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E-Insurance Law and Digital Space in Iran

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Abstract

The present article proposes the inadequacies and speculations of the electronic insurance (EI) in the Iranian insurance law (1971). Cyber-insurance, the transfer of financial risk associated with network and computer incidents to a third party, has captured the imagination of professionals and researchers for many years. Yet reality continues to disappoint the proponents of cyber-insurance in Iran. Financial accounts, legal grounds, internal regulations and software and hardware organizational structure are among the elements that the Iranian insurance law has to promote. Furthermore, it is necessary for Iran to invest heavily in EI to encourage both public agencies and the private sector especially small and medium sized enterprises to use EI to increase their efficiency and capabilities for competition in the digital space. Alongside with these developments protective, commendable and progressive legal measures to protect the rights of parties, insurer and insured in the virtual world must never be ignored.

Keywords: E-insurance; Law; E-consumer; Iran

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INTRODUCTION

Business to consumer (B2C) including (EI) in the form of buying and selling goods and services from a website or electronic location on the Internet is now a common phenomenon and conducted by users and customers worldwide [1]. In EI contracting, formation and performance of a contract can be constituted within the bounds of cyberspace, namely 'the Internet which is a global network connection [2]. The Internet allows the dissemination of diverse services for the convenience of mankind. The directly affected party is usually the electronic customer (insured) who conduct their purchases online. When buyers (insured) and sellers (insurer) are about to transact online, sufficient information must be provided online for the contract to be completed and the system to be in place to arrange binding contracts and payment [3]. There may be asymmetry of information where one party to a transaction has better or more information than the other party. Usually the insurer has more information about the products than the insured. The laws must prevent e-insured from being misled or deceived by e-insurers or entities which have stronger bargaining position than the e-insured. The law is also to promote fair competition in the market and to provide appropriate remedies upon the breaches of the e-insured rights. The provisions of the Iranian insurance law (1971) inadequately and insufficiently provide and protect the insurer rights in EI.

Law develops like the language or manner of the people. Thus the life of the law is integrally connected with the life of the people [4]. The purpose of the law is to regulate man's conduct in relation to external things and persons, not merely to ascertain and explain what happens in fact. Since the electronic insured (e-insured) are in an unequal bargaining power position as well as having less information, there is a need to have proper and up to date laws for e-insured protection. However, as doing insurance on-line brings risks such as lack of confidential way of payment, data privacy and absence of the insured party, therefore, compatible legal system to this new type of insurance is necessary. With the advancement and progression of technology especially the Internet not only devices have been created, but a system has also been formulated [4]. Iran therefore must follow the changes in e-commerce in order not to fall behind universal innovations in the era of EI. In order to implement the EI in Iran, the executive, judicial and legislative sectors and organizations like the Central Bank, Radio and Television, High Council of Free Zones and High Council of Informatics are all should be commissioned to follow specific tasks and responsibilities to enhance it. However, on the ground of a recent research that has been done in 2013, the rate of online shopping including EI in Iran is 43%¹. In this research, searching for information is the maximum and online shopping is the minimum (Figure 1).

The ease of accessing and acquiring information through the Internet has made it convenient for both e-insurer and e-insured parties to enter into EI. To enhance EI, the law should not be in a state of speculation.



Figure 1: Online shopping in Iran.

OBSTACLES OF EI IN IRAN

Consumer protection in insurance does not differ from the general concept adopted by the Iranian laws in this respect, rather it relates to the specific nature of consumer protection in insurance services. It results from several factors concerning the nature of insurance, such as the complexity level of an insurance contract, and the continuous character of an insurance relation. Other important aspects also seem to be a much higher than average disproportion in negotiation power experienced by consumers vis a vis financial institutions, the adhesive character of consumer insurance, as well as the type and importance of the values protected by the insurance, such as health, life and property of the insured. Iran faces both opportunities and challenges during its transition from a natural resource-based to a knowledge-based society. With the advancement of Internet technology, Iranian society has to move forward in order to be categorized as an information or network society². In Iran, the government plays the main role in e-commerce development and has monopoly over the Information and Communication Technology (ICT) infrastructure. It is patently obvious that consumers including e-insured are not only the largest economic group but also the pivots of all the economic activities [5]. It is not in doubt that EI customers in e-commerce are in need of the protection of the law in some form or other. However, any development in the Internet or ICT technology in Iran should focus on protection of all members of the Iranian society particularly the EI customers. The explosive growth of doing purchases online such as EI is not only leading to changes in the ways the people conduct their lives and transactions but also is arising the need to new protective and enforceable laws and provisions which suit for protecting e-insured rights. In this regard for example Consumer information still remains a main weak point, and emphasis should be now put on the transparency of the goods and services offered to consumers so as to eliminate the negative consequences of the information overload. They are the most vulnerable or voiceless group who obtain service of insurance online. There are plethora of laws and other mechanisms to ensure the welfare of online consumers such as insured persons, yet they have no power to order where and how insured can make his online purchase at will [6].

For e-insurance to flourish, certain infrastructures and standards are necessary, such as a strong banking system, proper legislation, data security and coordination of national insurance legislation and laws with international standards. In addition, the availability of

highspeed Internet access is among the factors that encourage e-insured to purchase online, that presently inadequate in Iran³. Considering the conditions in the development ICT in which the technical and communicational infrastructures are created or could be created by the government, three main challenges exist. These challenges are human resources, cultural conditions, and required laws [7]. However, it is stressed that the electronic vision in Iran requires additional actions on a kind of patchwork of various pieces of legislation, principles, rules, standards and market practices. The consequence of this is to remove the lack of coherence and operability of the consumer protection system within the field – this, in turn, affects confidence in online services. Such confidence, reflected in public opinion polls, which is one of the factors of economic development. With above in mind, the effective creation of a transnational online services market is feasible mainly due to the increase in consumer confidence in this form of offering services and goods. Such confidence should be built via proper information strategies [8] Iranian regulators have to be fairly convinced that realizing such a vision will bring significant benefits to consumers, such as lower prices and better choice and quality of goods and services; all this stems from an increased number of online transactions including e-insurance.

The electronic signature is not accepted worldwide but recently Iran has established a centre for issuing electronic signatures (digital signatures) in Tehran⁴. The admissibility of an electronic document in the Iranian courts requires a signature, but fraud has become a problem. To prevent these problems, electronic signatures use a code approved by the electronic signature centre. In 2011, Iran introduced an additional requirement: a symbol of electronic trust that must be requested by any website that engages in selling or buying goods and/or services and approved by the Mindless Crap (MC). After approval, the website owner or the seller needs to display the electronic symbol of trust on the website. This is a suitable step forward the EI in Iran. E-banking in Iran has promoted in cases but on the ground of e-insurance still banking system is encountered with serious problem of credit card payment. The provisions of the Iranian insurance law also are insufficient to solve the problems of EI. Article 2 of the said law proposes that the insurance contract and its terms and conditions must be written down and the said document shall be called an Insurance policy. This article says that the terms and conditions of the contract must be written down which in itself can be considered as an obstacle in the virtual era of EI. The law does not provide the electronic type of insurance contract.

Another constraint that the Iranian EI faces with is the lack of existing an overall system of insurance. In Iran most of the insurance companies work as an island and have no knowledge sharing with the other companies and usually have their own specific programs. It is necessary for the insurance system in Iran to have a hub in order to feed the information and draw the plans for the insurance representatives all over the country. Moreover, in cases the content (terms and conditions) of the insurance contract need to be standardized. Standardization of the terms and conditions in a way that can be understandable, short and easy to read by the insured can help the implementation of the EI in Iran. ICT and national laws should be not only in tandem with each other,

but also at par and sensitive to the transitions taking place in the global legal scenario, including online insured protection [9]. Progress of ICT brings forth the notion of achieving high information technology literacy in the population through exposure to information technology from various direct initiatives, such as those from the government, and indirect exposure through the use and acceptance of the Internet [10]. The Iranian Commission on Science and Technology for Development states:

Currently many societies and governments are concerned about inequalities in the development of infrastructure and global access to and use of information and communication technology, the effort should be made to turn the digital gaps into digital opportunities through the promotion and consolidation of digital ties. In keeping with the continued internationalization of the Internet, it is imperative that existing laws and governance mechanisms be reviewed, private sectors, civil society, and other authorized organizations should be enactive and adapt to the reality of the present time [9].

However, online transactions such as EI and e-commerce are gaining momentum in Iran, especially through the Internet. One of the most important infrastructural requirements for conducting e-insurance is high-speed Internet access. Technical infrastructure and access to information are important aspects of developed countries. Easy, cheap and fast Internet access enables companies and online customers to obtain information on the prices of the goods and services and generates new opportunities. In addition, the government should be able to take the appropriate actions and preventive measures, as determined by law, to enable all citizens to use the Internet and other electronic media for their transactions including EI. Thus, institutional, organisational, and social constraints apart from online insurance customers' ideology play a significant role in shaping insurance law [10].

THE RISK OF DATA PRIVACY AND EI

Privacy and security are the control over one's personal data and the attempted access to data by unauthorised parties are two critical problems for both on-line e-customers like the insured and websites alike. Moreover, privacy may be any personal information that a person is unwilling to share with others [11]. Data protection is not only about keeping secret on personal information; rather it is about creating a trusted framework for collection, exchange and use of personal data in commercial particularly online transactions such as electronic insurance contract [12]. Therefore, data protection laws must strengthen consumer confidence in e-commerce and online transactions which is a prerequisite for sustainable growth in the commercial sector. Without such protection, e-customers will not visit or shop at a website, nor can websites function effectively.

In today's virtual world, cyber-attacks are becoming more sophisticated than ever before. The internet connects cyber criminals with a limitless number of potential victims, even to the point where cyber criminals can now target businesses such as electronic insurance without even stepping foot in the same country let alone the same

building. Collecting data from the e-insured has a paramount role in issuing the insurance contract. According to this data the insurance risk is evaluated. As e-commerce and online purchasing have expanded and evolved over the past decade, so have methods of collecting, organizing, and analyzing the data that unwitting e-customers make available to interested commercial entities as they venture through cyberspace [13]. Privacy is at the very soul of being human [14]. Therefore, privacy is defined as “the ability of an individual to control the terms under which their personal information is acquired and used” [15]. Commentators, courts, online customer advocates, policymakers, regulators, and e-businesses have struggled to advocate systems that could safeguard e-insured privacy while maximising commercial interests incapitalising the flow of information in the Internet. There is an assumption that commercial entities violate e-insured privacy by collecting data from Internet transactions and this simultaneously violates the insured’ information privacy protection [13]. All information carried over the World Wide Websites (3W), the Internet or any other electronic media will be considered as data and as long as the data relates to the individual, who can be identified from the data including e-insured, it must be protected by the laws of the State. Fundamental to the debate about privacy is the concept that holding of information about another person confers a power over that person and this gives the rise to the concept of data privacy [16]. Ever-greater sophistication of electronic systems especially the Internet and 3W have given greater urgency to the issue of data protection, and the possibility of controlling the collection, handling, and storage of personal data [17]. As the Internet is an open network prone to problems such as identity, privacy, legal commitment and manipulation of information, security and data privacy are key issues of online commercial transactions [18]. The Iranian Insurance Law does not refer to the data protection of the online insured and electronic insurance contract. In the European Union, 2013 was the final year in the five-year-long period of the previous strategy of the EU within the field of consumer protection [19]. It was to serve the purpose of strengthening the consumer position in the EU, ameliorating the welfare of society and improving competition and innovation in the economy. As the report prepared in the summary of the European Commission activity during the period 2007-2013 confirms, the awareness of consumers as to their rights has undoubtedly increased. The main contribution to this is attributed to the impact on information policy, including the information duties imposed on entrepreneurs. This aimed to ensure a process of conscious decision making, though it did not eliminate all the problems. In fact, to the contrary, it must be stressed that information overload can more and more often be observed, and this may even hamper the exercise of consumer rights [20].

Meanwhile, on data privacy, the Iranian Electronic Commerce Law (ECL) 2004, under Section 3, Protection of Private “Data Messages” protects the data messages but never refers to data onward transfer or trans-border data flow. In terms of the right to access to personal data, part (d) of Article (59) gives too general right to the subject which in cases may be in contradiction with the security or public safety affairs especially when the consumer is a legal person. Also the right to object data processing is not referred to by the Iranian ECL. This legislation does not mention anything about the unlawful

collection of personal data because even the word “storage” in Article 58 of this Act does not mean “collection” as “collection” is referred to as obtaining the data, while “storage” refers to keeping of the data. Therefore, according to the Iranian ECL unlawful collection of personal data cannot be forbidden [21]. The ease with which data can be acquired and disseminated across the Web, and the peculiarities of the electronic environment have led to growing concerns from many potential insurance customers over disclosing personal information to e-goods/services providers⁵. Personal data, such as an individual’s name, address, credit card number, phone number, e-mail and some other information such as in medical, psychological and legal consultation may be necessary to be given by the e-insured to conclude the insurance contract online. The collection of personal information from customers is a necessity for e-insurers, who need such information to effectively provide insurance service to the customers. However, collecting any information by the e-insurers in online direct marketing must be with the consent of the e-insured [22]. In Iran there is no privacy-specific legislation and this is the main legal gap in respect of the data privacy protection especially in the era of EI.

INFORMATION FLOW IN EI

An attempt to distinguish the specific nature of e-insurance from the general rules of consumer protection leads to the statement that basically there are no substantial differences both as to the idea of consumer protection and to the manner of its implementation. The duties of the e-insurer can be divided into stages of pre-contractual information duties and information duties during the term of the contract. There is no doubt that especially in e-insurance the biggest emphasis is put on the information provided to a policyholder by an insurer before concluding an insurance contract. This seems to be particularly important as regards the “information overload” stressed before. The problems of trust and confidence in relations with consumers are some of the points in the strategy adopted by the European Commission within Europe 2020 [23]. Meanwhile, it is characteristic in insurance that information duties are also imposed on an insurer during the term of the contract, following its conclusion. This refers mostly to life insurance, which is usually not only a continuous legal relation but also a long term one. In situations where an investment factor is involved, there also appears a change of the contract’s content over time. This is why, apart from the general and specific insurance terms, the insured should also receive information on the insurer, as well as on the subject matter of the contract, during the whole term of the insurance period.

The question here is that, Why is disclosure of online information so important for consumers in the electronic market place? To answer this question it should be said that, the disclosure of information in online consumer transactions refers to the obligation of traders to provide information which helps e-insured to make informed decisions [23]. This obligation should take into account both the content of the product or service information and the form in which the information is presented to the e-insured. The content of service information namely online insurance, on which customers may take their decisions, may be insufficient or inaccurate. The failure to

provide sufficient information about the service prices, the characteristics and qualities of the services, may represent a serious failure of the electronic marketplace to the same extent as the inaccuracy of information [24]. Therefore, the e-insured needs to receive a description of the service on all terms and conditions of sale including: price, customs duties, time of issue and expiry exact time, method of payment and its security, and any cost implications of using different options, on the cancellation and complaint procedures, on the processing of personal data [23]. Article 3 of the Iranian insurance law states that:

The following information must be clearly stated in the insurance policy:

1. Date of conclusion of the contract.
2. Name of the Insurer and the Insured.
3. Interest insured.
4. The event against which the insurance is taken out.
5. Date of commencement and termination of the insurance cover.
6. Premium.
7. Amount of liability of the Insurer in case risk materializing.

However, the Article does not provide any legal liability for the insufficient or even inaccurate information by the insurer to the insured. The law also does not refer to the deceptive and misleading advertisements in the virtual world. While disclosure of information from the form perspective, refers to the placement and the proximity of disclosures, the use of hyperlinks, frames, pop-up screens, and interstitials to make disclosure in banner ads. E-insured own the right to acquire adequate and true information on services they are going to purchase online; therefore, it requires the providers of goods and services to supply information such as price, origin, seller, usage, performance, standard, main component, date of issue and expiry, quality certificate, usage direction, or content, and fee of the delivered services [24]. In the electronic market as is the case in the traditional market, e-insured customers encounter problems with information including not knowing what products are available for their needs, being overwhelmed by information in leaflets, not understanding complex terminology, stupefied by the content of small print and unaware of how to access comparative information on services. Meanwhile care must be taken to provide legislative measure not only to overcome ambiguity and provide clarity but to accord adequate protection to e-insured customers [25]. Figure 2 show the flow of information between e-insurers and the e-insured in which the information is reciprocal.

In broad terms, legislation is the most effective means and widely used technique for the adaptation of the law to changing circumstances. However, other devices such as stability and change, security and flexibility, certainty and adaptability, and giving adequate and true information have also been employed to strike a balance between some of the polarized needs and demands of the societies [26]. In the works of some European jurists when speaking of pre-contract information, only refer to advertisement, which makes it unnecessary to give more information to the consumers except those which are related to the characteristics of the services at the stage of advertising [27]. In

the other words, insurance customers do not need separate information about the insurance service more than what is given at the stage of advertising. However, as advertising may not result in contract formation with the customer, therefore, giving information at the pre-contract stage in addition to the information for advertising is necessary. Some Articles (33, 34, 35, 52, and 55) of the Iranian ECL refers to giving information by the e-seller but all are mostly related to marketing and advertisement and not to pre-contract stage [28]. The provisions of the Iranian insurance law do not touch such outmost issue in the process of concluding an insurance contract.

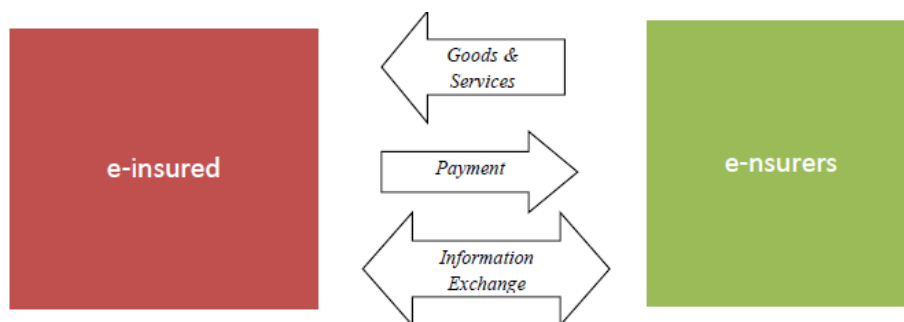


Figure 2: E-insurer and e-insured flow of information.

CONCLUSION

Nowadays, technology has fundamentally changed the way that the businesses are handled. As stressed in this article, the concept of consumer protection in e-insurance does not differ from the general idea adopted by the Iranian law with respect to consumer protection. The differences in the particular provisions result from the fact that online contracting requires more sophisticated instruments in order to achieve the same result and levels of protection. Computer use and e-commerce by the use of the Internet have grown at exponential rates. Online marketing including EI is a significant channel of communication for both e-insurers and e-insured. However, studying the present laws in Iran such as ECL and the Iranian Insurance Law, the researcher concludes that the efficiency of the current legal framework is not adequate and at least in some cases questionable. The provisions of the Insurance Law do not provide the adequate protection for the weaker party namely the e-insured. Moreover, data privacy and online flow of information in terms of collecting and transferring data by the e-insurers are not protected by the mentioned laws. The paper findings expose that the current laws are not adequate and efficient for the purposes of the electronic insurance contract in the context of e-insured protection. The current trend is to extend protection to all distribution channels, including not only online contracting and intermediaries but also any kind of direct distribution of insurance. Therefore, Iranian legislators have to reform and in cases enact the laws suited for the area of EI.

1Asreiran, Electronic Newspaper, Availabla at: <http://www.asriran.com/> (12/01/2013)

2United Nations Conference on Trade and Development, Trade and Development

Board, Commission of Investment, Technology and Related Financial Issues 10th session, Summary of Deliberations on the Science, Technology and Innovation Policy review of the Islamic Republic of Iran, TD/B/COM.2/69, %January2006.

3Electronic Newspaper of JahaneEghtesad, 15 Feb 2015, at: <http://www.jahaneghtesad.com>, (10/03/2015)

4Electronic Newspaper of JahaneEghtesad, 21 Feb 2011, at: <http://www.jahaneghtesad.com>, (10/03/2011)

5For example, many network advertisers and sellers collect anonymous information by using 'cookies' to track the consumer's movements on the seller's site. A cookie is a file on the user's computer or a computer data storage program that can be and is accessed by websites that a user visits and enables the website to record, using information on a visitor's hard drive his /her online activities. A cookie does not contain information about the consumer.

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