

Electronic Signature in Israel

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For years we were accustomed to putting our signatures down in handwriting. In recent years, however, other signing methods have crept into our lives, such as, for instance, signing on electronic screens or different kinds of tablets, using our finger or pen-like objects, scans of our normal signatures saved on computer files and so on. These signing technologies have become more and more common and they are now used on a day-to-day basis, for example, at supermarket checkouts or banks. Some of us are also familiar with the smart card, a personal electronic card that allows for e-signatures on documents uploaded onto various kinds of computer systems without using any writing utensil. All these forms of signatures can be called electronic signatures, but does the law recognize any of them?

The purpose of a signature is to express a signer's intent to affirm the content of the document s/he signed and his/her consent.^[1] Another purpose is to identify the signer, since everybody has their own signature that they choose themselves.^[2] Many questions arise with respect to such purposes as it concerns electronic signatures. For instance, how can one be assured that the document will not be changed after signing it? that the signature was indeed signed by the signer and not another signing in his/her name or copying his/her signature? The answers to these questions also bear impact on the question of whether these signatures can be considered admissible by a court. So, for example, in a case heard in 2014^[3], the court held that a signature on an electronic pad that does not display the document and allows it to be read is absent any legal value and is not indicative of consent of the document.

The Electronic Signature Law was passed in 2001^[4], and its main purpose was to increase the certainty of actions performed electronically, especially over the internet, by ensuring the identity of signers using certain electronic means and recognizing the evidentiary status of the signatures using such means.

The Electronic Signature Law prescribes two important forms of electronic signatures:

1. Secured electronic signature: a signature that meets several requirements the Law sets out, among them, that it is unique, it enables the signatory to be identified, it is produced by a means under his/her sole control and it enables identifying later changes in the electronic message the signature was attached to.

2. Certified electronic signature: an electronic signature that is more reliable than the secured electronic signature, since, in addition to it meeting the requirements of the secured electronic signature, it is approved by a third party, who is registered with the Ministry of Justice, in accordance with the Law's provisions.

Legal Status of Electronic Signatures and the Amendment to the Law

The Electronic Signature Law stipulates that an electronic signature is admissible in court.

Approved a few months ago, the latest amendment to the Law^[5] applies a change to the evidentiary status of the secured electronic signature. Prior to the amendment, an electronic message signed by secured electronic signature would be prima facie evidence that the signature is that of the holder of the signing device and that the electronic message is that which was signed by the holder of the signing device. The amendment to the Law changed the evidentiary status such that the prima facie proof is to the fact that the message was not changed after its signing and that the message was signed by the signing device matching the electronic signature.^[6] That is, a secured electronic signature is no longer prima facie evidence that the signature was carried out by its owner. Only a certified electronic signature can be prima facie evidence that the signature was done by the holder of the signing device.^[7]

Another important change made in the Law is the easing of the previous version's requirement that a person's signature required on a document by statutory provision can only be in the form of certified electronic signature. Now the Law provides for any electronic signature that meets, "with a sufficient degree of certainty in the case circumstances, the purposes of the signature requirement under said statute." This condition is deliberately worded vaguely in order to lift barriers vis-à-vis electronic signatures and to allow them to be used freely while preserving the purposes of any statute requiring a signature.^[8] The courts may have to delve further into this matter when hearing future cases.

Along with loosening up the type of electronic signature when required by law, this last amendment to the Electronic Signature Law seeks to address a situation where there are 'power gaps' between parties signed onto a contract, such as consumer contracts. It prescribes that when a party to a contract has priority in formatting the electronic signature method and it seeks to rely on electronic signature for the contract, the burden of proving that the other party signed onto the contract will be on the former, except when the signature is a certified electronic signature.^[9]

It is worth noting that the explanatory notes to the original law's bill states that the Law is not intended to regulate use of "simple" electronic signatures, such as a signature at the end of emails.^[10] Its intention was seemingly to make reference only to electronic signatures made using specialized technologies. The language of the Law, however, especially after its latest amendment, allows for an interpretation holding that some of the Law's provisions apply to any electronic signature. Under the Law's current version, both a signature required by law and the burden on a party to a contract who formed the signing method, may also apply to a case of simple electronic signatures not produced by special means, such as a scan of a signature made for a computer document.^[11]

Those interested in using electronic signatures in Israel must do so with proper application of the relevant statutory provision and the latest amendment to the Law and should receive specific legal advice regarding compliance of the electronic signature they are interested in using with the Law's requirements and regarding its evidentiary status.

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[1] Many years ago the Israeli Supreme Court noted as much: “a contractee’s signature is usually a conclusive indication of a decision on its part”, CA 3601-96 Berashi v. Estate of the late Zalman Berashi, Rul. 52(2) 582, 599 (11 Jun 1999).

[2] See, for example, the explanatory notes to the Israeli bill of the Electronic Signature Law in 5760-2000 [translator’s note: sic.], Bill 5760 no. 710 2915 (“explanatory notes of the Law’s bill”).

[3] CF (Jer.) 27082-04-12 Shimon v. Partner Communication Ltd (published on Nevo on 19 Nov 2014).

[4] Electronic Signature Law, 5761-2001 (the “Law”).

[5] Electronic Signature Law (Amendment no. 3), 5778-2018, Book of Laws 5778 no. 2696 dated 28 Feb 2018 on pg. 212 (Government Bills 5778 no. 1192 pg. 296).

[6] See Article 3 of the Law and the explanatory notes to the bill of the Electronic Signature Law (Amendment no. 3), 5778-2018, Government Bills 5778 no. 1192 (“explanatory notes to Amendment no. 3”), pg. 300.

[7] See section 3(b)(3) of the Law and the explanatory notes to Amendment no. 3, pg. 300.

[8] See the explanatory notes to Amendment no. 3, pg. 296-298.

[9] Section 3A of the Law.

[10] Explanatory notes to the Law’s bill.

[11] See the definition of electronic signature and §2(2) and 3A of the Law. Except when it comes to statutory provision or a document listed in the First Schedule of the Law, which, as of the date of this article, deals with wills.

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