

International arbitration between the risks of traditional commerce and electronic commerce

(Future vision)

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Abstract

Electronic arbitration and the resulting electronic decisions are considered to be one of the most important modern means of settling disputes between the parties to the contractual relationship.

Since the electronic arbitration decision rendered by the arbitrator or arbitral tribunal is provided by electronic means in terms of writing or signature, it is necessary to have the necessary legal rules to regulate it, which is lacking in most of the legislation of different countries in the world.

The obligation of the losing party in this decision to apply its judicial obligation or alternative means did not affect the traditional legal systems dealing with customary documents and traditional signature, which motivated our concern to choose the effectiveness of the electronic arbitration decision under investigation.

What we had to distribute to the two researchers processed under the first of the electronic arbitration decision and our second to ensure the effectiveness of the electronic arbitration decision and completed the conclusion of the subject.

Keywords:

Electronic Arbitration, Resolving international disputes, Investment Arbitration

Introduction

E-commerce presents many problems and challenges: first, it authenticates the user or customer because the site, good or service exists. The second is the legality of what is presented on the site in terms of ownership of its moral material (intellectual property issues). The third is the challenge of protecting consumers from online fraud, fake websites or illegal content in the services and products offered.

Fourth: - Taxes on e-commerce revenues via the line, the criteria for calculating this line and the extent to which they are considered a major obstacle to the development of e-commerce.

Reliability and consumer protection go hand in hand with the other stages of electronic commerce activities, which require that international laws protect electronic commerce through the international arbitration laws that we will examine in this study to resolve international disputes.

First: the importance of research

The content of the commercial activity and the means of contracting on the site, the most famous being electronic contracts on the web,

Electronic mail contracts and, in general, the will of the supplier, producer or seller converge with the intention of the customer, and the contract is concluded online.

Second: the problem of research.

Two central problems emerge: - First, they document the status, person and existence of the other party, in the sense that they authenticate the integrity of the contractor. They are considering that one way to solve this problem is to find neutral interlocutors who act as mediators between contractors (intermediate certification authorities) to ensure their existence and the exchange of information. The other party Second: The authenticity of the electronic contract or the legal force required by the contractual means, guaranteed in traditional commerce by the person signing the written contract or requesting the goods or similar

evidence (personal certificate) in the case of unwritten contracts with those who have witnessed the material facts related to the contract. Or with regard to the performance of the parties' obligations after the conclusion of the contract, how is signed in this imposition, and the extent of its argument that has been made by electronic means, and the acceptability of evidence, and submission mechanisms as evidence only if only documents and files stored in the system?

Third: methodology and structure of the research

In this research, we use a comparative analytical approach, which shows the position of national and international legislation on the effectiveness of electronic arbitration decisions. The study will be divided into two requirements.

The first requirement

Comparison of the risks of traditional and electronic commerce:

Each form and type of human activity involves a certain degree of risk and adventure. There is no movement without a measure of risk. However, the person in his room inside his house or an armored cupboard is exposed to a certain degree of danger.

Trade, in its traditional sense, is based on the exchange of goods and services through conventional means, which have become - since the beginning of the 20th century - the use of specific modern means of communication, such as the telephone and telegraph, and preceded by mail in all its forms and types, and all these traditional means carry risks. The content of written and other mailings can be consulted, which is an accident. Trade, in the conventional sense of the term, uses documents, records, instruments and documents printed on paper, such as contracts of all kinds. For bills of exchange and promissory notes, all of which are subject to a certain degree of danger, such as fire, drowning or dampness, theft, total or partial damage, in addition to counterfeiting, falsification, fraud, fraud and intentional and unintentional destruction. Exists with respect to traditional means of exchange of goods and services as they exist in other non-traditional and other forms.

The argument that electronic commerce and electronic commerce expose commerce to high risks is inaccurate but inaccurate. Just as traditional commerce has its risks; electronic commerce also has its risks. Traditional trade has not been entirely safe but in the calculation and prevention of risks.

Qualities of electronic commerce

Electronic commerce is characterized by many different and distinct characteristics from traditional business, and we can identify seven distinct key characteristics as follows:

1. The disappearance of paper documents in electronic transactions (1)

Paper plays a significant role in trade, particularly international trade. It contains information and instructions, is used in documentation and certification. Paper has many properties that make it difficult to avoid it, it is economical and easy to use, but it has the disadvantage that it requires large storage space and large quantities. The paper used in commerce inevitably entails high transport and circulation costs and, because of this considerable amount of paper, it may be difficult to obtain information immediately or at least late, and this delay is unacceptable for international trade at an increasingly interesting time Bank

The objective of e-commerce is to create a paperless community, i.e. to replace paper accessories, which means not using paper.

E-commerce aims to create a paperless community, which means replacing paper accessories, which means that traditional paper documents must be replaced by electronic documents (1) after some of the disadvantages of working with these documents, especially in light of the communications and information revolution in our world. These include the slow movement of paper documents, the possibility of delaying customs formalities, exposing goods to the risk of corruption and bribery, and the ability of paper archives to be inflated and occupied by more filing rooms, in addition to the difficulty of processing them.

Therefore, electronic transactions are characterized by the absence of any paper documents exchanged in the conduct of transactions, all procedures and correspondence between the parties to the transactions being carried out electronically without the use of paper,

which is compatible with the purpose of electronic commerce is to create a community of paperless transactions, and will, therefore, replace electronic media. Thus, an electronic document becomes the only legal basis available to both parties in the event of a dispute between them.

2- Difficulty in identifying contractors:

The Internet allows companies to effectively manage their business transactions from anywhere in the world, as their headquarters can be located anywhere without compromising performance,

However, this spatial separation between the parties to electronic transactions may lead to a lack of knowledge of all the necessary information about each other,

As with traditional commercial transactions, neither of them can know the progress or financial situation of the other and whether they have reached the age of majority or are sub-eligible.

3- Electronic delivery of products:

The Internet has made possible the electronic delivery of certain products, namely the moral delivery of products, such as computer programs, music recordings, videos, books, research and electronic reports (2), as well as services such as medical or technical consultations.

This poses a problem for the competent authorities, as there is still no agreed mechanism for subjecting digital products to customs duties or taxes, which sellers can use to avoid the payment of customs duties and taxes by not recording these transactions in their accounting records.

- (1) The document means that "the publisher must have a source that calls the broadcast, and is therefore not considered a document if it is not visible from which source the publisher is.

(2) Dr Ateeq, cybercrime, Arab Renaissance House 2000, page 120.

4- The presence of electronic support:

It is the computer (computer) of each of the contracting parties, connected to the international communication network, which transmits the expression of the will to each of the contracting parties at the same time, despite the divergence of place and residence.

The message usually arrives at the same time as the recipient.

He has specialized several companies - such as Microsoft's American companies

And other companies in Europe and Japan - in the development of computer-compatible software in the fields of accounting, advertising, marketing, sales services and many other services that are not limited to:

This contributed to the speed of work at the lowest possible cost and allowed businesses and individuals to move from the traditional desktop system to the use of computers in all possible operations.

5 - Speed in the conclusion of business:

Electronic commerce contributes effectively to the conduct of commercial transactions between the two parties on an urgent basis, where they take place from the negotiation and conclusion of contracts to electronic payment and the delivery of products and services, without the need to move the parties and meet in a particular place, including saving time, money and labor

6. Collective interaction between several parties:

A party can send an e-mail to an infinite number of recipients at a time, without having to send it back each time,

In this area, the Internet offers unlimited possibilities for group interaction between an individual and a group, a feature unprecedented in previous interactive tools.

The message can be sent to people who are not concerned. The respondent can send the e-mail by e-mail to dozens of people simultaneously in several countries.

By clicking on a specific field on the email site, Carbon Copy, which represents the acronym Cc, or through the mailing lists.

7. No direct relationship between the contracting parties:

Negotiations are ongoing between the contractors within the Contract Council to agree on the details of the contract to be concluded between them (sales contract, rent, gift, etc.).

The conclusion of a contract may take one or more sessions until all the necessary details have been agreed in the e-commerce contracts.

There will be no traditional contract advice or ongoing negotiations to agree on the terms of the contract because the seller is in place and the buyer can be thousands of kilometers away,

The time may also vary between buyer and seller sites, even if they are connected by computer or between sending and receiving the recipient's e-mail, as the messages have not been downloaded from the network or have been delayed.

Even the human element may be completely absent, and the devices communicate with each other according to programs prepared for them, which in some companies inventory the inventory of a given product and place new orders for suppliers if the stock falls below a specific limit for which computers receive and execute purchase orders and send sales invoices without the intervention of the human element.

Factors that have contributed to the growth of e-commerce:

The current prevalence of e-commerce and its expected increase shortly have added to the following factors:

1- Develop the use of plastic silver:

During the last half of the previous century, the use of credit cards or "plastic money" issued by many banks and financial institutions such as Visa, American Express, etc.,

can be used to buy or sell people and thus avoid the use of paper money or metal, which has facilitated trading,

It has helped banks to increase credit and loans, thus facilitating the subscription of this type of currency for individuals. This protection is also protected in the event of the loss of a card that allows the cardholder to contact the issuing bank or institution and stop using it.

This provides a degree of protection to the original cardholder when reporting his loss and exposes those who have illegally acquired it to criminal liability, as well as the fact that these cards grant the holder a credit period during which the cardholder can make interest-free withdrawals to be applied after a certain period (one month or 45 days).).

2 - Major development in the use of computers and programs:

Computers have evolved, and new generations have emerged, characterized by speed, efficiency and ease of use. They have formed companies specialized in the production and innovation of computer programs capable of many operations and multiple methods in the fields of agriculture, industry, scientific research, entertainment games and other areas of thought and human activity. Facilitate the use of computers by ordinary people after a short period of training, which has led to the widespread use of computers in banks, businesses, government and other organizations, as well as between individuals and students in schools and universities.

3. Expansion of the international telecommunications network

The Internet was first created as a private information network on the military uses of the armed forces in the United States of America and then transferred to the civilian sector. It has also been expanded and strengthened and created new uses, such as e-mail and specialized websites.

The creation of websites and e-mail on the Web has facilitated communication between different geographical regions of the world, drawing the attention of businesses and commercial institutions to the importance of using the network to increase the size of the market and market goods and services via the Internet. Music equipment, car and ambulance services and consultation via the Internet.

4. Widespread use of English in international trade, computer programs and the Internet

This has become the language of businessmen and banks dominating and controlling their various operations. The emergence of the US economy supported this as the world's leading economy in this historical phase of global economic growth, which coincided with the fact that the most extensive IBM computer manufacturer and the largest Microsoft software publisher are both American companies.

Importance of electronic commerce:

The importance of e-commerce for institutions and institutions that use it is as follows:

Reduce inventories of goods for which production can be organized to meet planned orders or purchase orders, thereby reducing production costs, storage costs, keeping the level of stagnant products to a minimum and increasing the company's profits and operational efficiency

2- Compression of the volume of paper and office work using the computer to store information and control production and warehouse work

The provision of business registers and books has, therefore allowed an excellent orientation of the workforce towards specialized productive enterprises.

It has created generations of memory-intensive computers that store, store and retrieve all the necessary information as quickly as possible while connecting to the information network.

This comprehensive information Centre can easily and quickly provide all the required information on a subject, decision or problem.

3 - Linking the bodies and branches of different institutions and authorities at the lowest cost

It has become possible - thanks to basic computers and peripherals - to establish an effective communication system for the publication of decisions and the control of execution between the parent company and its various divisions or between multiple government agencies for active and rapid decision-making Business and implementation control.

Particularities of electronic commerce:

1. The offer must be expressed via an international telecommunications network:

A contract consists of an affirmative action led by one person and acceptance by the other party. To enter the field of electronic commerce, the positive expression must be expressed in the form of an offer via an international telecommunications network.

A global telecommunications network as for the Internet.

The term "international telecommunication network" refers to a broad concept in this field. It applies to any communication in which the positive is expressed by the image, sound or signal indicating its content, as well as by writing.

This applies to a telecommunications cable, wireless communication and finally a satellite communication.

It should be noted that the positive expression via the telecommunications network that distinguishes e-commerce contracts from other contracts concluded by traditional means in the first type of contract does not involve any physical presence, but a physical appearance of the contractors when the contract is remote.

Contract distance,

In ordinary contracts, the offer is accepted by the contractual board or subsequently, when the physical presence of the contractors is ensured by them or by their legal representatives.

2- The offer must be open to an unspecified customer segment:

6. This second ownership of e-commerce contracts is intended to address the offer to customers in general or to an unspecified sector of them.

Barriers to e-commerce:

As mentioned above, despite the many advantages offered by electronic commerce, there are some obstacles to developing them into a modern alternative to traditional business, mainly because of the very nature of this type of trade, including the surrounding circumstances. As summarized as follows:

- 1- The predominance of the risk element in electronic commerce due to the lack of confidence in treating it in this way to facilitate the manipulation of transactions carried out by them.
2. Insufficient security features for means of payment.
3. The difficulty of dealing with many cases due to the multiplicity of normative standards applied by different countries in this regard.
- 4 - Fear of hacker hackers to hack into commercial sites, which is now happening on a large scale until the recent penetration of the Microsoft topic and the resulting substantial material losses.
5. The impact of bad experiences of fraud by companies or even some consumers on the network.
6. Non-application of intellectual property protection rules in many laws.
7. Lack of integrated legislation governing electronic commerce and related matters.
8. A contradiction between the bill of States in this regard, which is contrary to the nature of this type of trade.

Legal regulation of electronic commerce:

First: questions concerning the legal organization of electronic commerce:

Problems related to the legal regulation of electronic commerce, for example:

Legal regulation for the conclusion and implementation of electronic contracts

2. Legal regulation of digital signatures
3. Legal regulation of website registration

4. Legal regulation of domain name and address registration
5. Legal regulation of the filing and registration of electronic documents and ratification of electronic certification
6. Legal regulation of the payment of goods and services via the Internet Online payments
7. Legal regulation of the supply of products and services in electronic transactions
8. Legal regulation of securities transactions via the Internet. Transactions on the stock markets
9. Legal and tax regulation of electronic transactions

Second: International regulation of electronic commerce:

The purpose of these international agreements between States and other countries is to codify and regulate electronic commerce in the event that a person in one country deals in electronic commerce with a person in another country and everything related to it in terms of marketing, promotion, conclusion of contracts, payment and formal and objective provisions governing. Besides, international organizations have developed model laws governing electronic commerce between countries, in the presence of the WTO and its specialized institutions. Non-international e-commerce on the way to take shape.

Third: Domestic regulation of electronic commerce:

Given the growth of e-commerce, whether among citizens of one country or citizens of the State and citizens of another country, many countries have organized or initiated the regulation of e-commerce in several legal ways, including

1- Method of developing specific regulations:

Under this method, some countries or states in these countries have enacted specific legislation, for example, to regulate electronic commerce, the second to regulate communications on the Internet, the third for electronic signature systems, etc.

2. Methods of amending existing legislation to keep abreast of developments in electronic commerce:

States have adopted or amended laws necessary for existing laws, such as the Civil Code, the Evidence Act and commercial laws, including banking, credit, money market, real estate registration, documentation, criminal laws, tax and customs legislation, etc., to include provisions relating to electronic commerce.

The objective of an electronic commerce law:

The purpose of the Electronic Commerce Act is to ensure the validity of transactions carried out on electronic media in which an electronic medium is used to edit, transfer or store data and contracts related to such transactions.

To achieve this objective, the Electronic Commerce Act focuses primarily on developing legal principles for the recognition of electronic publishers as substitutes for traditional paper-based formats.

In addition to the recognition of the electronic signature and equality between electronic publishers and the electronic signature in terms of argumentation as legal evidence and between paper editions and the traditional signature, which is done on paper.

The second requirement

The future vision of international arbitration

Electronic commerce can be considered as a multidimensional concept and can be achieved in six different ways. This is perhaps essential e-commerce between commercial companies on the one hand and between these companies and consumers on the other.

1. B2B E-Commerce

This is the oldest type of electronic commerce. It is intended for exchanges between traders. The Internet is used by transmitting orders to suppliers and receiving invoices when the business unit places orders to the group. Other Data and information are then exchanged until an agreement is reached between them and the parties can conclude an electronic contract for the supply of goods and services, receive invoices and make payments electronically, depending on the contract or the nature of the products and services (1).

2. Business-to-Consumer Electronic Commerce (B2C)

This form is widely used and used by the customer to purchase products and services via the Web, in Internet shopping centres or virtual centres. It provides all kinds of goods and services, and this form is used by the company to reach new markets.

(1) Mohamed Said Ahmed Ismail, op.cit., P. 40

3. Consumer Electronic Commerce (C2C)

This type of e-commerce between a consumer and another consumer via the Internet, this category of people buys or sells directly on the Internet, then resells to other consumers in order to make a profit so that a person who is not a merchant can display his car, for example, A website (website) such as ouedkniss is also an example of the Aliased electronic newspaper site on the Internet, which allows many users to display their goods, products, real estate and others for sale and trade via the Internet.

4. Electronic commerce between a business establishment and a public administration (B2A)

It covers all transactions between business units and departments,

For example, the United States and Canada offer online procedures, regulations and forms so that companies can consult them electronically and complete the transaction electronically without having to deal with a government office.

5. Electronic commerce between consumers and public administration

(A2C) Administration to the client

This form has recently begun to spread in many countries, for example by paying taxes electronically as in Malaysia and obtaining a driving license as in Dubai. It is intended to enable citizens to carry out transactions with the Department via the Internet, such as payment of water and electricity bills, telephone, etc.

The introduction of this method will increase the efficiency of the government sector and save time and effort for the citizen. It should be noted that this type includes calls for tenders, orders and services provided to citizens through electronic media.

Inter-electronic commerce

Intra-organizational-commerce, which includes international organizations that use electronic technology to communicate between their branches, divisions or affiliates, for example, a company's computer, is pre-programmed in case the company's products decrease. A certain amount automatically activates the program

It sends an e-mail to the main computer located in the company's warehouses, either by e-mail or via an internal network including the sending of goods in an amount equal to the reduced quantity. Between the company's branch and its warehouse to pay for the value of the unloaded goods.

(B) E-commerce tools: (1¹)

While e-commerce has many forms, it has many tools at its disposal, including tools for the provision of goods and services and tools for the delivery of goods and tools for pre and post-sale service, but the two most essential elements are:

1- Electronic payment systems such as electronic funds transfer (EFT), interbank transfers, and magnetic cards such as smart cards, Mondex cards, electronic wallets, digital money,

¹ *Counselor Khaled Ibrahim Ibid.*

cybercash and electronic payment tools. Scope of the implementation of the electronic contract.

2- Tools for trade, namely EDI, Email and Electronic Contracting.

Legal regulation of electronic transaction problems:

The most important objective of the legal regulation of relationships and transactions in electronic commerce, which is to obtain justice and the right of everyone, has this right. It is, therefore, necessary to legally protect all e-commerce operators and to address the challenges facing their organization and development.

The lack of recognition of these transactions, the lack of authenticity of their papers, the control of the use of electronic information, confidentiality and integrity as well as the legal value of the electronic signature are at the heart of these challenges.

We will examine these issues in the context of the 1996 United Nations Model Law on Electronic Commerce and its 2002 Model Law on Electronic Signatures.

Tunisian Law No. 83 of 2000 on Electronic Commerce and Electronic Exchanges (1²),
Jordanian Law on Electronic Transactions No. 85 of 2001 (2³) and the Law of the Emirate of
Dubai on Law No. 2 of 2002 on Electronic Transactions and Commerce of the Emirates;
Law No. 15 of 2004 on electronic signatures in Egypt;

Authentic electronic transactions:

There is no doubt that one of the most important challenges facing electronic transactions is to deny its argument or power to prove or attempt to question the authenticity of the data in question or their signatures.

The laws stipulate that there is no distinction between electronic writing and other forms of traditional writing,

² Official pioneer of the Tunisian Republic on 9 August 2000.

³ and in force since 1/4/2002 Official Journal (Jordan) No 4524 of 31/12/2001 p. 601

This corresponds to the authenticity of the Electronic Signature Act, with the electronic signature having the same authenticity as signatures in the provisions of the law of evidence in civil and commercial articles, when done following the conditions prescribed by law.

To ensure compliance with this legal effect, by invoking electronic writing and electronic signature, it is necessary to comply with the conditions and controls required by law.

Legislators have used the Model Law on Electronic Commerce and the Model Law on Electronic Signatures as a basis for their decisions. Article 5 of the Model Law on Electronic Commerce recognized the legal effect of electronic data, including their authenticity and accessibility.

Article IX of the form also prohibits denying the authenticity of the electronic data message simply because it was issued in that form or because the person did not provide the original.

Article 3 of the Model Law on Electronic Signatures recognizes the authenticity of the signature and its legal effect when the conditions set out in Article VI, paragraph 1, of this form, are met, as well as the conditions required by the applicable law.

The Tunisian law on electronic commerce has approved the authenticity of electronic contracts following its first chapter, which stipulates that electronic contracts must be concluded in written form, expressing the will, its legal effects, its validity and its enforceability so as not to contradict the provisions of this law.

Based on this provision, electronic contracts apply to written contracts concerning all legal effects they may have.

This is also the case under Jordanian law on electronic transactions, according to which the first paragraph of Article 7 stipulates that electronic registration, electronic contract, electronic message and electronic signature are the product of the same legal effects as written documents and written signature.

According to the provisions of the legislation in force, it is mandatory for the parties or the validity of the evidence.

This is the same as the United Arab Emirates Electronic Business Transactions Act of the Emirate of Dubai and the Bahraini Electronic Commerce Act, which gives electronic documents authenticity with regard to proof of knowledge and legal effect of information contained in electronic documents in terms of validity and the possibility of working simply because they are received in whole or in part. It is not permissible to deny the legal effect of the electronic signature in terms of validity and the possibility of working according to it simply or entirely in electronic form. If an electronic record is used in this respect, an electronic signature on it must comply with the requirements of this Law following Article 6.

This is the same as the French and English electronic signature laws published in 2002, The Electronic Signature Regulations or the US Electronic Signature Act of 30 June 2000.

Controls on the use of electronic transactions:

It is dangerous to recognize the absolute authenticity of electronic papers and signatures without following a system that guarantees the authenticity and integrity of these papers and signatures or to verify the identity of customers and the confidentiality of information.

One of the controls and conditions, (1⁴) necessary for the authenticity of electronic writing in evidence to achieve three objectives:

First: the signature of the signature is electronic only for those who have signed the signature alone.

Second: the control of the person who signed the signature alone on the electronic medium.

Third: the possibility of detecting any modification or alteration of the data of the electronic publisher or the electronic signature.

Article 7 of the Electronic Commerce Act requires the use of a system or means to verify the electronic signature of customers and their conformity with their actual signature, as well as the acceptance of data or information contained in the messages they have exchanged.

⁴ *This Regulation and these conditions shall be entrusted to the Executive Regulator*

The model law leaves it to States developing e-commerce legislation to define such a system or method and its working method in such a way as to ensure impartiality and precision in the performance of tasks or to require the adoption of what a neutral body does as a court or arbitral tribunal.

Article VII specifies that the system or means used for the investigation of electronic equipment resellers and the conformity of their signatures must allow electronic messages to be exchanged or communicated taking into account all circumstances, including the transaction or agreement concluded by the parties.

These rules leave each country the freedom to choose the appropriate system to verify the authenticity of electronic transactions and the conformity of customers' signatures and their attribution to their person, as these rules can guide the evolution of national legislation.

Article VI of the Model Law on Electronic Signatures requires reliable authentication for the electronic signature to produce its legal effects depending on the purpose for which the electronic data message was issued or communicated.

He also showed cases where the signature is considered reliable:

- Signature creation data must be linked to the person who signed the signature in the context in which it is used.
- The signature creation data must be controlled by the person who signed the signature at the time of signing.
- If it is possible to detect a change in the electronic signature after having made it.
- If the legal obligation of a signature is to confirm the integrity of the data on which it is made, and any modification of such data after the signature is likely to be discovered.
- Provided that these rules do not prevent any party from proving in any other way, the validity of an electronic signature.
- Article VIII of the Model Law requires persons who have signed an electronic signature and who have such legal authority to exercise due diligence to avoid the use of an unauthorized electronic signature.

Article 9 requires the authentication service provider to take all reasonable precautions to ensure the completeness of all devices and tools used by them in connection with electronic certificates or turn, and to facilitate verification by customers of the authenticity of such certificates and the conformity of signatures at the time the certificate is issued.

Tunisian law has also set up a system for verifying the authenticity and integrity of electronic transactions, with Chapter 5 stipulating that any person wishing to sign an electronic document may create his or her electronic signature using a reliable system whose technical specifications are set by the decision of the Minister in charge of Communications.

Any person using an electronic signature system must, in accordance with Chapter VI of the Act, take precautions to prevent any illegal use of encryption elements or personal equipment related to his signature and inform the electronic authentication service provider of each unlawful use of his signature and ensure the reliability of all data transmitted to the authentication service provider. And all the parties who have been asked to trust his signature.

Chapter 11 of the Act requires any natural or legal person wishing to exercise the activity of electronic certification service provider to obtain prior authorization from the National Electronic Certification Agency, which the legislator has decided to establish in accordance with Chapter 8 as an institution with legal personality and financial independence and set in Tunis Administrative Statute and subject to commercial law.

It grants the license to operate as an electronic authentication service provider, ensures compliance with legal provisions, determines the specifications of the signature, compliance and audit system, and other tasks, including the issuance, issue and retention of electronic certificates.

Jordanian law requires that the electronic recording or electronic signature be documented, otherwise it will have no validity (in accordance with article 22 of the law) and the electronic recording will be considered authenticated in accordance with article 30 if it is carried out according to approved authentication procedures or commercially acceptable authentication procedures agreed between the parties to the relationship.

An electronic signature shall be considered authenticated if it is distinguished only by its association with the person concerned and if it is sufficient to identify the person whose holder has been established through the person under its control and with a link to the document to which it relates, so that no change is made to the registration after the signature without changing the signature.

In accordance with article 32 of the Act, a notarized electronic signature is deemed to have been issued by the person to whom it is attributed and to have been able to establish his consent to the content of the bond and that the authenticated electronic record has not been altered or modified since the date of its authentication procedure.

The law of the Emirate of Dubai determines the authenticity of the electronic signature be protected or strengthened and article 20 of the law stipulates that:

"A signature is considered a protected electronic signature if it is possible to verify, by the application of the judicial authentication procedures provided for in this Law or by a reasonable and mutually agreed commercial compromise, that the signature was electronic at the time:

- A. The person who used it is his own.
- B. It is possible to prove the identity of this person.
- C. It must be under its full control, both for its establishment and for the means of using it at the time of signature.
- D. It is linked to the relevant electronic message or in such a way as to provide reliable assurance of security by not being protected.

The Bahraini law on electronic information required that the recipient be able to access and extract it later, whether by diffusion, printing or other means, and that the recipient can save this information.

In assessing the authenticity of the electronic recording of evidence in the event of a conflict in its integrity, the following elements shall be taken into account:

- A. The degree of confidence in the way in which the electronic record was created, preserved or transmitted.

- B. The degree of confidence in the way the electronic record was signed.
- C. The extent of confidence in the method used to maintain the integrity of the information contained in the electronic record.
- D. Any other issue related to the integrity of the electronic record.

Conclusion

After concluding on the subject of the effectiveness of the electronic arbitration decision, we must indicate the most important conclusions and recommendations that we have reached, as follows:

First: the results

1- Electronic arbitration in international commercial contracts is one of the most important means of settling disputes between the parties, because of the advantages of being more straightforward and faster in the procedure, more secure in the confidentiality of information, low costs and the need for the parties to settle at the place of arbitration. The presentation of information, data and witness statements to the arbitral tribunal are carried out electronically utilizing modern means of communication, the most important being the Internet.

2. Electronic arbitration bodies and centers generally follow their legal procedures, where there is no agreement on specific procedures leading to the adoption of the electronic arbitration decision to which the parties to the dispute are subject.

3. The Arab Law on Procedures did not deal with electronic arbitration or the implementation of arbitral awards or foreign arbitral judgments; it was limited to domestic arbitration judgments, due to the amended 1928 Law on Foreign Executions.

4 - Electronic writing and electronic signature are the conditions to be met when publishing the electronic arbitration decision.

5 - The electronic arbitration decision has the same legal authority as the traditional arbitration decision if it meets the conditions provided for by law.

6. A photocopy of the electronic arbitral award shall have the status of the original copy when the conditions provided for by law are met.

Second: recommendations

1- Due to the inability of the Iraqi Code of Procedure to implement electronic arbitration decisions, we call on the UAE legislature to adopt a law on electronic arbitration that takes into account the rules set out in the Model Law on International Commercial Arbitration, particularly after the transformation of the UAE economy in recent years. The 2008 crisis and the current needs of the UAE for e-commerce transactions to catch up with developed countries.

2 - We call on the Emirate legislator to find a law governing the creation of electronic arbitration bodies, such as the Center for Electronic Settlement, which would assume responsibility for arbitration proceedings and oblige the loser in the dispute to fulfill his obligation without recourse to justice.

3 - The need to find centers specializing in international commercial arbitration in universities and scientific institutions in the United Arab Emirates, responsible for preparing arbitrators specializing in domestic and international commercial arbitration, in particular electronic arbitration, because of its importance for the resolution of disputes related to business transactions and the advantages it has in being able to issue an electronic arbitration decision.

4 - The need for the prior agreement of the parties to the contractual relationship on electronic arbitration before resorting to it, since many States do not accept electronic writing and signature and some States require laws in advance of electronic transaction agreements.

References

- 1 - d. Ahmad Safar, Electronic Payment Systems, Al-Halabi Publications, Beirut, 2008.
- 2 - d. Ahmad Sayyed Sawy, Memorandum in Arbitration, 3rd floor, no printed location, 2010.
- 3 - d. Ahmed Hendi, Execution of Arbitrators, Publishing House of the New University, Alexandria, 2001.
- 4 - d. Inas Al-Khalidi, Electronic Arbitration, Dar Al-Nahda Al-Arabiya, Cairo, 2009.
- 5 - d. Bilal Abdel Mottaleb Badawi, Electronic Arbitration as a Means of Resolving Commercial Disputes, Dar Al-Nahda Al-Arabiya, Cairo, 2006.
- 6 - d. Tharwat Abdel Hamid, electronic signature, new university house, Alexandria, 2007.
- 7 - d. Jamal Omran Song Alwarfali, Implementation of the Provisions of Foreign Commercial Arbitration, Dar Arab Renaissance, Cairo, 2009.
- 8- Dr Hossam El-Din Fathy Nassif, Electronic Arbitration in International Trade Disputes, Arab Renaissance House, Cairo, 2005.
- 9 - d. Hassan al-Haddawi and Dr Ghalib al-Daoudi, Private International Law, Book II, Conflict of Laws and Enforcement of Foreign Judgments, Dar Al Kutub Publishing, Baghdad, 1982.
- 10 - Dr Hassan Abdel Baset Al-Jumaie, Proof of legal conduct concluded by Internet, Dar Al-Nahda Al-Arabiya, Cairo, 2000.
- D. Hafidh, M. Haddad, Appeal of the Invalidity of Arbitration Provisions in International Private Disputes, Dar Al Fikr University, Alexandria, 1997.
- 12 - Dr Tarek Abdel Aal Hamada, E-Commerce, University House, Alexandria, 2003.
- 13 - Dr Abdel Moneim Zamzam, Electronic Arbitration Law, Arab Renaissance House, Cairo, 2009.
- 14 - Dr Essam Abdel Fattah Matar, Electronic Arbitration, New University House, Alexandria, 2009.

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