

THE LEGAL SIGNIFICANCE OF DIGITAL EVIDENCE IN INTERNATIONAL COMMERCIAL ARBITRATION

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Annotation: Determining and establishing the legal force of digital evidence in international commercial arbitration is one of the key issues of the modern era. This article analyzes the legal status of digital evidence in international commercial arbitration and within the legal systems of various jurisdictions, including the USA, the United Kingdom, Germany, and the European Union, as well as national legislation. The article follows the IMRAD structure and is based on scientific literature, foreign and national articles, and legislative sources.

Keywords: International commercial arbitration, digital evidence, foreign legislation, Uzbekistan's legislation, convention, blockchain, legal solution.

Introduction

The rapid development of modern business and international trade has increased the demand for swift and effective resolution of commercial disputes. From this perspective, international commercial arbitration is recognized as one of the most flexible and reliable mechanisms for dispute resolution. However, with technological advancements and the growing circulation of digital documents, the role of electronic evidence in arbitration proceedings has expanded alongside traditional forms of evidence. In particular, issues surrounding the acceptance of electronic signatures, blockchain-verified documents, and other digital evidence as reliable records in arbitral tribunals have gained both scientific and practical relevance.

This study focuses on examining the legal force of digital evidence in international commercial arbitration. While numerous academic studies have been conducted in recent years, there is still no unified approach regarding how arbitral tribunals accept electronic evidence and assess its reliability. For instance, in some jurisdictions, electronic evidence is equated with traditional paper-based documents, whereas in others, its admissibility requires additional verification.

Methods

In preparing this scientific article, methods of legal analysis, comparison, a systematic approach, and a normative-legal approach were employed. The main goal of the research is to analyze the process of accepting digital evidence in international commercial arbitration and to determine its

legal status. During the research, the reliability of electronic evidence is assessed based on international legal documents, the experience of advanced arbitral tribunals, and modern technologies. Based on these analyses, the study holds both scientific and practical significance by proposing recommendations aimed at strengthening the status of digital evidence in international arbitration processes.

The method of analyzing normative-legal documents was employed to determine the acceptance and legal status of digital evidence in international commercial arbitration. Specifically, both international and national legal documents were analyzed, including:

- The 1958 New York Convention
- UNCITRAL Model Law
- The Law of the Republic of Uzbekistan on International Commercial Arbitration (16.02.2021, No. 674)
- The Criminal Procedural Code of the Republic of Uzbekistan (01.04.1995)
- The German Civil Procedure Code (Zivilprozeßordnung) (1998)

Based on these documents, the reliability and acceptance mechanisms of digital evidence in international arbitration tribunals were analyzed. A comparison was made between the legal frameworks of Uzbekistan and foreign jurisdictions, including the USA, the United Kingdom, Germany, and the European Union. This comparison highlighted the differences and similarities in how digital evidence is accepted, its reliability, and its application in arbitral tribunals. Effective practices were identified, and the technological and legal characteristics of digital evidence, along with the issues and risks associated with its use in arbitration proceedings, were examined. The certification of electronic documents, the principle of immutability of evidence ensured through blockchain technology, and their impact on acceptance in courts were studied. Additionally, the general principles of presenting and evaluating evidence in arbitration proceedings were analyzed, and the integration of digital evidence into the broader system of international commercial law was explored.

During the research, the legal risks associated with the acceptance of digital evidence in international arbitration proceedings were analyzed. Based on this analysis, the following recommendations were developed to mitigate these risks:

- Developing a unified standard for electronic evidence across international arbitration institutions.
- Strengthening the legal status of blockchain-verified documents.

Results

As a result of the conducted research, urgent issues related to the legal force of digital evidence in international commercial arbitration and existing legal gaps were identified. During the research process, national and international normative legal documents, judicial practices, and scholarly perspectives were examined and analyzed.

It was found that the Law of the Republic of Uzbekistan on International Commercial Arbitration does not explicitly include specific provisions regarding digital evidence.

Additionally, the Civil Procedure Code of the Republic of Uzbekistan does not clearly define the legal status of digital evidence in foreign arbitration tribunals. However, amendments and additions have been made to the Criminal Procedure Code of Uzbekistan concerning evidence. Specifically, Article 81 (Types of Evidence) is now phrased as follows:

"These materials consist of statements from witnesses, victims, suspects, defendants, and those being prosecuted, expert conclusions, physical and digital evidence, audio recordings, video recordings, cinematographic materials, photographs, records of investigative and judicial actions, and other documents."

Article 87 (Collection of Evidence), Part One is now phrased as follows:

"Evidence is collected through investigative and judicial actions, which include questioning the suspect, defendant, accused, witness, victim, and expert; confrontation; identification for recognition; verification at the scene of the incident; seizure; search; inspection; as well as remote access in computer networks, authentication; exhumation of the body; conducting experiments; obtaining samples for expert research; appointing expertise and investigation; accepting presented physical objects and documents; listening to conversations through telephones and other communication devices; and conducting operational-search measures."

Similarly, Article 90 (Recording of Evidence in the Record), Part Three is now phrased as follows: "The records must include: information about the participants in the investigation or trial, along with an explanation of their rights and obligations; the location, time, conditions, process, and results of the investigative or judicial action, describing the discovered electronic data and material objects and their significance for the case; facts confirmed by the participants in the investigation or trial; their statements, explanations, and opinions on the reasons for the event; petitions, complaints, and rejections they have made; any violations during the investigative action or trial process, and the measures taken to eliminate and prevent these violations."

Article 951 (Inadmissibility of Evidence), Part Three is now phrased as follows:

"Testimonies, expert conclusions, physical evidence, electronic data, audio and video recordings, and other materials obtained from the witness, victim, suspect, defendant, or accused in violation of the provisions of this Code shall not be used as evidence."

Article 2071 ("Recognition of Electronic Data as Electronic Evidence and Inclusion in Criminal Cases") is as follows: "The investigator or interrogator, and the court shall issue a decision regarding the recognition of electronic data as electronic evidence and its inclusion in a criminal case."

Foreign legislation, particularly in Germany and the European Union, introduced international commercial arbitration and national arbitration systems much earlier than Uzbekistan. In 1996, the National Center for Automated Information Research (NCAIR) and the Cybersecurity Law Institute (CLI) in the USA launched the first project for the introduction of electronic arbitration. In the field of international commercial arbitration, the online arbitration system was introduced in the United Kingdom in 2002. The legal significance of digital evidence in this system has

been rapidly developing, especially with the acceleration of this process during the COVID-19 pandemic.

During the pandemic, the use of technology by legal professionals in resolving commercial disputes became widespread, with the electronic arbitration system, known as e-arbitration, gaining prominence. This system involves uploading the details of the dispute, complete case facts, and supporting documents and photos that confirm the claims. E-arbitration then reviews the submitted materials and calls on the parties to respond. Ultimately, e-arbitration answers online questions and issues a signed arbitration award. As highlighted above, the legal force of digital evidence is evident through this system.

For instance, the approach of the Shenzhen International Arbitration Center (SCIA) during the peak of the COVID-19 pandemic serves as an example. It was reported that SCIA used e-arbitration to resolve urgent disputes electronically and promptly. Furthermore, the Arbitration Act of 1996 in the United Kingdom is one of the key legal documents regulating arbitration proceedings.

In the German Civil Procedure Code (Zivilprozeßordnung), Article 1031 defines two methods for submitting documents in commercial arbitration: traditional paper format or electronically. However, German legislation includes general rules for the recognition of electronic documents and signatures, which support the acceptance of electronic evidence.

The 1958 New York Convention establishes procedures for the recognition and enforcement of foreign arbitration awards. However, the Convention does not contain direct provisions regarding the legal force of digital or electronic evidence in international commercial arbitration. The Convention primarily focuses on the recognition and enforcement of arbitration awards and does not regulate the forms or types of evidence in detail. Like many other countries, Uzbekistan is also a signatory to and has ratified this Convention.¹

In the matter of the legal force of digital evidence in international commercial arbitration, the following model laws developed by the United Nations Commission on International Trade Law (UNCITRAL) are of significant importance:

- Model Law on Electronic Commerce (1996): This law was designed to facilitate trade conducted through electronic means and to ensure legal certainty. It establishes the principle of providing equal legal status to electronic and paper-based information, creating a foundation for the acceptance of electronic evidence and the recognition of its legal force.
- Model Law on Electronic Signatures (2001): This law aims to facilitate the use of electronic signatures and establish criteria for their technical reliability, ensuring equality between electronic and handwritten signatures. It further strengthens the legal force of electronic evidence certified by electronic signatures.

Discussion

¹ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 7 February 1996

The legal significance and force of digital evidence in international commercial arbitration present a new challenge for legal professionals. Unlike traditional material evidence, this concept has emerged with the advancement of technology. Specifically, digital evidence refers to data that exists in electronic or digital form and can be used as legal proof in court and arbitration proceedings. This includes, but is not limited to, electronic documents and files, telecommunications records, audiovisual evidence, electronic commerce and financial records, network and server data, blockchain and cryptographic information, and other similar electronic information.

Some scholars argue that digital evidence in international commercial arbitration holds the same importance as material evidence. This is because, in today's world, many transactions and records have transitioned to digital formats. For example, China, a country known for its low-cost manufacturing and delivery, plays a significant role in the global economic system. Disputes arising from online services and contracts often lead to the need for commercial arbitration. The question, however, is whether digital contracts (digital evidence) can be accepted as evidence in arbitration or court. The answer is certainly yes. The reason being that "evidence in the form of a record or signature cannot be rejected solely because it exists in an electronic format."²

It is useful to highlight both the positive and negative aspects of determining the legal force of digital evidence in international commercial arbitration. Starting with the positive aspects:

In traditional arbitration, parties are required to submit supporting documents along with their claims or counterclaims at the beginning of the proceedings. Recognizing the legal significance of digital evidence could pave the way for the rise of online arbitration, which would help accelerate dispute resolution, increase efficiency, and minimize issues arising from geographical distance or logistical challenges. It could also significantly reduce barriers to access, making arbitration more accessible to parties in different parts of the world.

On the negative side, there is a risk that digital evidence could be falsified or manipulated, presenting false or altered data. Additionally, specialized expertise and technological tools are necessary to verify and analyze digital evidence, which could increase the costs of arbitration.

In conclusion

In line with contemporary demands, the concept of digital evidence and its legal significance in international commercial arbitration, as well as the need for amendments and additions to national legal systems, has been thoroughly studied and highlighted in this research.

Arbitration is a method for resolving disputes without resorting to court, where impartial arbitrators make decisions. This process is often faster, more confidential, and more flexible compared to traditional court procedures, which is why it is widely used in international

² Stephen E. Blythe, "Digital Signature Law of the United Nations, European Union, United Kingdom and United States: Promotion of Growth in E-Commerce With Enhanced Security," *Richmond Journal of Law and Technology*, vol. 11, no. 2, 2005

commercial disputes. To regulate the acceptance of digital evidence in arbitration, countries, including Uzbekistan, have started amending their legal frameworks.

This research highlights the issues related to digital evidence in international commercial arbitration and national legislations, offering legal solutions to these challenges. Further research is needed to address the verification and expert analysis of digital evidence and resolve issues related to determining its authenticity.

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