GAR Global Arbitration Review

The Middle Eastern and African Arbitration Review

2025

Egypt

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Egypt

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Summary

IN SUMMARY

This article outlines the main features of Egypt's arbitration legal framework and covers key developments in arbitration during 2024. It provides a brief overview of the new laws issued and developments in the field of financial technology. It further highlights the main arbitration principles established by courts in 2024 concerning, inter alia, the interpretation and scope of the arbitration agreement, the extension of the arbitration agreement to universal legatees, the application of the principle of subsequent approval and estoppel with regard to the validity of the arbitration agreement, the principle of separability of the arbitration agreement, the arbitrator's duty to disclose the prior contractual relationships with one of the disputants, and the requirement of the competent minister's approval on the arbitration agreement in administrative contracts.

DISCUSSION POINTS

- Legal framework for arbitration in Egypt
- Scope and interpretation of the arbitration agreement
- Principle of separability
- Extension of the arbitration agreement to universal legatees
- Arbitrator's duty to disclose
- Competent minister's approval in administrative contracts

REFERENCED IN THIS ARTICLE

- Egyptian Arbitration Act
- Civil and Commercial Procedures Law
- Financial Regulatory Authority's Decree No. 57 of 2024 regarding the regulations governing the operation of Robo-advisors program for Investment
- Financial Regulatory Authority's Decree No. 232 of 2024 regarding the regulation of approval for trading in government securities and financial instruments in the secondary market
- Financial Regulatory Authority's Decree No. 68 of 2024 regarding the regulation of the settlement guarantee fund and the central counterparty clearing risk
- Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024
- Cairo Court of Appeal, Circuit (3), Challenge No. 32 of JY 140, 28 March 2024
- Cairo Court of Appeal, Circuit (2), Challenge No. 17 of JY 141, 18 September 2024
- Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024
- Cairo Court of Appeal, Circuit (1), Challenge No. 60 of JY 141, 5 August 2024
- Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024
- Court of Cassation, Challenge No. 8405 of JY 91, 20 May 2024
- Court of Cassation, Challenge No. 11840 of JY 89, 7 March 2024

- Court of Cassation, Challenge No. 11523 of JY 87, 14 February 2024
- Supreme Administrative Court, Judgment Nos. 39843, 41082, 41541, 42410, 42414, 42673 of JY 66, 25 June 2024
- Supreme Administrative Court, Judgment No. 3653 of JY 51, 25 June 2024

THE EGYPTIAN ARBITRATION ACT

Egypt was one of the first countries in the region to introduce an arbitration law. It enacted the Arbitration Act No. 27/1994 (the Arbitration Act), which is based on the UNCITRAL Model Law on International Commercial Arbitration (1985). It applies to arbitrations conducted in Egypt or in cases where the parties to an international commercial arbitration, conducted abroad, agree to subject the arbitration to the Arbitration Act.[1] While the Arbitration Act is regarded as the general law governing arbitration in Egypt, there are other laws that govern certain aspects of arbitration regarding certain legal relationships. For example, the transfer of technology contracts, sport arbitrations, investments under the investment law and contracts of public entities.

Egypt has become more arbitration-friendly through the courts' repeated findings that defective arbitration clauses are valid arbitration agreements[2], and through legislations widening the scope of the matters that may be resolved by compromise, including matters that are traditionally regarded as matters of public law – for example, tax disputes[3], custom disputes[4], and certain crimes under the Investment Law of 2017[5], as well as the Criminal Procedural Law.[6] Egypt signed the New York Convention on 2 February 1959, and it entered into force on 8 June 1959. Egypt signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in 1972.[7] Egypt concluded 116 bilateral investment treaties (BITs), 29 of which are not yet in force and 15 of which have been terminated.[8]

To date, a total of 46 investment treaty cases have been registered against Egypt as a respondent state[9] (including 38 ICSID cases).[10] Of these 46 cases, seven are currently pending (including one ICSID case)[11], 15 were settled, 14 decided in favour of Egypt, five were decided in favour of investors and one case the liability was found, but no damages were awarded.[12] A total of seven cases have been registered with Egypt as the home state of the investors. Of these seven cases, two cases are currently pending, two were settled and two were decided in favour of the host state.[13] There is one case where there is no available data.[14]

THE ARBITRATION AGREEMENT

The Arbitration Act defines an arbitration agreement as an agreement in which the parties agree to resolve, by arbitration, all or part of a dispute that arose or may arise between them in connection with a specific legal relationship, contractual or otherwise.[15] Since 2005, the Cairo Court of Appeal (the Court of Appeal) has held that an arbitration agreement is considered to be the constitution of an arbitration and determines the scope, extent and subject of the arbitration, and grants the arbitrators their powers, resulting in excluding the dispute from the jurisdiction of the courts.[16]

An agreement to arbitrate may take three different forms:

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the arbitration agreement may be embodied as a clause or an annex to the agreement between the parties before a dispute arises between them;

- the parties may enter into a 'submission agreement', which is an arbitration agreement that the parties agree to after a dispute has risen. In this case, the parties must define in the arbitration agreement the matters or disputes subject to arbitration, otherwise the agreement is null and void; or[17]
- the arbitration agreement may be incorporated by reference. However, the validation of this incorporation requires explicit reference to an existing document with a valid arbitration agreement therein.[18] Pursuant to article 10(3) of the Arbitration Act and Egyptian jurisprudence, the following conditions must be satisfied:
    - reference should be made to an existing document or contract that includes an arbitration clause;
    - the document or contract that reference is made to should be known to all the parties against whom that document or contract and the included arbitration clause will be invoked; and
    - reference should be explicitly made to the arbitration clause itself and to the fact that it is an integral part of the contract (general reference to the existing document or its terms is not sufficient).[19]

In terms of the scope of the arbitration agreement, the Court of Appeal has held that the arbitration agreement scope's excludes disputes related to the performance of the applicable contract, if the arbitration agreement is drafted in a manner that would only empower the arbitral tribunal to hear disputes arising out of the difference in interpreting the provisions of the agreement. The Court of Appeal decided that the tribunal would only be competent to hear disputes relating to the interpretation, not performance, of the contract.[20]However, the Court of Appeal found that even if the tribunal exceeded its mandate and the scope of the arbitration agreement without any objection by the parties, this would not be a ground for setting aside the award as long as the party making the claim for setting aside the award did not make any objection in this respect during the arbitration proceedings.[21] In another judgment, the Court of Appeal[22] found that rendering an award for tort liability falls outside the jurisdiction of the tribunal. In that case, the tribunal awarded compensation for the abuse of using a trademark that was categorised by the tribunal itself as tortious liability, which was considered by the Court to fall outside the scope of the arbitration agreement.

CONDITIONS OF VALIDITY OF THE ARBITRATION AGREEMENT

In addition to the general requirements for the validity of contracts, such as consent, capacity and the existence of a legal relationship, the following requirements, as well as any further requirements mandated by a specific provision of law, must be satisfied for there to be a valid arbitration agreement: (1) the arbitration agreement must relate to matters that are amenable to compromise;[23] and (2) the arbitration agreement must be in writing, otherwise it shall be null and void.[24]

It will be deemed written if it is included in written communication exchanged between the parties. This requirement is widely interpreted to include an arbitration agreement concluded by exchanging offers and acceptance through electronic means.[25] Silence may be considered as acceptance of the arbitration agreement if there are previous continued

transactions between the parties where the arbitration agreement is included,[26] or where proceedings are initiated without objection from the opposing party.[27]

Defective arbitration clauses have been repeatedly held by the Cairo Court of Appeal as valid arbitration agreements and were interpreted to favour arbitration over courts.[28]

ENFORCEMENT OF ARBITRAL AWARDS IN EGYPT

Pursuant to article 55 of the Arbitration Act, all arbitral awards rendered in accordance with the provisions of this law have the authority of ***res judicata*** and shall be enforceable in conformity with its provisions.[29] The enforcement of domestic arbitral awards is governed by article 56 of the Arbitration Act, which requires a request for enforcement to be submitted to the president of the competent court, along with the required documents.[30] The enforcement order must be submitted after the lapse of the 90-day period prescribed for filing the nullity action[31], and it will be issued after verifying that certain conditions have been met.[32] The enforcement of foreign arbitral awards in Egypt is governed by the Convention on the Enforcement of Foreign Arbitral Awards (the New York Convention),[33] and as such, are subject to the same enforcement rules applicable to national arbitral awards under the Arbitration Act.[34]

The Court of Appeal previously rendered a judgment enforcing a foreign arbitral interim measure that was issued by an International Chamber of Commerce (ICC) tribunal. The judgment found that arbitral interim measures must be applied according to the same legal procedures as those for enforcing a final arbitral award – that is, by an order on application without notification of, or hearing, the parties. The Court went further[35] and required that the interim measure:

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

Article 24 of the Arbitration Act allows a court to order the enforcement of interim measures decided by arbitral tribunals in arbitrations that are subject to the Arbitration Act.[36]

Under article 54(2) of the ICSID Convention, the recognition and enforcement of an award may be obtained from the competent court or other authority designated by a contracting state on presentation of a copy of the award certified by the Secretary-General of ICSID. The Ministry of Justice has been designated by Egypt as the competent authority for the recognition and enforcement in Egypt of arbitral awards rendered pursuant to the ICSID Convention. Execution of the award is, in accordance with article 54(3) of the ICSID Convention, governed by the law on the execution of judgments in force in the country where execution is sought, which in Egypt is the Civil and Commercial Procedures Law (CCPL). According to article 55 of the ICSID Convention, ICSID awards should be enforced in Egypt without prejudice to the Egyptian law provisions regarding the immunity of Egypt or any foreign state from execution. Article 87 of the Egyptian Civil Code provides that public assets of the Egyptian state are immune from enforcement and attachment procedures.

SETTING ASIDE ARBITRAL AWARDS

Pursuant to article 53 of the Arbitration Act, arbitral awards can only be challenged by set aside proceedings. An award may be set aside for several reasons including that it contradicts public policy, there was no valid arbitration agreement, the tribunal did not apply the law agreed upon by the parties, one of the party's right of defence was violated or, as is the case more recently, there is a complete absence of reasoning (unless the parties agree not to provide any reasoning).[37] Set aside proceedings could only be brought within 90 days of the valid notification of the award debtor,[38] and the 90 days will not commence even if the counterparty became aware of the award through other means.[39]

The Supreme Constitutional Court held that the right to bring set aside proceedings against arbitral awards is a constitutional one. Additionally, the Court of Appeal held that if the parties agreed in the arbitration clause that the arbitral award is final and no party may challenge it, this cannot prevent either party from filing a nullity suit. However, waiver of a set aside lawsuit after the issuance of the arbitral award is permitted under Egyptian law.[40]

Egyptian courts opined on whether an international commercial arbitration award rendered in Egypt in the context of an international treaty could be subject to set aside proceedings before Egyptian courts, where the treaty seems to prohibit challenging the award. The Court of Cassation took the view that set aside proceedings are allowed under the treaty and that the treaty does not contradict the Arbitration Act regarding the right to request setting aside the award,[41] overturning a previous Court of Appeal judgement.[42]

KEY DEVELOPMENTS IN THE ARBITRATION REGIME

The Integration Of ECAS: A Pro-arbitration Approach

The Regulation on Non-Banking Financial Markets and Instruments provides for the establishment of an arbitration centre by a presidential decree to resolve disputes arising out of the application of the laws governing non-banking financial transactions, subject to the parties' agreement on arbitration. Presidential Decree No. 335 of 2019 was issued in this regard, establishing the Egyptian Centre for Arbitration and Settlement of Non-Banking Financial Disputes (ECAS). ECAS is specialised in all disputes arising from the application of laws concerning non-financial transactions, in particular disputes between shareholders, partners or members of companies and entities that work in the non-banking financial markets.

ECAS plays a pivotal role in the settlement of disputes between a company specialising, inter alia, in the management of financial instrument portfolio integrating the 'robo-advisor' and its client. This is apparent from the Financial Regulatory Authority (FRA) Decree No. 57 of 2024, which has provided for the settlement of disputes arising between a the company operating the 'robo-advisor' and its client(s) regarding the performance of the contract concluded between them shall be settled through ECAS, unless the parties agree otherwise.[43] The FRA's decision has thus created a framework for the use of 'robo-advisors' in the capital markets in Egypt for the first time. This poses a positive step in the field of arbitration by encouraging the use of arbitration as a dispute settlement mechanism and the importance of arbitration as a dispute settlement mechanism in this field.

Similarly, there were several decrees issued which have encouraged the settlement of disputes through ECAS (ie, by way of arbitration). This is clear from the following:

- Article 9 of FRA's decision No. 232 of 2024 regarding the regulation of approval for trading in government securities and financial instruments in secondary markets

provides that companies and entities subject to the provisions of this decision are required to conclude a contract with their clients that must include certain provisions. These provisions include, inter alia, the settlement of disputes through ECAS, unless the parties agree otherwise.[44]

- The FRA's Decree No. 68 of 2024, which governs the settlement guarantee fund and the central counterparty clearing risk, provides for the optional settlement of disputes by referring the said dispute to ECAS.[45]

Therefore, it appears that Egypt has taken a pro-arbitration approach and has shifted its focus on arbitration as a dispute settlement mechanism. This poses a positive step in the field of arbitration.

PRINCIPLES FROM THE EGYPTIAN COURTS OF APPEAL ISSUED IN 2024

Interpretation And Scope Of The Arbitration Agreement

In a set aside proceeding before the Court of Appeal, the Court of Appeal provided elaboration on the interpretation of the arbitration agreement. It has further shed light on the courts' adoption of a pro-arbitration approach that is aimed at validating the arbitration agreements.

In this case, the arbitration agreement stipulated that: 'In case of any disagreement or dispute regarding the interpretation of the contract or any of its provisions, such dispute shall be resolved amicably and in good faith between the parties within fifteen days from the date one of the parties notifies the other of the existence of the dispute. If the dispute is not resolved amicably, the parties have agreed to resort to arbitration'.[46]

The appellant requested setting aside the award on the grounds that the tribunal has exceeded its mandate by ruling on subject matter that is not within the scope of the arbitration agreement. The appellant's reasoning was that the tribunal was not empowered to resolve disputes relating to the performance of the contract, because the tribunal was only empowered to rule on matters related to the interpretation of the contract.

The Court of Appeal rejected the appellant's allegations that this clause warrants the narrow interpretation of the arbitration agreement.[47] The Court of Appeal reasoned that this narrow interpretation of the arbitration agreement is inconsistent with the nature of the contract and the parties' intentions, and it does not enable the arbitration clause to produce its effects. The narrow interpretation of the arbitration agreement further frustrates its purpose of resolving disputes that may arise between the parties.[48]

Remarkably, the Court of Appeal highlighted that the arbitration agreement should not be interpreted in accordance with its literal meaning solely. Rather, the arbitration agreement should be interpreted in light of what its wording could bear from meanings.

In reaching this finding, the Court of Appeal sought guidance from foreign jurisprudence (eg, the ***Fiona Trust*** case as well as the French Court of Appeal), in which it was highlighted that the parties' reference to arbitration indicates their intention to arbitrate all disputes concerning their commercial relationship, as long as the arbitration agreement terms are general and not limited.

Notably, the Court of Appeal applied the principle of validation. It highlighted that the arbitration agreement should be interpreted in accordance with the meaning that gives it its effect and purpose.

The Court of Appeal further provided that the nature of disputes relating to the interpretation of contract terms typically arises in one of two scenarios:

1. A dispute that occurs before the performance of the contract and thus, the dispute is limited to the interpretation of the contract's terms at this stage to be able to apply on the dispute.
2. A dispute that arises during or after the performance of the contract, requiring the interpretation of contract terms governing the obligations of the parties during performance. These disputes are closely tied to the contract and cannot be separated from it.[49]

Hence, the Court of Appeal noted that a broad interpretation of the arbitration agreement must be followed. Accordingly, the Court of Appeal found that the tribunal did not exceed its mandate by ruling on matters not covered by the arbitration agreement for the following grounds:

- The contract subject of the dispute did not explicitly limit the scope of the arbitration agreement to disputes related only to the interpretation of the contract at a specific stage. The interpretation of the arbitration clause should encompass all disputes arising between the parties in the context of their commercial relationship, whether during the performance of the contract or outside of it, without limiting its application to specific stages;
- the use of the term 'interpretation' does not exclude the adjudication of disputes related to the performance of the contract. Rather, examining the performance of the contract primarily relies on interpreting its terms to define each party's obligations and clarify the relevant provisions. This is intrinsically linked to the arbitrator's role in interpreting the contract's terms and applying this interpretation to the facts of the dispute;
- the use of the term *"in case of any disagreement or dispute regarding the interpretation of the contract or any of its provisions"* in the contract does not mean that the parties intended to limit the arbitrators' mandate to providing interpretive opinions without granting them the authority to apply this interpretation to the facts of the dispute to issue a binding decision. This interpretation would contradict the fundamental role of arbitrators, which is to settle disputes between the parties with an award that has ***res judicata***; and
- the arbitral tribunal had distinguished between an arbitration agreement and a submission agreement. Therefore, since the arbitral tribunal concluded that arbitration had been agreed upon before the dispute arose, the parties to the dispute could not determine the subject of the dispute or predict it.[50]

THE EXTENSION OF THE ARBITRATION AGREEMENT TO UNIVERSAL LEGATEES

In the same case cited above, the appellant alleged that the arbitral award is null and void as it was issued in a case no legal dispute existed due to the death of one of its parties prior to the initiation of the arbitration proceedings.[51]

In this case, the respondent (ie, the claimant in arbitration proceedings) argued that the ownership of the consultancy office was transferred to his heirs, and they continued its

practice. Additionally, the appellant's consultancy firm has no legal personality separate from its owner; thus, the arbitration agreement applies to universal legatees.[52]

The Court of Appeal refused to set aside the award for the following reasons:

- The notice sent to the legal representative of the appellant's office was merely a call for the parties to resolve the dispute amicably in anticipation of initiating arbitration procedures, and it did not include an explicit request to refer the dispute to arbitration. The heirs were informed of its content and responded to it;
- the Notice of Appeal submitted by the respondent (ie, the claimant in the arbitration proceedings) named the heirs of the deceased, which marks the initiation of the arbitration proceedings;
- arbitration agreements apply to the universal legatees according to the general principles of civil law; and
- an heir is not considered a third party regarding the arbitration agreement unless the parties specifically agreed that the arbitration agreement would not apply to the heirs of one of the parties, which was not the case.[53]

ESTOPPEL IN ARBITRATION PROCEEDINGS AND THE PRINCIPLE OF SUBSEQUENT APPROVAL

In a set aside proceeding before the Court of Appeal, the appellant alleged that the arbitral award should be set aside because the arbitration agreement was signed by the chairman of the appellant company who has no signatory powers.[54]

The Court of Appeal rejected the appellant's plea and maintained its well-established position, namely:[55]

- The lack of objection of the appellant company regarding this point before the arbitration panel denotes the appellant company's subsequent approval of the concluded arbitration agreement.
- The annulment of the arbitration agreement due to the lack of capacity is relative annulment. It is declared for the interest of the disputants and can be waived, whether explicitly or implicitly.
- Even if the appellant company has made this plea before the arbitral tribunal, the appellant's plea would have had no effect on the validity of the arbitration agreement due to the principle of estoppel. In particular, the appellant company cannot benefit from its own wrongdoing. This is because the appellant company is the responsible party for the defect in the arbitration agreement, especially after the other party has dealt with the appellant company under the understanding that these actions were validly conducted.

In accordance with the above, the Court of Appeal has maintained its well-established position regarding the subsequent approval of the arbitration agreement and the prevention of contradictions in the positions which have already been settled.

THE EFFECTS OF THE PRINCIPLE OF SEPARABILITY OF THE ARBITRATION AGREEMENT IN CONNECTION WITH THE TERMINATION OF THE CONTRACT

In a set aside proceeding before the Court of Appeal, the appellant alleged that the contract was terminated which entails that the arbitration agreement provided therein is no longer valid. Hence, the case must be dismissed.[56]

The Court of Appeal rejected the appellant's claims on the grounds of the separability of the arbitration agreement, reasoning that the arbitration agreement remains valid, irrespective of the contract's termination or invalidity, unless the parties expressly agreed to invalidate the arbitration agreement. Thus, the Court of Appeal refused to set aside the award.[57] This judgment confirms the constant jurisprudence established by the judiciary on this issue.

ARBITRATOR'S DUTY TO DISCLOSE PREVIOUS CONTRACTUAL RELATIONSHIPS WITH ONE OF THE PARTIES

Recently, the Court of Appeal addressed the arbitrator's duty to disclose. In this case, the appellant alleged that one of the arbitrators had entered into the contract to purchase a residential unit from one of the respondent company's projects. As the appellant alleged, this creates an apparent bias towards the respondent, which affects the constitution of the tribunal. Hence, the case must be set-aside.[58]

The Court of Appeal rejected this allegation for several reasons, namely:[59]

- The arbitrator's purchase of residential unit from the respondent company is unrelated to the subject-matter of the current dispute and occurred prior the commencement of the arbitration proceedings. According to the reasonable person, this event ***per se*** does not indicate the existence of a special relationship between the arbitrator and the respondent that leads to bias.
- The appellant did not raise the objection regarding the arbitrator's alleged lack of impartiality and independence in a timely manner, which constitutes a tacit waiver of its right to object.
- The mere failure of the arbitrator to disclose any relevant matters does neither automatically imply bias or lack of independence, nor does it lead to setting aside the award. It is subject to the discretion of the court hearing the set aside case.[60]

THE STIPULATION OF THE NATIONALITY OF ARBITRATORS IN THE ARBITRAL AWARD

In a set aside proceeding before the Court of Appeal, the appellant alleged that the arbitral award issued by the ICC did not specify the nationalities of the arbitrators. Hence, this is a substantive issue related to the public policy in Egypt, which entails that the award must be set aside.[61]

The Court of Appeal rejected this plea for several reasons, namely:

- The arbitration agreement in the contract subject of the dispute does not contain any specific requirement related to the nationality of the arbitrators.
- There are no provisions in the ICC rules requiring the award to state the nationality or address of the arbitrators as essential elements for its validity. These rules do not conflict with public order in Egypt.
- The appellant did not raise any objections regarding this matter up until the issuance of the arbitral award.[62]

CAPACITY IN ARBITRATION AND THE WAIVER OF THE RIGHT TO SET ASIDE THE ARBITRATION AGREEMENT

In another case, the Court of Appeal refused to set aside an award on the basis that the arbitration agreement was concluded by respondents that do not have the capacity to dispose of their rights.[63]

The Court of Appeal found that the respondents were minors at the time the arbitration agreement was concluded. Yet, the Court of Appeal refused to set aside the award. This is because the disputants in the arbitration proceedings reached the age of majority at the time of filing the arbitration case. Yet, they did not make any set aside pleas during the arbitration proceedings. Therefore, it is not possible for the disputants to request setting aside the award on that ground.[64] This judgment confirms the position already established by the judiciary on this issue.

THE BOARD OF DIRECTOR'S RIGHT TO CONCLUDE AN ARBITRATION AGREEMENT

The Court of Appeal refused the appellant's allegations that the lack of a special power of attorney issued by the general assembly of the joint-stock company to the Board of Directors renders the arbitration agreement invalid.[65]

The Court of Appeal refused to set aside the award on that basis. It reasoned that the Board of Directors or the managing director have full authority in managing and disposing of the company's assets within the scope of achieving the company's objectives. Therefore, they can conclude an arbitration agreement without the need for a specific authorisation, unless the company's bylaws or its articles of association specifically restrict or deny this authority.-[66]

TIME REQUIRED FOR RENDERING AN AWARD

In another case, the appellant submitted that the arbitral award should be set aside for several reasons, including that the arbitral award was rendered at a date prior to its determined date.[67]

The Court of Appeal rejected the appellant's plea. The Court of Appeal reasoned that given that the tribunal has the authority to extend the duration required for rendering an award, by analogy, the tribunal has the authority to render an award at a prior date if there is a reason justifying this.[68] Given that all disputants in the arbitration proceedings submitted their defences and pleas, the ground justifying rendering the award at an earlier date has been fulfilled and the tribunal has the authority to accelerate the time for rendering the award.[69]

PRINCIPLES FROM THE EGYPTIAN COURT OF CASSATION ISSUED IN 2024

The Effect Of The Failure To Challenge An Arbitrator Due To His Lack Of Impartiality Or Independence Prior To The Issuance Of The Arbitral Award

The Court of Cassation refused to set aside an arbitral award despite one of the arbitrators' failed to disclose the circumstances that are likely to raise doubts on his independence or impartiality. In this case, the appellant alleged that one of the arbitrators was the legal counsel of the respondent in previous civil cases between the appellant and respondent. Hence, the appellant argued that the award should be set aside.[70]

The Court of Cassation dismissed this claim as the powers of attorney submitted in the previous civil cases between the parties, which prove that the arbitrator was the respondent's attorney in these cases, prove that the appellant was aware of this matter before filing

the arbitration case. Therefore, the appellant's failure to raise the objection regarding the arbitrator's lack of independence and impartiality until the issuance of the arbitral award constitutes a tacit waiver of its right to object, since it knew these facts during the arbitration proceedings.[71]

THE START OF THE 90-DAY PERIOD FOR CHALLENGING THE AWARD

In a recent case, the Court of Cassation noted that the date for submitting a set-aside challenge starts from the date of serving a court bailiff notice to the losing party and not from the date of the other party's knowledge of the award through any other means. In this case, the respondent sent the appellant a notice that included the facts addressed in the award and its final ruling.[72]

Hence, the Court of Cassation found that even if the respondent became aware of the award by any means other than an official notice, it will not be taken into account. Thus, the Court of Cassation overturned the court of appeal's judgment that ruled that the appellants' right to set aside the arbitral award has lapsed as a notice is not a valid substitute of the official notification.[73]

THE RIGHT TO RAISE THE INADMISSIBILITY CLAIM DUE TO THE EXISTENCE OF AN ARBITRATION CLAUSE

In a case before the Court of Cassation, the Court overturned a court of appeal judgment that rendered that the case was inadmissible before the court due to the existence of an arbitration agreement. In that case, there was an agreement concluded between the appellant and the first respondent that encompassed an arbitration clause.[74]

However, the first respondent did not plead the inadmissibility of the claim due to the existence of the arbitration clause. Rather, it was the second respondent who raised the inadmissibility of the claim, despite not being a party to the arbitration agreement.[75]

Hence, the Court of Cassation found that the second respondent cannot raise the inadmissibility of the claim for the following reasons:

1. The arbitration clause has relative effects and only binds the parties to the contract, which entails that it does not extend to the second respondent.
2. The Court also found that the second respondent's objection regarding the inadmissibility of the claim is still considered waived for being raised at a late stage, since it was raised after hearing the substantive issues of the case.[76]

PRINCIPLES FROM THE SUPREME ADMINISTRATIVE COURTS ISSUED IN 2024

The Competent Minister's Approval Of The Arbitration Agreement In Administrative Contracts

Recently, the Supreme Administrative Court emphasised the importance of obtaining the competent minister's approval of the arbitration agreement in administrative contracts. In this case, the Court found that there was no evidence in the case files proving the approval of the competent minister of the arbitration agreement in the contract subject of the dispute.[77]

The absence of the competent minister's approval entails that the arbitration agreement is absolutely null. As a result, the Court found that this restores the Administrative Court's jurisdiction to adjudicate the matter since it pertains to administrative contract disputes and related matters.[78]

Remarkably, the Supreme Administrative Court highlighted that the burden of obtaining the competent minister's approval is not solely on the administrative authority.

The rationale behind the Court's reasoning is premised on the fact that the provision that permitted arbitration in administrative contracts, is subject to the approval of the competent minister, with no delegation allowed in exercising this authority.[79]

This provision is mandatory and aims to regulate the resolution of a certain type of dispute in a specific manner, as an exception to the general rule that assigns all disputes and crimes to the courts, unless specifically exempted. Therefore, since the enactment of this provision, it is applicable to all and to everyone subject to its provisions, and ignorance of it is not an excuse.[80]

Pursuant to the above, it appears that the Supreme Administrative Court has increased the threshold required with regard to the effects of not obtaining the competent minister's approval, as historically, judgements and arbitral awards indicated that this burden lies on the administrative authority, not the other contracting party.[81]

CAPACITY IN ARBITRATION

The Supreme Administrative Court addressed the party's capacity in filing an arbitration case and its effects on setting aside the award in the absence thereof. In that case, a contract was concluded between an administrative entity and the respondent company.[82]

The appellant requested setting aside the award for several reasons, most notably, on the basis that the respondent company had established another company that replaced the original company in all its dealings with third parties. In light of this, the appellant alleges that the respondent company has no capacity in this arbitration.[83]

However, the Supreme Administrative Court refused to set aside the award due to respondent's alleged lack of capacity to file the arbitration for several reasons, namely:

- The appellant did not provide any material evidence evidencing the substitution of respondent's newly established company with the original company that is a party to the arbitration agreement.
- Assuming this substitution occurred as claimed by the appellant, it took place after the contract that contained the arbitration agreement was concluded. The contract in question was concluded between the respondent company under its former name and the appellant. Therefore, the respondent company has capacity in the dispute, whether before the relevant judicial authorities or arbitration bodies.[84]

EGYPTIAN ARBITRATION CENTRES IN 2024: AN OVERVIEW

CRCICA

CRCICA is the leading arbitral institution in the region. It was established in January 1978 by a decision of the 19th session of the Asian–African Legal Consultative Committee. It is an independent, non-profit international organisation. The Court of Appeal considered the CRCICA's status as a non-profit international organisation to be that of an international body enjoying judicial immunity in practising its role as an arbitration institution; and thus, it may not act as a defendant in challenging its arbitration-related function.

Since its establishment, CRCICA has adopted, with minor modifications, the UNCITRAL Arbitration Rules. The CRCICA amended its Arbitration Rules in 1998, 2000, 2002, 2007, 2011, and 2024.

In 2024, CRCICA appears to have registered more cases when compared to the number of registered cases in 2023. Particularly, CRCICA, in 2024, registered a total number of 76 cases that were filed during that year, including 11 ***ad*** hoc proceedings, as compared to 53 cases that were registered in CRCICA in 2023.[85]

CRCICA's 2024 caseload involved disputes related to approximately 18 sectors, including, ***inter alia***, the following: (a) the Retail Sector, which represented a margin of 22% of the total number of cases; (b) the Real Estate Development Sector, which represented a margin of 12%; (c) the Construction Sector, which represented a margin of 10.5% of the dispute; (d) the Tourism and Hospitality, which represented a margin of 6.5%; (e) the International Sale of Goods, the Health sector, and the Oil & Gas Sector represented a margin of 5% respectively.-[86]

Throughout 2024, 108 hearings took place using CRCICA's hearing facilities. 69 of these hearings related to cases brought under CRCICA's Arbitration Rules, 17 hearings related to ***ad hoc*** cases administered by CRCICA, while 21 hearings related to non-CRCICA proceedings, including ICC, ICSID, and non-CRCICA administered ***ad hoc*** proceedings, and 1 hearing related to a dispute board case.[87]

Of these 108 hearings, 3 hearings were held remotely (i.e., 3% of the total number of hearings held in 2024), 8 were hybrid (i.e., 7% of the total number of hearings held in 2024), and 97 hearings were held in-person (i.e., 90% of the total number of hearings held in 2024).

CRCICA has further highlighted that 66 arbitration cases were conducted in Arabic, representing a margin of 87% of the cases, whereas 10 cases were conducted in English, which represented a margin of 13%. There were also 3 cases that were bilingual, whether Arabic-French or Arabic-English.[88]

Similar to 2023, CRCICA registered 3 mediations in 2022. There was also 1 dispute board case that was registered in CRCICA in 2024, as compared to 2 dispute board cases registered in 2023.[89]

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Endnotes

1 Article 1 of Arbitration Act No. 27 of 1994. ^ Back to section

2 Cairo Court of Appeal, Circuit (8), Challenge No. 55 of JY 134, 16 September 2018 and Cairo Court of Appeal, Circuit (50), Challenge No. 59 of JY 135, 28 November 2018. ^ Back to section

3 Article (138) of Tax Law No. 91 of 2005. ^ Back to section

4 Article (64) of the New Customs Law No. 207 of 2020. ^ Back to section

5 Articles (90) and (93) of Investment Law No. 72 of 2017. ^ Back to section

6 Article (18)-bis (a) of the Criminal Procedural Law. ^ Back to section

7 https://icsid.worldbank.org/about/member-states/database-of-member-states ^ Back to section

8 https://investmentpolicy.unctad.org/international-investment-agreements/countries/62/egypt?type=bits ^ Back to section

9 https://investmentpolicy.unctad.org/investment-dispute-settlement/country/62/egypt/investor ^ Back to section

10 https://icsid.worldbank.org/cases/case-database ^ Back to section

11 https://icsid.worldbank.org/cases/case-database ^ Back to section

12 https://investmentpolicy.unctad.org/investment-dispute-settlement/country/62/egypt/investor ^ Back to section

13 https://investmentpolicy.unctad.org/investment-dispute-settlement/country/62/egypt/investor ^ Back to section

14 https://investmentpolicy.unctad.org/investment-dispute-settlement/country/62/egypt/investor ^ Back to section

15 Article 10(1) of Arbitration Act No. 27 of 1994. ^ Back to section

16 Cairo Court of Appeal, Circuit 91 – Commercial, Case No. 95 of120 JY, 27 April 2005. ^ Back to section

17 Article 10(2) of Arbitration Act No. 27/1994. ^ Back to section

18 Article 10(3) of Arbitration Act No. 27/1994. ^ Back to section

19 Court of Cassation Judgment, Challenge No. 495/72 J, session dated 13 January 2004. ^ Back to section

20 Cairo Court of Appeal, Challenge No. 3 of 136 JY, session dated 27 May 2019. ^ Back to section

21 Cairo Court of Appeal, Circuit (1), Challenge No. 15 of JY 137, 8 July 2020. ^ Back to section

22 Cairo Court of Appeal, Circuit (1), Challenge No. 39 of JY 136, 10 September 2020. ^ Back to section

23 Article (11) of Arbitration Act No. 27 of 1994. Public policy matters are not subject to compromise and are therefore non-arbitrable (see article 551 of the Egyptian Civil Code). Non-arbitrable matters include, inter alia, the personal status of individuals, criminal matters, bankruptcy claims, public assets and for the sole purpose of requesting interim measures (see Cairo Court of Appeal judgment, case No. 29 of JY 117, 25 February 2002). ^ Back to section

24 Article (12) of Arbitration Act No. 27 of 1994. ^ Back to section

25 Fathy Waly, ***Arbitration Act in Theory and Practice***, 2021, Vol. 1, p. 238-239. ^ Back to section

26 Professor Mahmoud El Briery, International Commercial Arbitration, Fourth Edition 2010, Dar El Nahda El Arabi'a, p. 59. ^ Back to section

27 Cairo Court of Appeal, Circuit (50), Challenge No. 59 of 135 JY, session dated 28 November 2018. ^ Back to section

28 Cairo Court of Appeal, Circuit (8), challenge No. 55 of 134 JY, session dated 16 September 2018 and Cairo Court of Appeal, Circuit (50), challenge No. 59 of 135 JY, session dated 28 November 2018. ^ Back to section

29 Article (55) of Arbitration Act No. 27 of 1994. ^ Back to section

30 Article (56) of Arbitration Act No. 27 of 1994. ^ Back to section

31 Court of Cassation, Challenge No. 17492 of 91 JY, 9 May 2023. ^ Back to section

32 Article (58) of Arbitration Act No. 27 of 1994. ^ Back to section

33 Some jurists take the view that the Arbitration Act and the Egyptian Civil and Commercial Procedures Law No. 131 of 1948 (articles 296–301) also apply. ^ Back to section

34 Cairo Court of Appeal, Circuit (7), challenge No. 55 of JY 135, 6 February 2019. ^ Back to section

35 Cairo Court of Appeal, Circuit (7), challenge No. 44 of JY 134, 9 May 2018. ^ Back to section

36 Article (24) of the Arbitration Act states that: '1. Both parties to the arbitration may agree to confer upon the arbitral tribunal the power to order, upon request of either party, interim or conservatory measures considered necessary in respect of the subject matter of the dispute and to require any party to provide appropriate security to cover the costs of the ordered measure. 2. If the party against whom the order was issued fails to execute it, the arbitral tribunal, upon the request of the other party, may authorise the latter to undertake the procedures necessary for the execution of the order, without prejudice to the right of said party to apply to the president of the court specified in Article 9 of this Law for rendering an execution order.' ^ Back to section

37 Cairo Court of Appeal, Circuit (1), challenge No. 65 of JY 137, 4 February 2021. ^ Back to section

38 Alexandria Court of Appeal, Circuit (5), Challenge No. 6 of JY 76, 20 April 2022. ^ Back to section

39 Cairo Court of Appeal, Circuit (3), challenge No. 56 of JY 135, 24 June 2020. ^ Back to section

40 Cairo Court of Appeal, challenge No. 78 of JY 131, 4 May 2015. ^ Back to section

41 Cairo Court of Appeal, Circuit (62), challenge No. 39 of JY 130, 6 August 2018. ^ Back to section

42 Cairo Court of Appeal, challenge No. 39 of JY 130, 5 February 2014. ^ Back to section

43 Article 10 of Financial Regulatory Authority's Decree No. 57 of 2024 regarding the regulations governing the operation of Robo-advisors program for Investment. ^ Back to section

44 Article 8(4) of Financial Regulatory Authority's Decree No. 232 of 2024 regarding the regulation of approval for trading in government securities and financial instruments in the secondary market. ^ Back to section

45 Article 9(8) of Financial Regulatory Authority's Decree No. 68 of 2024 regarding the regulation of the settlement guarantee fund and the central counterparty clearing risk ^ Back to section

46 Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

47 Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

48 Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

49 Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

50 Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

51 Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

52 Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

53 Cairo Court of Appeal, Circuit (1), Challenge No. 69 of JY 140, 8 May 2024. ^ Back to section

54 Cairo Court of Appeal, Circuit (3), Challenge No. 32 of JY 140, 28 March 2024. ^ Back to section

55 Cairo Court of Appeal, Circuit (3), Challenge No. 32 of JY 140, 28 March 2024. ^ Back to section

56 Cairo Court of Appeal, Circuit (2), Challenge No. 17 of JY 141, 18 September 2024. ^ Back to section

57 Cairo Court of Appeal, Circuit (2), Challenge No. 17 of JY 141, 18 September 2024. ^ Back to section

58 Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024. ^ Back to section

59 Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024. ^ Back to section

60 Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024. ^ Back to section

61 Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024. ^ Back to section

62 Cairo Court of Appeal, Circuit (2), Challenge No. 5 of JY 140, 16 September 2024. ^ Back to section

63 Cairo Court of Appeal, Circuit (1), Challenge No. 60 of JY 141, 5 August 2024. ^ Back to section

64 Cairo Court of Appeal, Circuit (1), Challenge No. 60 of JY 141, 5 August 2024. ^ Back to section

65 Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024. ^ Back to section

66 Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024. ^ Back to section

67 Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024. ^ Back to section

68 Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024. Back to section

69 Cairo Court of Appeal, Circuit (2), Challenge No. 3 of JY 138, 16 September 2024. Back to section

70 Court of Cassation, Challenge No. 8405 of JY 91, 20 May 2024. Back to section

71 Court of Cassation, Challenge No. 8405 of JY 91, 20 May 2024. Back to section

72 Court of Cassation, Challenge No. 11840 of JY 89, 7 March 2024. Back to section

73 Court of Cassation, Challenge No. 11840 of JY 89, 7 March 2024. Back to section

74 Court of Cassation, Challenge No. 11523 of JY 87, 14 February 2024. Back to section

75 Court of Cassation, Challenge No. 11523 of JY 87, 14 February 2024. Back to section

76 Court of Cassation, Challenge No. 11523 of JY 87, 14 February 2024. Back to section

77 Supreme Administrative Court, Judgment Nos. 39843, 41082, 41541, 42410, 42414, 42673 of JY 66, 25 June 2024. Back to section

78 Supreme Administrative Court, Judgment Nos. 39843, 41082, 41541, 42410, 42414, 42673 of JY 66, 25 June 2024. Back to section

79 Supreme Administrative Court, Judgment Nos. 39843, 41082, 41541, 42410, 42414, 42673 of JY 66, 25 June 2024. Back to section

80 Supreme Administrative Court, Judgment Nos. 39843, 41082, 41541, 42410, 42414, 42673 of JY 66, 25 June 2024. Back to section

81 Previously, the Supreme Administrative Court held that the other contracting party is the one who has the right to invoke the nullity of the contract due to the absence of approval of the competent minister with regard to the arbitration agreement. In this meaning, ***see*** Supreme Administrative Court, Challenge No. 34754 JY 66, 20June 2023; ***See also*** CRCICA, Case No. 567 of 2008, 12 September 2009, cited in***Arabic Arbitration Journal***, 13th ed, December 2009, p. 237. Back to section

82 Supreme Administrative Court, Judgment No. 3653 of JY 51, 25 June 2024. Back to section

83 Supreme Administrative Court, Judgment No. 3653 of JY 51, 25 June 2024. Back to section

84 Supreme Administrative Court, Judgment No. 3653 of JY 51, 25 June 2024. Back to section

85 CRCICA Caseload 2024, available at: https://crcica.org/news/caseload-2024-case-numbers-bounce-back/ Back to section

86 CRCICA Caseload 2024, available at: https://crcica.org/news/caseload-2024-case-numbers-bounce-back/ Back to section

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