

# DIGITAL TRANSFORMATION OF JUDICIAL NOTIFICATIONS IN THE SAUDI LAW AND ITS ROLE IN ACHIEVEMENT OF JUSTICE

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## **Abstract**

*Judicial notification is the primary means by which the litigant is informed about all the elements of the case against him and all the requests made against him during the case proceedings. This notification is achieved through the principles of confrontation between litigants and the right of defense. Due to the significance of this end and the failure of traditional (paper) judicial notification to attain this goal sometimes, and in view of the tremendous technological developments, the need has become obligatory and urgent to make electronic judicial notifications using modern electronic instruments, due to the advantages of such electronic tools, including confidentiality, speed and verification of the person of the reporter, since electronic notification is a notification to the person who is informed in a legally binding form with full legal effects once it is completed. This, in turn, helps get rid of the negative aspects of traditional judicial notification and guarantee prompt justice. This is why the research is divided into two sections, the first one entitled the definition of judicial notification and this topic is divided into two themes, the first one entitled the essence of judicial notification and its types and the second theme entitled the importance of notification Judicial, and the second topic entitled Judicial notification controls. Again, this topic is divided into two themes, the first is entitled Controls of Judicial Reporting and the second is: how to do judicial notification and its conclusiveness.*

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### **1. Research topic:**

The topic of the research is the Digital Transformation of Judicial Notifications by adopting electronic means in notifications, as the Ministry of Justice has relied on electronic means in judicial notifications, in accordance with Royal Decree No. (M/18) on 15/1/1442 AH. The Ministry has also launched several initiatives to support digital transformation, including the Integrated Case Management System initiative, which aims to support a comprehensive digital transformation of all litigation system procedures, starting from the stage of filing a case, entering and registering it, passing through the notification procedures, and then supporting the litigation process and following up on cases.

### **2. Importance of the research topic:**

Digital transformation of judicial notifications is one of the most important achievements of the National Transformation Program, which aims to support digital transformation that shortens and makes easy the beneficiaries' job. Relying on electronic means of notification upholds confidentiality and privacy, helps in the accurate and efficient completion of transactions, saves effort and time, and is cost-effective compared to traditional (paper) notification.



### 3. Research objectives:

1. Highlighting the importance of using electronic means in judicial notifications.
2. Clarifying the electronic means approved for judicial notifications.
3. Raising awareness among the public of the regulatory impacts of using electronic means for notification.
4. Identifying the controls of electronic judicial notification.

#### Research problem:

- 1- That the regulator considered reporting using modern electronic means to be a notification to the defendant without indicating what procedure used in the event that the defendant's actual declaration could not be reached as a result of a technical error or a breach of the defendant's account?
- 2- That the regulator stipulated the methods used to report by notaries, by electronic means and by the private sector, but did not specify whether or not the identification was by choice or by arrangement?
- 3- That the regulator stipulates that electronic notification should be done by one of the following ways: Text messages sent through an authenticated mobile phone, e-mail or an account registered in any of the governmental automated systems without also specifying whether they are by arrangement or by choice? And if it's a choice, who's the burden of choosing?

### 4. Search inquiries:

The research inquiries are as follows:

1. What is the definition of "electronic judicial notification," and what are the electronic means adopted for judicial notifications?
2. Who is responsible for conducting electronic notifications in the Saudi law?
3. What is the importance of electronic judicial notification?
4. What are the controls on electronic judicial notification?
5. What guarantees the authenticity of electronic judicial notifications?

### 5. Research methodology:

The inductive and analytical approach has been adopted during this research. The related literature has been read through, the scientific material from original sources has been collected, the research has been drafted in an accurate and clear scientific manner, texts, opinions and ideas have been documented and attributed to their owners, and a conclusion that includes the results of the research, together with its recommendations, appears at the end of the research.

### 6. Literature review:

- Dr. Obeid, Husam Hamed. The Idea of Electronic Judicial Notification, published research, Basra Studies Journal, the fourteenth year, issue (34), December 2019.
- Al-Mutleq, Faisal Abdul Aziz Ali. Electronic Means of Notifications of Commercial Lawsuits, supplementary research to obtain a master's degree in the Department of Commercial Court, Higher Judicial Institute, Imam Muhammad bin Saud Islamic University, 1439/1440 AH.

### 7. Research plan:

This research is divided into two sections:

The first section: What is judicial notification?

The first subsection: Definition of judicial notification and its types

The second subsection: The importance of judicial notification



The second section: 'Judicial notification controls and how notifications are conducted

The first subsection: Judicial notification controls

The second subsection: How to conduct a judicial notification and what guarantees its authenticity

The first section

What is judicial notification?

It is divided into two subsections:

The first subsection: Definition of judicial notification and its types

The second subsection: The importance of judicial notification

The first subsection

Definition of judicial notification and its types

First: Definition of judicial notification

Judicial notification is defined as the informing of the defendant of the judicial litigation brought against him/her before the court. (Al-Jibreen 2017, p. 176). The purpose of judicial notification is to inform the person to be notified of the judicial papers and the measures taken against him/her in the manner prescribed by law (Al-Qashtini, 1976, p. 192), so that they can exercise their right to defense and achieve the adversarial principle.

Second: Types of judicial notification

Judicial notification is divided into two types: There is the traditional judicial (paper) notification, and there is the electronic judicial notification (using electronic means), which was approved by Royal Decree No. (M/18), dated 15/1/1442 AH.

The electronic judicial notification does not differ from the traditional one in terms of content or purpose. There is a difference, however, and it lies in the means used in the notification procedure. The electronic means is what gives judicial notifications their electronic characteristic. The legislator stipulated that, "It is permissible to use electronic means in judicial notifications, and will entail such effects similar to other," (Article 11/2 Saudi Law of Civil Procedures) Accordingly, electronic judicial notification can be defined as the informing of the person who it is required should be notified, of the judicial papers and the actions taken against him/her, using electronic means that have been approved by the legislator and confirmed by the law (Obeid, 2019, p. 213)

The second subsection

The importance of judicial notification

Traditional (paper) judicial notification is very important, as it is through notification that litigation takes place (Muwafi, 2016, p. 70), and the defendant is able to respond to his/her opponent's claim in a timely manner (Al-Fawzan, 2010, p. 243). Notification is a legitimate right for both litigants, guaranteed by Sharia and the regulation in order to ward off the injustice that may occur to one of the parties as a result of that party's not being notified, as well as to be more affirming of equality in justice (Al-Yahya, 1433 AH, p. 25). What helps to achieve this function effectively, accurately and more efficiently is the adoption of electronic means of notification. Having many advantages, the modern electronic means of communication can overcome the many obstacles that the traditional judicial notification would otherwise encounter. These advantages are as follows:

### 1. Speed and ease of process:

Compared to traditional means, modern means of communication are far speedier, a feature that makes their use a must, especially in summary cases where the period of appearance is within twenty-four hours. Such period may, in compelling circumstances, be reduced by court order (Article 207, Saudi Law of Civil Procedures). In the event that the period is less than twenty-four hours, it is required that the notification be made to the litigant himself/herself or his/her representative in the same case, and that the said person be able to reach the court at the specified time. (Article 207, Saudi Law of Civil Procedures). This traditional notification is usually criticized. However, by using electronic means of notification, the typical slowness of traditional means is averted, proceedings are expedited, and missed deadlines are avoided as well.

### 2. Effort and time-saving and cost-effectiveness:

Electronic notification contributes to reducing expenses, as reliance on a large number of process servers to complete the notification procedures, with the concomitant expenses, wages and salaries, represents a burden that is not easy to handle (Omar, 2004, p. 182). The electronic notification also contributes to saving time and effort, as it takes place within a few moments, with high accuracy and not involving transportation, effort and expense. Thanks to this method, the court can, simultaneously and in a few moments, inform as many defendants to attend judicial sessions as required.

<https://shortest.link/IQAp>

### 3. Flexibility in achievement:

The regulator stipulates that “A process may not be served at a place of residence before sunrise or after sunset or during official holidays, except in compelling circumstances and with the written permission of the judge. It may be conducted at any time if it is through an electronic means.” (Article 12, Civil Procedures). It is clear, from the aforementioned article, that the court may notify the defendant of the judicial procedures taken against him/her before sunrise or after sunset or during official holidays and without prior permission from the judge, if electronic notification is used. This indicates flexibility in achievement, non-adherence to specific deadlines, and speed in completing work.

### 4. Reducing the use of paper-based transactions:

Electronic judicial notification eliminates the accumulation of paper transactions, allowing quick access to information and speed of retrieval and linking between them (Otani, 2012, p. 28)

### 5. Maintaining confidentiality:

Electronic notification is one of the e-transactions that are conducted or implemented electronically; electronic means are characterized by confidentiality, as only the sender and recipient will have knowledge of the information that is sent through this electronic means (Jamali, 2000, p. 3). In contrast, the traditional means of judicial notification may want in confidentiality, since it is conducted by the process server delivering the notification and its attachments to the recipient at his/her place of residence or work, if any. Otherwise, the server shall deliver a copy of the notification and attachments thereto to the person to be served at his/her place of residence or work, if available; otherwise, he/she shall deliver the same to whomever he/she deems to be the agent or person working for the intended recipient or to any of the intended recipient's family members, relatives or in-laws residing with him/her. If none of them are present or if the one present refuses receipt of said notification or is a minor, the copy and attachments shall be delivered, as the case may be, to the Umdah (chief of the quarter), the police station, the administrator of the township or the chieftain of the tribe within whose jurisdiction the place of residence of the person to be served lies, in that order, and obtain their signature on the original acknowledgment of receipt. <sup>(1)</sup> This emphasizes fully the fact, that in the traditional method there is the possibility of others becoming aware of the judicial

<sup>1)</sup> See Article (14) of the Law of Civil Procedures.

litigation or of the judicial procedures taken against the notified, as the person serving may not find the notified in his/her place of residence, so he/she delivers the notification to the notified's relatives, in-laws or family members residing with him/her, which results in disclosure of confidentiality, just as the report goes to the place of residence of the advertiser for him to deliver the announcement; this in itself is an indication for others that there are judicial measures being taken against him. And if we look at the electronic notification, we find that these problems are to a large extent addressed.

The second section

Judicial notification controls and how notifications are conducted

It is divided into two subsections:

The first subsection: Judicial notification controls

The second subsection: How to conduct a judicial notification and what guarantees its authenticity

The first subsection:

Judicial notification controls

Judicial notification controls are intended to identify the person responsible for preparing and announcing the judicial notification paper, and to clarify what data should be included in the judicial notification sheet. We will address that in the following lines:

First: The person responsible for preparing the notification sheet

In the case of traditional (paper) notification, a process server is responsible for preparing the notification sheet, and, when needed, the (Secretary) in the judicial jurisdiction shall be in charge (Article 27/4, Regulation of the Saudi Judicial Assistants), where the regulator stated that "Processes shall be served by process servers at the order of the judge or the request of the litigant or court administration. Litigants or their agents shall continue the proceedings and submit papers to process servers for service. Service may be carried out by the plaintiff if he so petitions." (Article 11/1, Saudi Law of Civil Procedure). As for the electronic notification, it is done electronically, whereby the plaintiff files his/her process electronically to the competent court. The court (through one of the assistants appointed for this purpose) receives these processes and records them electronically, and then the notification is also done electronically, since the ones who direct the electronic notifications are now (Al-Mutleq, 1440 AH, 26):

1. The judge, through an automated system of the Ministry of Justice for judges;
2. Judicial jurisdiction, which also sends an electronic notification, after being directed by the judge; and
3. The Department of Cases and Decisions also sends electronic notifications.

Second: The information that must be included in the notification sheet:

In the case of traditional (paper) notification, a service of process must be in duplicate, an original and a copy. If several persons are served, a copy shall be served to each person. The process shall include the following:

- (a) subject of the process, and date of service specifying day, month, year and time;
- (b) full name, identification number, occupation or job, place of residence and place of work of the person requesting the process, as well as the full name, identification number, occupation or job, place of residence and place of work of his/her representative;



(c) full name of the defendant and any available information relating to his/her occupation or job, place of residence and place of work. If his/her place of residence is unknown, the process shall be served at his/her last known place of residence;

(d) name of the process server and the court where he/she works;

(e) name and capacity of the person receiving the copy of the notification and his/her signature on the original, or a proof of his/her refusal and reason therefor; and

(f) the server's signature on both the copy and the original.

In case of government agencies, the name and location of the agency shall be deemed sufficient for the purposes of paragraphs (b and c) of this Article. (Article 13/1, Civil Procedures).

As for the data that must be included in the electronic notification, they are as follows: (Controls of Electronic Notification before the Board of Grievances)

1. full name, identification number, occupation or job, place of residence and place of work of the person requesting the process, plaintiff or objector, as well as the full name, identification number, occupation or job, place of residence and place of work of his/her representative;

The aim of this is for the defendant to be aware of who filed against him/her in a lawsuit, or to take action in it. By doing so, the defendant may realize the reason for the lawsuit brought against him/her, which would prompt him/her to initiate a reconciliation, or to argue that the lawsuit was not accepted due to the lack of capacity or interest in the lawsuit filed by the plaintiff.

2. full name of the defendant and any available information relating to his/her occupation or job, place of residence and place of work. If his/her place of residence is unknown, the process shall be served at his/her last known place of residence, and the mobile phone number, if possible. In case of government agencies, the name and location of the case shall be deemed sufficient.

The aim is to actually reach the defendant and not simply to have him/her being suspected by another person, and to ensure that the notification reached him/her and that he/she received the same (Al-Jibreen, 195).

### 3. Subject matter of notification

The subject of the notification must be clear so that the defendant can know the subject matter of the case in order to prepare to confront his/her opponent with the papers and documents he/she has and to be able to exercise his/her right of defense.

### 4. The name of the court, its location and jurisdiction

In order for the defendant to be aware of the court before which the case is brought, and whether this court has jurisdiction in terms of subject matter or place, to consider the case or not, since it is on the basis of the subject matter of the case filed against him/her and on the basis of the defendant's residence that the competent court shall be determined. If this is not observed, the defendant has the right to plead that the court lacks competence in terms of subject matter, location or jurisdiction.

### 5. Time and date of the hearing

The time and date of the hearing must be set by the hour, day, month and year, in order for the defendant to be able to exercise his/her right to defense, and to prepare for the consequences that will follow.

6. A copy of the process or an electronic link to access its content <sup>(M5/H/</sup> Decision of the Saudi Administrative Judiciary Council, Article 13, Saudi Law of Civil Procedures).



The Supreme Judicial Council may, if necessary, add other data, means, and attachments (Article 13, Saudi Law of Civil Procedures).

These are the data that must be included in the electronic notification. I have not made mention, among them, of such items as the name and capacity of the person to whom the copy of the notification was served, his/her signature on its original, or proof of his/her refusal and the reason for it, or a statement of the signature of the process server on both the original and the copy, as these data need to be included in the traditional (paper) notification, not the electronic one. The electronic notification is made to the person who is served, and it thereby produces its statutory effects; it does not require the signature or the automatic response upon receipt. It is sufficient that only the notification's arrival at the notified's address is verified (Al-Mutleq, p. 58).

### The second subsection

## How to conduct a judicial notification and what guarantees its authenticity

### First: How to conduct the traditional judicial notification

The traditional (paper) judicial notification is served by the server's attending the residence of the defendant (the served) or his work, if any, for notification. When the server performs this procedure, he/she may face many possibilities: (Article 14, Saudi Law of Civil Procedure).

First possibility: The server finds the served party and delivers notification to him/her and takes his/her signature on the original acknowledgment of receipt. This notification is considered in person. The notification to the served party through his/her national address is also considered a notification in person, if the person requesting the process submits a statement from one of the mail service providers that includes the notification sheet to the address of the served party, and the accuracy of the national address (Article 11/1, the Executive Regulations for Saudi Law of Civil Procedures).

Second possibility: That server does not find the served person but finds someone whom he/she deems to be the served individual's agent or a person working for him/her, or any of his/her family members, relatives or in-laws residing with him/her. In such case, the server shall deliver a copy of the notification to the same and obtain their signature on the original acknowledgment of receipt.

Third possibility: If none of them are present, for example, because the door is locked, or if the one who is present refuses receipt of said notification or is a minor, the copy and attachments shall be delivered, as the case may be, to the Umdah (chief of the quarter), the police station, the administrator of the township or the chieftain of the tribe within whose jurisdiction the place of residence of the person to be served lies, in that order, and obtain their signature on the original acknowledgment of receipt. The server shall send a letter - via registered mail - to the person to be served, at his/her place of residence or work, notifying him/her that a copy has been delivered to said party.

## Second: How to make an electronic notification

The regulator stipulated that “electronic notification shall be served by one of the following means: Text messages sent via authenticated mobile phone, e-mail, or one of the accounts registered in any of the government’s automated systems.” (Article 13/2, Saudi Law of Civil Procedures). It is decided that notification using this means entails the same consequences as notification by the methods established in judicial systems. It is clear from the foregoing that the regulator specified the electronic means through which electronic notification is carried out, which are:

1. Text messages sent via mobile phone, provided that it is authenticated by the competent authorities

A mobile phone is a wireless communication tool that operates through a network of broadcast towers distributed to cover a specific area and then interconnected via fixed lines or satellites. With the



development of these devices it has become more than just a means of voice communication (<https://cutt.us/cVonl>) It has become a compact laptop computer built into a mobile phone. Smartphones are now manufactured with a display screen and smart technical software to manage personal data. A smartphone is also a device that carries an operating system that allows running various computer programs such as: web browsing, e-mail, music, and many different applications. Among the tasks of the smartphone are photography and internet access (<https://cutt.us/Yx7WT>) in addition to the ease of sending and receiving SMS text messages SMS (Obeid, 2019, p. 313).

In order for the mobile phone to be adopted as one of the electronic means of judicial notification in the Saudi system, it is required that it be authenticated by the competent government agencies, in accordance with the following:

a. By reporting its use in a contract between the two parties to the case, if the receiving of notifications on it is stipulated.

b. By proving it in the statement of claim or the statement of counterclaim.

c. By proving his/her connection to the person to be served, registered with the National Information Center Absher, or the electronic judicial system of the Board (Mueen). It is permissible to enable the concerned persons to change their confirmed addresses (Articles 2, 3, 4 of the decision of the Saudi Administrative Judicial Council). The judicial jurisdiction, where the case is pending, or the Department of Cases and Decisions at the court notifies the plaintiff, his/her attorney in the same case, or his/her representative, through an automated system that the judges apply on their electronic system, and same is the case with the judicial departments of the courts, which are linked to the Absher Information Center, by sending a text message to the mobile phone number documented by the National Information Center, to whomever the judicial notification was served (Al-Mutleq, p. 45).

2. Notification is made by correspondence on the e-mail of a natural or legal person. E-mail is defined as a means that allows the exchange of written messages between devices connected to the Internet (Ibrahim, 2007, 98:102). The regulator authorized its use as one of the electronic means considered in notification, if the e-mail domain belongs to the served person, or if it was written in a contract between the parties to the case, on its website, or documented with a government agency. <https://cutt.us/TTuYR>

3. The notification is made through one of the accounts registered in any of the government automated systems <https://shortest.link/IQXo>, since if the defendant is notified through any of

these accounts in the same case, it is considered a legal and personal notification with its legal effects (Circular of the Supreme Judicial Council, No. (1020/T), dated 4/5/1439 AH).

The serving by electronic means is considered as received unless there is a notification that delivery of what was sent is not possible, or the served person proves that it was not received by the competent authority. If it is not possible to serve by electronic means, the notification shall be in accordance with the methods established in the regulations of Civil Procedures. The notification is considered not possible, if it is not possible to serve (Articles (6, 7) of the Administrative Judiciary Council's decision held on 19-20/10/1439 AH). The legal effects shall not result as regards one of the parties to the case who was not notified, or could not reach the access link. The legal service shall record the result of the date of notification, and the arrival of the link, in the session minutes (<https://shortest.link/IQzi>).

Third: Authenticity of electronic notification

The regulator stipulated that "Particulars provided in statements of claim, processes, case records, representations and the like, may be entered electronically and shall have the same legal effect as written documents, in accordance with the Electronic Transactions Law." Article (72) of the Law of Civil Procedures.



It is clear from the aforementioned text that judicial notifications may be recorded electronically, provided that such recording is carried out in accordance with the Electronic Transactions Law. The Electronic Transactions Law aims to control the use of electronic transactions and signatures, leading to: (Article (2) of the Electronic Transactions Law issued by Royal Decree No. (M/18), dated 1428 AH.

- a. Ensuring the credibility and integrity of electronic transactions, signatures, and records.
- b. Setting uniform legal standards for using electronic transactions and signatures and facilitating the implementation thereof in both private and public sectors by means of reliable electronic records.
- c. Facilitating electronic transactions and signatures.
- d. Removing obstacles facing use of electronic transactions and signatures.
- e. Preventing misuse and fraud in electronic transactions and signatures.

The regulator also stipulated that “If any law in the Kingdom requires that the document, record, or information submitted to another person be written, then submitting it in an electronic form will fulfill this purpose.” (Article (9) of the Electronic Transactions Law).

Therefore, electronic transactions (one of which is electronic notification) are considered binding, and their validity may not be contested on the grounds that they were wholly or partially conducted in electronic form, provided that such transactions are carried in compliance with the conditions provided for in the Electronic Transactions Law (Article 5/1 of the Electronic Transactions Law).

## 8. Conclusion

The conclusion includes findings and recommendations, as follows:

### First: Findings:

1. The similarity of electronic judicial notification with traditional (paper) judicial notification in terms of method and purpose, and their difference in terms of the means used.
2. The use of electronic means of notification is of great importance in the judicial system, as it is time-, effort- and cost-saving; transactions are completed in record time; it eliminates slow procedures and reduces the number of in absentia cases.
3. Judicial notifications shall be served by the judge, the judicial jurisdictions, or the Department of Cases and Decisions.
4. Notifications made using electronic means are binding; their authenticity may not be contested on the grounds that they were conducted electronically.
5. Notification using one of the electronic means shall be considered as process service to the served person.

### Second: Recommendations:

1. Spreading awareness of the regulatory effects of notifications using electronic means, by holding seminars and meetings related to the topic of research, due to the novelty this method that some people may not be aware of.
2. The regulator is advised to collect the provisions of the electronic judicial notification by issuing a regulation that deals with its definition, time, controls, authenticity, its servers, and the consequences for violating its provisions.
3. The regulator is advised to determine who is competent to choose the method of notification (electronic or paper). Is the matter up to the litigants, the judge, or the court administration?
4. The regulator is advised to specify the main means of notification so that it is the one used in general, and if that means is not possible, other methods will be resorted to, since the regulator decided several methods of notification but did not indicate which one to start with, then which is next, if the precedent is not viable, and so on.



5. The researcher invites other researchers to conduct more scientific research on the topic, given the lack of scientific research that touches on it.

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- [1] Circular of the Supreme Judicial Council, No. (1020/T), dated 4/5/1439 AH.
- [2] The decision of the Administrative Judiciary Council regarding the Controls of Judicial Notification by Electronic Means before the Courts of the Board of Grievances issued in its session held on 19-20/10/1439 AH.
- [3] Regulations of Judicial Assistants issued by Resolution No. (50335) dated 8/7/1435 AH.
- [4] The Electronic Transactions Law issued by Royal Decree No. (M/18) dated 1428 AH.
- [5] The Law of Civil Procedures. This is the text of the article after it was amended by Royal Decree No. (M/18) dated 15/1/1442 AH.