



Electronic Signature: from the perspective of Iranian E-Commerce Law

Ebrahim Taghizadeh¹, Sahar Ghobadi² and Hadi Rahmani³

¹Private Law at PNU (Payame Nour University) of South Tehran.

²Private Law at Tarbiat Modarres University (Tehran).

³Private Law at University of Tehran.

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ABSTRACT

According to the article 191 of Civil law, a contract can be implemented on the condition that the thing that indicates the intent will be possible. Since the signature indicates the intention of the signee's composition, the symmetry can be signature or signet. It is obvious that it is not necessary that the symmetry to be created in handwriting and it could be an electronic symmetry. The electronic signatures are actually a way for confirming the documents while guaranteeing their security during an interaction. In addition, this kind of signature does not have a feature prior to than the other kinds of signatures that makes them invalid and only the way of their creation is different. As a result, there is no legal restriction to apply this technology. According to the article 7 of the Iranian Trade Law (ITL), whenever the law necessitates the presence of signature, the electronic signature is sufficient. Therefore, the article of the electronic signature is computer does the same article of the handmade signature done by something like pen, while in the electronic signature is done again by hand but this time it. Secondly, not all the documents are paper-based. For instance, there are some important tablets, which regarding the available definition of document in the law, are considered as documents while they are not on paper. In fact, from the above-mentioned article 7, it can be inferred that the electronic signature can legally be a suitable substitution for the handy signature, and there is no difference between the handy signatures in the paper documents and the electronic ones in the terms of effects.

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Introduction

Paper gradually gives its place as the transmitter of the important information to the other ways of exchanging information. In fact, paper has some defects such as the slow and expensive transition of documents. Moreover, today, the methods for storing information are changing fast and the electronic methods are applied instead of archiving the dense paper stacks.

Signing the foot of writing, the signer specifies his own identity as the writer, confirms the comprehensiveness of the document, and declares that he is committed to the content. While working with the electronic signature, a symbol should be added to the information in order to recognize the originality of the document and to validate the content; because in the electronic trading and in the exchanging of the trading document and data, the individuals need to be assured that the exchanges are safe, provable in order to they can continue their business activities and prevent any damage. The electronic signature is a means for validating that, via encoding by a public key, makes an electronic record to be validated.

Electronic trading

First discourse: trading implication

Traditionally, trading refers to the economic and profit-making activities including purchasing and selling goods and services, agencies, distribution, transportation, insurance,

financial affairs, contraction, consultation, technical cooperation, investment, commission, and like that¹.

In traditional trading, transaction is done face to face and by exchanging money through the bank system or in cash. Moreover, the buyer and seller can communicate physically, negotiate face to face and sign the documents. Therefore, being written, originality, and being sealed or stamped are the reasons for a document to be valid. However, in the electronic trading, all of the business procedures are done via internet².

The electronic trading became popular when the business activities were practiced through computer. Today, the electronic trading allows the organizations and the individuals to communicate and negotiate digitally and via computer, then ratify the contract and finally provide the post-selling services.

Definitions of Electronic Trading

This technology has different definitions as follows:

1. Electronic trading means implementing the business transaction in the electronic framework.
2. Electronic trading is to implement every business affairs online and via the internet.
3. Electronic trading means to exchange the information exchanging and business implementations using the electronic

¹ Mozaffari, M., familiarity with electronic signature; C. First, Tehran: Publication of Commerce, 2012, P. 84.

² Langeroudi, Jafar.; terminology of law, C v, Tehran: GanjeDanesh., 1990.

4. Tools, computer, fax, phone in order to the parties transact electronically with each other without need to the traditional methods or direct connection.

5. All dimensions that can be done on internet and web technology are called the electronic trading.

6. Electronic trading is referred to every kind of activity in which computer and the digital technology is applied.

7. Electronic trading is the implementation of all business activities using the computer communication channels, particularly the internet.

Difference of Data Electronic Exchange with Electronic Trading

In lots of cases, it has been seen that the data electronic exchange is taken equal with the electronic trading and they are used vice versa. These two technologies are not similar at all and are wholly distinct. Of course, it can be said that the electronic trading is a complementary to the data electronic exchange. The data electronic exchange is referred to a process in which the data and information, using the standards text via an exclusive channel, are transmitted from a computer to the other computer without human interference. It is considered as one of the oldest method in the electronic trading, which has been set up between two institutions. The data electronic exchange needs the installation and launching an exclusive system between two economic institutions. When the system is installed and launched, and the primitive data are put into, it works automatically independent from human force. Thus, this method is not commodious for the case transactions and is mainly applicable where the parties frequently transact together, and the most advantages of this system is the time reduction for rendering the orders, cut in expenses, lack of human mistakes and errors, quick answer to the requests, precision in the factors' issuance, and order to pay the transaction money through connecting to a bank system. The data electronic exchange is defined as a mechanism in which the data exchanging is defined to achieve the framed business activities and applying the international standardized tests by the electronic tools are done from a computer to another one. While the electronic trading is business interaction without using paper, in which the data electronic exchange is used as a tool plus the electronic mail (E-mail), electronic bulletin, web electronic exchange as well as the other channel-based technologies. In the other words, the data electronic exchange works as the backbone of the electronic trading. As inferred from the above definition, the electronic trading possesses a very wider domain than the data electronic exchange³.

Electronic Banking

Today, the modern payment methods have been developed in the countries as paying by the cell phone and the internet have taken the place of the credit cards and cash. To make progress in this field some biometric initiatives such as the fingerprint, eye iris, or the person's voice have been used. The electronic banking is the latest way in the bank services, which refers to some types of bank services. The bank clients can request some information such as the bill transmission, bill payment, and remote connection channel without leaving home or office⁴. Here some important kinds of electronic banking are referred to:

1. Web-based banking, where a client can access to his account while using computer.

2. Where a bank client uses the modem to connect to a bank server to access to his account.

3. The electronic connection that the most popular of it is the extranet, which is a private channel between the bank and the client who are the subscribers.

Electronic Banking Advantages

The electronic banking advantages can be taken into consideration from the two aspects of the clients and the financial institutions. From the first aspect, we can mention the saving in time and expenses as well as the access to the numerous channels for implementing the bank operations. From the second aspect, we can mention some features like increase in the banks' popularity for providing initiatives, preserving the clients despite of changing the banks' place, providing opportunities for seeking the new clients in the target markets, widening the geographical activity domain, and establishing the conditions for a perfect competition⁵.

The electronic banking advantages are outlined as follow:

1. Possibility for the clients to access to the bank services without physical presence besides the secure connections.

2. Applying the internet for providing the bank operations and services and make changes in the types of the clients' accounts.

3. Providing the new and traditional bank services and operations directly to the clients through the electronic mutual connection channels.

Digital Signature

The digital signature in its broad meaning is a signal showing the signer's main intention for being committed to do an action or inhibiting from doing that action. The digital signature is the same data locking which cannot be faked or changed, and it is based on the cryptography science and is exclusive to the person who owns it. Today, the digital technology has set up the legal necessities automatically and provides the agreed transaction for the parties with the specific signatures. Meantime, the digital technology contains a preventive force with high security against the cheating or illegal uses compared to the paper documents⁶.

Main specifications of digital signatures are:

1. To produce them, the information are used which are exclusively given to the signer.

2. The computer produces these signatures automatically.

3. The signature of every single document is different from the other document.

4. The signature of each text is consistent to the all bits of the text and every manipulation in the content of document makes the signature damaged.

5. It should be easily surveyed and confirmed to prevent the probable fake or denial.

In brief, the digital signature means that the user and the business party can enjoy the security of the programs by using the public key infrastructure. Now, we are in the technology era. The number of people and businesses who join the internet every day is unprecedentedly increasing, and if the internet

³ Ayagh trout, news, article, Internet-based electronic commerce, Tehran, 2002, P. 11.

⁴ Mystical, Mahmoud, International Trade Law, Vol V, Tehran: Publications forest, 2010, p. 211.

⁵ Industries, Ali; trading in the third millennium, Tehran: Jahad University Press, 1991, p. 46.

⁶ Ghajar, Siamak, e-commerce and related offenses, (Vice President of Naja), Tehran, 2001, p. 191.

wants to be a resource for the business targets and information interaction, it will surely need the security frameworks⁷.

What does the security offer?

Identity confirmation: to make sure that the person or party whom we are connecting to is the same person whom we expect and he, himself, says.

Privacy: the information inside the text or interactions is private and is only eligible and understandable for the sender and receiver.

Trusteeship: information inside the text or interactions will not being stolen accidentally or on purpose during the route.

Undeniable: the sender cannot deny sending a text or a financial exchange; neither can the receiver deny receiving a text.

1-4- Digital Text

The digital technology has provided a powerful instrument to create, send, store, receive, and the texts' performance, which is used in the legal and business contracts. The digital text is stored in the computer short memory, even though; the permanent storing will be in the hardware. Because of lack of style in declaring intention in the digital electronic, to prove the technical situation, status, the party's behaviors, and performance about sending the goods and paying the transaction money etc... are taken into consideration in the terms of the proving reasons. It is obvious that in the contracts, declaring intention in the paper correspondences is known for the lawyers⁸. For instance, in applying the international trading vocabularies, the style for ordering goods, the transportation style, the buyer's and seller's responsibilities, and the place for transiting the possession as well as the risks of paper correspondences are specified. In the electronic data exchange of such texts, it is necessary that the owner of the public key and digital signature, specifically, in the transactions involving high amount of money, to be confirmed and recognized. For the security of the electronic texts and for controlling and inspecting them satisfactorily, some regulations are adjusted that are discussed as the software rights. The issues of cryptography and surveillance have become so important that considering them is very necessary in the business subjects.

Cryptography and Decoding

To provide security in the text exchange, cryptography is used. Thus, the sender encodes the text primitive content and the receiver decodes it to get the text main subject. The encoded text is not understandable on its own unless it will be decoded. To encode the text, the cryptography algorithm besides the cryptography key is used. If the key used for encoding and decoding is the same, it is called the symmetrical key or cryptography. Since the both sides use the same key, therefore, this key should be exchanged that in this way, the interaction security is reduced. As a result, the asymmetrical cryptography algorithms are used. In these asymmetrical algorithms, the encoding and decoding keys are not the same, and we cannot reach one of them if we know the other one. Thus, there is a pair of keys, which one of them is the private key and the other is the public one⁹.

Implication of Electronic Document

In the electronic world, the electronic documents possess a particular place; and because the electronic signature can be done only on the electronic documents, we first get to the implication of the electronic document. The Electronic Trading Law (ETL) doesn't give a definition of the electronic document and only in the clause (a) of the Article 2, in the definition of the text data, it says: it is every symbol of event is the information or implication which is created, sent, received, stored, or processed using the electronic or light devices or the new information technology. The electronic documents are the data created in some cases like the special business documents in particular formats and in the other case, they are created, regardless to their formats and shapes and only regarding the document content in the electronic way through the processing system such as computer. The bill draft of amending the trading law, in the electronic documents section, divides the electronic documents into the two original and replaced types that the original document is the same processed original document by the system and the replaced document is the confirming transcript. What is legally the subject is that we can attribute an action or a document to a person. Therefore, nowadays, the electronic signature is known as one of the important and determinant elements in the documents validation, and it has solved the document's security problem for the individuals. However, what should be taken into account is that all of the electronic signatures are not valid the same and their validation will be determined according to their supply, distribution and, supervision¹⁰.

Implication of Electronic Warrant

The electronic warrant is the same identification card, which virtually determines the person real identity for the electronic work and profession. In fact, the electronic warrant application is to use the electronic signature and information cryptography. The electronic warrant is entrance to the new generation of the electronic trading and the electronic signature has caused a great revolution in the relations and interactions. Using the electronic warrant is to recognize and pursuit the documents and the way to receive it is on the intelligent card¹¹. The electronic warrant is totally a document that:

- Is issued and signed by a reliable entity.
- It is according an identity confirmation done by the center.
- Its application is written in the warrant.
- Includes a range of information and a public key for the person or organization.
- Its validation period is limited and specified.

Implication and types of Electronic Signatures

First Discourse – Signature

In general, the writings attributed to the individuals are provable if they are signed. The signature is the symbol for confirming the written declarations and accepting their caused commitments; and before this, that writing should be considered as a plan which is the subject of study and consideration that the final decision is not still made about it. Therefore, each document that is signed, it becomes valid actually and it can be attributed to a person and obliges him to its content. To what is related to the paper signature, the presence of a manuscript is necessary and some of the lawyers have defined the signature as:

⁷ J. M., N.; procedure, Computer Crime, Information Bulletin, No. 84, 2003, p. 311.

⁸ Shiravi, AbdulHosein, International Trade Law, Vol III, Tehran: The Press, 2012, p. 214.

⁹ Org, Vahid Reza; Sarmad Saeedi, Sohail, Manager International Marketing in the Third Millennium, Tehran ideas Gvhrbar, 2003, p. 96.

¹⁰ Goldsmith, Mahmoud; models and strategic business solutions for the Internet, Tehran: Publication best of 2004, p. 83.

¹¹ Mystical, Mahmoud, Business Law, Volume I, Tehran: Publications Majd, 1996, p. 84.

"to write the first name or last name (or both), or to draw a specific signal that is the owner's identity symbol on the foot of the formal or informal papers and documents that guarantees the transaction, commitment, agreement, witness, and so on; or they are blank papers and documents that later the commitments and transactions will be recorded on them¹² (white signet).

Second Discourse – Electronic Signature

The electronic signature generally means a private and independent code, which determines the sender's identity and forms his adhesion to the document forming the data content. In simpler words, the electronic signature is a data added to the other ones and specifies the association of the singer to the added data and every kind of symbol, which is created electronically and is placed in a processing system like computer¹³.

According to the clause of the Article 2 of the Electronic Trading Law, the signature is every type of signal added to in a logical way connected to the text data, which is used for identifying the singer of the text data. In this Article, it should be taken into consideration that attaching a scanned picture of a signature is the only way that is not accepted for attaching a signature to the text data. In the electronic implication, signature can hold more various forms than the traditional form.

Third Discourse – Singer Recognition

According to the clause of the Article 2 of the Electronic Trading Law, the signer is a person or his deputy who produces the electronic signature; and according the clause, this rule involves a real or legal person or his deputy or the computer systems, which are under their supervision.

FOURTH DISCOURSE – Types of Electronic Signature

The Electronic Trading Law has accepted two different levels of the electronic signatures: the simple electronic signature and the assured electronic signature (digital).

ARTICLE 1 – Simple or Ordinary Electronic Signature

In this type of the electronic signature, there is not a process of cryptography. The simple electronic signature is a simple way of entering a column or specific pictures into an electronic system. Every person can create it without the help of a third party's presence and use it in his electronic documents. According to the Article 1287 of Civil Law, in this case, we cannot say definitely that the documents that are created in this way are the official and reliable documents, and in the business documents, the presence of a simple electronic signature is not provable. However, the lawmaker has accepted the simple electronic signature, this type of signature will have the proving value when in the court of law, and it is not denied for its application and can stand before every denial¹⁴.

Clause 2 – Assured Electronic Signature (digital)

The lawmaker has just talked about the conditions of the assured electronic signature that it can be said the reason is the varying technologies. Regarding the fact that the Iranian lawmaker knows the documents, which are under the electronic signature management in the lieu of the reliable and official documents, it can be said that the lawmaker's opinion is the assured electronic signature. Through the electronic signature, particularly by describing it as the assured one, the lawmakers in

the different countries are trying to guarantee the specifications of a paper document such as integrity, continuity, and the possibility to do signing on the mold.

Technically, the assured electronic signature is either a digital signature (an asymmetrical cryptography technology in which two different public and private keys are used for encoding and code breaking) or a reasonable business process which is justified by the parties. The private key is exclusive for the owner and the public one is given to the assumed receiver that these two keys are mathematically quite consistent together and are unique in the out world. The private key is used for the digital signature and the public one for confirming and evaluating the private key. According to the Article 10 of ITL, the assured electronic signature needs to have the following qualifications:

- a) To be exclusive to the singer.
- b) To specify the signer's identity of the text data.
- c) To be issued by the signer or under his exclusive intention.
- d) To be attached to a text data that every change in the text data to be recognizable.

The clause (a) of this Article assigns that the assured electronic signature is a signature, which is exclusive to the signer. Exclusiveness is a trait expected to be available in each signature. If a signature is supposed to be used by more than one person, it cannot be justifying for a particular person to a text and what is created by this signature is nullified and without effect because of the multiple singers. In fact, the assured electronic signature is a signature that we are sure that it is exclusive to the signer. The clause (b) is not exclusive to the assured electronic signature but every signature must make the signer identity clear and declare the owner's confirmation about the signed text.

The clause (c) reminds us the similarity of the electronic signature to signet. If it is a handy signature, the signer must issue it. To facilitate the works, the employees are usually allowed to use their boss's signet or signature for the cases that the boss has given them the permission, but it is not true about the signet or signature signet. As a result, this fact that the other people can use the electronic signature under the owner's exclusive volition shows that the electronic signature is something like the signature signet. At any rate, the signature, which is exclusive to a person, is issued the basics by him or under his exclusive volition unless the opposition becomes proved. To put this article in effect, today, some ways can be used in order to prevent every change in the text after signing. Perhaps, the most important way is to send the text in the format of the software recording the date of tiniest changes accompanied with the done changes, and this date recording is indispensable part of the software and text. Moreover, to send the text with signature, we can enjoy the PDF texts that do not allow any change and are not passive¹⁵.

Offices for Electronic Warranty Issuance

Using the electronic signature or the signature based on the asymmetrical cryptography, the document integrity, information privacy, and data security will be guaranteed. However, the main problem is to guarantee the signer identity and because the electronic signature is not able to do so alone, therefore, a third references should undertake an important issue that are so-called "Office for Electronic Warranty Issuance" or "Warranty Reference" or "Electronic Services Office". These offices

¹² Zarklam, Sattar; Magazine Association (Electronic Commerce and Electronic Signature Act), Tehran, 2012, p. 32.

¹³ Sasanian, Khadija; Journal Club (Digital Signature credit in the virtual world), Tehran, 2012, p. 91.

¹⁴ Electronic Commerce Act, passed by Parliament 29/10/2004, p. 114.

¹⁵ Regulations implementing Article 32 of the Law on Electronic Commerce Act of 2005, p. 752.

guarantee the signer's identity and consequently justify the electronic information. The offices for the electronic signature issuance (the services office) work as a third reference and in the role of the offices for the official documents and what they do cause the creation of the texts' data in the lieu of the official document. The warranty offices undertake two important tasks: first, allocating an exclusive key to the owner and recording it as documentary information; second, keeping the complementary key as a public key and make the list of the owners of the public key accessible via interline system or particular informational banks. Certainly, the services offices are the official witness of applying the electronic signature as the public notary offices do the same about the applying signature on the paper documents.

In Iran, the center of electronic warranty issuance is the same center available for registration the official documents by the public notary offices under the judiciary branch supervision.

According to the Article 31 of the Electronic Trading Law, the offices for electronic warranty issuance are the units established to offer the services of the electronic signature issuance in the country. These services include creation, issuance, storage, sending, confirmation, nullification, and updating the originality warranties of the electronic signatures; and according to the Article 32 of the same Law, the regulation for establishing these offices and their job-descriptions are provided by the Organization of Planning and Management and the ministries of Trading, Communication and Information Technology, Commerce and Finance, and Justice and are passed by the Cabinet Members¹⁶.

Reasons for Electronic Signature Application

The reasons for applying the electronic signature in the virtual environment is the same reasons for the traditional signature in the materialistic world that only the conditions for implementation and proving them are different. These conditions are:

a) Composition intent:

Signature is the last composition of the person's will in writing. The first and the most important reason for signature is declaring the composition intent. In the electronic environment, permanently many documents are exchanged. Because of this, it is necessary that in a business transaction, the parties have some reasons for this intent from the other party and the electronic signature removes this need in this first place as a specific signal, which is exclusive for the other party.

b) Legal effects:

In order to the document involve the legal effects and it can be presented as a reason in the claims, it should be prepared according to specific conditions. In the cyber environment, the electronic signatures are able to do so because of their specific conditions. The electronic signatures control and reveal the time and place situation and the individuals' identities.

c) Identity recognition:

Identity recognition is the most important basic of the electronic signature warranty issuance. In fact, in the real world, the signatures are the explorers of the individuals' identities that it is more tangible in the virtual environment and the people need this recognition more for their transactions in the virtual environment. The electronic signature in this respect is a unique achievement.

d) Document Authenticity and perfection:

In the electronic environment, some types of the electronic signatures can guarantee the document perfection, and there is not this guarantee in the documents signed by the traditional handy signatures. Nothing can prove that a paper document has not changed because of a signature on its food while it can be proved in the documents signed by the electronic signatures

Custodian of electronic signature and its security warranty

In our country, the Trade Ministry is the custodian of the electronic signature and its issuance is done by a committee including the representatives of the judiciary branch, government, the Organization of Registration Documents and Estates, and according their meticulous supervision, the engineering procedure starts, the signature issues, and then will be at the service of the users and it is preserved and supported all the time by the computer system of the Trade Ministry and it reports any fault or abuse, whenever necessary.

Advantages of electronic signatures

The electronic signature holds lots of advantages compared to the traditional ones in the paper documents which some of the most important advantages are in following:

1. The electronic signature is a very strong code or serial number, which is given to the person and the law system of each country, protects it. If some damage happens to it, it is pursuable legally.
2. The electronic signature is an infrastructural tool in the social and business activities; consequently, the ordinary methods which were used in past for considering these affairs are nullified today and it prevents the people's time to be wasted.
3. Applying the electronic signature causes the commuting to be less, speeds up the processes, and finally by reducing the expenses and the social damages, it causes the national productivity.
4. The electronic signature cannot be copied or decoded; therefore, the signature cannot be faked.
5. During the internal transactions, the electronic signature is reliable in hundred percent.

In addition to the above-mentioned advantages, the electronic signature has some capacities making it more acceptable than the handy signature. These capacities are:

A. Guarantee of data integrity:

The data integrity means the unchanged or undamaged content of the electronic data that as it was stated, a reliable electronic signature that is protected by the authority of the warrant issuance will guarantee that the data are received without any changes.

B. Undeniable

Because of the presence of the original text accompanied with the summarized and encoded text and because of the digital warrant annex in the text, the technology of the electronic signature makes the electronic text undeniable¹⁷.

C. Holding the time signet:

The time signet is an indispensable part of the signature confirmed by an authority of warrant issuance and the time of signature occurrence in the documents is legally important.

D. Rapidity and precision:

The electronic signature increases the speed and precision. The documents of the electronic signature can be created and sent everywhere around the world in few seconds and it is an

¹⁶ Computer Security, Department of Science and Technology, North Tebyan site, 2006, p. 211.

¹⁷ Erfani, Mahmoud, Business law, Tehran, Majd publication, 2006, p. 117.

unimaginable advantage for the modern trading period in which the speed element is dominant.

E. Privacy:

The electronic signature assures that only the authorized person sees the text and the illegal access via the transmission is the least.

Offices of notary public and performing the electronic signature warranty

These offices as the agent's behalf of the Registration Organization of Documents and Estates of the Country are authorized to set and register the official documents and to present the signature warrant. From a long time, these offices have been considered as the counter for providing services in the field of registering the official documents.

For various reasons including:

1. The appropriate geographical dispersion in all of the cities in the country,
2. The people in charge with the law education and familiar with the affairs,
3. The presence of a perfect supervision system on these offices by the government for more than 8 decades,

These offices have, without any problem, managed the most challenging affair of the country, which is the subject of possession for more than 80 years, and their transgression rates have been trivial and they have established the best place for issuing the electronic signature¹⁸

As the specialty of the heads of these offices is in the registration, and setting the legal documents, and every day, they are faced with some people who are seeking their evil intentions by using the fake identification and documents; therefore, connecting to the portal system of registration of personal status is the most important action for the recognition of identity and assurance of the accuracy and originality of the identification documents and the possessor's life and death. As a result, applying the electronic system facilitates these actions and there will not be any obligations for keeping the paper files and it causes the reduction in the expenses for the offices of notary public.

Proofing value of electronic signature

As stated, in contrast to the handy or written signature on the paper documents, an electronic signature will be created in an electronic environment using the electronic technologies and methods. In order for such signature to be defendable, it is necessary that it hold some of the most important characteristics of the handy signature such as exclusiveness, identity determination, being controllable, and auditable. Consequently, the countries have passed some laws in most of which what is common is to determine the proofing value of the electronic signature; or in the other words, the legal authenticity of this signature and its position among the evidence for proving the quarrel. In addition, the electronic signature holds the undeniable proofing value at the courts when the singer identity is confirmed from a third reliable party. According to the Article 6 of ITL: "whenever the presence of a writing is legally necessary, the text data is in lieu of the writing except the following cases:

1. Documents of the immovable properties
2. Selling medicines to the final consumers

3. Warnings or the similar phrases prescribing a particular instruction or inhibiting some special methods for doing an action or quitting that action".

Alternatively, according to the Article 12 of ITL, the documents and evidence of the quarrel might be in text data, and in no court of law or governmental department, the proofing value of the text data cannot be rejected according to the available evidence rules, merely because of the text format. Also according to the Article 14 of ITL, all of the text data which have been created and preserved in a reliable way, in the terms of their content and signature, the parties of the signature or the commitments of the parties as well as the persons who are considered as the deputy of the parties, the performing of the clauses and the other effects are in lieu of reliable and valid documents in the judicial and legal references¹⁹.

Discourse 1: proofing value of electronic signature in the closed system

When the digital technology was introduced for the first time, it was imagined that its' main application would be in the open transactions; that means, in the transaction where the parties have reached to some agreements about their rights and duties in advance. However, in practice, the electronic procedure has shown that in the relationship among the businesspersons, applying the technology of the digital signature has mostly been in the closed environment; that means, in the situation where the parties have reached to agreements about their rights and duties and the potential risk in advance. Applying the closed system for the electronic transactions is current among not only the businesspersons, but also the companies and their employees as well as the banks and their clients. The sensible example in this field is the electronic receiving and paying system in the bank operations.

Despite the dominant opinion in the Iranian law based on the obligation of the rules concerning the reasons and evidence, it seems that if the agreement between parties is not about the possession and occupancy in the legal evidence or their proofing value, but it is about faking the proofs of the signs, and the subject of the agreed sign is not owing to the public order description, it must be considered valid and reliable. In fact, the Iranian courts accept these agreements for years and issue their orders based on them, like some of the adjunct contracts. Primarily, there is not any inhibition that the parties of a legal relation can set the results of the electronic transactions including the electronic data in the cases which are not in contrast with the public order as the signs of doing transaction or making some commitments or something like that²⁰.

Discourse 2: proofing value of electronic signature in the open system

The open system means a system in which there are not any pre-agreements about the electronic signature, the way to create it, and its implication rate. In the framework of this system, the parties do not know each other and are not aware of each other's economic situation. The relationship between the providers of the goods and services often is shaped in such environment. The article 15 of the primer draft of the Iranian electronic trading law obviously declares that "all of the data which are created or preserved through a reliable way, in the respect of content and its signature, the commitments of the parties, the committed

¹⁸ Sotodeh Tehrani, Hasan, Business law, Tehran, Dadgostar publication, 2008, p. 97.

¹⁹ Eskini, Rabia, Business law, Tehran, Samt publication 2007, p. 211.

²⁰ Sadri, Mohammad, Electronic Business law, Tehran, Pana pulication, 2003, p. 72.

party or parties as well as all persons who are considered as their legal deputy, the performing of the clauses or the other effects are in the lieu of the official documents". According to the article 19 of the draft, the proofing value of the data, which are created through a reliable way, is considered equal with the official documents. Commonly, the article 14 of the Electronic Trading proposal knows the text data in the lieu of the reliable and referable documents, and in the article 15, it declares: "into an assured text data, assured electronic precedence, and an assured electronic signature, denial and doubt is not audible, and the population claim to the mentioned text data can be accepted or it can be proved that the mentioned text data is invalid legally in some respects". In the other words, the lawmaker knows the effect for the assured text data, which is particular for the official documents²¹.

Conclusion

Although the ability to refer to an electronic document is an accepted principle in the laws of the leading countries in this field, and the bill draft for reforming the Iranian Trade Law has allocated a part to the reliability of this kind of document; it is evident that the legal authenticity of this kind of document will be confirmed through the assessment of their existing security coefficient, and no electronic document will be valid without a secure electronic signature guaranteeing the accuracy of the contents of the document. If we wish that our documents to be truly secure and safe, we should sign them digitally because this kind of signature guarantees the originality, completeness, and the lack of flaw in the content. According to the Act of Islamic Assembly Council, the documents issued by the electronic signature are taken as the legal documents and can be petitioned in the courts of law. Therefore, the signature registration offices are the most essential existing bases in the process of this signature and without their presence in the society and their influence on the cyber field, the secure basis of trust in trading will be destroyed.

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