

[CH] New Federal Law on Digital Signatures Adopted

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*Oliver Sidler
Medialex*

Electronic signatures are to be placed on an equal footing with handwritten signatures. Accordingly, in future, it will be possible to conclude contracts for which the law requires a handwritten signature via the electronic media. On 2 December 2003 the Swiss Federal Assembly passed the Bundesgesetz über die elektronische Signatur (the Electronic Signatures Act), which is due to come into force in early 2005.

The new law is intended to replace the Verordnung über Dienste der elektronischen Zertifizierung (Decree on Electronic Certification Services), which has applied since 1 May 2000. This decree formed the basis for the voluntary recognition of suppliers of certification services. Certification services consist of the generation of private keys and the administration of generally accessible public keys (certificates). A document signed in accordance with the certification services decree does not, however, currently satisfy the requirements of the law of obligations concerning documents in writing.

In future, with the introduction of the new law and the change in the law of obligations associated with it, electronic signatures will have the same legal status as handwritten ones if the electronic signature is based on a certificate from a recognised supplier of certification services. This will make it possible to use the electronic media to conclude contracts for which a traditional handwritten signature has been necessary up until now.

The Electronic Signatures Act sets the conditions for the recognition of suppliers of certification services as well as establishing their liability. In the event of a claim, however, signature key holders are required only to demonstrate convincingly (not prove) that they have kept the key in such a way that use by an unauthorised third party can be ruled out. Persons who fail to take sufficient care with their key are liable for damage caused by third parties who have relied on the valid certificate.

The new law is limited for the most part to questions of e-commerce. However, it also lays a legal foundation for electronic communications with the authorities (or e-government) in the private law field, with the result for instance that in future it will be possible to communicate electronically with the register of companies. Details will be settled by the cabinet in a decree.

