

# **Confirmation of Arbitral Awards in Emirati Civil Procedures Law Analytical Comparative Study with the Kuwaiti Law**

**Dr. Bakr A. F. Al-Serhan  
Head of Private Law Department  
University of Sharjah  
United Arab Emirates**

## **Abstract:**

Parties to a dispute do refer to arbitration to have their disputes resolved. This is due to the fact that arbitration achieves more than one advantage to the parties such as speediness and confidentiality. Arbitrators, who are ordinary people as a general rule, deliver a judgment on the case. This judgment (the arbitral award) has no value if not respected and enforced. Both the Emirati and the Kuwaiti laws state that the arbitrators' delivered judgment (the award) is not eligible for enforcement unless confirmed by a court of law. This article analyses, examines and assesses the requirements and steps that must be met and followed in order to confirm the arbitrators' delivered award, both in the Emirati and the Kuwaiti laws. However, the article adopts more than one recommendation concerning the matters it addresses.

**Key Words:** Arbitral Awards; Confirmation; Emirati law; Kuwaiti Law; Civil Procedures Law; Comparative Study.

## 1. Introduction

It is established that arbitration- which is referred to as an alternative dispute resolution process- achieves many advantages that made it one of the most important dispute resolution means. Furthermore, arbitration, in more than one case, comes first and is preferred to courts of law<sup>(1)</sup>. This is due to the fact that arbitration is, as a general rule, discretionary (contractual) in more than one aspect. In one way, it enables the parties to agree on and appoint the arbitrators. Parties, in arbitration, may also designate and determine both procedural and substantive rules that are to be applied on their disputes. Furthermore, arbitration enables the parties to set and determine the time limits for the arbitrators. Arbitration, also, provides secrecy, confidentiality, and privacy to the parties. Accordingly, arbitration has become a well-known dispute resolution process, and countries all around the world adopted it and enacted laws regulating it. The Emirati and Kuwaiti laws are no exception. They, the Emirati and the Kuwaiti laws, regulated arbitration in their internal laws.

However, it is important to note that opponents do refer their disputes to arbitration in order to have them resolved and determined. Yet, as a general rule, an arbitrator-similar to a judge of a court of law-ends the process before him by issuing a decision on the case. This decision or judgment, which is referred to as the 'arbitral award', is a mere piece of paper if not further steps are taken. In other words, this decision, the arbitral award, has no value if not respected and enforced

---

(1) For more on the advantages of arbitration see Altehaiwee. Mahmoud,1999, Arbitration in Civil and Commercial matters and its Possibility in Administrative Contracts, (Alexandria/ Darul Matboa'at Aljame'iah: [The House of Universal Publications] p. 4, et. Seq. Also see Shafeeq, Muhsen, Without Year of Publication, International Commercial Arbitration, (Cairo: Darul Nahda, [House of Revival], p28, et. Seq. also see Alrefa'ae, Ashraf, 2003, Arbitration Agreement and the Practical and Legal issues in the Private International Relations, Darul Fikr Aljami'ee [[The House of Universal Thinking Publications] p.1, et. Seq.. Also see Sherwin, Peter, et al "The Decision to Arbitrate" at <http://www.proskauerguide.com/arbitration/19/> accessed 1st Oct 2014. Also see Mazirow, Arthur, "The Advantages and Disadvantages of Arbitration as Compared to Litigation" at [http://www.cre.org/images/MY08/presentations/The\\_Advantages\\_And\\_Disadvantages\\_of\\_Arbitration\\_As\\_Compared\\_to\\_Litigation\\_2\\_Mazirow.pdf](http://www.cre.org/images/MY08/presentations/The_Advantages_And_Disadvantages_of_Arbitration_As_Compared_to_Litigation_2_Mazirow.pdf) accessed 2 Dec. 2012. Also see

by the parties involved. Otherwise, an award will be of no effect, and, as a result, arbitration as a dispute resolution process will be valueless.

Therefore, the enforceability of the arbitral awards is organised internationally through conventions and treaties<sup>(2)</sup>, and internally by domestic laws. It is legally established that if a party does not respect the arbitral award voluntarily, he will be forced to do so. A compulsory enforcement action can be initiated against a party who denies the rights imposed by an arbitral award. Same thing applies to court of law reached decisions. Yet, the Emirati and the Kuwaiti laws differentiate between arbitration and court decisions in terms of enforceability. Courts of law judgments are enforceable *per se*. In other words, a judgment of a court of law needs not to be referred to any other party to make it eligible for enforcement. While, on the other hand, an arbitral award needs such referral. Arbitral awards need to be submitted to courts of law in order to be eligible for enforcement. Strictly speaking, an arbitral award, in order to be compulsorily executed and enforced, needs to be confirmed by a court of law. This is the general rule in both the Emirati and the Kuwaiti laws.

The followed methodology: As mentioned above, this article is mainly set to analyse and assess the regulation adopted by the Emirati law concerning the confirmation of domestic arbitral awards. However, the regulation adopted by the Kuwaiti law is of interest in this study, since a comparison is made between the two laws. Therefore, it is to be noted that the methodology followed in this article is the comparative analytical methodology. The study analyses and compares the two regulations to show the pros and cons of each regulation concerning the matter in question and whether they can benefit from each other.

Still, it is to be noted that this article is concerned with the private arbitration in the Kuwaiti law, which is solely made on the hands of arbitrators appointed by the parties' agreement or by the court where no such agreement is found. Accordingly this study excludes the judicially

---

(2) See for example the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

formed arbitration committee or what can be referred to as 'the judicial arbitration panel', which can be dealt with in a separate study<sup>(3)</sup>.

Once again, it is of importance to note that this study is concerned with the confirmation of domestic arbitral awards. Yet, as to when an arbitral award is considered domestic or non-domestic, the Emirati Civil Procedures Law states that a foreign (non-domestic) arbitral award is an award that is delivered outside the United Arab Emirates, and as a result, if an award is delivered within the country (i.e. in Emirate) it is considered domestic<sup>(4)</sup>. The Kuwaiti law adopts similar view in this regard<sup>(5)</sup>.

Finally, it is to be noted that this article is divided into two parts; the first one addresses the application made to have an award confirmed.

- 
- (3) It is important to note that the Kuwaiti law acknowledges and regulates two types of arbitration, which are arbitration on the hands of judicial arbitration panel and private arbitration panel. In other words, the Kuwaiti law states that one or more arbitration panel must be established within the Court of Appeal to handle the disputes that are to be brought before arbitration. This arbitration panel is composed of 5 members, three of which are from the judiciary, and the other two are chosen by the disputants (one by each). This panel is presided over by one of the three judges (the highest in degree between them). Accordingly, this arbitration panel can be referred to as the judicial arbitration panel, since it is composed by the law, it is situated in the Court of Appeal, judges constitute the majority in its formation, and it is presided over by a judge. On the other hand, parties, in the Kuwaiti law, are eligible to agree not to submit their disputes to the judicial arbitration panel. The law makes it possible for the parties to agree to bring their disputes before arbitrators of their own choice (i.e. private arbitration panel). This is regulated in two laws in the Kuwaiti law, the Civil Procedures Law, and the Judicial Arbitration Law (the Law no11\year1995), which is (the latter law) concerned with the judicial arbitration panel. See articles 1 and 2 of the Kuwaiti Judicial Arbitration Law and article 177 of the Kuwaiti Civil Procedures Law. However, it is to be noted that the private arbitration panel in the Kuwaiti law is regulated by the Civil Procedures Law. While, the other law (i.e. the Judicial Arbitration Law) solely addresses the judicial arbitration panel.
- (4) Article 212 of the Emirati Civil Procedures Law states: "An arbitral award must be delivered in the United Arab Emirates, or otherwise the rules designated for the arbitral awards delivered in a foreign country will be applied to it". This is also supported in rule 236 of the same law. For more on when to consider an arbitral award domestic or non-domestic (international) see Abdel Hameed Al-Ahdab, *International Arbitration*, part 3, (Beirut: Nofal Institute, 1990), p. 1 et seq. Hafeiza Hadad, *Challenging the Arbitral Award Delivered on Private International Disputes by Nullification*, (Alexandria: Darul Fikr Aljami'ee [[The House of Universal Thinking Publications], without year of publication), p 41 et seq. Also see Khalid Hasan, *Nullification of Arbitral award*, (Cairo: Darul Nahda, [House of Revival]: 2010), p 89 et seq. Also see Nasser Ottoman, *Criteria of International Arbitration*, paper presented in the proceedings of the "International Arbitration conference", (United Arab Emirates University, 2008), published on <http://slconf.uaeu.ac.ae/papers/n1/naser%20osman.pdf>
- (5) See article 182 of the Kuwaiti Civil Procedures Law.

The court of competence is defined in this part. The second part identifies the choices a court has towards the confirmation issue. The finality of the court's decisions is also addressed in this part.

## **2. Arbitral Awards Confirmation Applications:**

Confirmation of an arbitral award by a court of law is a process that starts with an application made to this effect. This application, in the Emirati law, can be- depending on the type of arbitration- made either by an arbitrator or by the parties, since there are two types of arbitration that are of concern in this regard, which are the via-court and the outside-court made arbitrations. In both types of arbitration, arbitrators deliver an award that needs to be confirmed. The Kuwaiti law adopts a different regulation in this regard. The two regulations can be addressed as follows.

### **2.1 Confirmation Application of 'Via-Court-Reached' Arbitral Awards in Emirati Law:**

As mentioned above, the Emirati Civil Procedures Law differentiates between two types of arbitral awards; 'via court-reached' arbitral awards, and other arbitral awards (i.e. 'outside-court reached arbitral awards'). The 'via court-reached' arbitral award is referred to to mean the arbitral award that is reached through a court of law. In other words, the Emirati law recognises the fact that the parties to a dispute may submit their dispute to a court of law, and after so doing, they agree to refer their case to arbitration and the court approves such an agreement. In such a case, the arbitrator's delivered decision is referred to as an arbitral award reached via court of law, since the agreement on arbitration is concluded under the court's endorsement<sup>(6)</sup>.

In this type of arbitration, the Emirati law states that the process of confirmation starts from the arbitrators. In other words, the Emirati law

(6) See article 213/1 of the Emirati Civil Procedures Law. It is to be noted here that the Emirati courts decided, in more than one case, that the mere appointment of arbitrators by the court does not constitute an arbitration made through courts. See Dubai Cassation court decision no. 151/year 2007/Hearing no. 17 dated 17th Sep. 2007, Published on "Mohamoon" website at [www.mohamoon-ju.net](http://www.mohamoon-ju.net). It is to be noted that "Mohamoon" is a website that electronically contains Emirati, Kuwaiti and other Arab countries' courts decisions. From now on it will be referred to as "Mohamoon". Accessed 9th Aug. 2014.

states that in the via court arbitration, arbitrators- once they have a decision on the case- need to submit their reached decision (the arbitral award) to the court of competence in order to have it confirmed. However, it is pertinent to note that the law states that an arbitral award is considered complete and issued, not from the time it is announced or uttered by the arbitrators, but from the time it is signed by them (i.e. the arbitrators)<sup>(7)</sup>.

Furthermore, the Emirati law states that arbitrators must submit their reached judgment for confirmation within a certain time limit, which is fifteen days, starting from the date of the issuance of their decision<sup>(8)</sup>. Yet, the law does not impose any sanction if this time limit is not respected. Furthermore, the Emirati Federal Supreme Court decided that such time limit is just imposed to rush up and urge the submission of the award by the arbitrators, and that no nullification is applied if not adhered to by them<sup>(9)</sup>. However, it can be said that in all cases, if the

---

(7) See article 212/7 of the Emirati Civil Procedures Law. It is pertinent to note here that the law in this regulation contradicts the regulation adopted in the case of courts' judgment. In the latter case (in the court-delivered judgments), a decision is considered complete, effective and issued not from the time it is signed from the judges, but from the time it is announced and delivered to the parties. See article 127 of the Emirati Civil Procedures Law. However, such a regulation (considering that the arbitral award is issued from the time it is signed and not from the time it is delivered) is considered advantageous and beneficial for arbitration. This is due to the fact that the law states that an arbitrator is obliged to reach a decision on the case within a certain time limit. This time limit, if not agreed to the contrary by the parties, is six months starting from the first meeting held in the case. If no decision is reached by an arbitrator within the assigned time limits, the law states that a party is allowed to refer his case to courts of law to have it decided and settled. See article 210/1 of the Emirati Civil Procedures Law. As a result, deciding that an arbitral award is issued from the time it is signed, and not from the time it is delivered to the parties, means that the award is reached earlier in the case. In other words, an arbitrator, as a general rule, prepares his decision and signs it long before delivering it to the parties. Therefore, considering that an award is delivered and issued from the time it is signed increases the cases of having that award issued within the assigned time limits. Such a thing decreases the cases of awards nullification due to the excess of time limits by the arbitrators. What is more, the Emirati law- as will be seen later on- specifies no time limits on the parties to either confirm or nullify an arbitral award. Therefore, considering that an arbitral award is issued from the time it is signed and not from the time it is delivered to the parties causes no harm to them (to the parties). It is to be noted that the Kuwaiti law adopts a similar provision concerning the time an award is considered issued by the arbitrators. See article 183 of the Kuwaiti Civil Procedures Law.

(8) Article 213/1 of the Emirati Civil Procedures Law.

(9) See the Federal Supreme Court decision no. 22/ year 22 dated 3/3/2002, published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx> Accessed 16th Sept. 2014.

court does not accept the decision if such a time limit is not respected by arbitrators, parties harmed of such violation can always ask for remedies under the general rules of civil liability<sup>(10)</sup>. Furthermore, arbitrators, according to the Emirati law, in this type of arbitration, are asked to submit their awards to the court of competence along with both the arbitration agreement document, the case file, which contains and shows the parties' pleadings, their adduced evidence, and the arbitration's held hearings<sup>(11)</sup>.

It is also pertinent to note, that in this type of arbitration, an arbitrator has no obligation to deliver or hand the parties copies of his decision. He is, instead, obliged to hand the parties' copies to the court, and the latter (the court) afterwards hands them (the copies of the award) to the parties. Furthermore, the time limit for an arbitrator to submit the parties' copies of the decision (the award) to the court is five days starting from the day he deposits his judgment for confirmation<sup>(12)</sup>.

In brief, it can be said that an arbitrator- in via-court arbitration- is the one obliged to file the award to the court in order to have it confirmed. Accordingly, a related question can be posed to the effect that does the Emirati law exclude this type of arbitration from the general rule of civil litigation? This is to say that the general rule of civil litigation states that courts of law are not to issue any order or judgment unless an application is made before it to that effect by the beneficiary party<sup>(13)</sup>, either personally or through a qualified agent<sup>(14)</sup>. This is due to the fact that an arbitrator is

(10) See article 282 of the Emirati Civil Transactions Act. However, illustration of the general rules of civil liability goes beyond the scope of this article, which is concerned with the confirmation of the arbitral awards.

(11) See article 213/1 of the Emirati Civil Procedures Law.

(12) Ibid.

(13) The beneficiary is the party who has the right that needs the court's protection or endorsement. On this regard see Fathi Wali, *Alwaseet on Civil Adjudication Law*, (Cairo: Cairo Uni. Press and Universal Books Publishers: 2001/2002), p 45 et seq. Also see Nabeel Omar, *The Law of Civil Procedures*, (Beirut: Al-Halabee Legal Publications: 2008), p. 193 et seq.

(14) The Emirati law acknowledges that the agents eligible to represent a party before courts of law are lawyers as a general rule. However, it is also possible for a party to assign his spouse or any of his fourth degree next of kin relatives to act as agents representing him in courts. See articles 20 and 21 of the Emirati Federal Law regulating the lawyering profession no 23 of the Year 1991. Still, it is to be noted that only lawyers can represent a party before the Emirati Supreme Federal Court. See article 177 of the Emirati Civil Procedures Law.

not the beneficiary of the reached judgment, and, as a general rule, he must not have interest in the case he hears<sup>(15)</sup>. Furthermore, an arbitrator is not an agent representing the parties<sup>(16)</sup>. As a result, the question, then, is why the Emirati law states that an arbitrator is the one who puts and files the award for confirmation in this type of arbitration? It is also to be mentioned here that the arbitral award confirmation process, in this type of arbitration, commences and begins after the deposition of the award by the arbitrator. The Emirati law states that a court must- within fifteen days after receiving the arbitral award, from an arbitrator in this type of arbitration- hold a hearing for the purpose of confirming it<sup>(17)</sup>.

However, as an answer to the given question, it can be, logically, said that the Emirati law seems to adopt a certain presumption, in this type of arbitration. The presumption is that since the first step of referring to arbitration (i.e. the agreement on arbitration) was taken before the court, then the latter (the court) will be interested in monitoring and supervising the outcome of that arbitration (the award). Strictly speaking, parties in the first place- in this type of arbitration- bring their case before a court of law and decide afterwards to refer that case to arbitration. Therefore, the law presumes that the court stays attached to the case despite the fact that it was sent to arbitration. In other words, according to the fact that the case started before the court, the case even after referring it to arbitration, must end before it (i.e. the court). As a result, arbitrators are asked to finish their work by submitting the award to the court for confirmation.

Furthermore, as seen above in this type of arbitration, the party or the authority of responsibility to hand or provide the opponents with

---

(15) See Mustafa Al-Jamal, and Mohammed Okashah, *Arbitration in Internal and International Private Relations*, (Beirut: Al-Halabee Legal Publications: 1998), p. 607.

(16) This applies even if the arbitrator is appointed by the party. In other words, parties to a dispute, when referring their case to arbitration, may agree to appoint arbitrators in a certain way, allowing each one of them to appoint an arbitrator of his own and the two appointed arbitrators appoint a third one heading the arbitration panel. In this case, the arbitrators appointed by each party are in no way considered as agents of the parties appointing them. This was confirmed by the Emirati Courts. See the Federal Supreme Court decision no. 537/year 1999, Hearing dated 23rd of April 2000. Published on "Mohamoon". Accessed 9th Aug. 2014.

(17) See article 213/1 of the Emirati Civil Procedures Law.

copies of the award is not the arbitrators who decided the case, but the court itself, after receiving them (the copies) from the arbitrators<sup>(18)</sup>.

## **2.2 Confirmation Application of Outside-Court Reached Arbitral Awards in Emirati Law:**

The other type of arbitral awards is the award reached in an arbitration concluded without courts' involvement. As a general rule, parties in this type of arbitration refer their disputes to arbitration from the outset (i.e. without having their case put before a court of law at the time of referring it to arbitration)<sup>(19)</sup>. Here, in this type of arbitration, an arbitrator has no obligation of any kind towards the court. In other words, an arbitrator- in this type of arbitration- is not obliged to hand copies of his reached decision to the court.

The Emirati law states that an arbitrator, in this type of arbitration, is only obliged to directly hand the parties with copies of his given decision (the award). As a result, confirming the arbitral award will be the responsibility of the parties themselves. Parties, as a result, need to apply to the court to achieve such an end. However, it is pertinent to note that, in this type of arbitration, an arbitrator needs to provide the parties with copies of his award within five days starting from the day of the issuance of the award<sup>(20)</sup>.

(18) This can be supported with article 210 of the Emirati Civil Procedures Law, which refers to the time limit of the arbitration process. This article says that- if no agreement to the contrary is made- arbitrators must deliver their judgment within six months starting from the first meeting held in the case. Otherwise, if no decision is made by arbitrators within this time limit, 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. In other words, article 210 of the Emirati Civil Procedures Law presumes that if parties refer to arbitration after bringing their case before a court of law and the arbitrator exceeds the time limits, a party can go back to the court to continue dealing with the case. This provision implies that a case put before a court of law, and which is after that referred to arbitration, stays before it (the court) in a standby situation until it is either decided by arbitrators or sent back to the court to continue dealing with it. This is supported by the Emirati courts. See Dubai Court of Cassation decision no. 167/year 2002, hearing dated 2nd of June 2002 on "Mohamoon". Accessed 9th Aug. 2014.

(19) It is also imaginable- in this type of arbitration- for the parties to withdraw their case from a court of law and refer it to arbitration without the court involvement in their agreement.

(20) See article 213/3 of the Emirati Civil Procedures Law. Still, the Emirati courts decided that the excess of time limits in handing the parties copies of an award, does not lead to the nullification of an arbitral award. See Dubai Court of Cassation decision no. 40/year 2004, hearing dated 26th of Sep. 2004 on "Mohamoon". Accessed 9th Aug. 2014. Also see the Federal Supreme Court decision no. 279/Year 18 dated 14th Dec. 1997, published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx> Accessed 16th Sept. 2014.

As to how to confirm an outside-court-reached arbitral award, it can be said that a party seeking for such a confirmation- in this type of arbitration- needs to file an application to this effect to the court of competence. Such an application can be originally made to the court. This is seen when the party initiates proceedings, by filing a lawsuit asking the court for nothing but to have the award confirmed. However, a party, on the other hand, may apply to achieve such an end (have the award confirmed by the court) as a plea, a counterclaim, adduced in an existing case.

This is supported by both the general rules of litigation, which allows it<sup>(21)</sup>, and the decisions of the Emirati courts, which acknowledged such a thing. The Court of Cassation of Dubai, for example, dealt with a case concerning the nullification of an arbitral award. In that case, a party contended that an opponent can only ask for the nullification of an arbitral award when the other party applies for its confirmation. The party supported his argument with article 216/1 of the Civil Procedures Law, which states that "Opponents may seek for the nullification of arbitral awards when they are brought before the court for confirmation..." The Court of Cassation of Dubai denied this argument and decided that

"...despite the fact that arbitral awards are unappealable according to any appellate means regulated within the Civil Procedures Law, a party still can ask for their nullification in any of the cases specified in article (216/1 a, b, and c) of the Civil Procedures Law. However, applications to nullify an award can be made as a counterclaim in the very case brought by an opponent to confirm that award... A party may also initiate or file an original lawsuit to have an arbitral award nullified- according to article 213/3 of the CPR- even if he does so long before the other party's application for the confirmation of the award. This is due to the fact that nothing in the law compels a party to wait until the other party applies for the confirmation of an award to ask for its nullification"<sup>(22)</sup>.

---

(21) Counterclaims are regulated in article 99 of the Emirati Civil Procedures Law.

(22) The Court of Cassation of Dubai, decision no. 233/ Year 2007, hearing dated 13th Jan. 2008. On "Mohamoon". Accessed 9th Aug. 2014. Also see Federal Supreme Court decision no. 92/Year 25, dated 8th June 2003, published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx>. Accessed 16th Sept. 2014. However, article 213/3 of the CPR states that "In the arbitration that is made by the parties outside courts of law, the arbitrators must hand copies of the award to each one of the parties within five days after the issuance of their award and the court decides whether to confirm or nullify it according to any of the parties application, which is to be brought in accordance with the proceedings regulating the filing of lawsuits".

As a result, if looked at, from the other angle, this judgment implies that if a party applies for the nullification of an arbitral award in an original lawsuit, the other party is allowed to ask the court, through a counterclaim, to confirm that award.

### **2.3 Time Limits for Applying to the Court in Emirati Law:**

It is seen above that, in the 'via-court reached arbitral awards', the Emirati law stipulates that an arbitrator must submit an arbitral award to the court with no more than fifteen days starting from the date of its issuance. Still, it was seen that the courts decided that exceeding this time limit does not cause nullification. What is more, the law states that a court, in this type of arbitration, needs to hold a hearing within fifteen days after the submission of the award to see whether to confirm or not to confirm it. Nevertheless, it can also be said that exceeding this time limit by the court, the fifteen days, may not lead to nullification, since the law does not impose such a sanction<sup>(23)</sup>.

On the other hand, in the other type of arbitration, the 'outside-court made arbitration', the Emirati law does not determine any time limits at all. In other words, a party, as a general rule, can apply for confirmation of an award at any time of his choice. In addition, the court- if an application for confirmation is made by a party- is not obliged to assign and hold a hearing within a certain time limit to deal with such an application.

Still, it is worth mentioning that a party may find himself obliged to apply for the confirmation of the arbitral award if the other party applies for the nullification of that award. In other words, it is seen above that the Emirati courts decided that it is possible for a party to initiate proceedings before a court of law asking for the nullification of an award, even if there was no application made to confirm that award. In such a case, a party

---

(23) Although it may lead to responsibility under article 71 of the Emirati Civil Procedures Law, which states that a court of law, if not convinced with the excuses, can impose a fine ranging between 500 and 3000 Emirati Dirham [equals 136-800 US Dollars] on any party or court employee if they fail to deposit to the court any document or fail to perform any procedure needed in the case. Alternatively, this rule allows the court to hold and stop the proceedings for three months if the party in default is the claimant. Furthermore, a judge may be held responsible if found to have committed serious mistake or cheating. See article 197 of the Emirati Civil Procedures Law.

benefiting from the award needs to ask the court to confirm that award when the other party asks for its nullification. This is due to the fact that a court, when asked to nullify an award, has two choices; either to nullify or not to nullify it, and as a result have it confirmed. Therefore, a party needs to ask the court in that same case to confirm the award. As a result, it can be said that the time limits for confirmation of an award, in the latter case will be before the closure of the trial in the original case, which was initiated to have the award nullified<sup>(24)</sup>.

#### **2.4 The Court of Competence in the Emirati Law:**

A relevant question can be posed to the effect that which court of law is competent to confirm an arbitral award in the Emirati law, and is there a certain court assigned in advance to confirm an arbitral award? As an answer, it can be said that the Emirati Civil Procedures Law does not assign or name, in advance, a specific court to deal with the matters concerned with arbitration including the confirmation of an award. Yet, it, the Emirati Law, refers all arbitration-related matters (including the confirmation of the award) to the court of competence to address the subject matter of the dispute. In other words, the court of competence to confirm an arbitral award, in Emirati law, is the very court which was deprived of jurisdiction in dealing with the case as a result of referring it to arbitration<sup>(25)</sup>.

However, distinction should be made between the two previously mentioned types of arbitral awards (both the 'via-court' and the 'outside-court' reached arbitral awards). This is to say that if the arbitral award is an outside-court one, the court of competence to confirm it will be the court that was deprived of deciding the case as a result of referring it to arbitration. Yet, this does not literally apply to the 'via-court' reached arbitral awards. In the latter type of arbitration, the court of competence to confirm an award is the court that dealt with the case before referring it to arbitration. This court, as a general rule, should be the court which was originally competent to decide the case. However, this does not always apply.

---

(24) See article 100/1 of the Emirati Civil Procedures Law.

(25) See articles 213/1&2, 204/1 and 207/3 of the Emirati Civil Procedures Law

Strictly speaking, it is imaginable for the parties to bring their case before a different court (i.e. a court other than the one that has jurisdiction). For example, parties may agree to bring their case before a court other than the court of competence<sup>(26)</sup>. In this case, if the parties brought their dispute before a court other than the court that was originally competent to deal with it, and they (the parties) afterwards agree, before that court, to refer their dispute to arbitration, and the arbitrators reached a decision on that dispute, the confirmation of the reached decision is referred to this court rather than the one which was originally competent to address it. This is due to the fact that the former court is the court that dealt with the case before referring it to arbitration.

Still, another related question that needs to be addressed here can be given to the effect that is it possible to have an award confirmed by tribunals other than courts of law? As an answer to the latter question, it can be said that article 213/1 of the Emirati Civil Procedures Law refers to 'courts of law' as the authority concerned with confirming arbitral awards. Still, the Court of Cassation of Dubai interpreted article 213/1 of the Civil Procedures Law to the effect that the arbiter or the adjudicator of competence to confirm an arbitral award is the one who, originally, had the jurisdiction to deal with the case, whether this arbiter or adjudicator was a court of law or any other tribunal.

The case, where the court so decided, was about a landlord-tenant dispute. The Emirati Civil Procedures Law, in article 26, allows every Emirate in the state to refer such disputes (i.e. landlord-tenant disputes) to private committees formed by the concerned Emirate<sup>(27)</sup>. The Emirate

---

(26) It is pertinent to note that there are two types of courts in the United Arab Emirates; local and federal courts. There are three Emiratis that have local courts, which are, Dubai, Abu Dhabi and Ra'sul Khaimah. While, on the other hand, the other Emiratis are part of the Federal Court System. Furthermore, the law adopts three types of jurisdiction-distribution-rules in the Emirati law; location, cost and type of case. The jurisdiction built upon location does not, as a general rule, relate to public policy. Therefore, parties can agree not to adhere to it. See article 31/5 of the Emirati Civil Procedures Law.

(27) Article 26 of the Emirati Civil Procedures Law states: "As an exemption of the ruling of the previous article, every Emirate has the right to establish committees that solely has the right to decide landlord-tenant disputes, and the concerned Emirate specifies the proceedings to be followed in order to enforce the decisions of these committees". However, the previous rule, article 25 of the same law, states: "The Federal courts are of competence to address all civil, commercial and administrative law disputes".

of Dubai, according to the above mentioned article (article 26), established a committee to settle landlord-tenant disputes within its jurisdiction. However, it happened that two parties, in a landlord-tenant dispute located in the Emirate of Dubai, agreed to refer their dispute to arbitration to have it settled. The arbitrators delivered a decision (an award) on the case, and as a result, the winning party needed to have the reached arbitral award confirmed in order to have it enforced. A dispute has risen as to who should be the arbiter of competence to confirm the award. An argument was given to the effect that only courts of law are eligible to have the award confirmed. Yet, the Emirate of Dubai Court of Cassation adopted a different view. It decided that

"... since article 213 of the Civil Procedures Law states that the court of competence to confirm an arbitral award is the court that was originally competent to address the case that was referred to arbitration, and since the dispute between the parties is a landlord-tenant one,... and since there is a certain committee assigned for settling this type of disputes, then this committee is solely the arbiter of competence... to confirm the arbitral awards concerned with this issue. As a result, the normal courts of law have no authority to confirm the arbitral awards related to landlord-tenant disputes"<sup>(28)</sup>.

It is obvious from the given judgment that the arbiter of competence to confirm an arbitral award needs not to be a court of law. It can be any tribunal of competence to address the subject matter of the dispute. In other words, a court of law of jurisdiction to confirm an arbitral award is any tribunal, who was of competence to deal with the case that was decided through arbitration.

---

(28) Court of Cassation of Dubai decision no 193 year 2002. Hearing dated 23rd of June 2002. Published on "Mohamoon". Accessed 9th Aug. 2014. It is to be noted that article 213/1 of the Emirati Civil Procedures Law states: "In the arbitration made through a court of law, arbitrators must deposit to the court, which was originally of competence to decide the case, within fifteen days from its issuance, both their reached decision along with the arbitration agreement, the file of the case and the relevant documents. Arbitrators, within five days after depositing the original award, must also deposit a copy of that award to the court's administrative employees to have it delivered to each one of the parties, and a court's employee needs to write down such a deposition and must inform the concerned judge with it in order to hold a hearing within fifteen days to confirm that award. The parties must be notified with the latter hearing's date".

## 2.5 The Position in the Kuwaiti Law:

The Kuwaiti law, same as is the case in the Emirati law, acknowledges the fact that parties to a dispute may refer their case to arbitration either before or after bringing their case before courts of law<sup>(29)</sup>. Yet, the Kuwaiti law does not place any specific effect on such a thing. In other words, unlike the Emirati law, the Kuwaiti law does not distinguish between via and outside court arbitration even if referral to arbitration was made after bringing the case before courts.

However, as to the court of competence, the Kuwaiti law adopted a similar regulation to the one adopted by the Emirati law. It, the Kuwaiti law, states that jurisdiction concerning the confirmation of an arbitral award is held to the court which was originally of competence to address the case<sup>(30)</sup>. Yet, as to the time limits, the Kuwaiti law states that an award must be submitted and deposited to the court within ten days starting from the date of its issuance<sup>(31)</sup>. However, the law does not determine the party responsible for such deposition; is it the concerned party or the arbitrator?

As an answer, one can say that it is more likely that the arbitrator is the one responsible for such a thing due to the fact that the deposition must be made within ten days from the issuance of the award. Moreover, the Kuwaiti law, same as is the case in the Emirati law, considers the award issued from the time it is signed by the arbitrator, and the latter may sign his award long before handling it to the party. Therefore, it is more logical to consider the ten days time limit imposed on the arbitrators and not on the parties<sup>(32)</sup>. Accordingly, parties seem not to be addressed by the ten days time limit.

However, depositing the award does in no way mean starting the process of its confirmation in the Kuwaiti law. To have an arbitral award confirmed in that law, the beneficiary party must file an application to this effect to the court<sup>(33)</sup>. Furthermore, same as is the case in the Emirati

---

(29) See article 181 of the Kuwaiti Civil Procedures Law.

(30) See article 184 of the Kuwaiti Civil Procedures Law.

(31) Ibid.

(32) However, this is not a public policy rule, since parties may file and deposit the arbitral award to the court instead of the arbitrators.

(33) See article 185 of the Kuwaiti Civil Procedures Law.

law, the Kuwaiti law specifies no time limits for the party to apply for confirmation, although the party will have to wait until the extinction of the time assigned for appeal, if applicable, to have the award confirmed<sup>(34)</sup>. Still, the Kuwaiti law adopts no time limits for the court to address and deal with the adduced confirmation application.

## **2.6 Assessment:**

As an assessment to the above given regulations, more than one point can be raised, as follows:

Firstly, the Emirati law's distinction between via court and outside court arbitration needs to be revised and readdressed by the legislator. This is due to the fact that in the via court arbitration the agreement on arbitration is made before the court, the latter (the court) actually does not interfere with both the parties' agreement nor does the court interfere with the arbitrators' work. The court is as external from arbitration in this type of arbitration as it is in the other type of arbitration (the outside-court arbitration).

Accordingly, in the two types of arbitration, the arbitrator's role must end at the time of delivering his award, and a court in order to confirm an arbitral award should receive an application from the concerned party (the beneficiary).

Initiating the confirmation process without an application from the concerned party in the via-court reached arbitral awards in the existing regulation may lead to undesirable results. Mainly, in more than one case the party who is seen as the beneficiary from an arbitral award may not be satisfied with it or he may be unwilling, for any reason, to have it enforced. Therefore, initiating the confirmation process by a court by holding a hearing to have such an award confirmed will be meaningless and may be done against the parties wishes. Accordingly, it may be more logical to wait until an application is made by the interested party to initiate the arbitral award confirmation process before the court.

---

(34) Ibid. It will be seen later on that a party in certain cases can appeal against the arbitral award. It is to be noted that a party may find himself to apply for confirmation, in counterclaim, if an appeal or nullification lawsuit is brought against the award by the other party.

Secondly, from another angle, the Emirati law's regulation of the via-court made arbitrations requiring the court to hold a hearing within 15 days to confirm an award can be extended and adopted as a general rule in arbitration. In other words, assigning a certain time limit for the court to hold a hearing is advantageous and constitutes privilege, since it supports arbitration, which is referred to as a speedy dispute resolution process. Such a provision can be extended to the Kuwaiti law as well.

### **3. The Court's Authority towards the Application:**

A court of law, when an application is made before it to confirm and ratify an award, has to check the award and order or issue a judgment either to, or not to, confirm it. This decision may be final. It may also be subjected to appeal. This can be seen as follows.

#### **3.1 The Emirati Court's Choices towards the Filed Award:**

Once an award is filed to the court, whether by an arbitrator or by the parties, in the two types of arbitration in the Emirati law, the question will be what authority a court has towards such an award? In other words, what a court has to do with the award, which may be found to be correct or incorrect? What do courts exactly do when assessing the confirmability of an award? Do they (the courts of law) re-assess the award in terms of correctness and accuracy?

As an answer to the above given questions, it can be said that the Emirati law states that a court, when asked to confirm an award, scrutinises and oversees it (the award), and confirms it whenever it finds that nothing prevents its enforcement<sup>(35)</sup>. As to what may prevent an arbitral awards' enforcement and, accordingly, leads to its non-confirmability by a court, and as to what is exactly meant by courts' scrutiny of arbitral awards, it can be said that the Emirati courts have addressed this issue in more than one case. For example, the Emirati Federal Supreme Court decided that

"...according to article 215 of the Civil Procedures Law an arbitral award cannot be compulsorily enforced without confirmation of a court of law... and the judicial scrutiny of an award, when an application is made to have it confirmed according to the above mentioned article, is meant only to see

---

(35) Article 215/1 of the Emirati Civil Procedures Law.

the legality of the arbitrators' work. The court's role in this regard is no more than checking that nothing prevents the awards' enforcement. This is to say that a court, in order to confirm an award, checks whether or not that award fulfilled its formal conditions; whether or not it respected the parties' right to confrontation; whether or not it opposes another previously delivered judgments addressing both the same parties and same subject according to the same reasons; and to check whether or not the award is in conflict with public policy. A court's role does not extend to checking the subject matter of the conflict or assessing the correctness of the award..<sup>(36)</sup>.

Then, it can be said that a court, when asked to confirm an award, examines it superficially and externally. A court does not re-assess the arbitrators' work<sup>(37)</sup>.

---

(36) The Federal Supreme Court decision no 92/year 25, dated 8th of June 2003, Also see, to the same effect, the Federal Supreme Court decision no 165/ year no. 18, dated 30/11/1996. Both decisions published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx>. Accessed 16th Sept. 2014.

(37) It is worth mentioning that there is another approaches found to be followed towards the award by a court, when asked to confirm it, which is the revision approach, where the court revises the award in terms of correctness and erroneous. While, the other approach is the one followed by the Emirati law. for more in those two approaches, see Nabeel Omar, "Arbitration on National and International Civil and Commercial Matters", 2nd ed. (Alexandria/Dar Aljameah for Publication [The House of Universal Publications]: 2004), p 218 et seq. Furthermore, a court is enabled to nullify an award if a party calls for its nullification as a general rule. However, study of setting aside and nullification of an award lies beyond the scope of this study. For more on the nullification of an award issue, see Hafeiza Hadad, *Challenging the Arbitral Award Delivered on Private International Disputes by Nullification*, (Alexandria: Darul Fikr Aljami'ee [[The House of Universal Thinking Publications], without year of publication), p 114 et seq. also see Khalid Hasan, *Nullification of Arbitral Award*, (Cairo: Darul Nahda, [House of Revival]: 2010), p 231 et seq. Mamdoh Al-Enizi, 2006, *Nullification of International Arbitral Award* (Beirut: Al-Halabee Legal Publications: 2008), p.93 et seq. Also Ibrahim, Jaghbeer, 2009, *Nullification of Arbitral Award*, Dar Al Thaqaqa [House of Knowledge: Amman], p127 et seq. also see Teresa Giovannini what are the grounds on which awards are most often set aside, at [http://www.lalive.ch/data/publications/tgi\\_what\\_are\\_the\\_grounds.pdf](http://www.lalive.ch/data/publications/tgi_what_are_the_grounds.pdf) accessed 20th May 2016. Also see Mark Beswetherick and Keith Hutchison, *Enforcement of arbitration awards: Moving in the right direction*, at <http://www.cmguide.org/archives/3095> accessed 20th May 2016. Also see Mohamed Al Marzooqi, *Why do UAE Courts annul Final Arbitral Awards which are issued in the UAE?* At [http://www.almc.ae/catalogPublication/18382016123857Thesis\\_A1%20Marzooqi\\_ESCL\\_-May%2026%202013.pdf](http://www.almc.ae/catalogPublication/18382016123857Thesis_A1%20Marzooqi_ESCL_-May%2026%202013.pdf) accessed 20th May 2016. Also see Hassan Elhais, *United Arab Emirates: Challenging An Arbitration Award*, at <http://www.mondaq.com/x/261718/Arbitration+Dispute+Resolution/Challenging+An+Arbitration+Award> accessed 20th May 2016.

Furthermore, a court- when an award is adduced for confirmation- is, as a general rule, not dealing with a dispute, since the confirmation of an arbitral award is a requirement imposed by the law to have it compulsorily enforced, even if the parties do not have anything against that award<sup>(38)</sup>. Accordingly, it can be said that a court may or may not confirm the award. The relevant question will then be what parties can do against a court's decision in this regard? In other words, how final is a court's decision confirming or not confirming an arbitral award? The answer to this question can be seen as follow.

### **3.2 Finality of the Emirati Court's Decision Concerning Confirmability (The Parties Right of Appeal):**

It is seen above that the court of competence to confirm an arbitral award, in the Emirati law, is the very court that had the jurisdiction to decide the dispute at the first place. Accordingly, it can be said that the court of competence to confirm arbitral awards may be a court of first instance or a court of second instance (a Court of Appeal)<sup>(39)</sup>. However, as to the appealability of the court decision on the confirmation applications, it can be said that the Emirati Civil Procedures Law states that a party, as a general rule, can appeal against the court decision confirming or not confirming an award.

Yet, the Emirati law refers to two types of appeal towards a court's decision; appeals before the Court of Appeal, and appeals before the Court of Cassation<sup>(40)</sup>. This is to say, if the court dealing with the

(38) Nabeel Omar, "Arbitration on National and International Civil and Commercial Matters", 2nd ed. (Alexandria/Dar Aljameah for Publication [The House of Universal Publications]: 2004), p 219.

(39) Article 213/1 & 2 of the Emirati Civil Procedures Law.

(40) This is due to the fact that article 217 of the Emirati Civil Procedures Law states, in its first paragraph, that "Arbitral awards are not subjected to any way of appeal", and the second paragraph of it states: "Whereas, the courts' judgments confirming or nullifying arbitral awards can be appealed through the adequate appellate means". Article 213 of the Emirati Civil Procedures Law, which was dealt with above, states in its first paragraph, that "In the arbitration made through a court of law, arbitrators must deposit to the court which was originally of competence to decide the case - within fifteen days from its issuance- their reached decision along with both the arbitration agreement, the file of the case, and the relevant documents. Arbitrators, within five days after depositing the original award, must also deposit a copy of that award to the to have it delivered to each one of the parties, and a court's employee needs to write down such a deposition and must inform the concerned judge with it =

confirmation issue is a court of first instance, then a party can challenge the court's reached decision by appealing before both the Court of Appeal and afterwards he can appeal against the latter court's decision before the Court of Cassation. However, if the court dealing with the confirmation of an award is a court of second instance (the Court of Appeal), then a party can only challenge the court's reached decision by appealing before the Court of Cassation.

Nonetheless, the Emirati Civil Procedures Law refers to three cases in which a party is deprived of the right to appeal- before the Court of Appeal- against the judgment of the courts of first instance concerning the confirmation of an award. These cases are as follows:

**3.2.1 Non-Appealability Depending on the Parties' agreement:** The law allows the parties, either in advance or after the court judgment is delivered, to abandon and waive their right to challenge the judgment of the court of first instance before the Court of Appeal<sup>(41)</sup>. This applies to all types of arbitration regardless of the amount at stake.

**3.2.2 Non-Appealability Depending on the Amount at Stake:** The law states that parties are deprived of appealing and challenging the courts' reached decision, whether it confirms or disconfirms the award, if the monetary value is either equal to or less than 20 thousand AED<sup>(42)</sup>. The logical explanation supporting this view is that the Emirati law, most likely, tends not to engage the Court of Appeal with cases of trivial or small monetary value<sup>(43)</sup>.

---

= in order to hold a hearing within fifteen days to confirm that award. The parties must be notified with the latter hearing's date", and the second paragraph of it (article 213) states that "If arbitration is involved with an Appeal Court's case, the deposition must be to court's administrative employees of the concerned Court of Appeal". These two articles imply that appeals of relevance in this regard are both the appeal before the Court of Appeal if the court concerned with confirming an arbitral award is the Court of first instance, and the appeal before the Court of Cassation, if the court concerned with confirming an arbitral award is the Court of Appeal as will be illustrated hereafter.

(41) See article 217/3 of the Emirati Civil Procedures Law. See the Federal Supreme Court judgment no. 417/year 18, dated 1st of Nov. 1998. Published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx> accessed 16th Sept. 2014.

(42) A Dirham is the United Arab Emirate currency. The mentioned amount (the 20 thousand AED) approximately equals about 6000 US Dollars.

(43) See article 217/3 of the Emirati Civil Procedures Law.

However, it is possible to see two different sums of money within the scope of arbitral awards confirmation. In such a case, the question then will be which amount should be taken into account to apply the given exception? In other words, it is imaginable to refer to arbitration on many issues in one case. For example, a party- in a landlord-tenant dispute- may agree with his opponent to refer more than one point of disagreement between them to arbitration. It is imaginable to see a landlord asking- in a dispute before an arbitrator against the tenant- for both the rent and compensation for defects caused by the tenant to the rented flat. The value concerning the rent may be worth of 10 thousand AED. While the required compensation equals thirty thousand AED.

Supposing that the arbitrator only decided on the landlord's application for rent, which is of ten thousand AED value, the question will be then which value will be of concern in this regard to prevent a party from appealing against the court's decision confirming the arbitral award? Is it the value of the whole case which was put before the arbitrator in the first place? Or is it the value of the parts put before the court for confirmation? Such a question is of importance, since if looked at the lowest value, in such a situation, there may be no appeal if it was less than 20 thousand AED. While, on the other hand, if the contrary was adopted, appeal will be allowed. It is imaginable to see conflict of interest in this regard.

However, it is pertinent to note here that- despite the fact that the Emirati law does not contain rules regulating the application for confirmation of parts of arbitral awards- the Emirati courts adopted views that makes such a thing imaginable. For example, the Court of Cassation of Dubai decided, in one case, that a court when asked to nullify an arbitral award and whenever it sees that only some parts of it are capable of nullification, it (the court) may nullify these parts and confirm the other parts. 'Portioning Nullification', according to the court, is applicable only if it is possible to separate the null parts from the non-null ones in the award<sup>(44)</sup>.

---

(44) See the Court of Cassation of Dubai decision no.10/year 1995, hearing dated 8th of Oct.1995, published on Mohamoon. Accessed 9th Aug. 2014.

Although this decision addresses a different angle of arbitral awards portioning, which is dividing the arbitral award by the court when finished with dealing with it, it (this judgment) seems- in this article's view- to support the possibility of portioning and dividing an arbitral award from the outset by a party (i.e. when asking to have part of it confirmed by a court). Furthermore, the general rules of execution allow such a thing, since a party can ask for the execution of part of the rights he has against his debtors. It is imaginable then to see two values involved in the court's confirmation process. In such a case, if a party seeks for the confirmation of the part of the lesser amount (the ten thousand dirham amount) of the arbitral award, which value will be of concern to determine the appealability of the court's decision?

No clear-cut answer is given by the Emirati Civil Procedures Law, since article 217/3 of the law states that parties cannot appeal against the court's decision if "...the amount or the value of the dispute does not exceed 20 thousand AED". The word "dispute" here seems to be confusing, since there may be two disputes concerned in the process; the dispute before the arbitrator<sup>(45)</sup>, and the dispute before the court over the confirmability and the non-confirmability of the given award<sup>(46)</sup>.

Yet, as an answer, it can be said that it is more likely that the law in the above mentioned provision (article 217/3 of the Civil Procedures Law) refers to the dispute brought before the court (i.e. the amount of the part brought before the court for confirmation). However, justice, which supports the parties' right to appeal, may be in support of the other view (i.e. considering the value of the whole case brought before arbitration). In all cases, an intervention from the legislator is highly welcomed to have this point illustrated and made clear.

### **3.2.3 Non-Appealability in 'Conciliation Arbitration' in Emirati Law:**

The Emirati law states that the parties can agree to enable the arbitrators to decide their case not according to rules contained on a certain law but according to the principles of natural law and rules of

---

(45) This amount is of a higher value, since it is concerned with the whole amount disputed before the arbitrator.

(46) This amount is of a lesser value, since it is confined with the amount adduced by the party before the court (the part put before the court for confirmation).

justice. In this type of arbitration an arbitrators' decision looks more like a settlement or reconciliation. Yet, this settlement is imposed by an arbitrator rather than the parties' agreement. This type of arbitration is called 'Conciliation Arbitration'<sup>(47)</sup>. It seems that the Emirati law, here, presumes that if the parties agree to have their dispute settled according to any law of the arbitrator's choice including principles of natural law and the rules of justice, then it is more likely that they want to have their dispute settled at any cost by an arbitrator. Therefore, a court's decision confirming the award is deemed unappealable.

However, such a regulation needs to be re-addressed, since a court's decision confirming or disconfirming an award may be wrongly made. Therefore, parties should be enabled to challenge such a decision.

### 3.2.4 The Extent of the Non-Appealability in Emirati Law:

A related question is posed to the effect that does the above mentioned unappealability (the exclusions from appeal) apply to all court judgments? In other words, the law- in preventing challenging the court decisions regarding the confirmation of an arbitral award- refers literally to the appeals before the Court of Appeal. Therefore, does such a prohibition extend to apply to appeals before the Court of Cassation? That is to say if a decision, confirming or not confirming an arbitral award, was delivered by the Court of Appeal in a case where the parties, for example, agreed to enable the arbitrators to conclude conciliation, will the parties be deprived of the right to challenge that decision before the Court of Cassation?<sup>(48)</sup>

(47) See article 217/3 of the Emirati Civil Procedures Law. It is pertinent to note that the Emirati law differentiates between two types of arbitration in this regard; the above mentioned arbitration (the 'Conciliation Arbitration'), and the 'According to Law Arbitration'. Conciliation Arbitration, as mentioned above means the arbitration where in which the parties enable the arbitrators to apply to the dispute any law of their choice, including rules of justice and principles of natural law. Whereas, the other type of Arbitration- the 'According to Law Arbitration'- is the arbitration where the parties specify a certain law or certain legal rules that an arbitrator must adhere to in order to decide the case. For more on these two types of arbitration, see Mahmoud Altehawi, Types of Arbitration, (Alexandria/Darul Matboa'at Aljame'iah: [The House of Universal Publications] 2002), p. 178 et seq. Also see Alansary Alnedany, Judicial Conciliation (Alexandria/Dar Aljameah Aljadeedah: [The House of New University Publications] 2001) p. 23.

(48) However, if the legislator meant to adopt the first view, a clearer provision needs to be adopted to address such a thing.

As an answer to the latter question, it can be said that there are two imaginable views; logical and legal. Logically, it can be said that the exemptions adopted concerning the appeals before the Court of Appeal should be applied before the Court of Cassation. This is due to the fact that the wisdom (the reasoning) supporting and standing behind the prohibition of the appeals before the Court of Appeal is also found in the case of the appeals before the Court of Cassation. In other words, if a system prevents appeals against a decision before the Court of Appeal, which constitutes the normal way to challenge the decisions of the courts of first instance<sup>(49)</sup>, then logic necessitates the prevention of appealing same cases before the Court of Cassation. Nevertheless, the legal view to this issue can be given to the effect that the prevention from appeal, should be looked at as an exception to the rule, and therefore, it should not be largely interpreted and, as a result, should not be extended to apply to the appeals before the Court of Cassation. Furthermore, the law referred only to appeals before the Court of Appeal. Therefore, from a legal point of view, the exception should be confined with the appeals before this court (i.e. the Court of Appeal) and no other court (i.e. the Court of Cassation)<sup>(50)</sup>.

---

(49) It is agreed that the Emirati judicial system stands on the principle of the "two-step adjudicating process". This principle means that, as a general rule, opponents 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). 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 Emirates Civil Procedures Law", (UAE Alaaq Almushriq, [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> Accessed 16th Sept. 2014..

(50) It is important to note here that the Emirati law states that, as a general rule, a decision can be subjected to appeal before the Court of Cassation only if it is issued by the Court of Appeal. Therefore, if a case is not subjected to appeal, it cannot, as a general rule, be brought before the Court of Cassation. See article 173 of the Emirati Civil Procedures Law. Also see the Federal Supreme Court decision no. 170/Year 2009 dated 10th of June 2009, published on the website of the Ministry of Justice at <http://www.elaws.gov.ae/ArLegislations.aspx> visited Dec. 23rd 2014.

On the other hand, it is also pertinent to note that the Emirati law, in terms of appealing against courts' judgments when confirming arbitral awards, states that the parties can appeal through, what the legislator names as, "the adequate means of appeal"<sup>(51)</sup>. Furthermore, as mentioned above according to the Emirati law, arbitration may be concerned with disputes that can be brought before either courts of first instance or courts of second instance. As a result, the 'adequate means of appeal' can be logically interpreted, as mentioned above, to mean both appeals before the Court of Appeal if the decision (concerning the confirmability of an arbitral award) was delivered by a court of first instance, and appeals before the Court of Cassation, if the decision was delivered by a court of second instance. Still, the Emirati Civil Procedures Law adopts a third appellate means, which is re-trial. The question, as a result, will be is it possible for the parties to appeal against a court decision by this appellate means?

As an answer to the latter question, it can be said that re-trial is an appellate procedure<sup>(52)</sup>. This procedure, which is regulated by the Emirati law, means that a party- if certain reasons and requirements are established- can ask the court that addressed the case to re-address and re-decide it again. An example of the reasons that allow re-trial is when forged documents or false testimony (perjury) is involved in the case. The law states that if, for example, a party adduces such evidence and the court found them (the evidence) to be material and depended on them in deciding the case, the other party, if these evidences were proved to be forged, may appeal through this means of appeal (i.e. he may ask for re-trial)<sup>(53)</sup>. As a result, it can be said that this appellate procedure should be applicable to the courts' decisions confirming arbitral awards. This is due to that fact that re-trial is built on reasons that are of high merits and of direct intact with justice<sup>(54)</sup>. Accordingly, this type of appeal should be

(51) See article 217/2 of the Emirati Civil Procedures Law.

(52) See article 169 of the Emirati Civil Procedures Law.

(53) For more on retrial see Fathi Wali, Alwaseet [[the Intermediate]]on Civil Adjudication Law, (Cairo: Cairo Uni. Press and Universal Books Publishers: 2001/2002), p. 757 et seq. Also see Ahmed Abul Wafa, The rules of Pleadings in Emiratis, 1st ed. (No publishers: No Year of publication), p. 473 et seq.

(54) Reasons for re-trial are found in cases such as building a judgment on forged documents, false testimony, cheating, etc. see article 169 of the Emirati Civil Procedures Law.

looked at as a part of the appeals referred to as the 'the adequate means of appeal' in article 217/2 of the Civil Procedures Law. However, a provision clarifying whether such a view is adopted is highly welcomed from the Emirati legislator.

### **3.3 The Position in the Kuwaiti Law:**

As to the court choices towards the arbitral award and the finality of its ruling in the Kuwaiti law, more than one point can be addressed in this regard. First of all, it is pertinent to note that the Kuwaiti law, unlike the Emirati law, made it possible for the parties to appeal against the arbitral awards. The Kuwaiti law states that the parties can agree, in advance<sup>(55)</sup>, to make appeals possible against the award before the competent Court of Appeal<sup>(56)</sup>. Yet, in the Kuwaiti law, appeals against the awards are not allowed in three cases;<sup>(57)</sup> the first of which is the case where the award is delivered in 'Conciliation Arbitration'<sup>(58)</sup>. Appeals are also not allowed if the Amount at stake is no more than 500 Kuwaiti Dinars<sup>(59)</sup>. The third case is the case where the dispute is referred to arbitration at the Court of Appeal level (i.e. if the dispute was before the Court of Appeal and the parties agreed to refer it to arbitration)<sup>(60)</sup>.

---

(55) Agreement must be made before the issuance of the award.

(56) It is to be noted that the Kuwaiti law states that the appeal against an arbitral award is to be brought before the court of general jurisdiction. However, this court is a first instance court but given competence to act as a Court of Appeal in certain cases including the case in question. See articles 34 and 186 of the Kuwaiti Civil Procedures Law.)

(57) The talk here is concerned with private arbitration panels only. This is to say that it was mentioned earlier that the Kuwaiti law regulates what can be referred to as the 'judicial arbitration panel'. This arbitration panel, which is formed within the Court of Appeal, is composed of 5 members, three of them are from the judiciary, and the other two are chosen by the disputants (one by each). This panel is presided over by one of the three judges (the highest in rank between them). See articles 1 and 2 of the Kuwaiti Judicial Arbitration Law and article 177 of the Kuwaiti Civil Procedures Law. The law states that this panel's award is unappealable. Therefore, no appeal is accepted against the awards delivered by the judicial arbitration committee. See article 186 of the Kuwaiti Civil Procedures Law. However, it was mentioned earlier that addressing this panel and its decisions, which can be dealt with in a study of its own, goes beyond the scope of this study.

(58) See article 186 of the Kuwaiti Civil Procedures Law. However, the reasoning supporting this case is similar to the one adopted in the Emirati law, which is illustrated above.

(59) See article 186 of the Kuwaiti Civil Procedures Law. However, although the amount is slightly different, the reasoning supporting this case is similar to the one adopted in the Emirati law, which is illustrated above.

(60) See article 186 of the Kuwaiti Civil Procedures Law.

Accordingly, it is established that the Kuwaiti law- apart from the three above given cases- allows the parties' agreement on making appealable the arbitral awards. Moreover, parties can always ask the court to confirm the delivered award. Yet, concerning the confirmation issue, it can be said the court can either confirm or disconfirm the award. Similar thing can be applied in the case where an appeal is made against an award. A court may accept or deny the appeal (support or abolish the award).

Yet, the law was not clear as to whether the delivered award is still- after being subjected to appeal- needs to be confirmed by the court of competence, which may be the court of first instance. No clear-cut answer is given by the law. No court decisions were found in this regard. However, logically, one can say that it needs not such a procedure, since if the Court of Appeal, supports the award, it will be meaningless to go again to the Court of First instance, for example, to have it confirmed. However, a bigger problem will be seen if this court chose not to confirm that award, which was supported by a court of higher level.

Yet, a clarification of this matter is highly welcomed from the legislator, especially when knowing that he (the legislator) states that the confirmation application can only be made after the laps or the expiry of the appellate time limit. Moreover, nothing in the law prevents a party from appealing before the Court of Cassation against the Court of Appeal's decision on the adduced appeal. The question still stands; does a party need to seek a court confirmation of an award after being supported by the Court of Cassation as well?

From another related angle, one may ask about the powers a court has in the case of appeal and whether it differs from the case of confirmation of an award? As an answer, it can be said that the court's powers are different from each other in the two cases. This is to say that in the case of application for confirmation, a court, in the Kuwaiti law- similar to the Emirati law- can confirm the award if it finds that "nothing prevents its enforcement"<sup>(61)</sup>. However, the law does not specify the cases that may prevent its enforcement. Yet, the court powers in such a case are

---

(61) See article 185 of the Kuwaiti Civil Procedures Law.

similar to that established for the Emirati courts. This is to say that a court only externally scrutinises the award. A court in no way assesses the award in terms of substance<sup>(62)</sup>.

However, it is a different story in the case of the appeal of the award. The Kuwaiti law states that an appeal against an arbitral award is subjected to the same rules governing appeals against judgments' of courts of law<sup>(63)</sup>. Accordingly, the Court of Appeal seems to have the full power to assess the appealed award in terms of substance and correctness, and if it finds it to be incorrect, a court can abolish it and decide on the case, same as if it was dealing with a court of first instance decision<sup>(64)</sup>.

As to the finality of the court's decision in the Kuwaiti law, it can be said that the court of competence, in the Kuwaiti law same as is the case in the Emirati law, can be either a court of first instance or a court of second instance. Accordingly, if the court confirming an arbitral award is a court of first instance, then parties can challenge the court's decision- confirming or not confirming the award- before the Court of Appeal. On the other hand, if the court confirming an arbitral award is a court of second instance (i.e. a Court of Appeal), then parties can challenge the court's decision before the Court of Cassation.

However, it is important to note that the Kuwaiti law, unlike the Emirati law, does not exclude any of the courts' decisions, concerning the award confirmation issue, from appeal. The previously mentioned exclusions from appeal in the Kuwaiti law are concerned with appeals against arbitral awards only. The Kuwaiti law adopts no exclusions from appeal concerning the courts' decisions confirming arbitral awards.

Still, despite the fact that the Kuwaiti law allows the parties to appeal against the awards, it was seen that the law prevents appeals (i.e.

---

(62) See Kuwaiti Civil Cassation Appeal no. 21\87. Hearing dated 11th Jan. 1988. Published on "Mohamoon". Accessed 9th Aug. 2014. Also see Kuwaiti Civil Cassation Appeal no. 113\2004. Hearing dated 31st Jan. 2005. Also on "Mohamoon". Accessed 9th Aug. 2014.

(63) See article 186 of the Kuwaiti Civil Procedures Law.

(64) For more on the Court of appeals powers towards the court of first instance decision, see Fathi Wali, *Alwaseet [the Intermediate] on Civil Adjudication Law*, (Cairo: Cairo Uni. Press and Universal Books Publishers: 2001/2002), p 756 et seq.

the law overlooks and invalidates agreements of appeal) against the awards in three cases, which were addressed earlier<sup>(65)</sup>.

However, it is recommended to allow appeals against the awards, after an agreement is made by the parties, regardless of the amount at stake, and regardless of type of arbitration or the stage in which arbitration is referred to to address the case, since this supports the parties' will and their needs for justice. This is so provided that such a thing (opening the way for appeal) is governed by their will (their agreement) as it is the case with other permitted cases.

### 3.4 Assessment:

It is obvious that there are some differences between the two regulations. The Kuwaiti law allows the parties to agree on making appealable the arbitral awards. Parties can agree on appealing an arbitral award before Kuwaiti courts of law. Such a thing is not applicable in the Emirati law.

As an assessment, from the outset, one may say that the Kuwaiti law regulation of such a thing contradicts with the idea supporting arbitration. This is to say that opponents refer to arbitration in order to avoid referring their case to courts of law in the first place. Therefore, when allowing appeals against an arbitral award, the arbitral award will be put before the court's assessment. What is more, when an appeal is made before it, the court can abolish the award and give its ruling on the very case that was agreed to be brought before arbitration.

However, although considerable, this criticism does not apply to the Kuwaiti law's regulation. On the contrary, the Kuwaiti law's regulation of this point is advantageous. This is due to the fact it is discretionary and consensual procedure. This is to say that it only applies where an agreement is made by the parties. Such a thing agrees with the arbitration contractual nature. This also allows the parties to mix between arbitration and litigation. Whereas, the latter is a standby procedure, they can refer to it when not satisfied with the result reached by an arbitrator.

---

(65) These case area: The case where the amount at stake is less than 500 Kuwaiti Dinars, where the parties agreed to refer to 'Conciliation Arbitration' and where arbitration is agreed upon after bringing the case before the Court of Appeal. Here, one can say that the amount that makes it possible to appeal is the amount, which was disputed before the arbitrator, since the court is not addressing the case again.

Furthermore, this regulation, the Kuwaiti law's regulation of this issue, avoids one of the arbitration disadvantages. In other words, arbitral award- as a general rule and as is the case in the Emirati law- is unappealable, and a court's power when asked to confirm it is only to check that nothing prevents its enforcement. Accordingly, an arbitral award is not subjected to revision in terms of correctness and fairness. This in some cases leads to enforcing awards that are far from justice or which are substantially incorrect. Therefore, allowing court revision of an arbitral award when the parties allow appealing against it helps in monitoring the arbitrators' work and helps ensuring the issuance of a more accurate decision by them<sup>(66)</sup>.

Accordingly, adopting such a view is recommended for the Emirati law. However, this needs to be after an agreement is made by the parties to that effect. Such a thing (the parties' agreement) can be seen in rare cases, since parties agree on arbitration to avoid referring their cases to courts. One imaginable case is seen where the parties found to be uncertain as to the competence of the arbitrator.

Another point of assessment is the finality of the decisions delivered by the court. The Kuwaiti law, unlike the Emirati law, does not exclude any of the court's decisions- concerning the confirmation of the award- from appeal. This was not the case in the Emirati law, which adopts three exclusions on the parties' right of appeal against the first instance courts decisions on the confirmability issue. These exclusions, as seen above, were concerned with the type of arbitration<sup>(67)</sup>, the monetary value at stake<sup>(68)</sup>, and the case where the parties agree not to appeal.

However, it is important to note that the three cases embodied in the Kuwaiti law as exclusions from the right of appeal were concerned with the appeals against the arbitral award itself rather than with the appeals against the courts' decisions concerning the confirmation issue.

---

(66) In addition, arbitrators may pay more attention when knowing that their work will be revised by another tribunal (i.e. a court of law) not only externally but in terms of substance and content.

(67) It is seen that the Emirati law prevents appeals in the case where Conciliation arbitration is involved.

(68) it seen that the Emirati law prevents appeals in the case where the amount at stake is no more than 20 Thousand Dirhmas.

However, it is suggested that allowing appeals, in all cases, against courts' decision when dealing with the confirmation issue seems to be closer to justice, since it makes it possible to correct the court's mistaken decisions concerning arbitral awards confirmation issue<sup>(69)</sup>. Therefore, the Emirati law is recommended to adopt such a view.

However, the Kuwaiti law is also recommended to allow parties' agreement on appeals against all arbitral awards, since appeals can only be seen where the parties agree on them. Therefore, it is more logical to give them the right to agree on appealing against all types of arbitral awards. However, if such a recommendation is not adopted, the parties in the Kuwaiti law are still better off, since they have the right to appeal against the court decisions concerning the confirmation issue in all cases. This, as mentioned above, it is hoped to be adopted by the Emirati law along with the other earlier adopted recommendations.

#### **4. Conclusion**

To conclude, it can be said that arbitration- which is referred to as an alternative dispute resolution means- achieves many advantages that made it one of the most important ways to resolve disputes, and it is agreed that opponents do refer their disputes to arbitration in order to have them resolved. Accordingly, as a general rule, an arbitrator ends the arbitration process by issuing a decision or a judgment on the case. This decision, the arbitral award, in order to be of value, needs to be respected and enforced by the party against whom it is delivered. Both the Emirati and Kuwaiti laws regulated the enforceability, the confirmation issue, of arbitral awards. This article dealt with the regulation adopted by the two laws and assessed the regulation made in both of them.

##### **4.1 Findings of the study:**

the study has mainly found that the Emirati law and Kuwaiti law agree with each other on the fact that both of them stipulate that arbitral awards- in order to be capable of enforcement- need to be confirmed by the authorities of competence, which are courts of law as a general rule.

---

(69) However, parties' agreement not to appeal can be respected, since it supports their will, which is respected in almost all arbitration aspects as a general rule.

However, despite the fact that both laws, the Emirati and Kuwaiti laws, are considered part of the civil law legal system, and that they both come from the same legal school, the two laws differed from each other in their approach. Both of them addressed the confirmation issue in a different, distinct, way. The study in this regard found that:

The Emirati Civil Procedures Law, in terms of arbitral awards confirmation issue, differentiates between two types of arbitral awards; 'via court-reached' arbitral awards, and other arbitral awards (i.e. 'outside-court reached arbitral awards'). It is found that the 'via court-reached' arbitral award is referred to to mean the arbitral award that is reached through a court of law. Furthermore, it is found that the Emirati law, concerning this type of awards, states that arbitrators need to submit their reached awards to the court of competence in order to have it confirmed.

It is also found that arbitrators, in this type of awards, must submit their reached awards to the courts for confirmation within a certain time limit, which is fifteen days, starting from the date of the issuance of their decision. Moreover, it is also found that, in this type of arbitration, an arbitrator has no obligation to deliver or hand the parties copies of his decision. He is, instead, obliged to hand the parties' copies to the court, and the latter (the court) afterwards hands them (the copies of the award) to the parties. Furthermore, the time limit for an arbitrator to submit the parties' copies of the decision (the award) to the court is five days starting from the day he deposits his judgment for confirmation. In addition, it is found that, in this type of awards, the Emirati law states that a court must hold a hearing- within fifteen days after receiving the arbitral award, from an arbitrator in this type of arbitration- for the purpose of confirming it.

However, concerning the other type of arbitral awards, in the Emirati law, it was found here, that an arbitrator has no obligation of any kind towards the court. In other words, an arbitrator- in this type of arbitration- is not obliged to hand copies of his reached award to the court, but, directly, to the parties. Accordingly, it is found that confirming an arbitral award, in this type, is the responsibility of the parties themselves. However, it is also found that, in this type of

arbitration, an arbitrator needs to provide the parties with copies of his award within five days starting from the day of its issuance.

It is found that a party seeking for confirmation of an outside-court-reached arbitral award needs to file an application to this effect to the court of competence. Such an application can be originally made to the court. It can also be made as a plea, a counterclaim, adduced in an existing case.

Still, in terms of the court of competence to confirm an arbitral award in the Emirati law, it is found that the Emirati courts decided that the arbiter or the adjudicator of competence to confirm an arbitral award is the arbiter who, originally, had the jurisdiction to deal with the case, whether this arbiter or adjudicator was a court of law or any other tribunal.

As to the Kuwaiti law, despite the fact it allows the parties to refer to arbitration; either before or after bringing their case before courts of law. Yet, it is found that this law (the Kuwaiti law) does not place any specific effect on this fact. This law, unlike the Emirati law, does not distinguish between via and outside court arbitrations.

What is more, as to the time limits in the Kuwaiti law, it is found that the law states that an award must be submitted and deposited to the court within ten days starting from the date of its issuance.

However, the Kuwaiti law states that the process of confirmation of an award starts at the time the beneficiary party files an application to this effect to the court. Furthermore, it is found that the Kuwaiti law specifies no time limits for a party to apply for confirmation of an award, although the party will have to wait until the extinction of the time assigned for appeal, if applicable, to have the award confirmed. Moreover, it was found that the Kuwaiti law adopts no time limits for the court to address the adduced confirmation application.

As to the powers a court has towards the confirmation application, it was found that a court, in both the Emirati law and the Kuwaiti law, scrutinises and oversees it (the award), and confirms it whenever it finds that nothing prevents its enforcement. However, it is found that a court, when asked to confirm an award, examines it superficially and externally. A court does not re-assess the arbitrators' work.

It is also found that a court, in the two laws, may or may not confirm the award. However, the two laws approach towards the appeal against both the court's decision confirming or disconfirming an award and against the delivered arbitral award itself was found to be inconsistent.

It is found that the Emirati law, as a general rule, allowed the appeals against the court's decision confirming or disconfirming the award only. No appeal is allowed against the arbitral award itself in the Emirati law. Still, it is found that the Emirati law refers to two types of appeal towards a court's decision; appeals before the Court of Appeal, and appeals before the Court of Cassation.

It also found that the Emirati Civil Procedures Law refers to three cases in which a party is deprived of the right to appeal- before the Court of Appeal- against the judgment of the courts of first instance concerning the confirmation of an award. This is seen in the case of parties' agreement on such a thing. It is also seen where the amount at stake is no more than 20 thousand Emirati AED, and where the award is delivered in a 'conciliation arbitration' case.

It was found that the Kuwaiti law, unlike the Emirati law, made it possible for the parties to appeal against the arbitral award and against the court's decision confirming or disconfirming the award. This is to say that it, the Kuwaiti law, states that the parties can agree, in advance to make appeals possible against the award before the competent Court of Appeal. However, it was seen that the Kuwaiti law, states that appeals against the awards are not allowed in three cases; the first of which is the case where the award is delivered in 'Conciliation Arbitration'. Appeals are also not allowed if the Amount at stake is no more than 500 Kuwaiti Dinars. The third case is the case where the parties referred their dispute to arbitration at the Court of Appeal level.

Yet, it was also found that the law was not clear as to whether the delivered award is still- after being subjected to appeal- needs to be confirmed by the court of competence.

In the Kuwaiti law also, it was also found that the powers a court has in the case of appeal differ from those it has in the case of confirmation of an award. This is to say, in the case of application for

confirmation, a court, can only externally scrutinise the award. A court in no way assesses the award in terms of substance. While if subjected to appeal before it, the Court of Appeal seems to have the full power to assess the appealed award in terms of substance and correctness, and if it finds it to be incorrect, a court can abolish it and decide on the case, same as if it was dealing with a court of first instance decision.

Last but not least, as to the finality of the court's decision, in the Kuwaiti law, it was found that the court of competence, in the Kuwaiti law same as is the case in the Emirati law, can be either a court of first instance or a court of second instance. Accordingly, if the court confirming an arbitral award is a court of first instance, then parties can challenge the court's decision- confirming or disconfirming the award- before the Court of Appeal. On the other hand, if the court confirming an arbitral award is a court of second instance (i.e. a Court of Appeal), then parties can challenge the court's decision before the Court of Cassation. Once again, it was found that the Kuwaiti law, unlike the Emirati law, does not exclude any of the courts' decisions, concerning the award confirmation issue, from appeal.

#### **4.2 Main Recommendations of the study:**

The study reached a conclusion that both regulations can learn from each other in more than one point, and the legislators in both regulations are recommended to re-address this issue in order to achieve a higher level of justice. Yet, the main adopted recommendations are as follows:

4.2.1 The Emirati law's distinction between via court and outside court arbitrations needs to be revised and readdressed by the legislator. This is due to the fact that it is true that, in the via court arbitration, the agreement on arbitration is made before the court, but, nonetheless, the latter (the court) actually does not interfere with both the parties' agreement nor does the court interfere with the arbitrators' work. The court is as external from arbitration in this type of arbitration as it is in the other type of arbitration (the outside-court arbitration). Accordingly, in the two types of arbitration, the arbitrator's role must end at the time of delivering the award, and, second, in Emirati law, a court in order to confirm an arbitral award should receive an application from the concerned party (the beneficiary).

4.2.2 It was seen above that Initiating the confirmation process without an application from the concerned party in the via-court reached arbitral awards in the existing regulation may lead to undesirable results. Mainly, in more than one case the party who is seen as the beneficiary from an arbitral award may not be satisfied with it or he may be unwilling, for any reason, to have it enforced. Therefore, initiating the confirmation process by a court by holding a hearing to have such an award confirmed will be meaningless and may be done against the parties' wishes. Accordingly, it may be more logical to wait until an application is made by the interested party to initiate the arbitral award confirmation process before the court.

4.2.3 From another angle, the Emirati law's regulation of the via-court made arbitrations requiring the court to hold a hearing within 15 days to confirm an award can be extended and adopted as a general rule in arbitration. In other words, assigning a certain time limit for the court to hold a hearing is advantageous and constitutes privilege, since it supports arbitration, which is referred to as a speedy dispute resolution process. Such a provision can be extended to the Kuwaiti law as well.

4.2.4 The Emirati law's position preventing appeals against the awards if delivered in 'conciliation arbitration' cases needs to be revised. It is recommended for the Emirati legislator to make appealable such decisions, since a court's decision confirming or disconfirming an award may be wrongly made. Therefore, parties should be enabled to challenge such a decision. Same thing applies to the case where the amount at stake is no more than 20 thousand AED.

4.2.5 It is also found that the Emirati law, when addressing the non-appealability against the courts' decisions referred to the appeals before the court of appeal. Therefore, doubts and questions were posed to the effect that does such a prohibition extend to appeals before the Court of Cassation? This is due to the fact that a decision, confirming or disconfirming an arbitral award, can be delivered by a Court of Appeal on a case of arbitration conciliation, no clear-cut provision is made by the law to address this point. Moreover, it is also asked whether the prohibition includes the appeals by way of retrial. The Emirati law is recommended to make such matters clear.

4.2.6 It was seen that the Kuwaiti law was not clear as to whether the delivered award is still- if and after being subjected to appeal- needs to be confirmed by the court of competence, which may be the court of first instance. No clear-cut answer is given by the law. If such a procedure is stipulated, a problem will be seen if the court of competence, if it was a court of first instance, chose not to confirm that award, which was supported by a court of higher level (the Court of Appeal) when the award is appealed before it. The Kuwaiti legislator is recommended to make such a matter clear.

4.2.7 It is recommended for the Kuwaiti law to allow appeals against the awards, after an agreement is made by the parties, regardless of the amount at stake, and regardless of the type of arbitration or the stage in which arbitration is referred to to address the case, since this supports the parties' will and their needs for justice. This is so provided that such a thing (opening the way of appeal for them) is governed by their will (their agreement) as it is the case with other permitted cases. Adopting this view seems to be closer to justice, since it makes it possible to correct the arbitrators' mistaken awards when the parties agree on such a thing.

4.2.8 Allowing appeals against arbitral awards after parties' agreement is recommended for adoption in the Emirati law. Such a thing, which is adopted by the Kuwaiti law, agrees with the arbitration contractual nature. Such a thing also allows the parties to mix between arbitration and litigation. This also helps in avoiding one of arbitration disadvantages, which is seen as a result of the fact that an arbitral award is not subjected to revision in terms of correctness and fairness. This in some cases leads to enforcing awards that are far from justice or which are substantially incorrect. Therefore, allowing court revision of an arbitral award- when the parties allow appealing against it- helps in monitoring the arbitrators' work and helps ensuring the issuance of a more accurate decision by them.

## References

- Abul Wafa, Ahmed, The rules of Pleadings in Emiratis, 1<sup>st</sup> ed. (No publishers: No Year of publication), [Original Language (Arabic)].
- Al-Ahdab, Abdel Hameed, International Arbitration, part 3, (Beirut: Nofal Institute, 1990). [Original Language (Arabic)].
- Al-Enizi, Mamdoh, 2006, Nullification of International Arbitral Award (Beirut: Al-Halabee Legal Publications: 2008), [Original Language (Arabic)].
- Al-Jamal, Musttafa and Okashah, Mohammed, Arbitration in Internal and International Private Relations, (Beirut: Al-Halabee Legal Publications: 1998), [Original Language (Arabic)].
- Al-Marzooqi, Mohamed, Why do UAE Courts annul Final Arbitral Awards which are issued in the UAE? At [http://www.almc.ae/catalogPublication/18382016123857Thesis\\_Al%20Marzooqi\\_ESCL\\_May%2026%202013.pdf](http://www.almc.ae/catalogPublication/18382016123857Thesis_Al%20Marzooqi_ESCL_May%2026%202013.pdf) accessed 20th May 2016. [Original Language (English)].
- Al-nedany, Alansary, Judicial Conciliation (Alexandria/Dar Aljameah Aljadeddah: [The House of New University Publications] [Original Language (Arabic)].
- Alrefa'ae, Ashraf, 2003, Arbitration Agreement and the Practical and Legal issues in the Private International Relations, Darul Fikr Aljami'ee [[The House of Universal Thinking Publications] [Original Language (Arabic)].
- Altehaiwee. Mahmoud, 1999, Arbitration in Civil and Commercial matters and its Possibility in Administrative Contracts, (Alexandria/Darul Matboa'at Aljame'iah: [The House of Universal Publications] [Original Language (Arabic)].
- Altehawi, Mahmou, Types of Arbitration, (Alexandria/Darul Matboa'at Aljame'iah: [The House of Universal Publications] 2002), [Original Language (Arabic)].
- Beswetherick, Mark and Hutchison, Keith, Enforcement of arbitration awards: Moving in the right direction, at <http://www.cmguide.org/archives/3095> accessed 20th May 2016. [Original Language (English)].
- Elhais, Hassan, United Arab Emirates: Challenging An Arbitration Award, at <http://www.mondaq.com/x/261718/Arbitration+Dispu->

- te + Resolution/Challenging + An + Arbitration + Award accessed 20th May 2016. [Original Language (English)].
- Hadad, Hafeiza, Challenging the Arbitral Award Delivered on Private International Disputes by Nullification, (Alexandria: Darul Fikr Aljami'ee [[The House of Universal Thinking Publications], without year of publication), [Original Language (Arabic)].
  - Giovannini, Teresa, what are the grounds on which awards are most often set aside, at [http://www.lalive.ch/data/publications/tgi\\_what\\_are\\_the\\_grounds.pdf](http://www.lalive.ch/data/publications/tgi_what_are_the_grounds.pdf) accessed 20th May 2016. [Original Language (English)].
  - Hasan, Khalid, Nullification of Arbitral award, (Cairo: Darul Nahda, [House of Revival]: 2010), [Original Language (Arabic)].
  - Jaghbeer, Ibrahim, Nullification of Arbitral Award, Dar Al Thaqafa [House of Knowledge: Amman 2009], [Original Language (Arabic)].
  - Mazirow, Arthur, "The Advantages and Disadvantages of Arbitration as Compared to Litigation" at [http://www.cre.org/images/MY08/presentations/The\\_Advantages\\_And\\_Disadvantages\\_of\\_Arbitration\\_As\\_Compared\\_to\\_Litigation\\_2\\_Mazirow.pdf](http://www.cre.org/images/MY08/presentations/The_Advantages_And_Disadvantages_of_Arbitration_As_Compared_to_Litigation_2_Mazirow.pdf) accessed 2 Dec. 2012. [Original Language (English)].
  - Muhsen, Shafeeq, Without Year of Publication, International Commercial Arbitration, (Cairo: Darul Nahda, [House of Revival] [Original Language (Arabic)].
  - Omar, Nabeel, Arbitration on National and International Civil and Commercial Matters, 2<sup>nd</sup> ed. (Alexandria/Dar Aljameah for Publication [The House of Universal Publications]: 2004), [Original Language (Arabic)].
  - Omar, Nabeel, The Law of Civil Procedures, (Beirut: Al-Halabee Legal Publications: 2008) [Original Language (Arabic)].
  - Ottoman, Nasser, Criteria of International Arbitration, paper presented in the proceedings of the "International Arbitration conference", (United Arab Emirates University, 2008), published on <http://slconf.uaeu.ac.ae/papers/n1/naser%20osman.pdf> accessed 20<sup>th</sup> Sep 2014. [Original Language (Arabic)].
  - Qandeel, Mustafa, "Alwajeez [The Concise] on Litigation and Adjudication within the United Arab Emirates Civil Procedures

- Law”, (UAE Alaafaq Almushriqh, [Shining Horizons Publications] 2010), [Original Language (Arabic)].
- Sherwin, Peter, Ana Vermal, Elizabeth Figueira, The Decision to Arbitrate, at <http://www.proskauerguide.com/arbitration/19/I> accessed 1<sup>st</sup> Oct 2014. [Original Language (English)].
  - Wali, Fathi, Alwaseet [[the Intermediate]] on Civil Adjudication Law, (Cairo: Cairo Uni. Press and Universal Books Publishers: 2001/2002), [Original Language (Arabic)].