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**Electronic arbitration as a means of resolving arising
disputes of electronic commerce**

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Abstract

As a result of technological progress in the electronic field and the information boom that led international trade to international electronic commerce, which is based on rapid conclusion and implementation of trade contracts, as a result of what has been known as electronic transactions, there have been many questions related to electronic transactions, such as applicable law, their adaptation, their description and so on, after many disputes over electronic transactions arose, the question arose: how would they be solved? The best and most appropriate ways to solve them, which created what is known as electronic arbitration.

Keywords: *electronic transactions, electronic arbitration, electronic-commerce.*

Introduction

The world is witnessing a massive development in the field of communications such as fax, internet and other means of communication, which have become the preferred means of communication and information transfer, as a result of this development in communications, e-commerce has emerged which has a Privacy differ from traditional commerce in terms of way it is carried out, it is done through an electronic environment using modern means of communication such as Internet.

Therefore, the thinking of settling e-commerce disputes has been through mechanisms based on the same technology used to conclude transactions, so that settlement is electronic based on Internet mainly, with no need for dispute parties to be in one place.

Despite of electronic arbitration effectiveness and importance in resolving arising disputes of electronic transactions, but as any modern system it is faced by problems; men of law have to overcome them in line with this remarkable development in communications revolution, as electronic arbitration faces many challenges regarding the framework and governing legal rules.

Problem of Study

Are national legislation developed as a mechanism for traditional arbitration applicable to electronic arbitration? Or are these rules incapable of accommodating arising problems by using modern techniques in arbitration process? Do we need new rules and legislation governs this type of arbitration? To what extent should traditional arbitration requirements apply to electronic arbitration?

Study Questions

1. What is the concept of electronic arbitration and what are its advantages and disadvantages?
2. What is the mechanism by which electronic arbitration is conducted?
3. How is an electronic judgment implemented?

Study Plan

This study will be divided as follows:

The first topic: the concept of electronic arbitration and its scope of application.

The second topic: electronic arbitration mechanisms and its terms within the framework of electronic commerce.

The third topic: advantages and disadvantages of electronic arbitration.

The first topic: the concept of electronic arbitration and its scope of application

The first demand: the concept of electronic arbitration

Arbitration is a means by which the disputed matter is settled, matter is entrusted to one or more called arbitrator or arbitrators provided that they are impartial, arbitrators settle dispute in accordance with an agreement between them and disputed parties, their judgment is final and binding on all parties, since e-commerce is based on speed of conclusion and implementation of contracts, this is not in line with slow pace of ordinary judicial proceedings, the importance of electronic arbitration is demonstrated by its speed and flexibility, electronic arbitration does not require the dispute parties travelling ⁽¹⁾ or physical presence in front of arbitrators, they can be heard via electronic media via satellite, the idea of electronic arbitration emerged as an exclusive method of resolving arising disputes of using internet in electronic transactions compared to other dispute resolution methods such as electronic negotiations and electronic mediation, which allows the use of electronic techniques without the need for travelling or the presence of parties in arbitration place.

Electronic arbitration is not different from traditional arbitration, both are alternative means of dispute resolution, electronic arbitration is the agreement whereby parties undertake to settle arising disputes or likely to arise through arbitration, the arbitration agreement should be international if dispute relates to international trade interests, some jurists have defined it ⁽²⁾ as an arbitration which parties agree to submit their arising disputes from transactions that are more often concluded by electronic means to a third person to be adjudicated under a power based on agreement of dispute parties by using modern means of communication that differ from traditional

means which is used in traditional arbitration, therefore electronic arbitration is a special type of judicial system that arises of agreement between the parties and through electronic means to refer disputes in an optional way to resolve dispute between them, which is often related to electronic commerce.

If electronic arbitration is done via electronic media ⁽³⁾, and the ruling is issued by using modern means of electronic communication, there is nothing to prevent it from being carried out in whole or in some stages electronically and in other stages by traditional means ⁽⁴⁾, which is represented by physical presence of arbitration process parties.

Electronic arbitration issues include as examples not limited to: arising disputes of electronic contract terms breaching, rights and obligations of each party, liability of ISPs, domain name disputes, copyrights and disputes over electronic payment.

Of Judicial applications the registration of TOYOTA trademark as an electronic address by a person who has no right to this trademark, this case is considered by the WIPO Arbitration and Mediation Center, www.toyota.com. Arbitration and Mediation Center WIPO decision to delete the e-mail website www.pepsicola.com ⁽⁵⁾.

Electronic arbitration aims to purify and secure electronic work environment through settlement or resolution of existing electronic disputes through external arbitrators via electronic communications media to settle or resolve disputes arising out of legal relations of an economic nature, whether contractual or non-contractual to respond to a request to supplement a contract with deficiencies ⁽⁶⁾.

In fact, we do not tend to call arbitration using modern means, including Internet, as electronic because it gives impression that process of arbitration is carried out automatically without intervention of human element, although the reality is that arbitration process is conducted with all its traditional methods, with fundamental difference that the used means to conduct arbitration is via internet, so, the term arbitration via internet could be more accurate in expressing fact ⁽⁷⁾, the same is true negotiation via internet and mediation via internet.

The second demand: scope of electronic arbitration application

Despite of most of disputes in front of electronic arbitration centers are related to websites names, due to the effectiveness of judgments implementation on one hand, and disputes mandatory resort to arbitration under electronic registration convention in such disputes on other hand, however, the scope of electronic arbitration application is not limited to such disputes, it is used in all disputes related to e-business, the work of e-commerce contracts especially.

Despite the legal problems that may face parties to such disputes when resorting to electronic arbitration, in implementation of foreign judgments under the New York Convention related to recognition and enforcement of Foreign arbitrators of 1957 in particular, situation becomes more complicated when consumer enters into a contractual relationship so that relationship becomes not a commercial one, but rather a mixed nature that tends to be acquiescence, keenness of legislation to issue laws which protect consumer from arbitrary conditions especially, What is the nature of these conflicts? How could they legitimize electronic arbitral decisions? In light of its issuance within difficult equation represents in weak party acceptance (consumer) in contractual terms without negotiation on one hand and issuance of special laws to protects consumer in most of legislation in consumer contracts on other hand.

The second topic: electronic arbitration mechanisms and its terms within the framework of electronic commerce

First demand: arbitration agreement

Arbitration agreement is an agreement within the framework of private law aimed to create a certain legal effect by establishing an obligation on its parties to refer dispute between them to arbitration and to waive their right to resort to courts, in fact it is a legal act of two or more wills. On other hand arbitration is a judicial act in which arbitrator carries out the same function ⁽⁸⁾ as the national judge to adjudicate disputes in front of him by issuing judgment.

Electronic Arbitration Convention is the first step in e-arbitration and the basis for its establishment, its definition is not different from traditional arbitration convention except that it is carried out via electronic means via international telecommunications network, it means settlement of disputes via internet ⁽⁹⁾ without the physical presence of parties during arbitration process, this issue has raised many legal problems from legal rules of arbitration agreement in its traditional form on electronic arbitration agreement ⁽¹¹⁾, in terms of formal and objectivity requirements for its validity.

Electronic arbitration poses a problem with the form of agreement. Should arbitration agreement be in writing? Is legislation in this regard sufficient? Or does it require amendment or enactment of new legislation to accept electronic pillar as a written version of agreement?

It is different from country to another on the obligation of a written agreement in arbitration rule in general; there is no steady position among various countries on the writing of arbitration agreement, some countries require to be fixed in writing for its validity, others require writing only as a condition of proof this agreement and not its validity, but the most importantly regarding to electronic arbitration, the ability of legislation to encompass concept of the form of an electronic arbitration contract and adoption of electronic pillar, arbitration proceedings should be conducted on the center website electronically and should be carried out as a written document, then storing data and documents related to the case, when parties agree to resort to arbitration to resolve disputes that may arise between them, it is customary to include an item in their contract in which they refer to direction of their will to resolve dispute through arbitration, this condition is called arbitration clause.

Such an agreement may be concluded in a separate contract from original contract, it may be earlier or later to dispute occurrence, as well as arbitration agreement contains many details that cannot be covered by arbitration clause.

The point of difference between electronic arbitration and traditional arbitration in the area of arbitration agreement, it is the legality of concluded arbitration agreement electronically, since most laws require writing in arbitration agreement, this does not exist in contracts of electronic information services particularly, which complete in electronic world entirely, where is no book on a material basis but in electronic form only ⁽¹¹⁾.

Several international arbitration conventions provide freedom for parties' to choose applicable law to arbitration as well as their freedom to choose arbitration court, taking into account reservation related to public order, also taking into account the choice of parties to applicable law, court, as well as scope and content of arbitration extent ⁽¹²⁾.

The arbitration board should be chosen as in traditional arbitration, as parties have the right to choose arbitrators, in most contracts parties agree to arbitration under terms of contract, dispute parties may assign a third party to choose arbitrators and putting arbitration proceedings, parties may agree to refer dispute to an arbitration court to select arbitrators, legislation provided that arbitrator should be one, if they are more, their numbers must be

individual, electronic arbitration is followed by ordinary arbitration procedures, additional rules on electronic arbitration are added to agreement by parties, the most prominent is how to communicate between opponents and arbitrators via the internet, how to submit documents electronically and the importance of maintaining confidentiality of commercial and industrial information of dispute parties interest, however, parties may determine arbitration procedures, arbitration centers often require that arbitration requests include the following data ⁽¹³⁾ : parties names, nature of work, their e-mail addresses, nature and circumstances of dispute, nature of required settlement, a list of documentary evidence, documents, text of arbitration clause and any other necessary information ⁽¹⁴⁾.

Electronic arbitration agreement includes identification of essential elements of agreement, such as contract terms related to legality, its obligations of delivery and guarantee, corresponding in terms of how to pay and currency type because electronic payment involves interferences, as well as all agreed terms, rights and obligations, guarantees and identification of documents that are part of contract, such as electronic communications and exchanged publications between parties that led to contract.

Second demand: formal and objective conditions for electronic arbitration

Most of legislations govern arbitration provisions in general and formal in arbitration agreement, this formality is that arbitration agreement should be in writing, note that these legislations are inconsistent on played role by formalities in arbitration agreement, some of them consider writing as a condition for arbitration agreement like Egyptian arbitration law and some of them don't consider writing as a condition to prove this agreement, so writing is a lonely condition of formal conditions that should be available in traditional arbitration, as for electronic arbitration is subjected to provisions of general arbitration because of the lack of its own legal provisions, This means that required form by law in arbitration agreement must be available, if the required form is writing ⁽¹⁶⁾ , it is necessary to address the nature of writing firstly, then examine the extent of availability in arbitration agreement, secondly, difference in national legislations on the extent of writing fulfilled in electronic messages would raise many difficulties in case of implementing electronic arbitration in a country that does not take broad interpretation of writing condition, which led international organizations to try to issue agreements that take broad interpretation of writing, including draft law on developing international commercial arbitration law prepared by UNCITRAL Commission of the United Nations, which stipulates (arbitration agreement must be in writing and include any form that provides a concrete record of agreement or otherwise accessible as a data message so it can be used in a subsequent reference), which indicates that arbitration agreements can be concluded by another means ⁽¹⁷⁾ not having form of paper documents such as electronic communications.

As for pillars of electronic arbitration there are no different from ordinary arbitration, whether the need for availability of satisfaction, location and reason, However, considering that electronic arbitration in framework of electronic commerce means that conditions are subject to particular privacy in this case, especially as how to express the will electronically.

The objective conditions for electronic arbitration are:

1- Satisfaction: The will of parties to accept electronic arbitration as a means of resolving emerging or potential dispute in future, it is most likely that expression of will is explicit, direct and requires will to be free of will defects, such as coercion, falsehood and deceit with obscene injustice and exploitation ⁽¹⁸⁾.

Since electronic arbitration agreement is made through electronic means, Internet, expression of will is through this means, where positive is directed through and acceptance is received through it, for example, a trade company writes terms of contract on its website, including arbitration clause, those who wish to contract they press key

only to accept or approve to conclude contract with company, here expression of affirmation and acceptance was done through internet, The general rules allow the expression of will by several means, expression of will can be verbal , can be written , the usual reference, even if he is not dumb , actual exchange ⁽¹⁹⁾ of consent or any other course of action that does not allow circumstances of case to doubt its sign of conciliation.

Expression of satisfaction of using electronic arbitration over internet by parties has raised other forms of proof, which necessitated development of technical procedures in order to ensure that party consent to which it expressed is not dissipated. Therefore legislation required electronic signature in electronic arbitration agreement for its validity and satisfaction of other party ⁽²⁰⁾ .

2- Eligibility: issue of verifying eligibility of contractor in electronic contracts is a accurate technical matter, statistics indicate that 28% of web sites visitors provide false information about their personal identity, technicians have contributed to confirmation of contractor eligibility by a third party whose mission is to ensure flow of real data in electronic journals, which are broadcast in virtual environment, which is called a certification service provider, he is an authorized or recognized person or entity that issues electronic certificates certification, any related services and electronic signatures ⁽²¹⁾ .

Some see that in order to confirm eligibility of dispute parties in an electronic arbitration; the site must be designed in such way that the party intending agreement is required to refer current or future dispute to one of centers that providing electronic arbitration service to disclose his identity and his age. If he fails, he will never be allowed to proceed with agreement, which will give credibility and effectiveness to issued judgments ⁽²²⁾ .

3- place of contract: description of product or service in electronic contract through modern communication techniques accurately and fully with avoiding misleading advertisement, arbitration agreement does not come out of these rules as a contract. Arbitration agreement place represents in dispute that is to be resolved, it is required to be reconcilable through electronic arbitration, and also it is required to be arbitrable, in origin, contractors in international trade enjoy considerable freedom particularly in determining matters that are subject to arbitration, however, some legislations impose restrictions on parties' freedom to submit dispute to arbitration, it states that it is not arbitrable.

The restrictions set forth in consumer protection laws are among the most restrictive restrictions on place of electronic arbitration, consumer protection texts prohibit agreement between merchants and consumer regarding to determination of applicable law to their contract or dispute, because contracts nature concluded remotely impose several difficulties arising from physical presence lack of contract parties, where it is difficult for any of contractors to verify eligibility of the other and his describe in contract, in addition to legislator desire to provide legal protection to consumer, because consumer contracts with a professional dealer, he will be in a weak position in contract because he does not possess technical experience merchant has ⁽²³⁾ .

The third topic: advantages and disadvantages of electronic arbitration

The first demand: advantages of electronic commercial arbitration

1- Speed in settling disputes: electronic arbitration is characterized by speed of dispute resolving and this is compatible with nature of electronic commerce, because litigation procedures are relatively long and have many issues and time limits, which litigants must adhere ⁽²⁴⁾ , the reason for saving time is due to electronic arbitration, which does not require traveling of dispute parties or their physical presence in front of arbitrators, but they can be heard through electronic means of communication, also litigants can exchange evidence and documents at the same time via e-mail or any other electronic means.

The speed of adjudication in dispute that characterizes e-arbitration is not due to environment which arbitration procedures are conducted through only, but also to regulations of organizing centers which provide arbitrator with a limited time to resolve dispute, such as ICANN arbitration rules for resolving ICANN disputes arising of internet addresses registration, which requires arbitrator to issue decision within 60 days from date of arbitration application submission ⁽²⁶⁾.

2- Reduce litigation costs and expenses: This is commensurate with volume of concluded electronic contracts, which are not large generally, but modest, sometimes multimedia systems are used which allow using audiovisual devices to hold online arbitration sessions for parties and experts, thus it reduces travel and travel expenses.

3- Conducting remote trial sessions: Where arbitral court hold sessions via internet without a physical meeting of arbitral court and litigants to save expense of traveling costs to arbitration place, trial sessions could be attended from anywhere in world through computer network connected to prepared website for that ⁽²⁷⁾.

4- Eliminate problem of laws conflict and jurisdiction: The existence of New York agreement of 1958 on recognition and enforcement of arbitrator's provisions avoids wishing parties to be exposed to conflict of law and jurisdiction, on the grounds that concluded contracts via internet in general and e-commerce contracts in particular, an international contracts do not specify a particular geographical, internet is an open network universally, if a dispute arose between two parties regarding e-commerce and one of them sought to resort to his national jurisdiction, it would be a problem of competent court to deal with dispute and applicable law to it, as well as lack of regular objective rules in which countries are committed to electronic commerce, there are no regular rules defining jurisdiction of electronic commerce disputes ⁽²⁸⁾.

5- The accuracy of documents and recordings submitted by users and preserved electronically with lowest direct human intervention.

6- A secure online environment that is applicable on internet and allows users access to it and exchange documents, data and requests away from viewers eyes.

7- Efficiency: national judiciary depend on specialized jurists to adjudicate dispute, which may include technical matters that require different and precise specialties, however, electronic arbitration systems do not require appointed arbitrator to adjudicate dispute to be a judge, he may be an engineer, a doctor or businessman who have extensive experience and familiarity with field of submitted dispute to electronic arbitration, which ensures arbitration provisions are keeping up in field of technical and legal.

The second requirement: disadvantages of electronic arbitration

1- arbitrator non-application of commanding and final rules: Parties are afraid to resort to arbitration generally and especially weak party in contract, and electronic arbitration in particular if that party is a consumer, resulting invalidity of arbitration and impossibility of implementation on ground, also, when choosing applicable law other than national consumer law to govern dispute, arbitrator will not apply these rules that protect national consumer, because he applies chosen law only, he is not a judge to abide by application of commanding rules, even in country in which arbitration court is located, therefore many have opposed arbitration because the protection of weak party is always through commanding rules that established by lawmakers to protect a particular sect or collective interests, arbitrator is interested in resolving dispute between parties regardless to the interests of countries supreme legislative policy ⁽²⁹⁾.

2- Current legal systems are not keeping pace with rapid development of electronic commerce; there are some legal systems whose laws do not include electronic transactions and e-commerce, in addition to legal rules rigidity in many countries of the world relating to litigation procedures and traditional arbitration of the recognition of arbitration by electronic means and non-modifying existing legislation for recognition of electronic arbitration provisions, Hence the question has been evoked about validity extent of electronic settlement procedures and the recognition of electronic arbitral judgment.

3- Confidentiality of arbitration is not guaranteed: one of electronic arbitration disadvantages is possibility of penetrating arbitration process confidentiality by internet hackers, which threatens confidentiality of entire arbitration process, preservation of confidentiality and dispute separation is one of main reasons for resorting to arbitration without judicial action because traders and commercial companies seek to preserve their confidential information and trade secrets to prevent disclosure by competing commercial companies, if preservation of confidentiality is achieved by ordinary arbitration, since its sessions are limited to litigants only, in contrast to judiciary, whose sessions are always public, except in exceptional cases ⁽³⁰⁾ .

The guarantee of confidentiality is not always achieved by electronic arbitration because procedures of this arbitration are conducted through internet so that each litigant has a special code (secret number) to access site of case in which arbitration takes place, access of dispute parties to secret numbers requires intervention of persons have nothing to do with dispute in order to facilitate their access to secret numbers. This means that knowledge of secret numbers is no longer limited to litigants lonely, which may threaten confidentiality of arbitration procedures ⁽³¹⁾ .

Conclusion

Perhaps dealer's high demand in field of e-commerce to e-arbitration as a means to resolve their disputes compared to other means on one hand, and to encounter privacy of virtual e-commerce disputes that defies private international law curricula to keep pace with on other hand, which confirms utmost importance acquired by e-arbitration.

Effects of such rules on determining place of arbitration require consideration of how to determine it in event of arbitration occurrence through electronic communication networks, similarly, nature of these networks raises questions about place and time that is considered arbitration ruling was issued in, in general, safe and effective use of electronic communication networks will need to be studied and then organized into aspects related to procedures of pleading and evidence, in particular submitting and exchanging of documents, in terms of its safety, documentation ,argumentation and discussing subject that is controversial, which is validity of electronic writing to perform its functions, both in connection with conclusion of contract and prove or in dispute settlement.

Electronic arbitration, which was recently developed and still in process of modernization and legal and technical regulation, requires intervention by international organizations and countries to develop a comprehensive framework by to achieve universality of recognition and regulation of this new type of arbitration types.

Finally, it can be said that electronic arbitration is an effective system that offers many advantages not provided by traditional arbitration. It embodies all provisions and rules that are regulated by self-legislated in arbitration, there is no more to its development and effectiveness than existence of special international law framework, as well as endorsement of national legislation in electronic transactions, especially privacy of electronic arbitration.

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