

# Implementing Arbitration Orders according to Jordan Legislations

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## **Abstract:**

*Study purpose :To negotiate Implementing Arbitration Orders in Jordan Arbitration Code , which is the most important element in arbitration judgments regarding to this implementation elements whether positive or negative , and the implementation parties with it's mechanism to reach the result of the final arbitration order on Home Land.Through this study , it becomes clear to us that the implementation of arbitration order is the result that litigant aspired by the arbitration litigants which is the final purpose of arbitration parties . Arbitration process and implementing these orders are not be carried out but according to terms and conditions must be undertaken . And that there are problems that face arbitrators orders , and because we found that the national arbitration is under studying ; I try to mention implementing foreign arbitration order that other study dealt with which follows implementing executing orders of foreign courts , agreements and international treaties ; therefore there in no need to continue studying them .*

**Keywords:** Arbitration Orders, Jordan Legislations

## **I. Implementing Arbitration Orders**

### **Study Task :**

To negotiate Implementing Arbitration Orders in Jordan Arbitration Code , which is the most important element in arbitration judgments regarding to this implementation elements whether positive or negative , and the implementation parties with it's mechanism to reach the result of the final arbitration order on Home Land.

### **Study Abstract:**

The task of dealing with judicial departments whether natural one ( courts ) or optional judicial party ( Arbitration) is to achieve justice which results can't be seen but after implementation which is to obtain justice fruits.

As basically implementing arbitration shall be the aimed goal of seeking arbitration , and to reach these fruits shall be the obligatory implementation(1) . And if implementing the judicial order is

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achieved by obligatory implementation through judicial competent departments , whereas arbitration implementing orders shall not obtain this characteristic (2).

(1) Ezzat Buhairi / Implementing Foreign Arbitration Orders /Dar Al Tahqiqya Al Dinia 1997 P108

(2) Ahmad Hindi /Implementing Courts judgment/ Dar Al Jama'a Al Jadida 2001 P11

But after definite conditions that have to be mentioned here to clarify the troubles that hinder reaching this method and how to solve it , which means that arbitration order shall be strong by itself when implemented .

Though studying implementing arbitration orders , we have to deal with local and foreign arbitration and the lawful articles that treat implementing these orders with its implementing conditions , in addition to the relationship of this implementation with national Law rules with it's connection to international treaties and foreign legislations. Also the strong will that leads this kind of orders judging ( private) , and it's ability to face legal rules that organizes implementing ordinary judging orders , and does it have the free will for the litigation parties who elected arbitrators to settle their conflicts and follow legal rules to implement these orders , or that issuing the order means to be strict to the decided rules without any election or difference between them as the rules related to arbitration procedures such as difference between national or foreign procedures , or is there any difference between national arbitration rules and foreign arbitration ones ; regarding to this study , we will deal with it through two demands and many branches.

#### **Study divisions :**

Here we will divide the study into two branches which are :

**First Demand :** implementable arbitration order , as the study shall be divided into two branches :

**The First branch :** identifying Arbitration

**The second branch :** legal rules that control arbitration implementation .

#### **Second demand :**

**The First branch :** procedures and conditions of implementation application.

**The second branch :** judicial parties control during implementation .

#### **Opening Speech:**

The research importance is related to the ability of controlling implementing orders which is strongly connected with the motivation that lead people to this way on one hand , and on the other hand to have a safe quick way shall be the other side to achieve this way success. Whereof in this research ; the researcher dealt with it through demands and branches depended here.

## **II. First demand : implementable arbitration position**

### **First branch : Identifying Arbitration**

Reviewing Jordan Arbitration Code , we find out that article 2/A defined arbitration body by that it consists of one arbitrator or more to settle conflict which depends on arbitration according to this code. And because law is not meant to identify the indicated idioms, Fiqh shall do that . Reviewing legal studies and jurists opinions , we find that it is so hard to have a full definition express arbitration contrary to judicial orders magazine issued in 1790 which identify arbitration ( the litigated parties willingly have an arbitrator to settle their conflict and case).

As the meaning in language comes from order source stressing on Kaf letter which means authorization in arbitration as using arbitration in some matters to be arbitrated (2) . In legal terms , arbitration is identified by that a person shall be an arbitrator between them , so to elect competent person to arbitrate between them who has no jurisdiction between the two.

Whereas in legal convention , it is identified by some Arab jurists as to agree putting the dispute to one or more arbitrators to settle it instead of the competent courts .

And it is identified by Jordan Cassation Court in 1994 that ( it is an exceptional way to settle disputes far away from ordinary litigation and the guarantees it guarantees.

(1) Jordan Arbitration Code No. for the year

(2) Al Razi – Mokhtar Al Sihah P.148

(3) AbdulBade'e Shata / Explaining Egyptian Arbitration Code, print 2004 , P.11

(4) Cassation 1774/1994 publications of Adallah Centre – Jordan BAR , also 37/1972 Judicial Magazine for 1972 P.38

Legal articles are not specialized in identifying Arbitration , there are some famous Fiqh definitions like the definition that Arbitration is ( the decision issued by the arbitrator to solve the conflict irrevocably and fully or partly whether these decisions related to the concerned department or the procedures such as orders issued by judgment or arbitration body regarding the law that should be applied or the validity of the contract or in somebody responsibility(1)

Whatever definitions regarding arbitration or arbitration order ; we summarize that arbitration is an exceptional litigation method that judicial systems have reached during modern times .Because of the need for litigation that is characterized by specialization and quick in solving conflicts with out adhering the general procedural rules that narrow the borders of the conflicting parties .As for the arbitration order , it shall be the order that finalize the presented order whether partly or fully or acquires the executable characteristic.

Any identification for any legal system that can't cover all aspects of that system , so the researcher sees that these identifications are the closest one to arbitration conclusion and arbitration order , hope that it fulfilled the purpose for which the search should be sought ; then in order not to limit the difference in the identification , as we shall be deviated from the origin and the detail of the research .

(1) D. Hamza Al Haddad / revoke by cancel for arbitration orders issued in private international conflicts 1997 P17

### **Second Branch Legal rules that control Arbitration Order**

By referring to the provisions of Jordan Arbitration Code (article 48 ) that denies the right of the order to follow any means of appeal prescribed in the Civil Trials Origins ( and what is meant here is court judgments) stipulated in articles 49 /50/51 of this Code.

Accordingly ,there are set of rules that must be applied when searching for means to challenge arbitration order and other means that are required to be followed while implementing arbitration order ....So this point shall be divided into two divisions:

When researching for means to appeal arbitration order , these means shall be avoided according to Civil Trials Origins Code indicating the above said articles , then we must refer to Jordan Arbitration Code in articles 84-51 which allow a request to nullify the validity of the arbitration at Court of Appeal in which the arbitration proceedings were conducted by article virtues 2/A , 50 , and 51 of Arbitration Code , which in the event of submitting the application , either to accept it or invalidate the decision , or orders execution , even if the request is not requested by the litigants .

The desire to implement arbitration order through submitting an application to the competent courts to ratify the arbitration order , and by virtue of articles 25 and 53 of arbitration Code ; if the period of filling a nullity lawsuit expired and the application of for execution is not accepted before that ; so implementation procedures shall not be passed but after submitting an application to the competent court asking for execution by virtue of article 54 .if it is found out that the decision is not contrary to the public order in the Kingdom and was informed duly , shall order to implement it and that the decision issued by the order to be excuted is not permissible to be appealed against discrimination ; rather , it is permissible to appeal against through refusing implementation order by article virtue 54/B

### **III. Second Demand**

**First branch** : Procedures and conditions for requesting executing arbitration Order. (1)

When obtaining Arbitration order , it is necessary to pursue prosecution procedures that makes this order enforceable , and that merely reaching this judgment shall not carry any power before any party unless these elements are completed to gather . To clarify these elements ; the following points must be discussed.

1- In the event that the convicted party of the arbitration order decides to fulfill or voluntarily implement the content of this order ; this judgment shall be expired or has avoid the purpose of it's existence.

2- If in the event he doesn't do that , he shall be notified about the verdict , and a verdict must has been issued against him in presence or he doesn't be notified . By the case , the judgment must have been issued against all opponents , or that they informed dully , and the

necessary legal deadline for the implementation of the application for execution procedures has ended .

3- In the event that elements mentioned in term 2 are completed , and when initiating an application for implementing order , whoever wishes to implement it's content must submit the court the following :

1. A copy of arbitration agreement
2. The original arbitration order or a copy signed by all parties including the arbitrators , the dispute parties and the sessions clerk .
3. If issued by a language other than Arabic ; certified translation must be presented.

### **Second Branch**

The judicial extent control over order implementing and during it's execution by referring to article 54 of Execution Code . By reviewing various jurists opinions , we find that there are controls and restrictions that must be examined for both parties of arbitration order whom are the one claimed for execution , and the juristic authority that required to implement it.

#### **First : The Applicant for execution**

Is the one who must submit an application to implement arbitration order , and shall be a legal characteristic to present this application ; who is usually the convicted party and the public right . And what is known that no one can submit a request to obtain an order to implement arbitration order if he had no benefit such as curious and who does not have a real interest , such as the volunteer instead of the hires of the convicted person or convicted with the intention with the intention of harming other creditor .As well as ,every natural or intangible person whom is considered by the juristic body that review this application; to have this characteristic , so if this characteristic is available , then it must be implemented according to the previous conditions indicated in article 53 of arbitration Code.

**Second :** the judicial authority required to obtain execution order according to what has been already explained , the court of appeal located in the geographical region in which the arbitration took place ; is the competent court to consider the request to implement the arbitration order , unless the parties in the arbitration agreement agree to another court of appeal in accordance with article 2 . When defining the competent court ; it appears that the parties of arbitration do not have deviation from the jurisdiction of the court of appeal , whether in appeal or execution order , but they do not have the choice of an appeals court contrary to the court in which arbitration took place , and in the event of disagreement ;the basic principle is that the court of appeal located there and which makes arbitration shall be the competent. When the jurisdiction is dully determined , there should be a set of rules that the appeal court is obliged to undertake.

A- The appeal court is considered to be a court of invalidity and implementation at the same time , and this shall be applied for cassation court in the event that he decides to annul the decision not to ratify and ratify the decision or ordered nullifying the verdict , so this court shall have this jurisdiction .

B- Court of Appeal has the invalidation control over arbitration order after the expiry of null appeal period . If execution order was affected after the expiry of the appeal period in accordance with articles 53 and 54 of Execution Code , and that court found that the conditions for requesting execution are not available , then it decides implicitly to nullify arbitration order even if it is too late to appeal or basically not to appeal of nullity .

C- Court of Appeal verifies the formal conditions of execution request , and the application must be as a paid summons for 2% of the verdict value provided that the fees shall not exceed 3000 dinars according to article 7 of Court Fees System amended 2008.

D- The arbitrator shall verify the completion of the aforementioned documents in accordance with article 53/B , and the court will start seeing objectively in appeal subject , and this will be by auditing and not by pleading . When nullity elements met ; the court decided to implement order if there is no in the kingdom such as when the two parties agreed that part of the agreement subject to arbitration was to work as a slave or a servant for other person .If it is possible to divide what include violation and to execute the rest according to article 54 so it is allowed . Refrain from execution order ; as executable arbitration order should be as if it wasn't , and as a result ; it was a nullity request from another point of view.

When the order is completed or not , the finishing shall be through:

Appeal against implementing order is not possible in 2019 till issuing the amending valid law that allows appealing court decision for execution , as well as the nullity and the failure of arbitration agreement when the decision of execution order is not ratified by Court of Cassation .In the event the appeal is dismissed , it is considered an implementation of the arbitration order and an executed order.

#### **IV. Conclusion:**

Through this study , it becomes clear to us that the implementation of arbitration order is the result that litigant aspired by the arbitration litigants which is the final purpose of arbitration parties . Arbitration process and implementing these orders are not be carried out but according to terms and conditions must be undertaken . And that there are problems that face arbitrators orders , and because we found that the national arbitration is under studying ; I try to mention implementing foreign arbitration order that other study dealt with which follows implementing executing orders of foreign courts , agreements and international treaties ; therefore there in no need to continue studying them . the aim of dividing this study is to search in all research elements and it's problems , in addition to the legal rules covering arbitration order . So dealt with procedures and conditions of implementing arbitration order , the juristic control on implementing arbitration order or the way it is executed ,appeal court role in controlling arbitration order through executing order or nullity . Hope that this study achieved the targeted object that the researcher seeks .

## V. Results & instructions

### Results:

1. Arbitration provisions are no longer executable as those of courts.
2. There are some procedures and basis that must be undertaken to reach execution or nullifying arbitration order.
3. There is an oversight over arbitrator work through a request for enforcement or a request to annul arbitration order.
4. Foreign arbitration provision does not apply provisions of national arbitration until achieving provisions of foreign courts implementation Law .
5. The recent legal amendment that occurred to arbitration law permitted to appeal arbitration order when the request to annul arbitrator order or decided to order the implementation.
6. Court control over arbitrators orders shall obtain some necessary full definite documents .
7. This court considers appeal or executing order by auditing .

### Instructions :

1. Jordan Arbitration code shall stipulate that there must be a record for arbitrators works and a serial number for each arbitration action took place in the territory of the Hashemite Kingdom of Jordan within departments that keep work secret, confidence and control .
2. That the two parties desire to consider the arbitration order as final whatever the result that may affect any legislative amendment on arbitration Code.
3. That the judicial control shall have a formal effect only on arbitration orders issued in Jordan.
4. To stipulate that the person who shall present for execution is the one who has the characteristic than the holder of the judicial order has without leaving it to diligence.

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1. Al Buhuri /Ezzat 1997 executing foreign arbitration orders – Dar Al Nahda Al Arabia – Cairo
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3. Dr. Ahmad Abu Al Wafa – Execution procedures in Trade Civil articles , print 9 -1986
4. Al Razi Mokhtar Al Sihah P.148
5. AbdulBade'e Shata – Explanation of Egyptian arbitration Code, print 2004 P.11
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7. Al Momani Ahmad 1983 – Arbitration in Jordan legislation , Al Tawfiq publication – Amman

**Laws :**

1. Jordan Arbitration Code.
2. Jordan Civil Trials Origins
3. Foreign orders execution Code.
4. System of fees and pleading stamps.