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English Studies & Research

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- 3- The subject of the research should be current, original and innovative.
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- 5- The researcher should use the critical method in his study and discuss in depth the subject of the research and the problems he raises.
- 6- The Conclusion of the research should include a statement of the results of the research, and the recommendations to issues or problems in question, and the proposals for future studies.
- 7- The research or study references should be modern and varied, local and international, Arab and foreign whenever possible, and fully documented.
- 8- The number of words of the research or study should not exceed fifteen thousand (15000) words, and not exceed the number of (30) pages, A4 size. (Font type: Times new Roman , size 14 - the distance between lines per page: 1.15 - margins: the same font type - size 10 - the distance between lines: 1.0), including abstracts (Arabic, English and references).

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New Publication Rules for the Kilaw Journal

“To enhance the journal's role in disseminating and encouraging legal research in Kuwait, the Gulf, the Arab world, and internationally, and as part of the ongoing effort to develop Academic legal research methods to increase its added value and as a contribution to serving the academic and professional legal sectors in particular, and the community in general, and in line with the new research policies of the Kuwait International Law School (the publisher), the journal's editorial board has approved the addition of the following new provisions to its publication rules:”

- The Journal invites researchers to focus their research submitted for publication on studying practical and applied legal issues and problems that directly or indirectly concern the administrative, economic, social, and other related sectors, including the study of specific cases.
- The Journal encourages the adoption of scientific approaches that help in studying this type of issue, including the analytical approach, the critical approach, and the comparative approach. It also encourages authors to choose mechanisms and methods that contribute to the clarity and accuracy of analysis, discussion, and interpretation, including databases, statistics, indicators, and others.
- The Journal invites researchers to submit innovative, grounded, and practical recommendations based on comparative systems. This includes proposals for laws, regulations, guidelines, and other relevant information.
- The Journal gives priority to publication of research of an applied and practical nature, whether from within or outside KILAW.
- Applied and practical research shall be included in the list of research nominated for the annual “Kilaw Journal Award” for the best applied and practical research.

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The Full Legal Responsibility of the Occupying State's Accomplices in the War Crimes of Genocide in Gaza: The Necessity of Accountability and the Possibilities of Prosecution

Prof Dr Badria Abdullah Al Awadi (*)

Editor-in-Chief

Nearly two years after the Zionist occupation state waged a war of genocide and destruction against the Palestinian people in the Gaza Strip, much of the information surrounding it has been revealed. Perhaps the most significant of these is the criminal and brutal nature of the gang that controls this state, as well as of large segments of its society, which have unconditionally supported and backed the war of extermination. This has prompted many political and legal scholars to warn of the danger this state and society poses, not only to the region but to the entire world.

This period of genocidal war crimes also revealed a matter of utmost importance: the continued complicity of many parties, represented by countries, governments, parliaments, companies, official and unofficial bodies, and others, with the occupying state, through the provision of various forms of support, such as military, human, technical, financial, and other support. In this context, many countries have not hidden this, most notably the United States, the United Kingdom, Germany, France, Italy, Australia, and others.

Dual nationals are permitted to fight in the ranks of the occupying army without any reservations, and the volume and pace of supplying the occupying army with modern weapons and equipment has increased, in addition to the provision of logistical and intelligence services. Here, the role of British spy planes becomes more prominent, as they regularly take off from a base in Cyprus to spy on the Gaza Strip and supply the occupying army with intelligence. This is undoubtedly just the tip of the iceberg, a small fraction of what is actually taking place on the ground.

UN reports have recently revealed that many Western and foreign financial companies have increased their support for the occupying state, with some American and European companies, businessmen, and universities even directing their support directly to sectors of the occupying army to assist it in its military and war operations.

In addition, this collusion with the occupying state has included major technology companies, which have in turn declared their unlimited support for it, most notably Microsoft, Google, and others, through systems, applications, artificial intelligence programs, training, and other means, claiming that this helps maintain regional security. This is a lie, misleading, and fraudulent.

(*) Emeritus Professor and Former chair of Public International Law Department, Kuwait International Law school, and former Dean of Law College, Kuwait University.

While these acts of complicity have found political and international cover from Western countries throughout the past period, the horrific and brutal crimes of genocide committed by the occupying state, which included the killing and attacking of civilians, innocents, and the defenseless, especially children, the elderly, and women, and the destruction of hospitals and schools, have shaken humanity and awakened its conscience, in the East and West. This has contributed to restoring order to the situation, in accordance with laws, customs, and morals, as what is being committed by the occupying state: crimes of genocide, crimes against humanity, and war crimes, fall under the provisions of international criminal law, and require referring their perpetrators to a special court similar to the Nuremberg Tribunal, which was established after World War II to try war criminals.

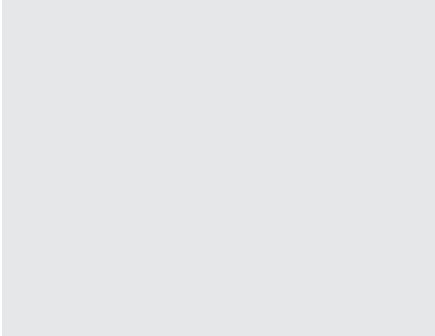
The aforementioned acts of complicity constitute actual participation and contribution to these crimes, and the provisions of international criminal law apply to them, as well as the provisions of national regional law in countries with jurisdiction over such crimes. They also require judicial prosecution and holding their perpetrators fully legally responsible.

International legal associations and United Nations legal experts have concluded that what is happening in Gaza, by the occupying state, constitutes a full-fledged war of genocide. The world's largest association of scholars specializing in genocide research and awareness-raising, finally passed a resolution, with an 86% majority vote, stating that the legal criteria for proving that Israel is committing genocide in Gaza have been met. Melanie O'Brien, president of the association and professor of international law at the University of Western Australia, who specializes in genocide, emphasized: "This is a definitive statement from experts in the field of genocide studies that what is happening on the ground in Gaza is genocide." She added: "There is no justification for committing war crimes, crimes against humanity, or genocide, not even in self-defense."

A report submitted by the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and the West Bank, to the 60th session of the Human Rights Council, recently concluded that Israeli authorities and forces have committed – and continue to commit – genocide in the occupied Gaza Strip.

In light of this, the principal perpetrator, in this case the occupying state, and the co-perpetrators and accomplices, the complicit parties, deserve to be prosecuted and tried, and bear full legal responsibility. Legal action must be taken against them without the slightest hesitation or slackness, through direct criminal proceedings before the competent courts or the courts of national jurisdiction.

Establishing international accountability would ensure international security and stability and bring justice to the oppressed, while impunity would perpetuate the law of the jungle and chaos.

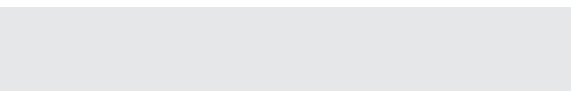


English Abstracts of Arabic Research

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The General Framework of Reservations and their Effects on the Relationship between Parties of International Agreements^(*)

Dr Khaled Al Yaqout

Assistant Professor of Public International Law
Kuwait International Law School

Abstract

The study explores the ways in which reservations are made, as one of the forms of objection by states and international organizations who are partying to a treaty to one or more of the provisions of the treaty. It also explains the impact of such objections upon their issuance, with the effect extending to the point of non-implementation of the treaty text subject to the reservation by freezing it completely. This study addresses the general structure of reservations, in terms of their general explanation and specific forms, by presenting the nature of reservations, followed by their forms, whether issued based on a unilateral or joint declaration.

The research aims to demonstrate the permissibility of reservations, whether they are not expressly prohibited by the treaty or do not contravene the treaty's purpose and objective, and the reactions to them. It also clarifies the extent to which reservations must be formulated in a specific manner, as detailed in the accompanying explanation of the timing of the reservation and the reactions to it. The research also aims to demonstrate the legal effect of reservations and the reactions to such reservations, whether approval or objection, in the relationship between the reserving state or international organization and the accepting party, or the relationship between the reserving state or international organization and the objecting party, or even the effect of the reservation on the relationships between all other parties to the treaty. This is to demonstrate the full resonance of the treaty's application by all its parties.

The research was concerned with clarifying the practical problems related to reservations, starting with their nature and forms, with their formal and substantive conditions, and arriving at their legal impact on the relations between all parties, while clarifying the procedures related to them, with each of them

(*) The research was submitted for publication on: 25 September 2024

& accepted for publication on: 24 December 2024.

being attached to possible practical solutions for each hypothesis, so that the study achieves its desired goal regarding the legal regulation of reservations.

Keywords: State objection, international organization objection, international treaties, non-enforcement of treaties, and freezing of treaties.

**Urgent measures issued by the ICJ: A Study of the Order Issued
by the Court on 26 January 2024 Regarding the Dispute
Filed by South Africa Against Israel^(*)**

Dr Nada Yousef Al Duaij

Associate Professor of Public International Law
College of Law, Kuwait University

Abstract

This research examines the order issued by the International Court of Justice (ICJ) to authorize certain urgent measures at South Africa's request against Israel. The Court's adoption of the requests was analyzed, along with the extent to which the necessary formal and substantive conditions were met. The order excluded some of South Africa's demands in which the required conditions were not met. The importance of this study lies in outlining the correct path to approach the urgent justice of the Court, and the nature of the urgent demands that can be requested, and those that cannot be requested. This study serves as a road map for countries that approach the urgent justice.

This study aims to analyze the order issued by the International Court of Justice on January 26, 2024, indicating some urgent measures in the case filed by South Africa against Israel, in order to analyse the powers of the court in this regard (absolute or restricted), and what are the reasons for such powers. The problem with this study is that the disputing states submit several requests to the International Court of Justice for urgent notice, but the court may grant some of these requests and ignore others. It is important to read the court's ideas and directions to understand what is required of it and what is not. The analytical approach was followed, by analyzing the court's order; the descriptive approach, by describing the requests adopted by the order; and the comparative approach, by comparing this order with previous orders issued by the court in similar situations. This study is based on two axes: the first is theoretical, relating to the formal and substantive conditions that must be met in any urgent applications submitted to the court. The second, practical, axis

(*) The research was submitted for publication on: 25 August 2024

& accepted for publication on: 24 September 2024.

examines the South African applications the court has adopted and those it has rejected, based on whether these conditions are met.

The findings of this study were based on the assertion that the court is restricted in its adoption of urgent requests with regard to the availability of formal and substantive conditions, and has a free hand beyond these conditions. The study concluded that the court was wise and committed to the substantive and formal conditions necessary for adopting these requests. In other instances, it played politics, seeking to gain the approval of both parties to the dispute, but it did not exercise its discretionary power wisely, adopting requests not mentioned by the parties, which were likely to play a role in mitigating the conflict and its tragedies. One of the most prominent findings of the study is that the court has absolute authority to approve or reject urgent requests, but it strongly cautions against approving any requests that do not meet the formal or substantive requirements. This is to prevent its credibility from being lost. Furthermore, during the urgent requests phase, the court is not immune to political activity. It attempts to be courteous and maintain a neutral stance to ensure the cooperation of all parties until a final ruling is issued in the case.

In light of the above, the study recommended the establishment of a specialized body to ensure that the parties to the conflict respect the urgent requests issued by the court. The court should address all countries of the world, particularly members of the United Nations, to refrain from providing any support, in any form, to any party to the conflict that could exacerbate it. The court should be more daring by adopting some urgent measures not requested by the conflicting parties.

Keywords: urgent, measures, genocide, Palestine, Gaza, and Israel.

The Impact of a Wife's Work on Sharing New Financial Burdens between Spouses: A Comparative Jurisprudential Study with Kuwaiti Personal Status Law^{(*)()}**

Dr Abdullah Salem Alatiqi & Dr Abdullah Awaid Al Rashidi

Assistant Professors
Comparative Jurisprudence and Policy of Sharia
College of Sharia and Islamic Studies, Kuwait University

Abstract

The study examines the financial burdens faced by Muslim families today, focusing on the Islamic Shari'ah rule regarding which spouse should bear these burdens. It examines the impact of the wife's work outside the home on her expenses and the sharing of these financial burdens. The research aims to clarify the husband's role in bearing these burdens and explore the measures for wife's participation if necessary. The study follows a descriptive, analytical, and comparative methodology.

The research has reached several results, including:

- Islamic scholars agree that a husband should cover his wife's essential expenses like food, drink, clothing, and housing, while not covering luxuries that would not harm the wife if not fulfilled.
- The expense bearer is determined by the benefit derived from it, with the husband bearing the expense if it is for both.
- The husband is not required to bear the expenses of items provided free of charge by the state if they meet the desired efficiency.
- The study also addresses several new financial burdens and clarifies which spouse should bear their costs.

The two researchers recommend that the Kuwaiti legislature address emerging financial burden issues and develop solutions and controls for their provisions, and that the research's findings in this area be included, inter alia:

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The wife shall bear the financial burden arising from her departure from work, as well as the benefit to her, and the husband shall bear the financial burden arising from his application, as well as the benefit to him, and the spouses shall bear the financial burden arising from the husband's irrelevance, if the benefit belongs to them jointly, and their requests jointly.

Keywords: wife's work, expenses, spouses, family, personal status, and Kuwaiti law.

The Effects of Registration in the Commercial Register on the Legal Status of the Merchant and his Documents, and its Practical Problems According to the Kuwaiti Commercial Register Law^(*)

Dr Faris Mohammad Al Ajmi & Dr Ahmad Rashid Al Mutairi

Associate Professors of Commercial Law
Department of Law, College of Business Studies, PAAET
State of Kuwait

Abstract

Registration in the commercial register is considered one of the most crucial obligations imposed on the trader as a direct consequence of acquiring such status. This obligation applies to the trader regardless of whether they are a natural or legal person. The legislator has imposed this obligation to enhance trust and confidence in commercial transactions and to support the legal, statistical, economic, and informational functions the commercial register performs. The commercial register serves as a legal means of publicity within the commercial environment.

The registration in the commercial register entails a range of legal consequences. Some of these have a constitutive effect on individuals, such as when it concerns proving a natural person's status as a trader or a legal entity's acquisition of legal personality. Others are related to the authenticity of the data, involving mandatory legal publicity and the permissibility of accessing and contesting these data by third parties. Additionally, the absence of registration in the commercial register can prevent the trader from enjoying certain rights exclusively granted to registered traders. Moreover, there are practical issues associated with registration in the commercial register, which this research will address.

Keywords: Trader, Legal person, Commercial activities, Professionalism, and Trader's Instruments.

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& accepted for publication on: 4 September 2024.

The Position of the Kuwaiti Administrative and Constitutional Judiciary on Restricting the Employee's Right to Education by Requiring Full-Time Study

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Abstract

This study examines a specific restriction imposed on public employees' right to education in Kuwait—namely, the requirement to study full-time, even when pursuing education at their own expense. It explores how both the administrative and constitutional courts in Kuwait have addressed this state and considers whether it stands in conflict with constitutional provisions that guarantee the right to education for all citizens.

The significance of this research lies in its advocacy for expanding and safeguarding public employees' access to education. It aims to support and reinforce this right by highlighting how certain administrative constraints may run counter to constitutional guarantees. To the best of the author's knowledge, this is the first academic work to address this issue in the context of Kuwaiti law, making it a valuable contribution to the local legal discourse.

The research adopts a descriptive and analytical methodology. It begins by outlining the legal texts governing the right to education, followed by a close analysis of judicial interpretations—particularly those of the constitutional and administrative courts—regarding the full-time study requirement. The analysis seeks to determine whether this requirement aligns with the constitutional framework and helps delineate the scope of the right in question. The study concludes with a critical assessment of the extent to which the legislature and judiciary's positions on this restriction are consistent with constitutional protections.

At the heart of this inquiry is a central legal question: Is the requirement of full-time study, even when self-funded, compatible with the constitutional right to education? This question is addressed from two angles: First: the extent to which the restriction aligns with constitutional provisions safeguarding

educational rights, Second, the stance of the administrative and constitutional judiciary regarding this restriction and whether it infringes upon the Constitution.

The study is limited in scope to this specific restriction and does not address other potential limitations on employees' educational rights. It focuses solely on the interpretation of this requirement within the framework of Kuwaiti constitutional law.

The paper starts with an introduction to the concept of the right to education and the legislative position on it in Kuwait. The main body is divided into two parts: the first reviews the rulings of Kuwaiti administrative and constitutional courts on the full-time study condition; and the second offers a critical perspective on those rulings and the restriction itself.

Ultimately, the paper concludes that the full-time study requirement likely conflicts with the constitutional guarantee of the right to education. The study therefore calls on the Kuwaiti legislature to reconsider and eliminate this restriction.

Keywords: Right to education, public employee rights, civil service, public freedoms, and constitution.

The “Originality Status of Victim” Theory in Criminal Dispute: Towards a New Vision in Kuwaiti Criminal Trial Jurisprudence^(*)

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Abstract

If the accused and the public prosecution are the parties of criminal dispute procedures, then the victim is the one who has the human and material interest in imposing the punishment before anyone else, and he is the one who may have motives of revenge playing in his head if the criminal is not punished, thus society enters onto a spiral of revenge. The victim is the person who was badly affected by the crime in his property, personality, or honor. He is the one who was most harmed by the criminal act, the one who has the will and the effort to prove the crime, and he is the one who is impatiently waiting for the deterrent punishment to be imposed on the criminal. Then why did the criminal procedure follow unrealistic formalities and legal templates when it stripped the victim of his status in the trial?

This research paper is considered a turning point in the way of legal thinking towards the criminal case as a whole, as the researcher proposes a new theory to recognize the victim as an original opponent before the criminal court “Originality Status of Victim”. We arrived at this theory after analyzing, criticizing, and deducing the rules of the Kuwaiti Code of Criminal Procedure, which makes the theory of the “Originality Status of Victim”, as we propose it, the only solution for the legislature to come down from the tree of formalities and finally stand on the ground of reality.

Keywords: Victim, Criminal, Public Prosecution, Criminal Trial, Criminal Court, Criminal Judge’s Doctrine, Criminal Procedures, and Criminal Dispute.

(*) The research was submitted for publication on: 11 February 2024

& accepted for publication on: 24 September 2024.

Public Employees' Refusal to Implement Administrative Rulings and Punishment in the Saudi and Sudanese Systems^(*)

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Abstract

This study addressed the position of the Saudi and Sudanese systems on the administration's refusal to implement the rulings issued against it, and the means established to confront the refusal of the administration and its employees to implement administrative rulings. This study aims: to identify the nature of the responsibility of the employee who refuses to implement in light of the administrative and criminal responsibility and penalties stipulated in the Saudi and Sudanese systems for the crime of refusal to implement. The problem of this study: revolves around the effectiveness of the employee's punishment as a means of ensuring the implementation of administrative rulings, and the extent of the administrative judge's role in implementation. The study adopted the comparative and analytical approach by comparing and analyzing the provisions of the two systems.

The study reached the following results:, the most important of which are: that the Saudi legislator granted the administrative judge the authority to assist the administration in how to implement administrative rulings, and considered the punishment of the employee who refuses to implement a crime of administrative corruption, and that the Sudanese legislator stipulated the imprisonment of the employee who prevents the implementation of rulings issued against government agencies if the ruling is for a debt or orders the payment of money, so that the provisions of imprisonment of the debtor stipulated in the Civil Procedures Law of 1983 apply to him. The study also rec-

(*) The research was submitted for publication on: 11 August 2024

& accepted for publication on: 24 September 2024.

ommended: amending the penalty for an employee who refuses to implement the administrative rulings stipulated in Article (83) of the Sudanese Criminal Code of 1991, which is imprisonment for a period not exceeding two years, or a fine, or both penalties, so that it is appropriate to the nature of this crime, which is classified as an administrative corruption crime, so that the penalty becomes imprisonment for a period not exceeding seven years, or a fine, or both penalties.

Keywords: abstention, public employee, implementation of administrative rulings, and punishment.

Punishment for the Crime of Harassment in the Saudi System and Islamic Jurisprudence: A Comparative Study^(*)

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Abstract

This study was designed to highlight the regulatory articles related to the punishment for the crime of harassment, to identify the current new procedures and penalties for perpetrators of the crime of harassment in the Saudi system and Islamic jurisprudence, to make a comparison between them, and to indicate the cases in which the punishment for perpetrators of the crime of harassment is increased.

The research adopted the descriptive, inductive and comparative method because it fits the content and achieves its goals. The research contained an introduction, a preliminary section, two sections and a conclusion. It ended with a conclusion that contained the most prominent results and recommendations. The final result was that the penalty for the crime of harassment is a discretionary penalty, and discretionary penalties are determined by the guardian, and their evaluation is based on the condition of the offender, the circumstances of the crime, and its nature. The penalty for harassment can be either light or aggravated, and harassment crimes are classified as felony crimes, and they include public and private rights, so the lawsuit in them is not dismissed by the victim's waiver. While tracking the penalties for the crime of harassment in the Saudi system and the position of Islamic law on it, it appears that there is agreement between the Saudi system and Islamic jurisprudence.

Keywords: Adverse punishment, disciplinary punishment, fine, defamation, and Saudi Society.

(*) The research was submitted for publication on: 17 July 2024

& accepted for publication on: 4 September 2024.

Post-COVID-19 Economic Recovery Strategies: A Comparative Analytical Study of the Economies of Some Developed and Developing Countries^(*)

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Abstract

Economic recovery strategies are an inevitable and continuous issue. It is inconceivable that countries can overcome economic and financial crises without it, as it is an intermediate stage between recession and the return of the economy to its normal situation. The Corona crisis has severely affected the economies of the developed and developing countries of the world between stagnation and inflation. Therefore this study comes to show and analyze what economic recovery is and the procedures and policies taken by a number of economically developed countries such as America, China and the European Union, and those taken by some developed and developing countries such as Saudi Arabia, Brazil, Kuwait and Bahrain, and to recognize the differences between economic recovery strategies between developed and developing countries.

This topic was addressed in two sections, the first of which dealt with the definition of economic recovery strategies, tools and indicators of success, and the second section dealt with analyzing economic recovery strategies in the above-mentioned economies. The study reached a number of results, the most important of which is that developing countries formulate comprehensive economic recovery strategies while developed countries focus on monetary policy.

Keywords: Economic recession, leading indicators, lagging indicators, economic and financial crises, and economic recovery.

(*) The research was submitted for publication on: 20 August 2024

& accepted for publication on: 24 September 2024.

Legal Regulation of Adventure Tourism Trips in Jordanian Legislation^(*)

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Abstract

Adventure tourism emerged as a result of the change in the traditional demand pattern for tourism. It creates a unique experience for the tourist; develops a spirit of adventure, engages with nature, merges with the local community of the tourist destination, and what follows from acculturation and economic development. In order for the Jordanian legislator to promote and organize this new type of tourism it was systematized within a legislative framework for the first time in 2019. This study comes as an attempt to evaluate this legislative intervention and to demonstrate its effectiveness in achieving the goals for which it was legislated.

Accordingly, this research was divided into two sections: the first dealt with the definition of adventure tourism trips in Jordanian legislation, while the second dealt with the legal conditions for serving adventure tourism trips services in Jordanian legislation. We followed the descriptive and analytical approach by reviewing and analyzing the texts of the relevant legislation and reviewing the position of international organizations and institutions such as the World Tourism Organization and stating an opinion on them to extract the results of this study, despite the scarcity of legal studies or research on this topic due to the recentness of its organization.

We reached several conclusions, the most important of which are: that the Jordanian legislator was satisfied with organizing adventure tourism trips and did not organize adventure tourism, and restricted the organization of the trip to tourism and travel offices and companies and to its implementation through tourist guides specialized in adventure tourism. Accordingly, we recommended establishing a legislative framework to organize adventure tourism

(*) The research was submitted for publication on: 5 October 2024

and accepted for publication on: 30 October 2024.

as a general framework; due to its economic, social and environmental importance, and to reconsider the mechanism and the conditions for organizing adventure tourism trips; to empower local communities and create economic development as directed by the Economic Modernization Vision.

Keywords: Tourism professions and activities, soft adventure, hard adventure, tour operator and travel agent, and specialized tourist guides.

Applications of the Principle of Jurisdiction by Jurisdiction in the Arbitration Jurisprudence of the International Centre for Settlement of Investment Disputes (ICSID)^(*)

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Abstract

The research on the application of the principle of jurisdiction in the arbitration jurisprudence of the International Centre for Settlement of Investment Disputes (ICSID) came as an inevitable result of the magnitude of the financial losses incurred by Arab countries for the benefit of foreign investors when resorting to the Centre's arbitration. It was therefore necessary to examine the reasons for these losses and their causes, which cost the public treasury of these countries enormous sums, and in US dollars, every time the Center asserts its jurisdiction to resolve a dispute. Since the matter concerns measuring the success of the International Center for Settlement of Investment Disputes in resolving these disputes, through arbitration, related to its jurisdiction to resolve its jurisdiction, it was necessary to address the issue from its source; describing the jurisprudence of the International Centre for Settlement of Investment Disputes related to the principle of jurisdiction, and analyzing the arguments of the disputing parties (the host state and the foreign investor), in contrast to the provisions of the Washington Convention regarding this principle.

Because the Center has arbitration decisions whose content varies and differs from one case to another, there are arbitration decisions of the Center that ruled on the lack of jurisdiction as a preliminary objection, and some of them ruled on it after adding it to the subject matter, and there are arbitration decisions that adhered to their jurisdiction, despite the invalidity of the arbitration clause. Although the dispute itself was brought before local judicial

(*) The research was submitted for publication on: 30 June 2024

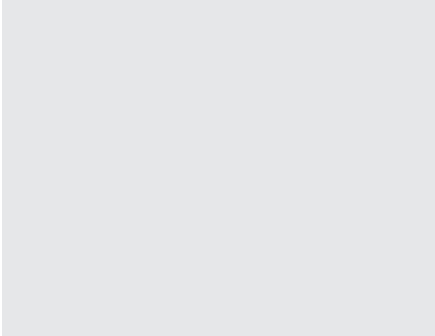
& accepted for publication on: 4 September 2024.

authorities, the research plan was divided into two sections: the first concerns applications of the principle of jurisdiction by jurisdiction following a formal examination of the arbitration request, while the second addresses applications of the principle of jurisdiction by jurisdiction following a substantive examination of the arbitration request.

The most important result revealed by the research is that the liberalism of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington 1965), which was translated into arbitration rulings related to the principle of jurisdiction by jurisdiction, is in the interest of countries seeking development through foreign investments, if these countries properly assess resorting to the center to resolve the potential dispute between them and the foreign investor. This is particularly relevant to the selection of the arbitrator, the applicable law to the dispute, and the conclusion of the investment agreement itself.

With recommendations regarding not refraining from responding to the investor's claims before the Center's arbitration court without fully understanding the situation or the seriousness of the action, and avoiding improper selection of the arbitrator, since the criterion here is not the arbitrator's nationality but his competence, without excluding national cadres in favor of foreigners, while developing their knowledge through continuous training.

Keywords: formal examination, substantive examination, arbitration request, Arab countries, and Washington Convention on the Settlement of Investment Disputes.

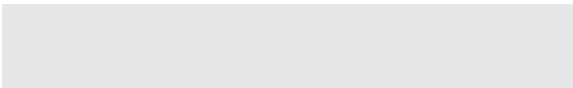


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The Transformative of E-Insurance in an Era of E-Commerce Transactions: Legal Framework and Liability^(*)

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Abstract

The financial services sector over recent years has witnessed a myriad of shifts and at present, is at a slight misalignment between e-commerce and the financial services sector, which is leading to concerns in some quarters. With the rapid rise in e-commerce over the last two decades, businesses have explored appropriate insurance policies which can protect themselves from liability. The significance of this is that with the cyber insurance market expected to reach \$20 billion by 2025, some insurers are still tentative in approving documents online, and these services are only gradually being included on their sites.

In order to fully comprehend e-insurance, e-commerce and its regulation, not just within the Gulf region but beyond, this research will address a number of concerns. This paper outlines several of the core issues surrounding internet business models within the insurance industry, the advantages, difficulties, and factors of success. Extensive industry experience and a proven capacity to present cost-effective e-commerce solutions that meet requirements, are applied in creating appropriate E-commerce Insurance Products. This paper will particularly explore what regulatory and digital shifts need to occur in order to make the insurance industry more agile.

Keywords: E-insurance; E-Commerce; Insurance Transaction; and Private law.

(*) Date of research submission for publication: 21 September 2024

& Date of Research acceptance: 22 December 2024.

1 - Introduction

Insurance companies are modifying their workflows to include the Internet and to improve internal effectiveness. Internet customers are searching for extra value. It is a given that only cost-effective businesses will have the ability to offer this value while remaining profitable. Insurance companies have highlighted online insurance shopping by individual customers, but a wider range of insurance activities could be influenced by e-commerce, resulting in a number of interesting issues.

This includes not merely activities between insurers, intermediates and purchasers, but practically every major business operation undertaken by insurance firms. Thus, many possible applications and business models exist. A flourishing insurance sector is a prerequisite for economic success. Insurance aims to provide financial security to not only individuals, but also organizations and corporations. As a method of pooling and mitigating risk, insurance permits the insured individual to allay risks, such as poor health, fire, flood, and accidental damage to a third party⁽¹⁾.

If an unexpected event occurs, businesses are able to remain open, workers can continue in their occupations or education through financial compensation. Even in calm waters, insurance offers the benefit of peace of mind. Covering both short and long-term risks, insurance encompasses three fundamental actions, life insurance, including general life insurance and reinsurance, both with and without an element of saving, non-life insurance involves the insurance and reinsurance of non-living elements, such as insurance of organisations against fire, flood, accident, automotive, marine, aviation, transportation, financial loss, and liability cover.

Pension funds include providing incomes for retirement, of a non-contributory type, where public sources provide the funding. One of the above-mentioned sections includes reinsurance, depending on the type of risk reinsured, e-Business. The insurance sector is a key service sector since its functions underlie the whole of society and the economy⁽²⁾.

(1) A. Georgosouli, "Payment Protection Insurance (PPI) Misselling: Some Lessons from the UK", Connecticut Insurance Law Journal, Iss.261, (2014), p.21.

(2) T. Baker and P. Siegelman, "You Want Insurance with That?" Using Behavioral Economics to Protect Consumers from Add-on Insurance Products", Connecticut Insurance Law Journal, (2013), p.20.

The risks to industrialised and technology-based economies are at an all-time high. Individuals also require a safeguard against risks, in addition to building a retirement pot. Insurance companies' role further covers investment and its shareholders. Recent years have seen significant development in the insurance sector. Substantial actions towards the deregulation of financial services, combined with telecommunication and computing developments, are mandating sizable changes in the industry, resulting in it becoming increasingly competitive.

The two most significant technological industry innovations of recent years are the appearance of financial market alternatives to long-established reinsurance products, and the increasing relevance of the Internet in the promotion and distribution of insurance products. As a result, the industry has become more competitive. This emergence of electronic commerce (e-commerce) is especially relevant and interesting to study⁽³⁾.

International insurance has existed for hundreds of years. However, it is to be expected that the insurance industry would be slow to embrace the internet since its traditional methods of doing business are founded on corroboration, evaluation, and costing of individual risks. The industry has confirmed regional channels of distribution linked to independent brokers and complicated governing constraints that classically follow jurisdictional limits⁽⁴⁾.

There is great pressure to adopt IT to innovate, refine commercial models, differentiate services, increase value, reduce prices, track performance and offer increased customer satisfaction. This satisfaction should result from efficient and prompt worldwide processing and the individualisation of services and the innovative use of the business's utilisation of IP, data and knowledge. Businesses are also encouraged to expand to new markets and develop brand awareness using a variety of methods, including social media. Therefore, the insurance industry is now almost entirely following these methods and further advantages of the internet⁽⁵⁾.

(3) E.J. MacGillivray, *MacGillivray on Insurance Law*, Sweet and Maxwell, London, 2002. p.7.

(4) *Ibid* at 145.

(5) M. Eling and M. Lehmann, "The Impact of Digitalization on the Insurance Value Chain and the Insurability of Risks", *The Geneva Papers on Risk and Insurance: Issues and Practice*, Vol.43, (2018), pp.359–396. Available at: <https://link.springer.com/article/10.1057/s41288-017-0073-0>. Last accessed: 18/11/2024.

1.2. General Outline

1.2.1. Research Problem

Since the early 2000s there were concerns that the insurance industry was slow to adopt E-commerce, unlike other financial industries that have embraced it to gain a competitive edge. The rapid rise of information communication technology (ICT), artificial intelligence (AI), and technical advancements has driven the insurance industry to incorporate new technologies to better insurance services while at the same time rethink traditional approaches to insurance. Although E-insurance services can lower expenses for companies, increase sales, boost productivity and enhance customer experience, there still appears to be some apprehension in its broader adoption in the sector. There are however, steps being made which this paper will address.

1.2.2. Aims

This paper aims to explore a variety of questions to achieve a comprehensive understanding of e-insurance, e-commerce, and the regulation of these concepts. The paper will also specifically investigate legislative and digital transformations required in order to ensure the greater efficiency and responsivity of the insurance industry in light of modern digital security threats. The core aims of the paper therefore, are as follows:

- To offer definitions and characteristics of e-commerce, and its history.
- To look at the legal implications of electronic data interchange (EDI).
- To address any legal uncertainties within electronic contracts.
- The EU and the Electronic Commerce Directive.
- To explain legal perspectives in insurance for e-commerce transactions, along with areas of legal liability and jurisdiction.
- To examine issues around regulatory compliance.
- To reflect on cross-border considerations.
- To discuss Online insurance regulation in the UK, EU and US.
- To provide some case studies of how the insurance sector has navigated this landscape, as lessons for future practice.
- To offer some key recommendations.

1.2.3. Contribution to Knowledge

This paper contributes to the broader and ever-increasing discourse around the viability of E-Insurance at a time when E-Commerce has become pervasive. In light of that, this paper will therefore propose that any recommendations regarding changes to the legalities refer accurately and appropriately to the existing realities of E-Insurance and the issues arising as a result of the continuing development of the e-commerce industry.

Importantly, it is hoped that this paper will serve as a springboard for more studies in this field particularly in light of the rapid growth of E-Commerce in the Gulf region and across GCC countries. Research into E-Insurance for E-Commerce in the region is scant, hence, this paper serves as a catalyst for more exploration.

1.2.4 Structure of Paper

The structure of this paper is as follows:

- An introduction to the subject, its significance, repercussions and future.
- Definitions and characteristics of e-commerce, and its history.
- Legal implications of electronic data interchange (EDI).
- A case study of *Munn v Eastwood Insurance Services*.
- Addressing legal uncertainty within electronic contracts.
- Global frameworks for e-contracts and e-signature recognition.
- The EU and the Electronic Commerce Directive.
- The need for cyber security, encryption and fraud prevention
- Cyber risks and insurance
- Current developments.
- Legal perspectives in insurance for e-commerce transactions.
- Self-service insurance card transactions.
- Subject and object of insurance coverage in e-transactions.
- Areas of legal liability and jurisdiction.
- Regulatory compliance.
- Cross-border considerations.
- Online advertising for instance products

- Online insurance regulation in the UK, EU and US.
- A case study of how the insurance sector has navigated this landscape.
- The duty of disclosure in insurance card transactions.
- Conclusion, including findings and recommendations.

2.0 - E-Business and E-Commerce

The WTO's definition of an E-commerce transaction is a comprehensive set of procedures to buy or sell and employ economic means to distribute, advance, and sell products online. While not confined to sales only, it has expanded to embody commercials and digital exchange of information and sales points strategy. The growth of E-commerce can be correlated with the advances of finance and the need to assure its security (Campbell, 2017: 376)⁽⁶⁾.

Conversely, outside of the insurance industry, E-commerce is commonly perceived as a way of supplying information and products or services by applying modern technology. For many companies, E-commerce is the use of technology to enable transactions effortlessly and automatically. Thus, E-commerce can be seen as a trade procedure that indicates the acquisition or sale of products or services, knowledge, and expertise via computerised systems between two explicit parties.

Buying and selling goods allows assistance and profit to be achieved by increasing demand. Therefore, E-commerce enhances commercial support and customer services⁽⁷⁾. It is possible to imagine E-commerce operations as an automated market where stores or mediators contact consumers over the Internet.

Retailers, mediators and customers who make use of E-commerce are not only likely to be in separate areas but may also be aware of the goods from the Internet. Transactions provide descriptions of goods and services using world-wide network sites. In the insurance industry, E-commerce has a variety of categories, such as the option to receive payment using debit or credit cards, payment via other methods, creating online stores or shopping online using a firm's website or an agent or approved retailer, supply and delivery activities

(6) D. Campbell, "Good Faith, Adam Smith and the Social Foundation of Agreement: Walford v Miles as a Relational Contract." *Edinburgh Law Review*, Vol.21, Iss.3, (2017), pp.376-404.

(7) J. Davey and M. Bek, "Insurance and Big Data", University of Southampton, 2015, p.65. Available at <https://eprints.soton.ac.uk/381274>. Last accessed: 18/11/2024.

plus commercial Internet-based agencies, financial facilities, and online delivery services⁽⁸⁾.

2.1. Defining E-Commerce, and a Brief Look at Its History

Electronic commerce, abbreviated as 'e-commerce', refers to the buying and selling of goods and services via the internet, mobile, and digital technologies. Transactions occur via mobile applications, websites, or online platforms and facilitate companies to reach customers globally and therefore allow for 24/7 transactions.

Yet, differing views concerning the concept of E-commerce exist. For some researchers, it can be regarded as a transaction procedure between vendors and customers or between companies via information and communication technology (ICT). Others identify it as the use of the internet for the purpose of trade; a process that permits the consumer to complete a significant number of purchases or sales easily and conveniently.

However, other academics suggest E-commerce means all internet trade, such as exchanging electronic data and electronic money transfers, the exchange of emails and electronic mailshots, and further services offered by companies and organizations⁽⁹⁾.

With the growth of business via the Internet and the World Wide Web, E-commerce frequently refers to purchases from online Web stores, also known as E-commerce Web sites, virtual-stores or 'Cyber stores'. As transactions occur via the Internet and the Web, it has been suggested, that another term could be used: I-commerce (Internet commerce), or i-commerce. E-commerce includes business-to-business (B to B), business to consumer (B to C) and two further variations of this⁽¹⁰⁾.

The origins of e-commerce can be found in the 1960s, when companies started exchanging commercial papers electronically using Electronic Data Interchange (EDI). However, with the introduction of the World Wide Web

(8) Ibid at 71.

(9) Ibid at 80.

(10) A. McHarg, "Evolution and Revolution in British Energy Network Regulation: From RPI-X to RIIO" in Martha M. Roggenkamp, Lila Barrera-Hernández, Donald N. Zillman and Iñigo del Guayo (eds.), *Energy Networks and the Law: Innovative Solutions in Changing Markets*. Oxford: Oxford University Press, 2012, pp.313-333.

and the first safe and secure online payment methods in the mid-1990s, e-commerce really took off. Since then, the growth of social media, mobile, and online marketplaces has caused e-commerce to expand rapidly.

2.1.2. E-Commerce in the Gulf Region

Aldwsry examined the spread of e-commerce in wealthy developing nations, using Saudi Arabia as his primary case study. He also emphasised some cultural concerns pertaining to the legal and corporate climate in Saudi Arabia. Additionally, he characterised Saudi Arabia as a “collectivist society,” whose commercial dealings are influenced by ties. Crucially, Aldwsry also noted that Saudi Arabia had a degree of “uncertainty avoidance,” which had an impact on the use of e-commerce there. He suggests that this can be because of the society’s strong conservative tendencies and the laws that stifle creativity and prevent progress as a result of what he describes as “outside forces”⁽¹¹⁾.

2.2. Legal Implications of Electronic Data Interchange (EDI)

A large amount of e-business, such as automated supply actions and the processing of payments, predate the Internet, administered for decades over electronic data interchange (EDI) using networks in business-to-business commerce (B2B). EDI, a computer-to-computer message exchange, transfers documents using data formats specifically constructed to a set of determined message standards. These applications characteristically require human involvement only for the correction of errors, quality assurance or precise pre-specified tasks⁽¹²⁾. Conventionally, EDI covered interactions between extant trading partners.

However, the uses have increased. EDI frequently involves an all-encompassing trading-party contract outlining the specifications to be used, with conditions for the legal impact of data messages exchanged. Several EDI standards have been established for industry-specific systems to fulfil exact requirements, including those of the insurance industry⁽¹³⁾.

(11) Mubarak A. Aldwsry, *E-Commerce Diffusion in High Income Developing Countries: Determinants of E-Commerce Adoption and Post-Adoption of Saudi Enterprises*, Ph.D Thesis, School of Computing Sciences, University of East Anglia, 2012.

(12) Tian Yin and Zili Ren, *Insurance Law Review*, the city of publication: Law press, 2012, p.99.

(13) Ibid at 103.

The legal complications of the creation, legitimacy and acceptability of such a supply, and further business contracts and the associated messages are long-standing; significant numbers of contracts have been settled, electronic ‘messages’ put in ‘writing’ and exchanged, and commitments accepted using EDI since the 1960s. As in most cases with new technologies, business adjusts and moves on. If the existing rules of legal systems are sufficiently open to adjust to the technology, meaning that conventional contractual elements occur, such as a legitimate offer from one party being accepted by another in a manner demonstrating the intent to be bound by it, it is probable that the agreement will be enforceable, even though it has been created electronically⁽¹⁴⁾.

2.3. Case Study: *Munn v Eastwood Insurance Services, Inc.*

Under private contract law relating to party autonomy, the wide-ranging trading-party contracts are probably likely sufficient to signal the intent of the parties regarding electronic contracts, even in situations where there was a fully-automated process. For instance, these may encompass the reach of underwriting authority in electronic placement processes, which became a central issue in a California Court of Appeal’s resolution concerning the intermediary’s level of importance in their role as an agent or broker. *Munn v Eastwood Insurance Services, Inc.* was a class action claiming unfair and misleading business methods stemming from the defendant’s charging of brokerage fees on top of its potential receipt of payments in setting up automobile coverage⁽¹⁵⁾.

Maintaining the lower court’s trust in the entirety of the circumstances to reach a conclusion that the defendant had acted as separate to the insurer’s agent, the Court of Appeal found that notwithstanding the completion of an electronic application resulting in a near immediate result binding the risk, Eastwood had not engaged in field underwriting since he lacked the authority to formally bind the insurer, as demonstrated in the brokerage agreement and underwriting handbook which anticipated the use of such systems.

While the broker had professionally elicited and recorded accurate

(14) N. Boodhun and M. Jayabalan, “Risk prediction in life insurance industry using supervised learning algorithms” *Complex Intell. Syst.* 2018, p. 145.
<https://doi.org/10.1007/s40747-018-0072-1>, para 2.

(15) J. Wang, *Insurance Cases: Rules of Judgement and Application of Laws*, People’s Court Press, 2013, p.43.

information from prospective insured individuals and transported it from one system to another, the near immediate underwriting was completed by the insurer, which had created and applied its own risk criteria into the software system, and also that of the broker's comparative rating system.

The insurer's software system identified whether the application had been accurately concluded and met underwriting criteria with an acceptance or rejection.

Therefore, the automation of the settlement process made no changes to the approved intent of the parties concerning the authority to electronically bind a contract or otherwise as specified in their wide-ranging trading partner contracts, the brokerage contract and the underwriting handbook⁽¹⁶⁾.

2.4. Addressing Legal Uncertainty in Electronic Contracts

Additionally, Trading-partner contracts can build confidence in further potentially grey legal spheres of electronic transactions, such as the selection of law and jurisdiction, as courts will generally acknowledge the agreement terms as controlling. It is possible for them to create a private legal structure where the law remains yet undeveloped. Legal uncertainty is to be expected when new technology borders traditional legal systems.

For instance, many jurisdictions use expressions such as 'in writing' or 'signed by the parties to be charged' or 'mailed', that, while not explicitly excluding electronic communication, plainly refer to physical papers and procedures concerning their creation⁽¹⁷⁾. Furthermore, many jurisdictions require not only physical documents but also signatures in certain situations, whether for statutes of fraud or due to the nature of the rights considered, such as marital or inheritance rights or precise statutory definitions of what encompasses a 'signature'. Lack of clarity as to whether electronic documents or signatures meets these requirements hinders their application, as is the lack of statutory definitions of signatures⁽¹⁸⁾.

Detailed and comprehensive trading-party contracts may be a positive

(16) J. Xing, Tian Yin and Zili Ren, (eds.), *Insurance Law Review*, 2012, p.151.

(17) T. Scassa and M. Deturbide, *Electronic Commerce and Internet Law in Canada*, Toronto: CCH Canadian Limited, 2004.

(18) A. M. Alghamdi, *The Law of E-Commerce: E-Contracts, E-Business*, Bloomington, IN: Author House, 2011.

solution for some B2B trading partners (conditional to the requirements of any overriding regulation or legislation), these are too expensive and unfeasible for general use, such as e-commerce, with clients needing electronic contract arrangements, such as web-based documents.

2.5. Global Frameworks for E-Contract and E-Signature Recognition

E-commerce and its related digital technologies have often been lauded in the literature, and particularly considering the repercussions for the insurance industry. It has therefore been noted for instance that, the development of digital signature technology has been mainly driven by the banking sector, but it clearly also has potential applications to the life insurance industry.

Legislators and regulators have discussed if relevant substantive laws related to contract and consumer protection legislation can be amended to include e-commerce.

Since the latter has a broader effect, provincial, national, and international efforts were focused on creating *lex specialis*⁽¹⁹⁾ that tackled legal obstacles to the validation and recognition of electronic contracts and that also allowed the lawful acknowledgement of electronic signatures. *Lex specialis* refers to a law that governs specific areas of legal regulations, such as electronic contracts in certain industries.

These also aimed to improve international recognition by proposing co-ordinating principles which may be employed as required by national governments. Prominent in this area are the United Nations Commission on International Trade Law (UNCITRAL) Model Laws on Electronic Commerce 1996 and Electronic Signatures 2001 and the more current UN Convention of the Use of Electronic Communications in International Contracts 2005, which is, as yet, not in force⁽²⁰⁾.

The UNCITRAL Electronic Commerce Model Law offers a range

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- (19) At the heart of the Western legal tradition is the *lex specialis* principle, which posits that special norms should be distinguished from general ones. This principle is one of the most common criteria against legal antinomies in the minds of jurists and legal philosophers, and it has a straightforward and well-defined meaning.
- (20) M. Niddam and N. Barsley and J.C. Gard, and U. Cotroneo, "Evolution and revolution: How insurers stay relevant in the digital future", BCG and Morgan Stanley Blue paper, 2014, p.54. <https://www.bcg.com/publications/2014/insurance-technology-strategy-evolution-revolution-how-insurers-stay-relevant-digital-world>. Last accessed: 18/11/2024.

of internationally recognised archetypal rules for national legal systems to deliberate concerning the lawful recognition of and acceptance of electronic equivalents for traditional paper-based ideas such as ‘writings’, ‘signatures’ and ‘original’. The Electronic Signature Model Law built on additional ideas concerning the legal functions of signatures, including, for instance, recognising the message’s source and validating the contents, and considering ways in which these can be achieved electronically⁽²¹⁾.

Although these Model Laws are not legally binding, they have been the foundation of *lex specialis* in several jurisdictions, for instance, the EU’s Electronic Commerce and Electronic Signature Directives and the US Uniform Electronic Transactions Act (UETA), which has been implemented by the majority of states.

The US Electronic Signatures in Global and National Commerce Act (‘E SIGN’) is based on EUTA and pre-empts the laws of each state, if the official EUTA or a comparable provision is not applied. The subsequent brief reflects on the UNCITRAL conditions concerning electronic contracts and specific US and EU laws based on them⁽²²⁾.

3.0 Electronic Contracting

The UNCITRAL Electronic Commerce Model Law considers the efficacy of electronic or ‘data messages’ in commercial legal communications. It states that information must not ‘be denied legal effect, validity or enforceability solely on grounds that it is in the form of a data message’⁽²³⁾. It incorporates ‘offer’ and ‘acceptance’ in the creation and legitimacy of a contract, unless established in other ways by the parties concerned.

The validity conditions allow information included by reference to have a lawful consequence. This may include information retrieved by hyperlink, but not itself specifically recounted in the contract terms except by reference. Where legal requirements specify a ‘writing’, either employing a positive agreement or a repercussion for an omission thereof, the electronic message is sufficient if it is subsequently used for reference⁽²⁴⁾.

(21) Ibid at 56.

(22) Ibid at 57.

(23) Alghamdi, 2011, p.228.

(24) Introduction to Preliminary Contract” published on: www.civillaw.com.cn. Accessed on 26 July 2024.

3.1. Model Law's Guide for the Original

An 'original' writing obligation is fulfilled when valid assurances are received that the veracity of the contained information is maintained from its initiation to its definitive form and is capable of being demonstrated. The Model's Guide to Enactment indicates that although this provision was specifically envisioned as a method of considering negotiable apparatuses, it could also be seen to refer to an insurance contract, stating the requirement that these be communicated in their original form, in order to provide the parties with confidence and further, to reflect paper-based situations where an original document is frequently required to avoid alterations taking place that would prove problematic to identify in a copy⁽²⁵⁾.

The requirements of the Model cover the efficient timing of messages and require that communications are dispatched when the message leaves the originator (or their agent's) system and are received when they enter the system chosen by the recipient or, if a different system, once retrieved by the recipient. Furthermore, the Model sets out default instructions for the place of receipt in cases where there is no agreement, when communications, even in an automated form, can be ascribed to a party and the recognition of receipt. Since the autonomy of parties is a core notion of the Model Law, these default requirements are commonly adjustable as per the specific agreement, unless an applicable law states otherwise⁽²⁶⁾.

3.2. The European Union (EU) and the Electronic Commerce Directive

While UNCITRAL provides a global framework, the EU has taken further steps to harmonize electronic contracting across member states with its E-Commerce Directive. While similar in its fundamental principles to the Model Law, the directive, however, is far more extensive. Further to requiring the legality of electronic contracts, the Directive also provides a partly harmonised legal frame for the single market online delivery of e-commerce packages across the EU.

The Directive obliges participants, with potential exclusions for particular operations, to guarantee that electronic contracts are legally binding and

(25) Ibid at 44.

(26) A. A. Chirkov Muftieva, "Problems and advantages of electronic insurance." International Scientific Journal «Symbol of Science», 2016, p.215.

eliminate barriers or constraints on their application, as documented by a technical working group established by the Insurance Committee, Internal Market Directorate General, with the aim of evaluating the potential for additional conjunction of insurance and e-commerce⁽²⁷⁾.

The E-Commerce Directive operates across the insurance sector in addition to all other financial services. That insurance activities are encompassed by the directive, will enable the conclusion of insurance contracts electronically via the Internet. Member States are required to remove any existing regulations barring, hindering the proposal and conclusion of insurance products via the internet, whether it be nationally or internationally⁽²⁸⁾.

Since the Directive encompasses insurance within its regulations covering electronic contract construction and acknowledgement, where the law necessitates an insurance contract to exist on paper, electronic contracts should serve as the embodiment of a strict 'public good' exclusion⁽²⁹⁾.

Nevertheless, requirements for written insurance contracts continue. For instance, the Dutch Civil Code of Procedure has only recently been revised to recognise the legality of electronic insurance contracts.

In the UK, marine insurance contracts and further specific insurance contracts without consideration must still exist in writing. Yet as the common law 'writing' condition can be compared with several other insurance contracts that could be verbal, or seen to be contained in other documents, no reason exists for electronic writing to be excluded⁽³⁰⁾.

The E-commerce Directive also sets out a framework for completing electronic contracts, including pre-agreement information regulations about the provider and the contract in a manner that can be retrieved, replicated and the stages of the conclusion of the contract outlined to the consumer and other contacts not otherwise approved by non-clients. Thus, the latter creates a default position for completing electronic B2B transactions⁽³¹⁾.

(27) Ibid at 218.

(28) D. Campbell, *op.cit.*, p.37.

(29) Digital/McKinsey, *Digital Disruption in Insurance: Cutting through the noise*, March 2017, p.7. <https://www.mckinsey.com/~media/McKinsey/Industries/Financial%20Services/Our%20Insights/Time%20for%20insurance%20companies%20to%20face%20digital%20reality/Digital-disruption-in-Insurance.pdf>. Last Accessed: 18/11/2024:

(30) Ibid, p.9.

(31) Ibid, p.7.

These information requirements stand in addition to any other informational requirements enacted on the service supplier under Community law. From an insurance perspective, these could be substantial: firstly, directives regulate international service provision, plus there is the possible overlap of predetermined host state rules and policy exposure.

3.3. UETA

UETA has been implemented by 47 states in the United States. The purpose of UETA is to guarantee that ‘an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature’⁽³²⁾. Its fundamental rules, derived from UNCITRAL’s Model Law on Electronic Commerce, state that⁽³³⁾:

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form (sec 7(a)).
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation (sec 7(b)).
- If a law requires a record to be in writing, an electronic record satisfies (sec 7(c)).
- If a law requires a signature, an electronic signature satisfies (sec 7(d))

UETA does not fulfil the information requirements of other laws apart from such information that can be supplied electronically, which must be supplied in a manner that permits the recipient to retain it. Hence, there is potential for state *lex specialis* not to reference E SIGN. While these regulations appear to foresee the legitimisation of electronic insurance contracts, the informational and compliance aspects of insurance regulation for advertising electronic products, their online sale, and servicing will create significant issues. This is particularly true regarding life, health, and minor commercial risks, were regulatory insurance disclosure and form requirements.

(32) A. Rodger, “The Codification of Commercial Law in Victorian Britain”, *Law Quarterly Review*, Iss.108, (1992), p.90.

(33) *Ibid* at 60.

4.0. The Rising Need for Cyber Security, Encryption and Fraud Prevention Within the E-Commerce Ecosystem

Cyberattacks in the US, along with car hacking and identity fraud, are the main threats. While the most worrisome threats in the EU are ransomware, supply chain assaults, and phishing⁽³⁴⁾.

According to these figures, cyber incidents happen even in European nations with stricter laws, demonstrating that cybersecurity is a global issue. Despite having conflicting views on data security and privacy, the US and the EU began working together to stop ransomware attacks and released a joint declaration in 2021. However, cyberattacks continue to pose a problem for companies worldwide.

Most small to medium-sized enterprises (SMEs), however do not have the essential technological assistance and expertise needed to enhance their cybersecurity procedures or the security of their commercial operations systems. Hence, the security of the cyber environment is of higher importance to SMEs than large businesses. Considering their reduced size and incomes, SMEs are particularly susceptible to the harmful outcomes of successful cyber-attacks. These outcomes may involve a lasting loss of clients due to negative publicity, a danger that insurance cannot completely mitigate.

Cyber risk is a concept which covers many factors that pose threats to an individual's, company's, or government's technology and information assets. Among the range of risks are business disruption, critical information leaks, identity theft, and cyber-attacks. Rawlings's writing in 2015, brought attention to how insurance policies in the London market at the time often excluded liability for cyber risk.

Rawlings also noted that the US insurance industry was ahead of the curve in comparison to the UK context when it came to insuring cyber risk.

It is also important to differentiate between *non-criminal* disruptions, like blackouts, loss of power, and natural disasters, and *criminal* causes of cyber disruption such as doxing, phishing attacks, extortion, hackers, and scammers. Cyber risk can also include a range of specific risks that relate to the use of computers, IT and virtual reality⁽³⁵⁾.

(34) Nuvias, Cybersecurity Perspectives: Europe vs. USA, 2023. <https://www.nuvias.com/en-us/cybersecurity-perspectives-europe-vs-usa/>

(35) K. Middleton and M. Kazamia, "Cyber Insurance: Underwriting, Scope of Cover, Benefits and Concern." Pierpaolo Marano, Ioannis Rokas and Peter Kochenburger (eds.),

Erkan-Barlow and Wells-Dietel (2023: 20) brought attention to the Hiscox (2022) *Cyber Readiness Report*, which presents a contrasting picture, despite the EU's seeming stricter stance on cybersecurity and data protection. The Netherlands, Ireland, and the United States saw the biggest rises in the percentage of businesses that suffered a cyberattack, while France, Belgium, and Germany saw the fewest increases. Spain is experiencing a minor downturn. A similar pattern can be seen when examining the median cost of cyberattacks.

Once more, France and Germany are seeing a fall, while the Netherlands, Ireland, and the United States are seeing the biggest increases. All things considered, ransomware assaults increased most in the Netherlands, Spain, decreased in France, and increased least in Germany and Ireland. In the United States, the proportion of companies that suffered a ransomware assault was constant. Regarding the adoption of cyber insurance, the figures vary from 58 to 69 percent; nevertheless, the United States, Germany, Spain, and Ireland seem to be depending more on risk transfer.

4.3. Cyber Risks and Insurance

Cyber insurance allows companies to transfer a proportion of financial responsibility connected to cyber incidents to an insurance provider. It is created to offer businesses a safeguard against possible financial damage and legal responsibilities that may be encountered, including costs sustained by the company. Global economic volatility, geopolitical conflicts, climate crises, energy vulnerabilities, and cyber-attacks are but a few of the challenges that face the global economy at present.

Insurers have a role in maintaining economic resilience via various means. Europe has also borne the brunt of these challenges, yet its financial services sector has generally stood the test of time. Insurance is about residual risk and putting measures in place to handle potential problems when the unexpected happens, insurance will come into play. In cyber insurance, a business or enterprise purchases a policy, akin to how one would buy a car or home insurance policy and then in the event of a business having its data or systems breached or lost via a cyber-attack, the insurance company would assist. This may be in the form of facilitating the enterprise to get in touch

The "Dematerialized" Insurance: Distance Selling and Cyber Risks from an International Perspective, Springer, Cham, Switzerland, 2016, pp.185-201.

with data forensics, incident report companies, public relations side, and also regulations based on where the enterprise and its customers are located. All of this depends on the insurer.

Large-scale cyber risk is easier for cyber insurers to manage, due to the inherent financial incentive to reduce claims and losses⁽³⁶⁾. Media coverage on cyber insurance has been generally negative, particularly regarding its asserted failure to compensate claims received and its contribution to the serious issue of ransomware. Furthermore, the rise in insurance premiums, and the triggering of some insurance companies leaving the market can be seen as results of the financial harm produced by ransomware incidents⁽³⁷⁾.

5.0. Current Developments and Usage in Insurance

In comparison to online brokerage and online banking, Internet growth has been slower in the insurance industry. Debate is occurring within the industry regarding the effect of E-commerce, but concrete solutions are still in their infancy. A recent Swiss Re survey on personal insurance, for instance, automotive, private liability, and domestic contents) expected online networks to have reached a US market share of 5-10%, and 3-5% in Europe by 2025. Within the range of traditional insurance products, where advice and guidance are seldom required, brokers are increasingly encountering significant competition due to falling information costs. Regarding more complex products, specifically pensions, life assurance, and health insurance products) there has been less competition⁽³⁸⁾.

Activities on the Internet are traditionally categorised into the following categories: Business and Consumer. Business-to-Business (B2B) is identified as where large businesses invest their resources in the Internet and its activities. Some websites create a secure link between a firm's internal website (known as the Intranet) and users who may be gaining access remotely. Known as an Extranet, a relevant illustration is Cisco Systems, whose actions focus on

(36) N. Sullivan and J.R.C. Nurse, Cyber Security Incentives and the Role of Cyber Insurance. Royal United Services Institute for Defence and Security Studies, Emerging Insights Paper, 2020. <https://rusi.org/publication/emerging-insights/cyber-security-incentivesand-role-cyber-insurance>. Last Accessed: 18/11/2024.

(37) D. Kuru and S. Bayraktar, "The effect of cyber-risk insurance to social welfare." *Journal of Financial Crime*, Vol.24, Iss.2, (2017), pp.329-346.

(38) N. Oman, *The Dignity of Commerce: Markets and the Moral Foundations of Contract Law*, University of Chicago Press, 2017, p.24.

computer hardware trading.

B2B transactions made up 85 percent of all e-commerce revenues. A recent improvement has been the establishment of online B2B exchanges. It was predicted that by 2003, more than 35 percent of Internet operations would be completed via these exchanges. This type of exchange can be employed to effectively gain a company's inputs and market its outputs to its desired market. Both commercial insurance and reinsurance are relevant examples of areas well-suited to this type of exchange concept⁽³⁹⁾.

Business to Customer (B2C) can be defined as a rise in accessibility leading to an increase in retail market share, and an increase in customer recognition of services and products offered, such as Lastminute.com. Studies have shown that the gap between business to consumer (B2C) and B2B is likely to increase significantly in the next few years, with B2B rising by 100 percent annually, while B2C is anticipated to increase by 50 percent annually. Additionally, Customer to Business (C2B) allows customers to directly communicate with a company rather than vice versa.

Furthermore, Customer-to-Customer (C2C) permits inter-customer interactions via an intermediary. For example, Names123.com allows customers to bid on specific website names and monitor their bids by using password-protected account information⁽⁴⁰⁾.

5.1. Advantages of the Digital Shift in E-Insurance

There are several advantages with the digital shift within e-insurance.

5.1.1. Improved Experience for Customers

The way that consumers engage with insurers is greatly enhanced by digital transformation. AI-powered chatbots, such as Zurich Claims Bot and Geicos Virtual Assistant, which for example, can process claims and offer immediate customer service via new digital channels⁽⁴¹⁾. For instance, 60% of claims submitted in Zurich were handled outside of regular business

(39) Ibid at 26.

(40) F.A Hayek, "The Use of Knowledge in Society", American Economic Review, Vol.35, Iss.4, Sep.1945, pp.519-530. https://statisticaleconomics.org/wp-content/uploads/2013/03/the_use_of_knowledge_in_society_-_hayek.pdf. Last Accessed: 18/11/2024. For the analysis of this paper in Peter J. Boettke in F.A. Hayek, Economics - Political Economy and Social Philosophy, Palgrave Macmillan, London, 2018, p.29.

(41) J. Charlton, "Digital Transformation in the Insurance Industry" Passkit, 2 July 2024. <https://passkit.com/blog/digital-transformation-insurance-industry/>. Last Accessed: 18/11/2024.

hours. Furthermore, quicker claims processing is made possible by digital tools like smartphone apps, which shorten the wait times for payouts and claim approvals. Additionally, clients enjoy round-the-clock access to their accounts and services, which makes it easy to handle their insurance claims and policies at any time. Customised policies and recommendations based on client behaviour and history are made possible by data analytics.

5.1.2. Efficiency in Operations

By automating repetitive operations, digital transformation helps insurers run more efficiently. Better resource allocation is made possible, and expenses are decreased. Automation saves time and money for both clients and insurers by reducing errors and speeding up processing times. All parties involved gain when insurers can manage additional business without experiencing a corresponding rise in workload due to improved internal processes.

By creating cutting-edge digital platforms that optimise self-service capabilities, Allianz Direct for instance, has emerged as one of Europe's top digital insurers. Customers can submit papers and photographs to expedite the 60-second claim process, which is driven by AI-based damage assessment. Customer satisfaction scores have increased by 90% as a result of this innovation, while operating expenses have decreased by up to 50%.

5.1.3. Mitigation of Risk

Both policyholders and insurers can be protected by advanced data analytics and machine learning, which can analyse enormous volumes of data, spot suspicious activity, and flag possible cases of fraud earlier. For instance, a significant insurance company in North America saw 20–30% increases in productivity after implementing AI on a large scale for claims-related administrative duties. Additionally, data-driven underwriting enables improved risk management and more precise policy pricing, guaranteeing customers fair and competitive prices.

5.1.4. Novel Business Structures

Innovative business models brought about by digital transformation give customers more freedom and accessibility to insurance. By providing more accessible and flexible insurance solutions, these innovative business models aim to increase client engagement. By digitising insurance procedures

and providing them as SaaS products, Insurance-as-a-Service (IaaS) enables businesses such as Phoenix Group to streamline operations and enhance customer service⁽⁴²⁾. Policies are immediately included in goods purchase through embedded insurance. For example, Tesla provides customised prices for auto insurance based on individual driving patterns by monitoring driving patterns with vehicle data.

5.1.5 Ecosystem and Platform

To offer highly customised health plans and reach a wider audience, models incorporate other insurers, such as Discovery, which has a sophisticated digital platform and ecosystem. These models show how insurance is becoming more consumer-responsive due to digital innovation.

5.1.6. Enhanced Agility

Insurers can react to shifting customer demands and launch new products more swiftly with the help of digital tools. In a market that is changing quickly, this agility is crucial for being relevant and competitive. For example, Guardian Group, which collaborated with Sutherland to deploy a cloud-based analytics platform⁽⁴³⁾. Achieving 100% digitisation and cutting claims-related processing time by 20%, this greatly increased operational effectiveness and customer responsiveness.

6.0. Legal Perspectives in Insurance for E-Commerce Transactions

Similarly, to other online transactions, online direct insurance business transactions allow for the entire creation of an insurance contract to be completed online. The submission (the offer) of insurance by the proposer, the analysis of the application and its approval by the insurer, the settlement of payment for the premium, and the issuing of the policy all take place online.⁽⁴⁴⁾ This type of transaction permits the insurer to publicise its various insurance products on its company website, to welcoming offers from potential customers; this is akin to online commercials for goods and represents an invitation to treat.

If, after visiting an insurer's website, an individual is attracted by an advertised insurance product, they can create an online request by completing

(42) Charlton, 2024.

(43) Ibid.

(44) McHarg, op.cit., p.31.

an e-proposal form, observing the insurer's procedure, and then submitting it online. This represents the proposer's offer. If, after surveying the proposal, the insurer agrees to undertake the application, the proposer will be asked to pay the given premium⁽⁴⁵⁾.

The premium is paid online by providing the insurer with the proposer's bank details, ensuring that the premium can be transmitted from the account of the proposer to that of the insurer. On receipt of the premium, an e-policy is then sent to the proposer. The contract, now concluded, becomes immediately effective, and the insurer begins to assume responsibility for risks, as per the specifications of the contract.

The procedure for initiating an online insurance contract is comparable to the creation of a traditional paper insurance transaction. Fewer disputes occur from the creation of online direct insurance transactions. This article does not propose to give a detailed discussion of this form of online transaction, but instead highlights the second category of online insurance transaction, the "self-service insurance card" transaction⁽⁴⁶⁾.

7.0. Self-Service Insurance Card Transactions

Like an online direct insurance contract, insurance card transactions are also a paper free contract; the insurance contract will be created and finalised online without any paper documents, excluding the insurance card. Known as a self-service insurance card, it is an innovative way of buying and selling insurance, the customer or cardholder must conclude the online transaction personally⁽⁴⁷⁾.

The insurance companies can sell self-service insurance cards to any individual who is 18 years old or older with full adult capacity and who has

(45) Ibid at 33.

(46) F. A. Hayek, "The Use of Knowledge in Society", American Economic Review, Vol.35, Iss.4, Sep.1945, pp. 519-530. https://statisticaleconomics.org/wp-content/uploads/2013/03/the_use_of_knowledge_in_society_-_hayek.pdf. Last Accessed: 18/11/2024. For the analysis of this paper in Peter J. Boettke in F.A. Hayek, Economics - Political Economy and Social Philosophy, Palgrave Macmillan, London, 2018, p.39.

(47) Z. Jing, Chinese Insurance Contracts: Law and Practice, Abingdon, Oxon and New York, NY: Inform Law from Routledge, 2017. Z. Jing, "Electronic Transaction of Insurance Business: "Self-Service Insurance Card" in China", BILA Journal, Vol.127, (2014), pp.164-184. <https://bila.org.uk/wp-content/uploads/old/53db4403f24f81.46004968.pdf>. Last Accessed: 18/11/2024.

an interest in insurance card transactions. Recently, an increasing number of insurance companies have launched an insurance card business. The way it works is that initially, the self-service insurance card is advertised to customers on a face-to-face basis to encourage them to purchase the card.

A person wishing to take out insurance in this manner can purchase a self-service insurance card. The card can also be sold on an insurer's website, in a store, a travel agency, at a public transport terminus, an airport, or in a bank, post office, or other location. Once activated, an e-policy is produced, which immediately becomes active.

Otherwise, the parties may also choose an activation date for the policy⁽⁴⁸⁾. An insurance card may be gifted to a friend or family member. The recipient of the card (the card-holder) can activate it on the insurance company's website.

This type of insurance operation is devised with some specific, straightforward categories of insurance in mind, such as household and short-term personal accident insurance. The options offered may incorporate accident insurance for air travel, public transport, and motor vehicles, etc. The duration of the insurance contracts varies from several days, months, and half a year to one year.

There are many benefits to insurance card transactions. The operating cost to the insurer is low; the premium is inexpensive; the process of creating a contract is straightforward and quick. These benefits make this type of transaction desirable, particularly to certain groups of individuals. For instance, frequent travellers are interested since the process for creating the insurance policy is straightforward and quick. On a practical level, insurance cards are easy to sell, but several legal issues have occurred and may continue to occur related to this form of transaction⁽⁴⁹⁾.

The concerns relate to when the insurance is concluded, who the contract proposer is, where an insurance card is gifted and transferred to a friend, and how the parties fulfil their responsibilities of good faith within a card transaction⁽⁵⁰⁾. The conclusion of an insurance card transaction has two phases: the first is the purchase of the insurance card, and the second is online activation of the card. Therefore, disputes may arise as to the exact point that

(48) M. Siems, *Comparative Law*, Cambridge University Press, 2018.

(49) Schwarcz, 'Public Utility Style Rate Regulation', 2018, p.84.

(50) Jing, 2017, p.121.

the contract may be deemed to be completed.

Since an insurance card can be transferred between individuals, the purchaser and the activator of the card may be different individuals. Therefore, the issue of who is the proposer in this situation is unclear. Furthermore, in a card transaction, as compared with a traditional insurance transaction, the responsibilities of good faith will be fulfilled in another manner. Due to a lack of legal guidelines covering such a transaction, judges, academics, industry professionals and legal practitioners hold a variety of views on these concerns. These concerns are examined in the subsequent sections⁽⁵¹⁾.

Hence, it can be concluded that electronic and e-commerce transactions are an object of insurance, since all actions in electronic transactions or e-commerce can mitigate loss, damage, or not achieve the projected profit for the related parties⁽⁵²⁾.

8.0. Subject and Object of Coverage Insurance in Electronic Transaction Through E-Commerce

The insurance industry refers to what is known as subjects (the specific parties related to the contract) that is, the insurer and the insured. The definition is as following⁽⁵³⁾:

- a - The Insurer / Insurers refers to parties prepared to assume and take risks from the insured. The insurance, insurance agreement takes place between the two parties, where the insurer is prepared and guarantees to offer compensation to the insured, if a loss, injury or loss of revenue due to an uncertain event occurs, as established by the agreement.
- b - Insurers may consist of either an individual, or an authorized entity (that is an insurance company). On analysing electronic insurance transactions via the internet, it can be said that whoever became a party in an electronic transaction via the Internet (e-commerce) is an insurance company that accepts cyber assurance. A relevant example of an insurance company in

(51) Ibid at 45.

(52) Significant report by the Law Commission to shape this Act was The Law Commission and Scottish Law Commission, Consumer Insurance Law: Pre-contract Disclosure and Misrepresentation (Law Com No 319, Scot Law Com No 219, 2009), p.17.

(53) Law Commissions, Insurance Contract Law: A Joint Consultation Paper (June 2021) p.23.

Indonesia accepting online insurance provisions is Adira Insurance⁽⁵⁴⁾.

- c - Insured Person. This refers to a party whose risk will be covered by the insurer. The insured may refer to an individual, several individuals or organisations, legal entities including businesses, or anyone liable to suffer a loss. According to the author, those who can become the insured party in online insurance is the Certificate Authorities, in its position as a party that may experience a loss. Moreover, according to article 1 point (7) of Law no. 40 of 2014, according to Indonesian law, reinsurance involves covering risks faced by insurance companies or other reinsurers⁽⁵⁵⁾.
- 1 - Insurance Object. As stated in the Code of Commercial Law, the factors deemed as objects within an insurance agreement are anything that encompasses the content or a portion of a liability contract between the insurer and the insured covering objects and services, physical health, legal liability and all other factors that may sustain loss, damage, or be in any other manner diminished. Under section 268 of the Book of Commercial Law, the object is all interests that:
 - a - Can be measured with money.
 - b - Be exposed to a variety of danger.
 - c - Included by law⁽⁵⁶⁾.
- 1 - On evaluating more deeply the description of the object of insurance coverage according to Commercial Law, the following can be the object of online insurance transactions, among others⁽⁵⁷⁾:
 - a - Electronic Transactions. Electronic transactions are valid as the object of insurance, in that, the risks requiring insurance are losses occurring in the situation of a necessary data message, failing to arrive at its destination for some reason.
 - b - Network Security System. A Certificate Authority offers a method or

(54) S. Yinhu, Tian Yin and Zili Ren (eds.), Insurance Law Review, Law Press, China, 2012, p.27.

(55) See art.1 and art.17 of the Insurance Law 2009.

(56) J. Wang, Insurance Cases, Rules of Judgement and Application of Laws, People's Court Press, 2013, p.43.

(57) L. Feiler and N. Forgó, and M. Nebel, The EU General Data Protection Regulation (GDPR): A Commentary, Woking: Globe Law and Business, 2018, p.29

system for instituting telecommunication connections between service users. These connections may occur at any time and may be instituted by anyone. The service provider's system may suffer damage, be it of an interim or artificial nature as a result of natural disasters⁽⁵⁸⁾.

9.0. Areas of Legal Liability and Jurisdiction

Most companies are present online, even if it is merely an information only, passive website. But a limited online presence is still international as websites are accessible from almost everywhere. Other types of social media also have international influence. In theory, simply accessing a website could initiate the application of law and jurisdiction in countries other than that of the company's location. This subsequent section discusses legal principles inherent in the exercise of online insurance law. Furthermore, it evaluates a number of possible areas of liability that may generate the exercise of cross-border law⁽⁵⁹⁾.

9.1. Regulatory Compliance, Insurance

The insurance industry has clear regulations. Traditionally, its participants must be authorised to supervise an insurance and, in the case of some specific products, to oversee business investment within a jurisdiction, including publicity, and creating product offers. Additionally, these offers, product descriptions, and other insurance-related material must largely follow, *inter alia*, any relevant insurance and security disclosure and promotional regulations of the pertinent jurisdiction, be it on a blog, website, or another electronic communications medium, such as funded links on third-party search engines or further websites, such as X (formerly Twitter), or Facebook.

It is difficult for authorities to keep up with the rapid advancements in technology and shifting consumer expectations. Since preserving financial stability and safeguarding policyholder interests are the two main goals of insurance regulation, regulators must strike a balance between innovation and achieving their supervisory goals. Digitalisation is hampered by more than just insurance regulations. Regulations pertaining to data protection and privacy, for instance, may restrict the use of data, while regulations pertaining to data

(58) Ibid, p.36.

(59) R. Thomas, *Loss Coverage: Why Insurance Works Better with Some Adverse Selection*, Cambridge University Press, 2017, p.19.

localisation may impose limitations on international data flows.

9.1.1. Cross-Border Considerations

There are also legal and regulatory issues for cross-border e-commerce, in that a business can neither sell to everyone nor ship to everyone. There are 'restricted parties' which refer to blocked people and parties unto whom items cannot be sent. Hence, particular persons, entities, and locations have to be known. These are all concerns and intricacies of trade legality which has to be known to avoid a range of legal pitfalls when e-commerce businesses want to globalize their brands.

E-commerce therefore, may have to put disclaimers on their websites explaining to customers that customers' duties on products will have to be paid as per costs within the country of the recipient/customer. Moreover, online marketplaces may allow sellers to sell to a restricted party, and they allow that shipment to reach that restricted location. This could render a marketplace being liable for being in breach of local regulations on account of permitting sales to that location and then permitting the sale to ensue.

9.1.2. Online Advertising for Insurance Products

Regulators are now beginning to resolve the issue of whether a simple online presence and worldwide access is enough to initiate such compliance conditions and prompt liability for lack of appropriate authorisation or a lack of conformity to regulations⁽⁶⁰⁾. Solutions in progress incorporate criteria for whether the action points towards a jurisdiction, although, different principles are applied.

For instance, in the USA, authorisation from every state is required for undertaking an insurance business in that state ('admitted basis') or its functioning via distinct 'surplus' or 'excess' lines brokers ('non-admitted basis'). In cases where the specific market does not meet the requirements, the New York State Insurance Department made its position clear regarding online advertising, stating⁽⁶¹⁾.

Online advertisements for insurance products or services, agents or

(60) Y. Brauner, "Value in the Eye of the Beholder: The Valuation of Intangibles or Transfer Pricing Purposes", *Virginia Tax Review*, Vol.28, (2008), pp.79-88.

(61) *Ibid.*, p.91.

brokers have a variety of forms, including tiles, frames, banners, hypertext links or embedded links. Advertisements such as these should be clearly defined and may appear on a non-licensee's website⁽⁶²⁾. Therefore, a non-licensee that hosts advertisements such as these on its website may accept payment calculated in a specified way, including set fees for advertisements or fees calculated according to the amount of business generated as a result of the advertisements.

9.1.3. Online Insurance Regulation in the UK, EU and US

Online advertisements are subject to all related existing legal and legislation and limitations relevant to advertisements in any other form.

However, if a New York authorized insurer is not offering said insurance products or services, the websites where the advertisements appear must contain a clear and obvious disclaimer demonstrating that the said products or services are unavailable in New York State, and the said products and services will not be made obtainable in New York. For instance, a disclaimer proclaiming 'not available in all states' would be adequate. In such situations, payment would not include New York sales as such sales would break the Insurance Law⁽⁶³⁾.

Some regulators require the development of steps guaranteeing transactions will not be administered in that jurisdiction. Such as blocking credit card payments to customers registered to addresses outside of the jurisdiction. For instance, the FSA permits only authorised entities to advertise investment products in the UK. It further specified that it *may* be sufficient to post a disclaimer stating the offers were not open to UK individuals, combined with a policy and clear practice of declining to attend to or represent UK residents entering the website.

Similarly, this specification is liable to relate to non-investment insurance providers⁽⁶⁴⁾. An example from the UK Financial Services Authority (FSA) concerned the financial services providers' use of supported links and search

(62) European Commission, 'Transfer pricing in the EU Insurance context', Taxation and Customs Union. Last accessed: 21/7/2024.

(63) T. Wright and G. Zucman, "The Exorbitant Insurance Privilege" National Bureau of Economic Research, NBER Working Paper Series, Working Paper 24983, 2018, pp.23-25.

(64) U. Sivarajah and M. M. Kamal and Z. Irani and V. Weerakkody, "Critical analysis of Big Data Challenges and Analytical Methods", Journal of Business Research, Vol.70, (2017), p.36.

engines. It states, for instance, that an advertisement link not occurring in combination with a related search term would be unlikely to reach the criteria of “fair, clear and not misleading”⁽⁶⁵⁾.

EU supervisory compliance regarding online insurance business is more complicated than other jurisdictions, since it is partially overseen by the E-commerce Directive and partially by other EU and state regulations, including the various insurance commands and the Distance Selling of Financial Services Directive. While EU legislation aims at harmonisation, it is only minimally harmonious with varying state implementation⁽⁶⁶⁾.

Overlap also occurs in the areas of customer security, e-commerce, the remote sale of financial services, and the numerous insurance directives. The exact interface of this range of directives and their application in 27 Member States is outside the bounds of this chapter. Regarding e-commerce, the electronic agreement requirements of the E-commerce Directive and its prohibition of Member States enforcing an authorisation system for undertaking online services, as stated, apply to insurance. Consequently, Member States must ‘lift ... existing provisions prohibiting/impeding the offer/conclusion of insurance products over the internet, be it internally or on a cross-border basis’. Therefore, only the insurance authorisations needed for to the Insurance Directives would apply⁽⁶⁷⁾.

The E-Commerce Directive, ...concerns only the activities of the insurance undertakings but not the activities of insurance intermediaries, who as a result – with respect to their on-line activities – are covered by the “internal market clause” of the E-Commerce Directive⁽⁶⁸⁾.

While the Insurance Mediation Directive concerns online transactions as they correspond to the E-commerce Directive, there is still discussion about an amended insurance mediation instruction.

Under negotiation are the varied definitions of cross-border activity and the restricting considerations which may impact notification, policyholder data conditions, and additional compliance details. The precise manner of the

(65) Feiler et al., *op.cit.*, p.39.

(66) Sivarajah, et al., *op.cit.*, p.290.

(67) *Ibid*, p.296.

(68) R. Thomas, *Loss Coverage: Why Insurance Works Better with Some Adverse Selection*, Cambridge University Press, 2017, p. 21.

interface with the E-commerce Directive is for future consideration. Although covering the approval/notification and contract law requirements under the relevant insurance directives sections, the criticism of insurance in Article 3 of the E-Commerce Directive does not cover provisions on 'pre-contractual information to policyholders'⁽⁶⁹⁾.

9.2. A Case Study of How the Insurance Sector Has Navigated this Landscape

Legal & General, a British insurance company, is leading the way in creating a website offering a range of financial and administrative information. Its 'Extranet' computer system coordinates its agents and representatives around the world. Instalment payments can be made via the website, allowing for customer discussion with the firm's experts. Over 750 British insurance companies participate in the rapid exchange of electronic information and provision of services, resulting in the creation of the 'Limnet' network, the largest network involving insurance procedures and reinsurance of commercial elements.

The 'Rinet' network covers insurance and reinsurance⁽⁷⁰⁾. It is used by a substantial number of insurance dealers in over 30 countries and incorporates over 200 authorities and organisations. There has been significant growth in the number of businesses utilising the Internet to market insurance policies, such as house insurance, at a greatly reduced price. Numerous insurance and crisis risk companies use the Internet to share comprehensive insurance contacts. The Internet is valuable in reducing administrative and distribution costs, and its automated procedures allows for instant problem resolution⁽⁷¹⁾.

The above information suggests a wide-ranging lack of individual, business, and governmental awareness of insurance. In particular, its significance and role in the protection of society and the reduction of risks⁽⁷²⁾. Many forgo insurance, claiming its religious illegality or that since incidents

(69) R. Stirton, "Insurance, Genetic Information and the Future of Industry Self-Regulation in the UK" *Law, Innovation and Technology*, Vol.4, Iss.12, (2012), p.212.

(70) T. Yin and Z. Ren, *Insurance Law Review*, 2012, p.147.

(71) Arts.16 and 17 of the Insurance Law 2009.

(72) R. El Monayery, "The Application of E-Commerce in the Insurance Industry", *The Macrotheme Review*, Vol.4, Iss.1, (2015). https://macrotheme.com/yahoo_site_admin/assets/docs/17MR16Ra.802903.pdf. Last accessed: 18/11/2024.

are predestined to occur, insurance is unnecessary.

This reduces the scale of the industry activity. Regulations and routine practices still hamper the insurance sector, to say nothing of the small scale of activity among private companies. Additionally, some companies in the industry lack either an adequate number of employees, or the required type of expertise from its university graduates⁽⁷³⁾.

9.3. The Duty of Disclosure in Insurance Card Transactions

Since online insurance and card insurance transactions are paper-free, the entire process is concluded online. Insurers or their agents are therefore incapable of offering a paper description of exclusion clauses or of requiring a proposer to sign the paper to prove that the requirements have been fully completed. This has resulted in a significant number of disputes regarding whether an insurer has fulfilled its obligation to explain the terms, principally in situations where an insurance card is activated by an insurer's staff member or agent.

Two illustrative cases will follow, wherein both situations the cards were activated by agents⁽⁷⁴⁾. In *Longmei Han and Na Liu v Yangguang Life Insurance Co Ltd*, 58 Mr Liu, from a village of Jiangsu Province, purchased an automated insurance card from the insurer's agent in March 2009. Liu, lacking a computer and therefore being unable to access the insurer's website, requested the agent activate the card for him. Helping Liu to complete the online form, the agent wrote "farmer" in the section for "Insured's Occupation", wrongly believing this to be his profession, and not asking Liu his profession.

In fact, Liu was a truck driver for a transportation business, driving his own truck. The agent successfully activated the card, and an e-policy was issued, thereby concluding the contract. The policy was to run between 16th March 2009, and 15th March 2010. On 20th April 2009, an accident occurred, killing Liu. His beneficiaries made a claim against the insurer, which was rejected on the basis of non-disclosure of key information by the proposer.

Had his profession as a truck driver been disclosed, the insurer would have

(73) This case was cited by Jing Wang in her book. See J. Wang, *Insurance Cases: Rules of Judgement and Application of Laws*, 2013, p.46.

(74) This case was cited by Jiadong Xing in Tian Yin and Zili Ren (eds.), *Insurance Law Review*, Law Press, China, 2012, p.143.

rejected the risk, and the online system would have automatically rejected the application. The court found that the insurer could not reject the claim since there had been no breach of duty of good faith by the proposer. Under Insurance Law, a proposer's duty of disclosure is to answer the questions raised by the insurer or his agent in an honest manner. In this situation, by not asking the proposer his profession, the mistake was due to the agent's negligence⁽⁷⁵⁾.

In a second case, of *Jinglong Dai v Huaxia Life Insurance Company Jiang Su Branch*, Jun Dai, the son of Jinglong Dai (the plaintiff), purchased an accident insurance card on 15 Feb 2010. The agent who sold the card to Dai, activated it. The contract, once concluded, became immediately effective for the period of one year. On 20 Sept 2010, Dai was killed in a traffic accident while riding his motor bike. The notice issued by the Traffic Police established that Dai was responsible for the accident, since he was riding an old motor bike without a relevant safety technical assessment (equivalent to MOT). Dai's father claimed, but was rejected by the insurer, as this risk was not included. The court found for the insurer⁽⁷⁶⁾.

Several questions have arisen from the preceding two cases: (1) the manner in which both parties fulfil their duties of good faith in a card operation; (2) the manner in which they fulfil their duties if the card is activated by an insurer or their agent at the behest of the proposer. In the ruling of the second case (Jinglong Dai), the court held that all policy terms and exclusions were stated on the website and that the activation process, the key terms, particularly the exclusion clauses were emphasised with "BOLD" words, that design was appropriate to specify that the insurer had fulfilled the pre-contract duty to clarify all contract terms. A proposer, concluding the activation himself, must first read the terms and then click "Agree" and "Confirm", in order to access the activation system.

The activation is deemed successful, since it means that the proposer has read and agreed to all the contract terms, including all exclusion clauses⁽⁷⁷⁾. The Supreme People's Court's Second Interpretation on Certain Questions Concerning the Application of the Insurance Law of the People's Republic

(75) This case was cited by Jing Wang in her book. See Jing Wang, *Insurance Cases, Rules of Judgement and Application of Laws*, 2013, p.46

(76) Ibid.

(77) S. Sun, *Introduction to Civil Law Obligation*, Sunmin Book Press, Taipei, 1999, p.45.

of China has lately offered a response to the issue of providing evidence of an insurer's fulfilment of pre-contract duty to explain terms and exclusion clauses to the proposer. Article 12 of the SPC's⁽⁷⁸⁾.

Interpretation provides "Where the insurance contracts are concluded through internet, telephone or other similar ways, if the insurer performs his duty of explaining exclusion clauses by webpage, audio or video or other similar ways, the People's Courts should deem that the insurer has performed his duty"⁽⁷⁹⁾. An issue arises where the card is activated by an insurer's employee or its agent, since it is complicated to establish whether the staff member or agent has fulfilled the explanatory part of his duty appropriately. It is recommended that:

- a - if a staff member or agent assists the proposer to activate the card in their presence, during the activation process, the staff member or agent should recite and clarify the terms for a proposer who is illiterate, or will request the proposer to read the specific terms and exclusionary clauses if the proposer can read. A printed affirmation should be authorised by the proposer with a signature, saying "the policy terms have been clearly explained to me".
- b - If the activation between the proposer and the insurer occurs over the telephone, a record of the conversation should be made in order to prove that all duties were performed accurately during the process of the card activation⁽⁸⁰⁾.

10. Operational, Technical, and Regulatory Challenges

In the contemporary interconnected world, consumers may buy anything they want from vast online offerings at the touch of a key, and electronic contracts make up a sizable share of international trade. In contrast to the conventional world, where it takes time and effort to find new products, people may now access a wide commercial world. Insurance must adapt accordingly. Yet with all this, comes a plethora of challenges, which will be outlined below.

(78) Insurance Law, article 12 (1).

(79) The Insurance Law 2009, art.34, para.1.

(80) R. H. Jerry and D. R. Richmond, *Understanding Insurance Law* - New Providence, NJ: LexisNexis, Fifth Edition, 2012, p.71

10.1.1. Legacy Systems

In the insurance sector, outdated systems present several difficulties that obstruct efficiency and advancement. It is challenging to combine these rigid systems with contemporary technologies, which results in data silos and restricted analytics capabilities.

These systems' manual procedures lead to inefficiency and higher error rates. Furthermore, updating and maintaining old systems requires specialised knowledge and is expensive and resource-intensive. These systems also suffer increased security risks as a result of insufficient defence against contemporary cyberthreats, and they have difficulty meeting changing regulatory requirements. Some insurers have partnered with tech businesses to successfully merge new technology with outdated systems.

For instance, Cognisant assisted a multinational insurer in modernising its antiquated platform, which increased operational effectiveness and reduced expenses. Likewise, Infosys helped a major international insurance modernise its actuarial processes. Infosys enhanced the insurer's data integration and analytics capabilities by transferring data and logic to a Hadoop-based big data platform, which resulted in more accurate and efficient modelling procedures.

10.1.2. Data Security and Privacy

Insurers are exposed to increased cybersecurity concerns as a result of the growing digitisation of operations. It is crucial to safeguard private client information from online attacks and make sure that strict data protection laws are followed.

10.2. Regulatory Challenges

With modifications to financial regulations, environmental standards, and data protection legislation, the regulatory environment in the insurance sector is always changing. It takes ongoing attention to detail, flexibility, and substantial support for compliance management solutions to navigate these intricacies.

E-commerce and the Internet provide the insurance industry with a range of prospects, including potential profitable new distribution methods within a jurisdiction, especially in personal or commercial insurance where the availability of online insurance websites and product comparison sites allow

customers to find, cost and purchase a policy that fulfils their needs to the point that these sites can be understood to be performing the broker or agent's role.

The possibility of innovative and inexpensive methods of gaining access to new geographic markets by conducting online business internationally is an ideal. This, however, seems unlikely in many jurisdictions in the near future. International legal compliance continues to be a complex and expensive endeavour, even in supposedly harmonised areas such as the EU, even before linguistic, cultural, and legal differences, such as dispute resolution or claims handling, are considered.

The industry has modified its procedures and distribution systems to geographic boundaries due to the legal restrictions of insurance regulation. Global brokers and insurers with authorisations in many places have continued to hide the impact of these restrictions on major business clients, or the customer has approached insurance markets prepared to write risks on an offshore basis.

This is unlikely to change soon, although there are likely to be more effective, appropriate, and transparent procedures using online systems for applications, underwriting, policy, and authorisation issuance, and improved access to information and clarity in something close to real time. At the individual and minor commercial level, it is still possible for technology to cloud regulatory limitations by restricting access to insurance portals or an insurer's website, or to resources limited by specific jurisdictions, by using geo-location systems and software.

The ethical use of the enormous volumes of data that insurers use is essential to preserving public and policyholder trust. Across 12 business areas, Gore Mutual had to manage more than 330 distinct regulatory requirements (Charlton, 2024). Gore Mutual automated risk-based control testing, enhanced insight into compliance status, and expedited its compliance procedures by deploying Onspring's regulatory compliance management system. Significant productivity improvements and improved regulatory compliance resulted from this change.

Sentry Insurance ran into issues with compliance training and user participation. Sentry gave its staff real-time support and relevant in-app guidance by implementing Whatfix's digital adoption platform. With a 94%

user engagement rate and a 91% self-help search success rate, this strategy greatly increased the effectiveness of compliance training while lowering the risk of non-compliance.

10.3. Findings

The insurance industry is an industry that is always changing, with challenges to overcome but also a wealth of opportunities brought about by advancements in technology, increased consumer knowledge, and a changing perception of risk. At present, the market has the following features, which have to be taken into consideration in light of evolving developments: Cyber threats: Cyberattacks are being anticipated in the insurance industry, making cybersecurity a top priority and motivating investment in strong security measures.

- Direct Threat from Over-Regulation: More than any other industry, 91% of insurance CEOs view over-regulation as a direct threat.
- Challenges with Legacy Systems: It can be expensive and difficult to integrate new technologies with antiquated systems. Updates to old systems are a top priority for 73% of insurers in order to increase efficiency and compatibility.
- Customised Insurance: Telematics and usage-based insurance are becoming more popular, providing data-driven client pricing.
- Cloud and AI Adoption Is Growing: 39% of firms concentrate on AI for engagement and efficiency, while 45% of businesses look to cloud capabilities.
- CEOs Face Tech Pressure: Keeping up with the rapid advancements in technology is a concern for 70% of insurance CEOs. In an unpredictable geopolitical environment, 76% of CEOs devote significantly more time to scenario planning.

The findings from this paper there are as follows:

- a - E-commerce has a range of advantages such as easy payment options (debit and credit cards, and online payment platforms); enhanced customer experience and services; global reach; increased sales; better consumer and customer insights via data which helps to improve products

and the experience; greater product selection in comparison to physical stores; lower overhead costs making them more most-effective to run as enterprises and also more accessible to younger people and those without any formal business training; greater convenience as customers are able to shop at any time, anywhere.

- b - Yet despite the above, individual electronic transactions give rise to several problems that are crucial to e-commerce's development as a legitimate business transaction tool and to the building of trust and confidence in it. There are particular concerns regarding the online formation of the insurance contract. Because of this, safeguarding consumer privacy and data security is essential, as is enforcing laws that prohibit the usage of data and information that have been utilised in commercial transactions.
- c - There are legal and regulatory compliance issues as e-commerce businesses must comply with a variety of legal and regulatory requirements, which can be both lengthy and complex.
- d - For the insurance sector, digital transformation is essential. New business models, more efficiency, and better consumer experiences are all brought about by it. But there are difficulties with this change. Strict laws, outdated processes, and the exorbitant price of new technology can all impede advancement. The future can be challenging for insurers with lengthy histories and antiquated procedures.
- e - Both UNCITRAL and the EU Directive emphasize the legality of electronic contracts. However, the EU Directive goes further by providing a harmonized legal framework for cross-border e-commerce transaction within the EU.
- f - Older and mid-sized insurance firms must make a difficult choice. They must choose between taking on the cost of updating their systems alone or partnering with insurtech companies. Our case studies demonstrate how insurers have effectively navigated these obstacles by leveraging technological partners. Because they begin with the newest technology and have development teams that can innovate fast, new insurtech companies have an advantage. They can swiftly adjust to shifting consumer demands and market conditions thanks to their agility, which keeps them ahead of more established businesses.

g - Several national laws have been passed to promote and advance e-commerce and e-contracts, which are agreements signed between businesses that sell goods and services online and potential clients in the same or other nations.

11. Conclusion

E-commerce is now a crucial component of several sectors, such as manufacturing, retail, travel, and entertainment. Among the most well-known e-commerce businesses are Temu, Uber, Alibaba, Amazon, eBay, Shopify and AliExpress.

Financial services and products (banking, insurance, and investing) are available through e-commerce from almost any location. However, the recipients of these services may find it extremely challenging to verify that the financiers are trustworthy organisations or to assess the potential risk levels in the electronic market. Moreover, any company that sells products online can encounter dangers, such as:

- A client alleges that the goods were harmful.
- Warehouse operations are disrupted by a fire or other tragedy.
- A supplier does not deliver items on schedule.
- Customer data is compromised on the website associated with the e-business.

It is crucial to have enough insurance in place to safeguard both a company and its associated bank account if something goes wrong, and one is forced to make payments because it is impossible to anticipate what may happen to an e-business. Consequently, customers may make even greater use of the Internet to purchase insurance in than they do at present. The possibility of a growth in international online insurance transactions appears to rely on a more integrated harmonisation of regulations covering retail insurance business and additional consumer protection laws. In jurisdictions like the EU and US, a central core of harmonised regulation exists already; there is no convincing reason why a complete harmonisation is impossible, but it continues to be unlikely in the short term.

Finally, electronic insurance transactions have become progressively more popular in the insurance market recently, because of its benefits, easier, faster,

and less expensive than the traditional method of insurance transactions. But the lack of legislation governing this type of insurance activity creates issues and disputes in judicial and industrial spheres. This paper has considered a range of issues related to “self-service insurance card” transactions, concentrating on the themes of the creation of insurance contracts via “self-service insurance card”. To remain current with the rapid growth of the insurance card business, it is vital to develop additional legislation to manage the activities to aid the strong growth of the business.

Suggestions and Recommendations

For the insurance industry, digital transformation entails using technology to restructure conventional business models and procedures. The need to adjust to a world that is becoming increasingly connected digitally, where customer expectations and behaviours are changing quickly, is driving this shift. Digital self-service technologies, such as mobile applications and online portals, are among the technical innovations that help insurers provide better customer support. Leading-edge technologies like blockchain, cloud computing, artificial intelligence (AI), and machine learning are helping insurers work more productively, provide better customer service, and innovate. To stay competitive in the insurance market, digital innovation and business change are essential. Companies that do not embrace digital transformation risk falling behind. Everyone is impacted by this issue, even major insurance corporations, who could find it more challenging because of their reliance on outdated technology and legacy processes.

The recommendations are:

- 1 - The regulatory framework for insurance must permit the electronic facilitation of insurance procedures.
- 2 - Traditional insurers face serious difficulties due to the emergence of insurtech disruptors. By using technology to provide efficient, user-friendly services, these innovative firms are forcing more traditional insurers to change and adapt.
- 3 - To stay ahead of the more agile and nimble rivals, insurers must embrace digital change immediately and keep up with the pace of technological developments. The IT infrastructure and operating environment of insurers must support digital business models.

- 4 - Insurers face difficulties in anticipating and controlling financial risks due to global economic uncertainties, which include geopolitical conflicts and unforeseen circumstances. To handle these swings and stay profitable, insurers require flexibility and intelligent risk management.
- 5 - Increased knowledge of e-insurance for e-commerce contracts, particularly within the Gulf region.
- 6 - Implementation of an international convention on both the regulation of a legal system which is able to rule cyberspace and monitor violations which occur therein, and also one which grants protection and preserves the rights of parties to e-commerce contracts.
- 7 - Further research in this emerging arena, with also attention to the Gulf Arab countries and related jurisdictions.
- 8 - Conferences and seminars on the evolution of e-insurance, especially in the Gulf region, and an awareness of the challenges associated with its deployment are necessary. This is in addition to making suggestions and addressing these obstacles. These conferences can address any legal concerns in order to keep attendees updated on current developments and guarantee the formation of an expert panel capable of overseeing e-insurance in the area.

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