ARBITRATION UNDER THE AUSPICES OF

THE CAIRO REGIONAL CENTRE FOR COMMERCIAL ARBITRATION

(AN AALCC CENTRE)

BY

DR. M.I.M. ABOUL ENEIN

ACTING DIRECTOR OF THE CENTRE

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I- THE ESTABLISHMENT OF THE CAIRO REGIONAL CENTRE FOR ARBITRATION

In recent years the growth and development of business and international commercial transactions in Asian and African countries stressed the need for amicable, quick and internationally acceptable methods for the settlement of commercial disputes.

The Asian-African Legal Consultative Committee (AALCC) sought to introduce the concept of arbitration in the Region especially where this concept was already beginning to be popular.

Thus, it was not strange that one of the two AALCC Regional Centers was established in Cairo.

For more than two decades the concept of arbitration was receiving in Egypt gradual popularity.

Egypt was among the pioneer countries which ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in 1959. It has acceded also to the Convention on Settlement of Investment Disputes between States and Nationals of other states in 1971. Moreover, in 1973 Egypt ratified a convention concluded between Arab Countries for the settlement of the investment disputes between Arab States. These Conventions provide for arbitration as a means for the settlement of international commercial disputes.

In many bilateral agreements between Egypt and other states such as France, Switzerland, Greece, United Kingdom, Romania, Holland, Japan, Belguim, Sudan, Yugoslavia and others, arbitration was accepted for the settlement of international commercial disputes.

Also Law No. (65) for year 1971 as amended by Law No. (43) on 1974 was issued about the"Investment of Arab and Foreign Capital, and the Free Zones", in which arbitration was provided for as a way for settling international commercial disputes.

Thus, It may be concluded that arbitration as a means for settling international commercial disputes was already acquiring popularity in Egypt before establishing the Cairo Centre.

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

The establishment of regional centres for arbitration in the area was first discussed by the Asian-African Legal Consultative Committee (AALCC)[1] held in Tokyo in 1974.[2] At that session, the Committee endorsed the recommendations of its Trade Law Sub-Committee that efforts should be made by Member States to develop institutional arbitration in the Region so that the flow of arbitration to countries out side the Region could be reduced. At Its Kuala Lumpour Session held in 1976, the Committee also decided to request the Secretariat to investigate into the feasibility of establishing regional centres and to

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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, Jordon, Kenya, Democratic People's of Korea, Republic of Korea, Kuwait, Libya, Malaysia, Mauritius, Mongulia, Nepal, Nigeria, Oman, Pakistan, People's of China, Philippines, Qatar, Sengal, Sierra Leone, Singapore, Somali Democratic Republic, Sri Lanka, Syria, Tanzania, Thailand, Turkey, Uganda, United Arab Emirates and Yemen Arab Republic. Beside those 38 members there are three associate members i.e., Botswana, Ethiopia and Saudi Arabia.

2- The sources of the idea of establishing regional centres of arbitration in the area under the auspices of AALCC can possibly be traced back to the Committee's thirteenth session held in Lagos in 1973, in which the Committee recommended that an independant study be carried out about the subject.

ascertain the means of obtaining effective inter-institutional co-operation among the existing arbitral institutions in the Region. The Committee's Secretariat in its report made to the Baghdad Session held in 1977 presented a scheme for establishment of regional arbitration centres on the basis of a general survey conducted by it in the light of the experience in the various parts of the world and more particularly in Latin America.

The Committee at its Doha Session held in January 1978 decided upon the establishment of a regional centre at Kuala Lumpour, a second centre at Cairo and a third centre to be located in an Africa country to be decided upon by the Secretary General of the AALCC in consultation with the governments concerned.

The objectives and functions of the Cairo Regional Centre are:

1- Promoting international commercial arbitration in the region;

2- Co-ordinating and assisting the activities of existing arbitral institutions particularly among 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 the Rules of the Centre;

6- Rendering of advice and assistance to parties who may approach the Centre.

The Cairo Regional Centre is a non profit making institution. It was established in Co-operation, and with the assistance of the Government of the Arab Republic of Egypt to provide a system of arbitration to settle the disputies for the benefit of parties engaded in trade, commerce and investments with and within the region.

The operational costs of the Centre are met by the Egyptian Government subject to the condition that any fees or receipts for service to be rendered by the Centre shall be utilized towards such costs; and that all expenses on promotional work undertaken by the AALCC relating to the Centre that may have to be incurred outside Egypt shall be met by the AALCC.

The Regional Centre for Arbitration is an independent international institution. 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 Egyptian Government has assured that the Centre enjoys the privileges and immunities of the independent international institutions.(1)

The Centre maintains an international panel of arbitrators. The panel contains the names of a number of eminent Jurists, Judges and Diplomats drawn from the countries in the Asian-African region as well as the countries which have close economic links or large investments in the Asian-African region.

1- See letter No. 1043 dated May 6th, 1984 issued by the office of the Prime Minister (Foreign Affairs Section).

II- ARBITRATION PROCEEDINGS

(A) The Arbitration Agreement

Parties to international contracts who want binding arbitration of potential future disputes should say so clearly. A timid straddle between binding arbitration and resort to courts which require an additional element of further mutual consent to establish a binding dispute resolution process turn the arbitration into mere foreplay to litigation.(1)

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 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 difference shall be settled in accordance with the rules of the Centre which are the UNCITRAL arbitration rules subject to certain modifications and adaptations as incorporated in the rules".

The UNCITRAL, the American Arbitration Association (A.A.A.), and the International Chamber of Commerce (I.C.C.) rules recommend the insertion of their respective standard submission clauses into a contract.

The following clause is the recommended model arbitration clause 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."

NOTE: Parties may wish to consider adding:

(a) The appointing authority shall be the Cairo Regional Arbitration Centre/ . . . . . (1);

(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 "disputes" arising out of contracts is defined according to the Cairo Centre rules in wide terms to include existing or future disputes that raise out of , or relate to a contract concuded between the parties or its breach, termination, or invalidity. If the arbitration clause or separate arbitration agreement does expressly restrict its scope of application, it is not likely that the arbitrators would knowingly exceed their competence.

1- 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."

(B) The 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. This regulation must be in writing in order to avoid any confusion. Also, in this case the agreement can be contained in an exchange of letters signed by the parties, or in an exchange of telegrams or telexes.

The commencement of arbitration procedures differ slightly between international institutions of arbitration. According to the UNCITRAL and the AALCC rules which are applied in the Cairo Centre the commencement of the arbitration procedures is realized by issuing the notice of arbitration containing a brief statement of claim and the amount.(1)

As regards the necessary technicalities applied at various stages of the arbitral proceedings, a notice, notification, communication or proposal by one party to the other party is deemed to have been received on the day on which it is delivered at 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 last known residence or place of business.

Arbitration proceedings is to be initiated by notice given by the claimant to the respondent, and the proceedings shall be deemed to commence on the date on which such notice is duly delivered to the respondent. The purpose of the notice is to assert a claim against the respondent. For this reason the notice shall include necessary information to acquaint the respondent with the particulars of the claim in order to enable him to take a standpoint to it. If he then decides to contest the claim, he shall prepare himself for the arbitral proceedings in accordance with the arbitration clause or agreement that is invocked. This includes the establishment of an arbitral tribunal.

1- According to the A.A.A. rules the commencement of procedures takes place also by the demand or the brief statement of the claimant. The reply of the defendent is optional. The ICC rules provide for the commencement of the arbitration procedures a request for arbitration made in a concise statement of legal grounds and a reply made in a concise statement of defences.

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

(C) Composition of 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, make available or arrange for such facilities and assistance for the conduct of arbitral proceedings as may be required including suitable accomodation for sittings of the arbitral tribunal, secretarial assistance and interpretation facilities.

If the parties have not previously agreed on the number of arbitrators, and if the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

If the parties failed to agree on the choice of the 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.(1)

1- 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. ICC then selects a single arbitrator. If ICC believes dispute warrants then each party nominates an "independent" arbitrator and the two select a third.

If the parties appoint the Regional Centre as the appointing authority or where the parties have failed to nominate an appointing authority, the sole arbitrator or the presiding arbitrator shall be appointed by the Centre out of the international panel maintained by the Centre in accordance with the procedure indicated in its rules.

Following the principle of flexibility, the methods to be applied in the appointment of arbitrators are carefully regulated taking into account all various situations that may arise. If a sole arbitrator is to be appointed and where the parties fail to agree on choosing him such arbitrator shall be appointed by the Centre from a nationality other than that of the parties.

If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed choose normally the third arbitrator who will act as the president of the arbitral tribunal.

If no agreement was reached on choosing the president, the presiding arbitrator shall be appointed by the Centre from a nationality other than that of the two parties.

The requirement that the sole arbitrator or the presiding arbitrator shall be of a nationality other than that of the parties is intended to secure the impartiality and independence of the arbitrators.

However, if both parties and in the latter case also if the two party-appointed arbitrators, have complete confidence in the impartiality and independence of a sole arbitrator or of a presiding arbitrator, as the case may be, of the nationality of one or both parties, that person may be appointed to perform the task in question, after the parties have agreed in writing to modify the requirement of nationality.

Either party may challenge an arbitrator, including a sole arbitrator or a presiding arbitrator, irrespective of by whom such arbitrator was appointed or chosen or what method of appointment or choice was applied. The grounds for challenge are consituted by circumstances which give rise to justifiable doubts as to the arbitrator's impartiality or independence. Such circumstances include any financial or personal interest of an arbitrator in the outcome of the arbitration or a family tie or any past or present commercial tie of an arbitrator with a party.
This list of circumstances is not exhaustive but it serves to draw the attention of the parties to typical cases which fall within the general grounds of challenge envisaged in Article (9) of the UNCITRAL rules. Proof of the existance of a reason constituting a ground for challenge would disqualify an arbitrator even though no doubt in fact existed as to the impartiality and independence of the arbitrator concerned.

In order to avoid the interruption of course of the arbitral proceeding resulting from a challenge, a prospective arbitrator or an arbitrator already appointed or chosen is imposed upon an obligation to disclose the existence of any reason which is likely to disqualify him at the earliest stage at which disclosure is possible.

(D) Hearings and Presentation of Evidence

The general provisions concerning the conduct for arbitral proceedings by the arbitrators are contained in section III of the UNCITRAL rules. Flexibility is charecteristic to these provisions to the extent that the arbitrators are given the power 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 arbitration must, if either party so requests hold hearings for the presentation of evidence by witnesses or for oral argument by the parties of their counsel. If neither pary presents such request, the arbitrators may nevertheless decide to hold hearings for the purpose just mentioned. However, in any case where no such request has been presented, and the arbitrators have decided to conduct the proceedings solely on the basis of documents and other written materials, they may arrange for inspection of goods or other property.

In order to expedite the proceedings, the parties are imposed under an obligation to communicate to the other party all documents and other relevant information at the same time as they supply them to the arbitrators.(1)

1- At the request of any party, the Centre shall arrange for the exchange of documentary evidence or list of witnesses between the parties. In International cases, it is important that parties know in advance what will transpire at the hearings.

In International arbitrations the parties, arbitrators and witnesses often have differing language backgrounds. Threrefore, 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. Their agreement may be contained in the arbitral clause or separate arbitration agreement, or may be reached before or even after the commencement of the proceedings. In the absence of an agreement by the parties, the arbitrators shall promptly after their appointment determine the language to be used in the proceedings taking into account the exigencies of the arbitration. It is clear that this determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings should take place, to the language to be used in such hearings. In any case translation facilities should be presented when needed.

Where documents are submitted in a language that is not the language agreed to by the parties or determined by the arbitrators, the arbitrators may order the party concerned to accompany such documents by 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. Whereas the latter document serves the function of informing the respondent that the claiment is submitting to arbitration a dispute arising out of a contract between them, the statement of claim is communicated only after the arbitrators have been appointed or chosen and states the claim in an exact form to be dealt with by the arbitrators.

The respondent in turn shall communicate his statement of defence in writting to the claimant and to each arbitrator within a period of time to be determined by the arbitrators. By the statement of defence the respondent shall reply to the information that is required to be included in the statement of claim. Also the respondent has an option of annexing the documents on which he intends to rely for his defence or of including a reference to such documents, and he is entitled to present additional or substitute documents at a later stage in the arbitral proceedings. Furthermore, the respondent may assert in his statement of defence claims arising out of the same contract as the one on which the statement of claim was based. Such claims may be asserted either as counter-claims or for the purpose of a set-off.

The arbitrators may conduct the arbitration in such a manner as they consider appropriate. It is particularly provided that 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 decision on the subject-matter may depend on matters of a technical nature or on the existance and scope of commercial usages. In such cases the arbitrators may appoint one or more experts to report to them on specific issues arising during the arbitral proceedings. The terms of reference for such experts are established by the arbitrators. The parties shall give the experts any relevant information or produce for their inspection any relevant documents or goods that they may require of them.

The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to

make and, if there are none, it may declare the hearing closed. Also, the arbitral tribunal, if it considers it necessary owing to exceptional circumstances, decides, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

III- THE AWARD

The arbitrators are authorized to make interim, interlocutory, partial or final awards whenever justified under the circumstances of the particular dispute that is before them.

An award, whatever is its nature, shall be binding upon the parties. It shall be made in writing and it shall state the reasons upon which it is based.(1)

Where there are three arbitrators, an award shall be made by a majority of the arbitrators.(1)

As a general rule all arbitrators must sign the award. It should also contain the date, and palce at which the award was made. However, when there are three arbitrators, the failure of one arbitrator to sign the award shall not impair the validity of the award. In such a case the reasons for the absence of an arbitrator's signature shall be stated.

According to the principle of privacy, the award may only be made public with the consent of both parties. The arbitrators shall communicate copies of the award signed by them directly to the parties.

If the parties agree to a settlement of their dispute before the award is made, the arbitrators shall in such a case either issue an order for the discontinuacne of 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, but the settlement acquires nevertheless the legal force of an award.

1- The UNCITRAL Rules require that every award should include the reasons on which it is based. Also ICC awards contain reasons. However, the AAA Rules do not require that short awards contain reasons.

Any party can request the interpretation of the award. The request must be notified to the other party. The interpretation which is binding upon the parties must comply with the formal requirements for awards.

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

The arbitrators shall fix the cost of arbitration in their award. while the fee of the arbitrators must be stated separately in the award, all other costs of arbitration may be compined into one figure. It is a generally accepted principle that the costs of arbitration shall be borne by the unsuccessful party. However, the arbitrators are authorized to apportion these costs between the parties whenever justified by the particular circumstances.

The arbitral tribunal shall fix the costs of arbitration in its award. The term "COSTS" includes only:

A) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself.(1)

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.

1- See the appendix for fees and charges of the Centre.

E) The cost for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

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

Each party, with 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 to be justified and considers that the ommission can be rectified without any further hearings or evidence, it shall complete its award.

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Several steps were taken in Egypt in the last few months upon the request of the Centre to eliminate the difficulties in arbitral procedures or concerning the 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 was adopted by the United Nations Commission on International Trade Law, the Centre suggested to the Ministry of Justice that a committee should be formed to revise the national laws to be in confirmity with the Model Law. The proposal was accepted and the committee would be formed after the approval of the draft by the General Assembly of the United Nations.

APPENDIX

FEES AND CHARGES

1- Registration Fee:

Each party shall pay fifty American Dollars ($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 in percent of value of subject-matter. The value of the subject-matter is evaluated 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 slice of the subject-matter are to be added together. The amount of deposit is to be paid to the Centre in American Dollars in accordance with the following table:

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

3- Arbitrators Fees:

The arbitrators fees are determined in percent of value of subject-matter. The percentages applied to each successive slice of the subject-mater are to be added together. The amount of deposit is to be paid to the Centre in American Dollars in accordance with the following table:

Value of Subject-Matter			Percentage	Remarks
	Upto	50,000	3%	With the minimum of $1,000.- for each arbitrator, and one thousand dollars for each of the three arbitrators.
50,001	Upto	100,000	2%	
100,001	Upto	500,000	1%	
500,001	Upto	1,000,000	0.80%	
1,000,001	Upto	2,000,000	0.40%	
2,000,001	Upto	5,000,000	0.15%	
More than	:	5,000,000	0.10%	

4- General Rules:

1- The arbitrators fees and the administrative charges would be paid to the Centre before the beginning of 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. In these cases due to its complexity, nature of the dispute, length of the hearings and the eminence and standing of the arbitrators themselves, the charges and the fees would be fixed after consultation with the arbitrators and the parties.

The fees and charges of the Centre would be fixed taking into account the actual expenses incurred and also keeping in view the non-profit making character of the Centre.