

**Electronic formality in the light of Algerian law  
- Electronic payment cards as model-**

الشكلية الالكترونية على ضوء القانون الجزائري

-بطاقات الدفع الالكتروني نموذجاً-

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**Abstract:**

According to the general rules of civil law, legal acts submit in its creation to the will's autonomy principle, which is expanded or restricted depending on the act's nature and its affiliation to public or private law fields; However, due to the specificity of certain acts, it may require some formal procedures for protecting both parties of the act and others' interests. The public interest may require the intervention of legislator by imposing certain formality rules in conclusion of some legal acts. With the use of information and communication technologies for the contracts' conclusion, especially via the electronic payment card, it becomes necessary to adapt formalism's rules to the specificity of the electronic transaction.

**key words:** Electronic payment card, Electronic signature, Electronic formality

### الملخص:

وفقا للقواعد العامة للقانون المدني فإن التصرفات القانونية تخضع في إنشائها لمبدأ سلطان الإرادة الذي يتسع ويضيق بحسب طبيعة التصرف ومدى انتمائه لمجالات القانون العام أو الخاص، غير أنه ومراعاة لخصوصية بعض المعاملات قد تفرض اجراءات شكلية معينة حماية لأطراف المعاملة ولمصالح الغير، وقد تفرض المصلحة العامة أن يتدخل المشرع بفرض قواعد شكلية معينة في ابرام بعض التصرفات القانونية، ومع الاعتماد على تكنولوجيا المعلومات والاتصال في ابرام بعض العقود لاسيما من خلال تسوية المعاملات عبر بطاقة الدفع الالكتروني أصبح من الضروري ان تتكيف الشكلية مع خصوصية المعاملة الالكترونية.

**الكلمات المفتاحية:** بطاقة الدفع الإلكتروني، التوقيع الإلكتروني، الشكلية الالكترونية.

### introduction:

Formality is a set of procedures and statements imposed by law as a legal form, or through the accord of the parties as an agreed form. In fact, the concept of formalism was the subject of a major jurisprudential controversy resulting in two trends: one that expands the meaning of formalism and one that narrows it, the first one that expands the concept of formalism considers that every expression of will is a formal manifestation of legal act, so the agreed form enters into the formality's types ,the latter -Which we agree with- considers that the act is not formal unless it is declaredly imposed by the legislator, therefore Legal act preserves its consensual character <sup>1</sup>, in accordance with the general rules of civil law <sup>2</sup>.

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<sup>1</sup> Wasan Qasim Ghani, (Formal Agreement in Contracts), Journal of the Investigator Ornaments of Legal and Political Sciences, issued by the Faculty of Law at the University of Babylon, No. 1, Volume 3, 2011, pp. 9-11, research published in arabic version on the following link

<https://www.iasj.net/iasj?func=fulltext&aId=16532>

<sup>2</sup> See Article 59 of the Algerian Civil Code, "The contract shall be concluded as soon as the parties exchange their identical will without infringement of the legal texts». Refer to the. Presidential ordinance 75/58 issued in September 26, 1975 includes civil Code amended and supplemented, the Official journal No. 46 of 11 June 1976.

As the legislator concedes the possibility of electronic dealing and in light of the legal lacunas in some legislative texts regarding the contract's conclusion and electronic payment instrument, the following question arises:

**How is formalism legally adapted to the requirements of electronic transaction, especially in electronic payment cards?**

-This study relies on the descriptive approach, starting from characterizing electronic formality with exemplifying the latter on the electronic payment card, in accordance with the Algerian legislation.

- The subject is treated in the following two sections:

**The first section:** concerns the general rules of electronic formality.

**The second section:** is related to the application of electronic formality rules regarding electronic payment card.

**Section I:**

**The general rules of electronic formality**

**A) -The Link between the Concept of Electronic Formalism and Electronic Writing**

**B) -Conditions of producing electronic writing's legal effects**

**Section II:**

**The application of electronic formality rules on electronic payment card dealing**

**A) -The application of electronic formalism rules in electronic payment card issuing phase**

**B) -The application of electronic formalism rules in electronic payment card implementation phase**

**Section I:**

**The general rules of electronic formality**

Formalism is a set of procedures related to the contract conclusion required by the legislator, as a "legal form", or by the parties as an "agreed form". The purpose of its requirement is either to

prove the legal act, or a condition of its legal existence, or a condition for the contract to produce legal effects and be opposable in confrontation of the other, Those who's their legal status are affected by this contract "designated successor /non-designated successor". Hence, the same rules recognized in formalism are applied to the electronic formality concept; Taking into account the specificity of electronic transactions as they are based in their creation on an electronic pillar.

### **A/The Link between the Concept of Electronic Formalism and Electronic Writing**

Initially, electronic formalism is linked to electronic writing, and referring to jurisprudential studies, there is a distinction between the types of writing and their legal functions:

- Writing as a mean of proof.<sup>1</sup>
- Writing as an element of the contract.<sup>2</sup>
- Writing as a condition of opposability for protesting against third parties.<sup>3</sup>

It is crucial to distinguish between writing as a mean of proof, writing as an element of formality, and writing as a condition of opposability. The consensual contract can be proven by avowal and legal oath<sup>4</sup>, however, in some contracts, the law may require writing to prove the contract "article 333/1 of the Algerian Civil Code"<sup>5</sup>, or official writing through the intervention of a public officer in the

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<sup>1</sup> Article 333 of the Algerian Civil Code: "In non-commercial acts, if the value of the legal acts exceeds 100 thousand DA, it shall not be proven by witness testimony....."

<sup>2</sup> In accordance with the general rules of the Civil Code, The Algerian legislator stipulated the legal form in the conclusion of the lease contract, See the text of Article 467 bis of the Algerian Civil Code: "The lease shall be in writing form and shall have a fixed date, otherwise it shall be void".. See the text of article 324 bis 1: "In addition to contracts which the law orders to be in Official format, under penalty of invalidity, the contracts that include..... agricultural or commercial leases or Management contracts of industrial establishments, shall be written in official form.

<sup>3</sup> As in the case of the land registry, see the text of Article 793 of the Algerian Civil Code, or the registration of some commercial acts, such as contracts of commercial companies in the official Commercial Register.

<sup>4</sup> Abdul Razzaq Ahmad Al-Sanhoury, **the Brief in the General Theory of obligation**, Al-Ma'arif Establishment Alexandria, 2004, p. 35.

<sup>5</sup> "Except contrary legal disposition and apart from the commercial matters, the proof of a legal act or that of the extinction of the obligation cannot be made by witnesses if its value is higher than 100,000 Algerian dinar or is undetermined"

redaction of the contract, taking into account the limits of his authority and competence, in accordance to the requirements of article 324 of the Algerian Civil Code. While the formality rules associated to opposability does not affect the validity of the act between the parties, but in its effect against others.<sup>1</sup>

However, it is necessary to consider the specificity of electronic writing in formulating rules of electronic formality, especially that electronic writing process goes through several stages by using the computer, and these stages include technical activities embodied through the following phases:

**1- Editing and saving stage: through the following:**

**a-Data entry:** This phase is done by the computer; user enters the data to be processed into the computer memory using the keyboard in the form of letters, numbers, signs or symbols.

**b - Data processing:** This needs word and text processing programs to perform some operations on the data entered; within the program, accordingly with the instructions received from the user to appear on the computer screen in the form of readable information.

**c - Data preservation and storage:** This phase follows the phases of recording and processing, it aims to preserve the data entered for retrieval when needed, and it is stored on technical tools, specially prepared for this regard, for example: hard disks as well as websites storage.

**2- writing display for review stage:** writing is shown in different forms called the outputs, which are units attached to the computer, and can be summarized as follows:

**a- Computer screen:** The visual display unit is not considered to be a support pillar in the proof, because one of the most important characteristics of the pillar is to lead to the continuity of writing or stability, it is therefore limited to display only.

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<sup>1</sup>" The company must be proven by an official contract, otherwise it shall be null" ,also in the field of contracts related to fund commercial , As well as in the commercial lease . refer to articles 545 ,79 , 187bis of Algerian commercial code, Presidential ordinance n: 75/59 issued in September 26, 1975 includes commercial Code amended and supplemented, the Official journal No. 101 published on 19 December 1975, Amended and supplemented by Law No. 05-02 of 6 February 2005, Official journal No. 11 published on 09 February 2005..

**b- Printing on paper:** copied paper is seen as a traditional paper editor while the technical fact is stored in a computer memory.

**3 - The stage of transmission and electronic exchange of writing and data:** The exchange of data and messages between computers via electronic closed or open networks "extranet, Internet." <sup>1</sup>

**B- conditions of producing electronic writing's legal effects:** In order to produce the legal effect of the electronic act concluded through the previous phases, a number of legal and technical requirements are required:

- Legitimacy of electronic dealing, means the legal act can be concluded electronically and is not one of that the legislation excluded from the possibility of electronic conclusion, as the Algerian legislator in the field of electronic commerce, where he excluded some contracts that are related to pharmaceutical products or commodities or service that requires the preparation of an official contract<sup>2</sup>.

- The authenticity of electronic dealing in the evidence between the parties and before the judiciary, these requirements are integrated by The Algerian legislator through the texts of articles 323 and 323 bis 1 of the Algerian Civil Code, which established a legislative principle of functional equivalence between written and electronic writing:

**«Writing as a Proof results from a sequence of letters or descriptions of numbers or any meaningful signs or symbols, regardless of the means and the methods of transmission.»**

**«Writing as a Proof in electronic form shall be considered as proof of writing on paper, provided that the identity of the person who issued it can be ascertained and reserved in safe conditions.»**

the will is the essence of the legal act regardless of the contract pillar written or electronic, the paper document of the contract is a mean of proof only, thus the proof of electronic writing is not limited to the data message exchanged by the parties of the contractual relationship, but also intended archive, resulting from the computer's electronic record as an integral part of the electronic data exchange system in the

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<sup>1</sup> Belkacem Hamdi, **conclusion of the electronic contract**, doctoral thesis in legal sciences, specialization in business law, Faculty of Law and Political Science, University of Haj Lakhdar Batna, the academic year 2014/2015, p 183.

<sup>2</sup>Refer to Article 3 of the Algerian Electronic Commerce Law of 18-05 of 10 May 2018 Official journal Issue 28 Date of publication 16 May 2018:

form of files for each party in the contractual process, where it is considered as a mean of archiving, documentation and storage of data through the computer's hardware, and in a way that can only be read by authorized persons<sup>1</sup>, Therefore, all stages of the electronic writing creation must be documented through the providers of electronic authentication services, through which the electronic signature is documented, which is considered as an alternative to the traditional signature, embodied in the form of technical procedures that allow to verify and to attribute the act to the person from whom the signature is issued "signature holder", Where it could take Several forms, one of which is the signature of the subjective characteristics that define the person biologically "iris, fingerprint, tone of voice", as well as electronic pen signature and digital signature, which depends on Encryption mechanism<sup>2</sup>.

So according to the general rules, the electronic document has no legal authenticity unless it is:

- a certificate issued by a licensed or accredited body is obtained.
- a certificate from a competent authority in another country is obtained.
- a certificate issued by a government department, institution or legally authorized body is obtained.
- a certificate issued by a part that both parties of the transaction have agreed to adopt for authentication is obtained<sup>(3)</sup>.

As the other legislation, the Algerian legislator has issued a law on electronic signature and ratification in 2015, based on the articles 6, 7

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<sup>1</sup>Maramaria Hama, Habara Fawatih, (Towards the unification of the concepts of electronic commerce between the Arab legislations - electronic document between the term and the concept -), the Academy of Human Social Studies, issued by the Department of Economic and Legal Sciences Hassiba Ben Bouali University Chlef, No. 1 January 2018, p. 177, 178.

<sup>2</sup>Messaoudi Youssef, (Electronic Contract in Private International Relations), Journals of Politics and Law, Journal of Law and Political Science issued by the University of Kasdi Merbah Ouargla, No. 9 June 2013, p. 80.

<sup>3</sup>Ammar Karim Kadhim, Narman Jamil Nehmeh, (Legal authentic of Electronic Document), Journal of the Center for Kufa Studies, issued by the Center for Kufa Studies, University of Kufa, No. 7 2008, p 187.

and 8 , The electronic signature is used to authenticate the signatory identity and prove his acceptance of the electronic writing contents' ; The electronic signature described alone is considered to be similar to the written signature, provided that it is: established on the basis of a prescribed electronic certificate, linked to the signatory only, enables the identification of the signatory , designed by a secure mechanism for the creation of an electronic signature, be under the exclusive control of the signatory , and linked to his data so that subsequent changes to such data can be detected.<sup>(1)</sup>

## **Section II: the application of electronic formality rules on electronic payment card dealing:**

Payment instruments range from “cash” to “scriptural money” (the transfer of funds between accounts that can be in the same bank or in different banks)<sup>(2)</sup> , and are classified either in paper or electronic form<sup>(3)</sup> . The e-payment card is an application of the e-payment service, and the term e-payment is legally expressed as an evolving concept of payment <sup>(4)</sup> ,legally adapted as an act aimed at settling a

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<sup>1)</sup>(See Articles 6 to 14 of Law 15-04 issued on 1 February 2015, defining the general rules concerning electronic signature and ratification, Official journal, No. 6, Published on: 10 February 2015.

<sup>2)</sup> ( « la monnaie scripturale peut se définir comme une somme d'argent inscrite sur un compte bancaire et qui circule de compte à compte à l'aide d'instruments de paiement scripturaux comme le chèque, le virement ou la carte bancaire. ces instruments, comme les cartes bancaires qui étaient à l'origine qualifiées de « monnaie électronique », permettent seulement de transmettre à un établissement de crédit l'ordre de transférer des fonds sur un autre compte bancaire ». voir: la nature juridique de la monnaie électronique, bulletin de la banque de france . n° 70 . octobre 1999, p51.

<sup>3)</sup>(Working Paper on the Legal Framework of Payment and Settlement Systems, Arab Committee for Payment and Settlement Systems, Board of Governors of Central Banks and Arab Monetary Institutions, Arab Monetary Fund 2012, p. 9.

<sup>(4)</sup>” le paiement est généralement défini comme l’exécution d’une obligation par la satisfaction du créancier. dans le cadre d’une obligation de somme d’argent, cette satisfaction est réalisée par la remise de la somme, soit avec des espèces qui ont cours légal et forcé (billets de banque et pièces métalliques), soit par l’inscription sur le compte bancaire du créancier du montant de la somme d’argent due. le paiement s’effectue au moment du transfert des unités monétaires contenues dans le



fixed debt owed by one person to another as a result of the existence of a commercial transaction between them through an information and communication network, by registering the amount transferred in the creditor side of the beneficiary , using existing payment methods or by using developed methods adapted to the needs of e-commerce, or refer to new means such as crypto currency <sup>(1)</sup>, Electronic payment methods include: electronic checks and plastic bank cards, smart cards, and digital money<sup>(2)</sup> ,in Algeria, electronic payment is mainly about payment by bank card "la carte CIB" <sup>(3)</sup>.

The Algerian legislator has set the principle of functional equivalence between traditional and electronic payment methods, by defining the means of payment contained in particular on the Article 69 of Cash and credit Law: **"Payment instruments <sup>(4)</sup>are considered: All the**

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patrimoine du débiteur vers celui du créancier " . voir: la nature juridique de la monnaie électronique, bulletin de la banque de france . n° 70 . octobre 1999, p48.

<sup>1)</sup> Abdul Baqi Abu Saleh, (electronic payment of debts arising from commercial transactions), Journal of the Union of Universities, issued by the Scientific Association of Arab Law Colleges, No. 23, April 2006, p. 22.

<sup>2)</sup> Lakhdar Azzi, Houari Khether, (An attempt to analyze the effects of electronic commerce on the performance of banking management "the Algerian case"), Journal of North African Economies, issued by the laboratory of globalization and the economies of North Africa, Hassiba Ben Bouali University Chlef, No. 16, the first semester, 2017, p 118

<sup>3)</sup> **« le paiement électronique est un moyen permettant d'effectuer des transactions commerciales pour l'échange de biens et de service sur internet entre professionnels et particuliers en utilisant la monnaie numérique , le porte monnaie électronique , les carte bancaires »** voir : merbouhi samir , hadid noufyele,( le paiement électronique en Algérie délits économiques et financiers) ,revue nouvelle économie, revue scientifique, semestrielle , le laboratoire de l'économie numérique en Algérie- université de khemis miliana,n16 ,voll ,2017 ,p21.

<sup>4)</sup> Referring to the Algerian law, specifically to Article 4 of Executive Decree No. 15-153, the means of payment are defined as follows: "..... All means of payment that allow the transfer of funds through bank and financial channels: the check, transfer, payment card, deduction, and bill of exchange "Saftaga". Executive Decree No. 15-153 of June 16, 2015, specifying the applicable limit to payments made by means of written payment through banking and financial channels, Official journal n: 33, published in June 22, 2015.

**tools that enable each person to transfer funds in whatever the technical method used**".<sup>(1)</sup>

The Algerian legislator also defined the means of electronic payment through Article 6/5 of electronic commerce law issued in 2018 as: "Any payment method authorized in accordance with the applicable legislation, enables its holder to make close "proximal" or distant payment through an electronic system."

The use of electronic payment card is considered as a model of electronic document ,because it requires the same conditions relating to the paper-based formula, these conditions are related to the content of the writing, the identity of the person issuing the document, the integrity of the document in terms of its preparation and preservation, and the ability to refer to the electronic document upon request and dispute

The security rules of payment card dealing are linked with the intervention of the Central Bank, as an electronic certification body that authorizes the establishment of electronic payment institutions, and the launch of the electronic payment service in a way that gives credibility to the financial transactions carried out through the electronic payment card, that revolutionized the banking services through financial and personal management software provided by the bank, as a card issuer, to the cardholder, to conduct financial transactions remotely<sup>2</sup>, central bank role appears through the issuing and implementation phases surrounded by a set of rules that give electronic act a formal character.

**A-the application of electronic formalism rules in electronic payment card issuing phase**

Credibility in the e-card payment system is associated to the contract, that relating the issuer to the cardholder, entailing a number of issuer's obligations towards the holder, imposed by the legal frameworks governing the electronic payment, and the accreditation connecting the issuer to the central bank, considering that the issuer is

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<sup>1)</sup>(presidential ordinance No. 10-04 of 26 August 2010 on the Law of Monetary and credit Amended and Completed, Official journal Issue: 50, Date of Publication: 1 September 2010.

<sup>2</sup> Kamal Takwasht, (Equation of electronic document with paper document), Journal of Law and Political Science, issued by Abbas laghrour University of Khenchela No. 9 January 2018, p. 25 to.30 .

the strongest party and responsible of managing card payment system<sup>1</sup>.

Electronic payment card authenticity is related to the electronic certification authority, this institution has a digital system for electronic signatures, and thus the signature of a person cannot be confused with the signature of other persons. Beside the existence of an electronic archive system that includes the signature saved at the authentication body, ensuring the integrity of electronic signature by obtaining a certificate from the electronic notary specifying his name and address, his secret number, and his authorities if he is a moral person, and the electronic signature of the issuing authority. The electronic notary gives confidence to deal via the internet by granting civil and commercial act the character of an official transaction. The electronic notary is either a public body established by the government entrusted with the task of authentication, or formed by an agreement between internet users in their dealings, in this case it is called the private body, an example of that is the regulation between banks and their card holders, which includes the customer's name, address and PIN, that is kept in a special file for each customer at the bank, when the customer wants to use the card, he inputs the pin code using a support provided with a memory card for this number, hence, we find that the bank guarantees the electronic signature against other institutions that deal with the customer.<sup>(2)</sup>

For an authentic payment card order, the electronic formality rules also require the establishment of a consensual arrangement between the parties: cardholder, issuer, beneficiary, and a data encryption system assuring the validity of the payment instrument.<sup>(3)</sup> This is done through:

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<sup>1</sup> Saouli Zohra, **Legal System of Electronic Payment Cards**, doctoral thesis in legal sciences, Business Law, Faculty of Law and Political Science, Mohammed khider University, Biskra, 2018/2019., p. 158.

<sup>2</sup> (Ammar Karim Kadhim, Narman Jamil Nehmeh, (Legal authentic of Electronic Document), Journal of the Center for Studies of Kufa, issued by the Center for Kufa Studies University of Kufa, No. 7 2008, pp. 175 to 186

<sup>3</sup> Nabil Mohammed Ahmed Sobeih, (Consumer Protection in Electronic Transactions), Journal of Law, Scientific Publishing Council Kuwait University, No. 2 year 32, June 2008, p.236,237

- Framing the contract linking the cardholder to the issuer within the general rules that include the conditions for opening an electronic money account, in which the terms of use of electronic money are determined, the maximum amount for the permissible operations, the commissions charged by the issuer, the methods, procedures and time limit of protest, in case of loss or theft of the card, indemnity methods, complaint mechanisms available at all times, a record of incidents and operations concluded, the process must be accompanied by an electronic receipt containing the reference number, the nature of the process "payment, withdrawal", the name of the issuer, the name of the recipient "beneficiary", the expenses of the operation value".<sup>(1)</sup>

Following a set of formality rules at the issuance stage according to the norms of banking transactions, and these rules' legitimacy recognized in the field of card manufacturing, which is termed technical and physical standards of payment card, including a set of basic data, visible and invisible, The visual data is:

- \* The number of the card, which often consists of 13 to 16 digits, which is printed on the card and registered by the card issuer management, such as the bank, under the so-called "fichier de compte".

- \* The name of the cardholder: any person who has an account with his name and his photo in the bank where a modern technology is introduced, to ensure cardholder's identity and to prevent the use of another person.

- \* The date of issuance to verify the card's validity.

- \* The name of the issuer: which is the bank authorized by international bodies, such as: "visa and master card".

-Invisible data or electronically readable components such as:

- \* the Limited amount of payment registered in the cardholder's account on the bank's server.

- \* Hologram, containing laser drawn labels, that when passed on the card reader, contributes significantly to the verification of non-forgery of the card, revealing the process of fraud, such as a hologram dove in

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<sup>(1)</sup> refer to the articles 29,30 of instruction n ° 008-05-2015 regulating the terms and conditions for the exercise of the activities of electronic money transmitters in the member states of the west african monetary union (wamu). states of west africa (bceao). see the link:

[https://www.bceao.int/img/pdf/instruction\\_no008\\_05\\_2015\\_intranet.pdf](https://www.bceao.int/img/pdf/instruction_no008_05_2015_intranet.pdf)

the Visa card.

\* Digital chip: is for data storage, in order to identify the card number or the allowable limit of payment, and consists of magnetic pulses read by the electronic machine TPE, through which the order of payment is given by entering the PIN code consisting of 4-digits number, accordingly it is presumed that the order of payment is issued at the request of the cardholder through transaction record history of the bank, except in the case of card's theft, provided that the payment opposition is reported within a reasonable delay.<sup>(1)</sup>

### **B-the application of electronic formalism rules in electronic payment card implementation phase :**

Credibility in the e-card payment system necessitates regulating the relationship between the issuer and the merchant" beneficiary", who's adhere to the payment banking network, and accepts the payment card dealing, all in the light of a contract that includes specific conditions :

-the maximum authorized limit for dealing with the merchant, the name of the bank issuing the card, the merchant information such as the trade name, address and number, the commission rate charged by the bank from the customer, the payment method from the bank to the merchant.

- Follow-up the information associated to the purchases and withdrawals on the card through bank electronic payment network, And as an electronic payment service provider, the issuer is obliged to provide the merchant with the following information:

- The ID number, the payer's information, any information associated with the electronic payment, and the transaction amount in the currency of the electronic payment account in which the deposit is made.

- The exchange rate used by the service provider and the commission

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<sup>1)</sup>(Al-Sabouni Safa, `` The Reality and Legal Protection of the Bank Card ", Fiqh and Law Magazine, Electronic Magazine, No. 2, December 2012, pp. 17-19. Refer to the following link: <https://sites.google.com/site/marocsitta/> See also: Amjad Hamdan Al-Juhani, **Civil responsibility for Illegal Use of Electronic Payment Cards**, First Edition, Dar Al-Masirah for Publishing, Distribution and Printing, Jordan, 2010, p.50

of the electronic payment transaction before the transaction takes place.

- The due date of the electronic payment <sup>(1)</sup>

In order to get libratory payment, the process must be done by securing the electronic payment card process through a commitment to technical protection, which entails technical framing in the light of the concluded contract between issuer and the merchant, taking into account the special rules relating to electronic payment, especially with regard to the guarantee of equipment and update Protection-related software, in the form of a "firewall, antivirus" as a precautionary measure to secure the stage of implementation of the card, ensuring continuity and non-penetration of the service, recording all hacking attempts, and reporting of payment incidents. <sup>(2)</sup>.

### **Conclusion**

We conclude from all of the above:

- The rules of electronic formalism are functionally linked to electronic writing, so producing its legal effects requires initially the legitimacy of electronic dealing, and the possibility of identifying the parties and keeping it in circumstances that prevent it from being forged or misrepresented.

- The authenticity of e-card payment is linked to prior authorization from the Central Bank as an electronic certification body for banking financial transactions.

- a prior consensual arrangement between the parties of the payment process, "the beneficiary, the holder and the issuer", taking into account the legal and technical standards in the field of card manufacturing, and securing electronic communication networks through which payment orders are transmitted as a data message.

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<sup>1)</sup> (Refer to the text of Article 20 / 2 of the Regulation No. (3) of 2014 relating to the electronic payment services of funds issued by the Council of Ministers' Decree No. 186 of 2014 on March 18, 2014, Iraqi Proceedings Official journal of the Republic of Iraq No. 4326, June 23, 2014, p. 13 . <https://www.moj.gov.iq / uploaded / 4326.pdf>

<sup>(2)</sup> refer to : -Memebship contract for payment by .bank cards "cb", bank and insurance, BRED popular bank, july 2016. [www.bred.fr > pdf > contrat dencaissement carte ba](http://www.bred.fr > pdf > contrat dencaissement carte ba).

- Setting up an electronic archive system, which is a digital system that includes the electronic signatures saved at the card issuer.

## **Bibliography:**

### **A-Legislation**

- 1- Law n: 18-05 of 10 May 2018 includes Electronic Commerce Law Official journal Issue 28 Date of publication: 16 May 2018.
- 2- Law n: 15-04 issued on 1 February 2015, defining the general rules concerning electronic signature and ratification, Official journal, No. 6, Published on: 10 February 2015
- 3-Presidential ordinance 75/58 issued in September 26, 1975 includes civil Code amended and supplemented, the Official journal No. 46 of 11 June 1976.
- 4-Presidential ordinance n: 75/59 issued in September 26, 1975 includes commercial Code amended and supplemented, the Official journal No. 101 published on 19 December 1975, Amended and supplemented by Law No. 05-02 of 6 February 2005, Official journal No. 11 published on 09 February 2005.
- 5-Presidential ordinance No. 10-04 of 26 August 2010 on the Law of Monetary and credit Amended and Completed, Official journal Issue: 50, Date of Publication: 1 September 2010.
- 6- Executive Decree No. 15-153 of June 16, 2015, specifying the limit applicable to payments made by means of written payment through banking and financial channels, Official journal n: 33, published on June 22, 2015.

### **B - Books:**

- 1-Abdul Razzaq Ahmad Al-Sanhoury, **the Brief in the General Theory of obligation**, Al-Ma'arif Establishment Alexandria, 2004.
- 2- Amjad Hamdan Al-Juhani, **Civil responsibility for Illegal Use of Electronic Payment Cards**, First Edition, Dar Al-Masirah for Publishing, Distribution and Printing, Jordan, 2010

### **C - Theses:**

- 1-Belkacem Hamdi, **conclusion of the electronic contract**, doctoral thesis in legal sciences, specialization in business law, Faculty of Law and Political Science, University of Haj Lakhdar Batna, the academic year 2014/2015.

2- Saouli Zohra, **Legal System of Electronic Payment Cards**, doctoral thesis in legal sciences, Business Law, Faculty of Law and Political Science, Mohammed khider University, Biskra, 2018/2019.

#### **D - Journal Articles:**

1- Abdul Baqi Abu Saleh, (electronic payment of debts arising from commercial transactions), Journal of the Union of Universities, issued by the Scientific Association of Arab Law Colleges, No. 23, April 2006.

2- Ammar Karim Kadhim, Narman Jamil Nehmeh, (Legal authentic of Electronic Document), Journal of the Center for Kufa Studies, issued by the Center for Kufa Studies, University of Kufa, No. 7, 2008.

3- Kamal Takwasht, (Equation of electronic document with paper document), Journal of Law and Political Science, issued by Abbas laghrour University of Khenchela No. 9 January 2018.

4- Lakhdar Azzi, Houari Khether, (An attempt to analyze the effects of electronic commerce on the performance of banking management "the Algerian case"), Journal of North African Economies, issued by the laboratory of globalization and the economies of North Africa, Hassiba Ben Bouali University Chlef, No. 16, the first semester, 2017,

5- Maramaria Hama, Habara Fawatih, (Towards the unification of the concepts of electronic commerce between the Arab legislations - electronic document between the term and the concept -), the Academy of Human Social Studies, issued by the Department of Economic and Legal Sciences, Hassiba Ben Bouali University Chlef, No. 1 January 2018.

6- Messaoudi Youssef, (Electronic Contract in Private International Relations), Journals of Politics and Law, Journal in Law and Political Science issued by the University of Kasdi Merbah Ouargla, No. 9 June 2013.

7- merbouhi samir, hadid noufyale, (le paiement électronique en Algérie délits économiques et financiers), revue nouvelle économie, revue scientifique, semestrielle, le laboratoire de l'économie numérique en algérie- université de khemis miliana, n16, vol1, 2017.

8- Nabil Mohammed Ahmed Sobeih, (Consumer Protection in Electronic Transactions), Journal of Law, Scientific Publishing Council Kuwait University, No. 2 year 32, June 2008.



9-Wasan Qasim Ghani, (Formal Agreement in Contracts), Journal of the Investigator Ornaments of Legal and Political Sciences, issued by the Faculty of Law at the University of Babylon, No. 1, Volume 3, 2011.

### E – Websites articles:

1-la nature juridique de la monnaie électronique, bulletin de la banque de france . n° 70 . octobre 1999. Refer to [www.banque-france.fr > bdf bm 70 etu 1](http://www.banque-france.fr > bdf bm 70 etu 1) 26 /12/2019 , 20.00

2-Working Paper on the Legal Framework of Payment and Settlement Systems, Arab Committee for Payment and Settlement Systems, Board of Governors of Central Banks and Arab Monetary Institutions, Arab Monetary Fund 2012 refer to : [www.amf.org.ae > amdb > legal payment system](http://www.amf.org.ae > amdb > legal payment system) 26 /12/2019 , 21.00 .

3-Instruction n ° 008-05-2015 regulating the terms and conditions for the exercise of the activities of electronic money transmitters in the member states of the west african monetary union (wamu). states of west africa (bceao). see the link: [https://www.bceao.int/img/pdf/instruction\\_no008\\_05\\_2015\\_intranet.pdf](https://www.bceao.int/img/pdf/instruction_no008_05_2015_intranet.pdf) 20/11/2019 ,15.00.

4- Regulation No. (3) of 2014 relating to the electronic payment services of funds issued by the Council of Ministers' Decree No. 186 of 2014 on March 18, 2014, Iraqi Proceedings Official journal of the Republic of Iraq No. 4326, June 23, 2014, p. 13 . <https://www.moj.gov.iq / uploaded / 4326>. 14/11/2019 ,12.30

5-Membership contract for payment by .bank cards "cb", bank and insurance,BRED popular bank, july 2016. [www.bred.fr > pdf > contrat dencaissement carte ba](http://www.bred.fr > pdf > contrat dencaissement carte ba).

6-Al-Sabouni Safa, ` The Reality and Legal Protection of the Bank Card ", Fiqh and Law Magazine, Electronic Magazine, No. 2, December 2012. Refer to the following link: <https://sites.google.com/site/marocsitta/>- 12/10/2019, 10.00.