

Overview of Arbitration and Online

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Abstract:

Online arbitration is an ideal dispute resolution mechanism to solve disputes arising from B2B transactions for various reasons, among others, because it allows parties to select a specialist they both trust to solve the controversy with an award that is binding for both parties, but that respect the minimum necessary formalities of the procedure. Additionally, the use of electronic means of communication allows the procedure to be conducted in a faster pace, from any location, and allowing parties to get access to the documents of the procedure at any place at any time.

Keywords: Online arbitration.

1. Introduction

International trade continues to increase in online volume, resulting in a sharp increase in disputes arising from such online commerce. Accordingly, arbitration is the preferred method for resolving international trade disputes, in which online arbitration is the standard of alternative dispute resolution in the near future, especially in the field of e-commerce. When the court could not afford to resolve the dispute, online arbitration has become a legal method of dispute resolution everywhere in the world with different levels of scope and application. For online arbitration to be accepted, it is necessary to determine which basic rules will govern the choice of law, jurisdiction and enforcement of the award. Online arbitration can inherit the characteristics of traditional arbitration, can also shorten the time of making judgments, save time and cost for all parties, apply modern technology to support aid dispute process. In addition, online arbitration is particularly suitable for e-commerce, when the number of disputes arising is becoming more and more complicated in large numbers along with the rapid growth of payment and e-commerce.

2. Literature review

There are several researches on ODR in general and online arbitration in particular.

Frank (1997) in the study of Online Systems in Alternative Dispute Resolution found that the problem with online arbitration is difficult in selecting the appropriate law to apply to the dispute. Arbitrators may only need to apply applicable legal rules to determine the law governing the value of the dispute, but it is often unclear what choice of laws rules will govern a particular dispute when Legal systems cannot be clearly defined when applied in Cyberspace. Frank (1997) also argues that contractual obligations are the only effective means of contracting parties with online courts. Therefore, the incorporation of online terms must be included in the user registration agreements. Accordingly, the use of online systems to resolve binding disputes will be less restrictive.

Eddie (2000) argues that in the context of national legal systems related to censorship technology, there have been calls for adjustment of international commercial arbitration to consider the issue of online arbitration. Accordingly, the parties to the Internet dispute will be comfortable, resolving their disputes through the same means that they are doing business. Online arbitration also provides an incentive for the parties to agree on a dispute settlement system and the parties will be able to bypass formal legal institutions and maximize government intervention. Eddie also discusses a number of special and very important issues that will need to be addressed to ensure the proper and legal functioning of online arbitration including: time frames applicable to online arbitration; rights of the parties to the dispute regarding access to the material; requests concerning communication between the parties and the arbitrator; procedure to cater for authenticated or authoritative

situations; and instructions on the appearance and enforcement of online arbitration. Meanwhile, Llewellyn et al (2002) found that large costs, jurisdiction and transnational lawsuits were not feasible to perform in court, not provide an equal playing field for online arbitration in disputes between merchants although at the time this system may not exist or be inadequate for disputes between consumers and traders.

Eddie's study (2000) also suggested a mechanism for online arbitration to work in practice, such as The World Intellectual Property Organization (WIPO) to resolve intellectual property disputes. Accordingly, online arbitration begins by accessing procedures through the website and then electronically submitting a request at the WIPO Arbitration Distribution Center. All claims about claims, facts and legal arguments, documentary evidence need to be submitted electronically and online. The arbitration center determines the location of the arbitrator and the language used. After the end of the required requirements, a final award is given and no appeal is given. Accordingly, the steps mentioned above for the strict time frames are specified in the WIPO rules. The parties contact via digital means and send requests by completing the corresponding electronic and online forms via secure channels, and receive automatic notifications, payment of electronic fees, databases of document storage and storage, and secure channels are all via Internet-based systems.

Eddie (2000) also provides other examples of an online Arbitration that clearly shows that organizations have realized the potential advantages and predicted the need to resolve disputes by online arbitration such as Cybertribunal is a project of the Faculty of Law in University. Montreal; The Office of Online Inspection is provided by the Massachusetts Center for Information Technology and Dispute Resolution at the University of Massachusetts providing mediation services primarily to other parties; The Virtual Judge Project is a joint venture of the American Arbitration Association and Villanova Law School related to trademark infringement, fraud disputes.

Tiffany (2000) in her study confirmed that the best regulation of trade on the Internet can be done by combining current international law while drafting new flexible laws to supplement and clarify applicable laws. And the same combination can be applied to online arbitration to create some law certainty. In order to conduct arbitration online, Tiffany (2000) listed six arbitration tribunals that the arbitrator can submit including the American Arbitration Association (AAA); International Chamber of Commerce (ICC); London Court of International Arbitration (LCIA); Stockholm Chamber of Commerce (SCC); International Center for Settlement of Investment Disputes (ICSID); and the United Nations Conference on International Trade Law (UNCITRAL).

Tiffany et al (2000) also argued that the statutory arbitration rules of most countries will maintain the decision of the judgment officer to be binding, except for the discovery of fraud or arbitration such as evidence of corruption among arbitrators; the referee has exceeded their powers. For online arbitrators, due to their independent geography and number of participants, the parties involved may include defendants, petitioner and arbitrators and may be located in many other geographical locations (usually 6 or more). Up to six national courts may have relevant jurisdiction for review purposes. Accordingly, the location of the arbitrator is determined by the geographical location of the server. If the parties disagree with the position of the arbitrator, the arbitral tribunal may determine the appropriate location.

Another issue that was also raised in the study was that although the parties agreed to the terms of the online arbitration in the contract, it was impossible to determine whether the local court would help or hinder the arbitration. Referees and many local rules will have to follow. Therefore, online arbitration is a useful alternative dispute resolution but still needs to create new or amend the old arbitration rules.

Regarding transparency in online arbitration, Bashar (2009) states that unless the result of online arbitration is published, system users cannot find out what the law is applied to. However, the owner of a trademark or a trader will have many dispute resolution cases and may gain unwarranted advantages. Thus, in a well-defined, highly developed, legal and commercial environment, such as e-commerce, online referees face the challenge of establishing certainty as mentioned. This can be done by requiring the decisions of the online arbitrator to be provided publicly by the ODR provider.

Karen et al (2002) have found that the more difficult issue is whether consumers should refuse online arbitration in the process of contract formation, which depends on the transparency of the arbitration process. Online arbitration only becomes a method of resolving international disputes between businesses and consumers when the online arbitration process must be an open process, allowing consumers to participate in online commerce. At the same time, it is necessary to limit the occurrence that suppliers often conduct secret procedures. Karen's research suggests that the key means to achieve this allows consumers to observe the entire process and increase the transparency of the system. Research by Karen et al (2002) also shows that courtroom doors in the United States are open to anyone interested in observing the process. Published decisions represent the solidity of the US legal system while many other countries do not publish decisions.

The European Commission considers transparency must be included in any out-of-court dispute resolution process, including significant online. Accordingly, decisions published from online arbitration will also show that this process is an attempt to fairly resolve international online disputes. Online arbitration providers should provide arbitral awards and relevant statistical information. Publicizing decisions will not be too difficult because the online proceedings will automatically create a record; Disputes between consumers and businesses are quite similar to those between businesses. In addition, some countries have acknowledged the exception appropriately to keeping confidential decisions not only for online arbitration but also for offline arbitration between businesses.

3. Overview of arbitration and online arbitration

3.1. Arbitration and its advantages.

Arbitration

Arbitration is “a method of dispute resolution involving one more or more neutral third parties who are chosen by or agreed to by the disputing parties, and whose decision is binding”.

Arbitration is one of many Alternative dispute resolutions (ADRs) that exist as an alternative to traditional jurisdiction. It has certain characteristics that differentiate it from the others, for instance, its procedural rules are more formal, as parties have deadlines for the presentation of their arguments and evidence. Unlike in negotiation or mediation, a party that has agreed upon arbitration cannot walk out of the procedure. Arbitration is intended to provide a final resolution for the dispute; it is not merely intended to mediation between parties or to conciliate them. Actually, the resolution of the arbitrations (the award) is binding and enforceable.

The above mentioned characteristics give arbitration considerable relevance among the available ADRs. This does not mean that arbitration will always be the ideal mean to solve a dispute. Each ADR has its own advantages and drawbacks. Therefore, in each case, parties should analyze which is the most convenient way to solve their particular dispute.

Advantages of Arbitration in comparison with traditional jurisdiction

Arbitration comes equipped with certain characteristics that make it an attractive option for dispute resolutions. Among others, arbitration has the following advantages:

(i) Election of the arbitration: Arbitration allows parties to choose the arbitrator or panel of arbitrators who will solve the dispute.

The possibility of choosing the arbitrators becomes useful in disputes involving technical or special knowledge. For example, in e-commerce, in disputes involving the sale of software, parties may want to select an arbitrator who is an expert on the subject.

The arbitrator's specialized knowledge can help solve the dispute faster and in a more economical manner, while a traditional judge may not have sufficient knowledge to solve the dispute, or would need the opinion or advice

of an expert, which may make the judicial procedure longer and expensive. Furthermore, parties can create an arbitral panel composed of experts from different fields, e.g., a technical expert and a lawyer.

(ii) Internationalization: Parties can select any location in the world for the arbitral proceedings, this may be especially helpful in international disputes in which the parties involved reside in different countries.

(iii) Neutrality and equality: Parties are able to select an arbitration with no inclination towards one or the other, so that the neutrality and equality of the procedure is guaranteed.

This characteristic is helpful in disputes involving parties with different nationalities. In this case, they may deem it convenient to appoint an impartial arbitrator instead of going before the national court of one of the parties, whose impartiality may be doubtful.⁷

(iv) Flexibility: Arbitration allows flexibility in both procedure and time, provided that minimum formalities required to guaranty the due process of law are observed. Parties in arbitration will not be tied to the formal mechanisms of a normal court proceeding⁸, as an arbitral procedure can be tailored for each case.

(v) Confidentiality: Arbitration is generally considered to be a confidential procedure. Arbitration agreements normally imply confidentiality obligations in connection with all the information exchanges in the arbitral procedure⁹. On the other hand, judicial procedures are public and the information related to it may be disclosed.

The confidentiality of the arbitral proceedings may stimulate e-business transactions if they know that in the event of a dispute, it will remain confidential. Parties may want to keep the information regarding the arbitration confidential, as sensitive information may be exchanged in the process. Additionally, in some cases, if the existence of a dispute is disclosed to the public, a company may face financial or reputational damages.

However, parties may allow, to a certain extent, the publicity of an arbitral procedure. For instance, in the Netherlands, with the prior authorization of the parties, awards are published without indicating the names of the parties involved in the Journal of Arbitration.

Drawbacks of Arbitration:

Arbitration also implies certain drawbacks, for instance, the costs and fees of the arbitration process can be high, and the arbitration process may, in some cases, be as long as a judicial procedure. Finally, although the arbitral is binding, it is non-self-executing; therefore, it may require the intervention of a court to enforce the award or other interim measures. As we will see further in this thesis, the online arbitration procedure overcomes most of these drawbacks.

3.2. Online dispute resolution

Concept of online dispute resolution

Living in the age of technology, it is happened every minute that people located in different places and even with different time-zone make contracts with each other only by some clicks through their Internet connection. This kind of contract naturally becomes the root for the development of Online Dispute Resolution. The Online Dispute Resolution (hereinafter “ODR”) is often referred as a form of Arbitration Dispute Resolution which takes advantage of the speed and convenience of the Internet. Since the beginning of 2000s, these ODR systems have been practiced by several justice systems and deliver a range of useful decisions in mediation, arbitration and judicial proceedings.¹⁰ The ODR concepts are believe to affect the perspective of people to justice and even change the ordinary thoughts and procedure experience naturally, in both public and private justice system, unpredictably.

ODR systems are built on the platform of Internet base which allow parties to perform the whole process of dispute resolution, from administrative tasks, for instance, e-filing to the final decision or determination, all

throughout a convenient online environment.¹¹ Therefore, technology keeps a critical role in the development of this dispute resolution system, besides human in order to aid or enhance their work. ODR could be considered as one of the most useful, maybe in some circumstances, it could be treated as the only option in order to enhance the redress of consumer grievances, to strengthen their trust in such a competitive market, and to promote the sustainable growth of some type of field, such as e-commerce business field.

It could be observed that ODR systems are increasingly institutionalized. Several international organizations are allocating their resources to enhance the use of ODR for the purpose of solving these types of issues. A number of legal systems in North America and Europe have launched their judicial ODR systems.¹² The European Commission also published a Directive on Consumer ADR and a Regulation on Consumer ODR establishing an ODR Platform. Not only European Union but also the United Nations promoted the institution of cross-border ODR systems for commercial disputes.

For its potential growth and impact, ODR is considered a “disruptive legal technology”¹⁴ that is possibly involve in the transformation of feature and future development of contemporary legal system.

Characteristics of online dispute resolution

The term ODR refers to an alternative measure and occurs outside the traditional court with a complete procedure. Accordingly ORD reduces or even completely eliminates the need for the actual presence of the parties at a meeting or hearing in order to dispute a value that is not too large and the level of complexity can be resolved.

General characteristics

The main distinguishing characteristic of ODR processes from the traditional type is the deep reliance on information technology in service delivery, although not all ODR applications are "software". Accordingly, technology can make many dispute resolution processes more accessible, less expensive, easier and faster. The quality of the process can be improved by creating new features with rapid technological advances along with the increasing internet increase in everyday life. ODR is considered to become a natural next step in the process of developing dispute resolution.

ODR has limitations that the online environment imposes upon people in communication. The privacy, security, and neutrality of the online interface also cause a lot of inconvenience, so ODR systems are now mainly applied for simple and low-value disputes.

The EU ODR Regulation does not contain the definition of ODR. While according to UNCITRAL, ODR is: Dispute resolution mechanism through the use of electronic communications and other information and communication technologies. This argument does not provide any guidance in distinguishing ODR from traditional ADR techniques and should be considered unsatisfactory. The UNCITRAL definition has only a very narrow specification of the types of technologies that ODR providers can incorporate into their services. However, ODR vendors often combine these modern means of communication with the ability of computer information processing, along with the recent development of artificial intelligence to help technology play a key role in neutral decision making process.

In addition, a clearer distinction between ODR and ADR, which is some form of ODR with no obvious offline equivalents, has also emerged as an automatic negotiation process for bidding in the field of bidding called blind bidding. Basically, in a blind bidding process, the parties invited to submit their lowest and highest payment offers through an online platform, will not disclose any of these offers to across. Instead, the software algorithm will try to match these offers to find equilibrium. This shows significant expansion and flexibility of ORD compared to traditional ADR.

Instrumental & Principal ODR systems

Instrumental ODR systems are basically a virtual space to carry out the dispute resolution process with a specialized communication platform that allows online process execution. This system helps the parties collect and provide information to expedite the process of dispute resolution: planning, interaction and decision making. However, the system still controls users and provides general process direction. Therefore, the characteristics of this ODR platform require that the third party (human) operate the system and communicate with the parties to the dispute.³⁴ Software tools can be improved for effective handling when operating processes, but they do not have a decision-making role.

Unlike instrumental ODR systems, Principal ODR systems play an active role in facilitating dispute resolution, in addition to allowing communication and information access; this system is often supported by artificial intelligence to automate the capabilities of third parties that play a role in traditional dispute resolution. This system is capable of educating parties about available options, identifying interests and goals, and identifying strategies. In addition, the system also sets out the rules that apply and applies them, allows maximize mutual benefits, creates resolution and self-determines final result. As such, principal ODR systems can reduce the expensive and limited dependence on traditional professional dispute resolution.

3.3. Online arbitration

Concept of online arbitration

Similar to traditional offline arbitration, Online Arbitration also owns a functional scenario of “a mode of resolving disputes by one or more third persons who derive their powers from agreement of the parties and whose decision is binding upon them”.¹⁹ However, it could be seen from the definition point of view, Online Arbitration also owns a further element than traditional arbitration, which is technology and this element vitally differ this type of arbitration from traditional one. This technology appearance is also reflected in the terminology for Online Arbitration, for instance, transnational online arbitration²⁰ or internet arbitration.

Basically, according to Slavomir (2011) online arbitration there are two basic models. First, in order to control costs and ensure quick procedures, the parties conclude transactions in traditional paper form, calling for arbitration online for disputes. Accordingly, major arbitration institutions around the world provide online tools for parties to file and manage their cases online in order to transfer any dispute originating from the "real world" to "virtual world". Second, to sign a contract, businessmen around the world will use modern means such as signing via email exchange. Similarly, for terms or agreements the arbitration can communicate via modern means to call for arbitration. International contracts of great value often do not use the above-mentioned method, but they are quite common for small value transactions but in bulk transactions.

Online technology involves exclusively or partly to Online Arbitration proceedings.²² If several major parts are conducted entirely based on the support of online technology, occasionally, procedural parts of arbitral process are performed in person, such as in-person meetings instead of conference calls, yet the rest are still performed online, such arbitration still is considered an Online Arbitration case. It could be initially concluded the vital role of technology and also a way to differentiate this type of Online Arbitration from offline or traditional arbitration.

Even though Online Arbitration is seem more related to Internet, the concept of this type of arbitration seems to be more related to Internet, it is evidenced that Online Arbitration can be considered an adjudicatory or right-based²³ process as it also follows procedural elements, similar to offline arbitration process and delivers a final binding or non-binding arbitral award.²⁴ In a sense, Online Arbitration appears to be similar to offline arbitration from a conceptual perspective.

Another important feature is that online arbitration is not merely a combination of traditional arbitration and online media. There is a big difference between the core elements of online arbitration and traditional arbitration such as the fairness and independence of the arbitrator while other unnecessary elements exist in

online arbitration, or the degree of compliance with such factors may vary. Online arbitration can provide a very flexible method of dispute resolution recognized as a valid process and can be adapted to the needs of the parties.

In summary, online arbitration is a process by which the parties can submit disputes entirely online or in part online using internet technology, in a consensus manner for a decision maker chosen by the parties, to make a decision and to make a dispute resolution decision by the parties' agreement or a decision of the arbitral tribunal. Therefore online arbitration may be categorized as:

- o Totally online binding arbitration: Every process from filing to making a judgment is done entirely;
- o Totally online non-binding arbitration: There is no stage of arbitration that must be mandated online;
- o Unilaterally binding online arbitration: only one party shall perform procedures of online arbitration;
- o Partly online binding arbitration: A process of arbitration can be conducted through face-to-face meetings such as signing an arbitration agreement or making a decision.
- o Partly online unilaterally binding arbitration: only one party shall perform some of procedures of online arbitration;
- o Partly online non-binding arbitration 25 : There is some stages of arbitration that must be mandated online.

Structure and legal basis of electronic arbitration

In Article 7(1) of Model Law 26 , the content does not include any clear guidance about the exchange of arbitration agreement by online means, for instance, emails or by asserting to an offer on a website; besides, it does not mention any possibility of the formation of arbitration agreements through electronic documents that are signed by electronic signature.²⁷ Under New York Convention, the formation of this type of agreement could be found in requirement of “agreement in writing”²⁸, signed by parties or contained in an exchange of letters or telegrams.²⁹ The exchange of letters and telegrams was in 1958 added to make sure that arbitration could be agreed upon using the most modern means of communication.

Advantages and disadvantages of online arbitration

The application of an online arbitration mechanism costs significantly less than traditional dispute resolution systems (including time savings). In addition, thanks to the Internet platform, there are no physical boundaries for the parties involved, overcoming obstacles of location and distance. The simplicity and convenience of the online settlement process, which does not require a lot of complicated procedures from stakeholders, are the corrective advantages of online arbitration. Along with increasing the development of modern software systems both in developed and developing countries, the application of online arbitration may be able to spur international trade activities, leading to economic growth. Specifically, the advantages of the above mechanism are as follows:

Firstly, the advantage is fast speed: All communications between parties will normally take place via electronic means so this process can be conducted faster than traditional arbitration.

Secondly, online arbitration mechanism is easy access: The parties can easily access the procedure content and documents and they will be able to present any documents from any time and place.

Thirdly, online arbitration mechanism save time and cost: The parties do not need to go to different locations to present evidence and documents because all procedures are done via the Internet.

Fourth, the advantage is flexibility: The parties can also agree to create a more flexible process, set up convenient implementation stages and can choose the law according to the dispute to be resolved.

In addition, the online dispute resolution (including online arbitration) process has a proven advantage in reducing hostile tensions between the parties. The parties involved in the conflict feel less hostile, calmer and more confident when resolving disputes online. The distance between the two sides to the conflict helps keep them calm and focused on the intrinsic issues and helps the dispute resolution process more effectively.³¹

Democracy is also considered one of the advantages of online arbitration, whereby all parties are equally considered in terms of status. The argument is that the democracy inherent in online arbitration processes (compared to ADR processes based on face-to-face meetings) is likely to contribute to an agreement in which both parties are satisfied. The common practice of disputes such as B2C is that of a strong party (seller) against a weak one (consumer), so the advantage of democracy is particular importance in case above.

Finally, the advantage is decentralization: Arbitrators and parties may act from anywhere in the world without being bound by any particular local laws. The parties discussed other issues through video conferencing.

E-commerce online arbitration advantages

For e-commerce, online arbitration provides internet users with good and effective dispute resolution mechanisms and helps the parties to be more confident when participating in transactions. Online arbitration allows parties to resolve their disputes through familiar mechanisms, quickly and inexpensively with an expert in the matter to resolve their disputes.

Although online arbitration may be a suitable solution for the majority of e-commerce disputes, it is not the best solution in all cases. For small value B2C transactions, other ADRs such as mediation or small claims procedures are more effective because the cost of the arbitrators and the procedure may be higher than the actual amount of the dispute.

An online arbitration procedure may be the best option for related parties if the transaction involves larger and often larger amounts of money in B2B transactions. This procedure avoids conflicts of jurisdiction, is flexible and simple but has a high procedural effect that will result in binding and enforceable results. This is an advantage that mediation and other ADRs do not have. Online arbitration is helpful to resolve single e-commerce disputes such as disputes involving domain names, intellectual property issues in e-commerce transactions can be effectively solved through In addition to e-commerce, most types of disputes can be effectively resolved through online arbitration.

Disadvantages

Despite its advantages, online arbitration also has certain limitations.

Firstly, written communication has drawbacks and is always considered to be lacking compared to direct communication, with the ability to convey richer information and more interaction between people with non-verbal suggestions such as gestures, facial expressions and voice.

Second, most of the processes are not binding or can be done if only the customer agrees before using Online Arbitration and handling in case of future disputes that the post-dispute agreements to ODR use is rare in practice due to technology reliability, online information security and process regulation.

In addition, when participating in online arbitration, the parties may be attacked by hackers, lost information due to viruses, changed due to technological advances and other technical difficulties and obstacles, causing for increased investment in security and information backup mechanisms. However, due to overcoming many inconveniences of traditional arbitration mechanism, basically the cost to maintain the online arbitration system is still lower than the traditional system.

Block-chain

Even with the recently emerging blockchain technology being viewed as a no-dispute environment in which transactions are irreversible and done automatically, the issue of dispute resolution has been and existing. Accordingly, blockchain will inevitably create misunderstandings, conflicts and unforeseen situations, like any other field of human participation in an increasingly complex and rapidly growing context. Accordingly the potential for the field of blockchain related to online arbitration is increasing.³⁷

In addition, Blockchain encourages and facilitates new dispute resolution capabilities such as the ability to create new private decentralized dispute settlement mechanisms such as Aragon and OpenBazaar platforms and open source platform for smart contract disputes.³⁸

Machine Made Justice

Language recognition technology, voice recognition technology and image processing technology give software systems human-like capabilities like never before. However, the software is still unable to deduce and make decisions like a human being to the complex and dynamic nature of the legal phenomenon. The software has not been able to identify strongly and accurately enough to establish rules to make reliable automatic binding decisions between contexts and in situations never encountered before. Software makes it difficult to 'translate' rules and concepts of justice into specific statements (Ayelet, 2018). Although recent advances in artificial intelligence technology have made software more intelligent and more human-like but its use in online arbitration needs more research.

Traditionally, the Online Dispute Resolution System has often simulated traditional dispute resolution solutions, but instead of meeting face to face, it has become online. However, many models of intelligent online dispute resolution with many advanced applications of Artificial Intelligence (AI) have operated in practice and provided support for smart negotiation and decision making (Arno & John, 2010). AI applications are a subset of IT applications and can be further improved using intelligent techniques or implemented in an intelligent way. Accordingly, online referees can really benefit from AI applications. There are many signs that it will not take long before AI becomes a practical component of the mainstream online arbitration system and careful application of AI can make online arbitration much more efficient (Arno, 2003).

Applicable law to online arbitration

Although there are currently no international legal regulations designed specifically for online arbitration, the rules for traditional arbitration can be applied to this rule. However, due to its special characteristics, a set of rules specifically designed for online arbitrators will be convenient for the parties to dispute. The current legal framework for traditional arbitration comes from international, regional and domestic regulations. At the international level, the two main sources are the New York Convention and the Uncitral Model Law, which regulate the main aspects of arbitration. Most laws applied in countries have been governed by the mentioned international instruments.

International law

The New York Convention

The convention has been ratified by more than one hundred countries from different legal systems and is increasingly expanding. Accordingly, the Convention requires the national courts of the signatory states to recognize and enforce arbitral awards made abroad if all of the requirements have been complied with. ³⁹ The Convention also sets out requirements that an arbitration procedure and a judgment must follow to be recognized and enforced. Therefore, for an online arbitral award to be recognized and enforced, it must comply with such requirements. Vietnam became member of this Convention in 1996.

Karen et al (2002) in their study found that trade reservation is the biggest barrier to the use of online arbitration in cross-border B2C disputes. With the same opinion, the New York Convention was drafted to enforce arbitration agreements in commercial disputes between the two businesses. Ensuring that the contractual terms, especially, contractual terms for arbitration will be enforced is one of the goals of the New York Convention. The study also argues that when two businesses engage in an online transaction, in keeping with the spirit of the New York Convention, the record between them demonstrates their intention to resolve any dispute by means of online arbitration then an agreement should be enforced. However, in the case of a dispute being a consumer, the New York Convention does not provide a basic policy that is conducive to enforcing arbitration agreements. As the inherent difficulty in the application of domestic laws to e-commerce has become more evident, standards of fair procedures for international arbitration for consumers are gradually being established. Many countries have signed the text of the New York Convention, but it has not kept pace with consumer-related arbitration.

The Convention requires signatory states to provide sufficient domestic regulations to apply the rules it prescribes and to ensure consistency, UNCITRAL has created Model Law for the countries to apply accordingly.

The UNCITRAL Model Law on International Commercial Arbitration was adopted by UNCITRAL in 1985 and is adopted by many countries with some conformity and still keeping the general principles so Model Law is not a binding tool. Accordingly, the Model Law has established common national standards for arbitration regimes and limits the powers of the courts, allowing arbitral tribunal to rule on its own jurisdiction.⁴⁰

The model law covers all aspects of the arbitration process, from arbitration agreement to judgment aimed at harmonizing national legislatures on arbitration. Thanks to the Model Law, it is possible to reach agreement between the parties involved in international arbitration and at the same time provide legal certainty.

Legal initiative perspective

In a legal initiative perspective, OECD activities on Consumer Policy have been solving consumer disputes for many years through the development of E-commerce Principles; card payment protection; cross-border fraud; Recommendations on dispute resolution and consumer dispute resolution. ⁴²These recommendations include mechanisms for resolving disputes among consumers, thereby facilitating the recovery of economic losses due to business-to-consumer transactions with goods and services. These recommendations essentially define the different types of mechanisms that need to be provided to consumers at the domestic and transboundary level.

Regional law

There are several other regional conventions on arbitration such as the

Inter-American Convention on International Commercial Arbitration (1975) or the European Convention on International Commercial Arbitration (1961). These conventions have been applied at a regional level. However, more common are custom applications in countries.

National law

The final arbitration rules are based on national laws with certain identities (thanks to the Model Law), because each country has its own characteristics that the Model Law has not yet matched. Local law will verify arbitration and judgment processes in order to comply with all requirements set out in specific domestic law.

There is no provision in the legal framework that prohibits parties from participating in online arbitration. The online version of the arbitration procedure should apply the rules of traditional arbitration at the most important points and it will be more convenient to create a legal framework specifically designed for the online version in each country and region. In particular, issues relating to the validity of electronic contracts should be clarified by courts or legislatures.⁴³ The foregoing legal framework should recognize the validity of electronic

documents and signatures; regulate the use of technology in procedures and other issues that may arise in the procedure from the use of electronic media.

The Agreement

The first important question related to the validity of the online arbitration process is whether the parties can enter into an arbitration agreement online (instead of using the traditional paper form).

The Convention⁴⁴ requires the arbitral agreement to be in writing; therefore, it does not contemplate the possibility of entering into an electronic agreement. On the other hand, the Model Law⁴⁵ sets forth that the arbitral agreement can be valid if its content is registered in any form.

The above can be seen as either a contradiction between the two instruments, or as an interpretation of the Convention. UNCITRAL, recognizing “the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards,”⁴⁶ issued a recommendation on 7 July 2006, suggesting that states must interpret the Convention in a broader sense, recognizing the validity of electronic arbitration agreements.⁴⁷ This recommendation is not binding, and needs to be implemented in all the signatory states.

We may take into consideration of the fact that the legislation of many countries fully admit the validity of electronic contracting and of electronic signatures, however, this is not a universal rule and many countries still need to adapt its legislation to suit the fully validity of electronic contracting. Even though such agreement seems to be valid, we would recommend the immediate modification of the convention (as it is the binding international instrument), in order to avoid any confusion about this issue.

The Award

In order to enforce an arbitral decision, the Convention requires the interested party to present a duly authenticated original or copy of the award;⁴⁸ similarly, the Model Law requires the award to be in writing and signed by the arbitrators. The above may represent a problem for online arbitration, as it is generally the case that the award would not be issued in paper, and it would not normally be signed (except for the electronic signatures of the arbitrators, which is not regulated in all jurisdictions). However, the interpretation of the Convention and the Model Law may validate digital documents and electronic signatures in an award although such interpretation will depend on domestic legislation and each court’s criteria.

In any case, the arbitrators may just print, sign and authenticate the final award and hand it to the interested party; nonetheless, it could be convenient to modernize national legislation in this respect.

There are no provisions in the legal framework that forbid parties from engaging in an online arbitration procedure, however, certain issues may be best attended with a special set of rules created specifically for the online arbitration procedure.

The rules for the traditional arbitration are, in the most important points, applicable for the online version; nonetheless, it would be convenient to create an especially for the online arbitration procedure.

Enforcement of the award

Once an award has been issued, it needs to be complied with by the losing party. As one of the characteristics of arbitration is that it is binding procedure, it is important to ensure that there is some definite procedure for enforcing the award. Unfortunately, arbitrators lack imperium; therefore, they do not have the authority of enforcing the award by themselves, and require the assistance of a judicial court.

Enforcement of an arbitral award in a national court may be quite a burdensome procedure. It may require the translation of document, the presentation of documents to the court, provision of service and notifications to the

other party, and the possibility of an appeal. In the most favorable scenario, it will take additional time to actually enforce it after the award has been rendered. Parties may want to avoid this procedure and get the award enforced in a more efficient manner. Enforcing the award of an online arbitration will face the same inconveniences. To overcome these hindrances, parties may agree upon extrajudicial mechanisms to expedite the enforcement of the award. For example, parties can use an escrow or trustmarks. However, parties should agree upon the use of these extrajudicial mechanisms before the award is rendered.

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