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ABSTRACT

Arbitration, as an approach or a way to resolve international civil and commercial disputes, has been widely practiced around the world. Today, the rapid development of internet technology and international e-commerce technology brings some brand-new forms of interaction, resulting in a great number of disputes with new features, which often involve the parties in different regions or countries. Under such circumstance, online arbitration emerges as the times require. With its emergence and development, online arbitration creates a new era of arbitration, and presents a new direction with its unique advantages for the development of traditional arbitration in the future.

This new type of arbitration distinguishes itself from traditional arbitration mostly because it takes high-tech communication device as its medium to connect the arbitrators or the parties at different places. As it is still new, online arbitration is however accompanied by lots of legal issues, such as, determination of place of online arbitration, form of agreement for online arbitration, recognition of validity of online evidences, recognition and enforcement of arbitral awards, etc. This new way of resolving disputes is mostly implemented on the internet, so there is almost not any specific physical space involved. Hence, the place of arbitration is normally left blank in online arbitration. However, the blankness does not imply the insignificance of determining the place of arbitration. The place of arbitration plays a role in online arbitration as important as in traditional international commercial arbitration.

For instance, the place of arbitration decides the law applicable to the whole arbitration proceedings as well as in what way a local court imposes the judicial supervision over the arbitration proceedings. What is more important, the place of arbitration can also decide the nationality of arbitral awards, which may, to some extent, affect whether the final arbitral award can be recognized and enforced by the countries involved.

Obviously, it is therefore inevitable to determine the place of arbitration in either traditional international commercial arbitration or online arbitration. This thesis focuses on the critical analysis of some viewpoints that were raised early in the academic circle, such as, location of arbitrator, location of online arbitration institution, location of computer server, location of website owner or controller, location where arbitrator sends or receives emails, and newly developed theory of delocalized arbitration, and argues that these viewpoints cannot effectively applied in the determination of the place in online arbitration due to their insurmountable inherent obstacles and deficiencies.

For this reason, this thesis analyzes the causes for the blank place of arbitration in online arbitration and puts forward a theory to properly solve this problem for online arbitration, i.e. seat of arbitration theory. Additionally, the determination of place of arbitration in online arbitration is further explored under the guidance of the seat of arbitration theory. This attempt leads to the suggested solution for the blank place of arbitration in online arbitration within the framework of domestic law and international law. In China, online arbitration is still young, so there are not any systematic rules available for compliance with, except some provisions in the arbitration rules released by a few arbitration agencies. Meanwhile, the determination of place of arbitration in online arbitration in China is even contradictory to the common practice around the world, which places quite a large barrier on the development path of online arbitration in China to some extent. Therefore, the arbitration law of China should be modified and improved correspondingly.

This thesis analyzes the basic theories of online arbitration and discusses about how to determine the place of arbitration in online arbitration. The analysis is presented in five chapters and a conclusion.

The first chapter elaborates on the basic issues. It covers the definition and features of online arbitration, and the definition, role and development trend of place of arbitration. Then, this chapter brings forward the problem to be demonstrated in this thesis, analyzes the causes for this problem and explores how to solve this problem.

The second chapter analyzes the limitations of the relevant viewpoints on how to determine the place of arbitration in online arbitration, and demonstrates the infeasibility of delocalized arbitration.

The third chapter studies the feasibility to apply the seat of arbitration theory on the determination of place in online arbitration by analyzing the basic issues about the seat of arbitration theory.

Based on the study in the previous two chapters, the fourth chapter puts forward the basic way to determine the place of arbitration in online arbitration and the related factors to be considered in the process, and mainly introduces the principles of party autonomy and most significant relationship to the determination of the place of arbitration. Then, the determination of the place of arbitration in online arbitration is explored in the framework of domestic law and the framework of international law, and some recommendations are given to help determine the place of arbitration in online arbitration.

The fifth chapter delves into and reviews the stipulations for place of arbitration in the legislation of China, evaluates and analyzes these stipulations based on the domestic legislation for arbitration and the arbitration rules of arbitration institution. Also, it advocates applying the seat of arbitration theory and modifying the arbitration law in a timely manner, while improving the arbitration rules of arbitration agencies.

Key words: online arbitration; place of arbitration; delocalized arbitration; seat of arbitration theory

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