

GUIDE TO ARBITRATION PLACES (GAP)

**EGYPT**

CHAPTER PREPARED BY

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

EN [DELOS MODEL CLAUSES](#)

ES [DELOS CLÁUSULAS MODELO](#)

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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|--|---|
| 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                                    | ● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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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 any and all responsibility.

## 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 ultimately resorting to arbitration, Egypt adopts, by the year, measures and reforms that aim at aligning Egypt 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? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Arbitral awards are confidential by law and may not be published. Consequently, arbitral proceedings are also confidential. However, confidentiality 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 required by law.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Hearings and meetings taking place during the arbitration may take place inside or outside of Egypt depending on the parties' agreement and the arbitral 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 Egyptian civil law, the arbitral tribunal has the ultimate power to decide on issues of compensation and interest, provided that the applicable law on the merits is Egyptian law. 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 amount of 20% out of the outcome of the dispute.  There are no restrictions as to third-party funding in arbitrations. However, 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.
Party to the ICSID Convention?	Egypt is a party to the ICSID Convention and ratified the same on 3 May 1972.
Compatibility with Delos Rules?	The usage of Delos Rules by agreement of the parties is compatible with the Arbitration Act. The parties are free to agree on the usage of the arbitration rules of any arbitral institution in Egypt or abroad.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period is fifteen years, save for cases where the law provides for a specific time-limitation period.
Other key points to note?	∅
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?	40.0
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2020, if available?	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, as well as to 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 procedures for enforcement and/or recognition, which would be daunting depending on the parties' conduct.

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? 2006 version?	<p>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.</p> <p>The Arbitration Act has not adopted the amendments introduced by the 2006 version of the UNCITRAL Model Law.</p>
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised courts for handling arbitration matters. However, with respect to domestic arbitrations, the Arbitration Act grants competence to the court having original jurisdiction over the dispute for purposes of handling arbitration matters. In the case of international commercial arbitrations, whether conducted in Egypt or abroad, the competent court is the Cairo Court of Appeal unless the parties agree on the competence of another appellate court within Egypt (Article 9). Within the Court of Appeal, there are specific circuits or judges (administrative divisions) dedicated to dealing with arbitration-related matters, especially for annulment proceedings.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Domestic courts have the power to rule on both <i>ex parte</i> and 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?	The Arbitration Act recognizes the competence-competence principle and provides that the arbitral tribunal shall decide over any jurisdiction-related claims including on the existence, validity and scope of the arbitration agreement (Article 22.1). Generally, Egyptian courts are in favour of applying the competence-competence principle. However, there have been instances where Egyptian courts, specifically in relation to administrative contracts, have

	decided over the existence and validity of an arbitration agreement prior to or during the arbitral proceedings and irrespective of the arbitral tribunal's jurisdiction.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	An arbitral tribunal may render a decision on jurisdiction (or other issues) in the form of a partial award, without stating the reasons if the parties so agree, or if the procedural rules so allow, otherwise the tribunal will have to expressly state in its partial award that the reasons will follow in the subsequent award.
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, when either the Arbitration Act or the New York Convention is applicable, save in cases raising public policy issues.  When the Arbitration Act applies, the annulment procedures are significantly simplified and afford little to no power to the court with respect to review of the award on the merits, save in cases where the award contravenes principles of public policy.
Do annulment proceedings typically suspend enforcement proceedings?	Generally, annulment proceedings do not suspend enforcement proceedings. However, the competent Egyptian court may, upon the request of a party, order suspension of enforcement proceedings, if the court finds that such request is based upon serious grounds. The court has 60 days from the date of the first hearing in relation to the request for suspension to render its decision, if suspension is ordered, the court may require a given security or monetary guarantee. The Court has 6 months from the date of issuance of the suspension order to rule on the nullity action.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Egyptian courts have had little experience with the enforcement of awards annulled at the seat but are expected to adopt the position provided within the New York Convention rules.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Arbitral tribunals have the discretion, in absence of an agreement between the parties, to adopt the procedures they deem appropriate for the proper conduct of the arbitral proceedings, provided that the parties are treated with equality and are granted an equal and full opportunity to present their respective claims/defences.  Ordering to conduct a hearing remotely, despite a party's objection would not affect the recognition or enforceability of the ensuing award, provided that the parties were treated with equality and were granted an equal and full opportunity to present their respective claims/defences.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The Arbitration Act mandates that arbitration agreements relating to administrative contracts must be approved by the competent minister, or whoever assumes his/her authority with respect to public entities, and expressly prohibits delegation of this power, subject to penalty of nullity of the arbitration agreement. Moreover, as of December 2020, in contracts to be concluded with a state entity and a foreign investor which include an arbitration agreement, the approval of the competent minister, or whoever assumes his/her

	<p>authority with respect to public entities, is subject to a prior approval of the Supreme Council for Studying and Opining on International Arbitration Disputes, which is a ministerial committee in charge of examining all arbitration disputes involving state entities. Aside from the above, there are no specific points to note with regard to enforcement of arbitral awards against public bodies. Normally, state immunity cannot be invoked, so long as the concerned public body has validly consented to resolving the dispute through arbitration following the required procedure (<i>i.e.</i> obtained the required prior approvals) and that the matter in dispute is arbitrable.</p>
Is the validity of blockchain-based evidence recognised?	The Arbitration Act and the Evidence Law do not contain any provisions in relation to blockchain based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	<p>Arbitration agreements can be concluded by way of electronic means, subject to fulfillment of the writing requirement. However, their validity is uncertain.</p> <p>A blockchain arbitral award cannot be recognised as valid. The award must be “actually” signed by the arbitrators.</p>
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	No, courts would not consider valid a blockchain arbitration agreement or award for the purpose of recognition and enforcement procedure. Both shall be deposited at the court in paper form.
Other key points to note?	<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 proceedings do 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 remains underdeveloped and may benefit from further input with regards to internationally developed practices, 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? 1985 or 2006 version?

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 application of the Arbitration Act may be extended to arbitrations seated abroad with the parties’ agreement to such application (Article 1);
- The requirement that an arbitration agreement in an administrative contract be 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 is determined by the arbitration agreement, the place of performance of the obligations or the place with the closest connection 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 a condition for the validity as opposed to a mere evidentiary requirement. 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 the nullity of the arbitration agreement and the writing requirement under the Egyptian Arbitration Act is stricter than the one under the Model Law (Article 12);
- In the case of incorporation by reference, the reference to the arbitration agreement must be explicit in order for the arbitration agreement to form an integral part of the main contract (Article 10);
- The Arbitration Act does not provide for the “referral exception” whereby a state court may accept to decide jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed (Article 13);
- The arbitral tribunal must be constituted of an odd number of arbitrators. The violation of this requirement leads to the nullity of the award (Article 15);
- A preliminary decision by the arbitral tribunal on jurisdiction cannot be the subject to court review prior to the arbitral tribunal’s rendering of the final award deciding on the entire 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 grant such a power (Article 24);
- If the parties do not agree on the language of the arbitration, the arbitration 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 in that 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 revised since its adoption except for a limited number of amendments. The three important amendments pertain to the arbitration agreement for administrative contracts, the procedure for the challenge of an arbitrator and of an order granting or denying an *exequatur*.

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 of the person exercising his authority within the relevant public entities (entering into such arbitration agreements).<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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' substantive choice of law which, in turn, may be implicit.

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

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

## **2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?**

The Arbitration Act makes an express distinction between the legal seat and the venue of arbitration, and allows the parties to agree on the place (*i.e.* geographical location or venue, not the legal seat) of the arbitration whether inside or outside of Egypt, and in absence of agreement between the parties, the arbitral tribunal proceeds with determining the place taking into account the circumstances of the case and the convenience to the parties.<sup>6</sup> In this regard, it is worth mentioning that the legal seat determines the procedural law applicable to the arbitration proceedings (*lex arbitri*), whilst the geographical venue consists in the location for holding meetings, hearings and/or deliberations, which does not have any effect as to the applicable procedural rules to the arbitral proceedings, it is simply the place to convene hearings or any other related in-person meetings. In a recent decision, the Court of Cassation expressly recognised the distinction between the notions of '*legal seat/place*' and '*geographical venue*' and held that arbitration has gradually shifted away from the traditional notion of localisation.<sup>7</sup> However, to determine the seat of arbitration, the court will have to examine for instance, the parties' common intent at the time of concluding the arbitration agreement, if any implicit agreement existed between them regarding the seat, or the place of performance of the disputed obligation, taking into account the place of enforcement of the award to be rendered. Moreover, the parties' choice to submit their dispute to a standard contract or international convention includes applying the provisions related to arbitration provided therein.<sup>8</sup>

## **2.3 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 in which it is contained 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* (*i.e.* standalone arbitration agreement), 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.<sup>9</sup> This severability principle is widely considered as one of the fundamental pillars of arbitration in Egypt.<sup>10</sup> 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.<sup>11</sup>

<sup>4</sup> Fathi Wali, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 121-23.

<sup>5</sup> *Id.*

<sup>6</sup> Article 28 of the Arbitration Act.

<sup>7</sup> Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020).

<sup>8</sup> Article 6 of the Arbitration Act.

<sup>9</sup> Court of Cassation, Challenge No. 824 of 71 JY (24 May 2007).

<sup>10</sup> Court of Cassation, Challenge No. 933 of 71 JY (24 May 2007).

<sup>11</sup> FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 107.

## 2.4 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:<sup>12</sup>

- The parties must have capacity to enter into the agreement;<sup>13</sup>
- The subject-matter of the dispute must be arbitrable;<sup>14</sup>
- The subject of the dispute to be resolved by arbitration must be specified (in the *compromise d'arbitrage*, or in the Statement of Claim in case of a prior agreement to arbitrate);<sup>15</sup> 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).<sup>16</sup>

## 2.5 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 other contracts. Egyptian court decisions, all the same, do not portray a clear trend as to this 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 ruled 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.<sup>17</sup> 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.<sup>18</sup> 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.

The Egyptian Court of Cassation recently held that an arbitration agreement cannot exist without consent of the parties, but added that an arbitration agreement may extend to third parties and to other contracts

<sup>12</sup> FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 119.

<sup>13</sup> Article 11 of the Arbitration Act.

<sup>14</sup> Article 11 of the Arbitration Act.

<sup>15</sup> Article 10 of the Arbitration Act.

<sup>16</sup> Article 12 of the Arbitration Act.

<sup>17</sup> Court of Cassation, Challenge No. 4729 of 72 JY (22 June 2004).

<sup>18</sup> Cairo Court of Appeal, Commercial Circuit No. 62, Case No. 83 of 118 JY (5 August 2002), in FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., pp. 195-96.

connected to the principal contract on the basis of several doctrines and principles including: group of companies, group of contracts, universal succession, mergers or assignment.<sup>19</sup>

## **2.6 Are there restrictions to arbitrability? In the affirmative:**

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law, etc.)?**

Any matter that is not capable of settlement/conciliation is non-arbitrable under the Arbitration Act<sup>20</sup>. 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 criminal law issues.

Otherwise, the Arbitration Act solely requires that the right subject to arbitration be of an economic nature.<sup>21</sup>

### **2.6.2 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.<sup>22</sup> However, arbitration agreements in administrative contracts require the approval of the competent Minister, or whoever assumes his/her authority with respect to public entities. Delegation of this power is prohibited.<sup>23</sup> In this regard, a judgment by the State Council ruled that the arbitration agreement is void when the competent minister, or whoever assumes his or her authority with respect to public entities, has only approved it but has not signed it, and that such requirement is a matter of public policy. It also ruled that the arbitration agreement must deal only with matters that are arbitrable and in the case of a *compromis d'arbitrage*, the parties must identify the dispute subjected to the arbitral proceedings or the agreement would be null and void.<sup>24</sup>

## **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.<sup>25</sup> However, the court is not under an obligation to reject the case *ex officio* for the mere existence of an arbitration agreement; the defendant must raise her/his objection at the commencement of the proceedings (see, Article 13.1 of the Arbitration Act) prior to the examination of merits otherwise s/he would lose the right to object. 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.<sup>26</sup>

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halting or withdrawing litigation proceedings?**

The Arbitration Act is silent on the matter. However, as a matter of practice, arbitral tribunals do not have the power to order the parties to refrain from going to the courts, or halting or withdrawing litigation proceedings. In any event, an interim measure by the arbitral tribunal may however only address the parties

<sup>19</sup> Court of Cassation, Challenges Nos. 2698, 3100 and 3299 of 86 JY (13 March 2018).

<sup>20</sup> Article 11 of the Arbitration Act.

<sup>21</sup> Article 2 of the Arbitration Act.

<sup>22</sup> Article 11 of the Arbitration Act.

<sup>23</sup> Article 1 of the Arbitration Act.

<sup>24</sup> State Council, Challenge No. 8256 of 56 JY (5 March 2016)

<sup>25</sup> Article 13-1 of the Arbitration Act.

<sup>26</sup> FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 205.

to the arbitral proceedings and cannot impact or bind third parties, let alone national courts, for the purpose of halting ongoing proceedings or mandating a dismissal of a claim to begin with if a party does seize it with a claim in defiance of the tribunal's order, once issued.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

The application of the Arbitration Act extends to international arbitrations seated outside of Egypt in the event that 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 (or anti-arbitration) 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. The power of Egyptian courts with respect to the stay of proceedings is in fact restrained to an exhaustive list of cases mentioned in the Egyptian Law, amongst which anti-suit injunctions are not addressed. 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.<sup>27</sup>

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

The parties have the freedom to decide whether to retain outside counsel (Egyptian or foreign) or represent themselves in the arbitral proceedings. In a very recent court decision, the Court of Cassation addressed the issue of party representation and determined that there are no limitations or restrictions on party representation in arbitrations seated in Egypt. The Court of Cassation recognised that the parties to an arbitration, be it domestic or international proceedings, may be represented by any person of their choice, whether being a lawyer, Egyptian or foreigner, or a non-lawyer.<sup>28</sup>

Representation is made by virtue of a power of attorney in favour of a representing counsel.<sup>29</sup> 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.<sup>30</sup>

Representation includes all steps of the arbitral proceedings starting from the service of the request to arbitrate to the hearing and the issuance of the award.<sup>31</sup> 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.

### **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 be of a gravity such as to justify this outcome?**

The Arbitration Act regulates challenges to arbitrators. The competent court may intervene regarding the challenge of an arbitrator if he or she does not step down after 15 days from the date of a party's application

<sup>27</sup> FATHI WALLI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 492.

<sup>28</sup> Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020).

<sup>29</sup> MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para. 419.

<sup>30</sup> FATHI WALLI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 434.

<sup>31</sup> FATHI WALLI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 434.

for challenge before the arbitral tribunal. The Arbitration Act therefore imposes a pre-requisite of submitting the challenge to the arbitral tribunal before the transmittal of the challenge case to the court.

The obligation to transmit the challenge to the competent Egyptian court here is incumbent upon the arbitral tribunal itself.<sup>32</sup> 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.<sup>33</sup> The standard used for the challenge of an arbitrator is that of "*serious doubts as to his impartiality and independence*"<sup>34</sup> which the circumstances unfold.<sup>35</sup> The arbitrator's independence and impartiality are considered fundamental guarantees of justice.<sup>36</sup> However, an arbitrator is presumed independent and impartial if he/she accepted his/her mission and the party challenging these notions bears the burden to raise and prove the opposite.<sup>37</sup> The court's decision on the application for challenge is final and may not constitute the subject of a further appeal.<sup>38</sup>

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. Accordingly, in a recent court decision, after the issuance of the arbitral award, it came to the knowledge of the respondent that the chairman of the arbitral tribunal is a client of the co-arbitrator appointed by the claimant, and that neither has disclosed the existence of this relationship during the arbitral proceedings. However, the other-co-arbitrator appointed by the respondent had disclosed at the time of his appointment that he is the lawyer of the respondent and confirmed to be impartial in this arbitral proceedings, and the claimant accepted his appointment after such disclosure. In this regard, the Cairo Court of Appeal held that the non-disclosure of the relationship existing between the chairman and the co-arbitrator appointed by the claimant creates doubts as to their impartiality and independence, which consist in fundamental requirements for the appointment of any arbitrator. Therefore, the Cairo Court of Appeal annulled the arbitral award on the ground of non-disclosure by the chairman and the co-arbitrator appointed by the claimant of their existing relationship prior to the commencement of the arbitral proceedings.<sup>39</sup>

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;<sup>40</sup>
- 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 the first party to proceed with the appointment;<sup>41</sup>

<sup>32</sup> Court of Cassation, Challenge No. 9568 of 79 JY (14 March 2011).

<sup>33</sup> Article 16-3 of the Arbitration Act.

<sup>34</sup> Article 18-1 of the Arbitration Act.

<sup>35</sup> MAHMOUD MOKHTAR Al-Berairy, *International Commercial Arbitration*, Dar An-Nahda Al Arabiyyah (2004), 3<sup>rd</sup> ed., p. 75, para. 42.

<sup>36</sup> Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

<sup>37</sup> Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

<sup>38</sup> Article 19-1 of the Arbitration Act.

<sup>39</sup> Cairo Court of Appeal, Case No. 92 of 135 JY (12 January 2019).

<sup>40</sup> Article 17-1 of the Arbitration Act.

<sup>41</sup> Article 17-2 of the Arbitration Act.

- 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;<sup>42</sup>
- A default in the appointment by the parties of arbitrators in a tribunal composed of over three members;<sup>43</sup> and
- 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 appealed<sup>44</sup> except based on invalidity for not following the proper legal procedures for appointment.<sup>45</sup> 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.<sup>46</sup>

#### **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 party both prior to the commencement of the proceedings and during the conduct of the arbitration.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> The measure may be subject to appeal before the court.<sup>50</sup>

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 president of the Cairo Court of Appeal, in an *ex parte* proceeding, enforced, for the first time, an interim decision rendered by an ICC arbitral tribunal seated in Paris.<sup>51</sup> The enforcement order was affirmed by the full panel of the Cairo Court of Appeal in an adversarial proceeding in 2018.<sup>52</sup>

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<sup>42</sup> Article 17-2 of the Arbitration Act.

<sup>43</sup> BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19<sup>th</sup> ed. (December 2012), p. 105.

<sup>44</sup> Article 17-3 of the Arbitration Act.

<sup>45</sup> Court of Cassation, Challenge No. 17170 of 74 JY (22 November 2007).

<sup>46</sup> BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19<sup>th</sup> ed. (December 2012), p. 118.

<sup>47</sup> Article 14 of the Arbitration Act.

<sup>48</sup> Explanatory Note to the Arbitration Act.

<sup>49</sup> Court of Cassation, Challenge No. 1975 of 66 JY (12 December 1996).

<sup>50</sup> MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19<sup>th</sup> ed. (December 2012), p. 70.

<sup>51</sup> Cairo Court of Appeal, Arbitration Orders, Ordinance No. 39 of 134 JY (8 November 2017)

<sup>52</sup> Cairo Court of Appeal, Case No. 44 of 134 JY (9 May 2018). (The case is still under challenge before the Court of Cassation).

#### 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.<sup>53</sup> 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 proceedings, subject to possible extension by the arbitral tribunal for a period of 6 months unless the parties agree to a longer period.<sup>54</sup>

If the award is not issued within these time-limits,<sup>55</sup> 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.<sup>56</sup>

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 meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

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 (i.e. geographical location or venue, not the legal seat) of the arbitration whether inside or outside of Egypt. In the absence of such agreement, the arbitral tribunal may determine 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.<sup>57</sup> The arbitral tribunal enjoys a discretionary power to decide on procedural matters as it deems appropriate, in absence of agreement between the parties,<sup>58</sup> while preserving equal treatment of the parties and granting them an equal and full opportunity to present their case.<sup>59</sup> The Arbitration Act does not preclude holding hearings/meetings remotely, therefore, these can be held remotely, and the objection of a party does not affect the tribunal's decision. In this respect, the Court of Cassation expressly acknowledged the increased use of virtual hearings in arbitrations across the globe, and was keen on incorporating an express reference to the expression '*virtual hearings*' in English language in its very recent decision, which proves that the conduct of virtual hearings is consistent with the Arbitration Act.<sup>60</sup>

<sup>53</sup> Explanatory Note to the Arbitration Act.

<sup>54</sup> Article 45 of the Arbitration Act.

<sup>55</sup> MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para.472.

<sup>56</sup> *Id.*

<sup>57</sup> Article 28 of the Arbitration Act; MAHMOUD MOKHTAR AL-BERAIRY, *International Commercial Arbitration*, Dar An-Nahda Al-Arabiyyah (2004), 3<sup>rd</sup> ed., p.103, para.61.

<sup>58</sup> Article 25 of the Arbitration Act.

<sup>59</sup> Article 26 of the Arbitration Act.

<sup>60</sup> Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020).



#### 4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, c 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.<sup>61</sup> This agreement can well result from a general agreement as to the application of institutional rules which automatically grant the arbitral 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.<sup>62</sup> 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.<sup>63</sup>

It is worth noting that under the Arbitration Act interim relief may also be awarded in the form of an interim award (Article 42) which makes it subject to the ordinary procedures for the enforcement and recognition of arbitral awards. Nonetheless, interim awards do not have *res judicata* effect as do final awards.

In the event where the party subject to the measure fails to comply with it, the arbitral 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 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.<sup>64</sup>

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.<sup>65</sup>

#### 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 arbitral tribunal's power is however subject to any agreement by the parties on this matter which naturally takes priority over any such power.<sup>66</sup>

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.

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<sup>61</sup> Article 24 of the Arbitration Act.

<sup>62</sup> MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19<sup>th</sup> ed. (December 2012), p. 78.

<sup>63</sup> *Id.*

<sup>64</sup> MAHMOUD SAMIR AL-CHARKAWI, *International Commercial Arbitration: A Legal Comparative Study*, Dar Al-Nahda Al-Arabiyyah (2011), p. 320-21.

<sup>65</sup> Article 65 of the Arbitration Act.

<sup>66</sup> Article 33 of the Arbitration Act.



#### 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 on a higher rate, which will have to be reduced to the mentioned cap.<sup>67</sup> The only exception to the cap is the award of interest in certain banking transactions which the legislator exempts from the public policy rule. In this regard, interest may be payable at the rate set by the Central Bank of Egypt (the "CBE") which in fact may exceed 7% at the CBE's annual decision. This rate would apply in relation to (i) commercial loans; and (ii) amounts/expenses pertinent to the trader's trade (Article 50 of the Egyptian Commercial Code), in which cases public policy would not be contravened.

#### 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 from 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.<sup>68</sup> 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.<sup>69</sup>

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

There are no special provisions pertaining to the potential criminal liability of participants in arbitration proceedings seated in Egypt. However, in January and May 2019 the Egyptian courts passed and confirmed imprisonment sentences against certain arbitrators and members of a purported local arbitration institution who were engaged in the rendering of an arbitral award in sham arbitral proceedings. Charges of misappropriation by fraudulent means and forgery were made against the sentenced individuals.<sup>70</sup> This is an exceptional case that involved a flagrant criminal scheme that resulted in the issuance of a US\$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award resulting from the sham proceedings in Cairo.

## 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

<sup>67</sup> Court of Cassation, Challenge No. 3778 of Judicial Year 64 (17 February 2004).

<sup>68</sup> FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 367-68.

<sup>69</sup> FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 369-71.

<sup>70</sup> Al-Nozha Misdemeanor Court in Cairo, Case No. 12648 of Judicial Year 2018; Cairo Court of Appeal, Appeal No. 695 of Judicial Year 2019 (East Cairo Appeals). Whilst the lower court had passed 3-year imprisonment sentences for the arbitrators and the other implicated persons, the Court of Appeal reduced the sentence of one of the arbitrators to one year.

inclusion of the arbitral tribunal's reasoning for the decision.<sup>71</sup> Absent these exceptions, an unreasoned award is susceptible of annulment as per the Arbitration Act.<sup>72</sup>

## **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.<sup>73</sup> This applies *mutatis mutandis* to the parties' agreement to waive this right.<sup>74</sup>

Waiver may be explicit or implicit 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.<sup>75</sup>

## **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 *dispositive* (operative part), (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.<sup>76</sup>

At the time of the deposit of the award for enforcement, a certified Arabic translation of the award must accompany its original or copy.<sup>77</sup>

## **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

An award is not subject to 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.<sup>78</sup>

## **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?**

### **5.5.1 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 the award is in another language;
- the deposit of a copy of the arbitration agreement; and

<sup>71</sup> Article 43-2 of the Arbitration Act.

<sup>72</sup> 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.

<sup>73</sup> Article 54-1 of the Arbitration Act.

<sup>74</sup> FATHI WALLI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 782.

<sup>75</sup> *Id.*

<sup>76</sup> Article 43 of the Arbitration Act.

<sup>77</sup> Article 47 of the Arbitration Act.

<sup>78</sup> Article 52 of the Arbitration Act.

- a copy of the minutes indicating the deposit of the award at the court.<sup>79</sup>

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.<sup>80</sup> 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:<sup>81</sup>

- 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.

### 5.5.2 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.<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup>

### 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.

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<sup>79</sup> Article 56 of the Arbitration Act.

<sup>80</sup> Article 58-3 of the Arbitration Act.

<sup>81</sup> Article 58-2 of the Arbitration Act.

<sup>82</sup> Article 58-1 of the Arbitration Act.

<sup>83</sup> FATHI WALLI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 620.

<sup>84</sup> Article 57 of the Arbitration Act.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

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.<sup>85</sup> Alternative fee arrangements between client and counsel cannot be based on the client's solvency as ruled out by the Supreme Constitutional Court.<sup>86</sup>

The Arbitration Act is silent on the issue of third-party funding. 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. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognised?

The Arbitration Act and the Evidence Law are silent on the matter of blockchain-based evidence. In principle, the parties are free to agree on the procedural rules governing their arbitral proceedings and the Arbitration Act does not regulate the arbitrators' powers with respect to evidence. However, it is admitted in practice and by courts that arbitrators have the power to admit, assess and weigh evidence.<sup>87</sup> So the validity of blockchain-based evidence would be subject to the parties' agreement on its applicability and the arbitrators' discretion, which remains to be tested.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

A distinction shall be made between arbitration agreements and arbitral awards.

Arbitration agreements must be in writing.<sup>88</sup> The Arbitration Act does not expressly include the possibility to enter into an arbitration agreement by way of electronic means. However, it does not exclude it, and therefore, nothing prohibits the conclusion of arbitration agreements by electronic means and insofar as the electronic communication fulfills the requirement of writing. It is our opinion that arbitration agreements recorded on a blockchain may be recognised as valid, but this has not yet been tested to the best of our knowledge.

Arbitral awards must be in writing and signed by the arbitrators.<sup>89</sup> The award must be authenticated and cannot be sent electronically. Practice has not yet reached the stage of electronic submission of awards. Therefore, awards recorded on a blockchain are not recognised as valid.

### 7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

The arbitration agreement and the award cannot be submitted electronically to the court. A Blockchain arbitration agreement and award cannot be considered as originals or admissible before Egyptian courts.

<sup>85</sup> Supreme Constitutional Court, Case No. 22 of JY 14 (12 February 1994).

<sup>86</sup> *Id.*

<sup>87</sup> Cairo Court of Appeal, Appeal No. 26 of 120 JY (22 November 2003); and Cairo Court of Appeal, Case No. 52 of 130 JY (10 September 2014).

<sup>88</sup> Article 12 of the Arbitration Act.

<sup>89</sup> Article 43.1 of the Arbitration Act.

The party seeking enforcement of an award must submit a hard copy of the arbitration agreement and the original award or a certified/authenticated signed copy of the award, along with other requirements provided under the Arbitration Act for obtaining the *exequatur*.<sup>90</sup>

**7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

In practice, arbitral awards always bear the actual signature of arbitrators, although, Egypt enacted Law No. 15 of 2004 for Digital Signatures, it has not been implemented until date in relation to the signing of arbitral awards. Courts are still accustomed to receiving actually signed awards. The award must be authenticated and cannot be electronically signed or submitted electronically to the court.

**8. 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.

**9. Compatibility of the Delos Rules with local arbitration law**

The Arbitration Act preserves the parties' right to choose the procedural rules governing their dispute, which includes the Rules of arbitral institutions or centres, in Egypt or abroad.<sup>91</sup> In this respect, the Court of Cassation has recently provided insight on what is meant by an arbitral institution under Article 3 of the Arbitration Act by referring to the ICC International Court of Arbitration and stating the following:<sup>92</sup>

*"It is inferred from the travaux préparatoires of Law No. 27 for the year 1994 on Arbitration in Civil and Commercial Matters, and its international sources, and the doctrine and jurisprudence of international arbitration, that a permanent arbitral institution or an arbitration centre, considered under this law [the Arbitration Act], is that institution or that centre established and based in Egypt by virtue of an international or regional treaty, law, or pursuant to a law, for the purpose of administering international commercial arbitration cases, as well as all permanent arbitral institutions or arbitration centres headquartered outside Egypt, which are internationally or regionally well-known and has gained the trust of clients – over the years – in the field of international business, trade and investment, for their internal rules and regulations and stable administrative bodies refined by practical experience and frequency of administering arbitration cases, which ultimately provides for legal and procedural security for the parties to arbitration." [Bracketed words added]*

Hence, the Delos Rules are compatible with the Arbitration Act, as Delos fulfils the criteria of an arbitral institution.

**10. Further reading**

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<sup>90</sup> Article 56 of the Arbitration Act.

<sup>91</sup> Article 25 of the Arbitration Act.

<sup>92</sup> Court of Cassation, Challenge No. 14126 of 88 JY (22 October 2019).

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<a href="#">Cairo Regional Centre for International Commercial Arbitration.</a>
Main arbitration hearing facilities for in-person hearings?	<a href="#">In-person hearings are conducted at the premises of the Cairo Regional Centre for International Commercial Arbitration which has 3 hearing rooms.</a>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	<a href="#">Xerox offices.</a>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	ϕ