

## MEDIATION IN ELECTRONIC DISPUTE

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**ABSTRACT:** *Accelerated spread of trade and electronic trade in particular paves the way to growth of disputes rates arises thereof; consequently, looking for new ways to settle such disputes electronically becomes a must. These ways should conform to nature of such processes in term of speed and execution using the Internet. Hence, the electronic mediation emerged as an alternative for settling disputes between individuals, and it is characterized with easiness, confidentiality, low costs and quickness.*

**KEYWORDS:** Mediation, Electronic Disputes, Criteria

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## INTRODUCTION

Due to the technological development and culture clash, civil disputes lost its explicitness and simplicity in a world witnessing a telecommunication revolution and rapid flow of data. Now, we see what the electronic networks can do like creation of relations and execution of electronic contracts. On the other hand, judicial traditional means are suffering the massive amounts of cases referred to them, so it becomes necessary to look for means relieving the judicial system and shorten litigation procedures for saving time and efforts for the courts and litigants; therefore, the electronic mediation finds the light as a state of the art alternatives to settle disputes electronically. This service provides a venue for disputed parties online so the meeting, negotiation, discussion, and opinions will be heard and reviewed through a neutral mediator; accordingly, parties can reach an amicable settlement. This settlement shall be in a form of final agreement binding on both parties.

This research considers as a paramount participation in shedding light on an alternative to settle disputes between individuals; that's why it was tilted as "Mediation in Electronic Dispute". Hereinbelow, an explanation of the research importance and why we choose it along with its targets research methodology, problem and plan.

### Research Importance & Why We Choose it

Most previous researches studied this topic traditionally; i.e. only the judicial mediation without referring to the electronic means, so this research will complete these studies to show importance of the electronic mediation.

Owing to the few researches made in this topic, I chose this topic because having little number of studies in that field will provide the roots for those who desire to carry out legal scientific researches for alternatives for disputes settlement.

## RESEARCH METHODOLOGY

In this research, I used the analytical approach by returning to the legal books and specialized studies for alternatives for disputes settlement generally and electronic mediation particularly. I also included the legal texts of UNCITRAL law concerning international trade reconciliation.

## Previous Researches

Most previous studies dealt with the judicial mediation in its traditional aspect without referring to the electronic mediation. These studies include:

- 1- Assistance Professor, Aymen Khalid, Mediation as a Way for Settling Civil Disputes, Yarmouk Researches Magazine, Vol. (4/A/2004), Yarmouk University, Jordan, 2004.
- 2- Abu Ruman, Rola Saleh – Mediator's Role in Settling the Civil Disputes, Master Dissertation, Middle East University, 2009.
- 3- Dr. Al Louzi, Adel – Mediation for Settling Civil Disputes, Mutah University, Karak, 2006.

## Research Targets

This research aims to introduce the “Mediation in Electronic Dispute” as a new way of alternative solutions for settling disputes electronically. However, these targets may be summed up as follows:

- 1- Aim to define the electronic mediation description.
- 2- Aim to define the legal frame of the electronic mediation.
- 3- Aim to refer to the UNCITRAL law concerning international trade reconciliation.

## Research Problem

The continuous mixing between the alternative means for settling disputes such as arbitration, mediation and negotiation is the problem of this research; therefore, this study “Mediation in Electronic Dispute” intends to show details of the electronic mediation and its legal frame in order to present its importance as a new method for settling disputes untraditionally.

**Research Plan:** this research includes a preamble, two studies and a conclusion as follows:

Preamble: includes the research subject, importance, causes of its selection, applied methodology, previous studies and research problem.

### First Section: Electronic Mediation Description

First Requirement: Electronic Mediation Definition.

Second Requirement: Electronic Mediation Benefits.

Third Requirement: Mediator Selection Criteria.

### Second Section: Electronic Mediation Legal Frame

First Requirement: Electronic Mediation Procedures.

Second Requirement: Electronic Mediation Conciliation.

**Conclusion:** shows most important results, recommendations and suggestions we find by this research.

## **First Section**

### **Electronic Mediation Description**

As a result of the accelerated spread of electronic trade volume and increase of disputes arising thereof, this research attempts to find a faster way to settle disputes electronically, since resorting to courts is unacceptable for settling the electronic disputes, despite the fact that judicial mediation is not a fast way enough; therefore the electronic mediation take the lead.

The concept of settling disputes electronically was initially introduced at the beginning of the nineties, since telephone mediation was emerged at the end of eighties<sup>(1)</sup>, on 1992, Prof. Henry Pert introduced the idea of settling the disputes electronically for the first time. One year later, Prof. David Johnson started a study of the probabilities and conceptions in line with the characters of the World Wide Web through which the electronic trade takes place in order to find a way for settling disputes arises of such trade electronically. Accordingly, reconciliation of disputes will be made using the same way the legal actions are made which cause these disputes. However, to define the electronic mediation, we divide this section as follows:

First Requirement: Electronic Mediation Definition.

Second Requirement: Electronic Mediation Benefits.

Third Requirement: Mediator Selection Criteria.

### **First Requirement**

#### **Electronic Mediation Definition**

Electronic mediation is considered as one of the alternative solutions for settling disputes and differences arise between parties, and it is uniquely differs from the traditional judicial mediation. It is an administrative non-obligatory process for settling disputes, whereby, a neutral person will assist parties to reach a negotiable conciliation.

Consequently, we can say that mediation is a voluntary process whereby litigants agreed to work with a neutral person in order to settle their dispute; however, litigants have the full power to either refuse or accept the electronic mediation, and mediator's role is just to solve dispute points and suggest the available solutions.

As defined by clause three of article one of UNCITRAL law concerning international trade reconciliation, it is a process whereby the dispute will be settled amicably whether by mediation or reconciliation, and the mediator will attempt to reach an amicable settlement for any contractual or legal dispute, but he has no power to impose his settlement on litigants.

Based on the two definitions above, basic goal of electronic mediation is provide opportunity for litigants to create an atmosphere of understanding; participate in developing discussion culture; push them to positively join in finding mutual solutions; break the ice between litigants and join points of view on one platform. In this way, it provides a legal frame for each case that is acceptable for both disputes parties and made by them, so they can obtain a fair solution they are satisfied with. Wherein, parties will be the legislators for themselves in order to settle the dispute in a better way through a neutral and honest mediator whose goal is just to find a common place for their points of view without having any power to force or continue the mediation.

## Second Requirement

### Electronic Mediation Benefits

Each legal system has a variety of its unique features and benefits differentiating it from other legal system; however, electronic mediation as other systems has many benefits including:

**Electronic mediation based on parties' intention:** Electronic mediation is basically based on parties' intention <sup>(3)</sup>, since they only have the option to resort to the electronic mediation in order to settle their disputes, and it should be noted that mediation is made electronically, so it is nothing but just an electronic contract.

**Electronic mediation is flexible:** Differing from the judicial litigation, electronic mediation is characterized with simplicity, flexibility and quickness in settling disputes. This comes along with nature of the electronic trade, since litigation procedures are relatively long and have a lot of formations and time intervals binding on litigants. Flexibility, quickness and saving time is due to the fact that electronic mediation does not require travelling or attending of litigants before the electronic mediator, instead litigants may be heard through the electronic communications; moreover, litigants may exchange evidences and documents simultaneously through the Email or any other electronic mean <sup>(4)</sup>.

**Low costs and expenses of the electronic mediation:** In the electronic mediation procedures, using of up to date technologies will mitigate expenses of the electronic mediation, since it is described with fastness and flexibility and no need for any litigants to travel to venue of sessions, and does not require any actual presence of parties, witnesses and experts <sup>(5)</sup>. This reduces travel and lodge expenses.

**Free choice of mediators:** Parties in any electronic mediation (6) have the free choice to select mediators from a list of mediators and courses they have in order to be qualified for reviewing disputes.

**Easy to notify litigants :** Litigants <sup>(7)</sup> will be notified in an easy way by Emails, so litigants will notified by the dates and times of the mediation hearings.

**Secrecy of the electronic mediation:** This one of the electronic mediation benefits in respect of its existence and results throughout all phases, and this is clear by:

- A- Providing secure telecommunication channels during phases of the electronic mediation since its commencement till signing the final settlement.
- B- Securing the information and exhibits provided to the mediator by litigants and their maintenance, and anyone able to review them.
- C- Keeping and saving all exhibits, documents and applications, and ability to cancel what have been saved if litigants desire to suspend the mediation process <sup>(8)</sup>.

In light of these benefits, electronic mediation is considered as one of the alternative solutions and means to settle dispute untraditionally; consequently, it plays an important role in mitigating burden on judiciary system by reducing the litigation procedures and saving time and efforts of courts and litigants.

### **Third Requirement**

#### **Mediator Selection Criteria**

Due to importance of the electronic mediation in settling the disputes and differences that may arise between parties, electronic mediation centers stipulated criteria and conditions that should be available in the mediator, which are:

**Qualification:** For managing the current dispute between the parties, mediator shall have high qualification <sup>(9)</sup> compatible with mediation process in order to settle the dispute according to the parties' intention.

**Neutrality:** Mediator shall be known of his neutrality and fairness to manage the mediation process between litigants, and if he is not like this, then he shall withdraw from reviewing the dispute in order to save litigant's rights.

**Secrecy:** It is one of the benefits of the electronic mediation in respect of its existence and results, which mediator shall maintain during all phases of mediation by keeping secrecy of the provided information by litigants <sup>(11)</sup>, and maintain all submitted documents, exhibits and applications, and never allow any third party except litigants to review the same <sup>(12)</sup>.

**Jurisdiction:** Mediator shall be highly qualified and specialized in order to manage the dispute by having the required qualification, knowledge and courses so he can administrate the dispute effectively. This criterion differentiates between the mediation and the judiciary system, as judge does not require jurisdiction in the dispute matter.

Hence, mediator shall announce his qualifications, courses and obtained courses to it can be published in a list including names, courses and knowledge <sup>(13)</sup> so litigants can choose mediators freely.

**Disclose any Benefits:** Mediator shall disclose to the parties and center any circumstance and benefits related to the dispute or its parties <sup>(14)</sup> to keep its neutrality, transparency and independence. Moreover, he shall initially refuse his appointment request as a mediator to review the dispute if he has any benefit in the dispute unless litigants agree on his appointment as a mediator following his disclosure of his interests therein.

### **Second Section**

#### **Electronic Mediation Legal Frame**

Due to the pragmatic importance of the electronic mediation in settling the electronic trade disputes and electronic activities generally, its legal system shall observe requirements of treaties and agreements executed in the field of the mediation industry and execution of the foreign provisions, and respect the internal legal systems in countries of individuals, because most decisions issued by the mediator will be executed within a country of any litigants according to its internal laws.

Therefore, we are going to look for the legal frame to be observed in the electronic mediation as follows:

First Requirement: Electronic Mediation Procedures.

Second Requirement: Electronic Mediation Conciliation.

## First Requirement

### Electronic Mediation Procedures

#### Mediation procedures should commence as per the following phases:

- **First Phase:** any of litigant access the electronic mediation website in order to fill the specified form of mediation that includes: (Name, profession, address, telephone, Email), and states a summary of the dispute subject matter in addition to some information about the other party and how to reach him <sup>(15)</sup>.
- **Second Phase:** center will receive, review and study the application, and after approval thereon, it will send a letter to the applicant notifying him that he received the application and accepted to review the dispute.
- **Third Phase:** center will notify the other party with the mediation application and provide a copy thereof along with an answer form, provided that he shall send his answer within thirty days from its receipt date of the application or within any other period <sup>(16)</sup> as stated in the case according to UNCITRAL rules<sup>(17)</sup>. However, should first party does not receive any acceptance for that invitation within the specified period, this will be considered as a refusal of the mediation application.
- **Fourth Phase:** both litigants shall be provided with list of mediators names and courses they had which qualified them to review the dispute, so litigants can select the mediator under mutual consent of litigants on the mediator <sup>(18)</sup> and notify the center of the same. Mediator shall explain procedures progress to its dispute and inquire them about the proper method for reviewing the hearings whether by Emails or communications through meeting rooms or visual conference and cases letters.

Selecting the proper method by litigants, procedures commence, but in case of non-agreement on this method <sup>(19)</sup>, mediator may commence mediation procedures as he finds proper taking into account circumstance of the cases and any intentions of litigants.

- **Fifth Phase:** mediator will send Email and password to litigants so they can access the dispute page, and appoint hearings dates by the mediator or parties, thereafter, discussions of the dispute subject matter will begin to state the agreement and difference aspects <sup>(20)</sup> and provide the exhibits and applications, however, litigants have the right to make any changes thereon.
- **Sixth Phase:** during mediation hearings, mediator shall attempts to bring litigants' points of view close in order to reach a final and satisfying solution for both parties <sup>(21)</sup>; however, both litigants are free to terminate mediation without any reasons thereof.
- **Seventh Phase:** having reached a satisfied conciliation for both parties, mediator shall make a final conciliation agreement binding on parties and present it to them for signature.



## Second Requirement

### Electronic Mediation Conciliation

Should electronic mediator fails to reach an amicable settlement since litigants arrived a dead end or withdrawal of any of them from mediation procedures without any causes thereof, before signing the final and binding conciliation agreement, electronic mediation shall be considered terminated accordingly.

However, should the electronic mediator arrives an agreeable settlement for both parties as a result of electronic mediation attempts, then he shall write down what litigants agreed upon in a permanent agreement witnessing their intention, satisfaction and acceptance in a document called (settlement agreement).

When the electronic mediator finishes preparation of the settlement agreement, he shall present the settlement agreement for both litigants for signing thereon; however, after signing, none party may withdraw from it, because, it became final and binding on both parties. This is proved pursuant to the UNCITRAL law concerning international trade reconciliation where it stipulated that should dispute parties executed a settlement agreement, then such agreement is binding and effective <sup>(22)</sup> however the legislative country may include a description of the method whereby settlement agreements to be executed or refer to provisions regulating execution method thereof.

We dealt above with the modern “Mediation in Electronic Dispute” and its importance as an alternative method for settling the disputes; consequently, we will refer to one of the electronic mediation a center (as an example) who participates in settling disputes.

### Mediation Center Square trade <sup>(23)</sup>:

This center participates in settling disputes by the electronic mediation. The center shall collect 20 Dollars upon any mediation application, but as for the electronic mediation fees, it will be estimated according to the disputed amount as per the following table:

Dispute Value	Fee
To 1000 Dollars	50 Dollars
More than 1000 Dollars	40 × 5% of dispute value, provided that fee shall not exceed 2500 Dollars

This center gives a relief or discount for the above fee for its clients with companies registered with it such as Elance, Sony and Ebay.

## CONCLUSION

In this research, I studied the electronic mediation considering it as a modern and alternative method for settling disputes, and we concluded that electronic mediation found the light with the electronic contracts and usage of recent telecommunication techniques in order to be in line with the technological development, as it is ascribed with easiness, secrecy, low costs and expenses and quick completion.

### In this research, we concluded the following:

- 1- Electronic mediation plays a significant role in settling the international commercial disputes generally and electronic commercial disputes particularly.
- 2- Electronic mediation aims to refine and secure the electronic work environment through settling the electronic disputes.
- 3- Electronic mediation is characterized with secrecy, easiness, quickness and low costs and expenses.
- 4- Electronic mediator is characterized with high qualification, knowledge, experience, jurisdiction and neutrality.
- 5- Electronic mediation is considered as made if all its procedures were carried out via the electronic method.

### Recommendations:

- 1- Stipulates the proper legislations and laws for mediation and put them into effect in all countries in order to reach a proper environment for implementation of the electronic mediation and execution of its agreements.
- 2- Invites countries to utilize the social media and websites to spread the electronic mediation letter to avoid resort to disputes settlement methods which are ascribed with ambiguity in respect of litigants.
- 3- Encourages the academic and training organizations to increase their roles in the electronic mediation, and show its importance in settling disputes by a specialized scientific perspective.

### Footnotes:

- (1) Dr. AlKhaldi, Enas, Electronic Arbitration, Arabic Renaissance Publication and Distribution House, Fl. 1, Cairo, 2009 AD, Pg. 28.
- (2) Dr. Abu Haija', Mohammed Ibrahim, Electronic Arbitration (Electronic Methods for Settling Disputes – Mediation and Reconciliation – Arbitration – Direct Negotiation), Culture Publication and Distribution House, Fl. 2, Amman, Pg. 26.
- (3) Dr. Masadeh, Aymen, Mediation as a way to settle civil disputes in the Jordanian Law, Yarmouk Researches Magazine, Human & Social Sciences series, Circular No.: 4/A/2004 AD, Yarmouk University, Jordan, 2004, Pg. 3
- (4) Dr. Abu Anzeh, Adel, Electronic Arbitration in the Electronic Processes Disputes, article published online on the following link: (secure website) (<http://www.al-jazirah.com.sa/digimag/3004/hasebat3.htm>).



- (5) Advocate Tawakul, Fadi: Electronic Trade Contract, Alhalabi Publication and Distribution, Fl. 1, Beirut, 2010 AD, Pg. 202.
- (6) Dr. Abu Haija', previous reference, page. 29.
- (7) Dr. Mansour, Mohammed Hussein, Electronic Liability, University Publication & Distribution House, Fl. 2, Alexandria, 2009 AD, Pg. 351.
- (8) Dr. Mansour, Mohammed Hussein, previous reference, page. 348.
- (9) Dr. Louzi, Adel, Mediation to Settle the Civil Disputes according to the Jordanian Law, Mutah Researches & Studies Magazine, Karak, Jordan, pg. 4
- (10) This standard is confirmed by article (4/5) of the UNCITRAL law concerning international trade reconciliation 2002 AD "upon recommendation or appointment of any individuals to be appointed as mediators, concerned organization or person shall respect the requirements probably secure appointment of a neutral and independent mediator, and when necessary, it should be noted to appoint a mediator with nationality difference from the litigants' nationalities".
- (11) This standard is confirmed by article (9) of the UNCITRAL law concerning international trade reconciliation "he shall maintain secrecy of information related to mediation procedures, unless parties agree otherwise and their disclosure is obligatory according to law or execution purposes of the settlement agreement.
- (12) Dr. Abu Hashimeh, Adel: Service Contract for Electronic Information in the Private International Law, Arabic Renaissance House, Cairo, Pg. 320.
- (13) Green Paper-on alternative dispute resolution in civil and commercial law. Brussels, 19, 04, 2002.P.29.
- (14) Please refer to article (5/5) of the UNCITRAL law concerning international trade reconciliation.
- (15) Dr. Abu Haija', previous reference, page. 35.
- (16) Mediation Center belongs to the Chambre De Commerce Franco Arabe stipulates a period for replier not more than 15 days to give his acceptance on mediation, and in case of expiration of that period and failure to receive and reply, this is considered as a refusal for the mediation. Please refer to: <http://www.ccfranco-arabe.org/tem/Files>.
- (17) Refer to article (2/4) of UNCITRAL law concerning international trade reconciliation.
- (18) Green Paper. Op. cit. p.15.
- (19) Refer to article (2/6) of UNCITRAL law concerning international trade reconciliation.
- (20) <http://www.ccfranco-arabe.org/tem/Files>.
- (21) Please refer to rule (5/8) of mediation rules of the Chambre De Commerce Franco Arabe, <http://www.ccfranco-arabe.org>.
- (22) Refer to article (14) of UNCITRAL law concerning international trade reconciliation.
- (23) <http://www.Squaretrade.com>.

Another example of electronic mediation center is Internal Neutral, please refer to: <http://www.internetneutral.com>

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