

**Timescale for Arbitrators' Work  
in the Emirati Civil Procedures  
Law: A Comparative Study with  
the Jordanian Law**

Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law Journal of Law

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## **Timescale for Arbitrators Work in the Emirati Civil Procedures Law: A Comparative Study with the Jordanian Law**

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### **Abstract**

Arbitration is referred to as one of the leading alternative dispute resolution means. Parties do refer to arbitration to have their disputes resolved on the hands of arbitrators of their own choice. Arbitration was found to be faster than courts of law in resolving disputes. This speediness, is recognised as one of the main advantages of arbitration. What is more, parties expect arbitration to be speedy and fast. The Emirati and Jordanian laws acknowledged this fact. They, both laws, stated that arbitration must be accomplished in a certain time limit determined either by the parties or the provisions of law. The two regulations were analysed and addressed in this study. The two laws were found to learn from each other in this regard. The article adopts more than one recommendation for both legislators, in the two laws, concerning this issue.

## البعد الزمني لعمل المحكمين في ظل قانون الإجراءات المدنية الإماراتي دراسة مقارنة بالقانون الأردني

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### الملخص

يشار إلى التحكيم على أنه أحد الطرق الرئيسية البديلة عن التقاضي في فض النزاعات. الأطراف المتنازعون يلجأون إلى التحكيم لحسم نزاعاتهم على يد أفراد يقومون باختيارهم بأنفسهم كأصل عام. وقد وُجد بأن التحكيم، كوسيلة من وسائل فض النزاعات، أسرع من محاكم القانون. سرعة حسم النزاعات هذه تعتبر إحدى المزايا الرئيسية للتحكيم. والأطراف، عند لجوئهم إلى التحكيم، يتوقعون من هذه الوسيلة من وسائل فض النزاعات أن تكون سريعة ومستعجلة. كلا من القانونين الإماراتي والأردني يقران بهذه الحقيقة. كليهما (أي القانونين الإماراتي والأردني) قررا ضرورة أن يقوم المحكم بإتمام مهمته ضمن المدة التي يحددها الأطراف أو القانون كأصل عام. تنظيم هذا الموضوع في كلي القانونين تم تناوله بالبيان بهدف الوقوف على نقاط الاتفاق والخلاف بين كل منهما، وذلك من خلال دراسة تحليلية تقييمية. وقد وجدت الدراسة بأن كلا من القانون يمكن أن يستفيد بأكثر من جانب من التنظيم الذي قرره القانون الآخر. وقد تبنت هذه الدراسة أكثر من توصية تم الإشارة إليها في متنها بخصوص التنظيم المقرر لهذا الموضوع في كلا القانونين.

## Introduction

Arbitration is recognised nowadays as one of the main dispute resolution means. It is an alternative to litigation before courts of law. Courts of law are usually crowded with disputes. This is due to the fact that they are funded by the state. Moreover, judges, who are responsible for deciding disputes in courts of law, are appointed in advance by the state, and the law stipulates more than one condition in them to assure the best selection of them. Accordingly, parties need not search for an arbiter when referring their disputes to courts of law. Still, parties can always ask for judges' replacement if they are found in circumstances that may affect their impartiality. However, despite the fact that disputants in the case of litigation are relieved from both paying the judges' wages and from searching and agreeing on competent arbiters, they (the parties) choose to avoid bringing their case before courts of law and decide to put them before arbitration panels. This, referring the case to arbitration, is seen as a result of many reasons. One of the main reasons pushing the parties towards arbitration compared to litigation is speediness. Litigation before courts of law- as mentioned above- is crowded with cases. Judges, as a result, are asked to distribute their time on the cases brought before them. Moreover, the litigation process before courts of law depend on proceedings (legal procedures), which are previously assigned by the law. Such procedures are imperative in almost all cases. Such a thing causes delay and hinders the parties' case. However, in almost all cases, parties, especially in commercial disputes, need their disputes to be speedily resolved.

Arbitration is recognised as a means that achieves this result. Therefore, parties usually, when concluding their agreements and contracts, refer to arbitration as a means of dispute resolution. The laws regulating arbitration around the world have taken this point; speediness, which constitutes an advantage of arbitration, into account. Both the Emirati and Jordanian laws are no exception. Both laws addressed this point by stating that arbitration process must not be undertaken endlessly. An arbitrator, in the two regulations, must deliver his decision within a certain timescale. The timescale set for arbitration means that an arbitrator must deliver a decision within a certain time limit. Such a thing is advantageous, since it, in a way, shortens the parties' suffering and saves them time and money. In other words, adopting a time limit for the arbitration process means that an arbitrator needs to deliver a decision

within a certain period, and, accordingly the parties' time spent in dispute, at least before arbitrators, will not be endless. Yet, this timescale can either be assigned by the parties or by the law. Furthermore, extension, disruption and expiry of such timescale are also regulated in the two laws. This study is set to address this issue. However, it is pertinent to note that this study is mainly concerned with the Emirati law's regulation of this issue. Nevertheless, a comparison is made with the regulation adopted in the Jordanian law. This can be seen as follows.

### **Determination of the Arbitration Timescale:**

Once again, it is worth noting that assigning a timescale for the arbitration process helps in controlling and shortening the time of the dispute before arbitrators. Such a thing, as mentioned earlier, adds to the advantages of arbitration which is referred to as a speedy dispute settlement means. However, the question that is to be addressed here is: 'Who is the one of authority to determine the time limit for arbitrators', is it the party, the court, the arbitrators or the law itself? This subject can be addressed within the regulation of the two laws of Emirate and Jordan as follows:

#### **2.1. Assignment of Arbitration Timescale in Emirati law:**

The Emirati Civil Procedures Law states that, as a general rule, the timescale for arbitrators' work is to be assigned by the parties' agreement in the first place. However, parties may fail to agree on such a thing. Accordingly, the law interfered to address this case as a result. The Emirati law regulates this issue as follows:

##### **2.1.1. Determination of the Timescale Following Parties' Agreement:**

The Emirati law says that arbitration duration must be agreed upon by the parties as a general rule. Article 210 of the Civil Procedures Law states that "if no agreement to the contrary is made by the parties in their arbitration agreement, arbitrators must deliver their judgment within six months starting from the first arbitration session held in the case...." This article confirms the fact that arbitration process time limit is to be determined by the parties in the first place. Yet, the wording of Article 210 denotes that the parties' agreement on the time limit for an arbitrator must be embodied in their arbitration agreement. Accordingly, a question is posed to the effect is it a must for

the parties, in order to consider their determination of the timescale valid and correct, to embody it in their arbitration agreement? A related question can also be given to the effect that is do parties have to explicitly agree on such a thing? As an answer to the given questions, it can be said that this article, Article 210, is not to be taken literally in this regard. That is to say parties can agree on a time limit for an arbitrator at any time as a general rule, whether such an agreement was made at the moment of the conclusion of their arbitration agreement or at a later stage. Furthermore, this can be made either before or after assigning and appointing the arbitrators. This view is compatible with the contractual nature of arbitration, where the parties are allowed to agree on almost all arbitration-related matters. Moreover, it will be seen that the Emirati law enables the parties to agree to prolong or extend the timescale assigned for an arbitrator.<sup>1</sup> Accordingly, parties have the upper hand in this regard, whether their agreement on the timescale was made at the time of the conclusion of their arbitration agreement or at a later stage. In addition, parties can either explicitly or implicitly agree on the timescale for an arbitrator.<sup>2</sup> Parties, accordingly, can explicitly assign a timescale for an arbitrator by determining a certain time limit for him. That is to say parties may say, for example, that an arbitrator needs to accomplish his work within two, three, four, or five months, or no in more than June, July...etc of this year or that of the next year. Parties may also determine the timescale for an arbitrator by referring to a certain event that is taking- or that is to take- place at a certain time. They, the parties, may, for example, say that an arbitrator must accomplish his work before the end of the harvest season of this year, and this season is agreed to end on a certain month, like in August, of that year. In such cases, parties do explicitly assign the time limit for an arbitrator. On the other hand, parties may not expressly determine the timescale for an arbitrator like in the case if the parties consult an arbitrator concerning their dispute to have him appointed, and he informs them that if he is to hear their case, he will need, for example 8 months to deal with it, and the parties after hearing such a thing from him agree to appoint him to decide the case. Appointing that arbitrator without assigning a timescale for him may be interpreted to mean that parties

1. See article 210/2 of the Emirati Civil Procedures Law.

2. This is also supported by article 210/2 of the Emirati Civil Procedures Law, which refers to the parties' right to explicitly or implicitly agree on prolonging or extending the timescale assigned for an arbitrator.

have implicitly agreed on the timetable suggested by him. Moreover, parties can leave the assignment of such timescale for the arbitrators themselves, by agreeing that an arbitrator can assign the time needed for him to decide the case. Furthermore, such timescale can also be left for a third party to decide. This is seen where the parties agree on such a thing. Accordingly, for example, parties can agree to refer assigning such timescale to an attorney of law or to an expert of trust to them.

### **2.1.2 Determination of Timescale Where Parties Fail to Agree:**

It is seen that the Emirati law leaves determining an arbitration process timescale to the parties' agreement. However, parties may fail to agree on such a thing. In other words, parties may refer to arbitration and fail- usually as a result of not recalling such a thing- to determine a timescale for an arbitrator's work. In such a case, the Emirati law, in article 210 of the Civil Procedures Law states that "if no agreement to the contrary is made by the parties in their arbitration agreement, arbitrators must deliver their judgment within six months..."

Then, if the parties did not agree on a timescale for an arbitrator, the Emirati law interfered and determined it with six months. However, as to when the six months time limit starts, it can be said that the law states that it starts from the first arbitration session held in the case.<sup>3</sup> Still, a question can be posed as to the meaning of the first session from which the time limit starts. This question is posed due to the fact that arbitrators in more than one case hold a provisional or preparatory session in order to agree on a work plan and all related matters concerning the arbitrators' work such as the applicable law, the place and time of concluding the sessions...etc.<sup>4</sup> Accordingly, does such time limit, the six-months, start from this session or from the actual session held by an arbitrator to hear the case? The Emirati law does not make such distinction. Though, the wording of Article 210 Emirati Civil Procedures Law, seems to be a little bit confusing in this regard, since it refers to 'the first arbitration session'. A view may interpret this sentence by saying that it is

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3. Article 210 of the Emirati Civil Procedures Law states: "If no agreement to the contrary is made by the parties in their arbitration agreement, arbitrators must deliver their judgment within six months starting from the first arbitration session held in the case..."

4. For more on this session, see Aashor, Mabrouk, 2008, "The Procedural Regulation of Arbitration Proceedings", DarulFikrWaAlqanon, 2nd ed., p. 176, et. Seq.

concerned with hearing the case by arbitrators (i.e. the first session held by the arbitrators to arbitrate or address the subject matter of the case). However, it can be said that the Emirati legislator, most likely, meant the first session ever held by an arbitrator after being appointed to address the case. In all cases, a definition or a clear-cut provision is highly welcomed to address this point.

## **2.2 Assignment of Timescale in Jordanian Law:**

The Jordanian law, as is the case in the Emirati law, states that arbitration process needs to be governed by a limited timescale. However the details of the regulation adopted by the Jordanian law are a little bit different from those adopted in the Emirati law. As a starting point in addressing the regulation adopted in the Jordanian arbitration law concerning this issue, it can be said that the Jordanian law states that the timescale is to be determined by parties' agreement in the first place.<sup>5</sup> Accordingly, parties can always agree- either explicitly or implicitly- on the arbitration time limit. Parties can also delegate the arbitrators to determine the timescale.<sup>6</sup> However, if the parties did not agree on a timescale for an arbitrator, the Jordanian law, as is the case in the Emirati law, the legislator interfered and determined it. The timescale set by the Jordanian law, where no agreement to the contrary is made by the parties, is one year (a twelve-month time). This time limit, in the Jordanian law, starts and begins from the time of the commencement of the arbitration proceedings.<sup>7</sup> However it is pertinent to note that the Jordanian law states that the arbitration proceedings commence and start- not from the first arbitration session held in the case as is the case in the Emirati law but- from the time the arbitration panel is formed and composed.<sup>8</sup>

## **2.3 Assessment:**

It is obvious that the two laws, the Emirati and Jordanian laws, agree on leaving the determination of the timescale of the arbitration process to the parties in the first place, and if the parties fail to agree on such a timescale, the timescale is assigned by the provisions of law. However, it is seen above

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5. Article 37/a of the Jordanian arbitration law. Also see M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.125.

6. See Article 5 of the Jordanian arbitration law. Also see M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.126.

7. Article 37/a of the Jordanian arbitration law.

8 This is established in article 26 of the Jordanian arbitration law.



that the Emirati law- where parties fail to reach an agreement to the contrary- makes the timescale six months only, and this time limit starts from the time in which an arbitrator holds his first session in the case. This is not the situation in the Jordanian law, which makes the timescale a twelve-month time, starting from the time in which the arbitrators are appointed to address the case. As assessment, it can be said that the regulation adopted in the Emirati law seems to be more efficient than the one adopted by the Jordanian law. This is due to the fact that the Emirati law, where the parties fail to agree on a timescale, sets shorter time than the time set in the Jordanian law. Such a thing agrees with the speediness privilege sought from arbitration. Furthermore, the event commencing or starting the timescale in the Emirati law is more preferable than the one adopted in the Jordanian law. It is seen that the timescale in the Emirati law starts from the date of the conclusion of the first session in the case. The Jordanian law addressed this point differently as seen above. In Jordanian law, the timescale starts from the time of the appointment of the arbitrators.<sup>9</sup> Starting the time limit from the arbitration's first session seems to be more logical, since arbitrators usually hold their first session in the case long after being appointed. The arbitrators, hold such a session- especially when more than one arbitrator appointed in the case- after contacting each other, and usually after gathering together, in order to arrange their case and to know exactly what they want to do with the parties in the session. Such a thing usually takes time. Therefore, it seems to be more productive to start the timescale from the first session held in the case rather than from the time of appointing the arbitrators.

However, it is pertinent to note that the Jordanian legislator may have taken this point into account when he adopted the existing regulation. In other words, the Jordanian legislator, when making the timescale- where no agreement to the contrary is made- twelve months, may have thought that the arbitrators need extra time to accomplish their work. Therefore, he gave the arbitrators this time limit, since the latter (the arbitrators) will need some time before starting their work after being appointed. However, it is recommended for the Jordanian legislator to re-address this issue by shortening the timescale

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9. Compare in M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.126, where the author sees that the time limit starts in the Jordanian law from the time the arbitrators commence their mission. However, this is not supported by the law provisions as seen above.

and make it start from the first meeting held in the case as is the case in the Emirati law. Adopting such a thing adds to the advantages of arbitration, since it supports speediness.

### **3. Extension of the Assigned Timescale:**

It is established above that arbitration must be made and accomplished within a certain timescale, which is set and determined by the parties' agreement or the law itself as seen above. This is seen in the two laws. However, it is imaginable for the arbitrators to find themselves running out of time. In other words, the set timescale may appear to be insufficient for the arbitrators to decide the case. In such a case, the question will be is it possible to increase or extend the timescale? As an answer, it can be said that both the Emirati and Jordanian laws made such a thing possible and allowed. However, the two laws, somehow, differed from each other in this regard. This can be seen as explained below.

#### **3.1 Extension of Timescale in Emirati Law:**

The Emirati law, as mentioned above, made it possible to extend the timescale for an arbitrator to accomplish his mission. Still, this extension can be made by three routes in the Emirati law. It can be made by the parties' agreement, by the court and by the law itself. This can be seen as follows:

##### **3.1.1 Extension of the Timescale by the Parties:**

It is seen above that the parties are the ones entitled, in the first place, to assign the timescale for the arbitration process as a general rule. They can set any time limit of their choice. The Emirati law, which confirms this fact as seen above, continues to acknowledge the parties right to modify and extend the set timescale. This rule applies whether such timescale was originally set by them or by the law, where no agreement is reached by them in this regard. The Emirati law also allows the parties to enable the arbitrators to impose such extension. This is established in Article 210/2 of the Emirati civil procedures law, which states that "the parties may- explicitly or implicitly- agree to extend the arbitration timescale which is fixed either legally or by parties' agreement, and the parties may delegate the arbitrator to make such extension..."

It is clear then that the Emirati law enables the parties to agree on the expansion or extension of the timescale of the arbitration process. This agreement can be made explicitly where the parties clearly declare such thing. However, the law acknowledges the fact that the parties may implicitly agree on the extension. However, the question that needs to be answered here is how to establish the existence of the implicit extension agreement if no explicit agreement is found? Furthermore, are there specific conditions in this regard and what time limits can be given in the case of implicit extensions? The answer to these questions was given by the Emirati courts in more than one case. The Court of Cassation of Dubai, for example, decided that

"...it is established in the adjudication of this court that... it is possible to perceive the existence of the parties' agreement on the extension of the timescale implicitly from their presence before the arbitrators and their discussion of the subject matter of the case after the expiry of the fixed timescale..."<sup>10</sup>

It is obvious, then, that implicit extension of the timescale exists where the parties' actions imply their consent and agreement on it. As a result, and as the court so decided in the latter decision, if the parties continued to advocate their cases before an arbitrator after the end of the set timescale without contending that the arbitration's held meetings are illegal due to the expiry of the timescale, means that the parties have no problem with the extension of that timescale and also means that they have implicitly agreed on such extension. However, it is pertinent to note that the party entitled to decide on such a thing (the implicit extension), when disagreement is found, is the arbitrator. Yet, if a party refuses the arbitrator's interpretation of his implied consent on such extension, he may refer to the court of law to decide on such a thing. This can be seen through a lawsuit asking for the nullification of the delivered award.<sup>11</sup>

Still, it is to be noted that the Emirati courts impose a certain condition to consider existent the implied extension, which is the connectivity of the two periods. This condition, which seems to be controversial in our view, was adopted by the courts in more than one case. The Court of Cassation

10. Decision no 403 and 435 \Year 2003. Session dated 13th March 2004. Published on Mohamoun.

11. A party can ask for the nullification of the award depending on the fact that it was delivered after the expiry of the time limit without extension. See article 216\1 of the Emirati Civil Procedures Law.

of Dubai, for example, decided that "...in order for the court to consider existent the implicit extension of the timescale, the period of the extension must be attached to the previous extended period. The period of extension is considered attached and continues to the previous extended period if the parties, or their agents, continued to attend the arbitrator's set sessions without contending that the arbitration agreement is outdated as a result of the expiry of the first set timescale..."<sup>12</sup>

It seems that the court in the latter case presumes that arbitrators hold sessions after the original timescale has ended and the parties attend these sessions without any objection. Moreover, it seems that the court sees that if an arbitrator holds a session, after the expiry of the set timescale, and calls for the parties' attendance, no implicit agreement can be inferred if the parties did not attend before him. However, such a view seems to make narrower the cases of inferring the parties' implicit consent to the extension of the timescale. This is due to the fact that it is imaginable for the arbitrator to hold sessions long after the expiry of the set timescale and the parties fail to attend them and act in a way that can be interpreted as an implicit consent to the extension from their side. That is to say parties may send written petitions and pleas instead of physically attending before an arbitrator. Moreover, there is more than one case where parties' implicit consent is inferred, it is imaginable for an arbitrator-for example in the last week from the set timescale- to inform the parties with his intention to hold a session in the following week (i.e. after the expiry of the set timescale), and informs the parties that they need to inform him directly and explicitly with their refusal of such a thing if they do not agree on it, and otherwise their consent on extension is presumed. Accordingly, the parties consent may be logically perceived in such a case if they, inexcusably or unjustifiably, failed to explicitly inform the arbitrator with their refusal of such a thing. This result, the inference of their consent in such cases, is established even if they did not attend the session held after the expiry of the set timescale. Accordingly, the rule must be that implicit consent on extension can be inferred from any action or circumstances supporting its existence. In all cases, the court, when such a thing is disputed before it, can investigate and examine such actions and circumstances to decide the existence, or the non- existence, of such consent, and there should be clear evidence that the parties' intent was to extend the timescale.<sup>13</sup>

12. Decisions no 322\Year 2004. Session dated 11th April 2005. Published on Mohamoun.

13. see Aashor, Mabrouk, 2008, "The Procedural Regulation of Arbitration Proceedings", DarulFikr Wa Alqanon, 2nd ed., p. 382.

Another point that needs to be addressed, where the implicit consent is established, is how long will the inferred extension be? In other words, if a party, for example, continues to attend the sessions before an arbitrator after the expiry of the set timescale, how and who is to determine the length of the extension? No direct answer is given by the Emirati law. However, it can be said that the authority that can directly infer the length of the extension time is the arbitration panel or the arbitrator. Still, the arbitrator's inference of this matter can be challenged before the court through the nullification lawsuit.<sup>14</sup> Still, the Emirati courts have adopted a certain presumption concerning the length of the parties' implicitly agreed extension. The Emirati Supreme Federal Court decided that

"...wherethe two appellants continued to deal with the arbitrator for about more than two years starting from the first session, this means that they have implicitly agreed to extend the six months timescale imposed by the previously mentioned Article 210, which is set for the arbitrator to deliver his decision, and if the parties failed to agree on the length of the extension of the timescale, then the parties' consent on the extension of the timescale will be considered as agreement on arbitration with no time limit. Accordingly, the extension length will be six months each time until one of the parties shows his disagreement to the extension or refers the case to the courts of law after the expiry of the last extended timescale..."<sup>15</sup>

It is obvious that the court in the latter judgment considered that if the parties implicitly agreed to extend the timescale without agreeing on the length of the extension, the parties will be treated as if they have referred to arbitration without assigning a timescale at all, and accordingly the length imposed in this regard will be six months. This applies to all subsequent implicit extensions. The court's view in this regard seems to be logical and of help to address the shortage in the regulation of this point.

However, another view can be given to the effect that distinction could be made between two situations or cases. The first case is where the parties fail, from the outset, to agree on a timescale of their choice, and the second one is where such agreement is found. In the former case, the court's above given view is applicable (i.e. the six-month time limit extension applies, since the arbitration process was subjected to this time limit in the first place according

14. See article 216\1 of the Emirati Civil Procedures Law.

15. Decisions no 178\Year 1996. Session dated 25th 1st of 1997. Published on Mohamoun.

to Article 210\1). This- it may be contended- does not apply to the other case, where the parties agreed on a timescale of their own on the first place. That is to say, for example, it can be imagined that parties to a dispute may want their arbitration process to be addressed on a shorter timescale, and accordingly agreed that an arbitrator must deliver his decision within two or three months time. In such a case, if the parties implicitly extended the arbitration timescale without expressly identifying the length of the extension, a view can be given to the effect that extension length needs to be to a period similar or close from that of the expired one. However, it can be said that, in all cases, a court needs to search for the parties' intention and examines the circumstances to check if there is an implicit agreement not only on the extension but also on the length of that extension. Moreover, in all cases, a legislative intervention is highly welcomed to address this matter.

### **3.1.2 Extension of Timescale by the Court:**

The Emirati law presumes that the parties may disagree on the extension of the arbitration timescale. As a result, the law organised and regulated the right to refer to the court to extend the timescale. However, as to the party entitled to refer to the court to have the timescale extended, the Emirati law states that this right is established for any of the parties and for the arbitrator himself. This is embodied in Article 210\2 of the Emirati Civil Procedures Law, which states that

"The parties may- explicitly or implicitly- agree to extend the arbitration timescale... and it is possible for the court, after receiving an application to this effect from either the arbitrator or any of the parties to increase the timescale set in the previous paragraph for the period it sees suitable for the dispute resolution".

Allowing the court to increase and extend the timescale is a significant measurement. This is due to the fact that parties, as a general rule, spend time and money when referring to arbitration and the fixed timescale may become slightly shorter than the time needed to decide and settle the dispute. It is imaginable to see one of the parties goes against or refuses the extension. In such a case, allowing the parties to ask the court for extension is compatible with justice, since- as a general rule- if such an option is not found, the parties' sole option will be to refer their case to the court to have it settled. Such

a thing means to go through the whole process of dispute settlement from the outset, and the time and money spent in the arbitration process will be wasted. Therefore, allowing the court's extension of the timescale is highly welcomed if extra time can save the situation.<sup>16</sup> The same thing can be said in allowing the arbitrator to ask the court for such extension. It is agreed that an arbitrator is not an opponent or part of the dispute. Nor is he an agent of any of the parties. However, an arbitrator is still interested in extending the set timescale, since he is the one handling the dispute. An arbitrator may find that the timescale, set either by law or the parties, insufficient and that all he needs is a little more time to accomplish his mission and decide on the case. Accordingly, allowing him to ask for extension is of high importance, especially when knowing that the arbitrators' wages depend primarily on their settlement of the dispute.<sup>17</sup> Therefore, if an arbitrator sees that the parties are unwilling to refer to the court to extend the timescale and estimates that he needs extra short time to accomplish his task, he may make such referral to the court to secure such extension. However, it is to be noted that the parties, in all cases, have the right to end the arbitration process, since the law made it possible for them to agree on terminating the arbitrator's work by setting him aside, even if no mistake is attributed to him.<sup>18</sup>

As to the court's position concerning the extension application, it can be said that the court logically, since no rule states such a thing, will extend the timescale if it sees such a thing efficient and useful. In other words, a court will be willing to extend the timescale if it sees justice supports extension. This, for example, is seen when the court finds that an arbitrator dealt with the case reasonably and the time needed is too short compared to the time and effort spent in the case. However, as to the finality of the court's decision, it can be said that the rules regulating arbitration in the Emirati Civil Procedures Law

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16. Compare in M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref(knowledge Institution Publications), p. 268, where the author suggests that the court extension of timescale does not oblige the disagreeing party to stay in the arbitration. However, admitting such view will make meaningless the court's power to impose extension. Supporting the latter view, which is adopted in this article, see Aashor, Mabrouk, 2008, "The Procedural Regulation of Arbitration Proceedings", Darul Fikr WaAlqanon, 2nd ed., p.382.

17. See Article 218\ of the Emirati Civil Procedures Law, which allows the arbitrators to deliver a decision stating their wages and expenses. Such a decision is, as a general rule, issued at the end of the case, after deciding the case.

18. See Article 207\3 of the Emirati Civil Procedures Law.

do not prevent appeals against the court's decisions on this regard. Therefore, the general rules of appeal apply to the court's decision ordering or preventing time scale extension.<sup>19</sup>

### **3.1.3 Extension of Timescale by Law Provisions:**

Extension of timescale by law provisions means the extension is imposed by the legislator (by law). The Emirati law addressed two types of legal extension of arbitration timescale. The Emirati law's regulation of this type of extension can be seen as follows:

#### **3.1.3.1 Legal Extension following Stay of Proceedings:**

The Emirati law, as will be mentioned below, states that the case before an arbitrator stops for different reasons. For example, if a party dies or loses capacity, the case suspend still his hire, or the one responsible for him, is informed to represent or replace him in the proceedings before. Another example, where one matter, involved in the proceedings before an arbitrator, is disputed in criminal proceedings before criminal courts. In such a case, the procedures before an arbitrator are stopped until the matter is decided before the competent court of law. The timescale of the arbitration process stops in such cases. The rule, however, is that the timescale continues and is activated after the end of the stay of the proceedings. However, the Emirati law states that if the timescale left- after being stopped or stayed- in such cases, is less than one month it is extended to one month. In other words, if the case was

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19. It is agreed that the Emeriti judicial system stands on the principle of the "two-step adjudicating process". This principle means that, as a general rule, parties are eligible- when referring to courts of law- to present their case before two courts; the Court of First Instance and the Court of Appeal. This principle, which is adopted by the Emirati law, is of great importance; since it enables the parties to bring their cases before more than one court, which helps in reaching more accurate decisions by allowing the Court of Second Instance (the Court of Appeal) to correct the judgments of the Court of First Instance. This principle also urges the judges of the Court of First Instance to take utmost care when delivering their judgments; since they will feel that they will be most likely scrutinised and monitored by the Courts of Second Instance (i.e. the Courts of Appeal). It is to be noted that this principle applies to all cases unless a provision is made to the contrary. For more on this principle, see Fathi Wali "Alwaseet [the Intermediate] on Civil Adjudication Law", (Cairo, Cairo University Publications and University Books 2001/2002), p. 207 et seq. Also see Mustafa Qandeel, "Alwajeez [The Concise] on Litigation and Adjudication within the United Arab Emiratis Civil Procedures Law", (UAE AlaafaqAlmushriqh, [Shining Horizons Publications] 2010), p. 44 et seq. Also see the Federal Supreme Court judgment no. 603/year no 29, dated 11 March 2009, published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx>



stopped before one week from the end of the set timescale, in this case, if the reason of stay or suspension has expired and the case is to continue to proceed before an arbitrator, the left timescale for the arbitration process extends to become one month.<sup>20</sup>

The logic behind such a thing is, most likely, the presumption of the Emirati legislator that an arbitrator may need time (at least one month) to get back to the case after being stopped and stayed.

### **3.1.3.2 Legal Extension Following Defected Arbitral Awards:**

Arbitrators, as a general rule, accomplish their work by issuing a decision on the dispute, which is referred to as the arbitral award. This award, in order to be enforced, needs to be confirmed by courts of law. This is established in Article 215 of the Emirati Civil Procedures Law.

The Emirati law states that the court is entitled to refer the case to the arbitrator after receiving an application to confirm that award. The Emirati Civil Procedures Law, in Article 214, states that the court, when asked to confirm an arbitral award, can refer the case to an arbitrator either to decide on a matter that he failed to address and to illustrate ambiguity found in his award. If the court refers the case to the arbitrator in these two cases, the law states that an arbitrator has three months to answer and address the court's order starting from the time he is informed with the court's application. The time given by the law in this case extends the time limit given to the arbitrator. It is pertinent to note that Article 214 of the Emirati Civil Procedures Law allows the court to increase or decrease this time limit. However, it is also pertinent to note here that the court's decision concerning this issue can only be appealed along with the parties' appeal against the court's decision confirming or disconfirming the arbitral award. Still, it is recommended that the appeal- against the court's decision increasing or decreasing the assigned time limit- in the latter cases be allowed immediately. In other words, appeal in such cases must not be postponed to a later stage, since postponing appeal to a later stage, as is the case in Article 214, makes it (the appeal) ineffective and useless. This is so, especially if the court gives the arbitrator longer time to handle the case, since parties only have interest to appeal immediately against the court's decision. Postponing appeals to a later stage (i.e. at the

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20. See article 210\3 Emirati Civil Procedures Law.

time of confirming or disconfirming the award) and after an arbitrator has accomplished his mission within the time limit given by the court will be meaningless. Therefore, the Emirate legislator is recommended to readdress this point.

### **3.2. Extension of Timescale in Jordanian Law:**

As is the case in the Emirati law, the Jordanian law regulates the cases in which the timescale set for an arbitration process can be extended and increased. However, in the Jordanian law three parties can make extensions to the set timescale. Both, opponents, arbitrators and courts of law can extend arbitration process time limit in Jordanian law. Still, law provisions do also give direct extension in Jordanian law as well. This can be addressed as follows.

#### **3.2.1. Parties', Arbitrators' and Courts' Extension of Timescale in Jordanian Law:**

The Jordanian law, as is the case in the Emirati law, regulated the extension of the arbitration timescale by both, the arbitrators, the parties and the courts of law. However, the Jordanian law adopted a different regulation of this issue. Article (37/a) of the Jordanian Arbitration Law states that:

"Arbitration panel must deliver their arbitration award within the timescale set by the parties' agreement, and if there is no agreement, they must deliver it within a twelve-month time starting from the commencement of the arbitration proceedings, and in all cases the arbitration panel can extend this time limit to a six-month period unless the parties agreed on a longer time of extension".<sup>21</sup>

Furthermore, Article 37/b of the same law states that:

"If an arbitrator does not deliver an arbitral award within the timescale referred to in paragraph (a) of this article, any of the parties can refer to the head of the court of competence to either grant extension (extra time limit) or to end the arbitration proceedings...."

It is clear that the Jordanian law enables the arbitrators to directly extend their missions' time limit. Furthermore, referral can also be made to the court to make such extension. However, assessment of this regulation is given hereunder, after addressing the extension made through direct law provisions in the Jordanian law.

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21. Stress (bold font) added.

### 3.2.2. Extension of Timescale by Law Provisions in Jordanian Law:

It is also pertinent to note that the Jordanian law- as is the case in the Emirati law- also regulated the extension of arbitration timescale by law provisions. The law states that it is possible for any of the parties to ask the arbitrators to remove ambiguity and vagueness from their delivered award. An arbitrator is given a thirty-day time limit to accomplish this task. Arbitrators can extend this time limit to fifteen days more, if they find such a thing necessary.<sup>22</sup> Moreover, if the arbitration award is found to contain mathematical, printing, or writing errors, parties can ask the arbitrators to have them corrected. Arbitrators, in such a case, are given a thirty-day period to make such correction. This time limit starts from the time in which the arbitrators receive an application from the parties.<sup>23</sup> Still, it is of importance to note that the Jordanian law states that arbitrators need to inform the parties with their corrections within thirty days, starting from the time of accomplishing the required corrections.<sup>24</sup> Furthermore, the Jordanian law states that any of the parties can ask the arbitrators to decide on a matter that they failed to address in their award. In the latter case, the law states that an arbitrator has a sixty-day time limit to deliver their decision. Yet, arbitrators can add thirty days more if they find such a thing necessary.<sup>25</sup>

### 3.2.3 Assessment

First of all, it is obvious from the above mentioned provisions that the Jordanian law gives the arbitrators the right to extend the timescale set for their mission. Such a thing may find its explanation in the fact that arbitrators are the ones who, supposedly, know exactly the time needed to deliver a decision on the dispute before them. Accordingly, the law gives them the right to directly extend the time limit for their mission. The Emirati law, as seen above, agrees with such a view but- instead of giving an arbitrator a direct power to extend the time limit- stated that an arbitrator, where no delegation is made to them by the parties to make such extension, can refer to

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22. Article 45 of the Jordanian Arbitration Law.

23. However, it is pertinent to note that arbitrators can make such corrections by themselves (without receiving an application from the parties). In this case, the 30 days time limit starts from the date of the issuance of their award. See article 46 of The Jordanian Arbitration Law

24. See article 46 of The Jordanian Arbitration Law.

25. See article 47 of The Jordanian Arbitration Law.

the court to obtain such extension. It can be said that making the first step in- or making the direct choice of- extension in the hands of the arbitrators seems to be more preferable, because arbitrators as a general rule are- supposedly- persons of trust to the parties. Furthermore, they are closely dealing with the case, and they know better their needs of time. In addition, allowing them to extend the timescale saves time and money that will be wasted when requiring referral to courts of law to establish such a thing.<sup>26</sup> However, it is safer, as is adopted in the Jordanian law, to limit the arbitrators' right in this regard. That is to say arbitrators, as seen above in the Jordanian law, can only extend the time limit to a period of six months. Such a thing prevents the arbitrators from extending the timescale for longer times in a way that may make arbitration disadvantageous to the parties, who- as mentioned above- do prefer arbitration for its speediness and time saving. However, parties, as seen in the given provisions, can agree on extending the time limit extended by the arbitrator to more than six months, and if the parties failed to agree on the extension after the expiry of the above mentioned timescales (i.e. those imposed by the parties or the law in the first place and the timescale imposed by an arbitrator afterwards), it is mentioned above that, they (the parties) can refer to the court of law to impose such an extension. Still, it is recommended in the Jordanian law to make it possible for the arbitrators to refer to the court to make timescale extensions after the expiry of the extensions made by them, since they may be not far, and close, from deciding the case and need extra short time to deliver their decision on it. In such a case, it may be more productive to enable the arbitrators with the right to refer to the court to achieve such extension, especially when knowing that some of the parties may refer to arbitration to avoid referring to courts of law in all circumstances (even if such referral is only needed to have the timescale extended).<sup>27</sup>

26. It is said that there are jurists, in other jurisdictions, who went against allowing the arbitrators' extension of timescale on their own, since such a thing transfers arbitrators to become agents of the parties. See B. Mahmoud, 2007, *International Arbitration Awards Nullification Proceedings*, Dar ulJameah Aljadeddah [New University House Publications\Egypt], p 337. This view is not adopted by the Jordanian law, and it can be said that allowing the arbitrators to impose such extension in no way makes them agents of the parties, since an agent only acts according to the instructions given by the one appointing them, and arbitrators are given the right to extend the timescale even if the parties were in dispute between themselves concerning this extension issue.

27. Compare where there is a view that sees that such an option is available for an arbitrator even in a provision similar to the one adopted in the Jordanian law. See M. AL-Zu`bi, 2010, *(Arbitration Law)*, Munsha`at El-Ma`aref {knowledge Institution Publications}, p.127. However, although this view is highly respected, a provision confirming such a thing is highly welcomed as is the case in the Emirati law.

However, a question can be posed to the effect that is it possible for the parties to deprive an arbitrator from his right of extension, or can they agree to shorten the time limit extended by an arbitrator? As an answer, it can be said that the wording of Article (37/a) of the Jordanian Arbitration Law states that "...in all cases the arbitration panel can extend this time limit to a six-month period unless the parties agreed on a longer time of extension".<sup>28</sup> If this provision is taken literally, the answer will be that parties can only agree to increase the extension period. However, this interpretation does not stand before the idea that constitutes a cornerstone of the arbitration process, which is the contractual or consensual nature of arbitration. Parties, as a general rule, can agree on almost all aspects of arbitration. They agree on arbitrators, the substantive and procedural applicable laws, and the timescale for the arbitration process in the first place. The latter (i.e. the timescale for the arbitration process) constitutes part of the procedural aspects of arbitration, which can be totally subjected to the opponents' agreement and consent.<sup>29</sup> Furthermore, parties can agree to end the arbitration process at any time. Accordingly, parties have the upper hand in the arbitration process in almost all of its features. Therefore, parties can always agree to prevent the arbitrator from extending the time limit or to shorten it.<sup>30</sup> Such a view is supported by Article 24 of the Jordanian Arbitration Law, which gives the parties the right to choose the procedures they see suitable to govern the arbitration process.

Moreover, as to the assessment of the Jordanian law's regulation of the legal extension of arbitration timescale, when compared to the Emirati law, it can be said that the Jordanian law's regulation is not far from the one adopted by the Emirati law. However, it is to be noted that the Jordanian law states that arbitrators themselves are to correct mathematical, printing or writing errors in their awards, and arbitrators were given certain time limit, thirty days, to make such corrections. This is not similarly regulated by the Emirati law, where corrections of this kind are made by the court when asked to confirm the award.<sup>31</sup> As an assessment, it can be said that the Emirati law's position is more preferable, since it saves time. This is due to the fact that the corrections in question are supposed to be obvious and there is no need to

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28. Bold font added.

29. See B. Mahmoud, 2007, *International Arbitration Awards Nullification Proceedings*, Dar ulJameah Aljadedeah [New University House Publications\Egypt], p337.

30. In support of this view, See H. Hadad, year of publication (not available), "Challenging by Nullification of the Arbitral Award Delivered on Private International Disputes", Dar ulFikr Aljami`ee, Alexandria, p. 158.

31. See Article 215/1 of the Emirati Civil Procedures Law.

send them back to the arbitrators to address them. Therefore, giving the court the power to handle them, when asked to confirm the award, agrees with the speediness advantage of arbitration.

It is also seen above that the Jordanian law states that arbitrators can correct such errors within thirty days. Such a time limit can be justified due to the fact that arbitrators, when receiving an application to make such corrections, need to get back to the case and most likely need, especially where there is a panel of arbitrators involved in the case, to hold a meeting to make such corrections. This may take time. However, this does not apply to the time limit- the thirty-day time limit- given to the arbitrators to inform the parties with their corrections. If the two time limits (the one set to make the correction and the one set for informing the parties with the corrections) are gathered together the time limit will be sixty days. This will be a long time limit to perform such task. Therefore, the Jordanian legislator is invited to shorten the time limit in this case, since the arbitrators' job here is only to correct mathematical, printing or writing, non-legal, errors. The time set for arbitrators to inform the parties with the corrections is, somehow, extravagant and exaggerated. Furthermore, it is pertinent to note that the law, only here in this case, states that the arbitrators are given extra time to inform the parties with any of their performed tasks or actions.

#### **4. Disruption and Expiration of the Arbitration Process Timescale:**

Arbitration proceedings may face cases and situations that affect its progress. Such cases affecting the proceedings also affect the arbitration's timescale progress. Furthermore, an arbitrator may fail to accomplish his work within the fixed time limit. Certain effects are seen in such situations. These two issues are to be addressed in this part of the article as follows:

##### **4.1 Disruption of the Arbitration Process Timescale:**

It is agreed, as mentioned above that the time limit put for the arbitration process is faced with circumstances that necessitate halting and stopping it. This fact is recognised by both the Emirati and Jordanian laws. The regulation adopted by these two laws is addressed as follows.

##### **4.1.1 Disruption of Timescale in Emirati Law:**

It is mentioned above that there are cases affecting the progress of the time

limit set for the arbitration process. The Emirati law acknowledges such a thing, since it contains regulations of certain circumstances that may cause stay of the arbitration proceedings. These cases are divided into two types, the first of which affect the parties' legal status in the case, and the other ones affect the case itself with no intact with the parties' legal status. These two types, in Emirati law, can be illustrated as follows:

#### **4.1.1.1 Timescale Disruption due to Stay Related to Parties' Legal Status:**

The Emirati law states that arbitration proceedings must be stayed and stopped in more than one case affecting the parties' legal status in the case. In other words, the Emirati law states that arbitration proceedings stay if certain events, affecting the parties themselves, take place. This is seen when the party deceases, loses capacity, or when a minor party loses the person appointed by law to represent him in the proceedings. In such cases, arbitration proceedings is put on stay until the hire of the party or the new person representing him are informed to continue attending the proceedings.<sup>32</sup> Accordingly, the law states that, the time limit of the arbitration process stops in these cases.<sup>33</sup> However, the law states that such an effect is not imposed if one of the above mentioned cases affecting the party occurs or takes place after the court has finished and completed the hearings in the case. That is to say, for example, if a party dies after the arbitrator decides that the hearings are finished and completed in the case, here, in this case the Emirati law states that there must not be stay of proceedings, since the parties, at that time, will have no role to play in the proceedings, and all is left, at that time, is for the arbitrator to deliver his award.<sup>34</sup>

#### **4.1.1.2 Disruption of Timescale due to Non-Party Related Stay of Proceedings:**

Stay of arbitration proceedings may not be seen as a result of circumstances affecting the parties in the case but the case itself. For example, arbitrators are, sometimes, faced with matters that must be settled first prior and before settling the matters put before them. If such matters are found to be beyond the arbitrators' jurisdiction, the arbitration proceedings must be stopped until that

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32. For more on the proceedings stay, see A. Mandeel, 2011, (Arbitration Agreement Regulation and procedures: comparative study) (Alzain publications\Lebanon) 1st ed., p186 et seq.

33. See 209\1 and 103 of the Emirati Civil Procedures Law.

34. see 209\1 and 105 of the Emirati Civil Procedures Law.

matter is decided by the tribunal or authority of competence. An example is the case where a decisive document adduced before an arbitrator was alleged to be fake or forged. In such a case, proceedings before an arbitrator must be stopped till the dispute concerning the authenticity of that document is confirmed by the court of competence.<sup>35</sup> However, the Emirati law refers to three other cases that may cause stay of proceedings before an arbitrator. All these cases involve arbitrators' referral to courts of law. The first case is where an arbitrator refers to the court to impose penalty on non compliant witnesses.<sup>36</sup> The second case is where an arbitrator refers to the court to compel reluctant third parties to adduce and hand him documents or evidence, which is under their possession.<sup>37</sup> The third case is where an arbitrator refers to the court of competence asking it to delegate its powers to another court in order to refer to that delegated court to address a certain matter.<sup>38</sup> In the above mentioned cases, the proceedings before an arbitrator stops as a result of circumstances affecting- not the parties but- the case itself. However, it is to be noted that in the above mentioned cases, the proceedings before an arbitrator stops from the time the application made to the court until the court says its word in the given application. Yet, stay of proceedings before an arbitrator stops the progress of the arbitration process time limit.<sup>39</sup>

#### 4.1.2 Disruption of Timescale in Jordanian Law:

Jordanian Law, not far from the situation in the Emirati law, states that arbitration proceedings stop in the cases that cause proceedings' stay before courts of law. These cases are embodied in the Jordanian Civil Procedures Law.<sup>40</sup> The effects of arbitration proceedings' stay, according to the Jordanian law, are the same as resulting from courts' proceedings stay.<sup>41</sup> One main effect of proceedings' stay is the suspension of the arbitration process timescale.

35. See article 209\2 of the Emirati Civil Procedures Law.

36. See article 209\2a of the Emirati Civil Procedures Law.

37. See article 209\2b of the Emirati Civil Procedures Law.

38. It is to be noted that the Emirate law states that the court of competence to deal with arbitration-related matters is the court of original competence to deal with the case. However, if an arbitrator wants another court to deal with a certain matter related to arbitration, he may refer to the court of original competence to delegate the required court to address the arbitrator's needs. See article 209\2c of the Emirati Civil Procedures Law.

39. See article 210\3 of the Emirati Civil Procedures Law.

40. See article 35 of the Jordanian Arbitration Law.

41. See article 35 of the Jordanian Arbitration Law.



However, it is pertinent to note that, as is the case in the Emirate law, there are different types of proceedings stay in the Jordanian Civil Procedures Law. For example, as seen in the Emirati law, arbitration proceedings, in Jordanian law, are stayed, where deciding the case before the arbitrator depends on deciding another subject matter that lies beyond the arbitrator's jurisdiction.<sup>42</sup> Arbitration proceedings also stop and stay when the parties agree on such a thing in the Jordanian law.<sup>43</sup> Moreover, arbitration proceedings also stay and stop due to circumstances affecting the parties' legal status as is the case in the Emirate law. Such a thing, in the Jordanian law, is seen where a party, before an arbitrator dies, loses capacity, or is deemed bankrupt by a court of law.<sup>44</sup>

#### **4.1.3 Assessment:**

As an assessment, it is fair and just to stop the arbitration time limit as a result of proceedings stay, since the case at this time is frozen and inactive. Both the Emirati and the Jordanian law adopt this view. However, it is seen above that the Emirati law states if that proceedings is stayed, and the time limit left for an arbitrator after the end of the stay period is less than one month, the time limit extends to one month time. This view, as mentioned above seems to be logical, since extending the time for arbitrators to become one month, after the expiry of the stay time, when the left time is found to be less than this period helps the arbitrators to get back to the proceedings after being halted and stopped. For example, when more than one arbitrator is involved, they need to hold meetings and to get back again to the mode of the case after the end of the period of stay. Accordingly, the Jordanian law is invited to adopt such a view.

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42. See article 122 of the Jordanian Emirati Civil Procedures Law. This is supported by article 43 of the Jordanian Arbitration Law.

43. See article 123/1 of the Jordanian Emirati Civil Procedures Law.

44. See article 123/3 of the Jordanian Civil Procedures Law. However, the Jordanian Civil Procedures Law states that no stay of proceedings is made if the party's death occurs while the case is ready for decision. See article 123/4 of the Jordanian Emirati Civil Procedures Law. This is due to the fact that when death occurs at this time, the hires will have no role to play in the case, which will be ready to be decided by the court. This rule is also adopted by the Emirati law as seen above. Concerning stay of arbitration proceedings in the Jordanian law, see M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.230 et. Seq. Also see F. Sami, 2008, (International Commercial Arbitration), Darul Thaqafh (Knowledge House Publications\Amman), p.292 et. seq.

## 4.2 Expiry of Arbitration Timescale:

The time limit set for the arbitration process may finish before delivering the arbitration award in the case. Furthermore, it is imaginable for the arbitrator to deliver the award outside the set time limit. Moreover, it is imaginable for a party, once this time limit has expired, to refer his case to another tribunal to have it decided. The Emirate and Jordanian laws have addressed this issue as follows:

### 4.2.1 Expiration of Timescale in Emirati Law

The Timescale assigned for an arbitrator may expire before reaching a decision on the dispute. In such a case, the Emirati law states that the party of interest can refer the dispute to the court to have it settled.<sup>45</sup> This means that the arbitration agreement becomes ineffective and the other party cannot prevent the court from addressing the case.<sup>46</sup> Furthermore, it is imaginable for the arbitrator to deliver a decision on the case after the expiry of the timescale set for him. In such a case, the arbitrator's authority is expired, and the party of interest can ask the court to nullify the delivered arbitral award.<sup>47</sup> However, it is agreed that arbitrators may decide on some parts of the case within the set timescale and they may decide on other parts after the expiry of that time limit. In this case, distinction between two situations can be made as follows. The first one is where it is possible to divide the decisions delivered by an arbitrator. In such a case, the ones issued within the set timescale cannot be invalidated for this reason, since they were issued within the assigned time limit. However, contention can be made against the other decisions (i.e. the ones issued after the time limit has expired). On the other hand, if no division

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45. This is established in Article 210/1 of the Emirati Civil Procedures Law, which states that "If no agreement the contrary is made by the parties in their arbitration agreement, arbitrators must deliver their judgment within six months starting from the first arbitration session held in the case. Otherwise, parties may file a case before a court to resolve their dispute or ask the court to continue dealing with the case if that case was brought before it in the first place".

46. It is to be noted that if an arbitrator was found to be in fault or negligent, parties, the one harmed or affected by his fault, may file a lawsuit seeking remedies. However, addressing this issue lies beyond this study, which is concerned with the timescale set for arbitration process.

47. This is established in Article 216/1 of the Emirati Civil Procedures Law. See Aashor, Mabrouk, 2008, "The Procedural Regulation of Arbitration Proceedings", Darul Fikr WaAlqanon, 2<sup>nd</sup> ed., p. 372 and 384. Also see M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.269 and 328.

is applicable between the two types of decision, nullification can be sought for all decisions made in the case.<sup>48</sup>

#### 4.2.2 Expiration of the Timescale in Jordanian Law:

The Jordanian law, as is the case in the Emirati law, states that if the arbitration time limit expires before an award is delivered in the case, parties can refer their dispute to the court to have it resolved. However, in addressing this issue, the Jordanian law, adopted a slightly different regulation from the one adopted by the Emirati law. The Jordanian law states that if an arbitrator fails to deliver his decision within both the original and the extended timescales set for him, any of the parties can refer to the head of the competent court to either extend the timescale, as mentioned above, or to end the arbitration proceedings, and once a decision to end the proceedings is made, any of the parties can refer his case to the court of competence to have it resolved.<sup>49</sup> However, as is the case in the Emirati law, if an arbitrator delivers his decision after the end of the set timescale, any of the parties can ask for the nullification of that decision.<sup>50</sup>

#### 4.2.3 Assessment:

It is logical to allow the parties to refer their case to courts of law when the parties fail to deliver an award on the dispute within- the original or the

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48. This applies to the situation in the Jordanian law as well. See Aashor, Mabrouk, 2008, "The Procedural Regulation of Arbitration Proceedings", Darul Fikr WaAlqanon, 2nd ed., p.386. Also see M. Abdel Majeed, 2000, (the General Basis of Internal and International Arbitration), Munsha`at El-Ma`aref {knowledge Institution Publications\ Alexandria}, p.454 and 455.

49. Article 37/b of the Jordanian Arbitration Law.

50. See Article 49/1&6 of the Jordanian Arbitration Law. Also see M. AL-Zu`bi, 2010, (Arbitration Law), Munsha`at El-Ma`aref {knowledge Institution Publications}, p.328. It is important to note that nullification of an award, for being issued after the expiry of the set timescale must be plead and sought for by the party of interest, since it is related to the parties' own privilege. Compare with B. Mahmoud, 2007, International Arbitration Awards Nullification Proceedings, Darul Jameah Aljadeddah [New University House Publications\Egypt], p 344 and 345, where the author sees that a court of itself will not execute such an award regardless of the parties' views, since such award will be issued by powerless arbitrators. However, such a thing, although respected, is not convincing, since parties can extend the timescale, whether explicitly or implicitly, for the period they see suitable, therefore, in all cases a party does not dispute the trespass of the timescale issue of the parties, a presumption can be made to the effect that the parties have implicitly acknowledged the extension made by the arbitrator of his mission. In all cases, the court has no interest to nullify such an award on its own volition, if the parties did not choose to do so. This does not apply in one case only, which is where the award is against public policy as a general.

extended-set timescale. It is also reasonable to enable the parties to apply for the nullification of an arbitral award when delivered after the expiry of the timescale. This is due to the fact that parties usually refer to arbitration to save time and to speedily resolve their disagreements. Such a thing is, as previously mentioned, considered as one of the main advantages of arbitration. However, it is seen above that the Jordanian law states that if the timescale expires before an arbitrator delivers his award, parties, anyone of them, need to refer to the head of the competent court to either extend the timescale or to obtain a decision to end the proceedings. This regulation of the Jordanian law- the one concerned with the termination of the proceedings as a result of the expiry of the set timescale-is different from the regulation adopted by the Emirati law. It is seen earlier that the Emirati law states that if the original or the extended timescale set for an arbitrator expires the parties have the right to refer their case to courts of law to have it decided and resolved.<sup>51</sup>

Accordingly, it can be said that the Emirati law considers the non issuance of the arbitral award within the set timescale as an event allowing a party himself to end the arbitration process and refer his case to courts of law. This is not the case in the Jordanian law, where a party needs to obtain a decision from the head of the court of competence in order to end the arbitration process. The Emirati law's regulation seems to be more preferable, as it saves the parties' time and agrees with commonsense, since a party, in this regulation, does not need to refer to the court to end the arbitration proceedings. He can by himself consider it (the arbitration proceedings) ended and expired. Still, it can be said that differences between the two regulations, those of the Emirate and the Jordanian laws, concerning this issue, can be explained as follows. The Jordanian law sets a certain- one previously or in advance assigned- court to handle and address arbitration issues, which is the Court of Appeal. A Court of Appeal in the Jordanian law is a court of second instance.

Accordingly, in Jordanian law, if a party is allowed to, unilaterally, consider expired the arbitration proceedings and is allowed to refer his case to the court as a result, in this case the court of competence to address this party's case will be the court of first instance. Here, in this case, a problem will occur if the other party disputes and disagrees with the former one as to whether the arbitration proceedings have expired or not. The problem is also found if the other party

51. See article 210/1 of the Emirati Civil Procedures Law.

wants to ask the court for timescale extension, while the other one does not agree on that. In the latter there are two situations, two disputes; the first one is the one concerned with the substantive issue (the originally disputed matter), while, the other one will be the one concerned with the arbitration timescale (whether is it expired and is it extendable or not). These two disputed matters will be subjected to two different courts' jurisdiction in the Jordanian law. The jurisdiction concerning the substantive issue (the subject matter of the original dispute) is held to the court of first instance, while, the jurisdiction concerning the arbitration timescale will be given to the Court of Appeal. Therefore, in the Jordanian law, it seems to be logical to, as a first step, end any possible controversy and disagreement concerning the arbitration timescale issue before bringing the substantive dispute before the court of first instance. Such a thing is adopted by the Jordanian law when requiring referral to the head of the competent Court of Appeal to decide whether to end or to extend the proceedings before the arbitrator as seen above. However, it is seen that the Emirati law adopted a different regulation of this issue. The Emirate law's regulation of this issue is still efficient though. This is due to the fact that the Emirate law states that the court of competence to address all arbitration issues, including the timescale issue, is the court of competence to address the substantive dispute.<sup>52</sup> Therefore, there will be no confusion or disruption of the case, if a party refers his case to the court of law as a result of considering finished the arbitration timescale, since this issue, if disputed, will be subjected to the same court's jurisdiction.

## **5. Conclusion:**

To conclude, it is seen above that arbitration is a means of dispute resolution. Both, the Emirate and Jordanian laws adopted and regulated arbitration within their domestic laws. It is agreed that parties do refer to arbitration for the many advantages it achieves. One of the main advantages obtained through arbitration is speediness. Arbitration, which- when compared to courts of law- is recognised to be a fast process of dispute resolution. This is due to more than one factor. In one hand, arbitrators are supposed to be non-busy persons, whose priority is to address the case put before them. On the other hand, the procedures, in arbitration are also supposed to be less rigid and less

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52. See articles 204/1, 207/4, 209/2 and 213/1&2, of the Emirati Civil Procedures Law.

formal than those imposed on courts of law, and they are usually designed by the parties. Accordingly, both, the Emirate and Jordanian laws acknowledged this fact, speediness, of arbitration. Therefore, the two laws stated that arbitration process must not be endless. In both laws, arbitration process must be governed by a timescale. This timescale is to be determined by the parties. However, if the parties fail to determine the arbitration process timescale, the law determines it to assure the parties' early relief of either the dispute, when it is settled by the arbitrators, or from the arbitration agreement itself, since- as a general rule- none of the parties can unilaterally avoid arbitration after agreeing on it. Assigning a timescale for arbitration process allows the parties to refer to courts of law to settle their dispute if the arbitrators fail to deliver an award within the fixed timescale. However, this article addressed the regulation of the Emirate law of this issue. A comparison was made to the Jordanian law. It is found that the two laws can learn from each other in more than one point in regulating the timescale issue. In addition, the article adopts more than one recommendation, addressed in different parts of it, for the legislators of the two laws concerning this issue.