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Egypt
International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Egypt.

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Egypt: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The Egyptian Arbitration Law No. 27 of 1994 ('**EAL**') was adopted in 1994 and is based on the UNCITRAL Model Law (1985), with some variations. Most of the procedural rules governing the conduct of the proceedings are not mandatory and the parties may derogate from by agreement. However, few rules appear to be mandatory, such as non-arbitrability of disputes that cannot be subject to a compromise and rights in rem, witnesses and experts may not be heard under oath, awards may not be rendered by truncated tribunals, tribunals may not be constituted from an even number of arbitrators and parties may not agree to exclude the right to apply for setting aside of an award prior to the rendering of the said award.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Egypt is a signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Egypt has consented to join the New York Convention on 2 February 1959, ratified same on 9 March 1959, and it entered into force as part of the Egyptian legal system on 7 June 1959 without any reservations or declarations.

3. What other arbitration-related treaties and conventions is your country a party to?

Egypt is a party to many arbitration-related treaties and conventions. In this regard, amongst the instruments Egypt became party to, are the following:

the Convention of the Arab League on the Enforcement of Judgments and Arbitral Awards of 1952 (the Arab League Convention) ratified on 28 August 1954, the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ICSID Convention) ratified on 3 May 1972, the Unified Agreement for Investment of Arab Capital in the Arab States (the Arab Investment Agreement") signed on 26 November 1980 in Amman and entered into force on 7 September 1981, the Organisation of the Islamic Conference Investment Agreement of 1981 (the OIC Investment Agreement) ratified in February 1988, the Convention establishing the Multilateral Investment Guarantee Agency (the MIGA Convention) of 1985, the COMESA Investment Agreement signed on 23 May 2007, the Riyadh Arab Agreement for Judicial Cooperation of 1983 signed in 2014, and the Egypt-MERCOSUR Preferential Free Trade Agreement which has entered into force in September 2017.

Egypt has signed more than 100 Bilateral Investment Treaties ('**BITs**') among which around 72 BITs entered into force in the following dates and with the following countries:

Albania (6/4/1994); Algeria (3/5/2000); Argentina (3/12/1993); Armenia (1/3/2006); Australia (5/9/2002); Austria (29/4/2002); Bahrain (11/1/1999); Belarus (18/1/1999); Belgium– Luxembourg Economic Union (24/5/2002); Bosnia & Herzegovina (29/10/2001); Bulgaria (3/6/2000); Canada (3/11/1997); China (1/4/1996); Comoros (27/2/2000); Croatia (2/5/1999); Cyprus (9/6/1999); Czech Republic (4/6/1994); Denmark (29/10/2000); Ethiopia (27/5/2010); Finland (5/2/2005); France (1/10/1975); Germany (22/11/2009); Greece (6/4/1995); Hungary (21/8/1997); Iceland (15/6/2009); Italy (1/5/1994); Japan (14/1/1978); Jordan (11/4/1998); Kazakhstan (8/8/1996); Korean Democratic Peoples Republic (12/1/2000); Korean Republic (25/5/1997); Kuwait (26/4/2002); Latvia (3/6/1998); Lebanon (2/6/1997); Libya (4/7/1991); Malawi (7/9/1999); Malaysia (3/2/2000); Mali (7/7/2000); Malta (17/7/2000); Mauritius (17/10/2014); Mongolia (25/1/2005); Morocco (27/6/1998); Netherlands (1/3/1998); Oman (3/3/2000); Palestine (19/6/1999); Poland (17/1/1998); Portugal (23/12/2000); Qatar (14/7/2006); Romania (3/4/1997); Russia (12/6/2000); Serbia (20/3/2006); Singapore (20/3/2002); Slovakia (1/1/2000); Slovenia (7/2/2000); Somalia (16/4/1983); Spain (26/4/1994); Sri Lanka (10/3/1998); Sudan (1/4/2003); Sweden (29/1/1979); Switzerland (15/5/2012); Syria (5/10/1998); Thailand (4/3/2002); Tunisia (2/1/1991); Turkey (31/7/2002); Turkmenistan (29/3/1996); United Arab Emirates (11/1/1999); Ukraine (10/10/1993); United Kingdom (24/2/1976); United States of America (27/6/1992); Uzbekistan (8/2/1994); Vietnam (4/3/2002); and Yemen (10/4/1998). (UNCTAD Investment Policy Hub, available at https://investmentpolicy.unctad.org/international-invest

ment-agreements/countries/62/egypt?type=bits, last visited on 27 October 2024)

Furthermore, Egypt has concluded several bilateral treaties on judicial cooperation that refer to mutual cooperation in the recognition and enforcement of arbitral awards, which by way of illustration include the treaties concluded with the following countries: Tunisia (1976); Italy (1978); France (1982); Jordan (1987); Morocco (1989); Bahrain (1989); Libya (1993); China (1994); Hungary (1996); Syria (1998); United Arab Emirates (2000); Oman (2002); and Kuwait (2017).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The EAL is indeed based on the UNCITRAL Model Law (1985), however there exist some differences between both which consist in the following:

- the applicability of the EAL to both domestic and international arbitrations (article 1);
- the possible extraterritorial application of the EAL to proceedings seated abroad only if the parties have agreed to such extraterritorial application (article 1);
- the requirement that an arbitration agreement in an administrative contract is approved by the competent minister or whoever assumes his or her authority with respect to public entities, and delegation in this regard is prohibited (article 1);
- the EAL introduces several criteria for the establishment of the international nature of an arbitration including, amongst others, whether the arbitration is institutional, whether it involves parties whose principal places of business are in different States or alternatively if the place of the arbitration determined by the arbitration agreement, the place of performance of the obligations or the place with the closest connection to the dispute is abroad (article 3);
- the EAL does not expressly include the possibility to enter into an arbitration agreement by way of electronic means. However, it does not exclude it and therefore nothing prohibits the conclusion of arbitration agreements by electronic means and insofar as the electronic communication fulfills the requirement of writing, the arbitration agreement shall be valid. In brief, the writing requirement under the EAL is a condition for the validity of the arbitration agreement and is not simply a mere evidentiary requirement. According to the EAL, an agreement is in writing if it is contained in a document signed by the parties or contained in an exchange of letters, telegrams or other means of communication. Absence of an arbitration agreement in writing results in the nullity of the arbitration agreement and the writing requirement under the arbitration law is stricter than the one under the Model Law (article 12);
- in the case of incorporation by reference, the reference to the arbitration agreement must be explicit in order for the arbitration agreement to form an integral part of the main contract (article 10);
- the EAL does not provide for the 'referral exception' whereby a state court may accept to decide over jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed (article 13). However, in practice, some Egyptian courts have considered the validity and operability of the arbitration agreement before an arbitral tribunal rendered its award;
- the EAL requires an odd number of arbitrators for purposes of constitution of the arbitral tribunal, the violation of which leads to the nullity of the award (article 15);
- a preliminary arbitral award on jurisdiction cannot be the subject of a court review prior to the tribunal's rendering of the final award deciding on the entire dispute must be rendered for purposes of the competent court's review or annulment (article 22);
- the arbitral tribunal may only issue orders interim relief if the parties bestow this power upon it (article 24);
- if the parties do not agree on the language of the arbitration, the latter shall be conducted in Arabic (article 29);
- if the parties do not agree on the applicable law, the arbitral tribunal may apply the law having the closest connection to the dispute (article 39);
- the threshold used by the EAL for the challenge of arbitrators is relatively higher than its Model Law counterpart; the doubts as to the arbitrator's impartiality and independence must be serious (article 18);
- the EAL adds a ground for annulment based on the non-application by the arbitral tribunal of the lex causae chosen by the parties (article 53); and
- the EAL introduces a further condition for purposes of exequatur that is not listed in the Model Law, namely: the award does not contradict a prior judgment rendered by the Egyptian courts on the merits of the dispute (article 58).

5. Are there any impending plans to reform the arbitration laws in your country?

There are ongoing discussions for reform and possible

amendments to the EAL. In this regard, a Committee in charge of discussing these possible amendments to the EAL was established by virtue of Decree No. 8 of 2022, issued on 22 March 2022 by the Deputy Minister of Justice for Arbitration and International Disputes. The aforementioned Committee is headed by the Deputy Minister of Justice for Arbitration and International Disputes and comprises members of the ministry's arbitration and international disputes' department as well as other arbitration practitioners, including academics and lawyers. The Committee is in charge of preparing a proposal of possible amendments to the EAL to submit same to the Minister of Justice's review and consideration.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The leading arbitral institution existing in Egypt is the Cairo Regional Centre for International Commercial Arbitration ('**CRCICA**') which is an independent non-profit international organisation that administers domestic and international arbitral proceedings. The CRCICA has its own set of arbitration rules, mediation rules and dispute board rules. Early this year, the CRCICA has amended its 2011 arbitration rules and adopted its new arbitration rules which entered into force as of 15 January 2024. The new 2024 arbitration rules introduced provisions addressing issues that were not addressed in the 2011 arbitration rules, such as provisions in relation to multiparty arbitration, multi-contract arbitration, consolidation of arbitrations, early dismissal of claims, online arbitration filing, third-party funding, emergency arbitrator rules and expedited arbitration rules. The new 2024 arbitration rules are available in Arabic, English and French. The CRCICA mediation rules were amended in 2013 and are available in Arabic and English. In 2021, the CRCICA adopted for the first time its dispute board rules as of August 1, 2021, which are available in Arabic, English and French.

There exists a specialised arbitration centre, the "Egyptian Center for Arbitration and Settlement of Non-Banking Financial Disputes" ("ECAS"), which is established within the Financial Regulatory Authority by virtue of the Presidential Decree no. 335 of 2019 (11 July 2019). The Centre offers mediation and arbitration services. The members of the Board of Trustees have been appointed by virtue of the Financial Regulatory Authority Decision no. 133 of 2019. The statutes of the Centre as well as its arbitration and mediation rules were issued on 10 December 2020 by virtue of Prime Ministerial Decree no. 2597 of 2020.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court *per se*. However, there are certain specialised circuits within the court structure that normally handle arbitration-related judicial proceedings. In international commercial arbitration, the national court that is empowered to deal with arbitration-related matters is the Cairo Court of Appeal, unless the parties agree on a different Court of Appeal.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

According to the EAL, an arbitration agreement may be concluded prior to the existence of the dispute or after it has arisen. Whether being an arbitration clause (*clause compromissoire*) or a submission agreement (compromise), the validity requirements of an arbitration agreement under the arbitration law are the following:

- the parties must have capacity to enter into the arbitration agreement (article 11);
- the subject matter of the arbitration must be arbitrable (article 11);
- the subject of the dispute to be resolved by arbitration must be specified in the compromise, or in the statement of claim in case of a prior agreement to arbitrate (article 10); and
- the arbitration agreement must be in writing or else it is null. The writing requirement includes a document signed by the parties, an agreement by exchange of correspondences or other means of communication (article 12), and/or an incorporation into the contract by reference to a document containing an arbitration agreement insofar as the reference is explicit in considering the arbitration agreement part of the parties' contract (article 10(3)).

Furthermore, it is worth noting that in administrative contracts, the arbitration agreement must be approved by the competent minister, or whoever assumes his or her authority with respect to public entities, and delegation in this regard is prohibited (article 1). This has been confirmed by a judgment of the State Council where it ruled that the arbitration agreement is void when the competent minister, or whoever assumes his or her authority with respect to public entities, has not approved it and that such requirement is a matter of public policy. It also ruled that the arbitration agreement must deal only

with matters that are arbitrable and in the case of a submission agreement (compromis d'arbitrage), the parties must identify the dispute subjected to the arbitral proceedings or the agreement would be null and void. (State Council, challenge no. 8256 of JY 56, hearing session dated 5 March 2016) Moreover, in April 2019, a new committee was established within the Council of Ministers, namely the '*High Committee for Arbitration and International Disputes*', which is in charge of examining and opining on all arbitration related disputes involving the State or any of its organs or state-controlled entities. (Prime Ministerial Decree no. 1062 of 2019) The aforementioned Prime Ministerial Decree no. 1062 of 2019 was further amended on two occasions, firstly, in December 2020 by virtue of Prime Ministerial Decree no. 2592 of 2020, where it was expressly provided that the State, its organs and state-controlled entities shall not conclude any contracts with foreign investors or enter into contracts including an arbitration clause, and/or amending these contracts without having this first reviewed by the '*High Committee for Arbitration and International Disputes*'. (Prime Ministerial Decree no. 2592 of 2020) Secondly, in September 2022, Prime Ministerial Decree no. 3218 of 2022, added that the State, its organs and state-controlled entities shall not take any measure that would lead to the rescission or the termination of any contract including an arbitration clause without having this first reviewed by the '*High Committee for Arbitration and International Disputes*'. (Prime Minister Decree no. 3218 of 2022)

9. Are arbitration clauses considered separable from the main contract?

According to the EAL, the arbitration clause is considered separable from the main contract and is not affected by the latter's invalidity, termination and/or rescission insofar as the arbitration agreement itself is valid (article 23). The principle of separability of the arbitration clause from the main contract has also been confirmed by Egyptian courts and considered as one of the fundamental pillars of arbitration in Egypt. (Court of Cassation, challenge no. 824 of JY 71, hearing session dated 24 May 2007; and challenge no. 933 of JY 71, hearing session dated 24 May 2007)

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

At the outset, the EAL sets its scope of application by referring first to international conventions applicable in the Arab Republic of Egypt, then referring to its application to all arbitrations conducted in Egypt, or abroad insofar as the parties agreed to submit their arbitration to the provisions of the EAL (article 1). As to the validity of the arbitration agreement, there is no clear 'validation principle', since arbitration is largely seen as an exception. An arbitration agreement must also be in writing, otherwise it shall be null and void (see validity requirements in Q 8 above). It must also satisfy the standard contractual requirements such as consent, capacity and the existence of a legal relationship. It is also worth noting that, in practice, some Egyptian courts have considered the validity and operability of the arbitration agreement even before an arbitral tribunal rendered its award.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There are no specific rules regarding that matter under the EAL. However, the applicable institutional rules may include pertinent provisions. Absent such regulation under institutional rules, if any are applicable, it is preferable that a multiparty arbitration agreement explicitly states whether several parties shall jointly appoint one or more arbitrators. In this regard, the arbitration clause must be clearly drafted in order to determine the role of the parties in the choice of arbitrators. It is worth noting that early this year, the CRCICA adopted its new 2024 arbitration rules (amending its 2011 arbitration rules) which include – for the first time – provisions with regard to multi-party and multi-contract arbitration. (articles 11 and 51 of the CRCICA 2024 arbitration rules)

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The EAL does not expressly regulate the extension of the arbitration agreement to third parties or non-signatories. Egyptian court decisions, all the same, do not portray a clear trend as to the doctrine and accord the ultimate weight to the parties' consent to arbitration as determined by arbitral tribunals. Egyptian courts are increasingly becoming more flexible in considering the

extension of arbitration agreements to third parties and/or the joinder of third parties to arbitral proceedings and will usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or principles of public policy have been contravened.

The Egyptian Court of Cassation decisively rules that an arbitration agreement included in a contract does not automatically extend to a company that forms part of a larger group of companies entering into the said contract. The company must have actively contributed in the performance of the contract or there must have been a confusion between the intents of the two relevant companies (Court of Cassation, challenge no. 4729 of JY 72, hearing session dated 22 June 2004). In other words, the doctrine of group of companies is accepted by the courts for purposes of extension of the arbitration agreement in the presence of an implication in the performance process of the contract.

The doctrine of economic unity is not sufficient, in and of itself, for purposes of extension of the arbitration agreement if the third party has not exhibited consent to arbitration. (Cairo Court of Appeal, commercial circuit no. 62, case no. 83 of JY 118, hearing session dated 5 August 2002, *in* Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 195-196) However, Egyptian courts have shown flexibility regarding extension to third parties and would normally defer to the tribunal's reasoning in this respect, unless a clear principle of public policy is compromised.

With respect to the extension of the arbitration clause to third parties or non-signatories, the Egyptian Court of Cassation held that an arbitration agreement cannot exist without consent of the parties, but added that an arbitration agreement may extend to third parties and to other contracts connected to the principal contract on the basis of several doctrines and principles including: group of companies, group of contracts, universal succession, mergers or assignment if their conditions are met. (Court of Cassation, challenges nos. 2698, 3100 and 3299 of JY 86, hearing session dated 13 March 2018)

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Yes, the EAL provides that any matter that is not capable of settlement is non-arbitrable (article 11). Non-arbitrable matters principally pertain to matters of personal or family status, public policy, criminal matters, or rights in rem relating to immovables such as registration of real estate mortgages.

Otherwise, the EAL requires that the right subject to arbitration be of an economic nature (article 2).

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There is no recently reported court decision concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the parties. In this regard, it is worth mentioning that in determining the law applicable to the arbitration agreement, Egyptian courts have a tendency towards the law of the seat as selected by the parties, provided that the provisions of such law do not contravene Egyptian public policy rules. (Court of Cassation, challenge no. 453 of JY 42, hearing session dated 9 February 1981; and challenge no. 1259 of JY 49, hearing session dated 13 June 1983) This position is based on the assumption that the arbitration agreement constitutes the first step of the arbitral proceedings and should therefore be subject to the law applicable to the arbitral proceedings, i.e. the law of the seat. However, this interpretation is strongly rejected by scholars who view the arbitration agreement as a step preceding the arbitral proceedings and should therefore be subject to the parties' substantive choice of law which, in turn may be implicit. According to some scholars, absent a choice of law, the applicable law is that of the State where the award is rendered independently from the choice of law by the parties with respect to the subject matter to the dispute. As far as capacity to conclude the contract is concerned, the applicable law is that applicable to each party independently from the other, be it the law governing nationality, domicile for natural persons or effective principal place of management for juridical persons. (Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 121-123)

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

At the outset, the EAL recognises the principle of party autonomy where the parties are free to determine the law applicable to the substance of the dispute, subject to exceptional legislative constraints (as in technology transfer contracts and remuneration of Egyptian commercial agents, where application of Egyptian law is mandatory). This is confirmed by article 39.1 of the EAL which provides that the arbitral tribunal shall apply the

rules chosen by the parties, and that if the parties agreed on the applicability of the law of a given state, only the substantive rules thereof shall be applicable excluding its rules of conflict of laws, unless otherwise agreed by the parties.

However, if the parties have not agreed on specific rules or law applicable to the substance of their dispute, the EAL provides that the arbitral tribunal shall apply the substantive rules of the law it considers having the closest connection to the dispute. (article 39.2)

The EAL has not provided for a specific set of connecting factors that the arbitrators shall follow in determining the substantive rules having the closest connection with the dispute. The choice of the applicable substantive rules will be dependent on the nature of the dispute and shall be determined on a case by case basis. For example, if the validity of a contract is disputed, hence the law having the closest connection with the dispute will be the law of the state where the contract has been concluded. Also, if the dispute is related to the performance of an obligation, then the law having the closest connection with the dispute is the law of the state where the obligation has been performed or that of the agreed place of performance of this obligation. It is also submitted that Egyptian law is considered having the closest connection with a dispute when all the elements of the legal relationship forming the dispute are Egyptian. (Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 537)

Furthermore, in an arbitration case administered by the CRCICA, an arbitral tribunal has listed how it determined the law applicable to the substance of the dispute as follows: the law of the place of arbitration; the law of the place of signing of the original contract; the law of residency of the parties to the contract; the law of the state where the contract is performed; the law of the language of the contract; and the law of the language of arbitration if it was different from the language of the contract. (Arbitration case no. 95 of 1997, hearing held on 12/3/1998 *in* Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 537)

16. In your country, are there any restrictions in the appointment of arbitrators?

There are no specific restrictions in the appointment of arbitrators other than having attained the age of majority, enjoying full legal capacity and capable of disposing of his or her own rights. The arbitrator shall accept his or her appointment in writing and shall declare any events giving rise to justifiable doubts as to his or her impartiality and independence. (article 16)

It is worth noting that judges or members of the judiciary may sit as arbitrators, but they are required to obtain an administrative permission from the Supreme Judicial Council to sit as arbitrators in a specific case. In this regard, in a recent judgment of the Egyptian Court of Cassation ruled that the absence of the Supreme Judicial Council authorisation for a sitting judge to sit as an arbitrator in a specific case – despite being in breach of the Judicial Authority Law – does not affect the validity of the arbitral award. (Court of Cassation, commercial circuit, challenge no. 9968 of JY 81, hearing session dated 9 January 2018)

17. Are there any default requirements as to the selection of a tribunal?

In this regard, it is important to differentiate between ad hoc and institutional arbitration, such that in institutional arbitration, the applicable institutional rules shall apply. However, in ad hoc arbitration that is not subject to specific agreed arrangements between the parties with regard to the number of arbitrators, the EAL provides that the default number of arbitrators is three, and requires it to be an odd number. (article 15)

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, local courts can intervene in the selection of arbitrators in ad hoc proceedings. In this regard, the EAL provides that in absence of agreement between the parties on the selection of the tribunal, the competent Egyptian court shall undertake the appointment of the arbitrator(s), upon the request of one of the parties. That said, if the tribunal is composed of a sole arbitrator, the competent court shall undertake the appointment of the sole arbitrator, upon the request of one of the parties. However, if the tribunal is composed of three arbitrators, the default requirement is that each party shall appoint an arbitrator and both arbitrators shall appoint the chairman. If either party fails to appoint the arbitrator within thirty days of a request to do so from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator (chairman) within thirty days of the date of the latest appointment between both, the competent court shall undertake the appointment of this arbitrator, upon the request of either party, and the court decision in this respect is final and not subject to any appeal or challenge. (article 17)

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of arbitrators can be challenged. The EAL provides that an arbitrator may only be challenged if there exist circumstances that give rise to serious and justifiable doubts as to his or her impartiality or independence. (article 18)

According to the EAL, the party requesting to challenge an arbitrator shall submit to the arbitral tribunal a challenge request, incorporating the reasons for such challenge, within 15 days from the date it becomes aware of the constitution of the arbitral tribunal or of the circumstances justifying such challenge. If the challenged arbitrator does not withdraw from his or her office within 15 days from the date of submitting the challenge request, the request shall be forwarded to the Egyptian competent court to decide on this matter and render a final decision that will be subject to no appeal. Moreover, a party may not challenge the same arbitrator more than once in the same proceedings. (article 19)

In case of institutional arbitration the applicable rules would include specific provisions on the regulation of challenges. For example, the current rules and practice of CRCICA is that any challenges must be submitted within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days from the date of knowledge of the circumstances giving rise to justifiable doubts as to an arbitrator's impartiality and independence. After communicating the notice of challenge, the Centre shall request comments on the challenge from the parties, the challenged arbitrator and the other arbitrators. If the challenged arbitrator does not resign, the challenge shall be finally decided by a tripartite ad hoc committee, selected from among the members of the CRCICA's Advisory Committee, in compliance with articles 3 and 8 of the By-laws of the Advisory Committee in Annex 4. (article 14)

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

Impartiality and independence remain hallmarks and fundamental obligations under the EAL, and there is a wealth of judgments rendered by Egyptian courts on challenges against arbitrators and arbitral awards on grounds pertaining to duties of disclosure, impartiality and independence. The EAL provides that an arbitrator shall accept his/her appointment in writing and shall disclose any circumstances that are likely to give rise to justifiable doubts as to his/her impartiality and independence. (article 16(3)) Therefore, an arbitrator shall not only disclose the circumstances influencing his/her impartiality or independence, and which may lead to his/her disqualification as an arbitrator, but also the circumstances which may give *in abstracto* rise to doubts as to the impartiality or independence of a reasonable person. He/she shall disclose any direct relationship with any of the parties of the dispute, their representatives, employees, relatives or friends, regardless of whether this relationship is physical, professional or social or whether it is a past or current relationship, and which according to a reasonable person give rise to doubts as to the arbitrator's impartiality or independence. (Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 286)

In this regard, the Cairo Court of Appeal has set the definitions of the duties of independence and impartiality of arbitrators as follows:

"The independence of the arbitrator is the absence of his connection to or dependency on the parties to the dispute, the state or the third party, and the absence of any financial or psychological relation that is contradictory to his independence, whereas such [circumstances] constitute a definite danger resulting in the inclination to one of the parties of the arbitration." (Cairo Court of Appeal, 91 Commercial Circuit, challenge no. 1 of JY 120, hearing session dated 29 April 2003)

"*Impartialité* is any psychological or mental inclination of the arbitrator towards or against any of the parties to the dispute, a third party, or the state, which is likely to result in the arbitrator's inability to rule without inclination towards or against any of the parties mentioned above." (Cairo Court of Appeal, 91 Commercial Circuit, challenge no. 78 of JY 120, hearing session dated 30 March 2004)

Furthermore, the arbitrator's duty of disclosure remains throughout the course of the arbitration proceedings. (Cairo Court of Appeal, challenge no. 75 of JY 125, hearing session dated 18 May 2009)

As to recent court decisions addressing the duty of independence and impartiality of arbitrators, it is worth mentioning the following decisions.

On 22 February 2022, the Court of Cassation addressed the duty of disclosure of arbitrators and affirmed that the Egyptian judiciary warrants and ensures the independence and impartiality of arbitrators, which is

among the reasons that prove the increased trust by international arbitration parties to choose Egypt as the seat of arbitration. The Court expressly quoted Clause 3.3.5 of the Orange list of the IBA Guidelines on Conflicts of Interest in International Arbitration (2014) while addressing the arbitrators' duty of disclosure. The facts revolved around the non-disclosure by the chairman of the arbitral tribunal that a partner of the law firm representing the claimant in the arbitral proceedings, whom was not involved with any counsel work in the case, was a family relative to the chairman. The Court explained that the simple non-disclosure does not lead to set aside the award, such that the Court shall assess whether the undisclosed circumstance leads in a reasonable manner to infer a real danger of bias, to set aside the award. (Court of Cassation, Commercial and Economic Circuit, challenge no. 13892 of JY 81, hearing session dated 22 February 2022)

Also, on 9 May 2023, the Court of Cassation referred to Clauses 4.3.1 and 4.3.4 of the Green list of the IBA Guidelines on Conflicts of Interest in International Arbitration (2014), in the circumstances where the chairman, one of the co-arbitrators and the legal counsel of one of the parties were members of the CRCICA Advisory Committee, and the arbitrators failed to disclose that they were members of the CRCICA Advisory Committee. In this regard, the Court of Cassation held that the membership of both arbitrators and the legal counsel is publicly available information in their respective biographies accessible on the CRCICA's official website. Moreover, the Court held that the chairman disclosed his participation in an event where the legal counsel of one of the parties was a speaker and the parties did not raise any concerns during the arbitral proceedings, which constitutes a waiver of their right to object. Accordingly, the Court found that the above-mentioned circumstances do not raise doubts as to the impartiality and independence of the arbitrators by relying on the IBA Guidelines on Conflicts of Interest in International Arbitration (2014). (Court of Cassation, Commercial and Economic Circuit, challenges nos .7913 and 13996 of JY 91, hearing session dated 9 May 2023)

On 8 March 2021, the Cairo Court of Appeal upheld the existing definition of independence and impartiality of an arbitrator as previously held by earlier court decisions, by stating that it consists in the absence of a connection of dependency or a financial or a psychological relation that is contradictory to the arbitrator's independence which constitutes a real danger of bias or creates justifiable doubts in this regard. The Cairo Court of Appeal explained that an arbitrator and respondent's counsel who were sitting in the same CRCICA Advisory Committee – noting that CRCICA is an independent international non-profit organisation – and being speakers in the same panel in an event held by the CRCICA, where the law firm of the respondent's counsel was a golden sponsor to such event, does not constitute a "real danger of bias" or create "justifiable doubts" as to the independence or impartiality of the arbitrators, due to the absence of a connection of dependency, or a financial or psychological relation between the arbitrators and any of the parties, hence there is no breach of his duty of disclosure. (Cairo Court of Appeal, challenge no. 42 of JY 136, hearing session dated 8 March 2021) Moreover, the Cairo Court of Appeal ended the mandate of the chairman of an arbitral tribunal for his inability to managing the procedural hearings/meetings and for deciding to suspend the arbitral proceedings in the warranted circumstances. (Cairo Court of Appeal, 50th Commercial Circuit, challenge no. 3 of JY 132, hearing session dated 30 January 2019).In another interesting decision, after the issuance of the arbitral award, it came to the knowledge of the respondent that the chairman of the arbitral tribunal is a client of the co-arbitrator appointed by the claimant, and that neither has disclosed the existence of this relationship during the arbitral proceedings. However, the other-co-arbitrator appointed by the respondent had disclosed at the time of his appointment that he is the lawyer of the respondent and confirmed to be impartial in this arbitral proceedings, and the claimant accepted his appointment after such disclosure. In this regard, the Cairo Court of Appeal held that the non-disclosure of the relationship existing between the chairman and the co-arbitrator appointed by the claimant creates doubts as to their impartiality and independence, which consist in fundamental requirements for the appointment of any arbitrator. Therefore, the Cairo Court of Appeal annulled the arbitral award on the ground of non-disclosure by the chairman and the co-arbitrator appointed by the claimant of their existing relationship prior to the commencement of the arbitral proceedings. (Cairo Court of Appeal, 18th Commercial Circuit, challenge no. 92 of JY 135, hearing session dated 12 January 2019).

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In principle, arbitral awards rendered by truncated tribunals are annulled for contravening Egyptian public policy. This is confirmed by article 15.2 of the EAL which states that the number of arbitrators shall be an odd number, otherwise the arbitration is null. To continue with the proceedings the missing arbitrator(s) must be appointed.

Furthermore, it is worth mentioning that in institutional arbitration, it may be acceptable for truncated tribunals to render arbitral awards, and this is the case in the CRCICA arbitration rules which permit, in exceptional circumstances, a truncated tribunal to continue with the arbitral proceedings. This is primarily the case of proceedings governed by the CRCICA rules but seated outside Egypt. In this regard, there are several conditions required so that the CRCICA can take a decision authorising the other arbitrators to proceed with the arbitral proceedings and render the award: (1) a party shall request from the CRCICA to take such decision, i.e. the CRCICA shall not take such decision ex officio; (2) the CRCICA shall allow all parties and the other arbitrators to express their opinion in writing for taking such decision; (3) the CRCICA shall establish the existence of exceptional circumstances that would substantiate taking such decision, which can be proven if there was not a serious cause for the arbitrator to resign or that such resignation was at a very late stage of the proceedings; and (4) the CRCICA Advisory Committee shall approve such decision. (Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 353)

Nevertheless, if an award is rendered by a truncated tribunal in compliance with the CRCICA arbitration rules, it might be annulled by the competent Egyptian court. It is established by Egyptian courts that even though under the EAL, the parties are free to agree on the usage of institutional procedural rules (article 25), the said rules are applicable insofar as they do not contravene Egyptian public policy. Also, all arbitrators shall participate in the deliberation, otherwise the award would be rendered in breach of the fundamental judicial safeguards. (Cairo Court of Appeal, commercial circuit no. 91, case no. 47 of JY 119, hearing session dated 29 June 2003 and cases nos. 34 and 35 of JY 119, hearing session dated 29 January 2003)

22. Are arbitrators immune from liability?

Despite the absence of any legal text providing for the arbitrator's immunity, such immunity is presumed and applied by analogy from the legislative immunity accorded to the judge/court. However, the immunity does not apply in cases of fraud, deceit or gross fault (gross negligence), in which cases the arbitrator's civil liability can be exceptionally invoked before the courts. (Fathi Waly, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., p. 369-371) In this regard, in January and May 2019 the Egyptian courts passed and confirmed imprisonment sentences against certain arbitrators and members of a purported local arbitration institution who were engaged in the rendering of an arbitral award in sham arbitral proceedings. Charges of misappropriation by fraudulent means and forgery were made against the sentenced individuals. (Al-Nozha Misdemeanor Court in Cairo, case no. 12648 of JY 2018; Cairo Court of Appeal, appeal no. 695 of JY 2019 (East Cairo Appeals)) This was an exceptional case that involved a flagrant criminal scheme that resulted in the issuance of a US$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award resulting from the sham proceedings in Cairo.

Furthermore, in case of institutional arbitration, the CRCICA arbitration rules provide for the exclusion of liability of the arbitrators (including any emergency arbitrator), the Centre, its employees and any members of the Board of Trustees or Advisory Committee or any person appointed by the arbitral tribunal in performing their functions under the CRCICA 2024 arbitration rules, save for intentional wrongdoing. (article 55)

23. Is the principle of competence-competence recognised in your country?

The principle of competence-competence is generally recognised in Egypt. The EAL provides that the arbitral tribunal shall decide over any jurisdiction-related claims including the existence, validity and scope of the arbitration agreement. (article 22.1) However, in practice, there exist instances where Egyptian courts, in relation to administrative contracts and beyond, have decided over the existence and validity of an arbitration agreement prior to or while arbitral proceedings were still pending and irrespective of the arbitral tribunal's jurisdiction.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Egyptian courts are under a legal obligation to dismiss litigation with respect to disputes subject to an arbitration agreement if the defendant, at the commencement of the proceedings, advances a plea pertaining to the existence of an arbitration agreement. (article 13.1) In this respect, it is worth noting that article 13.1 of the EAL, which partially reproduces article 8 of the UNCITRAL Model law, has excluded the 'referral exception' whereby the state court may accept to decide over jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. This entails that the arbitral tribunal enjoys the priority to decide its competence over state courts.

However, the court is not under an obligation to reject the case *ex officio* for the mere existence of an arbitration agreement; the defendant must raise its objection at the commencement of the proceedings. This is principally due to the fact that an arbitration agreement is not constitutive of public policy. In the absence of a plea by the defendant in litigation, parallel proceedings will be conducted before the arbitral tribunals and the courts and decisions will be rendered irrespective of the parties' prior agreement to arbitrate. In the event that the two decisions are contradictory, the successful party in the arbitration may elevate the conflict to the Supreme Constitutional Court in accordance with the law.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If a respondent fails to participate in the arbitration without a valid cause, the EAL enables the arbitral tribunal to continue with the proceedings and objectively assess the claims of the claimant, and to render the arbitral award based on the submitted elements of evidence. However, it should be noted that a non-participating or absent party should be duly notified of all the documents submitted and orders issued, and must be given a proper and adequate opportunity to present its case and defences at every stage of the proceedings. (article 35) Furthermore, if the submitted evidence is not sufficient for the arbitral tribunal to make an award, the proceedings may be terminated by a decision of the arbitral tribunal. (article 48.1)

Moreover, local courts cannot compel participation of a respondent who failed to participate in the arbitration.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The EAL does not expressly regulate issues of joinder and extension of the arbitration agreement to third parties. As a general rule, the arbitration agreement is binding on the parties having consented to it. However, third parties can be bound by the arbitration agreement in justifiable circumstances under the law or by consent. In recent years, Egyptian courts have become more acquainted with the extension of arbitration agreements to third parties and/or the joinder of third parties to arbitral proceedings, and they will usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or overriding principles of public policy have been contravened. In this regard, the Court of Cassation held that the arbitration agreement may extend to third parties and to other contracts connected to the principal contract on the basis of several doctrines and principles which include by way of example: group of companies, group of contracts, universal succession, mergers or assignment. (Court of Cassation, challenges nos. 2698, 3100 and 3299 of JY 86, hearing session dated 13 March 2018)

Moreover, the new 2024 CRCICA arbitration rules briefly address the issue of joinder of a third party in article 17.5 which reads in pertinent part: *"The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. Where a joinder is allowed, the constitution of the arbitral tribunal shall not be affected. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration."*

That said, voluntarily joinder of a third party to arbitral proceedings remains a possibility as a matter of Egyptian law. If requested, the arbitral tribunal has the discretion to decide on such matter of joinder and to accept or reject same.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The EAL grants an arbitral tribunal the right to award provisional or interim relief only if the parties have agreed to confer such power upon the arbitral tribunal. (article 24) It is also acknowledged that such power could be conferred upon the arbitral tribunal by agreeing to the application of institutional rules that provide for such default power.

The EAL does not provide a list of the types of relief available to arbitrators, but it is generally accepted that an arbitral tribunal, if the parties so agree, has the discretion to order any type of interim relief or provisional measures that are warranted provided that such relief is available under the applicable law to such relief. Furthermore, under the EAL, arbitral tribunals may award interim relief by issuing an interim award (article 42) which makes it subject to the ordinary procedures for the

enforcement and recognition of arbitral awards. Nonetheless, interim awards do not a have res judicata effect.

Alternatively, a party may directly seek to obtain such interim relief directly from the competent court, such that the EAL allows local courts to issue interim and conservatory measures, upon the request of one of the parties, before commencing the arbitration proceedings or during said proceedings. (article 14)

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

The EAL does not prohibit or regulate anti-suit and/or anti-arbitration injunctions. However, the standard court practice in Egypt is that courts do not normally issue anti-suit or anti-arbitration injunctions.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The EAL does not regulate the arbitrators' powers with respect to evidence. It merely gives the arbitrators the right to request the originals of the documents submitted in support of the parties' claims. (article 30) However, it is unequivocal that the arbitral tribunal enjoys the power to admit and weigh evidence. The arbitral tribunal's powers include: undertaking any evidentiary procedure it deems appropriate, reversing a procedure it had previously ordered and the discretion to decide on the evidence on record. Arbitrators also have the right to accept or deny a party's request for an order on evidentiary procedures without prejudice to the party's defence rights. The evidence that may be admitted in arbitral proceedings in Egypt are documentary evidence, witness testimony, expert reports and/or site inspection by the arbitral tribunal. If a party does not submit to, and comply with, the orders of the arbitral tribunal, the latter may draw negative inferences that could adversely affect the non-complying party's position, especially if no adequate or reasonable justification is provided for a failure to comply. An arbitral tribunal is entitled to seek an Egyptian court's assistance in this respect, especially in cases of penalising witnesses who do not comply or ordering third parties to produce documents in their possession and/or undertake certain actions as properly and legally ordered by the arbitral tribunal insofar as the tribunal has jurisdiction to order same.

In this regard, the EAL grants the local competent court, upon the request of the arbitral tribunal, the authority to penalise and compel witnesses who declined to appear at the hearing for testimony. (article 37.1)

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Legal counsel are bound by the ethical code of the Bar Association and standard professional code of ethics. While the EAL does not include a specific set of ethical standards applicable to arbitrators and counsel, they are generally expected to adhere to the acceptable ethical standards prevailing in practice, unless they are specifically and extraterritorially bound by certain standards prevailing in their own jurisdiction. In this respect, it is worth mentioning the Court of Cassation's findings in relation to party representation in arbitration. In 2020, the Court of Cassation held that the rules relating to party representation are not part of Egyptian public policy, such that there are no limitations or restrictions thereon, despite the requirement under article 3 of the Advocacy Law exclusively reserving representation of parties before courts and arbitral tribunals to lawyers admitted to the Egyptian Bar Association. The court recognised that the parties to an arbitration can elect to be represented by the persons of their choice, whether lawyers or non-lawyers, Egyptians or foreigners in domestic or international arbitration. Furthermore, the court added that the EAL (article 16) does not impose any requirements with regard to the gender, nationality or profession of arbitrators to be appointed by parties, hence, *a fortiori*, there should be no requirement applicable to party representatives as well. (Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020).

The IBA Guidelines on Party Representation in International Arbitration (2013) are not yet commonly used in the jurisdiction, but are increasingly offering guidance in international proceedings seated in Egypt. However, the Court of Cassation, when addressing the duty of disclosure of arbitrators, has expressly referred to the IBA Guidelines on Conflicts of Interest in International Arbitration (2014) by quoting Clause 3.3.5 of the Orange list which reads '*a close family member of the arbitrator is a partner or employee of the law firm representing one*

of the parties, but is not assisting with the dispute'. In the said judgment, the chairman failed to disclose that one of the partners of the law firm representing the claimant in the arbitral proceedings was a family relative, however, this partner was not involved with any counsel work related to the arbitration case. The Court considered that this shall be assessed on a case-by-case basis, such that in the given circumstances, the non-disclosure by the chairman does not justify or lead in a reasonable manner to infer a real danger of bias, which in turn does not lead to setting aside the arbitral award. (Court of Cassation, Commercial and Economic Circuit, challenge no. 13892 of JY 81, hearing session dated 22 February 2022) Also, in another judgment, the Court of Cassation, has relied on the IBA Guidelines on Conflicts of Interest in International Arbitration (2014) referring to Clauses 4.3.1 and 4.3.4 of the Green list, where it held that the non-disclosure by the chairman and one of the co-arbitrators that they were members of the CRCICA Advisory Committee, where the legal counsel of one of the parties was a member thereof, does not raise doubts as to the impartiality and independence of the arbitrators. The Court held that the membership of both arbitrators and the legal counsel is publicly available information in their respective biographies accessible on the CRCICA's official website. Also, the Court added that the chairman disclosed his participation in an event where the legal counsel of one of the parties was a speaker and the parties did not raise any concerns during the arbitral proceedings, which constitutes a waiver of their right to object. (Court of Cassation, Commercial and Economic Circuit, challenges nos .7913 and 13996 of JY 91, hearing session dated 9 May 2023)

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The principle of confidentiality of the arbitral proceedings is inferred from the rule prohibiting the publication of the arbitral award and is confirmed by the Explanatory Note of EAL, which explains that the confidentiality of the arbitration is of significant importance to the parties in order to preserve inter-commercial relations. There is no explicit reference in the EAL providing for the confidentiality of the proceedings, however, the EAL provides that an arbitral award may not be published, in whole or in part, unless agreed by the parties. In any event, when an award is subject to nullity or enforcement proceedings, its content will likely fall in the public domain, unless otherwise ordered by the court.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The EAL does not include any provision relating to the allocation of costs which accords the tribunal a broad discretion in assessing the reasonableness of the fees and allocating the fees and costs between the parties, unless otherwise agreed between the parties. In practice, it is not uncommon for arbitral tribunals seated in Egypt to follow international practice as to costs' allocation by adopting the 'costs follow the event' rule insofar as winning party is able to justify and substantiate its fees and costs.

It is a standard practice that arbitral awards include an award of interest insofar as claimed by the parties, either pre- or post-award interest, such that the arbitral tribunal has the ultimate power to decide on issues of compensation and interest. In this regard, the EAL does not limit the arbitral tribunal's power as to the award of interest. However, a legal cap of 7% interest rate exists and is characterized as a public policy rule by Egyptian courts. (Court of Cassation, challenge no. 3778 of JY 64, hearing session dated 17 February 2004)

However, certain exceptions to the cap on interest rate exists, amongst which is the award of interest in banking transactions which can and do exceed the 7% cap. Similarly, interest may be payable at the rate set by the Central Bank of Egypt ('**CBE**') which in fact may exceed 7% at the CBE's annual decision, in relation to (i) commercial loans; and (ii) amounts/expenses pertinent to the trader's trade (Article 50 of the Egyptian Commercial Code).

Furthermore, it is worth noting that compounding interest is generally perceived to be contrary to public policy, unless a trade usage on compounding exists in the pertinent transaction.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The EAL sets the requirements for recognition and enforcement of an award as follows: the award must be in writing and signed by the arbitrators (if the minority refused to sign the award, the majority must include the reasons for the minority's refusal to sign); be reasoned unless the parties have agreed otherwise, or the

applicable procedural law does not mandate such reasoning; include the names and addresses of the parties; include the names, addresses, nationalities, and title of arbitrators; include a copy of the arbitration agreement (an explicit citation of the arbitration agreement would suffice); include a summary of the parties' claims, statements, and relevant documents; have an operative part (dispositive) ordering specific remedies; include the date and place of issuing the award. (article 43) At the time of the deposit of the award for enforcement, a certified Arabic translation of the award must accompany its original or certified copy. (article 47)

Accordingly, the Court of Cassation expressly held that the Egyptian judiciary adopts a '*pro-arbitration policy*' with respect to the recognition and enforcement of arbitral awards by limiting the grounds for setting aside an arbitral award to those specifically provided for under the EAL. In the said judgment, the Court defined what is meant by deliberations and dissenting opinions by explaining, on the one hand, that deliberations consist in the exchange of views between the arbitrators regarding the facts of the case, the claims put forward by the parties and their relief sought. On the other hand, the Court held that it is well-established in international arbitration for arbitrators whom refuse to sign an arbitral award to render a dissenting opinion explaining that this derives from the judicial duty upon arbitrators to issue a reasoned award. The Court added that in the absence of a dissenting opinion stating the reasons of non-signature by the minority arbitrator, the chairman of the tribunal shall state in the award that the minority arbitrator refused to sign due to his/her disagreement with the opinion of the majority. On this occasion, the Court reaffirmed that an arbitral award's erroneous reasoning does not lead to its setting aside. (Court of Cassation, Commercial and Economic Circuit, challenge no. 8199 of JY 80, hearing session dated 22 March 2022)

In another judgment, the Cairo Court of Appeal addressed the issue of whether there is a requirement for the award to be reasoned and held that this is not a public policy requirement, given that article 43 of the EAL enables the parties to agree on exempting/releasing the arbitral tribunal from its duty to render a reasoned award. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022) In this regard, under the EAL (article 43.2), in principle, an award must be reasoned unless the parties have agreed otherwise, or the applicable procedural law does not mandate such reasoning.

With respect to enforcement procedures, the EAL sets the following requirements: the deposit of an original or a signed copy of the award and its Arabic translation if the award is in another language; the deposit of a copy of the arbitration agreement; and a copy of the minutes indicating the deposit of the award at the competent court. (article 56)

As a requirement for the enforcement, the award creditor shall submit an application for depositing the award with the registry of the competent court. That deposit application will be sent to the Arbitration Technical Bureau within the Ministry of Justice to render its opinion on the application, noting that the opinion of the Technical Bureau is advisory and non-binding on the court, which ultimately decides whether to accept or reject the application for enforcement. (Decree No. 8310 of 2008, as amended by Decree No. 6570 of 2009, Decree no. 9739 of 2011, and Decree No. 1096 of 2017) Following the deposit of the award with the registry of the competent court, the Chief Judge of the court issues its order whether to accept or reject the request for enforcement.

The request for enforcement of an arbitral award will not be accepted unless the period for filing a nullity action has lapsed, *i.e.* 90 days from the date of notification of the award to the party against whom it was rendered. However, for foreign arbitral awards seated outside Egypt and which are not governed by the EAL, the applicant must submit evidence concerning the status of any nullity action in the country where the award was rendered, as Egyptian courts do not generally have jurisdiction to entertain a setting aside action.

However, enforcement may be refused in the following cases: contradiction with a previous judgment by the Egyptian courts on the merits of the dispute; contravention of rules of public policy in Egypt; and improper or lack of notification to the losing party. (article 58.2) Orders granting or refusing *exequatur* may be challenged before the competent court within 30 days from the date of issuance of such orders. (article 58.3)

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

According to the EAL, the application for the enforcement of an award shall not be admissible prior to filing an action for annulment or the expiration of the 90 days period for filing the action for annulment of the arbitral award. (article 58) An action for annulment does not suspend the enforcement of the arbitral award, unless the applicant requested from the court to do so based on

serious grounds. Therefore, the competent court has 60 days from the date of the first hearing fixed in relation thereto to rule on the request for suspension of the enforcement. Finally, if the court orders a suspension of enforcement, it is expected to rule on the action for annulment within 6 months from the date the suspension order was rendered. (article 57)

It is worth noting that obtaining the awarded amounts and tracing assets of the losing party may last for few years.

Furthermore, indeed a party may bring a motion for recognition and enforcement of an arbitral award on an ex parte basis as provided by the EAL, such that the application for enforcement of an arbitral award shall be accompanied by the following: (1) the original award or a signed copy thereof; (2) a copy of the arbitration agreement; (3) a certified Arabic translation of the award, if it was not in Arabic language; and (4) a copy of the procès-verbal attesting the deposit of the award at the court. (article 56)

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The EAL does not provide for a different standard of review for recognition and enforcement of a foreign award compared with a domestic award. However, Egypt is a signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards (1958) and so foreign arbitral awards are subject to the New York Convention, including article VII thereof, which entitles a party to avail itself of more favourable local conditions for enforcement, if any. Thus, enforcement of domestic awards is subject to the requirements set forth under the EAL and foreign awards are subject to the enforcement requirements of the New York Convention, without prejudice to the applicant's right to invoke local conditions/grounds for enforcement if more beneficial thereto.

The Cairo Court of Appeal reaffirmed the importance of the New York Convention on the recognition and enforcement of foreign arbitral awards, which forms part of the Egyptian legal system and which extends the applicability of the EAL provisions to the enforcement of foreign arbitral awards, given that the EAL provisions are less onerous than default provisions for enforcement of foreign judgments. (Cairo Court of Appeal, (First) Commercial Circuit, petition no. 2 of JY 139, hearing session dated 9 March 2022)

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

There are no specific limits imposed on remedies, other than issues related to public policy. Generally, an arbitral tribunal enjoys a broad authority and power to order any declaratory relief, monetary compensation, specific performance, interest, and costs. However, an arbitral tribunal is not generally entitled to award punitive damages.

In this regard, it is worth mentioning that the Court of Cassation annulled for the first time in its history an ICC arbitral award without remanding same to the Court of Appeal, for violating a fundamental principle of Egyptian public policy by ruling over the legality of an administrative decision. The Court of Cassation explained that the judicial control on the legality of an administrative decision – its validity and fulfillment of formal requirements – fall within the exclusive jurisdictional competence of the State Council courts, and this is a fundamental public policy principle. Hence, the Court shall, on its own initiative, annul the arbitral award as per article 53.2 of the EAL. However, the Court of Cassation added that courts adjudicating nullity actions in Egypt are bound not to re-examine the subject matter of the dispute or even delve into the arbitral tribunal's findings, unless a matter of public policy is in play. The Court of Cassation made it clear that courts shall strictly abide by the nullity grounds stipulated in article 53 of the EAL. (Court of Cassation, Civil and Commercial Circuit, challenges nos. 1964 and 1968 of JY 91, hearing session dated 8 July 2021)

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

An award is not subject of an appeal before the Egyptian courts, but can be subject to an action for setting aside. Save for setting aside (annulment), any other form of challenge of or recourse against the arbitral award is strictly prohibited by the EAL. (article 52)

Accordingly, the EAL expressly provides in article 53 thereof for an exhaustive list of the grounds according to which an award may be set aside or annulled, and reads:

‘1. an arbitral award may be annulled only:

a) If there is no arbitration agreement, if it was void, voidable or its duration had elapsed;

b) 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;

c) 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;

d) If the arbitral award excluded the application of the law agreed upon by the parties to govern the merits of the dispute;

e) If the composition of the arbitral tribunal or the appointment of the arbitrators was in conflict with the EAL or the parties' agreement;

f) If the arbitral award dealt with matters not falling within the scope of the arbitration agreement or exceeding the limits of this 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;

g) If the arbitral award itself or the arbitration procedures affecting the award contain a legal violation that causes nullity.

2. The court adjudicating the action for annulment shall ipso jure annul the arbitral award if it is in conflict with the public policy in the Arab Republic of Egypt.'

The arbitration law provides that the nullity action is brought before the competent court within 90 days from the date of notification of the arbitral award to the party against whom it was rendered. (article 54.1)

In this regard, it is worth noting that the role of the review courts is limited to examining the nullity of an arbitral award strictly based on the grounds set forth under article 53 of the EAL, and that these courts shall not conduct a *de novo* review of the merits, such that any error in the arbitral tribunal's assessment does not qualify as a ground for annulment given that a nullity action is not an appeal. This has been reaffirmed by Egyptian Courts on many occasions. For example, the Cairo Court of Appeal held that to challenge the correctness of the arbitral tribunal's findings and its understanding of the facts related to the subject matter of the dispute as well as challenging the tribunal's erroneous interpretation and application of the law, does not constitute a ground for setting aside an arbitral award, given that the nullity action is not an appeal. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022) This well-established principle has also been confirmed by the Court of Cassation, which dismissed for good the nullity action against the famous *Kharafi vs. Libya* arbitral award, after almost a decade of being debated before Egyptian courts, and reversed the ruling of the Cairo Court of Appeal, which had annulled the arbitral award in 2020. (Cairo Court of Appeal First Commercial Circuit, challenge no. 39 of JY 130, hearing session dated 3 June 2020; and Court of Cassation, Civil and Commercial Circuit, challenge no. 12262 of JY 90, hearing session dated 24 June 2021) In the same vein, the Court of Cassation upheld this well-established principle that review are bound not to re-examine the subject matter of the dispute or even delve into the arbitral tribunal's findings, unless a matter of public policy is in play. However, in this case, the Court of Cassation annulled, on its own initiative, the arbitral award for its violation of Egyptian public policy. (Court of Cassation, Civil and Commercial Circuit, challenges nos. 1964 and 1968 of JY 91, hearing session dated 8 July 2021)

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

As per the EAL, a party cannot waive its right to apply for annulment of the award prior to rendering the said award. (article 54.1)

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

In principle, only the parties having consented to the arbitration agreement shall be bound by the arbitral award. Non-signatories can only be bound by the arbitral award if the arbitration agreement has been extended thereto during the arbitral proceedings. No third party can be bound by the award, if it was not joined as a party to the arbitral proceedings.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recently reported judgments with respect to third-party funding, as the Egyptian law generally and the EAL, more specifically, do not expressly address the issue

of third-party funding in arbitration. Thus, it may not be argued that third party funding is prohibited per se under Egyptian law, insofar as the funding arrangement is not a gambling contract and counsel funding is not in the form of champerty. It is expected that, in due course, the matter will be subject to clear regulation to determine the legally permissible practices in this increasingly important area of arbitration practice, which may then lead Egyptian courts to consider it. It is worth noting that the CRCICA new 2024 arbitration rules (amending the 2011 CRCICA arbitration rules) introduced a provision in relation to third-party funding, which reads: *"The party that is funded by a third party in relation to the proceedings and its outcome shall disclose the existence of the funding and the identity of the funder at the commencement of and throughout the arbitral proceedings"*. (article 53)

In the same vein, the latest version of the Egyptian model bilateral investment treaty (2022) include provisions related to third-party funding which were initially added by the 2019 model bilateral investment treaty. The model bilateral investment treaty recognises the recourse to third-party funding under a strict duty of disclosure of the funding agreement, which remains a continuous duty throughout the proceedings. The funder would not qualify as a party to the arbitral proceedings, and would not be entitled to any rights under the treaty. The failure of disclosure of the funding agreement shall be deemed a manifest contravention of a fundamental rule of procedure. Also, the existence of a third-party funding agreement shall be considered in the probable existence of a conflict of interests with an arbitrator, an expert, or a legal representative. (article 17.8 of the 2022 Egyptian model bilateral investment treaty)

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The EAL does not provide for emergency arbitrator. However, the CRCICA new 2024 arbitration rules (amending the 2011 CRCICA arbitration rules) introduced – for the first time – in Annex 2 thereof emergency arbitrator rules. Decisions made by emergency arbitrators will be subject to the ordinary procedures for enforcement of arbitral awards, as it is the case for interim awards.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no simplified or expedited procedures that exist in the EAL. However, the CRCICA new 2024 arbitration rules (amending the 2011 CRCICA arbitration rules) introduced – for the first time – in Annex 3 thereof expedited arbitration rules.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

According to the EAL, there are no restrictions on the choice of arbitrators, as to their gender, nationality, age (provided that he or she has attained the age of majority). (article 16) However, diversity initiatives have been actively promoted in Egypt and the CRCICA has signed the Pledge for Equal Representation in Arbitration in 2017. (Ismail Selim, *Interviews with our Editors: Cairo in the Spotlight with Dr Ismail Selim, Director at CRCICA*, Kluwer Arbitration Blog, published on 17 July 2019, available online at http://arbitrationblog.kluwerarbitration.com/2019/07/17/interviews-with-our-editors-cairo-in-the-spotlight-with-dr-ismail-selim-director-at-crcica/) According to the CRCICA statistics for 2023, 7 female arbitrators were appointed representing 5% of the appointments, compared to 4 female arbitrators, representing 2.5% of appointments in 2022. Furthermore, 12arbitrators under the age of 40 were appointed, representing 9% of the appointments in 2023, compared to 15 arbitrators under the age of 40 appointed, representing 9% of the appointments in 2022.

As to counsel, the same applies, as there are no restrictions as to the gender, age or origin. This has been confirmed by a judgment of the Court of Cassation whereby the Court stated that the parties to an arbitration can elect to be represented by the persons of their choice, whether lawyers or non-lawyers, Egyptians or foreigners in domestic or international arbitration. The Court has based its argumentation on the fact that article 16 of the EAL does not impose any requirements with regard to the gender, nationality or profession of arbitrators to be appointed by parties, hence, *a fortiori*, there should be no requirement applicable to party representatives as well. (Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020).

44. Have there been any recent court decisions in

your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

The EAL provides for the supremacy of international conventions. (article 1) In this instance, the Egyptian courts shall apply the New York Convention. Anyhow, the EAL does not contain a provision that is similar to the New York Convention with respect to the possibility to enforce annulled awards or to refuse enforcement based on the setting aside of the award by the courts of the seat. Egyptian courts have not directly addressed the said issue and there is no judicial trend in this respect. However, with respect to arbitral awards set aside in Egypt and enforced in another jurisdiction, in *Chromalloy Aeroservices v. Air Force of the Arab Republic of Egypt*, the Cairo Court of Appeal set aside the award rendered in said case (Cairo Court of Appeal, case no. 8 of JY 115, hearing session dated 5 December 1995), then the same award, after being set aside in Egypt, was enforced in the US. (US District Court, District of Columbia, case no. 94-2339, 31 July 1996)

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Corruption is not an issue that is raised regularly in arbitration proceedings in domestic cases, but, since 2011, it has been increasingly invoked and pleaded in cases involving the State and state entities whether in international or local proceedings. That said, it is worth noting that Egypt has ratified the United Nations Convention against Corruption in 2005, which aims at eliminating corruption as a major impediment to development in poor countries and regions, and obliges member states to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. Before national courts, the standards for proving corruption is quite high and it must be proven beyond reasonable doubt. The burden of proof lies within the party invoking corruption.

Also, it is worth noting that sometimes arbitral proceedings may be seriously abused to conceal sham dealings. For example, in a sham arbitration case, in January and May 2019 the Egyptian courts passed and confirmed imprisonment sentences against certain individuals and members of a purported local arbitration institution who were engaged in sham arbitral proceedings. Criminal charges of misappropriation by fraudulent means and forgery were made against the sentenced individuals. (*Al-Nozha Misdemeanor Court in Cairo, case no. 12648 of JY 2018; Cairo Court of Appeal, appeal no. 695 of JY 2019 (East Cairo Appeals)*). This was an exceptional case that involved a criminal scheme that resulted in the issuance of a US$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award resulting from the said proceedings in Cairo.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The leading arbitral institution in Egypt, the CRCICA has adopted some measures and adapted some of its services in response to COVID-19 pandemic by offering guidance notes to arbitration users to ensure smooth administration of ongoing proceedings and the filing of new cases.

The CRCICA strongly recommended and encouraged arbitration users to file notices of arbitrations, written submissions and exhibits online via email, and also, to the extent possible, hold hearings online (in reference to Articles 17.1 and 28.4 of the CRCICA 2011 arbitration rules granting such authority and possibility to arbitral tribunals). In this respect, physical hearings at the CRCICA premises have been suspended during the period of closure of the CRCICA premises, due to the lockdown measures implemented by the Egyptian Government. Gradually, after the lockdown ended, physical in person-hearings have been held at the CRCICA premises with a minimum number of participants depending on the hearing facilities in use, to ensure safety and physical distancing. Furthermore, in the CRCICA new 2024 arbitration rules (amending the 2011 CRCICA arbitration rules), provisions in relation to online arbitration filings have been expressly added. In this respect, the notice of arbitration and the response to the notice of arbitration may be filed online. (articles 3.6 and 4.4)

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

On 29 May 2020, the CRCICA, the leading arbitral institution, concluded a Memorandum of Understanding ('MoU') with China Guangzhou Arbitration Commission ('GZAC'), an online arbitration institution founded in

response to the rapid growth of electronic business in China, with focus on mutual cooperation to promote online arbitration. The scope of this MoU includes sharing information, organizing joint arbitration and mediation activities, and mutual recommendation of arbitrators. In principle, the CRCICA grants the arbitral tribunal the liberty to decide on the manner of conduct of proceedings as the tribunal considers appropriate. (article 17.1 of the 2011 CRCICA arbitration rules). Also, article 28.4 of the 2011 CRCICA arbitration rules expressly provides for the possibility to examine witnesses and experts via videoconference. Further to the above-referenced articles of the 2011 CRCICA arbitration rules, the CRCICA new 2024 arbitration rules (amending the 2011 CRCICA arbitration rules) introduced express provisions allowing online arbitration filings of the notice of arbitration and the response to the notice of arbitration. (articles 3.6 and 4.4)

Moreover, the statutes of the ECAS, as well as its arbitration and mediation rules issued by virtue of the Prime Ministerial Decree no. 2597 of 2020 on 10 December 2020 provide for a greater use of technology. The said Decree provides for the establishment of an official website, as well as an electronic registry for the Centre to register all data related to arbitration or mediation procedures under its auspices, including the names of the parties, their addresses, their contact details, their legal representatives and contact details thereof, the case numbers of the arbitration or mediation cases, a summary of the claims/relief sought, the name of the arbitrators or mediators and the date of issuance of the arbitral award or the settlement. (articles 20 and 21 of the Prime Ministerial Decree no. 2597 of 2020) Moreover, the ECAS arbitration rules of the ECAS grant the arbitral tribunal the right to decide to examine witnesses and experts through means of telecommunications. (article 48 of the Prime Ministerial Decree no. 2597 of 2020) Also, the ECAS arbitration rules recognise electronic submissions and consider that notices and correspondences which are sent to the chosen electronic address (email) of a party are deemed delivered and produce their legal effect. (articles 89 and 91 of the Prime Ministerial Decree no. 2597 of 2020)

Furthermore, the EAL does not prohibit the conduct of virtual (online) hearings and leaves it to the discretion of the arbitral tribunal, subject to the parties' agreement or the applicable institutional rules. In practice, virtual hearings have been conducted even prior to COVID-19, but have increased owing to the COVID-19 restrictions. In 2020, the Court of Cassation expressly acknowledged the increased use of virtual hearings in arbitrations across the globe owing to the COVID-19 situation, and was keen on incorporating an express reference to the expression "*virtual hearings*" in English language in its decision, explaining that the delocalisation concept (separability between the legal seat and geographical venue) includes conducting virtual hearings due to the increased reliance and use of modern means of communication. The Court referred to article 28 of the EAL, which distinguishes between the legal seat, which determines the procedural law applicable to the arbitral proceedings, i.e. *lex arbitri*, and the geographical venue for holding meetings, hearings or deliberations. (Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020). The use of virtual hearings has also been recognised by other recent court decisions, referring to the widespread thereof, which ultimately leads to encouraging arbitration practitioners to resort thereto. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022)In other judgments, the Cairo Court of Appeal upheld this distinction between the legal seat and geographical venue explaining that the hearings may take place at different places/venues, however the legal seat remains one. (Cairo Court of Appeal, challenge no. 42 of JY 136, hearing session dated 8 March 2021; and Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022)

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

These topics usually involve state entities, such as the Ministry of Environment which is in charge of climate change developments, and is actively promoting the preservation of the environment and is participating in international conferences discussing the impact of climate change worldwide. More specifically, the Ministry of Environment is putting forward a new plan aiming to achieve 30% of investment projects in the state's policy for environmental sustainability and a green economy. Furthermore, Egypt hosted the 27th Conference of the Parties of the United Nations Framework Convention on Climate Change, known as the '*COP 27*', in Sharm el Sheikh, from 6 to 18 November 2022.

As to human rights developments, it is worth noting that the Egyptian Constitution warrants considerable rights to Egyptians, and there are some human rights NGOs present in Egypt. In this respect, disputes related to climate change and/or human rights are brought before national courts, and there is no particular recent developments worthy of a mention.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

There are no recently reported judgments with respect to international economic sanctions in Egypt, or their impact on international arbitration proceedings. It is worthy to mention that in Egypt, economic sanctions may be imposed on entities/individuals involved in criminal activities such as terrorism and money laundering. In this respect, a unit within the Central Bank of Egypt was created by virtue of the Law Combatting Money Laundering No. 80 of 2002, such that this unit has among its other roles, a duty to cooperate with sanctions committees established within the United Nations Security Council, or other international organisations to combat money laundering and the financing of terrorism. Moreover, Egypt is a member state of the United Nations since October 1945, and is hence bound by resolutions issued by the UN under Chapter VII of the UN Charter (article 41), imposing sanctions on states, entities and individuals. In this regard, the Egyptian Ministry of Foreign Affairs has the duty to supervise the implementation of international conventions and treaties in conjunction with other concerned ministries and governmental entities, which include the UN Charter and sanctions issued thereunder. Accordingly, following the same logic, public policy would encompass international undertakings of states. For example, an economic embargo imposed against a certain country by a resolution of the Security Council, would constitute an international undertaking binding upon the UN member states for implementing same and forming part of the member states' public policy.

On another note, a Cairo Court of Appeal judgment addressed the prevalence of arbitration internationally while referring to international procedural public policy. In this respect, the Cairo Court of Appeal held that, internationally, arbitration is a conventional and efficient means for resolving commercial disputes. Thus, the international commercial community constantly seeks to unify the arbitral legal principles, terms, criteria, interpretation and applicability of arbitration related laws on the international level, in order to promote and ensure confidence and trust between contracting parties, and eventually safeguard their rights to maintain a stable international market. The Court explained that arbitration, being an international legal system, has its own legal principles and standards, its specific criteria and its unified interpretations, which are stable and known to the international market and cannot be denied. National courts are bound to respect the aforementioned unified and well-known principles and standards, as these 'most probably' relate to international procedural public policy (Cairo Court of Appeal, (First) Commercial Circuit, petition no. 2 of JY 139, hearing session dated 9 March 2022).

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

At present, there are no rules or regulations implemented regarding the use of artificial intelligence at large in the context of international arbitration.

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