

The new Iraqi E-Commerce Act: A new move to openness

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INTRODUCTION: Recently, legislation relating to e-Commerce was approved and issued in Iraq. The Electronic Signature & Electronic Transactions Law No. 78 of 2012 (the “Law”) was approved by the Presidential Council on 18th October 2012 and published into Official Gazette issue No. (4256) on 5th November 2012.

The Iraqi Parliament Council of Representative passed the final draft of the Law by majority vote of Iraqi legislators. This article aims to summarize the main points as provided by the Law in order to explain its significance and impact on transactions relating to e-commerce in Iraq:

IMPORTANCE OF LAW

The issuance of this Law is construed to be an important event due to the fact that Iraq was in need of modernized legislative frameworks to keep pace with the evolution in Information Technology and Communications (ITC) revolution and strengthen the legal basis and frameworks for the Electronics Transactions through modern means of communication.

OBJECTIVES OF THE LAW

In accordance with Article 2 of the Law, the main objectives behind the issuance are as follows:

- To set-up the legal framework for using the electronic means in practicing electronic transactions.
- Giving admissibility and the evidential weight to the electronic transactions and electronic/digital signature and organizing its provisions.
- Promote public confidence in the validity, integrity and reliability of electronic transactions.

APPLICATION OF THE LAW

In accordance with Article 3 of the law, the provisions of the Law shall apply to the following:

1. Electronic Transactions carried out by the natural or juridical entities;
2. Transactions between parties which have agreed to conduct their transactions by electronic means; and
3. Electronic Securities and Commercial Papers.

However, the following are some of the issues not applicable under the Law:

1. Transactions relating to personal status law;
2. Wills and Waqfs and amending conditions thereof;
3. Transactions disposing of immovable property, including related powers of attorney, title deeds, transactions creating real rights in respect thereof, with the exception of lease contracts;

ELECTRONIC SIGNATURE

With regard to electronic signatures, the Law provided that it shall include any letters, numbers, symbols, signs, audio note or any other unique character that shows it refers to the relevant party. Furthermore, it is required to be accredited by a certifying body..

ELECTRONIC DOCUMENTS

The Law has provided that electronic documents include a record or document that is created, stored, generated, sent, or received completely or partially by electronic means, including electronically data interchange, electronic mail, telegram, telex, or tele-copy and contained a reliable electronic signature.

ELECTRONIC COMMERCIAL PAPER & SECURITIES

Article (22) stated the requirements and conditions for forming and withdrawing the electronic commercial paper and securities that the same applied on commercial paper and securities provided for by law and the Electronic Information Processing system to be capable to prove the right and verify that the electronic signature is belonging and attributed to the Parties involved.

The Information Processing System is deemed capable to prove the right on Electronic Papers granted it meets the following conditions:-

1. Ensure a safe circulation of a commercial papers through it;
2. Ensure circulation of commercial papers in an unchangeable manner; and
3. Unveiling the names of parties involved on the commercial paper.

ELECTRONIC TRANSFER OF FUNDS (EFT)

The provisions of Chapter Seven related to Electronic Transfer of Funds (EFT) where it was stipulated that transfer of funds by electronic means shall be deemed as an acceptable method of payment.

Moreover, Article 25 of the Law stated that any financial institution practicing the electronic transfer of funds in accordance with the provisions of this Law and the regulations issued pursuant shall take the measures necessary to ensure secure services for clients and maintain banking confidentiality.

Additionally, a client shall not be liable for any illegal entry to its account affected by an electronic transfer unless the same occurs due to the client's fault or negligence.

ADMISSIBILITY AND EVIDENTIAL WEIGHT OF ELECTRONIC RECORDS

Electronic records, contracts, messages, and signatures shall be deemed to produce the same legal effect as written documents, instruments and signatures pursuant to the provisions of legislation in force and with respect to enforceability and admissibility as evidence.

Article (23) stipulated that the electronic commercial paper and securities shall be deemed to produce the same legal effect as the equivalent written documents with legal and evidential weight unless the law provides otherwise.

CONCLUSION

In light of above analysis, the Government of Iraq has made some impressive recent legislative progress in enacting the new e-Commerce Act of Iraq. This notable evolution in Technology Media and Telecommunications area in Iraq is a turning-point to enable others the access into Information technology and the use of its application in conducting various activities with regards to writing electronic messages, entering into contracts, transactions, negotiating the commercial papers, trading securities by electronic or software systems or conducting any electronic transaction within this Law.