

# ELECTRONIC ARBITRATION AS A MECHANISM FOR RESOLVING E-COMMERCE DISPUTES

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## Abstract:

Due to the flourishing of electronic commerce and the accompanying disputes that require the use of the same means to resolve them, the use of electronic arbitration has become necessary. This has led many jurisdictions to establish the legal framework for this mechanism, and numerous electronic arbitration centres have been set up for this purpose. However, despite the regulation of electronic commerce in Algeria, its legislation still recognises traditional arbitration, which raises the question of the application of its system to electronic arbitration, starting from the arbitration agreement, through the proceedings of the dispute, to the issuance of the award, all of which can be done electronically, making it enforceable.

**Keywords:** Electronic arbitration, arbitration agreement, procedure, arbitral award, enforcement of arbitral award.

## Introduction:

The world is witnessing significant and rapid progress in the field of information and communication technology, which has contributed to the flourishing of electronic commerce. Disputes are inevitable as a result of entering into electronic contracts. This has led to the parties agreeing to resolve them by electronic arbitration as the most appropriate means, especially since recourse to litigation is considered inappropriate for this type of transaction, which may transcend the regional boundaries of countries, and where the parties are often located in different countries and, in many commercial transactions, the parties may not even know each other.

Electronic arbitration is not fundamentally different from traditional arbitration, except that it is conducted electronically, from the conclusion of the arbitration agreement, which must meet the conditions of validity and content, through the conduct of the dispute to the issuance of the award. Thus, electronic arbitration has become an effective alternative method for resolving e-commerce disputes. To this end, numerous electronic arbitration centres have been set up and collective agreements such as the New York Convention and the Washington Convention have regulated it. Many laws have also focused on regulating electronic arbitration. However, despite the regulation of e-commerce, Algerian legislation still relies on traditional arbitration.

Therefore, the following problem is addressed: What is meant by electronic arbitration, what are its procedures and how is the enforcement of electronic arbitration awards carried out? We will answer these questions in the following two sections:

- Section 1: The nature of e-Arbitration.
- Section 2: Electronic Arbitration Procedures.

### **Section 1: The nature of electronic arbitration**

With the rapid and increasing spread of electronic commerce transactions and the disputes that accompany them, especially in international transactions, parties have resorted to using the same means of conducting transactions, namely electronic arbitration, especially since it is compatible with electronic contracts. The use of electronic arbitration requires an agreement known as an arbitration agreement. We will discuss the concept of electronic arbitration and its legal nature below:

#### **Subsection 1: The concept of electronic arbitration**

Electronic Arbitration is a concept made up of two terms. Arbitration is the agreement by which the parties undertake to resolve disputes arising or likely to arise between them by arbitration. Arbitration is a dispute resolution system that allows the parties to a dispute to delegate the task of making a decision to arbitrators of their own choosing, instead of resorting to litigation, provided that the legislator recognises this agreement as a condition or a means<sup>1</sup>. The term "electronic" is a way of describing and specifying the field and means of carrying out the activity specified in the clause, relying on electronic networks, including the Internet<sup>2</sup>.

Some lawyers argue that there is no difference between traditional and electronic arbitration except in the means used in the virtual world. There are no physical documents or physical presence of individuals in electronic arbitration<sup>3</sup>. The resulting awards are produced in a ready-made form and electronically signed using electronic signatures<sup>4</sup>. However, there is a question as to whether an arbitration should be considered electronic. Should all stages of the arbitration be conducted electronically, or is it sufficient that electronic means are used at any stage of the arbitration for it to be considered electronic arbitration? Jurisprudence is divided into two directions:

**The first direction** holds that electronic arbitration does not require that all phases be conducted electronically. It is sufficient to limit the use of electronic means to some stages.

<sup>1</sup>- Essam Abdel Fattah Matar, "Electronic Arbitration: Its Nature, Procedures, and Mechanisms in Resolving Disputes in Electronic Commerce, Trademarks, and Intellectual Property Rights", New University House, Alexandria, 2009, p. 39.

<sup>2</sup>- Alaa Yaqoub Al Nuaimi, "The Legal Framework of Electronic Arbitration Agreement", Journal of Sharjah University for Legal and Sharia Sciences, College of Law, United Arab Emirates, Volume 6, Issue 2, 2009, p. 208.  
 . Khaled Mamdouh Ebram, "Electronic Contract - Comparative Study", Dar El Fikr University, Alexandria, 2009, p. 58.

<sup>3</sup>- Ahmad Essaid Salah Al-Din Al-Sayyed, "Electronic Arbitration", Supplementary Memoir for Obtaining a Master's Degree, Law Department, Faculty of Law and Political Science, Arabi Bin Mahdi University, Oum El Bouaghi, 2014-2015, p. 12.

. Mohamed Houdi, "Procedures for Electronic Arbitration in International Trade Contracts", Journal of Legal and Political Studies, Volume 5, Issue 1, 2019, p. 175.

<sup>4</sup>- Boudissa Karim, "Electronic Arbitration as a Means of Settling Disputes in Electronic Commerce Contracts", Thesis for Master's Degree in Law, Specialising in International Cooperation Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 11.

For example, electronic means may be used at the stage of concluding the arbitration agreement and exchanging data, while other stages may be conducted by traditional means, such as the physical presence of the parties during the arbitral proceedings<sup>1</sup>.

**The second school** of thought holds that for an arbitration to be considered electronic, it must be conducted entirely by electronic means. It should start with an electronic arbitration agreement and continue with the arbitration proceedings using modern communication methods. The parties do not physically meet with the arbitrator or arbitrators. Similarly, it should end with the delivery of an electronic award<sup>2</sup>.

Many lawyers believe that the second direction is the right one. This is because traditional arbitration does not currently exclude the use of modern means of communication at any stage of the proceedings, such as notification of the parties or the sending of documents by e-mail. Such modern technologies have become indispensable in the age of globalisation and technology, and their use does not necessarily make arbitration electronic<sup>3</sup>.

Based on the above, electronic arbitration is defined as an arbitration proceeding conducted over the Internet according to specific rules, without the need for the parties to the dispute and the arbitrators to physically meet in a specific location<sup>4</sup>. The dispute is submitted, the proceedings are conducted, the decision is issued and notification is made electronically<sup>5</sup>.

The second direction emphasises that international arbitration institutions are seeking to take advantage of technological advances, particularly the advent of the Internet. All of these institutions have websites that allow communication with them via the Internet, whether for consultation or for the submission of arbitration requests. The International Chamber of Commerce (ICC) in Paris provides a notable example with its "Netcase" programme, which allows parties to commercial arbitrations to communicate via the Internet in a secure environment. The information exchanged is encrypted and cannot be read during transmission, helping to organise individual case files<sup>6</sup>.

Moreover, the scope of electronic arbitration is not limited to electronic contractual disputes, which vary according to the diversity of electronic contracts<sup>6</sup>. Many lawyers classify them into three types based on the parties involved in the contract: business-to-business (B2B), business-to-consumer (B2C) and consumer-to-consumer (C2C)<sup>7</sup> contracts. EDR also covers non-contractual electronic disputes, such as intellectual property disputes, unfair competition, protection of trade secrets and domain name (URL) disputes<sup>8</sup>.

<sup>1</sup>- Rouabhi Amina, "Electronic Arbitration in Resolving Electronic Commerce Disputes", Thesis for Fulfilling the Requirements for Obtaining a Master's Degree, Specialising in International Law and Political Relations, Faculty of Law and Political Science, Abdelhamid Ibn Badis University, Mostaganem, 2016-2017, p. 82.

-Boudissa Karim, Ibid, p. 12.

<sup>2</sup>- Ahmed Essaid Salah Al-Din, "Electronic Arbitration", ibid, p. 13.

. Raja Nazem Hafez Bani Shamsa, "The Legal Framework of Electronic Arbitration: A Comparative Study", Thesis for fulfilment of the requirements for the Master's Degree in Private Law at the Faculty of Graduate Studies, An-Najah National University, Nablus, Palestine, 2009, p. 11.

<sup>3</sup>- Rouabhi Amina, Ibid, p. 82.

<sup>4</sup>- Essam Abdel Fattah Matar, Ibid, p. 42.

<sup>5</sup>- Ahmed Essaid Salah Al-Din, Ibid, p. 14.

<sup>6</sup>- Boudissa Karim, Ibid, p. 13.

<sup>7</sup>- Boudissa Karim, Ibid, p. 31.

<sup>8</sup>- Rouabhi Amina, Ibid, p. 46 and beyond, p. 86.

Boudissa Karim, Ibid, p. 35.

### **The second perspective: The nature of electronic arbitration**

There is a difference of opinion among lawyers as to the nature of electronic arbitration, with some considering it to be contractual in nature and others arguing that it is judicial in nature. There is also an intermediate view that it has a mixed nature, and another view that it has a distinct and independent nature.

#### **First, there is the contractual theory of electronic arbitration:**

Proponents of this theory argue that arbitration, whether traditional or electronic, is contractual in nature. This is because it is based on an agreement that removes the dispute from the jurisdiction of the courts and entrusts it to a private arbitrator. The agreement itself includes the determination of the applicable procedural rules and the law to be applied<sup>1</sup>. It is on the basis of this agreement that the arbitral award is made, which is considered to be a reflection of the agreement, thus giving the electronic arbitration a contractual nature<sup>2</sup>. The parties are also bound by all the consequences thereof, including the enforcement of the award<sup>3</sup>.

#### **Second, the judicial theory of e-Arbitration:**

Proponents of this theory argue that electronic arbitration is judicial in nature. They believe that it is a binding and compulsory decision, even if the parties agree to it, and that evasion of its jurisdiction is ineffective. They argue that the arbitrator does not act solely on the basis of the parties' will, thereby emphasising the judicial aspect of the arbitration. They argue that the arbitral award is a judicial act, similar to a judicial act issued by the judicial authority of the State<sup>4</sup>. In addition, they claim that the principles applied by judges, such as the principle of confrontation, respect for the rights of the defence and equality of the parties, are also applied in the conduct of arbitral proceedings<sup>5</sup>. The resulting award is considered to be a judgment of a judicial nature. It has similarities with judicial proceedings in terms of the procedures followed and the consequences that flow from them<sup>6</sup>.

#### **Third, the theory of the hybrid nature of electronic arbitration:**

Proponents of this view reconcile the contractual and judicial theories by claiming that arbitration occupies a middle ground between the contractual and the judicial. They argue that the proponents of the previous two theories overlooked objectivity when they treated arbitration as a unified process with a single description. While the arbitration agreement is based on the parties' freedom of will, this freedom and will have no influence on the award, which is the responsibility of the arbitrator, who is independent of the parties to the dispute.

<sup>1</sup> - Essam Abdel Fattah Matar, Ibid, p. 45.

Rouabhi Amina, Ibid, p. 102.

<sup>2</sup> - Ben Dahman Sabria, Ibid, p. 27.

Foghali Basma, "Electronic Arbitration in International Trade Contracts," Thesis submitted for a Doctorate in Law, specializing in Business Law, Faculty of Law and Political Science, Department of Law, University of Batna-1-Hadj Lakhdar, 2021/2022, p. 112.

<sup>3</sup> - Sarah Abdul Hussain Rahmani, "Enforcement of Electronic Arbitration Award (A Comparative Analytical Study)," Master's Thesis submitted to fulfill the requirements for obtaining a Master's degree in Private Law, Faculty of Law, Middle East University, 2011, p. 41.

<sup>4</sup> - Essam Abdel Fattah Matar, Ibid, p. 48.

<sup>5</sup> - Ben Dahman Sabria, Ibid, p. 28.

<sup>6</sup> - Sarah Abdul Hussain Rahmani, Ibid, p. 42.

Arbitration extends over time, starting with an agreement and ending with an award, and this extension is characterised first by its contractual nature and ultimately by its judicial nature<sup>1</sup>.

#### **Fourth, the special or independent theory of electronic arbitration:**

Proponents of this theory argue that electronic arbitration has a special nature that requires an independent perspective separate from contract and jurisdiction. They believe that its legal nature cannot be determined solely by contract or jurisdiction<sup>2</sup>. Although arbitration begins with a contractual nature, manifested in the arbitration agreement, this agreement is not the essence of arbitration. This is evidenced by the existence of many cases where the electronic arbitral tribunal is constituted by permanent electronic arbitration centres rather than by the parties themselves. Although modern arbitration has acquired a more judicial character due to remarkable developments, this does not mean that it has become a judicial act, as there are still significant differences between the arbitration system and the judicial system. The fundamental aim of the judiciary is to apply the law as a public authority in the state, with the power of coercion and enforcement<sup>3</sup>.

Proponents of this theory also argue that arbitration has a distinct social and economic function. Its unique characteristics, which are different from those of other systems, including the judiciary, contribute to the fulfilment of this function<sup>4</sup>.

Through the legal nature of the arbitration, the validity of the special or independent theory of electronic arbitration becomes evident, in line with the requirements of economic globalisation, trade and technological progress.

#### **The second aspect: The arbitration agreement**

The arbitration agreement is considered the first step in arbitration and forms its basis. The absence of this agreement means the absence of arbitration<sup>5</sup>. It is the agreement by which the parties undertake to settle existing or potential disputes between them<sup>6</sup>, whether contractual or non-contractual, by arbitration<sup>7</sup>. Arbitration can take the form of a clause in the contract, known as an arbitration clause<sup>8</sup>. Alternatively, if it is agreed after the dispute has arisen, it is known as post-dispute arbitration. It can also be determined by reference to a previous contract or a model contract, known as referral arbitration. The most common form is the arbitration clause<sup>9</sup>.

Arbitration is considered international when the dispute concerns international commercial interests<sup>10</sup>.

Electronic arbitration, like traditional arbitration, is based on the parties' agreement<sup>1</sup> to refer their dispute to a neutral third party for resolution, using modern means of communication

<sup>1</sup>- Foghali Basma, Ibid, p. 34.

<sup>2</sup>- "The Legal Nature of Arbitration," <https://www.sa-arbitrators.org/2011/03/29/1009723057>

- Ben Dahman Sabria, Ibid, p. 29.

<sup>3</sup>- Sarah Abdul Hussain Rahmani, Ibid, p. 42.

<sup>4</sup>- Foghali Basma, Ibid, p. 36.

- Ben Dahman Sabria, Ibid, p. 30.

<sup>5</sup>- "The Legal Edition of Arbitration," Ibid. <https://www.arbitrators.org>

<sup>6</sup>- Alaa Yakoub Al Nuaimi, ibid, p. 217.

<sup>7</sup>- Hamadoush Anissa, ibid, p. 232.

<sup>8</sup>- Boudissa Karima, ibid, p. 42.

<sup>9</sup>- Khaled Mamdouh Ibrahim, ibid, pp. 402-403.

- Articles 2007 and 2011 of the Algerian Code of Civil and Administrative Procedure.

<sup>10</sup>- Rawabeh Amina, ibid, p. 99. Hamadoush Anissa, ibid, p. 233.

and in accordance with appropriate rules governing the subject matter of the dispute and the method of resolution, with the aim of issuing a decision that is binding on the parties<sup>2</sup>. This may be done without the physical presence of the disputing parties, but rather "online"<sup>3</sup>.

In order for an electronic arbitration agreement to be valid, certain conditions must be met and the content of the agreement must be specified, as follows:

### **First section: Conditions necessary for the validity of an electronic arbitration agreement**

An E-Arbitration Agreement is a legal transaction resulting from the will of the parties. It is essentially a binding contract between the two parties and is subject to the same rules as a legal contract or, more precisely, an electronic contract, as adopted by the Algerian legislator in Law 18/05<sup>4</sup>. It is defined as a contract concluded at a distance, without the actual and simultaneous presence of the parties, relying exclusively on electronic communication technology. Its validity requires both objective and formal conditions.

#### **First, the objective conditions of an electronic arbitration agreement:**

An electronic arbitration agreement is considered to be a contract and therefore the necessary objective conditions for its formation must be met. These conditions include consent (mutual agreement), subject matter and consideration.

**1. Consent (mutual agreement):** Consensus refers to the concurrence of offer and acceptance as an expression of the will of the contracting parties. For consensus to occur in a contract, including an electronic contract, it is essential that the intention of both parties be present and directed towards the intended legal effect<sup>5</sup>. The offer is the first step in the formation of all contracts, including electronic contracts, and it is conveyed through the Internet. The offeror expresses his willingness to enter into a contractual process characterised by the following features:

- The offer is addressed to the parties to the electronic arbitration agreement.
- The offer is specific, clear and definite.
- The offeror intends to enter into an arbitration agreement and is bound by it upon acceptance.

The electronic offer is expressed through the audiovisual<sup>6</sup> means of the Internet. It differs from the traditional offer only in the means used, while the essence remains the same<sup>7</sup>. Acceptance takes place in the same way. However, some lawyers have tried to clarify the process of acceptance. It is possible for a person to accidentally click on the acceptance icon, which may contradict their intention to enter into a contract. Therefore, these jurists have

<sup>1</sup> - Ben Dahman Sabria, *ibid*, p. 39.

- Ahmed El-Sayed Salah El-Din, *ibid*, p. 34.

- Khaled Mamdouh Ibrahim, *ibid*, p. 403.

- Hafsah El-Sayed Haddad, "Summary of the General Theory of International Commercial Arbitration", Halabi Legal Publications, 1st edition, 2004, p. 117.

<sup>2</sup> - Articles 1007-1011 of the Civil and Administrative Procedures Code.

<sup>3</sup> - Rawabeh Amina, *ibid*, pp. 99-100.

<sup>4</sup> - Khaled Mamdouh Ibrahim, *ibid*, p. 311.

- Ben Dahman Sabria, *ibid*, p. 39.

<sup>5</sup> - Law No. 18-05 of 24 Shaaban 1439, corresponding to 10 May 2018, on electronic commerce, Official Gazette No. 28.

<sup>6</sup> - Khaled Mamdouh, *ibid*, p. 311.

<sup>7</sup> - Rawabeh Amina, *ibid*, p. 107.



established the rule of double-clicking the Accept icon or clicking the Accept icon and then the Confirm icon to ensure the validity of the consent.

The expression of the parties' consent to resort to online arbitration raises an issue of proof, which has led to the establishment of technical procedures to confirm it<sup>1</sup>. This includes the use of electronic signatures in the arbitration agreement to ensure its validity and to prove the parties' consent to embody electronic arbitration as a mechanism for resolving their disputes, including promoting confidence in electronic transactions<sup>2</sup>.

It is not enough to state the existence of consent; it must be valid, i.e. free from defects of will.

It should be given by a person with capacity, even if there is no presumption of lack of capacity. However, with regard to capacity, the situation is different, as different legislations and international conventions provide for the necessity of capacity to consent to the arbitration of rights over which the individual has absolute freedom to dispose<sup>3</sup>.

This is also reflected in Algerian legislation through Article 1006 of the Code of Civil and Administrative Procedure. The absence of legal capacity renders the arbitral award null and void.

The identity of the parties to the contract is verified by a third party whose role is to ensure that the electronic participant has provided accurate personal identity data. This third party is called a "certification service provider". This ensures that the person entering into the arbitration agreement has the requisite capacity to act and has not used a false or borrowed identity<sup>4</sup>. The issue of determining the law applicable to capacity remains, as it has been agreed to leave this matter to the law designated by the conflict of laws rule in the law of the relevant State for the enforcement of the arbitral award<sup>5</sup>.

**2. The subject matter and the reason:** The arbitration agreement must relate to the dispute to be resolved and must be capable of being resolved by electronic arbitration<sup>6</sup>. Arbitration has a defined scope that cannot be exceeded and is limited to disputes that can only be resolved by conciliation<sup>7</sup>. In general, electronic arbitration is based on the principle of the autonomy of the parties, with the legislator recognising the possibility of resorting to it by specifying its rules, domains and related legal procedures<sup>8</sup>.

<sup>1</sup>- Khaled Mamdouh Ibrahim, *ibid*, p. 318.

<sup>2</sup>- Boudissa Karima, *ibid*, p. 45.

Rawabeh Amina, *ibid*, p. 109.

Fughali Basma, *ibid*, p. 146.

<sup>3</sup>- Boudissa Karima, *ibid*, p. 47.

- Essam Abdel Fattah Mater, *ibid*, p. 105.

<sup>4</sup>- Ben Dahman Sabria, *ibid*, pp. 41-42.

- Ahmed El-Sayed Salah El-Din, *ibid*, p. 41.

<sup>5</sup>- Rawabeh Amina, *ibid*, p. 110.

Alaa Yakoub Al Nuaimi, *ibid*, p. 224. Rajaa Nazim Hafez Bani Shamsa, *ibid*, p. 67.

- Fughali Basma, *ibid*, p. 155.

<sup>6</sup>- Yetouji Samia, "The Importance of Electronic Arbitration as a Means of Resolving Electronic Commerce Disputes", *Ma'arif* (Peer-Reviewed Scientific Journal), Law Department, Seventh Year, Issue 14, June 2013, University of Akli Mohand Oulhadj, Bouira, pp. 164-165.

<sup>7</sup>- Boudissa Karima, *ibid*, p. 53.

<sup>8</sup>- Essam Abdel Fattah Mater, *ibid*, p. 90.

In the last two paragraphs of Article 1006 of the Code of Civil and Administrative Procedure, the Algerian legislator has specified the matters in respect of which arbitration is not permitted.

Regarding the reason for the electronic arbitration, it must be legitimate and its illegitimacy can only be considered if it is proven that the purpose of the arbitration is to circumvent the provisions of the law that would be applied if the dispute were brought before the courts. This is a case of circumvention of the law and fraudulent behaviour towards the legal system<sup>1</sup>.

**Second, the formal requirements for an electronic arbitration agreement:**

Most laws require arbitration agreements to be in writing<sup>2</sup>. Electronic arbitration is subject to the same rules as traditional arbitration, so it must be in writing and electronically signed. These formal requirements are not only for the formation of the agreement but also for evidentiary purposes. It is important that it is preserved so that it can be referred to in the event of a dispute<sup>3</sup>. The writing should be unalterable and the use of encryption should prevent any tampering with the preserved writing, along with the process of authentication<sup>4</sup>. Most legislators<sup>5</sup>, including the Algerian legislator in Article 323 bis 1 of the Civil Code<sup>6</sup>, emphasise these requirements.

In addition, the arbitration agreement must be electronically signed. The signature serves as a clear expression of the will of the contracting parties, indicating that they have reviewed and agreed to the terms of the agreement<sup>7</sup>. An electronic signature includes any electronically stored information that can be used to identify the signatory and confirm his or her consent to the information contained in an electronic document<sup>8</sup>. The Algerian legislator is among those who have embraced modern electronic means through paragraph 2 of Article 327 of the Civil Code, which recognises electronic signatures on condition that the identity of the signatory can be verified and that the signature is created and stored under conditions that guarantee its integrity.

<sup>1</sup>- Mohamed Houdi, *Ibid*, p. 176.

<sup>2</sup>- Rawabeh Amina, *ibid*, p. 111.

Mohamed Amine Mousawi, "Electronic Arbitration as a Means of Resolving Disputes Arising from International Trade Contracts", Supplementary Memorandum for the Master's Degree in Law, Specialising in International Law, Faculty of Law and Political Science, Arabi Ben Mhidi University, Oum El Bouaghi, 2017/2018, p. 28.

<sup>3</sup>- See Article 1012, paragraph 1, and Article 1040, paragraph 2, of the Algerian Code of Civil and Administrative Procedure.

<sup>4</sup>- Ahmed El-Sayed Salah El-Din, *ibid*, pp. 38-39.

- Alaa Yakoub Al Nuaimi, *ibid*, p. 237.

- Ben Dahman Sabria, *ibid*, p. 43.

<sup>5</sup>- Hamadouch Anissa, *ibid*, p. 233.

Alaa Yakoub Al Nuaimi, *ibid*, p. 237.

<sup>6</sup>- See Article 8 of the Jordanian Temporary Electronic Transactions Law No. 85 of 2001.

- German Arbitration Act of 1997, Article 11031, see [sccinstitute.com/media/29988/german-arbitration-act.pdf](http://sccinstitute.com/media/29988/german-arbitration-act.pdf).

- Article 8 of the UAE Electronic Commerce Law No. 2 of 2002.

- Chapter 4 of the Tunisian Law No. 83 of 2000 on Exchanges and Electronic Commerce.

<sup>7</sup>- Article 323 bis 1 states: "The electronic form of writing shall be considered equivalent to a written record on paper..."

<sup>8</sup>- Essam Abdel Fattah Mater, *ibid*, p. 103.

- Rajaa Nazim Hafez Bani Shamsa, *ibid*, p. 82.



**The second aspect is the content of the e-Arbitration Agreement.**

An electronic arbitration agreement has the same legal validity as a traditional arbitration agreement. If it complies with its legal requirements (both substantive and formal), it will have important legal effects. Therefore, an electronic arbitration agreement must specify the law applicable to the dispute and the appointment of the arbitrators. This is provided for in all legislation<sup>1</sup>, provided that it is not contrary to public policy. If the applicable law is not specified in the arbitration agreement, the arbitral tribunal will determine it on the basis of precedents established by international agreements, which means that the arbitrator will have discretion in this regard<sup>2</sup>.

**The selection of the arbitrator(s) shall be made in one of two ways:**

1. The first way is called "freely chosen arbitration", where the parties are free to choose the arbitrator(s).
2. The second way, known as "institutional arbitration", involves the selection of an arbitration institution which will be responsible for forming the arbitral tribunal according to its internal rules and procedures<sup>3</sup>.

**The second aspect: Procedures of Electronic Arbitration**

The term "electronic arbitration procedures" refers to the sequential procedural steps aimed at obtaining an award from the arbitral tribunal that resolves the dispute between the parties. These procedures are similar to those of traditional arbitration, but are conducted over the Internet.

We will first discuss the procedures of the arbitration and then the issuance and enforcement of the electronic award.

**First subsection: Procedures of Electronic Arbitration**

Most e-Arbitration institutions have focused on the procedural aspects and all the considerations necessary to ensure the success of the e-Arbitration.

In this subsection, we will outline the process of initiating the arbitration, followed by the formation of the electronic arbitral tribunal and the determination of its functions.

**First branch: Initiation of the electronic arbitration (submission of the dispute)**

Arbitration proceedings must be preceded by a request, i.e. a demand made by one or both parties in the case of a dispute that has already been agreed to be submitted to electronic arbitration. The Request for Arbitration refers to the electronic communication sent by the Claimant via e-mail to the other party or to the electronic arbitration institution, which refers the existing dispute to the agreed arbitration tribunal, and the arbitration proceedings are on their way to commence<sup>4</sup>.

<sup>1</sup> - Yatouji Samia, *ibid*, p. 167.

<sup>2</sup> - Essam Abdel Fattah Mater, *ibid*, pp. 434-447.

<sup>3</sup> - Saif Al-Din Elias Hamdeto, "Electronic Arbitration", *Journal of Legal Sciences*, Faculty of Law, University of Shendi, Sudan, No. 3, June 2011, p. 72.

For further details, see

- Essam Abdel Fattah Mater, *ibid*, pp. 434 et seq.

- Vogali Basma, *ibid*, p. 112 and beyond.

- Boudissa Karima, *ibid*, p. 80 and beyond.

<sup>4</sup> - Rawabeh Amina, *ibid*, p. 119.

Arbitration centres have taken great care in preparing forms for the submission of a request for arbitration, which include blank spaces for the parties to fill in<sup>1</sup>. An example of this is Article 4 of the International Chamber of Commerce Arbitration Rules, which requires any party wishing to commence arbitration under the Rules to submit its request to the Secretariat, which will notify the Claimant and Respondent of the receipt and date of the request. This is the starting date for the arbitration<sup>2</sup>. Paragraph 3 of the same article sets out the information to be provided, while paragraph 4 specifies the number of copies and the payment of arbitration costs and fees<sup>3</sup>. The Centre then prepares a web page displaying the dispute on its website and provides the parties with a password to access the web page and review the dispute. The Centre will also notify the arbitrators and inform them of their role<sup>4</sup>.

It should be noted that the language of the arbitration must also be specified, as the use of a foreign language by one of the parties may lead to misunderstandings. Most laws require the parties to include a clause in the contract specifying the language of the contract or the language in which the contract was concluded. This is also common practice in model contracts for electronic transactions<sup>5</sup>. For example, Article 19 of the UNCITRAL Model Law on International Commercial Arbitration 2010, leaves the parties free to choose the language and, in the absence of an agreement, the arbitral tribunal shall determine the language on the basis of the statement of claim, statement of defence or other written submissions made by the parties. The language or languages to be used at oral hearings, if any, may also be determined. The tribunal may order the submission of translations into the agreed language or languages<sup>6</sup>. This approach is also followed by the WIPO Expedited Arbitration Rules and the ICANN organisation<sup>7</sup>.

### **The second branch: Establishment of the electronic arbitral tribunal and determination of its functions**

It has already been explained that the arbitration agreement must include, in addition to the applicable law, the selection of the arbitral tribunal and the determination of its jurisdiction<sup>8</sup>. This is provided for in the 1927 Geneva Convention on the Enforcement of Foreign Arbitral Awards and the 1957 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The importance of defining the functions of the arbitral tribunal lies in the fact that it is one of the grounds for setting aside an arbitral award if it is found that the arbitral tribunal has ruled in a manner inconsistent with the functions assigned to it in the arbitration agreement<sup>9</sup>.

The arbitration agreement has played an important role in international commercial arbitration, where it has become customary in many arbitrations, even where it is not

<sup>1</sup> - Ben Dahman Sabria, *ibid*, p. 48.

<sup>2</sup> - Rajaa Nizam Hafidh Bani Shamsa, *ibid*, p. 86. - Boudissa Karima, *ibid*, p. 113.

- Hamadouch Anissa, *ibid*, p. 235.

<sup>3</sup> - See texts and provisions of the arbitration system for the Chamber of Commerce at: [link](<https://www.mohamah.net/law/>)

- Vogali Basma, *ibid*, p. 200.

<sup>4</sup> - Rajaa Nizam Hafidh Bani Shamsa, *ibid*, p. 89 et seq.

<sup>5</sup> - Mohamed Houdi, *ibid*, p. 181.

<sup>6</sup> - Boudissa Karima, *ibid*, p. 119.

<sup>7</sup> - UNCITRAL Rules, see: [link](<https://www.academia.edu/19517772/>)

<sup>8</sup> - Boudissa Karima, *ibid*, pp. 120-121.

<sup>9</sup> - Article 1008/2 of the Algerian Code of Civil and Administrative Procedure.

expressly provided for by law. In many cases, it has become applicable beyond the scope of arbitration within the International Chamber of Commerce in Paris<sup>1</sup>. It also requires the arbitrator to be impartial, independent and neutral in relation to the parties exploiting the system, as there is a form of collaboration between them. The arbitrator must be independent of the parties to the dispute<sup>2</sup>, as required by most legislation in general and Algerian legislation in particular. Similarly to traditional arbitration, in electronic arbitration the arbitrator or arbitrators may be challenged if they do not possess the qualifications agreed upon by the parties. In addition, the arbitrator or arbitrators may be challenged for a specific reason set out in the agreed arbitration system or if there are legitimate doubts as to their independence, in particular due to direct economic or family interests or through a mediator with one of the parties<sup>3</sup>. Furthermore, the arbitrator appointed or involved in the appointment process may not be challenged except for reasons that become known after the appointment. It is the responsibility of the party concerned to notify the Arbitral Tribunal and the other party of the challenge without delay. If the parties fail to resolve the challenge, the arbitrator, upon application by the party concerned, shall make a decision which shall not be subject to appeal. In order to ensure the smooth running of the arbitration, arbitration centres have established cases in which it is possible to replace the arbitrator. These cases include:

- Death

- incapacity that prevents the continuation of the dispute resolution process<sup>4</sup>.

Once the application has been completed as described above and the arbitrators have been notified and selected<sup>5</sup> (the selection may be for a single arbitrator or a tribunal), the arbitration has already begun. The arbitration shall commence on the date previously announced by means of the technological means available on the Internet that allow the electronic and synchronous exchange of audio, video and textual information between the parties. E-mail allows the transmission of textual and audiovisual documents. The arbitration hearings between the parties can be held from anywhere in the world using remote conferencing technology<sup>6</sup>. This is similar to virtual conferencing, where people working on computers can send and receive messages simultaneously and participate with other people in different rooms<sup>7</sup>.

The arbitral tribunal must comply with the terms and procedures set out in the arbitration agreement or clause<sup>8</sup>. The arbitral tribunal should consist of a single arbitrator or several

<sup>1</sup>- Hamadouch Anissa, *ibid*, p. 235. - Boudissa Karima, *ibid*, p. 116.

Article 1056/3 of the Algerian Code of Civil and Administrative Procedures.

<sup>2</sup>- Boudissa Karima, previous reference, page 116. - Vogali Besma, previous reference, page 207.

<sup>3</sup>- Azzouz Karima, cited above, page 104. - Article 1014 of the Algerian Code of Civil and Administrative Procedure.

<sup>4</sup>- Article 1016 of the Algerian Code of Civil and Administrative Procedure, previous reference.

<sup>5</sup>- Rouabhi Amina, cited above, page 133.

<sup>6</sup>- Electronic arbitration is mostly conducted through arbitration centres that publish their websites online and it is up to the parties to appoint arbitrators from the list prepared by the centre.

<sup>7</sup>- Hamadouch Anissa, previous reference, page 236. - Ahmed Essaid Salah Eddine, previous reference, page 63. Boudissa Karima, previous reference, page 139. - Vogali Besma, see previous reference, page 234 et seq.

<sup>8</sup>- Essam Abdel Fattah Matar, previous reference, page 444. - Azzouz Karima, *Electronic Arbitration in Electronic Commerce Contracts*, Journal of Research in Contracts and Business Law, Faculty of Law, University of the Brothers Mentouri, Constantine 1, 2019, page 103.

arbitrators individually<sup>1</sup> to ensure impartiality. The acceptance of the arbitration task by the arbitrator(s) should be formally declared<sup>2</sup>. Finally, it is necessary to mention the issue of ensuring the confidentiality of information and data exchanged during the arbitral proceedings. For this reason, arbitration centres include in their rules certain provisions requiring the parties to undertake not to disclose any documents relating to the dispute, to maintain the confidentiality of the proceedings and to implement technical measures to prevent unauthorised access and interference<sup>3</sup>.

### **The second request: Issuance and Enforcement of Electronic Arbitration Awards**

Electronic arbitration concludes with the issuance of an award resolving the dispute, which is considered the result of the agreement between the parties to the dispute. Enforcement of the award is essential to ensure that each party obtains its rights.

#### **First branch: Issuance of Electronic Arbitral Awards**

In order to reflect one of the most important features of arbitration, namely the speedy resolution of disputes, many legislations governing this method have attempted to determine the time within which the arbitral tribunal is obliged to issue the final award. Some legislations leave it to the discretion of the parties to determine the time limits<sup>4</sup>. The Algerian legislator has set a period of four months from the date of appointment or notification of the arbitral tribunal, which may be extended unless otherwise agreed by the parties<sup>5</sup>. The arbitration centres have also taken an interest in this matter and have set the time limit within which the arbitral tribunal must issue the award in accordance with their respective rules<sup>6</sup>.

Due to the remote nature of electronic arbitration, in addition to the speed of dispute resolution, it was necessary to ensure that the fundamental principles of arbitration were not compromised. These principles include respect for the right to a fair trial, the principle of impartiality and the principle of equality. By examining international documents and national legislation, we have found that they contain many principles that arbitral tribunals must take into account<sup>7</sup>.

The arbitral tribunal shall conclude the proceedings after the parties have presented their statements, after allowing them sufficient time to submit additional or amended statements, and after allowing the parties to appoint representatives regardless of their nationality, and shall render its decision by majority vote. The award shall be in writing<sup>8</sup> and shall be signed by the presiding arbitrator and the members of the Tribunal. It should contain the date and place of its issuance, the fees of the arbitrators and experts<sup>9</sup>, as well as the information of the

<sup>1</sup> - Saif Al-Din Elias Hamdtoo, previous reference, page 87.

<sup>2</sup> - Article 1017 of the Algerian Code of Civil and Administrative Procedure - previous reference -.

<sup>3</sup> - Article 1015 of the Algerian Code of Civil and Administrative Procedure - previous reference.

<sup>4</sup> - Boudissa Karima, the previous case, page 140.

<sup>5</sup> - Ben Dahman Sabria, case cited above, page 53.

<sup>6</sup> - See Article 1018 of the Algerian Code of Civil and Administrative Procedure - previous reference.

<sup>7</sup> - For further details, see - Boudissa Karima, case cited above, page 157 et seq. - Rouabhi Amina, the previous case, page 202. - Vogali Besma, previous reference, page 214 et seq.

<sup>8</sup> - For more details, see: - Essam Abdel Fattah Matar, previous reference, page 458 and beyond. - Vogali Besma, previous reference, page 237 and beyond. - Boudissa Karima, previous reference, page 140 et seq. - Ben Dahman Sabria, previous reference, page 60 and following.

<sup>9</sup> - Boudissa Karima, previous reference, page 162. - Essam Abdel Fattah Matar, previous reference, page 481.

disputing parties, a copy of the arbitration agreement and the statements and documents submitted by the parties<sup>1</sup>. All this is done electronically.

Electronic arbitration shall include all decisions issued by the arbitral tribunal through the international telecommunications network, whether final, interlocutory or partial<sup>2</sup>. Unless otherwise agreed by the parties or required by the applicable law governing the arbitration, the award must be reasoned<sup>3</sup>. However, under Algerian law, failure to state reasons for the award is considered a violation of a fundamental procedural rule and such an award may be challenged<sup>4</sup>.

### **The second branch: Enforcement of electronic awards**

After the arbitral tribunal has electronically signed the award, the award is issued and then notified to the parties by posting it on the case website on the Internet. The parties are notified of the award by e-mail and, if necessary, a receipt is obtained<sup>5</sup>. In general, the award, and in particular the electronic award, only acquires legal and practical value through enforcement.

Whether in the drafting of the arbitration agreement or in the issuance of the electronic award, all electronic documents must be capable of being extracted in paper form for submission to the courts for the purpose of seeking recognition and enforcement of the award<sup>6</sup>.

The issuance of the electronic arbitral award entails its finality, similar to that of a court judgment. The finality of the arbitral award is established before it is formulated for enforcement and, therefore, the arbitral tribunal that issued the arbitral award is prohibited from reviewing it, except to the extent permitted by law or by the arbitration agreement<sup>7</sup>.

In principle, the enforcement of the arbitral award is achieved by the agreement of the parties to the dispute, in accordance with the rules of the International Chamber of Commerce (ICC) in Paris. In the case of non-voluntary enforcement, some electronic arbitration centres have sought to provide mechanisms for compulsory enforcement, similar to the functions of enforcement authorities in the state. These mechanisms aim to encourage voluntary enforcement of the award. Examples of such mechanisms include enforcement commitment services, judgment financing funds and links between EACs and credit card providers to facilitate enforcement through registration<sup>8</sup>.

With regard to the rules governing the enforcement of electronic arbitration awards, in addition to the arbitration rules of domestic law, there are rules governed by collective agreements and others governed by bilateral agreements.

With regard to collective agreements on the enforcement of arbitral awards, the 1927 Geneva Convention and the 1958 New York Convention on the Recognition and Enforcement of

<sup>1</sup>- Mohammed Houdi, previous reference, page 182.

- Ahmed Mahmoud Al-Musa'ada, previous reference, pages 14-50. - Anissa Hamadouche, case referred to above, page 236. - Article 1029 of the Algerian Code of Civil and Administrative Procedure, previous reference.

<sup>2</sup>- Amina Rouabhi, cited above, page 205 et seq. - Essam Abdel Fattah Matar, cited above, page 480. - Articles 1027-1028 of the Algerian Code of Civil and Administrative Procedure.

<sup>3</sup>- Amina Rouabhi, cited above, page 195.

<sup>4</sup>- Anissa Hamadouche, cited above, page 236

<sup>5</sup>- Article 1056, paragraph 05, of the Algerian Code of Civil and Administrative Procedure, previous reference.

<sup>6</sup>- Amina Rouabhi, case cited above, page 204. - Essam Abdel Fattah Matar, case cited above, page 496.

<sup>7</sup>- Ahmed Mahmoud Al-Musa'ada, Legal Regulation of Electronic Arbitration Awards (A Comparative Study), Academic Journal of Legal Research, Al Majmaah University, Kingdom of Saudi Arabia, Issue 2, 2015, page 50.

<sup>8</sup>- Amina Rouabhi, the previous reference, page 215. - Ahmed Mahmoud Al-Musa'ada, previous reference, page 52.

Foreign Arbitral Awards<sup>1</sup> (to which Algeria is a party)<sup>1</sup> aim to improve the recognition and enforcement of arbitral awards. There is also the Washington Convention on the Settlement of Investment Disputes of 1965 (to which Algeria is a party)<sup>2</sup>, which states that a State may not invoke its immunity to refuse enforcement of an arbitral award, as this would undermine the legal regime of arbitration.

In the case of bilateral agreements, this occurs when countries resort to concluding bilateral agreements for the enforcement of arbitral awards<sup>3</sup>.

In terms of domestic legislation, some countries have adopted a voluntary approach without the need for any authority, such as Austrian and Norwegian law. Others have required an administrative procedure, such as Swedish and Finnish law<sup>4</sup>. However, most laws require an enforcement order to be obtained from the competent judicial authority. In this respect, the Algerian legislator has taken steps in this direction<sup>5</sup>.

Enforcement of an electronic award is the same as for a traditional award<sup>6</sup>.

The interested party should deposit the original copy of the electronic award with the court registry<sup>7</sup>, pay the fees and submit the motions, documents and the original award<sup>8</sup>. Upon confirmation of the validity of the electronic arbitration<sup>9</sup> by the presiding judge of the competent court, the Chief Registrar is responsible for delivering an official certified copy of the enforceable version of the award to the requesting party<sup>10</sup>. In the event of a refusal to enforce the electronic award, the parties may appeal to the Judicial Council within 15 days from the date of the refusal<sup>11</sup>.

As for the appeal in international arbitration, it should be filed within one month from the official notification of the order issued by the President of the Court<sup>12</sup>. Whether it is a national or an international award, it is subject to the rules of the law of the State in which enforcement is sought<sup>13</sup>. Once the electronic award has been certified as enforceable, it is available for enforcement in accordance with Article 600(9) of the Algerian Code of Civil and Administrative Procedure.

### **Conclusion:**

Electronic Arbitration is a modern and preferred mechanism suitable for participants in e-commerce due to its advantages such as quick resolution of disputes, reduction of litigation costs and avoidance of conflicts of law and jurisdiction. However, it is not without its shortcomings, especially considering that it takes place over the Internet, which raises concerns about the confidentiality of the arbitration.

<sup>1</sup>- Essam Abdel Fattah Matar, previous reference, pages 487-490-495.

<sup>2</sup>- See website: [uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ar/new.york-](http://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ar/new.york-)  
For further details see Bisma Vogali, the previous reference, page 316 et seq.

<sup>3</sup>- Implementing Decree No. 88/233 of 05-11-1988, Official Gazette No. 48.

<sup>4</sup>- See website: [aifa-eg.com/washington-agreement.html](http://aifa-eg.com/washington-agreement.html)

<sup>5</sup>- Implementing Decree No. 95/346 of 300-1995, Official Gazette No. 66.

<sup>6</sup>- Sara Abdul Hussein Rahmany, the previous reference, page 55.

<sup>7</sup>- Article 1035, paragraph 1 - 1051, paragraph 2 of the Code of Civil and Administrative Procedure.

<sup>8</sup>- Article 1035, paragraph 1 - 1052 of the Code of Civil and Administrative Procedure.

<sup>9</sup>- Articles 1035, paragraph 2 - 1052m of the Code of Civil and Administrative Procedure.

<sup>10</sup>- Articles 1051 - 1052 of the Code of Civil and Administrative Procedure.

<sup>11</sup>- Article 1036 of the Code of Civil and Administrative Procedure.

<sup>12</sup>- Article 1035 of the Code of Civil and Administrative Procedure.

<sup>13</sup>- Articles 1055 - 1057 of the Code of Civil and Administrative Procedure.



**Results:**

Electronic arbitration does not differ from traditional arbitration except for the means used, which is the Internet.

Electronic arbitration is considered to be the most effective method of resolving e-commerce disputes due to the simplicity of the procedures and the speed of resolution. All procedures, from the arbitration agreement, to the filing and conduct of the dispute, to the issuance of the award, must be conducted remotely via the Internet.

Electronic arbitration is regulated by collective agreements and most national laws. However, the Algerian legislator still adheres to the traditional system.

The Algerian legislation on e-commerce does not show any tendency to regulate electronic arbitration, since it regulates traditional arbitration in its national and international forms.

The recognition of the validity of electronic arbitration by most countries and collective agreements is subject to compliance with public policy and public morality.

**Suggestions:**

-The Algerian legislator should take the initiative to regulate electronic arbitration without delay.

-The Algerian legislator should align itself with international agreements in regulating international electronic arbitration.

-Allow the establishment of Algerian arbitration centres and the training of specialised arbitrators in the field of electronic arbitration.

-Provide a suitable environment to ensure its spread by improving internet connectivity and providing measures to protect against website breaches, such as data and information encryption.

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