Electronic contracts ‘an option’

Working remotely does not prevent businesses from legally entering into and executing enforceable contracts.

LEX Caribbean senior associate Bartlett D. Morgan said that point in the context of the coronavirus (COVID-19) pandemic, noting that “at the heart of commerce is the ability of parties to agree deals and enter into contracts”.

The attorney at law pointed out that Barbados’ laws included the Electronic Transactions Act, Cap 305 (ETA), under which “no information can be denied legal effect on the basis that it is contained in an electronic record”.

“Plainly – just because you have agreed with another person via email or iMessage does not, by itself, prevent that agreement from being legally enforceable in a court, just like a conventional agreement,” he explained.

Morgan made these comments in the context of his view that “the novel coronavirus has changed everything”.

“In only a few weeks, COVID-19 has forced many of us into self-imposed isolation and as a result, has forced us to find new, mostly digital ways of going about our lives,” he observed.

“Employers have been forced to scramble to put measures in place to enable employees to work remotely; our children are now receiving lesson plans via WhatsApp and Google Classroom; the use of digital payment methods has increased and food delivery companies are working overtime.”

All of this meant that “businesses must now adapt their practices to the new reality of keeping warm bodies of directors and employees isolated, while ensuring that deals and commerce do not falter”. This is where the ETA was important.

“Thankfully, Barbados has on the books, a law dating back to the early 2000s that makes contracting digitally easier. Yes, an agreement executed from the comfort of your bedroom-turned-bunker is as lawful as if you signed a traditional wet-ink agreement in a stuffy boardroom with your team of lawyers present,” said Morgan.

“Traditionally, the law has found that enforceable agreements exist without the agreement being in writing or even where the agreement has not been signed.

“However, it is far easier to prove that you have a valid, enforceable contract where the agreement is in writing and signed by all the parties. The ETA makes provisions for doing both, when contracting electronically.”

He noted that the ETA “is fairly technology neutral and does not mandate the form that electronic signatures must take”.

“If you wish to use an electronic signature on an agreement, you only need to ensure that the method of electronic signature authenticates the person signing; demonstrates the person’s approval of the information in the agreement (that is, that the person intended to be bound); and the method is sufficiently reliable and appropriate, in the circumstances,” he said.

Morgan added there was need to be “mindful that you cannot force a party to contract electronically. To avoid confusion, when opting to use electronic agreements, it may be useful to include language in the body of the agreement that expressly says the parties intend to sign electronically.”

Keep in mind the ETA does not apply to every kind of document. You will still need to execute, sell, conveyances or trusts in a traditional, paper-based manner,” the lawyer stated.

“The ETA must also be read with any other applicable laws that dictate the form and content of signatures to authenticate documents in certain contexts.”

Morgan said that “whether it is ideal or appropriate to contract electronically will depend on several factors”, and he added: “Before you decide to enter into an electronic agreement, ensure you seek legal advice.” (SC)

CariCRIS ratings under watch

Concerns about the coronavirus (COVID-19) pandemic’s impact have prompted the Caribbean’s lone credit rating agency to place all of its ratings under watch.

Caribbean Information & Credit Rating Services Limited (CariCRIS) chief executive officer (CEO) Wayne Dass said all of the ratings, nine per cent of which were in Barbados, were now deemed “Rating Watch – Developing”.

“A CariCRIS rating is placed on Rating Watch when events occur that may affect the credit quality of the issuer/issue, the impact of which is either unclear or cannot be accurately assessed, at this point in time,” Dass explained.

“A rating placed under Rating Watch does not imply that the rating will necessarily change. The rating action is based on the widespread impact that the coronavirus is having on global and regional economies and financial markets, which, if continued for a prolonged period, can adversely affect revenue, cashflows and the overall creditworthiness of all our rated entities.”

Trinidad and Tobago-based CariCRIS’ ratings span diverse sectors, including banking, insurance, mutual funds and other financial services, oil and gas, manufacturing, retail and distribution, tourism and property development.

“Our rated entities are in 18 countries across the Caribbean, concentrated around Trinidad and Tobago (42 per cent), Jamaica (25 per cent), Barbados (nine per cent) and St Lucia (six per cent),” Dass said.

“The deteriorating global and regional economic outlook caused by the spread of the virus, combined with asset price declines and lower energy prices are creating a credit shock across many of the sectors and markets in which our rated entities operate.”

He noted that “currently impact estimates are subject to a high level of uncertainty”.

“The impact on individual economies will differ depending on the structure of each economy and its health going into the crisis.”

Countries that are less tourism dependent may be less affected, unless they are major commodity exporters,” the CEO stated.

“For our rated sovereigns, the resilience of the country’s economic base, access to rainy day funds and the speed and extent of policy response will determine the impact on their ratings.”

“The credit impact on corporates would also not be uniform, with companies operating in industries most affected by cuts in discretionary spending being the hardest hit, including hotels and restaurants, retail, transportation and leisure.”

Dass said “most banks in the region are going into this crisis well-capitalised and with acceptable risk management systems and depending on the duration of the crisis may just face lower asset quality and reduced profitability, but the less diversified non-bank financial institutions may also have to contend with capital concerns”.

“The current financial market volatility, particularly the equity market decline and low interest rates, will likely weigh on the credit quality of insurance companies,” he said.

He said a severe but relatively short economic contraction “will mainly affect our weaker credits and/ or those in the most exposed sectors”, while “a prolonged recession however would likely have much broader implications”. (SC)