

eBCM Agreements: **LAWS AND REGULATIONS**

LEARNING OBJECT #05

LAWS AND REGULATIONS

Outline

- Introduction
- The reason for companies knowing about eBusiness law
- The “must-know” eBusiness legal issues
- Where to look for additional information

Introduction

This Learning Objective deals with the national legal framework for eBusiness where the following legal aspects are necessary in eBusiness environment: Authentication by electronic signatures; electronic money, taxation aspects, protection of copyrights, liability issues, awareness of alternative dispute resolution, conflict of laws and jurisdiction, contract law, protection of minors, protection of consumers, commercial communication, processing of personal data and protection of privacy. Laws and regulations are necessary in a B2B environment to avoid “unfair commercial practice”. The overriding fundamental legislation governing business activities through ICT means is the European Directive on e-commerce (Directive 2000/31/EC). A number of other EU legal acts sanction the “unfair” commercial conduct in the B2C area. Although these acts do not cover in principle B2B commercial relations, they provide valuable indications on how the “unfairness” and unfair trade practices can be interpreted also in the B2B context. These Directives are namely: - Directive 97/7/EC on the protection of consumers in respect of distance contracts, Directive 93/13/EC on unfair terms in consumer contracts, and Directive 2005/29/EC on unfair commercial practices. Apart from its own contractual framework, B2B e-marketplaces are subject to general rules of fairness enshrined in national laws and commercial practices.

All sustainable business is based on trust between business entities; trust in the willingness and ability of the business partner to fulfil the commitment undertaken in some kind of a negotiation process. Negotiations can be quite simple, such as agreeing to terms and conditions presented on a website or a complex procedure taking days, weeks or months using various ways of communication to conclude.

For over 4.000 years governments have used written codes of conduct to maintain order between businesses. “The Code of Hammurabi is considered one of the first known attempts to establish a written code of conduct. King Hammurabi ruled Babylon at approximately 2000 B.C. He was the sixth king of the First Dynasty of Babylonia for about 55 years. During that period of time, Babylon was a commercial centre for most of the known and civilized world. Since its fortune lay in trade and other business ventures, the Code of Hammurabi provided a basis for order and certainty essential for commerce. The Code established rules regarding theft, sexual relationships, interpersonal violence, and other issues. It was intended to replace blood feuds with a system sanctioned by the state”.¹

Codes establish and maintain the right of an individual or organisation to a certain property acquired in a process without violating the rights of others. The degree to which the code is protecting the property is measured by the state’s ability to provide the owner with property protection. If the mechanism is weak, then the protection is also weak, eventually leading to

¹ <http://www.ojp.usdoj.gov/ovc/assist/nvaa/ch04hslaw.htm>

loss of property. This leads to the notion, that trust between business partners rests on the state's ability to enforce the code (laws and regulations). Countries with weak law enforcement enjoy less credibility and local companies are less likely to establish trust with companies cross border or even within the same country. This lack of trust thereby becomes a trade barrier which limits the prosperity of the country and the companies within its borders.

eBusiness here stands for *“doing business electronically in support of organisational goals”*. Using electronic means to process business transactions, even negotiations, does not change the need for trust between business partners, but does have an impact on how the element of trust is ensured in the relationship. Still the partners need to have full confidence in each other's willingness and ability to live up to their commitments as negotiated.

The reason for companies knowing about eBusiness law

Why is it important for companies to know about the laws (of eBusiness)? How does it effect their operational environment?

Due to the more or less virtual nature of the eBusiness relationship, the accountability of the trust framework, meaning laws, law enforcement and standards, grows exponentially in importance. In what can be understood as traditional business, the element of trust to a large extent is based on personal relationships, achieved through interpersonal contact of decision makers. In eBusiness, in its most extreme form, relationships are established between computers or systems that have been programmed to recognise identities, product descriptions, terms, conditions, legal references and standards and compare those to their own company's requirements, acceptable specifications and business policies. Given a satisfactory match and verification of authenticity, a business “agreement” is automatically established and processed.

Today this level of automation is rare, but the trend is towards this practice. Companies wanting to maintain their competitiveness need to be aware of this change and start recognising the already current elements of the trust framework.

Regarding the legal element in the eBusiness trust framework, “already in 1985, the UNCITRAL Commission examined the issue of the legal value of computer records. This observation resulted in UNCITRAL Recommendation on the Legal Value of Computer Records. This Recommendation chiefly encouraged national governments to assess their legal frameworks in order to determine to what extent traditional paper-based processes would be susceptible to being modernised by replacing paper documents with electronic data”². Guided by the principles of the recommendation the EU e-Commerce Directive³ was passed through the Parliament in the year 2000, which resulted in the making of respective national laws and regulations.

In the process of preparing the e-Commerce Directive and other eBusiness related directives, the European legislator made the conscious choice of avoiding to prescribe technologies or standards, but rather to focus on the objectives that any technological solution was to provide. Such a pragmatic approach serves the dual purpose of being flexible enough to support often unforeseeable future technological developments, and of allowing the market to evolve freely towards whichever solution is most suited to its target stakeholders.

As a result of this principle, the importance of technology prescriptive documentation, such as standards, has grown as an element in the eBusiness trust framework and can be considered as practical guidelines in eBusiness implementation processes, formed and endorsed by respective business stakeholders.

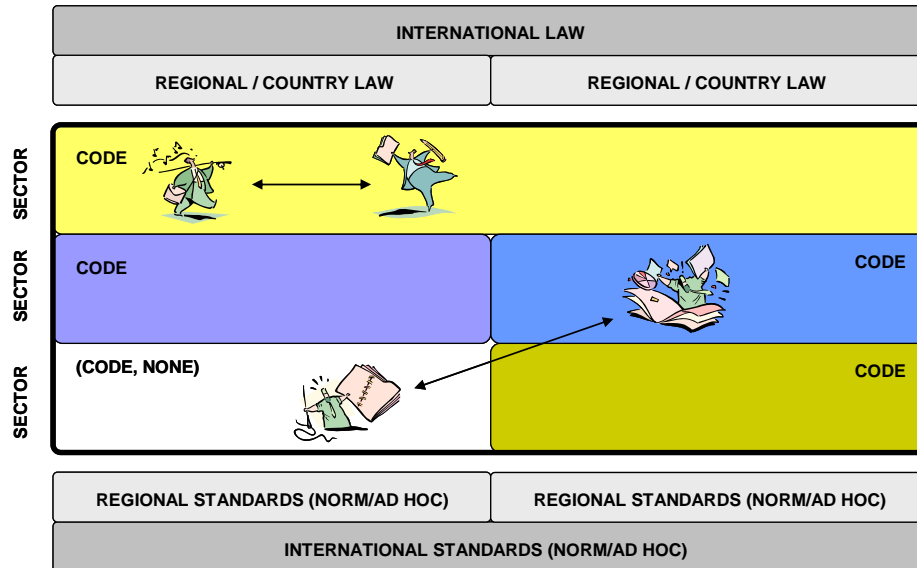
Due to the generic and often complex nature of laws and standards, many stakeholder communities, represented by business associations, prepare and publish Codes of Conduct for their members where the relevant legal aspects and standards, even ethical

² <http://www.uncitral.org/uncitral/en/about/origin.html>

³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

considerations, are presented. The purpose of such codes is to serve as a reference for businesses in their daily operations.

For a company heading into the future of ICT enabled business venue, knowing these basic elements of the trust framework, i.e. laws and law enforcement, standards and codes, is a necessity with respect to the company's maintenance and enhancement of competitiveness. The following illustration is one way of describing the structure of the trust framework.



The drawing shows two examples of a business relationship, one where both partners are located in the same country (region) and in the same sector and another where they are located in different countries (regions) and different sectors. In the first example, the companies both enjoy the same set of laws, law enforcement, standards and codes of conduct, which clearly will make it relatively easy to establish the feeling of trust between the partners, not to mention ease of personal interaction. In the second example, the companies are situated in different countries, say a developing country and an EU country. The prior company may or may not recognise international laws and standards, but certainly needs to comply with local law (but possibly with poor law enforcement) Local standards may be scarce and barely maintained, stakeholders in the respective sector unorganised, with no recognised code of conduct and business ethics may be based on a “survival” principle. For the EU company, with its comparatively well developed trust framework, to establish a feeling of trust in the relationship with the other company is a challenge. Most likely, the trade is either in the sale of commodity or service (against an up-front payment) to the developing country and/or raw material or low priced (low risk) products to Europe. For the European company to start buying high value products from the developing country some major changes in the elements of trust framework need to occur.

The “must-know” eBusiness legal issues

The main purpose of trade law is to protect businesses from the loss of value by act of force or deception. The legal framework dealing with B2B relationships can be sorted into four major categories, i.e.:

1. Corporate identity.
2. Corporate property.
3. Business framework.
4. Dispute resolution mechanism.

The first category serves the objective of establishing a business entity which becomes an active player in business transactions, the second defines and protects the property and

values to be traded, the third describes the rules to follow when conducting business (eBusiness) and finally, the fourth describes the procedures for dispute resolution in the case of disagreement in the process or conditions.

Under each category there are the following specific law. The list is for not conclusive:

1. Corporate identity
Law of Establishment.
2. Corporate property
Intellectual Property Rights.
3. Business framework
International Trade
Jurisdiction
Contract Law
Sales Law
Products and Service Liability
Competition
Consumer Protection
Data Protection
Electronic signatures
Electronic invoicing and payment
Cyber crime
Taxation.
4. Dispute resolution mechanism
Alternative Dispute Resolution.

Where to look for additional information

European law:

- **EUR-Lex:** “EUR-Lex is the result of merging the EUR-Lex site with the CELEX database on European law. It combines and exploits the main advantages of the two systems in order to offer direct, easy access free of charge to the biggest documentary holdings existing on EU law”. (from website)
<http://eur-lex.europa.eu/en/index.htm>
- **European Union Legal Materials:** A Guide for Infrequent Users - Duncan E. Alford
http://www.aallnet.org/products/pub_llj_v97n01/2005-03.pdf
- **ELDOC:** Legal study on legal and administrative practices regarding the validity and mutual recognition of electronic documents, with a view to identifying the existing legal barriers for enterprises D3.6 – Final Report - November 2006. (from website)
<http://ec.europa.eu/idabc/en/document/6417/254>

International law:

- **UNCITRAL:** “UNCITRAL is a subsidiary body of the General Assembly of the United Nations. The Secretariat of UNCITRAL is the International Trade Law Division of the Office of Legal Affairs of the United Nations Secretariat. In contrast, the World Trade Organization (WTO) is an intergovernmental organization independent from the United Nations”. (from website)
<http://www.uncitral.org/uncitral/en/about/origin.html>

National law:

- In many countries all relevant national legislation can be found on the Internet. The training includes finding the national legislation applicable to eBusiness.