

## RECENT DEVELOPMENTS IN MEXICO'S CIVIL AND COMMERCIAL LAWS

*By Romelio Hernández, Hernández, Mérito & Hurtado S.C.*

Until recent months, Mexico's judiciary system had struggled to enforce and recognize modern ways of doing business. Like other countries that share a similar civil law tradition, and because of the lack of flexible rules of evidence that could easily 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 existed recognizing 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, 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 Convention on Contracts for the International Sale of Goods. As we all know, governing international sales, such a Treaty brought the notion of recognizing verbal agreements in any transaction, relieving 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 devices and faxes.

Notwithstanding 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.

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 we had already known. Most importantly, reformed article 1834 bis of the Civil Code governs that on such contracts where

written form is asked for, such requirements will be considered satisfied through the use of electronic, 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 regulations tend, again, to consider use of technology and its information as circumstantial evidence, it is important to acknowledge that from now on, Courts will have to address such technology produced evidence with scrutinized attention as they are bound by law, and eventually, grant the importance that nowadays is supposed to have.

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 devises. 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 one would help buyers sanctioning sales made automatically by the use of a web site via Internet and not honored.

Procedure laws were also considered by legislators. Civil and commercial rules of evidence have now addressed the *data message* as important evidence 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 at 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 around the country develop a much more flexible way of applying rules of evidence, and give data message the importance it deserves.

While a Court might have considered written evidence as fundamental during a collection case in past situations, we dare to say that with this new approach, they will necessarily need to

consider data message evidence introduced by any party during a given case. This will allow counsel in Mexico, from now on, to pursue accounts where lack of written evidence was a problem, and enable them to bring a strong cause of action considering the use of technology along with other related evidence.

Although still important changes definitely need to be made in legislation, we think that keeping good circumstantial evidence in mind, a favorable result would surely follow in any dispute, enabling modern commerce to make its way where before it seemed impossible.