

Electronic Arbitration Agreement

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Abstract: The development of e-commerce has raised many legal questions about the legal framework to be organized, particularly by resolving the disputes of e-commerce contracts, which are difficult to establish in a given region, leading to the inability of traditional controls to determine the competent judicial body to resolve the dispute, since most of them are based on regional pillars.

Therefore, it was necessary to resort to alternative means of resolving disputes such as negotiations and arbitration, the latter, which was known to evolve as a result of simulations with the privacy of the Internet, which led to the emergence of online arbitration or arbitration through the line, which is the most appropriate means of resolving the disputes of electronic commerce contracts, with the urgent need for a legal framework of its own organized for its effectiveness.

Keywords: Arbitration agreement – Arbitrator – Electronic - Arbitration clause - Arbitration party.

1 Introduction

Given that the electronic arbitration system is the modern method used for closing an electronic arbitration agreement, that is concluded without financial return among the parties, but through talking and conducting a conversation by transporting sound and picture via these tools, which means having all the parties meeting at the same time only but not the same place⁽¹⁾.

Talking about electronic arbitration agreement is connected to what has been defined earlier about what traditional arbitration is detailing its forms, whereas those issues will have an impact on drawing the lines for this form of arbitration, which is clearly illustrated through identifying it from the way of closing the arbitration agreement, or from the way of writing and signing it.

Going through what has been mentioned before, it's clear that the modern image for the arbitration agreement is represented in electronic arbitration agreement which recently surfaced on the electronic arena. Therefore, its initially needed to give a glimpse about it to know it from all sides especially issues related to its modern nature that were the reason for transforming it from its old world to the new one, which are considered an integral part of this agreement. Those sides are identified as follows:

First matter: Electronic Arbitration Agreement and its characteristics.

Second matter: Electronic Arbitration agreement form.

2 Electronic Arbitration Agreement and its characteristics

The content of electronic arbitration agreement is embodied in the parties own will. Only this will has

(1) Dr. Ahmad Abu Alwafa, Optional and Compulsory Arbitration, Page 13.

the power to refer any existing dispute between the parties to electronic arbitration system to have a final judgment. Also, this will usually determines the terms and conditions of the arbitration system, the importance of the arbitration system appears here as a foundation for building the electronic arbitration system and without it the parties cannot connect with arbitration authorities to judge their disputes.

We will divide this subject into three sections starting from the concept of electronic arbitration agreement, then talking about the forms of electronic arbitration agreement, and finally discuss the most important characteristics of electronic arbitration agreement.

2.1 The Concept of Electronic Arbitration Agreement

Jurisprudence identified electronic arbitration system as: « having the arbitration parties deciding on using electronic means of communication in the process of agreeing on the arbitration»⁽²⁾.

Thus, electronic arbitration agreement is an agreeing with receiving affirmation and acceptance thru an open international net for remote communication using audio visual tool and because of interaction between the affirmative and the acceptor without physical attendance⁽³⁾.

It's worth mentioning that electronic arbitration agreement allies with traditional arbitration agreement and is similar to it as both of them are ways for settling disputes arising or going to rise in the future between the parties. But, electronic arbitration agreement is different from the traditional one as for the tools used - which is electronic, in another words, affirmation and acceptance in electronic arbitration agreement is concluded via the international internet web, hence, there is not any physical meeting between the parties of this agreement⁽⁴⁾.

2.2 Characteristics of Electronic Arbitration Agreement

The characteristics of electronic arbitration agreement are very important and that's because when examining those characteristics that the electronic contracts enjoys which are related to the nature of the mean used for concluding those contracts,

Which are as follows:

First: electronic arbitration agreement is considered an electronic contract signed between the parties to settle the existing disputes of electronic commerce or disputes which are going to rise in the future⁽⁵⁾.

Second: the Electronic arbitration agreement as an electronic contract, it is distinguished for being concluded through electronic pillars, and signed electronic signature, which of course done using modern communication means on international internet web⁽⁶⁾.

(2) Dr. Hazim Hasan Juma'a , electronic arbitration agreement and proofing means via modern communication means, a research presented in the 1st scientific conference , United Arab Emirates , Dubai Police Academy, in the period from 26 – 28 April 2003, P 115.

(3) Dr. Sa'udi Hasan Sarhan, more effective electronic commerce for energizing the international commerce, previous reference, P 47.

(4) Abd Allah Mohammad Abd Allah Isa Alka'be, arbitration in the disputes of electronic commerce , non-published master thesis , Applied Sciences University, Kingdom of Bahrain , 2014 , P 44.

(5) Mou'tasem Sweilm Nseir, The extent to which the conditions of traditional arbitration are met in electronic arbitration. Research presented in the 1st scientific conference about Legal and security aspects for electronic procedures, in the United Arab Emirates, Dubai Police Academy, in the period from 26-28 April 2003, Page 373.

(6) Dr. Mohammad Husain Mansour, electronic responsibility, Previous reference , Page 213.

Third: The electronic arbitration agreement has a specificity with respect to the reference to the traditional arbitration agreement, which is proved by electronic editors and documents, and electronic signature, and that's because of the huge revolution in the information and communication world, which had an important impact in the appearance of those electronic editors and documents and the methods for proving them ⁽⁷⁾.

Forth: Electronic arbitration agreement is characterized with being concluded electronically between the parties absent in term of place ⁽⁸⁾. Which means the absence of any physical meeting between them at the moment of expressing their will.

Fifth: Electronic arbitration agreement is also characterized with being signed between attendance in term of time despite being concluded between parties who are practically absent in term of place, we find that this agreement is concluded via an audio visual electronic mean which enables interaction and activity between the parties, and therefore, this attendance is a modern virtual attendance for the contractors ⁽⁹⁾.

Sixth: The electronic arbitration agreement is international, where it is often concluded between parties located in different countries, and of different nationalities, and that is because it is concluded through the international web for information "Internet" which is available for all parties in all the parts of the world at the same time, and had no political or geographical borders ⁽¹⁰⁾.

3 Electronic Arbitration Agreement Form

The discussion of the form of electronic arbitration agreement is not unrelated to what is stated about the nature of this agreement in term of its characteristics and image, whereas these aspects will have an echo on shaping the form of this agreement, this is clearly demonstrated by identifying both the manner in which the electronic arbitration agreement is concluded and how it is written and signed electronically. We will review each one of the stages, which is going to be the center of our talk in the next matters as follows:

- concluding the electronic arbitration agreement.
- writing the electronic arbitration agreement.
- Electronic signature of the arbitration agreement.

3.1 Concluding the Electronic Arbitration Agreement

Concluding this contract is via the international internet web electronically by corresponding affirming and acceptance between the parties, which is by having the parties exchanging data messages of affirming and acceptance via this network, and some international laws had affirmed that mean for

(7) Dr. Mohammad Al said Arafah , a presented research about electronic commerce through internet , arranged by the Faculty of Sharia and Law in the United Arab Emirates in the period 1-3 of the year 2000, Page 46.

(8) Dr. Ahmad AbdAlkareem Slamh , Internet and International Private Law (parting or meeting). A research presented to "Law, Computer, and Internet" conference , Faculty of Sharia and Law in the United Arab Emirates in the period 1-3 May of the year 2000, Page 29.

(9) Dr. EmanMa'moun, the legal aspects for electronic trading contract – signing and proving the contract, PhD Thesis, Faculty of Law, Al Mansoura University , 2006, Page 50.

(10)Dr. Mohammad Al said Arafah , Electronic commerce through internet, previous reference, Page 60.

concluding contracts such as Model Law on International Electronic Commerce where it stated that:

« In the context of contract formation, and unless the two parties had agreed other way, data messages for expressing the offer and accepting the offer, when using data message in forming the contract, the contract will not lose its validity or enforceability just because of using a data message for that purpose »⁽¹¹⁾.

Based on that, it is right to conclude an electronic arbitration agreement via electronic communication means, especially via internet and by using any contracting way, wither by using E-mail or any other service of the services provided by this web⁽¹²⁾.

When putting together all what has been mentioned earlier, it's clear that concluding an electronic arbitration agreement has two sides:

- First side: deals with how the parties express their will.
- Second side: deals with the time and place for concluding this agreement.

Which we shall address in the following two items:

First: expressing will via electronic means, stating the electronic arbitration agreement with expressing a matching will for the parties, by having one party expressing affirming to be named affirmative and being met with acceptance from the acceptor⁽¹³⁾.

Electronic arbitration agreement is the same as the traditional arbitration agreement for both are an agreement of the parties on settling existing disputes or disputes going to rise between them using arbitration, And it shall besettled between the parties to this agreement⁽¹⁴⁾.

However, the electronic arbitration agreement is different in term of the way used for concluding it, and expressing will, for this is done by E- mail via the international Internet, which is a tool or a mean in the hands of the contractors instead of the paper and the common signature used in the traditional arbitration agreement as a method for expressing the will of the contractors⁽¹⁵⁾.

The contractors will is expressed in the electronic arbitration agreement as an electronic contract by stating affirmation from one contractor and acceptance from the other contractor using an audio visual tool via international internet in one virtual arbitral council considering being present only in term of time⁽¹⁶⁾, stipulating that both the affirmation and the acceptance are completely matching regarding choosing arbitration as a mean for settling existing or future disputes⁽¹⁷⁾.

It is clear from the foregoing that the expressing will which is in the affirmation and acceptance, is not in the form of paper, but it is done electronically by having one party sending an electronic message

(11) see, art.11 OF uncitral Model Law on electronic – commerce Of 1996 (see,<http://www.uncittal.org/en-index.htm>)

(12) Dr. Fayez Abd Allah Alkandary, Contracting via Internet in Kuwaiti Law , a research presented in Electronic banking between Sharia and law conference , held in the United Arab Emirates, Faculty of Sharia and Law, Dubai, in the period 10 – 12 May 2003, Page 601.

(13) Dr. Khalid HamdiAbdAlrahman , Expressing will (Electronic Contract). Arab Renaissance House, Cairo, 2010, Page 35 and what follows.

(14) Dr. AtifShihab , International Commercial Arbitration Agreement and Arbitral Jurisdiction, Arab Renaissance House, Cairo, 2002, Page 88.

(15) Dr. Ibrahim Aldsouqi Abu Allail, Concluding electronic contract in light of the provisions of UAE law and comparative law, no publisher, 2008, Page 34 and what follows.

(16) Dr. Ahmad AbdAlkareemSalamh, Internet and Private international law, previous reference , Page 29.

(17) Dr. NarimanAbdAlqader , Arbitration agreement , Arab Renaissance House, Cairo, 1996, Page 216.

containing the offer to settle disputes through arbitration, as an affirmation, and issuing an acceptance from the other party using the same way⁽¹⁸⁾.

This was provided for in the Decree-Law No. (28) For the year 2002 in relation of Bahraini electronic transactions, where it stated in the article no. (10) That:

«In the context of concluding contracts, affirmation and acceptance may be expressed fully or partially along with all issues related to concluding the contract and abiding to it, including any amendment, or turning from, or revoking of affirmation or acceptance via electronic records, unless the two parties agreed otherwise»⁽¹⁹⁾.

Thus, for concluding an electronic arbitration agreement there must be a mutual consent among parties on settling their disputes using arbitration by affirmation and acceptance, and to have satisfaction in the contract there must be a will directed to making a legal impact, to express this will with external action, and to have this will matched with another will, therefore, will is expressed by affirmation of one party and acceptance from the other party equal for the affirmation without adding any changes on it or it would be considered a new acceptance that needs affirmation from the first affirmative, and the contract won't be completed without having the first party affirming it.

Second: the time and place for concluding electronic arbitration agreement, electronic arbitration agreement is characterized with the absence of physical existence of the parties at the moment of exchanging the expression of will, affirmation and acceptance in this contract is between parties in different countries, although they are in the same arbitral contract council, and that's because of what the Internet's interactive character, this feature in turn leads to contemporary affirmation and acceptance in some cases from a temporal dimension allowing a contemporary virtual presence of contractors, however, the spatial dimension between the affirmative and the acceptor remains undeniable, and therefore, the conclusion of the electronic arbitration agreement, although concluded between absentees in term of place, but the parties are present in time⁽²⁰⁾.

Since the focus of the discussion is contracts concluded between parties who are not directly in contact, and each party expressing the desire from a different place and often at a different time, from here arises

a fundamental problem which is the problem of determining the time and place for concluding the electronic contract.

1- The time for concluding electronic arbitration agreement:

In fact, determining a precise moment for concluding a contract of electronic arbitration agreement is a matter of particularity in the area of contracts concluded on the Internet, this is because it is difficult to determine the time at which the affirmation or acceptance is received or sent, i.e., the difficulty of determining the moment of arrival of the expression of will, whether affirmation or acceptance. The reason for this difficulty is that the expression of contractual will is achieved by pressing a key on the computer, where the will is transmitted by electrical frequencies that are encrypted to electronic messages on the physical support of the addressee, and thus it is difficult to determine the arrival of

(18) Dr. Mohammad Said Arafah, Electronic commerce via Internet, previous reference, Page 33, Dr. Mohammad AbdAlfattah Turk, Maritime Arbitration, New University Publishing house, Alexandria, 2003, Page 398.

(19) See article No. (10) of the Decree-Law No. (28) for the year 2002 in relation of Bahraini electronic transactions.

(20) Mohammad Amin Alromy, The legal system for electronic arbitration, Al fkr Al jama'ey House, Alexandria, 2006, Page 55.

those electronic messages⁽²¹⁾. Therefore, the timing of concluding an electronic arbitration agreement, like other contracts, is of paramount importance, since it in turn determines the time at which the contract begins to consequent its effects, and before the completion of the contract the party making the claim may amend its non-binding affirmation⁽²²⁾. So, if the traditional arbitration agreement contract is concluded at the moment of expressing the will of affirmation and acceptance in the contract council in which the two parties are mostly physically present, however, this principle faces some difficulties in concluding an electronic arbitration agreement in application because of the lack of physical presence of the parties at the moment of concluding the contract even though they are present in term of time⁽²³⁾, therefore, determining the moment of conclusion of the electronic arbitration agreement depends on determining the moment of acceptance by which the agreement is completed. Thus, determining the moment of acceptance faces some difficulties because of its special nature since it is completed through modern communication means "International Internet" between parties who are in several places in the world. Legal systems have also differed in determining this moment. The Model Law on International Electronic Commerce of 1996 and the UNCITRAL Model Law on International Commercial Arbitration of 1985, although they did not specify the time of concluding the electronic contract, they set the time for sending and receiving the data message⁽²⁴⁾. However, the rules laid down in the Model Law may determine the time for the conclusion of electronic contracts, including concluding an electronic arbitration agreement, since if we consider acceptance it is sent electronically in the form of a data message and therefore the time of the data message provided for in the Model Law can be applied on acceptance, and thus can determine the moment of this acceptance which in turn determines the moment of the electronic arbitration agreement. Considering the texts of these two laws, we find that they have differentiated between two propositions:⁽²⁵⁾

First: If the addressee has designated an information system for the purpose of receiving the data message.

Second: If the addressee did not designate an information system for the purpose of receiving the data messages.

2- The place for concluding electronic arbitration agreement:

The question of where to conclude the electronic arbitration agreement or try to determine a particular state to conclude it in is very difficult, since the conclusion of this agreement is made through the international Internet, which is available to all. The parties to this agreement are often from different states and they conclude it without being physically present in one place, although they are present at the same time only, it is therefore difficult to determine where to send and receive a message of acceptance which in turn would be the place for conducting the electronic arbitration agreement⁽²⁶⁾. If the place of the traditional arbitration agreement is important because it determines the law applicable to this

(21) Dr. Hasan AbdAlbasetJame'e, Proof of legal actions concluded through the Internet, Arab Renaissance House, Cairo, 2000, Page 12 and what follows.

(22) Dr. AbdAlfattahBaiomy Hijazi, Arabian electronic commerce, the legal system for electronic commerce in UAE, 2007, Al fkr Al jama'ey House, Alexandria, Page 207.

(23) Dr. Farouq Mohammad Ahmad Al Abasery, Subscription contract rules in the electronic databases, Arab Renaissance House, Cairo, 2003, Page 67 and what follows.

(24) Dr. Bashar Talal Ahmad Mou'men , Online contracting problems, Ph.D. thesis , faculty of Law , Al Mansoura University, 2003, Page 73.

(25) See article No. (7) Of UNCITRAL Model Law on International Commercial Arbitration of 1985 amended in 2006, and article No. (2/15) of UNCITRAL Model Law for the year 1996.

(26) Dr. Salih Al Mnzlawi , Law applicable to electronic commerce contracts, Ph.D. thesis, Faculty of Law, Al Mansoura University, 2004, Page 410.

agreement, in the case of an electronic arbitration agreement it cannot provide such importance, since it is difficult to determine a specific geographical location for concluding the agreement since it is made through the international Internet which knows no geographical political boundaries⁽²⁷⁾.

Thus, the issue of determining the place for concluding an electronic arbitration agreement has its specificity, since this issue relates to two things: the nature of the electronic intermediary on the one hand and the international character of the parties' transactions on the other, which makes it difficult to identify this place⁽²⁸⁾. In spite of these difficulties in determining the place of concluding the electronic arbitration agreement, it is possible to work on solving these difficulties by having the parties agreeing on a specific place to conclude this agreement, but in the absence of the parties' agreement on the place, some are with the opinion of jurisprudence, to consider the computer through which the contract was signed is the place of concluding the electronic arbitration agreement⁽²⁹⁾. While others consider that the place of the electronic arbitration agreement is that where the respondent knows of acceptance, all unless the parties agree otherwise⁽³⁰⁾.

The European Model Agreement on Electronic Data Interchange (EDI) identified the place of concluding the electronic arbitration agreement through defining the time and place of the electronic contract, where it stated that: "A contract made using data messages is considered to be concluded in place and at the time when the message that constitutes acceptance of the affirmative is received by EDI to the applicant's computer system"⁽³¹⁾.

In view of international laws in this area, the 1996 Model Law on Electronic Commerce did not specify the place of concluding the electronic contract, with a view to giving freedom to substantive laws to determine that, However, this law specifies the place where the data message is received, and therefore

determines the place of receiving acceptance as such acceptance is sent electronically via such communications, thus, the place of the electronic arbitration agreement could be determined because it itself was the place of receiving acceptance⁽³²⁾.

Bahrain Electronic Transactions Law No. (28) Of 2002, took this view and stated in article no. (14) that:

«1- If the originator agrees with the addressee, or if the originator asks the addressee, at or before the electronic record is directed, to send acknowledgment of the receiving such record, it:

a- If the originator's agreement with the addressee does not include having the acknowledgment of receiving the electronic record in a particular form or manner, it may be acknowledged that this record is received by:

- Any notification by the addressee, whether using automatic means, or in any other way.
- Any conduct by the addressee is sufficient to inform the originator that the addressee has received the electronic record.

b- If the originator stipulated to receive an acknowledgment from the addressee of receiving the electronic record, the originator shall consider the transmission of the electronic record as if it had not been sent until such acknowledgment has been received, unless otherwise agreed.

(27) The previous reference, Page 411.

(28) Dr. Mohammad Said Ahmad Ismail, Legal protection methods for electronic commerce transactions, previous reference, Page 168.

(29) Dr. Salih AL Mnzlawi, Law applicable to electronic commerce contracts, previous reference, Page 417 – 418.

(30) Dr. AbdAlfatahBaiony Hijazi, Arabian electronic commerce, previous reference, Page 174.

(31) Dr. Salih Al Mnzlawi, Law applicable to electronic commerce contracts, previous reference, Page 414 and what follows.

(32) See article No. (4/15) of UNCITRAL Model Law on International Commercial Arbitration of 1996.

c- If the originator desired to receive an acknowledgment of receiving the electronic record from the addressee without stating that the record is conditioned upon receiving such acknowledgment within the specified or agreed time, or within a reasonable period of time if no time is specified or agreed upon, the originator shall send the addressee a notice of not receiving any acknowledgment of receiving the record, and has determined a reasonable period during which such notification is to be received. If the acknowledgment is not received during this period, the originator may, after notifying the addressee, consider the transmission of the electronic record as if it had not been, or to hold onto any rights that may be theirs.

2- In the event that the originator receives an acknowledgment of receiving from the addressee, it is presumed - until proven otherwise - that the addressee has received the relevant electronic record, but this assumption does not imply the conformity of the electronic record sent with the content of the record received.

3- If the acknowledgment received by the originator indicates that the relevant electronic record has met the technical requirements, whether agreed or specified in the applicable standards, it is assumed that those conditions have been satisfied until proven otherwise.

4- The provisions of this article apply only to the transmission or receiving of the electronic record, and are not intended to address any legal effects that the electronic record may have or the acknowledgment of its receipt».

3.2 Writing the Electronic Arbitration Agreement

The technical development of the modern means of communication has allowed a new type of writing and signature to be dealt with since the transformation from the tangible to the digital and from the material to the electronic pillar have been introduced, where the emergence of a new "Support" different from the paper pillar, resulted in the retreat of traditional paper editors to be gradually replaced by electronic editors⁽³³⁾, as well as the emergence of both electronic writing and electronic signature, which have been dealt with in all electronic transactions between the parties through the international Internet, especially in the field of electronic contracts, including the conclusion of an electronic arbitration agreement.

Thus, although the parties express their desire to conclude a traditional arbitration agreement to settle what is being raised or will arise from disputes, they take that desire to write this agreement and sign it physically. As for the electronic arbitration agreement, it is quite different. The development in the modern means of communication has led to a change in the concepts of writing and signing particularly

in this field, so it is done electronically through messages between the parties⁽³⁴⁾.

Most national and international laws have authorized the conclusion and signing of an arbitration agreement electronically through modern means of communication. With regard to international law, the UNCITRAL Model Law on International Commercial Arbitration of 1985 provides in article 7 that:

«3- The arbitration agreement shall be in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by disposition or by any other means.

(33) See: Dr. Mohammad Husain Mansour, *Electronic Responsibility*, previous reference, Page 25.

(34) See of the same meaning: Dr. AbdAlwadoudYahia, *Summary in the general theory of obligations, resources – provisions – evidence*. First section, Arab Renaissance House, Cairo, 1994, Page 821.

4- The requirement that the arbitration agreement be in writing by means of an electronic communication shall be satisfied if the information contained therein is available for subsequent reference. "Electronic communication" means any communication by the party using a data message; "data message" means the information created transmitted, received or stored using electronic, magnetic or optical means or by similar means including, but not limited to, electronic data interchange, electronic mail, telegraph, telex and telecopy.

5- Furthermore, the arbitration agreement shall be in writing if there is an exchange of statements of allegation and defense in which both parties claim that an agreement exists and is not denied by the other party.

6- The reference in the contract to any document containing an arbitration clause constitutes a written arbitration agreement provided that the reference in way that such clause is part of the contract».

As a result, the act has expanded the written form required for the arbitration agreement to include the arbitration agreement contained in the modern means of communication between the parties, including electronic messages.

Also, the writing of an arbitration agreement in electronic manner is important because of its consistency with the nature of electronic contracts, for it is the means by which the dispute arising from such contracts is settled, therefore, the arbitration agreement must be written in the same electronic manner. It is important to write the arbitration agreement electronically, since this writing is done between the parties via the Internet without any physical meetings, otherwise the electronic arbitration agreement will be useless and this will be confirmed through their electronic signatures to this agreement. This Agreement shall be documented by a certificate attesting to this authentication and ratification of the Electronic Arbitration Agreement⁽³⁵⁾.

3.3 Electronic Signature of the Arbitration Agreement

The writing does not stand alone on its own in any contract, it must be accompanied by the signature of the parties to these contracts, this is due to the fact that the writing does not have full legal value and an argument on all parties unless being signed by them, because the signature allows to verify the identity

of the source, and expresses the desire of the parties to conclude this contract. The essence of the signature is to be personally, so the idea of written signature is to be by hand, and therefore any signature or distinctive and personal relationship that allows to distinguish who made it can be called a personal signature⁽³⁶⁾.

In order to enhance the electronic signature and using it in all contractual transactions made via the modern means of communication, the Model Law on Electronic Commerce issued in 1996 approved the validity of the electronic signature and set forth conditions and limitations that must be met for recognition. As an affirmation, subsequently the UNCITRAL Model Law on Electronic Signatures was adopted in 1996, which clearly defined the electronic signature in its article (7) as: «Where the law requires a signature from a person, that requirement is met for the data message if: a. A method was used to identify that person and demonstrate that person's consent to the information contained in the data message, b. That method was worthy to be relied upon to the appropriate extent to serve the purpose for which the data message was created or communicated for, in the light of all circumstances,

(35) Review, Dr. Hazim Hasan Jum'a, Electronic Arbitration Agreement and means of evidence via modern communication means, previous reference, Page 84.

(36) Review Dr. Mohammad Morsi Zahra, Authenticity of electronic signature in proof, published research in the magazine of legal aspects arising from the use of computers in banks, Arab Banks Union for the year 1991, Page 152.

including any related agreement»⁽³⁷⁾.

This definition is based on the need for electronic signature to serve all the traditional functions of distinguishing the identity of the person, and expressing satisfaction with the legal work, as stated in paragraph (a), and also emphasizing that the electronic signature method in paragraph (b) should be reliable and did not specify the modalities or procedures to be followed, but rather left them to each state which it determines in its own way and in accordance with its legislation. The UNCITRAL Model Law on Electronic Signatures of 2001, in its second article, paragraph (a) defined the electronic signature as: «The electronic data in the data message that is logically associated with, and used to verify the site's identity in relation to the data message, and to indicate the signatory's approval of the information contained in the data message»⁽³⁸⁾.

The majority of national legal systems have followed the same approach of the international law. Several laws have been issued which have approved the electronic signature and set a definition and conditions that must be met, with the aim of ensuring that the electronic signature is an equal to its traditional counterpart. Among these national systems is the Bahraini Law on Electronic Transactions Decree-Law No. (28) Of 2002, which approved the electronic signature and defined it as: «Information in an electronic form that exists in an electronic record, installed or associated with it logically and which the site may use to prove its identity»⁽³⁹⁾.

3.4 Conditions of the electronic signature of the arbitration agreement:

By reviewing the above definitions and the provisions of international and national laws on electronic signature, it appears that certain conditions must be met in this signature, which are as follows:

First: The electronic signature shall be distinctive to the identity of the owner. This condition is considered one of the most important conditions that must be met in the signature generally and electronic signature particularly, since it must be indicative to its owner, and distinctive to its identity, so that it indicates his personality without confusion or ambiguity, and therefore, leaving no doubt about the who the signatory is and distinguish him from others⁽⁴⁰⁾, if it is not revealing the identity of the owner and specific to his self, it should not be taken into account. Accordingly, the electronic signature attached to the arbitration agreement must specify and identify the owner⁽⁴¹⁾. Not only the jurisprudence

demanding this condition, but the majority of international and substantive laws have also required this. As for international law is concerned, the UNCITRAL Model Law on International Electronic Commerce, issued in 1996 in Article 7, stated that:

«When the law requires that a signature be signed by a person who meets those conditions for the data message if: a method has been used to identify that person and that person's consent to the information in the data message is clarified »⁽⁴²⁾

The UNCITRAL Model Law on Electronic Signatures, issued in 2001 in its definition of electronic signature, provided for this requirement, stipulating that:

«Electronic signature means data in an electronic form included in a data message, additive, or logically

(37) Review Dr. Iman Ma'moun , the Legal aspects of electronic commerce contract, previous reference , Page 248 – 249.

(38) Review Dr. Mohammad Said Ahmad Ismail, Legal protections for electronic commerce transactions, previous reference, Page 180.

(39) See article No. (1) Of Decree-Law No.(28) for the year 2002 on Bahraini electronic transactions.

(40) Review Dr. AbdAlfattahBayoumi Hijazi, Arabian Electronic Commerce, Legal System of Electronic commerce, United Arab Emirates, Page 216.

(41) Review Dr. TharwatAbdAlhameed , Electronic Signature, Aljala'a New Library, Al Mansoura, 2001, Page 24 and what follows.

(42) See article No. (7) of UNCITRAL Model Law on Electronic Signature of the year 1996.

linked, which may be used to assign the signatory identity to the data message and to indicate the signatory's consent to the information contained in the data message⁽⁴³⁾».

The same is true for the Bahraini legislator, who has defined the electronic signature as:

«Information in an electronic form that exists in an electronic record, installed or associated with it logically and which the site may use to establish its identity»⁽⁴⁴⁾.

From the above, we conclude that the electronic signature of the arbitration agreement must carry with it what would identify the owner and to be distinctive and specific to the identity of the owner, regardless of the means of issuing it, which means that it is not required to be signed in handwriting by the signatory, but can be completed with a separate tool from his entity, Such as the computer, which is under its authority this signature of the arbitration agreement is completed.

Second: The electronic signature must be fully controlled by the signatory. The electronic signature must be under the control of the signatory either when it is created or used, so that no one can imitate its symbols except the signatory and no one can sign in its place. Thus, the electronic signature must be done through means that are fully subject to the direct control of the signature holder⁽⁴⁵⁾.

This requirement was approved by the Bahraini legislature, where he provided that:

« 3- If, in respect of any legal proceedings, an electronic signature with an approved certificate is presented, it is presumed to be correct unless otherwise is proven or agreed by the parties:

a- The electronic signature on the electronic record is the signature of the person named in the approved certificate.

b- The electronic signature on the electronic record has been placed by the person named in the approved certificate for the purpose of signing this electronic record»⁽⁴⁶⁾.

Third: The electronic signature shall be an expression of its owner's will. This is contrary to the provisions of the Bahraini legislator, which provided in its definition of electronic signature that it is:

«It is information in electronic form that is registered in an electronic record, installed or logically. Associated with it and can be used by the signatory to prove its identity»⁽⁴⁷⁾.

Forth: the electronic signature is linked to the content of the electronic editor. This condition intends to

have the signature as an integral part of the editor of the electronic arbitration agreement⁽⁴⁸⁾, So as to give the editor its legal value, the signature shall be based on the satisfaction of its signatory with the content of the editor. Wish means that the electronic signature must be fully linked to the contents of the electronic editor and is directly connected to it with no confusion or ambiguity⁽⁴⁹⁾. If it is settled that the signature should be placed at the end of the writing contained in the editor, so that it is withdrawn on all written statements contained therein, and declares the consent of the signatory and its commitment to its content⁽⁵⁰⁾, however, the existence of the signature elsewhere does not deny such consent, and if it is subject to the discretion of the arbitral tribunal, what is important is that the signature attests to the

(43) See article No. (2/A) of Modal Law on Electronic Signatures for the year 2001.

(44) See article No. (1) in Decree-Law No. (28) for the year 2002 on Bahraini Electronic Transactions.

(45) See Iman Ma'moun, previous reference, Page 282 and what follows.

(46) See article No. (6) of Decree-Law No.(28) for the year 2002 on Bahraini Electronic Transactions.

(47) See article No.(1) in Decree-Law No.(28) for the year 2002 on Bahraini Electronic Transactions.

(48) Review Dr. TharwatAbdAlhameed, previous reference, Page 28 and what follows.

(49) Review Dr. Farouq Mohammad Ahmad Al'basery, Subscription contract in databases via the Internet, previous reference, Page 81.

(50) Review Dr. TharwatAbdAlhameed, previous reference, Page 29.

author's confirmation of the editor's content and acceptance⁽⁵¹⁾.

In the case of a multiplicity of the editor's papers and limiting the signatory on signing the last paper, the determination of whether the signature is withdrawn to all the editor's papers indicates a matter in which the arbitration is due. If there is a material and intellectual bond between the editor's papers making it a single editor, it does not require the signature of each paper, and it is right to be signed once in the tail of the last paper⁽⁵²⁾.

Fifth: The inability of the electronic signature for amendment or change

The electronic arbitration agreement as an electronic contract is concluded through the international Internet, and it is also written on this network, which makes the parties to these contracts mistrust, whether in these messages or electronic editorials, that are carried out among them for fear that hackers manipulate in these messages and editorials whether by amendment, change or forgery. Therefore, in view of the continuing progress in this area, the parties have signed electronic signatures on these communications to provide adequate security, safety and trust among them⁽⁵³⁾. This signature, however, because of its relevance to electronic writing, is also facing the same dangers that surround this writing, namely, distrust and insecurity because of the possibility of modification or change. As a result, this electronic signature has become subject to many technical specifications and high technology that makes it difficult for others to falsify, modify, or tamper with it without leaving any trace of this manipulation⁽⁵⁴⁾. Thus, the electronic signature became superior to the traditional signature in this area.

And so, some international laws were adopted before the UNCITRAL Model Law on Electronic Signatures of 2001.

4 Conclusion

In this study, we tried to discuss a new topic, the electronic arbitration agreement, one of the subjects that imposed itself strongly during the last period of the twentieth century, as a natural result of technological development in the world, e-commerce traders saw electronic arbitration as the most appropriate means of resolving disputes.

This study has reached several Results and recommendations as follows:

Results:

First: e-commerce parties want to resort to the electronic arbitration system to resolve their disputes away from the national jurisdictions because of the increase in expenses and slow procedures and disclosure of trade secrets through public meetings, as well as the fear of the parties of the tendency of the national judiciary to resolve the dispute in favor of the parties At the expense of foreign parties.

Second: electronic commerce favors electronic arbitration of the system of conciliation or mediation, whether traditional or electronic. This is due to the fact that the electronic arbitration system is

(51) Review Dr. AbdAlraziqAlsanhoury , the Mediator for explaining the Civil Law, second part, commitment theory, evidence, Page 306.

(52) Review Dr. Mohammad Husam Mahmoud Lutfi, previous reference, Page 30 and what follows.

(53) Review Dr. AbdAlfattahBayoumi Hijazi, Arabian Electronic Commerce, Explanation of the law of exchanges and electronic commerce in Tunisia, AlfikrAljam'ey House, Alexandria, 2003, Page 75, 76.

(54) Dr. Ibrahim Al Dsoqi Abu Allail , Concluding electronic contract in the light of the provisions of UAE Law and Comparative Law, previous reference, Page 1862 and what follows.

characterized by decisive judgments of the dispute between the parties and binding and enforceable.

Third: e-commerce parties prefer the electronic arbitration system to its traditional counterpart because it is compatible with the electronic nature of this trade, because it is used by electronic means in which this trade takes place away from traditional means.

Recommendations:

First: international conventions and laws, first and foremost the New York Convention and the Model Law on International Commercial Arbitration in 1985, should be amended or revised by establishing a set of legal rules that are compatible with the nature of the electronic environment in which the electronic arbitration system lives.

Second: International efforts must be in the establishment of several permanent electronic arbitration bodies, institutions and centers that practice the electronic arbitration system throughout the Arab world. Each of these bodies and centers shall have rules governing electronic arbitration at all stages without any substantial differences including the State of Qatar. And the Kingdom of Bahrain.

Third: international efforts must be combined in the establishment of training bodies and centers around the world whose task is to demonstrate the concept of electronic arbitration and the importance and increasing role in resolving e-commerce disputes and also to prepare trained technical staff at the highest level capable of practicing electronic arbitration, Such as electronic arbitration.

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