

Electronic Arbitration to Settle Disputes in E-commerce Contracts

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Received: 19/01/2023

Accepted: 19/03/2023

Published: 20/06/2023

Abstract:

This study examines the legal regulatory framework for electronic arbitration as a means of dispute settlement, as it is based on departing from the usual methods of litigation and the procedures that follow and the time it takes, which may not be permitted by the circumstances of some transactions, especially commercial contracts. Electronic arbitration does not differ from traditional arbitration, except through the means by which arbitration procedures take place in the virtual world, where there is no paper, traditional writing, or the physical presence of people, which provides additional features that are in line with the nature of transactions that take place in the virtual environment, and therefore it is important to address how the arbitrators are appointed, clarify the controls for the conduct of litigation procedures, and determine the law applicable to the arbitration agreement, especially as we are witnessing the spread and expansion of electronic transactions that led to an increase in the request for resort to this type of arbitration.

Keywords: arbitration, electronic, contracts, commercial.

1. INTRODUCTION

We live today in a world where modern communication technologies have removed the borders between countries and created a new environment that provided the contractors with advanced means that reflected a great development in electronic transactions and commerce, as the tremendous development in communication and information systems resulted in a great impact on traditional rules and laws, and led to the creation of Changes in many legal concepts, such as the concept of writing, editor, and signature, so new forms of writing and signature appeared, all of which are characterized by an electronic nature, and with the increase in the spread of electronic contracts and electronic commerce.

The various legislations, including the Algerian legislation, worked to put in place the legal regulation that guarantees the identification of the identity of the dealers during the exchange of information and the verification of their person in order to preserve the protection of the contractors from illegal actions.

And among the topics that have gained the attention of comparative legislation, jurisprudence and judiciary, and the prevailing controversy in many of its parts is the law applicable to disputes arising from electronic commerce contracts, due to the nature of these contracts, so the failure to determine the will of the parties to the contract for the applicable law makes us search for the latter of By subjecting electronic contracts to the traditional rules of conflict in international contract matters, especially in the absence of attribution controls for electronic commerce transactions.

However, the application of the traditional rules of attribution known in private international law required many criticisms due to the special nature of electronic commerce contracts, which made most modern legislation adopt electronic arbitration as an innovative mechanism for resolving disputes resulting from electronic transactions. Based on the foregoing, we try through this study to answer the following problem: What are the provisions and rules governing electronic arbitration?

In order to answer this problem and become familiar with this study, we discuss the concept of electronic arbitration, and then stop to consider how arbitrators are appointed before presenting the stages of the electronic arbitration procedures.

2. The Concept of Electronic Arbitration

We discuss the definition of electronic arbitration, then we look at its advantages.

2.1 The Definition of Electronic Arbitration

The definitions of electronic arbitration varied and varied according to the angle that each jurist deals with arbitration.

Some have defined arbitration in general as “a judicial system in which the parties choose their judges and entrust them, pursuant to a written agreement, with the task of settling disputes that may arise or have already arisen between them regarding their contractual or non-contractual relations, and which may be settled by arbitration in accordance with the requirements of the law and justice, and issuing a binding judicial decision to them.”¹

Some jurisprudence believes that the concept of electronic arbitration does not differ from the accepted concept of arbitration, as a special procedure for resolving electronic commerce disputes, and that the distinction is in the mechanism by which this procedure is carried out from its beginning to its end using electronic media, and from it the whole procedure is done electronically starting from the agreement on arbitration. By filling out the form that is then sent to the other party, then he would have been invited to arbitration if he accepted to participate in it by accepting the lawsuit that was filed against him, passing through the exchange of bonds, hearing witnesses and experts, and ending with the issuance of a judgment that the parties undertake to respect, whatever the applicable laws and treaties are, It remains for the one in whose favor the ruling was ruled to obtain the executive power of this ruling.²

Since the contracts and actions that take place within a traditional legal framework are sometimes partially or completely different from contracts and actions that are concluded through electronic media, it is necessary to search for means and mechanisms to resolve disputes arising from the latter, as an alternative that is commensurate with the conditions of modern technology. Used in concluding deals and executing contracts concluded via electronic media.

This alternative is to adopt new legal rules that are compatible with this new type of trade, so it was natural for concerted efforts at the national and international levels to set the rules and legal framework within which and under which electronic commercial arbitration takes place.³

Through the above, electronic arbitration can be defined as "the arbitration that takes place via the Internet according to special rules without the need for the parties to the dispute and the arbitrators to meet in a specific place."⁴

The definition of electronic arbitration does not differ from traditional arbitration, except through the means by which the arbitration procedures are carried out in the virtual world. There is no paper support, traditional writing, or the physical presence of the disputants, and even the final rulings in the dispute are obtained signed and ready in an electronic way.⁵ There is no objection to electronic arbitration being conducted in some of its stages electronically and in other stages by traditional methods.

In the electronic arbitration system, there is no real place for arbitration. Rather, the place is determined metaphorically or hypothetically, and the parties or arbitrators do not meet in it. Rather, this is done on the line via electronic media, which raises the problem of the place and time in which the arbitral award is considered to have been issued. Therefore, the parties to the arbitration, in the negotiation stage, resort to agreeing in advance to determine the place and time of issuance of the award.⁶

International legislation has recognized this type of arbitration and referred to it in many texts and recommendations, as the text of European Directive No. 31/2000 in relation to some legal aspects of serving the information society and electronic commerce states that "member states allow suppliers of information services and those who deal with them By settling their disputes away from the corridors of the courts and by using the technological means presented in the electronic world and in the information society in resolving disputes".⁷

And electronic arbitration remains an exceptional matter that may not be resorted to or adhered to, except with an explicit agreement between the contracting parties to resort to traditional or electronic arbitration instead of resorting to ordinary courts. It makes it compatible with the speed that characterizes electronic commerce, in addition to the desire of dealers to present their disputes before electronic arbitration to achieve unity and homogeneity within the electronic market.

The adoption of this alternative system for resolving disputes made many concerned organizations prepare special systems for electronic arbitration to face the privacy of disputes of electronic commerce contracts, especially since countries did not interfere by issuing legislation and

preparing an international agreement that establishes quick solutions and new legal rules for electronic commerce, and the virtual judiciary system appeared in America in 1996,⁸ several institutions have been established to adjudicate disputes related to electronic contracts through electronic arbitration, including (Cyber tribunal), as well as the Virtual Magistrate (established by some American academic institutions, and the mediation and arbitration centers of the World Intellectual Property Organization) OMPI, which deals with disputes related to intellectual rights.⁹

2.2 The Advantages of Electronic Arbitration

Electronic arbitration has several advantages, which we mention as follows:

- Enable the parties to the dispute and the arbitrators to communicate directly without being physically present in the same place, which leads to saving litigation expenses, given that the contracting parties, witnesses and experts are not obligated to move to the place of arbitration, which is often far from their place of residence.
- Facilitate the storage, retrieval, review, and re-use of stored information.¹⁰
- The speed in issuing the arbitral award, due to the flexibility and speed of dealing via electronic media, such as submitting the required papers and documents, through the use of e-mail instead of traditional mail, and avoiding formalities related to evidence or other procedures that hinder or delay the resolution of the dispute. Adjudication, as we find many electronic arbitration systems that oblige the arbitrator to issue his decision at a specific time.

An example of this is the unified ICANN regulations for arbitration in disputes arising from the registration of names and addresses of websites similar to, or identical to famous brands or trade names, as it is possible to obtain an order to delete the name or address of the site within 60 days from the date of submitting the request for arbitration, otherwise in the dispute that takes place before the traditional courts, where as a general rule there is nothing obligating the court to resolve the dispute at a certain time.

Bypassing national laws, to avoid the legal obstacles imposed by these laws, whether in terms of formality or substantive, as electronic arbitration is considered more appropriate than others to achieve justice in electronic commerce disputes, especially since national laws seem unqualified to deal with this new type of disputes.

- The arbitrator does not have to be a man of law, on the basis that disputes in this field are often related to very precise technical matters that are difficult for legal scholars to understand the details of; Accordingly, the parties can choose an arbitrator with experience in the field of activity to which the dispute relates, as he may be an engineer, doctor, or businessman, which makes him qualified to adjudicate the dispute without being forced to seek the assistance of an expert.

Commitment to maintaining the confidentiality of information, and this is what characterizes commercial transactions in general and electronic commerce in particular, as disclosure of this information may lead to heavy losses, and the nature of electronic arbitration that depends on the use of technical means in arbitration management would make access to Information or data related to electronic commerce is almost impossible, and it ends cases of material negligence that may lead to the disclosure of the content of some provisions related to the dispute.¹¹

3. The Appointment of Arbitrators and the Course of Procedures in Electronic Arbitration

In this requirement, we discuss how to appoint arbitrators (Section One), then look at the procedures for the conduct of the litigation (Section Two), before delving into the law applicable to the arbitration agreement (Section Three).

3.1 Appointment of Arbitrators in Electronic Arbitration

Some jurisprudence believes that the competent arbitral tribunal can be formed or arbitrators can be named according to the following methods:

- a-** The arbitrators shall be named by agreement of the parties; Thus, the choice of the arbitral tribunal is due to the express will of the parties.
- b-** The arbitrators are nominated by third parties with the consent of the parties, and for example, but not limited to, the parties refer the appointment of arbitrators to the lists of one of the arbitral tribunals.
- c-** An arbitrator is named by each party, and in the end the two selected arbitrators choose the third arbitrator, which is the most common method in this type of arbitration.¹²

In the event that the parties do not agree on the number of arbitrators, the panel shall consist of one or more, provided that the number is odd.

It is assumed to refer to the will of the parties to the arbitration agreement with regard to the selection and formation of the arbitral tribunal, but there remain controls that regulate the selection process. Of the

nationality of one of the parties to the dispute or shares the same religion with him, this would be a suspicion that this arbitrator is not impartial.¹³

In the event that the parties agree on a specific method for the selection of arbitrators, this agreement must be adhered to on the basis of the supremacy of the arbitration agreement, which is what the Egyptian and French legislators adopted, the United Nations Model Arbitration Law, the rules of the International Chamber of Commerce in Paris, and the Washington Agreement for the Settlement of Investment Disputes between States and State Nationals. other.

And the designation of arbitrators takes place with the knowledge of the arbitration court, for example what is decided by Article 8 of the Electronic Court Arbitration Regulations, which stipulates in its first paragraph that the arbitration court is formed by naming one arbitrator, or three arbitrators, with the knowledge of the court secretariat, and they undertake the task of appointing an arbitrator He presides over the court, but if they are unable to do so, then the matter is up to the secretariat, and the latter is competent to give each arbitrator the entry guide and the password to enter the case site, and the parties subject to the system of that court have no choice but to accept its rulings according to the text of Article 8/3 From the Electronic Court Arbitration Regulations.¹⁴

With regard to the arbitrator's response, the Algerian Civil and Administrative Procedure Code clarified several cases of arbitrators' response in the text of Article 1016, and the Egyptian Arbitration Law stipulated the setting of several controls for the arbitrator's response so that the litigants do not exploit the right of response to disrupt the arbitration process.

In the framework of electronic arbitration, the response is made by means of a notification sent electronically, as stipulated in the text of Articles 3-23 of the World Intellectual Property Organization (WIPO) Arbitration System, with regard to the disputes of administrative committees regarding Internet domain names, as determined by the electronic court regulations in the text of its article The tenth is the procedures for refusing the arbitrators, where the rebuttal must be established, and it must be submitted within ten days from the date of appointment of the arbitrator, or from the date of the party requesting the rebuttal's knowledge of the reasons it took and on which the rebuttal was based. Appealable.¹⁵

3.2 The Conduct of Electronic Arbitration Procedures

The arbitration procedures are a number of successive procedural actions that aim to reach a judgment issued by the arbitral tribunal that decides the dispute between the two arbitration parties. In addition to the traditional arbitration procedures, other electronic arbitration procedures are implemented with the agreement of the parties. After via electronic media, and how to submit documents electronically, the parties may specify electronic arbitration procedures within the arbitration agreement.¹⁶

The arbitration process proceeds through several stages until the issuance of the judgment, which we are working to explain as follows:

First - Request to resort to arbitration: The plaintiff defines the identity of the defendant accurately and determines the subject of the dispute that the litigants wish to submit to arbitration when filling out the form shown on the Internet website, which was prepared in advance by the center, or the party concerned with arbitration, and also shows what solutions it may propose. appropriate, and each party determines the names of its representatives to consider the dispute and determines the means of communication with them, whether by e-mail, fax or telex, and a remote conference (conference video) is held between all parties, according to which the number of arbitrators is determined and the method of procedures to be chosen He wishes to follow it, set the arbitration period and discuss everything related to the subject of arbitration.¹⁷

The preparation of this application requires great care, because its modification is subject to the discretion of the arbitrator. Article 1 of the rules governing the International Chamber of Commerce in Paris, CC1, states that the application is sent to the secretariat and the defendant is notified of it, and it is noted that the word send is not limited to mailings only. Rather, the meaning also extends to include the electronic request, which is what was approved by Article 3/2 of the Chamber's rules, after it stipulated that it should be conducted by mail, fax, etc., and added the phrase "and every means of communication proves its occurrence."

After filling out an electronic form on the court's website, and creating a website for each case via electronic media, he chooses a personal password for him on the website so that he can initiate litigation procedures through the website.¹⁸

Second - Exchange of documents and requests: The exchange of documents, documents and evidence of proof between the parties to the dispute helps the arbitrator to decide on the subject of the dispute. It was

presented during discussions or pleadings, and what was stated in the text of Article 20/2 of the International Chamber of Commerce Arbitration Regulations in Paris acknowledges that all these documents are based on paper supports, as the text of the article states the following: "After examining the written evidence and recording the documents submitted On the part of the parties to pleadings, the court hears the statements of the parties facing each other at the request of one of them, and it may also decide to hear them on its own " .

However, as a result of the tremendous progress in the field of modern communication and the increase in the degree of confidence in these means, many institutions involved in arbitration have recognized the electronic exchange of evidence, documents and electronic documents between the parties to the dispute, which makes them acceptable to the arbitrator to rely on in order to adjudicate the dispute.¹⁹

This is confirmed by the rules organizing the Space Court, where Article 3 stipulates that communication with the secretariat shall be through e-mail, and the WIPO Expedited Arbitration System stipulates the possibility of transferring documents and papers via electronic media, with the exception of the original documents that are sent via express mail.²⁰

Third - Managing electronic arbitration sessions: Modern electronic media give a wide scope for the immediate and instantaneous exchange of texts, images and sounds between the parties, such as e-mail technology that allows the transfer of documents and data via the Internet. In addition, remote video conferences (teleconference) is considered a procedure related to the session, which guarantees the presence of individuals in a virtual way, and thus we can say that virtual conferences are considered a substitute for the physical presence of the parties in the sessions, as we find the electronic court regulations in the text of Article 21/2, which stipulates the following:

- "The court may use every reasonable means that allows for an appropriate exchange of communications between the parties," as we find the text of Article 48 of the World Intellectual Property Organization WIPO's Regulations on Administrative Disputes in Domain Names, which stipulates that the term "session" must include, in addition to meetings between persons, physically - deliberations Telephone and video conferences and the immediate and reliable exchange of electronic communications in a manner that allows all parties to receive and send communications.²¹

3.3 The Law Applicable to the Electronic Arbitration Agreement

The litigants can establish arbitration procedures themselves, and it is called floating arbitration, through which the parties bypass all national legal rules and the will of the disputing parties is spent by formulating and defining the procedures that regulate the course of the dispute in detail.²²

The arbitral tribunal may also represent the litigants to carry out this task with an explicit agreement from them, and it remains for the arbitration parties to also agree to follow the procedures stipulated in a national law to be determined, or to follow the procedures stipulated in the regulations of a permanent center for arbitration.²³

It is important to note that in the event that the parties to the arbitration do not agree on the law applicable to the arbitration agreement, the jurisprudence, law and regulations of the arbitration centers differ in this matter, as some see the application of the law of the country in which the arbitration procedure was agreed,²⁴ as the Geneva Convention signed in 1961 went To adopt this opinion, where it stipulated in the first paragraph of Article 9 that "If it is related to the existence and validity of the arbitration agreement, the courts of the contracting countries shall decide on this issue in accordance with the law chosen by the parties to apply to the arbitration agreement, and in the absence of a codification or reference In this regard, the arbitration agreement is subject to the law of the country in which the arbitral award was rendered ".

Another doctrine considers giving the authority to determine the procedures applicable to the arbitration dispute exclusively to the arbitral tribunal, however, it is difficult to practically embody this with regard to electronic arbitration, where the contract is in a virtual environment that is not linked to a specific place, and therefore the litigants must specify in advance the applicable law, otherwise we are faced with An insurmountable legal void.²⁵

4. CONCLUSION

We concluded through this study that the rate of resorting to electronic arbitration increased, as it is considered a cornerstone for international trade in general and electronic commerce in particular, due to what the disputants felt of the effectiveness of arbitration in resolving international trade disputes and achieving its requirements based on special rules that are compatible with the market economy. In addition to the desire to overcome the obstacle of conflict of laws and liberation from national

rules, especially in the field of investment contracts, all of this led to an increase in the volume of disputes presented to arbitral tribunals.

Through this study, we also concluded several important results, which we mention successively as follows:

1- The definition of electronic arbitration does not differ from traditional arbitration, except through the means by which arbitration procedures are carried out in the virtual world, as there is no paper support, traditional writing, or the physical presence of the disputants.

2- One of the most important features of electronic arbitration is to bypass national laws, in order to avoid legal obstacles imposed by these laws, whether in terms of form or substance, as electronic arbitration is considered more appropriate than others to achieve justice in electronic commerce disputes.

3- Electronic arbitration remains an exceptional matter that may not be resorted to or adhered to, except with an express agreement between the contracting parties to resort to traditional or electronic arbitration instead of resorting to ordinary courts.

4- The trend towards this type of arbitration - electronic arbitration - is due to the advantages it enjoys, which make it compatible with the speed that characterizes electronic commerce, in addition to the desire of dealers to present their disputes before electronic arbitration to achieve unity and homogeneity within the electronic market.

5- It is assumed to refer to the will of the parties to the arbitration agreement with regard to the selection and formation of the arbitral tribunal. In the event that the parties agree on a specific method for selecting arbitrators, this agreement must be adhered to on the basis of the supremacy of the arbitration agreement.

6- Teleconferences are considered a procedure related to the session, which guarantees the presence of individuals in a virtual manner, and thus we can say that virtual conferences are a substitute for the physical presence of the parties in the sessions.

5. Endnotes

¹ Essam Abdel Fattah Matar, 2009, "Electronic Arbitration", New University House, Alexandria, p. 38

² Essam Abdel Fattah Matar , Previous reference, p 42.

³ Fadi Muhammad Imad al-Din Tawakul, 2010, "The Electronic Commerce Contract," Al-Halabi Human Rights Publications, first edition, Beirut, p196.

- ⁴ Essam Abdel Fattah Matar, Previous reference, p 42.
- ⁵ Lazhar bin Said, 2012, "The Legal System for Electronic Commerce Contracts," Dar Houma for Printing, Publishing and Distribution, Algeria, p. 241.
- ⁶ Khaled Mamdouh Ibrahim, 2011, "Concluding the Electronic Contract – A Comparative Study," Dar Al-Fikr Al-Jami'i, Alexandria, p. 404.
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- ¹⁰ Essam Abdel Fattah Matar, Previous reference, p 53.
- ¹¹ Fadi Muhammad Imad al-Din Tawakul, Previous reference, p 202-208.
- ¹² Essam Abdel Fattah Matar, Previous reference, p 158,159.
- ¹³ Muhammad Mahmoud Muhammad Jubran, 2009, "Electronic arbitration as a means of resolving electronic commerce disputes," a thesis to complete the requirements for obtaining a master's Degree in private law, Faculty of Law, Middle East University, p118.
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- ¹⁵ Lazhar bin Said, Previous reference, p265,266.
- ¹⁶ Jaafar Theeb Al-Ma'ani, 2014, "Electronic Arbitration", Dar Al-Thaqafa for Publishing and Distribution, first edition, Amman, pp. 107 and 108.
- ¹⁷ Lazhar bin Said, Previous reference, p267.
- ¹⁸ Fadi Muhammad Imad al-Din Tawakul, Previous reference, p 232,233.
- ¹⁹ Jaafar Theeb Al-Ma'ani, Previous reference, p 120,121.
- ²⁰ Fadi Muhammad Imad al-Din Tawakul, Previous reference, p 233.
- ²¹ Lazhar bin Said, Previous reference, p 270,271.
- ²² Jamal Mahmoud Al-Kurdi, 2003, "The Applicable Law in Arbitration Cases," Dar Al-Nahda Al-Arabiya, second edition, p 63.
- ²³ Khaled Mamdouh Ibrahim, Previous reference, p 413.
- ²⁴ Hisham Ali Sadiq, 2001, "The Law Applicable to International Trade Contracts," Dar Al-Fikr Al-Jama'i, p 124 et seq.
- ²⁵ Khaled Mamdouh Ibrahim, Previous reference, p 414.