

What are Electronic Communications and their Argument for Proof in the Light of the Corona Pandemic in Accordance with the Provisions of Bahrain's Electronic Communications and Transactions Act No. (54) Of 2001

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Abstract

The world is witnessing today a great revolution in the field of electronic information and communications, which included various aspects of life, and one of the most important areas affected by this technological revolution is the field of electronic transactions. Corona", which increased the importance of remote dealing by electronic means to limit the outbreak and spread of this epidemic.

At the end of this research, we have concluded many results and recommendations, which we hope will be of interest to the legislator.

Keywords: Corona Pandemic, Covid-19, Electronic Communications, Bahrain Electronic Communications and Transactions.

Introduction

Thanks to the modern technological revolution, and the expansion of the Internet. It has become imperative for the spread of electronic documents, at a time when there is less reliance on paper documents, whether in the transactions of individuals and non-governmental entities in general, or even at the level of official government transactions.

In conjunction with the development of modern technology, many new terms and concepts, previously unknown, appeared, such as electronic editors and electronic signature, which led to the emergence of terms dealing with the same subject such as electronic record and secure electronic signature and other terms.

Realizing the importance of issuing a law that keeps pace with technological, technical and electronic development, the Bahraini legislator enacted the Electronic Transactions Law No. (28) for the year 2002. This research accommodates all electronic transactions and contributes to encouraging electronic transactions.

In view of the successive developments in the field of electronic transactions and the emergence of many new terms and concepts that need to define their legal concept, the Bahraini legislator hastened to issue Decree Law No. (54) of 2018 under the name of the Electronic Communications and Transactions Law, according to which he abolished Decree Law No. (28) for the year 2002 regarding electronic transactions, as Article (3) of Decree-Law No. (54) of 2018 stipulates the following:

"Decree-Law No. (28) of 2002 regarding electronic transactions, as well as any text that contradicts the provisions of this law, shall be repealed."

Based on the Electronic Communications and Transactions Law, several government decisions were issued, which translated into the rational government's direction towards encouraging electronic transactions. For example, but not limited to, Resolution No. (87) of 2019 regarding the authentication and certification of documents by electronic means, as well as Resolution No. (62) of 2020 regarding the identification of documents that may be authenticated or certified by electronic means for inmates and pretrial detainees.

In view of the spread of the Corona epidemic around the world since the beginnings of 2020, and many countries went to complete transactions remotely to limit the spread of this epidemic, the importance of legislation regulating the completion of these transactions by electronic methods to reduce mixing and crowding that increases the spread of this epidemic in society .

Significance of the Study

The importance of the study is manifested in showing the extent of the legal value of electronic documents at a time when electronic transactions have increased within government institutions or even at the level of people outside the scope of official government transactions.

Problem

Why did the idea of ambiguity and lack of clarity raise the idea of the electronic editor, both in terms of defining its concept and the extent of its legal strength in proof, especially if we know that the information revolution and modern means of communication are a challenge to the legislator who strives to develop relevant laws in line with informational and technological developments? We have sought through this research to try to remove some of the ambiguity about the extent of the strength of electronic documents in proof, especially that the world is witnessing a great challenge in light of the Corona pandemic, due to which the public presence for concluding contracts and legal actions in general has become a very serious issue that threatens the safety of individuals, which may lead to That countries have to bear large financial burdens in order to combat this epidemic.

Scope of the Study

In this research, we will address the extent of the authenticity of official and customary electronic documents based on the relevant legal texts in the Bahraini Electronic Communications and Transactions Law and the Bahraini Evidence Law No. (14) of 1996.

Research Methodology

The study relies on the analytical approach to determine the extent of the authenticity of electronic documents in proof and the conditions for its safety to enjoy the confidence of dealers in those documents.

Research Plan

We divided this research into two main topics, the first of which was devoted to explaining the nature of electronic communications, while the second topic was devoted to the extent of the authenticity of electronic communications prepared for proof in proof.

The First Topic**The Nature Of Electronic Communications ¹**

In order to clarify the nature of electronic communications, its definition must be stated in the first requirement, while the second requirement will be devoted to the elements of electronic communication.

The First Requirement**Define Electronic Communications**

The UNCITRAL Law on Electronic Commerce prepared by the United Nations International Trade Law Commission on 16/12/1996 defines in Article (2) of the Law on Electronic Communications and Transactions under the name of a data message as follows: "Transactions that are generated, sent, received or stored by electronic means. photocopy, or by similar means including, but not limited to, electronic data interchange, electronic mail, telegraph, telex or hard copy."²

The French Civil Code defines the electronic editor in Article (1316) as "resulting from a sequence of letters, characteristics, numbers, and each symbol or sign assigned to a clearly understandable sign, regardless of its support and form of transmission."

It is noted that the approach of the French legislator in defining the electronic editor has been expanded to include any electronic editor.³

As for the Bahraini legislator, the electronic communication is defined in Article (1) of the same law, which states the following: "Electronic communication: any communication created by any party through electronic records."

It is noted that the Bahraini legislator - and well he did - has broadly formulated the definition of the electronic editor to include any electronic communication that originates through electronic records, in order to avoid making repeated amendments to the definition of electronic communications if it is formulated in a wording that limits the comprehensiveness of its scope.

The previous definition of electronic communication referred to the term electronic record, which was defined in Article (1) of the same law as "Information that is generated, sent, received or stored by electronic means, and includes, as the case may be, all information that is associated or logically related to the record in a way that makes it a part of it, whether it was created simultaneously or not."

As for the jurisprudential definition of electronic communication, it was defined as "electronic information that is sent or received by electronic means, whatever the method of extracting it in the place where it was received."⁴

Another aspect of jurisprudence defined it as "the editor that includes electronically processed data, written and signed in an electronic way, and placed on a physical support, with the possibility of turning it into a paper editor by extracting it from the computer outputs."⁵

Another aspect of jurisprudence defined it as "the bond that was created using electronic means and its originator is committed to facing the other in such a way that this bond is transferable".⁶

The Second Requirement

Elements Of An Electronic Discourse "Electronic Discourse Condition"

First Branch: Electronic Writing

The written evidence has traditionally been associated with paper and hand-signed, this narrow concept no longer keeping pace with developments in the field of legal actions, because the concept of writing has become to include all supports of whatever type, what is important in them to be meaningful, and saying otherwise will lead to a loss of the rights of dealers, and lack of Take advantage of the latest developments in modern means of communication.⁷

Electronic writing is one of the essential elements in creating an electronic discourse. It has been noted that there are different labels in the legislation regarding the term electronic writing. The Jordanian legislator and the Bahraini legislator used the term "electronic record," while the Egyptian legislator used the term "electronic writing."

Electronic writing is defined as "that digital information that is generated, transmitted or transmitted on an electronic support, regardless of its source".⁸

And electronic writing is of two types; Either it is phonetic writing, which is writing that can be pronounced, and writing that comes in the form of signs and symbols that cannot be pronounced, and it is rare in electronic writing under this type, because it is electric flashes, as it is created by pressing the keyboard buttons or any means created for this purpose. For us, it is readable and understandable, but the device receives it as electric flashes that convert into the language that this device understands, and this document remains stored in the device in this way, and if it is retrieved, it appears again in the understandable image of the human mind.⁹

Accordingly, it can be said that writing has become a comprehensive concept, as it is no longer limited to writing that is placed on the paper, whether it is written by hand or with typewriters and others.

In order for electronic writing to have its effect, the law established a condition related to the preservation of documents, records or information, and these conditions were contained in Article (1) of the Electronic Communications and Transactions Law, as it stipulated the following:

If the law requires the preservation of any document, record or information, this shall be satisfied by saving the document, record or information in the form of an electronic record whenever the following conditions are met:

- 1) The information contained in the electronic record should be accessible to enable its use when referring to it later.
- 2) That the electronic record is kept in the form in which it was created, sent or delivered, or in a form that can be shown to accurately represent the original information generated, sent or received.
- 3) Any information, if any, that enables the identification of the source of the electronic record, the addressee, and the date and time of its transmission or receipt, if the document, record or information subject to preservation has been sent or received by electronic means.
- 4) The approval of the concerned public authority, whose supervision the relevant activity is subject to, provided that keeping is in the form of an electronic record and that any other requirements that may be specified by a decision of that authority are met.

We note that the Bahraini legislator set a good course, when he stipulated many special conditions for the electronic editor, in terms of the ability to refer to the electronic record at any time and that these records are not subject to exchange, change or distortion. The auditor should be able to know the sender and the addressee, the date and time of transmission, in addition to the need for prior approval from the concerned government authority with jurisdiction.

It thus gives confidence and security to electronic documents, which encourages the contracting parties to conclude contracts by electronic means, especially in the circumstance that the world is witnessing from the spread of the “Corona” epidemic.

Second Branch: Electronic Signature

First: The Concept And Conditions Of Electronic Signature

The electronic signature is an important condition for the electronic communication to have the power of proof. The UNCITRAL Standard Rules on Electronic Signatures issued in 2001 define “data in electronic form included in, added to, or logically linked to a data message to determine the identity of the signatory in relation to the data message, and to indicate the signatory’s approval of the information contained in this message”.¹⁰

The Bahraini legislator defined the electronic signature in Article (1) as “data in electronic form within, attached to or associated with an electronic record, used to identify the signer of the record and to indicate his intent regarding the information contained in the record.”

We would like to point out here that the Bahraini legislator did not differentiate in terms of the electronic signature requirement between customary electronic documents and official electronic documents, as Article (7/A) of the Electronic Communications and Transactions Law stipulates the following:

If an electronic record is signed using a secure electronic signature certificate ¹¹, the presumption is based on the following, until proven otherwise:

- 1) The electronic signature on the electronic record is the signature of the certificate holder.
- 2) That the electronic signature on the electronic record was set by the certificate holder for the purpose of signing this record.
- 3) That the electronic record has not been changed since the electronic signature was placed on it.

Accordingly, it can be said that the Bahraini legislator has considered that the signature on the electronic document is the signature of the person concerned, and he has placed it on that document and that there has been no change or alteration to it. This is a simple presumption that can be proven otherwise by all means of proof as a material fact. The law also gave a legal value to the electronic signature if it was made based on the conditions set forth in Article (6/a) of the Electronic Communications and Transactions Law, which stated the following: “If the law requires the signature of a party However, the

electronic signature on the electronic record satisfies the requirements of the law in this regard, if a method is used to identify that party, and to indicate its intent regarding the information contained in that electronic record, and the method used is reliable in proportion to the purpose for which the record was created or sent. In light of the relevant circumstances, or it was actually proven that they fulfilled the job referred to in this paragraph, whether singly or in combination with other evidence.”

Emphasizing the importance of the electronic signature on the electronic document, and the extent of its importance in proof, the Egyptian Court of Cassation ruled in its ruling that the electronic messages received through e-mail have an authenticity equal to the paper-based one attached to a signature, provided that the controls specified in the Electronic Signature Regulation Law and its regulations aimed at certainty are met. On the one hand it was created or sent and the destination of its receipt and not to interfere and manipulate it to make it false.¹²

Second: Pictures of the electronic signature

Just as the traditional signature has multiple forms, it may be in the form of a signature, stamp or fingerprint, the electronic signature also takes many forms. We must point out here that the Bahraini legislator - and well he did - did not specify the images of the electronic signature, but rather the definition was broad and broad to include All forms of electronic signature that may be developed in the future.

We can summarize the images of the electronic signature as follows:

First: Signing with the password (code):

This signature, known as (the secret code), is done using a set of numbers or letters or both chosen by the signatory to identify his personality, and it is only marked by him.¹³

The most prominent examples of this type of electronic signature are the secret numbers used to withdraw cash through the following ATMs (ATM) through cards of all kinds, such as cash withdrawal cards from accounts, credit cards and recharge cards.

Second: Biometric signature:

The biometric signature is done using the subjective characteristics of the person, and it is also called the biometric signature¹⁴, so it is possible to adopt the fingerprint, the characteristics of the hand, verify the tone of the voice, or recognize the human face. It is to a large degree, which allows it to be used in several fields.¹⁵

It is worth mentioning here, that there are many banks adopting this method of signature to identify the identity of customers, as the eye print was captured for the first time and kept within special electronic records, and if the business wishes to perform any banking operation, it is required to look at a specific device to ensure compliance. The same fingerprint with the fingerprint saved with the bank.

Third: Signature by electronic pen:

In this way, the person signs manually using a special pen on the computer screen or on a digital panel, and the computer analyzes this handwritten signature and stores it as a set of digital values⁽¹⁶⁾, and the signature is stored in the form of data in an automated device with special specifications.

Fourth: Digital Signature:

This signature depends on encryption technology, and two types of encryptions have appeared in this regard¹⁷, the first is called symmetric encryption and the second is asymmetric encryption, and both are technical mechanisms that allow the contractor to express his will in a secure way from any manipulation or change, and to document this expression and attribute it to himself, and even to keep it a secret that only the other contracting party with him can see. This mechanism is based on giving each party a denominator or a specific code through which, after expressing his will in writing, he can transform this expression and reduce it to an unreadable encrypted logarithmic form, sign it and send it to the other party, who can only decipher this code

with another key that connects with the key The first is a real link, and here the addressee confirms that the link came from the sender.¹⁸

The Second Topic

The Extent Of The Authenticity Of Electronic Communications In Proof

To determine the extent of the authenticity of electronic communications in proof, we have divided this topic into two demands, the first in which we deal with the authoritativeness of official electronic communications in proof, and the second in which we deal with the authoritativeness of customary documents in proof.

The First Requirement

The Extent Of The Authenticity Of Official Electronic Communications In Proof

Article (9) of Decree-Law No. (14) of 1996 promulgating the Evidence Law in Civil and Commercial Matters defines official documents as “the official documents in which a public official or a person charged with a public service proves what is done by him or what he has received from those concerned, and that According to the legal conditions and within the limits of his authority and competence.

If these documents do not acquire an official status, then they shall have only the value of the customary documents when the concerned parties signed them with their signatures, seals or fingerprints.

It is noted that the Bahraini legislator did not know the official electronic editor, whether in the Evidence Law in Civil and Commercial Matters or in the Electronic Communications and Transactions Law.

A part of jurisprudence defines the official electronic editor as: “an electronic writing that proves a legal fact that a public official or a person charged with a public service intervenes in its editing, within the limits of his authority and jurisdiction, in accordance with the law”.¹⁹

It can be said that in order for the official electronic documents to be authentic in evidence, they must meet the general conditions in the official documents, which are:

- 1- Issuance of the document by a public official or a person charged with a public service.
 - 2- The document must be within the authority and jurisdiction of the employee or the taxpayer.
 - 3- To take into account in writing the document the conditions established by law.
- a) This is what was stipulated in Article (5) of the Law on Electronic Communications and Transactions, where it states the following: “The electronic records, within the scope of civil and commercial transactions, have the same authority as evidence for customary documents, and they have the same authority as established in evidence for official documents in the provisions of the provisions The Law of Evidence in Civil and Commercial Matters when it fulfills the conditions stated in it, the other conditions stipulated in this Law, and the decision issued by the competent authority in coordination with the Minister concerned with Justice Affairs in this regard. As for the special conditions set by the law, in order for official electronic communications to have an argument in evidence, they were stipulated in Article (5) of the Electronic Communications and Transactions Law, which stated the following.
- b) The legal effect of the information contained in the electronic record is not denied, not in terms of its authenticity or authenticity, simply because it is received - in whole or in part - in the form of an electronic record or referred to in this record.
- c) If the law requires that the information be in writing, then the entry of the information in an electronic record complies with the requirements of the law, provided that this information is accessible to it so that it can be used when referring to it later.

d) In assessing the authenticity of the electronic record in evidence, the following should be taken into consideration:

- i. The extent of confidence in the manner in which the electronic record was created, stored or transmitted.
- ii. The extent of confidence in the manner in which the electronic record was signed.
- iii. The extent of confidence in the method used to maintain the integrity of the information.
- iv. Any other matters related to the integrity of the electronic record.

It is worth noting that the Bahraini legislator allowed public entities to deal electronically and electronic communications within certain conditions stipulated in Article (4) of the Electronic Communications and Transactions Law, which stipulates the following:

- A) It is a condition for any public authority for electronic dealing, sending or receiving electronic letters, or accepting or using any of the trust services ²⁰, that a decision is issued to that effect by the concerned minister or head of that authority, as the case may be. The resolution sets out the scope and scope of acceptance of sending and receiving electronic communications, the acceptance and use of trust services, and the regulatory requirements to be observed.
- B) The approval referred to in Paragraph (a) of this Article is subject to the technical requirements issued by a decision of the Minister or the head of the government agency responsible for the information technology network and systems for state agencies.
- C) The provisions of the preceding paragraphs do not prejudice any legislation that expressly prohibits the use of electronic communications or trust services or requires that their use be in a certain way, and it is not considered a prohibition to use electronic communications or trust services - for the purposes of implementing the provisions of this paragraph - just the text in any law another, provided that the information or documents are fixed in writing or signed.

Accordingly, many decisions were issued by government agencies regarding allowing the issuance of official electronic documents, including, for example:

- Resolution No. (57) for the year 2009 regarding the authentication and certification of documents by electronic means. Article (3) of that resolution stipulates the following under the title of requirements and standards for electronic authentication systems:

“The electronic authentication information system must be restricted or approved by the authority²¹, provided that the following requirements and standards are met.”

- 1) The system should be based on a comprehensive study of all operations and functions related to the disk for which it was created.
- 2) The system should be able to guarantee the integrity of the data.
- 3) That the system has the ability to prevent access to and use of the system without permission.
- 4) Take the necessary measures to ensure the security of the equipment and software that make up the system.
- 5) Any applicable technical standards in accordance with software industry standards.

Article (4) also stipulates the obligations of the notary, as it stipulates the following:

The notary public must use the electronic authentication information system to conduct electronic authentication transactions, provided that he abides by the following:

- 1- Verify that one of the parties to the transaction is Bahraini or residing in the Kingdom of Bahrain.
- 2- To verify, as far as possible, the eligibility, satisfaction, and integrity of the will of the applicant.

- 3- To ensure that the service applicant agrees to the content of the documents to be authenticated or certified before signing.
- 4- The verification of the identity of the applicant must be in accordance with the law and regulations regulating the work of authentication, and this includes electronic messages that may be available through the electronic authentication information system, such as interviews via video chats. And that the entire video conversation is recorded and linked to the electronic documentation information system.
- 5- Performing all the legally obligatory obligations of a notary.

Article (8) of the same decision stipulates that those documents that are electronically authenticated or authenticated shall have the same authenticity as official documents, as it stipulates the following: “The documents electronically certified or authenticated in the evidence shall have the same authenticity as official documents.”

- Resolution No. (62) of 2020 specifying the documents that may be authenticated or authenticated by electronic messages to inmates and pretrial detainees, as Article (1) of this resolution stipulates the following:

The following documents may be authenticated or authenticated by inmates and remand prisoners, through the electronic authentication information system:

- 1- General power of attorney to dispose and manage or cancel it.
- 2- An official power of attorney for cases, or its cancellation.
- 3- Concluding the documented documents, which are: the reconciliation agreement, the declaration of the transferable indebtedness in the executive form, and other types of other declarations.

As an exception to this, it is not permissible to attest or notarize any of the powers of attorney or documented documents related to the disposal or management of inmates sentenced to a criminal penalty.

As for the extent of the authenticity of images for official electronic editors, they are authoritative according to what was stated in Article (12) of the Evidence Law, especially since the legislator did not make special provisions in this regard in the Electronic Communications and Transactions Law. Also, Article (5) of the same law referred us to some rules of the law of evidence, to know the extent to which electronic documents are authentic, whether they are official documents or customary documents.

The second requirement

The extent of the authenticity of customary electronic documents in proof

A part of jurisprudence defines customary documents as: “the writing that a person signs regarding a legal act and without the interference of a public official in its editing”.²²

What concerns us here are the customary documents prepared for proof, which can be prepared by electronic means.

Where it is required that these documents be written documents and signed by the person concerned, and these conditions are generally contained in the Evidence Law in civil and commercial matters. 5) of the Electronic Communications and Transactions Law.

Since this law did not distinguish between official electronic documents and customary documents about their evidence in proof, except for what was stated in Article (4) related to the conditions for public authorities’ acceptance of electronic transactions, electronic communications and trust services, we refer the reader to Article (5) and Article (6) of the Law Letters and electronic transactions to prevent repetition.

We would like to point out that the Electronic Communications and Transactions Law has made the signed electronic record secure and electronic, and the information contained in it true until proven otherwise, as Article (7) of this law stipulates the following:

- a) If an electronic record is signed using a secure electronic signature certificate, the following is presumed to be correct, until proven otherwise:
 - 1- The electronic signature on the electronic record is the signature of the certificate holder.
 - 2- That the electronic signature on the electronic record was set by the certificate holder for the purpose of signing this record.
 - 3- That the electronic record has not been changed since the electronic signature was placed on it.
- b) If an electronic record is sealed using a secure electronic seal, the presumption is based on the integrity of the electronic seal of the electronic record and the validity of the source associated with the seal, until proven otherwise.
- c) If an electronic record is stamped using a secure electronic time pony, the presumption is based on the correctness of the date and time fixed under the dowry and the integrity of the electronic record associated with that date and time, until proven otherwise.
- d) If an electronic record is sent using a secure registered electronic delivery service, the presumption is based on the integrity of the electronic record, its transmission by the sender and receipt by the addressee, and the validity of the date and time of its sending and receiving mentioned in accordance with the secure electronic registered delivery service, until proven otherwise.

Conclusion

In this research, we dealt with the role and authenticity of electronic communications in proof in light of the Corona pandemic in accordance with the provisions of the Bahraini Electronic Communications and Transactions Law No. (54) of 2018, and we found that electronic documents are not directly perceptible because they are electric flashes that need an electronic medium for all that can be read and perceived by the human being.

Based on this study, we reached several conclusions and recommendations, which are as follows:

Results

1. The Bahraini legislator has been keen to remove ambiguity from some related terms in electronic transactions, as Article (1) of the Electronic Communications and Transactions Law is devoted to defining those technical terms whose impact is not affected to determine the extent of the authenticity of electronic documents in proof.
2. Electronic writing and electronic signature are among the most important elements of electronic discourse.
3. The Bahraini legislator has set special conditions for the enjoyment of electronic documents in evidence. Some of these conditions were mentioned in the Electronic Communications and Transactions Law, and some of them were contained in the Evidence Law.
4. The Bahraini legislator allowed government agencies to deal in electronic documents if the necessary administrative approval was obtained from the competent authorities to ensure the safety and reliability of such documents.
5. The competent government agencies are keen to encourage dealing with electronic communications by issuing several decisions that came in implementation of the Law on Electronic Communications and Transactions, including, for example, Resolution No. (57) of 2019 regarding the documentation and ratification of documents by electronic means and Resolution No. (62) of 2020 specifying Documents that may be authenticated or authenticated by electronic means for inmates and remand prisoners.

Recommendations:

1. We hope that the Bahraini legislator will define the official electronic speech in the first article of the Law on Electronic Communications and Transactions, and we suggest that the definition be as follows: the official electronic letter: "An electronic writing kept in an electronic record that proves a specific legal action that a person charged with a public service intervenes in its editing, in the limits of his authority and competence in accordance with the law.
2. We hope that the Bahraini legislator will define the customary electronic document prepared for proof in Article 1 of the Law on Electronic Communications and Transactions, and we suggest that the definition be as follows: Electronic customary letter prepared for proof: "An electronic writing kept in an electronic record that proves a specific legal act signed by a person without That a public official or a person charged with a public service interferes in its editing.

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