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LEGAL ISSUES ON ELECTRONIC TRANSACTIONS: SL VS. EU

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Abstract

In the modern business epoch, the electronic transactions are considered as the key method of transaction to deal with the global digital financial system. By entering into an era of IT advancement, the e-transactions are being developed throughout the business world. Consequently; people have taken place most transactions over the internet with using their electronic instruments as it is easy to fulfill their requirements without wasting time. The e-transaction can be executed by the way of business to business, business to consumer and consumer to consumer. It is noted that there is a massive growth in e-transactions due to the globalization and it opens the door to the national e-business as well as to the across-broader market. By the common global consensus, Sri Lanka has taken a significant effort to develop the international e-commercial law: vide the Electronic Transaction Act, No. 19 of 2006 as it is amended by the Act No. 25 of 2017. The crucial problem of this study is whether there is a sufficient protection to the consumers or businesses throughout electronic transactions in Sri Lanka, especially when using electronic signatures. This paper will be carried out based on the qualitative method: primary sources viz. relevant Acts and secondary sources viz. relevant articles, websites, journals, text book. The core objective of this study is to critically analyze the Electronic Transaction Act in Sri Lanka comparing with the European Union legislations relating to e-transactions. Yet, the contemporary law in SL has not included any penal provisions to punish swindlers who may cause grave loss or damage to innocent consumers. At the conclusion, this paper will recommend to set forth a secured legal framework which deals with electronic authentication to the protection of consumers and businesses.

Keywords: e-transaction, Sri Lanka, European Union, Electronic Signature

Introduction

The business transactions are computerized. Day-to-day people are transferring money from one bank to another for their sale of goods transactions or send their documents to another for particular purposes. But, they don't have much time to go to put their sign for the documents, because all are in a busy schedule. In the business world gradually uses the electronic transactions to fulfill their needs. It gives lots of benefits for them. But on the other hand, it opens the door for frauds or unsafe activities. However, with these improvements, the electronic evidences also hold great significance in the modern litigation. By introducing the Electronic Transaction Act No.19 of 2006, the Sri Lanka (SL) is also going to meet the challenges of the modern world

This study will be narrowed down to the part of electronic signature ("e-signature") to maintain the quality of the research. This paper discussed the law relating to the electronic signature giving special attention to SL and EU. The Sri Lankan legal system is critically analyzed with the European Union (EU) legislations in relation to the e-signatures. EU introduces some of the legislative developments concerning with the practical aspects. Without any legal protection to the e-signatures, SL may lose business transactions; foreign as well as local

What is e-transaction?

E-transaction means a transaction which is done through the network and most of people use it for transfer money and goods for businesses or private purposes. This is governed by a separate law; Electronic Transaction Act, because it develops through the technology. Through the e-transaction, the e-documents and e-signatures become more popular.

What is e-signature?

An electronic signature is an illustration of a person's desire to agree on a data set that connects the document's content or signature. There are some form of methods are used as e-signatures. viz. digital signatures, digital stamp, digital finger print and digital images of handwritten signatures etc.

Sri Lankan judiciary system also give a narrow definition to the e-transactions or signatures.(Meyappan vs. Manchanayake 62 NLR 529) in the past the e-signatures will have no validity before law. Then the Act came into force with overcoming the problems. (s.7)

"e-Signature" is a technically conservative term in the general electronic technique of signatures. Most of the time it is easier to affix their signature to a document, because when using hand written one it may be change one document to other. Then some transactions may reject the signature even it has a small error.

Why the e-signature protection is needed to SL

Parties in a contract are required to affix their valid and clear signatures to a particular document and then it becomes a legal valid document. With the globalization, people are using new technologies to fulfill their works. Through the introducing e-signatures, people need a protection to carrying their needs.

How the e signature help to the business world

This reduces the time and cost for printing, faxing, posting and scanning. Introducing e-signatures to the business world, it enhances the consumers' relationship. It can be made through the network system. They can get all the updates quickly. Further when consumers do not use the e-commerce, they have to face some difficulties such as, risk of loss or large physical storage is needed or it is hard to find or hard to do any changes.

SL legal system to protect e- signatures

The laws have been enacted to acquire e-signatures in Sri Lanka after more than a decade after the adoption of the Electronic Transaction Act No.19 of 2006. Then it has been amended by the Act no 25 of 2017. Generally, it opens the door to the e-world, but has failed to create a secure legal system or advanced legal system.

The Act, as it is amended, provides the e-signatures means "data in electronic form, affixed to logically associated with a data message, electronic document, electronic record or communication which may be used to identify the signatory in relation to the data message, electronic document, electronic record or communication and to indicate the signatory's intention in respect of the information contained therein"

s.7 which is "legal; recognition of e-signature", has been amended. Further it has added a new paragraph to the s.19, as (da) which states that "authorize certification service providers to issue various types of electronic signatures in accordance with such criteria and guidelines as may be prescribed, including operational framework and security procedure for the use of biometric data and other authentication technologies for verification purposes" Furthermore, it has added another provision as the s.24 (da); "prescribe criteria and guidelines for Certification Service Providers to issue various types of electronic signatures, including the operational framework and security

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procedures for the use of biometric data and other authentication technologies for verification purposes.”

Removing the legal barriers, the Act enacted laws to provide domestic and international e-commerce facilities. The main barrier to the confirmation and implementation of an electronic transaction was that any agreement must be submitted in writing and signed in writing. But any other legislation has failed to give a clear definition to the word of 'writing' and 'sign'. Therefore, most of the paperless contracts are not legally authorized. Finally, by the s.4 of the Act, this confusion has been resolved. But there is no any specific protection for the users.

EU legal system to protect e-signatures

In the late 1990s, European countries began to become independent of the digital signature laws related to e-commerce. The Directive on a Community Framework for Electronic Signature (e-Signature Directive), which was approved in 1999, was initially accepted in European law with electronic signatures. But since 2016, e-signature of the European Union will be governed by Electronic Identification and Trust Services Regulation. This regulation applies to all member states and provides a safe environment as well as creates direct electrical connections between the businesses, citizens and public authorities.

There are three levels of e-signatures; (i). Simple e-signatures which is “data in electronic form which is attached to or logically associated with other data in electronic forms and which is used by the signatory to sign”. This type of e-signatures can be used when a person write his/her name in a e-mail. (Article 3) (ii). Advanced e-signatures which is used to identify a signer and designed to create a signature and also the data is connected to the document that can be detected after the data changes. (Article 3) (iii). Qualified e-signatures which is created by a advanced signature and is based on a qualified certificate for e-signature.

Most of the people are using e-signatures for sales or other contracts, e-business transactions and for the administrative purposes.

This regulation provides a definition for a trust services (Article 3.16). Further it states as a e-signature can only be used by a natural person. It means that every natural person needs express their consent to affix the sign to a document. The e-signature cannot be issued to legal persons. Furthermore, this trust service aims to Long-term conservation of information in order to ensure the legal validity and authenticity of Eligible Authorized Signatures without considering the future technology changes.

Liabilities which can be occurred through e-transaction

-Negligence of Duty

If the operator of the electronic device acts negligently, a third party can access to the device and steal the signature. Then it will open the door to the most vulnerable thing. In such a situation, the device operator should be liable for the duty of care under tort law.

-Unauthorized access to the device

The e-signatures are saved or stored in a computer or other electronic device, but when the device is not in a safe place, the e-signature may be vulnerable. Therefore, anyone can wrongfully enter into such devices and get the details to commit unwanted offences.

-Cheating deliberately or fraudulent act

When using e-signatures, a presumption may arise; original holder of the e-signature attests to the document. But when a person fraudulently enters in to another person's account and gets information from that account. Once they got another person's signature and can do anything as that person. Therefore, people can cheat others to fulfill their unwanted activities. It is necessary to restrict people who are trying to access the devices with putting false or erroneous information.

Hazard for e-signatures

In the view of the prevailing law, it is easier to steal or make easier to manuscripts than the written one. To provide a safer standard, it should need a strong legal system to protect the consumers and as well as people should have a knowledge of surviving in the e-business.

The implementation of a new legislation is extremely costly to the developing country like SL and this will effect to the economic objectives of the country. Hence it should be amend accurately. Further, it is difficult to highlight the issues of other countries for non-accepting the SL's e-signatures and e-documents for their business purposes. It may be because there is no safer law in Sri Lanka. Someone can say that, such acceleration is not required in order to accept the digital signatures made in the country. But, practically foreign consumers expect a strong legal system to protect their transactions and also their privacy data.

Not like SL, EU system has been implemented more complex administrative structure to bring this to a wider area and also to protect the consumers in the cross border transactions. In SL, the government involvement is much needed. EU government has introduced some criteria and format in accepting e-signatures.

Mechanism for developing e-signature protection

This should help to create and authenticate e-signature to public administration and business. At the same time, it is necessary to protect consumers and then it will develop so far the cross-border transactions. Therefore, SL can facilitate the mutual recognition and interoperability of e-signatures.

Many online services require the transfer of documents that can be signed cross-borders. Therefore, it is a major development for the European digital business market. Europeans empower their businesses through e-signature. On the other hand, this state-of-the-art facility will help IT systems grow in a wide range. With promoting the e-signature facility, consumers can reduce the technical disadvantages to disruptions and provide optimum online delivery services.

People should have a trusted facility through the e-signature and it is better to introduce a verification process. They should protect from the fraud, unwanted trespass and negligent of the operators. People should have a clear idea, who is the responsible person or authority here. It will help them to make any urgent complaint seeking a relief. Punishments for swindlers should be increased.

When there is a cross-border transaction, government may use manual documentation and has reluctant to use new technologies like e-signatures to reduce the time and cost. Without necessary protection, people may reluctant to put their e-signatures in to the documents because someone can enter to the software and use it for unwanted activities. Therefore people should seek to implement necessary protection for them. On the other hand necessary punishments are also needed to the swindlers. Otherwise dangerous things will be happened.

Recommendations

- i. give major guidelines for speeding up the authorization of e-signatures in Sri Lanka
Introduce this concept to the administrative bodies and other public authorities on proper acceptable use for e-documents or e-reporting on proceedings. Further it is necessary to provide guidance for the users (under s.8)
- ii. Set up a specific rules for National Certification Authority to certify or facilitate international acceptance process of Sri Lankan issued digital signature
It is important to maintain a valid national authority in SL to certify e-signatures in a highest standard. But it should be a law cost one and do not bias to others. Further this role should not be very crucial one.
- iii. Nominate a public officer to review this annually.
- iv. There should be a separate institute to provide emergency services to the business or consumers.

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- v. To implement a strong legal system to provide a safer environment for the businesses or the consumers
Therefore, it will help to improve the export growth in SL and as well as then people may want to use e-signatures to reduce the time and cost.
- vi. Amend the existing laws, especially Companies' laws or regulations should amend
- vii. To implement better safety measures or procedures to minimize the unwanted trespasses
- viii. To increase the punishments for negligent of the operators, trespass to the device and frauds.

Conclusion

Finally, it seems that SL has not given a priority to use e-signatures for their transactions, especially in government sectors. SL should respect for implementing this and should become the progressive trend in cross-border transaction which is using e-signatures. At the same time it should necessary to implement a safer policies and procedures to reduce such vulnerable things as recommended above.

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