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Litigation in Egypt in Commercial Matters

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Litigation in Egypt in Commercial Matters

Egypt has a system of law that is based upon the European continental legal system, except in personal matters which are subject to the Sharia Law.

A principle division under Egyptian Law is between Private and Public Law which is primarily based upon the difference between private relationships and relations in which the State and Public Juristic persons are parties and in which they act as a sovereign power.

Therefore the Egyptian legal system has ordinary civil and commercial Courts which decides the disputes between private persons as well as the disputes which involve the State and the Public Juristic persons when they act as private persons on one hand, and on the other hand, the administrative Courts of the Council of State which view the disputes in which the State and the Public Juristic persons act as a sovereign power, and which include-*interalia*- disputes relating to the so called Commercial "administrative contracts" in which one of the parties is the State or a Public Juristic person, that is linked to a public service and that includes conditions- in favour of the public party- that are not common in private law relationships.

The ordinary Civil and Commercial Courts include the Courts of urgent matters, the summary Courts, the Courts of first instance, the Courts of appeal and the Court of Cassation, and an important factor that should be noted is that in cases other than those before the Court of Cassation, the Courts often refer the cases to the Experts Department of the Ministry of Justice- which is composed of civil servants- and which is entrusted with the task of presenting to the Courts reports about the questions of facts relating to the cases, and the conclusions of those reports are usually adopted by courts.

Law No 13 of 1986 concerning Civil and Commercial procedures (the "Law") provides for the rules relating to the International Jurisdiction of the Courts, and the following has to be noted in this respect that:

1- Without prejudice to the exclusively territorial jurisdiction provided for in matters related to real estate (cases pertaining to immovables), Article 28 of the Law provides that Egyptian courts have the jurisdiction/ competence to adjudicate the Lawsuits filed against an Egyptian, whether domiciled or not in Egypt.

Furthermore, Article 30 of the Law provides that Egyptian Courts have jurisdiction/ competence to adjudicate certain categories

of lawsuits filed against foreigners non- domiciled or residing in Egypt. Such categories include

- *interalia*- the following:

(I) Cases concerning an asset situated in Egypt, or an obligation that originated, or that was executed, or that should have been executed in Egypt; or a bankruptcy that was registered in Egypt.

(II) Cases in which one of the defendants has a domicile or residence inside Egypt; i.e. extending the judicial competence to other defendants of foreign nationalities, not domiciled or residing in Egypt once they are co-defendants in the same lawsuit to a national involved in the same contractual or delictual Liability.

(III) Furthermore, Whenever a lawsuit is filed in front of the Egyptian Courts- that have jurisdiction/ competence to adjudicate it-, those courts are entitled to extend their jurisdiction/competence to deal with all preliminary matters and interlocutory demands relating to the original case, as well as all submissions linked thereto which are deemed necessary for rendering justice within the course of the pending judicial proceedings.

Therefore, it is likely that if a plaintiff brings court proceedings in Egypt against (I) an Egyptian defendant and (II) a

foreign defendant, the Egyptian Court declares itself having competence to adjudicate the claim against both defendants, whenever the claim against them is based on identical or closely connected facts.

2- The general rule is that a defendant who objects to the Jurisdiction of an Egyptian Court has to raise that objection at the beginning of the proceedings before getting in the merits. Otherwise, he will be considered having waived his objection, implying a voluntary submission to jurisdiction. However, once the objection is raised in due time, the Court may pass judgment concerning this plea at the outset or at the end of the proceedings, as it considers appropriate according to the circumstances of the case.

3- A general rule provided in Article 63 of the Law is that the legal action is brought at the request of the plaintiff by a notice of action that is deposited at the concerned court's clerk office.

This notice of action must contain the following:

- The full name of the plaintiff, his occupation, domicile, and the full name, profession and domicile of his representative.
- The full name of the defendant, his occupation and domicile, and his last domicile in case his present domicile is unknown.
- The date when this legal action is brought.

- The court before which the legal action is brought.
- The elected domicile of the plaintiff in the city where the court is situated in case he has no domicile therein.
- The facts of the case, the requests of the plaintiff and their basis.

4- The proceedings commence within days once the Court's clerk sends to the defendant through the Bailiff a copy of the official Notice of Action, informing him about the filing of the judicial requested action and providing him with the name of the plaintiff, his claims, and the date of the Court's session at which the judicial action will start being adjudicated.

From the defendant's side, he becomes required to deposit his defense memorandum and his supporting documents at the Court's clerk office, at least three days before the date fixed for the Court's first session as indicated in the Bailiff's Notice of Action.

However, it should be noted that on many occasions defendants prefer not to follow said rule, due to the fact that no sanction is provided for in the above mentioned Law if the defendant does not follow that rule. Thus, they wait to submit their defense in front of the Court during the proceedings taking place thereafter.

5- As a general rule, the Court's proceedings in Egypt are not confidential. All sessions and hearings are held in public, unless the Court decides in exceptional circumstances that the public is not entitled to attend a given case that requires secrecy. As to the documents filed, copies thereof can only be obtained by the other parties appearing in the same case and these copies can be photocopied by the Court's clerk, without any possibility to displace the file.

6- Judges in Egypt do not have the right to refer the parties in pending proceedings to arbitration/mediation.

On the other hand, Article 12 of the Egyptian Arbitration in Civil and Commercial Matters Law no 27 of 1994 provides that the court before which an action is brought concerning a disputed matter which is subject to an arbitration agreement shall judge that this action is inadmissible, provided that the defendant raises this objection before submitting any demand or defense on the merits of the case.

Economic Courts Law

It should also be noted that in order to simplify the rules relating to the judicial review of certain cases relating to the economy and investments, the Egyptian legislator adapted a new law no 120

of 2008. Said Law established Economic Courts that are mainly composed of first instance chambers and chambers of appeal and that view *-inter alia-* criminal actions resulting from the crimes provided in certain specific economic laws as detailed in this Law.

Furthermore, and without prejudice to the cases that are within this jurisdiction of the Council of State- the first instance chambers of the Economic Courts have the jurisdiction to view the civil disputes whose value does not exceed 5 million Egyptian Pounds and that result from application of the following laws.

- 1- The law of Companies Operating in the Field of Receipt of Assets for Investment.
- 2- The Money Market Law.
- 3- The Guarantees and Incentives of Investment Law.
- 4- The Lease Financing Law.
- 5- The Law concerning the Protection of the National Economy from the Effects of Harmful Actions in International Trade.
- 6- The Commercial Law in relation to transfer of Technology, Commercial Agency, Banking Transactions, Bankruptcy and Settlements for Its Avoidance.
- 7- The Real Estate Financing Law.
- 8- The Protection of Intellectual Property Rights Law.
- 9- The Organization of Communications Law.

10- The Regulation of Electronic Signature Law and the Establishment of the Authority for the Development of the Information Technology Industry.

11- The Protection of Competition and Prevention of Monopolistic Practices Law.

12- The Joint Stock Companies, Partnerships limited by shares and Limited Liability Companies Law.

13- The Central Banks, Banking institution and Money Law.

And the appeals chambers of the Economic Courts shall view in the first place the cases mentioned hereinabove if their value exceeds five million Egyptian Pounds or if their value is not estimable.

The above -mentioned law No 120 of 2008 also provides for the right of the Economic Courts to refer the cases to specialized experts who are registered in the concerned register in the ministry of Justice, in order to improve the quality of the expertise provided by the experts of the Experts Department of the Ministry of Justice.

Finally, it should be noted that the general rule in Egyptian civil cases is that the judgments of the Courts of first instance may be appealed before the Courts of Appeal and eventually before the Court of Cassations, and in order to reduce the duration of the judicial review of civil cases before the Economic Courts, Law no. 120 of 2008 provides that the appeals against the Civil Judgments of the chambers of first instance of the Economic Courts may only be

appealed before the appeals chambers of those courts, meaning that no challenge for cassation is allowed in such cases, and the judgments of the appeals chambers of the Economic Courts may only be appealed before the Court of Cassation.