

# The electronic signature in Spain

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**The law on electronic signatures in Spain is governed by Law 59/2003, dated December 19, 2003 on Electronic Signature.<sup>1</sup> This piece of legislation, in force since 20 March 2004, aims at promoting a more widespread use of digital signatures for e-commerce and e-government. The law implements EC Directive 1999/93, substituting the former law on e-signature that was approved by Royal Decree Law 14/1999, enacted before the approval of the EC Directive.<sup>2</sup> Thus, the law clarifies relevant concepts and terminology, introduces a digital signature for legal entities, promotes certification industry self-regulation, and establishes a legal framework for the future development of a national electronic registration card.**

## Main aspects

The main aspects of the law are the following:

- The “qualified electronic signature” is considered equivalent to the written signature. A “qualified electronic signature” means an advanced electronic signature that is based on a qualified certificate and generated through a secure electronic signature creation means. The above is valid for private transactions and for relations with the public administration as well.
- Legal entities are also able to issue documents signed with “qualified electronic signatures”. Until the enactment of the Law, companies could only use electronic certificates in the content of their tax obligations.

- The law establishes the basis for an electronic Spanish National Identity Card (“e-ID”) for electronic identification of Spanish citizens. This will allow individuals to identify themselves and sign documents electronically. As from July 2005, a consortium is developing a nine-month pilot phase for this project; it is foreseen that the project may be validated for a nationwide deployment in 2007-2008.
- The law also regulates the certification services to be provided by private and public entities (incorporated in Spain or having permanent presence in Spain) and their responsibilities and compulsory insurances. Also, the law obliges service providers to disclose their identification data and contact information, including the internet domain name, customer service information and the characteristics of the services that will be provided. A bond of Euros 3 million is established for certification services providers, to ensure that such companies are backed by sufficient guarantees in relation to users in case of liability.

## Qualified electronic signature

The law distinguishes between the “electronic signature” and the “advanced electronic signature”, the difference being that the second permits the identification of the individual or company who signs, and has been created under systems that the signatory can maintain under his or its exclusive control and exclusively related to them, allowing any modification of the elements and data incorporated into the signature to be detected. There is also an important distinction between the terms “certificate” and “qualified certificate” which basically refers to the number of elements that are included in order to make identification of the signatory and their identity more accurate, and to give them greater precision.

<sup>1</sup> Ley 59/2003, de 19 de diciembre, de firma electrónica.

<sup>2</sup> Real Decreto-Ley 14/1999, de 17 de septiembre, sobre firma electrónica.

For that purpose, the qualified certificate must include the following information:

- Reference that it is issued as a qualified certificate.
- The unique identity code of the certificate.
- The identification of the certificate services provider and its business address.
- The advanced electronic signature of the certificate services provider.
- The identification of the signatory by his name and surnames, or by pseudonym or company name or other elements to denote personal identification.
- The data, codes or cryptographic keys under the control of the signatory.
- The period of validity of the certificate.
- The general limits on issuing the electronic signature if applicable.
- The amount limits on issuing the electronic signature if applicable.

Additionally, article 13 of the law requires the physical presence of the applicant to verify their identification before being issued with qualified certificates, unless a Public Notary legalizes their written signature, duly stamped in the application form.

### **Providers of electronic certificates**

Providers of qualified certificates are obliged to assume extra obligations fundamentally referred to its human and technical organization. Any provider of certificates is liable for all damages caused to any individual or company due to the breach of its obligations under the law, it being they, and not the individual or the company, who are obliged to prove that they have acted under the provisions of the law with the necessary due diligence.

The law also includes a list in order to limit the liability of the providers under extraordinary circumstances or under a previous breach of other provisions of the Law by the signatory or any third party. The providers of qualified certificates also have to subscribe a guarantee of no less than 3,000,000 Euros or to be covered by insurance in that amount in order to cover possible liabilities arising by breach of the provisions included in the law. ■

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