

THE USE OF ELECTRONIC SIGNATURES IN MEXICO: ADVANTAGES AND PROCEDURAL OBSTACLES

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Executive Summary:

- Since 2023, various Mexican laws have recognized electronic signatures as equivalent to handwritten ones, promoting the digitalization of legal acts and e-commerce.
- For full legal validity, electronic signatures must meet the requirements set out in laws such as the LFEA and standards like NOM-151, including preservation records and time stamps.
- In legal proceedings, electronic signatures can be challenged, which may require costly forensic IT analysis; however, courts accept electronic documents as evidence if their authenticity is proven.

A couple of decades ago, in the year 2003, our Country took an important step towards the digitalization of legal acts after the reform of different legal systems that regulate relations between individuals and with authorities. The main objective of the reforms was to introduce the electronic signature as a valid alternative to the autographic signature on paper. With this, it was sought to facilitate the execution of contracts and legal acts through electronic means, strengthening the growth of electronic commerce and remote interactions. Since then, the use of these tools has been acquiring a daily use, although to date it still faces certain challenges in its implementation within the judicial sphere.

In view of the need to regulate the use of electronic signatures in our country, legislators have incorporated several provisions to the laws that establish its bases and requirements. Among the main ones are the Commercial Code; the Federal

Civil Code; the Federal Code of Civil Procedures; the recent National Code of Civil and Family Procedures and, in a more specialized manner, the Advanced Electronic Signature Law, which regulates its issuance, operation and validity. Together, these laws have allowed the electronic signature to consolidate as a reliable legal tool to replace the autographic signature on paper.

The Advanced Electronic Signature Law provides that the electronic signature is a set of data and characters that allows the identification of the signatory, created by electronic means under its exclusive control, in such a way that it is linked only to said signatory and to the content of the document to which it refers. The use of this electronic tool makes it possible to detect any modification of the document and guarantees that it has the same effects as a handwritten signature.

However, it is important to point out that in order for the electronic signature to be fully effective as a handwritten signature, it must comply with certain requirements established by the applicable legal regulations, which will be detailed in the following lines.

The Commercial Code establishes that documents sent by electronic means have the same legal validity as physical documents, provided that the signature can be attributed to the signer[1]. On the other hand, in 2017 the Ministry of Economy published the Mexican Official Standard called "NOM-151-SCFI-2016" whose objective is to regulate the conservation and integrity of these data messages sent by traders through electronic means, which allows guaranteeing their evidentiary value.

This regulation establishes that certain electronically signed documents must also have a retention certificate issued by a Certification Service Provider that includes a timestamp, which guarantees that the content of a document has not been altered and the accuracy of the date on which the document was generated.

However, the problem of the use of the advanced electronic signature arises in litigation, since, in practice, the counterpart of the signatory usually questions the validity of the electronic signature, focusing on a lack of consent of the signatory or contesting that its use was not made by the signatory. These arguments make it necessary that during the processing of lawsuits it is necessary the practice of expert opinions in computer science that can result in costly and time-consuming expenditures.

Therefore, in order to fully sustain the validity of electronically signed documents during the processing of a lawsuit, it is recommended that the requirements established by the corresponding legislation and the referred Mexican Official Standard be complied with and expressly refer to it in court. In practice, it is also advisable to present the electronically signed document and the format of the document that allows authenticating the use of the electronic signature, explaining in detail the validation process of the signed document.[1]

By way of conclusion, the position held by the federal courts is clear: electronic documents are admissible as documentary evidence, provided that their reliability and authenticity can be sufficiently proven. Although their digital nature requires careful assessment -given the technical possibility of alteration or forgery- this does not imply their automatic exclusion from the trial. On the contrary, their probative value can reach that of documents with a handwritten signature. Thus, the courts are strengthening a criterion of functional equivalence that recognizes a growing role for electronic media in contemporary judicial practice.[2]

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