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Legal Procedures for Issuing an electronic Certification Certificate in Law n° 15/04 and Comparative Laws

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Abstract:

Our article deals with one of the most important topics related to electronic transactions, as the performer of electronic certification services is responsible for issuing an electronic certification certificate for those who wish to verify the authenticity of the electronic document sent to him by the owner of the signature contracting with the service provider, as it confirms the validity of the electronic signature by identifying the signatory, the affiliation of the signature to it, and its response to legal requirements.

In view of the value of this certificate, the Algerian legislator specified, through Law n° 15-04, the legal procedures for issuing an electronic certification certificate, where our article aims to clarify the stages of its issuance, then the cases in which it is suspended, as well as cases of cancellation, which shows the legal value that it has acquired and made it authoritative in proof in accordance with the electronic certification policy, and for this we used the legal approaches required to prepare the research; and jurisprudence whenever required. At the end of our article, we tried to come up with a conclusion in which we show our conclusion of some results with some suggestions and recommendations.

Keywords: Performance of electronic certification services, Certification certificate, Certificate deactivation, Cancellation of certificate.

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Introduction

In view of the modern development that accompanied our daily lives, especially in the field of electronic communication, and in view of the rapid development of trade in general and e-commerce in particular, the transition from the traditional pattern to the modern pattern has become one of the priorities that allowed people to proceed according to transactions in all fields.

The world has become witnessing an intensive digital revolution, which resulted in several problems in the transactions that need to be proven located on a property, as they require a special formality, so there was an urgent need to ensure that the electronic signature was issued by those who attributed it without modification or forgery, and this is what the competent authorities are doing to certify the electronic signature through the issuance of an electronic certification certificate, as many countries have adopted the electronic certification system, so legislation differed in enacting laws, in addition to the role played by The Algerian legislator has created a special national authority to frame two subsidiary authorities by promulgating Law n° 15/04 specifying the general rules for electronic signature and certification¹.

The electronic certification process results from the desire of individuals to store their information and circulate it among them, in line with the development of modern means that have played an important role in preserving records and documents, and in order to preserve the exploitation of persons of the data in the correspondence circulating between them, making securing them through electronic documentation protects the identity of the person who is in the process of recording and signing the information; Not changed while sending².

In order to ensure the confidentiality of this information, it is encrypted by issuing an electronic certification certificate confirming the identity of the signatory through the link between the signatory and the signature creation data. In this regard, the Jordanian Transactions Law considered that this certificate, which is issued by a licensed or accredited competent authority, has the function of proving the attribution of an electronic signature to a specific

¹ Law n° 85 of 2001 relating to the Jordanian Electronic Transactions Law, Bahraini Electronic Commerce Law of 2002, Electronic Transactions and Commerce Law n° 2 of 2002, Law n° 83 on Tunisian Electronic Exchanges and Commerce, 2000, as well as the Executive Regulations of Egyptian Law n° 15 of 2004 on the Regulation of Electronic Signature and the Establishment of the Information Technology Industry Development Agency (ITIDA), promulgated by Resolution n° 109 of 2005, Egyptian Gazette, n° 115, dated 25/05/2005, UNCITRAL Model Law On Electronic Signatures, United Nations Publications, General Assembly, United Nations Commission on International Trade Law, Thirty-third Session, New York, 05/04/2000, Law n° 15 of 2005 Regulating Egyptian Electronic Signatures. Law n° 15/04 of 11 Rabi' al-Thani 1436 corresponding to 10/02/2015, laying down the general rules for electronic signature and certification in Algeria, Official Gazette n° 06, issued on: 10/02/2015.

² Abeer Mikhail Al-Safadi Al-Twal, The Legal System for Electronic Signature Authentication Authorities, First Edition, Wael Publishing House, 2010, p. 16. Also Iman Mamoun Ahmed Soliman, Concluding and Proving the Electronic Contract, Legal Aspects of the Electronic Commerce Contract, New University House, Alexandria, 2008, p. 314.

person based on approved authentication procedures, while the Egyptian Signature Law has specified the entity licensed to issue these certificates and its role in proving the link between the certificate data and the signatory through its private key. Create an electronic signature and document¹.

As for the Algerian legislator, he stressed the availability of requirements in the certification certificate, through the need for a reliable third party who is the provider of certification services, to grant this certificate to the signatory only, and considered the electronic certification certificate described as an electronic certification certificate that meets the following requirements:

- Be granted by a trusted third party or by an electronic certification service provider, in accordance with the approved electronic certification policy.
- To be granted to the site only.

The importance of the research:

- 1- The importance of the subject of our research includes the following: Scientific importance, as the library gives a new addition, which necessitated us to research it within an in-depth study in comparative laws and Law n° 15/04 specifying the general rules for electronic signature and certification.
- 2- The practical importance, as the issuance of the electronic certification certificate requires going through legal procedures until it is issued in its final form, and so that it is reliable in proof because it gives the confidence and security that people dealing with via the Internet are looking for and therefore it has brought guarantees of its abundance for the prosperity of electronic transactions and their non-extinction.

Research Objectives:

Our research aims to analyze the basic elements of the procedures for issuing an electronic certification certificate through the following points:

- 1- Clarifying the rules and texts governing the issuance of an electronic certification certificate.
- 2- Indicate the data contained in the electronic certification certificate.
- 3- Clarify the role of these rules to combat fraud that affected people's information and data by providing legal protection.
- 4- The purpose of the binding legal procedures for the issuance of the electronic certification certificate is the link between the signatory and the data of creating the electronic signature and that the latter is a valid signature attributed to the person who issued it and

¹ Article 31 of the Jordanian Electronic Transactions Law. Article 01 of the Egyptian Electronic Signature Regulation Law No. 15 of 2005.

is therefore considered an argument in evidence in civil, commercial and administrative matters.

- 5- Showing the validity of the electronic writing and has not been manipulated and has not undergone any alteration, whether by addition, deletion or change.

The problem of research:

The data in the electronic certification certificate requires caution and caution so as not to be forged or changed, and in order to do so, it must be confirmed by the provider of electronic certification services, which made us wonder about:

What are the legal procedures organized by the Algerian legislator to issue an electronic certification certificate? What is the position of comparative legislation?

Research methodology:

To answer the problem posed and according to the quality of the research, it needs several approaches in order to be given the scientific formula of the legal academy, we have used the descriptive and analytical approaches to clarify the basic concepts of the subject of our research and to analyze the legal texts that govern the same field, in addition to the comparative approach, which is the most appropriate to go deeper under the legislation and compare them with each other, and to enrich our research we decided to strengthen it with some jurisprudential opinions and jurisprudence when necessary.

Research Plan:

To answer the problem posed, we will try to address the main points according to a plan divided according to the following axes:

The first axis: the stages of issuing the electronic certification certificate

The second axis: cases of disabling the electronic certification certificate

The third axis: cases of cancellation of the electronic certification certificate.

The first axis: the stages of issuing the electronic certification certificate

The electronic certification certificate is issued by the provider of electronic certification services, which is also called the electronic identity card, and it performs the same role as the ID card or passport, confirming the data of the person he provided and his signature on it.

The issuance of the electronic certification certificate goes through several stages to produce it in its final form, where the application for obtaining it is submitted (first), then the information is verified (second), then the performer of electronic certification services issues the keys to the certificate (third), then issues the certificate in its final form (fourth), after which the validity period is determined (fifth).

First: Application Submission Stage

At this stage, an application for an electronic certification certificate is submitted to the competent authority, one of its branches, or its agents, after which this authority asks the

concerned person to prove his identity, provide his personal information, and also provide legal evidence and evidence that proves that he is able to conclude legal actions such as his eligibility and non-quarantine and the real qualities of him¹.

Second: Data Verification Phase

This stage comes immediately after the person concerned submits his application for the certificate, where the data provided by the supervisor of the process (certification authority) is verified².

Third: The stage of issuing the keys

The authentication authority issues the public and private keys; the owner of the electronic signature keeps the private key for himself because he decodes it to receive and open the message³.

Fourth: The stage of issuing the certificate

At this stage, the certification authority issues the electronic certification certificate and delivers it to the owner of the electronic signature, and then it is kept with a magnetic cylinder or any modern means, with the certification authority keeping a copy of the certificate in the electronic record, and when the issuing authority announces the certificate about it through its own website, it bears full responsibility for the validity of the data it has provided⁴.

Fifth: The stage of determining the validity period of the certificate

As the last stage, the certification authority determines the validity period of the certificate; its duration is fixed on a certain date, and it may be stopped to cancel it after that period, if the certificate is used after the specified period, the certification body does not bear any responsibility, if we take, for example, a person who sent a message to a second person, and the latter needs the public key that the first person possesses in order to use it to encrypt the text, so that the owner of the public key is safe from any deception, fraud or penetration, and before concluding the contract between them, he needs To a certification or certification body, to verify the authenticity of this public key, this is the primary task of the electronic signature certifier.

The second axis: cases of suspension of the electronic certification certificate.

The suspension of the electronic certification certificate is the temporary suspension of its validity, that is, the suspension of the legal effect of the certificate in preparation for its

¹ Alaa Ahmad Muhammad Haj Ali, Legal Regulation of Electronic Signature Certification Bodies, Master of Private Law, An-Najah National University, Faculty of Graduate Studies, Nablus, Palestine, 2013, p. 13.

² Bassam Atef Al-Muhtar, Convergent Terms in Civil Law: Explanation and Comparison, Intellectual and Literary Property Law, First Edition, 2006, p. 150.

³ Fatima Al-Zahra Mosaddegh, Electronic Certification as a Means of Protecting Electronic Signature, Journal of Legal Studies and Research, Volume 05, Issue 01, Received: 29/08/2020, Acceptance Date: 14/02/2020, Publication Date: 11/05/2020, p. 39.

⁴ Amal Boubacar, Electronic Certification in the Algerian Legal System, Al-Muthinker Journal for Legal and Political Studies, Issue 03, September 2018, p. 220.

cancellation, and therefore in the event of its suspension, the electronic signature of one of the parties shall not be considered when it was issued for the purpose agreed upon and becomes as if it was not, and it shall be suspended temporarily until it is canceled or resumed when it is proved that the reason on which this certificate was suspended is invalid¹.

He must also provide a justification in order to convince the service provider to take the suspension action, such as if he did not conclude a deal, or discovered a defect in his signature, or the difference of partners,... etc, provided that it is justified on the grounds that once it is issued, it is adopted by third parties in concluding the transaction contract. For reference, third parties do not have the right to request comment, but they can report the incident that justifies the suspension or not to the service provider, as the latter is the one who assesses the situation to take the decision to suspend, and in the event that third parties suffer any damage as a result of the delay in suspending, they have the right to refer compensation to the service provider.

**First: Comment at the request of the certificate holder The
suspension of the electronic certification**

Certificate is done at the request of its holder, i.e. the person who requested the issuance of the certificate, whether it is himself or a representative of a legal person².

He must also provide a justification in order to convince the service provider to take the suspension action, for example if he has not reached an agreement, if he has discovered a defect in his signature or the difference of partners,... etc., provided that it is justified by the fact that once issued, it is adopted by third parties when the transaction contract is concluded.

As a reference, third parties do not have the right to ask for comments, but they can report the incident that justifies or does not justify the suspension to the service provider, as it is the latter that assesses the situation to make the decision to suspend, and in the event that third parties suffer damage as a result of the delay in suspension, They have the right to refer compensation to the service provider.

Second: Commenting based on false or false information

The issuer of the certificate is responsible for identifying the information contained in the certificate and throughout its validity, whether false or false. False or fake information each has its own meaning; as for false information, it is that correct information but belongs to another person, such as if the service provider delivers the certificate to a person with the same name as the original certificate holder, and therefore the service provider made a mistake that may cause harm to others, and therefore he must speed up the suspension of the certificate on his own without a request from its holder, and in the event that the person discovers the mistake that

¹ Abdel Fattah Bayoumi Hegazy, Abdel Fattah Bayoumi Hegazy, Electronic Signature in Comparative Legal Systems, Dar Al-Fikr Al-Jamia, Alexandria, without year of publication, p. 174.

² Nadia Yas Al-Bayani, Electronic Signature via the Internet and its Authenticity in Proof, A Comparative Study of Islamic Jurisprudence, Dar Al-Bedaya Publishers and Distributors, First Edition, 2014, p. 268.

occurred in it, he takes the initiative to request suspension because the effects The consequent destabilization of trust in e-commerce is primarily¹.

As for the fake information, it is the information that is not true in the first place, based on which the certificate of authentication was issued, such as if the person presents the service provider with a fake personal or family card².

In this case, the certificate becomes forged based on false information, and in this case, the main first defendant is its owner, and the service provider is not responsible because his intention is sound and he did not know the truth.

Third: Suspension based on its use for the purpose of fraud

The certificate is issued correctly and its information is also correct, but it was used to conclude a legal act using fraud to which others were exposed, such as the person indicating his financial position that pays to contract with him, or the bank lends to the customer depending on the soundness of his financial position, but the truth is otherwise. The use of the certificate in this case is considered fraud on third parties, and the person responsible for issuing it, i.e. the service provider, must temporarily suspend its validity until the fraud is confirmed and thus cancel it if it is proven to be true.

Fourth: Suspension based on a change in the data in the certificate

Suspension of the certificate based on a change in the data in it is somewhat similar to the fraudulent data or given to the service provider for the purpose of deceiving others, but in the event of a change in any of these statements, the certificate holder must inform about this because he is obligated to provide the provider of electronic certification services with correct data for issuing the certificate³.

The certificate in this case is issued true and fulfills all the conditions, but any change may occur to the data after its issuance makes it subject to suspension, so the owner must inform the authority responsible for issuing it in order to give credibility to all the data declared to the service provider on the one hand and to all parties on the other hand so that the service provider changes the data and notifies the concerned parties⁴.

For reference, the service provider must verify the validity and validity of the certificate and verify the conformity of the signature data with its owner and his identity in the certificate and examine him, and also verify that these data and the signature examination are used to

¹ Zaid Hamza Moghadam, The Legal System of Electronic Documentation, A Comparative Study, Journal of Sharia, Law and Islamic Studies, No. 34, Islamic Republic of Iran, August 2014, p. 143.

² Abbas Youssef Jabber, les contrats consulés par voie électronique, étude comparée, universités Montpellier, école doctorale, 2012.

³ Lazhar Ben Said, The Legal System of Electronic Commerce Contracts, Dar Houma for Printing, Publishing and Distribution, Algeria, 2012, p. 153.

⁴ The second paragraph of Article 21 of the Tunisian law states: "The holder of the certificate shall inform the provider of electronic authentication services of any change to the information contained in the certificate."

manage two types of data by the person in charge of the certification service, considering that each certificate has a specific period of time, and this period is a substantial statement of the data contained in it¹.

The third axis: cases of cancellation of the electronic certification certificate.

This certificate is issued at the request of its owner to the competent authority as explained earlier, and therefore he is the one who has the right to cancel it for one of the reasons that may push him to do so, and therefore we will indicate the case of cancellation at the request of its owner (first), or because of the death of the natural person or the dissolution of the legal person (second), or because of its temporary suspension by the provider of electronic certification services (third).

First: The case of canceling the certificate at the request of its owner

The service provider must suspend the electronic certification certificate on its own if it is proven that the electronic signature system has been violated, as this is done by informing others of this system that matched the person's signature with the required conditions, or decrypting, or the person loses his private key, otherwise he will be held accountable. As for third parties, he does not have the right to request the cancellation of the certificate, but his right is limited to recourse to the owner of the certificate for compensation in the event of damage due to his use of it².

Second: The case of cancellation of the certificate due to the death of the natural person or the dissolution of the legal person.

Due to the link of the electronic certification certificate (personal identity or passport ... etc) closely and directly related to its owner because the signature contained therein is issued in the name of the natural person, whether in his original capacity or a representative of a legal person, in the event of the death of the natural person or the occurrence of insanity or dementia, the certificate is canceled for personal considerations, and his electronic signature does not have any legal value³, and he is not entitled to use it, as well as in the event of the termination of the legal person for any public or private reasons such as dissolution, bankruptcy or merger ... Etcetera.

¹ Djamila Mahi Disdet, l'obligation d'information dans les contrats du commerce électronique, université d'avignon et des pays de vaucluse, le grade de docteur en droit, spéculite droit prive, 2011, p 120.

² Al Shattnawi Sinan, les conditions generales de vente dans les contracts électronique en droit compare Franco Jordanian, université doctoral de droit U.F.A de doctorat en droit prive Ardenne, 2012, p 150.

³ Al-Zahra Bara, Electronic Certification Certificate as a Mechanism to Enhance Confidence in Electronic Transactions, Journal of Legal and Political Sciences, Valley University, Volume 10, Issue 01, April 2019, p. 25.

Therefore, the certificate cannot be valid in the cases mentioned, and if damage is caused to third parties, it is due to the heirs in the case of a natural person, but in the case of a legal person, it is due to the partners to claim compensation.

Third: The case of canceling the certificate due to its temporary suspension by the service provider.

As we mentioned earlier, the reason for the suspension of the certification certificate is false or false information or the case of fraud, so the suspension is temporary until the certification body verifies this, and if the reason is proven to be incorrect, it cancels the suspension decision, but if proven otherwise, it cancels the work of this certificate as if it were not.

If such cancellation or suspension causes harm to the certificate holder or third parties, they have the right to object to the decision of the certification body starting from the date of its publication in the electronic register¹.

As for the Algerian legislator, it provides for cases of cancellation of certificates in Article 45 of Law 15/04 specifying the general rules for electronic signature and certification.

Conclusion:

In the conclusion of our study, we can say that the provider of electronic certification services is a neutral body that secures, authenticates and confirms the validity of the electronic signature by certifying it by issuing a legally recognized certificate called the electronic certification certificate.

The Algerian legislator has endeavoured to clarify the procedures for issuing this certificate in accordance with the laws in force in order to combat any fraud affecting it, in addition to comparative laws, such as the Model Law on Electronic Commerce issued by the Commercial Law Committee in Support of the United Nations, the European Directive of 2000 on Electronic Commerce, and the adoption of several laws regulating electronic commerce and electronic signature.

The Algerian legislator has adopted the approach of the legislation that preceded it with a view to reaching basic stages that contribute to the issuance of the electronic certification certificate on the one hand, and on the other hand to create an atmosphere of trust and safety among customers, so it requires the procedures for its issuance by Law n° 15/04 specifying the rules relating to electronic signature and certification and their activities.

We have dealt with the procedures for issuing an electronic certification certificate and its validity, and we have explained them in accordance with comparative laws and Algerian law, as well as the cases in which they are suspended, as well as cases of cancellation, to conclude in the end some conclusions and recommendations as follows:

¹ Zahira Kissi, The Legal System for Electronic Notary Bodies, Journal of Politics and Law Notebooks, No. 07, Algeria, 2012, p. 12.

First : Results

- The developments of modern technologies have contributed to the development of electronic transactions, so the electronic signature has become the representation of these transactions.
- In order to verify that the electronic signature has been issued by its owner, neutral bodies called electronic certification service providers have been established whose function is to issue a certificate proving the authenticity of the information provided by the owner of such signature and that these data are attributed to the person requesting the certificate.
- Comparative laws regulate the legal procedures for issuing an electronic certification certificate, while the Algerian legislator, despite the suspension of these transactions for years, issued Law n° 15/04 specifying the rules for electronic signature and certification.
- The legislation that regulated the procedures for issuing an electronic certification certificate is the European, Tunisian, Emirati and Algerian directives.

Second: Recommendations

- Seeking to create a data protection mechanism for the signatory by the electronic certification body and protect it from disclosure or penetration.
- Work on holding conferences or seminars that clarify electronic transactions in general, and indicate the mechanisms for creating an electronic signature, as well as issuing an electronic certification certificate in order to clarify more to customers and others.
- Increasing people's awareness and legal culture by linking the field of dialogue and discussion between lawyers, judges, merchants, investigators... etc., to implement the electronic dealing system.
- Work on the development of an integrated system concerned with electronic transactions, especially the procedures for issuing an electronic certification certificate.
- Work to provide programs that protect people's data and maintain its confidentiality, seeking and creating mechanisms that protect the person's data on the site from disclosure, hacking or forgery.
- Include amendments to the electronic certification texts to combat all methods of fraud and fraud that affect the electronic certification certificate.
- Establishing specialized courts to settle disputes due to forgery in the electronic certification certificate, its amendment or others without the knowledge of its owner.
- Organizing international forums with developed countries to benefit from their experiences.
- Concluding agreements with developed countries to benefit from their legislation in regulating the procedures for issuing an electronic certification certificate.

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