The Middle Eastern and African Arbitration Review 2021

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A Global Arbitration Review Special Report

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Welcome to *The Middle Eastern and African Arbitration Review 2021*, one of *Global Arbitration Review*'s annual, yearbook-style reports.

Global Arbitration Review, for those not in the know, is the online home for international arbitration specialists everywhere. We tell them all they need to know about everything that matters.

Throughout the year, *GAR* delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live and GAR Connect banners) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into the regional picture than the exigencies of journalism allow. *The Middle Eastern and African Arbitration Review*, which you are reading, is part of that series. It recaps the recent past and provides insight on what these developments may mean, from the pen of pre-eminent practitioners who work regularly in the region.

All contributors are vetted for their standing before being invited to take part. Together they provide you the reader with an invaluable retrospective. Across 128 pages they capture and interpret the most substantial recent international arbitration developments, complete with footnotes and relevant statistics. Where there is less recent news, they provide a backgrounder – to get you up to speed, quickly, on the essentials of a particular seat.

This edition covers Angola, Egypt, Lebanon, Mozambique, Nigeria, Qatar, Saudi Arabia, Turkey and the UAE, and has overviews on energy arbitration, investment arbitration, mining arbitration, damages (from two perspectives) and virtual hearings.

Among the nuggets you will encounter as you read:

- a helpful chart setting out the largest awards affecting Africa and the Middle East, recently;
- the admonition to expect a wave of restructurings of energy projects locally, and even formal insolvency proceedings;
- a data-led breakdown of investor-state disputes in Africa starting from 2013;
- the revelation that a number of Africa-related mining disputes-opted to pause proceedings rather than attempt virtual hearings when the pandemic struck;
- a brisk summary of the extra considerations that covid-19 has introduced into damages calculation;
- an in-depth analysis of Angola's BITs and the modernisation of BITs in the region more generally; and
- a clear-eyed commentary on recent Nigerian court decisions, some of which are 'not entirely satisfactory'.

Plus, much much more.

We hope you enjoy the review. I would like to thank the many colleagues who helped us to put it together, and all the authors for their time. If you have any suggestions for future editions, or want to take part in this annual project, *GAR* would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
May 2021

Egypt

Amr Abbas and John Matouk
Matouk Bassiouny & Hennawy

In summary

This chapter outlines the main features of Egypt's arbitration legal framework along with shedding light on key developments in the arbitration field during 2020. This includes the development of arbitration principles by the Egyptian courts concerning the definition of 'international' arbitration, removal of arbitrators, the application of the estoppel doctrine, virtual hearings, unfair compensation as a ground for annulment and the delocalisation and use of non-lawyers and foreign lawyers in arbitration proceedings. This chapter also summarises the introduction of arbitration as a means of dispute settlement in various disputes related to the banking sector, customs, intellectual property and sports arbitration.

Discussion points

- Legal framework for arbitration in Egypt
- Expansion of the scope of matters that may be solved by arbitration
- Recognition and enforcement of foreign awards in Egypt
- Sports arbitration developments
- Delocalisation of arbitration and allowing virtual hearings amid the covid-19 pandemic
- CRCICA's role in international arbitration

Referenced in this article

- Egyptian Arbitration Act
- Civil and Commercial Procedural Law
- The Sports Law No. 71 of 2017
- Investment Law No. 72 of 2017
- Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020
- Court of Cassation, Challenge No. 6466 of JY 89, dated 14 January 2020
- Cairo Court of Appeal, Circuit (3), Challenge No. 98 of JY 135, dated 26 November 2020
- Court of Cassation, Challenge No. 3449 of JY 78, dated 11 February 2020
- Court of Cassation, Challenge No. 282 JY 89, dated 9 October 2020
- Cairo Court of Appeal, Circuit (1), Challenge No. 15 of JY 137, dated 8 July 2020

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 2020, one new investment treaty case was registered with ICSID against Egypt. To date, a total of 35 cases against Egypt have been registered with ICSID. Of these 35 cases, seven are currently pending[2] (including one annulment proceeding brought by Egypt).[3]

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.[4] 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,[5] custom disputes[6] and certain crimes under the investment law of 2017,[7] as well as the criminal procedural law.[8] This is apart from crimes that can be prosecuted only upon a complaint by specific public or private persons.[9] 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 remains to be seen whether and to what extent such a possibility exists. A recent judgment by the Court of Appeal[10] suggests that a tribunal might be competent even with matters related to cheques as long as they are closely connected to the dispute. Thus, the court suggests that returning a cheque or its value falls within the arbitration agreement. It is worth noting that cheques in Egypt are the subject of criminal proceedings due to the punishment for issuing bounced cheques.

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.[11] The Court of Cassation drew a distinctive line in respect of the institutions whose arbitrations are deemed international.[12] The Court held that, for institutions located in Egypt, their arbitrations are international if the institution is based or

established by virtue of an international or regional treaty (eg, CRCICA) or a law for the purpose of administering international commercial arbitration. For institutions located outside Egypt, the court limited them to those having international or regional reputation with strong trust of users in the field of business and investment. In illustrating what institutions would satisfy such criteria, the Court, following the preparatory works of the Arbitration Act, gave an example of the International Chamber of Commerce (ICC) in Paris. Arbitrations held under the auspices of institutions that do not fulfil either of these criteria are deemed national.

That being said, the criteria of international arbitration have 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] which the Court of Cassation reconfirmed in a 2020 judgment.[16] The rationale stated by the Court of Cassation for its judgment is that Egyptian law adopts an objective approach based upon the nature of the arbitration irrespective of the institution that administers that arbitration. However, the matter is still unsettled by Egyptian courts as both the Court of Appeal[17] and the Court of Cassation[18] held in 2019 that awards rendered by CRCICA are international in nature.

The Arbitration Act is applicable without prejudice to the international conventions that Egypt is party to[19] and applies to all arbitrations between public or private law persons, irrespective of the nature of the legal relationship that the dispute revolves around,[20] 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.[21] 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.[22]

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; or[23]
- 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.[24] 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 that 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).[25]

In terms of the scope of the arbitration agreement, the Court of Appeal has held that the arbitration agreement scope excludes disputes related to the execution of the applicable contract, if the arbitration agreement is drafted in a manner that would only empower the arbitral tribunal to hear disputes arising out of the difference in interpreting the provisions of the agreement. The Court of Appeal decided that the tribunal would only be competent to hear those disputes relating to interpretation and not performance of the contract.[26] However, the Court of Appeal found that even if the tribunal exceeded its mandate and the scope of the arbitration agreement without any objection by the parties, this would not be a ground for annulment of the award as long as the party making the claim for annulment did not make any objection in this respect during the arbitration proceedings.[27] In another judgment, the Court of Appeal[28] found that rendering an award for tort liability falls outside the jurisdiction of the tribunal. In that case, the tribunal awarded compensation for the abuse of using a trademark that was categorised by the tribunal itself as tortious liability, which was considered by the court to fall outside the scope of the arbitration agreement.

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, as well as 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.[29] In this regard, the Cairo Court of Appeal maintained that matters relating to deciding ownership of real estate in Egypt relates to public policy and, therefore, are non-arbitrable and that any arbitration agreement in this respect is null and void, being against public policy.[30]
- The arbitration agreement must be in writing, otherwise it shall be null and void.[31] 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 offers and acceptance through electronic means.[32] 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,[33] or where proceedings are initiated without objection from the opposing party.[34]
- 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,[35] 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.[36]

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.[37]

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.[38] The power to approve the arbitration agreement may not be delegated.[39] The approval of the competent minister for the validity of an arbitration agreement is a matter of public policy.[40] Egyptian courts had held that the absence of ministerial approval invalidates the arbitration agreement.[41]

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,[42] which was similarly upheld by the Supreme Administrative Court in 2011.[43] 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.[44] The Arbitration Act does not provide for an annulment sanction for violation of article 1, and, therefore, this requirement is addressed, and 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).[45] Other tribunals have, as recently as 2011, taken the view that the arbitration agreement is void in the absence of ministerial approval.[46] 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 that it has ministerial approval of the arbitration agreement.[47]

How the 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.[48] 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 for the arbitration agreement in a dispute in relation to 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.[49] The Constitutional Court seemed to support that view.[50] Nonetheless, in a 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.[51]

In addition to the above, the subject matter of the administrative contracts disputes was subject to another recent judgment of the Court of Appeal.[52] It found that administrative contract disputes subject to arbitration are those arising from a contractual relationship with the administration. As such, an arbitral tribunal can render an award against the administration concerning financial rights and obligations without extending its oversight to the conditions of public authority or legitimacy of its decisions or the immunity of sovereign acts. In this case, the Court found that the arbitral tribunal had not exceeded these powers, and the award was valid.

Competent court with regard 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 were no arbitration agreement, to the jurisdiction of the Administrative Court.[53] Therefore, a challenge of the relevant arbitral award would be within the jurisdiction of the Supreme Administrative Court. However, 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), unless the parties agree to the jurisdiction of another Egyptian court of appeal.[54] 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 and international in nature. [55]

In line with this, the Cairo Court of Appeal 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.[56] 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.[57] The same principle applies in the CRCICA Rules. [58]

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 for choosing the arbitrator whose jurisdiction has been terminated.[59] Where the arbitration is institutional and the agreed appointing authority – for example, CRCICA – has made an appointment, the Court of Appeal has 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. [60]

If an arbitrator is substituted for any reason, the Cairo Court of Appeal has 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. [61]

The possibility of challenging a court decision appointing an arbitrator

Pursuant to article 17(3) of the Arbitration Act, a decision by the competent court to appoint an arbitrator in cases of failure to appoint one is unchallengeable independently. A party may still challenge such a decision when seeking to set aside the final arbitration award on the bases of constituting the tribunal in breach of the law or the arbitration agreement pursuant to article 53(e) of the Arbitration Act. However, a party may do so only if it objected to the appointment in the context of the arbitration proceedings subsequently to the court's decision. Failure to so object is considered by the Court of Appeal to be a waiver of the right to seek annulment on that ground. The Court has considered this to be the case especially where the party elects to pay that arbitrator's fees among the fees of other arbitrators.[62] However, the Court of Cassation seems to accept challenging the court's decision to appoint an arbitrator independently. In one case, the Court of Cassation found such a challenge to be admissible and cancelled a decision of the first instance court upheld by the Court of Appeal. The Court reasoned that such a decision becomes challengeable if rendered in contradiction of law, the parties' agreement or jurisdiction rules of public policy.[63]

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. [64]

According to the general rules of substitution of arbitrators, a substitute arbitrator shall be appointed by the same mechanism used to appoint the predecessor.[65] 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, at the request of a party, CRCICA can determine, 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.[66]

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 or her mission after the conclusion of all hearings and pleadings, an award rendered by a truncated tribunal shall not be annulled.[67] 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 the Arbitration Act.[68]

In 2015, the Court of Cassation held 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 due to the fact that the third arbitrator did not participate in the deliberations, the award becomes subject to annulment.[69]

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.[70] The arbitral tribunal is obliged to then refer the challenge to the competent court to decide the challenge.[71] If the tribunal rendered its opinion on the challenge, even if that opinion was implicit, this might lead to annulment of its award.[72] 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 the 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.[73] 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 at the very same outcome.[74] Conversely, the Court of Appeal in 2020 adopted a different view. It found that the procedures for challenging arbitrators stipulated in the Arbitration Act is not applicable if the parties had a different agreement or agreed on the rules of a centre with different procedures. [75]

Removal of arbitrators

The Arbitration Act provides in article 20 for the possibility of seeking the removal of an arbitrator by a court decision if he or she is unable or fails to perform his or her mission, or acts in a manner that unduly delays the arbitral proceedings. In application, the Court of Appeal considered that increasing ad hoc arbitration fees, which are decided by the ad hoc tribunal, repeatedly and exaggeratedly from US$50,000 to US$6 million, then suspending the proceedings for the parties' failure to pay such fees is conduct that obstructs and unnecessarily delays the proceedings. Accordingly, the court found that such conduct justifies the removal of the presiding arbitrator but not a party's appointed arbitrator in the same tribunal on the basis that this would interfere with the party's freedom to choose its arbitrator. [76]

The possibility for an Egyptian minister to serve as an arbitrator

According to article 10 of Presidential Decree No. 106 of 2013, government 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' government position.[77]

Procedural law

The Arbitration Act grants parties the freedom to choose the procedural law that will be applied by the arbitral tribunal, including their right to subject the 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.[78]

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,[79] except where these norms are considered 'basic guarantees of adjudication'.[80]

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 corresponding criminal proceedings, or criminal acts in general. In such cases, 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.[81] In such a case, the arbitral tribunal shall suspend the proceedings until a final judgment is rendered in this respect by the competent authority.[82] This results in the suspension of the time limit for rendering the final arbitral award where such a limit applies.[83]

The Court of Appeal judgments seem to narrow the scope for the arbitral tribunal to suspend proceedings. 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. In addition, as ruled by the same court, if the forgery allegation concerns the arbitration agreement itself, the arbitral tribunal may decide it without the need to suspend the proceedings as it would be a matter within its jurisdiction in such case.[84] Even in cases where the tribunal is obliged to suspend the proceedings, deciding so remains the exclusive jurisdiction of the tribunal. The Court of Appeal found that it has no competency to decide suspension in general.[85] Furthermore, the Court of Appeal recently held that the reliance by the arbitral tribunal on a document that turned out to be forged would not result in annulling the award because this is not among the exhaustively defined grounds for annulment of an arbitral award provided under article 53 of the Arbitration Act. [86]

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 based on an application from one of the parties[87] and 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.[88]

The arbitral award: time limit

The Arbitration Act grants the parties the right to agree upon the time limit of arbitration proceedings. In the 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.[89] 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, those 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, the proceedings shall not be subject to the time limit set out in the Arbitration Act and shall not be limited to a certain time limit unless otherwise agreed by the parties.[90] 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.[91] 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.[92] In a recent case,[93] it was found that if the competent court's order terminating the proceedings was unchallenged within the prescribed period, it would have the authority of *res judicata.* Thus, if the arbitral tribunal rendered its award afterwards, it would be annulled due to its contradiction of a court judgment that has the authority of *res judicata*, an issue that pertains to public policy.

However, the parties' continuance in the proceedings beyond the determined time limit is considered an implied extension to that limit.[94] Recently, the Court of Cassation[95] and the Court of Appeal[96] confirmed that the extension of the time limit beyond the designated limit in article 45 of the Arbitration Law is not a ground for the annulment of an arbitral award, as long as the parties did not object to the extension before the arbitral tribunal since it is a matter of fact. The Court further held that a party waives its right to dispute the extension of the time limit if it did not raise any objection to the extension before the arbitral tribunal.[97] The Cairo Court of Appeal has also ruled that the lapse of the 18-month period provided under the Arbitration Act for the issuance of the award does not entail the annulment of the arbitral award, as this time limit is deemed to be merely of an 'organisational' nature.[98]

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 this basis, the omission of information may only lead to the annulment of an arbitral award when the objective of mentioning that 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 an 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.[99] 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.[100]

Setting aside 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. Annulment proceedings could only be brought within 90 days of the valid notification of the award debtor, and the 90 days will not commence even if the counterparty became aware of the award through other means.[101] In this regard, the Court of Appeal distinguished between two notification scenarios. In the first, where the bailiff proceeds to the address of the notified party and does not find him or her, administrative notification through the public prosecution or the police will not be valid.[102] In the second, the bailiff proceeds to the address of the notified party and the notified party refuses to receive the notification; in this case, the administrative notification through the public prosecution or the police will be valid.[103] The Supreme Constitutional Court held that the right to bring annulment proceedings against arbitral awards is a constitutional one. 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 from filing a nullity suit. However, waiver of an annulment lawsuit after the arbitral award is permitted under Egyptian law. [104]

In 2020, the Court of Cassation[105] set out three conditions to consider a party to have waived its right to object to a breach that occurred during the arbitration proceeding:

- the party that claims the violation continues in the arbitration proceedings while knowing of the violation;
- the violation should be for a condition that was in the arbitration agreement; and
- the party that claims the violation did not object to the violation to the arbitral tribunal within the agreed time. If there is no agreed time, it should be made within reasonable time.

Further, 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 rendered the award without reasoning.[106] 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.[107]

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.[108]

In another case,[109] 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 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 the judgment.[110]

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. [111]

Egyptian courts 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.[112] However, the Court of Cassation rejected this view. In its reasoning, the Court decided that 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.[113] The latter Court rendered a second judgment maintaining its initial position.[114] However, the Court of Cassation[115] overturned this judgement and referred the case to another circuit within the Court of Appeal on the basis that judgments rendered by the Court of Cassation must be followed by other courts, including the Court of Appeal.

The Cairo Court of Appeal found that its jurisdiction to decide on setting aside cases does not extend to amending arbitral award, and, in particular, its dispositive part.[116] The case pertained to an application made under article 192(1) of the Procedural Law to interpret a previous Court of Appeal judgment that partially set aside an arbitral award. The applicants requested that the Court of Appeal interpret the setting-aside judgment by adding a certain wording to the dispositive part of the arbitral award, which the Court refused on the basis that it was not empowered to amend the dispositive part.

The Cairo Court of Appeal still maintains that only the binding final arbitral award may be subject to annulment.[117] Accordingly, any other decisions, orders or evidence proceedings may not be subject to independent annulment proceedings. On these grounds, the Court found that it lacks jurisdiction to decide on the annulment of a notice of an arbitration hearing.

The Court of Cassation further maintained its position that the court of appeal's jurisdiction in an annulment claim may not extend to reviewing the substance of the arbitral award to determine its convenience or to review the determination of the arbitrators in understanding the facts or applying the law since the annulment claim is not an appeal. This applies even if the determination was incorrect because the arbitrators' mistakes in this regard are not a ground for the annulment of the award they issue.[118]

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 the 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 an economic nature', pursuant to article 2 of the Arbitration Act, as long as his or her determination is based on reasonable grounds. The Court further provided that the judge may rely on the parties' intent in the contract to reach a determination. [119]

The Court of Cassation's power to decide annulment upon its own initiative or upon the public prosecutor's request

The Egyptian Court of Cassation recently held that parties and public prosecution alike may raise grounds of annulment that are matters of public policy before the Court of Cassation, even if the 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 a matter 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 Arbitration Act.[120]

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.[121] 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.[122] 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.[123] The enforcement of foreign arbitral awards in Egypt is governed by the New York Convention on the Enforcement of Foreign Arbitral Awards (the New York Convention),[124] and, as such, are subject to the same enforcement rules applicable to national arbitral awards under the Arbitration Act.[125] 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 contradict the provisions of domestic Egyptian law, the provisions of the New York Convention will prevail.[126] The Court of Appeal also held that the enforcement of foreign arbitral awards cannot be subject to rules stricter than those applicable to national arbitral awards under the Arbitration Act. Therefore, subjecting foreign arbitral awards to the rules of enforcement of the CCPL would contradict the object of the New York Convention,[127] a stance adopted recently by the Court of Cassation.[128] Nonetheless, recently, one circuit of the Court of Appeal held that foreign arbitral awards should be subject to the application of the provisions of the CCPL, that is, similar to the method of enforcement of foreign judgments and not the Arbitration Act, if the parties did not agree to apply the Arbitration Act,[129] while another circuit of the Court of Appeal took the opposite view and subjected it to the Arbitration Act.[130]

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 CCPL. 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 had already ruled that article 58(3) of the Arbitration Act is unconstitutional because it allows the challenging of a judge's order to refuse enforcement of an arbitral award while prohibiting the challenging of the judge's refusal to grant that order. A Constitutional Court judgment is binding for the courts.[131] Accordingly, the Cairo Court of Appeal ruled that the period for challenging an enforcement order, pursuant to the Constitutional Court's judgment, should be 30 days, equal to the period allowed for challenging a refusal to grant such an order, not 10 days as in the general rules on challenging orders on application under the CCPL.[132]

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 the enforcement order.[133]

The Court of Appeal previously rendered a judgment enforcing a foreign arbitral interim measure that was issued by an ICC tribunal. The judgment found that arbitral interim measures are to be applied according to the same legal procedures as those for enforcing a final arbitral award – that is, by an order on application without notification of, or hearing, the parties. The court went further and required the interim measure:[134]

- to be final, and to be considered so if rendered by a competent arbitral tribunal;
- to be based on a valid arbitration agreement;
- to have offered both parties the opportunity to present their case; and
- not to be against public policy.

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.[135]

2019–2020 highlight developments: in sports arbitration

Overview

The Sports Law No. 71 of 2017 (the Sports Law) was enacted to regulate sports matters. 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) for settlement of any sports disputes subject to the parties' respective agreement or sports regulations.

Article 66 of the Sports Law provides the mechanisms to settle any dispute arising in relation to sports. 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.[136]

The president of the Egyptian Olympics Committee issued a decision regarding a draft amendment of the statute of the Egyptian Olympic Committee. The amendment changed the name of the Egyptian Sports Arbitration Centre to the 'Egyptian Sports Settlement and Arbitration Centre'; it also vested the Olympic Committee with particular responsibility for the promotion of the principles of the Olympic Charter in dispute resolution and affirmed that the Egyptian Sports Settlement and Arbitration Centre has the exclusive jurisdiction to settle sports disputes according to the Sports Law and the principles of the Olympic Charter.

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

According to the Sports Law, the Sports Centre shall consider the Olympic Charter and the international criteria of the relevant sports' associations. Furthermore, the Centre shall consider the fundamental procedural guarantees and principles of the CCPL. The Sports Law empowered the Olympic Committee to issue its own mediation and arbitration rules, which set out in Decision No. 88 of 2017. As per the Sports Law, absent a provision in it or in the Sports Centre's rules, the Arbitration Act shall apply.[137]

The Sports Centre's rules organise not only its mediation and arbitration proceedings but also summary decisions, which are to be decided by a sole arbitrator,[138] challenging the arbitral awards and the enforcement thereof.

All the statutes of the sports federations approved by the president of the Egyptian Olympics Committee in 2020 included arbitration as a means to settle the disputes of the respective sports, for instance, the statute of the Basketball Federation,[139] the statute of the Judo, Aikido and Sumo Federation,[140] the statute of the Kickboxing Federation[141] and the statute of the Tennis Federation.[142]

Additionally, the president of the Egyptian Olympics Committee approved the statute of Genius Sports Club, which granted the Sports Centre the jurisdiction to settle disputes arising from the application of the statute including disputes arising in relation to membership, elections, contracts and other acts concluded on behalf of the Club.[143]

Moreover, the Headquarters Agreement concluded between Egypt and the Confederation of African Football selected arbitration as a final stage to settle disputes arising out of the interpretation, application, breach or termination of the agreement. The arbitration will be conducted at CRCICA in accordance with its Arbitration Rules.[144]

Annulment of Sports Centre awards

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 defined under the Sports Centre's rules, which are given precedence over the Arbitration Act by the Sports Law.[145] In the same vein, the Court of Appeal has also adopted the view that an appeal cannot be lodged against an arbitral award issued by the Sports Centre, as the Sports Law does not provide for such an appeal mechanism.[146]

In contrast, there were other judgments by the Court of Appeal holding that sports arbitration awards are subject to the annulment procedures stipulated in the Arbitration Act.[147] Confirming the same view, the Court of Appeal set aside a sports arbitration award because it was made by three arbitrators, while the default clause of the rules of the Sports Centre requires, in the absence of an agreement, that the tribunal is composed of a sole arbitrator; and because the award was not signed by the three arbitrators.[148]

The stance of the courts on mandatory arbitration under the Sports Centre arbitration rules

The Court of Appeal has previously described arbitration under the Sports Law as being mandatory,[149] although mandatory arbitration is systematically declared by the Constitutional Court as unconstitutional.[150] In a recent judgment, the Court of Cassation found that arbitration under the Sports Law, although mandatory, conforms with international practice in this respect, which aims to limit states' interference in sports as well as the directions of the International Olympic Committee.[151] Nevertheless, the court found that the rules of arbitration of the Sports Law as well as the Sports Centre's rules of arbitration might be unconstitutional for other reasons and referred the matter to the Constitutional Court.

Possible unconstitutionality of several articles of the Sports Law

The Court of Cassation referred articles 66 and 69 of the Sports Law to the Supreme Constitutional Court to decide on their constitutionality. The Court of Cassation found in its landmark judgment that articles 66 and 69 may conflict with the guarantee of impartiality and independence of the judiciary stipulated in article 94 of the Constitution. The Court's view is that article 66 links the Sports Centre to the Egyptian Olympic Committee, although it was mentioned in the same article that the Sports Centre is independent. Similarly, article 69 of the Sports Law has established several links between the Sports Centre and the Egyptian Olympic Committee including granting the president of the board of directors of the Olympic Committee the legislative mandate to issue the Sports Centre's rules.

Moreover, the Court of Cassation ruled that the Sports Centre's Rules were issued upon a legislative mandate granted to the Olympic Committee by the Sports Law. This deemed the rules to be a law, the constitutionality of which is subject to the jurisdiction of the Constitutional Court. The Court of Cassation found that articles 2, 81, 92-bis (b) and 92-bis (c) of the Sports Centre's rules may be in breach of articles 53, 84(2), 97 and 170 of the constitution, which require equality between citizens before the law, prohibit immunity from judicial review, and define the limits of legislative mandates and the hierarchy of different legislative instruments.

In particular, the Court of Cassation found that articles 2 and 81 of the Sports Centre's rules potentially exceed the legislative mandate granted by article 69 of the Sports Law to the Olympic Committee. Specifically, the Court's view is that this mandate requires the rules to be consistent with international standards and requires the Sports Centre to abide by the Olympic Charter, international standards, provisions of the Sports Law, main guarantees and principles of adjudication of the CCPL and the Arbitration Act. However, the rules did not abide by these requirements.

Importantly, the Court of Cassation found that articles 81, 92-bis (b) and 92-bis (c) of the Sports Centre's rules giving the arbitration awards immunity from judicial review were inconsistent with international standards, which the Court drew from the rules governing the Court of Arbitration for Sports (CAS), and which allow for the review of sports arbitration awards by the Swiss federal courts.

Abolishing mandatory arbitration in disputes arising between public sector companies or between a public sector company and state organs

Law No. 4 of 2020 amended some of the provisions of the Law regarding Public Sector Authorities and their Companies and abolished mandatory arbitration in disputes arising between public sector companies or between a public sector company and state organs. Before this amendment, public authorities, public bodies, and public sector companies were obliged to bring disputes between each other to mandatory arbitration under the auspices of the Ministry of Justice.

Arbitrations where state organs and companies are parties

The Prime Minister issued Decree No. 1062 of 2019 regulating the rules governing the Supreme Committee for Advising on International Arbitration Cases (the Supreme Committee) by introducing significant changes to its composition while simultaneously expanding its powers.

The Supreme Committee is competent to review and submit its opinion in all types of arbitral disputes, both commercial and investment, where the state or one of its authorities, entities or subordinated companies is a party to the dispute. The Supreme Committee is also competent to carry out the following:

- providing advice and opinions regarding the defence submitted in arbitration cases;
- determining the strength and suitability of the defence and the documents presented, and proposing any additions or changes that the Supreme Committee deems necessary to improve the Egyptian position;
- providing all types of legal assistance that may be required by the State Lawsuits Authority or the law firms carrying out the state's defence before arbitral tribunals; and
- suggesting an amicable settlement with the other parties.

The decree focuses on the establishment of the Technical Secretariat, which is expected to be the driving force behind the substantive work of the Supreme Committee. The Deputy Minister of Justice for Arbitration heads the Technical Secretariat, and a decree setting out the composition of the secretariat is expected to be issued shortly.

In addition, the decree explicitly prohibited any governmental or administrative authority from taking any action with respect to an arbitral dispute without first referring the matter to the Supreme Committee.[152]

In 2020, Decree No. 1062 of 2019 was amended and new authorities were granted to the Supreme Committee. Now contracts concluded by state organs, public sector companies or companies in which the state is a shareholder that include an arbitration clause to resort to international arbitration must be referred to the Supreme Committee before their conclusion. Furthermore, none of the state organs, bodies, ministries, state-owned companies or companies in which the state is a shareholder may take part in any procedure in an arbitration dispute without the Supreme Committee's approval.

The banking financial sector

Establishment of the Banking Financial Disputes Arbitration Centre

The New Banking Law No. 194 of 2020 introduced a new alternative method to settle banking and financial disputes through an independent arbitration centre dedicated to resolving disputes arising from the application of the New Banking Law and other related laws that govern banking activities. However, recourse to the new arbitration centre is subject to the parties' prior or subsequent agreement to settle the dispute through arbitration.

Arbitration of customs disputes

The new Customs Law No. 207 of 2020,[153] like its predecessor,[154] granted the party concerned, or its representative, the right to request arbitration in customs-related disputes, in the event of a sustained dispute between the Customs Authority and that concerned party, and subject to the approval of the Minister or his or her delegate. According to the New Customs Law, the dispute should be settled by a three-arbitrator tribunal chaired by a member of one of the judicial authorities, or one of the law professors registered in the Arbitrators Register of the Ministry of Justice.[155] As for the other two arbitrators, one arbitrator shall be nominated by the Minister while the other shall be nominated by the concerned party. [156]

Arbitration in IP disputes

The Minister of Trade and Industry Decree No. 354 of 2020, authorised the Contact Point Body for Protecting Intellectual Property Rights Affairs, in order to achieve its goals, to settle IP rights disputes through arbitration, subject to the agreement of the parties and in accordance with the rules and procedures set by the law in this regard. [157]

The non-banking financial sector

Establishment of the Non-Banking Financial Disputes Arbitration Centre

In continuation of the state's policy of expanding the reliance on arbitration as the primary dispute resolution instrument, the law organising control over the Non-Banking Financial Markets and Instruments provided for the establishment of an arbitration centre by a presidential decree to resolve disputes arising out of the application of the laws governing non-banking financial transactions, subject to the parties agreement on arbitration. Presidential Decree No. 335 of 2019 was issued in this regard, establishing the Non-Banking Financial Disputes Arbitration Centre (the NBF Centre). The NBF Centre is competent in all disputes that arise from application of the laws concerning non-financial transactions, in particular disputes between shareholders, partners or members of companies and entities that work in the non-banking financial markets. It is also competent in disputes between those companies and beneficiaries of the non-banking financial activities. However, the NBF Centre is only competent if the parties agree to its jurisdiction, whether before or after the dispute arises. The NBF Centre offers mediation and conciliation services before starting arbitration proceedings, unless the parties agree otherwise. According to article 8 of the aforementioned Presidential Decree, the Prime Minister issued Decree No. 2597 of 2020, which includes the statute of the NBF Centre and the rules and procedures regulating the Centre's operation.

Principles from the Egyptian courts issued in 2020

The Estoppel Doctrine

The Court of Cassation[158] recently applied the estoppel doctrine and confirmed that a party may not benefit from its own fault towards other parties nor shall the others bear its consequences, whether such fault is fraudulent or not, and even if the other parties were also at fault. This applies in the context of an arbitration agreement, the Arbitration Law, any other law and all transactions in fields other than arbitration. The Court further held that estoppel is not explicitly regulated under the law. However, it applies by virtue of article 1(2) of the Egyptian Civil Code.[159] The Court determined two conditions for invoking estoppel: a party must act in a manner that contradicts with its previous conduct; and this contradiction shall harm another party who dealt with the first party while relying on the validity of its previous conduct. In this case, the court denied one party's claim to nullify an arbitration agreement that was concluded by its vice-chair of the board instead of its chair, because this party may not benefit from its fault nor shall the others bear its consequences as per the estoppel doctrine. The same principle was adopted by the Court of Appeal[160] finding that the basic principles of arbitration do not allow a party to challenge an award when that party stated or accepted the same during the arbitration proceedings.

Representation of the parties in the arbitral proceedings by non-lawyers or foreign lawyers

The Court of Cassation[161] held that non-lawyers can represent the parties in the context of arbitration. The Court confirmed that the Arbitration Act did not include any provision that restricts the freedom of the parties to represent themselves before arbitral tribunals. It also did not include any rule that prohibits the parties from appointing others to represent them in arbitral proceedings including non-lawyers. The Court further reasoned that since the arbitration law permits the appointment of arbitrators irrespective of their profession, then, a fortiori, this applies to the parties' representatives. Therefore, the Court denied one party's claim to nullify an arbitral award in which a consulting engineer represented one of the parties to the arbitration.

Virtual hearings and delocalisation of arbitration

The Court of Cassation[162] recently confirmed that arbitration is no longer localised and that the legal definition of the seat is no longer associated with the actual place of holding the arbitration sessions (the venue). It had thus become the case that arbitrations were frequently seated in Egypt without taking place in Egypt. The Court confirmed that such delocalisation is also evident in the recent trend for virtual hearings.

The procedure of referring the award to the ICC International Court of Arbitration found to be valid

One of the parties in an ICC arbitration argued that the award should be annulled because non-arbitrators had participated in issuing the award, while only the tribunal issue the award. However, the Court of Cassation[163] refused this argument as the parties had agreed to the ICC Rules including the review by the Court of Arbitration of the award before rendering it. Additionally, the Court refused to consider the International Court of Arbitration a 'court' in the strict sense. The Court considered it to be an independent arbitration body that ensures the correct application of the rules of the ICC and does not interfere with the tribunal in issuing the award, but only supervises the arbitration procedures without having anything to do with the subject matter of the dispute or the claims of the parties. The Court added that the Court of Arbitration's review is only limited to ensuring the correctness of the award in its form to avoid refusing its enforcement in the country where it will be enforced; and even when the Court of Arbitration reviews the subject matter of the award, its opinion is not binding.

Extremely excessive and unfair compensation as grounds for the annulment of arbitral awards

The Court of Cassation has previously adopted a position that the wrong assessment of damages is not a ground for annulment because, in the eyes of the Court, the assessment of compensation is considered a question of fact and thus falls outside the scope of the action for annulment.[164] However, in 2020, the Court of Appeal[165] reviewed an annulment action for an arbitral award between an investor and the Libyan government rendered by a tribunal seated in Egypt. The tribunal in that case awarded about US$960 million to the investor as damages. In its judgment, the Court of Appeal found that it is necessary to find harm to order compensation. As such, compensation must be proportionate to the damage. If compensation is excessively not proportional with the damage, it would be considered extremely unjust and in violation of public policy (represented by the rules of equity and fairness). The Court held that an arbitral award may be annulled if it included – clearly and explicitly – unjust compensation, extremely unfair, extremely excessive in relation to the damage, or disproportionate and unreasoned. Similarly, in another judgment, the Court implied that it has jurisdiction to review the tribunal's assessment of compensation if it was extremely unfair, abusive or invented.[166]

Application of arbitration clauses between group of contracts

The Court of Appeal[167] recently confirmed the extension of the arbitration agreement to other contracts if the contracts are closely connected. The dispute concerned two contracts signed between an employer and another contractor. The Court found that one of the contracts was not independent; rather it was complementary, supplementary and closely connected with the first one. In addition, the Court found that both related to the same works. Thus, the Court found that the tribunal's refusal of a plea of non-jurisdiction made by one of the parties over the dispute related to one of the contracts (which did not include an arbitration agreement while the other one did) was correct.

The Court refuses jurisdiction on an award issued in a customary arbitration

Disputants in some Egyptian towns and villages frequently take recourse to elders or persons with high social status to settle their disputes. Sometimes this takes the form of an agreement to take recourse to a certain person to settle a particular dispute. Normally, the issues subject to dispute are matters related to rights in water, land and succession. In an interesting case, the parties brought their dispute concerning the right to use common property to a customary tribunal and the tribunal issued its decision. One of the parties challenged this decision before the Cairo Court of Appeal. However, the Court of Appeal refused the annulment action on the basis that the decision was not binding and final, and thus was not an arbitral award. The Court set out certain conditions for considering a decision an arbitral award: it must be final and obligatory; and any award whose enforcement depends on the consent of the parties will not be considered an arbitral award.[168]

The award does not have to include the arbitration agreement

The Court of Appeal[169] has held that the award issued does not have to include the arbitration agreement if the rationale behind this inclusion is achieved. In this case, one of the parties challenged an award for not including the arbitration agreement, which is a requirement for the validity of the arbitral award. The court found that the rationale behind requiring the award to include the arbitration agreement is to define the scope of the jurisdiction of the arbitral tribunal. The Court found that this could be achieved through looking at the documents of the case including the statement of claim, the hearings, and the requests of the parties, which would equally define the scope of the jurisdiction of the tribunal. It is worth noting that this judgement appears to contradict previous court judgements requiring the award to include the arbitration agreement.

Appointment of the presiding arbitrator in a different manner from that stated in the parties' agreement

The Court of Appeal[170] recently refused a claim made by one of the parties to annul an arbitration award because the presiding arbitrator was appointed by the arbitration institution in a manner different from that stated in the parties' agreement. The Court refused because none of the parties objected to the appointment during the proceedings.

Controversy on whether the applicable interest rate is a matter of public policy

The applicable interest rate remains an alive topic. The Egyptian Civil Code allows parties to agree on an interest rate, but only to a maximum of 7 per cent.[171] Absent agreement, the applicable rate shall be 4 per cent in civil matters and 5 per cent in commercial matters.[172] It has been a subject of debate whether the maximum rate pertains to public policy for the purposes of deciding on annulment of arbitration awards. In 2020, the Court of Appeal[173] did not consider it as such and considered application of higher interest rate a mere wrong application of the law and not related to public policy. It is worth noting that the Court of Appeal previously,[174] in denying that the maximum rate pertains to public policy, relied on the fact that the legislator already provides for higher rates in the Egyptian Central Bank Law in banking transactions and commercial law for commercial matters. In addition, it found that public policy is a matter that changes over time and upon change in circumstances. Thus, the maximum rate stipulated by the Civil Code, which was promulgated in 1948, is no longer necessitated by an essential public interest that justifies maintaining it as a public policy rule. [175]

However, the Court of Cassation recently confirmed that matters pertaining to the maximum interest rate are public policy matters. It thus held that the maximum rate is 5 per cent in commercial matters as per the Egyptian Civil Code, and denied the enforcement of any interest rates exceeding such cap while maintaining the enforceability of such interest rates up to the maximum rate. [176]

CRCICA in 2020

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 that of an international body enjoying judicial immunity in practising its role as an arbitration institution and thus it may not act as defendant in challenging its arbitration-related function.[177]

The total number of cases filed with CRCICA as at 30 September 2020 was 1,433 cases. In the third quarter of 2020, 16 new cases were filed, demonstrating a slight increase in new cases compared with the 15 new cases filed in the second quarter of 2019.[178]

CRCICA's caseload in the third quarter of 2020 involved disputes related to construction, tourism and hospitality, corporate restructuring, international sale of goods, renewable energy and mining. CRCICA has also highlighted that it has signed a total of 89 cooperation agreements with one new agreement in 2020, with China Guangzhou Arbitration Commission.[179]

Since it was established, CRCICA has adopted, with minor modifications, the arbitration rules of 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.

Recently, CRCICA has been responsive to the covid-19 outbreak and it saw an increase in the utilisation of virtual hearings, with four hearings held entirely via videoconference, one procedural hearing was held via teleconference and only two hearings were held with partial in-person attendance and partial remote attendance during the third quarter of 2020.[180]

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Notes

1 https://investmentpolicy.unctad.org/international-investment-agreements/countries/62/egypt?type=bits.
2 https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx.
3 *The Annulment Proceedings of Unión Fenosa Gas, SA v Arab Republic of Egypt* (ICSID Case No. ARB/14/4) was registered on 8 January 2019.
4 Article 1 of Arbitration Act No. 27/1994.
5 Article (138) of Tax Law No. 91 of 2005.
6 Article 64 of the New Customs Law No. 207 of 2020.
7 Articles (90) & (93) of Investment Law No. 72 of 2017.
8 Article (18) bis (a) of the Criminal Procedural Law.
9 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.
10 Cairo Court of Appeal. Circuit (1), Challenge No. 64 of Jy 137, dated 9 December 2020.
11 Article (3) of Arbitration Act No. 27/1994.
12 Court of Cassation, Challenge No. 14126 of JY 88, dated 22 October 2019.
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 Court of Cassation, Challenge No. 7470 JY 89, dated 23 February 2020.
17 Cairo Court of Appeal, Circuit (7), Challenge No. 28 of JY 135, dated 6 February 2019.
18 Court of Cassation, Challenge No. 14126 of JY 88, dated 22 October

2019.

19 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.

20 Article 1 of Arbitration Act No. 27/1994.

21 Article 10(1) of Arbitration Act No. 27/1994.

22 Cairo Court of Appeal Judgment, Circuit 91 – Commercial, Case No. 95/ 120 JY, session dated 27/4/2005.

23 Article 10(2) of Arbitration Act No. 27/1994.

24 Article 10(3) of Arbitration Act No. 27/1994.

25 Court of Cassation Judgment, Challenge No. 495/72 J, session dated 13 January 2004.

26 Cairo Court of Appeal, Challenge No. 3 of 136 JY, session dated 27 May 2019.

27 Cairo Court of Appeal, Circuit (1), Challenge No. 15 of JY 137, dated 8 July 2020.

28 Cairo Court of Appeal, Circuit (1), Challenge No. 39 of JY 136, dated 10 September 2020.

29 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).

30 Cairo Court of Appeal, Circuit (7), Judgement, Challenge No. 4 of 130 JY, session dated 3 September 2018. Also see, Cairo Court of Appeal, Circuit (91), Challenge No. 8 of 136, dated 9 April 2019, Cairo Court of Appeal, Circuit (91), Challenge No. 15 of JY 136, dated 14 May 2019 and Cairo Court of Appeal, Circuit (91), Challenge No. 17 of JY 134, dated 14 May 2019, Cairo Court of Appeal, Circuit (1), Challenges No. 40 & 50 of JY 136, dated 3 March 2020.

31 Article 12 of Arbitration Act No. 27/1994.

32 Fathy Waly, Arbitration Act in Theory and Practice, 2014, p. 162.

33 Professor Mahmoud El Briery, International Commercial Arbitration, Fourth Edition 2010, Dar El Nahda El Arabi'a, p. 59.

34 Cairo Court of Appeal, Circuit (50), Challenge No. 59 of 135 JY, session dated 28 November 2018.

35 Cairo Court of Appeal Judgment, case No. 31/128 JY, session dated 26/06/2012, referred to in the Journal of Arab Arbitration, Issue No. 19, p. 190; and CRCICA Arbitration Case No. 795/2012.

36 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.

37 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.

38 Article 1 of the Arbitration Act as amended by Law No. 9/1997.

39 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.

40 Administrative Judiciary Court, Investment and Economics Disputes Section, 7th Section, Lawsuit No. 11492/65 JY, session dated 7 May 2011.

41 CRCICA Arbitration Case No. 676/2010, award dated 21/08/2011, Journal of Arab Arbitration, Issue No. 17, pp. 263–264.

42 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, 'Return to the Problematic Arbitration in Administrative Contracts Disputes', Journal of Arab Arbitration, Issue No. 19, p. 26.

43 id and also see Administrative Court Judgment No. 11492/65 JY, session dated 7 May 2011.

44 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, p, pp. 221–222.

45 id. 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.

46 id. 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.

47 id. 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.

48 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.

49 Supreme Administrative Court-Unification of Principles Circuit, Challenge no. 8256 JY 56 dated March 5, 2016.

50 Supreme Constitutional Court, Appeal No. 1 JY 38, Hearing Session dated 6 May 2017.

51 Cairo Court of Appeal, Challenge no. 48 of 134 JY, dated 19 September 2018.

52 Court of Appeal, Circuit (1), Appeal No. 48 of JY 137, dated 9 December 2020.

53 Fathy Waly, Arbitration Act in Theory and Practice, 2014, p.775.

54 Fathy Waly, Arbitration Act in Theory and Practice, 2014, p.775.

55 Supreme Constitutional Court, Judgment dated 15 January 2012, the Malicorp decision, referred to in Fathy Waly, Arbitration Act in Theory and Practice, p. 775.

56 Cairo Court of Appeal, Challenge no.78 of 131 JY, dated 4 May 2015.

57 Article 15 of the Arbitration Act No. 27/1994.

58 Article 7(1) of CRCICA Rules.

59 Article 21 of the Arbitration Act No. 27/1994; Article 14(1) of CRCICA Rules.

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

61 Cairo Court of Appeal, Challenge no. 71 of 131 JY, dated 4 March 2015.

62 Court of Appeal, Circuit (50), Challenge No 3 of JY 136, dated 30 January 2019.

63 Court of Cassation, Challenge no. 12459 of 85 JY, dated 1 June 2016.

64 Gary B Born, International Arbitration: Law and Practice, 2012, p. 142.

65 Article 21 of Arbitration Act No. 27/1994.
66 Article 14(2) of CRCICA Rules.
67 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.
68 Cairo Court of Appeal, Circuit 7 Commercial, Case No. 32/129 JY, session dated 5/3/2013, referred to in Professor Fathy Waly, Arbitration Act in Theory and Practice, 2014, p. 359.
69 Cairo Court of Cassation, Case No. 2047 of 83 JY Session dated 26/05/2015.
70 Articles 18 and 19 of the Arbitration Act No. 27 of 1994.
71 Article 19(1) of the Arbitration Act No. 27/1994; Court of Cassation, Challenge No. 9568/79 JY, session dated 14 March 2011.
72 Cairo Court of Appeal, Circuit (3), Challenge No. 98 of JY 135, dated 26 November 2020.
73 Article 13(6) of CRCICA Rules.
74 Court of Appeal, Circuit (62), challenge No. 73 of 134, session dated 4 April 2018.
75 Cairo Court of Appeal, Circuit (1), Challenge No. 64 of JY 137, dated 9 December 2020.
76 Court of Appeal, Circuit (50), Challenge No 3 of JY 133, dated 30 January 2019. In 2020, this judgement was challenged before the Court of Cassation, and it reversed the judgement based on lack of standing of one of the parties, while confirming that the Court of Appeal had jurisdiction over the request to remove an arbitrator. The Court also stated that an arbitrator may also be removed in case that arbitrator does not comply with the rules of conduct that ought to be followed by arbitrators. Court of Cassation, Challenge No. 6466/89 JY, session dated 14 January 2020.
77 Cairo Court of Appeal, Challenge no.37 of 131 JY, dated 4 March 2015.
78 Article 25 of the Arbitration Act No. 27 of 1994.
79 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.
80 Court of Cassation Appeal No. 145 of 74 JY, session dated 22 March 2011.
81 Prof Fathi Wali, Arbitration in the Domestic and International Commercial Disputes, 2014, p. 488.
82 Professor Mahmoud El Briery, International Commercial Arbitration, Fourth Edition 2010, Dar El Nahda El Arabi'a p118; Court of Cassation, Challenge No. 1479/53 JY, hearing dated 19 November 1987.
83 Article 46 of Arbitration Act No. 27/1994.
84 Cairo Court of Appeal, Circuit (91), Challenge No. 33 of 135 JY, session dated 12 August 2018.
85 Cairo Court of Appeal, Circuit (7), Challenge No. 20 of 135 JY, session dated 6 August 2018.
86 Cairo Court of Appeal, Circuit (18), Challenge No. 91 of 133 JY, session dated 13 May 2019.
87 Article 14 of Arbitration Act No. 27/1994.
88 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.
89 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.
90 Professor Mahmoud El Briery, International Commercial Arbitration, Fourth Edition 2010, Dar El Nahda El Arabi'a, pp. 516–517.
91 Article 45(2) of the Arbitration Act No. 27/1994.
92 Professor Mahmoud El Briery, International Commercial Arbitration, Fourth Edition 2010, Dar El Nahda El Arabi'a, p. 525.
93 Cairo Court of Appeal, Circuit (63), Challenge No. 1 of JY 135, dated 6 February 2019.
94 Article 8 of the Arbitration Act No. 27/1994; Court of Cassation, Challenge No. 3869/78 JY, session dated 23 April 2009.
95 Court of Cassation, Challenge No. 19574 of JY 88, dated 6 July 2020
96 Cairo Court of Appeal, Circuit (1), Appeal No. 1 of JY 137.
97 Court of Cassation, Challenge No. 19574 of JY 88, Session dated 6 July 2020
98 Cairo Court of Appeal, Circuit (18), Challenge No. 27 of 135 JY, dated 13 May 2019.
99 Cairo Court of Appeal, Challenge no.78 of 131 JY, dated 4 May 2015.
100 Court of Cassation, Challenge No. 10473 of JY 78, Session dated 16 November 2016. See Also, Cairo Court of Appeal, Circuit (1), Challenge 37 of JY 136, dated 3 February 2020.
101 Cairo Court of Appeal, Circuit (3), Challenge No. 56 of JY 135, dated 24 June 2020.
102 Cairo Court of Appeal, Circuit (1), Challenge No. 77 of JY 136, dated 4 June 2020.
103 Supreme Constitutional Court, Challenge No. 95 of 20 JY, session dated 11 May 2003.
104 Cairo Court of Appeal, Challenge no.78 of 131 JY, dated 4 May 2015.
105 Court of Cassation, Challenge No. 11713 of JY 89, dated 27 February 2020.
106 Cairo Court of Appeal Judgment, Case No. 11, 12, 14/132 JY, Session dated 6 January 2016, the *Bassem Youssef* case.
107 Court of Cassation, Challenge no. 2698 of 86 JY, dated 13 March 2018.
108 Court of Cassation, Challenge No. 10132 of 78 JY, session dated 11 May 2010.
109 Court of Appeal Judgment, Case No. 2 of 132 JY, Session dated 3 February 2016.
110 Court of Cassation, Challenge No. 4715 and 4868 of JY 86, hearing session dated 18 January 2017.
111 Cairo Court of Appeal, Circuit (8), Challenge No. 48 of 134 JY, session dated 19 September 2018.
112 Cairo Court of Appeal, Challenge No. 39 of 130 JY, session dated 5 February 2014.
113 Court of Cassation, Challenge No. 6065 of 84 JY, session dated 4 November 2015.
114 Cairo Court of Appeal, Circuit (62), Challenge No. 39 of 130 JY, session dated 6 August 2018.
115 Court of Cassation, Challenge No. 18615 of JY 88, dated 10 December 2019.
116 Cairo Court of Appeal, Circuit (50), Application for Interpretation No. 310 of JY 135, dated 25 March 2019.
117 Cairo Court of Appeal, Circuit (91), Challenge No. 61 of JY 135, dated 14 May 2019.
118 Court of Cassation, Challenge No. 11713 JY 89, dated 27 February 2020. See also: Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020. See also, Cairo Court of Appeal, Circuit (1), Challenge No. 7 of JY 137, dated 8 September 2020.
119 Court of Cassation, Challenge no. 5162 of 79 JY, dated 21 January 2016.
120 Court of Cassation, Challenge no. 12459 of 85 JY, dated 1 June 2016.
121 Article 55 of Arbitration Act No. 27/1994.
122 Article 56 of Arbitration Act No. 27/1994.
123 Article 58 of Arbitration Act No. 27/1994.
124 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.

125 Cairo Court of Appeal, Circuit (7), Challenge No. 55 of JY 135, dated 6 February 2019.
126 Court of Cassation, Challenge No. 282 JY 89, dated 9 October 2020. See also: Court of Cassation Judgment, Case No. 5000/78 JY, Session dated 6 April 2015.
127 Cairo Court of Appeal, Circuit (7), Challenge No. 55 of JY 135, dated 6 February 2019.
128 Court of Cassation, Challenge No. 282 of JY 89, dated 9 January 2020.
129 Cairo Court of Appeal, Circuit (3), Challenge No. 15 of JY 136, dated 31 December 2020.
130 Cairo Court of Appeal. Circuit (1), Challenge No. 15 of JY 137, dated 4 November 2020.
131 Court of Cassation, Challenge No. 7088 of 78 JY, dated 11 January 2016.
132 Court of Appeal, Circuit (50), Challenge No. 3 of 133 JY, session dated 28 August 2016.
133 Cairo Court of Appeal, Circuit (50), Challenge No. 17 of 135 JY, session dated 31 December 2018.
134 Cairo Court of Appeal, Circuit (7), Challenge No. 44 of 134 JY, session dated 9 May 2018.
135 Article (24) of the Arbitration Act states that: '1. 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.
2. If the party against whom the order was issued fails to execute it, the arbitral tribunal, upon the request of the other party, may authorize 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.'
136 Article 66 and article 67of the Sports Law No.71 of 2017.
137 Article 70 of the Sports Law No. 71 of 2017.
138 Article (38) of the Egyptian Sports Arbitration Centre Internal Regulations issued by the Egyptian Olympic Committee Decree No. 88 of 2017
139 The President of the Egyptian Olympics Committee decision No. 1 of 2020.
140 The President of the Egyptian Olympics Committee decision No. 5 of 2020.
141 The President of the Egyptian Olympics Committee decision No. 26 of 2019 (Issued in 13/07/2020).
142 The President of the Egyptian Olympics Committee decision No. 30 of 2019 (Issued in 03/09/2020).
143 The President of the Egyptian Olympics Committee decision No. 12 of 2019 (Issued In 22/05/2020).
144 The Presidential Decree No. 149 of 2020 regarding the approval of the Headquarters Agreement Concluded between Egypt and the Confederation of African Football (CAF).
145 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.
146 Cairo Court of Appeal, Circuit (8), Challenge No. 45 JY 135, session dated 20 January 2019. See also, Cairo Court of Appeal, Circuit (7), Challenge No. 73 of JY 135, dated 4 May 2019.
147 Cairo Court of Appeal, Circuit (50), Challenge No. 47 of 135 JY, session dated 25 November 2018.
148 Cairo Court of Appeal, Circuit (91), Challenge No. 9 of JY 136, session dated 9 April 2019. Also, Cairo Court of Appeal, Circuit (50), Challenge No. 46 of JY 135, dated 27 January 2019.
Article (38) of the Egyptian Sports Arbitration Centre Internal Regulations issued by the Egyptian Olympic Committee Decree No. 88 of 2017.
149 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.
150 The Supreme Constitutional Court Judgement, Challenge No. 130 of 34 JY, session dated 13 January 2018.
151 Court of Cassation, Challenge No. 1458 of JY 89, dated, 24 December 2019.
152 Article (6) of Prime Minister decree No. 1062 of 2019 reorganising the rules governing the Supreme Committee for Advising on International Arbitration Cases
153 Article 64 of the New Customs Law No. 207 of 2020.
154 Article 57 of the Old Customs Law No. 66 of 1963.
155 Article 64 of the New Customs Law No. 207 of 2020.
156 Article 57 of the Old Customs Law No. 66 of 1963.
157 The Minister of Trade and Industry Decree No. 354 of 2020 regarding to restructuring of the Contact Point Body for Protecting Intellectual Property Rights Affairs.
158 Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020.
159 It states 'In the absence of an applicable provision of law, the Judge shall rule according to custom; and in the absence of custom, in accordance with the principles of Islamic Law. In the absence of such principles, the Judge shall apply the principles of natural law and the rules of equity.'
160 Cairo Court of Appeal, Circuit (1), Challenge No. 48 of JY 137, dated 9 December 2020.
161 Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020.
162
163 Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020.
Court of Cassation, Challenge No. 3449 of JY 78, dated 11 February 2020.
164 Court of Cassation, Challenge No. 3299 of JY 86, dated 13 March 2018. See also, Court of Cassation, Challenge No. 414 of JY 71, dated 8 January 2009.
165 Cairo Court of Appeal, Circuit (1), Appeal No. 39 of JY 130, dated 3 June 2020
166 Cairo Court of Appeal, Circuit (1), Challenge No. 61 of JY 134, dated 12 August 2020.
167 Cairo Court of Appeal, Circuit (1), Challenge No. 61 of JY 134, dated 12 August 2020.
168 Cairo Court of Appeal, Circuit (1), Challenge No. 5 of JY 137, dated 8 September 2020
169 Cairo Court of Appeal, Circuit (1), Challenge No. 61 of JY 134, dated 12 August 2020.
170 Cairo Court of Appeal, Circuit (1), Challenge No. 10 of JY 137, dated 10 August 2020.
171 Article (227) of the Egyptian Civil Code.
172 Article (226) of the Egyptian Civil Code.
173 Cairo Court of Appeal, Circuit (1), Challenge No. 48 of JY 137, dated 9 December 2020.
174 Cairo Court of Appeal, Circuit (1), Challenge No. 48 of JY 137, dated 9 December 2020.
175 See also Cairo Court of Appeal, Circuit (7), Challenge No. 55 of JY 135, dated 6 February 2019.
176 See Court of Cassation, Challenge No. 282 JY 89, dated 9 October 2020
177 Cairo Court of Appeal, Circuit (7), Challenge No. 38 of 135 JY, session dated 3 September 2018.

178 https://crcica.org/news/2020/09/30/crcica-recent-caseload-3rd-quarter-2020-virtual-hearings-at-the-crcica/
179 https://crcica.org/news/category/crcica-newsletter-2-2020/cooperation-agreements-crcica-newsletter-2-2020/
180 https://crcica.org/news/2020/09/30/crcica-recent-caseload-3rd-quarter-2020-virtual-hearings-at-the-crcica/

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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.

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Matouk Bassiouny & Hennawy's arbitration team headed by Dr Amr A Abbas is active in Cairo Regional Centre for International Commercial Arbitration (CRCICA), the International Chamber of Commerce (ICC), LCIA and the International Centre for the Settlement of Investment Disputes (ICSID) arbitral proceedings. The litigation team is active in Egyptian civil, commercial, criminal, administrative and labour courts. We represent clients in high-value, high-profile disputes in a diverse range of sectors including automotive, construction, heavy industry, manufacturing, oil and gas, pharmaceutical, real estate, telecommunications and tourism.

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