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The cover features several large, dark green leaf-like shapes scattered across the background, creating a natural, organic feel. The leaves vary in size and orientation, with some pointing upwards and others downwards.

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# Enforcement of Judgments

Egypt

Matouk Bassiouny & Hennawy

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## Law and Practice

*Contributed by Matouk Bassiouny & Hennawy*

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**Matouk Bassiouny & Hennawy** is a full-service independent law firm based in Cairo, Egypt, with offices in UAE and Sudan. They 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 19 partners and over 155 fee earners are trained both locally and internationally and are fully conversant in English, Arabic and French. Headed by F. John Matouk, co-founder of the firm, the dis-

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## 1. Identifying Assets in the Jurisdiction

### 1.1 Options to Identify Another Party's Asset Position

There are a number of public registers that might help identify defendant's assets. These include the Real Estate Register's Office for the identification of immovables and the Commercial Register for the identification of commercial companies.

In addition, Egyptian law obliges banks to disclose the financial position of debtors subject to the fulfilment of certain judicial procedures.

## 2. Domestic Judgments

### 2.1 Types of Domestic Judgments

Egyptian law permits the issuance of different types of domestic judgments. These vary depending on the competent court, ie, the civil or criminal court. The civil and commercial courts may render the following types of judgment:

- declaratory;
- introductory;
- interlocutory or interim;
- default;
- compulsory;
- consent; and
- final.

In addition, the criminal courts may render:

- a judgment in presence;
- a judgment in absentia; and
- a reconciliation judgment.

### 2.2 Enforcement of Domestic Judgments

The Civil and Commercial Procedures Law No. 13 for the year 1986 regulates the enforcement procedures for domestic judgments.

As a general rule, final judgments are subject to compulsory enforcement, which is also the case for awards rendered by the Court of Appeal. Some judgments rendered by the court of first instance may also be enforceable if provided for by law, such as summary judgments, unless the judgment provides for the depositing of a security. The law grants the successful party the right to impose a precautionary attachment over movables that are owned by and in the possession of the debtor or a third party (eg, the defendant's bank account). This law also regulates the requirements and procedures for the compulsory enforcement of domestic judgments.

The first step in the enforcement process is the service of the relevant judgment on the defendant, demanding that he or

she take the necessary action, eg, pay the amount awarded or deliver the land sold.

Precautionary attachments do not require a court decision. They can be conducted by a court bailiff following the satisfaction of certain legal requirements.

For insolvency proceedings, Egyptian law differentiates between insolvency, which is regulated under Egyptian Civil Law, and bankruptcy, which is regulated under a recently promulgated law (Law No. 11 for the year 2018). The insolvency procedures apply to non-traders with respect to non-commercial disputes.

Under the civil law, a debtor may be declared insolvent if his or her assets are insufficient to satisfy his or her debts. Insolvency is declared by the judgment of the court of first instance of the district in which the debtor is domiciled, or upon petition by the debtor himself or one of his or her creditors. The lawsuit shall be adjudicated in an expedited manner.

### 2.3 Costs and Time Taken to Enforce Domestic Judgments

Generally, there is no specific time in which to enforce a domestic judgment. However, the costs and timeframe vary depending on the selected enforcement method, ie, a precautionary or a compulsory enforcement, and also whether the enforcement procedures are against movables or immovables. The law regulates the necessary requirements and procedures for each enforcement method. Assuming that enforcement will be made against movables owned by the debtor, the expected time frame may take approximately 18–24 months. However, for precautionary attachment, this may take 6–8 months.

It is generally advisable to commence enforcement procedures against the defendant's bank account as this is a more efficient and prompt enforcement procedure.

### 2.4 Post-judgment Procedures for Determining Defendants' Assets

Generally, there is no official central record of a defendant's assets. However, certain public registries may help identify some. These registers include the Real Estate Register's Office for the identification of immovables and the Commercial Register for the identification of commercial companies.

Additionally, there are some procedures that can be followed by the successful party to identify the defendant's assets. For example, to attach the defendant's bank account, the applicant must notify the relevant bank of his or her debt and seek attachment through a document issued by a court bailiff. The applicant must then submit an application to the competent judicial authority to obtain an order obliging the bank to disclose the financial position of the defendant, which must

be disclosed within 15 days of receipt of the bailiff's submission and disclosure order.

### 2.5 Challenging Enforcement of Domestic Judgments

The Civil and Commercial Procedures Law No. 13 for the year 1986 provides the legal options available to a defendant who wishes to challenge the enforcement of a domestic judgment. These options include filing an appeal before the highest courts, such as the Court of Cassation, and seeking cancellation of the judgment and a stay of enforcement until a final decision on the merits of the case is rendered.

Additionally, in order to provide balance between the creditor's right to secure his or her rights through compulsory enforcement and the debtor's right to avoid an invalid enforcement, Egyptian law regulates the initiation of certain lawsuits by either (i) suspending the enforcement automatically, or (ii) granting the competent judge the discretion to suspend the enforcement. Further, Egyptian law regulates the legal requirements and procedures for the initiation of these lawsuits. For example, the defendant can challenge enforcement if the creditor's right is extinguished for any reason. The defendant can also challenge enforcement if the applicant is seeking enforcement on an asset that cannot be subject to enforcement or attachment. This includes property owned by the state or a public artificial person allocated for a public purpose.

Another option is to file a contestation against enforcement of the judgment. The first contestation automatically suspends the enforcement of the judgment until the court makes a determination on the merits of the contestation itself.

### 2.6 Unenforceable Domestic Judgments

A judgment that does not impose an obligation on the parties cannot be subject to enforcement; for example, a declaratory judgment cannot be subject to enforcement. In addition, the judgment should be final and not subject to an appeal unless it is issued in a summary matter or is accompanied by expeditious execution.

### 2.7 Register of Domestic Judgments

There is no central register of domestic judgments. However, each court documents all judgments issued by it. However, this record only includes the parties' names, the number of the judicial proceedings and the date of the judgment. The Ministry of Justice is currently preparing documentary records for all judgments issued by the Egyptian courts.

## 3. Foreign Judgments

### 3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The Civil and Commercial Procedures Law No. 13 for the year 1986 regulates the enforcement procedures of foreign judgments in Egypt. A party seeking to enforce a foreign judgment must first obtain an *exequatur*. Foreign judgments can then be enforced in accordance with the same requirements for the enforcement of domestic judgments.

A petition for the enforcement of a foreign judgment should be filed before the competent court of first instance as per the normal procedures for the initiation of a lawsuit. The court will not render an enforcement order unless the following conditions are satisfied:

- the foreign court had jurisdiction to decide on the dispute;
- the concerned parties were duly notified and represented in the proceedings;
- the relevant judgment was final as per the law of the court rendering the judgment; and
- the judgment does not contradict any existing judgment or order rendered by any Egyptian court and is not in contravention of public policy or morality in Egypt.

In addition, the court must ensure that the country where the judgment was rendered enforces judgments issued by Egyptian courts (reciprocity).

The application of the above requirements and procedures is subject to the provisions of the relevant conventions and treaties to which Egypt is a party.

Furthermore, Egypt has joined the Al Riyadh Arab Convention for Judicial Cooperation (6 April 1983). Egypt is also a signatory to certain enforcement conventions such as the Arab League Convention (1952) and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (1965). In addition, Egypt is a member to a number of bilateral treaties concerning the judicial enforcement, eg, France and China, as well as being a signatory to the Legal and Judicial Cooperation Agreement with the UAE.

### 3.2 Variations in Approach to Enforcement of Foreign Judgments

Egyptian law does not differentiate between the enforcement of domestic and foreign judgments. All types of foreign judgments are subject to the same legal requirements and procedures.

### 3.3 Categories of Foreign Judgments Not Enforced

Subject to the provisions of the relevant enforcement conventions or treaties to which Egypt is a party, Egyptian courts

do not generally enforce any foreign judgment that is subject to an appeal in the country in which the judgment was rendered. Also, the courts will not enforce a foreign judgment if the party or parties concerned were not duly notified and represented in the proceedings.

### 3.4 Process of Enforcing Foreign Judgments

Subject to the application of the relevant conventions and treaties, Egyptian law requires the party seeking enforcement of a foreign judgment to obtain an exequatur. Foreign judgments are enforced in accordance with the same requirements as domestic judgments. A writ of enforcement of a foreign judgment should be filed before the competent court of first instance, as per the normal procedure for the initiation of a lawsuit.

The applicant party should also submit a bundle of documents, including the original version of the foreign judgment along with its official Arabic translation, a certificate ensuring that the judgment is final according to the laws of the country in which the judgment was rendered and a copy of any relevant convention, treaty or agreement between the issuing country and Egypt. The request for enforcement is then submitted to the court whose jurisdiction encompasses the place of enforcement. The competent court will render its exequatur without reviewing the merits of the foreign judgment.

Once the exequatur is issued, the applicant must serve it on the defendant. If the defendant does not accept the judgment voluntarily, the applicant may seek compulsory enforcement of the judgment.

### 3.5 Costs and Time Taken to Enforce Foreign Judgments

The receipt of an exequatur on a foreign judgment takes between six and twelve months. The court's decision to issue an exequatur is subject to appeal, which can take six months to determine.

The costs incurred on the enforcement of a foreign judgment in Egypt consist of a filing fee of approximately EGP1000 and 2.5% of the awarded amount, to be paid following the issuance of the exequatur.

### 3.6 Challenging Enforcement of Foreign Judgments

Generally, the party against whom enforcement of a foreign judgment is sought may argue non-fulfilment of the legal requirements in order to stall the enforcement. However, once an exequatur is issued, the judgment will be enforced according to the same requirements and procedures as for the enforcement of domestic judgments. It will also be subject to the same challenges and obstacles explained in the answer to question 2.5 **Challenging Enforcement of Domestic Judgments** above.

## 4. Arbitral Awards

### 4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Subject to the provisions of international conventions applicable in Egypt, the enforcement of arbitral awards is regulated under the Egyptian Arbitration Law No. 27 for the year of 1994. Arbitral awards enjoy the authority of *res judicata* under Egyptian law. However, a party seeking the enforcement of an arbitral award must obtain an execution order from the competent court (exequatur).

In addition, Egypt is a signatory to a number of conventions that facilitate the enforcement of arbitral awards, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Egypt signed it on 2 February 1959 and ratified it on 8 June 1959) and the 1966 ICSID Convention (Egypt signed it on 11 February 1972 and ratified the same on 2 June 1972).

### 4.2 Variations in Approach to Enforcement of Arbitral Awards

Egyptian arbitration law differentiates between domestic arbitral awards seated in Egypt and foreign arbitral awards seated outside of Egypt. While the enforcement of domestic arbitral awards is governed by Article 56 of the Arbitration Law, the enforcement of foreign arbitral awards is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

### 4.3 Categories of Arbitral Awards Not Enforced

Egyptian arbitration law differentiates between domestic arbitral awards seated in Egypt and foreign arbitral awards seated outside of Egypt. While the enforcement of domestic arbitral awards is governed by Article 56 of the Arbitration Law, the enforcement of foreign arbitral awards is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

### 4.4 Process of Enforcing Arbitral Awards

A party seeking the enforcement of an arbitral award must obtain an exequatur from the competent court. The following provides a summary of the legal steps that should be followed to enforce an arbitral award:

- the applicant should first serve the arbitral award, together with its Arabic translation, on the defendant through a court bailiff;
- the applicant must then deposit with the secretariat of the competent court the original arbitral award, or a signed copy thereof, as well as an authenticated Arabic translation thereof. In this respect, a specific forum called “the Technical Office for Arbitration at the Ministry of Justice” has to review the arbitral award before accepting its deposit;

- following the deposit of the arbitral award, a court notice should be served on the defendant to inform him or her of the deposit;
- an enforcement application must then be submitted to the president of the competent court, together with the following documents: (i) the original award or a signed copy thereof; (ii) a copy of the arbitration agreement; (iii) an Arabic translation of the award, certified by a competent body (in case the award was not made in Arabic); and (iv) a copy of the procès-verbal attesting the deposit of the award pursuant to Article 47 of this Law (Article 56 of the Egyptian Arbitration Law);
- in addition, the Arbitration Law imposes the following conditions on the enforcement arbitral awards:
  - (a) the award cannot be executed before 90 days have elapsed from notifying the losing party of the award. This is the period during which the losing party may file an annulment action against the arbitral award; and
  - (b) the court is not permitted to order enforcement of the award, except after having ascertained the following:
    - (i) that the arbitral award does not contradict a judgment previously rendered by an Egyptian courts on the subject matter in dispute;
    - (ii) that the arbitral award does not violate the public policy provisions of Egyptian law; and
    - (iii) that the arbitral award was properly notified to the party against whom it was rendered.
- upon the lapse of the 90 days, the applicant will then be entitled to seek official execution of the arbitral award (ie, request the issuance of an execution order “*exequatur*”), regardless of whether or not an annulment lawsuit is filed; and
- following the fulfilment of the above conditions and procedures, the competent court will then issue its execution order (ie, *exequatur*) on the arbitral award.

For foreign arbitral awards seated outside Egypt, the applicant must submit evidence concerning the status of any nullification action in the country where the award was rendered.

For the enforcement of ICSID awards, and pursuant to the Article 54(20) of the ICSID Convention, the Ministry of Justice has been designated by Egypt as the competent authority for the recognition and enforcement of arbitral awards rendered pursuant to the ICSID Convention.

#### 4.5 Costs and Time Taken to Enforce Arbitral Awards

In the absence of exceptional circumstances, the receipt of an *exequatur* pursuant to an arbitral award takes between eight to twelve months. The costs may vary depending on whether an official Arabic translation of the award is required.

#### 4.6 Challenging Enforcement of Arbitral Awards

Under the Egyptian Arbitration Law, the arbitral award is final, not subject to appeal and enjoys the authority of *res judicata*, but it may be subject to a nullification lawsuit provided that sufficient grounds exist. However, Egyptian courts only have jurisdiction to decide on a nullity action against a domestic arbitral award seated in Egypt. Thus, the foreign arbitral awards seated outside Egypt are not subject to nullification lawsuits.

As a general rule, Egyptian courts are not authorised to review the merits of the relevant arbitral award. They are only permitted to review an award if it violates any of the procedural aspects exhaustively listed under Article 53 of the Egyptian Arbitration Law.

From a procedural perspective, an annulment lawsuit should be filed before the competent court within 90 days of the date of receiving official notification of the arbitral award from the successful party (Article 54 of Arbitration law).

Article 53(1) of the EAL sets out an exhaustive list for the grounds of the annulment of arbitral awards. It provides:

“1. An arbitral award may be annulled only:

- (a) If there is no arbitration agreement, if it was void, voidable or its duration had elapsed;
- (b) If either party to the arbitration agreement was at the time of the conclusion of the arbitration agreement fully or partially incapacitated according to the law governing its legal capacity;
- (c) If either party to the arbitration was unable to present its case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond its control;
- (d) If the arbitral award failed to apply the law agreed upon by the parties to govern the subject matter in dispute;
- (e) If the composition of the arbitral tribunal or the appointment of the arbitrators was in conflict with this Law or the parties’ agreement;
- (f) If the arbitral award dealt with matters not falling within the scope of the arbitration agreement or exceeding the limits of this agreement. However, in the case when matters falling within the scope of the arbitration can be separated from the part of the award which contains matters not included within the scope of the arbitration, the nullity affects exclusively the latter parts only;
- (g) If the arbitral award itself or the arbitration procedures affecting the award contain a legal violation that causes nullity.”

Furthermore, Article 53(2) grants the court adjudicating the nullity action the right to decide ipso jure the nullity of the award if it is in conflict with Egyptian public policy.

Furthermore, the mere filing of annulment action does not stay the enforcement of the arbitral award whose annulment is being sought. However, the party against whom enforcement is sought may request the suspension of the enforcement pending the court's judgment on the annulment action itself. This request should be accompanied by an explanation of the (serious) reasons that justify the requested suspension. Therefore, the ruling suspending enforcement, if granted, is a temporary decision. It will lapse once a judgment on the annulment action is rendered.

Other legal challenges, as explained in the answer to question no. **2.5 Challenging Enforcement of Domestic Judgments** above, are also applicable to the enforcement of arbitral awards.

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