



جامعة الأزهر
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Digitizing Alternative Means of Resolving Commercial Disputes

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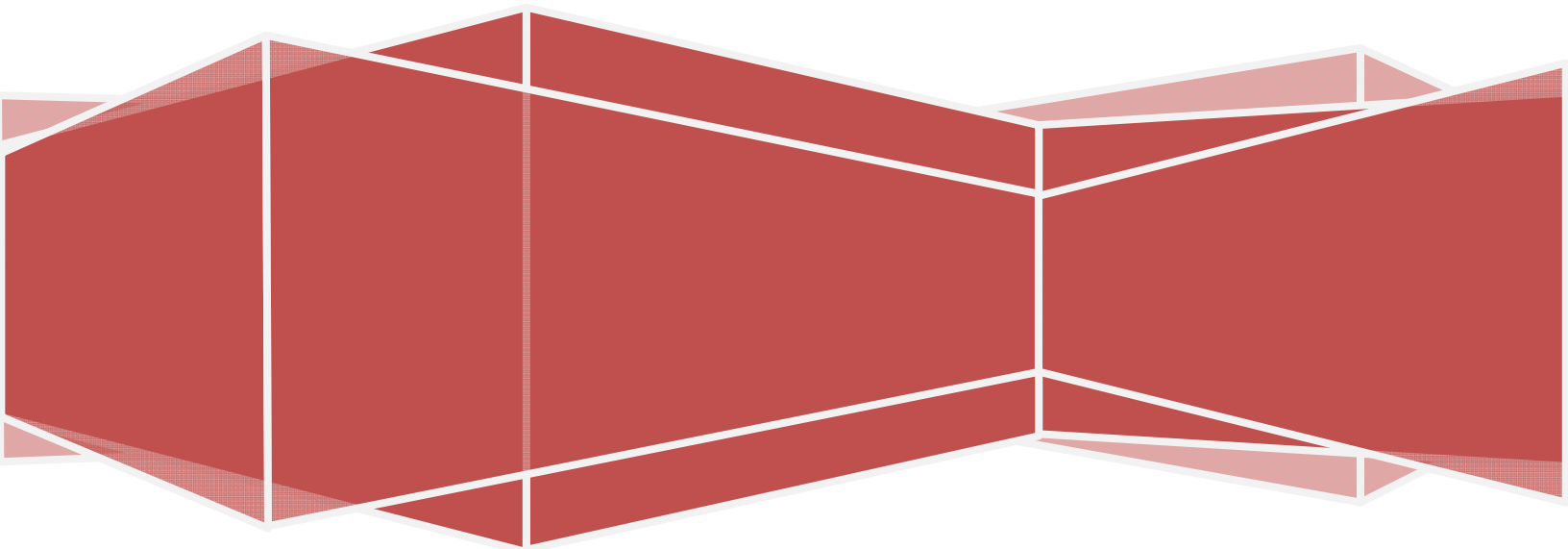
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الإصدار الأول من العدد الحادي والأربعين
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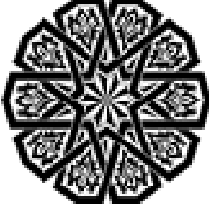
رقمنة الوسائل البديلة لحل المنازعات التجارية

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ملخص البحث :

يشهد العالم تطورات هائلة في مجال التكنولوجيا والرقمنة. تمثل الرقمنة مرحلة أساسية في التحول الرقمي، وتشمل استخدام التقنيات الإلكترونية لتخزين البيانات وتحليلها. تشير رقمنة أساليب تسوية المنازعات البديلة إلى استخدام تقنيات الاتصال الحديثة لحل النزاعات خارج النظام القضائي. ستتناول هذه الدراسة مفهوم رقمنة هذه الأساليب، وأهميتها، والعقبات التي تواجهها، وآلياتها. تستكشف هذه الدراسة رقمنة أساليب تسوية المنازعات البديلة، وتناقش مزاياها والتحديات التي تواجهها، كما تقترح حلولاً لتجاوز هذه العقبات. علاوة على ذلك، تقدم توصيات تهدف إلى تعزيز استخدام هذه التقنية في حل النزاعات التجارية بفعالية أكبر. تشمل هذه التوصيات ضرورة تشجيع الدول على تبني أطر قانونية مناسبة لتطوير أساليب تسوية المنازعات البديلة الرقمية، وتعزيز الأمن وحماية البيانات على منصات التحكيم الرقمي للتخفيف من مخاوف الخصوصية والسرية.

الكلمات المفتاحية : المنازعات، تسوية المنازعات البديلة، الوساطة الرقمية، التوفيق،

المفاوضات، التحكيم

Digitalization of Alternative Dispute Resolution Methods

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Abstract :

The world is witnessing significant advancements in technology and digitization. Digitalization represents a foundational stage in digital transformation, involving the use of electronic technologies for data storage and analysis. The digitization of alternative dispute resolution (ADR) methods refers to the use of modern communication technologies to resolve disputes outside the judicial system, this study will examine the concept of digitizing these methods, their importance, the obstacles they face, and their mechanisms. This study explores the digitization of ADR, discussing its advantages and the challenges it encounters. It also proposes solutions to overcome these obstacles. Furthermore, it offers recommendations aimed at promoting the use of this technology in resolving commercial disputes more effectively. These recommendations include the need to encourage countries to adopt appropriate legal frameworks for developing digitized ADR methods and to enhance security and data protection on digital arbitration platforms to mitigate privacy and confidentiality concerns.

Keywords: Disputes, Alternative Dispute Resolution, Digital Mediation, Conciliation, Negotiations, Arbitration

Introduction

Digitization refers to the process of converting information, procedures, services, or data into digital electronic formats using modern technologies and tools. Documents and other data forms are transformed into digital files that can be stored and processed using computers and digital technologies. Digitization generally involves using computing and the internet to transform transactions and procedures that were traditionally conducted physically into digital processes that occur online, allowing for faster, more accurate, and more efficient data storage and exchange.

The rapid technological advancements we are witnessing highlight the need to adopt modern and effective methods for resolving commercial disputes, moving beyond the traditional complexities of judicial systems. The digitization of alternative dispute resolution methods has become increasingly important, offering new avenues for improving efficiency and reducing costs. This research aims to shed light on this topic, outlining the advantages and disadvantages of digitization and its role in achieving commercial justice through modern and rapid methods. This research also examines the nature of electronic alternative dispute resolution methods as a means of settling commercial disputes, which is considered one of the most important methods for amicably settling disputes in the field of international trade.

Research Problem

The research problem lies in answering the question of how effective the digitization of alternative dispute resolution methods is? and whether they can serve as a substitute for traditional means of conflict resolution?

Importance of the Research

The research topic of digitizing alternative dispute resolution is an important topic, especially in the field of international trade, due to its significant and clear impact on finding quick and simple solutions in settling disputes.

Research Objectives

Understanding the importance and effectiveness of digitizing alternative methods for resolving commercial disputes

Research Plan

Section 1: The Nature of Digitization Alternative Dispute Resolution (ADR)

Section 2: Overcoming the Obstacles to Digitization ADR

Section One

The Nature of Digitalizing Alternative Dispute Resolution in Commercial Trades

Undoubtedly, the judiciary is the primary avenue for resolving disputes, but it suffers from an increasing backlog of cases, leading to delays in adjudication. This necessitates the adoption of alternative dispute resolution (ADR) methods based on amicable settlement. These approaches do not compete with the judiciary but rather alleviate the pressure of the large number of cases brought before it. In the first section, we will examine the types of alternative dispute resolution methods outside the judicial system, and in the second section, we will discuss the digitization of these methods.

First requirement : Types of traditional alternative methods for resolving commercial disputes

Alternative dispute resolution (ADR) methods are defined as the means by which parties resolve their disputes and reach an agreement without resorting to litigation. They are sometimes referred to as “appropriate dispute resolution” mechanisms. Such mechanisms are based on dialogue and understanding between the disputing parties to reach mutually agreeable solutions. These methods include:

1. Negotiation: This involves direct communication and exchange between the parties to reach a mutually agreeable agreement, without the intervention of any third party. If a dispute cannot be resolved through negotiation, another ADR method may be used, or the matter may be referred to the courts.
2. Mediation: A neutral third party assists the parties, at their request and with their agreement, in reaching a solution without imposing a binding decision. In mediation, the disputing parties can request expert opinions or witness testimony, which distinguishes it from negotiations.
3. Conciliation: This is considered a combination of negotiation and mediation, where the mediator offers suggestions based on their assessment of the situation. The mediator's role is limited to understanding and containing the dispute and attempting to reconcile differing viewpoints.
4. Arbitration: This involves entrusting the resolution of the dispute to an arbitrator or arbitral tribunal, which issues a binding decision.

Resorting to alternative dispute resolution methods is characterized by confidentiality and relative speed compared to litigation. However, the procedures in These procedures rely on paperwork and personal meetings, which can sometimes lead to higher costs.⁽¹⁾

(1) <https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/alternative-dispute-resolution.html>

Despite this, the increasing use of these methods has led to them no longer being considered alternatives to the judiciary. Instead, they have become primary means of dispute resolution in various fields, due to the advantages they offer, particularly in commercial disputes. These advantages stem from their streamlined procedures, which reduce delays and complexity. On the other hand, the sheer number of cases and the complexity of litigation procedures have led to longer litigation periods and slower dispute resolution.⁽¹⁾ The aim of resorting to alternative dispute resolution methods is to settle disputes outside of courtrooms. These procedures are characterized by their consensual nature, flexibility, and confidentiality, and they depend on the wishes and will of the disputing parties. These methods are considered convenient and suitable for the parties to resolve disputes in terms of time and cost².

The second requirement : Defining the digitization of alternative dispute resolution methods in commercial disputes

The use of modern communication technologies has led to the emergence of digital dispute resolution methods, which revolve around the idea of an electronic alternative to the traditional judicial system. These electronic methods vary and include e-negotiation, e-conciliation, e-mediation, and e-arbitration.

The digitization of alternative dispute resolution means using internet technologies, software, electronic platforms, artificial intelligence applications, and other digital tools to facilitate and develop methods used to resolve disputes outside the framework of the courts. The aim is to resolve disputes peacefully and effectively.⁽³⁾ These methods can be Examined as Follows:

First, direct electronic negotiations. This is a preliminary stage used by the disputing parties to find a solution to their conflict without the intervention of a third party. If the parties fail to reach a solution through negotiation, they may resort to other means of dispute resolution or to the courts. In digital negotiations, the parties exchange ideas, solutions, and proposals through data messages over the internet. The use of one of these electronic means is what distinguishes the electronic nature of the negotiation process.

Secondly, electronic conciliation, where a person intervenes with the agreement

(1) Boujemaa Jaafar – Electronic means of resolving disputes in e-commerce contracts – Faculty of Law and Political Science 173, Akli Mohand Oulhadj University of Bouira, Algeria, 2015 edition, p. 4.

(2) Jethro K. Lieberman, James F. Henry – Lessons from the Alternative Dispute Resolution Movement - University of Chicago Law Review - Chicago - March 1986 - Volume 53/2 - PP 424 : 439.

(3) Abdelkrim Arrouri, Alternative Methods in Resolving Judicial Disputes, According to the Code of Civil and Administrative Procedure, Faculty of Law, Ben Aknoun, University of Algiers, Algeria, 2012, p. 8.

and consent of the disputing parties, aiming to bring them closer together and reach an agreement through procedures conducted electronically. This does not require their physical presence, travel, or meeting in a specific location.

Thirdly, electronic mediation, where the mediator plays a more proactive role than a conciliator. The mediator intervenes in discussions between the parties, attempting to resolve their differences, proposing solutions, and participating in the mediation process. When resorting to electronic mediation and utilizing electronic means, the disputing parties and the mediator agree on and review certain practical details, such as the format for submitting information and documents. These documents are submitted electronically or through a shared electronic platform, within a specific electronic framework that includes search functionality. The parties and the mediator must also agree on the format of the electronic communication methods to be used, as well as all matters related to system compatibility, storage, and data security, ensuring adequate protection against hacking and breaches. ⁽¹⁾

Fourth, digital or electronic arbitration utilizes digital technologies and platforms to manage and resolve disputes between different parties. It relies on electronic means for presenting arguments and evidence, exchanging information, and reaching final decisions. These procedures are conducted electronically, making them more efficient, faster, and less costly compared to traditional arbitration.

Thus, alternative dispute resolution methods in commercial dispute resolution utilize email, electronic document signing, and online meetings for exchanging arguments and pleadings between parties and for presenting evidence and testimonies.

Digital means allow disputing parties easy access to files and documents via the internet, thus accelerating and simplifying the dispute resolution process. Modern technologies such as encryption, digital signatures, and artificial intelligence are essential components for ensuring data security and confidentiality, as well as the validity of decisions.

The technological advancements in information technology have led to a transformation in international trade, with the emergence of e-commerce as a new form of international commerce. This has been accompanied by the development of modern electronic dispute resolution methods.

Electronic methods aim to shift the parties to a dispute from a position of antagonism, where each party is against the other, to a position of dispute resolution. This approach avoids assigning blame and instead focuses on bridging differing viewpoints. For example, in mediation, both parties can be winners. This differs from traditional litigation, which is often characterized by its tendency to resolve conflicting relationships.

(1) Hossam Adly Gad, Electronic Mediation as a Means of Settling International Trade Contract Disputes, PhD Thesis, Faculty of Law, 2023, p. 11.

Section Two

Obstacles to Digitizing Alternative Dispute Resolution Methods in Commercial Trade

We examine the advantages of digitizing alternative means of resolving commercial disputes, and overcoming the obstacles to digitizing those means.

First requirement : Advantages of digitizing alternative methods for resolving commercial disputes

First, digital methods are characterized by the simplicity and clarity of their procedural rules and their lack of adherence to specific, predetermined procedures. Parties are free to choose the rules that suit them, provided that these rules are impartial, fair, and respect the rule of law. Furthermore, alternative digital methods are not bound by the time limits that must be observed in traditional courts. ⁽¹⁾

Second: Dispute resolution through the simplest procedures, which are characterized by saving time. ⁽²⁾

Third: Electronic alternative means are characterized by confidentiality, and they may not be used as evidence between parties or against third parties, nor may they be disclosed. ⁽³⁾

Fourth, alternative electronic means maintain friendly relations between the parties, allowing their work to begin and their procedures to proceed without ending, and the relationships and ties between the disputing parties remain intact ⁽⁴⁾.

Fifth: Commercial disputes often involve specialized technical or professional matters, and experts and specialists in the relevant field are entrusted with resolving them through alternative digital dispute resolution methods instead of resorting to litigation.

Sixth: Disputing parties can easily be notified of hearing dates via email, and the hearings are conducted remotely via the internet. ⁽⁵⁾

(1) Shrouq Abbas Fadel, The Legal System of Mediation, Tikrit University Journal of Law, 2016, pp. 89-136, p. 100.

(2) Khitam Abdul Hassan Shanan, Hassan Ali Kazem, Electronic Mediation as a Means of Dispute Resolution, Journal of the Islamic College, Islamic University, Issue Fifty, 2018, p. 547.

(3) Hossam Adly Gad, previous reference, p. 69.

(4) Hossam Adly Gad, previous reference, p. 73.

(5) Doha Ibrahim Mohammed Saqr Al-Zayani, The Arbitration Clause in Civil Contracts, PhD Thesis, Faculty of Law, Cairo University, 2003, p. 87.

The second requirement: Overcoming the obstacles to digitizing alternative methods for resolving commercial disputes

Section 1: Obstacles to digitizing alternative dispute resolution methods :

First, the digitization of alternative dispute resolution (ADR) methods faces privacy and security risks, such as the risk of sensitive data leaks or cyberattacks. This represents a major challenge to digital ADR. For example, data transfer over the internet can expose it to theft or manipulation.

Second, the absence or inadequacy of direct interaction between parties and mediators, conciliators, or arbitrators can negatively impact the negotiation process and lead to misunderstandings of intentions.

Third, there are challenges in adapting to technological advancements and the lack of technical expertise among individuals and institutional capacity among states in using these digital systems when resorting to ADR. Some parties struggle to adapt to new digital systems, resulting in delays in the efficient execution of electronic procedures or tasks. Therefore, participating parties need specific levels of IT skills to effectively utilize digitization.

Fourth, there are legal and regulatory issues due to differences in national legislation regarding the digitization of ADR in commercial dispute resolution. The risks and challenges lie in the lack of coordination of international legal standards, especially when parties operate within different legal systems. For example, some countries have enacted laws to guide and facilitate the digitization of alternative dispute resolution methods. The Jordanian Arbitration Law allows for the online submission of documents, and the Electronic Transactions Law regulates electronic signatures and authentication. However, other countries face legal challenges in implementing these laws.

Fifth, another obstacle to the digitization of alternative dispute resolution methods is related to regulating cross-border procedures, especially when the parties belong to countries with different legal systems.

Section Two: Proposals to overcome obstacles to digitizing alternative means of resolving commercial disputes :

First, improving digital platforms for encryption technologies, such as using encrypted communication networks or VPNs, to ensure the secure and reliable transfer of parties' file data.

Second, ensuring that the digitization of alternative dispute resolution (ADR) methods complies with local and international laws and regulations, and developing a legal and regulatory framework that supports the adoption of e-arbitration and protects participating parties.

Third, increasing coordination among international legal entities and adopting more international agreements, developing a robust electronic infrastructure suitable for digital arbitration solutions, and ensuring that legal institutions provide the necessary support to enable parties and specialists to utilize these systems effectively.

Fourth, fostering cooperation between the public and private sectors to address the high technical costs of digitizing ADR methods, particularly those related to developing and maintaining the necessary technologies.

Fifth, addressing the lack of human interaction, which can play a significant role in dispute resolution. To overcome this, a blended approach is needed, combining digital and in-person processes, such as holding virtual hearings with visual elements to create a sense of personal interaction among the parties.

Conclusion

The study explored the digitization of alternative methods for resolving commercial disputes, and arrived at the following conclusions and recommendations:

Results :

First, the digitization of alternative dispute resolution (ADR) methods represents a significant step towards improving the efficiency of these methods.

Second, while digitizing such mechanisms offers numerous advantages, it also presents significant challenges that must be overcome to achieve the goals of digitizing ADR.

Recommendations :

- 1.Strengthening digital infrastructure to facilitate the implementation of alternative dispute resolution (ADR) digitization.
- 2.Providing ongoing training for parties on the use of digital systems.
- 3.Developing unified international principles for the implementation of ADR digitization.
- 4.Improving international and domestic legal frameworks to ensure clarity of procedures in digital disputes.
- 5.Strengthening legal penalties for violations involving data breaches or digital dispute resolution platforms.

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