

1986

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Recommended Citation

Aboul Enein, *Arbitration under the Auspices of the Cairo Regional Centre for Commercial Arbitration*, 4 INT'L TAX & BUS. LAW. 256 (1986).

Available at: <http://scholarship.law.berkeley.edu/bjil/vol4/iss2/8>

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Arbitration Under The Auspices Of The Cairo Regional Centre For Commercial Arbitration

by
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I. THE ESTABLISHMENT OF THE CAIRO REGIONAL CENTRE FOR ARBITRATION

A. *Background*

In recent years the growth and development of business and international commercial transactions in Asian and African countries made clear the need for amicable, quick and internationally acceptable methods for the settlement of commercial disputes. The Asian-African Legal Consultative Committee (hereinafter AALCC) has sought to introduce the concept of arbitration in these regions, initially in countries where this concept was already beginning to be popular. Egypt was one such country. The concept of arbitration had gradually been gaining popularity in Egypt for more than two decades. Thus, one of the two AALCC Regional Centres was established in Cairo.

Egypt was one of the pioneering countries that ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1959. Egypt acceded to the Convention on Settlement of Investment Disputes between States and Nationals of Other States in 1971. In addition, in 1973 Egypt ratified a convention concluded between Arab countries for the settlement of investment disputes between Arab states. These conventions provide for arbitration as a means of settlement of international commercial disputes. In many bilateral agreements between Egypt and other states such as France, Switzerland, Greece, United Kingdom, Romania, Holland, Japan, Belgium, Sudan, and Yugoslavia, arbitration is employed for the settlement of international commercial disputes. Also, Egyptian Law No. 65 of 1971, as amended by Law No. 43 of 1974, regarding the "Investment of Arab and Foreign Capital, and the Free Zones," provides for arbitration as a means of settling international commercial disputes.

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Several steps were taken prior to the establishment of the Cairo Regional Centre for International Commercial Arbitration.

The AALCC¹ first discussed the establishment of regional centers for arbitration at a conference held in Tokyo in 1974. The Committee endorsed the recommendations of its own Trade Law Sub-Committee that efforts be made by Member States to develop institutional arbitration in the Asian and African regions in order to curtail the flow of arbitration to countries outside of these regions. At its Kuala Lumpur Session held in 1976, the Committee decided to request the Secretariat to investigate the feasibility of establishing regional centers and to ascertain a means of establishing effective cooperation among the existing arbitral institutions in the Asian and African regions. The Committee's Secretariat, in its report made to the Baghdad Session held in 1977, presented a plan for the establishment of regional arbitration centers, which was developed on the basis of a general survey conducted in light of the experience in various parts of the world, particularly in Latin America.

At its Doha Session in January 1978, the Committee decided to establish a regional center at Kuala Lumpur, a second center at Cairo and a third center in an African country to be decided upon by the Secretary-General of the AALCC in consultation with the government concerned.

B. The Cairo Centre

The Cairo Regional Centre is a nonprofit institution. It was established in cooperation with the government of the Arab Republic of Egypt to provide a system of arbitration to settle the disputes of parties engaged in trade, commerce and investments within the region.

The objectives and functions of the Cairo Regional Centre are:

1. Promoting international commercial arbitration in the region;
2. Coordinating and assisting the activities of existing arbitral institutions, particularly those within the region;
3. Rendering assistance in the conduct of ad hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules;
4. Assisting in the enforcement of arbitral awards;
5. Providing for arbitration under the auspices of and according to the Rules of the Centre;
6. Rendering advice and assistance to parties who may approach the Centre.

The operational costs of the Centre are met by the Egyptian Government subject to the condition that any fees or receipts for services rendered by the

1. The member countries of the Asian-African Legal Consultative Committee are: Arab Republic of Egypt, Bangladesh, Cyprus, Gambia, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Libya, Malaysia, Mauritius, Mongolia, Nepal, Nigeria, Oman, Pakistan, People's Republic of China, Philippines, Qatar, Senegal, Sierra Leone, Singapore, Somali Democratic Republic, Sri Lanka, Syria, Tanzania, Thailand, Turkey, Uganda, United Arab Emirates, and Yemen Arab Republic. Besides these thirty-eight members there are three associate members: Botswana, Ethiopia, and Saudi Arabia.

Centre shall be applied toward such costs, and that all expenses for promotional work incurred outside Egypt shall be met by the AALCC.

The Egyptian Government has ensured that the Cairo Regional Centre enjoys the privileges and immunities of the independent international institutions. The agreement concluded between the AALCC and the government of the Arab Republic of Egypt provides that: "The Centre will be an International Institution having its own international status. . . ."

The Centre maintains an international panel of arbitrators. The panel consists of a number of eminent jurists, judges and diplomats from countries in the Asian-African regions and from countries that have close economic links or large investments with these regions.

II. ARBITRATION PROCEEDINGS

A. *The Arbitration Agreement*

Article 10 of the Rules of the Cairo Centre for Arbitration states that:

Where the parties to a contract have agreed in writing that disputes and differences arising out of or in relation to that contract shall be settled through arbitration under the auspices of the Regional Centre for Arbitration at Cairo, such disputes and differences shall be settled in accordance with the rules of the Centre which are the UNCITRAL Arbitration Rules (hereinafter the UNCITRAL Rules)² subject to certain modifications and adaptations as incorporated in the rules.

The UNCITRAL Rules, like the American Arbitration Association (hereinafter AAA), and the International Chamber of Commerce (hereinafter ICC) Rules, recommend the insertion of their respective standard submission clauses into a contract.

The following clause is the model arbitration clause recommended by the Cairo Centre:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be decided by arbitration in accordance with the Rules for Arbitration of the Cairo Regional Arbitration Centre.

Parties may wish to consider adding the following:

- (a) The appointing authority shall be the Cairo Regional Arbitration Centre;³
- (b) The number of arbitrators shall be _____ (one or three);
- (c) The place of arbitration shall be _____ (town or country);
- (d) The language(s) to be used in the arbitral proceedings shall be _____;
- (e) The law applicable to this contract shall be that of _____.

In any case, the arbitration clause or separate arbitration agreement serves as the legal basis for arbitration. The term "dispute . . . arising out of

2. The UNCITRAL Rules are reprinted *infra* in the Appendix to this issue of the *International Tax & Business Lawyer*.

3. Rule 3 of the Rules for Arbitration of the Cairo Regional Arbitration Centre provides that, "unless otherwise agreed by the parties or if the appointing authority designated refuses to act or fails to appoint the arbitrator, the Centre shall be the appointing authority."

. . . contract” is defined under the Cairo Centre Rules in broad terms to include existing or future disputes that arise out of, or relate to, a contract concluded between the parties or its breach, termination, or invalidity. If the arbitration clause or separate arbitration agreement expressly restricts the scope of its application, the arbitrators will respect these limits on their authority.

B. Initiation of the Proceedings

The parties to a dispute may regulate the course of the arbitral proceedings, including any time limits, in the manner they consider appropriate. Agreements in this regard must be in writing to avoid confusion. The agreement may be contained in an exchange of letters signed by the parties, or in an exchange of telegrams or telexes.

The commencement of arbitration procedures differs slightly among international institutions of arbitration. Under the UNCITRAL and AALCC Rules applied at the Cairo Centre, the arbitration procedures commence with the delivery by the claimant to the respondent of a notice of arbitration containing a brief statement of the claim and the amount sought. According to the AAA Rules, the commencement of procedures takes place also by the demand or the brief statement of the claimant. The defendant’s reply is optional. The ICC Rules provide for the commencement of the arbitration procedures by a request for arbitration made in a concise statement of legal grounds and a reply made in a concise statement of defenses.

Any notice, notification, communication or proposal by one party to the other party is deemed to have been received on the day of delivery to the habitual residence or place of business of the other party, or if that party has no such residence or place of business, at his or her last known residence or place of business.

The arbitration notice shall include sufficient information to acquaint the respondent with the particulars of the claim. If respondent then decides to contest the claim, he or she shall prepare for the arbitral proceedings in accordance with the arbitration clause or agreement. This includes the establishment of an arbitral tribunal.

An application for arbitration together with relevant particulars may be sent by either the claimant or the respondent to the Director of the Centre, together with the registration fee and a statement containing (a) the names in full of the parties to the dispute and their addresses, (b) full details of the applicant’s case, and (c) the original (or photocopies) of the arbitration agreement and any contract or agreement out of or in connection with which the dispute has arisen and any other relevant documents and information.

C. Composition of the Arbitral Tribunal

The arbitration shall be held either at the seat of the Regional Centre at Cairo or at any other place chosen by the parties. The Director of the Centre shall, at the request of the arbitral tribunal or either party, arrange for such assistance for the conduct of arbitral proceedings as may be required, including accommodations for the hearings of the arbitral tribunal, secretarial assistance and interpretation facilities.

If the parties have not previously agreed on the number of arbitrators, or that there shall be only one arbitrator, three arbitrators shall be appointed. If the parties failed to agree on the choice of a sole arbitrator or the presiding arbitrator in the case of a three-member tribunal, the appointment shall be made by an "appointing authority" chosen by the parties.⁴

If the parties appoint the Regional Centre as the appointing authority or if the parties have failed to nominate an appointing authority, the sole arbitrator or the presiding arbitrator will be appointed by the Centre from the international panel maintained by the Centre in accordance with its rules.

The methods to be applied in the appointment of arbitrators are carefully designed to take into account the various situations that may arise. If a sole arbitrator is to be appointed but the parties fail to agree on who that arbitrator will be, the Centre will appoint someone of a nationality other than that of either of the parties. If three arbitrators are to be appointed, each party will choose one arbitrator. The two arbitrators thus chosen will then appoint a third arbitrator who will act as president of the arbitral tribunal. If the two arbitrators chosen by the parties cannot agree on the selection of the third arbitrator, the Centre will appoint a third arbitrator of a nationality other than that of either of the two parties.

The requirement that the sole arbitrator or the presiding arbitrator be of a nationality other than that of either of the parties is intended to secure the impartiality of the arbitrators. If both parties have complete confidence in the impartiality of a sole arbitrator, the parties may agree in writing to waive the requirement of neutral nationality. Similarly, the parties may agree to waive the nationality requirement for the presiding arbitrator on a three-person arbitration panel if the two party-appointed arbitrators agree to such waiver.

Regardless of who appointed an arbitrator or what method of appointment was applied, either party may challenge a sole arbitrator or a presiding arbitrator. Any circumstances that give rise to justifiable doubts as to the

4. The AALCC Centres apply the UNCITRAL Rules concerning the appointment of arbitrators. There are no major differences between these rules and the AAA Rules. However, the ICC Rules are somewhat different. Each country has a National Council. The ICC requests a national council of a country other than that of either party to provide a list of possible arbitrators. The ICC then selects a single arbitrator. If the ICC believes the dispute warrants, then each party nominates an "independent" arbitrator and the two select a third.

arbitrator's impartiality can provide the grounds for challenge. Such circumstances include the financial or personal interest of an arbitrator in the outcome of the arbitration including any family ties or any past or present commercial ties of an arbitrator with either of the parties. These examples of circumstances are not exhaustive but are meant to draw attention to typical cases that fall within the general grounds for challenge envisaged in Article 9 of the UNCITRAL Rules. Proof of the existence of any circumstances constituting a ground for challenge will disqualify an arbitrator regardless of whether any doubt in fact exists as to the impartiality of the arbitrator concerned.

Prospective arbitrators and arbitrators already appointed are obligated to disclose the existence of any reason likely to disqualify them at the earliest stage at which disclosure is possible, in order to avoid interruptions in the arbitral proceedings which can result from a challenge.

D. Hearings and Presentation of Evidence

The general provisions concerning the conduct of arbitrators are contained in Section III of the UNCITRAL Rules. Arbitrators are given flexibility to regulate the conduct of the proceedings in such a manner as they consider appropriate, provided that the parties are treated with equality and fairness. However, the arbitrators must, if either party so requests, hold hearings for the presentation of evidence by witnesses or for oral argument by counsel of the parties. If neither party makes a request, the arbitrators may nevertheless decide to hold hearings for the purposes mentioned. In cases where no request has been made by either of the parties and the arbitrators have decided to conduct the proceedings solely on the basis of documents and other written materials, the arbitrators may arrange for inspection of goods or other property.

In order to expedite the proceedings, each party is required to provide the other party with all documents and other relevant information at the same time these are supplied to the arbitrators. The Cairo Centre will arrange for the exchange of documentary evidence and lists of witnesses at the request of any party. In international cases, it is particularly important that the parties know in advance what will transpire at the hearings.

The parties to international arbitrations, their witnesses, and the arbitrators often speak different languages. It is important that the language or languages to be used in the proceedings be determined as early as possible. The parties may agree on this matter in an arbitral clause or in a separate arbitration agreement. Agreement may be reached either before or after the commencement of the arbitration proceedings. In the absence of an agreement by the parties, the arbitrators will promptly determine the language to be used in the proceedings in light of the exigencies of the arbitration. This determination will apply to the language employed in the statement of claim, the statement of defense, any further written statements and, if oral hearings are to

take place, to the language to be used in such hearings. Where documents are submitted in a language other than that agreed upon by the parties or chosen by the arbitrators, the arbitrators have the power to order the party submitting the document to provide a translation in the proper language.

The first written statement in the arbitral proceedings is the statement of claim, which must be distinguished from the notice of arbitration. The notice of arbitration serves the purpose of informing the respondent that the claimant is submitting to arbitration a dispute arising out of a contract between respondent and claimant. The statement of claim is communicated only after the arbitrators have been appointed or chosen and sets out the claim in the exact form to be dealt with by the arbitrators.

In response to the statement of claim, the respondent communicates a written statement of defense to the claimant and to each arbitrator within a period of time prescribed by the arbitrators. The respondent may assert in the statement of defense counterclaims arising out of the contract at issue. Such claims may be asserted either as counterclaims or for purposes of set-off. The respondent has the option of attaching the documents on which he or she intends to rely for the defense, or of including a reference to such documents. The respondent is also entitled to present additional or substitute documents at a later stage in the arbitral proceedings. At any time during the arbitral proceedings the arbitrators may require the parties to produce supplementary documents or exhibits within such a period of time as the arbitrators shall determine.

In some cases, the arbitrators' final decision may depend on matters of a technical nature or on the interpretation of particular commercial usages. In such cases the arbitrators may appoint one or more experts to report on specific issues arising during the arbitral proceedings. The parties must give the experts any relevant information and produce for their inspection any relevant documents or goods.

Before the close of arbitral hearings, the arbitral tribunal may permit the parties to submit any further proof they might have or to produce any witnesses not yet heard. If there are no more witnesses or submissions of proof, the tribunal will declare the hearing closed. The arbitral tribunal may, in exceptional circumstances, decide on its own motion or upon the application of either party to reopen the hearings at any time before the arbitral award is made.

III. THE AWARD

The arbitrators are authorized to order interim, interlocutory, partial or final awards. An award, whatever its nature, is binding upon the parties. It will be given in writing and will state the reasons upon which it is based.⁵

As a general rule all arbitrators should sign the award. When there are three arbitrators, the award must be agreed upon by a majority. The failure of one arbitrator to sign the award does not impair the validity of the award. However, the reasons for the absence of an arbitrator's signature must be stated. The arbitrators will send directly to the parties copies of the signed award. For reasons of privacy, the award may only be made public with the consent of both parties.

If the parties agree to a settlement of their dispute before the award is made, the arbitrators will either issue an order to discontinue the arbitral proceedings or, if requested by both parties and accepted by the arbitrators, record the settlement in the form of an arbitral award on agreed terms. In the latter case, the arbitrators are not obliged to give reasons for such an award. The settlement nevertheless acquires the legal force of an award.

Either party may request an interpretation of an award. The request must be communicated to the other party. The interpretation, which is binding upon the parties, must comply with the formal requirements for awards.

Either party may, after the receipt of the award and upon notice to the other party, request the arbitrators to correct any mistakes in the award, such as errors in computation or those of a clerical nature. The arbitrators may also make such corrections on their own initiative after communication of the award.

The arbitrators will set out the cost of the arbitration in the award. While the fee of the arbitrators must be stated separately all other costs of arbitration may be combined into one figure. The Cairo Centre adheres to the generally accepted principle that the costs of arbitration shall be borne by the unsuccessful party. However, the arbitrators are authorized to apportion costs between the parties whenever justified by the particular circumstances.

The term "costs" includes:

- A) The fees of the arbitral tribunal, to be stated separately as to each arbitrator and to be fixed by the tribunal itself;⁶
- B) The travel and other expenses incurred by the arbitrators;
- C) The costs of expert advice and of other assistance required by the arbitral tribunal;
- D) The travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal;
- E) The legal fees and costs of the successful party provided such fees and costs were claimed during the arbitral proceedings, and only to the extent

5. The UNCITRAL Rules require that every award include an explanation of the reasons on which it is based. ICC awards must also be accompanied by an explanation. However, the AAA Rules do not require that reasons be given for short awards.

6. See the Appendix to this Article for fees and charges of the Centre.

that the arbitral tribunal determines that the amount claimed is reasonable; and

- F) Any fees and expenses of the appointing authority, as well as the expenses of the Centre.

Either party, upon notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

If the arbitral tribunal considers the request for an additional award justified and believes that the omission can be rectified without further hearings or evidence, the tribunal will complete the award.

IV. CONCLUSION

Upon the request of the Centre, several steps were taken in Egypt in the last few months to eliminate the difficulties in arbitral procedures and enforcement of arbitral awards.

The Ministry of Justice approved a draft submitted to it by the Centre to abrogate paragraph 3 of Article 502 of the Egyptian Procedural Law, which provides for the nomination of arbitrators in the arbitration agreements. Legislative procedures are taking place now to introduce the draft to the People's Assembly.

Also, after the final draft of the Model Law on International Commercial Arbitration⁷ was adopted by UNCITRAL, the Centre suggested to the Ministry of Justice that a committee be formed to revise the national laws in conformity with the Model Law. The proposal was accepted and the committee will be formed after approval of the draft by the General Assembly of the United Nations.

We hope that the work of the committee as well as the other steps taken will both encourage the use of arbitration in dispute settlement, and facilitate the easier enforcement of arbitral awards.

7. UNCITRAL Report, 40 U.N. GAOR Supp. at 3, U.N. Doc. A/40/17 (1985), reprinted in 24 I.L.M. 1302 (1985).

APPENDIX

FEES AND CHARGES

1. Registration Fee:

Each party shall pay U.S. \$50 as a registration fee. This amount is to be paid to the Centre at the beginning of the proceedings.

2. Administrative Charges:

The administrative charges are determined as a percentage of the value of the subject matter. The value of the subject matter is set in U.S. dollars according to the rate of exchange of the Egyptian Central Bank on the day the request for arbitration is registered in the Centre. The percentages applied to each successive portion of the subject matter are to be added together.

Value of Subject Matter	Percentage	Remarks
\$ Up to \$ 50,000	3%	With a minimum of \$500.
50,001 Up to 100,000	2%	
100,001 Up to 500,000	1%	
500,001 Up to 1,000,000	0.80%	
1,000,001 Up to 2,000,000	0.40%	
2,000,001 Up to 5,000,000	0.15%	
More than 5,000,000	0.10%	

3. Arbitrators' Fees:

The arbitrators' fees are determined as a percentage of the value of the subject matter. The percentages applied to each successive portion of the subject matter are to be added together.

Value of Subject Matter	Percentage	Remarks
\$ Up to \$ 50,000	3%	With a minimum of \$1,000 for each arbitrator.
50,001 Up to 100,000	2%	
100,001 Up to 500,000	1%	
500,001 Up to 1,000,000	0.80%	
1,000,001 Up to 2,000,000	0.40%	
2,000,001 Up to 5,000,000	0.15%	
More than 5,000,000	0.10%	

4. General Rules:

1. The arbitrators' fees and administrative charges are paid to the Centre before beginning the proceedings.
2. The charges paid to the Centre do not include translation or expertise charges.
3. The UNCITRAL rules are the applicable rules in the Centre. Modifications of such rules are to take place according to the rules of the Centre.
4. It should be stressed that the amount of the deposits in no way binds the final determination of the arbitrators' fees or the administrative costs of the Centre. In some cases due to complexity, nature of the dispute, length of the hearings and the eminence and standing of the arbitrators, the charges and the fees will be fixed after consultation with the arbitrators and the parties.

The fees and charges of the Centre will take into account the actual expenses incurred and nonprofit character of the Centre.