

Notice

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**Federal law
on certification services in the area of the electronic
signature****(Law on the electronic signature, ZertES)**

of 19 December 2003 (status: 1 August 2008)

The Federal Assembly of the Swiss Confederation,

having regard to art. 95 para. 1, and 122 para. 1, of the Constitution¹ and having regard to the message of the Federal Council of 3 July 2001²,

decrees:

Section 1: General provisions**Art. 1** Object and purpose

¹ The present law regulates:

- a. the conditions under which providers of certification services in the area of the electronic signature may be recognised;
- b. the rights and obligations of recognised certification service providers.

² It aims to:

- a. promote the provision of secure electronic certification services to the broad public;
- b. encourage the use of qualified electronic signatures;
- c. permit the international recognition of certification service providers and their services.

Art. 2 Definitions

¹ SR 101

² BBI 2001 5423

In terms of the present law:

- a. *electronic signature*: is understood as electronic data which are joined or linked logically to other electronic data and which serve to verify their authenticity;
- b. *advanced electronic signature*: is understood as an electronic signature which meets the following requirements:
 1. linked solely to the holder,
 2. enables the holder to be identified,
 3. created using means which the holder is able to maintain under its exclusive control,
 4. linked to the data to which it relates in such a way that any subsequent change to these data is detectable;
- c. *qualified electronic signature*: is understood as an advanced electronic signature based on a secure signature-creation device in terms of art. 6 para's 1 and 2, and on a qualified certificate valid at the time of its creation;
- d. *signature key*: is understood as unique data, such as codes or private cryptographic keys which the holder uses to create an electronic signature;
- e. *signature verification key*: is understood as data, such as codes or public cryptographic keys, used to verify an electronic signature;
- f. *qualified certificate*: is understood as a digital certificate which meets the conditions of art. 7;
- g. *certification service provider (provider)*: is understood as a body which certifies data in an electronic environment and which delivers digital certificates for this purpose;
- h. *recognition body*: is understood as a body which, in accordance with the accreditation rules³, is authorised to recognise and supervise providers.

Section 2: Recognition of providers

Art. 3 Conditions of recognition

¹Physical persons or legal entities who:

- a. are registered in the commercial register;
- b. are able to issue and manage qualified certificates in accordance with the requirements of the present law;
- c. employ personnel possessing the necessary knowledge, experience and qualifications;
- d. use reliable and secure information technology systems and products, in particular signature-creation devices;
- e. possess sufficient financial resources or guarantees;
- f. take out the insurance necessary to cover the liability specified in art. 16 and the costs which could arise as a result of the measures provided in art.13 para's 2 and 3;

³ Federal law of 6 Oct. 1995 on technical obstacles to trade, (THG; SR 946.51) and the corresponding implementing provisions.

g. ensure compliance with the applicable law, in particular the present law and the corresponding implementing provisions;
may be recognised as providers.

²The conditions specified in para. 1 are also applicable to foreign providers. When a foreign provider has already obtained recognition by a foreign recognition body, the Swiss recognition body may recognise it if it is proved that:

- a. the recognition was granted in accordance with foreign law;
- b. the rules of the foreign law applicable to the granting of recognition are equivalent to those of Swiss law;
- c. the foreign recognition body possesses qualifications equivalent to those which are required of a Swiss recognition body;
- d. the foreign recognition body guarantees its cooperation to the Swiss recognition body for the supervision of the provider in Switzerland.

³The administrative units of the Confederation, cantons and municipalities may be recognised as providers without having to be registered in the commercial register.

Art. 4 Designation of the accreditation body

¹The Federal Council designates the accreditation body for recognition bodies (the accreditation body).

²If no body has been accredited to perform recognitions, the Federal Council shall designate the accreditation body or another competent body as the recognition body.

Art. 5 List of providers

¹Recognition bodies shall notify the accreditation body of the providers they recognise.

²The accreditation body shall make the list of recognised providers available to the public.

Section 3: Production and use of signature and signature verification keys

Art. 6

¹The Federal Council regulates the production of signature and signature verification keys which may be the subject of qualified certificates in the terms of the present law. In doing so, it shall ensure a high degree of security, in accordance with the development of technology.

²Signature-creation devices must as a minimum:

- a. guarantee that the signature key used to produce the signature cannot practically be encountered more than once and that its confidentiality is sufficiently guaranteed;
- b. ensure with an adequate safety margin that the signature key used for signature creation cannot be found by deduction and that the signature is protected from any falsification by the technical means available;
- c. guarantee that the signature key used for signature creation can be protected reliably

by the legitimate holder from any abusive use.

³ When the signature verification process is put in place, it should be ensured that the following requirements are met with an adequate safety margin:

- a. the data used to verify the signature correspond to the data displayed for the attention of the verifier;
- b. the signature is verified reliably and the result of this verification is correctly displayed;
- c. the verifier may, if necessary, determine reliably the content of the signed data;
- d. the authenticity and validity of the certificate required upon verification of the signature are verified reliably and the result of this verification is displayed correctly;
- e. the identity of the holder of the signature key is displayed correctly;
- f. the use of a pseudonym is clearly indicated;
- g. any change affecting security can be detected.

Section 4: Qualified certificates

Art. 7

¹ Any qualified certificate must contain the following information as a minimum:

- a. the serial number;
- b. a statement specifying that it is issued as a qualified certificate;
- c. the name or pseudonym of the physical person who is the holder of the signature verification key; if there is a risk of confusion, the name must be completed by a distinctive element;
- d. the signature verification key;
- e. the period of validity;
- f. the name, country of establishment and qualified electronic signature of the provider issuing the certificate;
- g. a statement specifying whether the provider is recognised or not, and if recognised, the name of the recognition body.

² The certificate must also contain the following elements:

- a. the specific attributes of the holder of the signature key, such as the fact that it is entitled to represent a specific legal entity;
- b. the scope of use of the certificate;
- c. the value of the transactions for which the certificate may be used.

³ The Federal Council shall regulate the format of certificates.

Section 5: Obligations of recognised providers

Art. 8 Issue of qualified certificates

¹ Recognised providers must require persons requesting a qualified certificate to

present themselves in person and to bring proof of their identity. With regard to art. 7 para. 2, lit. a, the representative's powers shall be subject to verification; the professional or other information relating to this person must be confirmed by the competent body.

²The Federal Council shall determine the documents capable of proving identity and, if necessary, the attributes of persons requesting a certificate. It may, subject to certain conditions, provide for exemption from the obligation to present oneself in person.

³Recognised providers must additionally ensure that persons requesting a qualified certificate possess the signature key relating to it.

⁴They may delegate their identification task to third parties (registration offices). They are responsible for the correct performance of this task by the registration office.

Art. 9 Obligation to notify

¹Recognised providers must make available to the public their general contract terms and conditions and information on their certification policy.

²They must inform their clients of the consequences of abusive use of their signature key, at the latest at the time of issue of qualified certificates, as well as of the arrangements to make, according to circumstances, to ensure the confidentiality of their signature key.

³They shall keep a log of their activities. The Federal Council shall regulate the period for which the log and the related documents must be archived.

Art. 10 Revocation of qualified certificates

¹Recognised providers shall revoke qualified certificates immediately:

- a. if the holder or its representative so requests;
- b. if it is shown that they have been obtained fraudulently;
- c. if they no longer permit the guarantee of a link between a signature verification key and a particular person.

²In the event of revocation on request according to para. 1, lit. a, the providers shall ensure that the requester is authorised to request revocation.

³The providers shall immediately inform the holders of qualified certificates of the revocation thereof.

Art. 11 Directory service for qualified certificates

¹Every recognised provider guarantees to the interested parties that they can verify reliably, at all times and according to a customary procedure, the validity of all the qualified certificates it has issued.

²It may additionally offer a directory service enabling interested parties to search for and consult the qualified certificates it has issued. A certificate is entered in this directory only at the request of its holder.

³The public authorities may consult these data free of charge.

⁴The Federal Council determines the minimum period during which it must remain

possible to verify qualified certificates which are no longer valid.

Art. 12 Time-stamping system

Recognised providers shall issue, on request, a statement accompanied by their qualified electronic signature for the purposes of establishing the existence of digital data at a precise point in time.

Art. 13 Cessation of activity

¹ Recognised providers shall inform the accreditation body in good time of the cessation of their activity. They shall notify it immediately of any threat of bankruptcy of which they have been notified.

² The accreditation body shall commission another recognised provider to maintain the list of valid, expired or revoked qualified certificates and to archive the log of its activities as well as the corresponding documentation. The Federal Council shall designate the competent body to assume these tasks when there is no recognised provider. The recognised provider which ceases its activity shall bear the resulting costs.

³ Para. 2 is also applicable in case of the bankruptcy of a recognised provider.

Art. 14 Data protection

¹ Recognised providers and the registration offices they have mandated may process only the personal data necessary for the performance of their tasks. Any trade in these data is forbidden.

² Moreover, the legislation on data protection is applicable.

Section 6: Supervision of recognised providers

Art. 15

¹ Supervision of recognised providers is ensured by recognition bodies in accordance with the accreditation rules⁴.

² When a recognition body withdraws recognition from a provider, it shall notify the accreditation body of this immediately. Art. 13, para. 2, is applicable.

Section 7: Liability

Art. 16 Liability of providers

¹ When providers contravene obligations deriving from the present law or the

⁴ Federal law of 6 Oct. 1995 on technical obstacles to trade, (THG; SR 946.51) and the corresponding implementing provisions.

implementing provisions, they are liable for the damage caused to the holder of a signature key and to third parties which have trusted a valid qualified certificate.

²It is their responsibility to provide proof that they have complied with the obligations deriving from the present law and the implementing provisions.

³Providers cannot exclude their liability deriving from the present law nor that of their auxiliaries. However, they are not liable for damage resulting from non-compliance with or violation of a restriction on the use of the certificate (art. 7, para. 2).

Art. 17 Liability of recognition bodies

When recognition bodies in the terms of art. 2, lit. h, contravene obligations deriving from the present law and the implementing provisions, they are liable for the damage caused to the holder of the signature key and to third parties which have trusted a valid qualified certificate. Article 16, para's. 2 and 3, is applicable by analogy.

Art. 18 Statutory limitation

The actions provided for in the present law are limited by one year from the day on which the injured party learns of the damage and of the identity of the person responsible and, in all cases, by ten years from the date on which the damaging act occurred. Claims resulting from a contract are reserved.

Section 8: International agreements

Art. 19

¹In order to facilitate the international use and lawful recognition of electronic signatures, the Federal Council may conclude international agreements, in particular concerning:

- a. the recognition of electronic signatures and certificates;
- b. the recognition of providers and accreditation of recognition bodies;
- c. the recognition of tests and conformity assessments;
- d. the recognition of conformity marks;
- e. the recognition of accreditation systems and accredited bodies;
- f. the granting of standardisation mandates to international standardisation bodies, to the extent that the provisions concerning the electronic signature refer to specific technical standards or when such reference is provided for;
- g. the information and consultation concerning the drafting, adoption, modification and application of such regulations or standards.

²The Federal Council shall decide upon the implementing provisions for the international agreements relating to the areas listed in para. 1.

³It may delegate to private bodies activities relating to information and consultation regarding the drafting, adoption and modification of regulations and technical standards concerning the electronic signature and provide for remuneration in this respect.

Section 9: Final provisions**Art. 20** Implementation

¹The Federal Council shall decree the implementing provisions. It shall take account of pertinent international law and may declare international technical standards applicable.

²The Federal Council may commission the Federal Office of Communications to decree administrative and technical regulations.

³In order to achieve the purpose of the law, it may commission a unit of the administration to issue qualified certificates covering juridical relationships under private law or to participate in the undertaking of a private provider.

Art. 21 Amendment of the law in force

Amendment of the law in force is regulated in the annex.

Art. 22⁵**Art. 23** Referendum and entry into force

¹The present law is subject to the referendum.

²The Federal Council shall fix the date of entry into force.

Date of entry into force: 1 January 2005⁶

⁵ Repealed by No. II 55 of the act of 20 March 2008 relating to the formal updating of federal law, valid as from 1 August 2008 (AS **2008** 3437 3452; BBl **2007** 5789).

⁶ BRB of 3 Dec. 2004 (AS **2004** 5094).

Annex (art. 21)

Amendment of the law in force

The laws mentioned hereunder are amended as follows:

1. Civil code⁷

Art. 942, para's 3 and 4

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Art. 949, marginal title

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Art. 949a

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Art. 970

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Art. 970a

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2. Code of obligations⁸

Art. 13, para. 2

Abrogated

Art. 14, para. 2^{bis}

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Art. 59a

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⁷ SR 210. The amendments cited hereunder are inserted in the said law.

⁸ SR 220. The amendments cited hereunder are inserted in the said law.

Art. 60, marginal title

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Art. 61, marginal title

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Art. 929, marginal title

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Art. 929a

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Art. 931, para. 2^{bis}

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3. Law of 9 October 1992 on topographies⁹

Replacement of a term¹⁰

In art. 13 the term “Federal Office of Intellectual Property (Office)” is replaced by “Federal Institute of Intellectual Property (the Institute)”.

In art. 15, para’s 1 and 17 the term “Office” is replaced by “Institute”.

Art. 16a

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4. Law of 28 August 1992 on the protection of marks¹¹

Title preceding art. 37

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Art. 40

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⁹ SR 231.2. The amendments cited hereunder are inserted in the said law.

¹⁰ Rectified by the drafting Commission of the Federal Assembly (art. 58 para. 1 ParlG – SR 171.10).

¹¹ SR 232.11. The amendments cited hereunder are inserted in the said law.

5. Federal law of 5 October 2001 on designs¹²

Title preceding art. 24

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Art. 26a

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6. Federal law of 25 June 1954 on patents¹³

Title preceding art. 60

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Art. 65a

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¹² SR 232.12. The amendments cited hereunder are inserted in the said law.

¹³ SR 232.14. The amendments cited hereunder are inserted in the said law.