



PRINCIPLES AND PRACTICE OF DIGITAL ARBITRATION

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Abstract

E-arbitration is a key component of online dispute resolution (ODR, which allows parties to resolve any issue originating from their contractual relationship online. E-arbitration is primarily used to resolve Business to Business (B2B) cross-border e-commerce conflicts, but it is also used to resolve traditional cross-border commercial disputes. The arbitration agreement and the arbitral process are both completed online in e-arbitration. Some analysts argue that the form requirement in e-commerce contracts, including arbitration agreements, is less necessary if the electronic document is sufficiently specific, establishing obvious indicators that can be read in the future.

Keywords: ODR, e-Justice, CyberTribunal, E-commerce, international arbitration, The National Center for Automated Information Research (NCAIR), the Electronic Transaction Arbitration Rules, the Czech Arbitration Court, the US Small Claims Court.

Introduction

Arbitration is a type of private justice that includes a number of formalities and procedural code regulations. It is a type of alternative conflict resolution governed by stronger and more formal norms, and it differs significantly from mediation in terms of process structure, cost, decision-making power, and many other factors.

The advancement of technology and the internet has given these alternative conflict resolution procedures a new dimension. Online Dispute Resolution (abbreviated ODR) is an Online Dispute Resolution technique in which conflicts are addressed using virtual platforms rather than being physically present with the parties. In the 1990s, the notion of ODR as a conflict settlement process was established. It can take place in two formats, namely the settlement of online issues in the cyber realm and problems that arise in the actual world but are resolved in a virtual manner. The parties handle these disagreements using numerous internet sites that offer online dispute resolution services.

The introduction of electronic arbitration has encountered challenges comparable to those encountered with e-Justice, but to a lesser level because it is a private procedure with greater procedural and technological flexibility. The court, the experts, the witnesses, the attorneys, and the parties should all utilize online communication tools, filing, document presentation, and so on, and they must do it in a technical environment that is fully safeguarded.



The legality of the agreements and conclusions of the electronic arbitration tribunals was a key point of contention. This is due in part to the fact that standard arbitration rules of procedure could not envision the day when arbitration would be available online! Furthermore, many express concerns about the effectiveness and trustworthiness of technical systems, the impartiality of electronic arbitration platform providers, and the disparities in the usage of systems by the parties. This helps to explain the poor adoption of technology in arbitration processes. Nonetheless, there is a global trend toward the use of e-arbitration in uncomplicated cases, and this model will undoubtedly serve as the foundation for future e-Justice growth.

The National Center for Automated Information Research (NCAIR) and the Cyberspace Law Institute US undertook the first pilot project introducing electronic arbitration in 1996. (CLI). Other platforms followed, such as the CyberTribunal, which used procedural norms for case resolution identical to those used by UNCITRAL and the ICC and successfully resolved multiple cases. Many e-arbitration platforms have gradually emerged, some of which are still operational, such as the platform of the Czech Arbitration Court, the US Small Claims Court, and others.

Electronic arbitration is generally used in business-to-business transactions. Today, several services offer various sorts of e-arbitration. According to Kaufmann and Schultz (2004), the essential components of conducting electronic arbitration include improving the speed with which disputes are resolved, lowering expenses, and the idea that disputing parties do not have to be present at the same time. Some of the suppliers of electronic arbitration are discussed further below. Hong Kong International Arbitration Centre is a dispute resolution institution that was established in 1985. It has created the Electronic Transaction Arbitration Rules, which are used to settle consumer claims. It has the option of holding hearings in person, by phone, via video connection, by mail, or by any other kind of technological communication.

Aside from cross-border commercial transactions, electronic arbitration is inextricably linked to the evolution of electronic commerce. Merchants in such transactions require a dispute resolution method that is efficient, cost-effective, and timely. As a result, online arbitration is gaining popularity as a private and speedier method of resolving e-commerce issues. According to research, a rising number of local and international legislation are following the principles governing electronic arbitration. However, e-arbitration, like e-commerce, is facing several problems that may impede its efficient functioning. This article will go into the difficulties of electronic arbitration and e-commerce in great detail.

The amount of E-commerce is increasing at an exponential rate. Despite the fact that the amount of global E-commerce has not yet reached the targeted levels that represent the existing potential, conflicts originating from cross-border E-commerce contracts will certainly increase in a world where E-commerce is booming. Consumers are wary about E-commerce because of the uncertainty around settling potential conflicts and worries about an effective means to exercise their right to seek remedies. It is critical to protect consumers' rights (in the event of a dispute). The most pressing problem right now is ensuring customer certainty and confidence in dispute resolution.



In terms of conflict resolution, the traditional process is litigation in state courts. If there is no agreement or legal law mandating alternative conflict resolution, the disagreements are settled through litigation. However, when it comes to cross-border conflicts, parties encounter a number of challenges. Due to structural considerations and the challenges of jurisdiction, cost, and speed faced, state judgment does not appear to be a suitable choice in resolving disputes originating from electronic consumer contracts. Furthermore, because the monetary value of disputes emerging from electronic consumer contracts is frequently minimal, customers avoid pursuing their rights through litigation. The lack of a supranational court to handle conflicts arising from international trade, as well as the incompatibility of state decisions with the structure of consumer disputes resulting from E-commerce, has encouraged interest in alternate dispute resolution procedures.

Out-of-court options such as arbitration, mediation, and negotiation are employed in conflict settlement and are known as alternative resolution methods. These means of conflict settlement are not new institutions to the current system. However, due to expanding and changing demands for conflict resolution, these strategies have witnessed a rebirth. Traditional alternative conflict resolution approaches outperform litigation in many ways. Traditional alternative dispute resolution systems, which require the parties and neutral third parties to physically meet (as in the state judgment), do not completely satisfy the expectations in responding to the special characteristics of E-commerce issues. Nonetheless, because overseas electronic consumer conflicts are often of low value, traditional alternative dispute resolution systems do not achieve the desired efficiency and efficacy.

As a result, a new conflict resolution mechanism that is consistent with the characteristics of E-commerce is required. This mechanism must ensure the effective and timely settlement of current E-commerce-related disputes. In this regard, the necessity for an efficient and speedy resolution system has resulted in the establishment of online alternative conflict resolution techniques in the legal order, with the goal of resolving disputes over time utilizing technology.

Online alternative dispute resolution procedures are gaining popularity and are recognized by the international legal system. This is due to their compatibility with the particular features of E-commerce and their capacity to address the difficulties associated with traditional dispute resolution procedures. Online alternative dispute resolution solutions are pre-defined procedures, some of which are completely automated, and can include the participation of a neutral third party. Online alternative conflict resolution methods include three primary dispute resolution approaches: electronic negotiation, electronic mediation, and electronic arbitration, which is the subject of this research.

Electronic arbitration provides for the resolution of conflicts in an electronic setting by utilizing the benefits given by technology, with all arbitration operations taking place through the Internet. A legal online arbitration agreement is the starting point for an electronic arbitration procedure, which concludes with a definitive online arbitration award. The most significant difference between electronic arbitration and traditional arbitration is that the procedure is carried out entirely electronically, as with other alternative online dispute resolution approaches. Given the uniqueness of these issues, electronic arbitration can be regarded as the most effective, quick, and practical method for resolving cross-border electronic consumer disputes.



Regardless of the case's worth, electronic arbitration is backed up by the notion that it will save money as compared to traditional arbitration resolution methods. As a result, state-sponsored or private efforts that have set out to provide an electronic arbitration platform as conveniently accessible dispute resolution techniques are required. To summarize, electronic arbitration appears as a dispute resolution process that must be widely used in order to promote customer trust in E-commerce. This will increase client trust in an effective dispute resolution procedure and encourage the exploitation of current E-commerce potential.

It is now well acknowledged in the arbitration world that parties rarely select arbitration because they believe it is the quickest or cheapest method of dispute settlement; rather, the drivers are its global enforcement system and confidentiality. Indeed, according to recent studies, in-house lawyers prefer arbitration over litigation, despite the assumption that arbitration is as sluggish and expensive as litigation. Most arbitral institutions are searching for solutions to react to the increased demand for cost and time efficiency in arbitration. However, the arbitration community also possesses the means to effect constructive change. Parties, lawyers, and courts should actively seek and adopt technological and procedural innovation. The practical benefits of ODR, such as its efficiency and mobility, go hand in hand with arbitration's innovative, flexible, and multinational character. There is no "correct" method to use ODR; it is a set of tools from which arbitrators and parties can choose the best combination for their circumstances. With the rapid advancement of technology, ODR is both fascinating now and in the future and should be welcomed by the international arbitration community.

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