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LEGAL OBLIGATIONS OF OFFICIAL DEEDS' ELECTRONIC REGISTRATION UNDER IRAN & FRENCH LAW

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ABSTRACT

With the inevitable advent of Information and Communications Technology (ICT) and setting of deeds in cyberspace, "Electronic Registration" of deeds is essential. In current status, the terms of the electronic deeds' realization and the position of the notaries in the written laws are both necessary regarding the particular circumstances of the recognition of these deeds in an actual environment. The authors create an appropriate platform and draw legislator's attention to special legislation on electronic registration and examine fundamentally electronic capabilities of deeds. The concepts of deed are discussed and a comparative study is conducted on the position of the electronic registration of deeds under Iran and French law. In conclusion, effective factors of the legal requirements of electronic deed are identified including applying electronic signature by a Notary and saving the electronic deeds in a central electronic archive.

KEYWORDS

Electronic archives, Electronic official deed, Electronic registration of deeds, Saving electronic deeds, Secure electronic signature.

INTRODUCTION

The deeds' establishment and registration are the subjects which required more than ever for social adjustments. Due to the importance of the registration, the official establishment of the deeds considered as the *acta jure empirii* in many countries. Also, there is a process and specific criteria as well as a special reputation towards registration in the legal systems of the world.

The main objective of present study is to investigate whether there are electronic capabilities for deeds. After leading concepts and operational definitions of deeds, current legal status of the electronic registration of deeds are studied in Iran and France.

However, there is a question in this study about the advent of ICT and setting of deeds in cyberspace whether the current legal basis of registration of official deeds is also applied to electronic registration of such deeds. Obviously the answer to this question determines the amount of credit of deeds which are registered in an electronic form.

French legislator understanding the importance of this issue allows the deeds' establishment and registration electronically by officials in terms of its accession to the article 1317 of the Civil Code of this country while Iran law despite existing deeds establishment's process electronically since September 2013; so far they have not taken a position on the electronic official deed. Certainly, "electronic official deed" first must be recognized by law, and then its terms of implementation shall be determined pursuant to rules and regulations. Hence, the authors attempt to facilitate the conditions for the legal recognition of electronic official deed by analogy with the registration system of French and Iran in order to resolve this legal gap. To achieve this aim, it is necessary to develop the culture and create an appropriate infrastructure-both technically and legally (Jahangardmahbob, 2013); that technical aspect is undertaken by computer science experts and is out of the scope of this discussion and naturally the legal experts are responsible for this legal aspect which still needs work and unfortunately there were not efforts adequately in order to understand the basics of implementing electronic registration, both in theoretical and practical terms in this field.

Lack of reliable and academic references on electronic deeds is one of major limitations in this study. Although, there are some books, many papers and various legal rules on electronic commerce and electronic signature under Iran and French law but there is no book or paper on electronic deeds under Iran law and a few under French law.

DISCUSSION

It is necessary to focus on legal definition of deed and its types before studying electronic capabilities of deeds and the place of electronic deeds under Iran and French law.

1- DEFINITION OF DEED

According to Article 1284 of the Civil Code of Iran, deed is any written one which can be reliable as claim or defense; the meaning of the written one is a line or mark which is visible on the screen whether conventional or non-conventional lines- such as codes and marks which are arranged among two or more individuals' relationships- and no matter it is written by the dye or hand either printed or copied by a machine. But what is important in the legal terms, it can be accounted as a proof in a trial. (Imami, 2000)

According to the definition of deed in civil law, three conditions must be considered as follows:

- 1) Be in written: the unwritten documents are not considered as instruments. Hence, Article 1258 of the Civil Code of Iran in the recognition of this meaning stated only the "written instruments" as one of the proof trials.
- 2) Proofable: the written one will be as a deed when it's comprised one of judicial evidences.
- 3) Referable: the deed must be capable of proving the claim or defense in the court. (Azimi, 1993)

Further, according to French Civil Code (Article 1316), the written evidence - whether it is on the paper or on the electronic format- is described: "Regardless the format or the way of transferring, literary or written evidence is from a collection of words, letters, characters, numbers or any other signs or symbols with an intelligible meaning."

According to Mazeaud (2000), this article only does not present a literary definition particularly but also it is generally defined as a written. Moreover, pursuant to the mentioned rule, it is necessary to have a written evidence to prove the contracts which exceed a certain amount (Article 1341 of the Civil Code of France). As the opposite meaning of ex-Articles 1306 and 1310 of the civil code of Iran, it is impossible to prove the contracts and obligations exceeding a certain amount expect via written one.

2- DEED TYPES

In terms of degree of validity (Imami, *ibid*) and ability of proving (Katouzian, 2009), the deeds are divided into two categories including official and private deeds (Article 1286 of the Civil Code of Iran). They are discussed as follows:

2-1-OFFICIAL DEED

Under Article 1287 of the Civil Code of Iran, an official deed is the one is established in the Registry of Documents Office or in the Notary Public's Office or near other official authorities according to the law and their jurisdiction.

In addition, according to Article 1317 of the Civil Code of France, "The deed is one that has been received by public officials entitled to deed in the place where the act was written, and the solemnities required...". This Article is not only including the conditions of official recognition of deeds but it also predicts the electronic deed if it is under the fixed condition of state council.

2-2- PRIVATE DEED

Deed under private signature is a written documented by the people without interference of an official agent. (Imami, *ibid*) In fact, what is raised from an ordinary written as a document is the signature of its parties which is considered as an element. (Voinir, 1995)

Civil Code does not provide a definition of the private deed. However, article 1289 of the Civil Code of Iran, pursuant to Article 1287 (definition of official deed) provides:

"All documents except those mentioned deeds in Article 1287 are as deeds under private signature"

3- ELECTRONIC DEEDS

Before the computer era, many laws and international conventions have applied such following concepts: writing, document and signature; presently, they appear in other forms and appearances. (Noori and Nakhjavani, 2011)

In general, regarding the concept of "written" which is topped in the beginning of the discussion, if the establishment of a document is not bound by specific conditions (e.g. official deed) or special devices (e.g. expressing to existence a sheet or paper), writings or documents which are designed by a computer can be used as an electronic document; since, "written" can be on paper, animal skins, stone or a computer screen that can be saved in its memory.

Therefore, the E-Commerce Law of Iran identifies the electronic data message expressly as a written document (Article 6) and evidence (Article 12); also, it recognizes a secure data message as a document which is valid and reliable by judicial or legal authorities (Article 14).

Under Article 412 of the draft bill of the Commerce code amendment of Iran, the bills, notes, checks, official receipt, shares, bonds, and other business documents with compliance of the determined conditions in the law are announced and exchanged electronically, they are called "commercial electronic papers".

Therefore, the authors identify the necessity of codifying a special legislation on the documents are limited to legal formalities by legislators in order to eliminate all doubts to perform their legal effects. According to French Civil Code, in addition to accepting electronic written one like a paper written one as an evidence (Article 1316-1) and carrying the same probative force as the written paper for this type of documents (Article 1316-3), the electronic official deed recognizes explicitly by Article 1317.

4-THE POSITION OF THE ELECTRONIC DEED UNDER IRAN'S LAW

In Iran's law, the relevant provisions to deduction of "electronic deed" can be derived from the basics of Registration Code, Civil Code and Civil Procedure Code. First of all, it is required to investigate whether these deeds have been basically accepted by Iranian legislator because applying the regulations despite related to documents, deeds and their signatures but no mention have been done to e-deed and e-signature with a need of evidence.

One of the important legislations can be inferred from the rules on electronic records and signatures is the E-Commerce Law. (Elsan, 2008)

E-Commerce Law does not provide a definition of "electronic instrument". It is only mentioned in the paragraph (a) of Article 2 in the definition of "data message" as follows: "It is any representation of facts, information, and concepts composed, sent, received, saved, or processed by the use of electronic, optical or other information technology means."

One of the most important legal aspects in E-Commerce law is always the security of information and computer systems because the data messages and electronic signatures are invalid without safety and security. Thus, the acceptance capability of electronic records and signatures require a fundamental element of "security and reliability."

This is why the E-Commerce Law describes the data message in its entirety and without any change as "Integrity" in the process of management system such as sending, receiving, saving or displaying data (Paragraph (e) of Article 2) or it addresses the terms of "Secure Information System" (Paragraph (h) of Article 2) and "Secure Method" (Paragraph (i) of Article 2); such as the following definition of "Electronic Signature" determines the terms of "Secure Electronic Signature" (Paragraphs (j) & (k) of Article 2).

On the base of the findings of present study, it is necessary to recognize the "electronic official deed" officially -by a special rule or amendment the previous rules- thus the amendment bill of Notaries Public's Office Code (approved 16/7/1975) is presented by parliament members. with regard to registering the deeds electronically, is essential;

Article 14 of the member's bill is going to amended article 18 of the Notaries Public's Office Code as follows:

"Article 18 is amended as follows and two notes join it:

Article 18: All deeds in notaries public's office and marriage & divorce registries must be established and registered electronically within one year after the date of enactment of this code. Registration in these offices will be done via an online network in the database of the Registry Office.

Annexed note 1 – The established deeds in these offices must be signed by the notary in addition to the parties' signature.

Annexed note 2 – The regulation of electronic registration, the way of reacting in case of network disturbance and lack of electronic systems, a timing of conversion method, instructions of establishment and maintenance the deeds and access relevant information, will be passed by the Head of the Judiciary."

It is hoped that with the enactment of legislation of the member's bill's amendment of Notaries Public's Office Code, the "electronic registration of official deeds" will be legally recognized and in practice, there is no hindrance to perform the obligations under various laws which are entrusted to State Organization of Deeds and Properties and its instrumentalities such as the notaries public's office in order to register the deeds electronically.

4-1 -THE LEGAL OBLIGATIONS OF THE REGISTRY ORGANIZATION RELATED TO ELECTRONIC PROCESS OF REGISTRATION IN THE NOTARY PUBLIC'S OFFICES

Following the development of communication through electronic means, Five-year General Judicial Policy (2009) is imparted from the leader of the Islamic Republic of Iran, refers to necessity of "developing, completing and updating to apply new technologies especially in the fields of information, communication, legal procedure and registry service" (paragraph 6). In this regard, the Fifth Five-Year Development Plan (2011 - 2015) which is based on the General Judicial Policy, turns also to this serious affair through many of its articles such as the obligations which are predicted for the State Organization of Deeds and Properties toward more efficient electronic devices as follows:

Article 46 of the Fifth Development Plan provides the following the tasks of Registry organization in order to develop e-government services, information technology (IT) industry, information literacy and increasing productivity:

"... State Organization of Deeds and Properties has to electronized all phases of conveyances and deeds and properties' registration by the end of 2nd year of the plan in order to develop an integrated system of deed and property registrations (Paragraph(v- 2)). Further, "State Organization of Deeds and Properties and Ministry of Commerce in collaboration with the Tax Affairs are obliged to develop the secure electronic system of real estate transactions in the country; therefore all executive concerned agencies are bound to cooperate in order to perform this system perfectly. (Paragraph (2))

According to Article 48, the Fifth Development Plan determines the below attempts for developing e-government, e-commerce and e-service supplies and authenticating the electronic documents and reducing paper documents:

A) Ministry of Commerce attempts to develop Electronic Certification Service Providers and apply electronic signature in the way to use the e-business and service systems and these types of devices by the end of third year of the Plan.

B) Electronic document can be considered as paper document when originality and integrity are found.

C) If the regulation of the securities or deeds as well as the issue or grant the authorization, notification and communication, exchange of payment, etc are necessary, they shall be valid and sufficient in compliance with the provisions of the E-Commerce Law.

Another article of the fifth development plan is article 211 for using the electronic devices. According to paragraph (h) of the mentioned Article, the Judiciary has to perform the following actions for developing the information and communication technology in order to increase quickness and efficiency in presenting legal services:

1 – Operational systems and rate of using ICT, particularly the management of judicial case system, establishing a national center of Judiciary's data, performing and completing the management of information security system, offering the e- legal services to people, profiting the information technology in communication among judicial authorities and other affiliated or related entities, such as the State Organization of Deeds and Properties, etc must be expanded.

2- The State Organization of Deeds and Properties required to change the property deeds in order to enhance the security of property deeds, decrease the cases related deeds in courts, digitize the deed's information items and perform the modern registration due to profit the information technology.

3- The judiciary is allowed – according to the provided regulations which by the Minister of Justice in collaboration with Attorney General and National Library and Archives Organization of Iran and approved by the Head of the Judiciary- to convert the Judicial records, papers and documents which keeping their records are essential - via updated information technology- into electronic documents and then efface them but it is a must to pass at least 30 years from their final achieve.

According to paragraph (m) of the mentioned Article, "The State Organization of Deeds and Properties is bound to electronize all phases of transactions registration electronically within the end of the second year of the Plan, in the way that provides immediate and electronically response to register inquiries and immediate registration of transactions, using secure electronic signature in order to develop an Integrated Registration of Deed and Property System and establish a National Center for Registering Data ".

In addition to the impositions of the above mentioned provisions, the State Organization of Deeds and Properties is also responsible for preventing the administrative corruption under the Health of Office Promotion and Anti-Corruption Act(approved 29/10/2011) including establishing a network and shared database between the Notary Public's Offices and this Organization so registering and exchanging all of facts in the Notary Public's Offices and Registry Organization shall be facilitated via the mentioned centralized system.(paragraph(c) of Article 12)

4-2- ESTABLISHMENT'S PROCESS ELECTRONICALLY OF OFFICIAL DEED IN THE NOTARY PUBLIC'S OFFICES OF IRAN

Iranian notaries were bound to establish the deeds via electronic system of the State Organization of Deeds and Properties since 14 September 2013 according to "Instruction for Applying the Notary Offices from Deeds' Electronic Registration System" imparted from the Head of the organization; as follows that notary initially establishes the deed by logging on system of the State Organization, then he prints the deed from the system and its contents are registered literally in the notary's current book after reviewing and making any necessary modifications so as their finalities. Now, Notary obtains a unique identifier for the deed established by him via the token which contains his identity information and electronic signature. Finally, after signing following the deed and notary's current book by the parties of the transaction, the notary also signs and seals the copies of deed so delivers the copies of interested parties up and maintains a copy of the deed in the archives of office. However, when the notary inserts the finalized registration in the system by his electronic signature, the deed established will be qualified the authentication password.

According to what is passed, the deeds established in Notary Public's Offices of Iran, in addition to the unique identifier, have an authentication password which allows to control the authenticity of deeds for Notary Public's Offices and interested parties and thus reduces the possibility of fraud and flaws in official deeds. But, what is certain is that registering the deeds in the notary's current book (Subject matter of Article 18 of Notaries Public's Office Code) is still done traditionally in the establishment's process electronically; however this importance will be also eliminated by implementing the Comprehensive Plan of Iran's Cadaster Act which is approved recently; because under the act, registering in the physical books will be nullified and replaced with electronic books. (Article 7 of Comprehensive Plan of Iran's Cadaster Act approved 24 June 2014)

5- THE POSITION OF THE ELECTRONIC DEED UNDER FRENCH LAW

"Electronic Revolution" in French law is started with "Act No. 2000-230 adapting the law of evidence in information technology and related to electronic signature". (Huet, 2004)

French legislator codifies this Act on 13 March 2000 in order to adapt the Internal Rights of this country with the Directive of the European Parliament(1999/93/EC).

According to the Act (Article 2), the second paragraph of Article 1317 of the Civil Code is annexed to complete the stated article. This article was previously allocated to the definition of an official deed. According to the annexed paragraph, the electronic official deed is recognized officially then "An official deed is the one which has been received by authorized public officers to draw up such these deeds at the place where the deed was written with the required formalities.

(Act no 2000-230 of 13 March 2000) The mentioned deed may be drawn up on an electronic medium where it is established and saved in the fixed conditions by decree in State Council. "

Since the determination of the electronic official document (Article 1317 French Civil Code) is trusted to decree of State Council, French State Council released the "Decree No. 973-2005" which explains the conditions of establishment, storage and the other instances related to an electronic official deed on 10 August 2005 in order to perform the terms of last paragraph of Article 1317 of the Civil Code; thereby, the provisions of this decree are appended to "Decree No.71-941 of 26 November 1971on issued documents by notaries " and the base of the performance of the public offices in official deed establishment in both modes on paper or electronic. (Joly-Passant, 2006)

Since 1st February 2006, the electronic official deed is realized at least theoretically in France because its legal causes are provided under the recent decree. (Charlin, 2012)

5-1- REQUIREMENTS OF ELECTRONIC OFFICIAL DEED IN FRANCE

Some preparations are required to realize the electronic official deed in a country. The first step is to equip the Notary Public's Office with a National Secure Server which provides the flow of information and exchange of data among Notary Public's Offices so that an "Electronic central minute" can be formed as a central archive. The next step is to realize the electronic official deed and save the same in the mentioned Central Archive. Using "secure electronic signature" by the notary is for confirming the instruments. (PRESS the Supreme Council of (French) Notaries, 2008)

Regarding present status of Information and Communications Technology (ICT) in the Notary Public's Offices of Iran and semi-facilitating establishment of deeds (such as typing, archiving the documents, etc.), it is necessary to recognize establishing and recording the deeds in the archives of the Registry Organization. Of

course, it is still traditionally registered in the notary's book (The subject matter of article 18 of Notaries Public's Office Code); whereas, the antecessor countries in establishing the electronic deeds (like France) have derived a benefit ICT in the establishment of authentic deeds for many years.

This paper discusses the process of the electronic official deed establishment and reflects the establishment requirements of this type of deeds in the French Notary Public's Offices in order to clear the path which is ahead of Iran toward the realization of the electronic official deeds.

5-1-1- STATUS OF THE SECURE ELECTRONIC SIGNATURE IN FRENCH NOTARY PUBLIC'S OFFICES

As it was mentioned earlier, one of the basics of the electronic official deeds' realization is to use secure electronic signature. The French notaries are the first ones in Europe who have been equipped with this technology since 12 September 2007. (Crouzillacq, 2008)

The notary who establishes an act electronically, is required to use a system of processing and transmission of information approved by the "Board of Notaries" and ensured the integrity and confidentiality of the contents of document. (Article 16 of Decree No. 2005-973)

In fact, the process of establishing, archiving and transferring the electronic documents shall provide the identity of the sender and the receiver, as well as the integrity and confidentiality of its content; and this important matter is not possible except through the use of secure electronic signatures. (Kaynia, 2009)

The secure electronic signature is a mechanism to recognize the electronic deed which should be applied- according to the conditions stipulated in Decree No. 2001-272 of 30 March 2001 which is adopted in the application of Article 1316-4 of the Civil Code relating to electronic signatures - by the notary. (ibid, 2008)

Firstly, this signature should be specific to the notary and under his sole control; secondly, it should be detectable somehow attached to the act as any subsequent amendment of the act. (Paragraph 2 of Article 1 of Decree No. 2001-272) Because by virtue of Decree No. 973-2005 (paragraph 6 of Article 28), any extension that may distort the original data, is not permitted. Thus, the reliability of the signature which composed in the secure method and the mentioned process shall be presumed. (Article 1316-4 of civil code) Unlike other types of electronic signature, their reliability must be proven. (Fallah, 2009)

5-1-2- ARCHIVES OF ELECTRONIC OFFICIAL DEEDS IN FRANCE

With the electronic official deeds in France, the archive of these documents becomes also important (Trezequet, 2005); certainly, the deed which establishes today electronically by current means should be also available and visible next decades while there will be surely more advanced devices. (Zarkalam, 2012)

Hence, the electronic official deed should be saved under protective conditions for the integrity and readability. (Art. 28 of D. no 2005-973) On this basis, the electronic official document requires an advanced archive that this important matter realizes via a central archive.

"Central Minute" as a central electronic archive which has been stationed in Venelles - in the south of France - is controlled by the Board of Notaries. (Paragraph (3) of Article 28 of D. no 2005-973)

Thus, archiving the electronic official deeds shall be far more secure than the deeds in paper-based; since the data transferring takes place in a process that guarantees the information security and confidentiality as secures the electronic signature of the Notary from any invasion and only him or the notary who owns, retains the exclusive access. (Paragraph (3) of Article 28 of D. no 2005-973) Also, this saving method allows the multiple copies of an electronic official instrument; furthermore, its accessibility is safe after many years and extensive developments of technology.

As a result, the transmission of electronic deed in the central minute is a part of establishment process that will be immediately after establishing the electronic official deed. (Paragraph (3) of Article 28 of D. no 2005-973) Thus, the successive operations are justified by its conservation including migration which he maybe does not remove the original nature of his act. (Paragraph (5) of Article 28 of D. no 2005-973)

As it was observed, electronic storage in a central server is one of the requirements to establish the electronic official deed in order to achieve the mentioned benefits. Hence, the realization of the electronic official deed in Iran would be needless from such necessity; according to the Health of Office Promotion and Anti-Corruption Act (approved 29/10/2011), the State Organization of Deeds and Properties requires to establish a Network and Shared Database among the Notary Public's Offices and this Organization- within one year of the date of enactment of this Act- so that registering and exchanging, all of facts which occur in the Notary Public's Offices and Registry Organization shall be facilitated. (Paragraph (c) of Article 12) Also, the Registry Organization under the Fifth Five Year Development Plan of the Islamic Republic of Iran (2011 - 2015) is obliged to develop the Integrated Registration of Deed and Property System and establish a National Center for Registering Data. (Paragraph (v-2) of Article 46 and Paragraph (m) of Article 211)

According to its provisions, the "Network and Shared Database among the Notary Public's Offices and Registry Organization" and "National Center for Registering Data" in Iran means "Central Minute" like a central electronic archive in France. It is obviously necessary to establish such this center in Iran and to realize the electronic official deed; an appropriate legal and technical infrastructure simultaneously is required in advance. Having rules and imposed provision would be useless and futile if there were lack of infrastructure.

5-2-PROCESS OF ESTABLISHING THE ELECTRONIC OFFICIAL DEED IN THE FRENCH NOTARY PUBLIC'S OFFICES

The electronic official deed in the Notary Public's Offices of France is established through the following steps:

Initially, the notary provides the act on the software dedicated to establish the deeds then he scans all appendices and paper-documents in order to attach them to the act electronically.

In the appointment of signing the act, the notary represents it on the monitor to be read by the parties. Thus the document appears on a tablet, the date of deed is fixed and the place of signature is specified. The notary gives a light pen to the parties in order to sign the electronic deed and its appendices.

But what makes this process distinct and significant from traditional method, it happens by signing of the notary. In this way, when all the modifications done, the notary confirms authenticity on the content of the deed and its attachments with his electronic signature by a flash called "REAL" and connected to the USB port of his computer.

In fact, "REAL" is the private key of a notary which is saved in the flash and brings recognition of the notary signature and the act is established by him. The key is exclusive and accessible only for notary which is secured under a pin code. The pin code includes the identification traits of the notary and his signature features (private and public key algorithms).

In short, the electronic deed shall be recognized by reflection of the notary's electronic signature on the act and the parties can receive a print of the act. (The letter of Notaries of France, 2012)

CONCLUSIONS

According to the obtained results in this study, it can be acknowledged that legal requirements of electronic official deed are two factors: the first one is to using the electronic signature by a Notary and the second one is to save the electronic deed in a central electronic archive.

Regarding the current situation of Notary Public's Offices of Iran and semi-facilitating establishment of deeds (having electronic process of deeds establishment, equipping Notary with the secure electronic signature and charging Registry Organization in established a base like "Central Minute" in France), it should be conceded that the recognition of electronic deeds under the law in Iran is truly necessary. It is the necessity which the French legislature found it out many years ago and with an insertion of a paragraph to Article 1317 of the Civil Code, which formerly addressed to official deed definition, expects the electronic official deed too. It seems that the legal lack on the recognition of the electronic official deed in Iran law can be solved by amending the Notaries Public's Office Code and allocating some of its articles to this matter. As the draft of the member's bill's amendment of Notaries Public's Office Code - which is now under consideration in Parliament - an Article is included, by which, all deeds in Notaries Office and Marriage & Divorce Registries, within one year of the date of enactment of this Act, will be established and registered electronically and maintained through an online network in a central database bank of the Registry Office. (Article 14)

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