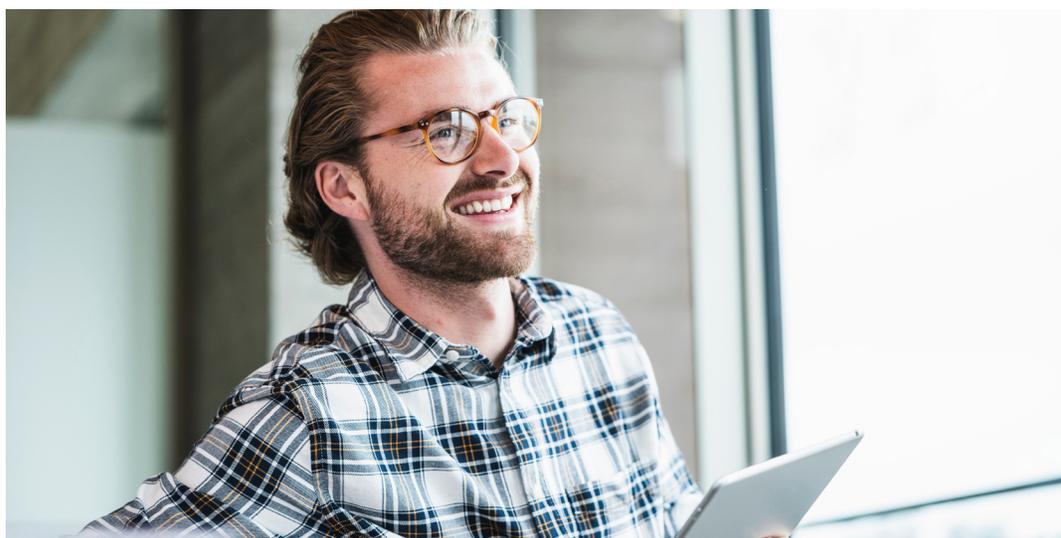


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# Court Support for Electronic Signatures in Brazil

Electronic signatures are a recent phenomenon in Brazil—even though the legal basis for them dates back to 2001. Electronic signatures with the right technology can provide as much evidence as ink or “wet” signatures. In addition, documents that are digitally sealed with industry-standard technology are able to certify that the electronic signature is valid and that the document has not been tampered with since the time of signing. As evidence of the act of electronically signing a document, an automated history of each and every action taken during the signing process (e.g, viewing, printing, sending, signing or declining activity) is essential to creating a reliable certificate of completion or audit trail. This certificate includes information to establish the who, what, when, and how of the electronic document-signing process.



The term “electronic signature” in Brazil is defined as any type of signature that is capable of electronically evidencing the authenticity and integrity of a document. Such electronic signatures are mainly governed by the Provisional Measure 2,200-2/2001 (“MP 2,200-2/2001”) – which authorizes the general use of electronic signatures. Specific technology is not required for an electronic signature to be considered valid under Brazilian law; however, the use of secure and auditable electronic signatures is strongly advisable to help ensure the enforceability and admissibility of such electronic signatures.

Moreover, in certain specific circumstances of government-regulated use cases, one may be required to use a heightened type of electronic signature, one which is secured with a digital certificate (also called a “digital signature”). For these cases, Brazil established a robust Certificate Authority infrastructure based on the Brazilian Public Key Infrastructure (“ICP-Brasil”), a centralized digital certificate chain framework managed by the National Institute of Information Technology for issuing these digital certificates. However, due to the high cost of acquiring and maintaining card or token-based digital certificates, the use of these ICP-Brasil-backed electronic signatures with digital certificates are generally limited to certain cases, such as the performance of professional activities (e.g., accountants and lawyers), high-value transactions including foreign currency exchange transactions, factoring (accounts receivable) among other specific use cases.

Due to the general popularity of standard electronic signatures (ones that do not use ICP-Brasil digital certificate), this paper focuses on case precedents related to the general definition of electronic signature, not ICP-Brasil digital signature. Specifically, this document surveys the enforceability and validity of electronic signatures when they properly meet the key requirements provided in Article 10, §2 of MP 2,200-2/2001, which are:

- the ability to evidence authenticity and
- the integrity of the signed documents.

In addition to those requirements, the MP 2,200-2/2001 expressly provides for the possibility of adopting other means of proving the authenticity and integrity of documents in electronic form, including those using certificates not issued by ICP-Brasil, provided they are accepted by the parties as valid or accepted by the person against whom the document is opposed. Some recent case precedents emphasized this factor when ruling for the validity and enforceability of electronically signed documents. Accordingly, some Brazilian companies are adopting a more conservative approach by including contractual provisions that make clear the parties are agreeing to use electronic signatures to formalize their agreement. In fact, adding such a clause and expressly providing that the contracting parties accept the use of standard electronic signatures in the terms of Article 10, §2 of MP 2,200-2/2001 can help to demonstrate the validity of the electronically signed contract before Brazilian courts.

More recently, the Brazilian Congress approved Law 14,063/2020, which establishes a framework for the use of electronic signatures in interactions with public sector entities (as well as in public health-related matters). Clearly inspired by the current law in the European Union, Regulation (EU) 910/2014 (eIDAS), this statute proposes a tiered approach and defines 3 types of electronic signatures: (i) standard electronic signatures (identifies the signatories by association of data in electronic form); (ii) advanced electronic signature (identifies the signatory through non-ICP-Brasil digital certificates or by other tamper-proof means that uniquely identifies the signatories, with a high level of trust), and (iii) qualified electronic signature (identifies the signatory through ICP-Brasil digital certificates, thus equivalent to the digital signature under MP 2,200-2/2001).

Also, it establishes certain use cases where each type of electronic signature must be used in documents and interactions with public sector entities, authorizing federal, state, and municipal entities to further determine such use cases within their competences. In addition, the Brazilian Federal Government issued the Federal Decree 10,543/2020, further regulating the use of standard, advanced, and qualified electronic signatures by entities of the federal public administration.

Such findings demonstrate that documents that are signed electronically with the right technology are typically admissible as evidence when enforced in the Brazilian courts. More importantly, they support that contracts executed through electronic signature systems can be binding and enforceable in Brazil.



# General Comments on the Brazilian Judicial System

## General Comments on the Brazilian Judicial System

Brazil is a civil law jurisdiction and its court system is established by the Brazilian Federal Constitution. The Brazilian Judicial System is composed by state and federal courts, with common or specialized jurisdiction, both subject to the Superior Court of Justice (“STJ”) for matters related to federal law and the Federal Supreme Court (“STF”) regarding constitutional matters. The federal courts have jurisdiction over specific subject matters, as provided in the Constitution (e.g., cases where the Federal Union or its entities are the plaintiff, the defendant or an interested party, cases involving foreign countries or international organizations, enforcement of letter rogatory, among others) and the state courts have residual competence over all remaining subject matters.

Article 5, LV of the Constitution establishes the adversarial principle and wide defense as a fundamental right of litigators in administrative or judicial procedures. Consequently, decisions issued by lower courts (first instance) are generally appealable to the courts of appeals (second instance). Also, if a second instance decision meets the requirements set forth by the applicable procedural law, it may also be subject to review by a higher court (whether STJ, STF or both, depending on the case).

As a civil law jurisdiction, decisions issued by the Brazilian courts affect only the parties involved in a certain cases and are generally not binding upon third parties (except for some types of binding decisions issued by higher courts, as provided in the applicable procedural law). In any case, the litigating parties and the judges usually rely on precedents to construe their arguments in other cases. Hence, in practice, uniform precedents tend to be more persuasive and exercise a greater influence over future decisions.

Please note that the Brazilian Judicial System has been struggling to address and resolve the high volume of claims under review by its courts. A 2021 report<sup>1</sup> from the Brazilian Council of Justice (“CNJ”) revealed that the average time for a claim to be finally awarded before state courts is 5 years and 4 months, and that federal courts may take more than 8 years to reach a final decision.



# Rulings that Support Documents Electronically Signed

Broad use of electronic signature in Brazil is relatively new. Consequently, only recently have a significant number of cases involving the use of standard electronic signatures been presented before Brazilian courts, but many of the decisions that have been issued to date support the enforceability and admissibility of standard electronic signatures.

## Rulings that Support Documents Electronically Signed with DocuSign eSignature

The following rulings support documents that were electronically signed with DocuSign.

- 1 Ourotur Corporate Eireli v. Prefácio Intermediação e Gestora de Negócios Ltda**  
**Lawsuit No. 2235424-56.2021.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (February 2022)**

This case is a repossession action of leased vehicles with an injunction request, filed by Ourotur Corporate Eireli (the plaintiff) against Prefácio Intermediação e Gestora de Negócios Ltda. (the defendant), based on the non-payment of lease installments of a contract signed electronically with DocuSign eSignature.

The injunction was dismissed by the First Instance Judge, understanding that there was no contract signed manually and there was no indication of a signature validated by an ICP-Brasil digital certificate.

The plaintiff filed an Appeal and obtained a favorable decision. The Court understood that the contract signed electronically, together with the evidence brought to the case (notification, confession of debt and transcription of conversations via WhatsApp), complies with Article 10, paragraph 2nd of MP 2,200-2/2001, evidencing the veracity of the contracts electronically signed.

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- 2 CAS Damazio Distribuidora de Gás Ltda. v. Companhia Ultragaz S/A**  
**Lawsuit No. 0009004-04.2020.8.19.0213**  
**Court of Appeals of the State of Rio de Janeiro (April 2022)**

This case is an Enforcement Action for an Extrajudicial Title filed by Companhia Ultragaz S/A (the plaintiff) against CAS Damazio Distribuidora de Gás Ltda (the defendant), based on a gas supply and equipment loan agreement, signed electronically via DocuSign eSignature by the parties and witnesses, for collection of installments and contractual defaults.

The First Instance Judge admitted the defendant's preliminary defense and extinguished the lawsuit, understanding that the contract that support the request does not have liquidity nor does it meet the requirements of Article 784, item III of the Brazilian Civil Procedure Code.

The plaintiff filed an Appeal and obtained a favorable decision. The Court annulled the sentence and understood that the agreement between the parties had the electronic signature of the signatories, carried out by a technology service company DocuSign, whose identification is sufficient to meet the provisions of Provisional Measure 2,200-2/2001, as there is the possibility of proving the authorship of the signatures and the integrity of the content of the document.

**3 Gavilon do Brasil Comércio de Produtos Agrícolas Ltda. v. Fenix Agronegocio Ltda.**  
**Lawsuit No. 2207406-25.2021.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (September 2021)**

This case is an Enforcement Action for an Extrajudicial Title filed by Gavilon do Brasil Comércio de Produtos Agrícolas Ltda. (the plaintiff) against Fenix Agronegócio Ltda., (the defendant), based on a soybean purchase and sale agreement, electronically signed by the parties and witnesses through the DocuSign platform, to charge a contractual fine for not receiving the product.

The First Instance Judge ordered the plaintiff to amend the complaint, by proving the regularity of the electronic signatures placed in the power of attorney and in the private instrument.

The plaintiff filed an Appeal and obtained a favorable decision. The Court determined the regular continuation of the legal procedure, as it understood that the fact that the DocuSign platform, not certified by ICP-Brasil, was used does not prevent the recognition of the validity and effectiveness of the documents, as provided for in Article

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**4 Ticket Soluções Hdfgt S/A v. R.D. Comércio de Acessórios para Veículos Ltda.**  
**Lawsuit No. 1018222-29.2019.8.26.0100,**  
**Court of Appeals of the State of Sao Paulo (July 2020)**

This case is a Monition Action filed by Ticket Soluções Hdfgt S/A (the plaintiff) against R.D. Comércio de Acessórios para Veículos Ltda. (the defendants), based on the Ticket Log System Administration Services Agreement (Contrato de Prestação de Serviços de Administração do Sistema Ticket Log), signed electronically by the parties with DocuSign eSignature, for the collection of services rendered and not paid.

The defendants presented a defense, claiming that they had not signed the contract and requested a forensic graphotechnical evidence. The First Instance Judge dismissed the defendants' request and accepted the initial request, determining the payment of the debt constituted through the contract.

The defendants filed an Appeal, and the Court sustained the decision of the First Instance, understanding that the graphotechnic forensic evidence is inappropriate, since the contract was signed electronically. In addition, it noted that the documents brought to the case file prove that there is identity between the data contained in the contract and those presented by the defendants. In addition, the case files contain spreadsheets that prove the provision of services, with a description of dates, hour and drivers, which were not challenged by the defendants. Thus, the Court concluded that the documents attached to the case file are capable of supporting the initial request.

**5 Fmb4 Securitizadora S/A. v. Dhemes Automotiva Ltda et. al.**  
**Appeal No. 2043881-27.2022.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (March 2022)**

This case is an Enforcement Action filed by Fmb4 Securitizadora S/A (the plaintiff) against Dhemes Automotiva Ltda and others (the defendants), based on a private debt confession instrument, signed electronically with DocuSign eSignature, for collection of installments unpaid.

The First Instance Judge ordered the plaintiff to present a new debt confession term, as it understood that the electronic signature must be supported by an accredited certifying authority, which would not be the case of DocuSign.

The plaintiff filed an Appeal and obtained a favorable decision. The Court understood that there is no need to present a new confession statement, at least before the defense is presented by the defendants. It also understood that documents signed through the DocuSign platform are valid, under the terms of Article 10, paragraph 2nd, of MP 2,200-2/2001, until their authenticity is removed.

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**6 Condomínio Residencial Sumaré IV – Porto Feliz Residencial Clube v. Valdinei de Lima and Lucilene Pereira de Souza Lima**  
**Appeal No. 2027060-79.2021.8.26.0000**  
**Court of Appeals of Sao Paulo (August 2021)**

This is an Enforcement Action filed by Condomínio Residencial Sumaré IV - Porto Feliz Residencial Clube (the plaintiff) against Valdinei de Lima and Lucilene Pereira de Souza Lima (the defendants), based on the second agreement signed electronically by the parties with DocuSign eSignature, and submitted to judge's approval.

The First Instance Judge conditioned the request for ratification of the agreement, to the presentation by the parties of an agreement signed by hand, understanding that DocuSign is not accredited by ICP-Brasil.

The plaintiff filed an Appeal and obtained a favorable decision. The Court understood that despite DocuSign not being accredited by the ICP-Brasil certifier, the Article 10, paragraph 2nd, of MP 2,200-2/2001 allows the use of electronic signatures. In addition, the document attached to the file has a validity clause for this type of signature and was not contested by the defendants. Therefore, the manual signature requirement was removed.

## Other Rulings on Electronic Signatures

The following rulings also recognized the validity of electronic signatures:

- 7 Supermercados Campo Grande Ltda. and Nourival Schomwambach v. Ulend Gestão De Ativos Ltda.**  
**Interlocutory Appeal No. 2196934-96.2020.8.26.0000**  
**Court of Appeals of the State of São Paulo (December 2020)**

This case is an Enforcement Action for an Extrajudicial Title filed by Ulend Gestão de Ativos Ltda. (the plaintiff) against Supermercados Campo Grande Ltda. and Nourival Schomwambach (the defendants) based on a banking credit certificate, signed electronically for non-payment collection.

The First Instance Judge rejected the preliminary defense presented by the defendants, understanding that the banking credit certificate electronically signed is valid and effective, hence determined the continuation of the legal procedure.

The defendants filed an Appeal and the Court sustained the decision of the First Instance, understanding that the defendants at the time of the execution of the banking credit certificate, expressly agreed to the use of an electronic signature not certified by ICP-Brasil; the defendants were benefited with the amounts arisen from the bank loan and, therefore, cannot evade the payment obligation.

The Court applied the intelligence of Article 10, paragraph 2nd, of Provisional Measure 2,200-2/01, which allows the use of other means of proving the authorship and integrity of documents in electronic form, including those using certificates not issued by ICP-Brasil, provided that they are accepted by the parties as valid or accepted by the person to whom the document is opposed.

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- 8 Banco BTG Pactual S/A v. Marcos Cerino Barbosa**  
**Interlocutory Appeal No 2132753-86.2020.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (August 2020)**

This is an Enforcement Action of a Sum Certain filed by Banco BTG Pactual S/A (the plaintiff) against Marcos Cerino Barbosa (the defendant), based on an Adhesion and Knowledge of Conditions and Risks for the Performance of Leveraged Operations Term “BTG Leverage” (Termo de Adesão e Ciência de Condições e Riscos para Realização de Operações Alavancadas “Alavancagem BTG”) and brokerage notes, to charge the non-payment.

The First Instance Judge, before hearing the defendant, determined that the plaintiff should readjust the type of action/procedure to the common procedure, as the signatures of the documents are not certified by ICP-Brasil, which removes their enforceability.

The plaintiff filed an Appeal and obtained a favorable decision. The Court recognized that the requirements of an extrajudicial enforcement order were present in the contract signed electronically in accordance with Provisional Measure 2,200-2/2001, which even allows the use of another electronic means capable of proving the authenticity and integrity of electronic documents. Furthermore, the Court underlined that the contract in question contained an express provision in which the parties agreed to the use of an electronic signature to form an enforceable extrajudicial title. Therefore, the Court allowed the plaintiff to proceed with the enforcement action for an extrajudicial title against the defendant.

**9 FIDC Creditas Tempus v. Estevão Invenção de Souza Neto**  
**Appeal No. 2012689-76.2022.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (February 2022)**

This is a Search and Seizure Action filed by a Fundo de Investimentos em Direitos Creditórios Não Padronizado Creditas Tempus (the plaintiff) against Estevao Invenção de Souza Neto (the defendant), based on a Credit Assignment Agreement electronically signed, for non-payment collection.

The First Instance Judge, in order to proceed with the legal procedure, determined that the plaintiff should add the manually signed Credit Assignment Agreement to the case files, as it understands that the electronically signed agreement is not valid, based on Provisional Measure 2,200-2/2001.

The plaintiff filed an Appeal and obtained a favorable decision. The Court understood that the certification of the electronic signature by ICP-Brasil is not an essential condition for the validity of the document, especially in the initial phase of the process before the defendant could manifest. Furthermore, Provisional Measure 2,200-2/2001 does not prevent the use of other means of proving authorship and integrity of documents in electronic form, including those that are not certified by ICP-Brasil.

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**10 Onix Fundo de Investimentos em Direitos Creditórios Não Padronizados v. Eduardo José Gomes Pimental Filho et. al.**  
**Appeal No. 2274038-33.2021.8.26.0000**  
**Court of Appeals of the State of Sao Paulo (June 2022)**

This case is an Enforcement Action for an Extrajudicial Title filed by Onix Fundo de Investimentos em Direitos Creditórios Não Padronizados (the plaintiff) against Eduardo José Gomes Pimentel Filho ME and Eduardo José Gomes Pimentel Filho (the defendants), based on a private instrument of assignment and other covenants signed electronically, for non-payment collection.

The First Instance Judge, in order to proceed with the legal procedure, ordered the presentation of the original copy of the extrajudicial title, signed with a certificate issued by a digital certification company accredited by ICP-Brasil.

The plaintiff filed an Appeal and obtained a favorable decision. The Court recognized that, in this case, the extrajudicial title could be signed with electronic signatures, in accordance with Provisional Measure 2,200-2/2001, provided that the signatories agreed to its use, and also that the electronic documents produced and kept in compliance with the specific legislation. In addition, the Court highlighted that the instrument was signed electronically by the contracting parties, joint debtors and two witnesses. Therefore, it determined the unenforceability of presenting the original copy of the agreement and the continuation of the legal procedure for the execution of extrajudicial title against the defendants.



## Adoption in Brazilian Courts

Brazilian Federal Law 11,419/2006 governs the use of electronic means for conducting judicial proceedings, communicating judicial acts and filings of procedural documents. Based on this statute, the Brazilian Judicial System authorizes petitions, appeals and other acts to be (a) digitally signed, upon the use of digital certificates as issued under ICP-Brasil, or (b) electronically signed, provided that the signatory completes its/his or her registration before the relevant branch of the Brazilian Judicial System, in accordance with the internal rules of the applicable Court.

The Brazilian Civil Procedure Code (Law 13,105/2015) has further regulated this matter and authorized judges at all jurisdictional levels to electronically sign their decisions and acts – thus reinforcing the legal validity of electronic and digital signatures in the Brazilian Judicial System.

Each Brazilian court, whether at a state or federal level, is responsible for providing an adequate system for the public to access and handle electronic judicial proceedings. The electronic systems made available by most Brazilian courts can only be accessed and used through a digital certificate; the interested parties and the judges are required to have a digital certificate and to digitally sign their acts in such systems. Some courts, however, use electronic signature-based systems. Such electronic systems require the interested parties and judges to fill out a registration before the court and obtain credentials (e.g., login and password) to access the system and electronically sign their acts.

# Conclusion

Electronic signatures are rapidly becoming a de facto standard in business and consumer transactions in Brazil. As the cases above illustrate, electronic signatures offer real benefits when the technology used is designed to comply with key requirements, including those of MP 2,200-2/2001. Electronic signatures can form contracts that are binding and enforceable, and also can provide the same amount of admissible evidence as would be provided by a paper-based signature.

Check the DocuSign eSignature Legality Guide to learn more about electronic signature-related laws from around the world.

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#### Disclaimer

The findings included in this White Paper are limited to decisions issued until July 01st, 2022 and reflect the current status of the publicly available proceedings until such date. This White Paper is for informational purposes only and should not be deemed as legal advice. Please address any questions or concerns with your trusted legal advisor.

August 16th, 2022.



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#### About DocuSign

DocuSign helps organizations connect and automate how they navigate their systems of agreement. As part of its industry-leading product lineup, DocuSign offers eSignature, the world's #1 way to sign electronically on practically any device, from almost anywhere, at any time. Today, over a million customers and more than a billion users in over 180 countries use the DocuSign platform to accelerate the process of doing business and simplify people's lives.

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