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Arbitration in disputes of electronic banking operations in Jordanian law.

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Abstract

The study focused on explaining the nature of arbitration in disputes of electronic banking operations and the problems of its implementation, given the importance that banks enjoy and the special nature of the disputes that arise from them. In particular, electronic banking operations raise many legal problems, especially in light of the absence of specialized legislative texts and the extension of these electronic banking operations between countries. Therefore, it was appropriate to resort to commercial arbitration as an effective and appropriate method for the special nature of electronic banking operations and the resulting disputes, and based on what The researcher has previously reached a set of results, the most important of which is that arbitration in banking disputes is subject to the general rules contained in the national and international legislation regarding the appointment of arbitrators and the implementation of the arbitration decision due to the absence of agreements and rules for bank arbitration with the exception of the few centers for bank arbitration, which are spread in some countries. Accordingly, the Jordanian legislator and comparative researcher recommended the establishment of an experienced mediation and reconciliation commission affiliated to the Central Bank, which would have its own system similar to many international bodies, as is the case in England.

Keywords

electronic banking operations, banking disputes, commercial arbitration.

Introduction

It is normal in the electronic banking environment for some disputes to

appear, as is the case in the non-electronic world, so the thinking tended to settle their disputes using electronic means in the sense that their procedures take place through electronic communication networks, without the need for the parties to the settlement process to be present in one place, as the global nature The electronic channels, through which the transaction is carried out, makes its concentration in a specific place difficult, if not impossible, which excludes the validity of the traditional rules of legislative and judicial jurisdiction to resolve disputes of electronic banking operations, so the idea of searching for other methods to settle disputes in which flexibility appeared.

Electronic arbitration was the appropriate method because it does not require the physical transfer of the parties from one place to another, but rather allows the resolution of these disputes with the remaining of each of the conflicting parties in its place while saving time, effort and money, as there is no doubt that electronic arbitration is considered one of the precursors of a technology revolution The information and the consequent change in the behavior of dealers through cyberspace, and due to its recent era, jurists have not yet determined its legal nature as to whether it is a stand-alone legal system, or is it like traditional arbitration and differs from it only in terms of the means.

Problem Research

In view of the development of banking operations, which have become closely linked to the Internet and the security of information that may lead to tampering with the balances belonging to customers, and these risks result in an increase in disputes between electronic banking institutions and customers, as the Jordanian legislator did not address the issue of electronic arbitration in banking operations, and from here it is represented The problem of the study is to explain the problems raised by the electronic arbitration agreement? How did the Jordanian legislator handle it?

Research Importance

In addition to the importance that electronic banks enjoy today, which provide customers with quality and speed in services, being of an electronic nature that carries advantages that were not present in traditional banking institutions, and that it is able to reach an expanded base of customers.

First Topic

Shapes Banking Disputes And The Extent To Which Arbitration Is Permissible

Banking disputes mean "the dispute that occurs between two parties, one of which is a bank and its customer, or a bank and another, as a result of the bank's practice of a banking business, whether it is a traditional business such as opening accounts, receiving deposits, issuing letters of guarantee, opening documentary credits and providing loans of all kinds, or it is non-traditional such as the range of

businesses that have emerged As a result of the successive developments in the surrounding economic and financial fields and the necessity to provide a series of various services that do not depend on credit, such as the process of exchanges, options and futures, as well as work that is based on adopting investment projects in various sectors and supporting them financially and administratively by providing the necessary financing or guaranteeing them. With third parties, or providing long-term loans, and providing all services to companies such as playing the role of discount houses, managing mergers and containment operations, real estate financing and financial leasing, carrying out brokerage work, issuing securities, trading in commodities, managing underwriting and guaranteeing it” (Matlop,2018) , and through this topic we will address the following:

Requirement: Forms Of Banking Disputes

And in light of the increase and spread of banking work and its ramifications in international trade, disputes arose between banks and their customers, and banks with each other, from their mutual commercial relationship . They are of two types:

Section: Banking Disputes In The Context Of International Trade

The establishment of banks and financing institutions helped a lot in financing foreign trade and encouraged investors at home and abroad by facilitating financing procedures and playing the role of the investor in financing.

If financing is considered the basic element of foreign trade, and the role of commercial banks is very important in granting foreign trade with this basic element of financing and other electronic banking services, and with this great role and ramifications in relations within the framework of international trade, it is natural that disputes arising from these relations result, and the status of In this context, the bank depends on the volume of its business with abroad, such as documentary credit operations , transfers, investments, and international investment tools(Abdel Aziz,2016).

Therefore, it goes without saying that the banking rules and unified customs issued by the International Chamber of Commerce specify the implementation of such operations, as large banks seek to adhere to them, and when any dispute occurs in this field, the bank is required to resort to courts or local or international arbitration, and any delay In implementing the issued rulings, the violating bank will be subject to the cancellation of the lines of credit granted to it, and the suspension of dealing with it.

Accordingly, the researcher finds that in light of the ramifications of these relations and their abundance, and in the event of a dispute in the framework of international trade, it is necessary to resort to means to settle these disputes

characterized by confidentiality, speed and experience, so it is possible to resort to international arbitration centers that are characterized by these previous characteristics, especially in the field of banking operations Electronic, which has spread and expanded, and international trade has become highly dependent on these operations, whether through granting loans , electronic documentary credits , and others.

Second Branch: Banking Disputes Within The National Trade Business

In light of the emergence of modern developments, the international and national expansion in the emergence of a number of banks, and the extension of their work outside and within the scope of the state, so the need has become necessary to find guarantor ways to resolve disputes that occur between these banks, as banks have a prominent role in the internal community due to what they collect savings of individuals Institutions and investing them in economic projects, providing credit and short, medium and long loans, providing modern innovative banking services for the convenience of customers, and investments that accelerate the process of economic development in order to raise the standard of living of the citizen. such services, or between banks and their customers (Raqeb,2015).

Also, "the increasing intensity of competition between banks in the same country creates a charged atmosphere that strains the relationship between them, for example when a bank seeks to attract customers of another bank, by various means, whether by raising usurious interest rates to attract depositors, or reducing them, As well as lowering currency rates and the conditions of the usual guarantees to attract more civilian clients from other banks(Al – Raqeb,2015).

This lenient policy in crediting may first harm the customers themselves, and its harm may reach the rest of the banks, when control and follow-up on the accounts of these customers are weak, and the level of transparency is reduced or almost non-existent, which leads to their speedy stumbling and inability to pay, in addition to The aforementioned may lead to the sudden cessation of payment by a bank to the loss of the banks that provided it with liquidity and granted it lines of credit that it had used, and thus the harm extends to the shareholders (Ismail,2001)

Second Requirement: The Position Of Jurisprudence On Commercial Arbitration In Resolving Bank Disputes

The jurisprudential opinions were divided regarding commercial arbitration in general and arbitration in banking disputes in particular, as jurisprudence was divided into two directions, the first of which: opposes the commercial arbitration system in resolving these disputes, and the second: supports resolving bank disputes by commercial arbitration, and accordingly the researcher will review these two directions, Through the following:

The first section: the opposition to commercial arbitration in resolving bank disputes

The banks themselves decided not to accept this method, due to the high percentage of legal and judicial risks, which is one of the most important risks of the banking business, as the banks supported the judiciary in resorting to it and resolving their disputes, as bank owners find great conviction for them that the ordinary judiciary performs its role in an excellent and optimal manner in resolving Bank disputes, due to the possibility of settlement in accordance with the provisions of the applicable law or the agreement of the dealers, also justifies this approach, because the arbitration provisions are not subject to review or appeal again, which they fear with him the unfairness of the arbitration unlike the ordinary judiciary(Al-Sharqawi,2014) .

Supporters of this trend believe, from their point of view, that there are no arbitration precedents in the field of banking work that arbitral tribunals can refer to, and the absence of arbitrators with specialization, competence and professionalism in this regard, and that the chosen arbitral tribunal does not have many important and basic compensatory powers, as is the case with the judiciary. This trend has many justifications and evidence to support his opinion in opposing the settlement of banking disputes through commercial arbitration, the most important of which is the **additional expenses**: the parties in the arbitration bear the arbitration expenses and the arbitrators' fees and are usually paid before the dispute is settled(Al – Khalidi,2016) , and this passivity of arbitration in banking disputes is considered one of its disadvantages because it It requires legal and technical competencies and expertise in the field of banking business, which in turn requires financial expenditures that may be exorbitant (Atay,2017) .

In view of these negatives, there are trends opposing the application of arbitration in the field of banking disputes in its various forms, by presenting many arguments, the most important of which is the absence of internationally known arbitrators in the field of international banking operations, in addition to that the arbitration system is financially costly, unlike the judiciary, and there is a fear among Disputing parties refrain from applying arbitration to their disputes, because it may lead to a departure from the application of the law and the principles of justice replace it, and this may lead to the loss of the rights of creditor banks and financial institutions. The trend opposing arbitration in banking disputes resorting to the state's judiciary.

The second section: the trend in favor of commercial arbitration in resolving electronic banking disputes

Arbitration in general, and in electronic banking operations in particular, as a means of settling disputes, has many advantages when balanced with the judiciary as the usual way to settle commercial disputes that require speed, because time has a major role in influencing banking operations, financial interest,

and so on. There are many arguments in support of their opinion through what commercial arbitration achieves to resolve banking disputes, which are as follows:

First: The speed in resolving the dispute: It is considered one of the most important advantages achieved by resorting to arbitration as an alternative to the judiciary (Abu Saleh,2014) .

Second: Confidentiality and neutrality: Banking operations are characterized by secrecy due to their attachment to the capitals of large companies, as data is processed automatically and stored in information banks, which are the subject of one of the contracts concluded at the international level (**Al-Qasabi,2010**).

Third: Flexibility and simplicity of procedures: Arbitration is a private judiciary that is free from the systems of judicial procedures conducted by the courts . The parties mainly control the time taken to consider the arbitration .

Fourth: The specialized expertise of the arbitrators: In view of the delicate technicality of banking business and its modernity, as is the case in deposits, documentary credits , letters of guarantee, and the method of calculating civil or credit interest, resolving any dispute of this nature requires expertise and specialization in the banking field, and this is something that is rarely available in The field of judiciary, and it can be available in the event of resorting to arbitration (Al-Qasabi,2010).

Based on the foregoing, the researcher finds that arbitration has many advantages, especially in the field of banking disputes that need accuracy, specialization, and speed. Friendliness between the parties, and sometimes voluntary implementation.

The topic the second

Procedural And Substantive Effects Of Arbitration In Electronic Banking Operations

It has become established in many legal systems that resorting to procedures other than the usual judicial procedures is more effective and more effective in resolving many of these economic and financial matters, including resorting to arbitration as an alternative and quick means to settle disputes away from the crucible of the judiciary and in order to achieve the principle of economy in procedures and dedication to business management Accordingly, what are the procedural and substantive implications of the arbitration agreement in electronic banking operations, and this is what we will discuss in this topic , according to the following division:

Pain request The first: the procedural effects of arbitration in electronic banking operations

It is difficult to specify a specific list of disputes that may arise between

banks and their customers (Abdel Qader,2019). Accordingly, through this section, we will define arbitration procedures in electronic banking operations, according to the following division:

The Branch The First: The Appointment Of Arbitrators

With regard to the provisions subject to the appointment of arbitrators in arbitration in electronic banking disputes, there is no exception to the general rules in selecting arbitrators except taking into account experience and specialization when selecting arbitrators, especially since banking business is growing rapidly, especially in terms of electronic banking services, and such a development can only be kept up by a few. The two banks, as for the judges, it is rare that there are those among them who specialize in the banking field or its branches as a result of the delicate technicality of banking business or its novelty, as is the case in banking operations such as deposits or documentary credits, or the method of calculating debit or credit interest, so in the event that the dispute is presented to the judges, the Experience in the banking field, the specialized expert will be used, but in banking arbitration, banks usually resort to choosing a specialized technical arbitrator who has experience in the field of banking work to solve problems in the banking field, as is the case in disputes that arise in cases of documentary credits (Abdel Qader,2019).

For example, Article (10) of the rules of the International Islamic Center for Reconciliation and Arbitration in Dubai, which specializes in banking disputes, stipulates that: "It is required for the arbitrator to be a man of law or judiciary, or someone with high experience and wide knowledge in trade and industry, and one who is familiar with the provisions of Islamic law, and that he be He enjoys high morals, a good reputation, and independence of opinion."

DocDus rules of the International Chamber of Commerce stipulated in this regard that "...once the dispute is brought to the center according to these rules, the center shall appoint three experts from the list of experts of the Banking Committee, who have experience and deep knowledge of the rules of the International Chamber of Commerce (ICC) and its applications There are about (90) experts registered with the Experts Center of the International Chamber of Commerce for the Dodecads system, which is usually two banks and banking lawyers, and each of them must declare their independence from the parties specified in the application, and the center will determine one of these three appointed experts to act as their president. ..."(Docdex Rules Regulating Arbitration in Special Documentary Credits at the International Chamber of Commerce in Paris).

Accordingly, arbitration in banking disputes is subject to the general rules stipulated in national and international legislation regarding the appointment of arbitrators. This stage is considered one of the most important stages of the arbitration process in all disputes. The arbitral tribunal, which is called the regular

composition of the arbitral tribunal .

However, the researcher believes that in terms of the practical reality in arbitration in banking disputes, the majority in the formation of the arbitral tribunal is the multiplicity of arbitrators in it, and in particular, the disputes arising from contracts for international electronic banking operations such as documentary credits that enter into the core of international trade, given the nature of these disputes and their need for a number Of the diverse experiences in the formation of the arbitral tribunal because it needs experts and technicians in the work of banks and banks.

However , due to the special nature of banking disputes, institutional arbitration is usually chosen due to the existence of thorny relationships in it, and due to the existence of an unequal relationship sometimes between the two parties to the dispute (the bank and the individual), so institutional arbitration is the preferred option for resolving banking disputes in all its forms. Accordingly, if the two parties to the dispute agree to resort to a regular or permanent center or institution to resolve the dispute between them, this agreement avoids them the procedural problems that arbitration may be exposed to, especially the procedure for forming the arbitral tribunal, as the regulations of these centers or institutions regulate how to form a tribunal. arbitrators.

The International Chamber of Commerce in Paris is also the competent authority to settle disputes related to documentary credits , especially what is known as the DOCDEX system which means the settlement decision for documentary credits disputes and it refers to the decision issued by the center of expertise of the International Chamber of Commerce in Paris. Accordingly, the researcher believes that the application of the regulations of the center or institution that the parties to the dispute resorted to regarding the formation of the arbitral tribunal is consistent with the will of the two parties, because their resort to the centers or the permanent or regular institution for arbitration is considered as an expression of their will, and their consent to submit arbitration to the regulations of this center or institution To acquaint them with these regulations, and to inform them that they include rules for the formation of the arbitral tribunal.

Section Two: Arbitration Litigation in Electronic Banking Disputes

The litigation procedures in bank arbitration do not differ much from the litigation procedures in ordinary commercial international arbitration. The litigation procedures begin with a request for arbitration until the issuance of the arbitration award ending the litigation in banking operations, unless the procedures end without the issuance of this ruling. The Jordanian Arbitration Law indicated in Article (26) However, the arbitration procedures shall start from the day the formation of the arbitral tribunal is completed, unless the two parties agree otherwise .

What the researcher finds here is noteworthy, and the bank arbitration litigation procedures are subject to its own rules, such as the Docdex rules, and the

dispute presented to the expert committee concerned in this regard is settled by the center for the latest version of the docdex rules issued by the International Chamber of Commerce, unless otherwise agreed upon by the application of any A previous version. As for the law applicable to the subject of the Docdex dispute, it is subject to the provisions of the rules of the International Chamber of Commerce in force, and with regard to disputes of documentary credits , the unified rules and customs of documentary credits and their amendments in force according to the latest version are the applicable law.

Second Requirement: The Authority Of The Arbitration Award In Electronic Banking Operations And Its Implementation

Comparative laws differ regarding the recognition of the authoritativeness of a foreign judgment. Some of them see the necessity of recognizing the authoritativeness of the thing decided by foreign judgments, based on an old idea that adapts the litigation according to which it is a judicial contract from which the judge derives his authority, so the judgment in the case is a right arising from a contract, and accordingly, the Acknowledgment of the validity of the thing decided by the foreign ruling is nothing more than a recognition of a right arising from a right to conclude abroad, but this idea no longer has weight because the judge now derives his authority from the law. Through this section , the authority of the arbitral award in electronic banking operations will be examined, according to the following division:

First: The authoritativeness of the arbitral award in electronic banking operations: Most of the national and international legislations of arbitration provisions recognize the authoritativeness of the decided order (See Article (35) of the UNCITRAL Law on International Commercial Arbitration, and see Article (5) of the New York Convention of 1958. For more, see: (Al-Hedawi, 2011) , , as the Jordanian Arbitration Law stipulates in Article (52) the authoritativeness of arbitration awards. In view of the speed required by the settlement of banking disputes, when a dispute arises, banks and their clients seek to obtain a judgment with an absolute argument in order to stabilize financial and commercial transactions. Therefore, one of the most important advantages of arbitration in the field of electronic banking operations is that the arbitral award is considered final and not subject to appeal if It is devoid of cases that immunize it against nullity according to what was stated in Article (48) of the Jordanian Arbitration Law, contrary to the rulings issued by judicial courts and the legal rules regulating arbitration (Al- Shezawi,2019).

For example, we find that the regulation of arbitration procedures in the Commercial Arbitration Center of the Gulf Cooperation Council states, which is specialized in settling banking disputes, considers the judgment an official paper once it is issued and signed. The competent authority in the Member States, based on the presentation of the list of arbitration procedures in the Gulf Cooperation Council, the award is considered an official paper once it is issued and signed, as

is the case with the rulings issued by the ordinary judiciary and it has binding force, and thus it possesses the authority between the litigants of the case and it has no authority by those who did not He is a party to the litigation in which it was issued, and the implication of this text is that the execution order issued by the judiciary is not intended for the judge to verify the fairness of the ruling or the correctness of his ruling on the subject of arbitration because he is not considered an appellate body in this regard, nor is it intended to order the execution of the ruling to give him the capacity The official paper, because this capacity is linked to the ruling since its birth and once it is issued, fulfilling the formal conditions required by the law(Khatir,2019).

And in Jordan, in general , the authority of the thing decided by foreign rulings was recognized · This is confirmed by the text of Article (52) of the Jordanian Arbitration Law.

Second: Implementation of the arbitral award in electronic banking operations: After addressing the conditions that must be met in the foreign award, it should be noted that the availability of these conditions does not mean that the foreign award is implemented through the enforcement departments. Rather, an order to implement the foreign award must be issued by the competent court in The state in which the judgment is to be executed, and the court does not issue the execution order unless there is a request submitted to it, and the judge to whom the request to issue the execution order is submitted may refuse to issue it if one of the conditions required in the judgment fails .

There are two methods for executing foreign judgments, the first is by filing a new lawsuit, and the second is by issuing an order to implement the foreign judgment. The person who wants to implement a foreign judgment must resort to the judiciary of the country in whose territory he wishes to implement the judgment, and file a new lawsuit to claim his right and base this case on the judgment. The foreigner if the law of the state requires filing a new case, or requesting the issuance of an order to execute the foreign judgment if the law of the country from which the execution is requested follows the system of the order of execution, and with the issuance of the execution decision (execution order) the foreign judgment enjoys the executive power, which is the purpose of filing the lawsuit, and it becomes Judgment after this decision becomes final, by exhausting the means of appeal against it or the lapse of the period without appealing the decision(Al-Sharqawi,2013) .

As for the method of implementing the foreign judgment, it is agreed that the rules and procedures for execution are subject to the principle of territoriality, and accordingly, foreign judgments are implemented in the manner in which national judgments issued by the country from which execution is requested are implemented. The Jordanian legislator emphasized this matter in Article (9) of the Law Execution of Jordanian foreign judgments , and based on that, if the foreign law does not permit attachment of a specific money and the money is present in the country from which execution is required, and its law allows attachment of it,

then the provisions of the law of the country of execution are the ones that are applied exclusively.

At the international level, the New York Convention was concluded for the implementation of foreign arbitral awards for the year 1958, and this agreement stipulated in Article (4 / a, b) of the New York Convention on this condition , but at the regional level, Jordan has ratified the Riyadh Convention, The Arab League for Judicial Cooperation for the year 1983 AD, which regulated the method and authenticity of foreign bonds or the so-called foreign documented documents .

Conclusion, Results And Recommendations

In the conclusion, the subjectivity of arbitration in banking operations was researched by studying the arbitration controls in electronic banking operations by explaining the arbitration procedures in them, whether in the appointment of arbitrators and the arbitration litigation, as well as the legal provisions governing the arbitration ruling in electronic banking operations, and based on the above, the researcher reached To a set of results and recommendations, which can be summarized as follows:

First: The Results

1. What is meant by the banking disputes that are the subject of arbitration in banking operations is the dispute that occurs between two parties, one of whom is a bank and its customer, or a bank and another, as a result of the bank's practice of banking work, whether it is a traditional work such as opening accounts and receiving deposits, or it is non-traditional such as electronic banking operations.
2. is subject to the general rules contained in national and international legislation with regard to the appointment of arbitrators and the implementation of the arbitration decision due to the absence of agreements and rules specific to bank arbitration, with the exception of the few centers for bank arbitration, which are spread in some countries.
3. The means and method of implementing the bank arbitration award are the same as those applied in the implementation of the ordinary commercial arbitration award with some exceptions that we mentioned in the body of the research and which were stipulated by some of the rules and regulations of the procedures of arbitration centers specialized in banking disputes.

Second: Recommendations

- 1- recommends the establishment of a mediation and reconciliation commission with experience affiliated to the Central Bank, with its system similar to many international bodies, as is the case in England.
- 2- recommends adopting the arbitration agreement to resolve banking disputes and including it in contracts between banks or between banks and their customers in banking operations, especially electronic ones, especially

when these operations involve huge sums of money.

- 3- The researcher suggests that the Central Bank of Jordan prepare lists of arbitrators and experts in the banking field with specialization, competence, good reputation and high confidence in the field of commercial transactions, to be selected from among them in the Judicial Arbitration Committee that looks into bank disputes.

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