

Arbitration Award via Modern Technical means in Saudi Arabia

Dr. Mohammed Sulaiman Alnasyan

m.alnasyan@mu.edu.sa

Department of Islamic Studies, College of Science and Humanities, Majmaah University, AL- Majmaah 11952, Saudi Arabia

Abstract

This study deals with arbitration award via modern technical means; because e-Arbitration is deemed to be one of the most important substitute means for the settlement of disputes arising from electronic transactions. This type of arbitration is characterized by fast settlement of disputes, as well as fast enforcement of awards rendered thereon. The researcher seeks to indicate the content of the award, the conditions for rendering it, and to analyze the legal provisions related to its legal basis in the Saudi Law of Arbitration. This study shows that an arbitration award, rendered via modern technical means has a number of advantages, such as fast settlement, less cost, and keeping pace with modern technology, which is an aim of Saudi Arabia Vision 2030. The study also points out certain problems facing arbitration via technical means; however, the most important of which is the insufficiency of some legal rules associated with traditional arbitration, as contained in the Saudi Law of Arbitration, which are incompatible with or applicable to an arbitration award which is rendered via modern means.

Keywords:

Arbitration, Arbitration Award, Modern Technical, Award.

1. Introduction

An arbitration award, rendered via modern technical means, is an important issue, which urges the researcher to prove the legality of the arbitration award in general; as well as determining the impact of technical means on arbitration, in accordance with the Saudi Law of Arbitration. It is the aim of arbitration proceedings to render an arbitration award that would settle the arbitration case, wholly or partially. Furthermore, an arbitration award shall meet all the procedural, formal and substantive modes which are required under the Saudi Law of Arbitration. However, an arbitration award, rendered via electronic means, may face several difficulties, particularly in terms of the method of deliberation between the members of the arbitration tribunal, via modern means, and how to vote on such award by the arbitration tribunal, through using such devices. Moreover, it is not easy to write and sign the arbitration award via modern

technical devices, as problems may exist in this regard.

2. The Study Problem

The problem of this study emanates from how to indicate the sufficiency of the Saudi legislation governing an arbitration award, rendered via modern technical means; how the Saudi legislations, which are applicable to traditional arbitration, can be applicable to such arbitration award; and to what extent could general rules match with modern devices.

3. Research Questions

What is the Saudi legislator's attitude towards the arbitration award, rendered via technical devices? To what extent do the substantive and formal conditions of traditional arbitration apply to an arbitration award, rendered via modern devices? What are the formal and substantive terms of an arbitration award, so rendered?

4. Objectives of the Study

To indicate the Saudi legislator's attitude regarding the arbitration award, rendered by modern means of technology; as well as finding out the formal and substantive terms for an arbitration award, rendered via modern means of technology; and to identify the authenticity of an arbitration award, rendered by such modern devices.

5. Methodology of the Study

The research will be using the descriptive approach to describe the arbitration award, rendered via modern technical devices; and the researcher also uses the analytic methodology for the analysis of the provisions which are related to the subject of the study, in order to identify the strengths and weakness of the Saudi legislation.

6. The Importance of the Study

e-Arbitration is considered to be one the most methods for the settlement of disputes arising from electronic commercial transacting which are electronically concluded and performed; and based on all that is stated above, the importance of this study emanates from the lack of legislation and research dealing with this matter, which focuses on studying the arbitration award, rendered via technical devices.

7. The Arbitration Proceedings

Given the importance of the arbitration award, conducted via technical devices, to settle disputes related to e-commerce, transacted via modern means of technology, such award may only be rendered after going through certain procedures. Anyway, prior to rendering its award, the arbitration tribunal shall conduct deliberations between its members, which is applicable to arbitration processes in general. However, deliberation in arbitration is conducted via technical means, and during such deliberation, the members of the arbitration will come up with an opinion; and in case of non-agreement, the arbitration award will be rendered by the majority vote; and this shall be the content of the arbitration award, issued by them.

In principle an arbitration award, rendered via technical devices, is similar to that of the conventional arbitration; that is to say, it shall meet certain requirements so that it can be valid and enforceable.

Taking into account, the consequences resulting from an e-arbitration award, mainly represented by the settlement of the existing dispute between the parties, such award shall be drafted in a written form, and shall be signed by the members of the arbitration tribunal, which is convened via technical devices, so that such award will satisfy the requirements of an arbitration award under the Saudi Law of Arbitration.

7.1 Deliberation and Voting

e-Arbitration award is rendered after qualifying certain procedures; as these procedures are considered basic requirements for such award. These procedures comprise the deliberation which shall be conducted between the members of the arbitration tribunal prior to rendering an award, and

the members of the tribunal will come up with an opinion during such deliberation; however, in case of non-agreement, the majority's opinion will prevail, and will constitute the content of the award, so rendered.

Upon finalizing the arbitration process, and ending the hearings, the e-arbitration tribunal shall stop pleading on the arbitration case, and shall start rendering its award; however, such award shall only be rendered after deliberation between the members of the arbitration tribunal, provided that there is a period of time during which the members of the arbitration conduct the necessary deliberation prior to redefining an award [1].

The deliberation, conducted prior to issuing the arbitration award, is deemed a basic requirement of arbitration, because no award shall be rendered by the arbitration tribunal without deliberation prior to issuing it. In the event that the arbitration tribunal comprises several, normally an odd number, deliberation must be conducted among them prior to rendering the arbitration award [2].

Deliberation means that the arbitrators shall take an opinion between them in terms of the facts, the applicable rules, the decision made by each of them, as well as the rules of justice which are applicable to such facts, and the conclusion reached by them to settle the dispute.

The arbitration tribunal, upon stopping pleading on the case, shall conduct deliberation between the members thereof, to examine the documents and statements of the two parties, in order to come up with an opinion which is acceptable to the majority of the members, so that an arbitration award can be issued on the existing dispute between the parties. This deliberation is intended to enable each member of the arbitration tribunal to review the point of view of the other members. Then, each member will have the opportunity to discuss and comment of these views, in an attempt to bridge the gap between the various points of view, in order to come up with one opinion, so that the arbitration tribunal can render its award. All the members of the arbitration tribunal shall participate in such deliberation; however, in case that deliberation is conducted between said members, but no reference is made to it in the award, such award shall be subject to objection to invalidate it. On the other hand, only authorized persons shall take part in this

deliberation; and arbitrators may only participate in the deliberation after hearing the pleadings and statements provided by the litigants. Furthermore, the arbitrators shall conduct the arbitration in person, not by proxy [3].

To ensure the validity thereof, deliberation shall be conducted secretly, and shall only be attended by the arbitrators, so that the arbitrator is sure to have the opportunity to express his opinion, and ensure the non-disclosure of the secrets of the parties to the dispute, contained in the case file.

In case of e-arbitration, deliberation is conducted by way of exchanging communications without needing to attend physically, neither for the parties to the dispute or the arbitrators; in other words, the arbitrators will exchange views between them to render the arbitration award, via audiovisual technical devices, provided that confidentiality is strictly complied with; taking into account that confidentiality requires that deliberations shall only be attended by the members of the arbitration tribunals; that is to say non-authorized persons, in this regard, shall not have access to the website via which the deliberation is conducted [4].

After the end of deliberation, the arbitration tribunals will issue its award via modern means of technology, unanimously or by the majority vote of the arbitration tribunal members. Voting on the arbitration award shall be via technical means, without the physical attendance of the arbitrators; because the arbitration process and the procedures related to rendering the arbitration, as well as voting shall be conducted via such means [5].

7.2 The Content of an Arbitration Award rendered via Modern means of Technology

Taking into account the paramount significance of e-arbitration, it shall contain all the formal and substantive data, so that it can be valid and enforceable; therefore the arbitration tribunal, which conducted the arbitration process and rendered its award, via modern technical devices, shall mention the names of the arbitration tribunal members, their capacities, addresses and nationalities as well as mentioning the names of the parties to the dispute, to make sure that the arbitrators, who were selected by the parties, have

conducted the settlement of the existing dispute between the parties, by rendering an enforceable arbitration award.

The e-arbitration tribunal shall also present a brief account of the litigants' statements and the documents upon which they relied; so that the parties can make sure that the members of the arbitration tribunal have settled all the claims which have been filed by the parties within the specified period of time. Also, the arbitration award shall contain the reasons and legal grounds on which the tribunal relied to issue its award; and the award shall also contain the text of the ruling so that it can be enforced accordingly [6].

An arbitration award, rendered via modern technical devices, shall contain as follows:

1. Names of the arbitrators:

It is necessary to mention the names of the arbitrators who conducted the arbitration process via modern technical devices; as well as mentioning their capacities, addresses and nationalities, together with other relevant information, so that the arbitrators, who rendered the arbitration award, can be identified; and this is to make sure that the arbitrators, who were selected by the parties, constitute the tribunal themselves [7].

2. Names of the Parties to the Dispute:

Each party to the dispute shall be mentioned in the arbitration award, conducted via modern means of technology; also, their names, nationality, addresses, representatives, as well as other information, related to them, shall be mentioned. It is also important to explain whether the parties to the dispute are natural or legal persons; and also the names of the lawyers and advisors of each party shall be mentioned if any.

It is required to mention the names of the parties to the dispute, so as to ensure that an arbitration award, rendered via technical devices, includes the information of the litigants, and that the arbitration award is rendered on the dispute existing between them, not any other one; therefore, there will be no confusion or ambiguity, particularly upon the enforcement of the award, by the judgment beneficiary, so that

it can be easily enforced. However, if the parties to the dispute are not mentioned, this may render the arbitration award unenforceable, because it will be difficult to identify the party who is entitled to request enforcement [8].

The arbitration tribunal, which is convened via technical devices, shall, upon rendering its award on the dispute existing between the parties to electronic commercial disputes, mention the names of the parties to such dispute; which is important to indicate that the litigant parties are the same as the parties to the arbitration, pursuant to which the arbitration award has been issued; and to ensure that no financial liabilities exists between the parties; because contracts of e-commerce are concluded via modern technical devices; therefore, the parties to the dispute may not be able to identify each, except by way of the information which has been fully mentioned, and in the event that such information is not mentioned, it will be very difficult to enforce the arbitration award [6].

3. The subject of the Dispute

It is necessary to mention the dispute which has arisen between the parties; therefore one of the parties has requested the commencement of the proceedings in order to settle the dispute by way of arbitration; and the arbitration tribunal, which is convened via technical devices, shall mention the dispute arising from e-commerce transactions, or otherwise.

4. The Litigant's Statements and Documents

The tribunal of arbitration, conducted via modern means of technology, shall mention the litigants' statements, defenses and the documents on which they relied, to ensure that the arbitration tribunal has settled the dispute, examined all the requests which have been presented by the litigant parties, within the period determined by them, and this will also make it easy for the parties to challenge the arbitration award [9].

Furthermore, the arbitration tribunal, convened via technical devices, shall, upon rendering its award, include a brief account

of the litigants' statement and the relief claimed by them, as well as their defence so that the parties to the dispute can make sure that the arbitration tribunal has examined their requests, particularly as such award has been rendered via technical devices.

5. The Reasons of the Arbitration Award

An arbitration award, rendered via technical devices, is based on reasons; i.e. stating the arguments and factual and legal evidence, which has been relied on by the arbitration tribunal to render its award; and the tribunal shall also mention the laws on which it has relied to issue the arbitration award.

Also, the arbitration award shall indicate the extent of its activity, and how it is professionally capable of applying the laws and rules on the facts brought before it; so that the parties to the dispute will be confident that the arbitration tribunal is capable of settling the dispute; and it also required that such reasons are clear, and free of confusion, ambiguity or insufficiency [8].

The arbitration tribunal shall also provide sufficient causation to its award, to indicate the grounds on which it relied to issue the award, in order to ensure the right of defence for both parties, and to ensure the principle of independence and impartiality for the arbitration tribunal, which shall not take sides with any one of the parties to the dispute, so that confidence can exist in respect of the arbitration award, and its decision.

6. The Date of the Arbitration Award

Upon rendering its award, the arbitration tribunal shall indicate the date when the award was issued, because indicating such date will make it possible to find out whether the decision was issued within the specified period for arbitration, or otherwise beyond it. It is known that the parties to the dispute usually agree upon a certain duration for rendering the arbitration award; also the date is important because it gives rise to procedural and substantive consequences including objection, and in the event that the arbitration award neglects mentioning the

date, this will consequently render the arbitration null and void [10].

The date of an arbitration award, rendered via technical devices, will lead to some difficulties, because it is rendered without physical attendance of the parties to the dispute or the arbitration award; therefore, the arbitration tribunal shall, upon reaching its award, state the date of the arbitration award, via modern means of technology, which document e-transactions, and protect the rights of the tribunal because it rendered such award at this date.

7. The Text of the Arbitration Award

This refers to the decision, which was issued by the arbitration tribunal, in respect of the relief claimed by the parties, whether before or after the settlement of the dispute, and whether the arbitration tribunal has decided on the requests wholly or partially, or whether such award is obligatory or discretionary. However, the text of the arbitration award is considered among the most important aspects of an arbitration award, because it represents the final result that is sought by each party to the arbitration; and without it, such arbitration award will be futile; because the non-existence of the text of arbitration award will make the party, in whose favor such award is rendered, unable to enforce the same, and the whole arbitration process will collapse, and fail to settle the dispute [9].

It is required for the text of an arbitration award, rendered via technical devices, to be clear and free of shortcomings; so that the beneficiary of the arbitration award can be able to enforce the same very easily; and such text has to be clear in terms of the content thereof; that is to say the text of the arbitration award shall not be ambiguous, so that it can be easy to identify its real content, and the award shall not imply a discrepancy between the parties thereof.

In addition, the text of the arbitration award shall include the settlement of all the matters, brought before the arbitration tribunal, convened via modern technical devices, as agreed upon by the parties [8].

The text of the arbitration award, rendered via technical devices, shall clearly disclose the decision which has been made by the arbitration tribunal in respect of the existing dispute between the parties, the matter which will lead to realizing the aim of the parties, namely to enforce such award without any difficulty.

In Sumbased on the foregoing, it can be concluded that an e-arbitration and is not different from what is rendered by conventional arbitration, except for the method of rendering and notifying it, as an e-arbitration award depends on deliberation via electronic devices, and it is also notified via modern means and devices.

8. The Formal Requirements for an Arbitration Award rendered via Modern Technical Devices

Resorting to e-arbitration, by the parties, is intended to settle the existing disputes between the parties. Such arbitration awards shall be drafted in writing and signed by the members of the arbitration tribunal [10]. The award of arbitration, convened via modern technology, in terms of editing and signing it. However, writing and signing the arbitration award via technical devices give rise to a number of legal issues, regarding editing and signing it by using technical devices. Accordingly, the researcher will deal with the writing of the arbitration award rendered via technical devices in the first part, and the second part will deal with the signing of such an award.

8.1 Writing

When issuing its award, the arbitration tribunal shall write the same, as writing is considered the main requirement for the existence of such award, because it is deemed to be a judicial work, and the arbitrators are doing a quasi-judicial work; therefore, their decision on the dispute shall meet all the requirements of the judicial work, more particularly the element of writing.

The reason for stipulating writing in respect of the arbitration award is that in case such award is issued verbally, it will be forgotten with the passage of time; also, the writing of the arbitration award will enable the parties to the dispute to review it

easily, as well as monitoring it. Moreover, writing the arbitration award will enable the parties to enforce it in any country where it is required to be enforced [2].

Undoubtedly, the writing stipulation of the arbitration award is deemed one of the basic requirements imposed by the laws regulating arbitration.

8.1.1 The stipulation for writing the arbitration award in the Saudi Law of Arbitration

Article 42 of the Saudi Law of Arbitration provides that the arbitration award shall be made in writing; and this also provided for in Article 31 of the UNCITRAL model law. Furthermore, Article 7 of the Law of e-Transactions provides that if it is required under any law in the Kingdom that a document, registration or information, presented to any person, shall be in writing, it will be sufficient to present the same in electronic form.

This will certainly reinforce the Saudi legislator's approach, to use modern technical means, because the legislator now depends on computer extracts with respect to proof. Accordingly, it is possible to render an arbitration award via these devices or means; because this provision provides even for the authenticity of email messages, and has made them equal to common instruments in respect of proof, as long as the requirements of the Law of Evidence are available; also Article 9 of the Law of Evidence deems authentic all the information saved or transferred by using modern technologies.

The researcher believes that the Saudi legislator's attitude is very clear as regards the stipulation of writing, but he did not limit such stipulation to the written form on paper, as the stipulation of writing can be realized electronically, since such form can realize the function of writing, required by the Saudi legislator.

8.1.2 The Stipulation of Writing in the New York Convention

The New York 1958 Convention clearly stipulates that the arbitration award shall be made in writing, so that it can be enforceable, because it can be indirectly concluded that writing is a requirement for the enforcement of an arbitration award, under said convention; because it is required to provide the original award or a copy thereof, as well as the original agreement or a copy thereof;

however, these requirements unfulfilled in respect of electronic documents, because the computer can make an unlimited number of copies.

8.1.3 The Stipulation for Writing an Arbitration Award in the UNCITRAL Model Law

This law has been amended to give authenticity to email messages and electronic writing which are deemed to be equal to conventional writing; and Article 9 of the Convention stipulates that if the law provides for making the letter or contract in writing, such stipulation can be satisfied by electronic letter of accession to the information contained therein is possible in such a way as to make it easy to use and refer to it later on.

8.2 Signature

Article 2 of the UNCITRAL Model Law defines the electronic signature as follows:

"Data in electronic form contained in a message, or added or logically related to it, so that it can be used to determine the identity of the signatory of said message, and to indicate his approval to the information contained therein."

As per the Saudi Law of e-Transactions, it is clear that the Saudi legislation provides for an electronic signature; and that if a signature is required in writing on a document, a contract or the like, an electronic signature, is administered in accordance with the Law of e-Transactions, shall be deemed sufficient for this stipulation; because an electronic signature is considered as equal to a written signature, and shall have the same legal effect. In addition, Article 57 of the Law of Evidence provides that digital signature is deemed authentic if it has been issued in accordance with the Law of e-Transactions. Accordingly, it can be concluded that signature can be accepted as an evidence vis a vis the signatory, provided that the following conditions are satisfied:

- That the signature belongs to the signatory, and can identify him, otherwise such signature shall not be accepted as evidence.
- The signature shall be fixed and legible, and constant, because a signature is generally a form of writing.
- Signature shall be related to a written document, and shall come at the end of such document, to indicate the approval

thereof; however, in respect of e-Transactions, signature shall be closely placed to avoid alteration or any other unfavorable acts.

9. Conclusion

First: Findings

- Before rendering its award, the arbitration tribunal shall conduct deliberation among its members via technical means, and after that, the members shall vote by using modern means of technology.
- The Saudi Law of Arbitration provides for writing, but it does not limit this stipulation to paper writing, and the writing requirements in respect of an arbitration award can be fulfilled by the electronic form, as long as such form can fulfill the writing stipulation required by the legislator in terms of the arbitration award.
- Furthermore, after rendering its award, the arbitration tribunal shall notify the parties, and it shall send a copy of its award, signed by using technical devices, either via email or any other means.
- An arbitration award, administered via modern technical devices, shall include formal and substantive information so that it can be valid and enforceable.
- Signing the arbitration award electronically, shall not make such award lose its validity or the enforceability thereof, as per the concept of signature in accordance with the Law of e-Transactions, and the Law of Evidence.
- Finally, it can be said that the Saudi legislator has recognized the authenticity of computer extracts with respect to proof; and has granted email messages the authenticity accorded to conventional instruments of proof.

Second: Recommendations

1.It is recommended that Article 42 of the Law of Arbitration should be amended to include all the modern means of technology, to keep pace with development, on the one hand, and the provisions of the Law of Evidence and the Law of e-Transactions on the other hand.

2.It is further that the Saudi legislator should make amendments to regulate arbitration which is administered via technical devices, in terms of its procedures, method of rendering an award, as well as its authenticity and enforcement.

3.The Saudi legislator should also add a provision in line with Article 6 of the Model Law of Arbitration which provides as follows. *“wherever, the law requires signature by a person, such signature shall be deemed available with respect to the data message, if electronic signature is used.”*

4.The researcher also recommends that a provision should be added to define the electronic signature in line with Article 6 of the UNCITRAL Model Law.

Acknowledgment

The author would like to thank Deanship of Scientific Research at Majmaah University for supporting this work under Project Number No. R-2022-207

References

1. Al-Mirshawi, Abdul-Hameed, Al-Ma'arif Printing Press, Alexandria, 2010.
2. Al-Rifa'e, Ashraf, Arbitration in International Foreign Relations, Arab Nahda Printing House, Cairo, 1998.
3. Wali, Fathi, Arbitration, Arab Nahda Printing House, Cairo, 2005.
4. Fawzi, Sami, Arbitration in International Commerce, Dar Al-Thagafa, Amman, 1999.
5. Atteyah, Azmi, The Law of Arbitration, University of Kuwait, 1999.
6. Al-Tihaiwi, Mahmoud, e-Arbitration, Dar Al-Ma'arif, Alexandria, 2006.
7. Ibrahim, Ahmed, Choosing the Arbitrator's Way, Ein Shams, 2008.
8. Nabeel, Omar, Arbitration in Civil and Commercial Provisions, Dar Al-Ma'arif, Cairo, 2005.
9. Nour, Mohamed, Controlling the Arbitrators' Works, Dar Al-Nahda Al-Arabia, Cairo, 2006.
10. Ahmed, Ibrahim, Selecting the Arbitration Counsel, , Ein Shams, 2010.

Dr. Mohammed Sulaiman Alnasyan

Mohammed Alnasyan received a Bachelor's degree in Islamic Law. Al-Imam Mohamed Ibn Saud Islamic University, Sharia "Islamic Law" College in 2008, and L.L.M. degrees, from Willamette University School of Law in 2016. He received the S.J.D from Case Western Reserve University School of Law in 2019. He is working as an assistant professor at Majmaah University, College of Science and Humanities in Rumaah.