

The Improvement of Online Arbitration Rules of Evidence in China

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Abstract

Online arbitration as an emerging method for resolving disputes has variable forms. Within the system, the storage and exchange of the evidence depends greatly on the system environment and the authenticity of the evidence is easily damaged. This paper compares the differences between online arbitration rules of evidence and civil rules of evidence. Then the author analyzes the flaws of online arbitration rules of evidence and proposes ideas of improvement. At last the author summarizes the feature and uniqueness of online arbitration and gives some detailed suggestions from the perspective of technical protection, collection evidence rules as well as supporting measures to online arbitration.

Key words: Online arbitration; Rules of evidence; Electronic evidence

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January 26, 2012, the China Internet Network Information Center (CNNIC) released the “29th China Internet Development Status Survey Report”. The report shows that: At the end of December 2011, the total Internet users of China reached 513 million; China’s mobile netizens¹

reach 356 million. However, as of December 2011, the online shopping ratio of Chinese netizens reached 37.8%; the number of the shoppers reached 194 million people.² Meanwhile, the global e-commerce market total scale has reached to \$ 680 billion in 2011; a year-on-year growth of 18.9%. According to JP Morgan senior analyst Imran Kahn, this figure will reach to \$ 963 billion by 2013.³ E-commerce has become an important trading pattern in the commodity economy. Along with the development of e-commerce, online arbitration as a dispute resolution mechanism in the internet has also been paid much attention.⁴

Online arbitration is the combination of the ordinary arbitration and network technology. Like offline arbitration, online arbitration refers to a solving mechanism that both parties hand over their disputes to the third party (that is the arbitration tribunal) to resolve their disputes. In fact, online arbitration simply changes the information transmission carrier and modes, so it does not alter the internal mechanisms and principles of offline arbitration. Due to these changes, online arbitration has demonstrated its convenience, fast speed across the physical space and other significant advantages. Since 2001, China International Economic and Trade Arbitration Commission has adopted online arbitration to resolve Internet domain name disputes. Guangzhou Arbitration Commission also began to put into trial use of online arbitration. There is no denying that problems existed between the theory and the practice of online arbitration referring to electronic validity of the arbitration agreement, the independence of the rules of evidence, the connection with litigation and the enforcement of arbitral awards etc. However, along with the continuous improvement and development of B2C (Business-to-Customer) e-commerce

¹ Netizen is defined as an entity or person actively involved in online communities and a user of the internet.

² The 29th China Internet Development Survey Report. Retrieved on 25 Apr 2012 from <http://www.cnnic.cn/gywm/ndbg/>

³ Global E-Commerce Research Report 2010-2011. Retrieved on 25 Apr 2012 from <http://www.100ec.cn/zt/qq/>

⁴ Global E-Commerce Research Report 2010-2011. <http://www.100ec.cn/zt/qq/>

transactions and the development of network technology, online arbitration will show strong vitality due to its unique advantages. Therefore, the research and discussion of such issues, especially summary and analysis of the experience of online arbitration rules of evidence not only helps to improve the mode of online arbitration to solve online disputes but also facilitates the development of e-commerce in China to create a good legal environment.

1. OVERVIEW OF ONLINE ARBITRATION OF THE EVIDENCE

In arbitration, the evidence is the key for discovering facts, reaching conclusions and resolving disputes. Evidence is also important in online arbitrations. Therefore we should precisely define “online evidence” if we want to study the rules of online arbitration clearly. Generally, online arbitration evidence refers to the authentic case material collected by the parties or the arbitration tribunal. Moreover, the arbitration tribunal has the discretionary power to the evidence. In short, evidences used for online arbitration are not new types of evidence but general concepts for materials used in the process of online arbitration. They include all the evidences involved in the process of online arbitration. Although this internet technology is applied in the traditional arbitrations (ordinary arbitration), it has totally changed the environment in which those evidences are used (Li, 2005). Therefore, further identifying the features of evidences used in online arbitration and sorting those evidences combined with their features will not only help us know about those evidences but also help us improve the rules of online arbitration.

1.1 Categorization of Evidences Used in Online Arbitration

The disputes under the online arbitration have their origin in reality. Because of this combination between virtual space and reality, the form of evidence used in the online arbitration is variable. We can divide evidences used in the online arbitration into two categories according to the relationship between evidence and the internet or computers: the first category is the independent evidence that can be effective without internet or computer. The second category is the evidence that can only be effective with the help of computer and internet. With regard to evidences in the first category, they are usually used in the offline arbitration including documented evidence, material evidence, and conclusion of exports and testimony of witnesses. Although when people assessing the evidence, technologies are necessary due to the differences in online assessing, these evidences are independent and they do not rely on technologies. The second category of evidence used in online arbitration is what we call as “electronic evidence”. According to the definition of experts, online arbitration refers to the

arbitration that are established, negotiated and carried out on the internet (Wang, 2005). In this regard, the electronic evidence becomes the main part of evidence used online. Scholars generally believe that in the broad sense, the evidences used online include computer evidence, digital evidence and evidences that are stored by the digital devices or magnetic devices such as telephone messages and emails. In other words, they are “all the electronic materials and derivatives that are used as evidences” (He, 2002). Electronic evidence can also be divided into network evidence, as well as other evidence existing in electronic form. The advent of the internet has provides us a virtual space in which we can share information and share resources. Taking the information from the internet terminal and using it as evidence is called the online evidence. Compared with method for collecting offline evidence, the methods to collect online evidence are confined as we can only collect these evidences through internet technologies. Its assessing method is also unique. All the evidences can only be assessed online. Due to the evidences used in online arbitration having various kinds of forms, it can greatly help us improve the legislation on evidences used online based on our current practice. It can also help us review the rules for collection, assessing, cross-examination and certification and then improves our disputes resolving mechanism.

1.2 Features of the Online Arbitration Evidence

1.2.1 Variable Forms of Online Arbitration Evidence

Online arbitration is a procedure in a virtual space. During the online arbitration process, the transfer and exchange of evidence mainly depend on the network information technology which turn the evidence into a digitized form transmitted by internet. In this process, some changes have been made to the forms of evidence. For example, when people fax the documentary evidence or email it to the arbitrator, the form of the documentary evidence has been transferred from the tangible document into the electronic information. The variability of the form can be reflected both in the transfer period and the storage process. Unlike the offline arbitration, electronic file management of the online arbitration is one of the basic requirements for successful online arbitration proceedings. Electronic case file management refers to all the documents related to online cases which are stored in electronic form in the appropriate order, so as to create an electronic file for all the cases (Li, 2005). The establishment of the electronic files is one of the reasons of high efficiency for online arbitration. The establishment of electronic files not only improves the speed of retrieval case information and shows its interrelated connection and comparison, it also can facilitate the keyword query, thereby shorten a lot of time and cost for word query the evidence, and greatly facilitate the use of evidence for the arbitrator. In the process of establishing electronic file, the variability of the forms of evidence provides a foundation

for the storage of the evidence material. On the other hand, the original electricity, magnetism, light and other forms of electronic evidence, especially the digital form at the network evidence also experience the same change; for instance, the originally digital information in the net pages has to turn into the form of text or picture so that the arbitrator and the parties can take it as evidence. What we need to emphasize here is that the change of form of the online evidence is determined by the mode of the online arbitration, and it should take the authenticity and the consistency of the evidence as the premise.

1.2.2 The Storage and Exchange of the Evidence Depends Greatly on the System Environment

The convenience of online arbitration should take the electronic technology as the cornerstone. Meanwhile the search, storage and transmission of the online evidence also need the support of electronic technology and network technology. Firstly, the submission of offline evidence need the support of technical ways which include video, Internet chat rooms, fax and so on in order to get across the space distance. For example, online dispute arbitrator is often in different geographical location with the parties and the witnesses. Thus the online arbitrator has to depend on the video technology to acquire the testimony. Secondly, the electronic evidence needs through technology to turn into a form of which the arbitrator can use it as evidence. The basic feature of electronic evidence is that it is a kind of intermedium combining sound, light, electrons and magnetism, which determines that the electronic evidence should be recognized by some specific equipment and technology thus can be used it in the court by the form of text, images, video, audio, etc. (Li, 2005). Last, evidence of online arbitration requires electronic technology protection and screening. The creation and storage of electronic evidence cannot be separated from the information carrier. Once the information carriers or the system environment of electronic evidence are damaged by human factors, the information carriers would be easily damaged, especially when the security of the network directly affect the authenticity of the network evidence. Therefore, no matter the transferring of the offline evidence or the preservation of the electronic evidence, they are both based on computer and internet security technologies.

1.2.3 The Authenticity of the Evidence Is Easily to Be Damaged

The Internet is an open law LAN (local area network). The openness of the internet is the foundation of the online arbitration. Thus the online arbitration can fulfill its across-region, "face to face" function. However, it is the openness of the internet that makes the online arbitration always in the risk of being invaded. Both the ordinary evidence and electronic evidence need network to be transmitted and stored, which bring the security risk to the online arbitration. Once the network has been invaded, the evidence

of online arbitration may face the risk of being modified or resettled. Due to the online arbitration depending greatly on the network technology, the authenticity of the online arbitration evidence is highly vulnerable to damage, even difficult to detect. This is because the data of the network is digital. The network evidence adopted binary code sequence which consists of the logic signals 0 and 1 (Feng, & Zhang, pp. 205-206). Therefore, the network evidence is all about the binary code sequence. Once it has been modified, the authenticity of the network evidence will be damaged. Technically speaking, to change the binary code sequence is not very difficult. Network evidence or even the evidence which need transfer through network all could be modified without detection if we lack effective security and screen technology.

2. THE DIFFERENCES BETWEEN RULES OF EVIDENCES OF CIVIL PROCEDURE AND RULES OF EVIDENCES USED IN ONLINE ARBITRATION

There are two kinds of categorizations of those rules: the first kind is to categorize them into rules of evidence, rules for testifying evidence and the rules for collecting evidence based on the process of arbitration. The second kind is to categorize them into rules of evidence forms and the rules of solid evidence based on the form (Wang, 2005). This paper adopts the second kinds of categorization to compare the rules of evidences of civil procedure and rules of evidences used in online arbitration. There are two concepts that must be made clear: the formal rule of the arbitration evidence refers to the rules that regulate the shape and the classification of the evidences and the rules of substantive evidences are the procedural rules abided by the arbitrator and the parties in using the evidences affirming facts.

2.1 The Static Comparison of Formals of Evidence

In our civil procedure, there are seven evidences forms: documented evidence, material evidence, and audio-visual material, testimony of witnesses, litigant's statement, expert's conclusion and records of inquests. There is no rule on whether records of inquests from arbitral court can be used as records of inquests. Besides, although widely used in online arbitration, the electronic evidences are not accepted as evidences in civil cases. On the contrary, the Article 2 Paragraph 7 in the online arbitration publicized in May 1st, 2009 published by China Council for the Promotion of International Trade and the China Chamber of International Commerce said that the legislators are beginning to accept the online evidences in substantive law. The 11th clause of contract law published in 1999 says, "the contract made by parties can take the form of written contract, oral contract and other forms of contract.

The written contract refers to documentary contracts, letters and electronic message (including telegram, telex, fax, interchangeable electronic data and email)". Although this article was interpreted by some scholars that online evidences, especially electronic messages belong to the documentary evidences, it only gives us the information that the legislators realized that the electronic messages has the equal status with documentary evidences and the legislators began to admit the probative force of electronic messages. In short, this article proves that the telegram, telex, fax, electronic data interchange and e-mail on the internet have equal legal status with other forms of evidence. This admission is not only can be seen in the Contract Law, it also can be seen in Electric Signature Law published in august 28th, 2004. The 7th clause of the Electric Signature Law says, "(evidences) cannot be refused for they are evidences created through electronic, optical magnetic and other similar method that are transmittable, acceptable and storable".

2.2 The Dynamic Comparison Between Substantive Evidences

According to the time differences in discovering facts and the different procedural functions of the evidences, the substantive rules of arbitration evidence can be categorized into arbitral quoting rules, the evidence checking rules and the evidence adopting rules. The substantive rules of evidences used in online arbitration are almost similar to the rules of civil procedure, but there are some differences: firstly, the online arbitration focuses more on the efficiency. It is contract based and highlights efficiency. As for collecting documentary evidence, civil procedure has stricter rules than online arbitration. It requires at least two people in collecting evidence, while the rules of online arbitration allow the arbitrator to collect evidence alone or entrust others, they are in line with the procedure justice. In pursuit of efficiency, online arbitration inevitably features high efficiency and convenience. Secondly, in the online arbitration, arbitrator has wider range of discretion. In the civil procedure, the collection, cross-examination and acceptance of testimony of the witnesses must follow the evidence rules. However, in the online arbitration, the validity of testimony is under the discretion of arbitrator. Thirdly, the power of online arbitration is confined. In the civil cases, the court can investigate, detain and pick up material evidences, while the online arbitration court does not has the right to take those actions. The court also does not have the right to take preservation measures to the evidences and other compulsive measures. Fourthly, some special problems in the process of online arbitration do not exist in civil procedure, such as the vague legal status of electronic evidence and the obscure assessing standards. There are also questions on whether there exists record of inquest in arbitration and if it really exists, the problem is how to use them.

These properties of online arbitration are rooted in the unique features of online arbitration. Firstly, online

arbitration has all the features of arbitration in nature. They are not judicial activities. Civil procedure is the last resort for all civil cases. Online arbitrator has more discretion which can guarantee the function of arbitration and protect the procedural rights of the parties. From this perspective, we can tell the differences between the rules of evidences of online arbitration and the civil procedure is reasonable. However, the advantage of the online arbitration depends on the implementation and development of the network technology. We should make rules based on its features and the network technology.

3. IDEAS ABOUT THE IMPROVEMENT OF THE ONLINE ARBITRATION RULES OF EVIDENCE

3.1 To Further Clarify the Relationship of the Legal Sources About Online Arbitration Rules of Evidence

Civil Procedure Law, the Supreme People's Court's Several Rules in Civil Procedural Evidence (hereinafter referred to as the "Regulations"), the Arbitration Act as well as arbitration rules are the legal source of online arbitration rules of evidence. How to deal with the relationship of the four sources directly relates to the content of the online arbitration rules of evidence and evidence processing. Paragraph 3, Article 15 of China's Arbitration Law proves that, "The China Arbitration Association shall formulate Arbitration Rules in accordance with this Law and the Civil Procedure Law...". So the provisions of the online arbitration rules of the evidence shall be consistent with the "Arbitration Law" and "Civil Law". The Regulation is that the judicial interpretation is made under the provisions of the Civil Procedure Law by the Supreme People's Court, which consists with the Civil Procedure Law. In summary, Civil Procedure Law, Arbitration Law and the provisions of the relevant provisions of the evidence should be the basis of online arbitration rules of evidence. However, this interpretation ignores the autonomy and particularity of the online arbitration. Firstly, electronic evidence is mainly applicable object for online arbitration rules of evidence, however, Civil Procedure Law, Arbitration Law do not clearly define the procedures and requirements of the burden of proof on electronic evidence, questioning witnesses, collecting evidence. Some arbitration bodies enact its own arbitration rules and recognize and develop the review requirements, these practices of online arbitration should not be underestimated. Secondly, network technology is the reason why online arbitration is different from traditional arbitration, network technology application and specification will directly affect the evidence collection, transmission, and review. As for this special factor, "Civil Law", "Arbitration Law" and

“regulations” are not clearly defined. Therefore, for the online arbitration emerging private rights disputes settlement mechanism, attention should be paid to its autonomy and dependence on technology. Arbitration Law shall be clearly stipulated that the various arbitral tribunal has the power to stipulate online arbitration rules under arbitration practice provided that the collective interest and the interests of others online rules of evidence are not contrary to the public interest and not against the country’s development. Arbitral tribunal in the arbitration practice should first be constituted in accordance with respective arbitration institution arbitration rules.

3.2 Arbitration Rules of Evidence Should Correspond with the Characteristics of Online Arbitration Evidence

Based on the above analysis, the main features of the online arbitration evidence are variability in the forms of evidence, the storage and exchange of the evidence depending greatly on the system environment and the vulnerability for the evidence of the authenticity. The characteristic of the online arbitration evidence is defined by the network technology which is the foundation of the online evidence. If you cannot protect the stability and security of the system environment, the online progress of the arbitration and the realization of the rights of the parties to the basic program will be under a serious risk: First, confidentiality is considered to be one of the main advantages of the arbitration. The level of the safety factor of the system environment is directly related to the degree of confidentiality. Exchange of evidence, cross-examination program through the network may involve the private information of the parties, and therefore should be concerned about the maintenance of the system environment security in online arbitration rules of evidence. Second, the parties may be in a striking disadvantage because of differences in network technology and may lead to unequal access to information. The last, the instability of network technology may also lead to information delays or interference and affect cross-examine and the effect of online arbitration process. In addition, network security may cause loss of evidence or evidence storage difficulties. The uncertainty standard of the review of the evidence of the authenticity will confuse the arbitral tribunal to determine the authenticity of the evidence or even be wrong to judge the authenticity of the evidence. Therefore, Online Arbitration Rules should be clear on the maintenance of the systems environment and should determine standard of review of the authenticity of evidence. Nevertheless, the existing sources of law involving online arbitration rules of evidence do not make this clearly defined. Of course, in the face of the evidence the authenticity of the situation cannot be determined because the network needs professional technology knowledge. The arbitral tribunal may need commission accreditation bodies to determine the authenticity of the evidence and whether it is destroyed in accordance with the request of the parties or not, the party

may also apply for notary institutions to fix and save the online arbitration evidence for protecting the authenticity of evidence from destroying.

4. SPECIFIC RECOMMENDATIONS FOR THE ONLINE ARBITRATION RULES OF EVIDENCE

Since online arbitration does not break through the functional framework of the offline arbitration, its rules of evidence must be subject to the arbitration rules and cannot be in violation of the relevant provisions of the Arbitration Act. As the online arbitration is a non-litigation dispute resolution mechanism, which based on party autonomy, therefore in every case meeting any parties without objection who does not violate the public interest of the community, the legitimate interests of the state and the collective or others’ interests, the arbitral tribunal shall be clear and perfect provided the Arbitration Act does not specify explicitly. That is to say, the arbitral tribunal in the arbitration process should give priority to the online arbitration rules, as well as the Arbitration Act. In the case of the above rules and the law without clear provisions, the tribunal can apply the Civil Procedure Law and the provisions of the relevant judicial interpretation for references. This will not only protect the legality of online arbitration, but also give definite freedom to it, thus ensuring its convenience and efficiency. In order to further ensure the online arbitration going smoothly, the author believes that the online arbitration rules should be further improved to guarantee online arbitration both efficient and fair.

4.1 Clarify Technical Support in Online Arbitration

4.1.1 Network Technology Specialist Is Indispensable

In addition to both parties, arbitration tribunal and tripartite, etc, as in offline arbitration, online arbitration also has network technology as “the fourth party”. Network technology is not only related to the quality of online interactive, but also directly affects evidence submission, transmission, examination and recognition in online arbitration. First of all, network platform for the submission and transmission of online arbitration evidence needs network technology to ensure its security maintenance so as to protect the privacy and security of arbitration documents and evidence material. Secondly, evidence examination in online arbitration needs the aid of computer equipment and network technology to eliminate system fault, guaranteeing the integrity and authenticity of online arbitration evidence. Finally, online arbitration evidence storage needs network technology. The offline arbitration evidence materials are mainly classified, filed in paper document, but online arbitration evidence material are often preserved with the aid of computer equipment or floppy disk, hard disk, CD and

other storages. At the same time, technology is required to ensure the readability and unchangeability of storage material. Based on the above-mentioned reasons, online arbitration institution shall hire special network technical personnel to exclude system failure, to ensure the integrity of the electronic evidence and transmission security, privacy and also to assist arbitrator to judge the authenticity of evidence in online arbitration.

4.1.2 Perfect Undeniable Mechanism Is Necessary

The authenticity of the electronic evidence is closely linked to the undeniability of its source and transmission. The so-called undeniable mechanism is powerful and substantial evidence to the identity of information subscriber and the integrity of information, so it is enough to prevent a party from successfully denying the sources, submission and the content integrity of the information. (Lu & Shen, 2008) Authenticity of evidence in online arbitration can only be guaranteed with the perfect undeniable mechanism.

In particular, online arbitration undeniable mechanism has the following five factors: the first is undeniable request, i.e., the undeniability of sources; the second is generated record, namely undeniable record in the future in dispute which can be used as evidence material; the third is record distribution, which guarantees the arbitration tribunal and the parties having evidence material; the fourth is record verification, which confirms the authenticity and sufficiency of the source of the evidence material; the fifth is the preservation of the record, namely the neutral third party saving the evidence material and transmission information and other records in order to ensure the authenticity of evidence material.

4.2 Rules of Collecting and Submitting the Online Arbitration Evidence

A party has the right to collect evidence on its own and to appoint the relevant technical personnel or the networking experts to collect evidence. An arbitration tribunal may collect its own evidence if it is necessary. Both of them should consider the authenticity of the online arbitration evidence, including the reliability of methods when the electronic evidence producing, storing and conveying and reliability of the methods of keeping the integrality of the content and of distinguishing the sender. If the electronic evidence has reliable electronic signature, then it has the same legal force and effect to the files which have been handwritten or sealed.

To be more specific, collecting and submitting the online arbitration should conform to the following requirements:

(1) To explicate the IP or the network address of the computer that can generate or store the electronic data in the type of text, picture and audio-visual material.

(2) To explicate the relationship between the major content of the evidence collected and the facts waiting to be proved.

(3) To explicate the time, place, manner and the witness when collecting the evidence.

(4) Submitting the video and textual material during the collection of evidence.

(5) The evidence submitted should have a copy.

4.3 Make Clear the Standard of Examination and the Rules of Use in the Online Arbitration Evidence

4.3.1 To Examine the Authenticity of the Electronic Evidence Materials

When the arbitrator examines the authenticity of the relevant electronic evidence materials in the online arbitration, he should conform to the following principles. On one hand, the system environment that generates the evidence materials should conform to the principals. For instance, the hardware that generates the electronic evidence must work correctly; the designations and versions of the hardware should be in accordance with the requirements of the evidence generating. On the other hand, all the data which generates the evidential materials should be original. The evidential materials should have the record of generating, storing, conveying, and modifying the evidence materials. And meanwhile they should also have the record of intruding or unlawfully modifying the network system service log.

To be more specific, arbitrator can affirm the authenticity of the evidence materials in the following circumstance.

(1) If all the parties accept the system environment of generating, storing and conveying the evidence materials and the data come-and-go, the arbitrator can affirm the authenticity of the evidence materials.

(2) If one party does not interpose objections to the evidence produced by the opposing party, the arbitrator can presume the authenticity of the evidence materials.

(3) If the evidence is presumed by the parties against themselves or the neutral third party, the arbitrator can presume the authenticity of the evidence.

(4) If the reliability of evidence is identified, justified or proved by the experts, or the opposing party does not provide an opposite expert conclusion, the arbitrator can affirm the authenticity of the evidence materials.

(5) The evidence materials should be preserved by the court in legal process during the suit. If one party has no objection to the evidence provided by the opposing party, the arbitrator can affirm the authenticity of the evidence materials.

4.3.2 To Examine the Legitimacy of the Evidence Materials

On April 1, 2002, "Evidence Civil Procedure provides that" Article 68 stipulates that "in order to infringe legal rights of others or violate the provisions of the law prohibiting sexual achieved by the method evidence, cannot serve as the basis of facts of the case found". So, if the generating, storing and conveying of the online

arbitration evidence is illegal, and it has violated the legal right (such as rights of privacy and publicity) of others, then the arbitrator should exclude it as illegal evidence. To be more specific, the evidence obtained by the means of the following circumstance should be excluded:

(1) The computer contained electronic messages obtained by illegal search, seizure and steal.

(2) The evidence materials obtained by intruding the network system illegally.

(3) The evidence materials obtained by decoding or stealing the account name and password of others.

(4) The evidence materials obtained by illegal software (such as wiretap).

4.3.3 The Relevance of the Evidence

The relevance of the evidence is basic for the arbitrator to use evidence to create new evidence for the facts to be proved. It refers to the evidence that must have objective connections with the facts which are to be proved in the case and prove it (Cai, 2009). Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. If the online arbitration evidence materials conform to the following requirements, then it can be seen as relevance evidences. On one hand, it should be the facts to be proved by using the evidence materials legally. On the other hand, the evidence materials have the ability to prove the facts true or untrue. So, the relevance of the evidence is the definitive factors for some objective facts to become the evidence.

4.3.4 Specific Rules of Examining and Determinating the Evidence of Online Arbitration

Best evidence rule is the most time-honored rule of British Common Law, and, originally it means source written materials used as evidence having priority to their replica and recall. According to this, documentary evidence should provide the original ones under the traditional evidence rule, or it should reject any other evidence before satisfactory answer had been given. Differently, the subject of online arbitration is the electronic evidence, and the extraction, replication, transmission and preservation of whom cannot change the information of electronic data only if there is no hardware problem, the computer system is on normal operation, and the internet is safe and stable. So the rule that electronic evidence should not need to distinguish the original from the replica if the authenticity of that can be safeguarded should be explicit. However, because of the dependence of electronic evidence on system environment, the electronic evidence should safeguard its integrity and authenticity on the process of transforming to characters, pictures, audio-visual materials and other forms as well as direct reproduction. Meantime, the rule of the probative force of different forms of the same electronic evidence should be specified. If the same electronic evidence can be transformed in a variety of ways without affecting its authenticity, relevance and the

probative force, the relevant transformations have the same probative force; if the same electronic evidence can only be transformed in some way to reflect its relevance, thus this transformation has the strongest probative force.

4.4 Integrating Neutral Institution into the Assisting Online Arbitration System

4.4.1 Network Service Centers (NSC)

Network service centers should preserve the electronic data autonomously and desirably based on the will of the service objects. From the aspect of network technology, it is easy for network service centers to get information, and from the aspect of law, the obligation of network service centers should be well-defined so as to protect the privacy of the service object.

(1) Network service centers should fulfill the obligation on keeping secret, namely, they cannot leak the users' information on the purpose of business without permission and they must bear the corresponding civil compensation, administration and even Criminal responsibility if the leakage of information is illegal.

(2) Network service centers should preserve the electronic data well, and cannot alter it unauthorized within the fixed period of years (11 year in Singapore). The modification of the electronic data without permission is forbidden (Zhong, p.22).

(3) At the request of the service object or the authorized notary organization and within the prescribed time limit, network service centers should assist in extracting relevant information.

4.4.2 Notary Organization

Preservation of evidence refers to a system under the circumstances that the evidence maybe lost or difficult to obtain in the future and a court should adapt to fix and protect the evidence according to the participants in the proceedings, the application of an interested person, or in accordance with the right quality. Whether the person involved in online arbitration can apply the preservation of evidence to a court depends on the position of online arbitration in the online dispute resolution mechanisms. From the point of all the dispute resolution that can be used in online dispute, the mode to settle online dispute can be divided into three levels: online consultation, accommodation, online arbitration and lawsuit. Now, online arbitration is in the transition period from accommodation to arbitration, which is beyond the legally binding. Therefore, it is not appropriate to ask the court to support online arbitration now. While the notary organization is neutral and professional, and it has the ability to preserve the evidence for the party in online arbitration. So, in order to collect and solidify the evidence without delay, and to protect the parties' legitimate rights, the notary organization should undertake the function of preserving the evidence (Zhong, 2011). The evidence through preservation is more reliable than other evidences in the absence of proof to the contrary.

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