

Electronic Arbitration Mechanism in Settling E-Commerce Disputes



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Abstract

In the face of the judiciary's inability to keep pace with the electronic revolution and to provide swift means for resolving e-commerce disputes, the need has become urgent to search for more successful ways to resolve disputes and disagreements between contracting parties while simultaneously adhering to the requirements of e-commerce, which are based on speed. As a result of these efforts, electronic arbitration has emerged.

Arbitration stands as an exceptional pathway for dispute resolution, stemming from mutual agreement and diverging from conventional litigation methods. Its purpose lies in resolving disputes by reaching a verdict issued by an arbitration panel, which holds comparable validity to a court ruling.

Keywords

Arbitration;
E-Commerce;
Disputes ;
Arbitration Body;
Judiciary.

الكلمات المفتاحية

التحكيم؛
التجارة الإلكترونية؛
المنازعات؛
هيئة التحكيم؛
القضاء.

آلية التحكيم الإلكتروني في تسوية منازعات التجارة الإلكترونية

ملخص

امام عجز القضاء عن اللحاق بالطفرة الإلكترونية وتوفير وسائل سريعة لفض منازعات التجارة الإلكترونية، أصبحت الحاجة ملحة للبحث عن سبل أكثر نجاحا لفض منازعات والخلافات بين المتعاقدين مع الحفاظ في ذات الوقت على متطلبات التجارة الإلكترونية القائمة على السرعة بين أطرافها، كانت نتيجة جهودها التحكيم الإلكتروني. يعتبر التحكيم طريق استثنائي لفض الخصومات، مصدره الاتفاق وقوامه الخروج على طرق التقاضي العادية، من أجل فض المنازعات للوصول إلى حكم يصدر عن هيئة التحكيم، يتمتع بحجية الأمر المقضي به شأنه شأن حكم الصادر عن القضاء.

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I- Introduction :

The world has witnessed a technological revolution in recent years that has touched all fields and led to the change of many long-standing concepts. The world has become a small village, where among the most important aspects of this technological revolution is electronic commerce. It is considered one of the tributaries of the information revolution, where the Internet has become the backbone of economic transactions and financial relationships, as well as an effective means of concluding electronic contracts and deals.

The numerous advantages offered by this modern type of commercial exchange conducted through an electronic intermediary have contributed to increasing awareness of the importance of adopting e-commerce by many countries. It has become an inevitable necessity imposed on all nations. It is one of the most important inventions of the era, through which profits that were previously impossible to achieve by traditional means can now be realized.

In the era of the Internet and the electronic space it has imposed as an alternative route for negotiating and concluding contracts, the volume of commercial operations has risen significantly. The convenience provided by e-commerce in terms of payment tools has led contracting parties to follow this path, accompanied as a natural consequence by a noticeable increase in the rate of disputes arising from the implementation of these contracts.

This has led to the judiciary's inability to keep pace with the electronic revolution and to provide swift means for resolving e-commerce disputes. Thus, the need has become urgent to search for more successful ways to resolve disputes and disagreements between contracting parties while simultaneously adhering to the requirements of e-commerce, which are based on speed. The result of these efforts has been electronic arbitration.

Arbitration is an exceptional method for resolving disputes, originating from agreement and departing from ordinary litigation methods, in order to settle disputes to reach a decision issued by an arbitral tribunal, which enjoys the authority of *res judicata* similar to a judgment issued by the judiciary.

Electronic arbitration is largely similar to traditional arbitration and differs only in the means through which it is conducted. The concept of electronic arbitration relies on modern communication methods, without the need for the physical presence of the parties and arbitrators in a specific location, or the physical transfer from one place to another. Research is of utmost importance, first and foremost concerning electronic arbitration, as the latter is the preferred means for the majority of stakeholders in the field of e-commerce due to its characteristics that distinguish it from national judiciary. The second importance lies in e-commerce itself due to its significance in the lives of nations and individuals. Therefore, the following question is raised:

- What is electronic arbitration?

First: Concepts about Electronic Commerce and Electronic Arbitration

1- Definition of Electronic Commerce:

There are several definitions of electronic commerce, some leaning towards narrow interpretations and others towards broader ones. Some define it as trade made possible through internet technologies⁽¹⁾, while others define it as the exchange of goods and services through electronic means or intermediaries.

Algerian legislation, in Article 6 of Law No. 18-05 concerning electronic commerce, defines it as the activity by which an electronic supplier proposes or guarantees the provision of goods and services remotely to an electronic consumer through electronic communications.

➤ Characteristics of Electronic Commerce:⁽²⁾

A. Global Nature of Electronic Commerce:

Electronic commerce activities are characterized by a global nature without geographical or territorial boundaries. Any commercial activity offering goods or services online does not necessarily require physical presence in a specific geographical area. Establishing an online presence allows even small companies to penetrate internet markets worldwide.

B. Interconnected Nature:

It has become possible to deliver goods and services both traditionally and electronically directly over the internet. This feature necessitates restructuring for institutions to cope with the sudden changes imposed by electronic commerce practices.

C. Absence of Paper-based Transactions in Electronic Commerce:

Completing a commercial transaction is done without exchanging paper documents, leading to what is termed as a paperless society.

D. Anonymity of Parties:

Parties involved in electronic commerce transactions may remain anonymous.

E. Presence of Electronic Intermediary:

An electronic intermediary, typically a computer device connected to the World Wide Web (www), is used to execute actions or respond to requests without the personal intervention of each party to the contract, enabling both contracting parties to express their will simultaneously despite the distance.

2- Definition of Electronic Commercial Arbitration:

Arbitration is defined as an agreement between parties to submit their disputes to the judgment of individuals chosen by them.

There is a variance in jurisprudence regarding the definition of electronic arbitration, with each perspective emphasizing different aspects. Some define it based on the parties involved, while others focus on the arbitrator. Additionally, some emphasize the function of the arbitrator, while others concentrate on the arbitration system itself. However, most definitions center on two aspects: the agreement between the parties and the arbitrators.⁽³⁾

Some define arbitration as a "private judicial system in which disputes are resolved by individuals chosen to arbitrate them." Others describe it as "examining a dispute by a person or entity chosen by the disputants, with their commitment to implementing the decision rendered in the dispute."⁽⁴⁾

Electronic arbitration, fundamentally different from traditional arbitration, is conducted solely through electronic means.

It is a specialized electronic judicial system aimed at settling disputes arising or potentially arising electronically between parties engaged in e-commerce, based on their mutual agreement. It may involve proceedings conducted via an international communications network in an auditory manner, without the physical presence of the parties or arbitrators in a specific location.

There are various types of electronic arbitration, including:

- **Non-binding arbitration:** where arbitration decisions do not carry binding force, unlike decisions in traditional arbitration proceedings.
- **Inherently non-binding arbitration:** where the aim is not to issue a binding arbitration award akin to a judgment from national courts.
- **Conditionally binding arbitration:** where one or both parties have the freedom to accept or reject the arbitration award within a specified period. If not rejected by either party within that period, the award becomes binding once both parties have accepted it.⁽⁵⁾

Second, Electronic Arbitration:

1- Scope of Electronic Arbitration:

Most legal experts agree to divide disputes related to electronic commerce into two categories:

A- Disputes arising from electronic contracts, i.e., contractual disputes:

Various types of disputes arise from electronic contracts, with significant ones including:

- Internet Access Agreement:

This contract obliges the service provider to enable the client to access the internet technically by providing the necessary means, such as connection software.⁽⁶⁾ Disputes arising from this type of contract are considered the most complex due to legal issues related to contract interpretation and modification to accommodate technological advancements.

Additionally, many countries have regulatory authorities specializing in information technology and communications, especially concerning laws related to granting monopolies or unfair competition⁽⁷⁾.

- Hosting Agreement:

This type of contract is entered into by anyone wishing to have an internet address or establish a virtual store. The service provider allocates space on their hard drive to store subscriber information and ensures easy access to the subscriber's website or virtual store for a specified period in exchange for a certain fee. ⁽⁸⁾

- Electronic Store Establishment Agreement:

Also known as a participation agreement, this agreement makes the store a participant in the virtual commercial center, bringing together many merchants under one address. This type of contract has enabled small and medium-sized enterprises to access new markets for their products and break the monopoly of large enterprises over these markets, especially companies specializing in software, publishing books, newspapers, magazines, videos, and music.

B- Non-contractual electronic disputes:

Most non-contractual electronic disputes revolve around intellectual property disputes, unfair competition, and protection of trade secrets. However, many disputes resorting to electronic arbitration are related to domain names, often involving disputes over electronic website addresses, also known as domain names. Small businesses or individuals often register a website with a name identical or similar to a global trademark with the intention of tarnishing it or attracting customers.

2- Nature of Electronic Arbitration:

There is a difference of opinion regarding the legal nature of arbitration, and we detail it as follows:

A- Contractual Nature of Arbitration:

This perspective is based on the principle that since arbitration is based on the principle of party autonomy, it has a contractual nature. By agreeing to arbitration, the parties waive some of the legal and procedural guarantees provided by the judicial system, aiming to achieve principles of justice, commercial customs, and follow procedures that are faster and less formal than court proceedings. ⁽⁹⁾

B- Judicial Nature:

Advocates of this perspective argue that arbitration has a judicial nature because it is a mandatory adjudication binding on individuals, even if they have not agreed to it. Avoiding arbitration is ineffective, and it replaces compulsory state adjudication.

The arbitrator does not act solely on the parties' will, making the judicial aspect dominant over arbitration. The arbitrator's decision is a judicial act similar to judicial acts issued by the judiciary in the state.

C- Independent Nature of Arbitration:

Electronic arbitration has a unique nature and independence distinguishing it from contracts and judicial rulings. It enjoys independence and privacy, distinguishing it from other legal systems, as it is considered the most appropriate means for settling electronic disputes.

Electronic arbitration has a composite nature, as it incorporates features of each theory individually, ensuring the rights of the disputing parties on one hand and ensuring its effectiveness in practice on the other. ⁽¹⁰⁾

3- Electronic Arbitration Bodies:

Also called Remote Arbitration Centers, can be defined as neutral and impartial mediators present in the form of centers on the internet, agreeing with the disputing parties to work with them to reach a hypothetical solution to the dispute, giving full authority to the parties to resolve the dispute without any decisions imposed by the mediator or others.

⁽¹¹⁾The most important arbitration organizations include:

A. The European Union:

Article 17 of Directive 31/2000 on Electronic Commerce allows member states, in the event of a dispute between information service providers and users, to settle these disputes outside the courts and using electronic means. It also directs member states not to impose legal obstacles in their domestic legislation that prevent the use of electronic dispute settlement mechanisms away from the judiciary.⁽¹²⁾

B. World Intellectual Property Organization (WIPO):

WIPO resolves commercial disputes related to intellectual property rights quickly and at lower costs, providing alternative solutions to lengthy and costly judicial methods for both parties.

It is renowned for providing rapid dispute resolution services related to registration, misuse of names on the internet, and offering these services on higher generic domains as well as local domains. Trademark owners can submit their complaints using the forms available on the organization's website.⁽¹³⁾

C. Virtual Judge:

This project accepts complaints related to trademark infringement, copyright infringement, disclosure of trade secrets, defamation, fraud, or violation of commercial practices, etc.

4- Procedures in Electronic Arbitration:

Legislation stipulates that the arbitrator must be impartial, and in case of multiple arbitrators, their number should be odd. In electronic arbitration, regular arbitration procedures are followed, with additional rules specific to electronic arbitration agreed upon by the parties.

Among the most prominent of these rules are the methods of communication between the disputing parties and the arbitrators remotely via the internet, how to submit documents electronically, and how to maintain the confidentiality of information. Parties may specify the procedures for electronic arbitration within the arbitration as follows:

- ✓ Submission to the designated arbitration center through the provided form on the internet.
- ✓ Specifying the mode of communication (email, fax, telex, video conference).
- ✓ Submitting documents and evidence as previously outlined.
- ✓ The date of dispute resolution proceedings begins upon receipt of the arbitration center of the arbitration request.
- ✓ The center schedules the trial date.
- ✓ Notifying the other party of the dispute and the commencement of the trial.
- ✓ Creating an electronic platform for each trial (with a unique username and password provided to the parties).
- ✓ All arbitration procedures are conducted electronically through the center's electronic platform.⁽¹⁴⁾
- ✓ Dispute resolution method.

A. Commencement of arbitration proceedings:

Arbitration proceedings commence online before the arbitration body on the pre-announced day, which the disputing parties are notified of after the arbitration center receives the respondent's data and allows sufficient time for additional data submission or amendments.

Dispute parties are allowed to appoint representatives regardless of nationality or qualifications, who were previously listed with the center to represent them during arbitration sessions. Arbitration procedures are limited to specific data presented with the claim and response or upon request by the arbitration body, including written evidence, personal testimony, and technical expertise.

Personal testimony is one of the admissible data in various evidence laws, which remote arbitration centers have adopted, leaving parties to freely rely on witness testimony with a specified mechanism for hearing witnesses and contacting them after the arbitration body is notified of their names and addresses and determines the facts on which the witnesses will testify. The expenses of hearing the witness are borne by the party requesting it.

As for requesting technical expertise, electronic arbitration centers allow disputing parties to request technical expertise to prove facts related to the dispute, such as defects in the sold item, for example, and determine the amount of damage suffered by the buyer and estimate the selling price, for instance. Electronic arbitration centers have established mechanisms and conditions for requesting technical expertise.⁽¹⁵⁾

B. Arbitration Fees Online:

They consist of:

- ✓ **Registration fees:** paid in US dollars and estimated according to the value of the dispute.
- ✓ **Administrative fees:** to be paid within 30 days of submitting the arbitration request.
- ✓ **Arbitrators' fees.**

C. Electronic Arbitration Award:

The arbitration proceedings conclude with the issuance of a final judgment by the arbitral tribunal, typically decided by majority opinion and must be reasoned unless otherwise agreed upon by the parties.

The arbitration award must include the names and addresses of the parties, the names, nationalities, qualifications, and images of the arbitrators, a copy of the arbitration agreement, a summary of the parties' claims and statements, their documents, the operative part of the award, and the place and date of issuance. Regarding the enforcement of the arbitration award, there are no distinct rules from traditional arbitration enforcement.

Therefore, arbitral awards are enforced voluntarily by the agreement of the disputing parties. Conversely, if enforcement is necessary, a court order recognizing the award is required, acting as the enforcement mechanism.⁽¹⁶⁾

D. Validity of Electronic Arbitration Award:

Arbitration awards, in general, are binding, but they do not possess immediate enforceability upon issuance. They require a court order for enforcement since the arbitrator is not an official entity but rather a private individual deriving authority from the parties' agreement. Thus, the arbitrator lacks the power to enforce the award compulsorily.⁽¹⁷⁾

Conclusion:

At the end of this research paper, we will summarize the main findings of this research paper and provide some recommendations for consideration.

Findings:

- ✓ Electronic commerce provides fertile ground for the practice of electronic arbitration.
- ✓ The emergence of electronic arbitration as an effective means to settle disputes arising from electronic commerce contracts is a result of tremendous advancements in technology and communication revolution, along with subsequent information development, which has cast its shadows on the evolution of arbitration in its traditional concept. Electronic arbitration has become an evolved form of arbitration in its traditional sense.
- ✓ The principle is that the arbitral tribunal should be formed by the parties, and arbitrators must accept the arbitration task.
- ✓ Electronic arbitration offers numerous advantages.
- ✓ Competent human resources play a significant role in the use and development of information technology.

Recommendations:

- Promote a culture of settling disputes arising from electronic commerce contracts through electronic arbitration.
- Establish uniform international rules governing the process of electronic arbitration.
- Establish specialized electronic arbitration bodies in Algeria to resolve disputes arising from electronic commerce contracts.

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