

## TRENDS IN LEGAL REGULATION FOR THE DEVELOPMENT OF E-ARBITRATION

### TENDÊNCIAS NA REGULAMENTAÇÃO JURÍDICA PARA O DESENVOLVIMENTO DA ARBITRAGEM ELETRÔNICA

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#### Abstract

This article explores modern trends in the legal regulation of electronic arbitration (E-Arbitration). With the growing influence of digital technologies, it has become clear that arbitration institutions must adapt to keep pace with these advancements. Through a comparative approach, the study examines the regulatory practices of major international arbitration centers, including HKIAC, CIETAC, SCIA, TAI, and ISTAC, within the context of e-arbitration. The results emphasize the critical need for distinct and tailored rules to govern electronic arbitration processes. Ultimately, this article contributes to the structured evolution of e-arbitration by offering recommendations to enhance national legal frameworks and presenting a proposed procedural regulation draft.

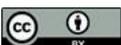
**Keywords:** E-Arbitration. Legal Regulation. Digital Technology. Online Dispute Resolution (ODR). Comparative Study. International Arbitration Centers.

#### Resumo

*Este artigo explora as tendências modernas na regulamentação jurídica da arbitragem eletrônica (e-Arbitragem). Com a crescente influência das tecnologias digitais, tornou-se evidente que as instituições de arbitragem devem se adaptar para acompanhar esses avanços. Por meio de uma abordagem comparativa, o estudo examina as práticas regulatórias dos principais centros internacionais de arbitragem, incluindo HKIAC, CIETAC, SCIA, TAI e ISTAC, no contexto da e-arbitragem. Os resultados enfatizam a necessidade crucial de regras distintas e personalizadas para governar os processos de arbitragem eletrônica. Em última análise, este artigo contribui para a evolução estruturada da e-arbitragem, oferecendo recomendações para aprimorar os marcos legais nacionais e apresentando uma proposta de minuta de regulamentação processual.*

#### Palavras-chave:

*E-Arbitragem. Regulamentação Jurídica. Tecnologia Digital. Resolução Online de Disputas (ROD). Estudo Comparativo. Centros Internacionais de Arbitragem.*



## 1 INTRODUCTION

The modern era is experiencing an unparalleled surge in digital technologies, fundamentally reshaping traditional systems and operations. Amid this evolving landscape, the legal field and mechanisms for dispute resolution have also undergone significant transformations. In response to the demands of a globally connected society and cross-border trade, "Electronic Arbitration," commonly referred to as online or digital arbitration, has surfaced as an innovative solution aimed at expediting processes, lowering costs, and improving accessibility to arbitration proceedings. However, the advancement of this contemporary approach calls for the simultaneous development of a robust, transparent, and trustworthy legal framework to govern it effectively. Acknowledging this necessity, prominent jurisdictions in international arbitration have made considerable progress in recent years by introducing regulations, procedural frameworks, and guidelines specifically tailored to electronic arbitration. These efforts provide a valuable foundation for other emerging legal systems to build upon. This article seeks to draw valuable insights and patterns through a comparative analysis of these international efforts while examining the current state of domestic frameworks to pave a well-defined course for harmonization with global trends. The study's primary aim extends beyond identifying major developments in e-arbitration regulations; it also strives to offer practical recommendations to enhance and fortify the legal infrastructure governing such initiatives. Strengthening this framework will empower arbitration institutions to fully harness digital technologies, ensuring they remain efficient, impartial, and reliable platforms for resolving commercial disputes.

## 2 PURPOSE OF THE STUDY

Nowadays, when e-arbitration is being developed in accordance with the new technology, permanent arbitration in Mongolia needs to be conducted in a form that is compatible with this development trend. Therefore, express the legal basis for the development of e-arbitration in accordance with digital technology and determine some ways to improve national legal regulations.

### 3 RESEARCH OBJECTIVES

In order to achieve this goal, the following objectives have been set:

1. Study and draw conclusions from the concept of e-arbitration and international practice (e-arbitration, Online Dispute Resolution (ODR))
2. The experience of some foreign countries regarding the legal regulation of e-arbitration (Hong Kong International Arbitration Center (HKIAC), Chinese International Economic and Trade Arbitration Commission (CIETAC), Thai Arbitration Institute (“TAI”), Shenzhen Court of International Arbitration (SCIA), Istanbul Arbitration Center (ISTAC)) to compare and make legal conclusions
3. Proposals for improvement of national legal regulations for the development of e-arbitration in accordance with digital technology.

### 4 RESEARCH RATIONALE AND REQUIREMENTS

Since contractual disputes cannot be denied in any society, it is clear that even during the global pandemic, the issue of arbitration continues. However, in most countries, the method and form of creating evidence documents in printed form in the form of personal participation of the authors in handling arbitration disputes was widely developed, but during the general pandemic, the development of e-arbitration in accordance with digital technology and the legal norms of the relationship There is a legitimate need to regulate.

The TAMARA arbitration in 1988<sup>1</sup> was established, this arbitrator started the development of e-arbitration in accordance with digital technology in 2008, and until now, by further improving it, the arbitration process is conducted electronically, and the arbitration activity with advanced technology is carried out by holding electronic meetings and resolving disputes. approving new rules and regulations governing related relations it is considered that there is a legal need for permanent arbitration in Mongolia to develop without lagging behind in the modern era of legal reforms to improve it. After studying the experience of the organization, countries have taken into account and started the development of e-arbitration in accordance with digital technology.

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<sup>1</sup> <https://unum.world/about-unum/>

As of 2019, Mongolian International Arbitration Center at the Mongolian National Chamber of Commerce (MIAC), a Mongolian international arbitrator under the Mongolian National Chamber of Commerce and Industry, received a total of 833 claims, 9.5 percent of which were international disputes<sup>2</sup>, In 2021, there are figures that 177 cases were received. The number and value of arbitration cases will increase year by year, so the study shows that the arbitration process will continue. In addition, in order to provide continuous and fast arbitration services to (MIAC), the Arbitration Procedure Rules, which are in force by the resolution of the Mongolian International Arbitration Arbitrators' Council dated January 29, 2021, add an addition to the electronic conduct of arbitration hearings, by the order of the Chairman of the International Arbitration of Mongolia dated April 5, 2021. “Guidelines for conducting arbitration hearings electronically Since the adoption of the”, a total of 25 arbitration hearings have been held electronically<sup>3</sup> it is an important step in arbitration proceedings. However, it is believed that the policy of developing e-arbitration in accordance with digital technology is the development trend of having independent rules and regulations for e-arbitration. For this reason, a draft of the e-arbitration rule has been drafted and attached to contribute to the improvement of the above-mentioned guidelines.

## 5 RESEARCH METHODOLOGY

“Development trends of legal regulations for the development of e-arbitration in accordance with digital technology The following methods were used in the research on the topics of:

1. When expressing the concept of e-arbitration and international practice (e-arbitration, Online Dispute Resolution (ODR), determine the theoretical basis of research based on the concepts of scientists and researchers, the experience and research of professional organizations, make conclusions,
2. Some foreign countries' experience in the legal regulation of e-arbitration (Hong Kong International Arbitration Center (HKIAC), Chinese International Economic and Trade Arbitration Commission (CIETAC), Thai Arbitration Institute (“TAI”),

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<sup>2</sup> Arbitr.mn, 2021.

<sup>3</sup> Forecast of the Secretariat of International Arbitration of Mongolia, 2021

- Shenzhen Court of International Arbitration (SCIA), Istanbul Arbitration Center (ISTAC)) to compare and study, provide legal opinions,
3. Proposing a proposal to improve the national legal regulation for the development of e-arbitration in accordance with digital technology,
  4. Methods such as drafting e-arbitration rules are included.

## **6 ONE. CONCEPT OF ELECTRONIC ARBITRATION, FROM INTERNATIONAL PRACTICE (ONLINE DISPUTE RESOLUTION (ODR), E-ARBITRATION)**

Electronic or electronic arbitration is an international experience in countries using many terms such as E-arbitration, online arbitration, virtual arbitration, digital arbitration, etc., and the term electronic arbitration is used in this study.

Scientists, researchers and arbitration organizations have recognized the effectiveness of electronic arbitration and tend to consider the issue of creating and improving its legal regulations as important. At the beginning of the study, let's consider the common ideas, practices and their advantages of how electronic arbitration is defined.

Electronic arbitration is the use of electronic devices such as e-mail and electronic file management systems over the Internet<sup>4</sup> it can be said that the arbitrator has created the legal framework for resolving disputes by method. Electronic arbitration is the basis of online dispute resolution ('ODR') for resolving disputes electronically, and parties can resolve any disputes arising from contractual relations online. E-arbitration is primarily used to resolve cross-border e-commerce disputes from Business to Business ('B2B'), and in part to settle traditional cross-border commercial disputes<sup>5</sup>.

Nowadays, when countries are using a variety of new technology platforms to develop electronic arbitration to conduct arbitration proceedings, there is a social need for the parallel development of permanent arbitration institutions in Mongolia. For this purpose, the trend of developing electronic arbitration was studied.

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<sup>4</sup> <https://unum.world/arbitration/e-arbitration/>

<sup>5</sup> This post presents an overview of online arbitration (e-arbitration') as part of online dispute resolution ('ODR') techniques from both theoretical and practical perspectives. E-arbitration is a major component of online dispute resolution ('ODR') in which parties can solve any dispute arising out of their contractual relationship online. E-arbitration is mainly used for the resolution of Business to Business ('B2B') cross-border e-commerce disputes, and partially used for the resolution of traditional cross-border commercial disputes.

The focus has been on the experience of the UNUM, a prestigious dispute resolution organization that has offered a platform for professional arbitration in shipping, shipbuilding and international trade over the years. The organization was established in 1988 by TAMARA arbitration<sup>6</sup> it was established in London under this name and has developed traditional arbitration in many countries around the world, and has experience in introducing mediation services. It concluded that the arbitration's activities and services were in the interests of the countries of the Hague Legal Center, Rotterdam, the main maritime center of Europe, and the main ports of Western Europe. The main reason for this is that in order to ensure the will of the parties who aim to resolve their disputes at a low cost in the usual possible period, they offer a platform for resolving disputes in a modern solution method, and the arbitration institutions in the countries pay great attention to it and intend to implement it by introducing experience. Since the beginning of arbitration using a digital platform, UNUM has created and developed the first e-arbitration, which can be considered as an advanced experience that can be improved and introduced into its operations in Mongolia, including the Mongolian International Arbitration Organization. The advantages of the digital platform used by UNUM are that professional, transparent, independent and reliable are legally important for e-arbitration.

There is a common approach that defines the following advantages in the handling of disputes through electronic arbitration:

Time and cost effective:

- Arbitration Secretaries, parties, and arbitrators can exchange letters, invoices, and documents in the eight-channel section of the platform,
- Each arbitration case can only be accessed by password, and the parties have the right to access only the arithmetic documents of their cases,
- When new documents in a particular arbitration file are uploaded, all participants in the case will be notified automatically by email. For this reason, the conditions for prompt and effective arbitration proceedings have been created
- Anywhere in the world, you can get documents of business importance at the same time,

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<sup>6</sup> <https://unum.world/about-unum/>

- It is no longer necessary to print the arbitration documents to the arbitration panel and parties, or to send them at the cost of postal service
- Based on the experience of system users, the control panel for the use of electronic arbitration is regularly updated and the system is improved
- Using electronic arbitration as a standard method,
- Where necessary, the parties may obtain a digital copy of the complete electronic arbitration file after the completion of the proceedings<sup>7</sup> such as proceedings to facilitate arbitration are included.

Over the past 10 years, countries have started experimenting with various platforms, and based on some experience since 2018, countries have recognized that they are resolving disputes by introducing a UNUM user-friendly digital platform system. In many foreign countries, with the aim of introducing the digital platform system of UNUM, due to the need to develop electronic arbitration and create new legal regulations for it, the rules and regulations for handling disputes through electronic arbitration are still being approved as online arbitration rules and regulations. The legal regulation of electronic arbitration proceedings in such countries is reflected in the second part of the study.

## **7 TWO. SOME FOREIGN COUNTRIES' EXPERIENCE IN THE LEGAL REGULATION OF ELECTRONIC ARBITRATION HONG KONG INTERNATIONAL ARBITRATION CENTER (HKIAC), CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION (CIETAC) SHENZHEN COURT OF INTERNATIONAL ARBITRATION (SCIA), ISTANBUL ARBITRATION CENTER ISTAC)**

The Hong Kong International Arbitration Centre (HKIAC) has been dedicated to its experience of multiple online sessions<sup>8</sup> based on the guidelines for virtual sessions in 2020<sup>9</sup>, China International Economic and Trade Arbitration Commission China International Economic and Trade Arbitration Commission (CIETAC) in 2009, e-Arbitration Rules<sup>10</sup>, Thai Arbitration Institute Thai Arbitration Institute (“TAI”) e-

<sup>7</sup> <https://unum.world/arbitration/e-arbitration/>

<sup>8</sup> <https://www.hkiac.org/news/hkiac-guidelines-virtual-hearings>

<sup>9</sup> HKIAC guidelines for virtual hearings

<sup>10</sup> China International Economic and Trade Arbitration Commission Online Arbitration Rules, 2009

arbitration rules in 2020<sup>11</sup>, The Shenzhen Court of International Arbitration (SCIA) rules for electronic arbitration in 2019<sup>12</sup>, Istanbul Arbitration Center (ISTAC), The Istanbul Arbitration Center, Turkey<sup>13</sup> e-arbitration rules have been approved respectively. The experience of the legal regulation of electronic arbitration proceedings in these countries was studied.

### **1. Hong Kong International Arbitration Center Hong Kong International Arbitration Center (HKIAC)**

Hong Kong International Arbitration Center (HKIAC) received 318 claims in 2020, the record for the most claims received in more than a decade. Also, 99.4% of cases are reports that the parties have often chosen HKIAC's rules for arbitration and Hong Kong's laws for material standards for dispute resolution in the arbitration process. HKIAC followed the guidelines of the virtual session approved in 2020 when providing requests for electronic arbitration hearings, and in the same year, 80 of the 117 sessions were held in full or partial electronic form, which means that electronic arbitration will continue to develop.

### **2. China International Economic and Trade Arbitration Commission (CIETAC)**

A total of 3,615 cases were registered in China's International Economic and Trade Arbitration (CIETAC) in 2020, an increase of 8.5% from the same period last year, and a total of 819 sessions were held electronically, an increase of 628 compared to the previous year's number<sup>14</sup> it also means that the policy of developing electronic arbitration is being followed in the future. China International Economic and Trade Arbitration Commission Online Arbitration Rules.

- The e-arbitration section of the China International Economic and Commercial Arbitration Commission has 52 articles, Appendix 1 includes the Model Clause of Online Arbitration, Appendix 2 includes the Schedule of Arbitration Fees for Online Arbitration, and the independent, fair and efficient arbitration process for e-commerce dispute resolution. An act aimed at making it effective and effective is being implemented. Among the special regulations of the rule:

<sup>11</sup> the Thai Arbitration Institute (TAI) issued its Arbitration Rules on E-Arbitration B.E. 2563 (“Rules”)

<sup>12</sup> SCIA Online Arbitration Rules, 2019

<sup>13</sup> ISTAC online hearing rules and procedures

<sup>14</sup> <https://hsfnotes.com/.../rise-in-arbitration-cases-in>

- Some of the definitions used in the relationship governed by the rules emphasize e-commerce disputes, while the "CIETAC Online Dispute Resolution Center Website" is a dedicated website, and "Electronic Evidence" is the creation, sending, receiving or data messages, as well as electronic, optical, magnetic and other files stored in similar ways, "Electronic signature" means data that is available electronically or attached to data, as well as "Online oral hearing" it is planned to include video conferencing and other forms of electronic or computer communication, which means oral hearing through the Internet. "Online mediation" is defined as the process of online mediation through video recording, which is regulated in the resolution of disputes electronically.

- If the parties agree to transfer the dispute to arbitration in accordance with this rule, the arbitration proceedings will be conducted electronically and the rules will be followed, which creates clear and easy-to-use conditions for the authors and the arbitration panel.

- Arbitration agreement, its written nature, fax, electronic information exchange (EDI) contained in the actual form of documents such as contracts, letters, telegrams, telexes, or documented in the form of e-mail, jurisdiction of arbitration cases

- Submit all documents, notices and written materials related to arbitration,

- CIETAC provides for efforts to securely transmit cases electronically, and how to deal with relationships that arise in the online environment, such as the storage of information and case information between parties, arbitration courts and CIETAC, and data encryption, etc

- The "Arbitration Application Form" and "Manual for Filing Claims in Arbitration" are set to be published on the website of CIETAC and the CIETAC Online Dispute Resolution Center, including the name, address, communication method, their zip code, phone number, fax number, email address and other means of electronic communication, information on arbitration agreements, claims, their requirements, facts and the main issues of the case and the claim, documents that are the basis of the claim the grounds and relevant evidence are clearly stated to be submitted to the Arbitrator

- The evidence submitted by the parties may be electronic evidence and shall be sent, received or stored by electronic, optical, magnetic or other similar means, while using reliable methods for storing and transmitting information, the time frame for producing evidence, and based on evidence if the parties agree to make a decision, guarantee electronic signature, order of electronic meeting, witnesses to testify in the form

of online video, mediation in a video conference, or other methods and forms of electronic and computer communication during training

- There are rules with detailed regulations for arbitration, such as arbitration decisions and delivery times to parties.

### **3. Shenzhen Court of International Arbitration (SCIA), Shenzhen International Arbitration, China**

Shenzhen Court of International Arbitration (SCIA) of the Shenzhen International Arbitration Court of China Electronic Arbitration Rules in 2019<sup>15</sup> the SCIA e-arbitration rules, which are in force, have been effective since 21 February 2019. Considering the provisions regulated by this rule, the following regulations are made.

#### **ARBITRATION MODEL**

Any disputes arising from this agreement shall be brought to the Shenzhen International Court of Arbitration (SCIA) for arbitration online. The parties shall mutually agree to submit the arbitration documents to the following e-mail address, and the parties shall immediately notify other parties in writing in case of changes in their e-mail, mobile phone number, e-mail address or mobile phone number.

Shenzhen International Arbitration Online Arbitration Rules<sup>16</sup> CHAPTER I Article 1 Purpose, Article 2 Definition, Article 3 Scope of Application, Article 4 Data Storage and Use, Article 5 Requirements for Online Arbitration, Article 6 Online Arbitration Session, Article 7 Confirmation and Signing of Identity Card Issues are included. Chapter II of the Rules DOCUMENT PREPARATION, Chapter 8 Document submission, Article 9 Electronic service address, Article 10 Electronic service, Chapter III Evidence chapter Article 11 Evidence preparation, Article 12 Evidence preparation, Article 13 Article 14 in the chapter "Electronic information control, CHAPTER IV ARBITRATION", Article 15 Acceptance of the case, Article 16 Arbitration Statement, Article 17 Defendant's Explanation, Article 18 Amendment of Claims, Article 19 Counterclaims, Article 20 Jurisdiction of the Court, Article 21 Form of Arbitration Session, Article 22 Arbitrators, Article 23 Meeting, Article 24 Minutes of the meeting

Article 25 Arbitration Decision Time, Article 26 Arbitration Document, Article 27 Electronic Archive Materials, Article 28 Change in Operation, Chapter V OTHER THINGS Chapter Article 29 Limits of Responsibility, Article 30 Explanation of Rules,

<sup>15</sup> SCIA Online Arbitration Rules, 2019

<sup>16</sup> SCIA Online Arbitration Rules, 2019

Article 31 There are rules regulating relations that will come into force. Since the number of research sheets is required, the legal regulations are summarized.

#### **4.Istanbul Arbitration Center Istanbul Arbitration Center Istanbul Arbitration Center (ISTAC), Turkey**

Istanbul Arbitration Center (ISTAC) Online Session Rules and Proceedings<sup>17</sup> these rules include: Article 1 Purpose, scope, Article 2 Decision to hold a meeting, Article 3 Preparation for the meeting, Article 4 People to participate in the meeting, Article 5 Meeting, Article 6 Presentation of documents at the meeting, Article 7 Right to hold a meeting, Article 8 The relationship between the participation of witnesses and experts in the meeting, Article 9, the participation of the translator, and Article 10, the recording of the meeting is regulated. Briefly mention the provisions of these regulations:

The purpose of the charter is to hold a video session without the parties coming in person in accordance with the relevant laws and regulations:

- Software; measures necessary to ensure the confidentiality and security of the meeting, phone number, link, username, password and other issues necessary for participation in the meeting; The issue of informing the parties about the technicality of the meeting is emphasized.

- In the event that it is decided to involve witnesses and experts in the electronic session, there is a special arrangement that witnesses and experts must show their cameras in the video conference and their faces must be clear.

**Three. Improving national legal regulations for the development of e-arbitration** Until the 60s of the 20th century, procedural law was narrowly defined as the study of the theory of judicial law “, while the tendency to broadly formulate ” legal process as a unique type of “has expanded, but nowadays only in the context of material law. determine the nature of the democratic system<sup>18</sup> recognizing the impossibility, material and procedural law is considered interrelated and coherent.

The guarantee and enforcement functions of the procedural law “fair trial rights” apply equally to the law of the arbitration process. Whether or not they enjoy the right to a fair trial is considered important in a democratic country because it has a decisive effect on whether they enjoy other human rights and freedoms guaranteed<sup>19</sup>. The legal

<sup>17</sup> ISTAC online hearing rules and procedures

<sup>18</sup> Amarsaikhan Ts. and Amarsanaa J. Process law. Theory and experience. UB. 2014. p.23

<sup>19</sup> Munkhsaikhan O. Ochirbal R. State of human rights in Mongolia: problems and solutions. Overview study. Ub. 2021. p.61 – Mongolian.

relationship regulated by the legal norms of the process is a “-organizational relationship in which the participants determine the rights and obligations to enjoy at all stages from the beginning of the relationship to the end, as well as the form, method, and sequence of their implementation. Therefore, it is necessary to legislate the legal norms of the process in a rational, clear and correct order. On the one hand, this is a guarantee of ensuring and protecting the human right to a fair trial, and the legality and reasonableness of the court proceedings shows the implementation of the rule of law.

US-British lawyer R. Dworkin “Empire of Law” in his novel “We live under the law and within the law, ... The court is the capital of the empire of law. Judges are not his prophets and preachers, but his sons<sup>20</sup> however, the legal role of the court process, its role and responsibility in ensuring the implementation of the right to fair court protection were noted. In modern times, procedural law is not limited to the national legal system of one country, but it plays an international and transnational function. The legal relationship between the parties to handle the dispute by arbitrator is the characteristic of establishing and regulating the procedure of the relationship between the parties<sup>21</sup>” it is considered. This shows that the legal relationship of arbitration is governed by the norms of both material and procedural law.

In accordance with the legal characteristics of the legal relationship of the arbitration process, the legal source is distinguished from other laws of the judicial process by the fact that it has a source consisting of laws, rules and regulations that express the set of national, international and regional characteristics, but arbitration proceedings and related legal relations. is a relationship regulated by the law on arbitration and its rules. Therefore, in order to study the legal regulation of e-arbitration in accordance with digital technology and its improvement, Mongolian International Arbitration is within the framework of social responsibility during the pandemic faced by mankind also, in order to continuously conduct arbitration proceedings, according to the resolution of the Council of Arbitrators dated January 29, 2021, Article 15 of the Rules of Arbitration Procedure, entitled "Conducting Arbitration Proceedings"<sup>22</sup> the following

<sup>20</sup> Dworkin R. Empire of Law. UB. 2015. p. 215

<sup>21</sup> : KRONKE, H. The future of harmonization <...>; KRONKE, H. Most Significant Relationship, Governmental Interest, Cultural Identity, Integration: “Rule” at Will and the Case for Principles of Conflict of Laws. *Revue de Droit Uniforme*, 2004, Vol. 3. / дам ишлэв/

<sup>22</sup> 15.1 The arbitration panel shall treat the parties equally and conduct the proceedings in the manner deemed necessary, making all efforts to ensure that each appropriate stage of the operation is carried out promptly and effectively.

amendment has been made to conduct the arbitration session electronically. Based on these additional regulations, by the order of the Chairman of International Arbitration of Mongolia dated April 5, 2021, “Guidelines for conducting arbitration sessions in electronic form were approved, and the following is followed for online arbitration sessions, which has created conditions for conducting arbitration sessions in electronic form and encouraged the development of electronic arbitration. concluded. As a result, a total of 25 online arbitration sessions were held<sup>23</sup> it is a significant indicator. However, an international practice study found that there is a development trend in the further development of e-arbitration using digital technology to regulate relations related to arbitration proceedings by introducing new technological systems. Specifically, a legal act with the capacity to be followed as a norm in procedural relations is necessary for the handling of disputes through arbitration. Article 40 of the Law of Mongolia on Arbitration<sup>24</sup> legal norms to be used in dispute resolution, as well as Article 31 of the law<sup>i</sup> the procedure for arbitration proceedings has been legislated. Article 3 of the Rules of Arbitration<sup>25</sup> legal norms to be used in dispute resolution, as well as Article 16 of the

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15.1.1. In the event of an emergency or unexpected or force majeure or difficult situation, the parties may agree to conduct the arbitration session electronically.

15.1.2 In the case of holding a meeting in electronic form, the decisions made by the state or other authorized organizations in that situation, as well as the operational procedures and guidelines issued by the arbitration organization in accordance with them, shall be strictly followed.

15.1.3 The guidelines to be followed by the arbitration panel, parties and other participants in the case for the electronic arbitration session shall be approved by the order of the head of the arbitration.

News from the Secretariat of International Arbitration of Mongolia, 2021.

<sup>23</sup> News from the Secretariat of International Arbitration of Mongolia, 2021

<sup>24</sup> 40.1. The legal norms applicable to dispute resolution shall be mutually agreed upon by the parties, and the arbitration panel shall resolve the dispute by applying the legal norms agreed upon by the parties.

40.2. When applying the legal norms agreed upon by the parties, the arbitral panel shall understand and apply them as material legal norms of the country, unless specifically specified in the agreement, and this does not include civil legal procedural norms.

40.3. If the parties do not mutually agree on the legal norms to be used in dispute resolution, the arbitration panel shall apply the material legal norms deemed appropriate for the resolution of the dispute.

40.4. If the parties have been granted the right by special agreement, the arbitration panel shall resolve the dispute by adhering to the ethical norms deemed fair without applying any law, or by mediation.

40.5. The arbitration panel shall resolve the dispute based on the conditions of the contract concluded between the parties, taking into account the customary trade customs established on the issue.

<sup>25</sup> The arbitration panel shall comply with the legal norms chosen by the parties to the extent appropriate to the content of the case. If the parties do not agree, the arbitration panel shall take into account the provisions of the agreement concluded by the parties and the legal norms deemed appropriate, international agreements and trade customs. Only if the parties are directly authorized, the arbitration panel shall resolve the dispute in accordance with the ethical norms deemed fair without applying any law. In the case of application of the law of a foreign country, the relevant articles, sections, provisions of the law, the official interpretation of the law, and the practice of how the case of that type has been resolved can be taken into account.

Rules<sup>26</sup> It provides for the determination of the procedure for conducting arbitration proceedings. Based on these norms, firstly, the norms applied in the arbitration process, and secondly, the legal basis for the combination of the material norms used in the handling of arbitration disputes, so the norms used for conducting arbitration hearings in electronic form are agreed upon by the parties and the arbitration panel at the preliminary arbitration session. It is considered appropriate to create a new act with legal capacity to be applied in the arbitration procedure. In other words, when examining some procedures for conducting arbitration hearings in electronic form, the norms to be used do not include the guidelines to be followed for conducting arbitration hearings in electronic form “, and there is no legal basis for including them, which means that it cannot be a legal amount directly applied to the arbitration process. Since this is a document that does not apply to legal norms and is only a document of direction and recommendation, it has been concluded that there is a legal requirement to approve and follow the new procedure for handling arbitration cases electronically in the future for the development of e-arbitration in accordance with digital technology.

## 8 CONCLUSION

Permanent arbitration of countries has a common trend with policies for the development of e-arbitration in accordance with digital technology. It is clear that the general direction of this policy is the importance of regulating relations related to the handling of disputes through electronic arbitration with independent rules and regulations.

Judging from the experience of the countries studied in comparison, since the beginning of the global pandemic, one of the prompt measures taken to continuously conduct arbitration has been the adoption of the rules of electronic arbitration.

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<sup>26</sup> If the parties do not agree, the Arbitration panel will hold a preliminary meeting to determine the procedure for arbitration by taking the opinions of the parties. The following shall be included in the arbitration procedure. These include: a/official name and address of the parties, b/arbitration agreement, c/jurisdiction of arbitration, d/content content of the dispute, claim, d/reference, f/arbitration fee, y/issues to be determined, j/arbitration place of conduct, z/language of arbitration, e/law of application in arbitration proceedings, k/date of arbitration session, l/how to conduct arbitration session.

In the future, there is a legal requirement to adopt and follow the new independent rules of electronic arbitration in order to improve the legal regulations for the development of e-arbitration in accordance with digital technology in Mongolia. In order to contribute to this, “Arbitration Cases in Electronic Form Procedure” draft is prepared and attached to the study. When developing the regulations of the rules, taking into account the legal regulations of countries with independent rules, we strive to comply with the laws on arbitration of our country and relevant rules and regulations.

### **RECOMMENDATIONS**

It was suggested that the procedure for handling arbitration cases in electronic form requires the following specific communication regulations:

1. If the parties agree to resolve the dispute electronically through arbitration by establishing the scope of application of the procedure for conducting international and domestic arbitration proceedings in electronic form, adhere to the procedure
2. The regulation shall have definitions of terms used in the regulations such as arbitration websites, electronic platforms, electronic signatures, electronic evidence, etc., and
3. When regulating arbitration agreements and jurisdiction, include the relevant provisions of the Arbitration Law and the Rules of Arbitration.
4. Electronic communication is very important for conducting arbitration proceedings electronically, so it should be clearly reflected
5. To reflect the issue of how to organize preliminary and main arbitration sessions in electronic form
6. Forming electronic evidence and clearly reflecting measures to ensure information security
7. Detailed coverage of the status of witnesses and experts in online arbitration sessions
8. The necessity of provisions on arbitral awards, etc.

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## APPENDICES

Санал болгож буй журмын төсөл, хавсралт:  
 Арбитрын хэргийг цахим хэлбэрээр хянан шийдвэрлэх журам  
*МОУҮА-ын Арбитрчдын зөвлөлийн*  
*20... оны ... дугаар сарын ...-ны өдрийн*  
*... тоот тогтоолын хавсралт №...*  
*Draft proposed regulations and*  
*annexes:*

*Procedures for electronic processing of arbitration cases  
of the Council of Arbitrators of the MOUA  
20... of the year... of the day of the month of October...  
... Annex to Resolution No. №...*

## **PROCEDURES FOR ELECTRONIC PROCESSING OF ARBITRATION CASES**

### **Article One. Scope of application**

1.1. This procedure shall be followed for conducting international and domestic arbitration proceedings under the jurisdiction of the International Arbitration of Mongolia (hereinafter referred to as "Arbitration") in electronic form.

1.2. In accordance with Article 15, Clause 15.1.1 of the Rules of Arbitration, if the parties agree to resolve the dispute electronically through the arbitration, this procedure shall be followed.

1.3. Any proceedings not specified in this rule or not agreed upon by the parties shall be conducted by the arbitral tribunal in any appropriate manner.

1.4. Electronic procedures other than mandatory provisions specified in the Law on Arbitration and the Rules of Arbitration shall be conducted in accordance with this regulation.

1.5. If the parties agree to resolve their dispute electronically in accordance with this procedure, it will be considered a dispute of jurisdiction of the International Arbitration of Mongolia.

### **Article Two. Terminology**

2.1. The following terms used in this regulation shall have the following meanings.

2.1.1. "An arbitration website for electronic processing of arbitration cases" means a special website, which can be found on [www.arbitr.org](http://www.arbitr.org)

2.1.2. "Electronic evidence" means any documentary information stored in electronic, optical, magnetic or other similar ways, which is based on the claim and refusal of the party to the case, which is important for the arbitration, and which is necessary to establish the actual situation obtained by means prescribed by law;

2.1.3. "Electronic signature" means electronic data containing words, letters, numbers, symbols, and images attached or combined to an electronic document intended to identify the person who signed the electronic document;

2.1.4. "Electronic arbitration session" means accessing the specific arbitration website with the rights provided for to conduct video conferencing over the Internet, as well as conducting arbitration proceedings using electronic and computer communication forms;

### **Article Three. Arbitration Agreement and Jurisdiction**

3.1. The arbitration panel shall determine whether the dispute is a dispute of arbitration jurisdiction, and shall follow the provisions of Article 8 of the Arbitration

Law and Article 3 of the Arbitration Procedure Rules to determine whether the parties have an arbitration agreement and whether the agreement is valid.

#### **Article Four. Communication**

- a. When sending all documents, statements or written evidence related to the case to arbitration, it shall be forwarded to the Arbitration Secretariat by e-mail, fax or other similar means.
- b. When conducting online arbitration hearings, guidelines for conducting arbitration hearings electronically shall be followed.
- c. If the contact information and address of the parties or participants in the case has changed, the relevant person shall immediately notify the Arbitration Secretariat.
- d. Unless otherwise agreed by the parties, the document shall be deemed to have been accepted if the parties have accessed the specific arbitration website when reviewing the evidence file created by the Arbitration Secretariat in accordance with Section 4.1 of the Regulations. The parties and the arbitration panel will automatically issue an information alarm when the documents are newly uploaded to the file.
- e. The arbitrator will make efforts to ensure the security of information in the electronic processing of cases and will create encryption for storing information.

#### **Article five. Arbitration**

5.1. Legal norms applicable to dispute resolution, filing of claims, return of claim prices and claims, arbitration costs, start of arbitration proceedings, defendant's explanation, filing of counterclaims, rejection of arbitration panel and arbitrator, and re-appointment of arbitrator shall be regulated in accordance with the rules of arbitration proceedings.

#### **Article Six. Arbitration session**

- 6.1. Preliminary and main arbitration sessions can be held electronically.
- 6.2. During the online session of the arbitration, the parties shall participate with equal rights and the arbitration panel shall be provided with the opportunity to freely express its position.
- 6.3. Record the arbitration session, record the session in written form and upload it to the case file.
- 6.3. Article 16 of the Rules of Arbitration shall be followed in determining the procedure for conducting arbitration proceedings.

#### **Article Seven. Evidence, its formation and evaluation**

- 7.1. The Secretariat of Arbitration shall create files for each case and prepare electronic evidence in accordance with Article 4.1 of this regulation.
- 7.2. The Secretariat of Arbitration has a platform to ensure the reliability of digital technology for the transmission of evidence submitted by the parties to the other party and the arbitration panel, and to check the guarantee of electronic signatures, organizational seals and symbols.

7.3. The arbitral tribunal may refuse to accept evidence that does not meet the technological requirements set forth in this regulation. In this case, the arbitrator may seek assistance from the company providing electronic services and the organization operating in this area.

7.4. The arbitration panel shall deliver to the parties any decision or document regarding the proceedings related to the case through the Arbitration Secretariat.

7.5. The parties may mutually agree to issue an arbitration decision based on electronic evidence. In this case, the parties should agree at the preliminary arbitration session.

### **Article Eight. Participation of witnesses and experts**

8.1. In the event that witnesses or experts participate in the online session of the arbitration, they can submit a video recording and present their images to give expert opinions and witness statements.

### **Article Nine. Arbitral Award**

9.1. The Secretary of Arbitration shall be responsible for obtaining the electronic signatures of the parties, their lawyers, and authorized representatives by submitting the written arbitration procedure established in the preliminary electronic session of the arbitration within 7 days.

9.2. The arbitration procedure certified by the signatures of the parties, arbitration panel and participants shall be uploaded to the case file within 7 days.

9.3. The content of the arbitration decision decided by the electronic main session of the arbitration shall be heard and explained to the parties, and within 14 days, the Secretary of the Arbitration shall be responsible for the written release and uploading it to the case file and informing the parties about it.

9.4. Relations related to the amendment, interpretation, additional decision-making, acceptance and execution of the main decision of the arbitrator shall be regulated by the relevant provisions of the Law on Arbitration and the Rules of Arbitration Procedure.

### **Article Ten. Miscellaneous**

10.1. Relations not regulated by this regulation shall be governed by the Arbitration Law and the Rules of Arbitration.

### **Authors' Contribution**

All authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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<sup>i</sup> 31.1.The parties shall freely agree on the procedures for arbitration within the framework of this law. 31.2.Unless the parties agree on the procedure for arbitration, the arbitration panel may conduct arbitration proceedings in accordance with the procedure deemed appropriate under this law. The mandate of the arbitral tribunal includes the right to determine whether any evidence is capable of proof, relevant to the case, significant, or without accurate doubt.