

The role of electronic arbitration in commercial dispute resolution

Tareck Alsamara¹, Farouk Ghazi^{2,*}

¹ Prince Sultan University, Riyadh 11586, Kingdom of Saudi Arabia

² Badji Mokhtar Annaba University, Annaba 23000, Algeria

* **Corresponding author:** Farouk Ghazi, ghazifarouk1@gmail.com

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Abstract: The article examines the role of electronic arbitration in settling commercial disputes. The article relies on the analytical approach to study legal texts and the comparative approach to examine the rules of international law and national laws in the field of electronic arbitration. In addition, the article discusses the concept of electronic arbitration and its distinction from traditional forms of arbitration. The article also explains the legal provisions related to it, especially those related to electronic arbitration agreements. Finally, the article explains the challenges related to its implementation how to take advantage of its benefits.

Keywords: arbitration; electronic arbitration; awards; national law; international law; e-commerce; arbitration agreement

1. Introduction

E-commerce relies on the fast conclusion and execution of contracts, a process that doesn't align with the slowness and complexity of traditional judicial procedures (Alazzam, 2023; Raynold, 2000). On the other hand this highlights the significance of electronic arbitration, which offers speed and flexibility not typically found in traditional judiciary systems. In electronic arbitration the disputing parties don't need to physically relocate or be present before arbitrators; instead, they can participate remotely via electronic communication methods, including satellite connections (Al-Dirani, 2023; Channak, 2023; Ferreira, 2023).

Simplified processes that allow for the submission of papers and documents by email as well as the possibility of direct online communication or interaction with experts also contribute to the quick issue of verdicts (Awaisheh, 2023). As a result of the rapid expansion of economic activity, global trade, and the use of electronic technology for contract fulfillment and legal proceedings, electronic courts and arbitration organizations have sprung up to swiftly resolve e-commerce issues. Since electronic arbitration uses audio-visual techniques over an open international network for remote communication and does not require the disputing parties and arbitrators to meet in person, electronic arbitration, as its name suggests, refers to arbitration carried out over the Internet (Obidimma, 2023).

Currently, there's discussion about leveraging information and communication technologies for contract negotiation and dispute resolution, both conducted electronically, wherein procedures unfold via electronic communication networks. This eliminates the necessity for all parties involved in the arbitration process to be physically present in one location, necessitating the development of a legal framework for this method of dispute resolution, known as electronic arbitration. The fact that electronic contracts were designed to achieve transaction speed is

evidence of the significance of electronic arbitration. From this vantage point, resolving conflicts in court requires the contracting parties to forfeit the time they would prefer to save, which can be avoided by using electronic arbitration organizations or a virtual judge (Mohammad, 2023).

Due to its audio-visual style and to its use of an open worldwide network for remote communication, arbitration carried out over the internet. Eliminates the need for the opposing parties and the arbitrators to meet in person. With the adoption of Article 17 of the European Directive on Electronic Commerce No. 31/2000, the European Union took the lead in establishing electronic arbitration. This clause gives member states the power to use electronic means to settle disputes between Internet Service Providers (ISPs) and their clients outside of the conventional judicial system (Bakhramova, 2024; Meskic and Gagula, 2024; Neumayer, 2023).

These considerations raise numerous legal issues regarding electronic arbitration, particularly concerning the arbitration agreement. Can such agreements be conducted electronically? Additionally, how effectively can electronic arbitration address disputes stemming from electronic commerce contracts? Exploring the advantages and drawbacks of electronic arbitration is essential. Moreover, understanding its future trajectory and the authority vested in electronic arbitrators' rulings is crucial. Identifying the obstacles hindering the development of the legal framework for electronic arbitration in Algeria and in other comparative systems is equally important.

2. Results and discussion

2.1. Definition electronic arbitration

Electronic arbitration is identical to traditional arbitration except for the fact that it takes place in the virtual world. There is no paper, traditional writing, or physical presence of individuals in this arbitration, so the rulings can be obtained by the parties signed and created electronically, and the most significant advantage of electronic arbitration is the speed with which a dispute can be resolved (Wolff, 2017). When parties choose to involve a third party in order to settle disputes resulting from transactions—mostly through electronic channels—the procedure is known as electronic arbitration. After that, this person decides the case using the authority granted by the parties' agreement. They do this by using modern means of communication that are different from those used in traditional arbitration, like email or closed-circuit audio and video conferences (Alwheebe and Almutairi, 2024; Kumar, 2023).

In the English language, electronic arbitration is referred to by a number of names, including online, virtual, cyber-, and cyber-justice arbitration. Because it occurs in an audio-visual format over an open worldwide network for remote communication, there is no longer a need for the conflicting parties and the arbitrators to meet in person. Due to the ability to conduct hearings and issue rulings online, this makes it one of the most globalization-compliant conflict resolution processes. Since written documents make up the majority of the arbitration process, electronic files can easily be used in their place, greatly streamlining the procedure (Aljawari, 2023).

2.2. Difference between electronic arbitration and traditional arbitration

The principal factor that sets electronic arbitration apart from traditional arbitration is the manner in which it is carried out. In terms of jurisprudence, there are two main schools of thought: one is broad and holds that the arbitration agreement and procedures' method determines whether the arbitration is electronic, while the other is narrow and concentrates on the nature of the process itself, especially if the dispute is related to an online activity or transaction (Amayreh, 2024; Łągiewska, 2024).

2.3. Evaluation of electronic commercial arbitrations

2.3.1. Advantages of electronic commercial arbitration

Electronic arbitration has a number of special advantages over traditional judicial dispute resolution procedures in addition to the general advantages that arbitration provides. The most important of these is the removal of the necessity for the parties to physically travel to different nations in order to attend meetings or exchange papers. Rather, materials are shared quickly and safely over the Internet using contemporary electronic methods. This not only expedites the procedure but also greatly lowers costs because paperwork can be efficiently submitted and processed over email, leading to a quicker delivery of the decision (Brantes, 2023; Raja, 2009).

2.3.2. Disadvantages of electronic commercial arbitration

Many legal scholars have expressed serious concerns about electronic arbitration, especially in light of its ability to circumvent rules pertaining to public order, and also because of its affects on governments' basic economic and social interests. Furthermore, several nations' internal laws, which may stipulate prerequisites like a signed arbitration agreement, have officially restricted the use of internet arbitration. In addition, there are concerns about the other party's mistrust of electronic transactions as well as the arbitration panel's transparency. When taking into account the enforceability of awards made by electronic arbitration panels, these worries are further intensified (Datla, 2021; Osama, 2010).

2.4. Regulation of electronic arbitration

2.4.1. Electronic arbitration agreement

An agreement whereby the disputing parties choose to take their dispute to an arbitrator, virtual court, or virtual judge via electronic means is known as an electronic arbitration agreement. Every texts of arbitration-related national and international law stipulates that the arbitration agreement must be in writing. Article 2 of the 1958 New York Convention, which deals with the recognition and execution of awards made by foreign arbitrators, is mentioned here by way of illustration. Article 1 of the 1965 International Commercial Arbitration Act, and articles 1012 and 1008 of the Code of Civil and Administrative Procedure respectively, provide information about Algerian legislation. They state that "the arbitration agreement shall be made in writing" and "the arbitration clause shall be established, under penalty of invalidity, by writing in the original agreement or in the document on

which it is based.” Similarly, Article 1040, paragraph 02 of that document states that the arbitration agreement “must be concluded in terms of form, and under penalty of invalidity, in writing, or by any other means of communication that permits proof in writing” (Kubicová, 2009; Singh, 2021).

In light of the emphasis of legislation, including Algerian legislation, on writing the arbitration agreement, can the arbitration agreement be electronic? The answer to this question depends on the recognized authenticity of electronic agreements and contracts. If the writing requirement is met by traditional written writing, then the question arises about the extent to which this condition is available in the electronic arbitration agreement (Al-arnaout, 2012; Mohanta, 2022). Some believe that there is no objection to the writing being written electronically, as long as it achieves the same goal. What is important is that the circulated data be saved electronically so that it can be preserved and referred to in the event of a dispute without any modification or distortion occurring to it (Grosshans, 2014; Lisitsa, 2023).

For the legislator, if writing plays a role in proving the arbitration agreement, then this is subject to electronic proof, as electronic writing is considered a means of proof in the Algerian Civil Code, according to the text of Article 323 of the Algerian Civil Code, where writing by electronic methods was considered the same as proof by writing on paper, provided that it is possible to verify the identity of the person who issued it. Moreover, the electronic agreement must be prepared and stored in conditions that guarantee its safety (Cherroun, 2019; Hathout, 2020). The article 1443 from civil code in France states that on pain of nullity, the arbitration agreement is written. It may result from an exchange of writings or from a document referred to in the main agreement.

The UNCITRAL Model Law on International Commercial Arbitration, amended in 2006, stated in Article 7, paragraph 4 states: ‘The requirement that the arbitration agreement be in writing is fulfilled if the information contained therein is accessible for later reference. The term ‘electronic communication’ refers to any communication transmitted by a party via a data message, and the term ‘data message’ encompasses information generated, sent, received, or stored by electronic means, including but not limited to electronic data interchange, email, telegraph, telex, and facsimile’ (Caron, 2013). There are some comparative legislative acts that explicitly stipulate that the writing condition be fulfilled in the arbitration clauses carried by an electronic data message and thus give it the status of handwriting. For example, the Swiss International Private Law of 1987, Article 178 states: “The arbitration agreement is considered to fulfill the writing condition if it is stated in telegrams, faxes, or any other means of communication whenever they can be proven in writing.”

2.4.2. Holding electronic arbitration sessions

Arbitration sessions are held electronically:

- Either through social communication systems,
- Or through e-mail, for the parties to exchange evidence and arguments, through documents and electronic documents.
- Or through audio-visual communication spaces.

2.4.3. Electronic arbitrator's decision

The electronic arbitrator's ruling is defined as the ruling issued by the arbitrator that definitively decides the dispute presented to the arbitrator, whether they are comprehensive rulings that decide on the subject of the dispute as a whole, or partial rulings that decide on part of it, whether related to the subject of the dispute itself, questions of jurisdiction, or an issue related to the procedures that led the arbitrator to decide to end the dispute (Faghih, 2013).

The electronic arbitrator's ruling raises several problems in terms of its implementation and recognition in countries other than the one in which it was issued. Courts of different countries operate according to their national laws, which do not obligate them to recognize all rulings which have been enshrined at the level of some bodies and parties' agreements in other countries (Nwachukwu, 2024).

The difficulties facing the electronic arbitrator's decision become clear in terms of the formal conditions required for its implementation, such as the text of Article 4 of the New York Convention of 1958, which requires the person requesting recognition and implementation to submit a certified original of the arbitration decision and the original of the agreement or a certified copy of them. It is necessary to call for amending the texts of this agreement in a way that achieves continuity for this mechanism, ensures the effectiveness of the rulings it issues, and removes any obstacles that hinder this process (Meskic et al., 2022; Ongenae, 2023).

The same applies to the Algerian law. Article 1027 of the Code of Civil and Administrative Procedure stipulates the requirement for giving reasons for arbitration awards, and the necessity of including a brief presentation of the claims of the parties. Moreover, Article 1028 specifies the mandatory data that must be provided in the arbitration award, and Article 1029 of it requires that the arbitration awards be signed by the arbitrators. Can arbitration awards be signed through an electronic signature? The same point was raised by Article 31 of the UNCITRAL Model Law on International Commercial Arbitration in terms of its requirement that awards be documented in writing, as well as the reasons for the decision and the signatures of the arbitrators. The possibility of signing it electronically was not stated. In light of this legal vacuum and towards the recognition of electronic arbitration awards, electronic arbitration bodies must write their rulings in traditional ways, so that they can be more securely implemented and recognized. However, arbitration awards written in an electronic way are valid for automatic voluntary implementation.

3. Conclusion

We conclude that electronic arbitration came as a result of developments in information technology, and that the use of electronic communications in the field of electronic commerce has led to the necessity of finding a system for settling these disputes in a way that ensures speedy adjudication as well as speedy exchange of documents. International and national legislative rules of countries currently allow the arbitration agreement to be electronic, but electronic arbitration bodies must write their rulings manually in order not to encounter difficulties related to recognition and implementation. However, at the present time, arbitration awards

written in electronic form are suitable for voluntary implementation. Countries must provide and create the appropriate legislative climate for electronic arbitration systems, especially since this is the most appropriate means of dealing with electronic commerce disputes, whether the disputes of merchants and professionals among themselves or the disputes of merchants with consumers.

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