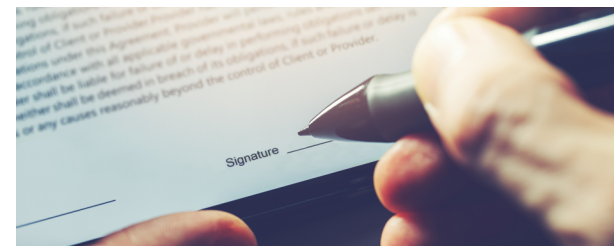




Electronic Contracts in Panama



These days, the electronic exchange of information has gained special relevance. The progressive adoption of technological tools that permit electronic communications embody significant savings of resources for both private and commercial sectors. Even the public sector has been incorporating technological systems to improve the management of Government affairs and the communication with citizens, promoting greater transparency and equitable use of resources in government actions.

Nowadays, there are multiple system options that facilitate the communication by electronic means. The use of email and electronic data exchanges has spread with remarkable rapidity in the negotiation of both national and international commercial operations, and it is expected that the use of these means of communication will become increasingly common. Nonetheless, the communication in the form of electronic messages of information of legal significance might still generate a certain degree of uncertainty about the validity and legal effectiveness of those messages.

In the Republic of Panama, **Law 51 of 2008**, amended by **Law 82 of 2012** and complemented by various regulations, establishes the regulatory framework for the development of e-commerce, including special norms that gives equal treatment to electronic documents, as it was issued in physical form, conferring legal recognition to electronic transactions and processes.

The aforementioned regulatory framework introduces the concept of electronic signature, as a technical means of identifying a person who gives consent to an electronic document or data message, which will have the same validity as a physical written signature, provided that: (i) a reliable method has been used to identify the person that sends the message and that its content has been approved by this person; and (ii) that the method is consistent and appropriate for the purpose for which the message was generated or communicated. This is what is known as a simple electronic signature, which does not enjoy an automatic legal presumption. Legal presumption is granted to what is known as a qualified electronic signature, which does have automatic legal recognition.

Qualified electronic signature originates from the use of a technological solution that is added to a cryptographic device (smart card or USB token) to give automatic legal recognition to documents and electronic transactions, protecting the integrity of the data, the authentication of digital signatures and guaranteeing the non-repudiation by their authors. This digital signature must be supported by a qualified electronic certificate issued by a certification services provider authorized by the National Directorate of Electronic Signatures of the Panama Public Registry.

If a legal disposition requires that a signature relating to a document or transaction is acknowledged or made under oath, such requirement shall be satisfied if the issuer uses a qualified electronic signature. If, in addition to the above, it is necessary for this signature to be notarized, countersigned, or made under oath before a notary or public official, the requirement will be satisfied by adding to the electronic signature of the issuer the qualified electronic signature of the notary and/or public official.

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About the validity of a digital signed document where the image of the tracing of a person's handwritten signature appears, this will have full legal recognition, provided that it complies with the conditions described above for a simple electronic signature, which are i) the use of a reliable method that allows the identification of the issuer of the electronic message and the approval of its content; and (ii) that the method is consistent and appropriate for the purpose for which the message is generated.

Law 51 of 2008 also establishes some principles in connection with the issuance of electronic documents, listed below:

- **RECOGNITION:** When the law requires that the information be in a written format, any document that has been granted or received by electronic messages will be legally binding, provided that the information contained therein is accessible for subsequent consultation.
- **ORIGINAL FORM:** When the law requires that information has to be submitted and maintained in its original format, this

requirement shall be fulfilled if there is appropriate reassurance that the integrity of the information has been preserved from the time it was first generated as an electronic document.

- **INTEGRITY:**
 - **Data message:** Information in a data message shall be considered certain and accurate if it has remained unaltered, except for the addition of an endorsement or a change inherent to the process of communication, filing, or submission. The degree of consistency required will be determined by the purposes for which the information was generated and by the relevant circumstances in the generation, transmission and filing of the message, as well as the integrity of the information contained and the way the issuer is identified.
 - **Electronic Document:** The information in an electronic document shall be considered certain and accurate, if the result of a corroboration procedure determines with complete certainty that said document has not been modified since the time of its issuance.

- **ADMISSIBILITY AND RECOGNITION AS LEGAL EVIDENCE:** Electronic documents shall be admissible as legal evidence and shall have the same legal evidentiary force granted to written documents in the Second Book of the Panama Civil Procedure Code. The assessment of an electronic document as legal evidence must consider whether its generation, transmission and filing were carried out in a way that guarantees its reliability; how the integrity of the information was preserved, the identification of the person issuing the document, and any other relevant factor.

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The **Law 82 of 2012**, which amended some aspects of **Law 51 of 2008**, introduced a set of new rules on electronic communications (Chapter II of Title II of **Law 51 of 2008**). These rules complement the principles established in the **Law from 2008**, which referred to the definition, scope, and validity of electronic documents. Follows an excerpt of the rules that were included:

- **Formation and validity of contracts:** If the parties do not agree on a different formality, the offer and its acceptance can be conveyed by means of a data message.
- **Recognition:** The legal effects, validity or mandatory force of a manifestation of consent or other declaration shall not be denied solely on the ground that it was made in the form of a data message.
- **Acknowledgment of receipt:** If the parties do not agree on a particular form or method of acknowledging receipt, it may be acknowledged by: (a) communication from the recipient, whether automated or not; (b) any act of the recipient sufficient to indicate to the other party that the data message has been received.
- **Presumption of receipt of a data message or electronic document:** When the sender of the message acknowledges receipt by the recipient, the recipient shall be presumed to have received the data message.
- **Sending time of a data message or electronic document:** If the parties do not agree on a different formality, the data message is deemed to have been issued when it is received by an information system that is not under the control of the sender.
- **Time of receipt of a data message:** If the parties do not agree to a different formality, the time of receipt of a data message or electronic document shall be determined as follows:
 1. If the recipient has designated an information system for the receipt of a data message or electronic document, receipt shall take place: (a) At the moment the data message is received by the designated information system, or (b) If the data message is sent to an information system of the recipient other than the designated information system; at the moment the recipient

retrieves the data message or electronic document.

2. If the recipient has not designated an information system, receipt will take place when the data message is received by the information system of the recipient.

Regarding the use of technological tools to improve the management of Government affairs; **Law 402 of 2023**, which adopts the new Code of Civil Procedure of the Republic of Panama, introduces the concept of electronic file as a measure to facilitate and expedite access to justice, enabling an Automated Judicial Management System to carry out all types of procedural acts; provided it grants secure access, transparency, authenticity, confidentiality, integrity, availability, traceability, conservation, security and interoperability of the data, information and services managed, and the protection of personal data.

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Email will be the preferred means of transmission in judicial proceedings. The submission of pleadings, motions, documents and other communications between judicial authorities, parties or their lawyers will be presumed to be authentic when they originate from the e-mail address provided in the lawsuit or updated during the process. The validity of these rules will begin as of October 11, 2024, upon completion of the year of promulgation of the Law in the Official Gazette.

CONCLUSIONS AND FINAL CONSIDERATIONS

Electronic contracts offer numerous advantages for commercial operations and transactions, such as reducing document management costs and the time it takes to conclude contracts, allowing communication and processing to be carried out almost instantly, streamlining the contract process.

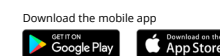
The use of technological tools that respect the principles of confidentiality, and that are also supported by an electronic certificate issued by a qualified certification body, provides the safeguard that the private and

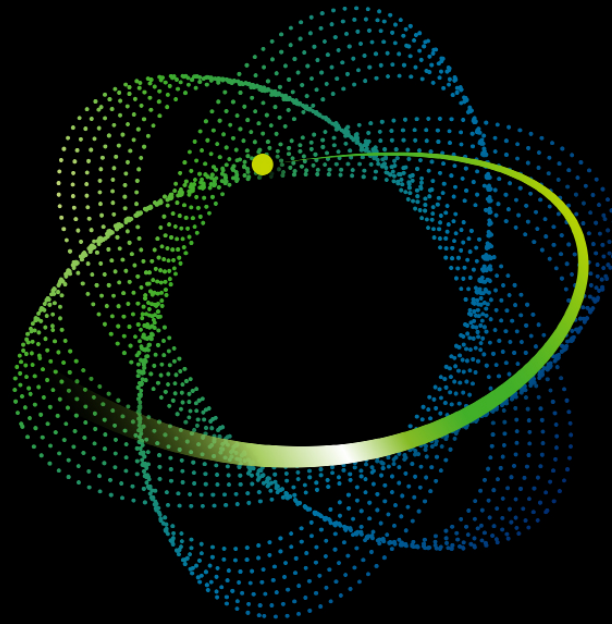
business sector needs to ensure that electronic communications between parties and/or contracts have full legal validity.

To conclude, the rules adopted by Panama to regulate the exchange of electronic information are based on the fundamental principles of non-discrimination in the use of electronic tools, functional equivalence and technological neutrality of the United Nations Commission on Trade Law (UNCITRAL). As a member country of the United Nations (UN), Panama adopted these principles and enacted **Law 51 of 22 of 2008**, to regulate the provision of technological storage services, electronic documents, and the development of e-commerce.

These universal principles that make up the legal framework of e-commerce in our country have as one of their goal the promotion of transparency among its actors and the generation of trust among Internet users.

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