



Law of Arbitration

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Content

- Online Arbitration

Introduction

- On the Internet, one can find over twenty-five providers of online dispute resolution
- Eg.
- ICANN's Uniform Dispute Resolution Policy for domain names (UDRP)—six thousand decisions have been rendered
- Chartered Institute of Arbitrators- has delivered approximately 70 awards

CONCEPT

Definition by Cecil Abraham:

A form of dispute resolution using the internet as the main medium in conjunction with other technology, such as multi point video conferencing.

✓Also known as cyber arbitration (CYBITRATION), virtual arbitration, cyberspace arbitration

✓ there is no need for a physical location or venue for cyber arbitration

✓ the seat of arbitration is usually where the arbitrator sits and the form of communication would be as laid down by the applicable rules governing the conduct of arbitration

TYPES OF ONLINE ARBITRATION

eg: eBay

- ✓ **Cater mainly for consumer disputes arising from or out of transactions and are banded together with the company trading over the internet**
- ✓ **Services offered usually are mediation and conciliation services**
- ✓ **The ultimate aim is to improve customer satisfaction and confidence in the system in order to encourage repeated business**

WHY CYBITRATION??

i. utilisation of existing internet technologies greatly reduces communication costs

✓ **telephone bills and etc.**

✓ **internet is more cost effective**

ii. it also alleviates the need for a specific physical location for the system to operate

✓

iii. it removes the need for the administrator and server to be in the same location

iv. All info is stored and administered by the server. Therefore, anybody can confirm the contents from anywhere and at any time

- ✓ internet is accessible anywhere and any time**
- ✓ convenient means of communication**

HOW IT WORKS??

- i. Every event or action takes place over the internet**
- ii. The server will perform every request and procedure**
- iii. The administrator always has immediate access to the current status of any case**
- iv. The server centralises all administrative duties, and thus coordination functions are maximised**

CHARACTERISTICS OF CYBITRATION

1. Mode of arbitration

- ✓ **it will be initiated, conducted and concluded using internet**
- ✓ **the internet will be used either btw the parties with arbitrator or btw the parties themselves**
- ✓ **everything will be filed electronically**
- ✓ **can also be in the form of video conferencing**

2. Initiation of arbitration

- ✓ **a registration form which could be obtained online**
- ✓ **the procedure and number of arbitrators are also required to be filled online**
- ✓ **everything would be sent via e-mail**

3. Appointment of arbitrators

- ✓ **subject to agreement btw parties**

4. Completion of registration

- ✓ **upon completion of registration, parties would be assigned login identification and passwords**
- ✓ **automated response will be generated to the system**

5. Documents

- ✓ **Documentary evidence will be uploaded by means of registration form.**
- ✓ **Server would generate file whereby the parties and arbitrators would be able to access using login identification and password.**
- ✓ **If one party omits to comply with certain procedures, the system will notify the other party.**

What laws?

- most national laws and international convention still require the arbitration agreement to be in writing.
- The UNCITRAL Model Law (Art. 7 (2)), the German
- Arbitration Act (§ 1031 (1)), the English Arbitration Act (Sect. 5 (6)), and the Swiss PIL Act (Art. 178 (1)) consider that the agreement is in writing when recorded by electronic means.

WHAT RULES ARE REQUIRED TO CONDUCT ONLINE ARBITRATION

- i. Arbitration clause and its validity**
- ✓ **Applicability of local laws to transactions that are conducted online and which may have been completed in another country**
- ✓ **An arbitration clause contained in an agreement executed online may be invalid by reason of it being contrary to the law of the land**

ii. Integrity of the system

- ✓ Parties must not consider the integrity of the proceedings conducted online is lower than traditional arbitration**
- ✓ Perception of the parties engaged in the online proceeding is important**

iii. Arbitral issues

- ✓ issue of impartiality, confidentiality and effective communication are important**

iv. Specific rules

- ✓ **eg. Right to be heard**
- ✓ **a legislation may be required to determine wtr a hearing via video conferencing impinges the right to be heard (observation of the rule of *audi alteram partem*)**
- ✓ **procedures must be established to ensure that witnesses are not guided in their testimony**

v. International response and modification of rules

- ✓ **there must be a specific rule to govern online arbitration**
- ✓ **eg: S. 9(1) requirement of writings should also include electronic data message**

(modifications have to be made to encompass online arbitration)

CYBER LAWS IN MALAYSIA

- i) Digital Signature Act 1997**
- ii) Computers crime Act 1997**
- iii) Telemedicine Act 1997**
- iv) Electronic Commerce Act**