

THE POSSIBILITY OF APPLYING ELECTRONIC ARBITRATION IN ACCORDANCE WITH JORDANIAN LAW

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ABSTRACT : *Problematic mail arbitration of traditional and modern hypotheses emerged and still preoccupy legal judges and courts, lawyers and law professors, have we thought through this research shed light on the possibility of electronic arbitration put into practice through a review of the Jordanian public law sense (Jordanian legal system), with a statement of how the application of this arbitration, according to him, based on the international conventions acceded to the Hashemite Kingdom of Jordan and became part of the Jordanian legal system, and for that, and after studying this research, we can apply the study of each Arab legal system or foreign Applied structural availability and so we were some of the similar law of Saudi laws Jordan and have worked on a comparison as possible without going out on the subject of the search base, a Jordanian legal system*

KEYWORDS: Electronic Arbitration, Jordanian Law

INTRODUCTION

Problematic electronic arbitration from the assumptions of traditional and modern emerged and continues to preoccupy legal judges, courts, lawyers, law professors, and we decided through this research shed light on the possibility of developing electronic arbitration into practice through a review of Jordanian law sense year (the Jordanian legal system) with an indication of how to apply this arbitration according to him, relying on international conventions by it Hashemite Kingdom of Jordan and became among the Jordanian legal system .To that end, and after studying this research we study the potential of each legal system, Arab or foreign to the availability of structural Applied and so we came to some of the Arab laws similar to the Jordanian law and we worked on a comparison as possible without going out on the subject of search basically a Jordanian legal system .And pave the division - :

With the era of technological development based on e-commerce transactions on the speed in the conclusion and execution of contracts, and with the growing role of these trade disputes arise on the background of dealings between the parties, then the parties will need to Chapter speed in conflicts, whether in the judiciary or arbitration, which is not in line with the slow the complexity of the ordinary judiciary procedures, and show the importance of e-arbitration; what is characterized by its speed and ease and flexibility not available in the ordinary courts, which is not required in arbitration mail transmission parties to the conflict or physical presence in front of the arbitrators, but can be heard adversaries across modes of electronic communication via satellite and means Contact E-rapid development in almost daily .

Moreover, sentencing speed due to the ease of procedures where they are providing documents and papers via e-mail, as can direct contact with experts or chatting with them online; therefore spread courts and mail arbitration to contribute in solving the disputes of e-commerce, which is in the immediate resolution of these disputes the result of the enormous development of

economic life and the increasing international trade and the conclusion of contracts and business and legal use of electronic technology; and therefore can mail arbitration defined as arbitration which are procedures via the Internet (), which acquires electronic recipe of how it is made, where the audio-visual way across the network international open to connect remotely, without having to meet the parties and arbitrators in a particular place modern ways unheard litigated before, as well as men of the law as it is located on their shoulders the burden of the face of this stunning development in the telecommunications revolution in accordance with the appropriate support and legal bases for the development in the field of arbitration after the problematic legal and characteristics that distinguish it from ordinary arbitration and resemble ordinary judiciary .

However there are some reviews that said not to have access to the means of electronic arbitration to the implementation phase in light of the Arab laws, including the Jordanian law and public sense (ie. the Jordanian legal system of the Arbitration Law No. (31) for the year 2001 (), and the Code of the Jordanian Civil Procedure No. (24) for the year 1988, and the law enforcement of foreign judgments No. 8 of 1952, and the law of the Jordanian electronic transactions No. (55) for the year 2001, and other laws related to the subject, do not forget the international conventions ratified by the Hashemite Kingdom of Jordan, and perhaps the most important of the New York Convention on the recognition and enforcement of foreign arbitral awards 1958, and the Convention on the Riyadh Arab judicial cooperation for the year 1983, and the Convention on the Amman Arab for the year 1987 and other conventions and treaties, as well as treaties and bilateral agreements, and the provisions of the Jordanian judiciary), even if we reviewed the legal system system earlier referred to, we find there is a possibility of conducting electronic arbitration in accordance with this system, and this process is the subject in this research so we will work in accordance with the legal system of Jordan said in a statement the possibility of actual and practical application of this type of arbitration, and I will, God willing, to walk in these proceedings from the beginning of the arbitration to end a sentencing up to the implementation on the ground like the arbitration normal commercial and judicial decisions, in order to achieve the objective of this research we will divide into two sections research, namely - :

First topic: - the legal framework for arbitration-mail and how to apply it according to Jordanian law .

The second topic: - Implementation of the provisions of the mail arbitration in accordance with Jordanian law .

First topic: the legal framework for arbitration-mail and how to apply it according to Jordanian law

Arbitration is problematic mail it from modern hypotheses, and here we find that the application of the mail system, the legal scope of the arbitration raises several issues, including :

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The first issue - an issue that the writing requirement in the arbitration .

many formal and not substantive difficulties in contract arbitration agreement electronic means and how it concluded, in raising the issue of writing a statement limbs agreement, and we find that more often than legislators require that an arbitration agreement in writing, otherwise it is void (). We find the Syrian and Kuwaiti legislator may ate that issue, saying the arbitration does not prove otherwise in writing ,

We find Bahraini legislator enjoined that an arbitration agreement in writing is the agreement in writing if contained in a document signed by the parties or an exchange of letters or telexes, telegrams or other means of telecommunication which provide a record of the agreement or in the exchange of claim and defense in which one of the parties alleged existence of an agreement or denied by the other party is a reference in the contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and that the signal may be such as to make that clause part of the contract .

The legislator Jordanian, Egyptian and Algerian also enjoined that an arbitration agreement in writing, otherwise it is invalid, and an arbitration agreement is in writing if guaranteed editor and signed by the parties or if the contents of the exchanged two sides of letters, telegrams or other means of communication written , the US Federal Reserve and the legislature to make the writing requirement for health contract and the arbitration clause to give binding force .And the New York Convention of 1958 addressed to that problem by saying recognize each Contracting State the written agreement, which is committed whereby the parties to submit to arbitration all or certain disputes arising or which may arise between them on the subject of links contractual law or non-contractual relating to the issue may be settled by arbitration, and the intended agreement written arbitration clause in a contract or an arbitration agreement signed by the parties, or mutual agreement, which contained letters or telegrams) .

Eating Model UNCITRAL on electronic writing trade law where admitted letters of electronic data and decided that it does not lose information legal effect, validity or enforceability simply because they in the form of a data message (), and touched the legislator then to the question of writing directly, saying that when the law requires to be written information, the data that meets the requirement if the message shall provide access to the data contained therein in a manner as to be usable for subsequent reference .

For my part I see that what is raised by legislators Egyptian and Jordanian and Bahrain in the articles that dealt with writing condition I find that it has expanded each arbitration colors including arbitration-mail, it means writing here does not address the quality of the arbitration, but whatever that quality is the arbitration agreement void and here Qaeda peremptory may not agree, especially to the contrary rule (), but the amplitude here in the words of the legislator or other means of communication started and here we can conclude the agreement via electronic means of communication, and through communication via the information or the exchange of documents via fax or telex network is no difference between the physical writing of electronic and writing as long as He graduated from the virtual world to the physical world .

The second issue - the issue of default attendance of the parties to the dispute .

Normal arbitration sessions held in the presence of limbs materially and dealing with the arbitrators and the exchange of memos and pleadings and hearing witnesses, evidence, and locate the place where the arbitration raises determine the applicable law. The agreement to arbitrate electronically is to confirm acceptance of the arbitration who face him, a Jordanian, I, in addition to this being before reviewing the request for arbitration to ensure the validity of all the data, and the United Nations has acknowledged in its article X passport contracted by means of instant communication and different ones through the Internet . And the question of proof-mail has become a place of the solution after the law was passed 85 years of Jordan in 2001, and other laws in the majority of countries in the world, and here is required to be the default arbitrator feed all assumed and fabricated and how to resolve conflicts automatically, according

to the parties agreement also automatically and how default expressing their personalities as mentioned above .

The third issue: - National implementation of the decision of the arbitration-mail .

"The impact of the legal action follows the nature and not vice versa, which means that the nature of the legal work is the basis of its impact" , it was difficult in previous times the implementation of any arbitration award issued style-mail because the states left to the implementation of domestic laws and international treaties and agreements it has ratified and entered into for its implementation and therefore not on the state mandated the implementation of the provisions of the mail which has a private arbitration agreements, but now that countries have begun to engage in the establishment of arbitration mail federations as mentioned above will become unpalatable issue applied. To this end, the format requirements and subject in the default arbitration as stipulated in the laws and international conventions must be taken into account when considering each dispute from the arbitration agreement and until the implementation of the arbitration judgment. Thus, we are looking frame, which must be taken into account in the e-arbitration in accordance with the Jordanian legal system in the following demands - :

First requirement: - The conclusion of the agreement on arbitration mail .

The second requirement: - content of the agreement on arbitration mail .

First requirement: - arbitration hearings and sentencing (arbitration proceedings) .

First requirement: the conclusion of the agreement on arbitration mail .Unlike the electronic brokerage that leaves mail arbitration center or satellite court system mediator often put procedures system, the mail arbitration center would system like normal arbitration center must put its system in order to regulate the arbitration process, and determine the commencement time, and time to determine the verdict and all actions which include the process starting from the how and the legitimacy of the arbitration agreement, and often adopts electronic arbitration centers supplementary rules if they found a deficiency in the system rules, such as reference to the rules of the Model Law Commissions on International Commercial Arbitration (1985), or the rules of the International Chamber of Commerce with the introduction of amendments that are commensurate with the nature of the e-arbitration, and are arbitration electronically on the mail center site procedures are during these procedures storing data and documents, and documents related to the case and when the parties agree to resort to arbitration to resolve what may arise, including the differences, it is uncommon to ensure their contract a clause referring it to the direction of their will to resolve their dispute through arbitration, and this condition is called the arbitration clause. May be the conclusion of this agreement in a separate contract from the original contract may be sooner or later to the conflict, as well as that the arbitration agreement includes many details that cannot be covered by the arbitration clause and Article (11) of the Jordanian Arbitration Law No. (31) for the year 2001 "may be a previously arbitration agreement on the dispute arose whether autonomous or mentioned in a particular contract on all or some of the disputes that may arise between the parties, as may be after the establishment of the arbitration agreement, even if the dispute had been held in front would suit any a judicial body, and must in this case to determine the merits of the dispute, which shall be referred to arbitration and precise, but the agreement was null and void" .

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Corresponds to this article in the Egyptian Arbitration Law No. (27) for the year 1994 article (10), and we find through laws mentioned above, they confessed Besotted the arbitration agreement, the arbitration clause and the arbitration stipulation, and these images of arbitration does not raise any problem in the field of e-Arbitration for possible made between Parties electronically customary form in many countries of the world, whether in the form of a

condition of contract that raised conflict thereon or subsequent agreement by the form of a contract, or through referral requirement to document containing the terms of the arbitration, and have the form of an arbitration clause if this condition is assigned to the center-mail arbitration settlement conflict explicitly, and are more dogmatic when it sends e-mail to the parties to the arbitration center email their agreement to submit the dispute to the center. The point of difference between the mail arbitration normal and arbitration in the arbitration agreement, it is the legality of the arbitration agreement concluded electronically, especially since most of the laws require writing in the arbitration agreement, and this does not exist, especially in the electronic information services contracts, which is completely within the scope of e-world, and there is no any writing on the material, but to be a pillar in a letter only, has arranged many of the laws governing the invalidity of the arbitration agreement in the case of matters not to write, such as Article 11 of the Jordanian Arbitration Act, and Article 12 of the Egyptian Arbitration Act. Will meets mail arbitration in the electronic writing for this condition, which results in the form of nullification agreement, has appeared in this issue are two opinions - :

First: - opinion goes to the lack of the possibility of extension of the expression in the national laws and international conventions that did not provide a passport and health exchange arbitration by electronic means agreement, to include electronic writing as a means of proving the existence of the arbitration agreement, and justify them their opinion on the basis that many of the treaties and agreements on international trade - which existed before the emergence of electronic means - did not take into account when they are created to organize its terms this actually means to be considered a recognized writing style law. This applies to laws that were prepared and did not provide for the electronic media in the writing of the arbitration and the recognition of the agreement, such as the New York Convention regarding the recognition of foreign arbitral awards and implementation, and in particular the provisions of Article (2/2), that

"Includes" written agreement "refers any arbitration clause in a contract or an arbitration agreement signed by the parties or contained in the media or telegrams." Like Article 12 of the Egyptian Arbitration Act, and Article 11 of the Jordanian Arbitration Act, as well as Article (7/2) Model Law on International Commercial Arbitration Law (UNCITRAL) for the year (1985)

Second: - Another view - we support - believes that writing electronic check writing in the international treaties and national laws with jurisdiction arbitration clause. This opinion is based on the basis of :In the field of states that recognize electronic means (the Internet) as a means to enter into contracts, under the conditions recognized by the laws regulating e-commerce and electronic transactions, these laws fully recognize the arbitration agreement that is writing an e-mail or through the exchange of information and recorded on the website of the Center for Arbitration Center to send data electronically via a page on the site be customized to fill the data, address and the like. Because the recognition of these laws decades health include Accordingly recognition agreement on arbitration, both came in the form of an arbitration clause or contract independent arbitration as long as taking into account the shape and the required conditions have been in it in accordance with the laws governing the contract-mail, and is available in terms of health and authoritative proof electronic writing, and about that , I see that are not on the measurement methods that have been recognized by the interest in this area only health contract, which has an arbitration clause, or an independent contract between the parties hereby agree that the parties to resort to arbitration (arbitration stipulation .(

2. The United Nations issued by the Committee on UNCITRAL Convention on the Use of Electronic Communications in International Contracts (), and this agreement will become in the near an important reference to the content of the provisions of (), especially as they have in the article (20) which stipulates explicitly is not unequivocal equality writing electronic regular writing letters and give it the same authentic proof in contracts and international reflected explicitly in the text of the article (9/2), which states, "where the law requires that a communication or a written contract, or provides consequences for the absence of a writing, that requirement is met by an mail, if access to the information contained therein is accessible so as to be used to refer to it later, "the most important thing in this Convention shall be brought by the article (20) which recognized electronic communications exchanged in international contracts and international conventions and treaties subject specified in paragraph (1), including the New York Convention on the recognition of foreign arbitral awards and implementation for the year (1958) and so this agreement not to text on the electronic writing in this agreement and showed similar electronic communications and electronic writing with mutual regular writing in e-mails, or contract signed, where they also acknowledged signing mail in the article (9/3) of them, and we will discuss more of the provisions of this modern treaty in subsequent chapters.

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