

eBCM Agreement: **CONTRACTS**

LEARNING OBJECT #07

CONTRACTS

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Introduction

Business communication and relationships have changed with the emergence of the Internet, new business and communication applications.

It is necessary to document the work process in business partners' electronic agreements. The eBusiness models that are mainly of interest here are Business to Business and/or Government, B2B and B2G, dealing with business directly between individual organisations, and B2B and B2G for e-marketplaces where the subject is the relation between the e-marketplace itself ("e-market operator") and the trading partners interested in participating in the e-marketplace ("e-market participants") The content of the relation between the e-market operator and e-market participants is primarily determined in rules prepared by the e-market operator. "Terms and Conditions - "T&C" - is used in its wide meaning covering any kind of rules governing the function of an e-marketplace and the relations between: a) the e-market operator and the e-market participants; and/or b) the e-market participants themselves.

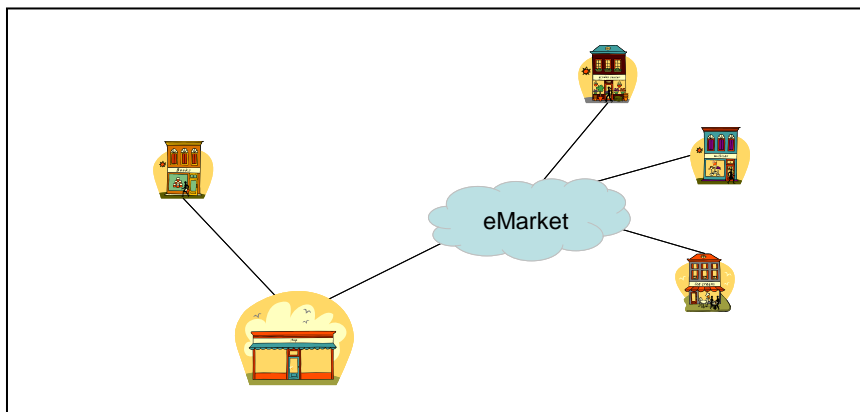
Risk management in eBusiness contracts and eBusiness transactions is another important issue. eBusiness contracts concern all kinds of information that are made electronically available. Companies are providing sensitive information about their customers/clients and/or employees to the service provider, they give access to their internal computer systems to the service provider. The companies are sharing proprietary intellectual property with the service provider (whether software, hardware, or business process), the companies and the service provider are communicating with each other via the Internet, and sensitive company data is being transmitted to the third party via the Internet. The risks to which a company with eBusiness activities is exposed, some of which are unique to e-business activities, must be carefully considered.

There is a need for companies to be able to make contracts with their partners, suppliers and customers about eBusiness. The task of this LO is to introduce main contract types and main challenges in making contracts in eBusiness.

For any business between companies to be functional, there must be a mutual understanding and agreement about the underlying conditions and business processes. Traditionally the agreement is established in a conversation or written communication between business partners. Usually the agreement is put down on paper but sometimes the agreement is verbal if there is a prior experience of trust between the business partners. It should be noted that in some countries legislation allows verbal agreements while in most countries they must be written in order to be valid. The problem with verbal agreements is that they are difficult to prove. In any case, trust, reliability and security are a general prerequisite for all successful business operations. In eBusiness this is of even greater importance where clarity in communication and business processes is imperative. This "matter of faith" comes from past

experience, however brief or extensive. With the emergence of the Internet, companies are given a new venue for initiating business relationships, developing them and to run many of the business processes online.

A simple presentation of eBusiness relationships can be seen as either between two trading partners or between a trading company and a marketplace, connecting several trading partners.



In the case of a marketplace, the service provider usually has developed a set of standard terms and conditions for the business relationship as well as the respective processes when the service provided is being utilised. As this business relationship usually is predetermined, with very little flexibility for negotiation or customisation, the following text will focus on the contractual framework directly between two trading partners. The issues raised can be used as a reference when evaluating the terms and conditions of an eMarketplace. What here is presented on eBusiness contract practices of eMarketplaces is to a large extent also valid for other online service providers, such as banks and governmental services.

eBusiness contracts have two main components; a legal component and an implementation component. In this text EU Directives serve as the legal basis from which European eBusiness contracts are derived. The Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 was created as a common fundamental legal framework for electronic commerce in the European Internal Market. The main objective was to stimulate the development of cross-border (at least on a European scale) online services, by providing legal certainty to businesses and consumers. In order to do so, a number of guiding principles were formulated, on issues such as the information requirements for online service providers, (unsolicited) commercial communications, formal requirements for electronic contracting and the liability of intermediary service providers. The implementation component varies between regional and sector communities. Here the ebXML (Electronic Business using eXtensible Markup Language) will be introduced as a hypothesis for the implementation component, a kind of a vision to aim for.

Why eBusiness contracts?

There is a need for revising the business contractual framework, taking into account the nature of the virtual business space.

For ICT enabled business processes to run efficiently there must be thorough preparation and integration of systems and business procedures. Before, the business agreement required company personnel to understand the commitment made and to know how to implement the agreement. In eBusiness a new element emerges as most of the transfer of information and many of the processes are dependent on ICT systems, data management, application

functionality and systems interaction. eBusiness contracts need to take this dimension into account, in addition to traditional terms of business.

Main differences between normal and eBusiness contracts

Identification

Trust and confidence in eBusiness depends to a large extent on the user's ability to recognise and be convinced of the identity of business partners, individuals, enterprises, institutions, services or applications, as well as physical structures and products in a virtual business environment. Authentication and certification deal with confirming the identity, authority and responsibility of an entity seeking or providing service, products or information. The procedures require the entity to present, for validation, credentials that are for example coded in an application, in an electronic token, smart-card or biologically. In addition to proving identity, the validated credentials can then be used to certify the authenticity of a particular action or electronic content such as communication and signed business contracts, ensuring transparency of business transactions and compliance with the responsibilities undertaken.

Business communication

An international business community consists of a multitude of actors, all serving their strategic functionality and objectives. What binds the community together is the information that flows between the actors, by informing, initiating, instructing and verifying. The digitising of the information flow has been developing for decades, but it is still very much limited to internal processes and documentation within an organisation or a small circle of business partners.

Even though more and more business processes are becoming ICT enabled, they do follow to a large extent the same choreography as before. The change lies mostly in the communication, the channelling and processing of information. One of the problems companies have come across when turning to eBusiness is that the information flow is to some degree "hidden" in the ICT systems and people need to become alert to the messages received. It used to be that it was easy to recognise a telephone call, a fax, a physical letter or a customer visit as business communication. Now when an EDI (Electronic Data Interchange) or XML (Extensible Markup Language) message is transferred into the sales system or an e-mail received, someone must be checking the incoming message on a regular basis. eBusiness contracts need to include a description of the information flow (business process) and verify the different responsibilities for maintaining the flow in an efficient manner. This prevents misperceptions of responsibilities in the business relationship.

Business transactions

With the Internet, connecting business partners in trading networks has become quite feasible, even for smaller enterprises, especially after the emergence of the XML messaging standard. For decades larger corporations have been exchanging business information by EDI through dedicated transfer lines, X400 or other. This solution has been relatively expensive and rigid in structure and management. Many expect that the XML will provide a more flexible and inexpensive structure which is what is needed for the SMEs to participate more actively in electronic business.

For electronic transactions to be brought to the extent possible, business processes need to be standardised, relevant electronic messages developed for the business community and businesses assisted in transferring their data to the respective messaging formats.

Data management, stressing information security

The development of information and communication technology (ICT) and its escalating use in business processes has brought with it a rapid increase in the use of the Internet. Concurrently, proper management of information security risks such as the risk of service interruptions, theft or alteration of data, impersonation and other events resulting from unauthorised access to the computer system is becoming critical. For this reason it is imperative for a healthy business relationship between business partners to agree on a set of rules in the management of electronic business data, its creation, ownership, supervision and storage. It is important that all employees carrying responsibility in the making and/or fulfilment of business contracts understand and appreciate the difference between paper contracts and electronic contracts.

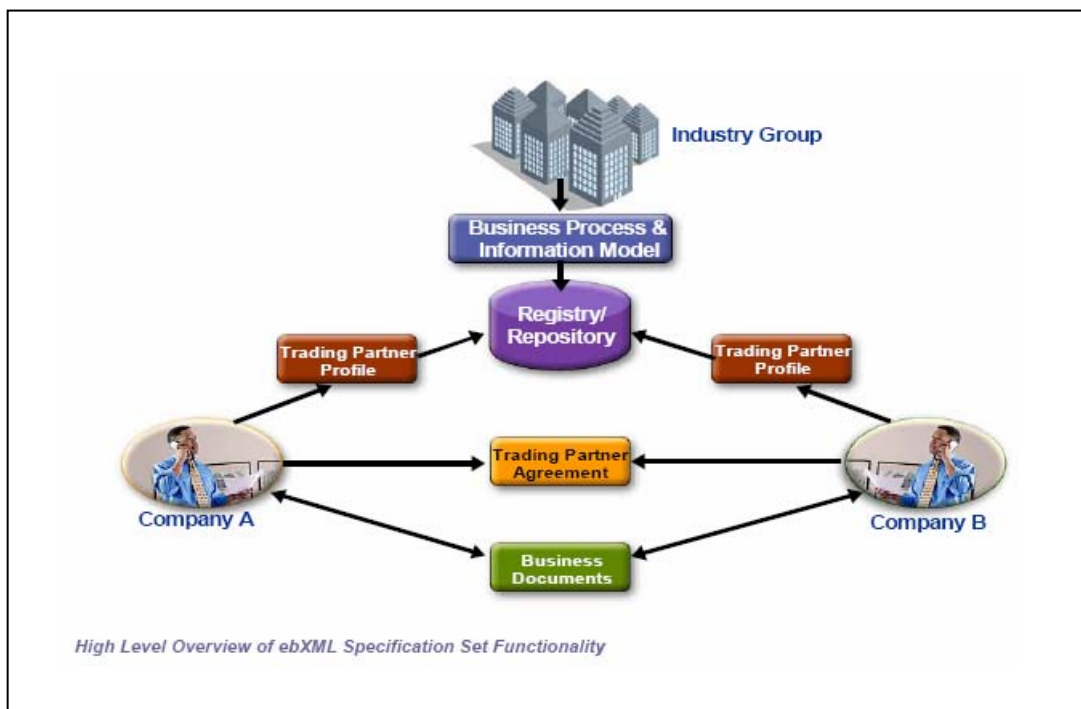
Dispute resolution

eBusiness contracts, like other contracts, need to include a method of dispute resolution, either the traditional legal court system or arbitration. The traditional legal method is well known but can be rather costly and time consuming.

In eBusiness, arbitration is in many cases preferred, especially when the business is done cross border between countries with different legal structure and practices and when there is limited interaction between the business partners. Online Arbitration is a growing trend, where the business partners use the service of an Internet service provider to resolve their differences.

ebXML and eBusiness contracts of the future

The ebXML eBusiness framework introduces a new way in contract making and business transactions. ebXML, is a modular suite of specifications that enables enterprises of any size and geographical location to conduct business over the Internet. Using ebXML, companies are provided with a standard method to exchange business messages, conduct trading relationships, communicate data in common terms and define and register business processes. The following example shows how organisations prepare for ebXML, search for new trading partners and then engage in electronic business.



1. Company A browses the ebXML registry to see what is available online. At best, company A can reuse all the existing business processes, documents, and core components common to its industry that are already stored in the ebXML registry. Otherwise company A designs the missing parts, stores them in the ebXML registry and makes them available for its industry partners.
2. Company A decides to do electronic business the ebXML way and considers implementing a local ebXML compliant application. An ebXML Business Service Interface (BSI) provides the link between the company and the outside ebXML world. The company has to create a Collaboration Protocol Profile (CPP) which describes the supported business process capabilities, constraints and technical ebXML information such as choice of encryption algorithms, encryption certificates and choice of transport protocols.
3. Company A submits its CPP to an ebXML registry. From that point on, company A is publicly listed in the ebXML registry and is likely to be discovered by other companies querying for new trading partners.
4. Company B is already registered at the ebXML registry and is looking for new trading partners. Company B queries the ebXML registry and receives the CPP of company A. Company B then has two CPP's: Company A's CPP and its own. The two companies have to come to an agreement on how to do business, which is called a Collaboration Protocol Agreement (CPA) in the ebXML terminology. Company B uses an ebXML CPA formation tool to derive a CPA from the requirements of the two CPPs
5. In this scenario company B communicates with company A directly and sends the newly created CPA for acceptance to company A. Upon agreement of the CPA by company A, both companies are ready for electronic business.
6. The companies then use the underlying ebXML framework and exchange business documents conforming to the CPA. This means that both companies follow the business processes defined in the CPA.¹

eBusiness contracts development and support network

This section is about how eBusiness contracts are being developed, the mainstream and actors. Currently eBusiness contracts in Europe refer mainly to Directive 2000/31/EC, but others are also of importance. Within the EU Commission, DG Enterprise and Industry provides information about the development of eBusiness laws and regulations on its website.²

As for the implementation component of eBusiness contracts, UN/CEFACT and OASIS are the two major international organisations involved in its development.



UN/CEFACT, a United Nations body, encourages close collaboration between governments and private business to secure the interoperability for the exchange of information between the public and private sector. The United Nations, through its Centre for Trade Facilitation and Electronic Business (UN/CEFACT), supports activities dedicated to improving the ability of business, trade and administrative organisations, from developed, developing and transitional economies, to exchange products and relevant services effectively. Its principal focus is on facilitating national and international transactions, through the simplification and

¹ http://www.tutorialspoint.com/ebxml/ebxml_usage_example.htm

² <http://ec.europa.eu/enterprise/ict/policy/legal/index.htm>

harmonisation of processes, procedures and information flows, and so contributing to the growth of global commerce.³



OASIS (Organization for the Advancement of Structured Information Standards) is a not-for-profit, international consortium that drives the development, convergence, and adoption of e-business standards. The consortium produces more Web services standards than any other organisation along with standards for security, e-business, and standardization efforts in the public sector and for application-specific markets. Founded in 1993, OASIS has more than 5,000 participants representing over 600 organisations and individual members in 100 countries.⁴

³ <http://www.unece.org/cefact/about.htm>

⁴ <http://www.oasis-open.org/who/>