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Enforcement of Judgments 2021

Egypt

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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 a defendant's assets, including the Real Estate Register's Office for the identification of immovables and the Commercial Register for the identification of commercial companies. A company's commercial register shows material information about the company, such as:

- its headquarters;
- board members;
- the existence of any liens on its assets; and
- whether the company is subject to bankruptcy proceedings.

In addition, if the defendant is a listed company in the Egyptian stock exchange, it might be possible to identify its assets from its disclosures and financial statements.

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

Moreover, the Central Depository and Registry Law of Financial Instruments creates a centralised system that keeps records of all shares, including the names of owners and transactions that take place on those shares. Thus, it can be used to determine the defendant's ownership of shares and financial instruments.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

Egyptian law permits the issuance of different types of domestic judgments, subject to the nature and jurisdiction of the competent courts; ie, civil or criminal courts. Egyptian jurispru-

dence advances the following judgments' categorisation.

Categorisation Based on the Finality of Judgments

A final judgment puts an end to the whole dispute, a part thereof, or a secondary matter in response to the parties' pleas; eg, lack of jurisdiction. These judgments have a *res judicata* effect that prevents the litigating parties from filing another action for the same matter. However, these judgments might still be subject to appeal.

Non-final judgments do not settle the dispute and do not provide a final opinion in a particular matter. They include the judgment referring the matter to an expert for financial or technical investigations or inspection.

An interim judgment does not end the dispute wholly or partially. Instead, it is a provisional judgment that might be later changed subject to the surrounding circumstances. Thus, for instance, a provisional judgment might be issued declaring the right of a party to possess a specific property pending a final judgment on the ownership of the same property.

Categorisation Based on the Content of Judgments

A judgment on the merits decides on the merits of the dispute, whether wholly or partially. It determines, declares, or confirms the existence or non-existence of a specific right or legal position, or any amendment thereof.

A procedural judgment decides on procedural issues that arise during the dispute; eg, the jurisdiction of the court, adjoining the case to another, or suspending the case.

In addition, there are other categorisations of judgments as to whether:

- a judgment is subject to an appeal;
- a judgment is declaratory, constitutive, or compulsory; and
- a judgment has res judicata status or is self-executing.

A judgment could also be issued “in the presence”, if the defendant attended the hearing, or when the defendant was notified in person, or submitted a memorandum in response to the statement of claims. Conversely, a judgment in absentia is where the defendant did not attend the hearing, was not notified and did not submit a memorandum in response to the statement of claims.

2.2 Enforcement of Domestic Judgments

The Civil and Commercial Procedures Law No 13 of 1968 regulates the enforcement procedures for domestic judgments.

As a rule, final judgments are subject to compulsory enforcement, which is also the case for judgments rendered by the Court of Appeal. However, 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. In addition, 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). Finally, this law also regulates the requirements and procedures for the compulsory enforcement of domestic judgments.

The Enforcement Process

The first step in the enforcement process is the service of the relevant judgment on the defendant, demanding that it responds to the judgment voluntarily; eg, pay the amount awarded or deliver the land sold.

The notice is served by the court bailiff on the defendant in its actual residence, including a copy of the document according to which the enforcement is sought and a request that the defendant undertakes the necessary action; ie, payment of the debt if it is an amount of money, performing specific work if it is for the performance of work, or delivering a particular item if the judgment is to deliver it.

The defendant can avoid the compulsory enforcement procedures if it acts on the judgment voluntarily following the notification.

Secondly, the respective party shall submit an enforcement request to the head of the competent enforcement administration.

Thirdly, the enforcing party may then proceed to enforce the judgment on the defendant’s assets through an attachment followed by public auction. The auction’s revenues will then be distributed to the creditors of the defendant.

Furthermore, the defendant’s assets might be subject to precautionary attachment and executive attachment.

Precautionary Attachment

Precautionary attachment puts the assets under the control of the courts. Thus, a defendant may not dispose of any of the assets subject to precautionary attachment. Precautionary attachments do not require a court decision. Instead, they can be conducted by a court bailiff following the satisfaction of specific legal requirements.

In general, it is a temporary action that is taken to determine the assets of the defendant and restrict it from taking any action on the assets to the detriment of the enforcing party.

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The general requirements for precautionary attachment are that:

- the right is certain;
- the right is due; and
- the right is quantified.

Finally, only movables can be subject to precautionary attachments.

Executive Attachment

Subject to the satisfaction of the legal requirements and procedures, the executive attachment is the step preceding the compulsory sale of the defendant's assets through public auctioning under the supervision of the competent enforcement judge.

Executive attachment procedures differ depending on the nature of the asset subject to the attachment; ie, a movable or an immovable asset.

Furthermore, 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 of 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 their assets are insufficient to satisfy their 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 themselves or one of their 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 whether the enforcement procedures are against movables or immovables. The law regulates the necessary requirements and procedures for each enforcement method. For example, assuming that enforcement will be made against movables owned by the debtor, the expected timeframe may take approximately 18–24 months. For a precautionary attachment, this may take six to eight 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 central official record where the successful party can identify the assets owned by the defendant. However, certain public registries may be helpful in identifying some of the defendant's assets. These registers include the Real Estate Register's Office for the identification of immovables ownership 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, for attachment on the defendant's bank account, the applicant has to notify the relevant banks with its debt and the sought attachment through a document issued by a court bailiff. The applicant has then to submit an application to the competent judicial authority to obtain an order obliging the banks to disclose the financial position of the defendant.

The banks shall then disclose the financial position of the defendant within 15 days of the receipt

of the court bailiff document and the disclosure order. The banks cannot then pay the amounts under their custody to the defendant.

COVID-19

It should be noted that the COVID-19 outbreak led the government to temporarily close and suspend the operation of the Real Estate Register's Office to curb the spread of the virus. This office has currently resumed its operation with a limited capacity.

The prime minister, on 29 June 2020, issued Decree No 1295 of 2020, stating that the period of lockdown, from 17 March until 27 June 2020, was to be considered a period of suspension of all limitation periods, including those of enforcement proceedings. Thus, non-initiation of enforcement proceedings within that period does not affect any limitation periods of enforcement proceedings. Recently, the Court of Cassation has relied on the above decision to rule for the suspension of the procedural periods regulating the challenge of judgments.

2.5 Challenging Enforcement of Domestic Judgments

The Civil and Commercial Procedures Law No 13 of 1968 includes the legal options available for the defendant to challenge the enforcement of domestic judgments. These options include:

- filing an appeal before the highest courts, such as the Court of Cassation;
- seeking the cancellation of the judgment; and
- a stay of enforcement until the final decision on merits is rendered by the court.

Additionally, in order to balance between the creditor's right to obtain its rights through compulsory enforcement and the debtor's right to avoid an invalid enforcement, Egyptian law regulates the initiation of certain lawsuits to either:

- suspend the enforcement automatically; or
- grant the competent judge the discretion to suspend the enforcement.

Egyptian law further regulates the legal requirements and procedures for the initiation of these lawsuits. For example, the defendant can challenge the enforcement if the creditor's right is extinguished for any reason. The defendant can also challenge the 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 public juridical persons and allocated for a public purpose, and any amount more than a quarter of a person's salary.

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

2.6 Unenforceable Domestic Judgments

Any judgment that does not impose an obligation on its 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 (other than a challenge before the Court of Cassation), unless it is issued in a summary matter or accompanied by an expeditious execution.

2.7 Register of Domestic Judgments

There is no central register including all judgments rendered by the Egyptian courts. However, each court has a documentary record for all the judgments issued by it. This record only includes the parties' names, the number of 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.

On 10 June 2020, in a welcomed response to the COVID-19 outbreak, the Court of Cassation announced the launch of a new electronic platform that contains a record of all challenges before the Court of Cassation, including the challenge number, status, hearing date and other relevant data.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The Civil and Commercial Procedures Law No 13 of 1968 regulates the recognition and enforcement procedures of foreign judgments in Egypt. A party seeking the enforcement of a foreign judgment must obtain an exequatur. Foreign judgments can be enforced in accordance with the same requirements for the enforcement of domestic judgments. This general rule is subject to foreign judgment enforcement conventions and treaties to which Egypt is a signatory.

A petition for the enforcement of foreign judgments 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 its enforcement order unless the following conditions are satisfied:

- Egyptian courts have no jurisdiction over the dispute, and the foreign court has jurisdiction to decide on the respective dispute;
- the concerned parties are duly notified and represented in the proceedings;
- the relevant judgment is 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 has to ensure that the country in which the judgment was rendered enforces judgments issued by the Egyptian court (reciprocity). The receipt of the enforcement order (an exequatur) is subject to the fulfilment of the recognition procedures under Egyptian law.

Application Provisions

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. If, however, any of these requirements were absent but the applicant feared the loss of its right, it may apply to obtain a precautionary seizure but will have, in any case, to file a writ of enforcement within eight days from enforcing the precautionary seizure.

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

3.2 Variations in Approach to Enforcement of Foreign Judgments

Subject to the satisfaction of the conditions referred to in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**, Egyptian law does not differentiate between the enforcement of domestic and foreign judgments. Therefore, 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 where the judgment was rendered. Also, the courts will not enforce a foreign judgment if the party or parties concerned was/were not duly notified and represented in the proceedings as the lack of proper notification is considered a matter of public policy. Finally, the courts will not enforce a foreign judgment that Egyptian courts have exclusive jurisdiction to decide on a dispute; eg, a dispute involving real estate situated in Egypt.

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. Subject to the recognition and enforcement requirements, 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 before such courts.

Practically, the applicant party submits 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 (if any). 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. However, the court

must ascertain that the conditions referred to in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments** are fulfilled.

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

Subject to the absence of any exceptional circumstances, the receipt of an exequatur on a foreign judgment takes around six to twelve months. The court's decision to issue an exequatur is subject to appeal, which takes around six months to decide.

The costs incurred on the enforcement of a foreign judgment consist of paying a filing fee of approximately EGP1,000 and a fee of 2.5% of the amounts subject to the enforcement procedures (not the total awarded amounts) is charged for each enforcement measure. This fee could be paid more than once, depending on the nature of the enforcement measures conducted over the defendant's assets. However, the 2.5% fee will be retrieved from the counterparty; ie, added to the amounts collected from the counterparty.

3.6 Challenging Enforcement of Foreign Judgments

Generally, the party against which enforcement of a foreign judgment is sought may argue non-fulfilment of the legal requirements in order to stop the enforcement procedures. For example, this party may raise specific arguments about the due process and proper notification of the foreign proceedings, the non-jurisdiction of the court that rendered the judgment, and that the foreign judgment violates public policy principles or is not final yet.

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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 **2.5 Challenging Enforcement of Domestic Judgments**.

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 Egyptian Arbitration Law No 27 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) to forcibly enforce it against the defendant.

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 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. Recently, the courts found that in the

event of a contradiction between the provisions of Egyptian domestic law and the provisions of the New York Convention, the provisions of the New York Convention would prevail.

Furthermore, Egyptian courts found that the enforcement of foreign arbitral awards cannot be subject to rules stricter than those applicable to national arbitral awards.

4.3 Categories of Arbitral Awards Not Enforced

Generally, arbitral awards that do not impose any obligation on their parties cannot be subject to compulsory enforcement. To be enforceable, the arbitral awards should not contradict any previous judgment rendered by Egyptian courts, nor violate the provisions of public policy. In addition, the enforcement of the arbitral award cannot be granted if the award is rendered in a matter that cannot be subject to compromise, such as matters relating to crimes, status and family law.

As regards the requirement that foreign arbitral awards must not violate public policy, if such violation is only partial – ie, that only part of the award violates public policy – the other parts of the award that do not violate public policy may still be enforced. This requires that the parts that may be enforced could be separated from the parts that violate public policy.

In any event, for any foreign arbitral award to be enforced, it must be final.

Recently, Egyptian courts have recently adopted a friendlier approach to arbitration. For instance, the Court of Appeal rendered a judgment enforcing a foreign arbitral interim measure issued by an ICC tribunal. The Court found that enforcement of interim measures is through the same procedures to enforce final arbitral awards; ie, through an order on application without notifi-

cation or hearing of the parties. The court only required that the interim measure must be final, based on a valid arbitration agreement, both parties had the opportunity to present their case and is not against public order.

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.

First, the applicant should serve the arbitral award, together with its Arabic translation, on the defendant through a court bailiff. Second, 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 it of the deposit. An enforcement application must then be submitted to the president of the competent court – in the case of foreign arbitral awards, with the president of the Cairo Court of Appeal – together with the following documents:

- the original award or a signed copy thereof;
- a copy of the arbitration agreement;
- an Arabic translation of the award, certified by a competent body (if the award was not made in Arabic); and
- a copy of the *procès-verbal* attesting the deposit of the award pursuant to Article 47 of the Egyptian Arbitration Law (Article 56 of the Egyptian Arbitration Law).

Conditions for Enforcement

The Arbitration Law imposes the following conditions on the enforcement of arbitral awards.

- 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.
- The court is not permitted to order enforcement of the award, except after having ascertained the following:
 - (a) that the arbitral award does not contradict a judgment previously rendered by an Egyptian court on the subject matter in dispute;
 - (b) that the arbitral award does not violate the public policy provisions of Egyptian law; and
 - (c) that the arbitral award was properly notified to the party against which it was rendered.

Upon the lapse of 90 days, the applicant will be entitled to seek official execution of the arbitral award (ie, requesting the issuance of an execution order, or “exequatur”), regardless of whether or not an annulment lawsuit is filed. Following the fulfilment of the above conditions and procedures, the competent court will issue its execution order (ie, exequatur) on the arbitral award.

Additional Requirements for the Enforcement of Foreign Arbitral Awards

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. If the court finds that a nullification action was filed, in practice, the court would delay enforcement procedures until a judgment in the set-aside action is rendered. This is done mainly in the case of requests to enforce foreign arbitral awards because it is done through an order on a petition that does not require attendance or submis-

sion of defence by the other party (against which enforcement is sought).

For the enforcement of ICSID awards, and pursuant to 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 and 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*. However, 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 an arbitral award seated in Egypt. Thus, foreign arbitral awards seated outside Egypt are not subject to nullification lawsuits.

As a 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 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 the Arbitration Law).

Grounds for Annulment

Article 53(1) of the Egyptian Arbitration Law 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 conflicts with Egyptian public policy.

However, the mere filing of an annulment action does not stay the enforcement of the arbitral award whose annulment is being sought. The party against which 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 decision that suspends 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 **2.5 Challenging Enforcement of Domestic Judgments**, are also applicable to the enforcement of arbitral awards.

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Matouk Bassiouny & Hennawy is a leading, full-service MENA law firm with offices in Algiers, Algeria (Matouk Bassiouny in association with SH-Avocats); Cairo, Egypt (Matouk Bassiouny & Hennawy); Dubai, UAE (Matouk Bassiouny); and Khartoum, Sudan (Matouk Bassiouny in association with AIH Law Firm), as well as a country desk covering the firm's Libya practice. A team of over 200 lawyers specialises in advising multinationals, corporations, financial institutions and governmental entities on all legal aspects of investing and doing business in the MENA region. Trained both locally and internationally in civil and common law systems, the

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