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Egyptian Business and Commercial Laws

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EGYPTIAN BUSINESS AND COMMERCIAL LAWS

Egypt is currently undertaking a major evolution and transition in its investment, business and commercial laws. In this article we will undertake to give an overview of such changes while providing some details of certain laws that we believe are important in taking the decision to invest and / or do business in Egypt.

THE LEGAL FRAME WORK FOR INVESTING IN EGYPT.

The current Law No. 8 of 1997 on Investment Guarantees and Incentives Law as amended¹ (the "Investment Law") still offers certain incentives for Egyptians and foreigners for investment in certain fields of activities including inter alia the following:

- Reclamation and/or cultivation of barren and desert lands.
- Animal, poultry and fish production.
- Industry and mining.
- Equipping and developing specific industrial areas.
- Hotels, Motels, Hotel flats, Tourist Villages and Touristic Transport.

¹ The Investment law has been amended by law no. 91 for 2005.

- Refrigerated transport of goods in refrigerators for storage of agricultural products, industrial products and food stuffs, containers stations and grain silos.
- Air transport and the services directly connected therewith.
- Overseas maritime transport.
- Oil services, assisting digging and exploration operations, and transport and delivery of gas.
- Housing projects, the units of which are wholly leased empty for non-administrative housing purposes.
- The infrastructure comprising drinking water, drainage, electricity, roads and communications, multi stores garages under the BOT system whether over or under land and waiting car meters.
- Hospitals and medical and treatment centers which offer 10% of their capacity free of charge.
- Financial leasing.
- Guaranteeing subscription in securities.
- Risk capital.
- Production of computer software and systems.
- Projects funded by the Social Fund for Development.
- Development of new Urban Communities.
- Design of programs and production of electronic components.
- Formation and management of technology areas.
- Credit classification of establishments and provision of information about them in the stock markets.

- Purchase and liquidation of debts of small and medium size establishments.
- Management and touristic marketing of hotels and motels and hotel apartments and touristic villages.
- Building and management of Nile River docks.
- Formation, management, operation and maintenance of Collective river transport means, inside and between cities and new urban communities.
- Management of execution of industrial and services projects.
- Collection of garbage and residuals of productive and services activities and their treatment.

Moreover, the Investment Law allows the Council of Ministers to add other fields to those mentioned herein above.

The Investment Law protects Egyptians as well as foreign persons, companies and establishments against nationalization and confiscation.

There are no price controls on the products of companies and establishments subject to this Law or on their profits. Those companies and establishments have the right to own building lands and built real estates which are necessary for exercising their activities and expanding them, whatever is the nationality or place of residence of its partners, shareholders, or the percentage of their participation.

Joint stock companies established under this Law are not exempted from the obligation to distribute 10% of their profits to their employees. Furthermore, their boards of directors may be totally composed of foreigners.

All corporate tax exemptions that were provided in the Investment Law have been abolished following the promulgation of the new Income Tax Law no 91 of 2005 which reduced in general the corporate tax rates from 40% to 20%. Accordingly all new companies established under the Investment Law after the promulgation of the new Income Tax Law No 91 for 2005 are subject to a uniform tax rate of 20% currently the same rate that is applicable to normal companies established under the companies Law No 159 for 1981 as amended.

The Investment Law still provides for subjection of all imported machines equipment and instruments that are necessary for the projects to a reduced customs tax of 5%.

Finally, this Law provides that settling the investment disputes in connection with implementation of its provisions may be carried out in the manner agreed upon with the investor, and agreement may be reached between the concerned parties on settling these disputes within the context of the Conventions in force between the Arab Republic of Egypt and the country of the investor, or within the context of the

Agreement on Settlement of Disputes which arises in respect of Investments, between the Countries and the Nationals of the other Countries, which the Arab Republic of Egypt adhered to by virtue of Law No. 90 of the year 1971 (i.e. the Washington Convention of March 18, 1965 creating ICSID), according to the conditions, terms and in the cases where these agreements apply, or according to the provisions of the Egyptian Law on Arbitration in Civil and Commercial Matters promulgated by Law No. 27 of the year 1994 as amended.

Agreement may also be reached on settling the aforementioned disputes by arbitration before the Cairo Regional Center for International Commercial Arbitration.

THE NEW ECONOMIC ZONES

The Law of the Economic Zones of Special Nature (the "Economic Zones Law") was promulgated by Law No. 83 of 2002 in order to encourage investment in certain areas.

The economic zones areas and the authorities that manage them are established by a Presidential Decree. The aim of each Authority is to encourage investments –in the economic zone under its responsibility- for the establishment of cultivation, industrial and services projects that are able to compete with comparable ones abroad.

Each economic zone has a special customs and taxes administration system that is established by the board of directors of the economic zone with the approval of the Minister of Finance.

The Economic Zones Law provides for the possibility of terminating the employment contracts of the employees in the economic zones, according to terms easier than those prevailing under the Egyptian Labor Law, as well as for the possibility of establishment of a special system for the social insurance of those employees.

The income tax in the economic zones is 10% of the net income except for the income derived from the salaries of those working in them, which is 5%.

The profits derived from bonds and from loans that are granted to establishments in the economic zones are exempted from taxes, and no sales taxes or duties or other direct or indirect taxes may be imposed in them.

The machines, raw materials, spare parts, components ...etc that are necessary for the authorized activities in the economic zones may be imported without permits, and are exempted from the customs taxes, the sales taxes and from all other taxes and duties. The products of those establishments may be exported without permits, and are subject to the

customs taxes, the sales taxes and other taxes and duties only on the imported components of those parts when they enter the local Egyptian market.

Furthermore, the establishments operating in economic zones may not be subject to nationalization, nor may they be subject to sequestration, freeze of assets or to confiscation except by a judicial judgment, and those establishments are entitled to decide on the prices of their products and services without governmental interference.

IMPORT AND EXPORT REQUIREMENTS IN EGYPT.

Only Egyptian nationals and fully Egyptian owned and managed companies may engage in importation into Egypt for trade on condition of registration in the Register of Importers.

Nevertheless, the Investment Law provides that all companies and establishments subject to this Law may import by themselves or via third parties what they need for their establishment, expansion or operation, of production necessities, materials, machines, equipment, spare parts, and means of transport which are suitable to the nature of their activities, without need for recording in the Register of Importers.

Registration in the Register of Exporters is needed for engagement in export from Egypt. There are no restrictions imposed on foreigners or local entities wholly or partly owned by foreigners with regard to export of products from Egypt.

Companies and establishments subject to the Investment Law have the right to export their products by themselves or through middlemen without a license and without need for their registration in the Register of Exporters.

COMMERCIAL AGENTS AND INTERMEDIARIES

Registration in the Register of Commercial Agents and Intermediaries is a condition for engagement in commercial agencies or intermediaries activities, and only Egyptian nationals and fully owned and managed Egyptian companies may be inscribed in this Register.

It might be worth noting that the Commercial Law No. 17 for 1999 regulates certain important aspects of the relationship between Commercial Agents and their Principals and makes it somewhat difficult for a foreign company to terminate its exclusive relationships with a local agent if such relationship has been registered in the Register of Commercial Agents and Intermediaries at the Ministry of Foreign Trade and Industry.

TRANSFER OF TECHNOLOGY RULES IN EGYPT

Egypt has up to the first of October 1999 applied a Commercial Code that dated back to 1883.

Obviously, the provisions of the old Code that regulated a vital part of the commercial activity, were no longer adequate for the radically different conditions and needs of the new millennium, and Egypt faced this situation by promulgating a new modern Commercial Code (No. 17 of 1999) - which is in some aspects only - is in line with the prevailing commercial climate of the new century.

Globalization and the ever increasing technological influence and power of the highly industrialized states, may have created a reaction on the part of the less industrialized states -including Egypt- which have found it necessary to codify certain rules relating to the transfer of technology, aiming at achieving the minimum balance between the Suppliers and the Importers of technology.

The most important rules contained in the new Commercial Code in this respect are the following:

1. Any condition prescribed in the Technology Transfer Contract, which restricts the freedom of the Importer of the Technology (the "Importer") in its use, development, acquaintance of the product or its

advertisement, may be invalidated. This shall apply in particular to the conditions binding the Importer with one of the following requirements:

- A. Accepting the improvements introduced by the Supplier of the Technology (the "Supplier"), and paying their value.
- B. Prohibiting the introduction of improvements or modifications to the technology to suit the local conditions or the conditions of the Importer's establishment. As well as, prohibiting the acquisition of another technology similar to or competing with the technology subject of the contract.
- C. Use of specific trademarks to distinguish the commodities for which the technology was used in their production.
- D. Limiting the volume of production, its price, the method of its distribution or its export.
- E. Participation of the Supplier in running the establishment of the Importer or his interference in choosing its permanent employees.
- F. Purchase of the raw materials, equipment, machines, apparatuses, or spare parts for operating the technology, from

the Supplier alone, or from the establishments exclusively specified by him.

- G. Restricting the sale of the production, or the delegation for its sale exclusively to the Supplier or to the persons, which he defines.

The foregoing shall apply unless any of these conditions is prescribed in the technology transfer contract, with the aim of protecting the consumers of the producer, or safeguarding a serious and legal interest of the technology Supplier.

2. The Supplier has to submit to the Importer the information, data and other technical documents that are necessary for assimilation of the technology, and also the necessary technical services requested by the Importer for operation of the technology, and in particular the expertise and training.

The Supplier also has to inform the Importer of the improvements that he might introduce to the technology during the validity period of the contract. The Supplier has to transfer these improvements to the Importer if the latter requests him to do so and the Importer shall pay the charges for the technology and for the improvements introduced to it, at the time and place agreed upon.

3. The Supplier, during the validity of the contract, has to provide to the Importer, upon the latter's request, the spare parts he produces and which are required for the machines or equipment used in operating his establishments, and if the Supplier does not produce these parts in his own establishments, he shall advise the Importer of the sources where they are available.

4. The Supplier shall guarantee the conformity of the technology and the documents attached to it, to the conditions prescribed in the contract. He shall also guarantee production of the commodity, or performance of the services agreed upon, according to the specifications prescribed in the contract, unless otherwise agreed upon in writing.

5. Egyptian Courts shall have the jurisdiction to decide on the disputes arising from the technology transfer contract referred to in this Commercial Law. Agreement may be reached on settling the dispute amicably or via arbitration to be held in Egypt according to the provisions of the Egyptian Law.

In all cases, deciding the subject of the dispute shall be according to the provisions of the Egyptian Law, and any agreement to the contrary shall be null and void.

There is currently a Recourse filed with the Egyptian Supreme Constitutional Court with regard to the constitutionality of Article 87 of the Commercial Code. Article 87 makes it obligatory that all transfer of

technology agreements should state – in case of arbitration – that any arbitration related thereto would be held in Egypt and that Egyptian Law should be the applicable law. In other words, the subject of said constitutional case is that any restraint on the parties' rights to choose the applicable law or the place the arbitration should be declared unconstitutional.

The importance of said constitutional case – if won – that the application of the Transfer of Technology Articles of the Commercial Code would be subject – once more - to the agreement of the parties.

LEGAL ENTITIES UNDER EGYPTIAN LAW

1. The Egyptian Law provides for the existence to full partnerships, limited partnerships, partnerships limited by shares, limited liability companies and joint stock companies, all of which are more or less modeled on the classical European Continental Style.

The Companies Law No. 159 of 1981 used to provide for the need to obtain an administrative license in order to establish partnerships limited by shares, limited liability companies and joint stock companies; but since promulgation of Law No. 3 of 1998 in January 1998 such requirement is no longer necessary and the administrative authority now has only to be informed *-a posteriori-* of their establishment.

On the other hand, a need for an administrative license from the Investment Authority still exists in order to establish companies subject to Investment Law.

The following details concerning limited liability companies and joint stock companies are worth mentioning here:

LIMITED LIABILITY COMPANIES

The Egyptian limited liability company has a minimum of two founding members and a maximum of fifty whose responsibility is limited by the value of their shares-parts in the Company.

The limited liability company may not engage in the activities of insurance, banking, savings, nor may it receive deposits or invest funds on behalf of third parties. No partner in the Company may transfer a part in it to third parties without first offering it to existing members.

The minimum issued capital of a limited liability company is L.E. 50,000, which must be fully paid up at incorporation. The issued capital may be 100% foreign owned and is divided into equal parts, and all parts must be subscribed on formation.

Limited liability companies are directed by one or more directors (at least one of whom must be Egyptian) and by their general assemblies, and if the company has more than ten partners, it must also have a supervisory council.

JOINT STOCK COMPANIES

The responsibility of the shareholder of the joint stock company is limited by the value of his shares in the company. In general the issued capital of the Egyptian joint stock company whose shares are not offered for public subscription is L.E. 250,000 and the minimum issued capital of the company whose shares are offered for public subscription is L.E. 500,000.

10% of the issued capital has to be paid at formation and it has to be increased to 25% within three months from the date of formation of the Company, and the rest has to be paid within a maximum of five years from this date.

Moreover, the issued capital of the company may be 100% foreign owned and directed.

The company may also specify in its Articles of Incorporation an authorized capital, which may not exceed ten times the issued capital.

The members of the board of directors of the joint stock company are appointed and dismissed by the shareholders in an ordinary general assembly of the shareholders. The board of directors and the general assemblies of the shareholders should be held in Egypt and the shareholders may vote in person or by proxy to other shareholders. Resolutions are passed by a simply majority of the shares represented at the meeting, unless the articles of incorporation require a greater majority. In extraordinary assemblies, resolutions are passed by a two-thirds majority, unless the resolution relates to an increase or decrease of capital, dissolution of the company, a change of its purpose, or a merger, in which case the majority required is three-quarters of the shares represented in the meeting.

Every company must appoint an independent auditor in addition to a lawyer both should be licensed to practice in Egypt.

Furthermore, the employees of the company play a role -by virtue of the law- in management of the company, usually through an administrative committee, that views the subjects relating to the employees, and whose chairman is entitled to attend and vote in the meetings of the boards of directors of the Company, and 10% of the profits of the company -on condition of not exceeding the yearly salaries

of its employees- has to be distributed to the employees of the company. The above rule relating to distribution of 10% of the profits to employees also applies to companies subject to the Investment Law.

2. A foreign company may establish a branch in Egypt provided it is registered in the Egyptian Commercial Register and in a special Register in the Egyptian Companies Department.

The branch must, every year, submit to the Companies Administration, a copy of its balance sheet, profit and loss account and the auditor's report, along with details concerning managers, personnel and salaries as well as its profits and the employees part in it as stated above.

The branch of a foreign company must also abide by Egyptian legislation including the laws governing companies, taxation, labor, social insurance and foreign exchange, and must also employ an Egyptian auditor.

It should also be noted that partnerships limited by shares, limited liability Companies, joint stock Companies as well as branches of foreign companies operating in Egypt may not employ foreigners representing more than ten percent of their work force, nor may they pay them more than 20 percent of the total payroll unless they receive an exemption by the concerned minister.

3. Representative offices of foreign Companies may also be established in Egypt.

They may not engage in any commercial activity and their sole purpose is to study the markets and the potentials of production for the foreign companies in Egypt.

They also have to be registered at the Egyptian Companies Department.

THE NEW EGYPTIAN INCOME TAX LAW:

A new income tax law no. 91 of 2005 (the "Law") was promulgated in Egypt that drastically amended the income tax rules that were applied up to the date of its entry into force as from June 10, 2005.

The law did not change the basic structure of the tax that is imposed on the total net income of natural persons domiciled in Egypt and on those domiciled outside Egypt concerning their incomes that are derived from permanent establishments in Egypt, nor did the law fail to mention that this total net income is derived from the following sources.

1. Salaries and wages of individuals.
2. Commercial and industrial activities of individuals.
3. Professional and non Commercial activity.
4. Income derived from immovable property.

On the other hand, the law lowered the maximum income tax rate from 40% to 20% and abolished the totality of the corporate and income tax exemptions provided in the investment guarantees and incentives law no. 8 of 1997 in relation to establishments that are incorporated after entry into force of the law.

The law defines in some detail the meaning of the "permanent establishment" which was not mentioned in the previous income tax law no. 157 of 1981 as amended and increases the income that is exempted from the tax to L.E 5000 (and L.E 9000 in general relation to the salaries and wages).

We shall mention herein-below in some details the rules provided in the law concerning the tax on the income of juristic persons due to its importance for foreigners doing business in Egypt.

TAX ON JURISTIC PERSONS PROFITS

The tax is imposed on the net yearly profits of the juristic persons that are domiciled in Egypt from all their profits, whether from Egypt or abroad, and on the profits derived from a permanent establishment in Egypt in relation to juristic persons that are not domiciled in Egypt.

The definition of "juristic persons" includes all types of companies, as well as foreign banks and foreign establishments, even if their head offices are situated outside Egypt and their branches are in Egypt, and the income tax on their net yearly profits is 20% and 40.55% concerning the profits of companies that are prospecting for oil and gas.

The taxable profit of those juristic persons consists of the total revenue after deducting, the costs and expenses that are necessary for obtaining the profit, as detailed in the law.

On the other hand, the various tax exemptions provided in the previous income tax law for companies listed in the stock exchanges and that employ a certain number of employees have been abolished on the understanding that the lowering of the income tax rate by 50% (i.e. 20% instead of 40%) is a fair counterpart for such abolishment of those exemptions.

The main tax exemptions provided in the law concerning the profits of juristic persons include the following:-

- 1-** Profits of reclamation or cultivation of reclaimed land for a period of ten years starting from the date of exercising the activity.
- 2-** Profits of animal, poultry and fish production for a period of ten years starting from the date of exercising the activity.
- 3-** Revenues from investments in securities which are listed in the Egyptian stock exchanges.
- 4-** Returns of bonds and securities which are listed in Egyptian stock exchanges and returns of investment funds established in accordance to the Egyptian stock exchange law.
- 5-** Distributions and profits obtained by Egyptian domiciled persons against their participation in other domiciled juristic persons.
- 6-** The returns of the juristic persons from their securities which are issued by the Egyptian central bank or the returns from the dealing in those securities.

SOCIAL INSURANCE CONTRIBUTIONS

Social insurance must be paid by the employers to the Social Insurance authority on their own behave and on the behave of their Egyptian employers.

Expatriate staffs are not liable for Egyptian social insurance unless their employment Contracts are for not less than a year and on condition of reciprocal treatment for Egyptian working in the concerned foreign state. The social insurance contributions cover old age, incapacity, death, work accidents insurance, sickness insurance and unemployment insurance. The total employers contributions amounts to 26% of the salaries and the employee's contribution amounts to 14% of the salaries.

THE EGYPTIAN LABOR LAW

A work permit is required for foreigners who intend to work in Egypt.

The new Egyptian labor law promulgated by law no 12 of 2003 (the "New Labor Law") provides that the employer is allowed to employ the employees on probation for up to three months and the employment contract may be either for a limited or an unlimited period of time.

The legal maximum working hours are eight per day or forty-eight hours per week excluding overtime and rest meal periods, and the employees must get a weekly rest which must not be less than twenty-four hours.

Employees have the right to twenty-one days of annual paid vacation days after working for one year and thirty days after working for ten consecutive years or reaching the age of fifty.

With regard to the employee sick leave, the general rule is that the employee is entitled to six months of sick leave per year with pay between 75 percent and 85 percent of the normal wage.

The minimum overtime premiums are 35 percent of normal pay for overtime work during daylight, 70 percent for work at night, and 100 percent for work on rest days and holidays.

Dismissal of the employee is legal if he commits a serious offense as defined by the New Labor Law.

We would add here that the New Labor Law has introduced a number of major modifications relating to the employment relationships which can be summarized as follows:

- 1-** The New Labor Law provides for an obligatory annual increase of a minimum of 7% in the employees basic salaries.
- 2-** The concerned Minister may designate certain activities which can not be exercised by foreigners in Egypt, as well as the maximum number of foreigners allowed to work in establishments in Egypt.
- 3-** The ranges of disciplinary sanctions that may be imposed on the employees have been increased in order to allow for certain latitude in this respect.

4- The jurisdiction to view the legal actions relating to the employment relationships has been transferred from the regular judicial Courts, to judicial Committees composed of two judges - one of whom presides the Committee –, a civil servant, a member representing the concerned Labor Union, and a member representing the concerned Employer's Syndicate, and the decisions of those Judicial Committees may be subject to appeal and to recourse to the Court of Cassation in accordance to the general rules of Egyptian Law.

5- The previous Labor Law of 1981 provided that renewal or continuation of a temporary employment contract is considered a renewal or a continuation of this relationship for an unlimited period of time. The New Labor Law takes a totally different approach in this respect, which allows the multiplicity of renewals of temporary employment contracts. The importance of this innovation is obvious because it allows, for the first time in decades, to employ the employees on a continuous temporary basis, which minimizes to a great extent the number of legal actions brought against the employers for abusive dismissal of their employees.

6- The New Labor Law mentions for the first time the possibility of dismissal of the employees for "inefficiency" in accordance to the approved work regulations.

7- The New Labor Law provides that the unjustifiable dismissal of the employee by the employer, allows the employee to claim damages before the judicial committees referred to above, and the damages accorded by the judicial committees in those cases must not be less than a sum equal to two months of the total wage for each year of service.

8- The New Labor Law provides that the age of retirement must not be less than 60 years, and that the employer may terminate the employment contract when the employee reaches the age of 60, unless he was employed for a limited period which ends after the employee reaches this age.

9- The New Labor Law has introduced detailed provisions concerning vocational training, including the creation of a fund for financing this training, which is partially funded by 1% of the net profit of the establishment subject of this Law which employs more than ten employees.

10- The New Labor Law allows the employees for the first time to strike peacefully through their labor unions, in defense of the professional, economic and social interests, and in accordance to this Law.

The New Labor Law also provides that the strike has to be approved by a two-thirds majority of the Board of Directors of the concerned labor union organization.

On the other hand, employees in strategic and vital establishments designated by the Prime Minister are not allowed to strike.

11- The New Labor Law allows the employer for economic reasons – to close his establishment totally or partially or to reduce its size or activity, after approval of a Committee whose membership and authority is designated by the Prime Minister, and the employers have to pay to the employees- whose employment contracts are terminated for economic reasons – a sum equal to one month of the employee's total salary for each of his first five years of service and one and a half month for each year of service over and above the first five years.

PATENTS, TRADEMARKS AND COPYRIGHTS REGULATIONS IN EGYPT

A recent Law No. 82 of 2002 (the "Intellectual Property Law") on the protection of intellectual property rights was promulgated by the Egyptian People's Assembly, and it provides for extensive protection of these rights, particularly in the following fields:

PATENTS

The Intellectual Property Law allows inventors to obtain patent protection for twenty years from the date of application in Egypt.

The patent protection for utility designs is for seven renewable years starting from the date of application in Egypt, and the patent protection for schematic designs of integrated circuits is ten years starting from the date of application in Egypt or the date of first commercial exploitation thereof in Egypt or abroad, whichever date is prior to the other.

It is the patent holder's exclusive right to fully exploit the invention. It is also his obligation to fully exploit it, otherwise the patent holder may be subjected to compulsory licensing in favor of a third party for failure to do so, as detailed in this Law.

Undisclosed secret data and information also enjoy protection in accordance with this Law.

TRADEMARKS

The Intellectual Property Law provides owners of trademarks with a protection period of ten years subject to renewals for similar periods. The owner of the trademark is the one who effects the registration and uses the trademark for the five following years, unless it is established that a third party had a priority of using it, and the person who had preceded the one in whose name the trademark is registered has the right to challenge and declare null and void the registration during those five years.

However, the trademark may be challenged and declared null and void without a period restriction if it is coupled with ill will.

This Law provides that the owner of a famous trademark in Egypt and worldwide has the right to enjoy the protection prescribed in the Law even if the trademark is not registered in Egypt.

INDUSTRIAL DESIGNS AND DRAWINGS

Industrial designs and drawings enjoy protection for ten years starting from the date of application for registration in Egypt, and the protection is renewable for five years.

COPYRIGHT

Copyright protection includes literary, technical and scientific works such as architectural designs, speeches, musical works, theatrical pieces, maps, photographic and cinematographic works, works for broadcast on television or radio, videotapes, and computer software.

The protection extends to fifty years after the death of the author. If the author is a legal entity then the protection begins on the date of first publication.

The protection for applied arts works is for twenty five years starting from the date of their publication or the date they are made

available to the public for the first time whichever is the latter and broadcasting authorities enjoy the exploitation protection for twenty years starting from the date of first transmission of the programs.

BOTANICAL PRODUCTS

Botanical biological and non-biological products derived in Egypt and abroad –which are new, distinctive, homogeneous, durable and that have a distinctive appellation- enjoy the protection of the Intellectual Property Law once they are recorded in the special register for botanical products subject of protection.

The duration of the protection is twenty-five years for trees and grapevines and twenty years for other agricultural products, and the general rule is that the protection runs from the date it is granted.

THE EGYPTIAN BANKING AND FOREIGN EXCHANGE LAW

The new Central Bank, Banking System and Foreign Exchange Law no 88 of 2003 (the "Banking Law") introduced many new Concepts that are worth noting and which affect the investors in those fields.

1- The first chapter of this law Contains the provisions relating to the Egyptian Central Bank, a public Juristic person that is dependent of the President of the Republic, and which has wide ranging rights in relation to the Control of various banks operating in Egypt as detailed herein below.

2- The second chapter deals with the Organization of the banking system operating in Egypt.

Banks operating in Egypt and their branches abroad have to be inscribed in a special register held in the Central Bank.

The issued fully paid up Capital of the bank must not be less than L.E 500 Million and the Capital earmarked for the operations of branches of Foreign Banks operating in Egypt must not be less than 50 millions U.S Dollars or their equivalent in free foreign exchange.

Those banks are free to decide upon the prices and interests relating to their banking operations.

On the other hand, Banks may only terminate their activities after obtaining of the approval of the Central Bank, and the Central Bank has the right to reject the appointment of the members of the board of directors of banks, and of their top managers. Further more the Central Bank has the right to request the dismissal of any board member of any bank and/or any of its top managers, if an investigation by the Central Bank reveals that the concerned person did not abide by the safety rules relating to the banks deposits and assets.

Egyptians and foreigners are allowed to own any percentage of the Capitals of banks, nevertheless ownership of more than 10% of the issued Capital of a bank or any percentage of its Capital resulting in control of a bank has to be authorized by the Central Bank.

The Egyptian Central Bank is also empowered to lay down the rules that ensure its control and supervision of banks operations in Egypt and the norms under which they operate, as detailed in the Banking Law.

Finally, the Central Bank has the right to cancel the registration of banks and branches of foreign banks operating in Egypt if they contravene the Banking Law, or if they adopt policies that harm the general economic interest or the interest of their depositors or their shareholders.

3- The third chapter of the Banking Law deals with the management of the public sector banks.

4- The fourth chapter concerns the secrecy of banks accounts, which is guaranteed with some exceptions, including the bank's obligation to disclosure if it so decided by a judicial or arbitral judgment, or if so provided in the Anti Money Laundering Law.

5- And the sixth chapter provides for the rules relating to the issue of Egyptian currency and foreign exchange transactions.

In this respect it should be noted that every natural or juristic person has the right to keep all the foreign exchange that he owns or possesses and that he may freely conclude local and foreign transactions through the banks and the other authorized establishments that are accredited to deal in foreign exchange. Nevertheless, it has to be noted there are certain restrictions have been applied in the past with regard to Egyptian exporters keeping the totality of the proceeds of their export in foreign currency. It maybe important that these restrictions have been cancelled nevertheless nothing prevents the government from introducing those restrictions in the future as it sees fit.

Sale and purchase transactions inside Egypt – whether for goods or services – has to be effected in Egyptian pounds, and the rate of exchange of the Egyptian pound vis a vis foreign currencies is determined by the market values in the light of the rules relating to the organization of the foreign exchange markets that are decided by the Prime Minister at the recommendation of the Central Bank.

In addition the Law ensures the right of travelers to bring in and to take out Foreign Currencies on condition of disclosing amounts over ten thousand dollars or their equivalent, on entering or leaving the country.

ANTI MONEY LAUNDERING REGULATIONS

The Anti Money Laundering Law was promulgated by Law No. 80 of 2002 (the “Money Laundering Law”), which aims at the prohibition of money laundering resulting –interalia- from the crimes of planting, production, importation, exportation and trading in narcotics, kidnapping, terrorism, importation of arms, ammunition and explosives without license, misappropriation of public funds, embezzlement, breach of trust, fraud, swindle, forgery, theft, prostitution, theft of antiquities, and also organized crime mentioned in international treaties to which Egypt has adhered to, and irrespective of whether the money laundering crime or the above mentioned crimes were committed inside Egypt or abroad, on

condition that they are punishable in accordance to Egyptian and foreign laws.

The Money Laundering Law provides that a certain independent unit be created at the Egyptian Central Bank – composed of representatives of the concerned Authorities- (the “Unit”) which has the task of receiving information from the various financial institutions relating to transactions in which money laundering is suspected, and this Unit has to investigate the information and the notifications relating to the suspicion of money laundering crimes and to inform the Public Prosecution of the results.

The Money Laundering Law also obligates the financial institutions to inform the Unit about the transactions in which money laundering is suspected, and to implement systems that ensure obtaining information about the legal status of their customers and the true beneficiaries whether natural or juristic persons.

Furthermore, the financial institutions are prohibited from opening accounts or making deposits or accepting money which are from unknown sources or in the names of fictitious persons.

The Money Laundering Law provides for the secrecy of operations relating to the combat of money laundering, and it ensures

the judicial cooperation between the Egyptian and foreign judiciaries in this field, as detailed in this Law.

In addition, the Money Laundering Law also states that entry or exit of foreign currency from and into Egypt is free, on condition of the obligation to mention - on a special attestation- the sums of over twenty thousand dollars or their equivalent when entering into Egypt which is more than the corresponding sum provided in the Banking Law.

The Law finally mentions that without prejudice to the harsher penalties mentioned in any other law, the penalty for the commission or the attempt to commit the crime of money laundering is imprisonment for up to seven years and a fine amounting to up to twice the money subject of this crime.

THE EGYPTIAN COMMUNICATIONS LAW

A new Law was promulgated under No. 10 for the year 2003 organizing Communications in Egypt (the "Communications Law").

According to the Communications Law the "National Authority for Organization of Communications" ("TRA") is the governmental Authority that is responsible for applying this Law.

Article 21 of the Communications Law provides that no communications network may be established or operated nor communications services to third parties be offered, nor international telephone calls be passed without a permit issued by the TRA.

Requests for obtainment of the permits are presented on the forms prepared by the TRA together with the data and documents that it designates and the request must in particular contain the suggested basis for the pricing of the services and the way of its evaluation.

Furthermore, the TRA decides upon the fees for the permits and the rules and procedures relating to its payment.

The Communications Law also provides that the already existing partially Government owned "Egyptian Company for Communications" (Egypt Telecom) is exclusively entitled up till 31 December 2005 to establish, operate and exploit the international correspondence networks between Egypt and any other state through the international crossing points by maritime, land, microwave links, industrial telestars for fixed services, and also to pass international calls and to offer telephone, fax telex and telegraph services through those networks. It is expected that the Egyptian government - in due course - will authorize other companies to undertake said services in Egypt.

EGYPTIAN OIL AND GAS CONCESSIONS

Oil and gas concessions are granted in accordance with Egyptian Law No. 66 for 1953 concerning mines and quarries as amended by Law No. 86 for 1959 and its Executive Regulations.

A law is promulgated by the People Assembly allowing the concerned Minister to conclude the required Concession Agreement for the exploration and exploitation of oil and gas between the Arab Republic of Egypt on one side and the Egyptian General Petroleum Corporation (EGPC) and the foreign Company (i.e. the Contractor) on the other side, in a specific area and according to the conditions that are attached to this Law, and the rules and procedures that are contained in those conditions that have the force of Law and prevail over other Egyptian Legislation including the above mentioned Law No. 66 for 1953 as amended.

Usually the Concession Agreement contains the definitions, the grant of rights, the government's royalty during the development period, the initial exploration period and its extension, and the applicable rules in case of a commercial discovery.

The general rule is that the Contractor is subject to the Egyptian income tax laws, and that the Contractor's income is calculated in accordance to the rules contained in the Concession Agreement.

Moreover, EGPC and the Contractor may form a private sector operating company in Egypt following the commercial discovery and this operating company is subject to the Laws and Regulations in force in Egypt to the extent that such Laws and Regulations are not inconsistent with the provisions of the Concession Agreement or the charter of the operating company.

The Concession Agreement also provides for the rules concerning the Contractor's recovery of his costs and expenses in respect of all exploration, development and related operations under the Concession Agreement, and the production sharing and valuation.

The Concession Agreement also mentions the various bonuses that the Contractor has to pay to EGPC, the customs exemptions, the privileges of the governments representatives in relation to the supervision of the correct execution of the Concession Agreement, and in addition it contains a stabilization clause to protect the Contractor in case of changes in existing Legislation or Regulations which take place after the execution of the Concession Agreement and

which significantly affect the economic interests of this Agreement to the detriment of the Contractor.

The Concession Agreement provides for the right of the Egyptian Government to requisition all or part of the production in cases of national emergencies, and the applicable procedures and rules in such cases, as well as in cases of breach of the Concession Agreement.

Finally, the Concession Agreement states that any dispute, controversy or claim arising out of or relating to the agreement or the breach, termination or invalidity thereof, between the Government and the parties shall be referred to the jurisdiction of the appropriate Egyptian Courts, and shall be finally settled by such Courts, and that any dispute, controversy or claim arising out of or relating to the Concession Agreement, or breach, termination or invalidity thereof between EGPC and the Contractor shall be settled by arbitration, and in this case Egyptian Law shall apply to the dispute except that in the event of any conflict between Egyptian Laws and the Concession Agreement the provisions of the Concession Agreement shall prevail.

THE EGYPTIAN ANTI MONOPOLY LAW

The Egyptian Law of Protection of Competition and Prevention of Monopoly Practices was promulgated by Law No. 3 of 2005 and entered into force on 16 May 2005.

This Law provides for the first time for rules that aim at the exercise of economic activity in a way that ensures freedom of competition and the prevention of putting restraints on it that causes it harm.

Article 4 of this Law defines the “domination” of a certain market by providing that it is the capacity of a person (natural or juristic) whose part exceeds 25 per cent of this market, to have an effective influence on the prices or the quantity of the offer in it without his competitors being able to restrain such influence.

Article 5 of the Law provides that it applies to actions that are committed abroad if they result in prevention, restraint or harm to free competition in Egypt and which are considered as crimes in accordance to this Law.

Article 6 of the Law prohibits the agreements or contracts between competing persons in a certain market that result in the following:

1- The increase, decrease or fixing the sale or purchase prices of products subject of the transactions.

2- The division of the products markets, or their assignment on the basis of geographical areas, centres of distribution, categories of clients or products or seasons or periods of time.

3- Coordination in relation to entry or non entry in tenders, auctions, direct offers and other offers to supply.

4- The restriction of activities in the field of industry, distribution or marketing or the restriction of distribution of services, or their types, or quantities, or putting conditions, or restrictions on their provision.

Article 7 provides that a person is prohibited from agreeing to contract with his suppliers or his clients if this results in restricting competition.

Article 8 of the Law prohibits those who dominate a certain market from the following:

- 1- Any action that results in the non ability to manufacture, produce or distribute a product for a duration or durations of time.

- 2- Abstention from conclusion of the sale or purchase deals with any person or refraining from transacting with him in a way that results in restricting his freedom to enter or leave the market at any time.

- 3- Any action between persons having a vertical relationship that results in the limitation of distribution of only one product on the basis of geographical areas or of distribution centres, or clients, or seasons or durations of time.

- 4- Making the conclusion of a contract or an agreement relating to the sale or purchase of a product conditional on accepting obligations or products that by their nature or by the commercial use of the products are not connected to it or to the original object of the transaction or the agreement.

- 5- Discrimination between sellers or buyers whose commercial situation is the same, in relation to the selling or purchasing prices or in the conditions of the transaction.

- 6- Refraining from producing or making available a scarce product even though its production or availability is economically possible.
- 7- Requiring those with whom he deals that they not allow his competitor the use of their utilities or services, even though such use is economically possible.
- 8- Selling products at a price that is less than their marginal cost or the average variable cost.
- 9- Obliging a supplier to refrain from dealing with a competitor.

Article 9 of the Law provides that it shall not apply to those public utilities that are managed by the State, and that the "Protection of Competition and Prevention of Monopoly Practices Authority", (i.e. the Authority) that is instituted in accordance to this Law may, at the request of the concerned persons, exempt from the area of prohibition all or part of the acts, provided in Articles 6, 7 and 8, by the public utilities that are managed by private law companies, if this ensures the public interest, or brings profits to the consumer that exceed the effects of limitation of the freedom of competition, in accordance to the standards and procedures provided in the Executive Regulation of this Law.

Article 10 of the Law provides that the Council of Ministers may fix the sale price of one or more basic product for a defined period of time, after obtaining the view of the Authority, and that the Agreement concluded by the government in view of applying the fixed prices shall not be considered as an activity that harms competition.

Article 20 of the Law provides that where a contravention of Articles 6, 7 or 8 of the Law is proved, the Authority may order the contravening person to amend his position and remove the contravention immediately or within a certain period of time as decided by the Board of Directors of the Authority, otherwise the agreement or the contract that is contrary to Articles 6 and 7 shall be considered null and void.

The Board of Directors may pass a decision to stop the contravening actions immediately or after the above-mentioned period of time without amending the positions or removing the contraventions, all without prejudice to the rules relating to the responsibility resulting from those contraventions.

Article 21 provides that taking criminal action concerning any contraventions of this Law may only be carried out upon a written request of the concerned Minister or his deputy.

The Minister or the deputy may agree to a reconciliation concerning any of those actions before a final judgment is passed concerning them, against payment of a sum that is not less than double the minimum fine and not more than double the maximum of the fine, and the settlement shall result in the lapse of the criminal action in the particular case.

Article 22 provides that without prejudice to harsher penalties provided in other Laws contraventions of any of Articles 6, 7 or 8 of this Law shall be punished by a fine of not less than L.E. 30,000 and not more than L.E. 10 millions, and the court may, instead of pronouncement of a confiscation judgment, impose a substitute fine equal to the value of the product subject of the contravening activity.

Article 24 of the Law provides that the conviction and final judgments concerning the actions stated in Article 22 of this Law shall be published in the Official Gazette and in two daily well-known newspapers at the cost of the convicted person.

Finally, Article 25 of the Law provides that the person responsible for the actual management of the person who contravened the Law shall receive the same penalties as are imposed for the commission of actions contrary to this Law, if it is proven that he knew

about them and that his dereliction of the duties imposed on him as a result of his management position has contributed to the commission of the crime.

The juristic person shall be jointly and severally responsible for payment of the monetary fines and the damages if the contravention was committed by an employee and in the name or for the interest of the juristic person.

THE EGYPTIAN CONSUMER PROTECTION LAW

The Consumer Protection Law no.67 of 2006 was recently promulgated and published on the 20th of May 2006. It provides that it will come into force after three months from the day of its publication, and that its Executive Regulation will be promulgated within the three months following the entry into force of this Law, i.e. most probably in November 2006.

Article 2 of this Law provides that the exercise of the economic activity is free for all, and that no natural or juristic person may conclude any deal or carry any activity that infringes the basic rights of the consumer, and in particular:

- A- The rights of health and safety during the normal use of the products.
- B- The right to obtain the correct data and information about the products that he purchases, or uses or that are presented to him.
- C- The right of free choice of products that are of good quality and that conform to their specifications.
- D- The right to personal dignity, and to respect the religious values as well as the customs and traditions.
- E- The right to join the establishments, counsels, and committees whose purpose is related to the consumer protection.
- F- The right to bring legal actions concerning all attempts against the consumer's rights, or that restricts them in an easy fashion and without cost.
- G- The right to just compensation for the damages that the consumer sustains as a result of purchasing or using the products and receiving the services, all in accordance to this Law and without prejudice to the international treaties and agreements that are applicable in Egypt.

Article 3 of this Law provides that the manufacturer or the importer has to write in Arabic on the products, the data that has to be inscribed in accordance to the Egyptian standard specifications or to any other Law or to the executive regulations of this Law, in an easy to read type that fulfils the aim to writing, the data.

Moreover, the supplier of the service has to clearly describe the information concerning the services that he provides their price, and their characteristics.

Article 6 of the Law provides that the supplier and advertiser of the product or of the service, has to provide the consumer with the correct information about the nature and characteristics of the product and refrain from what gives an untrue or false impression to the consumer or causes his confusion or error.

On the other hand, the advertiser shall not be responsible if the data contained in the advertisement is technical and the normal advertiser could not ascertain its correctness, and if the supplier had given it to the advertiser.

The Law establishes a Public Authority whose title is "The Consumer Protection Authority" that aims at the protection of the

consumer and his interests, and the Law provides for the obligation of the supplier of the product and of the service to inform this Authority about the defects that he discovers or knows about in the product and its potential danger, and in case the defect affects the health or safety of the consumer, then the supplier has to stop the production of the product and refrain from dealing with it, and warn the consumers not to use it.

The Law also provides for the rules relating to the return of the defective products and to the compensation of the consumer for the defective service, and the law provides that shall be null and void any condition in a contract or document or otherwise relating to contracting with the consumer, if this condition results in exempting the provider of the product or the service from any of his obligations in accordance to this law.

The Law allows the establishment of associations aiming at the protection of the consumers which may in particular bring or join legal actions relating to the interests of the consumers.

Finally, the law provides for the penalties that are imposed on those who contravene it, and those penalties may consist of a fine of up to L.E. 100000 without prejudice to the harsher penalties imposed by other laws.

SETTLEMENT OF DISPUTES IN CIVIL AND COMMERCIAL MATTERS IN EGYPT

Egypt introduced its first specific Arbitration Law in 1994 by adopting the UNCITRAL Model Law with very limited modifications. This Arbitration Law No. 27 of 1994 - as amended - applies to all arbitrations conducted inside Egypt and to international commercial arbitrations conducted abroad if the parties agree to submit them to the provisions of this Arbitration Law, with the possibility of obtaining assistance from the Judicial Courts to implement any arbitration agreement, to secure the proper functioning of the procedures, as well as for the enforcement of the awards rendered there-under. As for the awards rendered abroad, they are enforceable under the New York Convention of 1958 to which Egypt adhered since 1958 and which applies in its entirety without exceptions.

In this respect, it should be noted that the request for enforcement of Arbitral Awards rendered in Egypt becomes admissible only after the expiration of the period required for lodging an annulment plea; i.e.: that the requesting party has to wait 90 days before submitting the request for enforcement in front of the competent Court which is in principle the Cairo Court of Appeal (the relevant Articles of the Arbitration Law are annexed to this Article).

COURTS DECISIONS ON ARBITRATION

The following Courts judgments are relevant in respect of legal actions for annulment of Arbitral Awards, that were brought before Egyptian Courts:

1- The Cairo Court of Appeal's Decision on March 19, 1997 in the Commercial Case No. 64 of the 113th judicial year:

The Court of Appeal rendered an important judgment in this Case concerning the legality of arbitration in disputes relating to Egyptian Administrative Contracts, and the Court indicated that the agreement to refer disputes relating to administrative contracts to arbitration was perfectly legal for the following reasons:

- Article 1 of the Arbitration Law provides that it applies to "all arbitrations between Public Law or Private Law persons whatever the nature of the legal relationship around which the dispute revolves ..." and in view of the fact that this text clearly allows for an agreement to arbitrate, even when one of the parties is a governmental entity and whatever is the nature of the dispute. Therefore, there is no basis for the claim of nullity of the Arbitration Clauses in administrative contracts.

The Court added here that this is also confirmed by review of the explanatory note of the Arbitration Law, the report of the concerned committee of the Egyptian People's Assembly, and by the discussions relating to the Arbitration Law, all of which confirm that arbitration in administrative contracts is legal under Egyptian Law.

- The objection that Article 10 of the Counsel of State's Law No. 47 of 1977 provides that only the Courts of the Counsel of State are competent to judge the disputes relating to administrative contracts, does not stand because this provision aims at regulating the division of competences between the Counsel of State and the normal courts and not at prevention of arbitration in disputes relating to administrative contracts.

This is specially so if we take into consideration that Article 58 of the Counsel of States Law provides for the obligation of all Ministries, Public Authorities and Public Departments to obtain the opinion of the competent Advice Department of the Counsel of State before concluding an arbitration agreement or the enforcement of an arbitral award valued at more than 5000 Egyptian Pounds".

- Article 3 of the Law promulgating the Arbitration Law provides that: "any provision contrary to the provision of this law is repealed", and this would include Article 10 of the Counsel of States Law No. 47 of 1977.
- There is no basis for relying on Article 172 of the Egyptian Constitution in order to ascertain that arbitration is not allowed for in administrative contracts, because this Article refers to the Counsel of State in its capacity as a part of the judicial authorities and it aims at dividing the competences between the Counsel of State and the civil courts as aforesaid.

In addition, nobody can claim that providing for the competence of the Courts in general to view certain disputes means that arbitration concerning those disputes is prohibited.

- The Court of Appeal also reminded that contrary to the French Civil Law (Article 2060) the Egyptian Civil Law does not contain any Article prohibiting arbitration in relation to governmental entities.

The Court of Appeal noted that even French Law allows for International Arbitration in administrative contracts disputes.

- The Court of Appeal reiterated that the Governmental Authority's claim that the Arbitration Clause in an administrative Contract was null and void despite being signed by this same Governmental Authority, is not only illegal, but is equally contrary to the principle of the necessity to execute the obligations in good faith whether in civil or in administrative contracts.

Finally, the Court of Appeal added that such claim was also contrary to the agreed upon rules relating to International Commercial Arbitration, that the State or the Governmental Authority can not refrain from applying an Arbitration Clause contained in its own contracts by relying on local legislative constraints and that adoption of the opposite view would also affect the confidence that must prevail in their dealings with other parties and also negatively affect needed foreign investments.

Due to the importance of the issue of the arbitrability of administrative contracts, the legislator intervened and passed Law No. 9 of 1997 which provided that the concerned minister or whoever may replace him has to approve the arbitration agreement in administrative contracts related to his ministry.

2- The Cairo Court of appeal's Decision on December 31, 1997 in the Case No. 62 of the 113 Judicial Year:

The Court of Appeal rendered a judgment which indicated *-inter alia-* that Article 23 of the Arbitration Law provided that: "the Arbitral Clause is deemed to be an agreement that is independent from the other conditions of the contracts and that nullity, rescission or termination of the contract shall not affect the arbitral clause therein provided such clause is valid per se" and the Court decided therefore in the Case under review that nullity, rescission or termination of the Contract does not have any effect on the Arbitral Clause under consideration.

3- The Egyptian Court of Cassation rendered an important judgment on March 1, 1999 in Recourse no 10350 of the 65th judicial year, which mentioned that the Egyptian law on procedures – in its chapter relating to the execution of foreign judgments, orders and official documents – provides that foreign treaties between Egypt and foreign states concerning the execution of foreign judgments, orders and official documents shall have to apply, and as Egypt has adhered to the 1958 Convention on the Recognition and enforcement of foreign Arbitral Awards, therefore, this Convention legally becomes one of the laws of the state and is applicable even if it contradicts the Egyptian law on Arbitration in civil and Commercial Matters.

4- The Cairo Court of Appeal's Decision on May 5, 1999 in the Case No. 41 of the 114 Judicial year:

One of the reasons for the appeal in this case was that the arbitration award subject of the appeal was null and void because it allowed for an interest over the maximum ceiling imposed by Law - as maximum rate of public order in accordance to Egyptian Law -.

The Court of Appeal mentioned in this Case, that Article 39 (4) of the Arbitration Law provides that:

"The Arbitral Panel may, if it has been expressly empowered to act as an *"amiable compositeur"* by agreement between the two parties to the arbitration, adjudicate the merits of the dispute according to the Rules of Justice and Equity without being bound by the provisions of Law."

And the Court of Appeal added that in view of the above there is no contradiction to public order -in this case- if the arbitral panel decides that the interest rate mentioned in its judgment- is consistent with the rules of justice and equity, even if this interest rate is over the

maximum allowed for by Law, because this judgment is based upon the agreement of the Parties to apply the Rules of Justice and Equity and not the provisions of the Law.

5- The Cairo Court of Appeal rendered a judgment on July 20, 1999 in the Appeal no 7 of the 116th judicial year, Arbitration which mentioned that the standards of motivation in arbitral judgments are totally different from those of the judicial courts' judgments, for the following reasons:

- The judicial courts are constituted of judges contrary to the arbitral tribunals which may include non lawyers arbitrators. Therefore, it would be difficult to apply to their judgments the standards of motivation applied to the judgments of the judicial courts.
- The Egyptian Arbitration Law allows the parties of the arbitration to agree that the arbitral judgments be passed without need for their motivation, which is contrary to the judicial courts' judgments which have to be motivated.
- The Arbitration Law provides that the arbitral judgment has to contain certain data including the motivation if mentioning them is necessary, and this means that the legislator's intention is to limit

this motivation to the necessary minimum, whilst the rule is that the judicial judgments are null and void if they are not fully motivated.

- The arbitral judgments are not subject to appeal contrary to the judicial judgments.

6- The Cairo Court of Appeal's Decision of December 24, 2000 in the Case No. 59 of the 117th Judicial Year:

The judgment rendered in this Case confirmed that, according to the Arbitration Law no. 27 of 1994, the parties of the arbitration have to conduct it in the Arabic language unless the parties agree otherwise or unless the Arbitral panel decides otherwise.

7- The Cairo Court in Appeal's decision of March 12, 2001 in the Case No. 49 of the 117th judicial year.

The judgment of this Case provided that the Arbitrator has to ensure respect of the basic guarantees of litigation which are a necessary precondition of good justice.

8- The Cairo Court in Appeal's decision on February 5, 2002 in the case no. 39 of the 117th judicial year.

The Judgment of this Case emphasized that Arbitration in a summary dispute is not allowed, because the Arbitration must put a final end to the dispute in such a manner as to ensure that it may not be subject to further review before the Courts or before an Arbitral panel.

9- The Cairo Court of Appeal rendered a judgment on February 26, 2003 in the recourse no. 23 of the 119th judgment year, which stated that the Egyptian judiciary has no jurisdiction to view the actions for nullity of foreign arbitral judgments as long as the parties have not agreed to subject the arbitration to the Egyptian Arbitration in civil and commercial matters law no. 27 of 1994. In other words, if the parties agree to hold the arbitration outside Egypt – without subjecting it to the Egyptian Arbitration law – then this would result in subjecting the arbitration to the law of another state in accordance to its procedures or to the procedures they agree to apply.

The judgment added that Article 3 of the 1958 New York Convention on the Recognition and enforcement of Foreign Arbitral judgments – which Egypt has adhered to- has obliged the adhering States to recognize the arbitral judgments that are rendered outside

their territory and to execute them in accordance to the rules of procedures applicable in their territory.

Article 5/1/5 of this Convention prohibits the refusal to recognize or to execute the above mentioned arbitral judgments except in certain specific cases. Hence, this Convention linked the foreign arbitral judgments to the legal system of the state where they are rendered and approved the rule of the exclusive jurisdiction of the Courts of this State to view the actions for nullity of those judgments.

Therefore, the Courts of the other states may not reconsider such judgments from the angle of their correctness or nullity, and all that it can do – if recognition of the foreign judgment or its execution is requested – is to refuse it on the basis of its own law or on the basis of the New York Convention as the case may be, without such a refusal having any effect on the value of the judgment subject of the request.

10- The Cairo Court of Appeal's decision of March 20, 2003 in the Case No 111 of the 118th judicial year.

The court decided to annul an arbitral judgment which applied the Civil Code to a dispute concerning banking operations instead of the relevant Banking Law. In other words, the court believes that the

misapplication of the particular governing law is a valid reason for annulment of an arbitral award.

11- The Cairo Court of Appeal rendered a judgment on July 27, 2003 in the recourse no. 12 of the 120th judicial year, which mentioned that arbitration is an exceptional way of solving disputes, that the agreement of the parties to resort to arbitration is the basis of the authority of the arbitrators to decide on the disputes, therefore, the arbitration agreement has to be restrictively interpreted in relation of the disputes subject of the arbitration, and one of the results of this restrictive interpretation is that the arbitration agreement that limits the authority of the arbitrators to decide upon the disputes relating to the interpretation or to the execution of a Contract, does not allow the arbitrators to decide on disputes that are based upon the extra contractual responsibility (i.e. tort) or on the nullity of the Contract or on its termination.

12- The Cairo Court of Appeal rendered a judgment on the May 26, 2004 in the recourse no. 66 of the 120th judicial year, which stated that the action for the nullity of the arbitral judgment is not an appeal, therefore, it does not allow for review of the substance of the dispute. In other words, the judge in the nullity case may not review the arbitral judgment in order to evaluate whether it is opportune, or

whether the appreciation of the arbitrators was right, or whether they were right or wrong in understanding the facts and their results or in their interpretation and application of the law, because all of this is part of the competence of the judge of the appeal.

It is enough – unless the parties decide otherwise- that the arbitral judgment contains its motives, meaning that it answers the claims of parties and their main pleas, and thereafter the content of this answer, or whether it is opportune or right is not important in law or fact, because – as aforesaid– the action for nullity is not a recourse for appeal, and the contradictions in the motives of the arbitral judgments are not a case for its nullity, and is not equivalent with the inexistence of motives in the arbitral judgment.

13- On June 26, 2005 the North Cairo Court of First instance decided to terminate the tasks of an arbitrator in accordance to Article 20 of the Egyptian law on Arbitration in Civil and Commercial matters, on the basis that the arbitrator who was appointed by the respondent in the arbitration ceased fulfilling his tasks without an acceptable excuse, which is contrary to the need for expediency in rendering judgments in Arbitral cases.

14- The issue of the judicial control of the constitutionality of Laws and Regulations is exclusively entrusted in Egypt to its Supreme Constitutional Court.

This Court passed a judgment on November 6, 1999 in the Case No. 84 of the 19 Judicial Year, which directly bears on the subject of the Constitutionality of Article 19 of the Arbitration Law which provides in its Sub-clause 1 that the arbitral panel decides on the request for its own challenge.

The Plaintiff in this Case had previously requested the challenge of an arbitral panel, which was determining a dispute in which the plaintiff was a party and the arbitral panel has rejected his request. The Plaintiff then brought the Case before the Supreme Constitutional Court and alleged that allowing the arbitral panel to decide upon challenge of its members contravenes the necessity of neutrality that is guaranteed by the Constitution for those engaged in the judiciary activity.

Therefore, it is contrary to the basic principle of equality before the Law provided in the Constitution.

The Supreme Constitutional Court in this Case mentioned the judicial nature of arbitration that is based upon a

voluntary agreement between its parties and which results in negation of the right of the judiciary to review the disputes subject to arbitration.

The Supreme Constitutional Court reminded that the right to challenge the arbitrator is linked to the basic rights of litigation that are necessary for all judicial actions and is also closely linked to the right to litigate provided in the Constitution, that necessitates independence and impartiality, in the authority that dispenses justice.

The Supreme Constitutional Court then stressed that Article 69 of the Constitution guarantees the right of defense as a cornerstone of the rule of Law and that subjection of the State to the Law means that its legislation may not encroach upon the rights and guarantees which are considered in democratic states as the basis for the existence of the rule of Law.

The Supreme Constitutional Court finally stated that the Article subject of the recourse allowed the arbitral panel the right to decide upon its own challenge, that this is contrary to the values of justice and to the principle of impartiality of the judicial act in favor of one category of litigants and to the detriment of another and is therefore unconstitutional for contravening articles 40, 65, 67, 68 and 79 of the

Constitution which guarantee equality before the Law, subjection of the State to the Law, the right of defense and the right of litigation.

Finally, the Supreme Constitutional Court has constantly ruled that the right of the parties to go to arbitration is totally left to their will.

Furthermore, the Court ruled several times – the most recent decision was on May 11, 2003 – that any legislative Article that makes mandatory on the parties to go to arbitration is unconstitutional.

Needless to say, the Cairo Court of Appeal followed the mentioned judgments in its decision of the March 20, 2003 in the Case No. 72 for the 118th judicial year.

The above are some of the important decisions rendered by Egyptian Courts with regard to the Arbitration Law, which we hope, will help understand the evolution that is taking place in Egypt in the field of Arbitration.

TRANSLATED BY KOSHERI, RASHED & RIAD

**Law No. 27 for 1994 as amended
Promulgating the Law concerning
Arbitration in Civil and
Commercial Matters**

Articles 52 to 58 *

**Part VI
Nullity of the Arbitral Award**

Article (52)

1. Arbitral awards rendered in accordance with the provisions of the present Law may not be challenged by any of the means of recourse provided for in the Code of Civil and Commercial Procedures.

2. An action for the nullity of the arbitration award may be instituted in accordance with the provisions of t²he following two articles.

* Translated from the Arabic Official Text.

Article (53)

1. An action for the nullity of the arbitral award cannot be admitted except for the following causes:

- 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 arbitration was unable to submit its defense as a result of not being duly notified of the appointment of an arbitrator, 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 subject matter in dispute;
- e) If the composition of the arbitral panel or the appointment of the arbitrators had been undertaken in violation of the Law or contrary to 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 nullity; shall *ipso jure* annul the arbitral award if it contains violation of the public order in the Arab Republic of Egypt.

Article (54)

1. The action for nullity of the arbitral award must be brought within the ninety days following the date the notification of the arbitral award to the party against whom it was rendered.

The admissibility of the action for annulment shall not be prevented by the applicant's renouncement of its right to raise it prior to the making of the arbitral award.

2. Jurisdiction with regard to an action for the nullity of awards rendered in international commercial arbitrations lies with the court referred to in Article (9) of the present Law. In cases not related to international commercial arbitration, jurisdiction lies with the court of appeal having

competence over the tribunal that would have been initially competent to adjudicate the dispute.

Part VII

Recognition and Enforcement of Arbitral Awards

Article (55)

Arbitral awards rendered in accordance with the provisions of the present Law have the authority of the *res judicata* and shall be enforceable in conformity with the provisions of the present Law.

Article (56)

Jurisdiction to issue an enforcement order of arbitral awards lies with the President of the court referred to in Article (9) of the present Law or with the member of said court who has been mandated for this purpose by delegation from said President. The application for enforcement of the 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. An Arabic translation of the award, certified by a competent organism, in case the award was not rendered in Arabic.
4. A copy of the *procès-verbal* attesting the deposit of the award pursuant to Article (47) of the present Law.

Article (57)

The filing of an action for nullity does not suspend the enforcement of the arbitral award. Nevertheless, the court may order said suspension if the applicant requests it in his application and such request is based upon serious grounds. The court shall rule on the request for suspension of the enforcement within sixty days from the date of the first hearing fixed in relation thereto. If suspension is ordered, the court may require providing a given security or monetary guarantee. When the court orders a suspension of enforcement, it must rule on the action for nullity within six months from the date when the suspension order was rendered.

Article (58)

1. Application for the enforcement of an arbitral award shall not be admissible before the expiration of the period during which the action for nullity should be filed in the court registry.

2. The application to obtain leave for enforcement of the arbitral award according to the present Law shall not be granted except after having ascertained the following:

- a) That it does not contradict a judgment previously rendered by the Egyptian Courts on the subject matter in dispute;
- b) That it does not violate the public policy in the Arab Republic of Egypt; and
- c) That it was properly notified to the party against whom it was rendered.

3. The order granting leave for enforcement is not subject to any recourse. However, the order refusing to grant enforcement may be subject to a petition lodged, within thirty days from the date thereof, before the competent court referred to in Article 9 of the present Law.