

Mechanism of Arbitration in the Stock Exchange Disputes

آلية التحكيم في منازعات سوق الأوراق المالية

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Abstract:

Arbitration is one of the most important means of settling commercial disputes because it provides quick and confidential settlement of disputes by specialized persons. Although the laws adopted arbitration as a means of settling civil and commercial disputes and regulated its provisions, at the same time, it had received the attention of the Stock Exchange Laws, after it was adopted as a means of settling disputes arising in the stock exchange.

In view of the specificity of dealing in the stock exchange, the Stock Exchange Laws did not suffice with the arbitration rules contained in the Arbitration Law or Civil Procedure Law. Instead, they relied on special arbitration rules to settle stock exchange disputes and to ensure investors settle their disputes through specialized arbitration bodies, accordance with appropriate procedures to work in the stock exchange.

Keywords: Arbitral Tribunal; Arbitral Procedures; Arbitral Award; Enforcement; Challenges.

الملخص:

يعد التحكيم أحد أهم وسائل تسوية المنازعات التجارية ، لأنه يوفر تسوية سريعة و سرية للمنازعات من قبل أشخاص متخصصين، لذا فقد حظي باهتمام قوانين سوق الأوراق المالية، بعد اعتماده كوسيلة لتسوية المنازعات الناشئة فيها.

و بالنظر إلى خصوصية التعامل في سوق الأوراق المالية، فإن تلك القوانين لم تكفي بقواعد التحكيم الواردة في قانون التحكيم أو قانون الإجراءات المدنية. إنما تم اقرار على قواعد تحكيم خاصة لتسوية منازعات سوق المال، لضمان قيام المستثمرين بتسوية نزاعاتهم من خلال هيئات تحكيم متخصصة، وفق الإجراءات المناسبة للعمل في سوق الأوراق المالية.

الكلمات المفتاحية: تشكيل هيئة التحكيم؛ إجراءات التحكيم؛ قرار التحكيم؛ تنفيذ القرار التحكيمي.

1. Introduction

The stock exchange is one of the main pillars, on which the state builds its economy because it provides people with a low-cost investment, where they can benefit from the use of their money in buying and selling securities instead of leaving them idle, thus supporting economic growth.

Hence the importance of having an organized market specialized in the sale of securities, working to create the place necessary to meet the investors, which provides suitable opportunities to make deals between them, and working to assure their interests. This is what the stock exchange has achieved, it operates according to rules that aim at preserving the interests of the clients, and protecting their savings, through the rules followed in the management of its work on how to conclude transactions for the sale and purchase of securities. Indeed, stock exchanges have proved their ability to attract investor's confidence, as a result of these rules, so that this market has become the focus of investors, not a mere space to meet between sellers and buyers.

That the existence of a legal system capable of providing protection for investors is a key factor to support their confidence in the stock exchange, which is in the interest of investors, the market, and the national economy, at the same time, otherwise the stock exchange will be a means to exploit the money and waste, instead of operating and development. Recognizing the importance of this market, the legislation has worked hard to organize it, to achieve a speed of dealing and protect dealers

Although dealing with the stock exchange is subject to rules, that safeguards the interests of the clients and stabilize the transaction, this does not exclude the possibility of bypassing the dealers for what was prescribed by the law on the stock exchange, or exceed the agreement between them to the rules governing the dealing in the securities, whether due to breach of contracts or of a broker, who contract as agents.

While this situation is causing the disputes between the parties, and the related impact on their interests, it was necessary for the stock exchange to create the appropriate means to resolve these disputes, so as to preserve their interests, in order to support investor confidence in stock exchange efficiency, and to secure the necessary protection for their invested funds.

In fact, it is impossible to predict all the disputes, that the investor may face, and the reasons for such disputes cannot be limited. However, in general, the dispute may arise as a result of the breach of the obligations imposed by stock exchange rules, or the securities sale contract. An investor may face a problem arising from a broker's miscalculation of the execution of the purchase order issued by his client. Such as buying shares of an insolvent company, or facing in the execution a problem resulting from his contract with an investor familiar with the internal information of the exporting company of the shares sold, or being harmed by his contract due to the impact of rumors raised in the stock exchange by one of the investors, or is affected by the delay of the other contractor in the implementation of its obligations.

Whatever the causes of these disputes, its existence is an obstacle in the way of dealers that must be resolved. In this regard, we find that the rules of the stock exchange have determined the means used to settle these disputes. The settlement of these disputes is one of the issues that the laws of the stock exchange have paid great attention. Based on the need to regulate dealing and encourage investment in the stock exchange. And the review of some laws related to stock exchanges, including Iraqi law. We find that they have organized two basic instruments for the settlement of these disputes: arbitration and judiciary.

Arbitration is one of the most important means of settling commercial disputes, because of its confidentiality and speed, and the existence of arbitrators agreed upon by the parties to the dispute. They

have the expertise and specialization in the subject of the dispute, which fulfils the requirements of the stock exchange clients, where investors and brokers in the stock exchange fear to harm their reputation or disclose their trade secrets before the judiciary.

Having been adopted as a means of settling disputes by the laws of the stock exchange, States have been interested in the system of arbitration in the disputes of the stock exchange and developed its rules, where the issuance of special arbitration rules. The competent arbitrators listed on the stock exchange, for the purpose of being reviewed by the parties to select among them, when selecting arbitration to settle their disputes.

The choice of arbitration as an effective, and fundamental means in resolving the disputes of the stock exchange will reassure the parties, and protect transactions, despite the differences in jurisprudence and legislation in the necessity of resorting to the judiciary to settle these disputes, this is reflected in the way of the regulate the rules of arbitration from one state to another.

2. Arbitration Agreement

The arbitration is based on the consent of the parties, which is embodied in their agreement, whether this agreement is prior to the occurrence of the dispute, which is known as the arbitration clause, or later which is known as Submission. But if the will of the parties was the legal basis of arbitration. However, this will move within the limits established by law only. So, the arbitration includes the transfer of the dispute from the Jurisdiction court, and makes it subject to the arbitrator's competent. This cannot be done without the legislator's approval of an explicit legal provision, which in fact constitutes the legal basis for the arbitration. There is no legal effect on the Arbitration agreement unless the law allows for the parties to settle their disputes by arbitration.

We conclude that arbitration is based on the legislator's approval, and the parties consent to choose a way to settle their dispute. This is for Voluntary Arbitration, while the mandatory arbitration, which imposed by the legislature with a binding legal provision is based on that legal provision only.

The legal bases of arbitration in the stock exchange disputes may be found in the consent of the parties "Voluntary Arbitration", or may be

based on the legislative provisions, which oblige the parties to settle their dispute by arbitration “Mandatory Arbitration”.

Some laws have been adopted the voluntary arbitration, by allowing the parties to choose the way of settling their disputes. We find that some stock exchange laws mentioned a special provision expressly authorizing the parties to agree to arbitration to settle their dispute, for example, the article 59 of the Kuwaiti Stock exchange Law No 7 of 2010, where States “Disputes arising out of the obligations established in this law or any other law may be settled by arbitration, if it relates to stock exchange transactions..”

Other laws did not determine a specific means of settling stock exchange disputes, like the Jordanian Law, where the Amman Stock Exchange Law No. 1 of 1990 does not include what oblige the parties to settle their disputes in a specific way, nor does prevent them to agreeing to settle these disputes by arbitration. This means the parties may be agreed to arbitration in according to the article 9 of Jordanian Arbitration Law, no 31 of 2001, which allows for the parties to agree on the arbitration to settle their dispute. This situation changed after issued "Amman Stock Exchange Directives for Dispute Resolution of 2004". Article 3 of this Directives adopted voluntary arbitration, where include ((Any dispute arising between Members and their clients shall be resolved through arbitration procedures at the ASE, in any of the following cases: -

1. If the agreement drafted between the parties include an arbitration clause stipulating that all disputes pertinent or related to the agreement shall be conclusively resolved in accordance with the provisions of the ASE Instructions for Dispute Resolution by one or more arbitrator as the parties may agree.

2. If the parties agree following the arising of a dispute that it shall be conclusively resolved in accordance with the provisions of the ASE Instructions for Dispute Resolution if there is no arbitration clause.))(Amman Stock Exchange, 2018)

The parties may prefer arbitration over other means of the settlement the disputes, because of its advantages, such as the speed in resolving the dispute, confidentiality, and experience.(Saleh Rashid, 2009, p. 32)We must mention that the mechanism of transactions in the stock exchange, makes it difficult to imagine an agreement between the seller and the buyer of the securities to arbitrate, in the light of the

inability to deal directly, because that no direct dealing between them, and any securities transaction must have been made by a licensed broker. Section 3 paragraph 3/1/A of ISX Law refers "All transactions on the Exchange shall be restricted to those conducted by the Brokers authorized by the Exchange to engage in such transactions." Therefore, the agreement on arbitration is found by the agreement between the brokers, each one as an agent of his client, this relation to disputes arising between seller and buyer. So, it is easy to imagine their agreement on arbitration to settle any dispute that might arise between the brokers and clients, in this case, the parties should respect their agreement to submit their dispute to the arbitral tribunal.

Thus, the basis of arbitration under the laws that adopted the voluntary arbitration is based on the consent of the parties, and the legislator's approval of the arbitration, whether this approval is in a special provision in the stock exchange law, or in the general provision in arbitration law. In contrast, we find that the legislator in other countries has been convinced of the effectiveness of arbitration to settle disputes arising from dealing in the stock exchange. Therefore, these laws oblige all dealers in the stock exchange to settle their disputes by arbitration, and to consider accepting their transactions in the stock exchange as acceptance of them to settle their disputes by arbitration. Like the Egyptian Stock Exchange Law No 95 of 1992, where Article (52) states "disputes arising from the application of the provisions of this law shall be settled among the dealers in securities through arbitration only." and the article 2 of UAE Securities and Commodities Authority Decision No. 7 of 2000. The same approach was followed by the Bahrain Stock Market Law No. 4 of 1987 in Article 13, and Decree No. 14 of 1995 establishing the Doha Stock Market in Article 19.

These laws have previously imposed on the parties a specific method to settlement of their dispute, without leaving them the freedom to choose between dispute settlement methods, and choice of the most appropriate means from their point of view, with the nature of their dispute, and in this case, the arbitration became the original jurisdiction in these disputes and any request from the parties to the judiciary to settle this dispute will be rejected for point of the lack of jurisdiction. (Saleh Rashid, 2009, p. 241)

Obligating the parties to settle their disputes by arbitration, may be referred to the inclination to unify the ways of settling the dispute

within the stock exchange. However, we see this is not acceptable because it constitutes an infringement on their right to litigation.(Saleh Rashid, 2009, p. 181)

With the clarity of this infringement on the rights of the parties, however, mandatory arbitration remained an exist in the Egyptian Stock exchange Law until the Egyptian Supreme Constitutional Court issued its judgment on 13/1/2002, which made a fundamental change in the legal basis for arbitration in disputes in the Egyptian Stock exchange, This court has ruled that the Competence of the arbitral tribunal to settled disputes related to the stock exchange has entered into force in its Competence, involves the infringement of the right of litigation, and the denial of the parties to resort to their natural judge that guaranteed by article 68 of the Constitution, so the provisions of mandatory arbitration in the Stock Exchange Law, and its Executive Regulations, should be considered unconstitutional.

By this ruling, the Supreme Constitutional Court of Egypt has abolished the legal basis for mandatory arbitrating in the Egyptian Stock Exchange. There is no longer an obligation on parties yet to settled their disputes by arbitration, the jurisdiction has returned to the courts, with the possibility to the parties to chooses the arbitration for settling their disputes if they decided that. Some Scholarssupported this judgment(Mo'men, 2007, p. 293)(Makhlouf, 2004, p. 152), they confirmed to the constitutional rights of the parties, and the necessityto respect it by the stock exchange laws, so left them to determine the method of settlement of their disputes.

In 2014, the Egyptian Stock Exchange adopted the arbitration rules for the settlement of Stock Exchange disputes as an optional method.Article 6 of these rules states ((The Egyptian Stock Exchange Arbitration Rules (hereinafter referred to as" the Rules ") shall apply where one or more arbitration's party (referred to as the" parties ") agree to refer disputes arising in relation to a specific legal relationship, Contractual or non-contractual, to arbitration under these Rules for the settlement of such disputes)).(The Egyptian Exchange, 2018)

In UAE Law, the Scholars rejected and criticized the provisions that adopted mandatory arbitration in the settlement of such disputes. They described the article 2 of the UAE Securities & Commodities Authority decision No 7 of 2000, that it came in the arbitrary logic not based on a stable basis, and that the lack of interest in the will of the

parties has exceeded the constants of arbitration based on the autonomy of will. Whereby this decision, the parties were obliged to settle their dispute to the arbitral tribunal established in the stock exchange, without leaving them to choosing of another method to settle their disputes or intervene in the formation of the arbitral tribunal, or arbitration rules. (Kassem, 2007, p. 12) This rejection made UAE Stock Exchange Commodities Authority, return from mandatory arbitration to the voluntary arbitration, by leaving the matter for arbitration in disputes in the stock exchange to the agreement of the parties. Article (2) of decision No. 1 of 2000 modified to be "Arbitration is optionally used in resolving disputes that arise from the trading of securities and commodities, upon the consent of all parties. The provision of this Regulation shall apply in this regard."

In Iraq, the legal basis for arbitration in the disputes of the stock exchange is the legal provisions that make arbitration the only means to settle them. The Iraqi legislator imposed arbitration to the parties to settle their disputes, since the Baghdad Stock Exchange Law, No 24 of 1991. This law assumed the acceptance of the parties to deal in the stock exchange as implied acceptance of a settlement of their disputes by arbitration. Article (49) of this law included "A committee of arbitration shall be formed by a decision of the Minister. Its competence shall be to settle disputes concerning transactions in the market, and dealing in the market is considered acceptance of arbitration."

The situation did not change after the issuance of Iraq Stock Exchange law No 74 of 2004 "ISX Law". The title of Section 14 addressed "Arbitration", so the paragraph 1 of section 14 contained "The Exchange may adopt rules providing for arbitration of disputes between members and between members and their customers who shall accept to arbitration."

We have seen this paragraph has started with a sentence "may adopt rules", which may indicate that the adoption of such rules optional, but when looking at the other sentences in the same paragraph, we find it confirmed that adopting this rule is necessary to activate of arbitration in the settlement of disputes, especially in light of obliging the brokers to settle their disputes by arbitration. So, we note that the ISX Law did not issue any rules or regulations in this regard, and this is a deficiency in a fundamental issue did not remedy in the rules issued by ISX Law to regulate trading in it.

According to the ISX Law, we noted that the legal basis for arbitration in stock exchange disputes is not uniform, but varies according to the status of the parties of the dispute, whether they are brokers or investors. As for disputes involving brokers, whether they are individuals or as agents for their clients “seller & buyer”, the ISX Law is the basis upon which the arbitration is based, because that this law obliges brokers to settle their disputes by the arbitration. So, the section 14/1/ii include

“Conducting transactions in securities on the Exchange shall be considered an acknowledgement by a Broker to subject any disputes to arbitration.”

Therefore, the brokers cannot agree to settle their dispute by another way, nor shall they exercise their right to request judicial protection guaranteed by the Iraqi Constitution.

As for the legal basis for arbitrating in disputes between brokers and their clients, is not as clear. However, it can be concluded that the ISX Law requires the acceptance of the client only, when pointed out that the arbitral tribunal “to arbitrate disputes between members and their clients who accept arbitration” (Article 14/1 of the ISX Law), this indicating that without the acceptance of these clients, the arbitral tribunal does not have the competence to settle the dispute, and the acceptance of the members “brokers” is not required in practice, because the legislator assumes their acceptance to settle all disputes in the stock exchange by arbitration, but they are in fact obliged to arbitrate. Thus, we have seen that the arbitration in these disputes is voluntary, on the side of the client, and mandatory on the side of the broker. If the client seeks to settle his dispute with the broker by arbitration, depends on his consent, it means that he can reject the arbitration and sue in court. But what would be the position of the broker, who is obliged by stock market rules to resolve any dispute by arbitration?

It seems that the brokers will only have to go to court, as long as the law suspends the settlement of this dispute by arbitration on the client's acceptance, which indicates that the client's refusal to arbitration make a significantly changes the course of the matter. Thus, the court is becoming jurisdiction to settle the dispute rather than arbitration. As for the broker, the client rejection to arbitration, make him recover his right to litigation.

3. Formation of the Arbitral Tribunal

The arbitration is based primarily on the power of will, which assumed that the consent of the parties will have a fundamental role in the formation of the arbitral tribunal. However, this is not always applied under the laws of the stock exchange but rather depends on the policy of the legislator in determining the basis for arbitration to settle these disputes.

We have seen that the role of the parties in the selection of the arbitral tribunal narrowed and widened, according to the adopted type of arbitration. In voluntary arbitration, the primary role in this regard shall be the agreement of the parties as a general rule. In their agreement, they shall form the arbitral tribunal, determining the number of arbitrators, their personalities, and qualities.

However, the decision of the Securities and Commodities Authority in the UAE mentioned above, although the settlement of the dispute has been suspended by arbitration on the agreement of the parties after its amendment, but it retained the other provisions governing the arbitral proceedings, which were regulated by peremptory rules, including the formation of the arbitral tribunal Article 10 is considered. In contrast, the role of the will of the parties in the formation of the arbitral tribunal is almost non-existent in mandatory arbitration, which was adopted by some stock exchange laws. These laws, when assumed the acceptance of Members to deal in markets as acceptance to settle their disputes by arbitration, also assumed their acceptance of the arbitral tribunal legally defined the task to the settlement of the disputes.

In the Iraqi law, which adopted mandatory arbitration, we have seen that the appointment of the arbitral tribunal is carried out by a legal text without the intervention of the parties. The Article 49 of the Baghdad Stock Exchange Law gave the Minister of Justice the power to form an arbitral tribunal to settle stock market disputes, headed by a judge and two members of the Board of Governors of the Stock Exchange. The first paragraph of article 49 includes ((The arbitration committee shall be formed by a decision of the Minister of Commerce, headed by a judge of the second category at least chosen by the Minister of Justice, and the membership of two members of the Board of Governors, whose task is to adjudicate disputes relating to transactions in the market.)). It seems that the formation of the arbitral tribunal is

subject to the law of the stock exchange and that their number is consistent with the general rules established in the Civil Procedure Law, which requires that the number of arbitrators odd numbers, in order to achieve the required majority for the arbitral award.(Article 270/1 of Iraqi civil procedure law¹).Moreover, it appears that the availability of experience in the subject of the dispute was of interest to the legislator by requiring the membership of two of the Board of Governors of the Stock exchange in the arbitral tribunal, in addition to the existence of the judge is to ensure the expertise in the legal aspects.

Now, the ISX Law did not specify the method of forming the arbitral tribunal, leaving this issue to the rules issued by the stock exchange. This raises doubts about whether the parties will have a role in the formation of the arbitral tribunal or not. It should be noted that the arbitration tribunal of the stock exchange mentioned in paragraph 1/A of section 14, is not an arbitral tribunal for the settlement of disputes. But it is a committee formed by the board of directors of the Iraqi stock exchange to determine its needs, and arbitration requirements(Paragraph 3 (g) of section 8 of ISX Law¹).Whatever the method of forming this tribunal, its appointment gives it jurisdiction to settle the disputes, which requires taking the necessary procedures to settling the dispute.

As for the UAE law, the arbitral tribunal shall be formed by a decision of the Chairman of the Board of Directors of the Securities Commission.Where the General Director of the Market shall be nominated one arbitrator and the other shall be nominated by the General Director. The tribunal shall preside by a judge nominated by the Minister of Justice. (Article 10 of Decision no 7 of 2000).

We note that the arbitral tribunal in the UAE law consists of three arbitrators, which means cannot be formed of a single arbitrator, nor find a role for the parties in the formation of the arbitral tribunal.

In the Egyptian law, the arbitral tribunal shall be formed of three arbitrators, unless the parties agree in advance on the number of arbitrators.(Rules of Arbitration Egyptian Stock Exchange, Article 11), If the parties do not agree within 30 days from the date of taking delivery of the notice of arbitration to the respondent, the arbitral tribunal shall be formed by one arbitrator.The legal sector in the stock exchange may appoint a single arbitrator, at the request of one of the parties.

When the arbitral tribunal is formed of three arbitrators, each party selects an arbitrator, and the two arbitrators will appoint the third arbitrator, who will be the chairman of the arbitral tribunal. (Article 13)

4. Arbitral Procedures

The arbitration procedures mean the procedures that the arbitral tribunal shall follow after its formation to issue the arbitration award. (Abu Zaid Radwan, 1998, p. 87) This includes the necessary to establish the complaint by the parties to the arbitral tribunal, the methods adopted for the notification, the dates for the holding of the arbitral hearings, the venue, hearing the litigants and submit their claims, defenses, the provisions of the attendance, absence of the parties, the evidence relied on the evidence, the necessary procedures to follow the issuance of the arbitral award and the duration to settle the dispute.

While the arbitral tribunal cannot operate in accordance with procedures that it determines without authorization from the parties or a special legal provision, the parties must agree on special rules to regulate these matters. In this regard, they may agree on appropriate procedures to facilitate the completion of the settlement of the dispute, which would avoid him the complexity of judicial proceedings, such as agreement on easier methods to proving the disputed right, adoption of the particular system to notifications, or the submission of claims and defenses, etc., which should not be contrary with the public order, and guarantees the rights of the defense, and the equality of the litigants. (Sami, 1992, p. 171)

The right of the parties to regulate such procedures shall be only in the voluntary arbitration. (Article 265 of Iraqi civil procedure law¹). Where procedures shall be determined in mandatory arbitration by pre-prepared texts either under the rules of the stock exchange without leaving them to the agreement of the parties or for the general rules of the law of proceedings or arbitration law. The parties and the arbitrators find themselves, are obliged to follow what is decided in this respect.

Article 2 of Section 14 of ISX Law includes "The Exchange arbitration procedures shall be set forth in Exchange rules and approved by the Board of Governors, then submitted to the Commission for approval."

It seems that the legislator does not want to subject disputes related to the stock exchange to litigation procedure in the courts, which

established by the Civil Procedure Law(Fadel, 2009, p. 20). On the contrary, the legislator wanted to distance them from these procedures, and to oblige the arbitral tribunal to follow special rules to be approved by the specified commission, - which has not yet been issued -. Perhaps wanted to give this commission to adopt the simplest procedures that respond to the requirements of dealing with the stock exchange. While the stock exchange commissions have not issued this procedure. This means that the arbitral tribunal shall follow the procedures and conditions prescribed by the Civil Procedure Code, in order to perform its function of resolving the dispute and until such special procedures are adopted.

As for the arbitration procedures in accordance with the rules of the (UAE Securities Exchange, 2000), the arbitral tribunal exercises its functions in the settlement of disputes under special procedures specified in the provisions contained in decision No. 7 of 2000 issued by the Securities & Commodities Authority. The arbitral procedures start with the written submission for arbitration submit to the Authority, including the data specified in the decision,(Article 6 of Decision no 7 of 2000) this written submission is registered in a special record(Article7)Thereafter, determines a date for the arbitration hearing, and notify the Respondent, which must submit his defense Statement within 15 days from the date of notification.(Article 8) The commission shall provide the arbitral commission with the file of the dispute within one week from the date of its receipt.(Article 21).The arbitral commission shall establish a timetable for the arbitral proceedings, and then provide the Authority with a copy of it. Then, the arbitral commission shall review and settle the dispute in accordance with the stock exchange Law and the rules and decisions issued there under, within a period not exceeding 60 days, after that issue its arbitral award with the approval of a majority of its members, and shall be putted in the Office of Legal Affairs of the stock exchange, which delivers the parties by a copy signed by the arbitral commission.(Article 43)

The arbitration rules in the Egyptian Stock Exchange gave the arbitral tribunal an important role in determining the arbitral proceedings. The arbitral tribunal may follow the procedures it deems appropriate, provided that it upholds the basic principles of litigation, such as equality between the parties and giving each of them an

opportunity to present its case. (Rules of Arbitration Egyptian Stock Exchange, Article 21 paragraph 1)

The arbitral tribunal shall establish a timetable for arbitration after taking the opinion of the parties, holding hearings for witnesses at the request of the parties, and decide whether it is preferable to hold such hearings or to proceed on the basis of the pleadings.

The arbitral tribunal shall then determine the period during which the plaintiff shall submit a written statement, supported by documents and evidence, to the legal sector (Article 24). The arbitral tribunal shall also determine the period during which the Respondent shall submit his defence (Article 25). After hearing witnesses, discussing evidence and exchanging notes, the arbitral tribunal shall issue its decision by majority.

5. Enforcement of the Arbitral Award

We cannot imagine that the arbitral tribunal will perform its mission without issuing an arbitral award on the dispute. In practical, the importance of this award is demonstrated only by its enforcement. By enforcement of the arbitral award, the dispute between the parties settles and each of them acquires its right. Therefore, the stage of enforcement of these awards of the stock exchange disputes is one of the most important stages of settling the dispute. (Fadel, 2009, p. 28)

The arbitral award issued in the dispute arising from dealing in the stock exchange is not different in content from other arbitral awards. Generally, the arbitral award shall either include grant the right to one party, and oblige the other party to do something, or include the obligation of each party at the same time, as if the expenses were divided between them. (Sami, 1992, p. 353).

At a time when the parties want to settle the dispute, it is assumed that each of them voluntarily to implement the award of the arbitral tribunal, by performing its provisions. However, the arbitral award is not always implemented voluntarily. There may be one of the parties refuse its implement. In view of the consequences of this refusing to disqualify the other party from his right that granted by the arbitral tribunal. So, we in need of a means to force the party that refuses to implement of the arbitral award, in the same time any party by itself cannot force the other to enforce the award, because it constitutes an illegal intervention. Therefore, he needs to the assistance of the Enforcement of

judgments office, which can enforce the arbitral award by following the procedures prescribed by law.

Although arbitration performs a similar function to the judiciary judgment, arbitral awards are not enforced in the same manner as judicial judgment, because the arbitral award cannot be enforced directly by the Enforcement of judgments office. They do not have the executive power of judiciary judgment. There is nothing in the law what gives it the enforceability power when it issued, but this subject is depended on their acquisition the enforcement power, according to the law. (Articles (9-14) of Iraqi executive law)

The UAE and Egyptian law did not refer to the manner of implementation of the arbitral award, and all that exists in this regard is the text of Article 50 of the UAE Arbitration Rules, which indicated that the request to cancel the arbitration award does not lead to a suspension of its enforcement, this means that the arbitral award has enforcement power as soon as it is issued. Article (40/2) of the Egyptian Arbitration Rules states that the arbitral awards shall be final and binding. The parties shall undertake to implement all these decisions without delay. This article shall give the arbitration decision an enforcement power, which shall be enforceable once it is issued without the need for any other action.

The ISX Law does not specify how to enforcement of arbitral awards in disputes related to dealing with the stock exchange (Kashkool, 2015, p. 256). In fact, this negative position cannot be interpreted having arbitral award enforcement power, therefore, It should be subject to the provisions of the Iraqi Civil Procedure law, which requires the court recognition of the awards, in order to having enforcement power, according to Article 270 of Iraqi Civil Procedure law, as a general provision covering all arbitral awards, such as these issued in disputes arising in the stock exchange, as long as the ISX Law does not provide a contrary text.

This requires of the party submitting the ratify request and payment of the prescribed fees, then notify each of the parties to the proceedings by the date of the ratification session, if the court agreed with the ruling of the arbitrators, and there is no reason to refuse to the ratification, the court shall have ratified the arbitral award.

After the ratification of the court, the arbitral award rises to the level of the court ruling and becomes enforceable by the Enforcement of

judgments office. Through this ratify, the judiciary can exercise its control over that award, (Fadel, 2009, p. 29), this control is cover the arbitral objectively and formally, according to the article (274) of the above law, in order to ensure its validity. So, the court will ratify it, if it was valid. The claimant can request to be enforcing the arbitral award by the Enforcement of judgments office. By this enforcement, the dispute between the parties shall be settled.

6. Challenges of Arbitral Award

The arbitral award is a result of the efforts of the arbitral tribunal in the light of its understanding of the dispute, surrounding circumstances, claims, defences submitted by the parties, following the prescribed procedures. However, although the arbitral tribunal has expertise in the dispute subject to arbitration it may be issued an award that does not accept by one of the parties. Practically the party, who not issue the award in his interest, makes him in need to recourse against it.

At a time when the stability of the rights prescribed by the arbitral award requires the parties to abide by it and satisfied of its fairness. The law allows them to challenges of an arbitral award, by following legal procedures during the specific dates. (Fadel, 2009, p. 24)

Article 47 of the UAE Arbitration Rules allows appealing of the arbitral award by submitted written a submission to the Jurisdiction civil court. The request for annulment must be submitted within 30 days from the date of its receipt, otherwise, the request will be reversed. The court has the authority to ratify the award if it finds it not in violation of the law, Or to annul the arbitral award if you find one of the specific reasons.

The article 47 determine this reasons by the following : ((1- Where the party requesting setting-aside has not been validly notified of the appointment of the Panel or the arbitration proceedings, or has not been able to present his case before the Panel for a reason which satisfies to the court..

2- Where the arbitral decision has dealt with matters out with the scope of the dispute referred. If however it is possible to sever the decisions related to matters referred to arbitration from those not so referred; only that part relating to matters not referred may be set aside from the arbitral decision.

3- Where the rules relating to formation of the Panel or the procedure followed in the arbitration have been contravened .

4- Where the arbitral decision is contrary to public order.))

The rules of arbitration in the Egyptian Stock Exchange did not include provisions for challenges. This indicates that this matter was left to the general rules of Arbitration Law No. 27 of 1994. According to this law, the arbitral award may be challenging to the Jurisdiction court within 90 days from the date of issue. The Court may annul the award if one of the reasons referred to in Article 53 is available.

We have seen that the Iraqi Civil Procedure Code make the adherence to invalidity is the only way available to challenges the arbitral award, where required for this purpose to submit a request to the Jurisdiction court according to the reasons specified exclusively. This request is submitting by one of the parties to the court when the arbitral award is submitted for ratification. The court itself may judge the invalidity of the arbitral award if find one of the invalidity reasons.

In this regard, the Iraqi law did not regulate the challenges of arbitral awards issued by the arbitral tribunal by stock exchange rules, like the other matters relating to arbitration in the stock exchange disputes, nor did not organize the challenges in the same manner in the civil procedure law, but it has been assigned to specific department in the stock exchange, consider challenges of arbitral awards .It also does not follow the same approach in addressing this issue in relation to the generality of these awards. It distinguishes between awards that ruling in disputes between Brokers, and disputes between Brokers and their clients.

Section 14/2/a of ISX Law regulate the challenges of arbitral awards issued in disputes arising between Brokers, where indicate to

(a- With respect to disputes between Brokers, the arbitration committee decisions shall be binding on all parties, subject to such provision for appeal as the Commission, for the protection of investors, may see fit to adopt by rule.)

It is clear that appeal is the way to challenges of the arbitral award issued in these disputes. Generally, this text allows to covers all disputes between Broker when to exercise their activity in the stock exchange, either as personal capacity or as agents of their clients.The ambiguity of the phrase “subject to such provision for appeal as the Commission”,but, it indicates that the appeal against these arbitral

awards is submitted to the Iraq Securities and Exchange Commission and Board of Governors of the Exchange. This means the Exchange Commission is competent to form an arbitral tribunal and to consider to appeals made on arbitral awards issued in Brokers disputes as well as other jurisdictions. This is supported by Section 14/2/b of the ISX Law, which confers on this Commission the jurisdiction to appeals against arbitral awards made in disputes between the Brokers and their clients.

Regarding disputes between Brokers and their clients, Section 14/2/b regulates it where to refer to ((With respect to disputes between Brokers and clients, either party may appeal the decision to the Board of Governors of the Exchange; and, if still is satisfied, to the Commission. The Commission's decision shall be binding and not subject to further appeal)).

Accordingly, the settlement of the dispute by arbitration may end with an award, that is not acceptable by one of the parties, who is an appeal against it in accordance with the provisions of this section, where the appeal in two steps. First: appeal the award to the Board of Governors of the Exchange. The decision of the Board of Governors issued as a result of the appeal shall not be final. Second: the parties may appeal the arbitration decision to the Commission to decide definitively what it deems appropriate and according to the specific circumstances of each case.

There is nothing in the stock exchange law that determines the scope of the authority of the Commission in case of appeals submitted to it, whether it can judge the invalidity of the award as a whole or part, or whether it could settle the dispute by itself without returning the case to the arbitral tribunal in the same way as the courts. On the other hand, we do not find an acceptable justification for discrimination in the manner of appeal against the arbitral award according to the parties to the dispute. The ISX Law did not specify the legal period that is necessary to submit appeals, moreover, this law did not specify the reasons that may be appealed against the arbitral awards, whether submitted to the Board of Governors or to the Commission (Fadel, 2009, p. 25). In light of the fact that there are no restrictions limiting of control of the competent authority to hear appeals against those awards.

Through the provisions of ISX Law concerning the challenges of arbitral awards, appears that the legislator wanted to remove the jurisdiction of the court from the challenges of arbitral awards, referring

it to the supervisory bodies of the stock exchange,(kashkool, 2015, p. 258)exception of the provisions of the Iraqi Civil Procedure Law.

In fact, it seems impossible to completely exclude the intervention of the judiciary in the arbitration of stock exchange disputes, especially at the stage of enforcement of the arbitral award, even if it is possible to exclude its intervention in the Challenge(kashkool, 2015, p. 259).If we know that the arbitral award, regardless of the nature of the dispute, needs to be ratified by the court to be enforceable. In the absence of specific provisions in the Iraqi Stock Exchange Law regulating the enforcement of those awards,this means that the intervention of the judiciary is necessary. The question whether the subject of court approval allows judging invalidity according to the request of the parties, or may it do that on its ownthenfinding one of the reasons established by law is available?

The negative answer to this question would nullify the requirement of the court's recognition of the arbitral award from its content because the court's recognition is considered as judicial supervision of the arbitration. It is unreasonable for the court to ratify the award, with its knowledge of the existing one of the reasons determined by law for the invalidity, such as the court finding the award issued without taking into account the procedures prescribed, or issued without taking into account the right of defence.At the same time, the answer to the question in the affirmative allows the parties to challenges of the invalidity of the arbitral award in the court, which constitutes a violation of the provisions determined by the ISX Law on the appeal, where the appeal is subject to the Board of Governors and the Commission only, especially when this law noted that “The decision of the Commission shall be binding and shall not be subject to further appeal”(Paragraph 2/b of Section 14 of ISX Law). This undoubtedly reveals that there is a flaw in the stock exchange law as a result of its negative position of regulating the issue of enforcement of the arbitrate awards, as well as the ambiguity and lack of texts dealing with the issue of awards.

7.Conclusion

The foregoing provisions on arbitration in the disputes of the Iraqi Stock Exchange is a representation of the legal reality according to the provisions of the ISX Law.Which makes arbitration mandatory in

general, but the situation is quite different in the practical, because the provisions of the arbitration were not applied, nor the arbitral tribunals did not form yet.

It also appears that when the issuance of stock exchange rules, mandatory arbitration will be applied to settle these disputes as stipulated in the law. This reinforces the need of not to impose mandatory arbitration to settle disputes. More importantly, the efforts should be directed towards promoting investment in the stock exchange, in a way that does not violate the rights of members, such as the establishment of a specialized arbitration center that operates in accordance with rules and requirements that are appropriate with stock exchange disputes, including experts in this area, which encourages members to prefer arbitration to other methods.

We have seen that it is appropriate that if the Iraqi Stock Exchange trend towards establishing those rules. It must do for guarantee the right of members in the stock exchange to litigation, through the approval of the voluntary arbitration, avoid the policy of coercion, obligation in determining the methods of settling the disputes, and leave the parties to choose the appropriate means to settle it.

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