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<p align="center">RESEARCH ARTICLE </p>		
<p align="center"><b>Electronic Contracts Evidentiary Authority in Algerian Law</b></p>		
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<p><b>Keywords</b></p>	<p>Electronic contract Evidentiary Authority, functional equivalence, legal formality.</p>	
<p><b>Abstract</b></p> <p>Legal frameworks worldwide have acknowledged electronic contract as a functional counterpart to its traditional paper-based analogue, endowing it with identical legal efficacy and evidentiary validity. Such recognition compels adjudicators to evaluate its credibility based on criteria that ensure a high degree of reliability for the electronic documents in question. The Algerian legislature has ratified this position, stipulating that the authenticity of the issuer's identity must be verifiable and that the document must be created and stored under conditions that preserve its integrity. Specifically, the electronic signature serves to authenticate the signatory's identity and verify their acceptance of the contract's terms in digital form, according to Article 6 of Law 15-04. Furthermore, as per Article 8 of the same statute, a qualified electronic signature is equivalent to a handwritten signature, applicable to both natural and legal persons. The Algerian Civil Code, specifically Article 323 bis, establishes the general principle that written documentation serves as a means for proving legal transactions. This definition encompasses transactions executed through electronic means, irrespective of the medium employed or the transmission method, whether it occurs over internet networks or via direct computer-to-computer exchanges. The requisite clarity and comprehensibility of the writing underscore its unchanged essence, despite the shift from traditional paper-based to digital media. Historically, the concept of writing was inextricably linked to physical paper media, making it challenging to envisage any legal document outside this context.</p>		
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## Introduction

In the context of contract law, Article 54 of the Civil Code delineates the general principles governing contracts, while Law 18-09 on e-commerce elaborates on electronic contracts in Article 6/2. This provision characterizes an electronic contract as a legally binding agreement formed remotely, without the physical and simultaneous presence of the contracting parties, through electronic communication technologies (Official Gazette, 2018). Law 04-02 further elucidates in Article 3, Paragraph 4, defining a contract as an agreement pre-drafted by one party, which the other party accepts without the capacity for substantial alteration (Jumada, 2004).

This transition to digital platforms has led the Algerian legislator to affirm the principle of evidential parity between traditional and electronic documents. This foundational principle prompts us to examine the subsequent question: To what extent do electronic contracts possess evidentiary authority under Algerian law, and can they attain formal legal status upon satisfying designated legal conditions?

## **I. Section I: The Evidentiary Authority of Electronic Contracts According to General Principles and Law 15-04**

In Algerian law, Article 323 bis 1 of the Civil Code establishes the principle of functional equivalence between electronic and traditional written forms, effectively aligning the evidentiary standards for electronic and paper-based documentation. Specifically, Law 15-04 provides a regulatory framework concerning electronic signatures and certifications, detailing standards for transactions conducted through electronic contracts.

### **1. Evidentiary Authority of Electronic Contracts According to General Principles**

Article 327 of the Algerian Civil Code provides that an informal contract is presumed to have been issued by the individual who drafted, signed, or imprinted it with their fingerprint, barring any explicit refutation from said individual. The second paragraph of this article expands the scope of recognized signatures to include electronic signatures, provided they satisfy the evidentiary conditions specified in Article 323 bis 1. To validate an electronic contract, essential requirements must be met to verify the identities of the contracting parties and establish their consensual agreement to the terms as follows:

#### **1.1. Electronic Writing**

Article 323 bis of the Civil Code defines electronic writing as a sequence of characters, numbers, or symbols that convey meaning, regardless of the medium or transmission method. This definition is essential for understanding the modalities of electronic evidence.

##### **a. Legibility of Electronic Contracts**

The contract must be intelligible, ensuring that its contents are expressed in a format accessible and comprehensible to humans. This includes the translation of computer-readable codes into human-readable language, presenting these transformations as evidence (Sabri Al-Saadi, 2009, p. 68) in legal proceedings.

##### **b. Continuity and Accessibility of Electronic Writing**

This characteristic necessitates that electronic documents remain accessible for reference and verification as needed, similar to their physical counterparts. According to Article 10(1)(a) of the UNCITRAL Model Law on Electronic Commerce, for electronic writing to hold legal admissibility, the information within must be accessible and retrievable over time for future reference.

##### **c. Integrity of Electronic Contracts**

The integrity criterion requires that electronic contracts be maintained in their original form as created, transmitted, or received, ensuring that they faithfully represent the initial information conveyed.

#### **1.2. Authentication of the Issuer's Identity**

Technological solutions such as cryptographic measures (public and private keys), biometric identification (including digital fingerprinting and retinal scans), and traditional security measures like passwords and PINs are employed to verify the identity of the document's issuer. While these technologies enhance the security of electronic communications, they also present vulnerabilities that must be addressed to ensure robust identity verification. (Éric, 2000, pp. 7-8)

This need for security has catalyzed the development of intermediary certification or trust authorities, which employ a spectrum of identification technologies to authenticate the identities of parties in electronic transactions. Algerian regulations specifically refer to these intermediaries as "electronic certification authorities," highlighting their role in facilitating secure electronic commerce.

#### **1.3. Conditions Ensuring Document Preservation**

Electronic documents are intrinsically prone to degradation over time, even under optimal storage (Mansour, (no publication year), p. 273) conditions. Unlike physical records, which can be reconstructed if damaged, electronic records

face the risk of complete data loss due to digital degradation. Thus, the Algerian legislator mandates the preservation of electronic documents to secure the rights of parties involved in electronic contracts and to protect individuals with vested interests in these records (**Official Gazette, 2016**).

The storage of electronic records is typically achieved through digital media—termed storage devices—that facilitate electronic storage, retrieval, and long-term preservation of data. Storage solutions include both cloud-based services and physical storage media such as hard drives, CDs, and other durable formats that ensure the long-term integrity of electronic records. (**GAUTRAIS, 2010, pp. 274-275**)

## **2. Evidentiary Authority of Electronic Contracts under Law 15-04**

Law 15-04 delineates the general regulations applicable to electronic signatures and certification, enacting specific provisions for the validation of actions conducted electronically. This legislative framework enhances the security of contractual parties by recognizing the significance of the electronic signature associated with the contract.

### **2.1. Association of Informal Contracts with Electronic Signatures**

As stipulated in Article 2/1 of Law 15-04, the electronic signature authenticates the identity of the signer and validates their acceptance of the contract's content in electronic form as per Article 6. If an electronic signature is appended to a contract, it establishes an informal electronic contract, which depends on the type of electronic signature employed by the signer.

The Algerian legislator differentiates between simple and qualified electronic signatures. According to Article 9 of Law 15-04, a simple electronic signature cannot be denied legal validity or rejected as evidence in court due to its:

- electronic nature
- lack of certification,
- creation without a secure signature generation mechanism.

In such cases, the contract retains its status as an informal electronic contract. Conversely, a contract linked to a qualified electronic signature is fit as a formal electronic contract.

### **2.2. Conformity of Contract Content with Signer's Intent**

The electronic signature, when employed as evidence, confers legal validity upon the contract, provided that the contract meets the conditions required for a written document (as a form of documentation) and that the signature itself fulfills essential criteria. Additionally, the signature itself must satisfy certain conditions that allow it to function effectively in identifying the signer, affirming their acknowledgment of the content, and associating it with them. Per Article 6, the signature manifests the signer's will to agree to the contract's content, thereby acting as a validatory instrument.

Affixing a signature to a document implies that its content is attributed to the signer, ensuring that the data inscribed within the contract remain unchanged. Consequently, the act of signing signifies the signer's consent to the terms documented therein, reflecting their commitment to adhere to the stipulations.

## **3. Transactions Exempted from Electronic Evidence**

Deviating from the principle of contractual consensualism, which posits that the written form of a contract primarily serves as evidential rather than a mandatory formal requirement for contract validity, Algerian law stipulates formal requirements for certain contracts to achieve their legal effects. These requirements define formal contracts that necessitate specific procedural adherence, such as requiring property sale contracts (**Law, 1993**) to be registered and publicized in the property registry.

Articles 324 bis 1 and 324 bis 4 of the Algerian Civil Code dictate that certain contracts must be executed formally. For instance, a public official must detail in publicly declared contracts concerning property ownership the properties' characteristics, conditions, boundaries, the names of previous owners, and, if possible, the history and proportions of successive ownership transfers.

These provisions highlight the insufficiency of electronic documentation for formal transactions, reflecting a discrepancy between electronic formats and the protective objectives inherent in legal formalism. (**Aissa, 2001, p. 344**)

## II. Section II: Evidentiary Authority of Electronic Contracts by Type

When an electronic signature is appended to a digital document, it results in either an informal electronic contract or a formal electronic contract, depending on the type of electronic signature applied by the signer. Under Article 7 of Law 15-04, the Algerian legislator categorizes electronic signatures into two types: the simple electronic signature and the qualified electronic signature.

### 1. Informal Electronic Contracts

Informal electronic contracts operate under the general principles of contract law, yet they are distinct in their formation method, as they are typically concluded remotely between non-physically present parties through digital communication platforms.

While electronic contracts draw upon the foundational elements of traditional contracts, as defined by general legal principles, they differ notably in their mode of execution. A contract is, in essence, a binding agreement intended to generate legal effects, establishing a new legal status with rights and obligations upheld by the contracting parties prior to the agreement, or, conversely, it may serve to terminate existing rights or obligations. (Filali, 1997, p. 36)

An informal electronic contract, therefore, is a contract electronically signed by the parties involved without the participation of a public official. This type of contract does not necessitate a specific form of electronic signature with heightened reliability; instead, it merely requires that the electronic signature be linked to the contract and demonstrate the signer's acceptance of its content in electronic form. Importantly, according to Article 9 of Law 15-04, a simple electronic signature cannot be denied legal validity or dismissed as admissible evidence solely based on its electronic nature, the lack of a qualified signature, or the absence of a secure electronic signature mechanism.

As such, informal electronic contracts may be distinguished between those prepared for evidentiary purposes and those not specifically prepared as evidence.

#### 1.1. Informal Electronic Contracts for Evidentiary Purposes

This form of contract, signed by the involved parties, lacks the structural attributes of formal documentation, eschewing particular formalities for its establishment (Vincent, 2003, p. 104). Such contracts are deemed admissible as evidence against those from whom they originate and serve as general proof within the judicial process. The validity of these contracts hinges crucially on two foundational elements: the inscription and the signature. The Algerian Civil Code, notably in Article 327, stipulates the requirement of written form, which has undergone significant liberalization in recent legislative reforms. This reformative step represents a paradigm shift in evidentiary rules, accepting all manifestations of written expressions and signatures.

No specific language is mandated for drafting informal contracts; they fall under the principle of drafting freedom, except where specific language is legally required. The signature, attributed to the person bound by the contract, is essential, as it demonstrates acceptance of the contract's content and suffices for its validity.

Article 327 of the Civil Code also introduces an innovative element previously unrecognized in contract law—the use of a fingerprint by illiterate signatories, thus enabling them to execute contracts. This addition aligns with the broader acceptance of electronic signatures delineated in the second clause of the same article, reinforcing the inclusivity and accessibility of contract law.

An informal electronic document is designated as prepared for evidentiary purposes under the following circumstances:

a. **Certification by an Authorized Provider:** Technological advancements have facilitated new methods of validation through which the rights of the disputing parties can be authenticated, enabling mutual recognition among parties in a legal context. This recognition necessitates that the signature on the contract be directly linked to the individual, enabling attribution in the substantiation of legal actions. The signature must bear the electronic characteristics corresponding to the nature of the contract, often necessitating third-party verification of the electronically transmitted data.

The reliance on qualified electronic signatures, or digital signatures secured by dual-key encryption that also involves message encryption, assists in identifying the signatory and attributing legal actions or decisions to them.

b. **Mutual Agreement on the Evidentiary Authority of the Document, Regardless of Certification:** According to Article 106 of the Civil Code, a contract represents the governing law between the contracting parties, immutable except by mutual

consent or legal justification. Here, the agreement supersedes statutory provisions, allowing parties to define specific terms related to evidence within their contractual dealings. These agreements may stipulate the methods and standards of proof, effectively customizing the evidentiary landscape beyond statutory regulations. Such arrangements may be formalized through preliminary agreements on evidentiary procedures (**An example is the written contract executed by credit card companies with their clients, which stipulates that the records generated by automated devices (ATMs) serve as proof for payments made via card**) or through contracts for electronic data interchange, thereby establishing a bespoke legal regime for the parties involved (Zahra, 1994, p. 454).

c. **Legislative Acknowledgment of Evidentiary Validity:** The Algerian legislator explicitly acknowledges the probative value of electronic documents. For instance, Article 323 bis 1 of the Civil Code equates electronic written evidence with its paper-based counterpart, contingent upon the verifiability of the author's identity and the document's integrity-preserving conditions. Furthermore, Article 8 of Law 15-04 equates a qualified electronic signature in legal standing with a handwritten signature, irrespective of the signatory being a natural or legal person.

These articles collectively underscore the functional equivalence bestowed upon electronic documents, equating them with traditional paper documents under conditions specified within the same legislative framework. Additionally, they grant equivalent legal validity to qualified electronic signatures as to handwritten ones. The provisions also ensure that electronic contracts lacking a qualified signature cannot be dismissed as evidence solely based on their electronic format, fostering a robust framework for the recognition of electronic transactions in legal proceedings. For example, in banking disputes, electronic records, such as account statements or electronically signed communications, serve as valid evidence of completed transactions if a bank attempts to disclaim responsibility.

## 1.2. Non-Evidentiary Informal Electronic Contracts

An informal electronic contract not designed for evidentiary purposes typically lacks an electronic signature from the involved parties, as specified in electronic transaction legislation. This type of contract does not inherently aim to serve as proof and is therefore not configured as an evidentiary document. Nonetheless, the law grants it a certain degree of evidentiary significance, which varies depending on the elements it encompasses. Specifically, an electronic document may be deemed non-evidentiary under the following conditions:

- Unqualified electronic document
- Absence of contractual agreement on evidentiary weight
- Lack of statutory recognition of evidentiary value

An informal electronic contract that does not intend to serve as evidence—and for which the signer's intent does not explicitly designate it as such—may nonetheless function as preliminary written proof. This status, though limited, permits the judge to consult it as supplementary evidence when issuing a ruling.

## 2. Formal Electronic Contracts

In accordance with Article 324 of the Algerian Civil Code, a formal contract is one documented by a public official, officer, or individual endowed with a public service mandate, ensuring compliance with the prescribed legal formalities and within the limits of their authority. This principle extends to electronic contracts, thus granting them formal status irrespective of their digital format, provided that they are authenticated by a qualified public official, officer, or public service representative—such as an electronic certification authority or certified service provider. The official's signature confers the requisite formal legitimacy.

Several essential conditions must be met for an electronic contract to be legally recognized as formal:

- Qualified electronic signature by a public official
- Certification for all contract parties
- Secure mechanisms for signature generation and verification

The electronic signature must be generated and verified through secure and reliable mechanisms, as stipulated in Articles 11 and 13, and supervised by the national authority responsible for accrediting signature creation and verification mechanisms, as specified in Article 14.

## **2.1. General Conditions for Formal Electronic Contracts**

To be recognized as formal, whether traditional or electronic, a contract must be issued by a qualified public official, officer, or an individual designated to perform a public service. These individuals, equated with public officials due to their roles in providing state-mandated public services such as experts and electronic certification authorities, are responsible for documenting transactions in the presence of the contracting parties and affixing their signatures to validate the document formally.

### **a. Origination of Formal Electronic Contracts from Authorized Public Entities**

In the context of formal electronic contracts, contracting parties engage with an official entity represented by various electronic certification authorities (e.g., The National Electronic Certification Authority (ANCE), The Governmental Electronic Certification Authority (AGCE), or The Economic Electronic Certification Authority (AECE)). These bodies hold the responsibility for the electronic documents they issue and oversee the individuals within their jurisdiction. Regarding the issuance of formal electronic documents by a public official, the law prescribes specific competencies for each official, barring them from acting beyond these limits. The term 'competence' implies that the official has the authority to draft the document concerning its subject matter, timing, and location. Additionally, the official must be qualified to authenticate the official document within the boundaries of their conferred authority at the time of action; failure to adhere to these conditions results in the nullification (Al-Jabouri, 2014, pp. 204-205) of the document or contract.

### **b. Adherence to Legal Procedures in Drafting Formal Electronic Contracts**

Legal statutes specify the procedures to be followed when drafting formal contracts, particularly regarding the engagement of parties by a public official. Traditional requirements dictate the physical presence of the parties to verify their identities, full consent, and legal capacity to contract, which aims to prevent any potential fraud or deception. However, in remote contracting scenarios, parties are not collectively present before the same public official due to geographical disparities. Instead, each party visits a notary or public official in their respective locations to have the document certified and formally recognized, replicating the other party's actions (Éric, Written and Electronic Proof under Law No. 2000-230, 2003, p. 5).

When each party presents themselves before their respective public official, the official verifies their identity and legal capacity through a certification document issued by a national electronic certification agency or another similar certification service provider (According to Article 2/15 of Law 15-04). This certification is pivotal for verifying the contracting parties' identities and capacities and includes an electronic signature used by the parties to sign the contract in the official's presence. The certification also contains encryption keys, ensuring that the parties' agreement to the contract's content is clearly documented, stable, and secured against unauthorized modifications (19, 2004). The public official is mandated to confirm these conditions when documenting the contract.

Additional legal requirements necessary for formalizing a contract include the payment of applicable fees and the verification of the certifier's identity and legal capacity to conduct the transaction. The public official verifies these details through the electronic certification document issued by the national authority responsible for accrediting electronic signature mechanisms and their verification.

Modern automated systems now allow for contract certification through code-compliance checks without the physical presence of a public official, making the official's presence unnecessary in some jurisdictions. Moreover, entities involved in the documentation of formal electronic contracts provide legal security in electronic transactions, as the national authority enforcing electronic signature and verification standards (15-04) imposes stringent technical and security requirements to protect all signatures and documents. Today's technological advancements facilitate real-time audio-visual interactions between parties, enhancing identity verification and agreement confirmation processes, thus significantly contributing to the trust and security of remote electronic contracting and the authenticity of formal electronic documents.

## **3. Criteria for Evidentiary Authority in Formal Electronic Contracts**

Formal electronic contracts adhere to the general principles that govern contractual theory; however, they diverge primarily in the method of their execution. Unlike traditional contracts, electronic contracts are executed remotely using advanced electronic means, which introduces complexities in verifying the identity of contracting parties. Nonetheless, when an electronic contract is authenticated with a qualified electronic signature or linked to a digital certificate, it acquires the same legal standing as its traditional counterpart.

### **3.1. Qualified Electronic Signature**

A qualified electronic signature is one that fulfills the criteria detailed in Article 7 of Law 15-04. The Algerian legislation affirms the equivalency of the qualified electronic signature to the handwritten signature as per Article 8 of the same law: "A qualified electronic signature is equivalent to a handwritten signature, applicable to both natural and legal persons."

It is apparent from Articles 7 and 8 that an electronic contract endorsed with a qualified electronic signature between two parties is formally recognized as an official document. Such a contract, bearing the endorsement of a certification service provider, meets all conditions outlined in Article 7, especially those requiring it to be based on a qualified digital certificate.

### **3.2. Qualified Digital Certification**

A digital certification, issued by electronic certification authorities, links a public key to a specified individual, facilitating the verification of the signer's identity through the public key. The Algerian law in Article 2/7 of Law 15-04 defines an electronic certification as "an electronic document that corroborates the link between the electronic signature verification data and the signer."

A qualified digital certificate is further delineated in Article 15 of the same statute as "a digital certificate that meets specified requirements..." This provision distinctly classifies electronic certificates into simple and qualified categories, articulating the requisite data for a qualified electronic certificate to ensure its accuracy and clarity.

The formalization of an electronic contract is executed through automated systems that employ qualified digital certificates and qualified electronic signatures to verify the contract's encoded data. This process may be conducted in the presence or absence of a certification service provider or designated official, thereby ensuring the contract's formal validity remotely. The application of qualified digital certificates and qualified electronic signatures provides a robust legal framework for electronic transactions, effectively ensuring the contracting parties' identity verification and the electronic contract's legal integrity.

### **Conclusion:**

The Algerian legislator has harmonized national law with international standards by enabling individuals to conduct legal transactions through electronic means, thus accommodating those whose circumstances necessitate such methods. Importantly, this approach maintains protections for individuals preferring traditional legal norms, as affirmed in Article 3 of Law 15-04, which stipulates that "Without prejudice to existing legislation, no one is obligated to perform a legal act electronically signed."

Through dedicated provisions in Law 15-04, the Algerian legislator has established a comprehensive framework for electronic signatures and certifications. Specifically, the second chapter of this law governs electronic signatures, while the third addresses electronic certification. Article 323 bis 1 of the Civil Code further supports this framework by equating electronic written evidence with traditional paper-based evidence. This recognition is contingent on two essential conditions: the verification of the document issuer's identity and ensuring that the document is created and stored under conditions that guarantee its integrity, with adherence to legal protocols during contract drafting, and requirements of writing and signature.

The adoption of Law 15-04 has legitimized the formalization of electronic contracts. This law affirms the legal standing of simple electronic signatures, thereby safeguarding individual transactions. However, for contracts of significant importance, the legislator mandates the use of qualified electronic signatures, granting them the same legal force as handwritten signatures. Additionally, contracts executed under a qualified electronic certificate, issued by an accredited certification authority, enjoy further protection, with liability assigned to the certification authority for any damages resulting from the certification process.

### **Ethical Considerations**

This research is based exclusively on legal analysis of Algerian legislation, statutory interpretation, and secondary legal scholarship. No personal data, human subjects, confidential materials, or restricted institutional documents were used in the preparation of this article. All legislative references and jurisprudential citations are public sources, and all interpretations adhere to academic integrity and responsible legal scholarship norms.

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### Conflict of Interest

The author affirms that there are no competing interests—financial, academic, or personal—that may have influenced the research findings, interpretations, or conclusions presented in this manuscript.

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