News

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 made 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 his 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

Bartlett D. Morgan (FP)

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 wills, 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)**