
| RESEARCH ARTICLE

Legal Implications of Artificial Intelligence in Cross Border Contracts

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| ABSTRACT

This study explores the evolving legal landscape surrounding the integration of Artificial Intelligence (AI) in cross-border contracts. As businesses increasingly utilize AI-driven tools for drafting, negotiating, and executing agreements across jurisdictions, novel challenges and uncertainties arise—particularly in the areas of contract validity, enforceability, liability, and jurisdiction. The research analyses key issues, including the attribution of legal personality to AI systems, the role of autonomy and decision-making in contract formation, differences in regulatory approaches among major trade blocs, and the implications of data privacy and cybersecurity. Through a comparative review of U.S., EU, and selected Asian legal frameworks, the study identifies gaps in current laws and highlights emerging trends in international instruments and soft law attempting to regulate AI in commercial transactions. The findings demonstrate that while AI offers substantial efficiency and cost benefits in cross-border contracting, unresolved legal ambiguities risk undermining trust and predictability in international business. The study concludes by recommending legal reforms and harmonization efforts to address these challenges and promote responsible adoption of AI in cross-border settings.

| KEYWORDS

Legal Implications, Artificial Intelligence, Cross-border contracts, legal personality

| ARTICLE INFORMATION

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1. Introduction

The globalization of the world increases the rate at which individuals (natural or artificial) from different parts of the world engage in cross-border contracts (CBC). Sultan A. Adebayo, LLB ((Common and Islamic Law) University of Ilorin), (BL Nigerian Law School) is a Legal Assistant at the Bank of Industry Nigeria, Abuja. The development of CBC gave rise to different legal implications such as: difficulty in determining the governing law, uncertainty of court with requisite jurisdiction, problem of enforceability, multiplicity of regulatory compliance requirements, etc.¹

Of more importance is the growing influence of artificial intelligence in cross-border contracts. AI also has legal implications on cross border contracts, ranging from its role in contract formation, determination of who bears the

¹ Emmanuel Gbahabo and Orji AgwuUka, 'Fundamental Considerations before Entering into Cross-Border Contracts' (2020) *TEMPLARS ThoughtLab*, p. 1 <https://www.templars-law.com/app/uploads/2020/06/Fundamental-Considerations-Before-Entering-into-Cross-Border-Contracts.pdf> accessed on 22nd February, 2020.

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liability/responsibility of the AI decisions, how to resolve disputes arising from AI-generated contracts, including the ethical and regulatory challenges of AI in the world.²

Therefore, this paper examines the legal implications of AI in cross border contracts using doctrinal research methodology. The paper is structured into five (5) segments, which are: (i) the nature of cross-border contracts, (ii) legal implications of cross border contracts, (iii) the nature of artificial intelligence, (iv) legal implications of ai in cross border contracts, and (v) conclusion.

2. Nature of Cross Border Contracts

Contract generally refers to any legally binding agreement between two or more persons. However, where the agreement is between individuals who reside in different countries, it becomes a CBC. It is, therefore, safe to define it as a binding agreement between parties who are residents of different countries which contains the terms and conditions governing a business transaction.³ It is a contract involving parties who are subject to different jurisdictions under International private law. As earlier noted, globalization of the world influenced the development of CBC, which helps businesses access the global market without any distance barrier.⁴ In other words, the cross-border contract allows the individual entities to reach customers beyond their local limit and to internationally expand their business operations. Also, engaging in CBC helps in diversifying the risk of over-reliance on a single economy, such that when the economy of a country witnesses a downturn, the entity could minimize such risk through active participation in the international market through CBC. Importantly, CBC helps in strengthening the international relationships of countries because CBC increases foreign investments, which hugely boosts any economy.

To understand the nature of CBC, there is a need to highlight some of the features that distinguish it from all other forms of contracts. Some of the features of CBC are:

- Multiplicity of jurisdiction: Since the contract is an agreement between at least two parties, what distinguishes CBC is the fact that the parties involved are located in different jurisdictions, i.e., different parts of the world.⁵ The implication is that where the parties to a contract are within a particular country, there cannot be CBC between them.
- Terms of Payment: As part of the contractual terms of a CBC, there must be specifications as to the method of payment and the currency to be used in making payment, including clauses relating to exchange rates.⁶
- Language of the Contract: Due to the difference in the country of location of the parties, the tendency of the parties to speak and understand different languages is there.⁷ Thus, CBC may be drafted in a particular language agreed upon by the parties or in multiple languages. However, where the CBC is drafted in different languages, a clause should specify which language should be adopted as the official language for the purpose of translating the terms of the CBC in cases of disputes.
- Delivery terms: CBC should also specify the mode of delivery agreed upon by parties. It must detail the particulars of shipping, expected time of delivery, insurance against maritime risks, mode of transportation, etc.⁸

²DhabuAnkitaChandrashekhar, 'Legal Implications of Artificial Intelligence in Cross-Border Transactions: Navigating International Trade Law' (LL.M Thesis, School of Economics and Management, Lund University, 2020) p. 7 <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9154823&fileId=9154824> accessed on 22nd February, 2020.

³HernyIndriyati et al, 'The Development of the Principles of Agreement in Cross Border Contract Amid COVID-19 Outbreak' p. 121

⁴ Emmanuel Guillermo and Carreno Bernal, 'Harmonization of Cross-border Contract Law: Legal Solutions in a Globalized World' (2020) 2(2) *Journal of Policy and Society*, p. 1 <https://ojs.acad-pub.com/index.php/JPS/article/view/2273> accessed on 22nd February, 2020.

⁵HernyIndriyati et al, 'The Development of the Principles of Agreement in Cross Border Contract Amid COVID-19 Outbreak' p. 122

⁶ ibid

⁷ Ibid

⁸ ibid

3. Legal Implications of Cross-Border Contracts

Having explained the nature of CBC in the globalized world, it is important to understand that there are some legal implications arising from its nature. For instance, since CBC involves two parties who are located in different countries, it raises some legal questions such as: which of the countries' courts has jurisdiction to resolve disputes arising therefrom? What is the law to govern dispute resolution? Can CBC disputes be resolved in one country and be enforced in another country? How will the parties comply with the regulations of each party's country, etc? These legal implications are briefly explained below:

- **Determination of Governing Law**

By governing law, it means the system of law governing the CBC. Considering the difference in the parties' country of residence and the system of law operational in each country, there is always an issue of which system of law governs the CBC in terms of its validity, scope, interpretation, and execution.⁹ Generally, CBC should contain a clause stipulating the governing law, and the court is bound to enforce it because such clause is rooted in the principle of party autonomy.¹⁰ However, the court may sometimes infer it from the holistic reading of the CBC terms using the closest connection principle. In the case of **Enka InsaatVeSanayi v. OOO Insurance Company Chubb**,¹¹ the court held that the rules used in determining governing law are (i) the legal system agreed upon by parties either expressly or impliedly and (ii) the principle of closest connection where the parties failed to make any express or implied stipulation as to the governing law.¹² The principle implies that there are some factors to be considered by the court in inferring the intention of the parties with respect to the governing law. The factors include: (i) the location of performance, the place of formation of the contract, (iii) the nationality of the parties, and (iv) the principal place of business of the parties.¹³

4. Choice of Court

Another legal issue arising from CBC is the issue of determining the court with requisite jurisdiction over any dispute arising therefrom. Where the parties did not agree on their choice of court, through choice of court agreement, the court becomes burdened to go on a voyage of discovery.¹⁴ The choice of court clause may be exclusive or non-exclusive depending on the intention of the parties and how the clause is worded.¹⁵ Where the clause is exclusive, then it is only a specific court that the parties agree that it entertains their matter in case of any dispute, but where it is not exclusive, then the parties may bring the suit to multiple possible courts.¹⁶ In cases where parties do not express their choice of courts, then the municipal courts determine their jurisdiction based on factors like place of performance of contract, domicile of the defendant, and location of the assets. However, by the principle of forum non conveniens, a court may refuse to exercise jurisdiction on a matter arising from CBC if another court (forum) is considered more appropriate.¹⁷

⁹ Gary Born and CemKelelioglu, 'Choice of Law Agreements in International Contracts' (2020) 50(44) *GA Journal of International and Comparative Law*, p. 47 <https://assets.hcch.net/docs/1325a2b9-baa2-4c0a-8e59-0fb6572c49e8.pdf> accessed on 23rd February, 2020.

¹⁰ Scherk v. Alberto-Culver Co., 417 US 506, 516-17 (1974)

¹¹ [2020] UKSC 38

¹² Emmanuel Gbahabo and Orji AgwuUka, 'Fundamental Considerations before Entering into Cross-Border Contracts' p. 4

¹³ *ibid*

¹⁴ Keyes Mary, 'Optional Choice of Court Agreements in Private International Law: General Report' in *Optional Choice of Court Agreements in Private International Law* (Griffith University, 2020) p. 6 <https://research-repository.griffith.edu.au/server/api/core/bitstreams/daa9d465-1c2d-4cd9-b55e-a41b210b762d/content> accessed on 23rd February, 2020.

¹⁵ PoomintrSooksripaisarnkit and Sai RamaniGarimella, 'Choice of Court Agreements: Selected Common Law Jurisdictions and Indian Laws Compared: Time for the Convention of 30 June 2005 on Choice of Court Agreements' (2019-2020) 30 *Journal of Transnational*, p. 4 https://law.fsu.edu/sites/g/files/upcbnu1581/files/JTLP/2019-2020/1%20-%20Sooks-Garimella%20Art_JTLPv30_012122.pdf accessed on 23 February, 2020.

¹⁶ *Ibid*, pp. 4-5

¹⁷ Puja Soni, Application of the Doctrine Forum Non Conveniens in the Perspective of Multinational Enterprises' (2015) *Manupatra*, p. 2 <https://docs.manupatra.in/newsline/articles/Upload/C4181160-DF8B-474F-B757-2400551A9750.pdf> accessed on 23rd February, 2020.

5. Enforcement of Judgment

The difficulty of enforcing the judgment of a country in another country is one of the issues surrounding CBC. Although there are several international treaties in place to facilitate the easy enforcement of arbitral awards in different countries, such as the New York Convention and the Hague Choice of Court Agreement Convention, countries who are not parties to those treaties usually regulate the enforcement of foreign judgment in their territory by their national laws and through the principle of reciprocity between states.

6. Legal Implications of AI in Cross-Border Contracts

The relevance of Artificial Intelligence (AI) to the legal profession cannot be overemphasized. This is because, largely, all lawyering works are capable of being executed by AI in a highly perfect and speedy manner. For instance, there are now AI-powered tools that could help in contract drafting and review of contractual agreements. The tools conceive data relating to laws of different jurisdictions, analyze them, and use the analyzed data to draft contractual agreements.

Therefore, it is not a gainsaying that beyond a general understanding of the contract, AI has great impacts on CBC specifically.¹⁸ AI-powered legal tools can be used in the drafting of CBC and reviewing its terms and clauses.¹⁹ In reviewing the CBC, the legal systems and the corpus juris of the countries where the parties to the CBC reside are considered. The tools also help in detecting any form of inconsistencies and ambiguities in the clauses of the CBC drafts. More importantly, blockchain transactions are smart contracts because they are based on computer programmes. As a decentralized financial system, people can engage in cross-border transactions using cryptocurrency, which is AI-oriented. AI can also be used to assess risks in CBC and predict possible disputes.²⁰

However, the revolutionization of CBC by AI gives rise to several legal implications, which are discussed below:

- **Validity of AI-Generated CBC:** Parties make use of AI to negotiate, form, and review contracts generally. The use of AI in CBC is more relevant because parties are most likely not in the same country at the time of the negotiation, formation, and review. Therefore, this springs up the issue of the validity of AI-generated CBC.²¹ In other words, if it is AI that negotiates and drafts CBC for the parties involved, there is always the issue of whether there was any offer and acceptance to validate the contract. Also, since smart contracts are mostly AI-oriented, there can be a situation where the country of either or both parties does not recognize cryptocurrency for transactions.
- **Liability of AI:** Another issue is determining the liability of AI-generated contracts. If AI is engaged in the negotiation and formation of a contract, the question that logically arises is who bears liability for any breach or negligence between the AI system itself and the developer of the AI.²²
- **Jurisdiction and Applicable Law:** AI sometimes does not consider the jurisdiction and the extant laws of the countries of the parties. This may lead to potential disputes because it becomes difficult to determine the choice of court and choice of law agreed upon by the parties.
- **Data Privacy and Protection:** Each country has its data privacy laws that should be strictly adhered to. However, the involvement of AI in CBC may lead to breaches and violations of the data privacy of the

¹⁸ Laura Cami and Av. XhonSkenderi, 'The Impact of AI on Determining the Applicable Law in Cross Border Disputes under the Rome II Regulation' (2020) 11(3) *Global Journal of Politics and Law Research*, p. 3 <https://ejournals.org/gjplr/wp-content/uploads/sites/36/2020/05/The-Impact-of-AI.pdf> accessed on 23rd February, 2020.

¹⁹ Silvia Martinelli, 'AI as a Tool to Manage Contracts and Challenges in Applying Legal Tech to Contracts Management' (2020) 2(3) *European Review of Private Law*, p. 411 <https://www.researchgate.net/publication/379928553> accessed on 23rd February, 2020.

²⁰ BurakUyduran, 'The Crypto Effect on Cross Border Transfer and Future Trends of Cryptocurrencies' (2020) 16(4) *Financial Internet Quarterly*, p. 12 <https://www.researchgate.net/publication/353522432> accessed on 23rd February, 2020.

²¹ DhabuAnkitaChandrashekar, 'Legal Implications of Artificial Intelligence in Cross-Border Transactions' (LLM Thesis, School of Economics and Management, Lund University, 2020) p. 21 <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9154823&fileId=9154824> accessed on 23rd January, 2020.

²² *ibid*

parties. It is, therefore, necessary that AI-generated CBCs should be analyzed in a manner that does not violate the extant laws in each party's country.²³

7. Conclusion

The rise in CBC in the world cannot be detached from the technological advancement that involves the revolutionization caused by AI. AI helps parties who reside in different parts of the world to engage in CBC without necessarily being present in the same location. However, there are legal implications of the integration of AI in CBC, which include the issue of liability of the AI, the issue of determining the applicable law, and the jurisdiction of the court, including the issue of validity. It is, therefore, important that an international instrument is enacted to attend to these legal issues.

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- [13] Scherk v. Alberto-Culver Co. 417 US 506, 516-17 (1974)

²³ ibid