

Advantages and Disadvantages of E-Banking and Commerce

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Abstract: One of the necessary tools to implement and develop electronic commerce is e-banking systems, which along with international financial and monetary systems, facilitate the operations and activities related to e-commerce. In fact, it can be said that the implementation of e-commerce is based on e-banking. That is why implementation of electronic systems in monetary institutions all over the world has been increasing. That is, the number of e-banking system is daily increasing. One of the necessities in electronic commerce is to have safe e-banking, clear and obvious laws. Here, we evaluate the advantages and limitations of e-banking laws in Iran.

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Introduction

In old days, people used bartering trade method to answer their needs. The most common way in this method was that people exchanged their extra goods with one which they needed them. Problems related to this method caused people to create goods by which they can both answer their needs and play the role of dealer. This potential feeling got exterior appearance after sometime and led to creation of good called Money". It also led to dramatic change in commerce. Along with this evolution, we had spread of individualism and freedom of thought which led to appearance of commercial contracts in present form. However, the increasing demand and profit-driven nature of human being was not satisfied with written contracts and then soon afterwards we faced modern world of commerce after the invention of devices such as mobile, and fax out of the tumultuous trade world. Synchronization of modern commerce development, economic globalization plan and joining of different countries to this plan and daily increasing of internet users all over the world have changed this modern system to post- system. In the way that it has been an inevitable part of every body's life. Being in Global Village forces us to prepare the substructures of e-commerce and also ignore the modern laws which will be disaster in near future (Jariri2012). Muller (2008) calls e-banking as use of internet by banks to offer some services to customers and use of internet by customers to organize, control and doing transactions on bank accounts (Moghaddasi, 2010). Accessibility of a large number of people to internet as world web and expansion of electronic communications among people and organizations through virtual world have prepared an appropriate opportunity for doing economical and commercial trades. E-commerce is the most important achievement of using the

technology in economical fields. Using this technology has led to development of commerce, facilitation of economical communications, ability to work for small and medium agencies, improving productivity, reducing costs and saving time. ICT enables firms to provide increased competitiveness and has created new jobs.

Electronic money was firstly used in America in 1918 by the Federal Reserve Banks. These banks reported on its agenda the payment and funds transfer through telegraph. Later, with development of the bank's automated institutions in 1972, it provided the bed for widespread use of electronic money (Majidi M, 2011). As the result of developing this technology, volume of e-commerce is increasing in contemporary world. Based on the reported studies by Firstar Institution, it is predicted that during 2002-2006, volume of e-commerce will annually increase approximately 58%. That is, from 2293 billion dollars in 2002, it will get over 12873 billion dollars in 2006 (Soulati, 2010:8). One of the necessary tools to implement and develop e-commerce is e-banking systems that facilitate the international financial and monetary systems. It facilitates the operation and activities of e-commerce. In fact, it can be said that the implementation of e-commerce is based on e-banking. That is why use of electronic systems in monetary institutions has been increasing all over the world. That is, the number of e-banking system is daily increasing. Concept of digital economy stresses on this point that the current economy of the world has been significantly influenced by IT (Institute of Business Studies and Research, 2005:90). Electronic or online banking is the ability for employees to increase their speed and efficiency in banking services as well as processes between the bank branches all over the world and also provides customers with

hardware and software features to use them without having to be present in bank at any time of day (24 hours of a day). It is done through safe communication channels. In other words, e - banking means using advanced hardware and software technologies based on network and telecommunications for electronically sharing financial information resource and do not require the physical presence of the customer in the bank. It allows customers to make economic transactions in a secure website in ways such as retail banking jobs or virtual bank, credit or financial institution or construction companies (Soulati, 2010: 1). One of the implications and requirements of e-commerce is to have legal safe e-banking which are obvious and clear. Here, we evaluate advantages and limitations of e-banking laws in Iran.

What is e-banking?

E-banking is to prepare the customers any accessibility to banking services through safe and secure intermediates without physical presence in the bank (Molla Karimi 2012:191). However, some experts have suggested a broader definition and know that using electronic channels and tools such as mobile phones and digital television is necessary for information, communication and transaction banking (Gholipour Soleimany, 2010). In other words, you can define e-banking as using technology and telecommunications networks to transport resources (money) in banking system (Soulati, 2010: 3). Many of communications means including mobile phones, personal computers, laptops, and sales of their devices and ATMs have had main role in completing the process banking including informing, communication and data transaction. Electronic banking has three levels of information, communication and transactions are split. Information, electronic banking is the most basic level. E- Banking is divided to three levels: informing, communication and transactions. Informing is the basic level in e- banking. Banks offer their banking services through public or private networks. Communication is another level in e-banking which make it possible to do inter- system exchanges of banks and customers. The level of risk in e-banking is more than traditional ways and it needs appropriate approaches for controlling any access to network and database systems. Any appropriate transaction systems have the highest risk with Information and communication systems. With controlled security system, it is capable of issue a check, open a bank account and transfer the accounts (Seied Javadin, 2006: 3).

Law of E-Commerce and its evolution in Iran

Increasing growth of communication technology has created a revolution in many aspects of human life and organizational performance. This

technology has changed the working methods, attitudes of individuals, organizations and governments. It has led to transformation and creation of new industries, creativities and new jobs. The emergence of phenomena such as e-business, e-commerce and e-banking are major economic consequences of information technology spread. Iran is a young country using commerce and e-banking and would go a long way to achieve optimal situation. Electronic Commerce Act of 2003 was passed in December 2003. There has been extensive work in the field of e-banking, but lack of infrastructure in many aspects of these activities have causes it to run slowly. This paper presents the concepts and definitions, characteristics and requirements of business and e-banking, e-banking tools and channels and offers a brief consideration of each case (Solati, 2010: 8). Accessibility of many people to World Wide Web and expanding e-communications among people and the organizations through virtual life has created a desirable bed for commerce exchanges. E-Commerce is the most important achievement of using technologies in different economical areas. Using this technology has led to development of trade, economic factors facilitation of economical factors' communication, activities for small and medium businesses, improving productivity, reducing costs and saving time. ICT enables firms to provide increased competition has and also creation of new jobs. As the result of this technology volume of e-commerce is increasing in today's world. Based on the reports by Firstar, it is predicted that during 2002-2006, the volume of e- commerce will get over 58%. In the way that ,from 2293 billion dollars in 2002, it will be over 12837 billion dollars (Soulatin, 2010:8). One of the necessary instruments for expanding e-commerce is to have e-banking system. Along with world monetary systems, it facilitates the activities related to e- commerce. In fact, it can be said that the implementation of e-commerce is based on e-banking. Therefore, the use of electronic systems in the credit and financial institutions are rapidly increasing number of users of e-banking services day by day. Electronic Banking is in two levels: Communications and Transaction. That is a structure which is based on an agreement and a contract. In legal analysis, it is contractual relationship of people, in electronic banking communicate, who have no choice but to resort to the general principles governing contracts (Molla Karimi, 2012: 192). Legal nature of the contract between the parties is not out of the electronic contract because the agreement between bank's customer and bank for getting some services such as the money and foreign exchange transactions, are signed in contract. Relationship between the bank's electronic banking services such as any

liquidation is established in the contract with especial forms. Additionally, other interactions such as those between banks and lenders, or banks through the payment are conceivable in the form of contract (Syed Javadin, 2006:48-49).

Worldwide E-Banking

According to research by Data Monitor firm (leading centers in analysis of banking in Europe) to users of electronic banking systems in eight countries, France, Germany, Italy, Netherlands, Spain, Sweden, Switzerland and the UK have increased from 4.5 million people in 1999 to about 22 million people in 2004. In 2005, more than 75 percent of companies in developed countries, they use at least one of e-banking services. Account security 2. Opportunity to go to bank in any time and space 3. help to increase the economical growth level of country (Solati, 2010: 9). Electronic contracts is not only certain type of electronic contract, but concept of electronic is only shows the formation of it into present electronic contracts (Vesali Naseh, 2006: 116).

Advantages of E-Banking

Since that organizations which are in direct relation with banks are divided to two monetary and customary institutions, and then we evaluate these two from the perspective of financial institutions:

- Establishing and enhancing the reputation of the banks in innovation
- Maintaining existing bank customers
- attracting new customers expanding geographic realm
- offering more services to existing customers
- enhancing competitiveness
- Reducing costs

And from the customers' perspective:

- saving time
- accessing to multiple Channels
- Saving cost

Disadvantages of Electronic Banking

Problems in developing e-banking in Iran are as follows:

1. Lack of cohesive devices between banks
2. Dominance of Traditional banking systems on banks
3. Expensive electronic banking systems
4. Lack of expertise and research and development centers in all banks of Iran
5. Lack of applied researches about needs of society to these services and evaluations on social- economical situation in accepting these services (Soulati, 2010; 11). Now, we review electronic contracts (present or absent ones) and explain its advantages and limitations.

Electronic Contract: present or absent

Contracts signed via Internet and cyberspace which is considered as absent- party contracts.

Absent- party contract is a one whose acceptance is done without dialogue and negotiation, remotely through the mail, telegraph, courier, telex, etc. there is sometimes space and time difference between parties. Although the law of absent party contract is silent, but we cannot doubt on its accuracy because business has accepted it and there is not any reason for the invalidation of it. In addition, in our law, the principle is based on accuracy of commerce and contracts among people unless there has been any reason for its corruption. Since that there is no reason for invalidity of the absent party contract, so we should accept them undoubtedly. Therefore, electronic contracts, which are among the absent party contracts, are considered valid and correct (Vesali Naseh, 2006: 125). It seems that dividing these contracts to absent and present ones, is not appropriate. Then, it can be said that electronic contract is an agreement between two or more willing to cooperate in order to establish the legal works via electronics. The main reason of a contract to be electronic is to use electronic devices. Electronic contract is an agreement with all the conditions necessary to compromise and reach agreement, by way of electronic data messages or electronic devices like computers created, conducted. According to fundamental condition of validity of commerce, almost all lawyers believe that electronic contracts do not have difference with ordinary contracts and present of this situation is necessary for agreement. When both parties have necessary willing to have agreement, there can be contract between them. Form of willing to agreement is not important, but each mean can lead to legal contracts and works (Imami, 1985:181). In electronic contracts, people's willing is expressed through electronic means. A legal contract means that one or more people agree with one or more other people to do something. Therefore, electronic contract means any agreement which is done through electronic means. That is, willing is shown in electronic form in virtual space (Vesali Naseh, 2006:117). This action is generally similar to contracts in real world in the way that there are not much more differences between these two spaces. There are some basic situations for both contracts mentioned in provision 190, because electronic contracts follow the general laws of contracts. There are some basic conditions for accuracy of each contract. Intention is the most important element in each law action. That is, if there is not any intention in an action, it will not be valid. It should be mentioned that internal intention is not only enough, but it will need accomplished esoteric intention of parties. Another condition for the validity of the transaction is that transaction parties must have the ability and capacity to deal with those who do wrong because parties will be considered valid if they must be mature

and rational. That is, a transaction can not be two or more items of more cases: for example, if a person commits to transfer his house or garden to another person after two months or promises to transfer one of them that that is wanted, that contract is not valid. The last condition of having accurate transaction is legitimacy. In order to trade the law works, willing of parties is necessary which will have legal identity after agreement. That is why civil law number 191 says: the contract will be legal if it is written and is based on the parties' willing. As we can see, the contract must be in written form, but since that intention is an internal and psycho one, the contract must be written by means and have been known valid in law issues (Vesali Nasehi, 2006:142).

Based on this fact and also principles of Civil Law, it seems that in electronic trading, transmission and exchange of information through the Internet and electronic media can be a valid method for showing intention and willing of people in making law works. In fact, if people choose electronic means to make their law identity, law accepts their transactions and trades and calls it valid.

Willing and Intention of Parties

What leads to making law identities are human willing. Willing makes legal action because legal procedures are relative and they do not have legal nature. Therefore, the general rules concerning required in traditional space and customary conventions, all can be applied in cyberspace. With regard to what was said, there is no difference between normal and electronic works. But it must be noted that if there have been some unusual signals and alerts, they will not be verified. In electronic exchanges like ordinary contracts, the offer and acceptance is identified by satisfaction of both parties and clear situation. Messages are sent via e-mail, confrontation and Internet services (chat). If we Use the message for the contract, in this case we can not deny the validity of them (Elsan, 2006:346). Data messages which are transferred in electronic commerce and also the contract between the parties, they are considered as parties willing. They must have two following conditions: Firstly, the general principles of contract: that is, if the content of contract is not clear and evident, it is not valid. Secondly, the scientific and technical aspects are important. Note that the data exchanged messages need to be visible for the parties. Therefore, if analysis of internet banking related parties represented in the form of none decodable form and the parties can not get any information from the content of message, it is not true in all cases unless the message sender has mentioned his/her main aim in that (Lesan,2006:362). Based on the above mentioned conditions, both banks and customers must firstly mention their intention and

willing in a contract and then mention their internal intention. We can define the e- banking contract in legal identity advocacy form. It means that banks acts as attorney and the customer acts as client can get e-banking contracts. Attorney is an act whereby one party accepts the other party to his deputy. Analysis of internet banking related parties represented in the form of contract is not true in all cases, but it is true in some cases. For example, when a customer accepts the banks' attorney, we can accept this action between both parties (Elsan, 2009).

Side popularity

Parties must have popularity for trade (Article 210 of the Civil Code). None popularity in trade may be popular (such as being mad of child) or especial one (non popularity of contract such as commerce of immature one). Popularity means being wisdom, rational and mature (Article 211, Civil Code). In fact, result of none population is invalidity of the contract. Following the popular principles, in electronic contracts, the popularity of both parties must be mentioned in contracts related to e- banking institutions. This issue is important because of invisibility and untouchable aspect of the parties' relation in this kind of contracts (Mollakarimi, 2012:195). In fact, the required beds for e- banking are as follows:

- Smooth and precise banking system
- custom, tax and e-banking laws
- Commercial Code and Information Security
- Preparing financial system and legal information (copyright)
- Confidentiality of personal information
- adopting National regulations with uniform international regulations
- Cooperation with universities, research centers and other organizations
- Acceptance of electronic documents by Judiciary
- Providing and using smart cards
- preparing secure lines and wireless communication
- E-Commerce is a multidisciplinary phenomenon, and there are several development beds and e-banking is the most important one (Post Bank of Iran, 2007).

Conclusion

The increasing rate of e- commerce around the world and the necessity of banks for monetary transformations, these days e-banking is considered as impartial part of e- commerce and plays an important role in its operation (Parandoush, 2012).

Many economists, experts and prospective believe that during recent years we have encountered a revolution like industrial one which has directed the world towards Information Age. It has led to many deep social, cultural and economical changes. One aspect of this evolution refers to deep changes in economical relations between people, firms and

governments. Commerce exchanges between people, firms, firms and people, people and the governments is rapidly changes from its traditional form, which was based on documents and papers, and leads to exchanges which are done through systems based on electronic information. Because of speed, efficiency, low costs and using the short opportunities, e-commerce has created new chances in competition. It is said that any delay in development does not have any result except isolation in world economy. These days, stores can easily sell their products through internet and the firms can organize their large money exchanges through this system. Investing, e-marketing, e-payments, online stores, large markets and auctions etc. are only a sample of the large world of electronic commerce. Electronic contract is not only a certain type of electronic contract, but it reveals that how it is formed in the shape of this kind of electronic contracts. Almost all jurists and lawyers believe that e-contract do not have any difference with ordinary contract based on the commerce validity, in the way that it is necessary to mention these conditions in contract. According to general rules of contracts, bank and customers firstly they must have intention and then try to create a legal relationship. Secondly, they can show their internal intention. Since that the customer and the bank's aim is to offer some e - banking services, we can define this contract like Rental agreement or advocacy service. In e- contracts it is necessary to mention the popularity of parties, subject of contract and legitimacy (Mollakarimi, 2011: 196). What is obvious is that Civil law or other special laws do not have capability to meet the needs of e-commerce. Transparency of legislators and having comprehensive laws can solve the legal dilemmas of the modern business. Additionally, professional laws need their own organizations. That is, in e- banking issues, we need to expert and knowledgeable people (Jariri, 2012).

On the whole, we can offer some suggestions on this issue:

- Formulating rules and regulations for e-commerce activities and its strict implementation.
- Creating a suitable business environment in cyberspace (e-commerce).
- Strengthening cooperation between national and international laws of e-commerce.
- Using the potential legal capacities and removing some barriers in getting benefit from the full potential of e-commerce.

- Using the experiences of other countries in the field of e-commerce and electronic contracts.
- Creating beds for electronic commerce and economic reforms (such as reducing taxes and supporting foreign investment, controlling the inflation, etc.).
- Activities in awareness and education of e-commerce laws and regulations among the consumers and enterprises.

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