

# RECENT DEVELOPMENTS IN MEXICO'S CIVIL AND COMMERCIAL LAWS

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## GENERAL SCENARIO FOR MEXICO

Until recent months Mexico's judiciary system had struggled to recognize and enforce modern ways of doing business. Like other countries that shared similar legal systems based on the civil-roman law tradition, and because of the lack of flexible rules of evidence that could support verbal agreements –not to mention statute of frauds–, Mexico had heavily relied on formal written contracts as a way of conducting business.

Although relevant rules of evidence existed in Mexico recognizing an express consent by a party in an agreement through the use of "unequivocal symbols", Courts seemed hesitant to accept them and legally bind someone from the use of such evidence. Such an approach, therefore, made it almost impossible to enforce consensual or verbal agreements to the detriment of modern commerce.

As a new era in commerce appears (that of electronic commerce), Mexico has found its way to new legislation in an important effort to give modern merchants relief, in securing business transactions. Its first approach was with its adherence in 1988 to the Vienna [UN] Convention on Contracts for the International Sale of Goods. Governing international sales, such a Treaty brought the notion of recognizing verbal agreements in any transaction, mitigating the need to prove such contracts by means of written evidence. Such an approach authorized Courts in the country to rely on any form of evidence including some considered *circumstantial* by our system like electronic devises and faxes.

Despite the importance of such changes in commercial laws, it would prove that new developments in law were necessary as such rules would only govern international sales, and not transactions made locally within the country. Important changes would follow with the amendments made to the Civil and Commercial Codes on April 29, 2000.

## AMENDMENTS TO THE CIVIL AND COMMERCIAL CODES

This monumental step in substantive law reform has recognized electronic and optical means as well as any other use of technology, as those through which express consent can be given in any contract, besides the oral, written, and unequivocal symbols that was already provided for. Most importantly,

reformed article 1834 *bis* of the Civil Code provides that on particular contracts where written form is requested, such requirements will be considered satisfied through the use of electronic or optical means, or the use of any other technology as long as the information generated or communicated in its integrity can be attributed to the parties involved. Such amendments, we might add, were also introduced to the Commercial Code, on article 93.

Although such amendments tend to consider use of technology and its information as circumstantial evidence, it is important to acknowledge two things. First, contracts will very unlikely be put aside and considered null and void based on statute of frauds arguments, that is, because the contract was not executed in writing. Second, Courts across the country [from now on] will have to specifically address [in rendering an opinion] such technology-produced evidence with scrutinized attention as they are specifically constrained by law. Eventually, Courts will grant this evidence the importance that should carry today.

At the same time, amendments made to the Commercial Code, introduced a new chapter in its content called "From Electronic Commerce". Such innovation by legislators has clear intent to acknowledge what a data message is and how it relates to evidence from technology devices. It states on article 89 that any information generated, sent, received, filed, or communicated through the use of electronic, optical means, or any other use of technology will be considered a data message.

With that in mind, article 90 will consider that any data message will presumably come from a party involved when either: 1) the data message is sent with the use of identification means as codes or passwords, or 2) the data message is sent by any information system programmed by the party involved, or either programmed on his behalf to operate automatically. The first scenario could very well address credit card problems and related contract enforcement; very common in Mexico until recently. The second proposition would help buyers seek enforcement of a sale made automatically through a website and not honored by the selling company.

Procedure laws were also considered by legislators. Civil and commercial rules of evidence have now addressed the *data message* as an important evidence element that can be introduced during a case. Moreover, it governs the way it should be carefully valued by the Court during trial, ordering much attention to be paid to the reliability of methods through which it was obtained. Although this kind of evidence is still to be considered circumstantial, we firmly believe that such amendments will help Courts across the country develop a much more flexible way of applying rules of evidence, and give data message the importance it deserves.

## CONCLUSION

While Courts might have considered written evidence as the one-and-only probing method during a collection case in past situations, we dare to say that with this new regulation and approach, once raised by the parties involved and supported by other circumstantial evidence during the case (such as witnesses), they will necessarily have to consider data messages as an essential element, and will consequently have to address it specifically while rendering an opinion or judgment. This will allow counsel in Mexico to pursue accounts where no written evidence was accounted for, enabling them to bring a strong cause of action with the use of technology, along with other related evidence.

Although major changes definitely need to be made to Mexican Legislation (especially with regards to certifying authorities and rules of evidence), from a litigation standpoint we strongly believe that by keeping good circumstantial evidence in mind, favorable results will surely follow in future legal disputes, enabling modern commerce to make its way in situations that only months ago seemed impossible.

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