

**The Legal Provisions of the Arbitral Award of
Electronic Arbitration
With respect to the International Conventions and
UAE Law**

الأحكام القانونية لحكم التحكيم الإلكتروني

في ضوء الاتفاقيات الدولية وقانون دولة الإمارات العربية المتحدة

by

MARWAN SALA SALMAN ZAINEDDIN

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Abstract

In the current business and market setting where everything is now online, new challenges have emerged in terms of how the traditional means of doing business can successfully translate to the electronic world. In terms of related laws, numerous countries have implemented appropriate laws to implement electronic arbitration. Thus far, these efforts have included electronic laws from Egypt, Jordan, UAE, Qatar, Europe, the UK, and the US. International Conventions have also been set forth to serve as guide in the implementation of electronic arbitration. These laws have managed to set forth the necessary terms of electronic arbitration including its manner of implementation, its coverage, and its related terms and conditions. Arbitral awards have helped provide settlement and justice for legal concerns in the digital setting. This paper presents the definition of electronic arbitral awards, its conditions as well as requirements. It also presented the effects of these awards, and the fact that these awards can be considered *res judicata*. The enforcement of electronic arbitral awards are also presented in relation to international conventions as well as national laws. Lastly, the enforcement of the electronic awards in accordance with self-implementation is also indicated in this paper.

الملخص

تتناول هذه الدراسة "الأحكام القانونية لحكم التحكيم الإلكتروني في ضوء الاتفاقيات الدولية وقانون دولة الإمارات العربية المتحدة"، وذلك لأهمية التحكيم الإلكتروني وما يتمخض عنه من احكام الكترونية، فأصبح موضوعاً يتصدر مكاناً بارزاً في الفكر الاقتصادي والقانون.

وبما أن حكم التحكيم الإلكتروني الذي يصدره المحكم أو هيئة التحكيم، يتم بالوسائل الإلكترونية فهذا يستلزم توفر القواعد القانونية لجهة الشروط والمقتضيات الواجب توافرها في حكم التحكيم الإلكتروني، ولجهة حجية حكم التحكيم الإلكتروني وتنفيذه وفقاً للاتفاقيات الدولية والقوانين الوطنية ومبدأ التنفيذ الذاتي المباشر وغير المباشر.

كل ذلك كان مدعاً لاهتمامنا لاختيار دراسة الأحكام القانونية لحكم التحكيم الإلكتروني في ضوء الاتفاقيات الدولية وقانون دولة الإمارات العربية المتحدة. وذلك للوقوف على مفهوم التحكيم الإلكتروني وتسلط الضوء على عناصره، وأهميته، وتحدياته بالإضافة الى تناول مفهوم حكم التحكيم الإلكتروني والشروط والمقتضيات الواجب توافرها، وما يترتب على صدوره من اثار. ولذلك نقسم هذه الدراسة الرابع فصول رئيسية:

الفصل الأول: مفهوم التحكيم والتحكيم الإلكتروني

الفصل الثاني: عناصر التحكيم الإلكتروني وأهميته وتحدياته

الفصل الثالث: حكم التحكيم الإلكتروني، تعريفه، وشروطه، ومقتضياته

الفصل الرابع: آثار حكم التحكيم الإلكتروني للتحكيم الإلكتروني

Dedication

This work is dedicated to my parents, siblings, wife and friends who always supported and continues to inspire my success and push me further.

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Introduction

Justice is a fundamental element of ruling and it is a human demand. This was the consensus by many people throughout the years. The administration of justice necessarily requires the adoption of specific means, methods, and mechanisms aimed at enabling every individual fair and equitable access to its applications, away from inequity and injustice.

The State has the responsibility to ensure the provision of justice for all people. Since its establishment, the State has been keen on the existence of its judicial authority and has thus entrusted to the latter the tasks of adjudicating disputes through the official judicial courts administering to and dispensing of legal questions brought before them. In order to achieve this, the State has set forth laws, has established courts and has appointed qualified judges.

The judiciary is the natural means of settling disputes between individuals in societies, especially in the modern state. However, the State does not prevent the parties of the conflict from having recourse to other parallel or alternative means of settling their disputes if they so choose. These alternative means may include negotiation, mediation, conciliation and arbitration depending on what conditions may apply to their case.⁽¹⁾

The role of arbitration, among other methods, has been highlighted in the resolution of civil and commercial disputes, both international and national. It has thus become the most widely used and accepted practice in most transactions, especially in commercial transactions which have not remained confined within a single state and which have crossed the borders of more than one state under international trade contracts such as electronic commerce contracts, technology transfer contracts, investment contracts, and contracts on the design and the manufacture of space-based

⁽¹⁾AS Saleh, *Alternative Dispute Resolution of international investment contracts* (First Edition) 389.

communication systems.⁽²⁾These contracts have become the bridge that has connected countries with each other. These contracts have dominated the economic system as a whole,⁽³⁾and have been driven by huge investments in trade, ensuring huge profits and returns, making it an attractive source of investment in the national and international markets. Under the principle of free trade competition⁽⁴⁾ which has expanded widely after the establishment of the World Trade Organization⁽⁵⁾more international trade contracts have been made available.

The need for arbitration to resolve disputes in commercial activities has been highlighted throughout the years. This has necessitated a combination of international efforts to establish more effective provisions for arbitration, which, as can be seen later would result in the conclusion of a number of international agreements. This has stimulated national legislation to give greater attention to its adoption as a means of settling disputes, be it from countries that adopt a free economic system (capitalism), a restrictive economic system (the socialist), those which apply a flexible and mixed system (Islamic).⁽⁶⁾

In light of that, the use of the electronic arbitration in disputes resolution has, thus, posed many challenges and real issues resulting from rapid technological progress in general and in particular with regard to the legal mechanisms to be followed in the conduct of electronic

⁽²⁾AK Salama, 'Law Applicable to the Subject matter of Arbitration,' (2008) 1 Journal of Security and Law, Dubai Police Academy S16, 10.

⁽³⁾The Swedish economist Assar Lindbeck defines the "economic system" as "a set of mechanisms and institutions for decision-making and implementation of decisions regarding producing and exploiting in a given specific geographical area". This should include all institutions, organizations, laws, rules, beliefs, values, restrictions, and patterns of behavior that directly or indirectly affect economic behavior and results. ". See: A Wahid, 'Principles of Micro and Macroeconomics,' (Aljamiea Books, 2012) 94.

⁽⁴⁾Free Competition concept was clearly demonstrated by the Le Chapelier Act, which was issued following the French Revolution on March 17, 1791, which states: "Everyone has the full liberty to enter into any trade, profession that appropriate to him on the condition of performance of taxes and compliance with the provisions of the law." Under this law, the system of sects that prevailed during the Medieval Period was abolished. See: M Shafiq, *Commercial Law* (Cultural Publishing House, 1949) 397.

⁽⁵⁾S Zaineddin, *Rights of Intellectual Property in respect to UAE Law and International conventions* (Al-Falah House, 2016) 473.

⁽⁶⁾The world's economic systems are divided into three main systems: the capitalist system (the absolute system) and the socialist system (restricted) and the Islamic system (flexible). See in details for these systems, Wahid (n 3) 89; OM Hassan, *The business store in Islamic Jurisprudence* (Al-Halabi Publications, 2015) 181.

arbitration and the enforcement of its awards.⁽⁷⁾ Some of these challenges include: confidentiality, difficulty in establishing the place of electronic arbitration, the digital gaps in technology, the absence of interactions between the parties, difficulty of taking witness testimony, cross-examining them and assessing their credibility where the proceedings take place virtually, and lack of confidence in the electronic media. All too often judicial rulings focus on enforcing the law, and it does not give much attention to the will of the parties, especially if the will of the parties does not match terms and conditions as enumerated by the law. Arbitral awards are able to serve the interests primarily of the parties, and as such, arbitration seems to appear to be a more viable trend in the field of business litigation. It is important to however understand its application so far, especially in different countries. Current studies do not adequately provide compiled and coordinated data relevant to electronic arbitration. These studies also do not provide perspectives on electronic arbitration from the point of view of Arab countries, including the UAE. Arbitration has also to be differentiated from traditional arbitration⁽⁸⁾, especially in terms of how it affects parties, as well as how its outcomes can be implemented in resolving issues between parties. This paper seeks to cover the gaps in research related to electronic arbitral award of the electronic arbitration, for the ultimate goal of understanding the practice better as well as to help improve its application in the business world.

⁽⁷⁾ SA Mahmoud, *Towards making arbitration electronic and electronic arbitration* (Al-Nahda al-Arabiya House, 2010) 5

⁽⁸⁾Traditional arbitration refers to a “traditional face-to-face adversarial hearing”. The transactions are not undertaken online or via electronic processes. W Fox, *International Commercial Agreements: A Primer on Drafting, Negotiating, and Resolving Disputes* (Kluwer Law International, New York, 2009) 404.

Research Context

Research Topic:

This dissertation focuses primarily on the study of the provisions of the electronic arbitral award of electronic arbitration with respect to the international conventions and UAE law, with reference to some of the comparative laws where necessary.

The Research Problem:

Electronic arbitration and in particularly the electronic arbitral award is an up-to-date issue which is the result of rapid technical development, and it seems that sufficient research has yet to be done on the topic, in particular on the many challenges relating to its evolving legal provisions. Problems and challenges associated with arbitral awards include issues in confidentiality, digital gaps in technology for different countries, issues in establishing the place or venue for arbitration, differences in country legislation for arbitration, and difficulties in getting witness testimony and cross-examining witnesses.

The Importance of Research:

The study of the electronic arbitral award contributes to knowledge of the legal provisions of this vital subject because of its theoretical and practical benefits at the international and national levels. Theoretical benefits can come in the form of new theories which can be developed from this paper in relation to how electronic arbitration can be approached and perceived by political and economic experts. Practical benefits can come in the form of new laws which can be suggested to improve the use and application of electronic arbitration.

Research Objectives:

The purpose of this research is to demonstrate the need for electronic arbitration in practice, to identify the elements of the electronic arbitral award and the challenges it is facing, and to establish appropriate proposals and recommendations.

Previous Studies in the Subject of the Research:

There is little available literature on, especially electronic arbitration. Current studies do not adequately provide compiled and coordinated data relevant to electronic arbitration and in particular its arbitral award. These studies also do not provide perspectives on electronic arbitration from the point of view of Arab countries, including the UAE.

Research Methodology:

There were numerous approaches applied for this study, including the descriptive, analytical and comparative approaches. The descriptive approach was based on descriptions or enumerations of provisions of law related to electronic arbitration. Analytical and comparative approaches were related to the analysis applied on the different laws on electronic arbitration, including their issues, gaps, challenges, benefits, as well as applications.

Reasons for Selecting a Search:

This topic has been chosen for more than one reason, most notably, the fact that it is a new and unexplored topic and it is also very current and innovative aspect of international arbitration law.

Scope of Research:

This research focuses on the legal provisions regulating the electronic arbitral award of electronic arbitration especially in relation to its elements, the conditions of its impact, and its implementation.

Research References:

Many of the appropriate references were based on peer-reviewed journals and legal documents.

Structure of the Dissertation:

This dissertation consists of five chapters plus an introduction, and conclusion as follows:

Chapter I: The Concept of Arbitration, Electronic Arbitration

Chapter II: Elements of Electronic Arbitration, Importance, and Challenges

Chapter III: Electronic Arbitral Award of Electronic Arbitration

Chapter IV: Effects of the Electronic Arbitral Award of Electronic Arbitration

Chapter V: Conclusion

Chapter One

The Concept of Arbitration, Electronic Arbitration

This chapter is devoted to the concept of arbitration and electronic arbitration, in four sections, respectively: The emergence of arbitration, its development, definition and its Criterion

1.1 The Emergence of Arbitration

The first signs of arbitration dates back to the creation of human, from Cain and Abel's story.⁽⁹⁾ From this story,⁽¹⁰⁾ it can be noted that arbitration is actually one of the oldest methods of settling disputes known to man. It is as old as the presence of man himself. The arbitration was known to ancient nations, such as the ancient Greeks, Romans and Arabs before and under Islam as well as in the medieval period among the Europeans.⁽¹¹⁾

Roman arbitration was also known as the rule of "good faith". The award of the arbitrator did not have, at first, an executive force, and the right of the person in which the award was ruled in favor of was limited to bringing a claim for payment of a fine or financial penalty under the arbitration agreement.⁽¹²⁾

Arbitration is considered as one of the original means of dispute resolution that was used by **Arabs before Islam**. Arbitration was used to solve internal disputes between the individual

⁽⁹⁾ Quran [Surat Al-Ma'idah, verse 27 - 30].

⁽¹⁰⁾ AE bin Kithyalqurshi, *The stories of prophets* (Almanar House, 2001) 40. Eve, the wife of Adam tried to arrange a marriage between two sets of twins: Cain and his sister and Abel and his sister. In order to preserve the human race, they were asked to marry each other's sister. Cain refused to do so because he wanted to marry his twin. In order to deal with this dispute, God guided Adam towards a specific solution, namely, that both Abel and Cain would offer a sacrifice to God. Abel owned livestock, while Cain owned crops. Abel chose one of his best sheep and sacrificed it to God. Meanwhile, Cain chose his worst and spoiled crops and offered them to God. Each brought his sacrifice to a mountain. The sign of acceptance of the sacrifice was that a fire would come and burn it. The fire indeed came, eating up Abel's offering, and leaving Cain's untouched.

⁽¹¹⁾ N Abdelkader, *Arbitration Agreement in accordance with the Arbitration Law in Civil and Commercial No. 27 of 1994 and its amendments* (Al-Nahda Al Arabiya House, 2016) 18.

⁽¹²⁾ AZ Radwan, *General Principles in International Commercial Arbitration* (Alfikrlearabiu House, 1981) 4; However, arbitration continued to develop under the Roman era until it became a private type of judiciary that ended with a binding award on the parties in the dispute.

members of the tribe or between foreigners and tribes. Arabs used to choose the tribal leader or the significant persons in the tribe who were recognized for the authenticity of their opinion, wisdom, honesty, and justice in resolving issues and disputes. A well-known event in Arab history could be an evidence for the usage of the arbitration, when the Quraysh tribe decided to rehabilitate and renovate the Kaaba wanting to replace the Holy Black Stone in its position with the members of the tribe differing who should get the honor of replacing the stone..⁽¹³⁾⁽¹⁴⁾

In the **light of Islam**, we find that the resort to arbitration has been in many cases and situations, been the most abundant solution. We refer only to the well-known arbitration agreement that took place on The Battle of Siffin between Ali ibn Abi Talib and Maawiya ibn Abi Sufian. The two arbitrators chosen were Abi Musa al-Ash'ari and Amr Ibn Al-'Aas.⁽¹⁵⁾In the **medieval period**,⁽¹⁶⁾ the European Christian kingdoms used to resort to the Pope and the Emperor as two authorities to arbitrate between them whenever there was an issue that required arbitration.⁽¹⁷⁾

⁽¹³⁾ KS Al-Najjar, 'The Black Stone - History and provisions, hunting benefits,' (2018). <http://www.saaaid.net/mktarat/hajj/154.htm> [Accessed 09 June 2018]. All families of Quraysh agreed to choose Mohammed bin Abdullah (Before receiving the message of God and became the Messenger) to decide on the issue. In order to resolve this conflict, Mohammed bin Abdullah listened and understood the disagreement, and then placed his cloak on the floor and put the stone on it. After that, he asked the leaders of each family to hold a side of the cloak, and then to put the stone collaboratively in the wanted place inside the Kaaba.

⁽¹⁴⁾MS Al-Awa, 'Arbitration and its clause in Islamic Jurisprudence,' (2003) 6 *Journal of Arbitration*, 77. This judgment served as the best solution to the dispute. These kinds of judgments were common among Arabs sages and who used this method of arbitration to solve many disputes, realizing that the settlement of the dispute by mutual consent would extinguish the flames of enmity, hatred and fighting

⁽¹⁵⁾QAR Al-Duri, *Arbitration Agreement in Islamic Jurisprudence and Law* (Al-Furqan Publishing and Distribution House, 2002) 52.

⁽¹⁶⁾Shafiq (n 4).

⁽¹⁷⁾ Portugal demanded to rule the New World on the basis of a decree issued in 1479 by Callistus III, in which he supported the possession of all the lands on the Atlantic coast. Spain responded to this by saying that the decree was intended only for land located on the eastern shore of the said ocean. The fires of the war were imminent between the two countries when Pope Alexander VI issued a decree in 1493 granting Spain all the lands discovered in the west of the imaginary line extending from one pole to the second pole, one hundred Spanish brethren from the state of Cape Verde. The decree also granted Portugal all the lands discovered in the east, two conditions were imposed on both parties, that the lands are not inhabited by Christians, and that the conquerors shall make every effort to spread the Christian religion among their new citizens. See: P Thornberry, *Indigenous Peoples and Human Rights* (Juris Publishing, London, 2002). The most famous of these issues is the intense conflict between the Kingdom of Spain and the Kingdom of Portugal over the areas discovered in the South American continent where to resolve the issue, the parties embraced Pope Alexander VI, who in turn adopted the papal decree, which extinguished the fire of war and divided it between the conflicting parties.

At the beginning of the sixteenth century, arbitration began to decline slightly in European countries because of the emergence of a modern independent state with absolute power and sovereignty. At this time, states regarded arbitration as a measure affecting their sovereignty. *Vattel*, saw that the resort to arbitration was made when minor disagreements occurred that did not affect the prestige of states. The major differences were resolved through diplomatic negotiation.⁽¹⁸⁾

In this light, it is clear to us that the method of arbitration in settling disputes is not a newly established one, but one that has been known for a long time. Arbitration has been in place prior to the creation of laws and courts,⁽¹⁹⁾ as demonstrated above in the early societies of the Greeks, Romans, and Arabs. It has gone through numerous stages of development and has continued to exist to date.

1.2 The Development of Arbitration

It can be said that the conclusion of the Treaty "Jay",⁽²⁰⁾ was the first building block in the development of the international arbitration system in the last years of the eighteenth century, as it explicitly provided for the use of arbitration in the form of hybrid committees to settle differences.⁽²¹⁾ The international community's interest in arbitration has increased as an effective means of resolving disputes. This has been translated through the conclusion of several arbitration

⁽¹⁸⁾ M Farah, *Arbitration is an Alternative Dispute Resolution, ' with respect to the latest amended of the Civil and Administrative Procedures Act* (Al Huda Ain Melilla House, Algeria, 2010) 27.

⁽¹⁹⁾ SA Talib, *Principles of the History of Law* (Alnahdatalmisria Bookstore, Egypt, 1957) 97.

⁽²⁰⁾ It was concluded in 1795 treaty between the United States and Great Britain that averted war, resolved issues remaining since the Treaty of Paris of 1783 (which ended the American Revolutionary War), and facilitated ten years of peaceful trade between the United States and Britain in the midst of the French Revolutionary Wars, which began in 1792. The Treaty was designed by Alexander Hamilton and supported by President George Washington. The Treaty was negotiated by John Jay and gained many of the primary American goals. This included the withdrawal of British Army units from forts in the Northwest Territory it had refused to relinquish under the Paris Peace Treaty.

⁽²¹⁾ KM Al-Qadi, *Encyclopedia of International Commercial Arbitration* (Al-Shorouk house, Cairo, First Edition, 2002) 105.

agreements, such as: the Geneva Protocol on the Conditions of Arbitration of 1923,⁽²²⁾ the Geneva Convention relative to the Implementation of Foreign Arbitral Awards of 1927,⁽²³⁾ the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereinafter the "New York Convention"),⁽²⁴⁾ the European Convention on Commercial Arbitration of 1961 (hereinafter the "the European Convention on Arbitration"),⁽²⁵⁾ the Washington Convention for the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (hereinafter the "ICSID Convention"),⁽²⁶⁾ and the Moscow Convention on Compulsory Arbitration of 1972.⁽²⁷⁾

Moreover, the United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) in 1966⁽²⁸⁾ with the aim of reducing the handicap between national laws in regulating international trade and facilitating the flow of trade between States. In order to achieve this, the Commission has issued the UNCITRAL Arbitration

⁽²²⁾The League of Nations had approved this protocol on September 24, 1923. It was ratified by 53 states. See: FM Sami, *International Commercial Arbitration* (Al-Thaqafa House, 2006) 30 This left a tangible positive impact, making arbitration an effective means of settling disputes in the framework of international relations, in the sense that after the conclusion of the treaty, and until the beginning of the nineteenth century, about 177 arbitration tribunals called "Mixed Claims Committees" were established to settle disputes relating to individual claims, including those relating to political and border disputes.

⁽²³⁾ This convention was adopted on 26/9/1927, after the discovery of loopholes related to the implementation of the foreign arbitration provisions found in the Geneva Protocol. They are supplementary rules to the Protocol in order to emphasize the recognition by the signatory States of the arbitral awards and their implementation whenever the conditions set forth are fulfilled. See: Sami (n 22) 32.

⁽²⁴⁾ This convention seeks to provide common legislative standards for the recognition of arbitration agreements, as well as the recognition and enforcement by the courts of foreign and non-domestic arbitration provisions. States parties are obliged under this Convention to ensure that such provisions are recognized and generally considered enforceable in their jurisdictions. See: Sami (n 22) 35

⁽²⁵⁾ This convention was signed in Geneva on 21/4/1961. The status of the implementation in 7/1/1964. The aim was to develop and expand trade between the countries of Western and Eastern Europe, as well as to try to complete the shortfall contained in the New York Convention. See: Sami (n 22) 48.

⁽²⁶⁾ This convention was prepared by the International Bank for Reconstruction and Development (IBRD) to encourage investments in developing countries and to reassure venture capitalists in developed countries. See: Sami (n 22) 56.

⁽²⁷⁾ This convention was concluded between the countries of the Mutual Economic Cooperation Council and provides for compulsory arbitration of all disputes that may arise from the special relations of cooperation between the member states of the Comicon of the Union of Soviet Socialist Republics, Eastern Germany, Hungary, Bulgaria, Romania, Czechoslovakia, Cuba and Vietnam. This Convention is therefore considered to be an international treaty within the Socialist States concerning jurisdiction. See: Sami (n 22) 68.

⁽²⁸⁾ This Committee has been given the general mandate to promote the progressive harmonization and unification of the law of international trade. Since its inception, the Commission has become the principal legal body of the United Nations system in the field of international trade law. The Committee shall be composed of sixty Member States elected by the General Assembly.

Rules of 1967 (hereinafter called “UNCITRAL Rules”),⁽²⁹⁾ and the Model Law on International Commercial Arbitration of 1985 (hereinafter the “the Model Law”).⁽³⁰⁾

This has also reflected positively on the international trading environment in terms of the establishment of many arbitration centers at the international and national levels. At the level of the countries that adopt the free economic system (capitalism), the Court of Arbitration of the International Chamber of Commerce (ICC) was established in Paris, and to support the arbitration system, the International Chamber of Commerce (hereinafter "the ICC Rules"),⁽³¹⁾ the International Court of Arbitration in London,⁽³²⁾ the French Arbitration Association and the Maritime Arbitration Chamber in Paris, the Netherlands Arbitration Institute, the American Arbitration Tribunal, the Arbitration Tribunal at the Chamber of Commerce in Zurich, the Arbitration Tribunal of the Stockholm Chamber of Commerce and the Swiss Institute of Technical and Industrial Arbitration were setup.

⁽²⁹⁾ The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations. The Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award. At present, there exist three different versions of the Arbitration Rules: (i) the 1976 version; (ii) the 2010 revised version; and (iii) the 2013 version which incorporates the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration.

⁽³⁰⁾ The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world.

⁽³¹⁾ The International Chamber of Commerce was established in 1919 in the aftermath of the First World War when no world system of rules governed trade, investment, finance or commercial relations. Without waiting for governments to fill the gap, ICC’s founders acted on their conviction that the private sector is best qualified to set global standards for business. It established the International Court of Arbitration of the Chamber in 1923.

⁽³²⁾ It is considered one of the oldest arbitral institutions and was founded in 1892 under the name of the London Chamber of Arbitration. In 1903 it was named the London Court of Arbitration. The current name has been called since 1981. The institution has its own rules for international commercial arbitration.

Needless to say, arbitration has not lost sight of the interests of Arab countries, as it has concluded a number of conventions to regulate arbitration, most notably, the Convention of enforcement of arbitral awards of the League of Arab countries in 1952,⁽³³⁾ the unified convention for the investment of Arab capital in the Arab countries of 1981,⁽³⁴⁾ the Riyadh Convention on Judicial Cooperation, signed in 1983,⁽³⁵⁾ and the Arab Convention on Commercial Arbitration of 1987.⁽³⁶⁾

The United Arab Emirates regulated the provisions of arbitration in the Law No. 11 of 1992 on the promulgation of the Civil Procedure Code Chapter three (hereinafter the "UAE law"),⁽³⁷⁾ Egypt also issued Law No. 27/1994 promulgating the Law Concerning Arbitration in Civil and Commercial Matters (hereinafter the "Egyptian law"). In the Hashemite Kingdom of Jordan, the Arbitration Law No. (31) for the year 2001 was issued (hereinafter the "Jordanian law"). In Qatar, Law No. (2) Of 2017 promulgated the Civil and Commercial Arbitration Law (hereinafter the "Qatari Law").

⁽³³⁾ This convention has a regional nature where there is no room for a non-Arab country to join it. It was approved in 1952 at the sixteenth session of the Council of the Arab League and became effective in 1954.

⁽³⁴⁾ This convention was signed in Amman in 1980 and became effective the following year. The convention was aimed at facilitating the transfer of Arab capital within the Arab countries, establishing safeguards to protect it and showing three ways to resolve any dispute between the parties, including arbitration.

⁽³⁵⁾ This convention was issued in 1983 and became effective in 1985. It is noteworthy that this convention is the latest within the League of Arab States, and abolished the Convention of enforcement of arbitral awards of the League of Arab countries in 1952. It mainly deals with matters relating to the enforcement of arbitral awards. See: AW al-Nadawi, 'Rules for Implementing Civil Judgments under the Riyadh convention,' (1985) *Comparative Law Journal*, 16, 117-162.

⁽³⁶⁾ It is the first Arab convention that regulates commercial arbitration. It deals with the development of an Arab system for commercial arbitration, which distinguishes it from the aforementioned conventions, which were limited to the recognition and implementation of the arbitral awards. It led to establishing an arbitration center at the Arab level, so-called the Arab Center for Arbitration, based in Rabat, Kingdom of Morocco.

⁽³⁷⁾ It is worth mentioning that the Government of the United Arab Emirates submitted a federal draft law on arbitration to the Federal National Council for discussion and approval, considering it as a legislative means to attract more investments. And which contribute to reducing the number of cases before the courts. thus serving the interests of The Federal National Council has forwarded the draft law on arbitration in commercial disputes to the Committee of Financial, Economic and Industrial Affairs to study and prepare a report on its related issues in preparation for its discussion and parliamentary approval (hereinafter the "the UAE Draft arbitration law").

Arbitration centers were also established in Arab countries, including the Cairo Regional Center for International Commercial Arbitration in 1979,⁽³⁸⁾ the Egyptian Chamber of International Commercial Arbitration (ECICA), and the Egyptian International Arbitration Center in Egypt. The Arbitration Center of the Jordanian Chamber of Commerce in Jordan was setup. The Qatar International Center for Conciliation and Arbitration in Qatar⁽³⁹⁾ was setup while in Bahrain, the Bahrain Chamber of Dispute Resolution and the Commercial Arbitration Center of the GCC States⁽⁴⁰⁾ was also established. There are numerous arbitration centers in the United Arab Emirates, including the Abu Dhabi Commercial Conciliation and Arbitration Centre⁽⁴¹⁾, the Dubai International Arbitration Center, the International Islamic Center for Reconciliation and Arbitration, and the Sharjah International Commercial Arbitration Center.

In light of this, it is clear to us that arbitration in the modern era has received legislative attention at the international and national levels. This interest has increased, in the era of technological revolution. On the one hand, various fields have been affected by this major technological development, especially in the area of information and communications technology as well as business transactions⁽⁴²⁾. On the other hand, the need to find means to resolve disputes

⁽³⁸⁾The Cairo Regional Centre for International Commercial Arbitration (the “CRCICA” or the “Centre”) is an independent non-profit international organization established in 1979 under the auspices of the Asian African Legal Consultative Organization (“AALCO”),[1] in pursuance of AALCO’s decision taken at the Doha Session in 1978 to establish regional centers for international commercial arbitration in Asia and Africa.

⁽³⁹⁾ The Qatar International Center for Conciliation and Arbitration was established in 2006 by a decision of the Board of Directors of the Qatar Chamber of Commerce and Industry in order to find a quick and effective mechanism to resolve disputes between Qatari companies and foreign companies.

⁽⁴⁰⁾ The Center shall be competent to hear commercial disputes between citizens of the GCC States or between them and others, whether natural or legal persons and commercial disputes arising from the implementation of the provisions of the Economic Agreement and the decisions issued to implement them. If the parties agree in writing in the contract or in a subsequent agreement, Center.

⁽⁴¹⁾Based on the tireless endeavors of the Abu Dhabi Chamber of Commerce and Industry (ADCCI) to provide every possible facility to its members in order to improve and stabilize their businesses. ADCCI established Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) on January 3rd 1993 to be the first center in the GCC to solve national and international commercial disputes.

⁽⁴²⁾ M Al-ladsen, 'The Arbitrality of International online consumer disputes,' (2015) *University of Bangor* 1.

arising from such transactions has increased to coincide with technological and electronic developments. These challenges have gained the attention of the international community, especially the legal community, which started to prepare for the ever-increasing, accelerating, and growing electronic activity. Soon, electronic arbitration came about.⁽⁴³⁾

In this context, the provisions of electronic arbitration can be derived from the aforementioned international conventions, which regulate the traditional arbitration, in addition to supporting and complementary conventions. These are the conventions on electronic transactions and electronic arbitration, such as the United Nations Convention on the Use of Electronic Communications in International Contracts (hereinafter the “Electronic Communications Convention”).⁽⁴⁴⁾ More clearly, The European Parliament and the Council of the European Union issued the Electronic Commerce Directive 2000⁽⁴⁵⁾ which implicitly directed its member states not to place in their domestic legislation legal obstacles to the use of electronic dispute resolution mechanisms.⁽⁴⁶⁾

⁽⁴³⁾Technological development effected and result not only the emergence of electronic arbitration, but the rest of the alternative dispute resolutions methods were affected, that electronic negotiations, electronic mediation and electronic reconciliation were also revealed. SAB Abu-Saleh, *Commercial Arbitration* (Al-Nahda Al Arabiya house) 22

⁽⁴⁴⁾ The United Nations Convention on the Use of Electronic Communications in International Contracts was prepared by the United Nations Commission on International Trade Law (UNCITRAL) between 2002 and 2005. The General Assembly adopted the Convention on 23 November 2005 by its resolution 60/21 and the Secretary General opened it for signature on 16 January 2006. Desiring to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems.

⁽⁴⁵⁾Directive 2000/31 / EC of the Council of Europe dated 8 June 2000 on certain aspects of the information society's services, particularly in e-commerce, in the internal market (e-commerce).

⁽⁴⁶⁾ Article 3 of the Directive states that "Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities afforded by electronic commerce; this Directive therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for information society services."

It should be noted here that the United Nations Commission on International Trade Law (UNCITRAL) has issued the UNCITRAL Model Law on Electronic Commerce in 1996,⁽⁴⁷⁾ and the UNCITRAL Model Law on Electronic Signatures.⁽⁴⁸⁾ Various institutions conducting Arbitration procedures partly or wholly online, as in the cases of Modria,⁽⁴⁹⁾ American Arbitration Association "AAA-Web File,"⁽⁵⁰⁾ the World Intellectual Property Organization (WIPO-ECAF) were also available for the electronic alternative dispute resolutions, hereinafter referred to as the "WIPO Arbitration System"),⁽⁵¹⁾ and the Czech Arbitration Court.⁽⁵²⁾

On the level of the laws of the Arab countries, we find that the provisions of electronic arbitration can be derived from the provisions of the laws governing traditional arbitration, in addition to supporting and complementary laws, such as Law No. 15 of 2004 regulating the electronic signature, and the Egyptian Information Technology Industry Development Authority (hereinafter the Egyptian Electronic Signature Law), Law No. (1), the Electronic Transactions and Electronic Transactions in the United Arab Emirates (hereinafter the UAE Electronic Transactions and Electronic Transactions law), Law No. (16) of 2010 issuing the Electronic Transactions and

⁽⁴⁷⁾ The UNCITRAL Model Law on Electronic Commerce aims to provide national legislators with an international acceptable set of rules aimed at overcoming legal obstacles and enhancing predictability of legal developments in electronic commerce, (n 30).

⁽⁴⁸⁾ The UNCITRAL Model Law on Electronic intended to enable the use of electronic signatures by providing methods and standards for the technical reliability required to achieve equivalence between electronic and traditional written signatures, (n 30).

⁽⁴⁹⁾ Modria is an online arbitration system. It is a leading software provider for online dispute resolution for both high- and low-value disputes. Moreover, it provides the customers with the ability to link between negotiation, mediation and arbitration. See <http://www.modria.com/> Last Accessed 06/04/2017. See also BH Barton, 'Lawyer's Monopoly-What Goes and What Stays, The' (2013) 82 Fordham L.Rev. 3067, 3075–3076.

⁽⁵⁰⁾ The American Arbitration Association (AAA), is a not-for-profit organization with offices throughout the U.S. AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and organizations who wish to resolve conflicts out of court. Construction filings on AAA Webfile showed a steady increase in each year. There were 151 construction cases filed in 2002, 219 in 2003, and 289 in 2004, for a cumulative total of 1059 cases filed from 2001 through 2005-265 for mediation and 794 for arbitration. Am. Arbitration Association Webfile Statistical Report, May 2006.

⁽⁵¹⁾ The WIPO Arbitration and Mediation Center aims to offer time and cost efficient mediation, arbitration and expert determination proceedings. To assist this purpose, the WIPO Center makes available at no cost to interested parties online case administration options, including an online docket and videoconferencing facilities.

⁽⁵²⁾ The Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (Czech Arbitration Court) has separate rules for online arbitration procedures.

Commerce law (hereinafter the Qatari law of Electronic Transactions and Commerce), Law No. 20 of 2014, concerning Kuwaiti electronic transactions, and the Jordanian law of electronic transactions No.15 of 2015 (hereinafter the Jordanian Law of electronic transactions).

We conclude that the use of arbitration in commercial transactions domestically and nationally steadily increased. Today's arbitral awards have become more enforceable, voluntarily or by force of law through the judiciary. Therefore arbitration terms are no longer dependent on the parties involved. It has become a sure and guaranteed legal option, especially with the parties and arbitrators taking into account the rules of judicial work to reach arbitration provisions that respect legislation, jurisprudence, and the judicial system.

1.3. Definition of Electronic Arbitration

The term "electronic arbitration" consists of two terms: the first is "arbitration" and the second is "electronic".

1.3.1. Definition of the Term "Arbitration":

Several definitions of arbitration have been received in legal and doctrinal literatures alongside case law. In this context, some of these definitions will be mentioned. Arbitration has been defined by the Civil Code of the Ottoman Empire⁽⁵³⁾, as a remedy that "consists of the parties to an action agreeing together to select some third person to settle the question at issue between them, who is called an arbitrator".⁽⁵⁴⁾

In jurisprudence, Professor Robert Jean defined arbitration as a special judiciary system where a certain dispute was excluded from the jurisdiction of the judicial system and entrusted to

⁽⁵³⁾ Al-Majallah al-Ahkam al-Adaliyyah was the civil code of the Ottoman Empire in the late 19th and early 20th centuries. It was the first attempt to codify a part of Islamic law of the Ottoman Empire. The code was prepared by a commission headed by Ahmet Cevdet Pasha, issued in sixteen volumes (containing 1,851 articles) from 1869 to 1876 and entered into force in the year 1877.

⁽⁵⁴⁾Civil Code of the Ottoman Empire, Article 1790.

person/s of the parties' choice.⁽⁵⁵⁾ Dr. Mohsen Shafiq defined it as "a binding alternative method of resolving disputes".⁽⁵⁶⁾ Dr. Abu Zaid Radwan defined it as "a dispute resolution system functioned by individuals who were appointed by the opponents either directly or through another means of their wishes" using a method that enables the parties of the dispute to be excluded from the jurisdiction of the ordinary judicial system.⁽⁵⁷⁾

It is clear from the previous definitions that arbitration is an alternative legal method in resolving disputes. It is the desire of the parties to establish their own court and not to recourse their dispute before the ordinary judicial system of the state. They entrust a person to decide on the dispute and the parties have the ability to specify the subject matter of the dispute to be resolved including the proceedings that shall be undertaken.

The aforementioned shows that there is a common ground between the previous definitions, mostly in terms of the parties of a dispute agreeing that their disputes will be resolved before a special judge (arbitrator or arbitral tribunal) whom they can freely choose, rather than an ordinary judge. This means that arbitration is a road intended by the disputants to resolve their disputes in lieu of a formal court, provided that the award issued is binding on the parties.

1.3.2. Definition of the Term "Electronic":

Several definitions of the word "electronic" were received. In this context, we merely mention some of these definitions. It is defined by the Jordanian Electronic Transactions Law as "the technique of the use of electrical, magnetic, optical, electromagnetic or similar means".⁽⁵⁸⁾

The Qatari Electronic Transactions and Commerce Law defined it as a "means technology based

⁽⁵⁵⁾ R Jean, (1986) 2 *Arbitration International* 3 266-270

⁽⁵⁶⁾ Shafiq, (n 4), 39.

⁽⁵⁷⁾ Radwan, (n 12) 19.

⁽⁵⁸⁾ Jordanian law of electronic transactions No.15 of 2015 , Article (2)

on using electrical, electromagnetic or optical means or any other form of similar technological means".⁽⁵⁹⁾ The UAE Electronic Transactions and Commerce Law defines it as "all that relates to modern technology, and has digital, electrical, magnetic, radio, optical, electromagnetic, mechanical, optical or similar capabilities".⁽⁶⁰⁾ In jurisprudence, the word "electronic" refers always to the usage of the electronic and internet methods, and therefore Internet and the usage of electronic means in resolving disputes are considered to be the essence of electronic arbitration.⁽⁶¹⁾

It is clear from the previous definitions that the electronic term refers to the use of modern means of exchange and storage of information based mainly on electric, magnetic or electromagnetic power. In this light, it can be concluded that electronic arbitration is a system whereby the parties agree that an arbitrator or arbitral tribunal will resolve the dispute that exists between them or is likely to occur in the future using electronic methods.

1.4. The Criterion of Electronic Arbitration:

The question arises as to when arbitration is electronic and when it is not. It is still an area of debate and the opinions of this debate can be presented in two ways:

1.4.1. Those Using the Means Used in Arbitration to Establish if Arbitration is Electronic or Not;

The supporters of this trend argue that in determining whether the arbitration is traditional or electronic, the means used in the arbitration has to be considered.⁽⁶²⁾ Within this context,

⁽⁵⁹⁾Law No. (16) of 2010 issuing the Electronic Transactions and Commerce law, Article (3)

⁽⁶⁰⁾Electronic Transactions and Electronic Transactions in the United Arab Emirates (UAE Law), Article (1)

⁽⁶¹⁾KM Ibrahim, *Electronic Arbitration in International Commercial Contracts* (Alfikraljamieiu House, Egypt, 2008) 246.

⁽⁶²⁾ I Al-Khalidi, *Electronic Arbitration* (Al-Nahda al-Arabiya House) 30

arbitration is considered an electronic arbitration if electronic means were used and it would be traditional arbitration if no electronic means or tools were used.

It seems however that the use of electronic means in the arbitration process and its impact on the nature of the arbitration process cannot simply be used to settle the nature of the arbitration. Some are content to label arbitration as electronic if at any stage of the arbitration process, electronic tools were used.⁽⁶³⁾ Others are not satisfied with this connection. Rather, they believe that to consider an arbitration electronic, electronic means should be used in all stages of the arbitration process, from the beginning until its conclusion. To date, parties are still conflicted on this issue. This student's opinion is that the transaction must be considered electronic if the dispute was resolved through electronic means and the usage of electronic means - whatever their kind - would confer an electronic character on arbitration, provided that there is no physical meeting at any point in the transaction between the parties of the arbitration process.

1.4.2. Those Using the Nature of the Treatment of Arbitration to Determine If the Arbitration Is Electronic or Traditional;

This trend stems from the consideration of the nature of the arbitration transaction to distinguish between traditional arbitration and electronic arbitration⁽⁶⁴⁾. In this view, the arbitration is considered electronic arbitration where the parties of the dispute set forth to resolve their disagreements arising from contracts concluded electronically by appointing arbitrator or arbitral tribunal.⁽⁶⁵⁾ The criterion in this case in determining the electronic character of arbitration is the

⁽⁶³⁾ JD Al-Maani, *Electronic Arbitration and the Role of the National Judiciary in activating it* (First Edition, Al-Thaqafa House for Publishing and Distribution, 2014) 36

⁽⁶⁴⁾ Abdelkader, (n 11) 690.

⁽⁶⁵⁾ Ibrahim, (n 66) 248-249.

nature of the transaction that created the dispute, that is, the subject matter of the dispute which must be electronic in nature.⁽⁶⁶⁾

In this light, it can be noted that there is a convergence between the two trends in the sense that there is a need for electronic feature in the transaction for a case to be considered electronic arbitration and this electronic feature may emerge from the means used in arbitration or the process by which the dispute arose. This led some jurisprudence to describe the electronic arbitration as a special type of judicial process in which the parties agree to refer the dispute to a third party (which provides the electronic settlement service) to appoint one or several individuals (the electronic arbitral tribunal) to settle the dispute through the use of the Internet and other electronic means, using a set of regulations that are appropriate to the subject of dispute between the parties.⁽⁶⁷⁾

In reviewing the above information, it seems important to expand the nature of electronic arbitration to include the abovementioned opinions, to consider arbitration as electronic arbitration where the nature of the transaction is electronic or where the dispute was resolved through electronic means and the usage of electronic means - whatever their kind - would confer an electronic character on arbitration, provided that there is no physical meeting between the parties of the arbitration process.⁽⁶⁸⁾

⁽⁶⁶⁾ Abdelkader (n 11) 690.

⁽⁶⁷⁾ Ibrahim (n 66) 248-249. EAF Matar, *E-Commerce in Arab and Foreign Legislations* (Aljamieataljadida House for Publishing, Alexandria, 2009) 42. HO Ahmed (Aljamieataljadida House for Publishing, Alexandria, 2009) 177. IA Zamzmi, 'Applicable Law in the Disputes of E-Commerce Contracts' (Comparative Study) (*PhD thesis, Ain Shams University, Egypt* 2006) 315.

⁽⁶⁸⁾ It is essential that the rights to determining the nature of the arbitration in question shall be granted to the parties of dispute as long as their agreement does not contradict with the public policy of the state, In view of the principle of the will of the parties as this principle is the foundation stone to such method. In the case where the parties of dispute failed to determine the nature of the arbitration such right shall be given to the competent arbitral tribunal.

Chapter Two

The Elements of Electronic Arbitration, its Importance and its Challenges

In this Chapter, the elements of electronic arbitration, its importance and its challenges will be discussed in three sections.

2.1. The Elements of Electronic Arbitration

Electronic arbitration stands on a set of elements that combine together and enable it to keep pace with rapid development, to keep leading the way towards alternative dispute resolutions.

2.1.1. Electronic Arbitration is based on the Will of the Parties

Electronic arbitration, as well as traditional arbitration, is based on the will of the parties. In accordance with the latter, the parties of disputes agree to take the dispute out of the jurisdiction of the judicial system and to put it in the hands of their chosen arbitrator or arbitral tribunal.⁽⁶⁹⁾

All laws relied on this principle when it adopted arbitration as a method of dispute resolution.⁽⁷⁰⁾⁽⁷¹⁾⁽⁷²⁾ The UAE law stated that "the parties to a contract may generally stipulate in the basic contract or by a supplementary agreement that any dispute arising between them in respect of the performance of a particular contract shall be referred to one or more arbitrators and may also agree to refer certain disputes to arbitration under special conditions".⁽⁷³⁾

⁽⁶⁹⁾ME El-Tahoui, *Arbitration in Civil and Commercial Materials* (University Press House, Alexandria, 2006) 73-40.

⁽⁷⁰⁾ Egyptian Information Technology Industry Development Authority Law No. (1) (Egyptian Law)

Law. The Egyptian law has pointed out that resorting to arbitration and its selection among the methods of dispute resolution must be based on the agreement of the parties of the disputes of their own free will, whether the party conducting the arbitration proceedings, under the agreement of the parties, is an organization or permanent arbitration center.

⁽⁷¹⁾Jordanian Law (n 63) Article (16) The Jordanian law also gave the parties of the dispute the freedom to choose the arbitrators, the method of choosing them, and the date of such selection.

⁽⁷²⁾Qatari Law (n 64) Article (7) The Qatari law provided that the parties, whether they are legal persons or natural persons having the legal capacity to enter into contracts, is a condition which has to be fulfilled before referral to refer to Arbitration can be had.

⁽⁷³⁾UAE Law, (n 65) Article (203)

2.1.2. Electronic Arbitration Is a Special Electronic Judicial System

This arbitration is a judicial system that includes a set of substantive and procedural legal rules that aim at arranging and regulating the operation of the arbitral process from the beginning of its proceedings until its judgment.

This arbitration is special, that it begins with the agreement of the parties and ends with the issuance of an arbitral award binding on its parties in the same way as the judicial judgment.⁽⁷⁴⁾ This arbitration is electronic, that the parties to the dispute agree to refer the dispute to a third party, who would then provide the dispute resolution service electronically, appointing the electronic arbitral tribunal to resolve the dispute through the Internet based on a set of rules that are appropriate to the subject matter of the dispute and to the parties.

2.1.3. Electronic Arbitration is Electronic Method Dedicated to Resolve Disputes in which its Subject Matters are Legal Rights Related

The subject matter of the dispute is the most important foundation for the electronic arbitration. Therefore, many of the laws contain explicit provisions that specify the issues where arbitration may be held and matters where arbitration may not be permitted. In this context, the Egyptian law stipulates that, "subject to the provisions of international conventions applicable in the Arab Republic of Egypt, the provisions of this Law shall apply to all arbitrations between public or private law persons."⁽⁷⁵⁾ Also it is stated that arbitration is not permitted in matters which cannot be subject to conciliation.⁽⁷⁶⁾ Jordanian law, Qatari Law, UAE Law, and the UAE draft

⁽⁷⁴⁾Zamzmi, (n 72) 315.

⁽⁷⁵⁾Egyptian Law, (n 75) Article (1) "Whatever the nature of the legal relationship around which the dispute revolves, when such an arbitration is conducted in Egypt, or when an international commercial arbitration is conducted abroad and its parties agree to submit it to the provisions of this Law".

⁽⁷⁶⁾Egyptian Law, (n 75) Article (11).

Arbitration Law provides similar provisions.⁽⁷⁷⁾ Also it is stated that arbitration is not permitted in matters which cannot be subject to conciliation.⁽⁷⁸⁾⁽⁷⁹⁾⁽⁸⁰⁾⁽⁸¹⁾⁽⁸²⁾

As a result, the above-mentioned laws are based on the principle of arbitration and they help broaden the definition of matters in which arbitration may be permitted, whether these are disputes of a commercial or civil nature, such as commercial, investment, financial, banking, industrial, insurance, tourism, construction contracts, engineering or technical expertise, technology transfer, development contracts, transport contracts, energy contracts and wealth extraction matters.⁽⁸³⁾ Whether they arise from contractual or non-contractual legal relations, such as relationships arising from the individual's conduct, namely unilateral wills, wrongful actions, unfair competition, or unjust enrichment arbitration may be applied.

It is worth mentioning that arbitration in administrative contracts may be permitted, however, there are some restrictions to be observed for these contracts. The Egyptian law has placed a restriction on arbitration in administrative contracts. It is the approval of the competent

⁽⁷⁷⁾Jordanian Law, (n 63) Article (3). Jordanian law provides that "the provisions of this law shall apply to any arbitration in the Kingdom which is concerned with a civil or commercial dispute between the parties to public law or private law, regardless of the nature of the legal relationship in which the dispute revolves, whether contractual or non-contractual".

⁽⁷⁸⁾ Jordanian Law, (n 63) Article (9).

⁽⁷⁹⁾Qatari Law, (n. 63) Article (2). Qatari Law states that "without prejudice to the provisions of the international conventions in force in the State of Qatar, the provisions of this law shall apply to all arbitrations among parties, whether public law or private persons, regardless of the nature of the legal relationship which is the subject of the dispute, whether the arbitration takes place in the State of Qatar or whether it is an international commercial arbitration taking place abroad, and the parties agree that it shall be subject to the provisions of this Law. [The] agreement to arbitration in administrative contract disputes shall be subject to the approval of the Prime Minister, or the person to whom he delegates".

⁽⁸⁰⁾Qatari Law, (n 63) Article (7/2). It also provides that "arbitration shall not be permitted in matters where conciliation is not permitted".

⁽⁸¹⁾UAE Law, (n 65) Article (203/1) and Article (203/4). In the UAE law, the text states that, "the parties to a contract may generally stipulate in the basic contract or by a supplementary agreement that any dispute arising between them in respect of the performance of a particular contract shall be referred to one or more arbitrators and may also agree to refer certain disputes to arbitration under special conditions. Yet, arbitration shall not be permissible in matters, which are not capable of being reconciled".

⁽⁸²⁾UAE Draft Arbitration Law, Article (2/1). The UAE draft arbitration law also said that "without prejudice to the provisions of international conventions in force in the State, the provisions of this law shall apply to any arbitration between parties of public law or private law regardless of the nature of the legal relationship in which the dispute is concerned. The State or an international commercial arbitration conducted abroad and agreed by the parties to subject it to the provisions of the law".

⁽⁸³⁾Egyptian Law, (n 75) Article (2); Qatari Law, (n 64); UAE draft law, (n 87) Article 13.

minister or his authority for general legal persons. While the Qatari law and the UAE draft arbitration law have agreements to arbitration in administrative contract disputes subject to the approval of the Prime Minister, or the person to whom he delegates. Jordanian law is silent on this matter.

It should be noted that the said laws expressly agree to ban certain specific issues from the scope of arbitration⁽⁸⁴⁾ such as human rights issues and matters related to public order and policy.⁽⁸⁵⁾ It can be concluded that modern legislation has been moving towards a broader definition of the issues in which arbitration may be used. This is obvious in its inclusion as a means of settling contractual or non-contractual legal relationships involving civil and commercial matters, and its application for the administrative matters where the parties agree to coverage. Arbitration has been moving towards narrowing its application in matters which may relate to personal status or public order or matters explicitly indicated as not subject to arbitration. Despite these areas where arbitration may not apply, it may be said that arbitration can be applied to most issues of contention.⁽⁸⁶⁾

2.2. The Importance of Electronic Arbitration

Electronic arbitration has an undeniable importance at the national, regional and international levels. It has become a prominent topic in economic and legal quarters and studies. Where the literature and periodicals have proliferated, the provisions have been frequent and specialized bodies with internationally recognized systems have been established. Its rules are being taught in universities and scientific institutes, and international treaties and conventions

⁽⁸⁴⁾ Egyptian Law No. 131 of 1948 promulgating the Civil Code Article (551). The Jordanian Civil Code No. 43 of 1976 Article (512). The Qatari Civil Code No. 22 of 2004 Article (575). Abdelkader, (n 11) 365-379.

⁽⁸⁵⁾ MABHA Muttalib/Al-Dessouqi, 'The Influence of Public Order on Arbitration Ruling and Its Implementation,' (2003) *Journal of Security and Law* 458.

⁽⁸⁶⁾ A Al-Wafa, *Optional and Compulsory Arbitration* (Munsha'atAlmaeariffor Publishing, Alexandria, 1988) 18.

have been established for the purpose of recognizing and implementing awards of arbitration.

The importance of electronic arbitration is demonstrated by many reasons and advantages that have contributed to its spread and to its increased recourse for its resolution of disputes. Some of its advantages include:⁽⁸⁷⁾

- 1) **Confidentiality:** Confidentiality is one of the most important components of arbitration. It is often motivated by the choice of arbitration as a method of dispute resolution.⁽⁸⁸⁾
- 2) **Competence:** The arbitration process is conducted by a select group of qualified arbitrators with expertise and specialization in the arbitration process.⁽⁸⁹⁾
- 3) **Speed:** The speed of arbitration in resolving the disputes is one of the most important features of arbitration, although speed is subject to many considerations, including the agreement of the parties and the conditions of arbitration centers.⁽⁹⁰⁾ Moreover, arbitral awards are considered final, unless there is a reason for its invalidation, while judicial pronouncements are usually appealable to higher courts.
- 4) **The Ability to Achieve the Principles of Justice (Flexible Justice):**

The judges in the courts abide by and implement the law, in letter and spirit, and if their judgments come out contrary to the codes or contrary to its spirit, then the judges' decisions can be deemed flawed, and may be annulled or revoked, even if they suit the circumstances of

⁽⁸⁷⁾ E Nassif, *International Contracts - Electronic Arbitration* (Al-Halabi Publications, First Edition, 2012) 21.

⁽⁸⁸⁾ MS Arafah, 'Arbitration between Islamic Jurisprudence and Positive Law' (*Naif Arab University for Security Sciences*, Riyadh, 2006) 21. This is due to the ability of arbitration to preserve the private secrets relating to the parties of the dispute, regardless of the outcome of dispute resolution. This is in contrast to the traditional judiciary system where principle of publicity is a foundation of the justice process.

⁽⁸⁹⁾ B Jaafar, 'The Electronic methods in resolving the disputes of the electronic Commercial contracts', (*Master thesis, MohandOulhadj University*, Algeria 2015) 49; This implies the best level of justice desired by parties of the disputes. The competence component must be ensured by the parties while selecting the arbitrators in order to ensure the effectiveness of this feature.

⁽⁹⁰⁾ M Abdelmoumen, 'Arbitration between Islamic Jurisprudence and Positive Law' (*Master Thesis, Mohamed University*, Faculty of Legal and Economic Sciences, Morocco, 2009) 13. Still it remains relatively faster in settling disputes as compared to the framework of the judiciary and its lengthy procedures.

the case.⁽⁹¹⁾ Such flexibility increases the possibility of achieving fairness between the parties of the dispute. Aristotle Thales mentions that the parties to the dispute prefer arbitration to resolve disputes because judges care more about legislation, while the arbitrators care more for justice.

5) Friendly and Sustained Relations: This ensures friendly arbitration and the continuity of relations between the parties. This makes the acceptance of the arbitral award simpler and more acceptable to the parties. The award implemented is also less harsh to the parties.⁽⁹²⁾

6) Avoid the Issues of Legislative Jurisdiction in Relation to the Subject Matter of the Dispute (Conflict of Laws):

In light of the international conventions, the ICC rules have affirmed about the freedom of the parties to choose the legal rules that the arbitral tribunal must apply to the subject of the dispute.⁽⁹³⁾The European Convention on Arbitration,⁽⁹⁴⁾The Model Law,⁽⁹⁵⁾Egyptian law,⁽⁹⁶⁾

⁽⁹¹⁾AAIKSalameh, 'The Law Applicable to the Subject of Arbitration (Discipline and Guidance),' (2008) *Journal of Security and Law* 1 Justice as administered by the courts prevents the will or desire of the parties from being implemented, instead, the prevailing provisions of the law are followed objectively. In some instances, unfair or unjust decisions may be handed down by the courts.

⁽⁹¹⁾ Arbitration on the other hand, is more fixable in applying the law as the arbitrator will apply the law that is most related to the subject matter of the disputes.

⁽⁹²⁾Abdelmoumen, (n 95) 14

⁽⁹³⁾ICC Rules, Article 17

⁽⁹⁴⁾The European Convention on Arbitration, (n 25) Article 7/1. It has adopted the principle that "the parties are free to determine the law that the arbitrators would to apply in respect to their dispute, and if the parties fail to choose the applicable law, the arbitrators can apply the law appropriate in this regard. In both cases, the arbitrators shall take into account the provisions of the contract and commercial conventions".

⁽⁹⁵⁾Model Law, (n 30) Article (27/1). It states that, "the arbitral tribunal shall determine in the dispute, in accordance with the rules of law chosen by the parties, as applicable to the subject matter of the dispute. Any choice of the law or legal system of a State shall be taken as a direct reference to the substantive law of that State, and not to its rules of conflict of laws, unless the parties agree otherwise".

⁽⁹⁶⁾Egyptian Law, (n 75) Article (39). It gives the parties the freedom to choose the law applicable to the subject matter of the dispute and the obligation of the arbitral tribunal to apply to these rules. If the parties to the arbitration agreement do not agree on the applicable law, the arbitral tribunal has the authority to determine which law to apply, taking into account which law is most relevant to the dispute.

the Jordanian law,⁽⁹⁷⁾Qatari law,⁽⁹⁸⁾ and in the UAE Draft arbitration law⁽⁹⁹⁾ similar provisions are indicated.

The aforementioned is clear evidence that the position of international conventions and national laws is to give the parties the freedom to choose the law applicable, to choose whatever substantive rules they want, and to guarantee their rights and obligations based on the arbitration outcomes. It can be noted that if the parties fail to specify the applicable law, the arbitral tribunal can implicitly generate the will of the parties from the circumstances in which they wanted to deal with each other. These circumstances may include the nationality of the parties, the currency agreed upon, the language used in their dealings with each other, their reference to any rules of law, the state in which they have agreed to arbitrate, and other circumstances.⁽¹⁰⁰⁾Therefore, it is recommended that the parties to the electronic arbitration determine the law applicable to the subject matter of the dispute in the arbitration agreement. A good arbitration agreement is one which would include the applicable law, preferably the law chosen by the parties.

7) Avoidance of Issues of Jurisdiction in Arbitral Proceedings (Conflict Of Laws):

The recourse to arbitration shall avoid the conflict of law in relation to the arbitral proceedings of the dispute, since national laws support the parties' freedom to choose the law applicable to their arbitration disputes. Article (25) of the Egyptian Law stipulates that "the two

⁽⁹⁷⁾Jordanian Law, (n 63) Article (36/ a, b). The arbitral tribunal is required to apply the legal rules agreed by the parties to the subject matter of the dispute. If the parties do not agree on the applicable legal rules on the subject matter of the dispute, the arbitral tribunal shall apply the substantive rules of the law most relevant to the dispute.

⁽⁹⁸⁾Qatari Law, (n 64) Article (28/ 1 and 2). The arbitral tribunal shall decide on the dispute in accordance with the legal rules agreed upon by the parties. If the parties do not agree on the applicable legal rules, the arbitral tribunal shall apply the law determined by the conflict of laws rules.

⁽⁹⁹⁾UAE Draft Law, (n 87) Article (43). The arbitral tribunal is required to apply the legal rules to the subject matter of the dispute as agreed upon by the parties. If the parties do not agree on the applicable legal rules on the subject matter of the dispute, the arbitral tribunal shall apply the substantive rules of the law most relevant to the dispute.

⁽¹⁰⁰⁾Ibrahim, (n 66) 69-80.

parties to the arbitration are free to agree on the procedure to be followed by the arbitral tribunal, including the right to submit the arbitral proceedings to the rules prevailing under the auspices of any arbitral organization or center in the Arab Republic of Egypt or abroad." Similar provisions are laid out by Jordanian Law, (Article 24), Qatari Law (Article (19/1), Article 19 (2), and Article 27 of the UAE Draft Arbitration Law.⁽¹⁰¹⁾

It is clear that the legal texts referred to herein are unequivocal, indicating that national laws give the parties the freedom to choose the law applicable to their arbitral proceedings. The arbitral tribunal shall also be entitled to choose the laws it deems appropriate if the parties do not specify the law applicable to their arbitral process. It can be recommended that the parties to an electronic arbitration determine the law applicable to arbitral proceedings in an arbitration agreement. A good arbitration agreement is that agreement which would include the applicable law, specifically the law that the parties agreed of their own free. Otherwise, the parties may be surprised by a law that they may not be aware of, and the arbitration, which has been resorted to will be turned into an undesirable proceeding, especially in terms of electronic arbitration. Therefore, parties choosing electronic arbitration as a means of resolving the dispute must ensure that the system or law chosen allows the application of electronic arbitration.⁽¹⁰²⁾

Additional Characteristics, Which are Unique to Electronic Arbitration:

⁽¹⁰¹⁾Egyptian Law, (n 75) Article 25; Jordanian Law, (n 63) Article 19; Qatari Law, (n 64) Article 19(1), 19(2); UAE Draft Law, (n 87) Article 27. Article 24 of the Jordanian Law stipulates that "the two arbitrating parties are free to agree on the procedures to be followed by the arbitral tribunal, including their right to subject such procedures to the rules applied at any arbitral institute or center in the Kingdom or abroad; failing such agreement, the arbitral tribunal may, subject to the provisions of this law, select the rules of arbitral proceedings it deems appropriate". The Qatari Law in Article (19/1) states "subject to the provisions of this Law, the parties may agree to the arbitration procedures, including rules of evidence, which must be followed by the arbitral tribunal. They also have the right to subject these procedures to the rules in force in any arbitration institution or center inside or outside the state". Article 19 (2) of the same law states that "the arbitral tribunal may, subject to the provisions of this Law, apply the procedures that it deems appropriate, including the authority of the arbitral tribunal to accept the evidence submitted and to assess the extent of its relevance to the subject of the dispute, its materiality and its weight, unless there is an agreement between the parties regarding the determination of the arbitration procedures in accordance with the previous paragraph of this Article". Article 27 of the UAE Draft Arbitration Law states that, "subject to the provisions of this law, parties of arbitration proceedings shall be free to agree on the procedures to be followed by the arbitral tribunal. In the absence of agreement between the parties, the arbitral tribunal shall, subject to the provisions of this law, choose the procedures it deems appropriate, including its authority to accept evidence".

⁽¹⁰²⁾MIA Al-Haija, *Arbitration through the Internet* (International Scientific House and House of Culture, No edition, Amman, 2002) 35.

It is true that the previous characteristics and features mentioned are available in both traditional arbitration and electronic arbitration, and yet the latter includes more features, notably:

- A) The Appropriateness:** Appropriateness appears in electronic arbitration by reducing or closing the distances between the parties of arbitration.⁽¹⁰³⁾⁽¹⁰⁴⁾
- B) Reduce Costs:** The reduced need for the physical presence of the parties in an electronic arbitration process essentially contributes to the reduction of costs associated with the arbitration procedure, as travel expenses of the arbitrators, witnesses and parties of the dispute are practically non-existent.⁽¹⁰⁵⁾
- C) Ease of Storage and Retrieval of Data and Information:** The Internet provides the ability to store a large volume of information and is easy to retrieve and obtain when needed, unlike other methods that rely on traditional means of storage which requires considerable space for conservation, where damage and destruction of documents may be a barrier to party agreements or communication.⁽¹⁰⁶⁾
- D) The Use of Electronic Means:** That the emergence of many forms of electronic transactions, especially with regard to electronic commerce made electronic arbitration

⁽¹⁰³⁾RM Amin, *The Legal System of Electronic Arbitration* (First Edition, Alfikraljamieiu House, Alexandria, 2006) 93. The recourse to electronic arbitration as a dispute resolution does not require the physical presence of parties, where the Internet is the appropriate and impartial place for the parties of the dispute. This represents appropriateness for the parties, especially in cases where the places of residence of the parties are far apart from each other and when their nationalities are different.

⁽¹⁰⁴⁾RB Shamsa, 'The Legal Framework for Electronic Arbitration', 'A Comparative Study', (*Master Thesis*) 16. It should be emphasized that this convenience makes the electronic arbitration even faster than traditional arbitration in resolving disputes as it is a medium that overcomes circumstances of place and time, as there is no need for the physical presence of the parties and communication can be secured via e-mails or other internet-based media. The parties can also do away with having to navigate through different laws as the parties can actually choose what laws would apply to them.

⁽¹⁰⁵⁾There will be no need for travel expenses, hotel accommodations, plane ticket bookings and other expenses required for travel from one place to another

⁽¹⁰⁶⁾ M Otwif, 'Settlement of Disputes of International Contracts in Electronic Commerce' (2011) *Legal and Social Studies Laboratory, Business and Investment Law* 90

one of the most important methods through which disputes arising from those transactions were resolved.

2.3. Challenges of Electronic Arbitration

Despite the many positive features of electronic arbitration, however, like any modern system, there are some challenges that may stand in the way of its usage as a method of disputes resolution. These challenges can be summarized as follows,⁽¹⁰⁷⁾

2.3.1 Confidentiality

Confidentiality is one of the most important features of the arbitration process, but there is a question on whether such confidentiality can be maintained in electronic arbitration. The lack of confidentiality is a real threat to electronic arbitration as the use of electronic means to conduct negotiations may be fraught with risks of monitoring, altering, accessing or disposing of data.⁽¹⁰⁸⁾⁽¹⁰⁹⁾⁽¹¹⁰⁾⁽¹¹¹⁾

Considering that the passwords are not only known to the parties of the dispute but also to those who are related and involved in the arbitration procedures, to those who prepared the transaction, there is a major risk of confidential information about the parties and about the

⁽¹⁰⁷⁾Shamsa, (n 110) 18.

⁽¹⁰⁸⁾ Especially in view of the high incidence of piracy in the Internet. The latter faced the risk of hacking by so-called hackers and Crackers, causing the theft of electronic data of the users of the network.

⁽¹⁰⁹⁾ MSA Wahab, 'Research "Is Technology Affecting Confidence?" Confidentiality and Safety Considerations in Electronic Arbitration,' (2005) *Journal of Arbitration* 8, 148; The main reason for doubting confidentiality in electronic arbitration is the fact that there are risks often associated with use of the internet, including the loss of information security, especially electronic payment methods, hacking of the personal passwords of the parties of the dispute, the vulnerability of electronic piracy, the lack of confidence and security in the Internet, and the lack of verification of the identity of the parties involved in the electronic arbitration.

⁽¹¹⁰⁾ Encryption-technology is the most important technological event of the 20th century, during which the element of confidentiality can be strengthened in terms of securing recordings, communications and sharing important documents in electronic arbitration. In spite of these challenges and obstacles, it is possible to say that the technological methods and techniques which have been developed significantly reduce the disclosure of individual confidentiality. The protection provided by these technologies is stronger than traditional ones, especially with respect to the protection of the sources, where the latter are fraught with risks of counterfeiting, alteration and destruction. Some of these means of protection include Encryption techniques,

⁽¹¹¹⁾ Abdelkader, (n 11) 699. This includes cryptography, "firewalls", access control programs, , hidden watermarks, and digital signatures.

arbitration leaking out. The risk for such confidentiality being broken is not based on the parties themselves because they are committed, contractually and professionally, to maintain complete secrecy and non-disclosure of secrets, however, the same cannot be said about the individuals technically working the arbitration case.

2.3.2 Determination of the Place of Electronic Arbitration

Since the determination of the place of arbitration has important implications for considerations on the implementation and recognition of the award, there are numerous regulations that determine place, including the place of conclusion of the contract or the place of the arbitration.⁽¹¹²⁾ As electronic arbitration takes place in a virtual place on the Internet without the need to set a physical place for the parties to meet, the question has emerged on how the place of electronic arbitration can be set.⁽¹¹³⁾

This matter has been addressed at the international level. Article 18.1 of the ICC Arbitration Rules states that the arbitral tribunal may determine the place of arbitration in the absence of such determination in the agreement of the parties. Article 20 of the Model Law empowers the parties to arbitration to freely agree on the place of arbitration. In the absence of such agreement, the order to determine the place shall be left to the arbitral tribunal, subject to the provisions of this law. And as stipulated in Article 39 of the WIPO Arbitration Rules that, "the Center shall decide the place of arbitration, taking into account any observations made by the parties and the circumstances of the arbitration unless the parties agree otherwise.

Also, the national laws have addressed this question. The Egyptian law gives the parties to arbitration the freedom to agree on the place of arbitration.⁽¹¹⁴⁾ Article 27 of the Jordanian law

⁽¹¹²⁾Ibrahim, (n 66) 255.

⁽¹¹³⁾Shamsa, (n 110) 20.

⁽¹¹⁴⁾Egyptian Law, (n 75) Article (28).

stipulates that "the two parties are free to agree on the place of arbitration in the Kingdom or abroad; failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case and the convenience of the parties in respect of such place." This is also stipulated in Qatari law.⁽¹¹⁵⁾ It is noted that the UAE law has no provisions on the place of arbitration, and it seems that this was left to the provisions of the general rules in this regard. However, in the UAE draft arbitration law, it is provided that "the parties shall agree on the place of arbitration in the State or outside it. If there is no agreement, the arbitral tribunal shall determine that place, taking into account the circumstances of the case and the suitability of the place to its parties".⁽¹¹⁶⁾

In light of the above, the laws have left the issue of determining the place of arbitration to the will of the parties of the arbitration themselves, or to what the arbitral tribunal considers appropriate and consistent with the circumstances of the parties and the subject matter of the dispute in the arbitration.

2.3.3 The Digital Divide (Digital Gap)

The greatest challenge facing electronic arbitration is the digital gap⁽¹¹⁷⁾ in the use of modern technology and reliance on the Internet. The gap in developed countries is narrowing while it is widening in developing countries. Sometimes, this gap may exist within the countries itself, whether advanced or developing. For people living in isolated and rural areas, access to high-quality Internet services is difficult to secure.⁽¹¹⁸⁾ Such disparity in the ability of individuals to use

⁽¹¹⁵⁾ UAE Law, (n 65) Article (20).

⁽¹¹⁶⁾ UAE Draft Law, (n 87) Article (30).

⁽¹¹⁷⁾ The digital divide is defined as a gap between those who have the potential to use computers and those who do not have the means to employ them.

⁽¹¹⁸⁾ J Tambo and S John, 'Dimensions of Online Arbitration in India' (2012). *University of Tampa*.

the Internet and the availability of services strongly affects the ability of parties of arbitration to express their opinions and to listen to the views of the other party as well as to provide their defenses and demands. It is therefore important for arbitration tribunals and centers to take into account the difference of the parties to the process of arbitration, especially in terms of their cultural and technological differences.

It is worth mentioning that overcoming this challenge lies with countries and governments building an information society which would be responsive to the needs of their people. It is incumbent on governments and technology leaders to narrow the gap in information and electronic technology between states, between people of different nations and cultures, between people of different technological knowledge and expertise, and between people of different economic backgrounds.

2.3.4 The Absence of Interaction of the Parties through Electronic Arbitration

Electronic arbitration leads to the lack of ability of individuals to interact with each other, which translates to gaps in understanding body language and facial expressions. This may often contribute to the success or failure of an electronic arbitration as people are unable to personally relate to each other on a more congenial manner. Body language has a key role in influencing the way individuals associate with each other, and therefore the inability of individuals to interact with each other directly can affect their interaction with each other and later their ability to secure arbitration deals.

However, in recent years, technological developments in electronic and digital technology have made it possible for improved technology to be used in arbitration. Such technologies include clearer video calls where the parties are able to see each other and their reactions to each other

even over long distances. As such, more developments on the electronic scale have helped ensure that electronic arbitration would be able to serve the growing and changing needs of the people.

2.3.5 Lack of Confidence in Electronic Means

The lack of consumer confidence in online transactions is one of the shortfalls facing e-arbitration. Consumers do not trust online systems. Consumers are used to interviewing the seller, for example to complete their purchase. When purchasing online, consumers are not able to replace or refund their goods.⁽¹¹⁹⁾ This applies to all users of the Web in various business transaction and social relations.

It is important to acknowledge that it is natural for any new system to face a range of challenges, difficulties, and obstacles that will stand in the way of its progress and success, especially in underdeveloped countries which suffer from weak capabilities and poor infrastructures. It can be noted that consumers at present, as a result of the increasing reliance on modern methods in various transactions tend to deal and conclude contracts by electronic means. This trend has continued to enhance confidence in the electronic world and clearly reflects the importance of ensuring that this new system of arbitration and doing business would succeed.

2.3.6 Difficulty of Taking Witness Testimony

It is difficult to secure witness testimonies in the electronic setting. The fact that the venue for litigation is not the physical and normal court setting makes it difficult for either party to get witness testimonies, to cross-examine them, and to even assess their credibility.⁽¹²⁰⁾ This can pose difficulties in one party assessing and evaluating the credibility of a witness because the other party cannot assess the sincerity of his answers through his words and actions.

⁽¹¹⁹⁾Abdelkader, (n 11) 704.

⁽¹²⁰⁾E. Gaillard, 'Sociology of international arbitration.' *Arbitration International*, 31(1), 1-17.

However, in recent years, technological developments in electronic and digital technology have made it possible for improved technology to be used in arbitration. Such technologies include clearer video calls where the arbitrators are able to see the parties, their reactions, to cross-examine the testimonies, and to even assess their credibility.

Chapter Three

Electronic Arbitral Award of Electronic Arbitration

This Chapter is devoted to the definition of the electronic arbitral award, its conditions, and its requirements in three sections, respectively:

3.1. Definition of the Electronic Arbitral Award

The arbitration process shall end with the issuance of the arbitral award within the jurisdiction of the arbitral tribunal. The importance of defining an arbitral award, therefore, lies in the distinction between that provision and other decisions that may be made by the arbitral tribunal.

In this context, the New York Convention addressed the meaning of arbitral award, as article 1(2) states that “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.” The predominant approach of international conventions and national legislations governing arbitration is not expressly defined in respect of the arbitral award. However, most of them specify what the arbitral award must contain, and the rules and conditions that govern the arbitral award, rules which help ensure the legal status and formation of the arbitral award.

It seems that jurisprudence is divided in this regard in two approaches:

The Broad Approach

This trend, represented by the French professor Gaillard set out to expand the definition of arbitral award. In his opinion, the arbitral award includes "the decision of the arbitrator who finally resolves the dispute completely or partially or in a matter relating to the proceedings which led the arbitral tribunal to the termination of the dispute".⁽¹²¹⁾⁽¹²²⁾

The Narrow Approach

This trend is represented by Swiss jurisprudence represented by Professor Peymond and Lalive, who define arbitral award as, a decision that completely ends the dispute of arbitration. It should be noted that the broad approach has been more likely accepted and adopted in practice in defining the arbitral award. However, it is necessary to exclude decisions on certain issues of the dispute such as the decisions made by the arbitral tribunal concerning the determination of the law applicable to arbitral proceedings. This includes the place of arbitration, the validity of the contract or the determination of the liability of a party without specifying the amount of compensation.⁽¹²³⁾ These decisions are not considered arbitral awards in the strict technical sense, so they do not end the dispute or the arbitration.

In light of the above, the arbitration award may be defined as the final decision made by the arbitrator or arbitral tribunal on the subject matter of the dispute, in such a manner that the

⁽¹²¹⁾HM Haddad, *Summary in the General Theory of International Commercial Arbitration* (Halabi, Lebanon, 2007) 121; Shamsa, (n 115) 110. IR Al-Ghaibar, *The nullity of arbitral award* (First Edition, Dar Al-thqafa for Publishing and Distribution, Jordan, 2009) 30-31.

⁽¹²²⁾ Haddad, (n 127) 182. In light of this, the decisions of the arbitrator, such as the decision that relates to the proceedings of the investigation are not deemed to be arbitral awards, that they should be deemed administrative proceedings and partly judicial in nature. However, the decisions that are made by the arbitral tribunal which seeks to determine the law applicable to the arbitral proceedings, the subject matter of the dispute or the place of arbitration, the validity of the contract, or the determination of the liability of a party without specifying the amount of compensation, these are arbitral awards, albeit partial in their scope.

⁽¹²³⁾T Al Hamed, "The Contradiction of Arbitral award Comparative Study between GCC Systems" 9.

dispute is resolved finally and terminated ⁽¹²⁴⁾in whole or in part. Thus, the arbitral award of the electronic arbitration may be defined as the final decision of the arbitrator or arbitral tribunal on the subject matter of the dispute, in such a manner that the dispute is resolved finally and terminated in whole or in part by electronic means.⁽¹²⁵⁾

3.2 Conditions of Electronic Arbitral Award of Electronic Arbitration

The conditions of the electronic arbitral award may be related to the time of the issuance of the award, its writing, signature, content, reasoning and the method of notification concerning the parties.

3.2.1. The Date of Issuing the Award

Addressing the date of issuance of electronic arbitral award requires an explanation of the duration in which the award shall be issued, the date of its entry into force and the possibility of its renewal or suspension.

3.2.1.a. The Duration in Which the Award Shall Be Issued and the Date of Entry into Force

There is a discrepancy between international conventions governing arbitration. The Model Law and the UNCITRAL rules and ICSID Convention do not provide a specific period during which an arbitral award can be issued. While the ICC rules state that "the period during which the arbitral tribunal shall render its final decision is six months."⁽¹²⁶⁾

⁽¹²⁴⁾ Al - Khalidi, (n 67) 442

⁽¹²⁵⁾ Al - Khalidi, (n 67) 442

⁽¹²⁶⁾ ICC Rules, (n 31) Article (30/1). This period shall take effect according to the following:

1. The date of the last signature of the arbitral tribunal or of the parties on the document which gives the arbitral tribunal authorization.
2. In the event that one of the parties of arbitration refuses to participate in the preparation or signing of the document which gives the arbitral tribunal the authorization, the period shall start from the date of notification of the arbitral tribunal by the Secretariat that the court. This should also be accepted and adopted the mission document. The Court may determine a different period based on the schedule of proceedings prepared by the arbitral tribunal and handed over to the parties and the court.

The cyber-court regulation did not specify the period during which the arbitral award should be issued, and merely obliged the arbitral tribunal to determine the date of issuance of the award as the date of the conclusion of the hearing stage.⁽¹²⁷⁾ The WIPO Arbitration System set the maximum period in which the award shall be issued as three months from the date on which the arbitral tribunal was constituted.⁽¹²⁸⁾

We find that the Egyptian law requires "the arbitral tribunal to issue the final award of the entire dispute within the time agreed upon by the parties, if there is no agreement, the verdict must be issued within twelve months from the date of commencement of the arbitration proceedings".⁽¹²⁹⁾ The Jordanian law has requirements⁽¹³⁰⁾ similar to the Qatari law,⁽¹³¹⁾ and the UAE law.⁽¹³²⁾

It is noted that the said laws have left the parties free to determine the period during which the award is issued and the date of its entry into force in order to confirm the principle of the power of will of parties on which the arbitration is based. In case of non-determination by the parties, the Egyptian and Jordanian law requires that the arbitral award be issued within twelve months from the date of the commencement of arbitration procedures. The UAE law reduced this period to six months from the date of the first arbitration session which demonstrates the keenness of UAE law in settling disputes through arbitration at the soonest possible time. Qatari law on the other hand, requires the issuance of an arbitral award in one month from the date of the closing of the case.

⁽¹²⁷⁾Ibrahim, (n 66) 156.

⁽¹²⁸⁾Egyptian Law, (n 75) Article 56; Jaafar, (n 92) 76.

⁽¹²⁹⁾Egyptian Law, (n 75) Article (45/1).

⁽¹³⁰⁾Jordanian Law, (n 63) Article (37 / A).

⁽¹³¹⁾Qatari Law, (n 64) Article (31/5). This stipulates that the arbitration award must be issued by the arbitral tribunal within the time limit agreed by the parties or within one month from the closing date of the case, in case of absence of agreement.

⁽¹³²⁾UAE Law, (n 37) Article (201/1). This stipulates that if the parties of the arbitration agreement do not require a period of time, the arbitrator has to issue the arbitral award within six months from the date of the first arbitral session

3.2.1.b. Renewal (extension) of Duration:

It has been stated previously that the Model Law, the ICSID Convention, and the UNCITRAL Rules do not contain any limitation as to the period during which an arbitral award must be rendered. Thus, it makes sense to have no indication of its renewal. By contrast, the ICC rules set six months for the issuance of the arbitral award, which can be renewed by the court "upon a substantiated request from the arbitral tribunal or on its own motion if it deems it necessary".⁽¹³³⁾ The cyber-court grants the right to extend the period during which the arbitral award is supposed to be rendered, if the circumstances so require.⁽¹³⁴⁾

The Egyptian law gives the arbitral tribunal the right to renew the date of issuing the arbitration judgment for a period not exceeding six months unless the parties agree on a period exceeding that period.⁽¹³⁵⁾ The same applies to the Jordanian law.⁽¹³⁶⁾ The Qatari law shall extend the date of the awarding the judgment for a period not exceeding one month, unless otherwise agreed by the parties".⁽¹³⁷⁾ The UAE law provides similar provisions.⁽¹³⁸⁾

Accordingly, it is noted that the said laws have left the parties free to agree on the renewal period in which the arbitral award shall be issued. In the event where the parties do not agree on the renewal period, the aforementioned laws agreed upon may decide on whether a renewal period for the issuance of the arbitral award would be issued. The specified duration varies, with Egyptian

⁽¹³³⁾ICC Rules, (n 31) Article (30/2).

⁽¹³⁴⁾Ibrahim, (n 66) 156-158.

⁽¹³⁵⁾Egyptian Law, (n 75) Article (45/1).

⁽¹³⁶⁾Jordanian Law, (n 63) Article (37 / A).

⁽¹³⁷⁾Qatari Law, (n 64) Article (31/5).

⁽¹³⁸⁾UAE Law, (n 37) Article (210/1). "The parties of the agreement are able - either explicitly or implicitly – to extend the duration in which the award shall be issued even if it was specified by agreement or by law. Also, the concerned court may order to extend the duration in which the award shall be issued a new duration that is deemed appropriate to decide on the dispute".

and Jordanian law setting the period at six months, while the Qatari law setting it at one month; the UAE law left the renewal to the parties and to the arbitrator.

3.2.1.c. Suspend the Period:

Egyptian law, Jordanian law and Qatari law, ⁽¹³⁹⁾ provides that in the event that certain matters are brought to the attention of the court and the subject matter under arbitration has not yet to be deemed a proper matter for arbitration, the duration or the period in which the arbitral award shall be issued must be suspended until a final judgment is rendered regarding the subject matters.

The law of the United Arab Emirates has not specified matters where the duration of the arbitral award shall be issued. However, it provides that the said duration shall be suspended when the arbitration is suspended or stopped, and would resume again when the reason of suspension is no longer available.⁽¹⁴⁰⁾

3.2.1.d. Effect of Expiration of the Period Without Issuing the Award:

In the case of the expiry of the period of arbitration without the issuance of the award, Egyptian law similar to Jordanian Law authorizes any party of the dispute to submit its case to the court originally competent to hear it.⁽¹⁴¹⁾⁽¹⁴²⁾ While the Qatari law remains silent regarding this issue, the United Arab Emirates law adopted another approach. It did not give the parties the right to request extension of the period in which the arbitral award can be issued by the concerning court. The parties instead can only refer directly their case to the competent court.⁽¹⁴³⁾

⁽¹³⁹⁾Egyptian Law, (n 75) Article (46); Jordanian Law, (n 63) Article (43); Qatari Law, (n 64) Article (31/7).

⁽¹⁴⁰⁾UAE Law, (n 37) Article (210/3).

⁽¹⁴¹⁾Egyptian Law, (n 75) Article (45).

⁽¹⁴²⁾Jordanian Law, (n 63) Article (37 / A). Jordanian law states that "If the arbitration award is not issued within the time limit, either party to the arbitration may request the president of the competent court to issue an order to fix an additional date or more or to terminate the arbitration proceedings"

⁽¹⁴³⁾UAE Law, (n 37) Article (210/1).

3.2.2 The Condition of Writing

The requirement of writing in the arbitral award in article 4/1 of the New York Convention stipulates that the duly authenticated original award or a duly certified copy thereof shall exist and be supplied at the time of the application for enforcement.⁽¹⁴⁴⁾ The Model Law requires that the award shall be rendered in writing.⁽¹⁴⁵⁾ Article (34/2) of the UNCITRAL Rules requires that all arbitral awards be issued in writing.

National laws also require the writing requirement for arbitration award. Article 1473 of the French Act on Civil Procedure stipulates that the judgment shall be in writing. The Egyptian law stipulates the same in Article (43/1), same with Article 41(a) of the Jordanian law, the Qatari Law in article 31/1 and the UAE law article 212/5. Yet, it should be noted that the English Arbitration Act of 1996 took another approach that would emphasize the principle of the will of the parties. Article 52 states that "the parties are free to agree on the formation of the arbitral award. If they do not agree, the arbitral award must be signed by the arbitrators".

It is noted that most international conventions and national laws require the arbitral award to be put in writing, but they do not specify the mechanism, form or method of writing the arbitral award. This prompts the question on which form of writing is accepted in issuing an arbitral award.

It was not easy to answer this question in the recent past, because there is no legislative recognition of the use of documents extracted from the computer in transactions, especially in terms of legal evidence. But it seems easy in the present, especially after the issuance of the UNCITRAL Model Law on Electronic Commerce, which explicitly recognizes the use of

⁽¹⁴⁴⁾New York Convention, Article (4/1): "To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:(a) The duly authenticated original award or a duly certified copy thereof".

⁽¹⁴⁵⁾Model Law, (n 30) Article (31/1).

electronic writing and gives it the same legal recognition as traditional writing.⁽¹⁴⁶⁾ The United Nations Convention on the Use of Electronic Communications in International Contracts of 2005 had a very strong and efficient role particularly in the use of electronic communications in international contracts, where the traditional and electronic writing was treated equal, removing the ambiguity and the vagueness regarding the usage of electronic formations in international contracts.⁽¹⁴⁷⁾

It is noted that most national laws governing arbitration have been silent on the mechanism, form or method of writing of the arbitral award. Yet, the laws governing electronic transactions have dealt with this clearly. The Egyptian electronic signature law provided that the electronic writings have the legal force only if they meet the legal requirements.⁽¹⁴⁸⁾ The Jordanian Electronic Transactions Law, the Qatar Electronic Transactions and Electronic Commerce Law, and UAE Electronic Transactions and Commerce Law have all stated that electronic records, contracts, messages, and signatures shall be considered to produce the same legal consequences resulting from written documents and signatures in accordance with the provisions of the Laws in force in terms of being binding to the parties concerned or in terms of fitness thereof as an evidential weight if it fulfills certain conditions.⁽¹⁴⁹⁾

This demonstrated the efforts made to protect the rights of those who conclude their transactions and contracts electronically and those who define their obligations and their rights,

⁽¹⁴⁶⁾Model Law, (n 30) Article (6).

⁽¹⁴⁷⁾United Nations Convention on the Use of Electronic Communications in International Contracts of 2005, Article 9

⁽¹⁴⁸⁾Egyptian Law, (n 75) Article (18) of the said law. "The e-signatures, e-writing, and electronically written messages shall have the determinative effect for evidence provided their compliance with the following:

- A. The e-signature is for the signer solely
- B. The signer has sole control over the electronic medium
- C. Possible discovery of any modification or replacement of the data electronically written message or e-signature."

⁽¹⁴⁹⁾Jordanian Law, (n 63) Article (7); Qatari Law, (n 64) Article (21) and (24); UAE Law, (n 65) Article (5) and (7).

those who encourage and facilitate electronic transactions and correspondence through reliable electronic records, and those who facilitate and remove any obstacles to electronic transactions that may result from the ambiguity regarding writing requirements. Yet, there are conditions that must be met in electronic writing in order to have the same legal effects as traditional writing, and these conditions can be summarized as follows:

1. Access to the electronic record, storing it and returning it at any time without causing any change to it
2. The possibility of detecting and modifying the electronic record data

It is concluded that most of the international conventions and national laws have not tried to give a definition to electronic writing. The reason for this seems to be based on the desire to leave the concept broad and flexible to meet the requirements of rapid technological development. As a result, most international conventions and national laws tend to merely consider writing as an essential condition of the arbitration award. This is logical, since the award must be produced in writing in order to be tangible and to be visual so it can be referred to easily and implemented when and where necessary. As the traditional writing complies with the requirement of writing in traditional arbitration, electronic writing also complies with this requirement in electronic arbitration, in the sense of international conventions and national laws mentioned above.

3.2.3 The Condition of Signature

The electronic signature has been defined in many international conventions, national laws and jurisprudence⁽¹⁵⁰⁾ and they are presented in some of the definitions indicated below.

The UNCITRAL Model Law on Electronic Signatures defines an electronic signature as "data in electronic form that is included in a data message, added to or logically linked to it, which may be

⁽¹⁵⁰⁾YA Al-Nawafla, 'The Authenticity of E-Journals in Evidence,' (Master Thesis, *University of Jordan*, Amman, 2005) 54-55.

used to identify the location in relation to the data message and to indicate the location's consent to the information contained in the data message"⁽¹⁵¹⁾ which is similar to the definition under the Egyptian electronic signature law.⁽¹⁵²⁾The Jordanian Electronic Transactions Law defines it also in a similar way.⁽¹⁵³⁾The Qatari law of electronic transactions and electronic commerce presents a similar definition for electronic signatures".⁽¹⁵⁴⁾The UAE Electronic Transaction and Electronic Transactions Act defines it as a "means a signature consisting of letters, numbers, symbols, sound or electronic processing system that is attached or logically linked to an electronic message and which is designed to authenticate or authenticate that message."⁽¹⁵⁵⁾⁽¹⁵⁶⁾

It should be noted that the definitions described clearly focus on the intangible nature of the information message, and is not limited to the procedure of securing electronic signature using a particular means. Rather it includes means that may be used in its procedures, procedures that have include other means developed over time. This is very logical, because the electronic message (informatics) is constantly evolving. It also focused on determining the legal function desired in using the electronic signature, which is to indicate a party's consent to the content of the signed document.⁽¹⁵⁷⁾This means that the electronic signature, as well as the traditional (manual)

⁽¹⁵¹⁾Model Law, (n 30) Article (2/1).

⁽¹⁵²⁾Egyptian Law, (n 75) Article (1 / a). The Egyptian electronic signature law defines it as "what is placed on an electronic editor, taking the form of letters, numbers, symbols, signs or other, and has a single character which allows the person to identify the site and to distinguish it from others".

⁽¹⁵³⁾Jordanian Law, (n 63) Article (2).

⁽¹⁵⁴⁾Qatari Law, (n 64) Article (1).

⁽¹⁵⁵⁾UAE Law, (n 65) Article (1).

⁽¹⁵⁶⁾SY Al-Sabahin, 'Electronic Signature and its Authentic in Proof,' (Master Thesis, *University of Jordan*, Amman, 2005) 22. Moreover, the electronic signature has been defined by the specialists, some of whom declare it as: all signs, symbols or letters authorized by the competent authority to adopt the signature, and are closely related to electronic conduct, allowing the identification of the rightful individual without ambiguity.

⁽¹⁵⁶⁾ Others defined it as a set of technical procedures that allows the identification of the person to whom such proceedings were issued and their acceptance of the content of the conduct on which the electronic signature was issued.

⁽¹⁵⁷⁾A Tharwat, *Electronic signature, its nature, risks, how to confront it and the extent of its authority in the proof* (Aljala' aljadida Library, Mansoura, Egypt, 2003) 50.

signature⁽¹⁵⁸⁾ performs a specific function of identifying the signatory, ensuring that he agrees with what is stated therein.⁽¹⁵⁹⁾

Authentic Guarantees Electronic Signature:

The electronic signature faces a wide range of challenges in terms of its reliability and whether it can be considered forgery-proof. As such, these challenges require guarantees which can remove doubts on its reliability and its being forgery-proof.⁽¹⁶⁰⁾ International conventions and national laws governing electronic signatures have established specific conditions in order to ensure their legal validity. The UNCITRAL Model Law on Electronic Signatures identified these conditions in Article 6/3. The Egyptian electronic signature law also identified the same in Article 18 thereof. The same is indicated in the Jordanian Electronic Commerce Law in article 15. The Qatari Electronic Transactions and Electronic Commerce also defined it in the Article 28 as indicated in the Electronic Commerce Transactions Act of UAE Article 17 thereof. These conditions can be summarized as follows:

1. The electronic signature shall belong only to the signatory and no one else, and this means that the signature shall be a distinctive and shall indicative the signature of its owner.

⁽¹⁵⁸⁾Defined by Professor Christophe Devys as: "Each sign is placed on a document in which it distinguish the identity of the signatory and reveal his consent of the content of the signed document and deemed it as binding on him.

⁽¹⁵⁹⁾Tharwat, (n 165) 50. The following are the differences between the traditional signature and the electronic signature in addition:

- Formation: The traditional signature usually takes traditional forms such as stamping, fingerprint or signing, while electronic signature takes modern forms such as images, symbols, signs, numbers, voices, etc.
- Technique: The traditional signature is manually emptied on physical and tangible materials such as paper, while the electronic signature is emptied in a technical way on an intangible material using any of the approved electronic means.
- In terms of development: the development of the traditional signature is rigid, as it is limited to the form of stamping, fingerprinting, or signing, while electronic signatures can be developed, and can take many forms as indicated, as it shows new methods including magnetic, digital, and biometric modes.
- In terms of judgments: the traditional signature has been in use for the longest time and the rules governing its use in transactions have long been deemed stable, while the use of electronic signatures has been considered modern in their application. Its legal provisions keep evolving.

⁽¹⁶⁰⁾L Obeidat, *Proof of the electronic editor* (Al-Thaqafa House for Publishing and Distribution 2005).

2. At the time of the signature, signature creation data were subject to the control of the signatory and no other person.
3. The ability of detecting any modification or alteration in electronic signature data

It is certainly necessary to mention that signing the electronic award is required by international conventions in order to insure its legal force and protect its effects on arbitral awards. The Model Law requires that "the arbitral award be issued with the signature of the arbitrator or arbitrators, or the majority of them, with the reason for the absence of any signature".⁽¹⁶¹⁾ Similar provisions are indicated by the UNCITRAL Rules.⁽¹⁶²⁾ The ICC rules also stipulate that the arbitration award should be signed by the arbitral tribunal.⁽¹⁶³⁾ The Egyptian law stipulates that "the arbitral award shall be issued in writing and signed by the arbitrators."⁽¹⁶⁴⁾ The Jordanian law also has similar stipulations.⁽¹⁶⁵⁾ The Qatari and the UAE Law stipulates also similar requirements.⁽¹⁶⁶⁾⁽¹⁶⁷⁾

It can be noted from the above discussion that signing the documents, including arbitral awards, is tantamount to signing the spirit of the document, as the act of signing gives the document legal value purpose. Signing of traditional documents (paper) or electronic documents is essential in verifying the authenticity of the document. This certainly applies to arbitral award, as signing

⁽¹⁶¹⁾ Model, Law, (n 30) Article (31/1).

⁽¹⁶²⁾ UNCITRAL Rules, (n 29) Article (34/4). The UNCITRAL Rules stated that "the arbitral award shall be signed by the arbitrators, stating the date on which it was issued and the place of arbitration. In the case of more than one arbitrator and one more of them did not sign the arbitral award, the reasons must be mentioned".

⁽¹⁶³⁾ ICC Rules, (n 31) Article (33).

⁽¹⁶⁴⁾ Egyptian Law, (n 75) Article (43/1). In case of the formation of an arbitral tribunal by more than one arbitrator, the signatures of the majority of the arbitrators shall be sufficient, and, the reason of the absence of the minority of the arbitrators shall be mentioned".

⁽¹⁶⁵⁾ Jordanian Law, (n 63) Article 41 (a).

⁽¹⁶⁶⁾ Qatari Law, (n 64) Article (31).

⁽¹⁶⁷⁾ UAE Law, (n 37) Article (212). Under the UAE law, "the arbitrator's award shall be issued by a majority of opinions and must be written alongside with the dissenting opinion. It shall include in particular the signatures of the arbitrators. If one or more arbitrators refuse to sign the award, this shall be mentioned in the award. As is, the award shall nevertheless be considered sufficient.

these awards is a requirement for proving its validity and authenticity. Some groups have supported the application of standards to secure electronic signatures, as well as licensing of numerous technological activities. Some issues noted in electronic signature technologies include failures in international as well as domestic settings in securing legislative processes to manage electronic signatures.⁽¹⁶⁸⁾

Electronic signatures are considered unique to each person, organization, business, or company. Electronic signatures can refer to any electronically established symbol meant to be a signature indicating a specific individual signor. It also seeks to ensure that the signature is meant to be for a specific document.⁽¹⁶⁹⁾ Digital signatures are electronic in nature and usually apply specific private/public infrastructure tools which involve a complicated encryption process. With this technology, a certificate authority usually provides private and public keys for specific individuals. These individuals may then encrypt messages applying private keys which can be decrypted by the recipient in applying public keys.⁽¹⁷⁰⁾ Digital signature technology also includes a hash function in order to ensure the integrity of the message and this function relates to an algorithm which secures a specific message digest which is also covered in the message. As the message is decrypted, a recipient can tell where the message has been changed or modified.⁽¹⁷¹⁾

It seems that technological development made the electronic signature more authenticated than the traditional signature, because the traditional signature is a linear drawing which can be accurately imitated without the parties noticing, while electronic signatures are difficult to imitate

⁽¹⁶⁸⁾ W Krause, 'Do You Want to Step Outside? An Overview of Online Alternative Dispute Resolution,' (2001) 19 *J. Marshall. Computer & Info* 465-68.

⁽¹⁶⁹⁾ M Lewis, 'E-Commerce: Digital Signatures: Meeting the Traditional Requirements Electronically: A Canadian Perspective,' (2002) 2 *Asper Rev. Intl Bus. and Trade L.* 63, 69.

⁽¹⁷⁰⁾ Lewis, (n 178).

⁽¹⁷¹⁾ Lewis, (n 178).

as they are surrounded by electronic tools which guarantee security and confidentiality.⁽¹⁷²⁾ This makes electronic signatures more reliable in their own way. Most countries have developed laws to support the use of electronic signatures, alongside international uniform laws.⁽¹⁷³⁾

3.2.4 The Content of the Award

International conventions, as well as national laws, agree that arbitral awards must contain the minimum mandatory data, which can be referred to in order to ensure the validity of the arbitral award. These include:

3.2.4.a. Details of the Parties of Arbitration (Parties of the Dispute)

Most national laws require that the information of the parties of arbitration must be mentioned in the arbitral award.⁽¹⁷⁴⁾

3.2.4.b. Arbitrators' Details (Members of the Arbitral Tribunal)

Most national laws have confirmed the existence of arbitrator's data in arbitral awards.⁽¹⁷⁵⁾ These data include information on the names, addresses, nationalities, and identities of the arbitrators.⁽¹⁷⁶⁾ It is important to mention that the UAE law remained silent in this regard however, the UAE draft UAE arbitration law has stated that "the arbitral award shall include the names, addresses, and nationalities of the parties to the dispute as well as the names of the arbitrators".⁽¹⁷⁷⁾

3.2.4.c. A copy of the Arbitration Agreement

⁽¹⁷²⁾I Al-Roubia and A Al-Nali, 'Documentation of Electronic Arbitral Awards in Electronic Signature' Comparative Study '(2014) *Journal of Jeweler of Legal and Political Sciences* 169

⁽¹⁷³⁾Lewis, (n 178).

⁽¹⁷⁴⁾Egyptian Law, (n 75) Article (43/3); Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3; UAE Law, (n 37) Article 47/3

⁽¹⁷⁵⁾Egyptian Law, (n 75) Article 43/3, Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3.

⁽¹⁷⁶⁾Ibrahim, (n 66) 167.

⁽¹⁷⁷⁾UAE Draft Law, (n 87) Article (47/3).

Most national laws require a copy of the arbitration agreement or a summary of it and in some cases only a summary of an agreement to be attached to the arbitral award.⁽¹⁷⁸⁾

3.2.4.d. Summary of Claims and Defenses, Statements and Documents of Parties:

The majority of national laws require the arbitral award to include a summary of the parties' requests, statements and documents before the arbitral tribunal,⁽¹⁷⁹⁾ which requires a description of the main facts of dispute, the main claims of the parties, evidence and documents supporting their claims, as well as the demands of the parties and their defenses.

3.2.4.e. The Ruling (the Wording of the Award):

The arbitral award must include its ruling.⁽¹⁸⁰⁾ The ruling of the arbitral award is one which has decided on all issues brought before the tribunal's jurisdiction.

3.2.4.f. Date of Award:

The arbitral award shall include the date of its issuance.⁽¹⁸¹⁾ It is a significant requirement to indicate when the arbitral award has been issued and if it has been issued on time. Failure to issue the award within the proper date can nullify the award. The date of the arbitral award is evidence that cannot be denied by the concerned parties for any reason.

3.2.4.g. Determining the Place of Arbitration:

The arbitral award shall determine and mention the place of arbitration.⁽¹⁸²⁾ The importance of this is evident from two aspects: first, determining the character of the ruling, whether national, foreign

⁽¹⁷⁸⁾Egyptian Law, (n 75) Article 43/3; Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3; UAE Law, (n 65) Article 212/5.

⁽¹⁷⁹⁾Egyptian Law, (n 75) Article (43/3); Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3; Qatari Law, (n 64) Article (212/5).

⁽¹⁸⁰⁾Egyptian Law, (n 75) Article (43/3); Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3; UAE Law, (n 37) Article (212/5).

⁽¹⁸¹⁾Model Law, (n 30) Article 34/4; Model Law, (n 30) Articles (20/1) and (31/3); Egyptian Law, (n 75) Article 43/3; Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article (31/3); UAE Law, (n 65) Article (212/5).

⁽¹⁸²⁾Model Law, (n 30) Article 34/4; Model Law, (n 30) Article 31/3; Egyptian Law, (n 75) Article 43/3; Jordanian Law, (n 63) Article 41 (c); Qatari Law, (n 64) Article 31/3; UAE Law, (n 37) Article 212/5.

or international. Second is to determining the law applicable to the subject matter of the arbitration.

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3.2.4.h. Definition of Costs and Fees of Arbitration:

Most national laws such as Egyptian and UAE laws have remained silent on the costs and fees of arbitration. Jordanian law states that "the award shall determine the arbitrators' fees, the costs of arbitration and the way of distributing such costs between the parties...if no agreement on the arbitrators' fees has been concluded between the parties and the arbitrators, such fees shall be determined by a decision of the arbitral tribunal which may be subject to appeal before the competent court, and the court's decision in this respect shall be final".⁽¹⁸⁴⁾ ⁽¹⁸⁵⁾ It can be noted from the above that the costs of arbitration include: arbitrators' fees, arbitration expenses, how they shall be distributed among the parties, and payment procedures. There are different provisions of law on matters of costs. Some of them are completely ignored, such as Egyptian law, including the principle of freedom of parties such as the Qatari law, those that necessitated their presence in arbitration, whether by agreement of the parties or by the arbitral tribunal, such as the Jordanian law.

It is clear from the above that there is no contradiction between the nature of the electronic arbitration provision and the inclusion of details of the parties to the dispute, as well as the arbitrators' details, a copy of the arbitration agreement, a summary of the parties' claims and defenses, their statements and documents, the ruling, the date of the award, and the costs of

⁽¹⁸³⁾S Mansur, 'The invalidity of the arbitral award (*Comparative analytical study*) 15

⁽¹⁸⁴⁾Jordanian Law, (n 63) Articles 41 (c) and (d).

⁽¹⁸⁵⁾Qatari Law, (n 64) Article (31/4). The Qatari Law also states that "the arbitral award shall state the costs and fees of the arbitration and the party who shall pay such fees and the procedures of payment, unless the parties agree otherwise".

arbitration. This may be the case because electronic writing is now treated equally with traditional writing and has the same authenticity and effectiveness.

3.2.5 The Reasoning of the Electronic Arbitral Award

The reasoning of the arbitral award is to provide a sufficient explanation or justification for the ruling in the arbitral award. The European Convention pointed out that the standard rule of the arbitral award is to indicate reasons for its award, and to clarify the grounds on which the arbitral tribunal relied to issue the arbitral award, unless the parties of the dispute expressly agreed otherwise, or if they had subjected themselves to arbitral proceedings that require no reasoning for the award⁽¹⁸⁶⁾⁽¹⁸⁷⁾⁽¹⁸⁸⁾ Also, the ICSID convention states that the reasoning of the arbitral award is required.⁽¹⁸⁹⁾

The Egyptian law stipulates that "the arbitral award must be reasoned unless the parties to the arbitration agree otherwise, or the law applicable to the arbitration proceedings does not require the reasons for the award,"⁽¹⁹⁰⁾ same with Jordanian Law,⁽¹⁹¹⁾ Qatari Law⁽¹⁹²⁾ and the UAE law Article (212/5) which indicates that it is necessary for the arbitral award to address the reasoning that clarifies on which grounds the award was issued.

⁽¹⁸⁶⁾European Convention, (n 25) Article 8.

⁽¹⁸⁷⁾Model Law, (n 30) Article (31/2). The model Law emphasized that "the arbitral tribunal should clarify the grounds for awarding the award unless the parties agreed not to clarify the reasons.

⁽¹⁸⁸⁾UNCITRAL Law, (n 29) Article (34/3). The UNCITRAL Rules also made it clear that the arbitral tribunal should clarify the grounds for rendering the award, unless the parties agreed not to indicate these reasons.

⁽¹⁸⁹⁾ICSID Convention, (n 26) Article (48).

⁽¹⁹⁰⁾Egyptian Law, (n 75) Article (43/2).

⁽¹⁹¹⁾Jordanian Law, (n 63) Article 41 (b). The Jordanian law also states that "the arbitral award must be reasoned unless agreed otherwise by the parties of the arbitration or the law applicable to the arbitration proceedings does not require the reasons for the award".

⁽¹⁹²⁾Qatari Law, (n 64) Article (31/2). "The arbitral award must be reasoned, unless the parties agree otherwise, or the legal rules applicable to the arbitral proceedings do not require the reasons to be stated, or if the arbitration award is in accordance with the preceding article of this Law".

It is noted from the above that the views of international conventions and national laws governing arbitration are divided into three directions based on the reasoning indicated in the arbitral award.^{(193) (194)(195)}

3.2.6 Communication of the Electronic Arbitral Award

Various international conventions and national laws governing arbitration have addressed the matter of notifications in arbitral award. The Model law stipulates that "after the issuance of the arbitral award, a copy of it, signed by the arbitrators shall be delivered to each of the parties".⁽¹⁹⁶⁾The UNCITRAL Rules also indicated the need for the arbitral tribunal to send copies of the arbitral award signed by the arbitrators.⁽¹⁹⁷⁾ The ICC rules also provide that "additional copies certified by the Secretary-General shall be available upon request and at any time by the parties".⁽¹⁹⁸⁾

⁽¹⁹³⁾Ibrahim, (n 66) 168. Indicating the reasoning of the ruling of the arbitral award is a must. This is represented by the ICSID Convention and the UAE law, and others. This rule states that the reasons on which the arbitral award was issued must be stated and specified in the award itself, and there is no room for the parties to agree otherwise. This approach stands on the basis of the argument that the reasoning of the arbitral award is a guarantee for each of the parties of the arbitration so they can understand the arbitral award and be satisfied with it, and that it applies justice. Therefore, this requirement cannot be left to the agreement of the parties only to provide protection to them.

⁽¹⁹⁴⁾Sami, (n 22) 320. Indicating the reasoning of the ruling of the arbitral award shall be left for the parties to decide. This is represented by the United States law, the English law, the Austrian law, the Danish law, the Swedish law, the Norwegian law, etc. This approach states that the arbitration award should not be reasoned, but each party of the dispute shall have the right to submit and request from the arbitral tribunal that the award shall include the reasoning.

⁽¹⁹⁵⁾Sami, (n 22). Indicating the reasoning of the ruling of the arbitral award is a must unless the parties agreed otherwise. This is represented in The European Convention, the Model Law, the UNCITRAL Rules, French Law, Italian Law, Swiss Law, Spanish Law, Egyptian Law, Jordanian Law, Iraqi Law, Qatari Law, the UAE draft, and others. This approach indicates that the general rule is for the arbitral award to indicate reasoning. But there is room for the parties of arbitration to agree not to clarify those reasons, in accordance with the will of parties. It is important to mention that such agreement maybe concluded implicitly. This could be understood when the parties of the arbitration subjected themselves to a law where the arbitral award shall not be reasoned, for example, the United States law, the English law, the Austrian law, the Danish law, the Swedish law, the Norwegian law. These laws have a general rule not to provide reasoning for the arbitral award with the exception of the parties agreeing otherwise.

⁽¹⁹⁶⁾Model Law, (n 30) Article (31/4).

⁽¹⁹⁷⁾UNCITRAL Rules, (n 29) Article (34/6).

⁽¹⁹⁸⁾ICC Rules, (n 31) Article (34/2).

The Egyptian and Jordanian law provides that "the arbitral tribunal shall hand over to each of the parties a copy of the arbitral award signed by the arbitrators who have approved it within thirty days from the date of its issuance".⁽¹⁹⁹⁾⁽²⁰⁰⁾⁽²⁰¹⁾ The Qatari law stipulates it at 15 from the date of issuance"⁽²⁰²⁾ while the UAE law sets it that the arbitrators must hand over a copy of the arbitral award to each party within five days of the issuance".⁽²⁰³⁾It shall be noted from the above mentioned that, it is necessary to inform the parties of the arbitral award through the arbitral tribunal sending a copy of the arbitral award to the parties of the arbitration, provided that it is signed by the arbitrators.

The duration has been determined for this notification in order to regulate the matter. Some laws have to make the period 30 days from the date of the award issuance, as is the case with Egyptian law and Jordanian law. While other laws such as Qatari law determine the maximum period of 15 days from the date of the award issuance. Yet the UAE Law indicated 5 days only from the date of issuance.

It has been established that the arbitral award is being communicated to the parties of arbitration, although the methods and provisions vary from law to law. However, with regard to the specificity of the electronic arbitral award and its electronic communication, a question may arise with regard to the appropriateness and the methods being used in traditional arbitration, whether it would be applicable to the nature of electronic arbitration, in particular in such terms as

⁽¹⁹⁹⁾Egyptian Law, (n 75) Article (44/1).

⁽²⁰⁰⁾Jordanian Law, (n 63) Article (42 / a). According to the Jordanian law "the arbitral tribunal shall provide arbitral award to the parties within thirty days from the date of issuance".

⁽²⁰¹⁾Qatari Law, (n 64) Article (31/8). The Qatari law stipulates that "after the issuance of the arbitration award, a copy of the signed arbitral award shall be delivered to each party within fifteen days from the date of issuance".

⁽²⁰²⁾Qatari Law, (n 64) Article (31/8).

⁽²⁰³⁾UAE Law, (n 37) Article (213/1). The UAE law also states that "in arbitration between adversaries outside the court, the arbitrators must hand over a copy of the arbitral award to each party within five days of the issuance".

"replica", "delivery", "Inform", a "copy", and other phrases that have a traditional (paper) meaning. The UNCITRAL Model Law on Electronic Commerce provides an answer to this question and solution to this issue.⁽²⁰⁴⁾ ⁽²⁰⁵⁾

The United Nations Convention on the Use of Electronic Communications in International Contracts also stated that "the validity of the communication or the contract or its enforceability may not be denied merely because it is in the form of an electronic communication".⁽²⁰⁶⁾ Thus, the electronic document shall be treated as the original if the two conditions below are met:

1. The ability of ensuring the integrity of the information in the place of the arbitral award since the time it was established in its final form, which can be satisfied by its efficient dissemination complete without damage or distortion,
2. The ability of presenting the information in the place of the arbitral award to the person to be submitted to it when necessary.

3.3 Requirements of the Electronic Arbitral Award of Electronic Arbitration

3.3.1 Correction of the Arbitral Award

If the arbitral award has been issued with a material error in writing, it is not appropriate to leave it without correction. Yet, it is not justified to make this type of error a ground for claiming invalidity of judgment. As long as the error is nothing more than a material error, the judgment

⁽²⁰⁴⁾UNCITRAL Rules, (n 29) Article (8/1). Mostly by indicating an image identical to the original of the electronic document, stating that "when the law requires that information be provided or retained in its original form, the data message satisfies this requirement if it is found to be reliable. Since the time it was first created in its final form, as a data message or otherwise, that information could be presented to the person to be submitted to him/her when such information is required"

⁽²⁰⁵⁾UN Convention, (n 154) Article (8/2). The Convention continues to say that "the criterion for assessing the integrity of information shall be to determine whether it has remained complete and unchanged, except for the addition of any endorsement occurring in the ordinary course of communication, storage and presentation".

⁽²⁰⁶⁾UN Convention, (n 154) Article 8.

has to stand. It is sufficient to refer to the arbitrator or the arbitral tribunal who issued the award to correct it. It is important therefore to include correction provisions in the arbitration law.

The UNCITRAL Rules indicated that "a party may request the arbitral tribunal, within 30 days from the date of receipt of the award and subject to notice to the other parties of this request."⁽²⁰⁷⁾ The UNCITRAL rules continue to state that "the arbitral tribunal may make such corrections on its own within 30 days from the date of sending the award".⁽²⁰⁸⁾ The mentioned rules state that the correction shall be made in writing and must constitute part of the arbitral award.⁽²⁰⁹⁾ The ICC Rules stated that "the arbitral tribunal may, on its own initiative, correct any written, arithmetic, typographical or other errors of a similar nature set forth in the award, provided that such correction is presented to the court for approval within 30 days of the date of this judgment".⁽²¹⁰⁾⁽²¹¹⁾⁽²¹²⁾

⁽²⁰⁷⁾UNCITRAL Rules, (n 29) Article (38/1). Mostly to correct any errors in arithmetic, typographical, typographical or other errors, any oversight of a similar nature, and if the arbitral tribunal considers that such request is justified, it shall make the correction within 45 days from the date of receipt of the application"

⁽²⁰⁸⁾UNCITRAL Rules, (n 29) Article (38/2).

⁽²⁰⁹⁾UNCITRAL Rules, (n 29) Article (38/3).

⁽²¹⁰⁾ICC Rules, (n 31) Article (35/1).

⁽²¹¹⁾ICC Rules, (n 31) Article (35/2). Also authorizes any party to request with the Secretariat to correct a similar error in respect to such errors within 30 days from the date of receipt of the award. The arbitral tribunal shall then make the correction within a period not exceeding 30 days from the date of receipt of the request, and presenting it to the court within the same period

⁽²¹²⁾ICC Rules, (n 31) Article (31/3). These rules also affirmed that "the decision of amendment or interpretation of the arbitral award shall be issued and attached to the arbitral award and shall be considered part of it".

The Egyptian law stipulates that "the arbitral tribunal shall rectify material errors in writing or arithmetic by a decision issued on its own or at the request of one of the parties."⁽²¹³⁾ ⁽²¹⁴⁾⁽²¹⁵⁾⁽²¹⁶⁾ Also "the arbitral tribunal may rectify any of the errors referred to on its own, provided that all parties shall be notified, within seven days from the date of the award issuance".⁽²¹⁷⁾ The law also stipulates that "the arbitral tribunal may, if necessary, extend the period during which it must correct the arbitral award for a period similar to the original period".⁽²¹⁸⁾ The UAE law states that "... this court shall be competent to correct material errors of the arbitral award at the request of the concerned parties by means of the prescribed procedures to rectify the provisions".⁽²¹⁹⁾

Based on the above, the issue of correction of the arbitral award can be clarified with key points, including: knowing which error may be corrected, correction procedures, correction period, and correction decision. As follows:

3.3.1.a. The Error that May be Corrected:

The said laws confirmed that the correction of the arbitration award requires that the mistake may be purely material, whether it is a matter of arithmetic or if it is a literary error. In this case, the error can be corrected easily. It is not an error of judgment. Immaterial errors may be made

⁽²¹³⁾Egyptian Law, (n 75) Article (50/1). The arbitral tribunal shall make the correction without the need of a hearing session, within thirty days following the date of the award issuance or the date of the request made by the parties. The arbitral tribunal is entitled to extend the said period for 30 days more if necessary".

⁽²¹⁴⁾Egyptian Law, (n 75) Article (50/2). The correction decision shall be issued in writing by the arbitral tribunal and shall be notified to the parties within thirty days from the date of its issuance. If the arbitral tribunal exceeds its authority or jurisdiction while making the correction, it shall be permissible for the parties to ask for the invalidity of decision with reference to the articles 53/54 of this Law".

⁽²¹⁵⁾Jordanian Law, (n 63) Article (46 / B). The Jordan law also indicates similar provisions".

⁽²¹⁵⁾ Also "the correction decision shall be issued in writing by the arbitral tribunal and shall be notified to the parties within thirty days from the date of its issuance. If the arbitral tribunal exceeds its authority or jurisdiction while making the correction, it shall be permissible for the parties to ask for invalidity of such decision with reference to the provisions of the law".

⁽²¹⁶⁾Qatari Law, (n 64) Article (32/1).

⁽²¹⁷⁾Qatari Law, (n 64) Article (32/2).

⁽²¹⁸⁾Qatari Law, (n 64) Article (32/4).

⁽²¹⁹⁾UAE Law, (n 37) Article (215/1).

when the arbitral tribunal uses wrong expressions, words or numbers in expressing its ruling. The correction shall not necessitate obtain a new assessment or new decision from the arbitral tribunal.⁽²²⁰⁾

3.3.1.b. Correction Procedures:

The arbitral tribunal which issued the arbitral award shall undertake the task of rectifying the error on its own or at the request of one of the parties to the arbitration. Such request can be made by any party of the dispute. The correction request is not required to be in a special form.

Some laws, such as Qatari law, following the provisions of UNCITRAL rules require the parties to be notified of the request for correction. While other laws, including Egyptian law and the Jordanian make it clear that the correction decision shall be made with no hearings/sessions, as such no notification to the parties is required.

In the event where it is proven impossible for the arbitral tribunal which issued the arbitral award to come to session for purposes of the correction, such a situation shall be referred to the competent court unless the parties otherwise agree. Therefore, the parties may agree on the arbitral tribunal to carry out the correction or for an entirely new body to act as an arbitral tribunal and to carry out the correction.⁽²²¹⁾

⁽²²⁰⁾F Wali, 'Arbitration in National and International Commercial Disputes,' *Munsha'atalmaearif* 601. The error may be seen in the ruling section of the award, or it can be in another part of the arbitral award that is complementary to the ruling, provided that this error shall be clear from the ruling. It may also be noted when comparing the ruling with other parts of the award or in the minutes of the hearings. It is not permissible therefore to identify material errors and correct it by relying on papers or elements that may be out of the ruling or minutes of the hearings. Similar errors may also be noted in how the arbitral award misidentified the property in question, but in other parts of the award or in the minutes of the hearings, it did not. Under these conditions, the proper correction in the arbitral award may be made.

⁽²²¹⁾Wali, n. 238,p. 602.

3.3.1.c. Correction Period:

It has been noted that the correction period may be subjected to two different assumptions. First, the arbitral tribunal may proceed on its own discretion to make any of the corrections. In which case, the correction must be completed within a period of 30 days from the date of issuance of the arbitral award. This period may be extended to a similar period if the arbitral tribunal deems it necessary. This given period was followed by most laws including the Egyptian law and Jordanian law following the UNCITRAL rules and ICC rules. The Qatari law discarded this trend when it stated that the arbitral tribunal may proceed on its own discretion to make any of the corrections within seven (7) days from the date of issuance of the arbitral award. This provision has been set as an attempt to accelerate the process of arbitration. Also, the arbitral tribunal may, where necessary, extend the period where the Arbitral Tribunal is required to make the necessary corrections, to a similar period. The UAE law has left this matter to the general rules, however, the UAE draft law has stated that the arbitral tribunal may proceed on its own discretion to make any of the corrections within seven (15) days from the date of issuance of the arbitral award.⁽²²²⁾ This period is very reasonable, not very short and not too long when compared to the Qatari law and not too short as compared to the Egyptian and the Jordanian law. Second, the arbitral tribunal may proceed to make any of the corrections upon request of any of the parties. There is no time limit for the parties to submit their request of correction; therefore as a general rule, they can submit it anytime as long as the arbitral award has not been annulled or terminated, as long as it has not been already implemented, or as long as the right has not been time- barred. The arbitral tribunal is committed to a specified period of completion of the correction proceeding from the

⁽²²²⁾UAE Draft Law, n. 57, Article (45/1).

date of submission of the request, possibly extending the period for a similar time if such is deemed necessary. The Egyptian and Jordanian law made the due date for the correction 30 days from the date of the request, while the UNCITRAL Rules set it at 45 days from the date of receipt of the request. Seven days is the date specified by the Qatari law, starting from the date of the request. The UAE law has left the matter to the general rules, however, the UAE draft law set a similar period to what is applied in the Egyptian and the Jordanian law.

3.3.1.d. Correction Resolution:

The decision to correct the arbitral award shall be made in writing⁽²²³⁾ and signed by the members of the arbitral tribunal.⁽²²⁴⁾ The arbitral tribunal shall notify the parties of the correction decision within a specified time from the date of its issuance, which is 30 days in accordance with Egyptian and Jordanian law. Fifteen days is indicated by the UAE draft law and seven days as per Qatari law.

It is important to mention that the arbitral tribunal may not use the correction of entry to get the arbitral tribunal to change the substance of its ruling in the award. This can prejudice the results of the arbitral award. Therefore, if the arbitral tribunal has exceeded its authority and jurisdiction in making the needed correction, where the arbitral tribunal made a correction other than what has been agreed upon or what has been in the minutes of the hearing, or where the correction amended the ruling in a way that contradicted with the original ruling of the arbitral award, the arbitral ruling and the correction can be nullified. It should be noted, however, that the claim of nullification of the correction decision is a special case that differs in its purpose and nature from the claim of nullification of the arbitration award. The latter is intended to destroy the

⁽²²³⁾refer to the rules of writing which have been discussed previously

⁽²²⁴⁾refer to the rules of the signature, which have been discussed previously

arbitral award, while the first is intended to uphold and defend the arbitral award as issued before the correction was made.

3.3.2 Interpretation of the Arbitration Award

If the arbitral award is ambiguous, or where it is not clear about its ruling or decision, then interpretation is required. Most of the international conventions and national laws governing arbitration have regulated the interpretation matter. The UNCITRAL Rules state that "any party may request the arbitral tribunal, within 30 days from the date of receipt of the award provided that the other parties are notified of this request, to give an interpretation of the arbitral award".⁽²²⁵⁾ It also states that such interpretation shall be given within 45 days from the date of receipt of the request and that such interpretation shall be considered as part of the arbitral award".⁽²²⁶⁾

The Egyptian arbitration law stipulates that "either party to the arbitration may request the arbitral tribunal, within thirty days of receipt of the arbitral award."⁽²²⁷⁾ ⁽²²⁸⁾ The Jordanian and Qatari law states similar provisions.⁽²²⁹⁾ If the tribunal cannot attend to a session which would have explained the award, the courts may step in to explain the award, if such is accepted by the

⁽²²⁵⁾UNCITRAL Rules, (n 29) Article (37/1). The Egyptian arbitration law stipulates that "either party to the arbitration may request the arbitral tribunal, within thirty days of receipt of the arbitral award, to give an interpretation clarifying an ambiguity that appears in the dispositive part of the award. The party requesting clarification must notify the other party of the request before presenting it to the arbitral tribunal".

⁽²²⁶⁾Egyptian Law, (n 75) Article (37/2).

⁽²²⁷⁾Egyptian Law, (n.75) Article (49/1).

⁽²²⁸⁾Egyptian Law, (n 75) Article (49/3). The interpretation decision made by the arbitral tribunal shall form an integral part complementing the arbitral award which it clarifies shall be provided the same treatment".

⁽²²⁹⁾Qatari Law, (n 64) Article (32/4). The Jordanian law states that "either of the two arbitrating parties may, within thirty days following the date of receipt of the arbitral award, request the arbitral tribunal to interpret any ambiguity in the text of the award. It also highlights that "the interpretation shall be issued within thirty days following the date on which the request for interpretation was submitted to the arbitral tribunal. The Qatari law has indicated that "unless the parties otherwise agree, any party may within seven (7) days from receiving the arbitral award or any other period agreed to by the Parties, provided that the other parties are duly notified, request the arbitral tribunal to explain a given point of the arbitral award or apart thereof...The arbitral tribunal may, where necessary, extend the period wherein it is required to make the necessary explanation for a similar period".

parties.⁽²³⁰⁾The UAE law remains silent in such situations and leaves such matters to general rules. Based on the above, the question of the interpretation of the arbitral award can be clarified at key points, including the right to request interpretation and its timing. As follows:

3.3.2.a. The Right to Request Interpretation

The right to request an explanation shall be limited to the parties to the arbitration. No other persons shall have this right even if there is an interest in such interpretation. The arbitral tribunal may not interpret the arbitral award on its own.

3.3.2.b. Time to Interpret the Ruling:

The request of interpretation must be submitted within a certain time from the date of receipt of the arbitral award by the applicant for interpretation. Egyptian law and Jordanian law set the deadline of 30 days. Seven days is the deadline that set by Qatari law. The law of the UAE has left it to the general rules, however, the deadline to submit a request for explanation in the draft law UAE is 15 days.⁽²³¹⁾

3.3.3 Additional Award

The Model Law indicated that "any party may request the arbitral tribunal to issue an additional arbitral award in the event that the arbitral award is omitted within thirty days of its receipt of the arbitral award and provided that the other party is notified thereof..⁽²³²⁾ The

⁽²³⁰⁾Qatari Law, (n 64) Article (32/6).

⁽²³¹⁾UAE Draft Law, (n 87) Article (53/1).

⁽²³²⁾Model Law, (n 30) Article (33/3). Unless the parties agree to regulate the issue of the additional arbitral award in a different manner".

UNCITRAL rules also set 30 days.⁽²³³⁾⁽²³⁴⁾The Egyptian law stipulates that "either party to the arbitration may, even after the expiry of the arbitration period, request the arbitral tribunal, within thirty days following the receipt of the arbitral award, to make an additional award as to claims presented in the arbitral proceedings but which may have been omitted from the award".⁽²³⁵⁾⁽²³⁶⁾ The Jordanian law provides similar provisions.⁽²³⁷⁾⁽²³⁸⁾The Qatari law, however states that "unless the parties otherwise agree, any party may, provided that a prior notice is served to the other parties, request the arbitral tribunal within seven (7) days from the date of receiving the arbitral award, to issue a supplemental arbitral award in respect of claims that were prayed for in the course of the arbitration proceedings but were disregarded by the arbitral award".⁽²³⁹⁾⁽²⁴⁰⁾ The UAE draft law makes similar statements on the matter.⁽²⁴¹⁾

⁽²³³⁾ UNCITRAL Rules, (n 29) Article (39/1). The UNCITRAL rules states that "any party may request the arbitral tribunal, within 30 days from the date of receipt of the order to terminate the proceedings or arbitral award provided that the other parties are notified of this request to issue an arbitral award or an additional award for arbitration proceedings".

⁽²³⁴⁾ UNCITRAL Rules, (n 29) Article (39/2). The rules also state that "if the arbitral tribunal considers that the request for an award or an additional award is justified, it shall render the additional award or complete it within 60 days from the date of receipt of the request. However, the arbitral tribunal may, where necessary, extend the period wherein it is required to issue the necessary additional arbitral award".

⁽²³⁵⁾ Egyptian Law, (n 75) Article (51/1).

⁽²³⁶⁾ Egyptian Law, (n 75) Article (51/2). It also states that "the arbitral tribunal shall make its decision within sixty days of submission of the request, and it may extend this period for a further thirty days if it considers this to be necessary".

⁽²³⁷⁾ Jordanian Law, (n 63) Article (47 / A). It states that "either of the two arbitrating parties may, even after the expiry of the time limit for arbitration, request, within thirty days following the date of receipt of the arbitral award, for the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award".

⁽²³⁸⁾ Jordanian Law, (n 63) Article (47 / B). It also states that "the arbitral tribunal shall make the additional award within sixty days from the date on which the request was submitted, and may extend this period of time for another thirty days if it deems such extension necessary".

⁽²³⁹⁾ Qatari Law, (n 64) Article (32/3).

⁽²⁴⁰⁾ Qatari Law, (n 64) Article (32/6). If it is proven impossible for the arbitral tribunal which issued the arbitral award to come to session for purposes of the explanation or interpretation of the arbitral award, such a situation shall be referred to a competent court unless the parties otherwise agree".

⁽²⁴¹⁾ UAE Draft Law, (n 87) Article (55). It states that "either party to the arbitration may, even after the expiry of the arbitration period, request the arbitral tribunal, within the 15 days following the receipt of the arbitral award, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. It also states that "the arbitral tribunal shall make its decision within sixty days of submission of the request, and it may extend this period for a further thirty days if it considers this to be necessary"

Based on the above, the issue of an additional arbitral award can be clarified at key points, including: the arbitral tribunal's omissions to decide certain claims, requests for additional award, and disposals of such requests.

3.3.3.a. The Arbitral Tribunal's Omission to Decide Certain Claims:

It is noted that if the arbitral award is issued and the arbitral tribunal failed or to decide certain claims which were presented in the arbitral proceedings, either party to the arbitration may, even after the expiry of the arbitration period, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. The party to whom the claims was omitted by the arbitral tribunal shall not have the right to bring an action of annulment of the arbitral award as it is not a valid ground to do so.⁽²⁴²⁾

The omission means that the arbitral tribunal has unintentionally or mistakenly omitted deciding on the claim or number of claims presented during the proceedings of arbitration. Whether or not this claim relates to the parties or to the subject matter of the dispute or the cause of the dispute, the matter is subject to correction by the tribunal. It is right to assume that the claim concerns a contract as a fundamental issue and prescription is a secondary issue, with the arbitral award omitting to provide a decision regarding the prescription. Also, it would be assumed that a claim that focuses on fundraising money and its royalties can be subject to additional arbitration award, especially where the arbitral tribunal has ignored the issue of royalties. In all these examples there is an omission of a request made to the arbitral tribunal, and it is justified for the parties to the request for additional award from the tribunal.

⁽²⁴²⁾Fushar, Article 1631, 955.

It is important to mention that the requests in question are only the substantive requests, or the request that relate to subject matter. Therefore, there is no room of omission if the arbitral tribunal omitted a procedure request unless it is related to the conclusive oath request. Also there is no room for omission by the arbitral tribunal when it does not respond to the defenses submitted by the parties, not even if such defense were related to the subject matter of the dispute.⁽²⁴³⁾

It is important to mention that the arbitral tribunal would be deemed to have omitted its duties when it failed to clarify its ruling regarding the request submitted by the parties. Therefore, an indication by the arbitral tribunal stating that "all other requests shall be considered dismissed" does not preclude the arbitral tribunal from being asked to make additional award if the parties so request it. The phrase "all other requests shall be considered dismissed" shall only concern requests that the arbitral tribunal has already discussed during the proceedings.

3.3.3.b. Request for Additional Award:

In order for the arbitral tribunal to make a decision regarding the requests which have been omitted by the arbitral tribunal, it shall issue an additional award. This can only be made upon a request brought by the concerned parties, specifically the parties to the disputes. The aforementioned laws and conventions indicate that the right to submit this "request to issue an additional award" shall be for both parties of the arbitration. This means that the right to submit a request is not limited to the person whose requests and claims have been omitted, but also the

⁽²⁴³⁾RA Majid, 'Arbitration,' (2008) 11 *Journal of Arab Arbitration*. Moreover, the omission may occur with the original request, the subsidiary request, or the consequential requests. If the arbitral tribunal omitted the final requests that are submitted by the parties, then additional award shall be requested by the concerned parties. If a party himself omitted mentioning one of his requests, it shall mean that the request was set aside and the arbitral tribunal is not obligated to respond to it.

party against whom the claims or requests are being brought against. The latter may have an interest in requesting additional award since the mere submission of claim or request against him also creates a right for him to have the claims dismissed.

3.3.3.c. Disposed of the Additional Award Request

The request to issue an additional award shall be disposed by the same arbitral tribunal which has already ruled on the dispute. This arbitral tribunal shall not look into the request if one or more of its members are not available for reason of death or other reasons that prevent them from attending the meeting. Also the tribunal shall not look into the request without inviting the parties to attend. In the event where the arbitral tribunal is unable to meet, the parties may agree to appoint a new arbitrator to complete the arbitral tribunal, or to appoint a new arbitral tribunal to look into what has been omitted in the claims and requests in the award. Also it is permissible for the parties to resort to the competent court in order to complement the arbitral tribunal if any of the parties fail to select an arbitrator.⁽²⁴⁴⁾

It was established earlier that if the arbitral tribunal considers the request to issue an additional award to be justified, then the arbitral tribunal shall render its additional award within a specified period of time starting from the date of receipt of such request, however, the arbitral tribunal and may extend it if necessary for a certain period of time. This period of time is sixty days as per the model law, the UNCITRAL rules, the Egyptian law, the Jordanian law, and the UAE draft law, while it is seven days as per the Qatari law. Also, an extension of thirty days is allowed as per the Egyptian law, the Jordanian law, and the UAE draft law, while it is 7 days as

⁽²⁴⁴⁾E al-Qassas, (Dar al-Nahda al-Arabiya, Cairo 2000) 210.

per the Qatari law. It shall be noted, however, that the parties have the right to agree on a different period of time.⁽²⁴⁵⁾

⁽²⁴⁵⁾Wali, (n 230) 609.

Chapter Four

Effects of the Electronic Arbitral Award of Electronic Arbitration

The arbitral award, like the judicial judgment, has legal implications and effects similar to those of judicial judgment. The present study discusses three main implications of the electronic arbitral award. This subject is divided into three main sections. The first section deals with the authority of *res judicata* of the electronic arbitral award, the second relates to enforcement of the electronic arbitral award with respect to international conventions and national laws, and the third highlights the enforcement of the electronic arbitral award according to the idea of self-enforcement

4.1 *Res Judicata* of Electronic Arbitral Award of Electronic Arbitration

The national laws that regulate the arbitration method emphasize the principle of *res judicata* of the arbitral award. The Egyptian law states that "arbitral awards rendered in accordance with the provisions of the present Law have the authority of *res judicata* and shall be enforceable in conformity with the provisions of this Law".⁽²⁴⁶⁾ The Jordanian law⁽²⁴⁷⁾ and the Qatari law provide similar rules.⁽²⁴⁸⁾ The law of the UAE does not refer to the authority *res judicata* of the arbitral award as it is left it to the general rules that affirm such principle,

⁽²⁴⁶⁾Egyptian Law, (n 75) Article 55.

⁽²⁴⁷⁾Qatari Law, (n 64) Article 52; Jordanian Law, (n 63) Article 41 which states: "The provisions that have obtained the peremptory degree shall be an argument in which the rights are separated and no evidence shall be accepted to invalidate this presumption ..." It also states that "arbitral awards rendered in accordance with this law are deemed to have the authority of *res judicata* and shall be enforceable by complying with the provisions of this law".

⁽²⁴⁸⁾Qatari law, (n 64) Article (34/1). It states that "an arbitral award shall have the status of *res judicata* and shall be enforceable in accordance with the provisions of this Law, regardless of the country in which the award was issued"

however, the draft law of the UAE recognizes this matter by confirming the principle of *res judicata*, with the judgment being enforceable in accordance with the provisions of the Law.⁽²⁴⁹⁾

Based on the above discussion, it is possible to clarify the principle which states that an arbitral award shall have the status of *res judicata* by clarifying key points, including: the acquisition of status of *res judicata*, the status of *res judicata* as part of public order and public policy, and the exhaustion of the jurisdiction of the arbitral tribunal with regard to the dispute of the arbitration, respectively;

4.1.1 The Acquisition of Status of Res Judicata

The idea of the awards having the authority of *res judicata* is linked to judicial work and principles, whether the individual issuing the award or judgment is a judge or an arbitrator. The authority of *res judicata* of the award or judgment can be defined as a status given to the award that prevents the repeated presentation of the dispute which was already resolved to another body or to the same legal body, unless the law establishes a way to challenge the judge's or the tribunal's judgment or award. The arbitral awards⁽²⁵⁰⁾ shall be deemed to have the authority of *res judicata* whether it is national or foreign. The authority of *res judicata* of the arbitral award however cannot be upheld or invoked before Egyptian, Jordanian, Qatari or Emirati courts unless certain requirements and conditions have been met.⁽²⁵¹⁾

⁽²⁴⁹⁾UAE Draft Law, (n 87) Article 51.

⁽²⁵⁰⁾Dubai Court of Cassation Civil Appeal No. 265/2007 (2011) *International Arbitration Magazine* 11 247. The awards rendered in accordance with the provisions of the law shall be deemed to have the authority of *res judicata* immediately, and once rendered this status shall remain effective.

⁽²⁵¹⁾These conditions and requirement shall be discussed in details in the section were we shall talk about the implementation of arbitration provisions.

4.1.2 The Authority of *Res Judicata* is linked with the Public Order:

It is claimed that if the authority of *res judicata* of the judgments issued by the courts system is linked to the public interest and therefore to public order, the authority of *res judicata* of the arbitral awards shall also be linked to private interests.⁽²⁵²⁾⁽²⁵³⁾ The authority given to the arbitral tribunal is therefore almost completely equal to the authority granted to the courts. This issue of *res judicata* in relation to private and public interests therefore needs more study and evaluation to determine proper deduction.

The authority of the *res judicata* of the arbitral awards is linked to public order once it is rendered as long as it is rendered in accordance with the provisions of the law, same with the judgments issued by the court system.⁽²⁵⁴⁾ It should be noted that, although the arbitral award is linked to public order, the parties may agree to resort to the courts or to arbitration once again regarding the same dispute subject of rendered arbitral award⁽²⁵⁵⁾⁽²⁵⁶⁾

4.1.3 The Arbitral Tribunal's Exhaustion of its Jurisdiction

⁽²⁵²⁾W Ragheb, 'Is Arbitration a Type of Judiciary' (1993) *Journal of Rights, Faculty of Law and Sharia*; MM Younes, 'The Reference of the basics of arbitration,' 107

⁽²⁵³⁾See p. 86 of this thesis (beginning of this chapter) Unlike previous judgments, the law grants the authority of *res judicata* to arbitral award in order to protect private rights rather than protecting public interests. Also, arbitration is contractual, not judicial in nature. In effect, the parties of the arbitration agreement may (have the right) renounce and abandon the arbitration agreement, as is the case with all contracts. This opinion is under consideration and is subject to criticism as the arbitral award is considered as an actual judicial judgment, with international conventions and national laws regulating its application, expressly granting the authority of *res judicata* to its judgment.

⁽²⁵⁴⁾Wali, (n 230) 590.

⁽²⁵⁵⁾Court of Cassation – Dubai, (n 260). The parties may agree to resort to the courts or to arbitration once again regarding the same dispute subject of rendered arbitral award.

⁽²⁵⁶⁾Wali, (n 230) 155. Such agreement shall be deemed valid and it is not precluded by any previous arbitral award. The prevention that is being imposed on the parties of a dispute tried before the court is based on the provision of governance with the government authorized regulate the judicial system, allowing all persons the right to resort to it for one time only, for the same subject matter, and against the same opponent. Such a principle cannot be applied on the arbitration field as the parties of the arbitration agreement can renounce and abandon the arbitral award and resort instead to the competent court. This action by the parties would not conflict with the principle of *res judicata* as they are actually resorting to the court for the first time. The parties shall not be deemed to be disrupting the judicial system where they choose to resort to the courts.

In the event where the arbitral tribunal has decided on the dispute, including all claims submitted by the parties, then it shall be deemed to have exhausted its authority and jurisdiction over the case . As a result, the arbitral tribunal would have no jurisdiction or authority to look into it and decide on it again. In this regard, attention should be drawn on the importance of distinguishing between the principles of *res judicata* and exhaustion of jurisdiction. The exhaustion of jurisdiction would occur for each matter in which the arbitral tribunal has disposed (decided) during its proceedings until the end of the dispute, whether that matter was procedural or substantive. Therefore, the effect of exhaustion of jurisdiction remains within the dispute itself; this prevents the arbitral tribunal from reviewing the matter in the same dispute. The effects of *res judicata* shall be only for final and binding arbitral awards and not over every decision made by the arbitral tribunal. Therefore, the effect remains outside the dispute in which the arbitral award was issued.

4.2. Enforcement of Electronic Arbitral Award of Electronic Arbitration in Accordance with International Conventions and National Laws

The international conventions and national laws regulating arbitration emphasize the importance of the enforcement the arbitration award. ICC rules stipulate that "each arbitral award shall be binding on the parties and the parties undertake to refer their dispute to arbitration in accordance with these rules by implementing any arbitral award without delay".⁽²⁵⁷⁾The UNCITRAL rules made it mandatory for the parties to implement the arbitral award without delay.⁽²⁵⁸⁾The New York Convention obliges the parties to recognize and enforce the arbitral

⁽²⁵⁷⁾ICC Rules, (n 31) Article (34/6).

⁽²⁵⁸⁾UNCITRAL Rules, (n 29) Article (34/2).

awards, in accordance with the procedural rules of the State in which it invoked the decision and under the provisions of the convention.⁽²⁵⁹⁾The Egyptian law states that "arbitral awards rendered in accordance with the provisions of the present Law have the authority of *res judicata* and shall be enforceable in conformity with the provisions of this Law".⁽²⁶⁰⁾Jordanian law also states similar provisions⁽²⁶¹⁾ and so does the Qatari law.⁽²⁶²⁾The law of the UAE regulates the implementation of the arbitral award in articles (213-215) which confirms that the arbitration award must be carried out.

4.2.1. The Writ of Execution of the Arbitral Award

It is established that the enforcement of the arbitral award in general is consensual, as confirmed by various international conventions and national legislation that regulate arbitration. The ICC rules stipulate that "every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made".⁽²⁶³⁾The UNCITRAL rules made it mandatory for the parties to carry out the arbitral award without delay.⁽²⁶⁴⁾

The writ has two elements. The first is the arbitral award, which includes the ruling which obliges each party to comply. The second element is the executive order which orders the parties to comply with the award.⁽²⁶⁵⁾ It is important to check that every arbitral award is deemed

⁽²⁵⁹⁾New York Convention, (n 155) Article 3.

⁽²⁶⁰⁾Egyptian Law, (n 75) Article 55.

⁽²⁶¹⁾Jordanian Law, (n 63) Article 52, Article 41, which states: "The provisions that have obtained the preemptory degree shall be an argument in which the rights are separated and no evidence shall be accepted to invalidate this presumption"

⁽²⁶²⁾Qatari Law, (n 64) Article (34/1).

⁽²⁶³⁾ICC Rules, (n 31) Article (35/6).

⁽²⁶⁴⁾UNCITRAL Rules, (n 29) Article (34/2).

⁽²⁶⁵⁾Wali, (n 230) 611.

binding on the parties and the writ of execution helps ensure that the ruling can be forcibly executed on the parties. Where both parties comply voluntarily with the award there is no need for a writ of execution to be sought with the courts.

4.2.2. The Application to Implement the Electronic Arbitral Award

The international conventions and national laws regulating arbitration sought to provide legislative standards that would enable the enforcement of arbitral awards. New York conventions state that "to obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof".⁽²⁶⁶⁾⁽²⁶⁷⁾

The model law pointed out that "the party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof."⁽²⁶⁸⁾ The Egyptian Law states that "jurisdiction to issue an enforcement order of arbitral awards lies with the president of the court referred to in Article 9 of this Law or with the member of said court who has been mandated for this purpose by delegation from said precedent. The application for enforcement of the arbitral award shall be accompanied by the following:

1. The original award or a signed copy thereof.
2. A copy of the arbitration agreement.

⁽²⁶⁶⁾New York Convention, (n 24) Article (4/1).

⁽²⁶⁷⁾New York Convention, (n 24) Article 4 (2). It also stated that "if the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator, or by a diplomatic or consular agent.

⁽²⁶⁸⁾Model Law, (n 30) Article (35/2). The original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language"

3. An Arabic translation of the award, certified by a competent organism, in case the award was not made in Arabic.
4. A copy of the procès-verbal attesting the deposit of the award pursuant to Article 47 of this Law".⁽²⁶⁹⁾

Jordanian Law states that "an application for enforcement shall be submitted to the competent court."⁽²⁷⁰⁾ Also "the application for enforcing the arbitral award shall not be accepted unless the period of time given to the action for nullity expires".⁽²⁷¹⁾⁽²⁷²⁾⁽²⁷³⁾ The UAE draft law states that the "jurisdiction to issue an enforcement order of arbitral awards lies with the president of the court of appeals or with the member of said court who has been mandated for this purpose, through delegation by said president."⁽²⁷⁴⁾⁽²⁷⁵⁾

Based on the above, it is noted that there are legislative standards and requirements that govern the application to implement the electronic arbitral award. These requirements can be clarified by highlighting the main points including: the submission of an application for

⁽²⁶⁹⁾Egyptian, (n 75) Article (56).

⁽²⁷⁰⁾Jordanian Law, (n 63) Article (53/a). Must be accompanied with the following: A copy of the arbitration agreement; the original award or a signed copy thereof. An Arabic translation of the arbitral award shall be authenticated by an accredited authority if the award was not issued in Arabic"

⁽²⁷¹⁾Jordanian Law, (n 63) Article (53/a).

⁽²⁷²⁾Qatari Law, (n 64) Article (34/2). Qatari law states that "an application for enforcement of the arbitral award shall be submitted in writing to a competent judge, with a copy of the arbitration agreement, and the original award or a certified copy of it in the language in which it was issued, along with a certified Arabic translation if it was issued in a foreign language, unless the parties agree on alternative methods to enforce the arbitral award".

⁽²⁷³⁾Qatari Law, (n 64) Article (34/3). Also, "an application for enforcement of the arbitral award shall not be accepted until the lapse of the time limit set for the submission of the application for setting aside the award".

⁽²⁷⁴⁾UAE Draft Law, (n 87) Article (60). The application for enforcement of the arbitral award shall be accompanied by the following:

1. The original award or a signed copy thereof.
 2. A original or copy of the arbitration agreement.
 3. An Arabic translation of the award, certified by a competent organism, in case the award was not made in Arabic.
- A copy of the procès-verbal attesting the deposit of the award pursuant to Article 51 of this Law".

⁽²⁷⁵⁾UAE Draft Law, (n 87) Article (60). The same article also states that "an application for enforcement of the arbitral award shall not be accepted until the lapse of the time limit set for the submission of the application for setting aside the arbitral award".

enforcement of the arbitral award, translating the arbitral award, and the period in which such application shall be submitted.

4.2.3. The Conditions of Issuing the Executive Order for Enforcement of the Arbitral Award

The executive order for enforcement of the arbitral award is not only a matter of material procedure, that of issuing the writ of execution. But it is also an order provided based on the authority of a competent judge; therefore only he can issue the executive order for enforcement of the arbitral award. This writ can only be issued after ascertaining the availability of certain conditions required by law. These conditions are as follows:⁽²⁷⁶⁾

The first condition is that the time limit set for the submission of the application for setting aside or for the nullity of the arbitral award has been elapsed. According to the model law, the Egyptian Law and the UAE draft law, an action for nullity of the arbitral award must be raised within thirty days following the date on which the arbitral award was notified to the party against whom it was rendered.⁽²⁷⁷⁾ However, it is only thirty days according to Jordanian Law and Qatari law.⁽²⁷⁸⁾

The second condition: that each party, especially against whom the arbitral award has been set, shall be duly notified of the arbitral award. This condition can be carried out only after the

⁽²⁷⁶⁾New York Convention, (n 24) Article (5/2); Model law, (n 30) Article (36 / B); Egyptian Law, (n 75) Article (58); Jordanian Law, (n 63) (54/a); Qatari Law, (n 64) (35/2).

⁽²⁷⁷⁾Model law, (n 30) Article (34/3); Egyptian Law, (n 75) Article (54); Jordanian Law, (n 63) (50/2); Qatari Law, (n 64) (33/3); UAE Draft Law, (n 87) Article (58/1).

⁽²⁷⁸⁾According to the Qatari law Article (33/4), An application for setting aside is to be filed before the Competent Court within one month from the date on which the Parties have received the award, from the date on which the party making that application is notified of the arbitral award, or from the date of issuing the correction, interpretation or the additional award stated in Article (32) of this Law, unless the Parties agree in writing to extend the time limit for the filing of the application to set aside

issuance of the arbitration award, where a copy of the signed arbitral award is delivered to each party.⁽²⁷⁹⁾

The third condition is that arbitral award does not include anything that contravenes the public order of the state. Therefore, the competent court can decide to set aside the arbitral award on its own motion if the subject-matter of the dispute cannot be settled under arbitration under the law of the State.⁽²⁸⁰⁾

International conventions and national laws that regulate arbitration give the party against whom the award is invoked the right to request the competent court to whom the application of recognition or enforcement has been submitted to refuse such application. The enforcing court may refuse enforcement if the applicant proves required facts.⁽²⁸¹⁾

We have found that the arbitral award requires certain conditions and requirements to be met to be recognized and implemented by law. Also the party against whom the award is invoked

⁽²⁷⁹⁾ See: Communication and notification of the Electronic Arbitral Award from this thesis. The period in which the parties of the arbitration shall be duly notified vary. Some laws such as the Egyptian and Jordanian laws determined the period of notification to be at thirty days from the date of the award issuance, while other laws such as the Qatari law determine the period of 15 days from the date of the award issuance to establish period of notification. UAE Law determines their period of notification at 5 days only from the date of issuance.

⁽²⁸⁰⁾ Al-Maani, (n 68) 261.

⁽²⁸¹⁾ Egyptian Law, (n 75) Article (34); Jordanian Law, (n 63) Article (49 / a); Qatari Law, (n 64) Article (35/1); UAE Draft Law, (n 87); 1: One party to the arbitration agreement, at the time of the conclusion of that agreement, was incompetent or under some incapacity under the law governing its capacity, or the arbitration agreement is invalid under the law to which the parties have agreed to apply to the agreement or under the law of the country where the award was made.

2: The party against whom the enforcement is being sought was not duly notified of the appointment of the arbitrator or the arbitral proceedings, or was unable to present his defense for any reason beyond his control;

3: The award has decided matters which fall outside the scope of the arbitration agreement, or in excess of the arbitration agreement. However, it is possible to separate parts of the awards related to the arbitration from the parts unrelated to it. Yet it is allowed to recognize or enforce the award based on matters within the scope of the arbitration agreement or matters not exceeding such agreement.

4 The composition of the arbitral tribunal, the appointment of arbitrators, or the arbitral proceedings was in contradiction of the law or the agreement of the parties, or, in the absence of an agreement, was in contradiction of the law of the country where the arbitration took place;

5: The arbitral award is no longer binding to the parties or has been set aside, or enforcement of the award has been stayed by a court of the country in which the award was issued or in accordance with the law thereof.

It is important to mention that the competent court refusing or agreeing to enforce an arbitral award is subject to review by another competent court within a specific period of time from the date such decision is issued.

has to prove certain facts in order for him to be able to request the competent court to which the application of recognition or enforcement has been submitted, to refuse such application. Such requirements and conditions can be met with respect to the electronic arbitral award especially after proving that the methods being used in electronic arbitration are appropriate and applicable for implementation under the law. The UNCITRAL Model Law on Electronic Commerce has provided a solution on the issue of originality of the agreement submitted, or the notification of the arbitral award by stating that "when the law requires that information be provided or retained in its original form, the data message satisfies this requirement if it is found to be reliable since the time it was first created in its final form, as a data message or otherwise, and that information could be presented to the person to be submitted to it when such information is required".⁽²⁸²⁾ The UNCITRAL also indicates that "the criterion for assessing the integrity of information shall be based on whether it has remained complete and unchanged, except for the addition of any endorsement occurring in the ordinary course of communication, storage and presentation."⁽²⁸³⁾ The United Nations Convention on the Use of Electronic Communications in International Contracts also states that "the validity of the communication or the contract or its enforceability may not be denied merely because it is in the form of an electronic communication".⁽²⁸⁴⁾

It is also believed that those who resort to electronic arbitration should ensure that an additional procedure is implemented, which is to reflect on the judgment on a paper pillar and to communicate it through the ordinary mail of the parties in order to safeguard the rights of the

⁽²⁸²⁾Model Law, (n 30) Article (8/1).

⁽²⁸³⁾UNCITRAL Rules, (n 29) Article (8/2).

⁽²⁸⁴⁾UN Convention, (n 154) Article 8.

parties and to guarantee the implementation of arbitral awards, after notification of the e-arbitral award by e-mail to the arbitral parties.⁽²⁸⁵⁾

4.3. Enforcement of Electronic Arbitral Award of Electronic Arbitration in Accordance with the Idea of Self-Implementation

Some jurisprudence,⁽²⁸⁶⁾ sets forth that the enforcement of electronic arbitral awards should not be brought before national jurisdictions, as in traditional arbitration, since national laws governing arbitration do not adequately support the private nature of electronic arbitration in general, and in particular the electronic arbitral award. Therefore, the effectiveness of the electronic arbitral award is being threatened.⁽²⁸⁷⁾ There are two type of self – enforcement methods: one, the so-called direct self-enforcement methods and second, the so-called indirect self-enforcement methods. These methods shall be discussed respectively:

4.3.1. The Principle of Indirect Self-Enforcement of the Electronic Arbitral Award

The idea of indirect self-enforcement of the electronic arbitral award is to push the party against whom the award is invoked to implement the electronic arbitral award without resorting to the court system, using indirect methods such as;

4.3.1.a Threat to Withdraw Trust Mark:

This method is based on the idea of a trust mark which is considered to be of great economic value. Such trust marks are being granted to websites by certain organizations such as the

⁽²⁸⁵⁾ Abu Saleh, (n 43) 171.

⁽²⁸⁶⁾ Ibrahim, (n 66) 182.

⁽²⁸⁷⁾ Ibrahim, (n 66) 183.

Electronic Settlement Network for Consumer Disputes (ECODIR).⁽²⁸⁸⁾⁽²⁸⁹⁾In the US, trust marks are considered seals of approval which organizations or corporations create and make visible on their webpages in order to establish trust and confidence in their activities and business, with the end goal of further encouraging online transactions.⁽²⁹⁰⁾ To make such trust marks visible, businesses and organizations have to assent to some codes of conduct in the management of disputes as secured by the trust mark organization⁽²⁹¹⁾. The numerous guidelines mostly call for businesses to adopt best practices in the market and ensure efficient access to data, as well as cancellation and refund policies, privacy policies, and complaint/dispute processes.⁽²⁹²⁾ In the US, policies applicable are the American Bar Association's Task Force on Electronic Commerce and Alternative Dispute Resolution, *Addressing Disputes in Electronic Commerce: Final Recommendations and Report*.⁽²⁹³⁾ There are trust marks which call on businesses to take part in online dispute resolutions (ODR) to manage any disputes with the assistance of specific private arbitrators.⁽²⁹⁴⁾ The trust mark organization is then responsible to ensure that the member/parties comply with the numerous guidelines. In promoting easy access among business partners for dispute resolution services and in establishing trust and confidence in numerous online businesses

⁽²⁸⁸⁾ECODIR helps consumers and businesses prevent or resolve their complaints and disputes online using a quick, efficient and affordable service. The service is free to both consumers and businesses. ECODIR benefits consumers by providing them with an effective means of solving their complaints online.

⁽²⁸⁹⁾Matar, (n 72) 490 ECODIR indicates the reliability of sites, thereby helping consumers develop their trust on said sites. This trust mark can be given to these websites in exchange for their adherence to the rules and requirements provided by the organizations granting such marks. Usually, these organizations oblige their parties to resort to certain arbitration centers to resolve any disputes. The parties who fail to enforce and implement the arbitral award shall lose their given trust mark.

⁽²⁹⁰⁾ Berkman Center for Internet & Society at Harvard Law School, *E-Commerce: An Introduction, Session 5: Disputes*<http://cyber.law.harvard.edu/e-commerce/disputes.html> [accessed 01 July 2018].

⁽²⁹¹⁾A Nensiel, 'Online Dispute Resolution: A Canada-United States Initiative' (2006) *Can USLJ* 32, 213.

⁽²⁹²⁾Nensiel, (n 307) 213.

⁽²⁹³⁾ American Bar Association's Task Force on Electronic Commerce and Alternative Dispute Resolution, 'Addressing Disputes in Electronic Commerce: Final Recommendations and Report,' (2002) 58 *Business Law* 415.

⁽²⁹⁴⁾Nensiel, (n 307).

via established dispute prevention processes, trust marks support and encourage parties to participate in online transactions.⁽²⁹⁵⁾ Trust marks can be directly used in online dispute resolution processes in order to assist ODR providers and ensure that they actually comply with different guidelines to promote fairness and ensure confidence in the process of resolving disputes.⁽²⁹⁶⁾ The trust mark system for ODR providers can improve the participation of businesses and consumers in engaging in ODRs.

4.3.1.b. Black List System:

The black list system periodically issues a list of the names of websites that delay or refuse to implement the arbitral awards issued by the centers that provided the electronic arbitration resolutions services. Being in this list has a negative impact on one's business reputation. The basis of this system is founded on an agreement between the websites, the organizations that grant the trust marks, and the entities that manage the business reputation of the websites.⁽²⁹⁷⁾ Therefore, this method is considered as an effective indirect threat which can be used against parties refusing to recognize the arbitral award.

4.3.1.c. Reputation Management System:

The Reputation Management System publishes the resume, the background, and the business reputation of the website. Therefore, it is not possible to get rid of the negative information related to the delay or the refusal to enforce the electronic arbitral awards rendered by the electronic arbitration resolution centers.⁽²⁹⁸⁾ This system is considered indirectly effective

⁽²⁹⁵⁾ EM Katsh and J Riflnd, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass 2001)

⁽²⁹⁶⁾ Nensiel, (n 307).

⁽²⁹⁷⁾ HO Mohamed, *International Jurisdiction of Courts and Arbitrators in E-Commerce Disputes* (Aljamieataljadida House, Alexandria, 2009)

257. Entities that manage the business reputation of the websites are entitled, according to that agreement, to publish a list containing the name of the website that delays and refuses to implement the arbitral awards, along with all related details.

⁽²⁹⁸⁾ Ibrahim, (n 66) 188.

indirect as it pushes the party against whom the award is invoked to fulfill his obligations and implement the electronic arbitral award in order to avoid the negative reputation that may affect their business.

4.3.1.d. Expulsion from the Electronic Markets:

Under this method, the electronic arbitration resolution centers have the right to submit an application to the electronic service provider responsible for providing information services on the Internet, in order to prevent certain websites refusing to implement the arbitral award from using the Internet. If the submitted application is accepted by the said service provider, the latter shall shutdown the aforementioned website page on the internet so that it now becomes unreachable. This can seriously damage businesses and cause economic losses as well as damage the reputation of said businesses.⁽²⁹⁹⁾

4.3.1.e. Threatening Penalties and Fine:

The threat penalty system is a familiar method within the framework of the judiciary system which is based on the obligation of the party against whom the award is invoked, to pay a monetary amount as a fine for each day of delay in carrying out the ruling of the award. This is meant to push the party against whom the award is invoked to implement the ruling as soon as possible in order to avoid an increase in the value of the fine. Any delay will result in an increase in the penalty/fine. It is important to mention that the estimation of the amount of the threatened penalty/fine is based on the value of the subject matter of the dispute and the period in which the party against whom the award is invoked refrained from implementing it.

⁽²⁹⁹⁾Ibrahim, (n 66) 189.

4.3.2 The Principle of Direct Self-Enforcement of the Electronic Arbitral Award

The idea of the principle of direct self-enforcement of the electronic arbitral award is based on the need to push the party against whom the award is invoked to implement the electronic arbitral award without resorting to the court system by using direct methods such as;

4.3.2.a. Deposit of a Financial Guarantee:

Under this method, the parties to the arbitration shall deposit a certain amount of money to the account of the electronic arbitration centers before the commencement of the arbitral proceedings, provided that this amount remains frozen, only disposable after the end of the arbitral proceedings. This facilitates the work of the electronic arbitration centers, as the center can implement the award against the party against whom the award is invoked directly.⁽³⁰⁰⁾

4.3.2.b. Control the Credit Card

This method includes two agreements, first between the parties to the electronic arbitration and the electronic arbitration centers, whereby the latter has the authority to control the credit cards of the party against whom the award is invoked. Second is between each party and the bank issuer of their credit card.⁽³⁰¹⁾

4.3.2.c. Electronic Self-Implementation:

This method is based on an agreement between the electronic arbitration centers and the parties to the dispute subject to arbitration, whereby the Center is entitled to execute the award directly. This method may only be activated when recourse to the ICANN⁽³⁰²⁾ and its affiliated entities is made. These are bodies which are competent in resolving disputes arising from the use

⁽³⁰⁰⁾ Ibrahim, (n 66) 191.

⁽³⁰¹⁾ Matar, (n. 72) 493

⁽³⁰²⁾ Founded in California in 1998, a non-profit organization that distributes and manages IP addresses and domain names, and assigns top-level domain names such as .com, .info, and others. ICANN resolves disputes relating to ownership of domain names and Domains through a unified dispute resolution policy (UDRP).

of domain names and websites. The agreement between ICANN registration applicant expressly states that ICANN has the right to take the necessary actions to modify the domain name, or to remove confusion or delete the entire domain name if an illegal registration of the domain name is detected or if it is subsequently found to be similar to a trademark of another domain name previously registered.

Conclusion

The use of arbitration in commercial transactions domestically and nationally has steadily increased. Today's court rulings have become more enforceable, voluntarily or by force of law through the judiciary. The terms of arbitration are no longer dependent on parties involved. It is clear from numerous legal options, especially with the parties and arbitral judges taking into account judicial work to reach arbitration provisions that support legislation, jurisprudence, and the judicial system. It is also clear that arbitration is an alternative legal method and it is the desire of the parties to establish their legitimate way of settling disputes. In this process, the parties entrust an arbiter, instead of a court to decide on the dispute fairly and based on the terms of their agreement or based on their preferences.

The position of international conventions and national laws is to give the parties the freedom to choose the law which would apply to them when it comes to settling business transactions and to protect the rights and obligations associated with arbitration outcomes. It can be noted that where the parties do not indicate the applicable law, the arbitral tribunal can implicitly generate the will of the parties. These circumstances are often based on the nationality of the parties, the currency agreed upon, the language used in their dealings with each other, their reference to any rules of law, the state in which they have agreed to arbitrate, and other circumstances. In terms of the place of arbitration, this is left to the will of the parties of the arbitration, or to what the arbitral tribunal considers appropriate.

It is incumbent on governments and technology leaders to narrow the gap in information and electronic technology between states, between people of different nations and cultures, between people of different technological knowledge and expertise, and between people of different economic backgrounds. Still developments in technology in recent years have improved

available tools for electronic arbitration. Such technologies include clearer video calls where the parties are able to see each other and their reactions to each other even over long distances. As such, more developments on the electronic scale have helped ensure that electronic arbitration would be able to serve the growing and changing needs of the people.

It is important to acknowledge that it is natural for any new system to face a range of challenges, difficulties, and obstacles that will stand in the way of its progress and success, especially in underdeveloped countries which suffer from weak capabilities and poor infrastructures. It can be noted that consumers at present, as a result of the increasing reliance on modern methods in various transactions tend to deal and conclude contracts by electronic means. This trend has continued to enhance confidence in the electronic world and clearly reflects the importance of ensuring that this new system of arbitration and doing business would succeed.

Arbitration awards may be considered as the final decision made by the arbitrator or arbitral tribunal on the subject matter of the dispute, in such a manner that the dispute is resolved finally and terminated in whole or in part. Accordingly, it is noted that the said laws have left the parties free to agree on the renewal period in which the arbitral award shall be issued. In the event where the parties do not agree on the renewal period, the aforementioned laws agreed upon may decide on whether a renewal period for the issuance of the arbitral award would be issued. The specified duration varies, with Egyptian and Jordanian law setting the period at six months, while the Qatari law setting it at one month; the UAE law left the renewal to the parties and to the arbitrator.

In terms of electronic writing, most international conventions and national laws have not tried to give a definition to this term. This is because institutions have found the value of being broad and flexible in applying electronic writing in practice. As a result, many international conventions and national laws have chosen to use electronic writing as a part of the terms of

arbitration awards. This is prudent as the award has to be put in writing in order to be tangible and to binding between the involved parties. Traditional writing matches traditional arbitration, while electronic writing also matches electronic arbitration.

Signing the documents in arbitral awards is as good as putting a legal stamp on the effectiveness and validity of the award. Technological developments have transformed electronic signatures into more authentic tools of electronic trade. Technological developments have also helped improve the reliability of these signatures. No contradiction can be noted between the nature of electronic arbitration provisions and the inclusion of details of the parties to the dispute, as well as the arbitrators' details, a copy of the arbitration agreement, a summary of the parties' claims and defenses, their statements and documents, the ruling, the date of the award, and the costs of arbitration. This may be the case because electronic writing is now being treated equally with traditional writing, possessing similar authenticity and effectiveness.

Arbitral awards require some conditions and requirements which have to be fulfilled and implemented by law. The party against whom the award is being ruled has the burden of proving that the enforcement of the tribunal ruling would not validly cover him. Such requirements and conditions can be secured in relation to the electronic arbitral award, especially after it is set that the methods applied in the arbitration are appropriate. The UNCITRAL Model Law on Electronic Commerce has presented a solution on the matter of originality in the agreement, or the notice of its award by stating that where the law calls for information to be indicated in its original text, the data message already fulfills such requirement if it is seen to be reliable from the time it was first established in its original form and such information can be presented or used when such information is necessary. The UNCITRAL also mentions that the element in evaluating integrity of data is on whether such data has not been changed in any way in the course of its storage. The

United Nations Convention on the Use of Electronic Communications in International Contracts also highlighted that the integrity of communication cannot be dismissed simply because it comes in the form of electronic communication. As such, the electronic document is considered an original if: the document can ensure the integrity of the information in the place of arbitral award from the time it was made, until it was finalized, with its distribution complete without any forms of distortion; and also if it can present the information in the place of the arbitral award to the person to whom it has to be submitted. Those wanting to use electronic arbitration must guarantee that additional procedures may be required in implementation in order to reflect on the judgment on a paper pillar and also to transmit via ordinary mail of the parties the award. This is a means of protecting the rights of the parties and to guarantee the implementation of arbitral awards.

From the above information, it can be deduced that in the current modern age of the Internet and the World Wide Web, the need for electronic arbitration in the commercial world has become more imperative, convenient, and sensible. The above information shows how commercial transactions have now moved towards the physical and face-to-face world to the online, digital, and impersonal world of the World Wide Web. In order to keep the online medium viable in the commercial context, this medium also needs to make the necessary legal safeguards available to the people and companies transacting under it. Electronic arbitration is one of the fastest and easiest ways by which legal remedies can be made available to individuals involved in electronic transactions. There is a need for electronic arbitration because individuals transacting online are usually on different locations, even different countries. As such, there needs to also be an electronic means of resolving legal issues between the parties, and in the fastest time possible. Electronic arbitration provides such a legal remedy.

As discussed in previous chapters, electronic arbitration is a useful legal tool or mechanism which helps consumers develop trust and confidence in online transactions. It provides a means for buyers and sellers in the online setting to secure legal remedies where the other party to the transaction may not be compliant with the terms of the transaction. Electronic arbitration allows for the use of the available online tools and methods in order to resolve the issue or dispute without the parties to the transaction having to personally be face-to-face with each other. It is also a legal tool which is less costly and less tedious to the parties as the chosen arbiter can simply implement the terms agreed upon by the parties without resorting to court proceedings.

In identifying the different elements of electronic arbitration, it is important to understand that all of these elements can be similar placed with traditional arbitration, except for the fact that the media is the electronic setting. These elements include: the will of the parties, the special electronic jurisdiction, and rights in the electronic setting. The will of the parties in electronic mediation is very much like the will of parties in traditional mediation. Just as traditional arbitration emphasizes on what the parties agree to, it is also more or less the same with electronic arbitration where the terms of the arbitration would be based on the will of the parties. The second element is that electronic arbitration is a special electronic judicial system because it may not follow the usual court and legal processes in resolving conflicts, but it has the same binding power as the courts in terms of compelling compliance with the arbitral award. It is also special as in contrast with traditional arbitration, it uses electronic tools and methods to resolve the issue between the parties. On the last element, the rights in electronic methods relate rights of the parties to the transaction. It also covers the subject matter of electronic arbitration. Depending on different laws in various countries, the subject matter of electronic arbitration may also vary. In general however, there are not many restrictions on what can be considered subjects of electronic

arbitration, except for matters of public policy and those which are not indicated by the parties to a contract or transaction.

The challenges being faced by electronic arbitration include confidentiality, difficulty in establishing the place of electronic arbitration, the digital divide, and absence of interactions between the parties, difficulty of taking witness testimony, cross-examining them and assessing their credibility where the proceedings take place virtually, and lack of confidence in the electronic media. Confidentiality can be difficult to maintain in the digital setting as there are always risks of hacking and similar acts which can expose the contents of transactions including credit card information, and such other confidential data. It has also become difficult to establish a place for electronic arbitration in the sense that not all organizations, countries, and consumers give it as much credence in their online transactions. As such, they do not trust the digital format and avoid the online setting in their transactions. The digital divide is also a major challenge for electronic arbitration as not all countries and territories have as much internet access or quality internet access. As a result, a good percentage of people around the world are yet to join the digital and electronic world. The lack of interaction between parties is also a challenge, especially as the face-to-face meetings can help establish emotional connections and rapport between the parties. As face-to-face transactions are not often possible in online transactions, it may be difficult to gauge the sincerity of the parties. Another challenge for electronic arbitration is the fact that not all people are confident in this medium. As a result, there are still many who do not transact online. It follows that these individuals also do not trust electronic arbitration and where one party refuses to resort to electronic arbitration, the parties are likely to undergo the tedious court process in order to settle their legal issues. There are nevertheless advantages which can be gained from electronic arbitration. For one, parties to the electronic transaction and subsequent arbitration can enjoy

confidentiality. For as long as security measures are in place, the parties can enjoy confidentiality of their transactions. Competence is also assured in electronic arbitration, mostly in the form of arbitrators who can efficiently navigate and work the process of arbitration. Speed is yet another advantage of electronic arbitration as parties can actually expect the speed resolution of their issues. Electronic arbitration also helps secure flexible justice in the form of the arbitral award taking into consideration the preferences of the parties. The friendly and sustained relations between the transacting parties can also be maintained even after electronic tribunal rulings, which cannot be said in court rulings where parties often emerge resenting or having ill feelings for each other. Electronic arbitration is also able to avoid conflict of laws as the parties themselves can agree to be under the jurisdiction of the arbitral tribunal and the decision of the latter can be binding upon the parties involved. Other advantages include reduced costs, ease of storage and retrieval of files and information, as well as the appropriateness of electronic arbitration in the managing online and electronic transactions.

In evaluating the different countries where electronic arbitration is being applied, there are similarities and differences which can be noted in these countries. Similarities can be noted in many Arab countries including the UAE. These similarities can be seen in terms of how electronic arbitrations are defined, its challenges, its conditions, its effects, its enforcement, and its award. The policies as set by the ICC Arbitration Law, New York, Law, and other laws in developing countries are also similar to one another. UAE laws and the laws of Europe and the US are also essentially similar to each other with some minor differences. Any differences noted are mostly non-essential differences on how the arbitration awards are implemented by the parties. In essence however, most of these countries' laws on electronic arbitration recognize the importance of preserving and respecting the will of the parties. The above data also indicates the number of days

indicated for the issuance of arbitral award and the number of days by which parties can request for clarifications on the judgment. The above data also highlights the importance of writs of execution in completing the implementation of arbitral awards. The UAE and other Arab countries contain similar provisions to each other. They indicate how parties can request for such writs in order to have the award implemented where no specific instructions are indicated in the arbitral award. The concept of *res judicata* applies to the different countries where electronic arbitral laws are laid out. It is a concept which highlights the finality of the arbitral award. Such concept of *res judicata* very much aligns with the will of the parties. Nevertheless, the laws in the different countries do not preclude resort to the courts by any of the parties, in case any party may feel like his legal rights would be better protected in the courts. International conventions and treaties are also recognized by some countries based on their ratification of said conventions and treaties. These conventions help in the implementation of arbitral awards as these conventions cross country borders. As long as a country ratifies a convention, the terms of the convention would apply to the country. The Model Law and the European Law cover numerous countries and their provisions on arbitral awards take effect within the ratifying countries.

The method of arbitration in settling disputes is not a newly established one, but one that has been known for a long time since the earliest civilizations of the Greeks, Romans, and Arabs. It has also gone through different stages of development as a means of settling disputes. In the modern context, arbitration has gained legislative attention at the international and national level, and now also technological attention. Technological innovations have also affected information and communications technology as well as business transactions. As a result of these technological developments, the need to find means to resolve disputes arising from such transactions has increased. However, in the settlement of disputes in the digital and electronic setting, challenges

have been noted on how these disputes can be settled where the parties cannot physically come together.

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