

EGYPT

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

[GAP COMBINED SUMMARIES FOR IN-HOUSE AND CORPORATE COUNSEL](#)

[GAP COMBINED SUMMARIES FOR ARBITRATION PRACTITIONERS](#)

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law ●
 - a. Framework ●
 - b. Adherence to international treaties ●
 - c. Limited court intervention ●
 - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration is the prominent mechanism for the settlement of investment and commercial disputes in Egypt. With the growing number of investors in the country and the parties to commercial transactions ultimate resort to arbitration, Egypt adopts, by the year, measures and reforms aimed at aligning itself with best practices in international arbitration. By enacting the Egyptian Arbitration Act No. 27 of 1994 (the “**Arbitration Act**”), Egypt took a colossal step towards supporting arbitration and becoming an arbitration friendly jurisdiction.

Key places of arbitration in the jurisdiction	Cairo.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	Arbitral awards are confidential by law and may not be published. However, confidentiality of the proceedings is compromised at the stages of eventual annulment or enforcement of awards.
Requirement to retain (local) counsel?	There is no requirement to retain local counsel in an international arbitration seated in Egypt.
Ability to present party employee witness testimony?	There is no legal restriction as to the submission of testimony by party employees except if one party is a public entity, and consequently its employee a public officer, in which case the party's approval is necessary by law.
Ability to hold meetings and/or hearings outside of the seat?	Hearings and meetings taking place during the arbitration may take place inside or outside of Egypt depending on the parties' agreement and the tribunal's power to assess convenience. Egyptian courts carefully and clearly distinguish “geographical venues” from “legal seats”.
Availability of interest as a remedy?	Under the law, the arbitral tribunal has the ultimate power to decide on issues of compensation and interest. However, a legal cap of 7% interest rate exists as a public policy rule as characterized by Egyptian courts.
Ability to claim for reasonable costs incurred for the arbitration?	The parties are free to claim the costs they incurred during the arbitral proceedings to the extent that these costs are reasonable and justifiable in the arbitral tribunal's view.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Alternative fee arrangements and contingency fees are permissible under Egyptian law with a limit of a recoverable 20% from the outcome of the dispute. There are no restrictions as to third-party funding in arbitrations although Egyptian courts have not yet addressed this issue and no legislative policy or regulation exist to address this evolving practice.
Party to the New York Convention?	Egypt is a party to the 1958 New York Convention on the

	Recognition and Enforcement of Foreign Arbitral Awards and has neither made a commerciality nor a reciprocity reservation. Egyptian courts apply the provisions of the Convention for purposes of enforcement of awards rendered outside Egypt.
Other key points to note	φ
WJP Civil Justice score (2017-2018)	0.36

ARBITRATION PRACTITIONER SUMMARY

The Egyptian Arbitration Act, which is principally derived from the UNCITRAL Model Law, addresses all principal aspects of the arbitral proceedings including the arbitration agreement, issues of arbitrability, the composition of the arbitral tribunal, the challenge of arbitrators, the conduct of the proceedings, the intervention and assistance by domestic courts throughout the proceedings, the applicable law(s) and the rules pertaining to the award, its annulment and enforcement. Albeit being generally arbitration friendly, the courts can intervene in matters such as deciding on the validity of an arbitration agreement, the challenge of arbitrators, the default power to order interim measures and conduct daunting procedures for enforcement and/or recognition.

Date of arbitration law?	The Arbitration Act was promulgated on 21 April 1994, entered into force as of 22 May 1994 and was slightly amended in 1997 and 2000.
UNCITRAL Model Law? If so, any key changes thereto?	The Arbitration Act is primarily based on the 1985 UNCITRAL Model Law but deviates from the Model Law in certain respects, including the following: the application of the Arbitration Act to both domestic and international arbitration as well as arbitration seated abroad where the parties agreed to its extra-territorial application, the internationalization of arbitration, the overriding mandatory requirement for an arbitration agreement to be in writing for purposes of validity, the strict rule on incorporation of arbitration agreements by express reference, the annulment of awards on the basis of exclusion of the chosen applicable law, the prohibition of annulment of a partial award or a decision on jurisdiction before the issuance of the final award, etc.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	∅
Availability of <i>ex parte</i> pre-arbitration interim measures?	Domestic courts have the power to rule on <i>ex parte</i> as well as ordinary adversarial requests for interim measures if the circumstances reflect urgency, necessity and likelihood to prevail on the merits.
Courts' attitude towards the competence-competence principle?	∅
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Egyptian courts are generally arbitration friendly and generally do not review domestic or foreign arbitral awards on the merits, i.e. whether the Arbitration Act is applicable or the New York Convention is applicable, save in cases raising public policy issues. Moreover, Egyptian courts have confirmed that foreign counsel may appear and represent parties in arbitral proceedings seated in Egypt. In case of applicability of the Arbitration Act, the annulment procedures are significantly simplified and accord little to no power with respect to review of the award on the merits by the

	<p>court, save in cases where the award contravenes principles of public policy.</p> <p>In case of foreign awards, the courts apply the New York Convention.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>In case of foreign awards, the courts apply the New York Convention. Egyptian courts have had little experience with the enforcement of awards annulled at the seat but are expected to apply the New York Convention rules.</p>
<p>Other key points to note?</p>	<p>The enforcement procedure for foreign awards may be burdensome and relatively lengthy. The application for enforcement takes the form of an exequatur, but may, on average, take one to two years to secure an enforcement order. There is also a fee recoverable by the court which is based on a percentage of the amount of the dispute reaching around 2.5% of the awarded value.</p> <p>Annulment however does not, in principle, preclude enforcement except upon reasoned request of the relevant party and the court's decision to stay enforcement pending determination of the annulment.</p> <p>The Arbitration Act and, more generally, the Egyptian arbitration practice may benefit from further input with regard to internationally developed practices which remain undeveloped in Egypt, namely: conclusion of arbitration agreements electronically, extension of arbitration agreements to third parties, anti-suit injunctions, third-party funding, simplification of enforcement procedures, etc.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL model law?

The Arbitration Act is initially based on the 1985 UNCITRAL Model law on International Commercial Arbitration (the “**Model Law**”). To the exception of some provisions, the Arbitration Act significantly relies on the Model Law. There are prominent differences with the Model Law pertaining to different issues throughout the arbitration proceedings, these notably are:

- The Arbitration Act applies to both domestic and international arbitrations (Article 1);
- The Arbitration Act may extend its application to arbitrations seated abroad in the event of the parties’ agreement to such application (Article 1);
- The requirement that an arbitration agreement in an administrative contract is approved by the competent minister (Article 1).
- It introduces several criteria for the establishment of the international nature of an arbitration including amongst others whether the arbitration is institutional, whether it involves parties whose principal places of business are in different States or alternatively if the place of the arbitration determined by the arbitration agreement, the place of performance of the obligations or the place most connected to the dispute is abroad (Article 3);
- The Arbitration Act does not expressly include the possibility to enter into an arbitration agreement by way of electronic means. It does not however exclude it and is therefore considered to be implicitly included. Nevertheless, the writing requirement under the Arbitration Act is an issue of validity not just proof, such that an agreement is in writing if it is contained in a document signed by the parties or contained in an exchange of letters, telegrams or other means of communication. Absence of an arbitration agreement in writing results in a nullity of the arbitration agreement and the writing requirement under the Egyptian Arbitration Act is more strict than the Model Law (Article 12);
- In the case of incorporation by reference, the reference to the arbitration agreement must be explicit to form an integral part of the contract (Article 10);
- The requirement of an odd number of arbitrators for purposes of constitution of the arbitral tribunal, under penalty of nullity of the award (Article 15);
- A preliminary decision by the tribunal on jurisdiction cannot be the subject of a court review prior to rendering the final award; a final award deciding on the whole of the dispute must be rendered for purposes of the competent court’s review or annulment (Article 22);
- The arbitral tribunal may only issue interim relief if the parties bestow this power upon it (Article 24);
- If the parties do not agree on the language of the arbitration, the latter shall be conducted in Arabic (Article 29);
- If the parties do not agree on the applicable law, the arbitral tribunal may apply the law having the closest connection to the dispute (Article 39). This is normally the law of a State;
- The threshold used by the Arbitration Act for the challenge of arbitrators is higher than its Model Law counterpart; the doubts as to the arbitrator’s impartiality and independence must be *serious* (Article 18);

- The Arbitration Act adds a ground for annulment based on the non-application by the arbitral tribunal of the *lex causae* chosen by the parties.
- The Arbitration Act introduces a further condition for purposes of *exequatur that is not listed in the Model Law* (Article 58), namely:
- No previous judgment to the contrary has been issued by the Egyptian courts in the subject matter of the dispute.

1.2 When was the arbitration law last revised?

The Arbitration Act was not frequently revisited since its adoption except for a limited number of amendments. The two important amendments pertain to the arbitration agreement for administrative contracts and the procedure for the challenge of an arbitrator.

In 1997, the law was amended to include a requirement pertaining to the mandatory signature of the relevant Minister for the conclusion of an arbitration agreement with respect to administrative contracts, or the person exercising his authority within the relevant public entities (entering into such arbitration agreements).¹

Another amendment relates to the procedure for the challenge of an arbitrator. Law No. 8 of 2000 imposes the intervention of the local courts *in lieu* of the arbitral tribunal in the procedure of challenging an arbitrator. By virtue of this amendment, if an arbitrator does not step down within 15 days running from the date of his challenge, the Cairo Court of Appeal, the court designated by the Arbitration Act for intervention and assistance throughout the proceedings, must rule on the challenge. Its ruling is final and binding and may not be reversed.²

A third amendment pertains to the Constitutional Court decision enabling parties to challenge a decision granting or denying an *exequatur* under Article 58 of the Arbitration Act. Prior to 2001, it was only possible to challenge a decision denying *exequatur*; a decision granting an *exequatur* was not open to challenge on the premise of a pro enforcement bias under the Law. However, the Constitutional Court ruled that a challenge is possible in either case (*i.e. whether an exequatur is granted or denied*). The amendment incorporates this decision into the Arbitration Act.

The Arbitration Act has not been amended since.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In determining the law applicable to the arbitration agreement, Egyptian courts have an obvious tendency towards the law of the seat as selected by the parties. This is the position adopted by the Court of Cassation on the one condition that the provisions of this law do not contravene Egyptian public policy rules.³

This position is based on the assumption that the arbitration agreement constitutes the first step of the arbitral proceedings and should therefore be subject to the law applicable thereto, the law of the seat. This interpretation is however strongly rejected by scholars who view the arbitration agreement as a step preceding the arbitral proceedings and should therefore be subject to the parties' choice of law which, in turn, may be implicit.

¹ Amendment introduced to Article 1 of the Arbitration Act by Law No. 9 of 1997 dated 15 May 1997.

² Amendment introduced to Article 19 of the Arbitration Act by Law No. 8 of 2000 dated 4 April 2000 and entering into force on 5 April 2000.

³ Court of Cassation, Challenge No. 453 of 42 JY (9 February 1981) and Challenge No. 1259 of 49 JY (13 June 1983).

According to some scholars, absent a choice of law, the applicable law is that of the State where the award is rendered independently from the choice of law by the parties with respect to the subject-matter to the dispute.⁴ As far as capacity to conclude the contract is concerned, the applicable law is that applicable to each party independently from the other, be it the law governing nationality, domicile for natural persons or effective principal place of management for juridical persons.⁵

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

It has long been established in Egypt that the arbitration agreement is considered independent from the original contract where it falls or which governs the subject-matter of the dispute. This has been legislatively captured by the Arbitration Act and confirmed by both Egyptian courts and scholars. The arbitration agreement, whether an arbitration clause is included in the principal contract, is separate, or takes the form of a *compromis d'arbitrage*, is considered as a legally separate instrument that is not affected by the nullity, rescission or any other defect that could affect the original contract.⁶ This severability principle is widely considered as one of the fundamental pillars of arbitration in Egypt.⁷ This principle is also expressly enshrined in Article 23 of the Arbitration Act.

It is however worth mentioning, although inexistent in practice, that the principle pertaining to the severability of the arbitration agreement is not a principle of public policy and can therefore, theoretically, be subject to derogation in certain cases where the nullity of the contract may lead to the nullity of the arbitration agreement.⁸

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Egyptian courts will apply the law of the seat of the arbitration to the arbitration agreement. This includes the requirements for its enforceability which will draw their value from the applicable contract law. This is equally the case for Egyptian law, the primary conditions for contract enforceability of which are governed by the general theory of contract law.

In the event that the Arbitration Law is applicable (particularly in the cases where the seat is in Egypt or where the parties select the Arbitration Law to apply), further requirements, in addition to the contract law requisites, exist for the validity (and enforceability) of the arbitration agreement under penalty of nullity:⁹

- The parties must have capacity to enter into the agreement;¹⁰
- The right subject to arbitration must be arbitrable;¹¹
- The subject of the dispute to be resolved by arbitration must be specified (in the *compromis*, or in the Statement of Claim in case of a prior agreement to arbitrate);¹² and
- It must be in writing or else it is null (writing includes a document signed by the parties or an agreement by exchange of correspondences or other means of communication).¹³

⁴ Fathi Wali, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 106-107.

⁵ *Id.*

⁶ Court of Cassation, Challenge No. 824 of 71 JY (24 May 2007).

⁷ Court of Cassation, Challenge No. 933 of 71 JY (24 May 2007).

⁸ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 107.

⁹ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 119.

¹⁰ Article 11 of the Arbitration Act.

¹¹ Article 11 of the Arbitration Act.

¹² Article 10 of the Arbitration Act.

¹³ Article 12 of the Arbitration Act.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The Arbitration Act does not expressly regulate the extension of the arbitration agreement to third parties or contracts. Egyptian court decisions, all the same, do not portray a clear trend as to the doctrine and accord the ultimate weight to the parties' consent to arbitration as determined by arbitral tribunals. Egyptian courts are increasingly becoming more flexible in considering the extension of arbitration agreements to third parties and/or the joinder of third parties to arbitral proceedings and will usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or principles of public policy have been contravened.

The Egyptian Court of Cassation decisively rules that an arbitration agreement included in a contract does not automatically extend to a company that forms part of a larger group of companies entering into the said contract. The company must have *actively contributed in the performance* of the contract or there must have been a confusion between the intents of the two relevant companies.¹⁴ In other words, the doctrine of group of companies is accepted by the courts for purposes of extension of the arbitration agreement in the presence of an implication in the performance process of the contract.

The doctrine of economic unity is not sufficient, in and of itself, for purposes of extension of the arbitration agreement if the third party has not exhibited consent to arbitration.¹⁵ However, Egyptian courts have shown flexibility regarding extension to third parties and would normally defer to the Tribunal's reasoning in this respect, unless a clear principle of public policy is compromised.

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law, etc.)?

Any matter that is not capable of settlement/conciliation is non-arbitrable under the Arbitration Act.¹⁶ Non-arbitrable matters principally pertain to matters of personal or family status, public policy, or rights *in rem* relating to immovables (e.g. registration of real estate mortgages) and penal law issues.

Otherwise, the Arbitration Act solely requires that the right subject to arbitration be of an economic nature.¹⁷

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers, etc.)?

All natural or juridical persons and entities who enjoy legal capacity may agree to arbitrate their disputes.¹⁸ However, arbitration agreements in administrative contracts require the approval of the competent Minister.¹⁹

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Egyptian courts are under a legal obligation to dismiss litigation with respect to disputes subject to an arbitration agreement if the defendant, at the commencement of the proceedings, advances a plea pertaining to the existence of an arbitration agreement.²⁰ However, the court is not under an obligation to

¹⁴ Court of Cassation, Challenge No. 4729 of 72 JY (22 June 2004).

¹⁵ Cairo Court of Appeal, Commercial Circuit No. 62, Case No. 83 of 118 JY (5 August 2002), in FATHI WALLI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., pp. 195-96.

¹⁶ Article 11 of the Arbitration Act.

¹⁷ Article 2 of the Arbitration Act.

¹⁸ Article 11 of the Arbitration Act.

¹⁹ Article 1 of the Arbitration Act.

²⁰ Article 13-1 of the Arbitration Act.

reject the case *ex officio* for the mere existence of an arbitration agreement; the defendant must raise his objection at the commencement of the proceedings. This is principally due to the fact that an arbitration agreement is not constitutive of public policy. In the absence of a plea by the defendant in litigation, parallel proceedings will be conducted before the arbitral tribunals and the courts and decisions will be rendered irrespective of the parties' prior agreement to arbitrate. In the event that the two decisions are contradictory, the successful party in the arbitration may elevate the conflict to the Supreme Constitutional Court in accordance with the law.²¹

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The Arbitration Act is silent on the matter. However, as a matter of practice, arbitral tribunals do not have the power to enjoin the courts to stay litigation proceedings. An interim measure by the arbitral tribunal may only address the parties to the arbitral proceedings and cannot impact or bind third parties,²² let alone national courts.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction?

The Arbitration Act's application extends to international arbitrations seated outside of Egypt in the event where the parties agree to apply it to their arbitration. This extends the jurisdiction of Egyptian courts to all the matters where the Arbitration Act refers to the competent court. These include for instance appointing arbitrators in the event of default, their challenge, sanctioning defaulting witnesses to penalties prescribed by Egyptian Evidentiary Law, extending the time-limit for the rendering of the arbitral award based on a party's request and all matters pertaining to enforcement and annulment of arbitral awards.

The Egyptian legal system does not regulate anti-suit injunctions and there is no prohibition on the issuance of such injunctions. However, as a matter of practice, courts generally do not render such injunctions. Egyptian courts' power with respect to the stay of proceedings is in fact restrained to an exhaustive list of cases mentioned in the Egyptian Law, amongst which the anti-suit injunction does not figure. However, there have been a limited number of judicial instances where Egyptian administrative courts issued anti-suit injunctions. This however remains unregulated and questioned by scholars.²³

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

The parties have the freedom to decide whether to retain outside counsel or represent themselves in the arbitral proceedings. Representation is made by virtue of a power of attorney in favour of a representing counsel.²⁴ However, as a matter of practice, the power of attorney must reference arbitration proceedings to avert the risk of challenge of authority to represent a party in arbitral proceedings. The tribunal has the discretion to accept or reject the representation of a party before it.²⁵

Representation includes all steps of the arbitral proceedings starting from the service of the request to arbitrate through to the hearing and the issuance of the award.²⁶ The parties also have the freedom to represent themselves or retain outside counsel under the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration.

²¹ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 205.

²² FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 512.

²³ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 492.

²⁴ MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para. 419.

²⁵ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 434.

²⁶ FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 434.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

The Arbitration Act regulates challenges to arbitrators. The competent court may intervene regarding the challenge of an arbitrator in the event the latter does not step down after the lapse of a period of 15 days from the date of a party's application for challenge before the arbitral tribunal. The Arbitration Act therefore imposes a pre-requisite to the transmittal of the challenge case to the court which is the submission of the challenge before the arbitral tribunal.

The obligation to transmit the challenge to the competent Egyptian court here is incumbent upon the arbitral tribunal itself.²⁷ This is normally applicable to *ad hoc* proceedings exclusively governed by the Arbitration Act. The court's power with respect to upholding or rejecting the challenge of an arbitrator stems from the arbitrator's *legal obligation to divulge all information or circumstance* which may give rise to *doubts* as to his independence or impartiality.²⁸ The standard used for the challenge of an arbitrator is that of "*serious doubts as to his impartiality and independence*"²⁹ which the circumstances unfold.³⁰ The arbitrator's independence and impartiality are considered fundamental guarantees of justice.³¹ However, an arbitrator is presumed independent and impartial if he accepted his/her mission and the party challenging these notions bears the burden to raise and prove the opposite.³² The court's decision with respect to the application for challenge is final and may not constitute the subject of a further appeal.³³

Generally, non-disclosure does not, in and of itself, suffice to uphold a challenge; non-disclosure ought to pertain to an event, issue or fact that raises serious doubts as to impartiality and independence.

By and large, the prevailing view is that the procedure and grounds for challenge under the Arbitration Act do not normally apply to institutional proceedings, where the procedural rules regulate challenges.

4.3 On what ground do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Egyptian courts may intervene in the arbitral process for purposes of constitution of the arbitral tribunal in various cases of *ad hoc* proceedings:

- A default in the appointment of the sole arbitrator due to absence of agreement;³⁴
- A default in the appointment by a party of its party-appointed arbitrator after the lapse of 30 days from the other party's request to it to proceed with appointment;³⁵
- A default in the appointment of the president of the arbitral tribunal for lack of agreement by the party-appointed arbitrators after the lapse of 30 days from the date of the appointment of the last arbitrator;³⁶
- A default in the appointment by the parties of arbitrators in a tribunal composed of over three members;³⁷ and

²⁷ Court of Cassation, Challenge No. 9568 of 79 JY (14 March 2011).

²⁸ Article 16-3 of the Arbitration Act.

²⁹ Article 18-1 of the Arbitration Act.

³⁰ MAHMOUD MOKHTAR Al-Berairy, *International Commercial Arbitration*, Dar An-Nahda Al Arabiyyah (2004), 3rd ed., p. 75, para. 42.

³¹ Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

³² Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

³³ Article 19-1 of the Arbitration Act.

³⁴ Article 17-1 of the Arbitration Act.

³⁵ Article 17-2 of the Arbitration Act.

³⁶ Article 17-2 of the Arbitration Act.

- In the case of absence of agreement by the parties as to the number and method of appointment of the tribunal members (what is known under French Arbitration Act as “*clause blanche*”).

The court’s decision with respect to the appointment of an arbitrator is final and may not be appealed³⁸ except if subject to invalidity for the reason of not following the proper legal procedures for appointment.³⁹ The court may however grant the party or parties a short period to try appointing or agreeing on the appointment of an arbitrator before rendering its decision.⁴⁰

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The Arbitration Act grants the competent court in Egypt the inherent power to order interim measures upon the application by any of the parties both prior to the commencement of the proceedings and during the conduct of the arbitration.⁴¹ Egyptian law regards the role of the court as vital to the adoption of such special measures which may include for instance an order relating to a witness default in appearance to testify before the arbitral tribunal.⁴²

The court has the power, as it does in litigation cases, to order provisional or interim measures in the absence of the parties and without the obligation to state reasons to its decision if the matter requires speedy resolution and satisfies the local requirements for the issuance of such measures.⁴³ The measure may be subject to appeal before the court.⁴⁴

In practice, it is very difficult and quite rare to have a court ratify or enforce an interim measure ordered by an arbitral tribunal. However, in 2017, the Cairo Court of Appeal enforced, for the first time, an interim decision rendered by an arbitral tribunal.

4.5 Other than arbitrators’ duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The principle of confidentiality of the arbitral proceedings is inferred from the rule prohibiting the publication of the arbitral award and is confirmed by the Explanatory Note to the Law, which explains that the confidentiality of the arbitration is of significant importance to the parties in order to preserve inter-commercial relations.⁴⁵ However, there is no explicit reference in the Arbitration Act providing for the confidentiality of the proceedings without the parties’ agreement.

4.5.2 Does it regulate the length of arbitration proceedings?

The arbitral tribunal must issue its award within the time-limit agreed by the parties. In absence of an agreement, the award must be issued within 12 months from the date of commencement of the

³⁷ BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19th ed. (December 2012), p. 105.

³⁸ Article 17-3 of the Arbitration Act.

³⁹ Court of Cassation, Challenge No. 17170 of 74 JY (22 November 2007).

⁴⁰ BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19th ed. (December 2012), p. 118.

⁴¹ Article 14 of the Arbitration Act.

⁴² Explanatory Note to the Arbitration Act.

⁴³ Court of Cassation, Challenge No. 1975 of 66 JY (12 December 1996).

⁴⁴ MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19th ed. (December 2012), p. 70.

⁴⁵ Explanatory Note to the Arbitration Act.

proceedings, subject to possible extension by the arbitral tribunal for a period of 6 months unless the parties agree to a longer period.⁴⁶

If the award is not issued within these time-limits,⁴⁷ a party may then proceed to courts for purpose of securing an order either to extend or terminate the proceedings. In the latter case, the parties have the right to initiate a claim before the initially competent court which means that the arbitration agreement itself is terminated in such case.⁴⁸

However, Egyptian courts have confirmed that such principles apply to *ad hoc* (not institutional) proceedings only.

4.5.3 Does it regulate the place where hearings and/or meeting may be held?

The Arbitration Act makes an express distinction between the legal seat and the geographical location to proceed with one or more procedural issues. The Arbitration Act allows the parties to agree on the place of the arbitration whether inside or outside of Egypt. In the absence of such agreement, the arbitral tribunal may decide the place while taking into account the circumstances of the claim and the convenience of the place to the parties without prejudice to its given power to convene in the place it deems convenient for purposes of the arbitral proceedings such as hearing the parties, witnesses and experts or the perusal of documents, inspection of goods or monies or, finally, for deliberation purposes.⁴⁹

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

The Arbitration Act allows the arbitral tribunal to issue interim measures upon application by a party only if the parties agreed to grant the arbitral tribunal such power.⁵⁰ This agreement can well result from a general agreement as to the application of institutional rules which automatically grant the tribunal such power. For purposes of enforcement, the measure must satisfy all requirements imposed by the Egyptian procedural law which would likely entail the court's intervention to issue an order to this effect.⁵¹ The court will have to abide by the rules prescribed for the enforcement of foreign awards in the case of an interim measure issued in an arbitration seated abroad but that requires execution in Egypt.⁵²

In the event where the party subject to the measure fails to comply with it, the tribunal may, upon request from the other party, allow the latter to undertake necessary procedures for its enforcement and execution without prejudice to the party's right to request same from the court as stated above.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The Arbitration Act does not regulate the arbitrators' powers with respect to evidence. It merely gives them the right to request the originals of the documents submitted in support of the parties' claims (Article 30). However, it is unequivocal that the arbitral tribunal enjoys the power to admit and weigh evidence. Nevertheless, it should be noted that, as a matter of Egyptian law, rules of evidence have procedural and substantive aspects. The arbitral tribunal's powers include: undertaking any evidentiary procedure it deems appropriate, reversing a procedure it had previously ordered and the discretion to decide on the evidence

⁴⁶ Article 45 of the Arbitration Act.

⁴⁷ MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para.472.

⁴⁸ *Id.*

⁴⁹ Article 28 of the Arbitration Act; MAHMOUD MOKHTAR AL-BERAIRY, *International Commercial Arbitration*, Dar An-Nahda Al Arabiyyah (2004), 3rd ed., p.103, para.61.

⁵⁰ Article 24 of the Arbitration Act.

⁵¹ MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19th ed. (December 2012), p. 78.

⁵² *Id.*

on record. Arbitrators also have the right to accept or deny a party's request for an order on evidentiary procedures without prejudice to the party's defense rights.⁵³

According to the Egyptian Code of Evidence, there is no specific prohibition with respect to the testimony of an employee of a private sector entity. However, if the employee is a public officer or an employee of a public entity, the law prohibits his testimony with regard to non-public information learnt during the performance of his work even after he ceases to work for this entity except if the latter allows it.⁵⁴

4.5.6 Does it make it mandatory to hold a hearing?

The Arbitration Act accords the arbitral tribunal the power to decide whether the case requires a hearing for the parties to present their case and whether it is satisfied with the parties' written submissions and evidence. The tribunal's power is however subject to any agreement by the parties on this matter which naturally takes priority over any such power.⁵⁵

As a matter of law and practice, the arbitral tribunal can order a hearing or proceed on a documents only basis absent the parties' agreement to the contrary.

4.5.7 Does it prescribe principles governing the awarding of interest?

The Arbitration Act does not limit the arbitral tribunal's power as to the award of interest. The tribunal must follow customary practice depending on the nature of the dispute. However, Egyptian courts will strictly deny enforcement of an award granting interest in excess of 7% per annum. The cap is imposed by the Court of Cassation and is considered a rule of public policy for purposes of enforcement and annulment even in the case where the parties agree a higher rate, which will have to be reduced to the mentioned cap.⁵⁶ The only exception to the cap is the award of interest in certain banking transactions which the legislator exempts from the public policy rule.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The Arbitration Act does not include any provision relating to the allocation of costs which accords the tribunal a great discretion in this regard. Arbitration tribunals seated in Egypt are generally inclined to follow international practice as to costs' allocation by adopting the "costs follow the event" rule.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Albeit the absence of any legal text providing for the arbitrator's immunity, such immunity is presumed from the legislative immunity accorded to the judge/court. However, the immunity does not apply in cases of fraud, deceit or gross negligence, in which cases the arbitrator's civil liability can be exceptionally invoked before the courts.⁵⁷

4.6.2 Are there any concerns arising from potential criminal liability for any participants in an arbitration proceeding?

The arbitral tribunal's jurisdiction does not extend to criminal matters which are considered inarbitrable. If a criminal matter is however introduced or revealed before the arbitral tribunal, the Arbitration Act allows it to carry on with the arbitral procedures if such matter is not indispensable for purposes of resolution of

⁵³ MAHMOUD SAMIR AL-CHARKAWI, *International Commercial Arbitration: A Legal Comparative Study*, Dar An-Nahda Al-Arabiyyah (2011), p. 320-21.

⁵⁴ Article 65 of the Arbitration Act.

⁵⁵ Article 33 of the Arbitration Act.

⁵⁶ Court of Cassation, Challenge No. 3778 of Judicial Year 64 (17 February 2004).

⁵⁷ FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., pp. 369-71.

the dispute. Otherwise, the tribunal is expected to stay the proceedings until the incidental and inseparable matter is determined by the courts.⁵⁸

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

The Arbitration Act allows the parties to agree to dispense with the reasoning requirement. Another exception is in the case where the applicable procedural rules do not impose a requirement as to the inclusion of the tribunal's reasoning for the decision.⁵⁹ Absent these exceptions, an unreasoned award is susceptible of annulment as per the Law.⁶⁰

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

A party may independently waive its right to seek the annulment of the award. However, this waiver will only produce its effect if made after the issuance of the arbitral award where it will preclude the initiation of any annulment proceedings.⁶¹ This applies *mutatis mutandis* to the parties' agreement to waive this right.⁶²

Waiver may be explicit or implied in accordance with Egyptian legal principles. A party's acceptance of the enforcement of the award is considered as an implied waiver to seek annulment.⁶³

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

For purposes of validity, the award must satisfy a set of normative requirements notably: (i) being made in writing, (ii) the inclusion of the arbitrators' signature (in case of dissent, the signature of the majority and the reason for the dissent), names and addresses of the parties and arbitrators, capacities and nationalities of the arbitrators, (iii) the inclusion of a summary of the parties' claims, submissions and documentation, (iv) the inclusion of the *dispositif* or the content of the decision, (v) the date and place of issuance and (vi) the reasoning if there is no agreement by the parties to exclude such reasoning. The award must be accompanied by a copy of the arbitration agreement or an explicit citation thereto within the text of the award.⁶⁴

At the time of the deposit of the award for enforcement, a certified Arabic translation of the award must accompany its original or copy.⁶⁵

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

An award is not subject of an appeal before the Egyptian courts. Save for setting aside (annulment), any other form of challenge of or recourse against the arbitral award is strictly prohibited by the Arbitration Act.⁶⁶

⁵⁸ Article 46 of the Arbitration Act.

⁵⁹ Article 43-2 of the Arbitration Act.

⁶⁰ MOHAMED SELIM AL-AWWA, *International Arbitration in Egypt and the Arab Countries: Commented based on scholarly writings and case law*, 2014 ed., Vol. II, p. 374.

⁶¹ Article 54-1 of the Arbitration Act.

⁶² FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 782.

⁶³ *Id.*

⁶⁴ Article 43 of the Arbitration Act.

⁶⁵ Article 47 of the Arbitration Act.

⁶⁶ Article 52 of the Arbitration Act.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Enforcement of Awards subject to the Arbitration Act

The scope of the Arbitration Act only encompasses local and international arbitrations seated in Egypt or arbitrations seated abroad where the parties agree on the application of the Arbitration Act. With respect to enforcement procedures, the Arbitration Act sets the following requirements:

- the deposit of an original or a signed copy of the award and its Arabic translation if in another language;
- the deposit of a copy of the arbitration agreement; and
- a copy of the minutes indicating the deposit of the award at the court.⁶⁷

The decision is then issued without the need for a hearing. Pursuant to a Constitutional Court ruling, a party may contest an order granting or refusing enforcement within 30 days of its issuance.⁶⁸ An application for enforcement will not be accepted except after the lapse of the time-limit set for the application for annulment of the award (90 days from the date of notification to the losing party). Enforcement may be refused in the following cases:⁶⁹

- contradiction with a previous judgment by the Egyptian courts on the subject matter of the dispute;
- contravention of rules of public policy (pertaining to, amongst others, arbitrability); and
- improper or lack of notification to the losing party.

Enforcement of Foreign Awards

In addition to the Arbitration Act requisites above, enforcement of foreign awards is also subject to the New York Convention requirements, to which Egypt is signatory.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The Arbitration Act specifically prohibits the possibility to apply for enforcement before the lapse of the time-limit for the application for annulment.⁷⁰ Nonetheless, the mere application for annulment proceedings does not, *per se*, stay the enforcement of the arbitral award – if a party applies for annulment, this does not preclude the other party from applying for enforcement and does not even preclude the issuance of an order to this effect.⁷¹

The court may however stay enforcement if the applicant for annulment so requests in its application which shall include the reasons for such request. The court will rule on the stay of enforcement within 60 days from the date of the first hearing. If it does stay enforcement, it must decide on annulment within 6 months from the date of the order providing the stay.⁷²

⁶⁷ Article 56 of the Arbitration Act.

⁶⁸ Article 58-3 of the Arbitration Act.

⁶⁹ Article 58-2 of the Arbitration Act.

⁷⁰ Article 58-1 of the Arbitration Act.

⁷¹ FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 620.

⁷² Article 57 of the Arbitration Act.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Egyptian law provides for the supremacy of international conventions. In this instance, the Egyptian courts shall apply the New York Convention. However, the Arbitration Act does not contain a provision that is similar to the New York Convention with respect to the possibility for the court to refuse enforcement based on the setting aside of the award by the courts of the seat. Egyptian courts have not issued any decisions that determine a clear position on the matter and will assess the possibility of enforcement of a set aside award on a case by case basis.

5.8 Are foreign awards readily enforceable in practice?

Egypt is a signatory State of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Egyptian courts are favorable to enforcement despite the lengthy procedure applicable to the enforcement of foreign awards pursuant to the New York Convention's Article 3. Generally, recent practice shows an increasingly supportive position for the enforcement of foreign awards in Egypt.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

The Arbitration Act does not include provisions relevant to contingency fees. However, Egyptian Advocacy Law No. 17 of 1983 allows lawyers to receive contingency fees, and therefore allows them to enter into alternative fee arrangements, in a margin of 5% to 20% of the outcome of the case. However, the 5% minimum was declared unconstitutional by the Supreme Constitutional Court, and so there is no minimum threshold as a matter of Egyptian law.⁷³ Alternative fee arrangements between client and counsel cannot be based on the client's solvency as ruled out by the Supreme Constitutional Court.⁷⁴

As regards third-party funding, the Arbitration Act is silent on the issue. Albeit the absence of significant case law on the matter, this does not preclude, *per se*, arbitration tribunals from embracing this increasingly important practice.

7. Is there likely to be any significant reform of the arbitration law in the near future?

There are ongoing discussions for reform and possible amendments are being considered, but it is not expected that the Arbitration Act will be amended soon.

⁷³ Supreme Constitutional Court, Case No. 22 of JY 14 (12 February 1994).

⁷⁴ *Id.*