The Choice of Dispute Resolution Mechanism under the Egyptian Law

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The Egyptian litigation system was one of the first developed in the region and followed by many neighbouring countries. The judicial system is divided into ordinary and administrative courts, and has well-established, yet complex, litigation mechanisms.

Egypt also recognises arbitration as an alternative dispute resolution mechanism. The efficiency and flexibility of the arbitration system as opposed to litigation, made arbitration clauses in agreements concluded or to be performed in Egypt a common and highly recommended practice.

In the recent years, the country has become a regional arbitration hub through the Cairo Regional Centre for International Commercial Arbitration (the “CRCICA”). CRCICA adopts the UNCITRAL model rules of arbitration and has unified arbitration fees for domestic and international arbitration. This made it an increasingly important hub and less expensive option for international arbitration claims in the region.

In addition, simplified alternative dispute resolution mechanisms were recently introduced in the Egyptian Investment Law that may apply when the government is a party to such dispute.

The structure of the Judicial System in Egypt

In general, the judicial system in civil and commercial matters comprises three degrees of litigation:

Courts of Primary Jurisdiction: These are divided into District Courts (al-mahakim al-juz’iya) which rule on cases of value of less than EGP 40,000, and the Courts of First Instance (al-mahakim al-ibtida’iya) which rule on cases of higher value.

The Court of Appeal: This court rules on appealed decisions of District Courts, Courts of First Instance. It usually involves complete rehearing of the case for fact and for law.
The Court of Cassation: This is the top of the court hierarchy which mainly examines the application and interpretation of the law, procedural irregularities, or insufficient reasoning with respect to any judgments rendered by the Court of Appeal.

Economic Courts: This type of courts were recently introduced in Egypt. Ordinary courts are required to refer commercial disputes related to certain economic laws including the laws of capital market, investment, financial leases, unfair competition, transfer of technology, commercial agency, intellectual property, insolvency and banking laws to the competent Economic Courts in Egypt. While Economic Courts are part of the hierarchy of ordinary courts, the Economic Court itself is composed of chambers of first instance and chambers of appeal within that hierarchy. Appeal is available under the Economic Courts Law for cases involving amounts of five million (5,000,000) EGP or less. If the value is higher, the case should be litigated directly in appellate circuits and the decision is subject to cassation.

As Egypt is a civil law system, previous decisions and principles of the Court of Cassation do not constitute a case law with a legal binding effect. Nevertheless, such previous decisions and principles do have significant moral and persuasive effect, and are usually taken into consideration by lower courts in civil, commercial, and criminal matters.

Litigation procedures

All issues related to litigation procedures before the Egyptian courts are governed by the Civil and Commercial Procedures Law No. 77 of 1949 and its amendments (the “Civil and Commercial Procedures Law”). Under the law, Egyptian courts have jurisdiction over claims against Egyptian nationals, regardless of their country of residence, except in disputes pertaining to property located abroad.

In case of foreign nationals, Egyptian courts have jurisdiction over disputes against foreign defendants or plaintiffs residing in Egypt, having an elected domicile there, or having agreed to the jurisdiction of Egyptian courts. The said courts also have jurisdiction over cases if Egypt is the location where; (i) a disputed property or amount of money is located; (ii) an obligation is created, performed or should have been performed; (iii) interim or provisional measures related to a case should be executed; or (iv) bankruptcy or insolvency is declared.

Civil and commercial claims are usually initiated in Egypt by lodging a statement of claim with the competent court, and paying the necessary court fees based on the claim value. Defendant should be notified of the claim before the first hearing.

Several hearings are usually set where each party is given an opportunity to present his statements of case and arguments to court with supporting documents and a certain period is granted to the counterparty to reply to the other party’s claims. In practice, hearings are frequently adjourned for various reasons upon the request of the parties due to administrative reasons, or due to the use of
experts, all of which can prolong the litigation process. Therefore, it is not uncommon in Egypt for civil claims to remain before courts for several years.

**Enforcement of Domestic Judgments**

Judgments, if not acted upon voluntarily, may be enforced compulsorily through the machinery of State justice. The enforcement of judgments could occur (i) directly as set out in the decision (such as specific performance and delivery of certain goods); or (ii) indirectly through seizure and sale of property of the losing party (such as for the payment of a monetary award). Enforcement should strictly follow the legal prescribed procedures to avoid any challenge. In practice, procedural challenges to enforcement is a common cause of delays and a prolonged process.

**Enforcement of Foreign Judgments**

To enforce a foreign judgment in Egypt, an enforcement order or "Exequatur" must be sought and obtained from the competent Egyptian court. In principle, the Egyptian court granting an enforcement order will not review the merits of the judgment anew. For an Egyptian court to enforce a foreign judgment, (i) foreign courts rendering the judgment should apply reciprocal treatment to judgments rendered by Egyptian courts when enforced by these courts; (ii) Egyptian courts should not have exclusive jurisdiction to hear the case while the foreign court should be competent to rule on the case; (iii) the judgment should not conflict with a prior Egyptian judgment issued in relation to the same subject matter; (iv) the judgment is not contrary to public order or morality in Egypt; (v) due process should have been observed in the foreign court proceedings; and (vi) the judgment should be final (*res judicata*) in accordance with the relevant law.

Once an Exequatur is issued, the judgment will be enforced according to the same procedures of enforcing domestic judgments. Hence, subject to the same challenges, obstacles, and delays.

**Arbitration in Egypt**


Egypt is also a signatory of the New York Convention on the Recognition and Enforcement of International Arbitral Awards of 1958 (the “New York Convention”) and the Arab Convention on Judicial Cooperation (the “Riyadh Convention”).

The Arbitration Law governs all arbitrations -in civil, commercial, and administrative disputes- seated in Egypt or seated abroad which the parties have subjected to Egyptian procedural law.

**The Arbitration Agreement**
The arbitration agreement has a binding effect over the signatories, whereby the parties are obliged to refer their dispute to an arbitral tribunal pursuant to the terms of their arbitration agreement, and the courts must decline jurisdiction over that dispute except in cases where the validity of the arbitration clause may be questionable.

**Arbitration Proceedings**

The parties are free to choose the procedural rules that would govern the arbitral proceedings. In absence of agreement, the arbitral tribunal may apply the procedural rules that it deems appropriate.

Unless it has been determined that the case shall proceed on the basis of documents only, one or more hearings will take place (at the place of arbitration or in any other convenient place as the tribunal determines), at which the parties and their representatives will have the opportunity to make oral pleadings, present witness evidence and cross-examine the fact and/or expert witnesses presented by the other party.

**Enforcement of Domestic and Foreign Arbitral Awards**

As a general rule, the parties shall execute the award without delay, and many awards are enforced voluntarily. The Arbitration Law governs the recognition and enforcement of awards rendered in Egypt. Enforcement of an arbitral award rendered outside Egypt and under a procedural law other than the Arbitration Law is governed by the New York Convention or the Riyadh Convention, and the rules concerning the enforcement of foreign judgments of the Code of Civil Procedure.

An arbitral award is enforceable by virtue of an *exequatur* to be applied for through an ex parte application. According to the Arbitration Law, enforcement request shall not be submitted to court before the expiry of a period of 90 days in which the losing party may file an application for the annulment of the award. The competent court shall grant an *exequatur* only after it verifies that the award; (i) does not contravene a previous judgment rendered by Egyptian courts in the subject-matter of the dispute; (ii) does not contravene Egyptian public policy; and (iii) has been duly notified to the award debtor in a correct manner.

**Challenge of Arbitral Award**

According to the Arbitration Law, arbitral awards are final and binding, and are not subject to appeal before domestic courts. Nevertheless, the Arbitration Law provides that the losing party may challenge the award, by way of an annulment action, within 90 days from the date of being notified of the award. Filing an application for annulment does not suspend enforcement of awards unless the party so requests and is able to substantiate his claim.

Challenging an arbitral award is only possible in very limited cases listed in the Arbitration Law, these are in the event of (i) the arbitration agreement was void, voidable, expired, or no arbitration agreement; (ii) lack of legal capacity of either party at time of conclusion; (iii) inability of either
party to present its case for reasons beyond its control; (iv) the arbitral award failed to apply the agreed governing law; (v) the composition of the arbitral tribunal was in conflict with the Arbitration Law or agreement; (vi) the arbitral award exceeded the scope provided in the agreement; or (vii) the arbitral award or procedures contained a legal violation causing nullity.

Finally, it is important to note that under the Egyptian law, the parties may agree, after the award is rendered, to waive their rights to challenge the award.

Resolution of Investment Disputes through other National Frameworks

Egypt has recently pursued various additional frameworks to accelerate the settlement of investment disputes between the state and investors. In October 2012, a decree was issued by the Prime Minister providing for the creation of a settlement committee charged with providing recommendations for settling investment disputes over contracts entered into between investors and any governmental entity.

On 12 March 2015, Law no. 17/2015 was enacted introducing substantial amendments to the Egyptian Investment Law no. 8/1997 (the “Investment Law Amendment”). The amendment to the Investment Law introduced a new mechanism for simplified amicable settlement of investment disputes with the government, aimed at avoiding the court system altogether. In particular, the Investment Law Amendment established three out-of-court committees for amicable settlements of public-private disputes.

Grievance Committee for GAFI Decisions

A grievance committee consider challenges against the decisions of the General Authority of Investment and Free Zones ("GAFI") related to implementing the Investment Law and its Executive Regulations. Resorting to such committee is voluntary, and the grievance committee shall issue its decision within 60 days from the date that a challenge is submitted. The lapse of the 60 days without a reply is considered a refusal of the challenge. In any case, the committee’s decisions are final and binding on GAFI but not binding on the investor.

Dispute Resolution Committee (DRC)

The Ministerial Committee for the Resolution of Investment Disputes (simply, the Dispute Resolution Committee or the “DRC”) considers requests, complaints, or disputes arising between an investor and a governmental body in connection with the implementation of the Investment Law. It shall issue the decision with its reasons within 30 days from finalizing the hearings. If the DRC decision is approved by the Cabinet of Ministers, the decision shall be binding on the governmental party only. The investor, on the other hand, may still resort to courts or arbitration to challenge the decision, with no regard to the DRC decision.

Dispute Settlement Committee (DSC)
The Committee for Settlement of Investment Contract Disputes (simply, the Dispute Settlement Committee or the “DSC”) is charged with settling disputes between investors and governmental bodies arising out of investment contracts. In this capacity, the DSC can rectify inaccurate formalities taken to enter into the contract, reschedule financial dues, or extend limitation periods specified in the contracts. Settlement reached between the parties is only binding when approved by the Cabinet of Ministers. If no settlement is reached, each party may commence litigation or arbitration as the case may be. It should be noted, however, that submission to the committee is not a pre-requisite for filing a claim before courts or arbitral tribunal.

**ICSID Arbitration**

The inadequacies of the contractual protection granted to foreign investors have given rise to the conclusion of Bilateral Investment Treaties (BITs) as additional means of investment protection. BITs are a rather recent phenomenon on the international investment scene.

Generally, BITs are concluded between countries for the reciprocal encouragement, promotion and protection of investments in each other’s territories. They principally establish the terms and conditions for private investments by nationals and corporations of one state in another.

In that context, Egypt ratified the ICSID Convention in November 1971. Egypt also entered into investment protection treaties with a number of countries, including German, the United States and Japan.

The distinctive feature of many BITs is that they allow for an alternative dispute resolution mechanism that entitles an investor to have recourse to international arbitration, often under the auspices of the World Bank’s International Centre for the Resolution of Investment Disputes (ICSID) and under the 1966 ICSID convention. Arbitration under the latter brings about a number of considerable advantages for an investor seeking recourse against the guest state. Beside being fully enforceable and not requiring any further acknowledgment by the courts of the host state, ICSID awards are public information and states usually comply thereto in order to avoid the negative publicity which would result from non-compliance and to avoid jeopardizing their relationship with the World Bank.

Furthermore, the cancellation of an ICSID award can only be pursued as per Article 52 of the ICSID rules and through an “Annulment Committee”, entirely excluding the jurisdiction of the host state and thereby ensuring an impartial body.

**Conclusion**

Litigation procedures in Egypt are known to be quite cumbersome and lengthy. Execution of court judgments is also known to be a rather complicated procedure. It is not uncommon for court proceedings over several instances where a claim cannot be evidenced by documents to last for around seven years, especially that there is ample room for procrastination by either party. Such
delay usually results in significant direct and indirect costs that negate the only advantage of low litigation fees.

Seen as a more effective, expeditious, and flexible mechanism for settling investment disputes, arbitration has increasingly been used as a means for settling investment disputes in Egypt. To that end a clear, enforceable arbitration clause in agreements is widely believed to save time and money.