

# EVIDENCE IN THE SAUDI ELECTRONIC TRANSACTION SYSTEM, A COMPARATIVE STUDY WITH THE UNCITRAL MODEL LAWS

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## ABSTRACT

*The revolution in technology and communications has led to multiple developments in Saudi legislation. The Saudi legislator has taken care of the rules of electronic transactions, trade, and electronic stores by setting legal systems that put solutions to their legal problems. The article aims to identify evidence of electronic transactions in the Saudi system. Where the Saudi legislator put it to protect electronic transactions and ensure their authenticity, the research article used the comparative descriptive-analytical method, the results of the study indicated that there are legal rules for electronic signature and electronic record of electronic data for customers in the 2007 Saudi electronic system. The most important recommendations of the article are to establish a special evidence law, for electronic transaction.*

**Keywords:** Evidence, Electronic Transactions-Saudi Legal System.

## INTRODUCTION

The Kingdom of Saudi Arabia has witnessed an evolution in the technology and the telecommunications sector, which has had an impact in concluding legal transactions, Modern electronic forms of writing, signature, documents and records appeared. This led to the interest of the Saudi legislator in issuing legal regulations that regulate it, as the electronic transactions system was issued in the year 2007, Which aims to control electronic transactions and organize them according to a legal framework and provide legal protection for contractors, With the release of an e-commerce system in the year 2019 , In addition, the Kingdom of Saudi Arabia has issued a guide for electronic stores in accordance with the e-commerce system 2019, Electronic transactions are transactions that are organized in an electronic environment. The electronic transaction is legally included in the range of contracts that are concluded remotely and the will is expressed in it through modern communication technology (Saeed, 2016), so the aim of the research article is to identify evidence of electronic transactions in the Saudi system and in formulating that we review the concept of electronic transaction

## LITERATURE REVIEW

It was defined as electronic commerce as the system that allows through the Internet the movements of buying and selling goods, services and information (Quwa, 2010).

The definition of the electronic contract in the United Nations Model Law on E-commerce as, (Information that is created, sent, received, or stored by electronic, optical or similar means, including but not limited to the exchange of electronic data, e-mail, telegraph or

telex. And in the first article of the Saudi electronic commerce system 2019, it is an agreement that is concluded electronically between the parties who deal in electronic commerce.

Definition of electronic transactions in the Saudi electronic transactions law; Defined by the executive regulations of the electronic transactions system for the year 2007

*"It is any exchange, correspondence, contract, or other procedure concluded, in whole or in part, by electronic means. It is clear from the above that the term electronic transaction is more comprehensive than electronic commerce and electronic contracts, as electronic transactions mean the use of the Internet in managing financial and administrative business in addition, electronic commerce (Saeed, 2010)."*

## METHODOLOGY

To study the evidence of electronic transactions in the Kingdom of Saudi Arabia: The researcher used the descriptive method, the comparative analysis; it is descriptive because it knows the evidence and means to prove electronic transactions. (Electronic record and electronic signature) in the system of the Kingdom of Saudi Arabia, Based on an analysis and interpretation of legal rules, their classification, and analysis, t Then the distinction and comparison between the evidence and the conditions thereof compared with the UNCITRAL Model Laws.

## RESULTS AND DISCUSSION

In addition, electronic transactions do not differ from traditional transactions in terms of their content or fields, but the real difference between them. It is limited to the electronic medium used in the electronic transaction, and the rules of the national law in which the transaction took place shall apply to electronic transactions unless the two parties agree otherwise. And evidence in electronic transactions in the comparative legal systems is entrusted to specialized bodies that investigate the safety and validity of electronic transactions in terms of their content and validity of their issuance from those who are attributed to him. And, electronic certificates of certification are issued certifying the safety and correctness of these electronic transactions (Al-Balushi, 2018).

With the technological development of means of communication, the contract is concluded with a message of data exchanged by customers. The data message was defined in the 1996 UNCITRAL Model Law on Electronic Commerce 1996 as

*"Information that is created, sent, received, or stored by electronic, optical or similar means, including but not limited to the exchange of electronic data, e-mail, telex or paper copies" (Obeidat, 2000).*

The executive regulations of the Saudi electronic transactions system for the year 2007 defined electronic data in the first article of it as any data with electronic characteristics in the form of texts, symbols, pictures, drawings, sounds or other electronic formulas, Item 3/2 of the draft model contract for electronic transactions, which adds to the United Nations Model Law on Electronic Commerce, states the following: The letter represents consent if it includes consent sent to one or more specific persons as long as it is adequately known, and it indicates the intention of the recipient of the approval that it is bound if the recipient party agrees. The approval of the electronic message sent to the public shall not be considered unless otherwise indicated (Mason, 2007).

And Article (10) of the Saudi Electronic Transactions System states:

*"It is permissible to express the offer and acceptance of the contracts through the electronic transaction".*

The contract is valid and enforceable whenever it is done in accordance with the provisions of this system and the contract does not lose its validity or its enforceability simply because it was done through one or more electronic records. This indicates the recognition of the Saudi legislator in the Saudi electronic transactions system for the year 2007 of both the electronic record and the electronic signature as a means of proof recognized in electronic transactions.

Definition of electronic record it was defined by the thirteenth paragraph of the first article of the Saudi electronic transactions system 2007 AD as:

*"The data that is created, sent, received, transmitted or preserved by an electronic means and is recoverable or obtainable in a way that can be understood."*

The electronic record is the record in which the data and information related to the customers are kept, and it is evidence in the event of any dispute, According to the fifth article of the Saudi system for electronic transactions, *"electronic records and signatures shall have a binding electronic authenticity,"* It is not permissible to deny its validity or enforceability, nor to prevent its implementation because it was completely or partly done in electronic form, provided that these electronic transactions and records are carried out according to the conditions stipulated in this electronic transaction law. According to Article (5) of the Executive Regulations of the Saudi Electronic Transaction System 2007, there are conditions for storing electronic records represented in:

1. Follow clear and documented rules and procedures for keeping electronic records.
2. Keeping electronic records and data in any format in a way that is compatible with the applicable system.
3. Follow clear and documented rules and standards to ensure the safety of electronic records kept from accessing them and an unauthorized amendment to include those rules of application, audit and disaster recovery plans.
4. In order to prove the validity of the time specified in the electronic record, the record must contain the time stamp approved by the party responsible for registration. Or any time stamp explicitly agreed upon by the electronic trading parties. In this way, the Saudi legislator left the two electronic dealing parties the freedom to choose the necessary seal to document the transaction. The Saudi electronic transactions system stipulated in Article (15): For the electronic record to be considered evidence of proof with legal effect, that the information in the record be accessible and extracted by broadcast, print, etc.

According to Article (9) of the executive regulations of the electronic transactions system, the receipt of the electronic record is proven in any form of proof agreed upon by the parties to the transaction.

Thus, we find that the Saudi legislator has adopted the doctrine of free proof in electronic dealings, the doctrine that gives the judge and opponents the hand in cases to present the evidence that was available to them without specifying them.

Article (9) of the UNCITRAL Model Law on Electronic Commerce 1996 states the statement of acceptance and authenticity of electronic data messages as evidence IF Information

that is in the form of an electronic data message is acceptable as evidence If the originator is known by his identity.

### **Electronic Signature**

A digital signature that a person uses to sign a document electronically or with a pen attached to a computer keyboard, a copied signature, or a signature that appends to an email or a pen on the surface of a computer screen or signature by entering a secret number into an electronic bank account (Al-Sanbati, 2008)

According to Article 1/13 from the executive regulations of the Saudi electronic transactions system that:

*"Electronic data is included in an electronic transaction or added to it or logically linked to it used to prove the identity of the site and its approval of the electronic transaction and discover any amendment to this transaction after signing it"*

And Article 2/5 (of the Saudi Electronic Transactions Law for the year 2007 defined it as:

*"Electronic data inserted or added to it related to it logic used to prove the identity of the site and its approval of the electronic transaction and discover any amendment to the deal after signing it".*

An electronic signature, after its authentication with the notarized authorities, can only be denied by way of a forgery challenge, as long as the identity of the signed person is specific and consistent with the information contained in the document. Because the goal of the electronic signature is to document the electronic transaction and verify its issuance from the customer who signed the electronic data. This is stipulated by the UNCITRAL Model Law on Electronic Signatures Article 6, which stipulates the presence of signatures from a specific and reliable person in the electronic transaction, In Article (10) of the executive regulations of the electronic transactions system, the Saudi legislator admitted to accepting the electronic signature as proof of proof under the following conditions:

1. That the signature be linked to a digital certificate of authentication issued by the certification service provider authorized by the Communications Authority.
2. The certification certificate related to the signature must be effective at the time of signing the signature.
3. The identity data of the site must be in conformity with the certification.
4. The electronic signature must consist of the following technical elements (Ahmed, 2009):
  1. The issuing body of certification and certification service provider, and its electronic signature.
  2. Type of signature, scope of work, and serial number.
  3. Date and period of signature.
  4. Public key cipher in accordance with the digital certificate policy and authentication procedures.
  5. The scope of use of the signature and the limits of its statutory responsibility.
  6. Site identity data, which includes his name and full address.

Article (6/3) of the UNCITRAL Model Law for Electronic Signatures also affirmed that for the electronic signature to be considered reliable, as a piece of evidence, the following conditions must be met:

1. The signature creation data must be related to the site.
2. The site creation data is subject to the control of the site.

3. The possibility of discovering any change in the electronic signature.
4. The purpose of the signature is to confirm the integrity of the information to which it relates. This means that the identity of the owner of the electronic signature signed in the electronic document must be identified; this is done through competent authorities specified by the Saudi legislator.

### **Electronic Authenticator**

The Saudi legislator has identified a neutral mediator; its mission is to verify the authenticity of the signature issued the electronic customer. The neutral mediator is called a documentary that is known as the neutral party, which is represented by individuals, companies, or neutral independent parties, who act as a mediator between dealers to document their digital dealings (Saeed, 2016).

The Saudi legislator called it the certification service provider, as it defined it in the first article of the executive regulations of the electronic transactions system 2007, as a person authorized to issue digital certificates or any important service related to electronic signatures. In the Kingdom of Saudi Arabia, the National Center for Digital Certification undertakes the issuance of digital certificates for certification service providers and specifies the duration and validity of that certificate, According to Article 13/3, the National Center of the Ministry of Communications and Information Technology is affiliated to the Ministry, It is the body that sets general policies, draws development plans for electronic transactions and signatures, and represents the Kingdom in local, regional and international bodies with regard to electronic transactions and signatures (Jane, 2000).

According to Article 15 of the Saudi Electronic Transactions Act of 2007 AD, the authority is the supreme authority to lay the foundations of certification for any entity it deems qualified to engage in work in approving a digital signature and issuing the necessary certificate and certification services, (Carolina, 2010) This is what the UNCITRAL Model Law referred to in electronic commerce in paragraph 1/5 when it indicated that there must be a body or person that issues certificates of authentication on the electronic signature. So that he can assign that signature to his source.

### **CONCLUSION**

The Saudi legislator has established special legal rules for electronic record, electronic signature, and digital authentication and their responsibility, Conforming to the provisions of the Model Law on Electronic Signatures 2001, The Saudi National Center for Digital Certification undertakes the certification services and the necessary controls for the certificates, and thus the evidence is subject to censorship.

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