
Analysis of the legal and commercial challenges of electronic trading companies

Younes Amraie¹, Ebrahim Abdipour Fard^{2*}

1. PHD student of Private Law Department, Emirates Branch, Islamic Azad University, Dubai, United Arab Emirates.

2. Associate Professor of Private Law, Qom University, Qom, Iran

Article history:

Received date: 10 April 2017

Review date: 24 May 2017

Accepted date: 22 July 2017

Keywords:

Electronic Business Companies,
Electronic Business Rights,
Information and Communication
Technology Rights.

Abstract

Introduction: This paper examines legal dimensions and issues of electronic business companies and on the basis of that, this main question is proposed “what are the significant and main legal challenges in the arena of electronic business?”
Methodology: This paper is descriptive-analytical (qualitative) and applies deduction methodology using understanding power of researcher in appreciating legal scans related to electronic business based on available facts, evidence and cues.
Findings: Research findings indicated that the main and significant challenges facing electronic business companies are jurisdiction interference, agreement validities, supporting consumer rights, information confidentiality and copyright.
Conclusion: Electronic Business Company is an electronic company based on electronic business that its identity is related to the concept of electronic business, as with removal of electronic component, this becomes meaningless and its activities stops. In this way, the emergence of electronic business companies is related to the concept of electronic business and development of electronic business is along with spreading its definition. Electronic component of electronic business companies also indicates modern information and communication technology that only includes internet, intranet, and command codes of mobile phone and doesn't include other telephone communications like fixed and mobile phone, fax, telegram, etc.

Please cite this article as: Amraie Y, Abdipour Fard E. (2017). Analysis of the legal and commercial challenges of electronic trading companies. *Iranian journal of educational Sociology*. 1(5), 209-215.

* Corresponding Author Email: E.abdipour.qom.ac.ir

1. Introduction

Electronic business was emerged for the first time during 1960s in private networks by giant companies; these networks developed information exchange and electronic transfer of money especially through banks. Small companies wished the competitive benefits of giant companies using electronic business, but by development of internet, these companies gained the access to electronic business. In fact, though internet was founded as closed network by USA army for exchanging and communicating security information, but consequently it was evolved into general open system available to people all around the world. On this way, sudden growth of internet in two last decades of twentieth century transformed lifestyle and communication among people and how the companies do business and created increasing range of business companies based on electronic identity. Hence, in this paper, electronic business companies referred to those of business companies that their business transactions are not possible without using new information and communication technologies such as internet and electronic communications from far away. So, although nowadays many small and big companies all over the world organize their tasks through electronic business and some other through traditional business, but electronic business companies almost totally are dependent upon electronic business and can't do their preliminary activities without them (Abazari Fomeshi, 2007).

2. Methodology

This paper is descriptive-analytical (qualitative) and applies deduction methodology using understanding power of researcher in appreciating legal scans related to electronic business based on available facts, evidence and cues.

3. Findings

Jurisdiction Interferences: Certainly rules governing business transactions in cyber space are so different from available regulations for business transactions in real world. These differences are mostly relate to characteristics provide far attending in cyber space and differentiate it technologically from space and physical dimensions. The network situation is unrelated to geographical positioning that it's impossible to locate physically a source or an internet user. In real space and location, a company or business party usually can detect the individual or personal place of the other party, but doing this in cyber space is so difficult. While in the cyber space there is no spatial dimension, this question is proposed that on the basis of which communicative factor the righteous court and ruler's rule should be identified? Have legal systems formulated new regulations for solving this problem or conform the created problems in cyber space to available legal rules? Therefore, competency and ability are a kind of right and responsibility that according to the law, court, judicial and non-judicial authorities should have them in dealing with claims and solving disputes. Whenever a claim containing an external component is presented, the court should treat this important issue that whether it has the competency for dealing with presented claims or not before proposing laws or determining the governing rules. On the other hand, before determining the governing rules about the claim, the court should assess its competency or non-competency kin dealing with the claim. Therefore, determining competency in cyber space is one of the most challenging issues in law. Judicial verdicts issued from judges indicate that there is no required legal transparency in this respect, as the rules of private international rights indicating governing regulation and righteous court are spatial based, while cyber space has no spatial dimension. This borderless space ignores political and geographical borders and cyber space users can access websites of users from other countries and

commercially transact each other. These transactions are upon jurisdictions of other countries. Since the websites are available all over the world. Because of that, courts have indicated competency over external websites and by using rules for solving internal conflicts has shown their capabilities. The rules for traditional competency administrate unlimited applying of competency upon individuals and properties. As the internet websites can be accessible in every country, each government can claim legal competency for business transactions with the website. As a result of judge competencies, the courts of that country indicate competency for that legal act. So applying traditional competency principles in cyber space leads to competency conflict. Hence, cyber space has caused new and important challenge in traditional competency rules. This challenge has forced legal literature and law maker procedure to react and has made the governments to find a solution for legal challenges and entrust legal procedures in cyber space. This issue requires transparency of governing rules in cyber space and the cyber space is especially out of borders that we can consider it in the arena of international private law duties. International private law has made the most number of challenges. So, international private law should have an appropriate response to governing criteria for determining dominant rules and competency for contractual and non-contractual claims in cyber space but the rules of traditional international private law has been ordained based on spatial nearness while there is no spatial dimension in cyber space. In recent years, the emergence of internet and development of electronic communications have led to developing legal relations in domestic and international level. When disputes and claims have external components, the first issue is detecting competent court and then choosing the governing rule for the dispute. As the rules for solving conflicts in international private law are related to spatial dimension, the court and regulation for the place of concluding contract, place of committing crime or delinquency, the rule of related country and the rule of place for preparing documents are familiar criteria in conflict solving rules indicating the competency of court and governing rule in determined place. In the electronic communication age, the spatial dimension is lost. In addition, rules for solving conflict in some countries are affected by factors which don't exist in electronic world. So, legal systems have to renew their rules for solving conflict or propose strategies for applying them in electronic environment (Qasemzadeh, 2008:124).

In this paper we examine some of the related points to the issue of interference or non-interference of factors in business rules, articles 201, 141, 5 of modification bill a part of business law in 1347. According to article 201: "in following cases each beneficiary can request the company dissolution from the court: 1- If there is no action one year after company registration and also if the company activities have ceased more than a year. 2- If annual general assembly has not established for dealing with accounts of each fiscal year up to ten months from the date set in the charter. In this way, corporation dissolution cases are related to issue of final verdict of court and it has been predicted in article 201 and seemingly it has opposite concept with fifth and sixth negation. While other dissolution has been presented in article 5 of modified bill and corporation dissolution has been proposed in article 141 of this bill. As it is noticed, four company dissolution cases have been stated as conditional sentence in article 201, article 5 and another one in article 141. Other related cases are articles 541, 542 and 549 of business regulation. According to article 541 of this law: "the trader is announced delinquent bankrupt in following cases: 1-If it becomes evident that personal expenses or expenses of referred house in ordinary days are higher than earnings. 2- If it becomes evident that trader has transacted larger amounts of money related to his/her asset that is considered fictitious in business world or its benefit is upon an utter event.

3- If the trader for postponing bankruptcy has purchased higher than normal or has sold less than normal or has used useless devices for the same purpose to get money whether from borrowing or issuing bill of exchange 4- If s/he has preferred one of the creditors to others after cease date and has paid his/her debt. In article 542 also some cases have been predicted as optional and intentional bankruptcy. According to article 671 of Islamic punishment law, alternative to article 543 of business law, "punishment of intentional bankruptcy is imprisonment from six months to two years". Now if the trader commits two or

several acts of articles 541 or 542, this issue arises that whether several punishments should be considered for him/her or one punishment is enough? This issue is also presented in article 549 of business law and article 670 of Islamic punishment law. According to article 549, "Every bankrupted trader that has lost his/her registrations or has concealed some parts of his/her assets or has eliminated them by exchanging or factitious transactions...is announced as factitious bankrupt and punished on the basis of criminal law." Article 670 of Islamic criminal law factitious bankrupt is imprisoned from one to five years. If trader commits two items of mentioned cases in article 549, should for every mentioned case, separate punishment is considered for him/her or a total punishment is determined for sum of them? According to articles 541, 542 and 549, each of these cases, separately are effective in punishment and on the basis of their emergence in different situations; various punishments are regarded for the trader. It is certain that for issuing the factitious bankruptcy verdict, it isn't necessary that all mentioned items summed in the mentioned articles and occurrence of each item is enough for issuing the factitious bankruptcy verdict. Now that occurrence of each item is enough, if two conditions meet, the punishment should be varied. But this idea cannot be accepted, not because of its emergence, but the factitious bankruptcy is considered a crime, but neither of items of the articles is considered crime so that we consider crimes or punishments according to their number. We deduce from articles 5, 141 and 201 that lawmaker of business law also gives up the emergence of each conditional sentence so that every condition in punishment is effective and the punishment becomes compatible with the condition. Of course, the result obtained from civil law and business law does not mean confirming incomplete reasoning, but it means that non-interference of cause and effects is based on emergence of wisdom and common sense and the lawmaker basically respects this common sense, wisdom ad emergence and applies it (Katozian, 2008: 76).

Competency of Smart Systems in Electronic Business Companies Tasks: Wonderful speed, low cost and economic justification of using internet and electronic systems in business affairs and even non-business affairs have caused that electronic contracts are replaced with traditional contracts and develop extraordinarily and consequently new challenges have been arisen in different arenas (Sadeqi, 2013: 12). One of the most important challenges is related to smart systems competencies in performing activities of electronic business companies. In fact, new technologies enable advanced computer programs called computer smart systems to conclude electronic contracts independently without human interference and attracted attention of legal writers and organizers of international conventions. This system can autonomously detect conditions for accepting contracts merely based on knowledge and intelligence. The main legal question is that whether concluded contracts by this system are considered correct and valid? In analysis and explaining this smart system and validity of concluded contract by this system, some consider it merely as will announcing device like telephone and fax and exonerated themselves from proposed errors. Some others consider smart system as user agent or representative and finally the third group assigns a special identity for this system and considers it necessary to grant a legal character to the system (Toqyanipour, 2014: 10).

The mentioned issues about electronic business are in fact apart of wider legal issue as legal value of electronic evidence. Nowadays, different information which plays an important role in legal claims or criminal procedures is not recorded in paper cases, but they are saved and archived in a computer system or in a form readable with a computer. Increasing use of these methods in business relations and people's daily lives has created a new kind of evidence with different identity called electronic evidence. Though the identity of electronic evidence is different from traditional evidence, but we can provide elements in electronic evidence, required by law to be validated by applying technical methods. According to this, electronic business law in Iran ratified in 1381 matches message sender and electronic sign with traditional writing and signature, considers electronic evidence as new and valid kind of evidence and equals their value as ordinary documents. So, if the electronic evidence has the requirements of secure evidence, any doubt or denial about them is not acceptable (Davodi, 2011: 35-37).

Therefore, we can conclude that in sum, the competency of smart systems in electronic business companies in Iran's Law (and before that in legal system of many other countries) has been formalized, though reliance upon electronic evidence in business affairs requires special occasions that will be examined in next chapter in issues of electronic business. Current weak points in solving legal problems of electronic business companies: By development of communication and information technology and technologies related to them, all countries, especially developing countries for complete usage of these technologies, are developed the required infrastructures. Among the vital infrastructures is legal infrastructure of developing electronic business companies and electronic business that provides a safe place for both transaction parties (Azizi et al: 2005: 65).

In fact, development of electronic business companies requires proper legal framework to ensure these kind of companies about enough protection in concluding contracts and fiscal transactions. In spite of ratification of electronic business law and formulating comprehensive plan for developing electronic business in Iran as the fourth development plan in our country, these ratifications still have so many challenges in coordinating among different related systems and there is wide gap between implementing them and current legal infrastructures. On the other hand, the weakness of current laws about legal problems, customs, tax and non-existence of suitable formulated laws for fighting with electronic crimes are serious blocks in this case (Jafarnejad et al, 2009:3).

Conflicts among domestic and international rules related to electronic business companies: One of the important legal issues about activities of electronic business companies is the conflict of laws and choosing the governing rule in these companies; as the possibility of concluding business contracts by these companies in wide and transnational level is higher than traditional business companies. So, if the seller and buyer of the goods, information or service each reside in different countries, the first problem that is proposed is than which law will be applied in their contractual relations? Of course, detecting internal regulations of a country with general subject of governing rule isn't necessarily equal with all aspects of the contract; as the courts may avoid from partial or total applying law because of its discrepancy with public order, governing rules and ... Electronic business law in Iran doesn't include conflict of rules and electronic courts and in unitary model law there no special order about this matter. In civil law of Iran, the intonation of article 968 in civil law indicates restriction of free decision of both parties if both of them are Iranian. According to this article, "the commitments to contracts are upon the law of conclusion of contract, unless parties are not native and have agreed implicitly or explicitly on another law." From the perspective of most jurists, contents of article 968 of civil law are considered mandatory civil law and both parties can't base the contract concluded in Iran on laws of foreign countries. As some jurists have said, considering article 968 of civil law as mandatory law is against legal logic and creates problems in international transactions and so this rule of conflict solving will be implementable just in concluded contracts of Iran (Abazari Fomeshi, 2007: 389-391).

In sum, because of variety and complexity of activities of electronic business companies, we cannot determine a special law based on external activities of these kinds of companies, as the activities of these companies may be related to various legal subjects and descriptions that implementing all of cases are rationally out of lawmaker's authority. For exact, scientific and fair determination of rule governing mentioned contracts in the first step, court or arbiter should try to apply law for both parties. Of course the choice of governing rule cannot be interpreted as usual or insignificant referrals in the contract, but the implicit agreement of parties, should be based on common explicitness. If both parties don't say anything, the righteous court without internal law evidence, regarding legal criteria and accepted theories, should consider the governing rule as a basis for its decision-making which is not necessarily internal regulation. In this respect, two points seem important. At first, the court in determining the governing rule in external activities of electronic business companies should consider this issue that which country or countries are mostly related to the contract, so they apply the best law about the contract. In recognizing the relevance,

usage, conditions of the issue, the international conventions and transnational characteristics of electronic contract should be considered. Secondly, the court should not uselessly add to the range of limitations in governing rule of electronic contracts agreed by both parties or by applying conflict-solving rules. Wide interpretation of mandatory rules and internal public order not only causes inequality, it brings about misinterpretation based on inflexibility of internal regulations among the traders of other countries that is a barrier for wide interaction and communication among Iranian electronic business companies and other countries (Karimi, 2013: 2).

4. Discussion

Determining the main and significant legal and social challenges confronting electronic business companies has been in the arena of electronic business. Electronic business companies are at least divided into four parts. First, Business Company that its goal is producing goods, information or presenting electronic service. Second, Business Company that its goal is producing goods, information or presenting modern information technology service. Third, the company that its operation structure and activity is in electronic context and the selling of products/information or providing service is performed by using modern information and communication technologies. And fourth, business company that most of its tasks are performed electronically and far away. The main and significant legal challenge confronting electronic business companies is primarily user's security and validity of electronic documents and evidence. The issue of users' security divides into security of electronic payment, account information and confidential information of customers. Second, electronic business companies are faced with three issues of supporting consumer rights, judicial competency arena and copy right.

Most tasks of electronic business companies are performed with World Wide Web. Therefore the legal issues of electronic business companies that use intranet or command codes for leading their business are not so different with companies of the first group. In fact, though the technical conditions of task in the context of internet, intranet or command code are different with each other in some cases, but this reality does not have any effect on their legal issues. Electronic payment as the main element of electronic business and electronic business companies is related to e-money. E-money is in fact using internet network, intranet or command codes for transferring money between bank accounts or paying the cost of goods, information and service. In this respect, the main legal challenge is security attacks that can be happened in communications and consumer (level), or the merchant or transferor (e-money) or some attempts to steal (electronic) devices of the merchant or consumer for making fake devices. Security attacks to these systems occurred in different ways and can have civil liability for business companies. In this stage, definitely, more than one company is involved, the seller company and the intermediate company for electronic payment. The liability level for each company will be different depending on the contract between them and regulations of organizer institution for electronic payments. Using all security devices can provide a security comparable with physical transactions and of course the efficiency of this device is mostly dependent on correct design of the system and also arranging and predicting a series of policies and methods implemented seriously. Continuous growth of security technologies also requires updating criteria and security devices based on available advancements to be effective against new threats. Therefore, electronic business companies should ensure their customers that they have matched their devices with these advancements, otherwise they can be unusable and if security attacks are happened, not only the electronic business companies are liable but also the customers wouldn't trust the electronic business companies anymore. With respect to the account data and confidential information, the electronic business companies are required to keep the significant personal information in case of tax evasion. There are always inaccurate use of customer information by the electronic business companies. In addition to

abuse of bank account information of customers that is possibly restricted to the electronic business companies as electronic payment agents, other electronic business companies are also exposed to abuse of general information of their customers such as selling their contact information to advertisement companies. It is obvious that if electronic business companies do this without their customer's permission, they'll be confronted with legal challenge. Another issue regarding confidential information is saving users' information. Many of marketing and business companies use cloud for saving information that use popular producers for users' insurance and avoiding legal claims of confidential information. If electronic business companies use cloud for saving data, they should dedicate a paragraph in the section of usage conditions to occasions of breaking privacy and disclosure of users' data. For instance, Amazon Company has announced in its website that it has no liability in case of losing data. So in case of information disclosure, the third company, i.e. the cloud saving will be liable. The second main challenge is validity of electronic documents and evidence that electronic business companies are faced with it. Most of this challenge is related to the regulations in this respect. Reliability of electronic documents by stability criteria indicates their durability regarding ordained regulations about secure signatures. Even the congruence of electronic document content with used safety method in producing them though can be considered as judicial record by judge, but it cannot be considered as a principle in law, that despite the agreement of parties of claim in this respect, the law invalidates it as mandatory verdict. The necessity of presenting original document as proving evidence has caused a gap that despite the validity of electronic copy, merchants don't risk to give money or goods to the parties with electronic documents. The mentioned cases indicate the inability of modern technology in dealing with exact legal standards.

References

- Abazarifomeshi, M. (2007). Business law in judicial procedure, Tehran: Khorsandi Press.
- Azizi, Sh, Khodadahosseini, H and Elehi, Sh. (2005). Determining barriers and strategies for using electronic business: Case study: Iran Khodro, Journal of Commerce, tenth edition, no 37.
- Davoodi, S. (2011). The role of electronic documents in claim proving evidence in Iran, M.A. dissertation, Azad University, international branch of Bandar Anzali.
- Jafarnejad, A, Sajadipanah, A, Safavi Mirmahale, R and Ajali Qashlajoqi, M. (2009). Examination of barriers and proposing strategies of applying electronic business in developing export of handmade carpet of Iran, Journal of Commerce, thirteenth edition, no 37.
- Karimi, S. (2013). Convention of using electronic communications in international contracts and Iranian annexation, M.A. dissertation, Tehran University.
- Katozian, N. (2008). Civil law, determined contract span, exchangeable transactions-possession contracts, First volume, Tehran: Press Corporation, tenth edition.
- Sadeqi, S. (2013). Concluding contract by computer smart system, M.A. dissertation, Faculty of Law and Political Science of Qom University.
- Toqyanipour, A. (2014). Concluding contract in cyber space from the perspective of international law, M.A. dissertation, Faculty of Law and Islamic Thought of Shahid Ashrafi University of Isfahan.