

Introduction

With the outbreak of Covid-19 and the precautionary measures adopted by the states that required work from home, the need to use electronic transactions has increased more than any time before. We will highlight this issue from a legal perspective.

Scope of Application of the Electronic Transactions Law:

Clauses 13, 12, and 10 of Article 1 of the Law states that: The following terms and phrases, wherever cited in this Law, shall have the meanings assigned next to them, unless the context otherwise requires:

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Electronic Transactions

Any exchange, communication, contracting or other procedure performed, or executed, wholly or partially, by electronic means.

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Electronic Data System

One or more electronic devices or programs used to generate, retrieve, send, transmit, receive, store, display, or process electronic data. v

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Electronic Record

Data generated, communicated, received, or stored by electronic means and retrievable in perceivable form".

These definitions extend to include all transactions that use electronic means, & as well as using any electronic system or electronic record to which the definition applies, including those specifically programmed for specific transactions, particularly the insurance sector and the government sector, along with using email or any other means.

It is important to define the scope of application by applying the conditions mentioned in these definitions to electronic transactions, as the Law aims at:

☒ Ensuring confidence in the validity and integrity of electronic transactions, signatures and records.

The Law achieves this goal by establishing the force of these electronic transactions in principle, unless the contrary is proven. This means that these transactions are valid and have force of evidence before all parties, unless the contrary is demonstrated or proven.

Hence, it is necessary to differentiate between electronic transactions and electronic signature because of the different respective conditions required to prove force of evidence. Not every electronic transaction is required to include an electronic signature. On the other hand, an electronic signature is naturally a part of an electronic transaction. For example, contracting is a form of an electronic transaction that does not require an electronic signature for all of its forms, e.g.: (Written signature, sending a scanned document, agreement to the terms and conditions of sale, or online purchase). Thus, in the case of electronic transactions, the conditions focus on the electronic record and ability to retrieve, obtain and verify data. Conversely, the conditions of an electronic signature are limited to obtaining a digital certificate of the authenticity of the signature.

Article 5 of the Law stipulates that:

1 Electronic transactions, records, and signatures shall have full effect and their validity and enforceability may not be contested, nor may the execution thereof be stayed on the ground that they were wholly or partially conducted by electronic means, provided that such electronic transactions, records or signatures are carried out in compliance with the conditions provided for in this Law.

2 Information resulting from electronic transactions shall remain in effect and enforceable, as long as access to the details thereof is allowed within the electronic data system of the originator thereof and the manner of accessing them is indicated".

Article 9 of the Law stipulates that:

1 Electronic transactions or signatures shall be admissible as evidence if their electronic records satisfy the requirements set forth in Article 8 of this Law.

2 Electronic transactions or signatures may be admissible as presumptive evidence, even if their electronic records do not satisfy the requirements set forth in Article 8 of this Law.

3 Electronic transactions, signatures and records shall be deemed reliable evidence in transactions, and shall be deemed intact unless proven otherwise.

4 When assessing the reliability of an electronic transaction, the following shall be considered:

- ☒ The method of creating, storing, or communicating an electronic record and the possibility of tampering therewith.
- ☒ The method of maintaining the integrity of information.
- ☒ The method of identifying the originator.

Electronic Record Conditions

An electronic record, according to the above definition, is generated for establishments when technical conditions and technical means are fulfilled in order to ensure the integrity of the information contained therein, and to enable this information to be viewed and reviewed upon request.

Electronic Signature Conditions

In order for an electronic signature to be valid and have force of evidence under the Law, it should be effected by obtaining a digital certificate. This certificate includes a special key that enables the signatory to sign the electronic document or transaction and ensure that it is not amended after signing it.

How to obtain a digital certificate?

Through one of the providers of digital certification services licensed by the National Centre for Digital Certification of the Communications Commission. Service providers of the private sector are currently the two following companies:

☒ Baud Telecom Company (BTC) ☒ STC Solutions

Details and contact details of these two companies are available on the following link: https://www.ncdc.gov.sa/?page_id=1899

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