

Critical Review of the Proposed Palestinian Electronic Commerce and Signatures Laws



PALESTINE ECONOMIC POLICY RESEARCH INSTITUTE

2006



M A S

Palestine Economic Policy Research Institute

**Critical Review of the Proposed
Palestinian Electronic Commerce and
Signatures Laws**

2006

The Palestine Economic Policy Research Institute (MAS)

Founded in Jerusalem in 1994 as an independent, non-profit institution to contribute to the policy-making process by conducting economic and social policy research. MAS is governed by a Board of Trustees consisting of prominent academics, businessmen and distinguished personalities from Palestine and the Arab Countries.

Mission

MAS is dedicated to producing sound and innovative policy research, relevant to economic and social development in Palestine, with the aim of assisting policy-makers and fostering public participation in the formulation of economic and social policies.

Strategic Objectives

- ♦ Promoting knowledge-based policy formulation by conducting economic and social policy research in accordance with the expressed priorities and needs of decision-makers.
- ♦ Evaluating economic and social policies and their impact at different levels for correction and review of existing policies.
- ♦ Providing a forum for free, open and democratic public debate among all stakeholders on the socio-economic policy-making process.
- ♦ Disseminating up-to-date socio-economic information and research results.
- ♦ Providing technical support and expert advice to PNA bodies, the private sector, and NGOs to enhance their engagement and participation in policy formulation.
- ♦ Strengthening economic and social policy research capabilities and resources in Palestine.

Board of Trustees

Ismail Al-Zabri (Chairman), Hassan Abu-Libdeh, Heba Handoussa, Maher El-Masri/ (Secretary), Muneeb Masri, Nabeel I. Kassis (Vice-Chairman), Rima Khalaf, Salam Fayad, Samer Khouri (Treasurer), Nabeel Kadoumi, Samir Abdullah (Director General).

Copyright © 2006 Palestine Economic Policy Research Institute (MAS)
P.O. Box 19111, Jerusalem and P.O. Box 2426, Ramallah
Tel: ++972-2-2987053/4, Fax: ++972-2-2987055, e-mail: info@mas.org.ps
Web Site : <http://www.mas.org.ps>



Palestine Economic Policy Research Institute

Critical Review of the Proposed Palestinian Electronic Commerce and Signatures Laws

2006

Critical Review of the Proposed Palestinian Electronic Commerce and Signatures Laws

This study was prepared by Palestine Economic Policy Research Institute-MAS research team, particularly by the following researchers:

Researcher: Rami Olwan: Lecturer in the Faculty of Law and Public Administration at BirZeit University

Reviewers: Dr. Basim Makhool, Research Coordinator at MAS.
Dr. Firas Melhim: Assistant Professor of Law, BirZeit University
Dr. Yousef Shandi: Assistant Professor of Law, BirZeit University

Editorial Assistants: Mohammad Jawad Al-Noury (Arabic)
Simon Boas (English)

Layout: Lina Abdallah

Funding: This Study was funded by The Ford Foundation

Palestine Economic Policy Research Institute (MAS)
Jerusalem and Ramallah

©2006 MAS

FOREWORD

This is the thirteenth critical review of a draft legislation requested by the Palestinian Legislative Counsel (PLC) from MAS, this one concerned with the proposed Electronic Transactions (E-Commerce) Law and Electronic Authentications (E-Signatures) Law. Both proposed laws represent an important step towards the launching of Palestinian e-commerce, which is especially relevant as we witness the growing importance of the internet in business deals and commercial activities.

The paper aims to conduct a thorough analysis of the text, concept and implications of the proposed laws, maintaining high standards of impartiality and academic professionalism throughout. MAS's contribution also extends to stimulating debate on the subject, encouraging the airing of the issues in public before the laws are presented to the PLC for their first reading. Through the researchers' inquiries and through public discussion, interested parties can contribute to the development of the legislation.

With the beginning of a new term at the PLC and the departure of many of the previously-elected members, we would like to extend our appreciation to our partners in the draft economic law analysis programme, and in particular to the members of the PLC's economic committee, for their trust in MAS and their cooperation with us over the period. We also extend our hand to the newly-elected PLC members and the specialised committees there, with whom we look forward to continuing our cooperation on the development of an effective legal framework for a prosperous Palestinian state. We all aspire to an institutional democracy where justice prevails, law is respected, and the creative and developmental abilities of the Palestinian people are unleashed.

I would like to thank the principal researcher on this study for his great efforts to produce such a valuable and original piece of work, which will benefit legislators and decision makers at many levels. It will no doubt improve legislative debates and increase public interest in subjects that have become part of everyday life. I would also like to take this opportunity to thank the reviewers and discussants of the paper, who enriched its contents and conclusions. Finally, I would like to thank the Ford Foundation for their financial support of the study.

Dr. Samir Abdullah
Director General

Executive Summary

This study critically reviews two draft laws prepared by the Palestinian Legislative Council (PLC), namely the Electronic Transactions (E-Commerce) Law and the Electronic Authentications (E-Signatures) Law. It also provides recommendations to improve the draft laws and create a favorable legal environment to facilitate e-commerce in Palestine.

The paper first defines the various aspects of electronic commerce, highlighting its importance and advantages. It concludes that there are currently no true e-commerce activities in Palestine, despite the existence of several companies involved in the field. Reasons for this include the fact that the market is not apparently being developed to deal with such activities, that companies do not have the necessary international expertise and skilled staff, and that legal institutions in Palestine are undeveloped. In addition, the poor legal infrastructure, and current absence of any law that regulates e-commerce, discourages companies and customers from engaging in it.

The study explores and identifies the main reasons that induce countries like Palestine to create laws regulating e-commerce and electronic authentications. These include the protection of national security, the privacy of individuals, consumer protection, recognition of e-business transactions, and regulating Certification Authorities (CA) or Trusted Third Parties (TTP).

The study presents different methods of regulating electronic authentications and e-signatures, including government intervention, industry or self-regulation, and co-regulation. The author prefers the co-regulation model, already adopted in certain countries, under which the government drafts its e-commerce laws in discussion with the private sector. This cooperation between the public and the private sector result in laws being drafted in accordance with the needs of the Certification Authorities, which will result in increased certification services and thus increased e-commerce activities.

The paper also explores different approaches to drafting such laws, including the digital signature (or prescriptive) approach, the minimalist, and the two-tier approach. The approach adopted in the Palestinian draft laws is the minimalist approach, where the provisions of the law do not specify a particular technology that may become outdated later on. This sensibly corresponds with the speed of technological innovations and the changing dynamics of e-commerce.

Model e-commerce and digital signature laws prepared by UNICITRAL (United Nations Commission on International Trade Law) were examined in this paper. It also gives an overview of e-commerce laws in the United States, the European Union and South Africa, as well as in the Arab countries including Tunisia, Jordan, the United Arab Emirates, Bahrain, Egypt, Kuwait and Lebanon. The researcher argues that most Arab countries have failed to establish a favorable legal environment for e-commerce due to the fact that they have not issued any regulations for the *implementation* of e-commerce laws, which results in making these laws ineffectual. Also, most Arab laws issued so far concentrate on electronic contracting, electronic signatures, and evidencing contracts in cyberspace, but they do not specifically deal with many of the other issues that need to be regulated as well. These include domain names and their conflict with trademarks, internet piracy and cyber-crimes, privacy, modernizing administrative laws to facilitate electronic exchange between government departments, allowing companies to use the internet and other technologies to communicate with shareholders to simplify the process of corporate governance, etc.

In addition to the legal issues, there are other prerequisites that must be met for e-commerce to develop successfully in any country, especially developing countries, including the following:

1. Advanced telecommunications infrastructure.
2. Advanced banking system that facilitates e-commerce and paying online (e-payments).
3. Advanced information technology that guarantees the security, integrity, and non- repudiation of information transmitted over the internet.

The study concludes with several recommendations for improving the legal e-commerce environment in Palestine and the proposed draft laws. Among the most important are the following:

- ✧ Integrate the two draft laws into one single e-commerce law, since they deal with the same issues and the integration of the two would reduce the financial burdens on the PNA associated with implementing such laws.
- ✧ Expand the law to cover other legal e-commerce issues that were not dealt with in the drafts.
- ✧ Clear, specific and detailed e-commerce policies should be established by the PNA in order to improve and develop this sector.
- ✧ A specialized e-commerce committee consisting of technical and legal experts should be created to be responsible for preparing further legal studies and reviews.