

Electronic payment contract

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Summary:

Due to globalization, technology has been able to bring about radical changes in the banking sector, as it has led to changing the course of many banks in various countries of the world, by adopting electronic payment systems and services. Electronic payment methods are among the most important services offered by banks to their customers. They allow them to purchase their goods, benefit from services, and withdraw money according to an integrated system. In other words, technical progress has reduced costs and brought benefits to all concerned.

Electronic means of payment are based on a contractual idea that binds the provider of electronic payment services and the electronic consumer who uses these means for the settlement of his financial transactions. This relationship carries duties and obligations between its two parties, which is the electronic payment contract.

This paper aims to detail the electronic payment contract, defining its concept and the contracting parties, addressing its legal nature and related obligations.

Keywords: electronic payment contract; payment service provider; electronic payment methods; electronic commerce; electronic consumer.

Jel Classification Codes : E4,E41,E42

ملخص:

لقد استطاعت التكنولوجيات بفضل العولمة من إحداث تغييرات جذرية في القطاع المصرفي، حيث أدت إلى تغيير مسار كثير من البنوك في مختلف دول العالم، و ذلك بتبنيها نظم و خدمات الدفع الإلكتروني. و تعد وسائل الدفع الإلكتروني من بين أهم الخدمات التي تتيحها البنوك لعملائها، و التي تمكنهم من شراء احتياجاتهم من السلع و الاستفادة من الخدمات، و سحب مبالغ نقدية وفق منظومة متكاملة، و ذلك نتيجة للاستفادة من التقدم التقني، على نحو أدى إلى تقليل التكاليف و تحقيق الفائدة لكافة أطراف العملية. تقوم وسائل الدفع الإلكتروني على فكرة تعاقدية تربط بين مقدم خدمة الدفع الإلكتروني و المستهلك الإلكتروني الذي يستخدم هذه الوسائل للوفاء بمسئلاته، و تحمل هذه العلاقة التعاقدية واجبات و إلتزامات بين طرفيها، و هي عقد الدفع الإلكتروني.

تهدف هذه الورقة البحثية للتفصيل في عقد الدفع الإلكتروني، من خلال تحديد مفهومه و الأطراف المتعاقدة، ثم التطرق للطبيعة القانونية لعقد الدفع الإلكتروني و الإلتزامات المترتبة عنه .

الكلمات المفتاحية : عقد الدفع الإلكتروني، مقدم خدمة الدفع، وسائل الدفع الإلكتروني، التجارة الإلكترونية، المستهلك الإلكتروني .

تصنيف JEL : E4,E41,E42

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I- Introduction :

The various ways of human interaction have been affected by the progress and modern technological development, so the methods of dealing between members of society in many of its forms have turned to electronic methods, with the speed, accuracy and clarity they contain, giving them the necessary confidence that dealers demand among themselves. One of the areas most affected by the technological development in the field of dealing between individuals is the field of trade.

Technology has played a vital role in the development of trade and its transformation from ordinary trade to e-commerce, and what it showed of modern means of payment, which has spread among the different segments of customers in a large way.

The electronic payment system is one of the things that have been clearly affected by this development, which represents the backbone of commercial life. Technology has played a major role in the development of dealing with electronic payment methods, as it has introduced a new generation of fulfillment tools, whose use is characterized by ease and speed in conducting electronic exchanges. It is compatible with the nature of electronic commerce that takes place in a non-physical environment. This system also enables the parties to the commercial process to fulfill their rights to the other party without referring to the documents or paper supports.

The parties to the commercial process in the electronic payment system bring them together in a contractual relationship that introduces a legal regulation called the electronic payment contract, which takes place between the electronic payment service provider and the electronic consumer, the user of the payment methods.

The importance of studying the electronic payment contract is that it deals with a new legal regulation of electronic payment systems; E-commerce has flourished in many aspects, such as electronic banking operations, and electronic buying and selling operations within the World Wide Web.

It also defines the parties to the electronic payment service, the nature of the contractual relationship between them, and the obligations and rights imposed on each party within this contractual system of the electronic payment contract.

From the foregoing, it can be said that this study raises the following question: What is the legal system for an electronic payment contract? And what are the implications of it? .

In order to be more detailed in the details of the subject of the electronic payment contract, we have developed the following plan:

1. Basic concepts of electronic payment contract

Electronic contracts are keen to define the mechanism of fulfillment and its legal regulation, whatever its form. Electronic fulfillment is important for Internet users in facilitating the process of accessing and benefiting from commercial operations. The legal existence of electronic payment means is what is known as an electronic payment contract, the concept of which we will discuss below.

1.1 Concept of electronic payment contract

Electronic fulfillment results in a contractual relationship that is legally regulated between its parties within the framework of an electronic contract called the electronic payment contract, We will discuss the definition of this contract and define its parties in the following form.

1.1.1 Definition of an electronic payment contract

The electronic payment system is defined as that “the system that links between banks and credit card companies that conduct their business via the Internet, and this system verifies the validity of transfers, and includes monitoring systems to investigate problems and the effectiveness of information security (Al-Wadi & Al-Wadi, 2011, p. 212).” It is also known as: “Payment

systems that are carried out electronically instead of paper (cash, checks) a person can account for his bills electronically or transfer money electronically through his own account of the issuing institution.” (Al-Jeddah & Khalaf, 2012, p. 231)

As for the electronic payment contract, it is defined as: “It is a contract whereby the card issuer undertakes to open a specific account for the benefit of another person who is the card holder, through which he can fulfill his purchases at the commercial stores that are associated with the card issuer under a contract whereby you pledge to accept them to fulfill the requirements of the card holders, provided that the final settlement is done after each for a specified period” (Al-Anzi, 2015, p. 47).

It is also known as an agreement between two parties, one of whom is the service provider, who provides his services over the Internet within what is known as the home bank or the electronic bank, and the other party is the electronic consumer where, according to this agreement, the latter is able to complete his transactions through the Internet such as managing his accounts or issuing orders. The bank may transfer it as if it were dealing with the bank in its traditional way (Al-Ibrahimi, 2012, p. 714).

Some also defined it as a contract whereby the service provider pledges to open a credit for the benefit of a person called the beneficiary, which enables him to fulfill and pay the value of his purchases at the shops that are obligated under a previous agreement with the service provider to accept payment by electronic means within a certain period (Al-Jazaery & Al-Jader, 2012, p. 24).

It is generally called a means of payment for everything that can be accepted socially to play this role, that is, the means of payment "is that socially accepted tool in order to facilitate transactions for the exchange of goods and services, as well as the payment of debts, and the means of payment can be viewed from three basic angles. It is a mediation tool whose mission is to facilitate trading and enable transactions to be conducted easily, and on the other hand, it represents tools that enable the transfer of spending in times as owning it allows individuals to either spend it now or wait for better opportunities in the future (Al-Serafy, 2016, p. 278).

Accordingly, the electronic payment contract can be defined as a contract under which the service provider is obligated to enable the electronic consumer to carry out financial fulfillment operations using one of the electronic payment methods, in return for a financial compensation paid by the electronic consumer.

1.1.2 Parties to the electronic payment contract

There are two parties involved in concluding the electronic payment contract, the electronic payment service provider and the electronic consumer, and we will discuss the following to introduce each party separately.

First - the electronic payment service provider

The electronic payment service provider is considered the issuing institution, the financial institution or the major specialized commercial companies that issue the electronic payment method, as it contracts with the International Center for Cards, in order to obtain a license allowing it to issue electronic payment methods, and to contract with local merchants in order to accept the means of payment. In addition, it is the party that grants the means of payment to customers to deal with in paying what they are due to the merchant providing the commodity or service, and the latter obtaining a return for what he provides to customers using the electronic payment method, and that is in accordance with the terms and conditions specified in the contract (Taha & Bundaq, 2009, p. 357).

It was defined as that banking institution that has the right to issue credit cards to its customers, and that is only after obtaining an approved license and the approval of the international body or organization for issuing these cards.

Accordingly, one of the parties to the electronic payment contract is the service provider, which may be a bank or a financial institution that provides electronic payment services, and thus the service provider must have a website that provides its services through it, and this does not necessarily entail that the bank has a physical presence in the real world. It has an electronic branch dedicated to electronic transactions, so there is nothing to prevent the existence of an independent electronic bank on the Internet, that is, it is not a branch or website of a bank in its traditional sense, and it can provide its financial services in a manner comparable to the services provided by traditional banks, and is able to create a database to its customers and grants them payment facilities and other banking activities (Taha & Bundaq, 2009, p. 331).

And we can define the electronic payment service provider as every legal person licensed by the competent authorities and who has the technical and material capabilities to provide electronic payment services to its customers.

From the above, it can be said that the service provider requires the following:

1- That he be a legal person, I stipulated in the payment service provider that he be a legal person, so any legal person who meets the conditions and qualifications required for him to apply for a license to practice electronic payment services (Alabi, 2005, p. 40).

2- He must obtain a license from the competent authorities, as he must be one of the persons allowed to provide electronic payment services for money, Electronic payment services, The electronic payment services system has restricted the possibility of submitting licensing applications to sub-natural legal persons (Al-Ibrahimi, 2012, p. 714).

3- That he possess the technical and material capabilities that enable him to provide services to clients, which are closely related to the technical and material capabilities to practice this activity in a manner that ensures the availability of expertise to him, both with regard to the necessity of his enjoyment of technical and organizational skills, as well as for the license applicant to have a fixed workplace dedicated to practicing. This activity includes the mechanisms necessary to operate and manage the system and the technically qualified staff to do so.

4- To provide electronic payment services when requested by the electronic consumer, and these services are represented in issuing electronic payment tools, executing payment operations, managing cash deposits and withdrawals, and electronic transfer of funds (Hussain, 2019, p. 119).

Second - the user of electronic payment methods

There are many names given to the person who asks the provider to obtain the electronic payment service, Sometimes he is called the user, another is the electronic consumer, and another is consumer or the client, and with the multiplicity and diversity of these labels, they refer to the same meaning and are generally derived from the nature of his relationship with the service provider.

The user of the electronic payment service that the provider undertakes to provide, he is the second party to the electronic payment contract, who may be a natural or legal person, contracting with the electronic payment service provider, provided that the latter provides the first with electronic payment services.

It is defined as the person or persons who obtained the electronic payment method, based on a request submitted to the issuing authority, which agreed to grant it to them, after contracting with it in accordance with the conditions specified in the contract, so that they could then use it to purchase their needs through it, as well as obtain. On the various services it provides, such as cash withdrawals from automated teller machines, and it is noted that the person who holds the electronic payment method may be the original owner for whom the payment method was issued, and it can also be another person. The person who owns the payment method is the person who issued the card or The medium is in his name, and the account is opened in his name, and he is legally responsible for all amounts due as a result of using the electronic payment tool, whether by him or by the holder who is just a holder of it and who uses it without being responsible for it (Al-Saghir, 2013, p. 50).

This requires that the electronic consumer has his own computer so that he can enter the bank's website and view all the conditions required by the bank from those wishing to obtain its services and then obtain all the necessary programs from the bank, as the bank is constantly seeking to develop its programs and providing protection for the services it provides. It also requires that the electronic consumer have internet service in any form, whether by using the phone, satellites, or other means that enable him to connect to the network (Badawi, 2006, p. 7). And through the electronic payment service, the user can pay the price of the goods and services he buys, and he can also make the necessary cash transfers using the electronic payment methods provided by the provider without the need to be at the provider's workplace, which provides him source Time and effort in managing his financial affairs (Zekry, 2010, p. 20).

To use the electronic payment method, in addition to the holder, he needs another party, who goes to him to obtain his daily needs of goods and services, which is the merchant, and it is a group of institutions that accept payment of electronic means of payment, which includes shops, hotels, commercial companies and Hospitals, tourism companies, restaurants and others.

The merchant contracts with the issuer of the electronic payment method, in order to provide it with the necessary machinery and equipment for the payment method; Provided that these institutions have a specific physical entity, to which the electronic consumer resorts when using the means of payment, and they can also take a website on the Internet to advertise the goods and services that they produce and market, without having a physical entity.

It is clear from the above, that the description of the merchant is called all companies or institutions that own goods, shops and centers for providing services to the public in general, and concludes an agreement with the source of the electronic payment method to accept dealing with the electronic payment system in relation to sales operations, and then returns to the source of the electronic payment method Pay for these goods and services (Al-Hindi, 2000, p. 10).

1.2 Elements of an electronic payment contract

To conclude an electronic payment contract requires three pillars: satisfaction, location and reason, which are the pillars involved in the formation of all electronic contracts, but according to the function and purpose of each contract, and in the following we will address these pillars according to the nature of the electronic payment contract.

1.2.1 Satisfaction

Consensus is generally defined as the exchange of two identical wills to produce a legal effect, which requires the issuance of an expression by one of the parties indicating consent, which is the offer, and the issuance of an expression by the opposite party indicating the acceptance of the offer, which is acceptance, as well as the association of acceptance with the offer, and electronic payment contracts do not depart from these The rule, except that offer and acceptance are expressed by electronic means (Al-Sharifat, 2009, p. 130).

The electronic offer is required to be clear and conclusive, not subject to interpretation or ambiguity, and does not include a reservation, and to include the essential elements of the contract to be concluded (Ibrahim, 2015, p. 69). The electronic offer must also include data that indicates the identity of the offeror, and all that is useful to achieve the conviction of acceptance of the other party, which leads to sufficient knowledge of the electronic consumer, from the positive side.

The electronic payment contract is concluded in two ways: either the issuing institution prepares and distributes forms dedicated to requesting electronic payment methods, and this work is adapted as an invitation to contract. He works on studying the consumer's electronic request to take the decision to grant it or refuse to benefit from the electronic payment service whenever he finds that the applicant is not qualified to do so, and he is not forced to justify his refusal based on the principle of freedom of contract and personal consideration of banking contracts (Ibrahim, 2015, p. 70).

The person wishing to obtain the electronic payment service shall sign an application that includes a set of personal data related to the electronic consumer, such as the name, address, nationality, financial status, and others. Or withdraw it and the procedures to be followed in case of theft or hacking of the service, and the request also includes the obligations of both parties.

1.2.2 Shop

Due to the specificity of the activity of electronic payment services provided by the licensed institutions, contracting with them in this activity makes the subject of the contract concluded with their customers is the electronic payment service. Electronic payment, which is the subject of the electronic payment contract.

First: electronic payment cards

There are many definitions of the electronic payment card, and these cards are seen as: "a banking tool for fulfilling obligations, widely accepted locally and internationally by individuals and merchants, as an alternative to money to pay the values of goods and services provided to the card holder, in return for signing a receipt for the value of his commitment to the thing, when His purchase of the commodity or obtaining the service, provided that he collects the value from the issuing institution issuing the card through the issuing institution that authorized him to accept the card as a means of payment. The settlement process between banks and the parties to it is called the electronic payment system, which is implemented by international sponsoring organizations for the card (Al-Radadih, 2013, p. 32)."

This definition is distinguished by its mention of the practical aspect of payment cards, and their importance as an electronic payment method that facilitates the settlement process between banks and customers.

And there is an objective definition of electronic payment cards, as they are defined as: "It is a contract whereby the card issuer undertakes to open a specific account for the benefit of another person who is the card holder, through which he can fulfill his purchases at the shops that are linked with the card issuer by a contract under which he undertakes to accept it to fulfill the requirements of the card holders on the final settlement shall be made after each specified period" (Al-Anzi, 2015, p. 47).

It is noticeable on this definition that it shows the subject of electronic payment cards and their field of work.

As for the Algerian legislator, it was defined in Article 57 / (1) of the legislative decree as: "Any card that allows its holder to withdraw or transfer funds, and it can only be issued by a loan authority, financial institution or interest authorized to place and issue cards such as banks, Public treasury Postal Services" (Ordinance, 1975).

We note that the Algerian legislator has relied on electronic payment cards as a means of dealing between banks and customers in facilitating exchange operations.

As defined in Article 543 bis 23 of the Commercial Code, which states: "The payment card is every card issued by legally qualified banks and financial institutions and allows its owner to withdraw or transfer funds. (Ordinance, 1975)"

Electronic payment cards are characterized by a set of characteristics, which are as follows:

1- Formalism: where the necessary data must be mentioned from the person's name and account number, and then it is not permissible to issue it to its holder, because this card obliges the merchant who accepts it to verify the identity and signature of the holder on the invoice with the signature on the card, given that This card is for personal use and can only be used by the person for whose benefit it was issued.

2- The card is a credit tool: this card is based on ensuring that the value of purchases are fulfilled and that the merchant is paid for it instead of money. It provides a guarantee for the merchant to collect the price of his sales from the card holder who benefits from the purchases.

3- Low transaction costs: Electronic payment cards are characterized by low transaction costs, so banks use them in their banking transactions to reduce their expenses, and check processing expenses, and this is for making cards electronically, unlike the paper method that banks used to use.

4- The three-party electronic payment card: where a card transaction can only take place with the intervention of three parties: the “issuing party, its holder and the merchant who accepts dealing with it, unlike the traditional means of fulfillment that requires the presence of only two parties, the one who pays and the one who receives the payment.” i.e. the drawer and the beneficiary. As for the drawee (the issuing institution), his role does not exceed the execution of the order issued to him by the drawer (Al-Radadieh, 2013, p. 47).

Second: electronic money

I have known many different terms to express the concept of electronic money, some have used the "terminology of digital money or digital currency, and regardless of the term used, it refers to one concept, which is electronic money, and the jurists differed in defining this term, so I knew that it is: A monetary value stored on a prepaid electronic method that is not linked to the issuing institution's account, and is widely accepted by other than the issuer, and is used as a payment tool to achieve various purposes (Ramadan Ali, 2012, p. 37).

Some have expanded on the concept of electronic money, defining it as being transferred electronically, and the European Central issuing institution defined it as “an electronic stock of monetary value on a technical means, commonly used to make payments to contractors other than the one who issued it, without the need for the issuing institution's account to be present when making the transaction and It is used as a prepaid mobile tool, and Ernst & Young defined it as a set of protocols and digital signatures that allow electronic message to virtually replace traditional currency exchange (Kafi, 2011, pp. 18-19).

And it can be said that it is a monetary value translated in the form of electronic data, which is used as a tool of fulfillment on a large scale to achieve various purposes.

Third: electronic checks

"The check is one of the most important tools of fulfillment, especially in commercial transactions, because of the advantages and guarantees it brings to its dealers. It was found to be a substitute for cash in the process of fulfillment and settling financial matters, and that effective means of payment has been developed to suit the requirements of trade.

The electronic check, which is an exact copy of the paper check that everyone knows, contains the same characteristics and powers and results from the paper check, but it is dealt with electronically and completely, and the use of the electronic check requires the presence of third-party software to implement the electronic check payment process As systems that help the merchant to accept and complete the process directly from the site (Al-Jeddah & Khalaf, 2012, p. 271).

What is meant by the electronic check is “a documented and secured message sent by the issuer of the check to the recipient of the check (the bearer) to be approved and submitted to the issuing institution that works via the Internet, so that the issuing institution first transfers the financial value of the check to the account of the check bearer, and then cancels the check and returns it electronically to the recipient of the check, as evidence that the amount has already been transferred to his account (Kafi, 2011, p. 29).

An electronic check can be defined as “an electronic document containing the following data: the check number, the payer's name, the payer's account number, the name of the issuing institution, the name of the beneficiary, the value to be paid, the unit of currency used, the validity date, and the electronic signature of the payer (Ramadan Ali, 2012, p. 9).”

The process of certifying the check is done electronically through the drawee of the check, and from his account, which he accesses with the electronic signature approved by that signer, This is done before checking the adequacy of the balance and seizing the amount issued with the check, “and all of this is because the access to the electronic consumer account was done through the website of that financial institution, and it is not delivered, nor is it received except via the Internet, and as soon as the check is received by the merchant, he By sending it to the drawee electronically as well, to make clearing and deposit the amount in his account, at which point he will have received the price of the commodity, so that he will then send the commodity to the buyer, and this description mentioned above does not mean that the delivery of the price will take a long time, because the entire cycle is completed electronically, which makes it not take much time (Al-Zahrani, 2013, p. 172).

1.2.3 Reason

Both parties have a legitimate reason or motive for concluding the electronic payment contract, which is for the issuer to seek profit through its activity and is the main motive for the contract. As for the bank's motive, the banks' performance of banking by electronic means leads to their dispensing with paper documents with documents of a negotiable nature More quickly, and electronic banking transactions do not know temporal or spatial restrictions, as they take place at any time of the day, and their work does not stop with the end of official working hours, as it can be managed from anywhere on the face of the globe, all of these motives push the parties to conclude the contract who can use the electronic payment feature (Badawi, 2006, p. 16).

As for the reason that the electronic payment user seeks, it lies in obtaining the electronic payment method to facilitate his purchases, in order to avoid carrying ordinary money or carrying a large amount of it, and completing banking transactions by electronic means is more effective for all parties in general and for the electronic consumer in general in particular, the electronic consumer of the electronic bank, according to some people, is more fortunate than the consumer of the electronic traditional bank, as he does not have to move to the bank and complete his transactions, which saves him time, effort and expense, as well as the case for the bank, which leads to a reduction in its costs and thus increase his profits (Badawi, 2006, p. 16).

2. Effects of an electronic payment contract

In the study of the effects of the electronic payment contract, we address the legal nature of the contractual relationship resulting from the conclusion of this contract, and the obligations of its parties since it is among the binding contracts, so we will address the nature of the electronic payment contract, then the obligations of the parties to the electronic payment contract as follows.

2.1 Nature of the electronic payment contract

Electronic dealing is one of the topics about which jurisprudential disputes have been encountered, as the opinions of jurists vary in explaining the provisions of the electronic payment contract, and it may be difficult to choose the legal adaptation of the relationships arising from the use of electronic payment methods.

First - the contract of adhesion: The jurisprudence has differed in the extent to which the characteristics of the contract of adhesion are available in electronic commerce contracts in general, and in the contracts branching from them, such as the electronic payment contract, and the opinions of jurisprudence in this regard differ into two opinions, and that is as follows: * The owners of this opinion hold that the relationship between the electronic payment service provider and the electronic consumer with regard to benefiting from electronic payment methods is a contractual relationship characterized by the character of acquiescence, which does not give room for the compliant electronic consumer (the other party to the contract) to discuss the terms of the contract, as he either accepts the contract in its entirety or leave it in its entirety (Muhammad, 2010, p. 187).

Proponents of this view are based on the practical reality of e-commerce contracts in which the contractor has nothing but to express his opinion and click on a number of boxes in front of him when using the merchant's website, and on the specified goods and services, and these goods and services have specifications and prices. It is predetermined, and the contractor does not have the possibility to discuss or negotiate it with the merchant or the service provider about the terms of the contract on the website. It is only possible to accept or reject the contract with the terms provided, and this is the essence of compliance contracts (Ghannam, 2007, p. 147).

The legal argument for those of this opinion is based on the fact that the terms of the contract of adhesion are not available, and in particular the condition of the necessity of monopolizing the service. Legal or de facto monopoly and subject to limited scope discussion (Al-Hakim, Al-Bakri, & Al-Bashir, 1980, p. 44).

This is in addition to the fact that many of the goods that are offered through websites do not acquire the status of a monopoly in any way. The contractor who uses the Internet in his purchases is able to search on many websites for the commodity he wants.

Thus, it cannot be said that the electronic payment contract is one of the contracts of compliance with the differences previously explained.

Secondly- a contract of sale : A part of the jurisprudence has adopted adapting the relationship between the electronic consumer and the electronic payment service provider as a bilateral sales contract relationship, as the electronic consumer provides a cash consideration "that is, the payment of traditional money" (Ghannam, 2007, p. 107), to obtain the electronic payment service, that is, the electronic payment methods are bought with the equivalent of money. Banks are therefore described by some as a kind of selling the assets of the issuer, because they are bought with the equivalent of traditional cash (Safar, 2008, p. 52).

This opinion was opposed because it violates the nature of the sales contract, because the relationship between the seller and the buyer ends after the delivery of the sale and receipt of the price, and this does not happen in the electronic payment contract. It remains constantly executing the payment orders issued to it by the service provider, and whoever deals with the electronic consumer can demand the service provider to pay even though he is considered a foreigner from the electronic payment contract, as well as the ability of the electronic consumer to demand the service provider to recover the amount handed to him in the event of failure to do so. The use of the means of payment during the term of the contract or the remaining amount in the event that the means of payment is used to pay part of it, and this is not in the sales contract (Al-Uqabi, Al-Jubouri, & Jabr, 2008, p. 92).

Thus, it is clear that the legal relationship between the electronic consumer and the exporter cannot be adapted as a contract of sale, and this is due to the clear difference that appeared to us.

Third - agency contract: Although the agency contract is in agreement with the electronic payment contract in that both of the contracts mentioned work, the agent performs work for the principal's account, this work varies according to the type of agency, as well as for the electronic payment contract, the service provider performs a work that is to provide services to the electronic consumer. Also, both are contracts based on personal consideration, so the principal does not resort to the agent except for the qualities that the latter possesses that make him the focus of the trust of the principal, and this is the case for the electronic payment service contract, as the electronic consumer does not resort to the service provider except because he seeks in it. Technical and technical competence that authorizes him to supply the services he needs.

The jurists criticized this view that the original relationship in the agency is between the client and the third party, the rights and obligations arising from the contract concluded by the agent are in the name and for the account of the principal, and therefore the third party cannot demand the agent to implement the contract and pay the price, while in the electronic payment contract the merchant

can return the service provider must pay the price of the consumer's electronic purchases. In this case, the service provider does not fulfill the electronic consumer's indebtedness as an agent for him, but rather implements an original obligation under his contract with the merchant, the latter committed to accepting electronic payment methods in exchange for the service provider's commitment to pay (Al-Ibrahimi, 2012, p. 250).

Fourth - Contracting Contract: That the subject of the contract in the contracting contract for the contractor is the provision of work, and for the employer is the wage that he pledged to pay to the contractor, and since the place in the electronic payment contract is to provide a service to the electronic consumer in return for a fee, and therefore the subject of the contract is to provide work, and accordingly it can be considered. Considering the work carried out by the service provider falls under the description of contracting, and in addition to that, there are many commonalities between the contracting contract and the electronic payment contract, which are as follows (moukabila, 2009, p. 47):

1 In terms of consideration, in the contracting contract, the consideration is in the form of a sum of money that the employer is obligated to pay to the contractor, which applies to the electronic payment contract where the electronic consumer is obligated to pay a sum of money in exchange for the service provided to him.

2 In terms of supervision and control, in the contracting contract, the contractor is independent of the employer, as he is not subject to his management and supervision, and the same is the case in the electronic payment service contract, the service provider is not subject to the control and supervision of the electronic consumer.

3 In terms of transferring ownership, the contractor is not obligated to transfer the method he used to work to the employer, and the service provider is not obligated in the electronic payment contract to transfer the ownership of the service to the employer, but can only use it.

4 In terms of characteristics, both the contracting contract and the electronic payment contract are considered as netting contracts. Both the contractor and the service provider receive a fee from the other party in return for their work.

Based on the foregoing, the researcher believes that the electronic payment contract can be considered a form of the contracting contract, due to the similarity that was clarified between the subject of the two contracts.

2.2 Obligations of the parties to the electronic payment contract

The legal relations that bring together the parties dealing with electronic payment methods are characterized by legal independence, but despite their independence, they are linked to each other within a single legal framework, and this indicates that the electronic payment service provider has obligations to the electronic consumer, and the electronic consumer also has obligations to the electronic payment service provider, which we will discuss as follows.

2.2.1 Obligations of the electronic payment service provider

The electronic payment contract entails several obligations on the service provider, including the following:

A- The commitment of the electronic payment service provider to apply the general policies in providing the service of electronic payment methods

The electronic payment service provider must abide by the policies of the Central Bank regarding the processes for providing electronic payment methods and their controls, and these policies differ from one country to another, according to the financial and economic policies in force, and these policies play an important role in preserving the general rights of users of the electronic payment system As well as adherence to the principles that ensure the management of risks that may occur when carrying out the operations of providing electronic payment methods to protect users (Ibrahim K. M., 2006, p. 329).

B- The commitment of the electronic payment service provider to accept customer requests and provide electronic payment methods:

The electronic payment service provider is obligated, starting from the beginning, to accept customer requests, and this commitment is based on granting him the authority to provide electronic payment methods and trading for this new system of electronic dealing by the Central Bank.

Also, for the purpose of enabling the electronic consumer to benefit from the service provided by the electronic payment service provider under the contract concluded between them, the service provider is also responsible for delivering the means that enables him to achieve this benefit, as the service provider is obligated to provide the electronic consumer with the payment method they agreed upon and that It makes it at his disposal so that the electronic consumer can use it, so the service provider is obliged to deliver the means of payment to the electronic consumer physically or morally, where the physical delivery is in the case of bank cards and magnetic checks, while the moral delivery is for other payment methods such as money transfer services and electronic money that are stored on computers or smart phones, and is also obligated to hand over to the electronic consumer the necessary secret codes and programs (Al-Uqabi, Al-Jubouri, & Jabr, 2008, p. 125).

C- The commitment of the electronic payment service provider to enable the electronic consumer to close the electronic payment mechanism and report technical malfunctions, theft and loss incidents

The electronic payment service provider is obligated to enable and provide the electronic consumer and the merchant with the appropriate mechanisms to close and stop the work of the electronic payment mechanism when any errors occur in the use of this mechanism, or any circumstances that require its closure, such as the error in entering secret access codes, or the error in orders for transfers and transfers Or, the electronic consumer may commit fraud and deception when using this mechanism.

It is the responsibility of the electronic payment service provider in accordance with this obligation to provide the users of the electronic payment mechanism with all reporting and notification mechanisms when the devices are exposed to cases of theft or loss, in order to prevent illegal use by others (Ghannam, 2007, p. 141).

The service provider shall be responsible for the safety and efficiency of these devices and programs. The nature of the electronic payment service provider's obligation is a commitment to a result. It is not enough for him to claim that he has exercised reasonable care, and therefore he has no right to stipulate that he is not responsible for errors that are related to the electronic payment devices and software, and he is also committed Providing all electronic infrastructure requirements required by electronic payment methods (Al-Tamimi, 2012, p. 429).

D- The commitment of the electronic payment service provider to maintain the confidentiality of data relating to customer information and the operations they carry out:

It is the responsibility of the electronic payment service providers to maintain and abide by the confidentiality of the information provided by their customers, whether from customers who benefit from the electronic payment service, or merchants who participate in electronic payment operations, and the commitment of the electronic payment service provider to this duty can be derived from The electronic payment contracts themselves, and may be derived from the legal texts that obligate credit institutions to maintain the confidentiality of information and transactions of their customers, and this information may not be dealt with except after obtaining the approval of the person concerned, who is the electronic consumer (Hegazy, 2006, p. 52).

E- The obligation of the electronic payment service provider to keep documents and send periodic reports and statements to the electronic consumer:

It is also the responsibility of the electronic payment service provider to keep all documents related to the operations carried out by the electronic consumer, which includes keeping the statements of the electronic payment methods submitted to him, their categories and types, the date of providing them to the electronic consumer, and the processes that were used through them. Determining their times, dates, and sales locations in which they were used (Hegazy, 2006, p. 52).

F- Execution of electronic payment orders This obligation is considered one of the essential obligations of the service provider:

The electronic payment contract revolves around this issue, and for the purpose of executing the payment order, the electronic payment service provider must verify the identity of the electronic consumer who ordered the payment, and make sure that the order issued to him is from the electronic consumer who has this right under the contract concluded between them. The service provider may verify this through the electronic signature, the electronic consumer password, or other means, and the service provider must also ensure the adequacy of the amounts in the electronic consumer account, and the service provider after verifying this information, and that it the electronic consumer owns the order to pay, he executes the order (Al-Tamimi, 2012, p. 508).

2.2.2 Electronic Consumer Obligations

The electronic consumer is the beneficiary of the electronic payment service, but it has a set of obligations, which we mention as follows.

A- The electronic consumer's obligation to submit an application to participate in the system of dealing with electronic payment methods:

The electronic consumer does not obtain the advantages of the electronic payment system until after he requests a contract from the electronic payment service provider, and his request to join is only a positive acceptance of the terms of this service, and the provider of the electronic payment service remains the owner of the right to accept or reject the electronic consumer request. In all cases, the electronic payment service provider verifies the availability and conformity of the conditions to the electronic consumer who requests to deal with electronic payment methods for his account, and often the confirmation of the compliance of the conditions is immediately, if the electronic consumer is a customer of the provider of the electronic payment service Known people, it is provided with electronic payment methods immediately (Al-Tamimi, 2012, p. 509).

B- The consumer's obligation to inform the payment service provider of the data necessary for the contract:

The service applicant is obligated to inform the payment service provider of all the data he requests to provide this service, whether this data relates to the electronic consumer himself as his name, place of residence and his e-mail address, or it relates to data that the payment service provider may request to provide this service. When providing this data, the electronic consumer must adhere to the accuracy and inform the payment service provider of all the circumstances that would lead to changing this data, so that he is responsible for the consequences of an error in mentioning this data, as the service provider can terminate the subscription The electronic consumer is prevented from using the payment system if it turns out that the data he provided is incorrect (Ibrahim A. E.-S., 2009, p. 262).

C- The electronic consumer's commitment to the optimal and proper use of the system of dealing with electronic payment methods:

Among the requirements of the texts of the contract concluded between the electronic consumer and the electronic payment service provider is that the system of dealing with electronic payment means be used properly in accordance with the instructions directed to him, and in the form that was set for him, and this optimal use is related to the full benefit of the electronic consumer from this system.

On the other hand, it is related to the principle of good faith in the use of the system, according to what was created for it, and the manual of use instructions that he receives to the electronic consumer who benefits from electronic payment methods explains all the appropriate and ideal instructions for this use. Also, the electronic consumer does not make any changes that affect the operation of these means, whether in good faith or otherwise, and he must use them in the devices for which they were placed, and not use them in other devices that are no longer used, and the usage manual may contain other instructions Violation of these instructions is considered illegal use of electronic payment tools (Ghannam, 2007, p. 171).

D- The electronic consumer's obligation to pay in full all the amounts paid through the payment service provided by the service provider:

Based on the electronic payment service provider's approval of the consumer's electronic request to join the electronic payment system, he must pay in full all the amounts paid through the payment service provided by the service provider, and the value of these amounts is determined by the service provider.

And whether the service was used by him or by another person if the electronic consumer allowed others to use his payment methods, either if the use of the service was by others without his knowledge, as in the case of bank card theft or hacking of programs related to the use of payment services On the other hand, he is obligated to pay the service provider also until he informs him of the occurrence of theft or hacking, so that the service provider can take the necessary measures and notify the owners of the shops that deal with him of the necessity of not accepting payment by the hacked electronic payment method (Ibrahim A. E.-S., 2009, p. 266).

G- The electronic consumer's obligation to notify and report the failure, theft or loss of electronic payment methods:

One of the important obligations of the electronic consumer is to report and notify about all the exposure of the electronic payment system tools, as the contracts of these mechanisms require immediate reporting of cases of malfunctions, loss, theft and loss that occur to these tools, but the electronic consumer is obligated to inform the service provider if he believes that there is an error in his payment processes or electronic payment methods.

This notification is what enables the payment service provider to carry out its duty towards the account of the electronic consumer and close it to any illegal use, and thus reduce the responsibility of the electronic consumer towards any transactions that take place after informing the service provider, and the terms used to express the duration of this Notification in commercial contracts, such as "in a short period", "immediately", "without delay" and "the best possible period", and in fact, the opinion did not agree on the duration of the notification, some electronic payment contracts used the phrase in a short period, and What else (Al-Tamimi, 2012, p. 510).

H- The electronic consumer's obligation to restore the means of operating the electronic payment system

The last obligation that falls on the electronic consumer is to return what he received from the electronic payment service provider of operating tools and use of the electronic payment system, and this commitment is in accordance with the dictates of the terms of the contract concluded between the electronic consumer and the service provider, as these tools remain the property of the service provider, And the electronic consumer is nothing but a tenant of it and the services provided by those tools.

The electronic consumer is obliged to respond when the contractual relationship between him and a service provider ends, whether by the expiration of its term or the termination of the termination or closing the account or other reasons, or the electronic consumer request to withdraw from the electronic payment system, and these tools must be returned and They are in a sound, undamaged, usable form.

This does not mean that they are in the same condition in which they were delivered to the electronic consumer, but rather that they are in good and valid condition. This return to these electronic tools is important as it ensures that these mechanisms do not reach users who do not have the right to obtain them, so that they are not used in illegal attempts to enter the system of dealing with electronic payment means from others, especially by internationally organized gangs, and Internet users (Al-Tamimi, 2012, p. 510).

Rather, it explains the nature of the consideration that the electronic consumer pays to the bank when he obtains this tool, as it is a consideration for benefiting from it through its use in payment operations, provided that the payment service provider retains ownership of the tool. By the service provider in the face of the electronic consumer, such as canceling the payment instrument, or withdrawing it from the electronic consumer without prior notice, and without giving reasons.

II- Results and discussion :

- The existence of legal texts that govern the mechanism of dealing with electronic payment methods is undoubtedly going to gain them the confidence that dealers aspire to, in addition to its own characteristics and advantages, such as safety and speed in completion.
- Electronic payment methods play a role of traditional money in human interaction, which is represented in the legal power of discharge that it enjoys, and therefore determining the party that will provide the electronic payment service is important in terms of granting it the authority to issue electronic payment means equivalent to traditional money in the power of release.
- Electronic payment tools are characterized by their availability of the elements of confidentiality, security and safety, as well as achieving privacy in dealing with the bearer, and their ability to be divided to suit the various small, medium and large electronic payment operations and the multiplicity of areas of use, and it contains the continuous growth of electronic transactions, And when its services are put in the form of electronic payment contract, the modern electronic and distinguished method of playing the role of a payment tool becomes legal obligations that are discharged, as it is distinguished by the general acceptance of the segments of dealers with ease and speed of use to keep pace with modern technological development, and is characterized by its electronic form instead of the traditional form Metal and paper, which gives it general acceptance from the segments of dealers.
- The issue of dealing with electronic payment means is one of the modern and important methods in the progress and development of work in countries that seek to keep pace with everything new in the service of electronic consumer segments, and to disseminate electronic and smart government mechanisms in all its fields, and to provide the best services to all its residents, and in In light of the recent development of all areas of life, including the field of payment among customer segments, the use of electronic payment methods will be one of the best modern means of fulfilment, which has a great role in playing this role in the near future, especially in light of the presence of some problems that occur through dealing With credit cards.
- The jurists differed regarding the development of a comprehensive definition of an electronic payment contract, and this is due to several considerations, including the general function performed by electronic payment methods, the extent of the commitment to issue them and their external link, and their components and elements and how to obtain them, and the researcher set the definition Whosoever deems it appropriate for the electronic payment contract is his participation in this field

III- Conclusion:

This study touched on the nature of the electronic payment contract and its legal regulation, which will have a role in advancing the wheel of electronic commercial development, which will

bring general benefit to the commercial community, in terms of facilitating the new payment mechanism, and on the other hand providing a secure payment mechanism, which reassures the souls of the dealers. The study explained the location of electronic payment methods and systems, and the role of these modern means in providing money with new methods and forms that suit the developments of electronic commerce and the pattern of contemporary transactions. For the electronic payment service and its role in setting the most accurate standards for the electronic payment system, and between his point of view on creating an electronic payment contract and the accuracy of the controls that must be adhered to for this.

In part, the study has turned to the field of legitimate economic policy, in addition to its original doctrinal and legal field. On the one hand, lifting the paper cover for dealing with currencies and replacing it with the electronic economic credit cover according to the economic power of the state, needs to control the financial policy of the countries, it may be attracted by many. One of the factors that make instability and instability in transactions between consumers and merchants, and on the other hand, this opens the way for manipulating the issuance of electronic payment methods, and not the objection in this research to taking payment by electronic means from others, but this should be. The system is within a legal and economic framework, which is the regulation of the electronic payment contract.

The process of correcting the interaction between the consumer and the merchants must be started. In order for the correction to bear fruit, it must be inclusive of all aspects of the problem, so that its procedures support each other. Because clarifying the legal vision for Internet users and dealings in the economic field in particular.

Finally, the following perspectives can be made to support this study:

- The work with electronic means of payment must be supported and awareness spread among the ordinary and electronic consumer, despite the dangers that always surround electronic commerce, and despite the fear that dominates the owners of money, dealing with these electronic means is the future on which the internal economy of countries depends.
- Countries must follow legislative steps that include setting the correct standards and controls governing the issuance of electronic payment methods of all kinds and forms, whether by the state or by the private sector, and setting ways that lead to the benefit of society as a whole from these processes, and working to reduce the exclusivity of persons with their eyes on a resource that is a public resource in which all people must be partners.
- In the technical field, work must be done to unify efforts between the various private and public financial institutions, and work to establish financial companies that will develop modern electronic payment methods and systems, and work to enable them to compete internationally in this field, and be independent from Western international organizations that exploit these institutions. Especially in the field of credit cards, especially since institutions and banks have their own audience who prefers to deal with them because of their policies based on Sharia compliance, especially after they proved their worth during the past few decades and during the financial crises that afflicted the whole world.
- In the legal field, work must be done to strengthen the electronic payment organization with its own legislation, in regulating electronic payment contracts and clarifying its pillars and parties and the obligations imposed on them, and what are the impediments that we can show as a result of dealing with these means and how to solve them.
- Work must be done to liberate the Internet, and to consider it an important economic resource that must be exploited in the private and public sectors, especially since the electronic payment system works only through the Internet.

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