

eMail Legal Notice

your guide to the implementation of the eMail Legal Notice



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APPLICABLE LAW

The eMail Legal Notice is not just another document; there are various reasons why an eMail Legal Notice should be incorporated at your organisation. Herewith a brief summary of the applicable law

Electronic Communications and Transactions Act 25 of 2002

Section 11:

- (1) Information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a data message;
- 2) Information is not without legal force and effect merely on the grounds that it is not contained in the data message purporting to give rise to such legal force and effect, but is merely referred to in such data message;
- 3) Information incorporated into an agreement and that is not in the public domain is regarded as having been incorporated into a data message if such information is
 - a) referred to in a way in which a **reasonable person** would have **noticed the reference** thereto and incorporation thereof; and
 - b) accessible in a form in which it may be **read, stored and retrieved by the other party**, whether electronically or as a computer printout as long as such information is reasonably capable of being reduced to electronic form by the party incorporating it.

[own **bold**]

Companies Act 2008

Section 32(4)

Every company must have its name and registration number mentioned in legible characters in all notices and other official publications of the company, including such notices and publications in electronic format as contemplated in the Electronic Communications and Transactions Act, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all **letters**, delivery notes, invoices, receipts and letters of credit of the company.

Copyright Act 1978

Establish authorship and ownership in content and material that form part of the email. Establish Copyright under the applicable categories as addressed under the Copyright Act 1978, such as literary works, computer programs etc.

[Regulation of Interception of Communications Act 70 of 2002, section 5 and section 6.](#)

The general rule:-

No person has the right to *intentionally*¹ intercept or *attempt* to intercept or *authorize* or *procure* any other person to intercept at any place in the Republic any communications (direct and indirect² communications) in the course of its occurrence or transmission.

Under the Act there are exceptions to the general rule, with the following 3 exceptions applicable to ecommunications between 2 or more parties: -

1. By a person that is part of the communication (**section 4**);
2. With prior written consent from a party to the communication (**section 5**); and
3. In connection with carrying on of a business if that person (**section 6**)

Judgments in the ticket cases

In all the 'ticket' cases it was established that the position (on the front of the ticket, or at the entrance of the parking lot) of the Reference to the Terms and Conditions of Services is extremely important. This will determine the validity or enforceability of the Terms and Conditions applicable to the services utilized by the customer, e.g. parking lot, train services etc.

The eMail Legal Notice is seen as a browse wrap agreement, even if it is available through a hyperlink to another page – Section 11(3)(a) applicable

¹ **Interception** means aural or other acquisition of contents of any communication through the use of any means, including an interception device (this include email filtering and blocking technologies), so as to make some or all of the contents of a communication available to a person other than the sender or recipient or intended recipient of that communication and includes, monitoring by means of a monitoring device, viewing, examination or inspection of the content of any indirect communications and diversion of any indirect communication from its intended destination to any other destination.

² **indirect communication** as applied above, which means the transfer of information, including a message or any part of a message whether in the form of speech, music, or other sounds, data, text, visual images, whether animated or not, signals or radio frequency spectrum.

“TRANSLATE THEORY INTO PRACTICE”

How to apply the applicable law and ensure that the eMail Legal Notice is valid and enforceable?

1. The eMail legal notice must be available as a hyperlink from the top of every eMail sent by an employee of your organisation or sent by any person on behalf of your organisation;
2. The hyperlink must be titled “eMail legal notice” or “Legal notice” or “eMail terms”;
3. The hyperlink must be reasonably visible by person(s) receiving the eMail message;
4. The hyperlink must link to the actual eMail legal notice;
5. E-mail recipients or those accessing the eMail legal notice should be able to download, save and print it.

POSSIBLE PROBLEMS

1. Receiver of email does not have a browser and not able to use hyperlink to read, print or download email legal notice;
2. Link at the top of the email forms part of the email banner and some organizations detach banners for security reasons, which means that the receiver does not receive the email legal notice hyperlink at all

Solution(s) / Additional Controls

1. To deal with the possibility of a receiver that does not have a browser – add the following at the bottom of your email signature: “You could also [click here](#) to view our full eMail Legal Notice”.
2. To deal with the possibility where an organization detach the email banner with your hyperlink to the email legal notice – add the following at the bottom of your email signature: “If you do not have web access, please email [legalnotice@[yourdomain].co.za for a PDF version to be mailed to you.”

STEP BY STEP

STEP 1

The Accountable department of your organisation or person responsible for compliance and risk management should approve or ratify the content of the proposed eMail legal notice.

STEP 2

Publish the eMail legal notice on a separate page of the company website, e.g. www.yourcompanyname.co.za/emaillegalnotice/, in a format that enables downloading, printing and saving but not allowing the reader of the said email Legal Notice to be able to change the document (e.g. encrypted PDF). See example in [Annexure A](#); or publish the eMail Legal Notice in encrypted html format - See [Annexure B](#)

OTHER ASSOCIATED DELIVERABLES

It is imperative in any organisation to ensure that the various Policies and Notices are interrelated. No policy can stand in isolation and careful consideration should be given to the implementation of new Policies and Notices or changes / amendments to existing Policies and / or Notices and the effect of same on other existing policies. In light of the aforesaid a list of other deliverables under the heading of 'eCommunications', that may be applicable to your organisation:

Deliverables

- eCommunication Policy;
- eMail Retention Policy;
- Social Media Policy
- Records Management Policy;
- Disaster Recovery Plan;
- Interception and Monitoring Policy (based on latest Interception legislation);
- eCommunications with investors and shareholders;
- Digital Certificates, Practice Statements and Policy
- Privacy Policy;
- Data protection Policy
- Mobile Device Policy or BYOD Policy
- IT Security Policy

For more information on other IT&IP law services and/or solutions [click here](#).

You can contact Gerrie van Gaalen or Chris Brand for further assistance.

ANNEXURE A

EMAIL LEGAL NOTICE IN PROTECTED PDF FORMAT



EMAIL LEGAL NOTICE

THE TERMS AND CONDITIONS BELOW SHALL APPLY TO ALL EMAIL COMMUNICATIONS TO AND FROM DE KLERK & VAN GEND INC. ("DKVG")

Company Name	De Klerk & van Gend Inc.
Registration number	1997/016509/21
VAT number	4280253453
Directors	AF Brand (Chairman), DS Duffett, DP Smit, HP Serfontein, CA Albertyn, GC van Niekerk, MF Bardien, MI Higgins, JW Odendaal, M Koorts, CS Gersbach, AE Human, G van Gaalen
Physical Address	Click here
Contact details	Click here
Web site	www.dkvq.co.za

Kindly take note:

1. **Copyright:** The content in or attached to this email is the property of DKVG or has been licensed to DKVG to utilise in accordance with the applicable license. The addressee of this email may read this email and attachments (where applicable) and may only copy same for purposes of back up, compliance with retention legislation or where addressee acts as a conduit of the said email. The content and attachments of this email may not be utilised for commercial purposes, unless agreed to between the parties of this email.
2. **Confidentiality**
 - 2.1 The information contained in or attached to this email may contain confidential and privileged information and is solely for the use of the party to whom the sender intended to send the information ("intended recipient"). Any unauthorised distribution, copying or disclosure of this email and its content is prohibited, unless specifically authorised by the sender. If you have received this message in error, you should notify the sender by reply email immediately, not open the attachments (if any) and delete it.
 - 2.2 Any email content or attachments you transmit to us by electronic mail or otherwise (including any questions, data, answers, comments, suggestions, or the like) will be treated as non-confidential and non-proprietary by us, unless expressly agreed otherwise in writing or where such information is dealt with as privileged information under the DKVG attorney-client relationship.
3. **Data- & Privacy Protection**
 - 3.1 The email address(es) used in this email is/are used for the purpose of conveying this message and related messages only. The email address(es) may not be used for any other purpose unless the parties to this email have opted for such other use. The email address(es) under this email may not be used for any unsolicited communications or placed in a database to be used by 3rd parties for purposes of unsolicited communications.
 - 3.2 Any personal information that is transmitted to us will be dealt with in accordance with our Privacy Policy.

ANNEXURE B EMAIL LEGAL NOTICE IN PROTECTED HTML FORMAT



- Home
- The Firm
- The Team
- Services
- Employment
- News
- Contact
- Legal Terms

Cape Town Phone: +27 21 424-9200
 Tyger Valley Phone: +27 21 914-4020
 Claremont Phone: +27 21 683-3553



Email Legal Notice

- Print
- PDF Download

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Company Name	De Klerk & van Gend Inc.
Registration number	1997/016509/21
VAT number	4280253453
Directors	AF Brand (Chairman), DS Duffett, DP Smit, HP Serfontein, CA Albertyn, GC van Niekerk, MF Barden, MI Hirani, JM O'Connell, M Kooze, SS Oorbaek, AF Hume, Gysie Coetzee

ANNEXURE C

HYPERLINK AS PART OF EACH EMAIL

Gerrie van Gaalen
Director

DKVG
DE KLERK & VAN GEND
ATTORNEYS • PROKUREURS

gvgaaen@dkvg.co.za

Vineyards Square North, The Vineyards Office Estate
99 Jip de Jager Drive, Bellville, 7530
PO Box 4333, Tyger Valley, 7236
www.dkvg.co.za

OFFICE [+27 \(0\) 21 914 4020](tel:+270219144020)
FAX [+27 \(0\) 21 913 9778](tel:+270219139778)

DIVORCE MAINTENANCE:



CLICK HERE
to read more

Can your Antenuptial Contract prohibit you from claiming or paying maintenance?

Our email legal notice