EGYPT COUNTRY CHAPTER

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A. COMMERCIAL DISPUTES

I. INTRODUCTION

Egypt remains one of the largest markets in the Middle East/Africa region. With an estimated population of over 70 million and a growth rate of 1.66% in 2002, the Arab Republic of Egypt is the most populated country in the Arab region. The government of Egypt (GOE) has been following a structural economic reform program since early 1990s. Egypt's difficulties include its heavy reliance on tourism, Suez Canal duties and gas exports for foreign revenue income. The GOE is aware that it needs to diversify its foreign income potential – its human resources being an asset. According to a mid-1990s estimate, 23% of Egypt's population is below the poverty line. In 2001 unemployment was estimated at 12%, with over 500,000 new entrants into the labour market per year. In the beginning of this century, GOE has identified several sectors as national development priority. GOE perceives that it has adequate labour power, which if trained, can make Egypt into formidable different industries. The GOE has aspirations to become a regional and international competitor.

In addition to the above, the GOE has recognized the high priority of expanding and deepening legal reforms as a principal avenue to both greater national productivity and global competitiveness. Accordingly, new set of laws were introduced, such as the intellectual property law, tax law, and money laundry law. Despite impressive and demonstrable progress, however, technical, institutional, legal and regulatory, human resource, and infrastructure obstacles that constrain greater private and public sector utilization and national productivity are yet to be overcome in Egypt. Cooperation between public and private institutions is on the rise and is overcoming some of these obstacles, thus facilitating and accelerating economic growth and productivity leading to increased global competitiveness.

Contrary to common belief, Egyptian law is essentially based on continental European legal models; this is particularly true of Egyptian civil and commercial laws.

The adoption of Western laws can be traced back to the period of legal and administrative reform brought about by Mohamed Ali between 1805 and l849. An enormously important development was the establishment of the so-called "mixed courts". Those courts had jurisdiction over all financial disputes, which touched upon foreign interests, and prevailed from l876 until they were finally abolished in 1949. Although these courts were staffed with both Egyptian and foreign judges – hence the term "mixed" – the foreigners clearly

outnumbered the Egyptians. Decisions were based on modern codifications, in particular the French *"Code Civil"* and *"Code de Commerce"*.

The prevalence of these mixed jurisdiction courts over so many years had a significant impact on the shaping and development of modern Egyptian law, because it was exposed to various Western influences for such a long period. Compared with some other Arab states, which have only developed their legal systems in the last thirty years, Egypt has a sophisticated legal system. Although it unfortunately suffers from a flood of legal provisions and a vast number of regulations and administrative rules, Egyptian jurisprudence is highly sophisticated and enjoys great respect in the Arab world.

II. COMMERCIAL DISPUTES

i. Introduction

Although Egypt's judicial system is modern and relatively efficient, it suffers from both staff shortages and inadequately equipped courts. These shortcomings often result in proceedings being prolonged, the enforcement of judgments being delayed and legal actions not being carried out properly.

The Egyptian judicial system is however remarkably underdeveloped in connection with the settlement of commercial disputes. In fact, as will be discussed below, the Egyptian Courts' system does not recognize to a large extent the concept of specialized courts in general and commercial and economic courts specifically.

Whilst there is an ongoing debate between several institutions, amongst them the economic committee of the National Democratic Party, and legal authors regarding the establishment of "Specialized Economic Courts", this initiative has not yet been shaped in a form that could be thoroughly examined. Therefore, this section will only deal with the existing system while outlining its major pitfalls.

ii. Definition

The Egyptian Civil and Commercial Proceedings Law No. 13 of the year 1968 ("Proceedings Law") with its latest amendments does not include an express definition of what is considered a commercial dispute. The only reference to commercial disputes in the context of territorial jurisdiction is found in Article 55 which provides that in cases of commercial disputes the plaintiff may file his claim before the court in which jurisdiction the defendant is located or the

court in which the contract has been performed[1]. Therefore, reference must be made to the provisions of the Egyptian Commercial Code in order to determine whether or not the nature of a dispute is commercial.

Article 1 of the Egyptian Commercial Code of 1999 defines the scope of application of the Commercial Code to include all *"commercial operations as well as any natural or juristic person who acquires the capacity of a trader"*[2] .

Article 4 of the Commercial Code provides for a non exhaustive list of examples of activities that are considered per se commercial activities. This list includes the purchase of movables with the purpose of reselling it or leasing after changing its original form, lease of movables for the purpose of sub-leasing it as well as the establishment of commercial companies[3]. As for Articles 5 and 6, these provide for a list of activities that should be as well considered commercial if exercised on a professional basis. This list includes: supply of merchandise or services, industry, transportation, commercial agency and brokerage, insurance, banking operations, storage, mining, exploitation of computer software, satellite diffusion, poultry and cattle elevation, marine transportation as well as construction activities[4]. Finally Article 7 of the Code considers any activity to be commercial if it is found to be similar in nature or result by analogy to the activities listed in Articles 4, 5, and 6 of the Code.

As for the capacity of a trader, this is bestowed on any individual or legal person who exercises on a professional basis, in his name and for his own account a commercial activity as well as all types of companies whatever is the legal regimes to which they are subject[5].

From the above, it would be realized that a commercial dispute is thus allocated to a commercial circuit only if it falls within the scope of the Commercial Code with respect to the defendant and not to the plaintiff.

Finally, it is noteworthy of mention that the Egyptian jurisprudence does not consider that the distinction between commercial and civil disputes is important for the purpose of determining the competent court. This is due to the fact that the Egyptian legal system does not recognize the concept of a separate commercial jurisdiction even if there is an internal distribution of matters within courts; this does not mean that there is an independent court to examine commercial disputes.[6]

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[1] Article 55 of Civil and Commercial Procedures Law 13/1968.
[2] Article 1 of the Egyptian Commercial Law No. 17/1999.
[3] Article 4 of the Egyptian Commercial Law No. 17/1999.
[4] Articles 5and 6 of the Egyptian Commercial Law No. 17/1999
[5] Article 10 of the Egyptian Commercial Code
[6] Statements of the Egyptian Minister of Justice in 1998 during the parliamentary discussions of the draft commercial code delivered on February 7, 1998 as incorporated in the minutes of the Egyptian Parliament Session N0. 32

iii. Impact on Trade and Business Activities

This lack of a proper distinction between commercial and civil matters which should have lead to the establishment of proper commercial courts with a focus on commercial disputes has led to a serious adverse effect on the exercise of business activities in Egypt.

Dr. Samiha Fawzy, Vice Chairman of the Egyptian Centre for Economic Studies in Egypt ("ECES"), conducted a detailed study in 1998 where it was reporting that Egyptian firms regarded tax administration and commercial disputes settlement are the two most severe constraints on their operations. Both were reported to have increased in severity between 1994 and 1998 while being more serious for smaller firms than for larger ones and for firms in industry, construction and trade than for those in oil or tourism.

Dr. Fawzy showed the frequency and severity of disputes to be in the following declining order: bankruptcy, broken agreements, problems with the tax authority, and the quality of supplies. Almost two thirds of the firms' disputes were with other private firms, 22 percent had disputes with government agencies, and the rest with banks, labour and public enterprise. According to Dr. Fawzy, investors and economic players complain that the cost of litigation is high, it is time consuming and *"the judicial system is not well acquainted with commercial disputes related to market economies"*. She as well reported the complaints of investors about lack of contract enforcement mechanisms and poor enforcement of laws[7].

One of the crucial impacts caused by this ambiguity and lack of specialization is the long time it takes to resolve a dispute through the judicial system. Basing his argument on a World Bank survey that he applied to Egypt's commercial cases, Dr. Galal, Executive Director of the ECES, stated that the clearance rate of such cases taken to the formal court system was only 36 percent compared to 80 percent in Japan and 88 percent in Belgium. At the same time, the average time needed for the minority of cases that were settled had increased from two years in the seventies to over six years in the early nineties[8].

In light of the foregoing, it would be safe to conclude that the lack of distinction of commercial and civil disputes in connection with the competence of courts, the lack of specialized well equipped commercial judges has a serious adverse and negative effect on the conduct of business activities in Egypt and that the cost of dispute settlement is one of the most important obstacles faced by investors in Egypt.

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[7] FAWZY, Samiha 1998: "The Business Environment in Egypt" Paper presented to the Mediterranean Development Forum II in Marrakech, Morocco, September 1998.

[8] GALAL, Ahmed "Can Egypt Grow without Institutional Reforms? If Not Which Institutions Matter Most?" in *Industrial Strategies and Policies, Management and Entrepreneur Skills*. United Nations ESCWA, 1996.

It is important to give a thought of what economy is in Egypt and where it stands. Economy is on of the most important pillar existing in each country; it is the indices of development, industrialisation and prosperity.

According to the Economist Intelligence Unit[9], the Economy in Egypt is facing lots of difficulty since the cabinet of the Prime Minister Ahmed Nazif took the government after his predecessor Atef Ebeid. This include restoring business confidence with a view to simulating far more rapid, private-sector-led economy growth arresting the deterioration in public finance, and bringing greater coherence and transparency to monetary policy and the management of the exchange rate. The pace at which the new cabinet has embarked in reform has surprised many who had expected a more gradualist approach, given the well-documented caution of the president. Key measures have included lowering customs duties and simplifying customs procedures-a long-standing demand of investors, both foreign and domestic- as well as sharp reductions in income taxes. The diesel subsidy has been cut and a slew of other measures have been announced, including a far-reaching privatisation programme.

The customs and taxation reform measures aim to stimulate the economy by raising disposable income and reducing barriers to investment and production. The government is calculating that the short-term cost in terms of lower revenue will, in the medium term, be more than recouped by a widening of the tax-net- as the incentive to evade is reduced- and by a more rapid pick-up in economic activity, which will both raise the tax take and reduce pressure on government spending. Achieving such a goal should be possible as consumer and business confidence strengthens, boosted by the more coherent economic management now in evidence. The pick-up in privatisation should also bolster Egypt's ability to pay down the domestic debt stock. There are risks to the cabinet's bold approach, however. If commitment to reform flags, economic activity may not strengthen sufficiently- and privatisation may not accelerate though- to offset revenue shortfalls, leaving the public finances in a more precarious state. Moreover, if tourism- Egypt's main industry, which is vulnerable to one-off acts of violence-suffers a sharp downturn, the government's task will be made more difficult.

Sharm El Sheikh bombing had a less severe impact on the tourism sector than the Luxor massacre of November 1997, which caused a decline in tourism receipts in 1998 of about a third.

[9] Synopsis prepared by the EU regarding the Economist Intelligence Unit Limited establishing and managing operations across national borders.

III. INVESTMENT DISPUTES

i. Investment Treaties

Egypt is party to thirty four bilateral investment treaties. Most of these treaties, if not all of them, include for a jurisdiction clause whereby any dispute that arises between any of the contracting parties or their nationals, who are protected by virtue of these treaties, must be submitted to the International Centre for Settlement of Investment Disputes ("ICSID").

Since 1998 four claims were brought against Egypt before ICSID. Two were in application of the Bilateral Investment Treaty ("BIT") with the United Kingdom, one based on the BIT with the United States and the last with Greece.

It is actually interesting to note that the Egyptian Government's respect for the role of these investment treaties has increased drastically over the past ten years in light of the gravity of the decisions issued against the government. This late awareness has led the government to employ more qualified practitioners and not to depend on the governmental corps.

ii. Investment Law

The statutes of a company established under the Investment Law may contain an arbitration clause. In most cases, the General Authority for Investment and Free Zones ("GAFI") will accept the competence of the Cairo Regional Centre for International Commercial Arbitration ("CRCICA"). In some cases references to shareholders' agreements and joint venture agreements will also be accepted.

Foreign investors may conclude branch office agreements with the Investment Authority. Such agreements usually include arbitration clauses. Clauses referring to ICSID and the Egyptian Law on Arbitral Jurisdiction No. 27/1994 are expressly permitted under Article 7 Investment Law. Dispute resolution according to ICSID is agreed upon in many investment protection agreements.

IV. DISPUTE RESOLUTION TECHNIQUES

i. Commercial Courts

In civil and commercial matters, the Egyptian court system follows the principle of two stages of appeal. This does not include the Supreme Court of Appeal, which only has the power of cassation and not an independent power of decision.

There is a general court, which has jurisdiction over all matters for which no other jurisdiction has expressly been designated. Besides that, there is the Court of First Instance, i.e. a lower court, for cases involving only small amounts. There is a Court of Appeal for the decisions of the general court. The decisions of the court of First Instance may be contested before the general court, which exercises the function of a court of appeal in these cases, if the amount in dispute exceeds the threshold required to file an appeal.

The Supreme Court of Appeal, situated in Cairo, is competent to decide upon questions of law. There are divisions with criminal courts, civil courts, courts for commercial disputes, and courts regarding family and inheritance law. Five judges sit in each session. The Supreme Court of Appeal was established to unify the law. Its supervision of the courts of lower instance only covers legal and procedural issues but not questions of fact.

The problems inherent to the Egyptian judiciary system usually do not occur due to the legal framework of the court organization and procedures, but because of some shortfalls in practice, especially concerning the deficient equipment of the courts and judiciary. Egyptian judges suffer from a high workload, an inefficient court administration as well as from a lack of premises. A main reason for many numerous delays is the system adopted for the notification of judicial summons and decisions. Since the court employees who serve judicial documents are underpaid, they frequently make their own decisions. Due to the insufficient training of judges in specific areas, especially in commercial matters, decisions regarding complicated issues are usually left to experts who are employed by the Ministry of Justice or the State Council. Since these experts are not bound by any time limits, it may take months or even years for them to render their expert opinion.

Further, the effects of the socialist period (1957 – 1973) influenced by President Gamal Abdel Nasser may still be felt today. The extensive nationalization brought about a drastic decline of experienced lawyers working in the fields of commercial and business law. Many of these lawyers took up positions with their former, now nationalized, clients or emigrated. This migration of specialized lawyers resulted in a clear deterioration of the legal standards in the respective legal fields. Meanwhile, it has been recognized that it is crucial to improve and strengthen the Egyptian legal system in order to create a more favourable environment for investments in Egypt.

1. Description

As pointed out above, the Egyptian legal system does not provide for specialized courts for the settlement of commercial disputes as was the case under the mixed courts system.

The *interpreting memorandum* of the Civil and Commercial Procedures Law provide that the legislator saw that the existence of specialized commercial courts was only a result of some historical considerations and that the gap between commercial and civil matters has been reduced in a manner that does not justify the creation of a special court for commercial matters.

However, this express abandonment of a distinction between commercial and civil matters did not prevent the internal distribution of disputes amongst the different circuits of courts. In practice, disputes are divided within the courts into several circuits, amongst them a commercial one. This distribution is nothing but an internal administrative distribution and does not have any impact on the admissibility of claims.

Even if there is no specific commercial or labour jurisdiction, according to Law No. 46 of the year 1972 regarding the court structure, the Minister of Justice has the power to establish courts of First Instance for commercial and labour issues. Two Commercial Courts were established in Cairo and Alexandria in 1940. They do not differ from the other courts of First Instance except for their specialization on commercial matters.

2. Jurisdiction

The jurisdiction of these two courts as well as the jurisdiction of the commercial divisions of the First Instance, Appeal, and Courts of Cassation is based on the traditional rules of jurisdiction under the Civil and Commercial Procedures Law which follows the principal of territoriality as well as the value of the claim with few exceptions regarding the type of the dispute.

ii. Other Techniques

The judicial system does not include any other forms of dispute settlement that is prior or later to the court's judgment. It is only left for the judge to decide whether or not he needs the assistance of an expert to determine on certain technical aspects of the claim he is examining. Even in the case of an expert determination, this opinion is not binding on the judge.

B- ARBITRATION

Arbitration has become a pioneer method for settlement of commercial disputes both nationally and internationally. It derives its force from being a speedy method (compared to litigation)

resulting in a binding enforceable decision (compared to other Alternative Dispute Resolution). The following sections shall first provide a brief introduction on the historical origins of arbitration leading to the current arbitration scene in Egypt and in Islamic *Shairaa'* then will proceed to examine arbitration as practiced in Egypt starting from what arbitration is under Egyptian Law through the enforcement of arbitral awards.

I- HISTORICAL BACKGROUND

The word arbitration finds its origins in the Latin word *"arbitror"* meaning to judge or arbitrate.

Arbitration was practiced in ancient civilizations, such as the Greek city-states[10] and has formed part of the Greek mythology[11]. It was also practiced in Europe during the Middle Ages then revived by the United States and Great Britain agreement to submit certain disputes to arbitration under the Jay Treaty of 1794.

The usage of arbitration, however, in its modern form has started as a result of international efforts to establish rules or methods *"with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments"* as per the initiative of Czar Nicolas II of Russia to convene the first Hague Peace Conference in 1899. The outcome of this conference was the establishment of the Permanent Court of Arbitration ("PCA"), the first global mechanism for the settlement of inter-state disputes[12]. In 1968, Egypt ratified the 1907 Convention for the Pacific Settlement of International Disputes establishing the PCA.

Subsequently, the League of Nations was established in January 1920 and used arbitration as a possible mechanism for the settlement of disputes between states. Egypt joined the League of Nations in 1937 and was one of the first Arab countries to join the League, preceded only by Iraq.

Apart from the usage of arbitration in the political arena, arbitration became used in Europe and the United States as a method for the settlement of commercial and labour disputes.

[10] Around 400 B.C. and as the Athenian courts became crowded, the position of public arbitrator was instituted. The proceedings were formal and the decision to take a case to an arbitrator was voluntary, yet the choice of becoming an arbitrator was not. And every man was required to serve as an arbitrator according to the set procedures.

[11] The famous story of the goddesses Juno, Athena and Aphrodite who disagreed over which among them was the most beautiful and asked Paris, the King of Troy's son, to decide the matter. Paris, accepting Aphrodite's bribe, has chosen her. This started the War for Troy.
[12] The website of the Permanent Court of Arbitration, http://www.pca-cpa.org.

In 1920, the International Chamber of Commerce ("ICC") was established to serve the world of business through the promotion of free trade and investment and in 1923 the ICC's International Court of Arbitration was established to provide a forum for the settlement of commercial disputes.

Following this, the American Arbitration Association ("AAA") was founded in 1926 to offer a wide range of services including education and training, publications and the resolution of a wide range of disputes through mediation, arbitration, elections and other out-of-court settlement techniques.

Recognizing that one of the major problems facing arbitration was the enforcement of arbitral awards in foreign countries, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards was enacted in 1958 ("New York Convention"). Egypt has ratified the New York Convention in 1959.

Again international efforts were directed to the establishment of commission to further the progressive harmonization and unification of the law of international trade and the United Nations Commission on International Trade ("UNCITRAL") was established by the UN General Assembly in 1966. In fulfilment of its mandate, the UNCITRAL has adopted in 1976 the Arbitration Rules providing comprehensive rules and procedures to be used in the conduct of arbitrations. In 1985, the UNCITRAL adopted the UNCITRAL Model Law ("Model Law") that was designed to assist states in reforming and modernizing their laws on arbitral procedure to take into account the particular features and needs of international commercial arbitration.

The motivation that brought this Model Law to light was the recognition of the inadequacy of national laws to deal with international arbitration. The efforts made to issue this Model Law made it a remarkable document that allowed many countries to follow the call of modernizing its laws on arbitration. (Egypt included).

Egypt started the process of modernizing its arbitration laws reaching to the issuance of the current Egyptian Arbitration Law as shall be discussed below.

II- ROLE OF ARBITRATION

Arbitration in its modern form provides a practical solution for business. It is an intermediary solution between the judicial process and other forms of dispute settlement.

From the judicial process, it took the main feature of being final and binding, while it took after mediation and conciliation, in providing a rapid solution as well as flexibility to the parties of a dispute.

Therefore, people involved in a commercial dispute are saved from recourse to lengthy litigation procedures that in some countries like Egypt may continue for as much as ten years and are also able to get a final binding and enforceable decision settling the dispute, contrary to other forms of Alternative Dispute Resolutions ("ADR"). This in itself is considered by the business community as a save of expenses.

As such, arbitration can be playing a huge role in assuring investors of the existence of an efficient method for resolving disputes.

III- ARBITRATION UNDER ISLAMIC *SHARIAA'*[13]

As stated beyond, arbitration has been used since the days of the Greek city-states; it was also used in the Arab peninsula even prior to Islam and was practiced under the Christian and Jewish religions.

As Islam came, it has confirmed a number of traditions that were already in place in the Arab peninsula and abolished others that contradicted with the Islamic concept. Islam confirmed the method used by Arab tribes in resolving disputes and was practiced by Prophet Mohamed (peace be upon him) in the well-known incident of the Black Stone[14].

In addition to this, arbitration (*"tahkeem"* in Arabic) was explicitly mentioned in Quran in verses 35 and 58 of *Sorat Al Nesaa'* and confirmed in the other sources of Islam.

In Egypt, *Shariaa'* is considered to be the main source of legislation as confirmed by Article 2 of the Egyptian Constitution, reading:

> *"Islam is the Religion of the State. Arabic is its official language and the principal source of legislation is Islamic Jurisprudence (Shariaa')."*

As such, arbitration has been accepted in Egypt as a method of settlement of disputes finding its roots in *Shariaa*'.

IV- EGYPTIAN ARBITRATION LAW

[13] This section is partly based on the Article titled "Arbitration under the Islamic Sharia" by Zeyad Alqurashi published online in the Oil, Gas & Energy Law Intelligence, Volume I, and issue # 02 - March 2003. (http://www.gasandoil.com/ogel/samples/freearticles/article_63.htm).

[14] He acted as an arbitrator in the dispute between several Arab tribes regarding which of them will have the honor of lifting and placing the Black Stone after rebuilding the *Kaaba*. He put the Black Stone in his outer garment and judged that every tribe chooses a representative and that all the representatives carry the garment together to the place of the Stone.

i. Pre-1994

Prior to the issuance of the Egyptian Arbitration Law No.27 for the year 1994 ("Arbitration Law"), arbitrations were governed by Articles 501 through 513 of the law governing Proceedings Law. Those 13 articles governed the whole body of arbitration in Egypt and have created a number of difficulties for arbitration users in Egypt; hence it has contained a number of unreasonable provisions, such as the requirement that the arbitrators be appointed in the arbitration agreement[15].

Awards issued pursuant to said articles were to be enforced based on an order issued by the execution judge of the court in which the original award was deposited. Nevertheless, the enforcement of foreign arbitral awards was and still is governed by Articles 296 through 301 of the Proceedings Law.

However, in the beginning of the eighties a dramatic change in the Egyptian economic policy has taken place. Egypt started its first steps in liberalizing the economy and attempted to attract foreign trade. This was done through issuing investment laws granting foreign investors privileges and incentives as well as relaxing laws governing ownership of companies. Though, it became apparent that investors needed an assurance that an effective and speedy method of dispute resolution was available.

With this believe, the Egyptian legislator started the preparation of an arbitration law to replace Articles 501 through 513 of the Proceedings Law. In preparing this new arbitration law, the Egyptian legislator followed to a great extent the UNCITRAL Model Law, but, has inserted a number of amendments thereon to suit the custom of national legislations[16]. The preparation of this law was undertaken over eight years by various professors of law and was subject to long and extensive debates in the Egyptian Parliament.

The result of those extensive efforts was finally the issuance of the Arbitration Law on 18 April 1994, which entered into force one month thereafter.

ii. The New Arbitration Law

1. Scope of Applicability

When preparing this Arbitration Law it was initially meant to govern international commercial arbitrations only, however, by the time of its issuance it was made to govern both international and domestic commercial arbitrations.

[15] Article 502 of the Proceedings Law.
[16] The Explanatory Note of the Arbitration Law.

The applicability of this law in terms of time was determined by the first article of the Arbitration Law's, stipulating that:

> *"shall apply to any arbitration pending at the time it enters into force or which commence thereafter, even if it is based on an arbitral agreement concluded before the law entered into force".*

Then, article 3 of the issuance law repealed articles 501 through 513 of the Proceedings Law as well as any provision contrary to any provision of the Arbitration Law.

In terms of subject matter, the Arbitration Law is applicable to all arbitrations conducted in Egypt or when the parties to an international commercial arbitration agree to subjecting the arbitration to its provisions. This has been stipulated upon in the first paragraph of Article 1, reading:

> *"Without prejudice to the provisions of international conventions in force in the Arab Republic of Egypt, the provisions of the present law shall apply to any arbitration between public law or private law persons, whatever the nature of the legal relationship around which the dispute revolves, when such arbitrations are conducted in Egypt or when the parties to an international commercial arbitration conducted abroad agree to subject it to the provisions of this Law".*

It is worth noting that at the time of the issuance of the Arbitration Law, Article 1 has consisted solely of the above quoted paragraph. However, despite the clear wording as to the applicability of this law to public bodies entering into arbitration agreements, yet such wording has created confusion as to whether public or governmental bodies were bound by arbitration agreements. To resolve this confusion a second paragraph to this article was introduced by Law No. 9 of the year 1997 adding the following paragraph to Article 1 of the Arbitration Law:

> *"In regard to administrative contract disputes, the arbitration agreement shall have the approval of the concerned minister or the official assuming his powers with respect to public juridical persons. No delegation of powers shall be authorized therefore."*

Accordingly, the Arbitration Law now applies to arbitrations in which a public or governmental authority is a party.

2. Definition of Arbitration

In general, the word "arbitration" is taken to mean a method to resolve commercial disputes between two parties or more by a panel of one or more impartial individual, called arbitrator(s), having the right to issue final and binding awards.

Article 2 (a) of the Model Law defines arbitration as *"any arbitration whether or not administered by a permanent arbitral institution"*.

Similarly, Article 4 (1) of the Arbitration Law defines arbitration as *"the arbitration agreed upon by the parties to a dispute by their own free will, whether the body to which the arbitral mission is entrusted by virtue of the parties' agreement is an institution or permanent arbitration centre or not"*.

3. Definition of International

The importance of defining whether arbitration is international or otherwise is usually made to differentiate between international arbitrations and domestic arbitrations, for the purpose of applying different rules thereon.

In setting the criteria for an arbitration to be considered international, Article 3 of the Arbitration Law has followed the Model Law in providing that an arbitration is to be considered international if:

1. The parties' head offices are located in different countries;
2. the subject matter of the dispute is located to more than one state;
3. the seat of arbitration is not located in the same country as the parties' head offices;
4. an essential part of the agreement subject to dispute is to be performed in a place other than the parties' head offices.

However, in setting these criteria, Article 3 provides that arbitration is considered international if the matter thereof relates to international trade as in the above referred to cases.

Moreover, the Egyptian legislator has provided an extra criterion for an arbitration to be considered international that is if the parties agree to resort to a permanent arbitral organization or to an arbitration centre having its headquarter in Egypt or abroad. As such any institutional arbitration in Egypt, according to such criterion, is to be considered international. This is a

provision that is not to be found in the Model Law nor in other Arbitration Laws as far the authors know.

Despite this attempt to differentiate between domestic and international arbitrations, the Arbitration Law seems to set no consequence to such differentiation, save as for Article 9 provision determining that the jurisdiction to review arbitral matters lies with the court having original jurisdiction over the dispute should the arbitration be domestic, while this jurisdiction is vested to the Cairo Court of Appeal should it be an international arbitration.

Nonetheless, the CRCICA differentiates between international and domestic arbitrations in terms of fees, whether registration, arbitrators or administrative fees[17], yet the CRCICA arbitration rules do not set a criterion for differentiating between international and domestic cases. It is, however, a matter of practice that an arbitration case will be considered domestic if the parties to the dispute are both Egyptians and the contact subject of the dispute is performed in Egypt.

Another point of difference between the Model Law and the Arbitration Law with respect to the definition of international is that under the Arbitration Law an arbitration is considered international if the respective head offices of the parties to arbitration are located in the same country, while the place closely linked to the subject matter of the dispute is located in another country. This provision is an amendment of Article 3 (c) of the Model Law stipulating that arbitration is considered international if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

4. Definition of Commercial

In defining when arbitration is considered "commercial" the Egyptian legislator followed the Model Law note 2 that the term commercial should be given a wide interpretation, and as such Article 2 of the Arbitration Law stipulated that:

> *"Arbitration is commercial within the scope of this Law if the dispute arose over a legal relationship of an economic nature, whether contractual or non-contractual. This comprises, in particular, the supply of commodities or services, commercial agencies, construction and engineering or technical Know-how contracts, the granting of industrial, touristic and other licenses, technology transfer, investment and development contracts, banking, insurance and transport operations, exploration and extraction of natural wealth, energy supply, the laying of gas or oil pipelines, the building of roads and tunnels, the*

[17] See Articles 40 and 40 [bis] of CRCICA Arbitration Rules.

> *reclamation of agricultural land, the protection of the environment and the establishment of nuclear reactors."*

It is worth noting, that arbitration is not permissible in matters where compromise *"sulh"* is not allowed, regardless of being commercial or not[18].

Furthermore, Articles 4 through 9 of the Egyptian Commercial Law No. 17 for the year 1999 provides a list of what maybe considered commercial.

5. Arbitration Clause

In setting what forms a valid arbitration clause or agreement, the Egyptian legislator, following in the footsteps of the Model Law, defined in Article 10 (1) an arbitration agreement as *"an agreement by which the parties agree to resort to arbitration as a means of resolving all or some of the disputes which arose or which may arise between them in connection with a specific legal relationship, contractual or non contractual"*.

It has also accepted that an arbitral agreement may be drawn prior or after the occurrence of the dispute, whether as part of an agreement or as a separate agreement. In the event that the agreement is drawn prior to the occurrence of the dispute, the subject matter of the dispute must be determined in the statement of claim, while if the agreement is concluded thereafter, then it must, under the pain of nullity, determine the matters included in the arbitration[19]. An arbitration agreement may be also included by reference[20].

As in other arbitration laws and the Model Law, the Arbitration Law requires that the arbitration agreement be in writing and signed by the parties, however, has set the absence of writing as a reason for the arbitration agreement to be held null and void[21].

6. Appointment of Arbitrators

An arbitral tribunal under the Arbitration Law maybe composed of one or more arbitrators as per the parties' agreement. Failing this agreement, the number of arbitrators shall be three, the same as the Model Law. However, the Arbitration Law provides an extra provision not found in the Model Law being that an arbitral tribunal must be, under the penalty of nullity, composed of an odd number[22].

[18] Article 11 of the Arbitration Law.
[19] Article 10 (2) of the Arbitration Law.
[20] Article 10 (3) of the Arbitration Law.
[21] Article 12 of the Arbitration Law.
[22] Article 15 of the Arbitration Law.

The Arbitration Law sets a number of basic requirements that an arbitrator must fulfil. An arbitrator must not be a minor, subject to interdiction or deprived of his/her civil rights by reason of a judgment for a felony or misdemeanour contrary to morality or by reason of declaration of bankruptcy, unless he has been rehabilitated.

With respect to nationality, the Arbitration Law as the Model Law stipulates that an arbitrator do not need to have a specific nationality unless agreed otherwise by the parties; though, the Arbitration Law further stipulates that the arbitrator do not need to have a specific nationality unless otherwise is provided by the law. Moreover, the Arbitration Law provides that the arbitrator do not need to have a specific gender unless it is agreed otherwise by the parties or provided for by the law.

An arbitrator is required to accept in writing to act as an arbitrator in specific proceedings and must disclose in this acceptance any circumstances that may cast doubt on his/her independence or neutrality[23].

Similarly as in Article 11 of the Model Law, the parties under the Arbitration Law are free to chose the method and manner for the selection of arbitrators as well as sets a similar procedure to be followed in case of the parties failure to appoint the arbitrators[24].

Furthermore, Articles 18 and 19 of the Arbitration Law set the grounds and procedures for challenging arbitrators. Similarly to Article 12 (2) of the Model Law, Article 18 provides that:

> *"1. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence.*
>
> *2. either party may challenge an arbitrator appointed by him, or in whose appointment he has participated, except for reasons of which he becomes aware after the appointment has been made."*

And Article 19 of the Arbitration Law deals with the procedures for challenging arbitrators. Originally Article 19 required that the challenge application be submitted to the arbitral tribunal within fifteen days from the date on which the tribunal was constituted or from the date on which the reason for challenge has come to the attention of the applicant and provided that should the challenged arbitrator not step down, then the tribunal would issue a decision in this application. In the event that the challenge application is rejected, the applicant had the right to refer the matter to the court having jurisdiction within thirty days of being notified of the rejection.

[23] Article 16 of the Arbitration Law.
[24] Article 17 of the Arbitration Law.

This Article has been amended by Law No. 8 for the Year 2000 as follows:

> *"1. The challenge application shall be submitted in writing to the arbitral tribunal, indicating therein the reasons for the challenge, within fifteen days from the date on which the applicant has become aware of the constitution of this tribunal, or of the conditions justifying the challenge. If the arbitrator being challenged does not step aside within fifteen days from the date of the submission of the application, it shall be referred, without charges, to the court referred to under Article (9) of this law, to render an incontestable decision thereon.*
>
> *2. The challenge application shall not be accepted from part of whoever has previously submitted a challenge application related to the challenge of the same arbitrator in relation to the same arbitration.*
>
> *3. The submission of the challenge application shall not result in the suspension of the arbitration procedures. If the challenge of the arbitrator is accepted and sentenced, the arbitration procedures which have been undertaken, including the arbitrator's ruling, shall be consequently considered as null and void".*

7. Nullity Provisions

The Nullity of arbitral awards is governed by Articles 52 through 54 of the Arbitration Law. Arbitral awards issued pursuant to the Arbitration Law may not be appealed through recourse to any means prescribed in the Proceedings Law[25].

An application for the annulment of the arbitral award is acceptable in following cases[26]:

- If no arbitral agreement exists, or if it is void, capable of being void or expired.
- if at the time of entering into the arbitral agreement one of the parties thereto was minor or incapacitated pursuant to the law governing his capacity;
- if one of the parties to the arbitration was unable to present his defence because he was not properly notified of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond his control;
- if the arbitral award fails to apply the law agreed to by the parties to the subject matter of the dispute;

[25] Article 52 of the Arbitration Law.
[26] Article 53 of the Arbitration Law.

- if the Arbitral Tribunal was constituted or the arbitrators were appointed in a manner contrary to law or to the agreement between the parties;

- if the arbitral award rules on matters not included in the arbitral agreement or exceeds the limits of such agreement. Nevertheless, if the parts of the award relating to matters which are amenable to arbitration can be separated from the parts relating to matters which are not, then nullity shall apply only to the latter parts; and

- if nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award.

Moreover, the court may on its own motion declare the award null and void award if its contents violate public policy in Egypt.

One point of difference between the Model Law and the Arbitration Law is that the former provides in its Article 34 (4) for the right of the court to suspend the nullity proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. No such provision is found in the Arbitration Law.

V. AD HOC VS. INSTITUTIONAL ARBITRATION IN EGYPT

i. Introduction

Institutional arbitration is generally taken to mean arbitrations conducted before a permanent arbitration centre or institution having its own arbitration rules, while ad-hoc arbitration generally refers to an arbitration procedure that is not administered by others and where the parties are fully responsible for making all material organization of the dispute resolution procedure or through reference to certain procedural rules to be followed.

The Arbitration Law does not set any definition for either type, yet makes a number of subtle references to both throughout its different provisions. For example, Article 5 of the Arbitration Law stipulates that *"in those cases where the law permits the parties to arbitration to select the procedures which must be followed in a given matter, this also includes their right to allow a third party to make such selection. In this regard, third parties are deemed to be any arbitral institution or centre in Egypt or abroad"* and in Article 25 grants the parties to an arbitration procedure *"the right to agree on the procedures to be followed by the arbitral tribunal, including the right to subject it such procedures to the provisions in force in any arbitral organization or centre in Egypt or abroad ..."*.

The Arbitration Law makes no differentiation between institutional and ad-hoc arbitrations and both are subjected to the same provisions in terms of enforcement of awards rendered in either.

ii. Active Institutions

As it stands today, there are three active arbitration centres in Egypt, the most known and active of which is the CRCICA , then there is the Ain Shams University Arbitration Centre and Dr. A. Kheir Law & Arbitration Centre ("AKLAC"). This latter is a private imitative and is established as an independent non-governmental organization[27].

iii. The Cairo Regional Centre for International Commercial Arbitration (CRCICA)

1. Establishment

CRCICA is a non-profit organization enjoying immunities granted to other international organizations and was established in 1979 for an experimental period of three years following the signature of an agreement between the Asian African Legal Consultative Committee and the Egyptian government. CRCICA became a permanent organization in 1983.

2. Role

CRCICA is considered the main promoter of Arbitration and other ADR techniques in Egypt. It offers a wide range of services ranging from administering domestic and local arbitrations as well as other ADR techniques, selecting arbitrators and mediators to the promotion same through the conduct of seminars, conferences and publication of researches.

3. Rules

CRCICA has its own set of rules that are based on the UNCITRAL rules, however, were adapted to fit the culture and the Egyptian arbitration law.

4. Arbitration Proceedings

Under the CRCICA rules, arbitration starts when the respondent receives claimant's notice of arbitration. This arbitration notice must include; a demand that the dispute be referred to arbitration, names and addresses of the parties, the arbitration clause or agreement or a reference thereto, a reference to the contract out of which the dispute arose, general nature of the claim and an indication to the amount claimed, relief or remedy sought and the number of arbitrators[28].

[27] http://www.kheirlaw.com.eg/docs/aklac/aklac.htm
[28] Article 3 of CRCICA Arbitration Rules.

Following respondent's receipt of the notice of arbitration, Respondent shall within thirty days reply in writing indicating his preliminary defence with reference and copies of the documents that may support his view. This reply should include the name of the nominated arbitrator.

If the parties have not previously agreed on the number of arbitrators and if within fifteen days following respondent's receipt of the notice of arbitration the parties have not agreed that there will be one arbitrator, three arbitrators shall be appointed.

If a sole arbitrator is to be appointed and the parties fail to agree on the name of the person following thirty days of a proposal by either party, then the appointing authority named by the parties shall make the appointment. Should said authority refuse or fail to make such an appointment within thirty days of the party's request, CRCICA shall make the appointment[29]. The same procedure applies for the appointment of the chairman of the arbitral tribunal is composed of three arbitrators[30].

A party intending to challenge the arbitral tribunal must within fifteen days of being notified of the appointment of the challenged arbitrator submit a notice to this effect[31]. The submission of a challenge notice does not cause the suspension of the proceedings.

After the appointment of the arbitral tribunal, it shall determine the place and language of arbitration if no agreement between the parties has been reached in this regard. The tribunal will generally set a preliminary hearing for the purposes of drawing a terms of reference or just for the setting of a time table for the procedures to be followed in the arbitration[32].

Following this, a statement of claim is to be submitted by the claimant at the time determined by the arbitral tribunal. The statement of claim must include the names and addresses of the parties, a statement of the facts supporting the claim, the points of dispute and the relief and remedy sought[33]. The respondent shall provide its statement of defence and counterclaim (if any) within the period of time determined by the tribunal. Also any pleas with respect to the jurisdiction of the arbitral tribunal shall be made no later than the time of submitting the statement of defence or counterclaim[34].

[29] Article 6 of CRICA Arbitration Rules.
[30] Article 7 of CRCIA Arbitration Rules.
[31] Article 11 of CRCICA Arbitration Rules.
[32] Article 15 (1) of CRCICA Arbitration Rules.
[33] Article 18 of CRCICA Arbitration Rules.
[34] Article 21 of CRCICA Rules.

The tribunal will determine the closure of the hearings after ensuring that the parties have no further proof to submit and then after deliberating the matter, the tribunal shall issue an award in the dispute.

VI. ROLE OF LOCAL COURTS

Under the Arbitration Law, the legislator has vested a number of roles to the local courts. The court vested with such powers is referred to as Article 9 court. Said Article reads as follows:

> *"1. Jurisdiction to review the arbitral matters referred by this law to the Egyptian judiciary lies with the court having original jurisdiction over the dispute.*
>
> *2. However, in the case of international commercial arbitration, whether conducted in Egypt or abroad, jurisdiction lies with the Cairo Court of Appeal unless the parties agree on the competence of another court of appeal in Egypt.*
>
> *3. The court vested with jurisdiction in accordance with the preceding paragraph shall continue to exercise exclusive jurisdiction until the completion of all arbitral procedures".*

The Article 9 court role is limited to the following instances as explicitly provided for under the Arbitration Law, which also provides in Article 13 thereof that: *"a court seized with a dispute in respect of which an arbitral agreement exists must rule the case non admissible if the respondent invokes a plea of non admissibility before raising any request or defence in the case".* Moreover, the filing of a case before the court does not preclude the commencement of the proceedings or issuing an arbitral award.

i. Witnesses

Article 9 court may provide assistance to the arbitral tribunal in relation to the appearance of witnesses before the tribunal. As such, Article 37 of the Arbitration Law provides:

> *"The President of the Court referred to in Article (9) of this Law, upon request from the Arbitral Tribunal, shall be competent to:*
>
> *1. Pass judgment against defaulting or intransigent witnesses imposing the penalties prescribed in Article 78 and 80 of the Law of Evidence in Civil and Commercial matters.*
>
> *2. Order a judicial delegation commission rogatoire."*

Articles 78 and 80 of the Law of Evidence entitle the court to apply a penalty of EGP 4000 on the witness who was correctly notified but failed to appear before the tribunal. The court may also enforce the witness to appear before the tribunal. Also if the witness refuses to make oath or to answer the questions put to him, the court may apply a penalty of EGP 200.

ii. Appointment of Arbitrators

Article 9 courts maybe requested to appoint an arbitrator(s) pursuant to Article 17 of the Arbitration Law or to replace an arbitrator who is unable to perform his mission, fails to perform it or interrupts performance in a manner which leads to unjustifiable delays in the arbitral proceedings pursuant to Article 20 of the Arbitration Law.

Moreover, in the event of an arbitrator being challenged, the matter will be referred to the Article 9 court as per Article 19 of the Arbitration Law and as elaborated in the section titled "appointment of arbitrators" above.

iii. Extent of Interference

The role of Article 9 court is not limited to witnesses and to the appointment of arbitrators, the Arbitration Law also provides for the following:

Article (14) provides that: *"the court referred to in Article (9) may, on the basis of an application from one of the parties to the arbitration, order that provisional or conservatory measures be taken, whether before the commencement of arbitral proceedings or during the procedure"*.

Article (24) provides that: *"1. The parties to arbitration may agree that the arbitral tribunal shall be entitled pursuant to a request by one of them, to order either party to take whatever provisional or conservatory measures it deems the nature of the dispute requires, as well as to demand the presentation of an adequate guarantee to cover the expenses of the measures it orders. 2. If the party to whom the order is issued defaults on executing it, the arbitral tribunal may, at the request of the other, allow the letter to take the procedures necessary for execution, without prejudice to that party's right to apply to the president of the court referred to in Article (9) of this law for an enforcement order"*.

In addition to this, Article 9 court's main role becomes clear when the enforcement of arbitral awards is needed as shall be elaborated in the following section.

VII. ENFORCEMENT OF AWARDS

The rules governing the enforcement of arbitral award maybe divided to two sets of rules; the first are applicable to arbitral awards issued under the Egyptian Arbitration law and the second are those rules applicable to foreign arbitral awards, all as elaborated below.

i. Foreign Awards

The enforcement of awards rendered abroad and not subject to the Arbitration Law is governed by Articles 296 through 301 of the Proceedings Law. Pursuant to said articles, foreign arbitral awards are to be enforced in accordance with the same conditions applied to Egyptian awards being enforced abroad[35].

Application to enforce a foreign award is to be submitted to the court of First Instance that has jurisdiction over the area in which the enforcement of the award is required[36]. Prior to ordering the enforcement of the award the court must ensure that[37]:

- The Egyptian courts do not have the jurisdiction over the dispute;
- the parties of the dispute were afforded a reasonable opportunity to present their case and were notified to attend the proceedings;
- the award is final and binding pursuant to the laws of the country in which it was issued;
- the award does not contradict with a previous judgment issued by the Egyptian courts and does not include anything contrary to the Egyptian public policy.

Furthermore, Article 299 of the Proceedings Law requires that the award be issued in a dispute that is can be subject to arbitration pursuant to the Egyptian law.

ii. Domestic Awards

The enforcement of domestic awards (i.e. arbitral awards rendered pursuant to the Arbitration Law) is governed by Articles 55 through 58 of the Arbitration Law.

According to said articles, arbitral awards rendered in accordance with the provisions of the Arbitration Law are final, binding and enforceable[38].

[35] Article 296 of the Proceedings Law.
[36] Article 297 of the Proceedings Law.
[37] Article 298 of the Proceedings Law.
[38] Article 55 of the Arbitration Law.

In order to enforce a domestic award, the following steps must be taken:

- The party in whose favour the arbitral award was rendered must first deposit the original award or a copy thereof in the language in which it was issued, or an Arabic translation thereof authenticated by the competent authority if it was issued in a foreign language, with the clerk of the competent court referred to in Article 9 of the Arbitration Law[39];

- the lapse of the time frame for requesting the annulment of the arbitral award[40], which is nineteen days as of the date on which the arbitral award was notified to the party against who the award was rendered[41];

- an application is to be made to the president of the court referred to in Article 9 of the Arbitration Law requesting the enforcement of the arbitral award. This application must be accompanied by:

    1. The original award or a signed copy thereof.

    2. a copy of the arbitral agreement;

    3. an Arabic translation of the award; and

    4. a copy of the report evidencing the deposit of the award with the competent court's clerk[42].

The court would order the enforcement of the award after ascertaining that:

- The award does not conflict with any judgments issued by the Egyptian courts in a similar dispute;

- the award does not contain anything contradicting with the public policy in Egypt;

- the party against which the award was rendered has been correctly notified.

From the foregoing it is apparent that the rules governing the enforcement of both foreign and domestic awards are somehow similar.

[39] Article 47 of the Arbitration Law.
[40] Article 58 (1) of the Arbitration Law.
[41] Article 54 (1) of the Arbitration Law.
[42] Article 56 of the Arbitration Law.

C. MEDIATION

I. INTRODUCTION:

Mediation in Egypt is considered as in any other part of the world "…a settlement process in a which a neutral party facilitates communication between the parties, listen to their arguments, and assist them in reaching a mutually satisfactory results…"[43].

Mediation in the new and modern definition is novel concept in Egypt, nevertheless, mediation in its old fashion sense is not a new concept in Egypt and still considered the preferred method for resolving different types of conflicts (family, community, and state conflicts). Rituals and cultural process for conflict control have contributed in major way to the development of mediation in Egypt. The front-runners of those processes are; (i) *sulh* (settlement) and; (ii) *musalaha* (reconciliation), and they are considered alternative and indigenous forms of conflict control and reduction. The sulh ritual, which is an institutionalized form of conflict management and control, has its origins in tribal and village contexts. "The sulh ritual stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended". According to Islamic Law (Shariaa'), "the purpose of sulh is to end conflict and hostility among believers so that they may conduct their relationships in peace and amity....In Islamic law, sulh is a form of contract (*'aakd*), legally binding on both the individual and community levels. [44]Similar to the private sulh between two believers, "the purpose of [public] sulh is to suspend fighting between [two parties] and establish peace, called muwada'a (peace or gentle relationship), for a specific period of time. The Quran is an authoritative source that provides for modes of dispute resolution in Arab-Islamic societies and Egypt. The Quran calls for forgiveness in cases of apology and "remission."

Furthermore, in Egypt the preferred choice of resolving political disputes is mediation. Due to the fact that mediation between Arab countries is distinctive from mediation that occurs in other parts of the world in terms of the likelihood of Arab countries choosing it as a method of conflict resolution, in terms of the manner or process by which it is conducted, and in terms of the outcomes of mediation. There are two elements that make mediation among Arab countries distinct from mediation among other countries; (i) Arab political regimes; (ii) Arab culture. There are two of mediation in the Middle East; (i) Arab-Arab meditation (i.e. Kuwait/Iraq); (ii)

[43] J. THOMAS McCARTHY, McCARTHY'S Desk Encyclopedia Of Intellectual Property, third edition (2005)
[44] M. Khadduri, "Sulh" in C.E. Bosworth, E. van Donzel, W.P. Heinrichs, and G. Lecomte, The Encyclopedia of Islam, Volume IX, (Leiden, Holand: Brill, 1997), p.845-846.

Arab-non-Arab disputes at the domestic and international level (i.e. Sudan/Addis-Ababa & Egypt/Israel Camp David).

In addition, under Egyptian laws, any administrative and/or governmental agency that is subject to a dispute, the claimant must first resort to a dispute resolution committee. The said committee main goal is to examine the dispute and exerts reasonable efforts to identify the misunderstanding and try to resolve the matter amicably. If the dispute is not resolved, the committee will issue a recommendation for the competent courts to consider while hearing the claim.

II. MEDIATION SERVICE PROVIDERS IN EGYPT:

Albeit, mediation is an old mode for conflict control in Egypt as demonstrated above, yet, mediation centres are very few in Egypt. The primary centre for mediation is the Mediation Centre, which was established as a branch of the CRCICA to administer mediation and other peaceful non-binding means of avoiding and settling trade and investment disputes. The CRCICA have adopted rules that apply to all Alternative Dispute Resolutions("ADR") by the centre (attached hereto as exhibit A). Other branches for CRCICA are listed below:

- The Alexandria Centre for International Maritime Arbitration ("ACIMA"), a branch of the CRCICA was founded in 1992 pursuant to a cooperation agreement between the Cairo Centre and the Arab Academy for Science, Technology and Maritime Transportation.

- The Alexandria Centre for International Arbitration was established on June 2001 in cooperation with Alexandria Businessmen Association as a branch of CRCICA to administer commercial arbitration and other peaceful non-binding means of avoiding and settling trade and investment disputes.

- The Mediation & ADR Centre was established on August 2001 as a branch of CRCICA to administer mediation and other peaceful non-binding means of avoiding and settling trade and investment disputes.

- The Port Said Centre for Commercial and Maritime Arbitration, which was established on February 2004, upon an agreement with the Suez Canal Authority. The Port Said Centre for International Commercial and Maritime Arbitration was meant to deal with commercial and maritime disputes.

Dr. A. Kheir Law & Arbitration Centre ("AKLAC") which is an independent non governmental institution was established based on the increasing significance of commercial arbitration within the new Egyptian arbitration Law no.27/1994 and internationally.

In addition to the above, law firms seems to play an important role and replace the presence of ADR centres in Egypt particularly when it comes to mediation. When a contractual dispute arises between two parties, the first step is to seek the assistance of lawyers in resolving the dispute amicably through mediation.

III. MEDIATION AMONG THE CORPORATE COMMUNITY IN EGYPT:

Due to the long and exhaustive process of judicial proceedings in Egypt, ADR is the preferred method for resolving disputes. Also, due to the lack of experience among judges with regards to technical issues for certain industries, parties in dispute usually prefer arbitration to judicial proceedings. Nevertheless, realizing the value of mediation and the advantages it avails over arbitration, the corporate community in Egypt is pursing mediation over arbitration. The table below demonstrates some of the advantages of mediation over adjudication and arbitration.

FACTORS	ARBITRATION	MEDIATION
Submission	Involuntary	Voluntary unless mandated by court
Process	Formal • Imposed decision (may not be reasoned) • May have discovery; relaxed rules of evidence • May have subject-matter expertise • Proofs and argument	Informal • Decisions and agreements created by parties • No rules of evidence/minimal discovery • Usually subject-matter expertise • Presentation of interests and needs
Timeframe	Moderate, i.e. Months or sometime years	Immediate, weeks-months
Costs	Expensive	Inexpensive
Confidentiality	Confidential unless subject to court review	Confidential

On the other hand, mediation training and presentation workshops are not with extensive presence, opposed to those of arbitration. The need for trained mediators in Egypt is very much required now more than ever. That said, specialized centres for mediation should be established in the country or the so called Private ADR Centre. In the heart of those centre objectives is creating problem solving workshops and training of mediators. Moreover, training peer-to-peer mediators on both sides of a conflict often will generate the necessary understandings and skills base to allow resolution of disputes to go forward. It is considered best practice to develop those centres targeting particular industries such the information technology, e-commerce, telecommunication.

The general rule is that the success of Mediation is improved when the right mediator is selected. Selecting a mediator in general is a hard process. The general questions that are likely to arise prior to selecting a mediator in the Egyptian business community could be summarized as follows**:** is he/she professionally trained? The level of experience acquired in mediating similar cases? The areas of expertise enhance your mediation experience? Moreover, other important factors are considered crucial for the business community in Egypt while selecting a Mediator and those are as follows: Ethics, subject matter understanding and availability, non judgmental listening and collaborative problem solving, a respectable figure.

The current legislative framework is becoming inductive to development of mediation as most of the industry laws impose on the parties in dispute to resort to a specific department prior to resorting to court. E.g. in intellectual property disputes, there is a ministerial decree that requires the parties in dispute to resort to the Intellectual Property Unit established by the same decree in order to resolve the matter before resorting to court. Also, the Egyptian National Regulatory Authority ("NTRA") has recently established a department that specializes in settling disputes that arise between entities in the telecommunication industry in Egypt. This recourse is offered pursuant to law No. 10 for the year 2003 which obliges the disputing parties to resort to the NTRA dispute committee prior to court.

An agreement resulting from mediation is usually enforceable in Egyptian courts, nevertheless, the recourse of mediation must be based on a rule of law i.e. a contractual provision, and most agreements that direct to course of mediation in Egypt usually contain the following clause:

> "*...Any dispute or difference of any kind whatsoever between the Parties arising under, out of or in connection with this Agreement, including without limitation any question regarding its existence, validity or termination and whether before or after the termination, abandonment or breach of this Agreement ("a Dispute") shall be resolved in accordance with the following mechanism:(i) Mediation. Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve any Dispute in an equitable manner, and, unless otherwise provided herein, to exercise the authority of the*

Parties to make decisions by agreement, each Dispute shall be initially referred by written notice to such designated representative for resolution. If the designated representatives are unable to resolve any such Dispute within fifteen (15) calendar days of such referral, such Dispute shall be referred by each representative to a senior officer designated by the Parties, respectively and such senior officers shall attempt to resolve such Dispute with a further period of fifteen (15) calendar days. The Parties to this Agreement shall attempt to resolve all Disputes promptly, equitably and in good faith, and shall provide each other in a timely manner with reasonable non-privileged records, information and data pertaining to any such Dispute. (ii) Arbitration. Unless the Parties otherwise agree, if the period of thirty (30) calendar days referred to above has expired and the Dispute remains unresolved, either Party may initiate arbitration in accordance with Paragraph…"

Once the parties agree to mediate (i.e. apply the provisions contemplated in the clause above), they select the mediator in accordance with the criteria mentioned above. Below, is the common process for mediation in Egypt: Due to the non-binding-nature of mediation, the parties usually suggests the path of Evaluative-Mediation; whereby the parties empower the Mediator to evaluate the nature of the dispute, demands of the parties, and non-binding solution. The rational behind this path is that it allows the Mediator to evaluate their demands, and it shows the good faith and seriousness of the parties to exert the efforts for resolving the disputes and/or the conflicts among them. Sometime the mediation process adopted in Egypt suggest a link between the mediation proposed and arbitration as per the provisions of the clause above (i.e. if the mediation process did not result in a solution within a fixed period, the parties may resolve to arbitration). In other events, when the parties strongly that mediation is their choice for resolving the dispute, they disregard the evaluative mediation and proceed directly with the facilitative mediation. Also, if the dispute is complex and it involves technical matters, the parties prefer to have co-mediator (sometimes more than one co-mediator).

IV. RAISING AWARENESS AND PROMOTING MEDIATION:

In order to raise awareness regarding the usefulness of mediation and other ADR mechanisms; first, general conferences and workshops on the topic for all public and private sectors must be held on a regular basis. Programs for certification earning credits is highly recommended encouraging attendees and their organizations to participate and apply mediation and other ADR mechanisms in controlling conflicts and resolving disputes. Complex industries such information technology, e-commerce, oil & gas, pharmaceutical, and telecommunication must be targeted by mediation conferences and workshop specifically tailored according to each industry. Private and public mediation centres should be established in major cities with branches in distant areas. List of mediators must be available and updated regularly, also

mediators with certain skills tailored according to the complex industries mentioned above must be available and constantly in touch with their corresponding industry.

V. CONCLUSION

Mediation can be a powerful tool for investors, lawyers, and government officials to bridge the gap and identify the underlying interests, also, to accept the realities and limitations burdensome of judicial procedures before Egyptian courts. Furthermore, it gives the parties in dispute the opportunity start where they ended and pursue the goals they intended to. Mediation, simply reminds the parties in dispute that (i) this relation was intended for to work or; (ii) it was a big mistake. The presence of mediation facilities and mediators in Egypt will ultimately result in breeding comfort among local and foreign investors, and will provide some certainty and expectation with regards to result that may be achieved and the timeframe involved in the dispute resolution process.

D. OTHER ADR TECHNIQUES

There is no law regulating the usage of Mediation and other ADR techniques in Egypt. However, CRCICA provides as part of its services for rules governing conciliation, technical expertise, mini-trials and claim review boards.

The usages of those techniques are not as wide as arbitration. Also, there are no statistics available on such.

However, it maybe safely said that the usage of claim review boards is widely used in construction contracts, since most construction contracts concluded in Egypt are based on the "Fédération Internationale des Ingénieur-conseil" or the International Federation of Consulting Engineers ("FIDIC") different models and are now more inclined to include the provision referring disputes to a Dispute Resolution Board ("DRB") whether at the outset of the contract or after the arise of the dispute.