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IBA ARBITRATION COMMITTEE

# Arbitration Guide

# EGYPT

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# I. Background

## (i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is quite common in large commercial contracts in Egypt. That being said, litigation before the courts is still the norm for the majority of small to medium value transactions.

Institutional arbitration is relatively fast and expedient, and its procedural rules are not complicated. The parties to the dispute are given flexible methods of dispute resolution wherein they can argue their case effectively and before a competent tribunal, usually of their own choosing. However, for ad hoc arbitrations, there could be serious problems that would delay the process. These include complications that may arise when one party fails to appoint an arbitrator or the parties fail to agree on the appointment of a sole arbitrator. Also, in ad hoc arbitrations that are not deemed to be 'international commercial arbitrations' the procedural supervisory authority lies with first instance courts and not the Cairo Court of Appeal.

Egyptian litigation cases are notoriously procedurally complex. The judges unfortunately most of the time do not have the experience or the time to undertake an in-depth review of any material dispute. Litigation cases will almost always devolve into procedural tactics and disputes. Thus, when in-depth review and technical expertise is required, arbitration is seen as the preferred method.

Arbitration is, however, much more expensive than litigation before the Egyptian courts. Court fees are still very low when compared with arbitrators' fees. Most parties to commercial transactions cannot afford to refer their disputes to arbitration and most do not properly understand the concept of arbitration.

## (ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

For medium and smaller value transactions, ad hoc arbitrations are more common. Governmental contracts and large transactions would generally have institutional arbitrations. The Cairo Regional Centre for International Commercial Arbitration (CRCICA) Rules, UNCITRAL Rules and the ICC Rules of Arbitration are most commonly used in Egypt.

## (iii) What types of disputes are typically arbitrated?

Construction disputes, mergers and acquisitions, IP contracts (franchising, agencies, licensing agreements etc.) that include a foreign party, hotel management agreements and oil and gas contracts also tend to have arbitration provisions. Also, large scale governmental contracts tend to include arbitration provisions, usually at the insistence of the private law contracting party, that would prefer to avoid court litigation.

## (iv) How long do arbitral proceedings usually last in your country?

Arbitral proceedings commonly take one to two years from the request for arbitration until a final award is rendered. Enforcement may take another six to twelve months. In some cases, defendants are able to extend the enforcement time through various tactics for a further six or even twelve months. Nullity actions may take two to three years before a final judgment is rendered. Pursuant to the Arbitration Law, a nullity action should not provide grounds for a stay of enforcement of an arbitration award (although unfortunately sometimes, despite the clear letter of the law, courts do stay execution).

**(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

There may be a problem with foreigners acting as sole counsel representing a party in an arbitration taking place in Egypt. The law governing the legal profession and the practice of law would require that a party be represented by a member of the Egyptian Syndicate of lawyers. Practically, there may be foreign co-counsel. There is no problem with foreigners acting as arbitrators.

## **II. Arbitration Laws**

**(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The Egyptian Arbitration Law (EAL), Law 27 of 1994, as amended in 1997 and 2008, governs the proceedings of any arbitration that takes place in Egypt (seat being in Egypt) including both domestic and international arbitrations.

The EAL is based on the UNCITRAL Model Law.

**(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The procedures vary slightly between domestic and international arbitrations in the EAL. Domestic arbitrations are those between two Egyptian parties. International arbitrations are between two parties whose abodes or headquarters are in different states. Furthermore, an arbitration is deemed international if the arbitration agreement provides that the arbitration shall be under the auspices of an arbitration center, whether in Egypt or outside of Egypt. An arbitration would also be deemed international if the subject matter of the disputes transcends more than one state.

The main difference between the two lies in the procedures to be taken if an issue must be referred to the Egyptian courts. For international commercial arbitrations, unless the disputing parties agree to the jurisdiction of another appeal court, the Cairo Court of Appeal is the court with jurisdiction in terms of any disputes referred to the courts in respect of the arbitration procedures. Otherwise (for arbitrations that are not international commercial arbitrations), the first instance court that would have had jurisdiction to review the underlying dispute that was referred to arbitration would be the competent court to review disputes relating to the arbitration procedures.

**(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Egypt has been a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1959.

Egypt has been a signatory to the Washington Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States) since 1972.

**(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

Yes, Article 39 of the EAL stipulates that a tribunal must apply the substantive rules of law agreed to between the parties. If there is no such agreement, then the tribunal must apply the substantive rules of law that the tribunal deems most closely related to the dispute. The tribunal must also take into account the conditions of the contract and the prevailing customs for the type of transaction. Provided the parties expressly agree, a tribunal may also act as *amiable compositeur*.

### III. Arbitration Agreements

**(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Yes, the legal requirements regulating the form and content of a valid arbitration agreement can be found under the EAL. Pursuant to these provisions a valid arbitration agreement must be in writing (but could be established also through exchanges of written correspondence). If the arbitration agreement was concluded after the dispute, then the arbitration agreement must specify the dispute to be resolved. If the parties incorporate within their agreement a model form of contract that includes an arbitration provision, they must expressly confirm that they also incorporate the arbitration provision. Some statutory provisions dealing with specific types of contracts also provide additional conditions. For example, for transfer of technology contracts under the commercial code, the seat of arbitration must be in Egypt and Egyptian law must govern the settlement of the dispute.

For administrative contracts (most large-scale governmental projects' contracts for infrastructure and other public facilities are characterized as administrative contracts) the consent of the concerned Governmental Minister to the inclusion of the arbitration provision must be obtained. Thus, it is always recommended to have the consent confirmed in writing. In 2019 a Cabinet High Authority for Arbitration was established to assist and advise governmental entities engaged in international arbitration. In 2022 it was decreed that no governmental authority or entity shall enter into any arbitration agreement without the consent of this High Authority for Arbitration. The issue of the effect of breach of these internal governmental regulations on the validity of agreements to arbitrate is yet to be tested in the courts. This is of course an internal governmental matter, if indeed a governmental entity failed to obtain this consent, the author is of the opinion that this shall not detract from the enforceability of the agreement to arbitrate.

There are other additional non-mandatory, but recommended, best practice provisions not mentioned in the EAL. The EAL sets an 18-month time limit for rendering awards (unless otherwise agreed by the parties). If the parties foresee the need for a longer period, they should specify a longer period in their agreement. If the parties want to grant the tribunal the power to award interim measures and injunctive relief, this must be expressly provided for in the arbitration provision. If the parties wish for the proceedings to be conducted in a language other than Arabic, it is recommended that this be expressly stated (the default, absent agreement by the parties or a decision by the tribunal, is Arabic).

**(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

The courts generally enforce arbitration agreements and decline to review cases wherein there is a valid arbitration agreement. The main exceptions are administrative contracts. These are contracts concluded with public juridical persons (including governmental departments and agencies) in respect of public utilities and projects. Under the EAL, for these types of contracts the consent of the concerned Governmental Minister to include the arbitration provision must be obtained. In some cases where the consent is not very clear and explicit, the administrative courts would invalidate the arbitration provision.

**(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are not common in Egypt. However, when used, the most used is the one that includes the need to exhaust some sort of attempt to reach an amicable settlement.

Such clauses are enforceable as they are deemed to be pre-conditions to the coming into force of the agreement to arbitrate. Failure to enforce the conditions of a multi-tier clause, unless such conditions are waived by the respondent or not invoked within a reasonable period of time after arbitration proceedings are initiated, would invalidate any arbitration procedure performed contrary to the clause, which would be deemed pre-mature.

**(iv) What are the requirements for a valid multi-party arbitration agreement?**

The EAL makes no distinction between a multi-party arbitration agreement and a bilateral arbitration agreement.

**(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

As long as both parties have explicitly agreed to grant that unilateral right to one of the parties then that right would be enforceable.

**(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?**

Generally, arbitration agreements are only binding on the parties to the agreement containing the arbitration provision. However, there have been instances when guarantors, who have signed the main agreements as guarantors, were held bound by the arbitration provision. It may be possible in some cases to argue that a contract signed by an agent on behalf of a principal would bind the principal to the arbitration provision.

**(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

If the seat of the arbitration is in Egypt, the EAL would govern the arbitration agreement, regardless of any contrary agreement of the parties. If the seat of the arbitration is outside Egypt, the courts would generally apply the law of that foreign jurisdiction as that governing the arbitration procedures. However, this is always subject to mandatory provisions of the contract governing law. So, if the governing law is Egyptian law, mandatory provisions of Egyptian law that impact the agreement to arbitrate would be deemed applicable. Such as for example transfer of technology contracts and administrative contracts.

**(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?**

Yes, the distinction is recognized.

**(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?**

The arbitrability of these types of disputes has not yet been tested before the Egyptian courts. Theoretically, the parties under the EAL are free to decide on the arbitration procedures (subject to mandatory provisions of the EAL). Thus, blockchain disputes are theoretically arbitrable. One problem would be to what extent the Egyptian judges who may be called upon to rule on this issue would be familiar with smart contracts and blockchain arbitration platforms. The same would apply equally to non-fungible tokens' disputes being subject to arbitration. While theoretically they would be arbitrable, the courts' ability to deal with these issues would be a cause for concern.

**(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?**

Yes, the EAL contains a maximum time limit for rendering the arbitration award, otherwise at the request of a party, the arbitration agreement would become non-operable, and the courts would have the jurisdiction to resolve the underlying dispute. However, the Court of Cassation has ruled that this limiting provision would not apply to arbitrations made subject to arbitration rules that do not place any limitation on the time for rendering the award. Thus, in practice, this limitation would not apply to most institutional arbitrations.

## IV. Arbitrability and Jurisdiction

- (i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Yes, there are types of agreements which are not arbitrable except with certain pre-conditions (see for example technology transfer agreements and administrative contracts in Section III(i) and (ii) above). Moreover, any dispute which cannot be amicably settled (ie, where a party may not waive its rights) cannot be arbitrated such as for example criminal proceedings (Egyptian law allows for direct prosecution by victims for misdemeanours) and certain types of family law disputes. Real estate property title ownership disputes are not arbitrable. Disputes under technology transfer contracts (as defined in the Commercial Code) are not arbitrable unless the governing law is Egyptian law, and the seat of arbitration is in Egypt. Lack of arbitrability would be a matter of jurisdiction. For example, if a party during arbitration proceedings challenges a document as a forgery, as per the EAL, the tribunal would have no jurisdiction to rule on this challenge, and if the document is material and relevant to the dispute, the tribunal would suspend the arbitration pending a ruling by the courts on the forgery issue.

- (ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If a party refers a dispute to the Egyptian courts notwithstanding the existence of a valid arbitration agreement, to maintain its right to arbitrate the dispute the defendant, if it wants to enforce the agreement to arbitrate, must first make a preliminary submission to the court, objecting to the court proceedings and insisting on arbitration, before addressing any of the merits of the dispute. If it does not do so, it is deemed to have waived its right to resort to arbitration.

- (iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Arbitrators in Egypt can decide on their own competence during the arbitration proceedings. The principle of competence-competence thus to some extent is recognized under the EAL. However, the courts have the final say. Once a final award has been issued on all issues in the arbitration (including the merits), a party that had unsuccessfully raised a jurisdictional challenge before the tribunal may challenge the whole award in a nullity action based on jurisdictional arguments.

## V. Selection of Arbitrators

- (i) How are arbitrators selected? Do courts play a role?**

Arbitrators are selected in accordance with the contractual arbitration provision and any rules incorporated therein, failing which they are selected in accordance with the default procedural rules in the EAL. If the default procedures under the EAL are applied and a party fails to nominate an arbitrator, or the parties fail to appoint a chairperson or a sole arbitrator, then the arbitrator in question is appointed through a court action requesting the court to make the appointment.

**(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

The EAL obliges any nominated arbitrator to disclose any circumstances that may raise doubts about his or her independence and impartiality. If an arbitrator is challenged and does not resign, it is mandatory under the EAL that the challenge be referred to the Egyptian courts. This point of referral of challenges to the courts has been recently subject to much debate and some conflicting rulings, when the applicable institutional rules decree that the institution in question shall rule on the challenge. However, it is the author's opinion that absent a statutory amendment to the EAL, such referral remains mandatory.

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

Yes, there are limitations on who may serve as an arbitrator. An arbitrator must not be a minor or under legal guardianship and must not have been deprived of his or her civil rights by reason of a criminal conviction in a felony, or a misdemeanour in crimes relating to honour, or by reason of bankruptcy. Arbitrators have ethical duties. They are required to perform the role of the judiciary for the dispute in question and must therefore conform to the ethical standards of a judge which includes impartiality, neutrality and independence.

**(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are not generally followed in ad hoc arbitrations. However, there is nothing to prevent the application of these guidelines if the parties wish to apply them. However, practically they would be very difficult to apply in the event of a dispute because issues of recusal of arbitrators are, in the opinion of the author, ultimately decided by the courts, and the guidelines would need to be translated into Arabic and explained to judges who are very likely unfamiliar with them.

## **VI. Interim Measures and Emergency Arbitration**

**(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Under the EAL, arbitrators can issue interim measures or other forms of preliminary relief. However, this requires the express agreement of the parties to grant the tribunal such powers. The tribunal may request the applicant to post sufficient security. Such interim orders or awards are then enforceable by application to the courts.

**(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

According to the EAL, the courts have jurisdiction to grant provisional relief and order interim measures in support of arbitrations. Such measures may be ordered before or after the commencement of arbitration. Such measures will remain in force and may only be repealed by the courts.

**(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

The courts have the power to provide evidentiary assistance in support of arbitrations. For example, if a party challenges a document as a forgery, if the tribunal does not exclude the document from evidence (deeming it not relevant to the making of its award), then the matter is resolved by court action. The EAL allows a tribunal to request court assistance to compel witnesses to attend or to respond to questions by applying the sanctions set out in the Law of Evidence applicable to civil and commercial matters.

**(iv) Are decisions by emergency arbitrators enforceable in your country?**

The EAL does not have any provisions for the appointment of an 'emergency' arbitrator. If the parties have agreed to apply certain rules, that do include such an appointment, then the EAL as it allows a broad discretion to the parties to agree on the applicable rules and procedures (subject to contrary EAL mandatory provisions), would allow for the enforcement of directions of an emergency arbitrator. However, this issue has not yet been tested in court.

**(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?**

Such injunctions could be enforceable *inter se* the parties to the arbitration as long as they do not contradict any mandatory provisions of Egyptian law (these are considered part of public order). However, curtailing the right of a party to arbitration from initiating legal proceedings against third parties would not be enforceable, as it would undermine that party's constitutional right to resort to the courts.

**(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?**

For foreign based arbitrations, the courts would not recognize and enforce interim orders, such as documents disclosure and the like, but will recognize final awards and enforce them within the applicable rules of the New York Convention.

## **VII. Disclosure/Discovery**

**(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

There are generally no disclosure or discovery proceedings in arbitration or before the courts in the broad sense of the concept as applied in common law jurisdictions. There is however a narrower civilian concept where a party is entitled to request a production order of certain specific well-defined documents. The parties may, however, agree in the arbitration provision or terms of reference on a broad discovery and production process. This type of agreement is becoming more and more common in major arbitrations.

**(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

The default limits on the scope of disclosure (absent agreement of the parties) are quite narrow. A party must define the documents in questions with a high degree of specificity.

**(iii) Are there special rules for handling electronically stored information?**

No, there are no special rules for handling electronically stored information.

## **VIII. Confidentiality**

**(i) Are arbitrations confidential? What are the rules regarding confidentiality?**

Arbitration awards may not be made public unless otherwise agreed by the parties. The parties' submissions and the award, however, may become public if they are submitted before the courts for any court action or application (which happens quite often when a losing party sues for nullity). Lawyers in Egypt are obliged to protect the confidentiality of information obtained from their clients. However, this would not apply if the information pertains to the commission of a crime.

**(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No.

**(iii) Are there any provisions in your arbitration law as to rules of privilege?**

No.

## **IX. Evidence and Hearings**

**(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

It is not common for parties to an arbitration to adopt the IBA Rules on the Taking of Evidence. However, in large international arbitrations, the adoption of these Rules has become more and more common only as providing general guidelines, and tribunals in such cases are generally allowed to depart from these rules.

**(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

Tribunals generally have a broad discretion under the EAL within the procedural rules agreed by the parties (in the absence of such an agreement the default rules in the EAL apply). The tribunal is also obligated under the EAL to apply equal treatment to the parties and to provide each party with the full opportunity to present its case.

**(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Witness testimony is usually presented only through oral testimony in the hearing. Written witness statements are not common in ad hoc arbitrations. But witness statements ahead of hearings on the merits are increasingly becoming the

norm in large international arbitrations. The parties are allowed to examine witnesses. The tribunal may also question witnesses.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no rules on who can or cannot appear as a witness. Witnesses do not give their testimony under oath. There are no mandatory rules on oath or affirmation.

**(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?**

No, Egyptian law makes no differentiation between these witnesses if they appear before tribunals. In practice, however a tribunal would normally take all these differences into consideration when allocating weight to the witness' testimony.

**(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony is commonly presented first with a written expert report and then through oral testimony during a hearing. There are no formal requirements regarding the independence or impartiality of expert witnesses. It is possible to present the testimony of expert witnesses that have business or other connections to the parties.

**(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

It is not common for tribunals to appoint experts unless this is requested by the parties. There are no special lists for arbitration experts, and tribunals are generally free to select the expert(s) that they deem most suitable for the task at hand. There are no rules that would compel tribunals to adopt the findings of tribunal appointed experts, however, in practice, such findings would carry significant weight.

**(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Hot-tubbing of witnesses is not at all common. However, in cases involving arbitrators or counsel with international experience, hot-tubbing of opposing expert witnesses is sometimes used.

**(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules or requirements in Egypt as to the use of arbitral secretaries. However, the CRCICA does appoint an arbitration secretary for each case who assists the tribunal, but not to the same scope as a tribunal appointed secretary. It is becoming increasingly common in large international arbitrations that the tribunal requests and the parties accept the appointment of a tribunal secretary.

**(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?**

Yes, lawyers are strictly bound not to act in conflict with their clients' interests and cannot in any way represent their clients' opponents. Arbitrators are similarly bound, like judges, to be independent and impartial.

**(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?**

No, there are no rules under the EAL specific to the exclusion of counsel. However, conflict of interest obligations on lawyers, confidentiality and other obligations under the law regulating the legal profession (including abstaining from making slanderous allegations), may theoretically allow an aggrieved party to resort to the tribunal or the competent court for an order of cessation of representation. This is still very theoretical and has not been tested in any actual case. Article 5.3 of the new CRCICA Rules (effective January 2024) provides an arbitral tribunal with the authority take any measures necessary to avoid a conflict of interest of an arbitrator that arises from a change or addition to a party's representation, such measures may include the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.

**(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?**

There are no such provisions under EAL. However, such hearings are permitted as long as they have been agreed by both parties. The author is not aware of any court decision on this issue. Article 28.2 of the new CRCICA Rules (effective January 2024) expressly allows a tribunal after consulting with the parties, to decide to hold hearings remotely via videoconferencing or other appropriate means, or in hybrid form.

## **X. Awards**

**(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

For an award to be valid in Egypt, the award, as well as the proceedings, must not include any reasons for nullity as set out under the EAL. An award must be in writing and signed by at least a majority of the tribunal. Reasons for non-signature by the minority must be provided in the award. Formalistically, an award must include a variety of specific information. For example, it must include the names, addresses and nationalities of the arbitrators, the names and addresses of the parties and a copy of the agreement to arbitrate. There are limitations on permissible relief. Relief cannot contravene mandatory provisions of the substantive law (public order). For example, there are some limits on the award of interest under various codes in Egypt. An award that grants higher interest may be nullified in that respect. An award may not dispose of, allocate or otherwise deal with any real property rights. An award cannot deal with criminal or family law matters.

**(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Arbitrators cannot award punitive or exemplary damages unless specified in statutory provisions, as these would otherwise, contradict mandatory public policy in Egypt. They can award simple interest in accordance with Egyptian law (see limitations on interest in Section X (i) above). Compound interest may not be awarded.

**(iii) Are interim or partial awards enforceable?**

If an interim or partial award conclusively deals with a specific issue or matter (ie, it is final in that regard) then it may be enforceable. However, this issue is not yet clearly settled under Egyptian law since the right to raise a nullity challenge under the EAL appears to be available only after the final judgment dealing with the whole dispute. A recent precedent in the United Arab Emirates which has an arbitration law quite similar to the EAL, suggest that such awards are enforceable, and may in turn be subject to nullity challenges before the courts.

**(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Arbitrators are allowed to issue dissenting opinions to the award. These in practice either take the form of notations on the signature page made by a dissenting arbitrator or are set out in an annex to the award.

**(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

Yes, awards by consent are permitted. Proceedings may be terminated by the tribunal if the parties so request, or if the claimant abandons the case or for reasons of impossibility or futility of continuing with the arbitration. The proceedings may also be terminated by court order if an application for termination for expiry of the time limit to issue an award is made and is accepted by the court.

**(vi) What powers, if any, do arbitrators have to correct or interpret an award?**

A tribunal is free to correct or interpret an award on its own initiative or upon an application by one of the parties within 30 days of rendering the award. The tribunal may extend this deadline by another 30 days at its discretion. Such corrections are limited to purely clerical errors, such as typing errors or computational mistakes. Arbitrators may also further interpret their award upon an application of one of the parties within 30 days of the date of receipt of the award. A supplementary award may also be issued at the request of a party to deal with issues that should have been dealt within the initial award. Again, the application must be submitted within 30 days of receipt of the award.

## **XI. Costs**

**(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

There are no rules under the EAL, and this is left to the discretion of the tribunal. Parties generally are held to bear the costs of arbitration equally unless the unsuccessful party could have avoided arbitration, or its claims or defences were deemed frivolous.

**(ii) What are the elements of costs that are typically awarded?**

Awarded costs typically include arbitrator fees and arbitration centre costs. Awarding lawyer fees and other expenses is quite uncommon (although it does occur sometimes).

**(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

In ad hoc arbitrations arbitral tribunals are free to decide on their own costs and expenses, otherwise they are determined by the applicable institutional rules.

**(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

The arbitral tribunal has complete discretion to apportion costs between the parties. As mentioned, the general practice is for each party to bear its own costs. When the costs are apportioned, commonly they are apportioned according to the relative success of each party in its claims.

**(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

The courts do not have the right to review the merits of an award, including the tribunal's exercise of its discretion to award costs. The courts may partially or completely nullify an award for specific reasons set out in the EAL (generally procedural irregularities or that deal with public order and morality).

## **XII. Challenges to Awards**

**(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Awards may be challenged as null and void on any of the grounds provided for under the EAL. These are basically for formalistic and procedural errors. On content, breach of principles of public order or morality may also nullify an award.

The challenge must be initiated before the competent court within 90 days of formal notification with the award (through a court process server or diplomatic channels). Awards issued in languages other than Arabic must be translated into Arabic through a Ministry of Justice recognized translation service, prior to being notified to the other party.

Challenge proceedings are addressed through a court action. Challenges do not stay the enforcement of an award unless a stay of enforcement is granted by the court reviewing the challenge (although some courts do suspend enforcement – even if this is not allowed by the EAL). For international commercial arbitrations (see Section II (ii) above) a nullity action is initiated before the Cairo Court of Appeal, and the proceedings may take between 9 and 18 months for completion.

**(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

Under Egyptian law, only manifest rights may be waived. Parties cannot waive their legal right to challenge an award pre-emptively (before the award is issued and thus the reasons for nullity have become manifest). However, if the right to nullify has manifested, then parties are free to waive that right.

**(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Arbitration awards cannot be appealed.

**(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

No, the courts have the power only to partially or completely nullify an arbitral award. No review of the subject matter or correction thereto is permissible for the courts. The courts cannot refer awards back to arbitral tribunals following challenges.

**(v) Is there a specialist arbitration court in your jurisdiction?**

No, but within the Cairo Court of Appeal that overviews international commercial arbitrations (institutional arbitrations are automatically deemed to be international commercial arbitrations), there are specific circuits that are allocated the task of dealing with arbitration related cases.

- (vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arber)? Could this be a basis to set aside the award?**

The choice of law provision in contracts will prevail, and tribunals are not empowered to select another law to govern the merits. If the contract is silent, the tribunal will decide on the proper applicable law. Once the governing law is determined, the tribunal is bound by the provisions of the law. However, the tribunal will have the authority to interpret and apply the governing law as it deems correct and appropriate, regardless of the parties' pleadings in respect thereof.

### **XIII. Arbitrator Liability**

- (i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

No, the EAL does not contain provisions that provide immunity to arbitrators. However, arbitrators in institutional arbitrations are usually covered by immunity provisions in the institutional rules. Be that as it may, gross error or fault (fraud, intentional breach or gross negligence) may nullify such immunity provisions.

- (ii) Does this immunity, if any, extend to criminal liability?**

There is no statutory immunity as mentioned above. Even if the applicable rules or the parties agree on granting immunity, such immunity would not be enforceable in case of gross fault (fraud, bribery, intentional breach or gross negligence).

### **XIV. Recognition and Enforcement of Awards**

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Recognition and enforcement of awards made in Egypt is governed by the EAL. The party seeking enforcement must first formally notify the other party with the award through a court process server (along with a translation in Arabic if the award is not in Arabic). The enforcing party must then wait for 90 days (to allow the other party if it wishes to initiate a nullity action) and then lodge an original copy of the award with the Secretary of the competent court stipulated under the EAL (see Section II (ii) above). The award will then be engrossed with a writ of execution (exequatur) by the competent court execution judge.

- (ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

If the other party wishes to oppose enforcement, then it must submit a nullity action before the competent court. This submission of a nullity action must be done before 90 days have elapsed from the day of the other party's official notification of the award. The nullity action does not stay enforcement (although a stay order may be sought – see Section XII(i) above). Parties may also obstruct enforcement procedures through what is called a 'contestation', generally submitting that new events have occurred that render the enforcement invalid.

**(iii) Are conservatory measures available pending enforcement of the award?**

Execution attachments are available once an exequatur is obtained. These may be applied to moveable assets as well as bank accounts.

**(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Courts enforce arbitral awards in Egypt. Naturally awards that are nullified in nullity actions are not enforced. For foreign awards, the courts will only enforce the award if it is final and binding according to its place of issuance. If the foreign award is rendered null and void in the jurisdiction of the seat of the arbitration, the courts in Egypt will not enforce it. Be that as it may, a party resisting enforcement of a foreign award may still prevent enforcement by raising a nullity action under the terms of the New York Convention (typically alleging that the award contravenes public order in Egypt).

**(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

Given delaying tactics (nullity actions with a request for a stay of enforcement - contestations against enforcement as discussed in Section XIV (ii) above, enforcement may take from 12 to 18 months (if not longer). The general default prescription period of legal rights under the Civil Code (15 years) would apply.

## **XV. Sovereign Immunity**

**(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

State entities are not immune to enforcement in Egypt. A public official who intentionally refuses to implement a court order or judgment may face criminal prosecution.

**(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

There are certain steps that need to be taken for enforcement (see Section XIV (i) above). State entities generally as a matter of policy will resist enforcement using all legal methods and remedies and will only pay up once all attempts to avoid enforcement are exhausted.

**(iii) Are there any requirements for arbitrations involving sovereign entities?**

As discussed in Section III (ii) above, arbitration provisions in administrative contracts, in order to be valid and enforceable, require the consent of the concerned minister.

## XVI. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Yes, Egypt has been a signatory of the Washington (ICSID) Convention since 1972.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Yes, Egypt is currently a signatory to approximately 91 bilateral investment treaties.

- (iii) **Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?**

No, if Egyptian courts acquire somehow jurisdiction in respect of any such disputes (enforcement for example), the author is not aware of any such decisions.

## XVII. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Practitioners should first consult the EAL. After which they could consult doctrinal writings on arbitration in Egypt (only available in Arabic), namely:

Dr. Samir El Sharkawy's *International Commercial Arbitration: A comparative legal study*. (Al Tahkim Al Togary Al Dawly Derasa' Qanooniya Moqarana)

Dr. Fathy Wali's *The Law of Arbitration in Practice and Theory*. (Qanoon Al Tahkim Fe Al Naziraya We Al Tatbeek)

The CRCICA has compiled a collection of arbitration awards issued under its auspices. This is also an important resource that may be consulted.

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The CRCICA regularly holds educational events and conferences. The international conferences have usually been held in the city of Sharm El-Sheikh (in Sinai). Other CRCICA conferences are held in Cairo. The CRCICA web site should be consulted ([www.crcica.org.eg](http://www.crcica.org.eg)).

## XVIII. Trends and Developments

**(i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

Yes, particularly for medium level and major business transactions, and in particular those that include foreign parties.

**(ii) What are the trends in relation to other ADR procedures, such as mediation?**

Mediation is starting to become more and more recognized as an efficient and viable alternative. Several organizations are strongly promoting mediation, including CRCICA, the General Investment Authority and the Egyptian ADR Association.

**(iii) Are there any noteworthy recent developments in arbitration or ADR?**

By Presidential Decree in 2019, a new Arbitration Center for the resolution of disputes arising from non-banking financial transactions was set up. As discussed in Section III(i) above, new regulations issued in 2022 oblige governmental entities to obtain the approval of the Cabinet Higher Arbitration Authority prior to contractually consenting to arbitration.

The draft law on mediation that was being developed by the Ministry of Justice appears to have been shelved for the time being. One positive development is the increasing activity in arbitration moots to train law students. This initiative has been undertaken and is sponsored by some of the leading law firms. The Egyptian ADR Association, an NGO that is advocating and promoting mediation in commercial disputes, has become more active, and is exploring the possibilities of establishing mediation centres with some of the professional associations and chambers of commerce.

CRCICA issued its new Rules of Arbitration which became effective as of January 15, 2024. The new rules have addressed important new issues (not addressed in previous iterations of the Rules), including consolidation of arbitrations, early dismissal of claims, the appointment of an emergency arbitrator, expedited arbitrations, online filing of arbitrations, multiple contracts, and third-party funding.

**(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?**

Yes, there are some initiatives for overhauling the current arbitration law which has been in place for nearly three decades, and the opinions and comments of leading practitioners will be canvassed.

**(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?**

Currently there are no rules governing third-party funding and the author is not aware of any court decisions in this regard.

**(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?**

Prior to the peace treaty concluded with Israel several decades ago, there was an economic sanctions regime implemented in Egypt against Israel and transnational companies active therein. The author is not aware of any economic sanctions' regime implemented in Egypt since then and also of any recent court decisions dealing with economic sanctions.