The Middle Eastern and African Arbitration Review 2019

Published by Global Arbitration Review in association with

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A Global Arbitration Review Special Report

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This article was first published in April 2019
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Cover image credit iStock.com/blackdovfx

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ISBN: 978-1-83862-214-5

Printed and distributed by Encompass Print Solutions
Tel: 0844 2480 112

Law Business Research

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Global Arbitration Review is the leading resource on international arbitration news and community intelligence, read by leading lawyers, academics, economic consultants, arbitration centres and in-house counsel. We deliver on-point daily news, surveys and features, which give our subscribers the most readable explanation of all the cross-border developments that matter. In the past year, we have published exclusive interviews with judges around the world, unearthed nuggets from court hearings and released several original surveys.

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In this edition, our experts consider energy arbitrations in the Middle East and mining arbitrations in Africa, and provide guidance on dealing with expert evidence. Additionally, a chapter on the discounted cash flow approach sheds light on the assessment of damages.

Furthermore, our expert panel consider the landscape for investment arbitration involving African states, the Voluntary Arbitration Law in Angola, increasing foreign direct investment in Mozambique, award enforcement in Nigeria and the long-awaited implementation of the UAE Federal Arbitration Law, heralding a much-needed overhaul of UAE arbitration legislation.

The Middle Eastern and African Arbitration Review is annual and will expand each edition. If you have a suggestion for a topic to cover or would just like to find out how to contribute please contact insight@globalarbitrationreview.com.

Global Arbitration Review
London
April 2019

Egypt

Amr Abbas and John Matouk
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International arbitration in Egypt has continued to grow over the past year. Since the Arab Spring in Egypt, investment treaty claims against the Arab Republic of Egypt have increased. Egypt has been actively pursuing settlements to these disputes and has been successful in settling some of them.

Egypt is a party to 115 bilateral investment treaties (BITs), 28 of which are not yet in force, and 15 of which have been terminated.[1] Egypt is also a contracting state to the International Centre for the Settlement of Investment Disputes (ICSID). In 2018, one new investment treaty case was registered with ICSID against Egypt. To date, a total of 32 cases against Egypt have been registered with ICSID. Of these 32 cases, eight are currently pending.[2]

Additionally, in 2018 a new bankruptcy law was issued replacing the insolvency provisions of the commercial law.[3] The legislator maintained its position that, upon the declaration of bankruptcy and the appointment of a trustee , it is the latter who enjoys capacity and standing to accept arbitration on behalf of the insolvent.[4] In addition, a new law governing the contracts of public entities was issued replacing the Tender Law.[5] The law contains a provision regulating resort to conciliation, mediation and arbitration. In what concerns arbitration, the wording of the respective provision might raise issues as to the arbitral conditions required under the law.

The Egyptian Arbitration Act

The Egyptian Arbitration Act No. 27/1994 (the Arbitration Act) was enacted based on the UNCITRAL Model Law on International Commercial Arbitration (1985). The Arbitration Act applies to arbitrations conducted in Egypt or in cases where the parties to an international commercial arbitration conducted abroad agree to subject the arbitration to the Arbitration Act.[6] While the Arbitration Act is regarded as being the general law governing arbitration in Egypt, there are other laws that govern certain aspects of arbitration in respect of certain legal relationships. For example, technology transfer contracts, sport arbitrations, investments under the investment law and contracts of public entities.

The Egyptian legislator has also been expanding the scope of matters that may be resolved by compromise, including matters that are classically regarded as matters of public law, for example, tax disputes,[7] custom disputes[8] and certain crimes under the new investment law of 2017,[9] as well as the new criminal procedural law.[10] These are besides crimes that can be prosecuted only upon a complaint by specific public or private persons.[11] This may be of importance since all matters that can be resolved by compromise, as in waived, can be settled by arbitration under the Arbitration Act. This means that there is a possibility that arbitration in Egypt may extend to a completely new level that would include certain public law matters. It is yet to be seen whether and to what extent such a possibility exists.

Under the Arbitration Act, an arbitration is considered international if the subject matter thereof relates to international trade and, inter alia, if the parties to the arbitration agree to resort to a permanent arbitral organisation or centre headquartered in Egypt or abroad.[12] That being said, the criteria of international arbitration has been subject to different judicial views in the recent years. The High Administrative Court,[13] following a reading of a judgment by the constitutional court,[14] took the view that resorting to a permanent arbitral organisation such as the Cairo Regional Centre for International Commercial Arbitration (CRCICA) is sufficient to consider the arbitration international. Yet in 2018, the Court of Cassation, in the context of enforcing an arbitral award, took the opposite view, considering that an arbitration conducted under the auspices of CRCICA is a 'national' arbitration rather than an international one.[15] The Cairo Court of Appeal took the same position in a recent judgment.[16]

The Arbitration Act is applicable without prejudice to the international conventions that Egypt is party to[17] and applies to all arbitrations between public or private law persons, irrespective of the nature of the legal relationship that the dispute revolves around,[18] unless other contradictory and specific provisions of law exist.

The arbitration agreement

The Arbitration Act defines an arbitration agreement as an agreement that the parties agree to resolve by arbitration all or part of a dispute, which arose or may arise between them in connection with a specific legal relationship, contractual or otherwise.[19] Since 2005, the Cairo Court of Appeal has held that the arbitration agreement is considered to be the constitution of an arbitration that determines the scope, extent and subject of arbitration, and grants the arbitrators their powers resulting in excluding the dispute from the jurisdiction of the courts.[20]

An agreement to arbitrate may take three different forms:

- the arbitration agreement may be embodied as a clause or as an annex to the agreement between the parties before a dispute arises between them;
- the parties may enter into a 'submission agreement', which is an arbitration agreement that the parties agree to after a dispute has risen. If so, the parties must define in the arbitration agreement the matters or disputes subject to arbitration, otherwise the agreement shall be null and void;[21] or
- the arbitration agreement may be incorporated by reference.

However, the validation of this incorporation requires an explicit reference to an existing document with a valid arbitration agreement therein.[22] Pursuant to article 10(3) of the Arbitration Act and Egyptian jurisprudence, the following conditions must be satisfied:

- the reference should be made to an existing document or contract that includes an arbitration clause;
- the document or contract that the reference is made to should be known to all the parties against whom such document or contract and the included arbitration clause will be invoked; and

- the reference should be explicitly made to the arbitration clause itself and to the fact that it is an integral part of the contract (a general reference to the existing document or its terms is not sufficient).[23]

Conditions of validity of the arbitration agreement

In addition to the general requirements for the validity of contracts, such as consent, capacity and the existence of a legal relationship, the following requirements, in addition to any further requirements mandated by a specific provision of law, must be satisfied for there to be a valid arbitration agreement:

- the arbitration agreement must relate to matters that are amenable to compromise.[24] One recent development in this regard is that the Cairo Court of Appeal maintained that matters relating to deciding ownership of real estate in Egypt relates to public policy, and, therefore, they are non-arbitrable and that any arbitration agreement in this respect is null and void being against public policy;[25]
- the arbitration agreement must be in writing; otherwise, it shall be null and void.[26] It will be deemed written if it is included in written communication exchanged between the parties. This requirement is widely interpreted to include an arbitration agreement concluded by exchanging offer and acceptance through electronic means.[27] Silence may be considered as acceptance of the arbitration agreement if there are previous continued transactions between the parties where the arbitration agreement is included[28] or where proceedings are initiated without objection from the opposing party;[29] and
- in accordance with article 702 of the Egyptian Civil Code and article 76 of the Civil and Commercial Procedures Law (CCPL), the arbitration agreement may not be concluded by an agent except by virtue of private and specific written delegation,[30] otherwise, the arbitration clause will not be effective in relation to the principal.

Defective arbitration clauses have been repeatedly held by the Cairo Court of Appeal as valid arbitration agreements, and were interpreted to favour arbitration over courts.[31]

Administrative contracts

Arbitration relating in administrative contracts was a highly contested matter before it was settled by an amendment to the Arbitration Act in 1997.[32]

Arbitration in relation to administrative contracts is permissible provided that the arbitration agreement is approved by the competent minister or by whomever assumes his or her authority with respect to independent public authorities.[33] The power to approve the arbitration agreement may not be delegated.[34] The approval of the competent minister for the validity of an arbitration agreement is a matter of public policy.[35] Egyptian courts had held that the absence of ministerial approval invalidates the arbitration agreement.[36]

In 2010, the Cairo Court of Appeal held that ministerial approval is a legislative requirement for the validity of the arbitration clause and is a requirement addressed to both parties,[37] which was similarly upheld by the Supreme Administrative Court in 2011.[38] While some CRCICA tribunals have applied this principle, others have not. Some tribunals have held that the arbitration agreement is not invalidated due to the absence of ministerial approval as this requirement should not be applicable to international commercial arbitrations conducted with foreign investors.[39] The Arbitration Act does not provide for an annulment sanction for violation of article 1, and therefore this requirement is addressed, and, therefore, needs to be fulfilled by the administrative entity and not the other party (that is, it is the sole responsibility of the administrative entity and it should therefore bear the liability for not obtaining ministerial approval).[40] Other tribunals have, as recently as 2011, taken the view that the arbitration agreement is void in the absence of ministerial approval.[41] The consensus of case law settled for a while on the position that it is sufficient for the validity of arbitration clauses in administrative contracts that the relevant public entity expressly admits in the contract has ministerial approval of the arbitration agreement.[42]

How approval may be given has been subject to various views. One indicates that approval may be subsequent to the conclusion of the administrative contract and does not need to be written or expressed in a specific form.[43] On 5 March 2016, the Unification of Principles Circuit of the Supreme Administrative Court contributed to this matter in a case related to an arbitration agreement between an administrative authority and a private entity. The court held that in order for the arbitration agreement in a dispute under administrative contracts to be valid, the competent minister must approve and sign the arbitration agreement itself. The initial approval to resort to arbitration to resolve the existing dispute does not suffice alone, nor does the delegation in signing the arbitration agreement. In any of these two cases, the arbitration agreement shall be null.[44] The Constitutional Court seemed to support that view.[45] Nonetheless, in a recent Court of Appeal judgment, dated 19 September 2018, the court decided that the law did not require a specific form of the competent minister's approval.[46]

Competent court with regards to administrative contracts

Under article 54(2) of the Arbitration Act, the competent court for 'matters the Arbitration Act refers to courts' is the court of first instance, which has jurisdiction over the dispute if there is no arbitration agreement. The competent court to decide on the annulment of an arbitral award is the second-degree court, which hears the appeals against the judgments from the court of first instance. An arbitral dispute arising out of administrative matters, for example, would be subject, if there was no arbitration agreement, to the jurisdiction of the administrative court.[47] Therefore, a challenge of the respective arbitral award would be within the jurisdiction of the Supreme Administrative Court. Yet, if the arbitration is an international commercial one, the challenge of the award would be subject to the jurisdiction of the Cairo Court of Appeal under article 54(2), except if the parties agree to the jurisdiction of another Egyptian court of appeal.[48] It was held by the Supreme Constitutional Court that even in the event that the dispute arises out of an administrative contract, the Cairo Court of Appeal will be the competent court if the subject matter of the contract contains elements that are commercial international in nature.[49]

In line with this, the Cairo Court of Appeal recently decided that if an arbitral award is rendered based upon an administrative contract, according to article 1 of the Arbitration Act, the second degree of the originally competent court, in this case the Supreme Administrative Court, shall be the competent court for an annulment lawsuit. However, according to article 1 of the Arbitration Act, if the dispute arises in connection to an administrative contract and is an international commercial dispute, then the Cairo Court of Appeal shall be the competent court, not the Supreme Administrative Court.[50] As explained, the question of whether an arbitration is international, particularly when held

under the auspices of a permanent arbitral institution, is subject to uncertainty.

Arbitral proceedings

Number of arbitrators

Parties are free to choose the number of arbitrators, provided that the number is odd; otherwise, the arbitration shall be null and void. The arbitral tribunal is comprised of three arbitrators if the parties fail to reach an agreement.[51] The same principle applies in the CRCICA Rules.[52]

Substituting an arbitrator

Generally, if an arbitrator's mission is terminated by recusal, discharge, abstention or for any other reason, a substitute shall be appointed according to the same procedures of choosing the arbitrator whose jurisdiction had been terminated.[53] Where the arbitration is institutional and the agreed appointing authority – for example, CRCICA – made an appointment, the Court of Appeal held that the court may not interfere by appointing an arbitrator in substitution of CRCICA's appointed arbitrator even if one of the parties alleges that it did not agree to the arbitrator appointed by CRCICA.[54]

If an arbitrator is substituted for any reason, the Cairo Court of Appeal held that this shall not necessitate a repeat of the arbitral proceedings before the newly constituted tribunal. Rather, the new tribunal shall continue the proceedings that took place before its appointment. This is on the condition that the parties shall have the opportunity to participate in the proceedings (respecting the principle of confrontation) and that all members of the arbitral tribunal have had the opportunity to deliberate with each other before rendering the award.[55]

The possibility of challenging a court decision appointing an arbitrator

Pursuant to article 17(3) of the Arbitration Act, an appointment by the competent court to appoint an arbitrator in cases where either party fails to appoint an arbitrator and the two arbitrators fail to appoint a third arbitrator is unchallengeable. However, the Court of Cassation accepted a challenge of this decision and cancelled a judgment from the first instance court, which was confirmed by the Court of Appeal, because it considered that if this decision was rendered in contradiction with law, the parties' agreement or jurisdiction rules (which are of public policy), this decision became subject to challenge.[56]

Truncated tribunals

In situations where a tribunal conducts arbitration proceedings with only two arbitrators, the tribunal is referred to as a 'truncated tribunal'. This situation typically takes place when one of the co-arbitrators refuses to participate in the deliberations or resigns during the very late stages of the arbitral proceedings.[57]

According to the general rules of substitution of arbitrators, a substitute arbitrator shall be appointed by the same mechanism used to appoint his predecessor.[58] However, the party that appointed the resigning arbitrator may take this opportunity to delay the proceedings.

In an attempt to overcome this, the CRCICA Rules expressly provide that if, and at the request of a party CRCICA determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator. CRCICA may, after giving an opportunity to the parties and the remaining arbitrators to express their views, and upon the approval of the advisory committee, either appoint a substitute arbitrator or, after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make a decision or award.[59]

In 2011, the Cairo Court of Appeal held that in certain situations where the behaviour of an arbitrator is unjustified or in bad faith, and provided that the arbitrator has resigned or failed to undertake his mission after the conclusion of all hearings and pleadings, an award rendered by a truncated tribunal shall not be annulled.[60] More recently, in 2013, the Cairo Court of Appeal held that there is nothing in Egyptian law that would prevent the adoption of the CRCICA Rules in this regard and the arbitrator's refusal to participate in the deliberations with no acceptable reason and his or her consequential refusal to sign the award are not sufficient reasons to annul the award as provided for by article 43 of Arbitration Act.[61]

Recently, the Court of Cassation held in 2015 that awards rendered by a truncated tribunal could be annulled. The court stressed the importance, pursuant to the Arbitration Act of the fact that a tribunal needs to be composed of an odd number of arbitrators and that there must be deliberations between the arbitrators before issuing the award. When those requirements are not met became the third arbitrator did not participate in the deliberations, the award becomes subject to annulment.[62]

Impartiality and independence of arbitrators

The Arbitration Act provides that an arbitrator may not be challenged unless there are serious doubts as to his or her neutrality or independence. The request to challenge shall be submitted in writing to the tribunal, including the reasons for challenge, within 15 days of the party becoming aware of the composition of the tribunal or the circumstances justifying the challenge.[63] The arbitral tribunal is obliged to then refer the challenge to the competent court to decide the challenge.[64] The parties' ability to agree to different challenge proceedings, including by agreeing to certain institutional arbitral rules, such as CRCICA Rules, remains differential. For instance, under CRCICA Rules the challenge shall be adjudicated by a decision of a tripartite special impartial and independent committee, to be formed by CRCICA from members of the advisory committee.[65] Nevertheless, the Cairo Court of Appeal accepted that it has jurisdiction to decide on such challenges, even though it relied on CRCICA's decision on the challenge to arrive to the very same outcome.[66]

The possibility for an Egyptian minister to serve as an arbitrator

According to article 10 of the Presidential Decree No. 106 of 2013, governmental officials, as soon as appointed, are obliged to stop or liquidate any ongoing professional practice they may have and may not present any consultancy services whether paid or unpaid. The Cairo Court of Appeal considered that acting as arbitrator falls outside the prohibition established by the aforementioned presidential decree. This is because serving as an arbitrator does not entail providing consultancy services, and the arbitrator is not considered an agent or a provider of service. This exclusion from the prohibition applies as long as the minister's mission as arbitrator does not cause harm to the public interest or the ministers' governmental position.[67]

Procedural law

The Arbitration Act grants parties the freedom to choose the applicable procedural law that will be applied by the arbitral

tribunal, including their right to subject such arbitration to the applicable rules of any institution or arbitration centre in Egypt or outside. However, if the parties fail to agree on this matter, the arbitral tribunal will be granted the freedom to select the applicable procedural law.[68]

It is established through judgments of the Egyptian courts that, except for rules related to public policy, arbitral tribunals are not bound by norms considered mandatory in domestic litigations,[69] except where these norms are considered 'basic guarantees of adjudication'.[70]

Suspension

Pursuant to article 46 of the Arbitration Act, the tribunal has the right to suspend the arbitral proceedings if, in the course of the proceedings, a matter falling outside the scope of the arbitral tribunal's jurisdiction is raised, such as, forgery challenges, including respective criminal proceedings, or criminal acts in general. In such case, the tribunal may suspend the arbitral proceedings on the condition that the matter is essential or necessary for the tribunal to be able to decide the subject matter of the dispute.[71] In this case, the arbitral tribunal shall suspend the proceedings until a final judgment is rendered in this respect by the competent authority.[72] This will include suspension of the time limit for the making of the arbitral award.[73]

In its interpretation of article 46, the Court of Appeal found that it is within the tribunal's jurisdiction to assess whether the forgery allegation is of any seriousness, and if not, it may proceed with the arbitration. Moreover, the court found that where the forgery concerns the arbitration agreement itself, the tribunal would be competent to decide on such a claim since the tribunal is competent to decide its own competence.[74] In another judgment, the court found that where the parties agreed to institutional arbitration, the court has no competency to decide suspension even if a request that concerns the constitution of the tribunal is before it.[75]

The role of Egyptian courts in arbitral proceedings

The Arbitration Act provides for certain instances whereby the local courts may intervene in the arbitral proceedings subject to the request of either party to the dispute. For example, the competent local court may order provisional or conservatory measures, whether before the commencement of arbitral proceedings or during the procedure on the basis of an application from one of the parties and[76] the president of the court referred to in article 9 of the Arbitration Act shall, upon request from the arbitral tribunal, be competent to:

- pass judgment against defaulting or intransigent witnesses imposing the penalties prescribed in articles 78 and 80 of the Law of Evidence in Civil and Commercial Matters; and
- order a judicial delegation.[77]

The arbitral award

Time limit

The Arbitration Act grants the parties the right to agree upon the time limit of arbitration proceedings. In absence of the parties' agreement, arbitration proceedings are limited to 12 months from the date of commencement of the proceedings. This period may be extended by an additional six months by the tribunal, unless the parties agree to extend the period.[78] In this regard, if the parties agree to certain arbitration rules that provide for a different time limit, or are even silent on the point, such rules shall be applied. For example, if the parties agree to subject the dispute to the CRCICA Rules, which do not include any time limits for arbitration proceedings, such proceedings shall not be subject to the time limit set forth in the Arbitration Act and shall not be limited to a certain time limit unless otherwise is agreed by the parties.[79] In all cases, if the proceedings exceed the determined time limit, either of the parties may have recourse to the competent court for the purpose of terminating the proceedings or determining a new time limit.[80] If the arbitration proceedings exceed the determined time limit, the arbitration agreement shall be considered terminated and the arbitral tribunal shall have no jurisdiction to proceed further.[81] However, the parties' continuance in the proceedings beyond the determined time limit is considered as an implied extension to such limit.[82]

Mandatory information to be featured in an award

The Cairo Court of Appeal refused the challenge of an arbitral award on the basis that the arbitral award did not mention the place of issuance of the award or the nationality of the members of the arbitral tribunal, and did not attach or include a copy of the arbitration agreement in the award in violation of article 43(3) of the Arbitration Act. The court held that although the Arbitration Act does require that this information be provided in arbitral awards, this information may be supplemented by another document as long as this document is prior or contemporary to the arbitral award and the latter explicitly refers thereto. The court further applied the procedural rule that as long as the objective of the procedure has been fulfilled, there is no harm suffered and consequently no annulment.

On such basis, the omission of information may only lead to the annulment of an arbitral award when the objective of mentioning such information is not fulfilled. The Court of Appeal considered in the above case, that the place where the award has been rendered is known according to the place of arbitration in the arbitration agreement. The nationality of members of arbitral tribunal is known by their disclosures and CVs submitted upon accepting appointment. Also, the arbitration agreement may be derived from the parties' claims and defence in the proceedings. In a nutshell, the court considered that no party had suffered any harm by the omission of this information and therefore that the challenge must fail.[83] Nevertheless, the Court of Cassation considered that it is not sufficient to refer to the arbitration agreement as cited in a party's submission, as it does not indicate that the tribunal examined the arbitration agreement itself.[84]

Setting aside of arbitral awards

Pursuant to article 53 of the Arbitration Act, arbitral awards can only be challenged by annulment proceedings, and it may be annulled for several reasons including, inter alia, absence of a valid arbitration agreement or the violation to the right of defence of one of the parties. The Supreme Constitutional Court held that the right to bring annulment proceedings against arbitral awards is a constitutional one.[85] Additionally, the Cairo Court of Appeal held that if the parties agreed in the arbitration clause that the arbitral award is final and no party may challenge it, this cannot prevent either party to file a nullity suit. However, waiver of an annulment lawsuit after the arbitral award is permitted under Egyptian law.[86]

In 2018, the Court of Cassation confirmed its stance regarding whether the reasoning of the arbitral award might lead to its annulment under article 53. The Court of Cassation refused a previous Court of Appeal judgment annulling an arbitral award rendered against a famous Egyptian television personality for

being based on ambiguous, illogical, unfounded facts and assumptions, and full of flagrant discrepancies and unsubstantiated statements to the extent that renders the award without reasoning.[87] The Court of Cassation refused the reasoning of the Court of Appeal and held that lack of reasoning is not one of the grounds of annulment stipulated in article 53 of the Arbitration Act.[88]

Article 53 further provides that the court adjudicating the annulment action should decide ipso jure the nullity if it is in conflict with Egyptian public policy. The Egyptian courts defined public policy in the context of arbitration to mean only those rules forming the social, economic and political foundations of the society, and not all mandatory rules of law.[89]

In another case,[90] after the arbitral award was issued and annulment was refused by the Court of Appeal, the losing party petitioned for reconsideration of the court judgment rendered in the annulment case based on the article 241(1) of the CCPL. Article 241(1) provides that the parties may, even after a final judgment is rendered, petition for reconsideration of the final judgment, if, inter alia, fraudulent conduct of one of the parties is established and the judgment relied unknowingly on the fraudulent conduct to reach its final decision. The losing party claimed that the existence of fraudulent conduct committed by the other party influenced the outcome of the dispute. The Court of Appeal, in a first precedent, found in favour of the plaintiff and annulled the court judgment and the arbitral award in question based on that petition. However, the Court of Cassation refused such judgment.[91]

Conversely, in another case, the Court of Appeal decided that the prescription of the right to arbitrate by the lapse of 15 years, the general prescription period of civil obligations stipulated in the Egyptian Civil Code, is not one of the grounds for annulment.[92]

Recently, Egyptian courts have opined on whether an international commercial arbitration award rendered in Egypt in the context of an international treaty could be subject to annulment proceedings before Egyptian courts, where the treaty seems to prohibit challenging the award. The Cairo Court of Appeal took the view that annulment proceedings are not allowed under the treaty.[93] However, the Court of Cassation rejected this view. In its reasoning, the court decided that the annulment proceedings do not qualify as a challenge, and therefore are not prohibited under the treaty. The court concluded that the treaty does not contradict the Arbitration Act regarding the right to request annulment and referred the case back to the Cairo Court of Appeal.[94] The latter court rendered a second judgment maintaining its initial position.[95] This second judgment was challenged before the Court of Cassation and is still pending before it.

Competent court for annulment

According to article 9(1) of the Arbitration Act, if the arbitration is international and commercial in nature, the Cairo Court of Appeal is the competent court to rule on the annulment of award. Article 2 defines the criterion of 'commercial arbitration'. It provides that arbitration is commercial if it is raised based upon a legal relationship of economic nature. The article further provides examples of this legal relationship. In this regard, the Court of Cassation held that it is within the judge's authority to determine whether the relationship is 'of economic nature', as per article 2 of the Arbitration Act, as long as his or her determination is based upon reasonable grounds. The court further provides that the judge may rely on the parties' intent in the contract to reach his or her determination.[96]

The Court of Cassation power to decide annulment upon its own initiative or upon the Public Prosecutor' Request

The Egyptian Court of Cassation recently held that parties and public prosecution alike may raise grounds of annulment that are of public policy before the Court of Cassation, even if such grounds were not raised before the Court of Appeal, as long as the elements of those grounds were already available before the Court of Appeal. In this regard, the Court of Cassation reaffirmed the principles of article 109 of the CCPL that the jurisdiction of the courts is of public policy. The court further decided that the public prosecution might bring a suit for nullity of an arbitral award, when the award violates public policy provisions, without the need to comply with time limits for nullity suits provided for in article 54(1) of the Egyptian Arbitration Act.[97]

Enforcement of arbitral awards

Pursuant to article 55 of the Arbitration Act, all arbitral awards rendered in accordance with the provisions of this law have the authority of res judicata and shall be enforceable in conformity with its provisions.[98] The enforcement of domestic arbitral awards is governed by article 56 of the Arbitration Act, which requires a request for enforcement to be submitted to the president of the competent court, along with the required documents.[99] The enforcement order shall be submitted after the lapse of the 90-day period prescribed for filing the nullity action and this order will be issued after verifying that certain conditions have been met.[100] The enforcement of foreign arbitral awards in Egypt is governed by the New York Convention on the Enforcement of Foreign Arbitral Awards.[101] The New York Convention was signed by Egypt on 2 February 1959 and entered into force on 8 June 1959.

Moreover, the Egyptian Court of Cassation recently held that if the provisions of the New York Convention on the Enforcement of Foreign Arbitral Awards were in contradiction with the provisions of domestic Egyptian law, the provisions of the New York Convention would prevail.[102]

Under article 54(2) of the ICSID Convention, the recognition and enforcement of an award may be obtained from the competent court or other authority designated by a contracting state on presentation of a copy of the award certified by the secretary general of the ICSID. The Ministry of Justice has been designated by Egypt as the competent authority for the recognition and enforcement in Egypt of arbitral awards rendered pursuant to the ICSID Convention. Execution of the award is, in accordance with article 54(3) of the ICSID Convention, governed by the law on the execution of judgments in force in the country where execution is sought, which in Egypt is the procedures law. According to article 55 of the ICSID Convention, ICSID awards should be enforced in Egypt without prejudice to the Egyptian law provisions regarding the immunity of Egypt or any foreign state from execution. Article 87 of the Egyptian Civil Code provides that public assets of the Egyptian state are immune from enforcement and attachment procedures.

In a recent ruling, the Court of Appeal held that the Constitutional Court already ruled that article 58(3) of the Arbitration Act is unconstitutional because it allows for the challenging of the judge's order to refuse enforcement of an arbitral award while prohibiting the challenging of the judge's refusal to grant such order. A Constitutional Court judgment is binding for the courts.[103] Accordingly, the Cairo Court of Appeal ruled that the period to challenge the enforcement order, as per the Constitutional Court judgment, should be 30 days equally to the period allowed for challenging the refusal to grant such order, not

10 days as per the general rules of challenging orders on application under the CCPL.[104]

In terms of objections to enforcement, the Cairo Court of Appeal refused the enforcement of an arbitral award for contradicting a final judgment by the Court of Administrative Jurisprudence rendered after the arbitral award but before the request for obtaining the enforcement order.[105]

For the first time, on 9 May 2018, the Court of Appeal rendered a judgment enforcing a foreign arbitral interim measure that was issued by an International Chamber of Commerce tribunal. The judgment found that arbitral interim measures are to be applied according to the same legal procedures to enforce a final arbitral award; that is, by an order on application without notification or hearing of the parties. The court went further and required such interim measure to be:[106]

- final and is considered so if it is rendered by a competent arbitral tribunal;
- based on a valid arbitration agreement;
- both parties were offered opportunity to present their case; and
- is not against public order.

It is worth mentioning that article 24 of the Arbitration Act allows the court to order the enforcement of interim measures decided by arbitral tribunals in arbitrations that are subject to the Arbitration Act.[107]

2018 developments

Application of the Arbitration in Sports Law No. 71 of the year 2017

The Sports Law No. 71 of 2017 (the Sports Law) was enacted to regulate sports matters in Egypt. This is considered the first comprehensive sports law in Egypt replacing the history of regulating sports matters under different laws. The Sports Law established the Egyptian Sports Arbitration Centre (the Sports Centre) as an independent entity for settlement of any dispute arising from the application of Sports Law, where one of the parties to this dispute is deemed an entity governed by it.

Article 66 of the Sports Law provides the mechanisms to settle any dispute arising in relation to the sports field. It includes mediation, conciliation and arbitration in case an arbitration clause is included in any contract or regulation binding on the parties of the dispute.[108]

The board of directors of the Sports Centre is headed by the president of the Egyptian Olympics Committee. The members of the centre are:

- a representative of individual sports;
- a representative of team sports;
- a representative of the Ministry of Sports; and
- three legal and technical experts.

The duration of the board of directors is four years renewable for one additional term.

It is worth noting that the Sports Law provides that the Sports Centre shall consider the Olympic Charter and the international criteria of the relevant sports' associations. Furthermore, the centre shall consider the fundamental guarantees and principles of the CCPL. In absence of any specific provision, the provisions of the Arbitration Act shall apply, which are based on the UNCITRAL Model Law.[109]

In 2018, several annulment proceedings were brought in respect of arbitral awards rendered under the Sports Law. The Egyptian courts jurisprudence is not consistent on whether such annulment proceedings can be brought forward under the Arbitration Act. In one case, the Court of Appeal decided that such proceedings are subject to the annulment procedures stipulated in the Sports Law.[110] Another circuit of the Court of Appeal, however, held that they are subject to the same annulment procedures stipulated in the Arbitration Act.[111] In the first case, the court described the arbitration under the Sports Law as being mandatory. Mandatory arbitration has been repeatedly declared by the Constitutional Court as unconstitutional, which was confirmed in a recent judgment of the court in 2018. [112]

New law governing contracts concluded by public bodies replaces Tenders Law No. 89 of 1998

In an effort to improve contracting with public and government bodies, the President issued Law No. 182 of 2018. The law includes the possibility of electronic contracting with public bodies through an electronic platform that will be established by virtue of the anticipated executive regulations. The Egyptian Minister of Finance has already stressed the importance of the law, labelling it as an 'important national project' that will enhance competition, improve transparency and ease contracting between public bodies and the private sector.

As per article 91 of the law, the parties may, before resorting to courts or arbitration, agree to resort to conciliation or mediation provided the competent authority approves such agreement. When claims for compensation for damages sustained due to an administrative body's default under the relevant contract, the article allows the damaged party to resort to arbitration. This is only permitted upon obtaining the competent minister's approval, provided that it is included in the terms of the contract and agreed to as per the procedures and rules provided for in the Arbitration Act. This article might bring to light new questions as to whether it adds further requirements to those of the Arbitration Act in the respect of the contracts governed by the new law.

Restructuring and Insolvency Law No. 11 for 2018

The Restructuring and Insolvency Law No. 11 of 2018 (the Insolvency Law) was issued to govern restructuring, insolvency and protective settlements. The law's objective is to protect bankrupt merchants from prolongation of credits through the set mechanisms laid down in the law. The new Insolvency Law replaces insolvency-related provisions stipulated in Commercial Law No. 17 of 1999.

The law empowered the economic courts to resolve bankruptcy disputes and established a bankruptcy administration within each economic court to receive requests for restructuring, bankruptcy settlements, bankruptcy declarations and mediation proceedings.

Additionally, the law established a restructuring committee. This committee is composed of experts listed in the schedule set out in article 13 of the law, to prepare the restructuring plan, managing the assets of the merchant and evaluating them, in addition to other tasks assigned by a bankruptcy judge.

According to article 162 of this law, the bankruptcy judge may authorise the trustee, upon consulting the trustee and hearing the bankrupt merchant and notifying him or her, to accept arbitration in any dispute regarding the bankruptcy, even if it involves rights or claims pertaining to real estate. If the dispute has an undetermined value, or its value exceeds E£20,000, the acceptance of the arbitration shall not be effective unless the bankruptcy judge has ratified its conditions. The bankrupt is notified to attend the session of ratification, and can be heard if they attend, but the

bankrupt's objections shall be of no effect. The decision of the bankruptcy judge may be challenged before the court if the judge refuses to ratify the terms of settlement or arbitration.

On another note, it is impermissible for the trustee to dispose of the right of the bankrupt or to recognise the right of others vis-à-vis the bankrupt, save in accordance with the procedures set out in article 162 as demonstrated above.

Principles from the Egyptian courts issued in 2018

Court of Cassation's view of petition for annulment of arbitral awards based upon article 241 (1) of the CCPL

In 2016, after the Cairo Court of Appeal refused the annulment of an arbitral award, the losing party petitioned for reconsideration of the judgment refusing to annul an arbitral award based upon article 241(1) of the CCPL. The article allows the parties, even after a final judgment is rendered, to petition for reconsideration of the final judgment, if fraudulent conduct of one of the parties is established, and the judgment relied unknowingly on the fraudulent conduct to reach its final decision. In that case, based on a fraud conducted by the other party before the arbitral tribunal, the Court of Appeal found in favour of the plaintiff and annulled the award reversing its prior judgment of refusing to annul the award based on this article for the first time.

However, in 2017 the Court of Cassation had the opportunity to review the Court of Appeals' judgment. The court found that the alleged fraud of one of the parties was known to the petitioner during the arbitration proceedings and was not raised at the time. Thus, the Court of Cassation overturned the judgment and sustained the validity of the arbitral award. However, it is important to note that the Court of Cassation implicitly upheld the validity of the petition of reconsideration of the appellate court judgment in annulment of arbitral award cases, based on article 241 of the CCPL.[113]

Constitution of the tribunal

Appointment of arbitrator: application may be by an order rather than by a lawsuit

In a Court of Cassation judgment,[114] the court decided that according to article 17 of the Arbitration Act, the request for appointment of an arbitrator shall be through a case that is filed to the court and not through an order on application. Therefore, issuance of an enforcement order appointing an arbitrator is considered null and void as a matter of public policy. However, the court decided that the order on application in question, would be considered valid since it already achieved the goal of the procedures, which is to ensure due process, attendance of the parties and the opportunity that each party expresses its views. The approach adopted by the Court of Cassation might imply that appointment of an arbitrator could be made through an order on application. Specifically that the judgement of the Court of Appeal that was challenged was considered, by the Court of Cassation, to have reached a correct reasoning and the fact that the Court of Appeal accepted an application of an order on application to appoint the arbitrator in question.

Challenge of arbitrators according to article 19(1) of the Egyptian Arbitration Law must be after the composition of the arbitral tribunal

Article 19(1) of the Arbitration Act provides that the challenge for an arbitrator shall be submitted in writing to the arbitral tribunal within 15 days from the date of the applicant's knowledge of the composition of such tribunal or of the conditions justifying the challenge. The article further provides that if the challenged arbitrator did not step down within 15 days, the request for challenge shall be referred to the competent court to adjudicate by a judgment subject to no appeal.[115]

The Court of Cassation has clarified that challenging arbitrators according to article 19(1) of the Arbitration Act is applicable only after the composition of the arbitral tribunal is completed. If the tribunal is yet to be constituted, the parties may apply other agreed challenge procedures. In this case, the arbitral proceedings were under the auspices of CRCICA, and the tribunal was not constituted yet. Therefore, the court decided that the CRCICA Committee was solely competent to decide on such challenge, in accordance with CRCICA Rules. Thus, there was no room to refer the challenge to the courts.[116]

Article 26 of Law No. 211 of 1994 requiring mandatory arbitration deemed unconstitutional

The Supreme Constitutional Court has considered article 26 of the Cotton Exporters Union Law No. 211 of 1994 to be unconstitutional.[117] The article stipulated that disputes between the cotton exporters union and buyers must be settled by means of arbitration.

Extension of the arbitration agreement

The criteria for considering a signatory a party to the arbitration agreement and cases of extension to non-signatories

In a famous case, the Court of Cassation defined the criterion that a signatory of the contract can be considered a party to the arbitration agreement. The court held that one who signed as witness and guarantor of his own obligations under a different contract is not a party to the arbitration agreement. The court defined the criterion for considering a signatory a party to such agreement as being 'to make reference to the arbitration clause'. Nonetheless, the Court of Cassation acknowledged at the same time that there are cases where the arbitration agreement may extend to non-signatory third parties, giving examples of groups of companies, groups of contracts, universal successors, company merges and assignments of a right from the assignor to the assignee.[118]

Conditions of extending the arbitration agreement to assignees

In a challenge to a recent construction related award, the Court of Appeal accepted in principle that the assignment of right extends the arbitration agreement to a third-party assignee. The Court of Appeal outlined an important requirement that the original assigned contract signed between the creditor and the debtor must include the arbitration agreement that was assigned to the third-party assignee.[119] In this scenario, the assignee would replace the assignor as if it was the creditor in the original contract.

Defective arbitration clauses upheld and interpreted in favour of arbitration

When faced with defective arbitration clauses, Egyptian courts are now attempting to give them meaning in order to implement the intent of the parties to submit their dispute to arbitration.

In one case the arbitration agreement stated that 'any dispute arising from this agreement and was not settled after resorting to arbitration shall be resolved through the courts'.[120] The claimant argued that arbitration is not the sole method for resolving disputes between the parties. However, the court decided that it was clear from another part of the agreement that the parties intended to resort to arbitration, striking out the inconsistent provision for

the sake of the surviving clause that carried the real intention of the parties.

In a second case, the defective clause stipulated that 'any dispute arising from or for the reason of this contract shall be settled by the competent court in accordance with the applicable rules of the Cairo Regional Centre for International Arbitration by three arbitrators'.[121] The court disregarded the defective clause that provided for a 'competent court' since they outlined in detail the arbitration proceedings, including, inter alia, language, applicable law, fees and number of arbitrators.

Inconsistency over the nature of arbitration process

Against the established Constitutional Court jurisprudence finding that the arbitration process is judicial in nature,[122] the Cairo Court of Appeal repeatedly held that the arbitration is not so.[123]

The same issue appears in two recent judgments concerning whether an acting arbitral tribunal can refer the case to a domestic court, where the tribunal lacks jurisdiction, and the other way around. The stance of the Supreme Administrative Court, in the context of mandatory arbitration under article 56 of the Public Sector Agencies and Companies Law No. 97 of 1983 (the Public Sector Law)[124] is that an arbitral tribunal is a tribunal of judicial competency, and, therefore, may refer the dispute to the competent court, if it decides that it lacks competence. In case the tribunal does so, the referred to court will be obliged to apply such referral. To clarify, article 56 requires that disputes between different public bodies must be resolved through an arbitral tribunal that is constituted of judges chosen by the minister of justice.

However, the Supreme Constitutional Court considered article 66 of the Public Sector Law unconstitutional, stipulating that the decisions of the arbitral tribunals may not be subject to challenge by any means because it prevents annulment proceedings against the arbitral award rendered.[125] In support of its own decision, the Supreme Constitutional Court held that arbitral tribunals' decisions under Public Sector Law should be treated equally to the court judgments and voluntary arbitral awards governed by the Arbitration Act, and that all are of judicial nature. To the same end, the Cairo Court of Appeal[126] held that arbitral awards rendered under the Public Sector Law are subject to annulment as per the Arbitration Act, being the general law of arbitration in Egypt. On these bases, the above finding of the Supreme Administrative Court may lay the grounds for referrals between arbitral tribunals and courts.

In addition, the Supreme Constitutional Court has already consistently considered that it has jurisdiction to decide on resolving contradiction between court judgements and arbitral awards, because arbitral tribunals are tribunals of judicial competence.[127]

The Cairo Regional Centre for International Commercial Arbitration in 2018

The Cairo Regional Centre for International Commercial Arbitration (CRCICA) is the main arbitral centre in Egypt. It was established in January 1978 by a decision of the 19th Session of the Asian African Legal Consultative Committee. It is an independent, non-profit international organisation. The Court of Appeal considered CRCICA's status, as a non-profit international organisation, to be an international body enjoying judicial immunity in practising its role as an arbitration institution, and thus may not act as defendant in challenging its arbitration-related function.[128]

The total number of cases filed before CRCICA until 30 June 2018 was 1,261 cases. In the second quarter of 2018, 15 new cases were filed, demonstrating a slight increase in new cases when compared to the 12 new cases filed in second quarter of 2017.[129]

CRCICA's caseload in the second quarter of 2018 involved disputes related to oil and gas, subcontracting agreements, a shareholders' agreement, a timeshare agreement, a hotel management agreement and a construction agreement. CRCICA has also highlighted that this quarter witnessed the highest appointment of female arbitrators in a single quarter in CRCICA's history, mostly made by the parties themselves.

Since it was established, CRCICA has adopted, with minor modifications, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). CRCICA amended its arbitration rules in 1998, 2000, 2002, 2007 and 2011. The amendments of 2011 are based on the UNCITRAL Arbitration Rules as revised in 2010, with minor modifications, and apply to arbitral proceedings commenced after 1 March 2011.

The authors would like to thank Mr Moamen Elwan, Mr Lokmen Kassim, Mr Mohamed Sallam, associates at Matouk Bassiouny, as well as Mr Mohamed El-Baroudy and Mr Mohamed Abd Al-Rahman, interns at Matouk Bassiouny, for their support and research in preparation for this article.

Notes

1 https://investmentpolicyhub.unctad.org/IIA/CountryBits/62#iiaInnerMenu.
2 https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx.
3 The Insolvency Law No. 11 of 2018.
4 Previously provided under article (644) of the Commercial Code No. 17 of 1999 and article (162) of the Insolvency Law No. 11 of 2018.
5 The Law Regulating Contracts Concluded by Public Bodies No. 182 of 2018 and previously the Tenders Law No. 89 of 1998.
6 Article 1 of Arbitration Act No. 27/1994.
7 Article (138) of Tax Law No. 91 of 2005.
8 Article (119) of Customs Law No. 66 of 1963.
9 Articles (90) and (93) of Investment Law No. 72 of 2017.
10 Article (18) bis (a) of the Criminal Procedural Law.
11 See, for example, article (137) of Tax Law No. 91 of 2005, article (119) of Customs Law No. 66 of 1963, article (131) of Central Bank Law No. 88 of 2003, article (94) of Investment Law No. 72 of 2017 and article (21) of Competition Law No. 3 of 2005.
12 Article (3) of Arbitration Act No. 27/1994.
13 High Administrative Court, Appeal No. 3623 JY 56.
14 Supreme Constitutional Court, Appeal No. 47 JY 31, Hearing Session dated 15 January 2012.
15 Court of Cassation Judgement, Challenge No. 8777 of 87 JY, dated 7 March 2018.
16 Cairo Court of Appeal, Challenge No. 53 JY 135, session dated 28 November 2018.
17 Article 1 of Arbitration Act No. 27/1994. See also Court of Cassation Judgment, Challenge No. 966/73 JY, hearing dated 10 January 2005; Court of Cassation Judgment, Challenge No. 10350/65 JY, hearing dated 1 March 1999; and CRCICA Arbitration Case No. 495/2006, award dated 17 May 2007, published in *Journal of Arab Arbitration*, Issue No. 12, pp 121–123.
18 Article 1 of Arbitration Act No. 27/1994.
19 Article 10(1) of Arbitration Act No. 27/1994.
20 Cairo Court of Appeal Judgment, Circuit 91 Commercial, Case No. 95/ 120 JY, session dated 27/4/2005.
21 Article 10(2) of Arbitration Act No. 27/1994.
22 Article 10(3) of Arbitration Act No. 27/1994.

23 Court of Cassation Judgment, Challenge No. 495/72 J, session dated 13 January 2004.
24 Article 11 of Arbitration Act No. 27/1994. Public policy matters are not subject to compromise and are therefore non-arbitrable (see Article 551 of the Egyptian Civil Code). Non-arbitrable matters include, inter alia, the personal status of individuals, criminal matters, bankruptcy claims, public assets and for the sole purpose of requesting interim measures (see Cairo Court of Appeal Judgment, case No. 29/117 JY, session dated 25/02/2002).
25 Cairo Court of Appeal, Circuit (7), Judgment, Challenge No. 4 of 130 JY, session dated 3 September 2018.
26 Article 12 of Arbitration Act No. 27/1994.
27 Fathy Waly, *Arbitration Act in Theory and Practice*, 2014, p 162.
28 Professor Mahmoud El Briery, *International Commercial Arbitration*, Fourth Edition 2010, Dar El Nahda El Arabi a, p 59.
29 Cairo Court of Appeal, Circuit (50), Challenge No. 59 of 135 JY, session dated 28 November 2018.
30 Cairo Court of Appeal Judgment, case No. 31/128 JY, session dated 26 June 2012, referred to in the *Journal of Arab Arbitration*, Issue No. 19, p 190; and CRCICA Arbitration Case No. 795/2012.
31 Cairo Court of Appeal, Circuit (8), Challenge No. 55 of 134 JY, session dated 16 September 2018 and Cairo Court of Appeal, Circuit (50), Challenge No. 59 of 135 JY, session dated 28 November 2018.
32 Article 1 of Law No. 9/1997, which amended some provisions of the Arbitration Act No. 27/1994 including the permissibility to arbitration in relation to administrative contracts after the approval of the competent minister.
33 Article 1 of the Arbitration Act as amended by Law No. 9/1997.
34 CRCICA ad hoc Arbitration Case No. 793/2012, award Sharkawy, International Commercial Arbitration Legal Comparative Study, 2011, Dal El Nahda Al Arabia, p 81; Abdel Aziz Abdel Mena em Khalifa, *Arbitration in Contractual and Non-Contractual Administrative Disputes*, 2011, Monsha at El Ma aref, p 127.
35 Administrative Judiciary Court, Investment and Economics Disputes Section, 7th Section, Lawsuit No. 11492/65 JY, session dated 7 May 2011.
36 CRCICA Arbitration Case No. 676/2010, award dated 21 August 2011, *Journal of Arab Arbitration*, Issue No. 17, pp 263-264.
37 Id and also see Cairo Court of Appeal Judgment No. 111/126 JY, hearing dated 30 March 2010 referred to in Mohamed Amin El Mahdy, 62 Return to the Problematic Arbitration in Administrative Contracts Disputes, *Journal of Arab Arbitration*, Issue No. 19, p 26.
38 Id and also see Administrative Court Judgment No. 11492/65 JY, session dated 7 May 2011.
39 Id and also see CRCICA Arbitration Case No. 382/2004, session dated 7 March 2006 referred to in Walid Mohamed Abbas, *Arbitration in Administrative Disputes of Contractual Nature*, 2010, Dar El Gama a El Gadida, pp 221–222.
40 Id and also see CRCICA Arbitration Case No. 464/2006, session dated 2 July 2006; CRCICA Arbitration Case No. 553/2007, session dated 5 November 2009 referred to in Journal of Arab Arbitration, Issue No. 13, December 2009, p 237; CRCICA Arbitration Case No. 567/2008, session dated 12 September 2009 referred to in *Journal of Arab Arbitration*, Issue No. 13, December 2009, p 237; CRCICA Arbitration Case No. 495/2006, award dated 17 May 2007, referred to in *Journal of Arab Arbitration*, Issue No. 12, pp 121–123.
41 Id and also see CRCICA Arbitration Case No. 292/2002, session dated 29 May 2003 and CRCICA Arbitration Case No. 390/2004, session dated 12 March 2005 referred to in Walid Mohamed Abbas, *Arbitration in Administrative Disputes of Contractual Nature*, 2010, Dar El Gama a El Gadida, pp 222–223; CRCICA Case No. 676/2010, award dated 21 August 2011, *Journal of Arab Arbitration*, Issue No. 17, p 262.
42 Id and also see CRCICA Arbitration Case No. 793/1201 (Ad Hoc) Award dated 18 July 2012, published in the *Journal of Arab Arbitration*, December 2012, Issue 19, p 193, referred to in Fathy Waly, *Arbitration Act in Theory and Practice*, 2014, p 138.
43 CRCICA ad hoc Arbitration Case No. 793/2012, award Sharkawy, International Commercial Arbitration Legal Comparative Study, 2011, Dal El Nahda Al Arabia, p 81; Abdel Aziz Abdel Mena em Khalifa, *Arbitration in Contractual and Non-Contractual Administrative Disputes*, 2011, Monsha at El Ma aref, p 127.
44 Supreme Administrative Court-Unification of Principles Circuit, Challenge no. 8256 JY 56 dated 5 March 2016.
45 Supreme Constitutional Court, Appeal No. 1 JY 38, Hearing Session dated 6 May 2017.
46 Cairo Court of Appeal, Challenge no. 48 of 134 JY, dated 19 September 2018.
47 Fathy Waly, *Arbitration Act in Theory and Practice*, 2014, p 775.
48 Fathy Waly, *Arbitration Act in Theory and Practice*, 2014, p 775.
49 Supreme Constitutional Court, Judgment dated 15 January 2012, the *Malicorp* decision, referred to in Fathy Waly, *Arbitration Act in Theory and Practice*, p 775.
50 Cairo Court of Appeal, Challenge No. 78 of 131 JY, dated 4 May 2015.
51 Article 15 of the Arbitration Act No. 27/1994.
52 Article 7(1) of CRCICA Rules.
53 Article 21 of the Arbitration Act No. 27/1994; article 14(1) of CRCICA Rules.
54 Cairo Court of Appeal, Circuit (7), Challenge No. 38 of 135 JY, session dated 3 September 2018.
55 Cairo Court of Appeal, Challenge No. 71 of 131 JY, dated 4 March 2015.
56 Court of Cassation, Challenge No. 12459 of 85 JY, dated 1 June 2016.
57 Gary B Born, *International Arbitration: Law and Practice*, 2012, p 142.
58 Article 21 of Arbitration Act No. 27/1994.
59 Article 14(2) of CRCICA Rules.
60 Cairo Court of Appeal, Circuit 7 Commercial, Case No. 64/127 JY, session dated 7 September 2011, referred to in *International Arbitration Journal*, issue 16, October 2012, p 585.
61 Cairo Court of Appeal, Circuit 7 Commercial, Case No. 32/129 JY, session dated 5 March 2013, referred to in Professor Fathy Waly, *Arbitration Act in Theory and Practice*, 2014, p 359.
62 Cairo Court of Cassation, Case No. 2047 of 83 JY Session dated 26 May 2015.
63 Articles 18 and 19 of the Arbitration Act No. 27 of 1994.
64 Article 19(1) of the Arbitration Act No. 27/1994; Court of Cassation, Challenge No. 9568/79 JY, session dated 14 March 2011.
65 Article 13(6) of CRCICA Rules.
66 Court of Appeal, Circuit (62), challenge No. 73 of 134, session dated 4 April 2018.
67 Cairo Court of Appeal, Challenge No. 37 of 131 JY, dated 4 March 2015.
68 Article 25 of the Arbitration Act No. 27 of 1994.
69 Court of Cassation, Challenge No. 547 of 51 JY, session dated 23 December 1991; Court of Cassation, Challenge No. 1259/49 JY, session dated 13 June 1983.
70 Court of Cassation Appeal No. 145 of 74 JY, session dated 22 March 2011.
71 Prof Fathi Wali, *Arbitration in the Domestic and International Commercial Disputes*, 2014, p 488.

72 Professor Mahmoud El Briery, *International Commercial Arbitration*, Fourth Edition 2010, Dar El Nahda El Arabi a p 118; Court of Cassation, Challenge No. 1479/53 JY, hearing dated 19 November 1987.
73 Article 46 of Arbitration Act No. 27/1994.
74 Cairo Court of Appeal, Circuit (91), Challenge No. 33 of 135 JY, session dated 12 August 2018.
75 Cairo Court of Appeal, Circuit (7), Challenge No. 20 of 135 JY, session dated 6 August 2018.
76 Article 14 of Arbitration Act No. 27/1994.
77 Article 37 of Arbitration Act No. 27/1994. More examples are set out in articles (9), (17), (19), (45), (20) and (24) of the Arbitration Act.
78 Article 45(1) of the Arbitration Act No. 27/1994; Cairo Court of Appeal, Circuit 91 Commercial, Case No. 55/2005 JY, session dated 27 February 2005.
79 Professor Mahmoud El Briery, *International Commercial Arbitration*, Fourth Edition 2010, Dar El Nahda El Arabi a, pp 516–517.
80 Article 45(2) of the Arbitration Act No. 27/1994.
81 Professor Mahmoud El Briery, *International Commercial Arbitration*, Fourth Edition 2010, Dar El Nahda El Arabi a, p 525.
82 Article 8 of the Arbitration Act No. 27/1994; Court of Cassation, Challenge No. 3869/78 JY, session dated 23 April 2009.
83 Cairo Court of Appeal, Challenge No. 78 of 131 JY, dated 4 May 2015.
84 Court of Cassation, Challenge No. 10473 of JY 78, Session dated 16 November 2016.
85 Supreme Constitutional Court, Challenge No. 95 of 20 JY, session dated 11 May 2003.
86 Cairo Court of Appeal, Challenge No. 78 of 131 JY, dated 4 May 2015.
87 Cairo Court of Appeal Judgment, Case No. 11, 12, 14/132 JY, Session dated 6 January 2016, the *Bassem Youssef* case.
88 Court of Cassation, Challenge No. 2698 of 86 JY, dated 13 March 2018.
89 Court of Cassation, Challenge No. 10132 of 78 JY, session dated 11 May 2010.
90 Court of Appeal Judgment, Case No. 2 of 132 JY, Session dated 3 February 2016.
91 Court of Cassation, Challenge No. 4715 and 4868 of JY 86, hearing session dated 18 January 2017.
92 Cairo Court of Appeal, Circuit (8), Challenge No. 48 of 134 JY, session dated 19 September 2018.
93 Cairo Court of Appeal, Challenge No. 39 of 130 JY, session dated 5 February 2014.
94 Court of Cassation, Challenge No. 6065 of 84 JY, session dated 4 November 2015.
95 Cairo Court of Appeal, Circuit (62), Challenge No. 39 of 130 JY, session dated 6 August 2018.
96 Court of Cassation, Challenge No. 5162 of 79 JY, dated 21 January 2016.
97 Court of Cassation, Challenge No. 12459 of 85 JY, dated 1 June 2016.
98 Article 55 of Arbitration Act No. 27/1994.
99 Article 56 of Arbitration Act No. 27/1994.
100 Article 58 of Arbitration Act No. 27/1994.
101 Some jurists take the view that the Arbitration Act and the Egyptian Civil and Commercial Procedures Law No. 131/1948 (articles 296 301) also apply.
102 Court of Cassation Judgment, Case No. 5000/78 JY, Session dated 6 April 2015.
103 Court of Cassation, Challenge No. 7088 of 78 JY, dated 11 January 2016.
104 Court of Appeal, Circuit (50), Challenge No. 3 of 133 JY, session dated 28 August 2016.
105 Cairo Court of Appeal, Circuit (50), Challenge No. 17 of 135 JY, session dated 31 December 2018.
106 Cairo Court of Appeal, Circuit (7), Challenge No. 44 of 134 JY, session dated 9 May 2018.
107 Article (24) of the Arbitration Act states that:
    (i) Both parties to the arbitration may agree to confer upon the arbitral tribunal the power to order, upon request of either party, interim or conservatory measures considered necessary in respect of the subject matter of the dispute and to require any party to provide appropriate security to cover the costs of the ordered measure.
    (ii) If the party against whom the order was issued fails to execute it, the arbitral tribunal, upon the request of the other party, may authorise the latter to undertake the procedures necessary for the execution of the order, without prejudice to the right of said party to apply to the president of the court specified in article 9 of this law for rendering an execution order.
108 Article 66 and Article 67 of the Sports Law No. 71 of 2017.
109 Article 70 of the Sports Law No. 71 of 2017.
110 Cairo Court of Appeal, Circuit (7), Challenge No. 40 of 135 JY, session dated 5 December 2018, and Cairo Court of Appeal, Circuit (62), Challenge No. 22 of 135 JY, session dated 2 July 2018.
111 Cairo Court of Appeal, Circuit (50), Challenge No. 47 of 135 JY, session dated 25 November 2018.
112 The Supreme Constitutional Court Judgement, Challenge No. 130 of 34 JY, session dated 13 January 2018.
113 Court of Cassation, Challenge No. 4715 and 4868 of JY 86, hearing session dated 18 January 2017.
114 Court of Cassation, Challenge No. 145 and 221 of 74 JY, session dated 22 March 2011.
115 Article 13 (6) of CRCICA rules states if, within 15 days of the date of communicating the notice of challenge, all parties do not agree to remove the challenged arbitrator or the latter does not withdraw, the party making the challenge may elect to pursue it. In that case, the challenge shall be finally decided by an impartial and independent tripartite ad hoc committee to be composed by the Centre from among the members of the Advisory Committee.
116 Court of Cassation, Challenge No. 1394 of JY 86, hearing session dated 13 June 2017.
117 The Supreme Constitutional Court Judgment, Challenge No. 130 of 34 JY, session dated 13 January 2018.
118 Court of Cassation, Challenge No. 2698 of 86 JY, session dated 13 March 2018.
119 Cairo Court of Appeal, Circuit (8), Challenge No. 43 of 134 JY, session dated 19 August 2018.
120 Cairo Court of Appeal, Circuit (8), Challenge No. 55 of 134 JY, session dated 16 September 2018.
121 Cairo Court of Appeal, Circuit (50), Challenge No. 59 of 135 JY, session dated 28 November 2018.
122 Supreme Constitutional Court, Challenge No. 8 of 22 JY, session dated 4 August 2001 and Challenge No. 9 of 1 JY, session dated 5 December 1981.
123 Cairo Court of Appeal, Circuit (62), Challenge No. 39 of 130 JY, session dated 6 August 2018.
124 Supreme Administrative Court, Challenge No. 35839 of 57 JY, session dated 7 February 2018.
125 Supreme Constitutional Court, Challenge No. 95 of 20 JY, session dated 11 May 2003.
126 Cairo Court of Appeal, Circuit (7), Challenge No. 3 of 134 JY, session dated 7 August 2017, to the same effect see Court of Appeal,

Circuit (7), Challenge No. 45 of 131 JY, session dated 3 June 2016.

127 Supreme Constitutional Court, Challenge No. 8 of 22 JY, session dated 4 August 2001 and Challenge No. 9 of 1 JY, session dated 5 December 1981.

128 Cairo Court of Appeal, Circuit (7), Challenge No. 38 of 135 JY, session dated 3 September 2018.

129 http://news.crcica.org/2018/06/30/crcica-second-quarter-2018-caseload-a-new-record-of-female-arbitrators-appointments.

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Matouk Bassiouny & Hennawy is a full-service independent law firm based in Cairo, Egypt. We specialise in advising multinationals, corporations, financial institutions and governmental entities on all legal aspects of investing and business in Egypt and the region. Our team of 16 partners and over 170 fee-earners are trained both locally and internationally and are fully conversant in English, Arabic and French.

The firm prides itself on its in-depth understanding of cross-border cultural and business practices and on providing a commercial problem-solving approach to its legal services.

Headed by F John Matouk, co-founder of the firm, the dispute resolution group consists of four partners, two counsels and eight senior associates and 42 fee-earners. Grounded in both common and civil law jurisdictions, our team provides our clients with comprehensive dispute resolution services in both English and Arabic. Our primary goal is to effectively manage risk and resolve disputes pursuant to clients strategic interests whether through amicable negotiation, litigation or arbitration.

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THE MIDDLE EASTERN AND AFRICAN ARBITRATION REVIEW 2019 ISBN 978-1-83862-214-5