

# Admissibility and Reliability of Electronic Evidence before Qatari courts

**Ahmed El Amoury** - Senior Associate - Litigation / Employment and Incentives / Legislative Drafting / Insurance

a.amoury@tamimi.com - Doha

Bashayer Al Ahababi

b.alahbabi@tamimi.com - Doha, Qatar



Do the Qatari courts recognize a contractual relationship that results from an electronic transaction? Do the courts regard electronic evidence, such as emails and electronic receipts as admissible and reliable?

Prior to the recent judgment of the Court of Cassation, the answer to the above questions would be negative. In fact, the Qatari courts had previously dismissed a few cases by denying the admissibility of electronic evidence following a challenge to its validity by the other party. In those cases, the courts held that there was no evidence reflecting the existence of the contractual relationship between the parties.

However, in reliance on Law No. 16 of 2010 Promulgation of the Electronic Commerce and Transactions Law ("The Electronic Commerce Law"), the Court of Cassation has introduced a new principle which is considered to be a turning point for the admissibility and reliability of electronic evidence in litigation cases in Qatar.

## Background to the Case

The Claimant had supplied and installed some medical equipment for the Defendant. The Claimant requested the Defendant to pay the outstanding amount for such service. However, the Defendant failed to pay any of the outstanding amounts. The Claimant sent email reminders to the Defendant requesting the Defendant to respect their agreement and pay the outstanding amounts, but the Defendant failed to respond and failed to pay the outstanding amounts.

## The Case at First Instance:

In 2012, the Claimant filed a civil case against the Defendant claiming the outstanding amount in addition to compensation as result of the non-payment.

The Defendant argued that the case must be dismissed, alleging that there was no existing contractual relationship with the Claimant. In addition, the Defendant challenged the validity of the photocopies of the supporting documents submitted by the Claimant to substantiate the case.

The Court of First Instance appointed an expert to review the case. He reported that there was correspondence which proved the existence of the contractual relationship between the parties, in addition to bank statements evidencing the partial payment of the outstanding amount made by the Defendant.

The First Instance Court dismissed the case based on the following grounds:

- The absence of evidence proving the existence of the contractual relationship between the Claimant and Defendant.
- The Claimant's inability to provide any original documents, all the submitted documentary evidence being photocopies - accepting the Defendant's challenge to the validity of the same.

## Ruling of the Court of Appeal

The Claimant appealed the decision of the Court of First Instance before the Court of Appeal. The Court of Appeal upheld the finding of the Court of First Instance and dismissed the appeal in 2016.



## Judgment of the Court of Cassation

The Claimant challenged the decision of the Court of Appeal before the Court of Cassation. The Claimant relied on the ground that the Court of First Instance erred in its reasoning and application of the law on the facts of the case. The Claimant submitted that the Court of Appeal dismissed the case in contradiction of the following documents:

- The Claimant submitted documentary evidence such as photocopies of emails to prove the contractual relationship between the parties.
- In addition, the "copy" document submitted by the Claimant was only copy of the bank statement to prove that the Defendant had already made partial payment for the outstanding amount due to the Claimant.

# The Court of Cassation has implemented a new principle which is considered to be a turning point for the admissibility and reliability of electronic evidence in litigation cases in Qatar.

The Court of Cassation accepted the Claimant's argument and reversed the judgment of the Court of Appeal and confirmed the following important rules related to the enforcement of The Electronic Commerce Law :

## **1) The validity and the admissibility of the electronic transaction as evidence before the Court.**

In principle, in order for electronic evidence to be admissible before the court, it must:

- First take the form of a data message which, according to Article 1(4) of the Electronic Commerce Law is any type of information that was sent, received, displayed or stored by any means of electronic communications; and
- Secondly, comply with the requirements of Article 26 of the Electronic Commerce Law, which states the following:

*"In assessing the evidential weight of information or document in the form of a data message, regard shall be had to the following:*

1. The processes and circumstances under which the data message was generated, stored or communicated.
2. The processes and circumstances under which the integrity of the Information or document contained in the data message was maintained.
3. The processes and circumstances under which the originator of the data message was identified.
4. Any other relevant process or circumstances."

Article 26 of the Electronic Commerce Law requires certainty of the origin of the data message and the identity of its receiver to ensure that the data message was not manipulated by the parties or was not a counterfeit. The court in some cases can appoint specialized experts to verify the accuracy of the data messages. As such, if such requirements are applied, then all electronic transactions made in the form of data message are equal to the written and signed documents, with regards to legal effect and admissibility in the court as reliable evidence.

Further, Article 20(1) of the Electronic Commerce Law explicitly states that any information in the form of a data message is legally admissible before a court, the legal effect of which cannot be denied.

Based on the above principles, the Court of Cassation held that all the information that was in the corresponding emails, the receipts and the bank letters are indeed data messages in terms of Article 1(4) and Article 26 of the Electronic Commerce Law.

Therefore, the Court of Cassation ruled that the documents submitted by the Claimant were legally effective and admissible before Court.

## **2) Electronic transactions such as emails are a reliable means to constitute a valid offer and acceptance for the formation of an agreement.**

The Court of Cassation held that, as the corresponding emails between the parties showed without a doubt that the parties intended to enter into an agreement, the judge could recognize the offer and acceptance from the electronic correspondence without the need of written documents. The fact that parties had not physically signed an agreement was not imperative. The Court supported its opinion by Article 4(1) of the

Electronic Commerce Law which states:

*“An offer or acceptance of an offer may be expressed, in whole or in part, by means of electronic communications.”*

The Court of Cassation ruled that electronic transactions have become essential as a means of conducting business or entering an agreement. The use of a paperless mechanism has become the most favourable means of communication between parties for expressing their intention to enter an agreement; therefore, it has become essential to regulate electronic transactions by issuing the Electronic Commerce Law.

## **Conclusion**

This judgment issued by the Court of Cassation constitutes a reform of the methods of submitting proof before courts. The Court of Cassation gives evidential weight to electronic transactions which is equal to written documents in admissibility and reliability before the Qatari courts. In addition, the content of the electronic transactions can itself provide evidence of formation of binding agreements between parties.