

Validity of Electronic Contracts in India

Under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an electronic contract is valid and enforceable.

The only essential requirement to validate an electronic contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872.

Also, the courts in India give due regard to electronic contracts under the provisions of the Indian Evidence Act, 1872.

The provisions of the Information Technology Act, 2000 (**IT Act**) give legal recognition to an electronic (**E -Contract**) particularly section 10-A of the IT Act which states:

"Section 10-A: Validity of contracts formed through electronic means. -

Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

The above provision was introduced by the Information Technology (Amendment Act), 2008 after recognizing the growing dependence on electronic means to reach commercial agreements. This applies where contract formation, communication of the proposal and acceptance is carried out electronically.

How E - Contracts Can Be Entered Into: E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-

Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872. Which are:

- Offer and Unconditional Acceptance - Which may be made online or by e-mail communication.
- Lawful Purpose and Consideration - A contract is enforceable by law only when it is made for a lawful purpose and for some consideration. It must not defeat any provision of law and must not be fraudulent in nature.
- Capacity of Parties and Free Consent - Parties to a contract are capable of entering into a contract, if they satisfy the requirements of Section 11 and 12 of the Indian Contract Act, 1872 (capacity to contract), and consent of the parties must be free as per Section 13 of the Indian Contract Act, 1872.

The simplicity of the execution of an E-Contract being confounding, many sometimes wonder about its validity, especially when compared to a traditional written contract. The simple truth lies in the fact that the Indian Contract Act, 1872 has not specifically laid out any specific way of communicating an offer and what constitute its acceptance. The same can be achieved verbally,

in writing or even through conduct. This shows that even in its simplicity, an E-Contract is as valid as a traditional written contract; the only condition/ requirement being that an E-Contract should possess all the essentials of a valid contract as mentioned above.

Unless an inference can be drawn from the facts, that the parties intend to be bound only when a formal agreement has been executed, the validity of an agreement would not be affected by its lack of formality. Hence, once the parties are at *consensus-ad-idem*, then the formal execution of the contract is secondary. Therefore, once an offer is accepted through modes of communication such as e-mail, internet and fax then a valid contract is formed unless otherwise specifically provided by law in force in India; such as the Registration Act, 1908, the various Stamp Acts etc. Also, Section 1(4) of the IT Act lists out the instruments to which the IT Act, does not apply, which are as follows:

1. Negotiable Instruments;
2. Powers of Attorney;
3. Trust deeds;
4. Wills;
5. Contracts for Sale or Transfer of Immovable Property

Evidentiary Value of Electronic Records: The courts in India recognize electronic documents under Section 65-A of Indian Evidence Act, 1872. The procedure for furnishing electronic documents as evidence is provided under Section 65-B of the Indian Evidence Act, 1872.

As per Section 65-B of the Indian Evidence Act, 1872 any information contained in an electronic record produced by a computer in printed, stored or copied form shall be deemed to be a document and it can be admissible as evidence

in any proceeding without further proof of the original. But, admissibility of the same is subject to various conditions prescribed under section 65-B of the said act. It is required that the document or e-mail sought to be produced from a computer, was in regular use by a person having lawful control over the system at the time of producing it; the document or the e-mail was stored or received during the ordinary course of activities; the information was fed into the system on a regular basis; the output computer was in a proper operating condition and has not affected the accuracy of the data entered.

Conclusion: It may be concluded that where various steps of a contract have been affected through electronic means, the parties are at *consensus-id-idem* and such an agreement fulfills all the essentials of a valid contract under the Indian Contract Act, 1872 mentioned above, then, such contract is valid and legally enforceable.

**The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.*