**CAN YOUR 👍THUMBS-UP EMOJI OR E-SIGNATURE SEAL A DEAL?**

“…data messages or electronic signatures are now recognised in our law as equivalent to a proper basis upon which a written contract can be concluded. Thus, a valid written contract can be concluded electronically.” (Extract from the South African judgment below)

ECTA (the Electronic Communications and Transactions Act) means that you can in many cases create legally binding agreements purely electronically - via email, WhatsApp, social media and the like.

There is of course both risk and opportunity here. On the one hand, the old hassles of printing everything out and signing reams and reams of paperwork have become unnecessary, even undesirable, for many transactions (but not all – take advice in doubt). Remember to keep proof of everything.

**But be careful what you e-agree to!**

On the other hand, beware the risks! We tend to focus more on what we’re agreeing to when it involves reading and signing printed documents, and when everything is electronic it’s a lot easier to gloss over details, and to underestimate the importance of subject matter. Particularly, perhaps, in a social media environment, where things often evolve at pace and with an air of informality.

Let’s start our discussion off with a recent High Court confirmation of the binding nature of electronic signatures.

**An e-signature binds a debtor to a R1.5m deal**

* A bank sued a debtor who, it said, had electronically signed a credit agreement to buy a R1.5m BMW X5 motor vehicle and then defaulted on instalment payments.
* Sued for damages and for return of the vehicle, the debtor countered by denying that he had entered into a valid electronic contract. He said his brother-in-law/employer had purchased the car in his name and had signed the agreement electronically.
* The bank, however, produced evidence (including recorded telephone conversations between the debtor and its call centre) to support its claim that the electronic signature was indeed the debtor’s.
* Commenting that “…data messages or electronic signatures are now recognised in our law as equivalent to a proper basis upon which a written contract can be concluded. Thus, a valid written contract can be concluded electronically”, the Court held that the debtor had indeed concluded the contract, and that the bank was entitled to cancel it, demand return of the car, and claim damages.

**Can a “Thumbs-Up” 👍 emoji bind you to a contract?**

A Canadian Court recently made international news after holding that a👍thumbs-up emoji constituted approval of a contract (a sale of flax), thus creating a valid contract.

The buyer in that matter had texted to the (proposed) seller an image of a purchase contract, along with the message: “Please confirm flax contract”, and the seller had responded with a 👍thumbs-up emoji. When sued for failing to deliver per the contract, the seller claimed never to have accepted the contract - all the emoji meant, he said, was that he would think about it. However, on the particular facts of this matter, the Court concluded that the emoji had indeed signified the seller’s acceptance of the contract. The seller must now pay the buyer Can$82,200.21 (almost R1.2m at date of writing) in damages for breach of contract.

But would the result have been the same in a South African court? It seems logical that it would, provided of course that in the particular context of the matter the emoji clearly meant “I accept” and not perhaps “got it, will come back to you with an answer” or something similar.