

The Time Element in International Commercial Arbitration

Dr. Mohamed Abdel Raouf

Attorney at Law

Abdel Raouf Law Firm

Secretary-General

**Cairo Regional Centre for International Commercial
Arbitration**

Valencia 7-8 November 2008

I- Introduction

- According to a recent survey, **the length of time to resolve disputes** is the **second** most commonly cited **disadvantage** of international arbitration (Queen Mary's School of International Arbitration research on "International Arbitration: Corporate attitudes and practices 2006").
- According to several arbitral institutions, in the majority of the cases, an award is rendered **within 18 months** from filing a request for arbitration, which is quicker than most transnational litigation cases.
- However, with arbitral proceedings increasingly **simulating court proceedings** in the length of time it takes to complete an arbitration case, this is now perceived as a disadvantage.

I- Introduction

- **Different Time-limits in Arbitration**
 - **Time-limits pertaining to the arbitral proceedings**
 - Time-limit for submitting jurisdictional objections
 - Time-limit for appointing & challenging the arbitrators
 - Time-limit for submitting the written statements
 - Time-Limit for the Hearings
 - **Time-limits pertaining to the arbitral award**
 - Time-limit for rendering the award
 - Time-limit for the correction and interpretation of awards and additional awards
 - Time-limit for the recourse against the award

II- The Position of Institutional Rules

A. Rules Imposing a General Duty on the Tribunal

1) The LCIA Rules

- **Article 14.1 (ii)** imposes a general duty on the Tribunal at all times “*to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay or expense, so as to provide a fair and efficient means for the final resolution of the parties' dispute.*”

2) The SCC Rules

- **Article 19 (2):** “*In all cases, the **Arbitral Tribunal** shall conduct the arbitration in an impartial, practical and **expeditious** manner, giving each party an equal and reasonable opportunity to present its case.*”
- **Article 23:** “*After the referral of the case to the **Arbitral Tribunal**, the Arbitral Tribunal shall promptly consult with the parties with a view to establishing a **provisional timetable** for the conduct of the arbitration.*”

A. Rules Imposing a General Duty on the Tribunal

- **Article 37:** “*The final award shall be made not later than six months from the date upon which the arbitration was referred to the Arbitral Tribunal (...).*”

3) The ICC Rules

- **Article 18 (4):** “*(...) the Arbitral Tribunal, after having consulted the parties, shall establish in a separate document a provisional timetable that it intends to follow for the conduct of the arbitration and shall communicate it to the Court and the parties.*”
- **Article 20 (1):** “*The Arbitral Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.*”
- **Article 24:** “*The time limit within which the Arbitral Tribunal must render its final Award is six months.*”

A. Rules Imposing a General Duty on the Tribunal

4) The CRCICA Rules

- **Article 15:** “*The arbitral tribunal may (...) also conduct a preliminary meeting for signing the terms of reference and to organize and schedule the subsequent proceedings with a view of expediting the resolution of the dispute.*”
- **Article 23:** “*The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.*”

A. Rules Imposing a General Duty on the Tribunal

5) The Swiss Rules

- **Article 15 (3):** *“At an early stage of the arbitral proceedings and in consultation with the parties, the arbitral tribunal shall prepare a **provisional timetable** for the arbitral proceedings, which shall be provided to the parties and, for information, to the Chambers within an appropriate period of time.”*
- **Article 23:** *“The **periods of time** set by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) **should not exceed forty-five days**. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.”*

B. Rules Imposing a Special Duty on the Parties and the Tribunal

1) The Rules of the European Court of Arbitration

- **Article 1 (2):** “By agreeing to refer a dispute under these Rules, the *parties* undertake to contribute to a **quick** and proper determination of their dispute and to **refrain** from doing anything which might cause **unreasonable delays** or raise **unnecessary obstacles** to the development of the proceedings.”
- **Article 1 (6):** “Appendix 3 of the Rules provides a **recommended timetable for the timing of the proceedings**...The Tribunal shall use **its best efforts** to ensure that the proceedings maintain, as much as possible, the time limits established by these Rules and as provided by Appendix 3.”
- **Article 7 (3):** “The time limits shall be applied by **the Arbitral Tribunal** without restricting the rights of the defence nor violating the **imperative requirement of expedition** of the proceedings.”

B. Rules Imposing a Special Duty on the Parties and the Tribunal

- **Article 7 (5):** *“As a general rule, any party causing an unjustified delay of the proceedings arising from late production of documents and/or late amendments to its claim may be charged with all costs and fees resulting from such a conduct.”*

2) The CRCICA Rules

- **Article 4 of CRCICA’s Code of Ethics:** *“The arbitrator shall also devote the time and attention necessary for a speedy resolution of the arbitration taking into consideration all the circumstances of the case. The arbitrator shall avoid any act or behavior likely to hinder the deliberation or to delay the settlement of the dispute.”*

3) The LCIA Rules

- **Article 14.2:** *“(…) at all times the parties shall do everything necessary for the fair, efficient and expeditious conduct of the arbitration.”*

III- The Position of National Laws

A. The English Arbitration Act of 1996

1) General Duty of the Tribunal

- **Section 33:** “(1) *The tribunal shall: ... (b) adopt procedures suitable to the circumstances of the particular case, **avoiding unnecessary delay** or expense, so as to provide a fair means for the resolution of the matters ...* 2) *The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.*”

2) General Duty of Parties

- **Section 40:** General duty of parties: “(1) *The parties shall do all things necessary for the proper and **expeditious** conduct of the arbitral proceedings.* (2) *This includes - (a) complying **without delay** with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and (b) where appropriate, taking **without delay** any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law.*”

III- The Position of National Laws

B. The Egyptian Arbitration Act of 1994

- 1) Article 45 of the Act
- 2) The position of the Egyptian *Cour de Cassation* (The Media City Case)
 - Factual Background of the Dispute.
 - Ramifications and Legal Impact.

IV- Conclusion

- Arbitration is not a timeless process.
- Time is not anymore an advantage of international commercial arbitration.
- Dilatory Tactics are inevitable.
- Arbitral Institutions have an important role to play in addition to both the arbitrators and the parties.
- Institutional Rules should avoid or, at least, reduce the use of such discretionary expressions as: “*as soon as practicable*”; “*within as a short time as possible*”; “*within an appropriate period of time*”; and “*within a reasonable time-limit*”.
- Time-limit duties would better take the form of an *obligation de résultat* .

THANK YOU

mohamed@abdelraouf.com