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# LEGAL PROCEDURE AND STATUS OF ELECTRONIC SIGNATURE FOR SERVICE QUALITY IN NOTARY PUBLIC'S OFFICES: IRAN AND FRANCE

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## ABSTRACT

*The most important trusted factor in the validity of electronic notarial deeds is to enjoy electronic signature. This paper addresses to appeal the legislatures to recognize officially electronic signature based on special law in notary public's offices. This research examines the function, role, status and place of issue of electronic signature under Iranian and French legal systems. Electronic signature does not pose the status of manual signature and the capability of electronic signature is merely recognizable by law; this signature is an inseparable part of electronic notarial deed. The results show a legal gap exists for electronic signature recognition in the notary offices which hampers to substitute with manual signature.*

## KEYWORDS

electronic notarial deed, manual signature, notary public's office, Secure electronic signature.

## INTRODUCTION



One of the factors that determines the validity of the contract or any other instrument is the attribution to issuer and what has provided this importance to date, is the "signature". Signature, in fact, is a means by which the parties of an instrument not only indicate their intents and consents towards the provisions of the instrument, but also ensures their commitments to these provisions. With the inevitable advent of Information and Communication Technology (ICT) and necessity of setting deeds in cyberspace, validating the electronic deeds is also essential and this question arises whether we can replace the traditional manual signature by a signature on electronic form with the same legal impacts and credits. Obviously, this subject will be far more important in the case of electronic notarial deeds, with regard to the particular circumstances which are imposed towards deeds establishment in notary public's offices by the legislators.

A consideration of the nature and functions of the signature demonstrates that what being always considered by legislator regarding signature, is a way to assign an instrument to the issuer nor the manner of its creation and issuance. Therefore, the means of signature issue is unimportant. For this reason, the "signature" is legally able to be presented in electronic form in cyberspace. However, this capability is applicable and protected by sufficient sanctions when its legal platform has been provided.

With e-commerce development, the domestic and international regulations applicable to electronic commerce and signature have been approved which among them emerge:

- UNCITRAL Model Law on Electronic Commerce (1996) and UNCITRAL Model Law on Electronic Signatures (2001);
- General Usage for International Digitally Ensured Commerce (GUIDEC) of International chamber of commerce (1997);
- Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures and Directive 2000/31 / EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of the information society, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');
- Act No. 2004-575 of 21 June 2004 on confidence in the digital economy of France;
- E-Commerce Law of Iran approved 7/1/2004.

Numerous articles also appeared in the field of electronic commerce and signature which are addressed as far as possible in this paper; however, none of the papers have studied application and legal capability of electronic signature, specifically, in notary public's offices. Whereas, Iranian notaries were bound to establish the deeds electronically via electronic signature since 14 September 2013. (Article 4 of Instruction for Applying the Notary Offices from Deeds' Electronic Registration System) Despite recognition of electronic signature in e-commerce law of Iran passed in 2004, predicting this technology, in addition to legislative recognition of electronic notarial deeds, in notary public's offices by a special law is presently be required. Regarding this necessity, the French legislator, while recognizing electronic signature in Article 1316-4 of Civil Code declares the signature of public officer as authenticity factor in deeds, therefore provides the legally possibility of applying this technology, during last decade, in notary public's offices of this country. Hence, the signature which should be apposed on electronic notarial deeds is a challenge that notary public's offices have to be always involved, thus it should be considered by legislator.

This paper is organized as follows. First, in determining the legal nature of the signature, the signature definition and functions are mentioned. Second, the concept of electronic signature and its status under Iranian and French legal systems are addressed. Finally, as stated existing legal gaps, the legal process of electronic signature realization under Iranian and French law and current functions of this technology in Notary Public's Offices are examined in order to create an appropriate platform towards electronic notarial deeds recognition and draw legislator's attention to special legislation on electronic signature.

## DISCUSSION

This paper seeks to detect the "signature" as a binding factor in each instrument and authenticity factor in notarial deeds, of course in both traditional and electronical formalities. Hence, at first, the "signature" and its functions are defined, then, the concept of electronic signature and its impact on authenticating the electronic instrument will be discussed, finally, the historical basis of electronic signature and its legal infrastructure is also overviewed under Iranian and French legal systems.

### 1- DEFINITION OF SIGNATURE

Signature is determined by "writing name, last name (or both) or drawing certain sign that points out the identity of its owner under notarial or private instruments, and indicates a transaction, a commitment, an agreement or a testimony and like these or whichever should be recorded later (blank)". (Ja'fari Langrodi 1992, P.81) According to another definition, the signature is characterized as "a personal mark on a script or effect that testifies its creation by this person or authenticates its contents". (The Larousse dictionary, 2010)

The signature must be based on the secure manner and process of identification, authenticity verification, and belonged to the instrument that is affixed to it. (Kaynia 2009, P.84)



**2- SIGNATURE FUNCTIONS**

According to above definitions, the signature possesses three fundamental functions:

- A) Identifying the issuer (Identification Function);
- B) Consenting the signatory to the provisions of the signed instrument (Evidence Function);
- C) Establishing relevance between the signatory and instrument content (Attribution Function). (Zarkalam 2012, P.34)

The functions reveal the particular status of "signature" in order to validate the documents. According to Article 1301 of Iranian Civil Code "A signature apposed on a script or document serves as evidence against the signatory".

Indeed, the effect of signature is assessed at commitment of signatory towards all aspects of the signed instrument or contract. Even though the stated article is not considered one of the important effects of signature on signed instrument as evidence in favor of the signatory, each document that is signed, in fact is credited and it can be attributed to the issuer's and committed him to its content. (Rezaie 2012, P.90)

According to Article 65 of Registration Code of Iran, the legislator also provides that: "signing the registered notarial deed by the parties of transaction or their agent after reading, it would be as their consent". Therefore, the signature is indicative of consent and intent of the parties towards the contents and provisions contained in deed (Mohammadzadeh 2007, P.18) and obviously, if it is not signed by them, this implies invalidity and lack of any legal effect regarding the deed. (Rezaie, op .cit. p.91)

Accordingly, the French legislator to consider the matter and in addition to determine signature as identification factor of the person who apposes it, detects it as an evidence of consent the parties to the obligations which flow from a transaction. (Art. 1316-4 of French Civil Code)

**2-1- STATUS OF SIGNATURE IN PRIVATE INSTRUMENT**

Signature is an essential element to private document. In other words, signing the instrument indicates the identity of the signatory and confirms its contents by him. Hence, according to Article 1293 of Iranian Civil Code "If a document has been prepared by an official authority charged with the drawing up of documents, but that authority has not been competent to draw up the document or has not observed the legal requirements connected with the drawing up of the document, such a document, if it bears the signature or the seal of the party is regarded as private".

Article 1318 of the French Civil Code in this regard requires: "An instrument which is not authentic because of the lack of power or incapacity of the officer, or of a defect in form, has the value of a private instrument, if it was signed by the parties". Signature is regarded as an essential element under French law, as well. (Zarkalam, op .cit. p.33) Consequently, each attributable script which is not possessed by any condition of notarial deed, however is assessed by signature, would be considered as private instrument. (Shams 2010, PP. 147&148) Of course, the articles provide no legal force towards the instrument without of signature or seal of the parties. (Shahri 2004, P.140)

**2-2- STATUS OF SIGNATURE IN NOTARIAL INSTRUMENT**

A legal instrument signed by the parties (in person or by their representatives), actually reveals that they are committed to the legal results of this instrument; signing the instrument by public officer, in addition to signature of parties, leads to authenticate this instrument. (Cornu, 2005)

When the signature is apposed by a public officer, in fact it confers authenticity to the instrument. (Art. 1316-4 of French Civil Code) As a result, the established and registered deed is not followed by any legal effect as long as it is not signed. (Mohammadzadeh, op .cit. p.19)

**3- ELECTRONIC SIGNATURE**

In cyberspace that the entries are Non-visualized exterior and insubstantial, thereby data exchange takes place in a virtual environment, reconsidering the concept of signature is also required. In the context of electronic commerce that the documents based on electronic data are being replaced paper documents, in regards to safeguard the reliability and verify the attribution of electronic documents, it is also necessary to replace the manual signature with electronic signature. (Vesali Naseh 2007, P.54)

The electronic signature, in a general sense, is a data which is affixed to other data and uncovers the relevance between the signatory and affixed data. Considering that the most important effect of the signature is the commitment of signatory to the entire legal consequences induced the instrument or agreement signed by him, therefore the electronic signature as manual signature should be able to identify the signatory of instrument and commit him to its content. (Vesali Naseh, ibid, P.58) In this concept, a password, a message, or any other immaterial procedure, under the specified conditions, could possess the evidential value of signature in traditional sense. (Zarkalam 2004, P.37) Thus, the definition of electronic signature and its legal status will be discussed in the next section.

**3-1- THE DEFINITION OF ELECTRONIC SIGNATURE UNDER IRANIAN AND FRENCH LEGAL SYSTEMS**

Paragraph (l) of Article 2 of Iranian Electronic Commerce Law defines "electronic signature" as: "Any sign appended or logically affixed to a "data message" which may be used to identify its signatory".

As the definition suggests, electronic signature is predicated to any confirmation composed electronically and it could be a sign, password, word, number, typed name, and digital image of a handwritten signature or any electronic proof of identity that is adopted by the issuer or his deputy and is attached into a contract or any other document.

The French legislator in Article 1316- 4 of the Civil Code, after declaring the functions of a reliable signature, represents the terms of an electronic signature realization. Thus, the first paragraph of the Article attributes the signature to the person who apposes it and demonstrates it as a proof of consent the parties to the obligations which flow from that transaction, it also asserts the signature of public officer as authenticity factor in deeds. The second paragraph, as expression of electronic signature terms, refers to a reliable process of identifying which safeguards the signature link with the instrument to which it relates and testifies to identity of the signatory, as well as integrity of the document; and with these conditions, the principle is put on validity.

**3-2- TYPES OF ELECTRONIC SIGNATURE**

Iranian E-commerce law recognizes two levels of electronic signature. The first is simple "Electronic Signature" as defined in paragraph (i) of Article 2 of this Law and the second is "Secure/Enhanced/Advanced Electronic Signature" which should be in compliance with the conditions of Article 10 of above-mentioned Law. (Paragraph (k) of Article 2 of E-commerce law of Iran) This means that:

- "a) Be unique to the signatory.
- b) Identify the signatory of "data message".
- c) Be signed by the signatory or under his/her sole intention.
- d) Be affixed to "data message" in a way that any change in data message can be detected and identified".

It is notable that French Civil Code, in the section of electronic signature, is not distinguished the division above mentioned; however, the terms of "signature" in general (in the first paragraph of Article 1316-4) and "electronic signature" in particular (in the second paragraph of mentioned Article), without any distinction between this type of signature, are defined and affirming the requirements of this signature is trusted to decree of State Council.

The cited Decree which was published in the Official Gazette of 30 March 2001 introduced the electronic signature on two levels; thus, the conditions stipulated in paragraph 2 of Article 1316-4 of Civil Code, in defining electronic signature, are confirmed as a general concept of this signature and the following requirements for secure electronic signature are identified:

- "- Be specific to the signatory;
- It is created using means that the signatory can maintain under his sole control;
- Ensuring the act with which it is attached a link such that any subsequent change of the act is detectable." (Article 1 of Decree No. 2001-272 of 30 March 2001)

**3-3- THE LEGAL STATUS OF ELECTRONIC SIGNATURE**

With expansion electronic commerce, ensuring the reliability and its security by the legal systems is of course required and recognition of electronic signature in order to provide its technical requirements is one of the most important means to achieve the validity towards electronic transactions. (Vesali Naseh, op .cit. p.69)

Since the electronic signature is the principal elements in order to establish the notarial deeds electronically, (Signature of the first deed electronically, 2008) in this section, the legal status of this technology under Iranian law and subsequently in the notary public's offices is addressed; then, legal aspects and process of electronic signature recognition under French law and notary public's offices of this country, as a pioneer in applying the electronic instrument, are examined.

### 3-3-1- THE STATUS OF ELECTRONIC SIGNATURE UNDER IRANIAN LEGAL SYSTEM

Following the development of communication through electronic devices and the necessity of legislation in the field of new technologies, the Iranian legislator, in order to harmonize with international regulations and provide the legal security of electronic business transactions, ratified the "Electronic Commerce Law". This law which is adapted from UNCITRAL Model Law on Electronic Commerce (1996), in fact is a law regards to authenticate modern electronic communication devices in business relationships and transactions that is approved in January 2004 and is currently considered as the legal basis for electronic commerce in Iran. (Rezaie, op .cit. PP. 95 & 98)

The E-commerce law detects any sign appended or logically affixed to a data message as "Electronic Signature" ( Paragraph (I) of Article 2 of E-commerce law) and according to Article 7 recognizes expressly this type of signature with the provision that: "where the law requires a signature, an electronic signature may suffice".

Article 10 of this law contains the requirements of a secure electronic signature. Pursuant to Article 14, all secure data messages are deemed to be valid and reliable documents by judicial or legal authorities and thus, in accordance with Article 15, the secure electronic signature may not be questioned or denied and only a claim of forgery or a proof of its invalidity on a legal basis may be considered.

Iran's Fifth Five-Year Development Plan (2011 - 2015) which is adopted in January 2011 allocates several of its articles towards more efficient electronic devices as follows:

1- Article 48 (Paragraph A) of the Fifth Development Plan assigns the Ministry of Commerce, order to develop e-government, e-commerce and e-service supplies, to enhance the Electronic Certification Service Providers and to apply electronic signature to the extent that e-business and service systems be able to interest these devices by the end of third year of the Plan;

2-According to Article 211 ( paragraph m) of the mentioned Plan, "The State Organization of Deeds and Properties is bound to electronize all phases of transactions registration within the end of second year of the Plan, in the way that provides immediate and electronically response to registry inquiries and immediate registration of transactions by applying secure electronic signature in order to develop an Integrated Registration of Deed and Property System and establish a National Center for Registry Data".

### 3-3-2- ESTABLISHMENT'S PROCESS ELECTRONICALLY OF NOTARIAL DEEDS, THROUGH ELECTRONIC SIGNATURE, IN NOTARY PUBLIC'S OFFICES OF IRAN

Following enforcement of the assignments which was mentioned in the previous section, Iranian notaries were bound to establish the deeds via electronic system of the State Organization of Deeds and Properties since 14 September 2013 ;( Article 4 of Instruction for Applying the Notary Offices from Deeds' Electronic Registration System in Iran approved 14/9/2013) 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. Then, notary prints the final copy of the deed by obtaining a unique identifier for the deed established by him via the token which contains his identity information and electronic signature. Finally, the parties of the transaction sign following the deed and notary's current book as the notary who 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.

According to what is passed, notary's electronic signature is applied merely in receiving the unique identifier, in order to creating an authentication code at system of the State Organization to which it is possible to control the authenticity of the deed established and thus the possibility of fraud and flaws in official deeds is reduced. However, the manual signature of notary and interested parties following the prints of deed which is established electronically, is surely necessary and the electronic signature has not achieved the legal status of manual signature yet. Therefore, it is essential that the legislator determines the legal status of electronic signature as well as recognizing the notarial deeds. Whereas, this serious affair is being neglected by the legislator in Comprehensive Plan of Iran's Cadaster Act (approved 24 June 2014) whereby registering in the physical notary's current books will be nullified and replaced with electronic books; by virtue of this Act, manual signature and physical archives are still remained in force. (Article 7 of Comprehensive Plan of Iran's Cadaster Act)

Moreover, this importance is also unnoticed in amendment bill of Notaries Public's Office Code which is presented by members of parliament; according to Article 14 of this amendment bill, Article 18 of Notaries Public's Office Code (approved 16 July 1975) is amended as follows and two notes is affixed 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."

As it is obvious, in spite of assigning the notary and parties to sign the established deeds, the form of the signature is although uncertain.

### 3-3-3- THE STATUS OF ELECTRONIC SIGNATURE UNDER FRENCH LEGAL SYSTEM

The European parliament codified the Directive on a community framework for electronic signatures on 13 December 1999. This Directive is binding for EU countries (legal framework for electronic signatures, 2015) and the countries are bound to transpose the European directives in their legislation at the set time. Electronic signature in France since 2000 under the regulations to which we address below, is recognized officially as a manual signature: (digital signature , 2012)

- Act No.2000-230 of 13 March 2000 adapting the law of evidence in information technology and on the electronic signature;

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). The concepts of electronic script, instrument and signature are interpolated to French Civil Code by this Act which consists of six articles. Article 1316-4 is annexed to Civil Code through the Act (Article 4) whereby the electronic signature is recognized and the terms of this type of signature are determined.

- Decree No. 2001-272 of 30 March 2001 adopted in application of Article 1316-4 of the Civil Code relating to electronic signatures.

As noted previously, Article 1316-4 of the French Civil Code defining the electronic signature and its terms provides that: "(...) where it (the signature) is electronic, it consists in a reliable process of identifying which safeguards its link with the instrument to which it relates. The reliability of that process shall be presumed, until proof to the contrary, where an electronic signature is created, the identity of the signatory secured and the integrity of the instrument safeguarded, subject to the conditions laid down by decree in Council of State".

With regard to the latter part of Article 1316-4 of the Civil Code, characterizing the requirements of electronic signature is trusted to decree of State Council. This decree that was published in the Official Gazette of 30 March 2001, in determining the technical characteristics of the electronic signature process suggested the concepts such as "secure electronic signature", (Clause 2 of Article 1 of Decree No. 2001-272) "The device secure electronic signature creation" (Clause 6 of Article 1 of Decree No. 2001-272) and "electronic certificate". (Clause 9 of Article 1 of Decree No. 2001-272)

### 3-3-4- PROCESS OF ESTABLISHING THE ELECTRONIC NOTARIAL DEED APPLYING ELECTRONIC SIGNATURE IN FRENCH NOTARY PUBLIC'S OFFICES

The French notaries are the first ones in Europe who have been equipped with secure electronic signature since 12 September 2007. (Signature of the first deed electronically, op .cit.)

Actually, 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, by the notary. ( Article 17 of Decree No. 2005-973 of 10 August 2005 amending Decree No. 71-941 of 26 November 1971 on documents issued by notaries (in France))

Process of establishing the electronic deed in the French notary public's offices is thus to provide the act on the software dedicated to establish the deed and the notary 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 for signing the electronic deed and its appendices. However, what

makes this process distinct and significant from traditional method, it takes place 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 electronic deed: a dream come true, 2012)

## CONCLUSIONS

In the modern world, due to tendency of legislators of different countries to more deployment of electronic devices and in this regard, notary public's offices assignment to realize the electronic notarial deeds, taking advantage of secure electronic signature is inevitable.

Currently, the application of electronic signature in Iranian notary public's offices is limited to obtain the unique identifier for the deed established by the notary in order to create an authentication code at system of the State Organization and thereby establish a National Center for Registry Data. However, such application is per se considered a very important movement towards preventing infractions, the electronic signature does not achieve the legal status of manual signature which applies already in deeds establishment. Whereas, in French notary public's offices, in addition to signing the notary via secure electronic signature in deed legalization, the signature of parties is through light pen, thus it is reflected in the deed electronically.

Since electronic signature is a basic principles in establishing the electronic notarial deeds which has been emphasized repeatedly in recent years under various laws, it is essential that the Iranian legislator determines the legal status of electronic signature, under a special law, as well as recognizing the notarial deeds until the statutory functions of signature are effectively recognized towards electronic signature whereby application of this technology would be protected by the adequate sanction.

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