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ABSTRACT

With the inevitable advent of Information and Communications Technology (ICT) and setting of deeds in cyberspace, "Electronic Registration" of deeds is essential. In current status, the terms of the electronic deeds' realization and the position of the notaries in the written laws are both necessary regarding the particular circumstances of the recognition of these deeds in an actual environment. The authors create an appropriate platform and draw legislator's attention to special legislation on electronic registration and examine fundamentally electronic capabilities of deeds. The concepts of deed are discussed and a comparative study is conducted on the position of the electronic registration of deeds under Iran and French law. In conclusion, effective factors of the legal requirements of electronic deed are identified including applying electronic signature by a Notary and saving the electronic deeds in a central electronic archive.

KEYWORDS

Electronic archives, Electronic official deed, Electronic registration of deeds, Saving electronic deeds, Secure electronic signature.

INTRODUCTION

The deeds' establishment and registration are the subjects which required more than ever for social adjustments. Due to the importance of the registration, the official establishment of the deeds considered as the *acta jure empirii* in many countries. Also, there is a process-specific criteria as well as a special reputation towards registration in the legal systems of the world.

The main objective of present study is to investigate whether there are electronic capabilities for deeds. After leading concepts and operational definitions of deeds, current legal status of the electronic registration of deeds are studied in Iran and France. However, there is a question in this study about the advent of ICT and setting of deeds in cyberspace whether the current legal basis of registration of official deeds is also applied to electronic registration of such deeds. Obviously the answer to this question determines the amount of credit of deeds which are registered in an electronic form.

French legislator understanding the importance of this issue allows the deeds' establishment and registration electronically by officials in terms of its accession to the article 1317 of the Civil Code of this country while Iran law despite existing deeds establishment's process electronically since September 2013; so far they have not taken a position on the electronic official deed. Certainly, "electronic official deed" first must be recognized by law, and then its terms of implementation shall be determined pursuant to rules and regulations. Hence, the authors attempt to facilitate the conditions for the legal recognition of electronic official deed by analogy with the registration system of French and Iran in order to resolve this legal gap. To achieve this aim, it is necessary to develop the culture and create an appropriate infrastructure-both technically and legally (Jahangardmahbob,2013); that technical aspect is undertaken by computer science experts and is out of the scope of this discussion and naturally the legal experts are responsible for this legal aspect which still needs work and unfortunately there were not efforts adequately in order to understand the basics of implementing electronic registration, both in theoretical and practical terms in this field.

Lack of reliable and academic references on electronic deeds is one of major limitations in this study. Although, there are some books, many papers and various legal rules on electronic commerce and electronic signature under Iran and French law but there is no book or paper on electronic deeds under Iran law and a few under French law.

DISCUSSION

It is necessary to focus on legal definition of deed and its types before studying electronic capabilities of deeds and the place of electronic deeds under Iran and French law.

1- DEFINITION OF DEED

According to Article 1284 of the Civil Code of Iran, deed is any written one which can be reliable as claim or defense; the meaning of the written one is a line or mark which is visible on the screen whether conventional or non-conventional lines- such as codes and marks which are arranged among two or more individuals' relationships- and no matter it is written by the dye or hand either printed or copied by a machine. But what is important in the legal terms, it can be accounted as a proof in a trial. (Imami, 2000)

According to the definition of deed in civil law, three conditions must be considered as follows:

- 1) Be in written: the unwritten documents are not considered as instruments. Hence, Article 1258 of the Civil Code of Iran in-the recognition of this meaning stated only the "written instruments" as one of the proof trials.
- 2) Provable: the written one will be as a deed when it's comprised one of judicial evidences.
- 3) Referable: the deed must be capable of proving the claim or defense in the court. (Azimi, 1993)