African Development Bank

ASSESSMENT REPORT OF ARBITRATION CENTRE IN EGYPT (CRCICA)

13 JUNE 2022

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PREPARED FOR THE AFRICAN DEVELOPMENT BANK

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LALIVE

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ACRONYMS

CRCICA	Cairo Regional Centre for International Arbitration in Egypt
AALCO	Asian African Legal Consultative Organization
CIArb	Chartered Institute of Arbitrators
ICC	International Court of Arbitration
CCCP	Code of Civil and Commercial Procedure
SCC	Stockholm Chamber of Commerce
LCIA	London Court of International Arbitration
VIAC	Vienna International Arbitration Centre
ICSID	International Centre for the Settlement of Investment Disputes

1 INTRODUCTION

2 The present report (the "**Report**") is produced further to the engagement of LALIVE by the African Development Bank (the "**Bank**") for the analysis of the Cairo Regional Centre for International Commercial Arbitration in Egypt ("**CRCICA**" or the "**Centre**").[1]

3 This Report follows a previous report submitted to the Bank, published on 10 April 2014, and another report submitted on 9 June 2014.

4 The purpose of the present Report is to provide an update of the First Report on the CRCICA, with regard to the requirement for an "*internationally recognized arbitral forum with well-established and professionally-respected commercial arbitration procedures*", in accordance with Section F3.2.24. of Part A Volume 1 of the Bank's Operational Procurement Manual, Edition November 2018.

5 The present Report specifically examines the following issues:

> "- *what are the rules governing national and international arbitration in the relevant country the Centre is located;*
>
> *- what are the rules and procedures governing the Centre's arbitration procedure;*
>
> *- based on the analysis of judicial case law and former arbitration cases, how the arbitration awards of the Centre are enforced in the country the Centre is located;*
>
> *- whether the Centre provides a fully independent and neutral arbitration based on the applicable procedures, and if the Centre is reasonably free from impact of domestic procedural law when the contract involves a public body of the country the Centre is located.*
>
> *- whether there is a general public perception (of practitioners/lawyers/judges/interested bidders etc.) of the neutrality of the Centre which fulfils the AfDB's requirements*."

[1] This Report was prepared by Domitille Baizeau, Augustin Barrier and Baptiste Rigaudeau, from LALIVE SA, in Geneva.

6 Regarding the fourth issue, "*whether the Centre provides a fully independent and neutral arbitration*", neutrality and independence were examined at two levels:

- First, at the level of the Centre itself, as reflected in the **rules of arbitration** of that Centre and their application in practice, regardless of the nationality and status of the parties; and
- Second, at the level of the domestic law, most often applicable by virtue of the seat of the Centre being also the **seat of arbitrations** administered by that institution, or as the law of the place of recognition and enforcement of arbitral awards issued under the Centre's rules, and its application by the local courts, regardless of the nationality and status of the parties.

7 With this in mind, the purpose of this Report is to provide the Bank with some guidance so that the Bank may, in turn, suggest the use of arbitration clauses referring to a suitable institution before which disputes can be resolved.

8 This Report was prepared in two stages. The first stage consisted in a desk review of the background of CRCICA by way of an update, and of the applicable rules and laws. The results of that review were set out in an interim report provided to the Bank on 28 January 2022. The second stage involved virtual meetings with each institution administration, local lawyers, arbitrators, and other specialists in the field of international arbitration in Egypt.

9 This Report is divided in five main sections. A first section analyses the CRCICA's establishment, organisation, and activities. The second section focuses on the rules of arbitration and their application in practice. The third section specifically addresses how the Centre dealt with the recent Covid-19 pandemic. A fourth section analyses the arbitration law and the legal environment in Egypt, with particular emphasis on setting aside and enforcement proceedings, as well as the State Courts' general approach to arbitration. The Report ends with our conclusion regarding the Centre's suitability for the Bank's purposes.

2 ESTABLISHMENT, ORGANISATION, AND ACTIVITIES

2.1 Establishment and immunities

10 The CRCICA originates from an international agreement signed in 1978 between the Egyptian Government and the Asian Legal Consultative Committee (since 2001 the Asian African Legal Consultative Organization, "**AALCO**"). [2] This agreement sought to promote international commercial arbitration in Asia and Africa through the establishment of several arbitration centres within the Afro-Asian area. In addition to the Cairo Centre, the first one of its kind, other centres were established following the AALCO's initiative namely the arbitration centres of Kuala Lumpur (1978), Lagos (1989), Tehran (2003), and Nairobi (2007).

11 The CRCICA was formally set up for an experimental period of three years and issued its own arbitration rules in 1979 (the "**Rules**"). The Rules are largely based on the UNCITRAL Rules with minor amendments made to adapt them to institutional arbitration. The AALCO and the Egyptian Government concluded a number of subsequent agreements, including for the permanent functioning of the Centre in 1983, for financial support in 1986, and a Headquarters Agreement in 1987 providing the Centre with the status of an independent international organization in Egypt. Today, the CRCICA is a non-profit organisation which enjoys full financial autonomy: it owns its premises and derives its own revenues from its activities (including administration fees, conferences, seminars, workshops, trainings).[3]

12 The CRCICA seeks to promote arbitration not only on a regional level – it is firmly established in Egypt and its neighbouring countries, including in the Middle East – but also in the whole African continent, including Sub-Saharan countries. Based on our discussions with representatives of the

[2] L. El Shentenawi, "Cairo Regional Centre for International Commercial Arbitration", in L. Mistelis, L. Shore, S. Brekoulakis (eds), *World Arbitration Reporter Vol. 3* (2nd Juris 2012), 1 [World Arbitration Reporter CRCICA].

[3] See our previous report dated 10 April 2014, p. 24 (para. 81).

CRCICA and arbitration practitioners, we understand that the Centre seeks to be perceived as a sound alternative for users that do not wish to arbitrate in well-known places located outside of Africa (*e.g.* in London, Paris, or Washington).

13 As the Cairo Centre is an international organisation established through an international treaty (the Headquarters Agreement), it enjoys the related immunities of jurisdiction and enforcement. That status was confirmed by the Cairo Court of Appeal in a 6 June 2012 decision which held that the CRCICA was immune from any civil claims relating to the discharge of its arbitration functions, including claims brought participants to arbitration proceedings administered under its auspices. [4] The decision came somewhat as a surprise. Indeed, while common law jurisdictions, such as the United Kingdom or the United States of America, have long acknowledged the immunity of arbitral institutions against such claims, civil law jurisdictions, including France, are typically reluctant to hold the same. It remains unclear whether the immunity is specific to the CRCICA as an international public entity or if it extends to all arbitral institutions located in Egypt, even if they have a private status.[5]

14 However, during our discussion the Director of the CRCICA has confirmed that the Centre's immunities have been tested numerous times and have been systematically upheld by Egyptian courts. The only exception, to the Director's knowledge, was when a party recently initiated proceedings against the CRCICA before the Egyptian State Council, which rejected the claims on the merits before the CRCICA could be notified and invoke its immunity of jurisdiction. The CRCICA appealed the decision on that ground to avoid creating any precedent and that appeal is pending. The Director also confirmed that the Egyptian Government has always remained supportive of the Centre's immunities, including by providing confirmation in writing of the content of the CRCICA's Headquarters Agreement. He also confirmed that Egyptian banks used by the Centre are well-aware of its immunity of execution.

[4] "Arbitration News", *Int. Journ. of Arab Arb*. Vol. 4 Issue 4, 83.

[5] "Arbitration News", *Int. Journ. of Arab Arb.* Vol. 4 Issue 4 (2012), 83.

15 The CRCICA has established a number of branches, including the Alexandria Centre for International Maritime Arbitration (ACIMA) in 1992, the Mediation and Alternative Dispute Resolution Centre in 2001 and the Port Said Centre for Commercial and Maritime Arbitration in 2004, although the latter ceased its activities in 2014.

16 The Centre is also behind the creation of several institutes, including the Institute of Arab and African Arbitrators set up in 1991, the Cairo Branch of the Chartered Institute of Arbitrators in 1999 and the ILI/Cairo Middle East Institute for Law and Development (MILD) in 2003.[6]

2.2 Organisation

17 The CRCICA is composed of a Board of Trustees, a Director, a Deputy Director, Associate Directors, a Legal Advisor to the Director and an Advisory Committee "*appointed by the Director of the Centre from among the members of the Board of Trustees as well as eminent African, Asian and other personalities specialized in the fields of international arbitration, Alternative Dispute Resolution ('ADR') mechanisms and international trade*".[7]

18 The ten to thirty members of the **Board of Trustees** are appointed by the members of the Board in consultation with the AALCO. The by-laws require that all members be "*eminent African and Asian personalities*[8] *specialized in the field of international arbitration, law, business, trade, investment and international relations*".[9] The By-laws of the Board of Trustees require that the Chairman be of Egyptian nationality and the two Vice-Chairmen originate, one from Asia and one from Africa.

19 The main duties of the Board include the appointment of the Director, establishing the Centre's general policies, approving the annual fiscal audits, approving, and supervising the implementation of the CRCICA's

[6] World Arbitration Reporter CRCICA, 2.

[7] CRCICA website (https://crcica.org/advisory_committee.aspx).

[8] 20% of the members may nevertheless be from outside the Afro-Asian region provided they are specialists in the required fields and, apart from Egyptian members, no more than three members should have the same nationality.

[9] By-laws of the Board of Trustees of the CRCICA, Article 1.

action plan, adopting the Arbitration, Mediation and other Alternative Dispute Resolution Rules and any amendments thereto, as well as the panels of international arbitrators, conciliators, and technical experts of the Centre.[10]

20 The current Chairman of the Board of Trustees is Dr Nabil Elaraby, former Secretary-General of the League of Arab States, former Minister of Foreign Affairs of Egypt, and former Judge at the International Court of Justice. The two Vice-Chairmen are Prof Dr Mohamed Abdel Raouf[11] and H.H. Prince Dr Bandar Bin Salman Bin Mohamed Al Saud.[12] The Board of Trustees is currently comprised of 24 members: ten Egyptians[13] and fourteen non-Egyptians,[14] many of whom are eminent practitioners in the field of international arbitration.

[10] By-laws of the Board of Trustees of the CRCICA, Article 4. The Board of Trustees may delegate some of its functions to the Director.

[11] **Prof Dr Mohamed Abdel Raouf**, an Egyptian national, is the former director of the CRCICA (2012-2016) and an associate Professor at Université Paris I Panthéon-Sorbonne. He is also a partner and head of the Arbitration Group at Abdel Raouf Law Firm in Cairo.

[12] **H.H. Prince Dr Bandar Bin Salman Bin Mohamed Al Saud**, a national of Saudi Arabian, is a Minister of State of Saudi Arabia, President of the Saudi Arbitration Group.

[13] In addition to **Dr Nabil Elaraby** and **Prof Dr Mohamed Abdel Raouf**, the Egyptian members of the Board of Trustees are **Prof Dr Georges Abi-Saab**, Emeritus Professor at the Faculty of Law of the University of Geneva, Honorary Professor at the Faculty of Law of Cairo University, former Chairman of the WTO Appellate Body; **Prof Dr Mohamed Sameh Amr**, Partner at Amr and Partners Law Firm and Professor and Chair of International Law at Cairo University; **Dr Ziad Bahaa-Eldin**, Economist and Attorney at law, former Deputy Prime Minister of Egypt and former Chairman of the Egyptian General Authority for Investment and Free Zones (2004-2007); **Coun. Mahmoud Fahmy**, Former Vice President of the State Council, Former Chairman of the Capital Market & Investment Authority; **Mr Taher Hozayen**, Partner at Mackean Law Firm; **Coun. Dr Adel. F. Koura**, former President of the Egyptian Court of Cassation and President of the Egyptian Supreme Judicial Council, former Assistant to the Egyptian Minister of Justice for Legislative Affairs; **Dr Hani Sarie Heldin**, Partner at Sarie-Eldin & Partners Legal Advisors firm, Professor of Commercial & Maritime Law at Cairo University; **Prof Dr Fathi Waly**, former Dean of the Faculty of Law and Vice-President of the Cairo University, Head of the Civil Procedure Department, Attorney before the Egyptian Court of Cassation, International Arbitrator and Head of the Egyptian Society for Civil and Commercial Procedures, participated in the Drafting Committee for the Egyptian Code of Civil Procedure and in the Drafting Committee for the Egyptian New Law of Arbitration.

[14] In addition to **H.H. Prince Dr Bandar Bin Salman Bin Mohamed Al Saud** (Saudi Arabia), the following are the non-Egyptian members of the Board of Trustees: **Dr Abdulla Musfir Al-Hayyan** (Kuwait), associate Professor of Law at the Kuwait University; **Sheikha Haya Rashed**

21 As for the Director of the Centre, one of his key functions is to appoint arbitrators in case of default of the parties. The Director is assisted in his day-to-day activities by staff, organised in three departments headed by Associate Directors (dispute management, administration and finance, organisation of conferences and external relations). The Centre also employs legal advisers who work on the Centre's publications and provide consultations on issues of interpretation and application of the rules of the Centre and who also focus generally on conflict resolution through arbitration, mediation, and conciliation.

22 The current **Director** of the Centre is Dr Ismail Selim who is also Secretary Treasurer of the International Federation of Commercial Arbitration Institutions (IFCAI) and Vice-President of the Egypt Branch of the Chartered Institute of Arbitrators ("**CIArb**"). Dr Selim also teaches

Al Khalifa (Bahrein), Partner at Haya Rashed Al Khalifa Law Firm, former Bahrain's Ambassador to France and its non-resident Ambassador to Belgium, Switzerland and Spain, member of the World Intellectual Property Organisation Arbitration Committee and a member of the International Chamber of Commerce (ICC) International Court of Arbitration; **Prof Bernado M. Cremades** (Spain), Partner at Cremades Law Firm, Former President of the Spanish Court of Arbitration; **Dr Gaston Kenfack** (Cameroon), Cameroonian Magistrate and current Director of Legislation at the Ministry of Justice of Cameroon, Professor of business and arbitration law at the International Relations Institute of Cameroon and guest Professor at the Institute of International Studies – University Paris II; **Mr Vladimir Khvalei** (Russia), Partner at Baker & McKenzie Moscow Branch; **Mr Philippe Leboulanger** (France), LLM, Lecturer at University of Panthéon-Assas (Paris II, France), Counsel, Expert and appointed as Co-Arbitrator, Sole Arbitrator and Chairmen of the Arbitral Tribunal in numerous international arbitrations (ICC, UNICTRAL, LCIA, ICSID etc.); **Dr Nayla Comair Obeid** (Lebanon), Founding Partner of Obeid Law Firm, Professor of International Arbitration at the Faculty of Law of the Lebanese University and Judicial Institute, former Commissioner of the UN Compensation Commission in Geneva; **Mr Christopher Bayo Ojo** (Nigeria), Senior Advocate and arbitrator, former Attorney General and Minister of Justice of the Federal Republic of Nigeria, past President of the Nigerian Bar Association (NBA), past Chairman of the Chartered Institute of Arbitrators, Nigeria Branch; **Prof Alain Pellet**, Emeritus Professor, University Paris Ouest Nanterre-La Défense and Former Member and Former Chairperson, International Law Commission of the United Nations; **Mr Michael E, Schneider** (Germany), Founding partner of the law firm LALIVE (Switzerland), former President of the Swiss Arbitration Association (ASA), former Vice Chair of the ICC Commission on Arbitration, former Director of Studies at The Hague Academy of International Law; **Judge Dr Abdulqawi Yusuf** (Somalia), Member and former President of the International Court of Justice, **Ms Qin Yuxiu**, China State Construction Engineering Corporation, Research Fellow of China State Construction Strategic Research Institute; **Dr Nassib Ziadé** (Lebanon, Chile), Chief Executive Officer of the Bahrain Chamber for Dispute Resolution (BCDR). He is also president of the International Monetary Fund (IMF) Administrative Tribunal.

international law courses at the *Institut de droit des affaires internationales* in Cairo (Sorbonne University) and the Sorbonne University in Paris. Dr Selim is assisted in his task by a **Deputy Director**, Ms Dalia Hussein.

23 The role of the **Advisory Committee**, which is appointed by the Director of the Centre, is to supervise arbitration proceedings conducted under the CRCICA Arbitration Rules in several important respects. Some of its key functions include approving the decision "*not to proceed with the arbitral proceedings if [the Centre] manifestly lacks jurisdiction over the dispute*"[15] and to reject the appointment of an arbitrator for "*past failure to comply with his or her duties*" under the Rules.[16] Three members of the Advisory Committee, sitting as an impartial and independent tripartite *ad hoc* committee, decide on the removal or challenges of arbitrators in cases of deliberate delay in the initiation or management of the arbitration or allegations of lack of impartiality or independence.[17] The Committee also provides advice regarding substitute arbitrators and determination of fees.[18] It is consulted by the Director of the Centre on numerous issues, including amendments to the Rules, defining the annual themes and activities carried out by the Centre, and reviewing cooperation agreements.[19]

24 The Advisory Committee is composed of very experienced international practitioners. It is currently chaired by Mr Philippe Leboulanger, from France.[20] The two Vice-Chairs are Prof Dr Mohamed S. Abdel Wahab

[15] CRCICA Rules, Article 6 and By-laws of the Advisory Committee, Article 3 (a).

[16] CRCICA Rules, Article 8(5) and By-laws of the Advisory Committee, Article 3 (b).

[17] CRCICA Rules, Articles 12 and 13 (6) and By-laws of the Advisory Committee, Article 3 (c and d).

[18] Respectively CRCICA Rules, Articles 14 (2) and 45 (12) and By-laws of the Advisory Committee, Article 3 (e and f).

[19] By-laws of the Advisory Committee, Article 3 para. 3.

[20] **Mr Philippe Leboulanger** is LLM, Lecturer at University of Panthéon-Assas (Paris II, France), Counsel, Expert and appointed as Co-Arbitrator, Sole Arbitrator and Chairmen of the Arbitral Tribunal in numerous international arbitrations (ICC, UNICTRAL, LCIA, ICSID etc.)

(Egypt)[21] and Ms Rabab M.K. Yasseen (Switzerland & Iraq).[22] The Committee itself is currently composed of seven Egyptian[23] and six non-Egyptian members.[24]

25 Upon our request during his interview, the Director of the Centre accepted to provide us with an example of decisions of the Advisory Committee on requests to challenge individual arbitrators or the arbitral tribunal in its entirety. These decisions are not published. Based on our experience with other arbitral institutions, we found the decision provided in its reasoning and conclusion to meet the highest international standards.

26 Another role currently exercised by the Advisory Committee is to work on the upcoming revision of the CRCICA arbitration rules. We understand from our discussions with Dr Selim and Mr Leboulanger that this work is conducted by a dedicated working group and already well-advanced.

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[21] **Prof Dr Mohamed S. Abdel Wahab** is Chair of Private International Law and Professor of International Law at the Cairo University and a Founding Partner and Head of International Arbitration and Projects at Zulficar & Partners. He is also the former Vice-President of the ICC International Court of and a member of the London Court of International Arbitration (LCIA).

[22] **Ms Rabab M.K. Yasseen** is a Partner at the Swiss law firm Mentha & Partners.

[23] In addition to Prof Dr Mohamed S. Abdel Wahab, the following are the Egyptian members of the Advisory Committee: **Prof Dr Mohamed Abdel Raouf**, former director of the CRCICA (2012-2016), an associate Professor at Université Paris I Panthéon-Sorbonne, partner and head of the Arbitration Group at Abdel Raouf Law Firm in Cairo; **Dr Karim Hafez**, full-time international arbitration lawyer, Professor of Law at the American University in Cairo; **Ms Samaa A.F. Haridi** (also a US national), Partner at Hogan Lovells LLP; **Eng. Aisha Nadar** (also a Swedish and US national), Senior Consultant specialised in infrastructure procurement and dispute management at Advokatfirman Runeland AB, Stockholm, Sweden; **Mr Ahmed Ouerfelli**, Attorney at law, Former Presidential Legal Advisor, Former Judge; **Dr Karim Youssef, J.S.D.**, Managing Partner and Head of International Arbitration & International Law, Youssef & Partners Attorneys; **Mr Girgis Abd El-Sahid**, managing partner of Shahid Law Firm in Cairo.

[24] In addition to the Chairman and **Ms Raba M. K. Yasseen**, the non-Egyptian members of the Advisory Committee are: **Mr Lijun Cao** (China), Partner and Head of Arbitration Practice at Zhong Lun; **Mr Dany Khayat** (France, Lebanon), Partner at Mayer Brown Paris; **Dr Emilia Onyema** (Nigeria), Arbitration consultant, full time senior lecturer in international commercial law at School of Law, SOAS, University of London, Associate Dean for Learning and Teaching of the Faculty of Law and Social Sciences, SOAS; **Mr Craig Tevendale** (United Kingdom), Partner, Head of International Arbitration Group in London at Herbert Smith Freehills; **Dr Nassib Ziadé** (Lebanon, Chile), Chief Executive Officer of the Bahrain Chamber for Dispute Resolution (BCDR), president of the International Monetary Fund (IMF) Administrative Tribunal.

2.3 Activities

27 The main activity of the Cairo Centre is case administration. Its Arbitration Rules are well established and were amended in 1998, 2000, 2002, 2007 and in 2011. It also administers cases under other rules as explained below.

28 Since our previous assessment, the Cairo Centre has maintained its profile as a very dynamic and successful arbitration centre. In 2017, the Centre adopted a new logo, improved its website, updated mailing lists and its marketing materials, including a new brochure in Arabic, French and English, as well as a French version of its Arbitration Rules issued in 2016.[25] During our discussions, the Director of the CRCICA confirmed that this trend continues , with a new, more modern website to be brought online in the coming months, which will include a French version, and new Arbitration Rules.

29 The CRCICA does not remain within the confines of case administration and simple advertising. It also fulfils a global role of promoting arbitration in Egypt, Africa, the Middle East and worldwide, through the seminars, conferences, workshops, and training programmes it organises, but also by sending representatives and speakers to more global events.

30 For instance, the CRCICA has established a solid relationship with the CIArb Egypt Branch to organise training sessions and webinars on important arbitration-related topics.[26] It has also developed partnerships with Egyptian universities, such as the Ain Shams University,[27] the Alexandria University,[28] to offer international arbitration courses. The Centre organises, or co-organises, its own trainings on international commercial or investment arbitration.[29]

[25] CRCICA Annual Reports 2017 and 2018.

[26] CRCICA Newsletter 1-2021; CRCICA Newsletter 4-2020; CRCICA Newsletter 3-2020; CRCICA Newsletter 2-2020; CRCICA Newsletter 1-2020; CRCICA Newsletter 4-2019.

[27] CRCICA Newsletter 1-2021.

[28] CRCICA Newsletter 1-2021. The CRCICA also participate in the University of Alexandria's Vis Internal Moot.

[29] CRCICA Newsletter 1-2021; CRCICA Newsletter 4-2020; CRCICA Newsletter 2-2020; CRCICA Newsletter 1-2020; CRCICA Newsletter 4-2019; CRCICA Newsletter 32019.

31 The CRCICA also organises mediation trainings[30] and recently supported a survey on the development of mediation in Africa entitled "Comprehensive Study of Mediation in Africa under the Africa Mediation Network".[31] In 2019, the Centre published a Guidance Note to parties to arbitration proceedings encouraging them to resort to Arb-Med-Arb (arbitration-mediation-arbitration).[32]

32 The Director, Dr Ismail Selim, and other CRCICA representatives also regularly represents the Centre at global, international arbitration events and contribute to international publications on behalf of the Centre.[33]

33 In 2019, the Centre launched its Young CRCICA Forum, similar to youth forums of other arbitral institutions, with the aim of helping younger generations develop their skills and careers in arbitration.[34]

34 These sustained efforts have paid off, as, in 2020, the CRCICA received the award from the African Arbitration Association as African Institution of the Year.[35] In 2019, CRCICA won the Global Arbitration Review (GAR) "Regional Arbitration Award for an Arbitral Institution That Impressed" at among the 9th Annual GAR Awards.[36] Previously, in 2017, the CRCICA featured on the White List of the GAR Guide to Regional Arbitration 2017.[37] Also in 2019, the "Africa Arbitration" series profiled several representatives of the CRCICA, including its Director, as Personalities of the Month.[38]

[30] CRCICA Newsletter 4-2020; CRCICA Newsletter 3-2020

[31] CRCICA Newsletter 4-2020.

[32] CRCICA Newsletter 3-2019.

[33] CRCICA Newsletter 1-2021; CRCICA Newsletter 4-2020; CRCICA Newsletter 3-2020; CRCICA Newsletter 2-2020; CRCICA Newsletter 1-2020; CRCICA Newsletter 4-2019; CRCICA Newsletter 3-2019.

[34] CRCICA Annual Report 2018-2019.

[35] CRCICA Newsletter 4-2020. The same year representatives from the Centre was recognised by the Association of Young Arbitrators among Africa's 30 Arbitration Powerlist 2020.

[36] CRCICA Newsletter 2-2019.

[37] CRCICA Annual Report 2018.

[38] CRCICA Newsletter 3-2019.

35 Since our last report, the Centre has continued its efforts to sign cooperation agreements with other arbitral institutions and organisations, including in Africa, bringing the number of such cooperation agreements to 90.[39]

3 CRCICA ARBITRATION

3.1 CRCICA arbitration generally

36 According to the most recent statistics available at the time of writing, the total number of cases since the Centre's inception had reached 1,508 as of 30 June 2021. In 2021, 83 new cases were filed, a significant increase from the 67 cases filed in 2020 and the highest number of cases registered since 2016. The decrease in cases in the course of 2020 appears to have resulted from the Covid-19 pandemic.[40] These numbers are nevertheless in line with the average number of cases submitted to the CRCICA over the last five years. The same goes for mediation cases. The Centre generally registers one or two mediation cases a year. The CRCICA also registered its first dispute board case in 2021, after it issued its dispute rules in August 2021.[41]

37 The Centre has its own arbitration rules (further detailed below), but it also administers cases under various other rules. When acting under the UNCITRAL Arbitration Rules, the Centre acts as appointing authority.[42] A few cases have also been brought under bilateral investment treaties concluded between Arab countries, which refer to the CRCICA Rules or which list the CRCICA among possible arbitration institutions. In such cases, the Centre fully administers the arbitration.

38 Cases heard by the Centre concern both domestic and international disputes. The sectors involved in the 67 disputes submitted to the CRCICA in 2020 were construction (32%), corporate restructuring (16.5%) and

[39] CRCICA Newsletter 2-2020. According to the Director, the last cooperation agreement was signed in December 2021 with the Bangladesh International Arbitration Centre (BIAC).

[40] GAR, "Cairo centre reveals 2021 case numbers", 9 February 2022.

[41] GAR, "Cairo centre reveals 2021 case numbers", 9 February 2022.

[42] The Centre's rules generally and this issue specifically will be further detailed below.

tourism and hospitality (13.5%). In 2021, the 83 cases were less dominated by construction disputes which only represented 15% of the total. The other sectors were corporate restructuring (14%), oil and gas (9.5%), media and entertainment (7%), transport (6%) and real estate development, tourism and hospitality and banking & finance (5%) each.

39 With regards to the amounts in dispute, in 2020, nearly half of the cases submitted to the Centre had an amount in dispute under US$ 1 million, 63% of the cases were under US$ 2 million and 93% were below US$ 30 million.[43] Conversely, 7% of the cases had an amount in dispute between US$ 80 million and over US$ 100 million.[44] The average value of the $cases submitted to the CRCICA reached US$ 10,296,930. This represents a significant increase (over 230%) of the amount in disputes in CRCICA cases since our last report, which confirms the Centre's increased maturity.

40 The parties remain in majority Egyptian. In 2021, Parties included 34 non-Egyptian parties, with six coming from the United Arab Emirates (17%), five from the United Kingdom and from Malta (15% each) and three from Saudi Arabia (8%).[45] Other non-Egyptian parties were from the Bahamas, the British Virgin Islands, Bulgaria, Cyprus, France, Italy, Lebanon, Liechtenstein, Panama, South Africa, Ukraine, and the United States. The non-Egyptian parties in 2020 mostly originated from Europe (53%) followed by the Middle East (35%).[46] Interestingly, none of the non-Egyptian parties originated from another African country in 2020, only two in 2019 (from Tunisia and Sudan) and one in 2018 (Sudan).[47] This suggests that the CRCICA has not yet managed to become the centre of choice for African disputes, despite its marketing efforts.[48] The Director of the CRCICA confirmed that the Centre had a significant margin of improvement with respect to West and Sub-Saharan Africa, but that much

[43] CRCICA Newsletter 4-2020.

[44] CRCICA Newsletter 4-2020.

[45] GAR, "Cairo centre reveals 2021 case numbers", 9 February 2022.

[46] CRCICA Newsletter 4-2020.

[47] CRCICA Newsletter 4-2019.

[48] See in particular the CRCICA's organisation in 2017 of the first "Africa Arbitration Week" (CRCICA Annual Report 2018).

progress was being made through investments made in these areas by Egyptian investors, who insist on CRCICA arbitration clauses.

41 The origin of arbitrators involved in CRCICA arbitrations shows some diversity, despite the fact that they remain predominantly Egyptian nationals. In 2021, the Cairo Centre appointed over 17 non-Egyptian arbitrators, from Cameroon, France, Germany, Italy, Lebanon, Morocco, Sudan, the UAE, the UK, and the US.[49] This is less than in 2020, during which CRCICA cases involved 26 non-Egyptian arbitrators, whereas there were only 20 in 2019 and 17 in 2018. Of those, four came from the African continent in 2018 (Tunisia, Sudan), only two in 2019 (Tunisia, Sudan) but six in 2020 (Sudan, Tanzania, Nigeria, Tunisia). Non-Egyptian arbitrators were mainly from Canada, France, Lebanon, and the UK in 2020, and from the USA, France, Lebanon, Bahrain, and the UK in 2019 and Lebanon, Jordan, and the UK in 2018.[50]

42 The CRCICA does not compile and make publicly available statistics on the average duration of cases administered by the Centre. At our request, the Director provided us with an ad hoc study concerning those cases registered in 2017 on the basis that all of the 65 cases registered during that year had come to a conclusion, 36 of them with an award.[51] 2017 is also when the CRCICA started reminding arbitrators, in the Declaration of Acceptance and Statement of Impartiality and Independence to be signed by them, that they were expected to render their award within 90 days from the date of the last written submission, failing which the Centre would have the option to reduce their fees.[52] We understand that the Centre has done

[49] GAR, "Cairo centre reveals 2021 case numbers", 9 February 2022.

[50] CRCICA Newsletter 4-2020; CRCICA Newsletter 4-2019; CRCICA Newsletter 4-2018.

[51] The interest of this year is also that the cases registered display various levels of complexity, with amounts in dispute spanning from USD 25,000 to USD 56,596,995 for a total of USD 310,734,298.

[52] The full sentence reads as follows: "*Accordingly, the Centre expects that the Tribunal endeavour to render its award within 90 days of the date of the last written submission or of the hearing, whichever occurs later. Should the Tribunal fail to meet such deadlines without valid reasons, the Centre has the option to reduce the Tribunal's fees including through triggering article 45(12) of the Rules*."

so at least once in 2017, when a tribunal took 183 days after the the hearing to render its award.

43 For the 36 cases registered in 2017 and completed with a final award, the average length of the proceedings was 17 months (with a minimum of 4 months and a maximum of almost 4 years). This is below the average duration of ICC proceedings, which was 26 months in 2020 according to the ICC Dispute Resolution Statistics, and in line with with the average duration of cases administered with other major arbitral institutions. However, the sample is not large (a single year with 36 completed cases), and it is not known for instance how many proceedings commenced in 2018 or 2019, *i.e.*, over three/two years ago, are not yet completed out of all of the cases registered in those years.

44 The Egyptian State, including State-owned entities, is an important user of the CRCICA. It routinely includes CRCICA arbitration clauses in its international agreements. The Director of the CRCICA provided us, as an example, with a standard arbitration clause published in 2020 by the State for the purpose of being included in oil & gas concession agreements. This clause provides for the application of the CRCICA Arbitration Rules, and an arbitration seated in Cairo, with Egyptian law applicable. However, the Secretary General of the Permanent Court of Arbitration should designate the appointing authority should the co-arbitrators fail to agree on a presiding arbitrator. The appointing authority must then appoint the presiding arbitrator in the same way as it would appoint a sole arbitrator under Article 6.3 of the UNCITRAL Arbitration Rules.

45 The Director indicated that he saw State contracts with similar characteristics, including with seats located outside Egypt. We understand in particular that the Benban mega-solar project in Assouan apparently includes a CRCIA arbitration clause with the seat of the arbitration located in Paris.

46 Despite including CRCICA arbitration clauses in its agreements, it appears that the State is not attempting to interfere with the Centre's operation or the functioning of its organs. The Director of the Centre mentioned to us that he has never experienced any attempt by Egyptian authorities to influence the CRCICA's operations, despite the fact that CRCICA tribunals regularly issue awards against the State. The Centre's former Director, Prof

Dr Abdel Raouf, confirmed that this reflected his own experience during his tenure. All the other practitioners we interviewed confirmed that, to the best of their knowledge, there was no State interference with the CRCICA's operations or CRCICA-administered proceedings.

3.2 The CRCICA arbitration rules

47 The CRCICA Rules are based on the UNCITRAL Arbitration Rules and were amended in 1998, 2000, 2002, 2007 and most recently in 2011, taking into account the 2010 revisions of the UNCITRAL Rules.[53] The 2011 Rules apply to proceedings commenced after 1 March 2011.[54]

48 The Rules apply to disputes "*in respect of a defined legal relationship, whether contractual or not*" which were "*referred to arbitration under the Rules of Arbitration of the Cairo Regional Centre for International Commercial Arbitration*".[55] Article 1 specifies explicitly that parties may agree to modify the Rules in writing.

49 The Centre is currently preparing a new update of its Arbitration Rules, which should be published in 2023. The new rules should contain a series of improvements on the previous version, including new provisions on consolidation, the introduction of emergency arbitration and expedited proceedings. However, due to their early stage of preparation, we have not been able to review and analyse a draft version of these new rules.

3.2.1 Initiating CRCICA arbitration proceedings

50 The CRCICA Rules provide that arbitral proceedings are initiated by filing a notice of arbitration with the Centre. This notice should notably include "*a brief description of the claim and an indication of the amount involved, if any*".[56] The Centre communicates this notice to the respondent, who in

[53] Caline Mouawad, Rocio Digon, "Modern and Competitive: the new CRCICA Rules", *Int. Journ. of Arab Arb.* Vol. 3, Issue 1 (2011), 17.

[54] CRCICA Rules, Article 1 (2).

[55] CRCICA Rules, Article 1 (1).

[56] CRCICA Rules, Article 3 (3) (e).

turn has thirty days to submit a response.[57] This response may include a "*brief description of counterclaims or claims for the purpose of a set-off*".[58]

3.2.2 Constitution of the Arbitral Tribunal

51 The parties are free to agree on the number of arbitrators. If no such agreement has been reached within thirty days of receipt by the respondent(s) of the notice of arbitration, by default three arbitrators are appointed pursuant to Article 7(1) of the Rules. Notwithstanding this provision, if no other party has responded to a party's proposal to appoint a sole arbitrator within the same time limit, and no second arbitrator has been appointed in accordance with Articles 9 and 10 of the Rules, the Centre may, at the request of a party, appoint a sole arbitrator if it determines that this is more appropriate in view of the circumstances of the case.[59]

52 The parties are free to agree on the procedure to appoint the tribunal.[60] Generally, if a three-member tribunal is to be appointed, each party appoints one arbitrator, and the two arbitrators thus appointed appoint the president of the tribunal.[61] In case of default by a party, the Centre makes the appointment.

53 Absent an agreement of the parties within thirty days of receipt by the Centre of a party's request for appointment, the appointment takes place pursuant to Articles 8 to 10 of the Rules. In particular, the Centre appoints the sole arbitrator if one was to be appointed and the parties failed to reach an agreement on the arbitrator.[62] In a very transparent manner (unlike under some other arbitration rules), the CRCICA Rules specifically set out the procedure followed by the Centre: the Centre first communicates to the parties a list of at least three names; the parties are required to cross out names to which they object, and rank the remaining names in order of

[57] CRCICA Rules, Article 4 (1).
[58] CRCICA Rules, Article 4 (2) (d).
[59] CRCICA Rules, Article 7 (2).
[60] CRCICA Rules, Article 8 (1).
[61] CRCICA Rules. Article 9 (1).
[62] CRCICA Rules, Article 8 (2).

preference; and the Centre then appoints the sole arbitrator in accordance with the order of preference indicated by the parties.[63] This is in line with the procedure followed by the Permanent Court of Arbitration.

54 The CRCICA used to make available on its website an open list of potential arbitrators, but it was subsequently deleted. The Director explained that this is because it had become somewhat obsolete and too long and that the Centre considered it more useful to provide direct, more focused, advice to parties, whenever required to do so, rather than let them select arbitrators more randomly from a list.

55 It also noteworthy that, in 2017, the CRCICA signed the Pledge for Equal Representation in Arbitration (ERA), by virtue of which the CRCICA, taking into consideration the interest of the parties, the nature of the case and the interest of arbitral justice, undertakes to implement a regional, gender and age diversity policy when it acts as appointing authority. In this regard, as noted above, in 2020, CRCICA received an award from the African Arbitration Association 2020 Awards in the category of Diversity Champions for its efforts in this area,[64] and ERA acknowledged the CRCICA's efforts to implement the Pledge as part of its Africa subcommittee.[65]

56 These efforts do not necessarily appear in the Centre's appointment statistics. The Director explained that this mostly results from the fact that appointments are in their vast majority made by the parties. He also explained that, whenever requested by parties to recommend potential arbitrators, the administrative teams strive always to include names of potential female arbitrators. The unofficial list used by the CRCICA, to which we were given access, includes approximately 15% of female arbitrators, which leaves some room for improvement.

57 Challenges to arbitrators and similar issues are addressed at Articles 11 to 13 of the Rules. Arbitrators may be challenged within fifteen days of appointment, or fifteen days after the circumstances justifying the

[63] CRCICA Rules, Article 8 (3) (a) to (c).

[64] See https://afaa.ngo/page-18333.

[65] CRCICA Newsletter 2-2020.

challenge became known to the challenging party, "*if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence*".[66]

58 As mentioned above, the challenge is finally decided by an impartial and independent tripartite *ad hoc* committee to be composed by the Centre from amongst the members of the Advisory Committee.[67] The replacement of an arbitrator takes place under the standard appointment procedure,[68] unless the Centre determines that "*in view of exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator*".[69] In such a case, the Centre may, upon approval by the Advisory Committee, appoint the substitute arbitrator.[70]

59 If an arbitrator is replaced, at least one hearing must take place in the presence of the substitute arbitrator, which may entail repetition of hearings.[71]

3.2.3 The arbitral proceedings

60 The Rules provide that the Centre may, "*upon approval of the Advisory Committee, decide not to proceed with the arbitral proceedings if it manifestly lacks jurisdiction over the dispute*".[72] Absent such decision, competence to rule on jurisdiction lies with the arbitral tribunal itself, including any objection with respect to the existence or validity of the arbitration agreement (principle of *compétence-compétence*).[73]

61 The parties are free to choose the seat (or "*place*" as per the Rules) of the arbitration. Absent an agreement of the parties, the seat is determined by the tribunal "*having regard to the circumstances of the case*".[74] Unless

[66] CRCICA Rules, Article 13 (1).
[67] CRCICA Rules, Article 13 (6).
[68] CRCICA Rules, Article 14 (1).
[69] CRCICA Rules, Article 14 (2).
[70] CRCICA Rules, Article 14 (2).
[71] CRCICA Rules, Article 15.
[72] CRCICA Rules, Article 6.
[73] CRCICA Rules, Article 23 (1).
[74] CRCICA Rules, Article 18 (1).

otherwise agreed by the parties, the tribunal may also meet at any other location for other purposes, including hearings and deliberations.[75] We understand from the Centre's Director that the vast majority of CRCICA arbitration proceedings remain seated in Cairo, with few exceptions of seats in other African countries (mostly in North Africa), Europe (notably Madrid and Paris), or the Middle East (Dubai or Saudi Arabia).

62 The language of the arbitration is chosen freely by the parties. Absent an agreement, the tribunal is required to promptly determine the language or languages to be used in the proceedings.[76] Since our last report, CRCICA has been keeping statistics of the languages used in disputes submitted to the Centre. Whereas Arabic used to dominate back in 2018, English is catching up rapidly: in 2020, 54% of the cases were heard in Arabic and 46% in English, whereas in 2018, this ratio was 70% to 30%.[77]

63 The Centre has also decided to recruit French-speaking case management staff in 2017 and registered its first matter in the French language in 2022. The Director has confirmed that this was a welcome development and a sign that the Centre remains committed to increasing the number of cases in French in the coming years. This puts the centre in a better position to seek to become a preferred institution in francophone Africa.

64 In the proceedings, each party may be represented or assisted by one or more persons of its choice. The names and addresses of eventual party counsel must be communicated to the Centre. When counsel is appointed, the tribunal may, at any time, require proof of authority granted to the representative in such a form as the tribunal may determine.[78] It is noteworthy in this respect that, in a recent decision, the Egyptian Court of cassation determined that there is no limitation or restriction regarding the choice by the parties of their representatives in arbitration proceedings, whether domestic or international: parties may be represented by any

[75] CRCICA Rules, Article 18 (2).

[76] CRCICA Rules, Article 19.

[77] CRCICA Arbitration Statistics (https://crcica.org/Arbitration_Statistics.aspx).

[78] CRCICA Rules, Article 5.

person of their choosing, without any nationality or qualification requirements.[79]

65 The law applicable to the substance of the dispute is chosen by the parties. Failing such determination of the parties, the tribunal applies the law which "*has the closest connection to the dispute*".[80] The tribunal may rule *ex aequo et bono* only if the parties have expressly authorized the tribunal to do so.[81] The tribunal is in any case required to decide in accordance with the terms of the contract and take account of trade usages applicable to the relevant transaction.[82]

66 The tribunal may also, at the request of a party, grant interim measures[83] and require the party requesting an interim measure to provide appropriate security in connection with the measure.[84]

3.2.4 Publication of awards and confidentiality

67 The CRCICA Rules provides for an obligation of confidentiality extending to awards, decisions and materials submitted in the proceedings and not otherwise available in the public domain.[85]

68 Usefully, and as is not the case for most other institutions, other than the International Chamber of Commerce ("**ICC**"), CRCICA awards are published albeit in redacted form so as to observe confidentiality requirements. To date, seven volumes have been published. The CRCICA website library also presents thousands of books, collections of law journals and a database centralising all the arbitral awards as well as court decisions of relevance. As mentioned above, we understand from the Director that it is his intention to further modernise its website, both in terms of format and content.

[79] Court of Cassation, Challenge No. 18309 of JY 89, dated 27 October 2020.
[80] CRCICA Rules, Article 35 (1).
[81] CRCICA Rules, Article 35 (2).
[82] CRCICA Rules, Article 35 (3).
[83] CRCICA Rules, Article 26 (1).
[84] CRCICA Rules, Article 26 (6).
[85] CRCICA Rules, Article 40 (1).

3.2.5 Costs

69 Upon filing the notice for arbitration, the claimant pays a non-refundable registration fee of US$ 500. This amount is paid also by the respondent when filing a counterclaim. Administrative fees are determined based on the sum in dispute in accordance with Table (1) annexed to the Rules.[86]

70 Arbitrators may not directly or indirectly enter into agreements with the parties or their representatives with respect to their fees or the costs of arbitration.[87] Their fees are set out in the Rules and fixed in proportion to the amount in dispute and in accordance with Tables (2) and (3) annexed to the Rules. For sums in dispute up to US$ 3,000,000, Table (2) sets a fixed fee.[88] The fees range from US$ 1,000 for sums in dispute up to US$ 50,000 to US$ 16,000 for sums in dispute between US$ 2,500,001 and US$ 3,000,000. Beyond US$ 3,000,000 in dispute, Table (3) provides a scale of minimum and maximum fee ranges, proportionate to the amount in dispute.[89] The CRCICA's website includes a cost calculator, enabling parties to receive an estimate of the costs of the proceedings based on the amount in dispute and the number of arbitrators.

71 In exceptional circumstances, the Centre may, with the approval of the Advisory Committee, set the fees of the tribunal at a higher or lower figure than that provided by Table (2), or outside the ranges provided by Table (3), provided that such determination does not exceed 25%.[90] The Director of the CRCICA confirmed that this rule is rarely used. He indicated that, following in the footsteps of the ICC, this mechanism was used three times to decrease the arbitrators' fees in instances where arbitral tribunals issued their award late. This mechanism was only used once to increase the arbitrators' fees with the parties' agreement.

[86] CRCICA Rules, Article 44 (1) and Table (1).

[87] CRCICA Rules, Article 45 (11).

[88] CRCICA Rules, Article 45 (4) and Table (2).

[89] CRCICA Rules, Article 45 (5) and Table (3).

[90] CRCICA Rules, Article 45 (12).

72 Unless agreed otherwise by the members of the tribunal, the total of the arbitrators' fees are allocated as follows: 40% for the chairman of the tribunal, and 30% for each co-arbitrator.[91]

73 The costs of the arbitration are in principle borne by the unsuccessful party,[92] although the tribunal may apportion the costs between the parties if it determines such an apportionment to be reasonable taking into account the circumstances of the case.[93]

74 According to a recent study conducted by GAR, CRCICA is the cheapest of eleven international arbitration institutions for cases with low amounts in dispute decided by a sole arbitrator, and among the cheapest for low-value disputes decided by a three-arbitrator panel.[94] The Centre becomes increasingly expensive – and less competitive – as the value of the dispute increases,[95] but gains in competitivity with respect to very high-value disputes (US$ 100-500 million), especially when heard by a sole arbitrator.[96]

[91] CRCICA Rules, Article 45 (6).

[92] CRCICA Rules, Article 46 (1).

[93] CRCICA Rules, Article 46 (1).

[94] GAR, "Arbitration Costs Compared", 23 April 2021. The other competitors were the following: Brazil-Canada Chamber of Commerce (BCCC); China International Economic and Trade Arbitration Commission (CIETAC); Cairo Regional Centre for International Commercial Arbitration (CRCICA); Dubai International Arbitration Centre (DIAC); German Institute of Arbitration (DIS); International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC Ukraine); International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation (ICAC Russia); International Court of Arbitration of the International Chamber of Commerce (ICC); Kuala Lumpur Regional Centre for Arbitration (KLRCA); Madrid Chamber of Commerce and Industry (MCCI); Mumbai Centre for International Arbitration (MCIA); Milan Chamber of Arbitration (Milan Chamber); Russian Arbitration Association (RAA); Swiss Chambers Arbitration Institute (SCAI); Arbitration Institute of the Stockholm Chamber of Commerce (SCC); Singapore International Arbitration Centre (SIAC); and Vienna International Arbitration Centre (VIAC).

[95] GAR, "Arbitration Costs Compared", 23 April 2021.

[96] GAR, "Arbitration Costs Compared", 23 April 2021.

4 CRCICA'S COVID-19 PANDEMIC RELATED MEASURES

75 Like most of the well-established institutions, the Cairo Centre reacted quickly to the new conditions created by the pandemic, actively encouraging its users, including arbitrators, parties, and counsel, to privilege electronic means for both hearing and submissions.[97]

76 The Centre was well-served by its existing equipment, which includes hearing rooms with a premier videoconferencing system (Polycom HDX) and interactive meeting room systems. It also invested in Zoom and Microsoft Teams subscription to enhance its videoconferencing capacities.[98] From 1 January to 31 December 2020, 78 hearings took place using CRCICA's facilities, including eleven held entirely via videoconference, two via teleconference, ten hybrid with partial in-person and remote attendance and 55 in-person, in accordance with the Centre's social distancing guidelines.[99] The same trend continued throughout 2021.

77 Overall, CRCICA's response to the pandemic appears to have been effective and the Centre's case management was not tangibly affected, which is a sign of its strength as an arbitral institution. The Centre was in fact recognised by practitioners and users for its management of the impact of the pandemic and the measures taken.[100]

78 Importantly, in a recent decision, the Egyptian Court of Cassation upheld a decision of the Cairo Court of Appeal refusing to set aside a CRCICA

[97] See CRCICA's "Message to Users" https://crcica.org/NewsDetails.aspx?ID=119. See also the article by Dr Karim Hafez, Counsel and Legal Advisor to the Director of the Centre: "Remote Hearings and the Use of Technology in Arbitration" in in *The Middle Eastern and African Arbitration Review*, 2021, Global Arbitration Review; Mohamed S. Abdel Wahab and Noha Khaled Abdel Rahim, 'National Report for Egypt (2021 through 2022)', in Lise Bosman (ed), *ICCA International Handbook on Commercial Arbitration*, (ICCA & Kluwer Law International 2020, Supplement No. 120, February 2022), p. 4-5

[98] See M. Hafez, "Remote Hearings and the Use of Technology in Arbitration" in *The Middle Eastern and African Arbitration Review*, 2021.

[99] See M. Hafez, "Remote Hearings and the Use of Technology in Arbitration" in *The Middle Eastern and African Arbitration Review*, 2021.

[100] CRCICA Newsletter 3-2020.

award and confirmed the compatibility of remote hearings with Egyptian law.[101]

5 THE ARBITRATION LAW OF EGYPT

5.1 General background

79 Before the enactment of the first arbitration law, arbitration took place in Egypt under the *Shari'a* according to the Hanafi doctrine.[102] In the course of important legal reforms in Egypt inspired by French law during the second half of the 18th century, a new Chapter was created in the Code of Civil and Commercial Procedure (the "**CCCP**") to set out a comprehensive legal system for arbitration.[103] This system was reformed in 1949[104] and again in 1968.[105]

80 Following a proposal from the CRCICA in 1985, the Minister of Justice of Egypt consented to the creation of a Committee based at the CRCICA headquarters for the drafting of a new Egyptian law on commercial arbitration inspired by the recently adopted UNCITRAL Model Law.[106] The Committee's draft proposal was promulgated on 18 April 1994 as *Law No. 27 of 1994 concerning Arbitration in Civil and Commercial Matters* (the Arbitration Law) and became effective on 22 May 1994 (hereafter the "**Law**").

81 This Law remains in force as of today, notwithstanding certain amendments: in 1997, it was clarified that the scope of the Arbitration Law extended to administrative contracts; [107] in 2000, the procedure for

[101] Court of Cassation Decision of 27 October 2020, Case No. 18309.

[102] Mohamed Abdel Raouf, "Egypt", in Loukas Mistelis, Laurence Shore, Stavros Brekoulakis (eds), *World Arbitration Reporter Vol. I* (2nd Juris 2012), 1 [World Arbitration Reporter Egypt].

[103] World Arbitration Reporter Egypt, 1; Ibrahim Shehata, *Arbitration in Egypt: A Practitioner's Guide* (Kluwer, 2021), 2 [Shehata].

[104] Code of Civil and Commercial Procedure No. 77 of 1949, Articles 818 to 850.

[105] Code of Civil and Commercial Procedure No. 13 of 1968, Articles 501 to 513.

[106] World Arbitration Reporter Egypt, 3.

[107] Arbitration Law, Article 1 as amended by Law No. 9/1997 of 13 May 1997, see World Arbitration Reporter Egypt, 5; Dr Mohamed Abdel Raouf, "Chapter 4.2 – Egypt", in Lise Bosman (eds), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013), 281 [M. A. Raouf].

challenging arbitrators was modified;[108] in 2001, the impossibility to appeal against an order granting enforcement (*exequatur*) was held to be unconstitutional by the Supreme Constitutional Court;[109] and in 2008, a Ministerial Decree was issued introducing certain provisions governing the deposit of domestic awards before competent courts under Article 47 of the Law, which was last amended by Ministerial Decree 9739 of 5 October 2011.[110] Some of these changes are further addressed below.

82 While inspired from the UNCITRAL Model Law, the Arbitration Law of Egypt does contain certain differences, including the following:

- The Law has a broad scope of application and governs both domestic and international arbitrations.
- The Law may be applied to arbitrations conducted outside of Egypt if the parties so decide (extra-territorial application). Similar to domestic cases, the number of arbitrators under the Law must be an odd number.
- The ruling on a challenge made against an arbitrator is vested with the competent national court under the Law and not with the arbitral tribunal (as is the case under the CRCICA Rules, see above).
- The tribunal does not have the powers to order interim or provisional measures unless the parties have agreed to grant such powers[111] (as mentioned above, the CRCICA Rules contain such provisions).

83 The Egyptian courts tend to apply the *favorem arbitrandum* principle. There are indeed multiple examples of Egyptian court decisions interpreting defective arbitration agreements as requiring that the dispute be arbitrated as opposed to submitted to local courts.[112] As an illustration of its arbitration-friendly approach, the Cairo Court of Appeal also recently

[108] Arbitration Law, Article 19(1), following the Supreme Constitutional Court Decision of 6 November 1999 cited in World Arbitration Reporter Egypt, 6.

[109] Supreme Constitutional Court Decision of 6 January 2001 cited in M. A. Raouf, 282.

[110] Ministerial Decree 8310/2008 of 21 September 2008.

[111] World Arbitration Reporter Egypt, 4.

[112] See *e.g.* 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 cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

confirmed the extension of an arbitration agreement to contracts forming part of a group of closely connected contracts.[113]

84 In March 2022, the Egyptian Ministry of Justice set up a commission for the review of the Arbitration Law, apparently with a focus on the settlement of disputes relating to contracts between states and investors. Prof Dr Abdel Wahab, who has been appointed on that committee and whom we interviewed, considers that this may be a sign that the Government understood that some recent developments, which are addressed in the following sections, have been perceived as regressions and is willing to remedy the situation. Time will tell whether the committee's work will make a difference. However, the fact that it is composed of eminent and independent arbitration specialists is an encouraging sign.

5.2 Arbitrability of disputes and jurisdiction of arbitral tribunals

85 Arbitrability is conceived widely under Egyptian law as encompassing any legal dispute which can be subject to a compromise between natural or juridical persons having the capacity to dispose of their rights, regardless of the legal nature of the relationship which is the subject-matter of the dispute.[114]

86 In recent years, Egypt law has significantly expanded the scope of arbitrability. The new domains that have been considered arbitrable include areas that are traditionally considered public law matters, including tax disputes, custom disputes, and even certain criminal offences, on the condition that they cannot be prosecuted by specific public or private persons.[115]

87 However, a recent development set new boundaries to that scope. In the *DIPCO v. Damietta Port Authority* case,[116] the Egyptian Court of Cassation was called upon to consider whether an arbitral tribunal had the power to decide upon the validity of the Government's approval of an

[113] Cairo Court of Appeal, Circuit (1), Challenge No. 61 of JY 134, dated 12 August 2020.

[114] Arbitration Law, Articles 1 and 11.

[115] Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[116] Court of Cassation, Challenges No. 1964 and 1968, dated 8 July 2021.

administrative contract. In that case, an ICC tribunal had considered that an addendum to a concession agreement had not been properly approved by the Government and thus did not validly amend the concession agreement. The Court of Cassation considered that, because of its exceptional nature, the concession agreement was an administrative contract rather than a private law contract. Accordingly, the Court found that the question as to whether an addendum to this contract had been validly approved was an administrative law matter falling within the exclusive jurisdiction of the Egyptian State Council. The Court of Cassation concluded that, in making a finding in this respect, the arbitral tribunal violated Egyptian public policy. The Court further found that the arbitral tribunal should have stayed the proceedings pending a decision of the Council of State on the issue.

88 This decision has obvious implications in terms of whether acts by State entities may be arbitrable. It may also call into question the availability of arbitration under agreements with the Egyptian State or State entities. It confirms the separate regime applicable to administrative contracts. The Law indeed provides that, in administrative contracts the arbitration agreement must be authorised by the competent minister.[117] This was confirmed by an earlier decision of the Egyptian State Council dated 5 March 2016.[118]

89 Pursuant to Article 22 of the Law, arbitral tribunals have jurisdiction to rule on objections to their own jurisdiction, including objections relating to the existence, validity, and scope of the arbitration agreement (principle of *compétence-compétence*). A challenge of the tribunal's decision is only possible through a challenge of the award.[119]

[117] Arbitration Law, Article 1.

[118] State Council, Challenge No. 8256 of JY 56, Hearing session dated 5 March 2016, cited in Mohamed S. Abdel Wahab and Noha Khaled Abdel Rahim, 'National Report for Egypt (2021 through 2022)', in Lise Bosman (ed), *ICCA International Handbook on Commercial Arbitration*, (ICCA & Kluwer Law International 2020, Supplement No. 120, February 2022).

[119] Arbitration Law, Article 22 (3).

5.3 Domestic and international arbitration

90 The Law applies to any arbitration conducted in Egypt (whether international or not), as well as arbitrations seated abroad but to which the parties have agreed to apply the provisions of the Law.[120]

91 Pursuant to Article 3 of the Law, proceedings will be deemed "*international*" if their subject-matter relates to international trade, in one of the following cases:

(i) if the respective head offices of the parties are situated in two different countries at the time of conclusion of the arbitration agreement,

(ii) if the parties to the arbitration agree to resort to a "*permanent arbitral organization or to an arbitration centre*" having its headquarters in Egypt (notably the CRCICA) or abroad,

(iii) if the subject matter of the dispute falling within the scope of the arbitration agreement is linked to more than one State, and

(iv) if the "*principal places of business*" of the parties are located in the same State at the time of conclusion of the arbitration agreement but one of the following places is located in a different State: (a) the place of arbitration, (b) the place of performance of an essential part of the legal obligations arising out of the contract, or (c) the place closely connected to the subject matter of the dispute.

92 The Egyptian Court of Cassation recently clarified the notions of "*permanent arbitral organization*" and "*arbitration centre*".[121] This decision followed an award rendered against the US company, Chevron, by a tribunal constituted under the rules of a sham arbitral institution named the "*International Arbitration Centre*", under which the tribunal ordered Chevron to pay damages in the astronomical amount of US$ 18 billion. The Court held that, arbitral institutions that are located in Egypt are international only if the institution is established by virtue of an international or regional treaty (*e.g.,* the CRCICA) or a law enacted for the

[120] Arbitration Law, Article 1.

[121] Court of Cassation, Challenge No. 14126 of JY 88, dated 22 October 2019.

purpose of administering international commercial arbitration. For institutions located outside Egypt, the Court considered that only arbitration administered by institutions having a strong international or regional reputation were international, using the example of the ICC in Paris. Arbitrations administered by institutions that do not fulfil either of these criteria do not fall within the scope of Article 3 of the Law, regardless of whether their name includes the word "*international*", like the "*International Arbitration Centre*". This decision was well received as contributing to further establishing Egypt as an arbitration-friendly jurisdiction.[122]

93 There has nonetheless been some divergence among the Egyptian courts on the criteria to be fulfilled to qualify as an international arbitration.

94 The High Administrative Court has taken the view that resorting to a permanent arbitral institution like the CRCICA is sufficient to consider the arbitration international.[123] However, in 2018 and again in 2020, the Court of Cassation, in the context of the enforcement of a CRCICA award held that, despite being administered by the Centre, the underlying arbitration was not international. The Court indeed considered that Egyptian law envisages an objective approach based on the substance of the arbitration, rather than the institution that administers it.[124] The matter remains unsettled because the Court of Cassation in a 2019 decision and the Cairo Court of Appeal took the opposite position, *i.e.*, that CRCICA awards were international in nature.[125] However, this issue should be of limited practical concern in particular to foreign parties, as it may only affect arbitration

[122] Shehata, 219.

[123] Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[124] Court of Cassation, Challenge No. 8777 of 87 JY, dated 7 March 2018; Court of Cassation, Challenge No. 7470 JY 89, dated 23 February 2020, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[125] Court of Cassation, Challenge No. 14126 of JY 88, dated 22 October 2019; Cairo Court of Appeal, Circuit (7), Challenge No. 28 of JY 135, dated 6 February 2019, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

proceedings involving Egyptian parties with a seat in Egypt and relating to Egyptian matters.

95 The distinction between domestic and international arbitration is separate from that between awards with a seat in or outside of Egypt, as further addressed below.

5.4 Confidentiality

96 Confidentiality of arbitration under the Law is addressed in Article 44, which provides that awards may not be published without the approval of the parties. It is also generally accepted that there is an implied duty of confidentiality under Egyptian law with respect to the proceedings, documents submitted and to the award.[126]

5.5 Setting aside proceedings

97 The distinction between arbitrations with a seat in or outside of Egypt is important for the issue of setting aside, notably to determine the competent court.

98 For awards rendered in Egypt, the Egyptian competent court to hear setting aside actions is the Cairo Court of Appeal for international arbitration, unless the parties have agreed on another appellate court in Egypt.[127] For domestic arbitrations, competence lies with the court of appeal having competence over the tribunal that would initially have had jurisdiction over the dispute.[128]

99 Regarding awards rendered outside of Egypt, *i.e.*, foreign awards, the Cairo Court of Appeal has confirmed the principle – well established in most jurisdictions - that Egyptian courts have no jurisdiction with respect any setting aside application, unless the parties have specifically decided

[126] World Arbitration Reporter Egypt, 8.

[127] Arbitration Law, Articles 54 and 9.

[128] Arbitration Law, Articles 54 and 9.

to apply the (Egyptian) Law as the *lex arbitri* to the arbitration seated abroad.[129]

100 Article 53 of the Law contains an exhaustive list of the grounds for setting aside arbitral awards, which somewhat deviates from the UNCITRAL Model law, notably by including the failure by the tribunal to apply the governing law. These grounds for setting aside an award are the following:

> *i) If there is no arbitration agreement, if it was void, voidable or its duration had elapsed,*
>
> *ii) if either party to the arbitration agreement was at the time of the conclusion of the arbitration agreement fully or partially incapacitated according to the law governing its legal capacity,*
>
> *iii) if either party to the arbitration was unable to present its case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond its control,*
>
> *iv) if the arbitral award failed to apply the law agreed upon by the parties to govern the subject matter in dispute,*
>
> *v) if the composition of the tribunal or the appointment of the arbitrators was in conflict with the Arbitration Law or the parties' agreement,*
>
> *vi) if the award dealt with matters not falling within the scope of the arbitration agreement or exceeding the limits of the agreement. However, in the case when matters falling within the scope of the arbitration can be separated from the part of the award which contains matters not included within the scope of the arbitration, the nullity affects exclusively the latter parts only, or*

[129] Cairo Court of Appeal Decision of 29 January 2003, cited in World Arbitration Reporter Egypt, 44.

vii) if the award itself or the arbitration procedures affecting the award contain a legal violation that causes nullity.

101 Setting aside proceedings do not constitute an appeal against the award, in that the action does not extend to reviewing the merits of the dispute or reconsidering the reasoning of the award. Hence, despite ground (iv) above, it is "*not possible to seek the annulment of the award due to an error committed by the arbitral tribunal in interpreting the provisions of the law, in comprehending the facts of the case or in considering the documents, or due to the lack of reasoning of the arbitral award, since such causes are not among the grounds of setting aside the arbitral awards, as exhaustively enumerated in Article 53 of the Law*".[130]

102 The Court of Cassation has confirmed the position repeatedly; the challenge of an award not being an appeal, the Egyptian courts cannot review the substance of the arbitral award, including the arbitrators' factual determinations, or their application of the law to the facts, even if the arbitrators made mistakes in this regard.[131]

103 The filing of a motion to set aside the award does not suspend the enforcement of the award, although the competent court may order such suspension if the motion is "*based upon serious grounds*".[132] The application for the enforcement of an award is not admissible until the period for filing of a setting aside action has expired.[133]

104 The Egyptian courts tend to set boundaries to the parties' ability to challenge final arbitral awards. In 2020, the Court of Cassation held that a party could be considered as having waived its right to initiate setting aside proceedings based on an issue that arose during the arbitration process if three conditions were met: (1) the party invoking the violation continued

[130] M. A. Raouf, 289.

[131] Court of Cassation, Challenge No. 11713 JY 89, dated 27 February 2020; Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020; Cairo Court of Appeal, Circuit (1), Challenge No. 7 of JY 137, dated 8 September 2020, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[132] Arbitration Law, Article 57.

[133] Arbitration Law, Article 58.

to participate in the arbitration proceedings despite being aware of said violation; (2) the violation was serious enough to vitiate the arbitration agreement; (3) the party invoking the violation failed to raise an objection with the arbitral tribunal in relation to said violation in a timely fashion.[134]

105 In the same vein, in an earlier decision, the Court of Cassation denied a party the right to seek the reconsideration of a decision rejecting its request for setting aside of an arbitral award despite the claimant's argument that the award had been obtained through fraudulent conduct.[135]

106 The Egyptian courts have also recently implemented new doctrines to reach decisions favourable to arbitration and uphold the finality of arbitral awards.

107 Hence, the Court of Cassation recently applied the doctrine of estoppel, considering that, even though it did not specifically exist under Egyptian law, it could be applied by virtue of customs and equity in accordance with Article 1(2) of the Egyptian Civil Code.[136] The Court established two conditions for invoking estoppel: (1) a party must act in a manner that contradicts its previous conduct; and (2) this contradiction shall be detrimental to another party who relied on this previous conduct.[137] In that case, a party sought the annulment of an arbitration agreement because it had been concluded by its vice chair instead of its chair. The Court denied this request because the claimant could not benefit from, and let others bear the consequences of, its own conduct under the estoppel doctrine.

108 The same principle was applied recently by the Cairo Court of Appeal. In one decision it held that the basic principles of arbitration do not allow a

[134] Court of Cassation, Challenge No. 11713 of JY 89, dated 27 February 2020, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[135] Court of Cassation, Challenge No. 4715 and 4868 of JY 86, hearing session dated 18 January 2017, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[136] Article 1(2) Civil Code provides: "*In the absence of an applicable provision of law, the Judge shall rule according to custom; and in the absence of custom, in accordance with the principles of Islamic Law. In the absence of such principles, the Judge shall apply the principles of natural law and the rules of equity*."

[137] Court of Cassation, Challenge No. 18309 JY 89, dated 27 October 2020.

party to challenge an award it has accepted in the course of the arbitration proceedings.[138] In another, it refused to annul an award based on an arbitral institution's decision to appoint the president of the tribunal under a method different from that specified in the arbitration agreement on the ground that the claimant had failed to raise an objection at the time.[139]

109 Prof Dr Abdel Wahab highlighted another innovative decision of the Court of cassation dated 22 February 2022, in which the Court used the creativity of the party seeking annulment to set forth a number of principles.[140] Ruling against an accusation of bias and impartiality of the president of the arbitral tribunal, the Court notably referred to the IBA Guidelines on Conflicts of Interest in International Arbitration 2014, and in particular the list of instances where arbitrators must disclose connections with the parties' counsel. The Court further clarified the scope of Egyptian public policy by stating that the Egyptian mandatory rule that a company operating in Egypt must be registered with Egyptian authorities did not form part of Egyptian public policy and thus could not be invoked to seek annulment of an award. It also confirmed the use of the principles of estoppel and prohibition to review the merits of the case at the annulment stage and that the prohibition of interest under Islamic law did not form part of Egyptian public policy despite the reference to Islamic law in the Egyptian Constitution.

110 Finally, in another recent and important decision in *Al Kharafi v Libya*, the Court of cassation confirmed that the ground for annulling an arbitral award based on public policy was very narrow.[141] The Court noted in particular *"*[i]t *is not for the judge at the set aside stage to review the arbitral award's decision on the merits or control the correctness of the arbitrators' determination"* and noted that this applied *"to the arbitrators' right or wrong decision on the qualification of a contract or the assessment of damages.*"

[138] Cairo Court of Appeal, Circuit (1), Challenge No. 48 of JY 137, dated 9 December 2020.

[139] Cairo Court of Appeal, Circuit (1), Challenge No. 10 of JY 137, dated 10 August 2020.

[140] Court of Cassation, Challenge No. 13892, dated 22 February 2022.

[141] Court of Cassation, Challenge No 12262, dated 24 June 2021.

111 However, this approach, which is in line with international practice, contrasts with the abovementioned *DIPCO* case, in which the Court of Cassation held that arbitral awards deciding on issues falling within the jurisdiction of the State Council breached public policy. The fact that such distinct decisions were issued by the same jurisdiction in the space of a few weeks may call into question the predictability of Egyptian courts' approach to the setting aside of awards based on public policy. At the very least, it suggests that Egyptian courts will likely not follow the same approach if the State, or a State entity is involved in the arbitration proceedings.

112 Egyptian and international practitioners we interviewed have taken diverging positions on the impact of the *DIPCO* decision. The Director of the CRCICA and other eminent practitioners, like Prof Dr Abdel Raouf and Prof Dr Abdel Wahab, consider that, although unfortunate, this decision is and should remain an outlier. They consider that it results from divergent positions taken by two chambers of the Egyptian Court of Cassation and that additional concertation and training should result in the Court of Cassation reverting to a more reasonable position in line with the *Al Kharafi* decision. **Other practitioners consider, however, that this new trend of creating a separate legal regime for public entities is in line with the Egyptian State's current policy.**

113 In spite of these diverging views as to the impact of the *DIPCO* case, most arbitration practitioners interviewed indicated that they are already advising their clients to take additional steps to protect themselves against potential deficient governmental approval in their contracts with public entities.

114 This trend toward an increased control over arbitration proceedings involving public entities also transpires from the creation in 2019 of a new committee established by the Council of Ministers called the **Supreme Council for Studying and Opining on International Arbitration Disputes.** [142] The role of this committee is to provide opinions on arbitrations proceedings involving the State, State entities, governmental

[142] Prime Ministerial Decree No. 1062 of 2019.

bodies or State-owned enterprises.[143] Since December 2020, it has become mandatory for public entities subject to the committee's review to submit any agreement with foreign investors containing an arbitration agreement to the committee. This requirement thus creates another level or governmental approval, on top of the ministerial approval of the arbitration agreement pursuant to Article 1 of the Law.

115 The same trend can be observed with Egypt's Law 137 of 2021 on Amending Some Provisions of the Supreme Constitutional Court Law. The new article 48 introduced by this law expands the **Constitutional Court's power to review the constitutionality of decisions by international organisations and bodies and foreign court rulings to be enforced against the State.** Pursuant to new article 33 *bis*, the Prime Minister may petition the Supreme Court to order that such decisions be disregarded in case they contravene the Egyptian Constitution. It is not clear, however, whether the new law will apply to arbitral awards. Time will tell whether the Government will attempt to use it as a new path to challenge arbitral awards involving the State, including in commercial agreements.

116 Here also, interviewees took diverging views as to the impact of this new law. Some, though mostly non-Egyptian, practitioners consider this law as an adverse development showing the State's decision to interfere in arbitration proceedings at the stage of the award. However, most Egyptian arbitration practitioners interviewed, including the Director of the CRCICA, are less pessimistic. The State apparently conducted informal consultations with arbitration practitioners, scholars, and institutions, following which it removed from the draft law the reference to arbitral awards as decisions subject to the Constitutional Court's review. According to most of the interviewees, the risk of arbitral awards falling within the scope of the Constitutional Court's control is now extremely limited, whilst the risk that commercial awards involving private parties become subject to review by the Constitutional Court is close to nil.

117 Furthermore, as mentioned above, the Ministry of Justice recently appointed a committee of eminent Egyptian practitioners to start working

[143] Prime Ministerial Decree No. 2592 of 2020 (amending Prime Ministerial Decree No. 1062 of 2019), Article 2.

on a reform of the Law. Interviewees consider that, to the extent that the Government appears to be willing to focus the committee's work on contracts between the State and investors, the impending reform may be a way of resolving the uncertainties created by the *DIPCO* case. However, this merely constitutes speculation at this juncture.

5.6 Recognition and enforcement of CRCICA awards

118 As confirmed by most interviewees, the Egyptian courts generally take a favourable approach to the enforcement of arbitral awards, including awards rendered against the Egyptian State or State entities. For enforcement purposes, an important distinction must be made between awards rendered by a tribunal with seat in or outside of Egypt.

119 Arbitral awards rendered in Egypt are enforced under the Arbitration Law (Part VII). The competent court before which such proceedings are brought is generally the Cairo Court of Appeal.[144] Article 56 of the Law outlines the documents to be submitted with the application for enforcement order, namely: (i) the (complete[145]) original award or a signed copy[146], (ii) a copy of the arbitration agreement, (iii) an authenticated Arabic translation of the award if not rendered in Arabic, (iv) a copy of the *procès-verbal* attesting the deposit of the award with the competent court pursuant to Article 47 of the Arbitration Law (the "*deposit certificate*").

120 Pursuant to Article 58 of the Law, leave for enforcement is granted subject to the following conditions: (i) the award does not contravene any judgment rendered by the Egyptian courts on the subject matter in dispute, (ii) the award does not contravene any principle of Egyptian public policy, (iii) the award has been duly and validly notified to the party against whom it was rendered.

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[144] Arbitration Law, Articles 56 and 9. In a few cases, other courts of appeal may be competent. That is the case for instance in domestic or non-commercial arbitrations where the courts of first instance outside of Cairo have jurisdiction *ratione loci* (see Article 9(1) of the Egyptian Arbitration Law).

[145] Ahmed S. El Kosheri, "Procedure for Enforcement of Foreign Awards, Egypt" *ICC Court Bulletin, Special Supplement* (2012), Question 12(b) [ICC Spec. Bull.].

[146] This requirement has been interpreted as meaning "*the signed award in copy*": ICC Spec. Bull., Question 12(c).

121 Foreign awards (*i.e.* awards rendered outside Egypt) are enforced in Egypt according to the New York Convention of 1958 (the "**New York Convention**"), to which Egypt acceded in 1959 with no reservations.[147] The Court of Cassation recently confirmed that, in case the provisions of the New York Convention contradict Egyptian law, the New York Convention must prevail.[148]

122 However, there remains some uncertainty regarding the procedural route that should be followed to request the enforcement of an award from a competent court.

123 In a very controversial decision of 2005, the Court of Cassation held that the provision of the CCCP were more onerous than those provided under the Law and that the Law should thus apply.[149] Critics submitted that the decision confuses *conditions* laid down by the CCCP for enforcement (which they argued are no more onerous than those prescribed by the Law) with the *procedure* it prescribes (an action launched by writ of summons, *demande initiale par voie ordinaire*) which is allegedly not inconsistent with Egypt's obligations under the New York Convention.[150]

124 In 2010, the Court of Cassation indicated, albeit in a *dicta*, that the proper procedural route to enforce a foreign arbitral award was that prescribed in the CCCP.[151] In 2015, the Court of Cassation changed its position again and ruled that the provisions of the Law, rather than the CCCP, should apply in relation to the enforcement of foreign arbitral awards.[152] However, in a recent decision the Cairo Court of Appeal appears to have taken a different position, requiring that the provisions of the CCCP apply.[153]

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[147] Presidential Decree No. 171/1959 of 3 February 1959. The Convention came into effect on 7 June 1959.

[148] Court of Cassation, Challenge No. 282 JY 89, dated 9 October 2020; Court of Cassation, Case No. 5000/78 JY, Session dated 6 April 2015, cited in Amr Abbas, J. Matouk, "Egypt" in *Global Arbitration Review – The Middle Eastern and African Arbitration Review*, 2021.

[149] Shehata, 347.

[150] Shehata, 348.

[151] Court of Cassation, Challenge No. 913/Judicial Year 73, dated February 23, 2010.

[152] Court of Cassation, Challenge No. 15912/Judicial Year 76, Hearing dated April 6, 2015.

[153] Cairo Court of Appeal, Challenge No. 15/Judicial Year 136, Hearing dated 31 December 2020.

Interviewees commented that this decision was most likely an outlier and that the position taken by the Court of Cassation would eventually prevail.

125 In Egypt, there is no clear distinction made between the regime applicable to enforcement and to recognition of awards.[154] If a CRCICA award was rendered in Egypt and is to be enforced abroad, it may be necessary – depending on the legislation in force in the place of enforcement – that the award be recognized in the place where it was rendered. In such a case, a CRCICA award rendered in Egypt will be recognized in accordance with the provisions of the Law, as discussed above for the enforcement of awards rendered in Egypt. This situation will notably arise if the place of enforcement is a country which is not a State-party to the New York Convention and which requires, prior to enforcing foreign awards, that such award be recognized in the State where it was rendered ("*double exequatur* requirement").

126 In 2018, the Cairo Court of Appeal decided that it was also possible to seek the recognition and enforcement in Egypt of decisions by arbitral tribunals (in this case an ICC tribunal) ordering provisional measures,[155] which was perceived by practitioners as a welcome innovation.

5.7 International conventions

127 Egypt is a party to the following arbitration-related multilateral conventions:

a) The 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**"). The ICSID Convention was signed in 1971 pursuant to Presidential Decree No. 90/1971 and entered into force on 2 June 1972.

[154] In relation to the recognition of domestic awards, see World Arbitration Reporter Egypt, 47: "*The Law does not know the distinction between recognition and enforcement of arbitral awards*". In relation to the recognition of foreign awards, see ICC Spec. Bull., Question 20: "*Statutory law does not specifically address the recognition (as opposed to enforcement) of foreign awards, and this omission has given rise to the argument that foreign awards cannot be recognized in Egypt*."

[155] Cairo Court of Appeal, Challenge No. 44 of 134 JY, dated 9 May 2018.

b) The Convention of 1974 on the Settlement of Investment Disputes between the States hosting Arab investments and Nationals of other Arab States. This Convention was signed on 10 June 1974 and entered into force on 20 August 1974. Egypt adhered to this Convention by virtue of the Presidential Decree No. 1700 of 22 October 1974. It was published in the Official Gazette issue No. 45 on 4 November 1976 and became effective as of 19 August 1976.

c) The Unified Agreement for the Investment of Arab Capital in the Arab States dated 26 November 1980. Egypt became member to this Convention on 19 April 1992.

d) The Riyadh Convention for Judicial Cooperation signed on 6 April 1983, adhered to by Egypt adhered through Presidential Decree No. 278 of the year 2014 dated 19 August 2014. It was published in the Official Gazette issue No. 49 on 4 December 2014.

128 Egypt is also a party to 115 bilateral investment treaties, 28 of which are not yet in force and 15 have been terminated.[156]

[156] See full list of such treaties on the website of the United Nations Conference on Trade and Development at https://investmentpolicy.unctad.org/international-investment-agreements/countries/62/egypt?type=bits.

6 CONCLUSION

129 Our assessment in our previous 2014 report was that the CRCICA was one of the best arbitration centres across the African continent and could be recommended for use by parties from both the African continent and elsewhere. Six years later, we stand by that assessment.

130 It appears from our research and the interviews conducted with a number of practitioners that the CRCICA has only strengthened its administration capacity. Practitioners and representatives of the Centre alike praise the work done by Dr Ismail Selim since his appointment as director to increase the level of its services and expand its reach beyond its traditional area of influence in Egypt and the Middle East.

131 In particular, the Centre has developed its capacity to administer cases in French in 2017 and issued a version of its Arbitration Rules in French, thereby resolving an issue we had flagged in our previous report on CRCICA. For the first time this year, the Centre has registered a case in French. The delay between the hiring of French-speaking case managers and the registration of this first case shows that despite its marketing efforts, the CRCICA is still having difficulties with imposing itself as a truly international arbitration centre, shifting from its traditional image of English and Arabic-dominated centre.

132 We have received no negative feedback from the persons we interviewed in relation to the administration of cases by the CRCICA. The general view was that the quality of the services provided compared with large international centres like the ICC, the Stockholm Chamber of Commerce ("**SCC**") or the London Court of International Arbitration ("**LCIA**"). The case volume has remained stable, and even increased, since our last report showing users' confidence.

133 With regard to the Bank's requirement for a neutral venue, we had expressed the opinion in our previous report that Egypt met the relevant criteria. We maintain that view, albeit with a qualification. Indeed, the abovementioned *DIPCO* decision appears to indicate that Egyptian courts' neutrality may be affected in cases involving the Egyptian State or State entities. Even those interviewees who considered that and other developments mentioned above as mere "accidents", or very case-specific,

acknowledged that, in the current circumstances and pending clarification from the Egyptian Government or judiciary, there was a **risk that State courts would not act as neutrally as one could have expected in case the arbitration involves the State or a State entity**.

134 By contrast, court decisions relating to **standard commercial cases have continued to comply with the highest standards**, with a level of quality that is comparable to decisions of the most arbitration-friendly jurisdictions in the world. Based on our research and the feedback we received, it appears that the quality of Egyptian arbitration-related court decisions has even improved over the last six years, thanks to the training and increased experience of the judges dealing with arbitration-related matters. We view this as a reason to hope that the potential divide between normal commercial cases and cases involving the State may not become a permanent feature of arbitration in Egypt.

135 In any event, the main difficulty with State and State entities arising before Egyptian Courts stems from the ministerial approval of the underlying contract, or rather lack thereof. This difficulty may be overcome by **requesting evidence at the time of signing the contract containing the arbitration clause that all approvals have been provided**. Alternatively, **adopting a CRCICA arbitration clause with a seat outside of Egypt will mitigate the impact of the Egyptian Courts' position**. We understand from practitioners that this latter option is a viable one, even in contracts involving State entities.

136 The summary table below sets out an overview of the report's findings:

ANALYSED CRITERIA	CRCICA, EGYPT
Modern set of Rules, comparable to the standard guaranteed by the ICC, LCIA, Swiss Rules or similar modern arbitration Rules	**Criteria fulfilled.** The Rules are based on the UNCITRAL Arbitration Rules.
Arbitration friendly environment at the seat of the Centre (notably regarding the laws of the seat of the Centre, if such is the place of arbitration)	**Criteria fulfilled.** The Arbitration Law is based on the UNCITRAL Model Law, with modifications.

ANALYSED CRITERIA	CRCICA, EGYPT
Arbitration friendly State Court Intervention (if seat of Centre is the place of arbitration)	**Criteria fulfilled** with a reservation regarding contracts involving the State or State entities.
Parties are free to choose the **place of arbitration**	**Criteria fulfilled.**
Autonomy of parties to **select arbitrators**	**Criteria fulfilled.** The parties are not bound by a specific list. If the arbitrators are to be appointed by the Centre, then they must be chosen from the panel of arbitrators of CRCICA.
Open list of highly professional arbitrators	**Criteria not fulfilled.** However, a list exists and remains at the Centre's disposal. We are not convinced that such a list is necessary
Good **language skills** (French and English) of employees of arbitration institution	**Criteria fulfilled.**
No impediment to **enforcement**	**Criteria fulfilled**. Applications are made to the Cairo Court of Appeal. Very limited grounds to refuse to grant exequatur.
State Court intervention limited or representing no risk in light of the neutrality requirement.	**Criteria fulfilled** with a reservation regarding contracts involving the State or State entities.
In cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, **the neutral venue requirement is fulfilled**	**Criteria fulfilled**.

7 MODEL CLAUSE

137 The Model Clause suggested by the institution (CRCICA) and relevant notes are the following:

Any dispute, controversy or claim arising out of or relating to this contract, its interpretation, execution, the termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Arbitration of the Cairo Regional Centre for International Commercial Arbitration.

Note — Parties should consider adding:

a. The number of arbitrators shall be ... (one or three);

b. The place of arbitration shall be ... (town and country);

and

c. The language to be used in the arbitral proceedings shall be...

Note — Parties may consider adding:

The time limit within which the arbitral tribunal shall make its final award shall be...

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9 LIST OF PERSONS CONSULTED

138 For the purpose of this report, we interviewed:

a) Dr Ismail Selim, Director of the CRCICA;

b) Prof Dr Mohamed Abdel Raouf, Vice-Chairman of the Board of Trustees, Member of the Advisory Committee;

c) Mr Philippe Leboulanger, Chairman of the Advisory Committee, Member of the Board of Trustees;

d) Prof Dr Mohamed Abdel Wahab, Vice-Chairman of the Advisory Committee;

e) Several arbitration practitioners and CRCICA users based in Egypt or abroad whose names have been omitted from this report for confidentiality reasons.

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LALIVE SA

Domitille Baizeau
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