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A Report prepared for the
African Development Bank

*Assessment Report of
arbitration centres in Côte
d'Ivoire, Egypt and Mauritius*



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ACRONYMS

AALCO	Asian African Legal Consultative Organization
ACIMA	Alexandria Centre for International Maritime Arbitration
CAS	Court of Arbitration for Sport
CCCP	Code of Civil and Commercial Procedure
CCJA	Common Court of Justice and Arbitration
CCJA	<i>La Cour Commune de Justice et d'Arbitrage</i>
Clarb, Cairo	Cairo branch of the Chartered Institute of Arbitrators
CRCICA	Cairo Regional Centre for International Commercial Arbitration
CRCICA	Cairo Regional Centre for International Commercial Arbitration
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IDAI	<i>Institut de Droit des affaires internationales</i>
IFCAI	International Federation of Commercial Arbitration Institution
LCIA	London Court of International Arbitration
LCIA-MIAC	Mauritius International Arbitration Centre
MCCI	Permanent Court of Arbitration of the Mauritius Chamber of Commerce and Industry
MILD	ILI/Cairo Middle East Institute for Law and Development
OHADA	Organization for the Harmonization of Business Law in Africa
PCA	Permanent Court of Arbitration in The Hague
UNCITRAL	Arbitration Rules of the United Nations Commission on International Trade Law

INTRODUCTION

1. The present Final Report was mandated by the African Development Bank (the “**Bank**”) and assesses various arbitration centres across the African continent.
2. The Report focuses on the following three centres: *La Cour Commune de Justice et d'Arbitrage* (CCJA) in Côte d'Ivoire, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in Egypt, and the Mauritius International Arbitration Centre (LCIA-MIAC) in Mauritius (together “**the centres**”).
3. The purpose of the Report, as set out in the Terms of Reference, is to assess these arbitration centres against the requirement and standards for “*international commercial arbitration*” according to Paragraph 2.43 of the Bank’s Rules and Procedures for the Procurement of Goods and Works. More precisely, the undersigned was asked to examine the following issues:
 - *“what are the rules governing national and international arbitration in the relevant country the Centre is located;*
 - *what are the rules and procedures governing the Centre’s arbitration procedure;*
 - *based on the analysis of judicial case law and former arbitration cases, how the arbitration awards of the Centre are enforced in the country the Centre is located;*
 - *whether the Centre provides a fully independent and neutral arbitration based on the applicable procedures, and if the Centre is reasonably free from impact of domestic procedural law when the contract involves a public body of the country the Centre is located.*
 - *whether there is a general public perception (of practitioners / lawyers / judges / interested bidders etc.) of the neutrality of the Centre which fulfils the AfDB’s requirements.*
 - *Secondly, the Consultant will check the capacity of the Centre to discharge its responsibility by examining the competency of the arbitrators that the Centre uses, the cost of procedure, and by reviewing recent performance of the Centre.”*
4. Regarding the fourth issue examined, “*whether the Centre provides a fully independent and neutral arbitration*”, this Report was drafted with the understanding that the neutral venue requirement is twofold.

5. Under the *common sense* of the terms and taking into account the likely and understandable perception of the parties, the neutrality requirement could imply that none of the parties to the arbitration – especially a State party – is from the country in which the arbitration institution, or the State Court hearing an issue relating to said arbitration, is located. In such a case of **commonality of origin**, the venue of the arbitration could not be considered neutral.
6. From an *arbitration practitioner's point of view*, the neutrality requirement does not primarily relate to the origin of the parties; it refers on the one hand to the seat of the arbitration institution as the **place of arbitration** and on the other hand to the use of the institution as such. In other words, whether the **rules of that institution** and their functions provide for neutral and independent arbitration, also taking into account the origin of the parties. Under this understanding, the requirement of a neutral venue is fundamental in international proceedings. The definition of neutrality of the venue under this second understanding is therefore broader and also includes the assessment of the suitability of the examined institution.
7. This Report takes into account both understandings of the neutrality requirement. Under both understandings, the purpose of this Report is to provide the Bank with the necessary guidance regarding the suitability of the assessed arbitration institution. The Bank may then adequately suggest the use of arbitration clauses referring to a suitable institution which will administer proceedings that do not run the risk of being challenged by parties on the basis of an alleged lack of neutrality of any kind.

8. As set out in the Terms of Reference, this Report was prepared in two stages.
9. The first stage was conducted as a desk review of the relevant backgrounds of the centres and of the applicable rules and laws. Whenever possible, several telephone conferences were held with the registrars of the centres, lawyers involved in arbitration proceedings under the aegis of the relevant centre and different personalities involved in the establishment of the centre and promotion of arbitration in the relevant jurisdiction.
10. The second stage involved site visits of the centres in Mauritius and Côte d'Ivoire during the months of September and October 2013 with Dr Elke Paschl, Chief Legal Counsel, Procurement and Fiduciary Services at the African Development Bank, as well as meetings with the centres' administration, local lawyers, judges, arbitrators, and other specialists in the field of international arbitration in the said countries. This Final Report consolidates the findings of the two stages and provides a final assessment of each centre.

11. The undersigned highlights the fact that whenever possible he disregarded the current political situation in the studied countries; it was indeed understood that the purpose of this Report was rather to be set in the long term. This Report therefore assesses an arbitration centre located in Abidjan, in Côte where peace seems to have been restored after a recent period of crisis. Similarly, the Report assesses an arbitration institution in Cairo, Egypt, a country currently going through political instability. Political considerations were nevertheless stressed by the undersigned at times, notably in the recommendations, whenever these considerations would have adversely affected the suitability, or even the functioning, of the centre in the future.

12. The focus of the Report is on international commercial arbitration in view of the type of contracts subject to the Bank's Rules and Procedures for Procurement of Goods, Works and Non-Consulting Services. Investment arbitration was also briefly mentioned in the Report, notably to specify whether the relevant country is a signatory State to the ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the "**Washington Convention of 1965**").

13. This Report is divided in three chapters, corresponding to the three countries studied.
14. Each chapter has been subdivided in three main parts. Firstly, the establishment, organisation and activities of the relevant centre are presented. The focus is then moved to the rules of arbitration of the centre and on the arbitration law of the country in which the centre is located, with a specific focus on setting aside and enforcement proceedings and the general approach of the State Courts with regards to arbitration. The last part contains the final conclusion of the undersigned as to each centre's general suitability for the Bank's purposes.
15. Additionally, three tables have been included in an Appendix in order to allow an easy overview and comparison of the assessed centres. The first table compares the arbitration fees of each centre, the second table relates to the main issues relevant for arbitration proceedings under the rules of each centre and the third table lists specific criteria which, in the undersigned's view, must be complied with by any arbitration institution in light of the requirements contained in Paragraph 2.43 of the Bank's Rules and Procedures for Procurement of Goods, Works, and Non-Consulting Services. This table also indicates to what extent and whether, the arbitration institutions examined in this Report fulfil those specific criteria.

Chapter I. CÔTE D'IVOIRE

16. Côte d'Ivoire is a Member State of OHADA, a regional international organisation which has known recent developments in the field of arbitration and which shall therefore be briefly discussed. It is important to note from the outset that there is currently no specific arbitration law in Côte d'Ivoire and that the applicable arbitration law is the same throughout the Member States of this organisation.
17. This new framework has established a fully autonomous regime which presents very interesting particularities. A dual system was established within this organisation, with one set of rules applicable to institutional arbitration under the organisation's arbitration centre and another set of rules applicable to *ad hoc* arbitration and institutional arbitration which is not administered by the organisation's own arbitration centre.
18. As will be discussed, the rules of the organisation's arbitration centre may apply to arbitration proceedings having a link to one of the Member States of the organisation, either through the residence of the parties or through the contract underlying the dispute.¹ The laws and/or the regime of State Court intervention that apply to international arbitrations taking place in Côte d'Ivoire, other than under the rules of that centre (*ad hoc* or institutional) appear less compatible with modern arbitration proceedings and shall therefore only be briefly addressed here.

I. Summary introduction to the OHADA system

19. The Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation du Droit des Affaires en Afrique*, "**OHADA**", or the "**Organisation**")² is an international organisation established by the Treaty on the Harmonisation of Business Law in Africa signed on 17 October 1993 in Port-Louis, Mauritius, and revised in 2008 (the "**OHADA Treaty**"). This Treaty came into force on 18 September 1995. The official seat of the Organisation is located in Yaoundé, Cameroon.
20. The Organisation has seventeen members (the "**Member States**" or "**Contracting States**"): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, DR Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Côte d'Ivoire, Mali, Niger, Senegal and Togo. Although the majority of the Member States are francophone, the working languages of the Organisation are now French, English, Spanish and Portuguese to reflect the diversity of these States.

¹ See below, the CCJA Arbitration Rules.

² <http://www.ohada.com/accueil.html>.

21. The main objective of OHADA is the elaboration and adoption of simple, modern, and common rules adapted to the economies of the Contracting States.³ This uniform law is to be achieved through the adoption of “*Uniform Acts*” which are “*directly applicable and overriding in the Contracting States*”.⁴ The competence of the Organisation is limited to business law.⁵ Some practitioners have said that the implementation of OHADA law in individual domestic legal systems has been very successful, on both qualitative and quantitative levels. According to a member of the OHADA national commission for Congo, this achievement can largely be attributed to the dynamism of the Permanent Secretary of OHADA and his efforts to implement monitoring mechanisms within the Member States.
22. The OHADA Treaty also seeks the promotion of dispute settlement through arbitration.⁶ As will be discussed further below, the Member States have adopted a Uniform Act on Arbitration under which *ad hoc* arbitration (and institutional arbitration not administered by the Organisation’s arbitration centre) can be chosen by disputing parties. Among other institutions,⁷ the Treaty provides for an interesting and unique institution: the Common Court of Justice and Arbitration (the “**CCJA**”).⁸

II. Establishment, Organisation and Activities of the CCJA

A. Establishment

23. When the Contracting States adopted the OHADA Treaty in 1993, they sought to promote a uniform business law throughout the OHADA zone not only by adopting Uniform Acts but also by creating the Common Court of Justice and Arbitration. The CCJA is located in Abidjan, Côte d'Ivoire.
24. One of the aspects of the CCJA which makes it a unique institution emanates from its dual role of Supreme Court and Arbitration Centre. Article 1 of the Arbitration Rules of the CCJA (the “**CCJA Rules**”) explains this dual role

³ OHADA Treaty, Article 1. It should be noted that the term “rules” here employed has the same meaning as the term “laws”.

⁴ OHADA Treaty, Article 10.

⁵ OHADA Treaty, Article 2, provides: “*So as to implement the present Treaty, it is to be understood by Business Law regulations concerning Company Law, definition and classification of legal persons engaged in trade, proceeding in respect credits and recovery of debts, means of enforcement, bankruptcy, receiverships, arbitration; are also included the following laws: Employment law, Accounting law, Transportation and Sales laws, and any such other matter that the Council of Ministers would decide, unanimously, to so include as falling within the definition of Business Law, in conformity with the objective of the present Treaty and of the provisions of Article 8*”. Moreover, provisions relating to criminal liabilities may also be adopted and the Contracting States have committed themselves to enforce any sentences of offences, see OHADA Treaty, Article 5 paragraph 2.

⁶ OHADA Treaty, Part IV, Articles 1 and 21 to 26. See also, for example, A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p. 8.

⁷ The Treaty also establishes the following institutions under Article 3: the Conference of Heads of State and of Government, the Council of Ministers, and the Permanent Secretariat. A Regional Training Centre for Legal Officers (“ERSUMA”) is established under Article 41.

⁸ OHADA Treaty, Article 31. See generally, <http://www.ohada.org/ccja.html>.

played by the institution; it administers arbitration proceedings as an arbitration centre (the “**CCJA Centre**”)⁹ and it is a Supreme Court and exercises judicial functions (the “**CCJA Court**”).¹⁰

25. The *CCJA Centre*, as an **Arbitration Centre**, will be described in detail below.¹¹ It is important to understand that the *CCJA Court* will be called upon in two very distinct situations.
26. Firstly, the *CCJA Court*, as a **Supreme Court**, has jurisdiction to control the uniform interpretation and application of the OHADA Treaty and Uniform Acts.¹² Pursuant to Article 14 paragraph 3 of the OHADA Treaty, any challenge to a final decision of a domestic Member State court falling within the subject-matter of the Treaty will not be heard by the relevant Contracting State’s Supreme Court but by the *CCJA Court*. In other words, every matter covered by a Uniform Act, for instance the Uniform Act on Arbitration,¹³ will fall under the competence of the *CCJA Court* at the Supreme Court level.
27. Secondly, and of more interest for the present purposes, the *CCJA Court* will also exercise judicial functions during arbitration proceedings administered by the *CCJA Centre* (“**CCJA arbitration**”).¹⁴
28. During the visit of the undersigned at the *CCJA Court*, the President of the *CCJA*, Mr. Antoine J. Olivier and other Judges of the *CCJA Court* confirmed that, in practice, the exercise by the members of the Court of their judicial functions during arbitration proceedings, including in annulment or enforcement proceedings of an award in *CCJA* arbitration, is very limited.¹⁵ This explains the limited experience of the Judges in arbitration related matters. However, the undersigned is satisfied that the overall expertise related to arbitration issues, in particular that of the Chief Clerk (*Greffier en Chef, Secrétaire Général*) Mr. Paul Lendongo, as well as of the Registrar (*Greffier, Chargé du Service d’Arbitrage, Régisseur de la Régie d’Avances*)

⁹ See *CCJA Rules*, Articles 1.1 and 1.3 paragraph 1: “*attributions d’administration des arbitrages*”.

¹⁰ See *CCJA Rules*, Articles 1.2 and 1.3 paragraph 2: “*La Cour exerce les compétences juridictionnelles qui lui sont attribuées par l’article 25 du Traité*”.

¹¹ It should be noted that there are other arbitration centres within the OHADA zone, such as the Arbitration Centre of Dakar (Senegal) or the CAMCO in Ouagadougou (Burkina Faso). In the Côte d’Ivoire particularly, the Chamber of Commerce and Industry has established *la Cour d’Arbitrage de Côte d’Ivoire* (CACI) in 1996. The relevance of these institutions in international arbitration matters seem rather limited.

¹² OHADA Treaty, Articles 13 to 20.

¹³ As will be further detailed below in the section relating to “*the Arbitration Law of the Côte d’Ivoire*”, when arbitrations are not administered by the *CCJA* (*ad hoc* or another arbitration institution) and the Uniform Act on Arbitration applies, the State Courts of the OHADA Member States are competent to act as *juge d’appui* during the proceedings and to hear setting aside and enforcement proceedings.

¹⁴ See below, section relating to “*the CCJA Arbitration Rules*”.

¹⁵ For details relating to the Judges’ judicial functions, see below. It can be noted that the majority of the decisions rendered by the Judges of the *CCJA Court* are decisions rendered in their role as Supreme Court. In all, since the inception of the Court in 1996, a total of 1400 requests for *cassation* were filed with the *CCJA Court*. In addition, the Judges render advisory reports (“*Avis consultatifs*”) concerning the interpretation of the Uniform Acts. Since 1997, the *CCJA Court* has received 29 requests for such reports. By contrast, in arbitration related matters, the Court has received only 10 requests for annulment of arbitral awards since its inception.

Mr. Acka Assiehué, guarantees an efficient and rigorous handling of those matters.

29. The Rules of Procedure of the Court were adopted on 18 April 1996 by the Council of Ministers and the Rules applicable to arbitration proceedings were adopted a few years later on 11 March 1999 (the “**CCJA Rules**”).¹⁶ The features of this institution, notably its establishment as a Court and an arbitration Centre, are unique in the world of arbitration.
30. One of the objectives of the establishment of the CCJA was to attract foreign investors within the OHADA zone and to provide a legal framework guaranteeing the highest standards while reducing costs and time of proceedings.

B. Organisation

31. Nine Judges sit on the CCJA Court for a non-renewable term of seven years.¹⁷ The members of the Court never act as arbitrators in arbitration proceedings. They will only be involved in challenges to arbitrators, annulment of arbitral awards and at the enforcement stage (for these judicial functions, see below).
32. A President and two Vice-Presidents are elected within the Court for a non-renewable term of three and a half years. Among other duties, the President of the Court acts as President of the arbitration Centre. He appoints the Chief Clerk of the Court as well as the Secretary General who will assist with the administration of the arbitration proceedings.¹⁸ The position of the Secretary General is currently vacant and meanwhile these tasks are being fulfilled by the Chief Clerk with the assistance of the Registrar who is currently from Côte d'Ivoire.¹⁹ The previous Registrar was from Congo.
33. The undersigned held extensive interviews with the Chief Clerk and the Registrar and wishes to stress that they are both very professional and also extremely knowledgeable in CCJA arbitration and topics related to international arbitration in general.

¹⁶ The internal rules of procedure were adopted on 2 June 1999.

¹⁷ OHADA Treaty, Article 31. Currently, the judges are Antoine Joachim Oliveira of Gabon (President), Marcel Serekoisse-Samba of the Central African Republic (Vice-President), Abdoulaye Yssoufi Toure of Mali (Vice-President), Djoumsirimbaye Bahdje of Chad, Flora Dalmeida Mele of Congo, Mamadou Deme of Senegal, Namuano Francisco Dia Gomes of Guinea Bissau, Don Victoriana Obiang Abogo of Equatorial Guinea, and Idrissa Yayé of Niger.

¹⁸ OHADA Treaty, Article 39. Currently, the Chief Clerk is Paul Lendongo. The Permanent Secretariat is led by Prof. Dorothe Cossi Sossa.

¹⁹ The current Registrar of the CCJA is Mr Acka Assiehué.

34. Article 49 of the OHADA Treaty is interesting as it specifies that “*the civil servants and employees of OHADA, the judges of the [CCJA] and the arbitrators appointed or confirmed by said Court, shall all benefit from diplomatic privileges and immunities in the performance of their duties*”. This provision, which has been described as “*extremely original*”,²⁰ however only provides for immunity of the arbitrators appointed by the CCJA Centre and not those nominated by the parties. Nonetheless, this distinction has been criticised.²¹ It has to be noted that under all important institutional arbitration rules, arbitrators do not benefit from any diplomatic privileges.
35. The CCJA establishes a list of arbitrators which is updated every year.²² This list is published in the official journal of OHADA. Interested persons with a legal background and expertise in arbitration who wish to appear on the list should send a request to the Court. The Parties to an arbitration are free to choose their arbitrator and are not limited to this list. The current list names 154 persons from 29 countries,²³ many of whom are highly regarded arbitrators internationally while others are not known on an international level. As the Secretary General explained, the candidate wishing to be admitted to this list of arbitrators must attach the following documents to the admission request: a detailed *curriculum vitae*, a certified copy of all university degrees as well as a written and detailed description of the arbitration related experience of the candidate. Given the professionalism of the Chief Clerk and of the Registrar, the undersigned is satisfied that the selection process is such that it guarantees a high level standard of arbitrators.

C. Activities

36. The OHADA Treaty and the CCJA Rules specifically mention that the CCJA Centre does “*not itself settle disputes*” or “*disagreements*”.²⁴ The CCJA Centre – through its Secretary General – indeed only exercises administrative functions²⁵ such as appointing arbitrators or confirming the parties’ choice of arbitrators, and generally overseeing the arbitral proceedings.
37. The CCJA also organises conferences and in October 2013 the first “*audiences foraines*” were held in Kinshasa and Brazzaville, Congo. On this

²⁰ B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, p. 122 (free translation).

²¹ B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, p. 123.

²² CCJA Rules, Article 3.2.

²³ The 2013 list of arbitrators includes arbitrators from the following countries (with number of arbitrators): Belgium (2), Benin (8), Brazil (9), Burkina Faso (1), Cameroon (20), Canada (1), Cape Verde (1), Central African Republic (1), Chad (3), Chile (1), Congo (12), France (38), Gabon (5), Germany (1), Guinea-Bissau (3), India (1), Italy (1), Côte d'Ivoire (15), Luxembourg (1), Madagascar (1), Mali (6), the Netherlands (2), Nigeria (2), Senegal (10), Switzerland (4), Togo (3), the UK (1), and the USA (1).

²⁴ Respectively CCJA Rules, Article 2.2 and OHADA Treaty, Article 21.

²⁵ B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, p. 119.

occasion, the Court held hearings in these cities.²⁶ The idea is to promote the OHADA system which does not seem well known, even within the Organisation's territory. Therefore, in parallel with these hearings, various conferences specifically focused on arbitration matters and the CCJA. Particularly, the CCJA is aware of the fact that there is an important lack of information as to how to correctly draft valid arbitration agreements. The Registrar, Mr. Assiehué, confirmed to the undersigned that in many instances the arbitrations under the CCJA Arbitration Rules could not be conducted because of the "pathology" of the arbitration clause. This has also been confirmed to the undersigned by highly experienced practicing lawyers.

38. The CCJA Centre is also active in furthering cooperation with various institutions, both within the African continent and out. For example, a recent Cooperation Agreement was signed between the CCJA and the International Arbitration Centre of Vietnam which aims to promote the inclusion of arbitration clauses referring to the arbitration centre of the other party.

III. Arbitration in Côte d'Ivoire

39. Côte d'Ivoire had a specific domestic law on arbitration²⁷ which has been replaced by the OHADA provisions on arbitration of 1999. No distinction is made between the laws applicable to national or international arbitration in Côte d'Ivoire. However, as shown below, depending on whether the arbitration is administered under the CCJA Rules or an *ad hoc* arbitration under the Uniform Act on Arbitration (or institutional arbitration other than CCJA arbitration), very different legal norms apply and different authorities are competent.²⁸

A. The CCJA Arbitration Rules

40. As mentioned, the OHADA Treaty contains provisions relating to institutional arbitration pursuant to the Rules of the CCJA Arbitration Centre established by the same Treaty.²⁹ No distinction is made under these Rules between domestic and international arbitration. To a very large extent, these Rules were inspired by the Rules of Arbitration of the International Chamber of Commerce in Paris (the "ICC Rules")³⁰ but show a few differences mainly with

²⁶ As mentioned, the CCJA Court is also the Supreme Court in all matters regulated by the OHADA Treaty, i.e. business law in general and not only arbitration. The hearings held in Kinshasa and Brazzaville therefore concerned cases also relating to litigation under any of the other Uniform Acts.

²⁷ Law No 93-671 of 3 August 1993 on Arbitration. Prior to this law, French law was referred to as *ratio scripta* but there was no arbitration law in the Côte d'Ivoire, neither before nor after independence.

²⁸ For a general presentation of the CCJA Rules and the Uniform Act on Arbitration, see for example P. Leboulanger, "Présentation générale des actes sur l'arbitrage", in P. Fouchard (dir.) *L'OHADA et les perspectives de l'arbitrage en Afrique*, 2000, pp. 63 to 88.

²⁹ OHADA Treaty, Articles 21 to 26. It should be noted that recourse to institutional CCJA arbitration is not compulsory, as can be seen from the fact that the Uniform Act on arbitration was adopted, which applies to *ad hoc* arbitration or institutional arbitration other than CCJA; see below, section on "the Arbitration Law of the Côte d'Ivoire".

³⁰ P. Leboulanger, "Présentation générale des actes sur l'arbitrage", in P. Fouchard (dir.) *L'OHADA et les perspectives de l'arbitrage en Afrique*, 2000, p. 67. Also note that in the past the CCJA

regards to the role of the CCJA in relation to the recognition and enforcement of awards which will be discussed in detail below.³¹ The CCJA Rules provide detailed rules on the functions of the Court, the arbitration proceedings and the recognition and enforcement of awards.

41. Since the establishment of the CCJA, 64 arbitrations have already been administered by the institution³² and 18 are currently pending. The **confidential** nature of CCJA arbitration³³ meant that it was not possible to examine all of these cases. The Registrar has published some anonymised decisions.³⁴ The cases usually involve contracts relating to a wide range of sectors. Notable examples are the mining industry, insurance companies, and investments. The language of the proceedings is freely determined by the parties but is mainly French currently. There are no specific statistics regarding the average amount in dispute, but, according to the Registrar, it is thought to be between five and ten billion CFA francs. The highest value case to date was 200 billion CFA francs. The average duration of the proceedings is said to be nine (9) months.³⁵
42. The Parties must have specifically agreed to CCJA arbitration for the institution to accept, after a *prima facie* analysis of the arbitration agreement, to administer the proceedings.³⁶ This consent can either be found in the arbitration clause concluded prior to the dispute or in the parties' agreement following the dispute. The doctrine of *separability* of the arbitration clause from the underlying contract is explicitly recognised; in other words, any potential defect of the underlying contract does not affect the arbitration agreement which is considered to be severable.³⁷ Moreover, if a party alleges that the arbitration agreement is invalid or otherwise inapplicable, the CCJA will conduct a *prima facie* control on the existence of the agreement in which case it will refer the parties to arbitration. It will then be up to the arbitrator(s) to decide on their own **jurisdiction** (so-called *Kompetenz-Kompetenz* principle).³⁸

benefitted from practical support from the ICC, for example the latter has authorised the CCJA to use its Standard Letters ("*lettres types*").

³¹ CCJA Rules, Chapter III. See also B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, pp. 104 and 119.

³² According to the Registrar's statistics, less than half of these cases have ended with an award being rendered. The rest of the cases were either withdrawn by the requesting party or terminated by a "*décision d'incompétence*" or a "*decision relative à suite à donner*".

³³ CCJA Rules, Article 14.

³⁴ See also the few decisions published on the CCJA website: <http://www.ohada.org/jurisprudence.html>

³⁵ A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p. 16.

³⁶ CCJA Rules, Article 9.

³⁷ CCJA Rules, Article 10.4.

³⁸ CCJA Rules, Article 10.3. For an example of a case in which this article was applied, see CCJA Decision No 10/2009/CCJA/ADM/ARB, reproduced in anonymized form in A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p. 143.

43. The parties to CCJA arbitration can be nationals of OHADA Member States or from elsewhere; they can be private individuals/entities or public entities.³⁹ Out of the 64 cases administered by the CCJA, seven have involved a State party, mainly as the respondent. Generally, the parties were from OHADA countries or from Europe (France, Spain, and the UK).⁴⁰ There are no particular restrictions in the Rules or elsewhere with regards to who can represent the parties. Moreover, the parties are free to choose the law applicable to the merits of the dispute.⁴¹ Several practitioners have underlined that they do not think that the CCJA Court shows any bias in favour of State parties. The CCJA Court seems to have always dealt with annulment requests from unsuccessful State parties in a very objective manner.
44. The institution's jurisdiction *ratione personae* and *territoriae* is nevertheless limited. CCJA arbitration proceedings are indeed only open to "any party to a contract [...], either because [one of the Parties] has its domicile or its usual residence in one of the **Contracting States**, or if the contract is enforced or to be enforced in its entirety or partially on the territory of one or several contracting States".⁴² It is therefore possible to have a CCJA arbitration between two parties from OHADA Contracting States, or between one party from an OHADA Contracting State and another from outside this region, or even between two parties foreign to OHADA but with a contract which is to be enforced – entirely or only partially – within a Contracting State. According to some authors, this limited scope is unfortunate and it is still questionable whether parties who have no link with OHADA may contractually agree to expand this scope of competence of the institution by inserting a CCJA arbitration clause in an agreement which has no link to OHADA.⁴³ Indeed the prevailing principle in arbitration is that of party autonomy; two parties with no link to OHADA could theoretically choose to include a CCJA arbitration clause in their contract and the CCJA Centre may accept to administer the proceedings based on this consent. However this interpretation is not supported by the CCJA Rules and this has never been done in practice. It is therefore impossible to predict whether the arbitration agreement would be accepted by the CCJA or whether a judge hearing the dispute would refer the parties to arbitration. The interviews held at the CCJA concluded that this would rather not be the case at the moment. However, this position might change in the future.

³⁹ According to the Registrar, parties to the proceedings were from the following countries (with number of such cases): Benin (9), Burkina Faso (2), Cameroun (11), Congo (2), Côte d'Ivoire (14), France (5), Gabon (1), the UK (1), Equatorial Guinea (2), Mali (10), and Senegal (2).

⁴⁰ In the 64 cases administered by the CCJA Centre to date, in addition to the parties originating from OHADA Contracting States, seven (7) European parties were involved in total: France (5); Spain (1); Great Britain (1).

⁴¹ CCJA Rules, Article 17.

⁴² OHADA Treaty, Article 21, see also CCJA Rules, Article 2.1.

⁴³ See, for example, A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, pp. 12 and 13.

45. Although neither the OHADA Treaty nor the CCJA Rules specifically request that the **seat** of the arbitration be located within the territory of an OHADA Contracting State, for practical reasons, parties are advised to choose a seat within OHADA.⁴⁴ In practice, it has been noted that the seat of the arbitration is chosen in most cases in Côte d'Ivoire because the CCJA has its seat in Abidjan.⁴⁵ However, there have been cases of CCJA arbitrations with seat in Paris (France), Cotonou (Benin), or Lomé (Togo). These provisions relating to the seat of the arbitration do not preclude parties from holding a hearing or other meeting at any other location than the agreed seat. As this is quite common, a distinction is hereby drawn between the *legal* seat of the arbitration and the *physical* location of the hearings, the latter bearing no legal consequences.
46. With regard to the proceedings, following the initial exchange of submissions, the General Secretary submits the file to the CCJA to decide on the advance on costs and, if necessary, on the seat of the arbitration.⁴⁶ The **fee structure** is established pursuant to a scale of administrative expenses and the arbitrator(s)'s fees, which depend on the amount in dispute. In addition to an initial fee of 200,000 CFA francs (around US\$ 400/€ 300) ("*droit prévu pour l'introduction des instances arbitrales*"),⁴⁷ the administrative fees range between 500,000 and 30 million CFA francs depending on the amount in dispute (between US\$ 1,000/€ 760 and US\$ 60,000/€ 45,700). For disputes below 25 million CFA francs (around US\$ 50,000/€ 38,000), arbitrators are paid a minimum fee of 500,000 CFA francs (around US\$ 1,000/€ 760) (with a maximum fee fixed at 10% of the amount in dispute); for disputes over 5 billion CFA francs (around US\$ 10 million/€ 7,5 million) the fees range between 0, 01 and 0, 05% of the amount in dispute.⁴⁸
47. The arbitral tribunal consists of either a **sole arbitrator** or of a **panel of three arbitrators**, depending on the parties' agreement. Absent such agreement, or in case a party refuses to cooperate in the appointment of the tribunal, the President of the CCJA will appoint a sole arbitrator. If the case warrants it, the President will appoint three arbitrators.⁴⁹ Various criteria are taken into account by the President when discharging this duty; these are not mandatory elements but serve only as guidance. They include the nationality of the parties, the domicile/residence of their counsel and of the potential arbitrator(s), the language(s) spoken by the parties, the nature of the dispute

⁴⁴ B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, p. 119.

⁴⁵ P. Meyer, "Le droit de l'arbitrage dans l'espace OHADA dix ans après l'Acte Uniforme", in *Revue de l'Arbitrage*, 2010, No 3, Note 56.

⁴⁶ CCJA Rules, Article 8. With regards to the advance on costs, see CCJA Rules, Article 11.

⁴⁷ CCJA Decision No 004/99/CCJA of 3 February 1999 on arbitral costs, Article 1, reproduced in A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p.190.

⁴⁸ The fee scales are reproduced in A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, pp.192 to 194. See also Appendix I.1 to this Report for a comparative overview of the fee structures of the various centres.

⁴⁹ CCJA Rules, Article 2.2 and 3.

and the applicable law.⁵⁰ The CCJA Centre only confirms the appointment of each arbitrator after receiving the latter's declaration of independence. Challenges to arbitrators are heard before the CCJA Court in accordance with Article 4 of the CCJA Rules.

48. In cases of urgency, **interim measures** may be requested to the State Courts which shall inform the CCJA Court which subsequently forwards the information to the arbitrator(s).⁵¹ This is one of the rare situations in which the State Courts will be competent to intervene in the CCJA arbitration proceedings.⁵² The CCJA also adopts internal arbitration rules whenever necessary⁵³ and in cases of urgency, the President has the power to "*take decisions necessary for the putting into place and proper functioning of arbitral proceedings, subject to informing the Court in the next meeting, to the exclusion of decisions requiring an order of the Court*".⁵⁴
49. In a similar provision to that of the ICC Rules, the CCJA Rules provide that the institution "*shall examine the draft awards*".⁵⁵ However, as opposed to the ICC, the CCJA only undertakes a **formal control of the award** and cannot further scrutinise the award, i.e. it cannot comment on points of substance. The Registrar strongly disagrees with this rule; he considers that for efficiency purposes the CCJA should also be in a position to comment on the merits and draw an arbitral tribunal's attention on any possible error or issue which could lead to annulment proceedings. He nevertheless advocates for a limited control over the merits restricted to the possibility of making comments, with no normative value.
50. CCJA awards, meaning all awards rendered pursuant to an arbitration administered by the CCJA, i.e. irrespective of the seat of the arbitration inside or outside the OHADA zone, are given *res judicata* effect in all OHADA Contracting States. Article 27 of the CCJA Rules provides that the awards must have the same effect as decisions of the domestic courts. The enforcement of non-CCJA awards will be discussed below.
51. The judicial role of the CCJA warrants a further analysis. The CCJA Court – and not the courts of the Contracting States – will hear **annulment and enforcement proceedings** brought against CCJA awards.⁵⁶

⁵⁰ CCJA Rules, Article 3.3.

⁵¹ CCJA Rules, Article 10.5 paragraph 3.

⁵² Another example of possible recourse to State Courts is for the taking of evidence.

⁵³ CCJA Rules, Article 2.4.

⁵⁴ CCJA Rules, Article 2.5.

⁵⁵ CCJA Rules, Article 2.2.

⁵⁶ The official "OHADA terminology" is "*recours en contestation de validité des sentences*" and is set out at Article 29 of the CCJA Rules.

52. Annulment may only be sought on specific grounds, for example the arbitrator(s)'s failure to comply with its mandate.⁵⁷ If an award is annulled, the parties **may ask the CCJA Court to judge the dispute on the merits or refer them back to arbitration.**⁵⁸ There are two other procedures available to challenge an award: the "*recours en révision*" and the "*recours en tierce opposition*".⁵⁹
53. The CCJA Court is also competent to rule on the enforcement of the award. Therefore, a distinction should be made between the enforcement of CCJA awards inside or outside the OHADA zone. In the former situation, the CCJA has exclusive competence to grant the *exequatur* of the award⁶⁰ and this decision will then be directly enforceable in all OHADA Member States ("*exequatur communautaire*").⁶¹ In the latter case, the New York Convention on the Recognition and Enforcement of Foreign Awards of 10 June 1958 (the "**New York Convention of 1958**") or other relevant legal provisions must be applied by the competent authority of the State in which execution is sought. Non-CCJA awards which will be enforced within OHADA are not governed by the CCJA Rules and will be discussed below.
54. The CCJA Court may refuse to grant *exequatur* only on a limited number of grounds exhaustively listed at Article 30.6 of the CCJA Rules.⁶² These are the same grounds upon which annulment may be sought. It has been noted that the CCJA Court "*has demonstrated a rigorous approach to the interpretation of the grounds of annulment*".⁶³
55. The interaction between the State Courts and the CCJA Court has been said to be rather positive, without one interfering with the jurisdiction of the other. As previously mentioned, the negative effect of the *Kompetenz-Kompetenz* principle is complied with in practice. In a case in which the State Courts failed

⁵⁷ See, for example, the CCJA Decision No 028/2007 of 19 July 2007 reproduced in A. Assiehué, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p.124. In this decision, the arbitrators had acted as *aimables compositeurs* although the parties had agreed that the dispute should be decided under the law of the Côte d'Ivoire.

⁵⁸ CCJA Rules, Article 29.5.

⁵⁹ CCJA Rules Articles 32 and 33.

⁶⁰ CCJA Rules, Article 2.2.

⁶¹ An intermediary step is, however, necessary under Article 31.2 of the CCJA Rules: "*l'autorité nationale désignée par l'Etat pour lequel l'exequatur a été demandé appose la formule exécutoire telle qu'elle est en vigueur dans ledit Etat*". This is yet another example of State Court intervention in the CCJA arbitration proceedings, but it does not seem to unduly intrude in the proceedings as it takes place after the award has been rendered and only a control which is a purely objective is undertaken. The OHADA Member States have forwarded the list of these competent authorities to the CCJA.

⁶² The grounds are as follows: 1. the award was rendered although the arbitration agreement was inexistent, not valid or had expired, 2. the arbitrator did not comply with the terms of submission to arbitration, 3. in case of violation of due process, or 4. in case of violation of international public policy.

⁶³ P. Meyer, "*Le droit de l'arbitrage dans l'espace OHADA dix ans après l'Acte Uniforme*", in *Revue de l'Arbitrage*, 2010, No 3, p. 467, summary.

to uphold an arbitration agreement, the decision was overruled by the CCJA Court and the parties referred back to arbitration.⁶⁴

56. The Registrar of the CCJA has shown his enthusiasm for the CCJA arbitration system and notes that a quarter of the CCJA arbitral awards are enforced voluntarily. In his view, this constitutes a good framework to attract foreign investors.
57. Some practitioners have shown a more balanced approach to the CCJA system. Although this framework appears very good *theoretically*, the *de facto* practice was not as convincing. Some noted that the Judges sitting on the CCJA Court were not trained in arbitration – and some did not have any expertise in the specific field of competence of OHADA, i.e. business law. This means that the persons responsible for the good administration of the arbitration system do not have any expertise in this field. This raises practical issues. For example, when the Court finds irregularities during arbitration proceedings, it will refer the parties back to the last action it considers valid.⁶⁵ This is clearly a very technical decision which requires a good understanding of the system as a whole. For these reasons, some practitioners advocate a better training of the Judges with a specific focus on arbitration. Practitioners also consider that the number of Judges needs to be increased. Although the undersigned shares the view that the Judges of the CCJA lack experience in arbitration related matters, the overall expertise related to arbitration issues, particularly that of the Chief Clerk (*Greffier en Chef, Secrétaire Général*), Mr. Paul Lendongo, as well as of the Registrar (*Greffier, Chargé du Service d'Arbitrage, Régisseur de la Régie d'Avances*), Mr. Acka Assiehué, guarantee the necessary assistance of the Judges, if needed.
58. The CCJA arbitration framework is totally **autonomous**. Except for the limited examples mentioned, no intervention of State judges is warranted as the institution steps in as *juge d'appui* or to hear challenges against arbitrators and awards. Therefore, if parties have opted for CCJA arbitration, the presentation of the arbitration law in Côte d'Ivoire – which is the same in all OHADA Member States – in the following section is undertaken only for the sake of completeness. This legal regime helps to understand situations in which parties have agreed to *ad hoc* arbitration, or decided to submit their dispute to an institution other than the CCJA (such as the ICC, LCIA or other well established international arbitration centres), and chose Côte d'Ivoire as the seat of arbitration. Moreover, these provisions will be useful for the enforcement of non-CCJA awards in Côte d'Ivoire.

⁶⁴ See for example the CCJA Decision No 043/2008, *M. DAM SARR v Mutuelle d'Assurances des Taxis Compteurs d'Abidjan*, 24 July 2008.

⁶⁵ CCJA Rules, Article 29.5.

B. The Arbitration Law of Côte d'Ivoire

59. The Contracting States of OHADA adopted on the same day both the CCJA Rules and a Uniform Act on Arbitration (the “**Uniform Act on Arbitration**” or the “**Uniform Act**”) which sets out the fundamental principles of arbitration proceedings thereunder.
60. The rules of the Uniform Act apply to *ad hoc* arbitrations where the seat is located in one of the OHADA Contracting States⁶⁶ or to institutional arbitration if the arbitration agreement does not refer to CCJA arbitration (“**OHADA Uniform Act arbitration**”). It must be emphasised that there can be no joint application of the CCJA Rules and of the Uniform Act. The CCJA arbitration system is indeed autonomous and therefore must be strictly separated from OHADA Uniform Act arbitration.⁶⁷
61. The Uniform Act covers both international and domestic arbitrations; it allows parties in the latter case to waive some of its procedural provisions.⁶⁸ Parties to an OHADA Uniform Act arbitration may either be private or public persons.⁶⁹ The provisions of this Uniform Act may be waived by the parties who can decide to apply the rules of an arbitral institution (other than the CCJA), insofar as the Uniform Act allows it.⁷⁰ Some of its provisions are indeed binding, such as Article 9 relating to equality and due process. In cases where the parties have agreed on the application of other rules, the provisions of the Uniform Act will only apply in case of *lacunae* to complete the chosen rules and will be applied particularly when the State Court intervenes.
62. Côte d'Ivoire is a Contracting Party to the Washington Convention of 1965 and to the New York Convention of 1958.
63. As described above, the CCJA system is completely independent from State Courts. Conversely, OHADA Uniform Act arbitration is **dependent on State Courts**⁷¹ to undertake various important tasks, such as acting as *juge d'appui* when requested. For example, when a party defaults or if the parties cannot reach an agreement, the competent State Court will proceed with the

⁶⁶ Uniform Act on Arbitration, Article 1.

⁶⁷ The two systems are based on different sources of law, as was noted in the CCJA Decision No 045/2008, *SONAPRA v SHB*, 17 July 2008, *Le Juris Ohada*, No 4/2008, p. 60 (also accessible on <http://www.ohada.com/jurisprudence/ohadata/J-09-83.html>). A brief overview of the differences between the two systems can be found in B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, pp. 132 to 134. See also P. Meyer, “*Le droit de l'arbitrage dans l'espace OHADA dix ans après l'Acte Uniforme*”, in *Revue de l'Arbitrage*, 2010, No 3, p. 481, paragraph 13.

⁶⁸ Pursuant to Article 14 of the Uniform Act, the parties may agree that the arbitration proceedings shall be governed by another procedural law than the Uniform Act. This possibility is not available to the parties to a CCJA arbitration. See, for example, A. Assiéhue, *Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure*, 2012, p.9.

⁶⁹ Uniform Act on Arbitration, Article 2 paragraph 2.

⁷⁰ Uniform Act on Arbitration, Article 10.

⁷¹ It should be noted that the Uniform Act on Arbitration does not specify which State Court is competent but leaves it to be determined by each domestic law. In any event, the CCJA is competent in last resort and not the Supreme Court of each OHADA Member State.

appointment of the arbitrator.⁷² It will also hear any challenges brought against any arbitrators,⁷³ order interim measures,⁷⁴ and provide assistance in the taking of evidence.⁷⁵ It should, however, be noted that the State Supreme Courts of OHADA Member States are not competent to hear appeals on decisions of the Appeal Courts, which should be filed before the CCJA Court, as mentioned above.

64. Article 13 of the Uniform Act relates to **jurisdiction** and explicitly provides that a State Court hearing a dispute despite the existence of an arbitration agreement must declare itself incompetent and refer the parties to arbitration under two conditions: the arbitration agreement is not manifestly invalid and one of the parties must raise the issue. The State Court may not raise this issue on its own motion.
65. Once an award has been rendered ("**OHADA Uniform Act award**"), a party may request its correction, but only for clerical mistakes, and its interpretation. If the arbitral tribunal cannot be reconstituted, the State Courts become the competent authorities.⁷⁶ Finally, the State Courts also hear requests for **setting aside** of the award⁷⁷ for the limited grounds listed in Article 26,⁷⁸ as well as **enforcement** proceedings.⁷⁹ The control undertaken by the State Courts at this stage is a *prima facie* control.⁸⁰
66. The enforcement of foreign, non-CCJA awards, in Côte d'Ivoire is sought before the State Courts under the New York Convention of 1958. All of the OHADA countries are not State Parties to this convention.⁸¹ Even in these States, practitioners have confirmed with the undersigned that the execution of awards within the OHADA zone is relatively simple.

⁷² Uniform Act on Arbitration, Article 5. See also Article 8 for the appointment of an arbitrator when the parties have agreed on an even number of arbitrators.

⁷³ Uniform Act on Arbitration, Article 7.

⁷⁴ Uniform Act on Arbitration, Article 13 paragraph 4.

⁷⁵ Uniform Act on Arbitration, Article 14 paragraph 7.

⁷⁶ Uniform Act on Arbitration, Article 22 paragraph 5.

⁷⁷ Uniform Act on Arbitration, Article 25.

⁷⁸ Note that there are more grounds to request the setting aside of an OHADA Uniform Act award than a CCJA award. Under Article 30 of the CCJA Rules, the grounds are indeed more limited. For example, it is possible to set aside an OHADA Uniform Act award because the reasons of the award were not stated in the award or because the arbitral tribunal was irregularly constituted. Moreover, Article 26 of the Uniform Act specifies that an award may be set aside in case of a violation of the international public policy of one of the Member States.

⁷⁹ Uniform Act on Arbitration, Article 30.

⁸⁰ J.-P. Ancel, "Contrôle de la sentence", in Philippe Fouchard (dir.) *L'OHADA et les perspectives de l'arbitrage en Afrique*, 2000, pp. 190 to 196.

⁸¹ The following OHADA Member States have ratified the New York Convention of 1958: Benin, Burkina Faso, Cameroon, Central African Republic, Gabon, Guinea, Côte d'Ivoire, Mali, Niger, and Senegal.

67. It must be noted that State Courts must play an important role in the OHADA Uniform Act arbitration system. Some authors have noted that State Courts adopt an adverse position towards arbitration, notably in setting aside proceedings where the judges might attempt to control the merits of the award.⁸²
68. However, a direct appeal to the CCJA Court is available against these decisions and as mentioned above, the CCJA Court will take a robust position against any undue interference. In the case of enforcement proceedings, a decision of a State Court granting enforcement is final and irrevocable whereas the decision denying it can be challenged before the CCJA.⁸³
69. Attention should be drawn to the fact that the Uniform Act does not include any provision relating to **immunities**, and notably immunity from execution. The question becomes relevant in cases in which a public entity was party to the arbitration. This issue is governed by the law of the State in which enforcement of the award is sought.
70. As shown in OHADA Uniform Act arbitration, there is the possibility of a dual intervention from both the State judges and the CCJA. In this situation the undersigned underlines a key advantage of the CCJA arbitration system which bypasses this dual level of competence and unites all the functions attributed to State Courts in the hands of a single institution, the CCJA. Although the OHADA legal system is “*modern, liberal and adapted to arbitration*”,⁸⁴ it is up to the State Courts to guarantee the application of these high standards.

IV. Conclusion

71. The organisation and attributions of the CCJA, notably its dual role of arbitration Centre and Supreme Court are truly unique in the arbitration world. Some practitioners have stated that the OHADA system is very appealing on paper and that the legal framework is excellent and well-conceived. However, the ten (10) years of practice of the CCJA have shown some shortcomings, notably with regards to what was described by practitioners as the CCJA Judges' lack of knowledge and fluency in arbitration. Also, practitioners consider that the number of Judges (currently seven) is not sufficient to guarantee efficient proceedings. These shortcomings do not seem to affect the quality of the CCJA as an arbitration institution and other practitioners have had excellent experiences with the CCJA under its institutional arbitration rules. It has been noted that the members of the Court exercising their judicial functions during arbitration proceedings, including in annulment or enforcement proceedings of an award in CCJA arbitration, is very limited in practice. This explains the limited experience of the Judges with arbitration related matters in general. However, the undersigned is satisfied that the overall expertise related to arbitration issues, in particular that of the Chief

⁸² P. Meyer, “*Le droit de l’arbitrage dans l’espace OHADA dix ans après l’Acte Uniforme*”, in *Revue de l’Arbitrage*, 2010, No 3, p. 467, summary.

⁸³ Uniform Act on Arbitration, Article 32.

⁸⁴ P. Meyer, “*Le droit de l’arbitrage dans l’espace OHADA dix ans après l’Acte Uniforme*”, in *Revue de l’Arbitrage*, 2010, No 3, p. 473, paragraph 5 (free translation).

Clerk (*Greffier en Chef, Secrétaire Général*) Mr. Paul Lendongo, as well as of the Registrar (*Greffier, Chargé du Service d'Arbitrage, Régisseur de la Régie d'Avances*) Mr. Acka Assiehué, guarantees an efficient and rigorous handling of those matters.

72. Having accepted the suitability of the CCJA in general, the final conclusion of the undersigned, with regard to the recommendation of the use of the CCJA as an arbitration institution, depends on the origin of the parties to the arbitration.
73. For Contracting States of OHADA and parties originating from there, the CCJA is undoubtedly a suitable institutional arbitration system.
74. If all parties to the agreement come from outside of OHADA (non-OHADA States and foreign investors), the CCJA, pursuant to its rules, cannot be used as a centre to administer their disputes. Therefore, in a scenario where the parties have no link to OHADA and the contract is not executed within this zone (an element in a contractual framework which is extremely difficult to foresee), it is strongly recommended not to use a CCJA clause because of the high uncertainty surrounding this situation.
75. There is no other arbitration centre in Côte d'Ivoire with the experience and capacity to handle international arbitration proceedings. Moreover, the choice of *ad hoc* arbitration (or institutional arbitration other than CCJA) with its seat in Côte d'Ivoire (or even anywhere within OHADA) is not recommended as the State Court intervention is still too important in OHADA Uniform Act arbitration.
76. With regards to the Bank's requirement that the arbitration be held in a neutral venue, as understood by the undersigned (see above, Introduction), it is the opinion of the undersigned, following the desk review of CCJA arbitration and the discussions held with the institution and practicing lawyers, that such requirement is fulfilled to the extent that the arbitration can be administered under the CCJA rules (which is not the case if none of the parties come from an OHADA Contracting State).
77. The involvement of a State or State entity in CCJA proceedings seems to have no impact on the way the dispute will be administered by the Centre. Moreover, the State Courts are not called upon to intervene in the proceedings, as jurisdiction is exclusively given to the CCJA Court. The enforcement of an award may however be difficult as defences of immunity are often raised. This remains a problem which is not only encountered for CCJA awards but, on a wider scale, with the enforcement of any award, even those rendered under the rules of institutions such as the ICC.
78. It is therefore the undersigned's final conclusion that even in cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, i.e. Côte d'Ivoire, the neutral venue requirement can be regarded as being fulfilled. The system as a whole seems to indeed provide the necessary safeguards to guarantee all parties to the arbitration a suitable framework.

79. Extract from Appendix I-3:

Analysed Criteria	CCJA (Côte d'Ivoire)
<p>Modern set of Rules, comparable to the standard guaranteed by the ICC, LCIA, Swiss Rules or similar modern arbitration Rules</p>	<p>Criteria fulfilled. The Rules were inspired by the ICC Rules. However, the Rules only apply if one of the Parties has its domicile/usual residence in one of the OHADA States or if the contract is enforced on such territory. No scrutiny of award.</p>
<p>Arbitration friendly environment at the seat of the Institution (notably regarding the laws of the seat of the Institution, if such is the place of arbitration)</p>	<p>Criteria fulfilled as long as CCJA Rules apply.</p>
<p>Arbitration friendly State Court intervention (if seat of Institution is the place of arbitration)</p>	<p>Criteria fulfilled as long as CCJA Rules apply. Very limited State Court intervention in general.</p>
<p>Parties are free to choose the place of arbitration</p>	<p>Criteria fulfilled. However, due to the specific features of the CCJA Rules, it is recommended to choose a seat in an OHADA State. In practice, the Côte d'Ivoire is the preferred choice.</p>
<p>Autonomy of parties to select arbitrators</p>	<p>Criteria fulfilled. The Parties are not bound by a specific list. The list of CCJA is only applicable if the arbitrator is to be appointed by the Court</p>
<p>Open list of highly professional arbitrators</p>	<p>Criteria fulfilled. The selection process is transparent and follows strict guidelines; the process satisfies the expectations of a modern arbitration institution</p>
<p>Good language skills (French and English) of employees of arbitration institution</p>	<p>Criteria not fulfilled. It is recommended to use only French as language of the arbitration.</p>
<p>No impediment to enforcement</p>	<p>Criteria fulfilled. CCJA Court is competent to rule on the enforcement of the award inside the OHADA zone. Very limited grounds to refuse to grant <i>exequatur</i>. Easy enforcement in OHADA States even if the State is not a member of the New York Convention of 1958.</p>
<p>State Court intervention limited or representing no risk in light of the neutrality requirement</p>	<p>Criteria fulfilled.</p>
<p>In cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, the neutral venue requirement is fulfilled</p>	<p>Yes. The involvement of a State or State entity in CCJA proceedings seems to have no impact on the way the dispute will be administered by the Centre. Moreover, the State Courts are not called upon to intervene in the proceedings, as jurisdiction is exclusively given to the CCJA Court</p>

V. Model clause suggested by the institution (CCJA)

« Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant les dispositions du titre IV du Traité du 17 octobre 1993 de Port-Louis relatif à l'harmonisation du droit des affaires en Afrique et le Règlement d'arbitrage de la Cour Commune de Justice et d'Arbitrage de l'OHADA par un ou plusieurs arbitres nommés conformément à ces textes. »⁸⁵

⁸⁵ *“Any dispute arising out of or in connection with this contract shall be finally resolved by arbitration under the provisions of Title IV of the Treaty of Port Louis of 17 October 1993 on the harmonisation of business law in Africa and the Arbitration Rules of the Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA by one or several arbitrators appointed pursuant to these instruments.”* (free translation of the undersigned)

VI. Bibliography

A. Legal documents (available at <http://www.ohada.com/accueil.html>)

Treaty on the Harmonisation of Business Law in Africa (OHADA), adopted on 17 October 1993 in Port-Louis (Mauritius), published in the official journal No 4 on 1 November 1997.

Arbitration Rules of the Common Court of Justice and Arbitration, 11 March 1999.

Uniform Act on Arbitration, adopted on 11 March 1999.

Law No 93-671 on Arbitration of 3 August 1993.

B. Case law

CCJA Decision No 10/2009/CCJA/ADM/ARB.

CCJA Decision No 004/99/CCJA of 3 February 1999 on arbitral costs.

CCJA Decision No 028/2007 of 19 July 2007.

CCJA Decision No 043/2008, M. DAM SARR v the *Mutuelle d'Assurances des Taxis Compteurs d'Abidjan*, of 24 July 2008.

CCJA Decision No 045/2008, *SONAPRA v SHB*, of 17 July 2008, *Le Juris Ohada*, No 4/2008, p. 60 (also accessible on <http://www.ohada.com/jurisprudence/ohadata/J-09-83.html>).

C. Doctrine and other texts

Acka ASSIEHUE, Système d'arbitrage de la Cour Commune de Justice et d'Arbitrage (CCJA) de l'OHADA, Guide pratique de procédure, 2012.

Philippe FOUCHARD (dir.), *L'OHADA et les perspectives de l'arbitrage en Afrique*, Bruylant, 2000.

Laurence IDOT, "La loi ivoirienne N° 93-671 du 9 août 1993 relative à l'arbitrage", in *Revue de l'Arbitrage*, 1994.783.

Christophe IMHOOS/Gaston KENFACK DOUJANI, "The Arbitration Rules of the OHBLA Joint Court of Justice and Arbitration", in *International Business Law Journal/Revue du Droit des Affaires Internationales*, No° 7, 1999, pp. 825 to 843.

Benoit LE BARS, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, Joly éditions, 2011.

Pierre MEYER, "Le droit de l'arbitrage dans l'espace OHADA dix ans après l'Acte Uniforme", in *Revue de l'Arbitrage*, 2010, No° 3, p. 467.

VII. List of persons consulted

Acka Assiehué, Avocat, Greffier, Chargé du Service d'Arbitrage, Régisseur de la Régie d'Avances, CCJA-OHADA

Flora Dalmeida Mele, Juge, Cour Commune de Justice et d'Arbitrage de l'OHADA

Sidiki Diarra Boubacar, Docteur en droit, Directeur des Affaires Juridiques, de la Documentation et de la Communication de l'OHADA

Paul Lendongo, Greffier en Chef; Secrétaire Général, CCJA-OHADA

Roger Masamba, Professeur de droit, Président de la Commission Nationale OHADA de la République Démocratique du Congo

Antoine J. Oliveira, Président de la Cour Commune de Justice et d'Arbitrage de l'OHADA

Dorothé Sossa, LL.M., LL.D. (Ottawa), Agrégé des facultés de droit, Professeur titulaire de droit privé, Ancien ministre, Doyen honoraire, Avocat, Secrétaire Permanent de l'OHADA

Several practitioners practicing inside or outside of the Côte d'Ivoire were consulted for the purposes of preparing this Report. For confidentiality reasons their names were omitted from this Report.

Chapter II. EGYPT

I. Establishment, Organisation and Activities of the CRCICA

A. Establishment

80. The CRCICA originates from an international agreement signed in 1978 between the Egyptian Government and the Asian Legal Consultative Committee (since 2001 the Asian African Legal Consultative Organization, "AALCO").⁸⁶ This agreement sought to promote international commercial arbitration in Asia and Africa through the establishment of several arbitration centres within the Afro-Asian area. In addition to the CRCICA, other centres established after the AALCO's initiative are the arbitration centres of Kuala Lumpur (1978), Lagos (1989), Tehran (2003), and Nairobi (2007).
81. The CRCICA was formally set up in 1979 for an experimental period of three (3) years and issued its own arbitration rules. These rules are largely based on the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL") with minor amendments required to adapt them to institutional arbitration.⁸⁷ The AALCO and the Egyptian Government concluded a number of subsequent agreements, including for the permanent functioning of the Centre in 1983, for financial support in 1986, and a Headquarters Agreement in 1987 providing the Centre with the status of an independent international organisation in Egypt. Today, the Centre is a non-profit organisation which enjoys full financial autonomy: it owns its premises and derives its own revenues from the Centre's activities (including administration fees, conferences, seminars, workshops, trainings).
82. The CRCICA seeks to promote arbitration not only on a regional level (it is firmly established in Egypt and its neighbouring countries) but also on the level of the whole African continent by promoting the Centre in Sub-Saharan countries as well. The CRCICA strives to be considered as a better option to users who do not wish to arbitrate in places traditionally used which are mostly located outside the African continent (e.g. in London, Paris, or Washington).
83. As the Centre is an international organisation established through an international treaty (the Headquarters Agreement), it enjoys immunity. Such status was discussed and confirmed by the Cairo Court of Appeal in a decision on the liability of the CRCICA of 6 June 2012. The court stated that the CRCICA is immune against civil claims relating to the discharge of its arbitration functions brought by a participant to arbitration proceedings under its auspices.⁸⁸

⁸⁶ L. El Shentenawi, "Cairo Regional Centre for International Commercial Arbitration", in L. Mistelis, L. Shore, S. Brekoulakis (eds), *World Arbitration Reporter Vol. 3* (2nd Juris 2012), 1 [World Arbitration Reporter CRCICA].

⁸⁷ E. Al Tamimi, *Practitioner's Guide to Arbitration in the Middle East and North Africa* (Excelencia 2009), 55 [Al Tamimi].

⁸⁸ "Arbitration News", *Int. Journ. of Arab Arb.* Vol. 4 Issue 4, 83.

84. The decision was unexpected, as Egypt is a civil law country. In fact, while common law jurisdictions, such as the United Kingdom or the United States of America, have long acknowledged the immunity of arbitral institutions against claims relating to the discharge of their functions, most civil law jurisdictions are reluctant to adopt the same approach. Hence, the French courts have considered the relationship between the parties to arbitration and the arbitral institution to be contractual and, as such, subject to liabilities resulting from the contract and excluded the possibility of inserting clauses of immunity in this respect. The decision triggers a set of questions, mainly whether the immunity is specific to the CRCICA as an international public entity or if it extends in fact to all arbitral institutions located in Egypt, even if they enjoy private status.⁸⁹
85. The CRCICA established a number of branches, including the Alexandria Centre for International Maritime Arbitration (ACIMA) in 1992, the Mediation and Alternative Dispute Resolution Centre in 2001 and the Port Said Centre for Commercial and Maritime Arbitration in 2004. Most recently, it was appointed in 2012 as the only alternative hearing centre in Africa to host hearing sessions of cases of the Court of Arbitration for Sport (“CAS”). This agreement is already operational as two CAS cases were heard at the CRCICA in 2013. Under this agreement with the International Court of Arbitration for Sport, the CRCICA does not administer the proceedings or the substantive aspects of the case but provides assistance with the organisation of the hearing.⁹⁰
86. The Centre is also behind the creation of several institutes, including the Institute of Arab and African Arbitrators in 1991, the Cairo Branch of the Chartered Institute of Arbitrators in 1999 and the ILI/Cairo Middle East Institute for Law and Development (MILD) in 2003.⁹¹

B. Organisation

87. The CRCICA consists of a Board of Trustees, a Director and an Advisory Committee “*composed from amongst the members of the Board of Trustees in addition to other eminent legal experts*”.⁹²
88. The **Board of Trustees** consists of ten to thirty members, appointed by the CRCICA after consultation with the AALCO. All members are specialists in various fields, such as international arbitration, law, business, trade, investment and international relations.⁹³ The main duties of the Board include the appointment of the Director, establishing the Centre’s general policies, approving the annual fiscal audits, the panels of international arbitrators, conciliators and technical experts of the Centre.⁹⁴

⁸⁹ “Arbitration News”, *Int. Journ. of Arab Arb.* Vol. 4 Issue 4 (2012), 83.

⁹⁰ CRCICA Annual Report 2012/2013, p. 16.

⁹¹ World Arbitration Reporter CRCICA, 2.

⁹² <http://www.crcica.org.eg/organisation.html>

⁹³ By-laws of the Board of Trustees of the CRCICA, Article 1.

⁹⁴ By-laws of the Board of Trustees of the CRCICA, Article 4.

89. The current Chairman of the Board of Trustees is Dr. Nabil Elaraby, present Secretary-General of the League of Arab States, former Minister of Foreign Affairs of Egypt and former Judge at the International Court of Justice. The two Vice-Chairmen are Coun. Mohamed Amin El Mahdy from Saudi Arabia⁹⁵ and Prof. Dr. Hamza Haddad from Jordan.⁹⁶ The By-laws of the Board of Trustees require that the Chairman be of Egyptian nationality and the two Vice-Chairmen originate from Asia and Africa. The Board of Trustees is currently made up of 21 members: nine (9) Egyptians⁹⁷ and twelve (12) non-Egyptians.⁹⁸

⁹⁵ **Coun. Mohamed Amin El Mahdy** is the former Chief Justice of the Egyptian Council of State and one of the international judges who served on the International Criminal Tribunal for the former Yugoslavia. He was appointed as Egypt's first-ever Minister of Transitional Justice and National Reconciliation by President Mansour.

⁹⁶ **Prof. Dr. Hamza Haddad** is a Lecturer of civil and commercial law at the University of Jordan. He is the Secretary General of the Arab Union of Arbitration and is a former Minister of Justice of Jordan.

⁹⁷ In addition to **Dr. Nabil Elaraby**, the Egyptian members of the Board of Trustees are **Prof. Dr. Georges Abi-Saab**, Emeritus Professor at the Faculty of Law of the University of Geneva, Honorary Professor at the Faculty of Law of Cairo University, former Chairman of the WTO Appellate Body; **Prof. Dr. Ahmed Kamal Abul Magd**, Professor of Public Law at the Cairo University, Judge at the Administrative Tribunal of the World Bank (Washington D.C.), former Vice-President of the National Council for Human Rights; **Dr. Mohamed El Baradei**, former Director of the International Energy Agency (IAEA). Dr. El Baradei and the IAEA were jointly awarded the Nobel Peace Prize "for their efforts to prevent nuclear from being used for military purposes and to ensure that nuclear energy for peaceful purposes is used in the safest possible way"; **Prof. Dr. Yehia El Gamal**, Professor of Law at the Cairo University, former Deputy Prime Minister and Minister of State and Administrative Reform; **Prof. Dr. Aly H. El Ghatit**, Vice-President of the Egyptian Society of International Law, Member of the Board of Directors of the International Commission of Arbitration in Paris, Founder of El Ghatit Law Firm; **Prof. Dr. Ahmed S. EL Kosheri**, Judge at the World Bank Administrative Tribunal, Founder and Director of the "Centre René-Jean Dupuy pour le Droit et le Développement", Former Vice President of the ICC's Court of Arbitration; **Coun. Dr. Adel. F. Koura**, former President of the Egyptian Court of Cassation and President of the Egyptian Supreme Judicial Council, former Assistant to the Egyptian Minister of Justice for Legislative Affairs; **Prof. Dr. Fouad A. Riad**, Managing Partner at Kosheri Rashed & Riad, Lecturer at the Faculty of Law of Cairo University, Counsel for numerous multinational corporations.

⁹⁸ In addition to **Prof. Dr. Hamza Haddad** (Jordan) and **Coun. Mohamed Amin El Mahdy** (Saudi Arabia), the following are the non-Egyptian members of the Board of Trustees: **Dr. Ali Bin Fetais Al Marri** (Qatar), Head of the Legal Department in Al Diwan Al Amiri, Professor of International Law at the University of Qatar; **Dr. Bandar Salman Al Saud** (Saudi-Arabia), Minister of State, President of the Saudi Arbitration Group, Supervisor of Higher Education Programs for Judges; **Dr. Ziad A. Al-Sudairy** (Saudi Arabia), Principal at the Law Office of Ziad a. Al-Sudairy, Founder of Bateel Inc., President/Partner of Badrahn Enterprises, President of the Abdulrahman Al-Sudairy Foundation; **Prof. James Crawford** (Australia), Barrister and Solicitor of the High Court of Australia, Barrister of the Supreme Court of New South Wales, Senior Counsel, Foundation Member of Matrix Chambers; **Prof. Bernado M. Cremades** (Spain), Partner at Cremades Law Firm, Former President of the Spanish Court of Arbitration; **Dr. Abdel Hamid El Ahdab** (France and Lebanon), Lawyer at the Beirut Bar (private practice in Lebanon), President of the Arab Association for International Arbitration, Honorary President of the Lebanese Arbitration Association; **Mr. Philippe Leboulanger** (France), LLM, Lecturer at University of Panthéon-Assas (Paris II, France), Counsel, Expert and appointed as Co-Arbitrator, Sole Arbitrator and Chairmen of the Arbitral Tribunal in numerous international arbitrations (ICC, UNICTRAL, LCIA, ICSID etc.); **Dr. Nayla Comair Obeid** (Lebanon), Founding Partner of Obeid Law Firm, Professor of International Arbitration at the Faculty of Law of the Lebanese University and Judicial Institute, former Commissioner of the UN Compensation Commission in Geneva; **Judge Hisashi Owada** (Japan), Permanent Representative of Japan to the United Nations in New York, former President of the International Court of Justice in The Hague and

90. The current **Director** of the Centre is Dr. Mohamed Abdel Raouf who is a lecturer in international commercial arbitration at the Institute of International Business Law (*Institut de Droit des affaires internationales*, IDAI), a joint program of the universities of Cairo and Paris I Panthéon-Sorbonne. He is also an Attorney-at-law at the Abdel Raouf Law Firm (Cairo), but he has not been practicing since 2009. One of the key functions of the Director is to appoint arbitrators in case parties default. The Director is assisted in his day-to-day activities by staff members organised in five departments (dispute management, finance, administration, organisation of conferences and external relations, and finally information technology). The Centre also employs legal advisers working on the Centre's publications and providing consultations on interpretation issues and application of the Centre's rules, and who also focus on conflict resolution through arbitration, mediation and conciliation.
91. The Director of the Centre appoints the members of the **Advisory Committee** which is currently chaired by Prof. Dr. Ahmed S. El Kosheri from Egypt.⁹⁹ The two Vice-Chairmen are Mr. Philippe Leboulanger from France¹⁰⁰ and Dr. Nassib Ziadé (from Lebanon and Chile).¹⁰¹ The Committee is currently made up of eleven (11) Egyptian members¹⁰² and four (4) non-Egyptian members.¹⁰³

President of the Japan Institute of International Affairs, Professor of Law and Organisation at Waseda University of Graduate School in Japan; **Mr. Michael E, Schneider** (Germany), Founding partner of the law firm LALIVE (Switzerland), immediate former President of the Swiss Arbitration Association (ASA), Vice Chair of the ICC Commission on Arbitration, former Director of Studies at The Hague Academy of International Law.

⁹⁹ **Prof. Dr. Ahmed S. El Kosheri** is a Judge at the World Bank Administrative Tribunal, Founder and Director of the "*Centre René-Jean Dupuy pour le Droit et le Développement*", Former Vice President of the ICC's Court of Arbitration.

¹⁰⁰ **Mr. Philippe Leboulanger** is LL.M., Lecturer at University of Panthéon-Assas (Paris II, France), Counsel, Expert and appointed as Co-Arbitrator, Sole Arbitrator and Chairman of the Arbitral Tribunal in numerous international arbitrations (ICC, UNICTRAL, LCIA, ICSID etc.)

¹⁰¹ **Dr. Nassib G. Ziadé** is the Director of the Dubai International Arbitration Centre (DIAC), former Deputy Secretary-General of the International Centre for the Settlement of Investment Disputes (ICSID).

¹⁰² In addition to the Chairman, the following are the Egyptian members of the Advisory Committee: **Dr. Mohamed S. Abdel Wahab**, Senior Partner and Head of the Arbitration Group, Assistant Professor at the Faculty of Law of the Cairo University, Vice Chairman of the Chartered Institute of Arbitrators (Egypt Branch); **Coun. Dr. Borhan Amrallah**, Justice of the Appellate Division of the COMESA Court of Justice, Professor at various Egyptian and foreign Universities, Secretary-General of the Arab Union of International Arbitration (AUIA), former Chief Justice of the Cairo High Court of Appeal, former Assistant Minister of Justice of Egypt for International Cooperation and Arbitration, former Chief Justice of the Cairo Economic Court; **Prof. Dr. Mohamed Badran**, Lecturer and Professor of Public Law, Head of the Department of Public Law and Vice-Dean for postgraduate studies and research at the Cairo University, Founder-Director of the Law School (English Section) at the Cairo University; **Prof. Dr. Aktham El Kholly**, Attorney-at-law and legal Advisor admitted to the Egyptian Court of Cassation, former Professor of Commercial and Maritime Law and Vice-Dean of the Faculty of Law of the Cairo University, former Chief Legal Advisor at the Arab Fund for Economic and Social Development (Kuwait); **Coun. Mohamed Amin El Mahdy**, past Chief Justice of the Egyptian Council of State, international judge at the International Criminal Tribunal for the former Yugoslavia, Minister of Transitional Justice and National Reconciliation; **Prof. Dr. Mahmoud Samir El Sharkawy**, Professor of Commercial and Maritime Law at the Cairo University, former Dean of the Faculty of Law of the Cairo University, Arbitrator listed on several International Panels (ICC, ICSID, AAA etc.), **Dr. Karim Hafez**, full-time international arbitration lawyer, Professor of Law

92. The main role of the Advisory Committee is to supervise the arbitration proceedings under the Centre's Arbitration Rules. Some of the key functions of the Committee include approving the decision "*not to proceed with the arbitral proceedings if [the Centre] manifestly lacks jurisdiction over the dispute*"¹⁰⁴ and to reject the appointment of an arbitrator for "*past failure to comply with his or her duties*" under the CRCICA Rules.¹⁰⁵ Three members of the Advisory Committee, sitting as an impartial and independent tripartite *ad hoc* committee, decide on the removal or challenges of arbitrators in cases of deliberate delay in the initiation or management of the arbitration or allegations of lack of impartiality or independence.¹⁰⁶ The Advisory Committee also provides advice regarding substitute arbitrators and determination of fees.¹⁰⁷ The Director of the Centre consults the Advisory Committee on numerous issues, including amendments to the Centre's Rules, defining the annual themes and activities carried out by the Centre, and reviewing cooperation agreements.¹⁰⁸

C. Activities

93. The CRCICA is a very successful arbitration centre. The year 2014 marks the 35th Anniversary of the Centre and many events are organised in this context, such as a celebration on the occasion of the inauguration of the new Conference Centre, as well as a conference on investment arbitration, in the fall of 2014.
94. The Centre is not only active in the field of arbitration but also in other types of dispute resolution, such as conciliation and mediation. In this regard, a project was undertaken with the Centre for Effective Dispute Resolution which led to the adoption of a new version of the CRCICA Mediation Rules, effective since 1 January 2013. Two mediation cases were filed in 2013, and the Centre

at the American University in Cairo; **Prof. Dr. Hossam Issa**, Professor of Commercial law at the Ain Shams University, Attorney-at-law and international arbitrator; **Coun. Dr. Adel F. Koura**, former President of the Egyptian Court of Cassation and President of the Egyptian Supreme Judicial Council, former Assistant to the Egyptian Minister of Justice for Legislative Affairs; **Prof. Dr. Fathi Waly**, former Dean of the Faculty of Law and Vice-President of the Cairo University, Head of the Civil Procedure Department, Attorney-at-law before the Egyptian Court of Cassation, International Arbitrator and Head of the Egyptian Society for Civil and Commercial Procedures, participated in the Drafting Committee for the Egyptian Code of Civil Procedure and in the Drafting Committee for the Egyptian New Law of Arbitration.

¹⁰³ In addition to the two Vice-Chairmen, the following are the non-Egyptian members of the Advisory Committee: **Prof. Dr. Hamza Haddad** (Jordan), Lecturer of civil and commercial law at the University of Jordan, Secretary General of the Arab Union of Arbitration, former Minister of Justice of Jordan; **Ms. Raba M. K. Yasseen** (Switzerland and Iraq), Deputy Judge in Geneva Civil Courts and Partner in Mentha & Partners Law firm in Geneva.

¹⁰⁴ CRCICA Rules, Article 6 and By-laws of the Advisory Committee, Article 3 (a).

¹⁰⁵ CRCICA Rules, Article 8(5) and By-laws of the Advisory Committee, Article 3 (b).

¹⁰⁶ CRCICA Rules, Articles 12 and 13 (6) and By-laws of the Advisory Committee, Article 3 (c and d).

¹⁰⁷ Respectively CRCICA Rules, Articles 14 (2) and 45 (12) and By-laws of the Advisory Committee, Article 3 (e and f).

¹⁰⁸ By-laws of the Advisory Committee, Article 3 para. 3.

expects this number to increase in 2014 following the enactment of the new Egyptian law on mediation.¹⁰⁹

95. In order to raise awareness regarding arbitration, the Centre is very active internationally and regularly organises conferences, seminars, workshops and training programs, which address arbitration as well as issues relating to business law and dispute settlement.
96. The Centre has organised conferences along with high-profile partners such as FIDIC, the World Bank or ICSID,¹¹⁰ and has recently hosted a conference entitled "*Alternative Hearing Centre*" with the Court of Arbitration for Sport in light of the Centre's appointment as the only alternative hearing centre in Africa for CAS cases. One of the Centre's recurring events is a conference held in Sharm El-Sheikh on the role of State courts in arbitration, which will be held for the fifth time in November 2014.¹¹¹
97. Other recent events include a conference jointly organised with the Cairo branch of the Chartered Institute of Arbitrators ("**Clarb, Cairo**") entitled "*The Egyptian Experience*", a series of training courses co-organised by the Centre and the Clarb, Cairo was initiated with a course entitled "*Comparative Arbitration Law; the Theory and Practice*".¹¹²
98. The Centre has entered into a number of general cooperation agreements with numerous arbitration institutions, such as the ones in Bahrain, China, Dubai, Italy, Kuwait, Poland, Romania and Sudan, as well as with all major arbitration institutions, such as the ICC, ICSID, the Stockholm Chamber of Commerce, and the American Arbitration Association. The Centre has also established links with other institutions, for instance with the International Federation of Commercial Arbitration Institution (IFCAI). The Director of CRCICA has been elected as a member of the governing board of the IFCAI Council and was also appointed to the Board of the SCC.
99. The awards rendered under the auspices of the Centre are published in redacted form so as to observe confidentiality requirements. To date, three volumes have been published. Ambitious projects have recently been undertaken, such as the development of a new website, the rebranding of the logo, the automation, renovation and extension of the library and the renovation of the hearing and meeting rooms which were inaugurated on 26 December 2013.¹¹³ A new library now offers thousands of books, collections of law journals and a database centralising all the arbitral awards as well as court decisions of relevance.

¹⁰⁹ CRCICA Newsletter 4/2013.

¹¹⁰ For an overview of the numerous conferences organised by the Centre between 1980 and 2005 see http://www.crcica.org.eg/conf_past.html. A more current list is under development. The 2012/2013 CRCICA provides a detailed overview of the conferences recently organised by the Centre.

¹¹¹ See for instance CRCICA Annual Report 2012/2013, pp. 28-29.

¹¹² CRCICA Annual Report 2012/2013, pp. 31-35.

¹¹³ CRCICA Annual Report 2011/2012, p. 7.

II. CRCICA Arbitration

A. CRCICA Arbitration generally

100. From 1979 when the CRCICA was first established to 31 December 2013, the total number of arbitration cases submitted to the Centre is 942. It is worth noting that 78 new cases were filed in 2012, which represents an increase of 19% compared to 2011, the highest number of cases filed in a year.¹¹⁴ 72 new cases were filed in 2013.
101. The Centre has its own arbitration rules (see below). It also administers cases under various other rules. When acting under the UNCITRAL Arbitration Rules, the Centre acts as an appointing authority.¹¹⁵ A few cases have also been brought under bilateral investment treaties concluded between Arab countries, which refer to the CRCICA Rules or which list the CRCICA among possible arbitration institutions. In such cases, the Centre fully administers the arbitration. To date, three such investment cases involving States and investors from North Africa have been heard and one is currently pending.
102. As described below, the Centre may proceed with the appointment of an arbitrator if a party fails to do so.¹¹⁶ This task may be delegated to the Director of the Centre. One of the main objectives of the latest modification of the CRCICA Rules, which dates back to 2010, was to strengthen the Centre's role in the appointing process.
103. Cases heard by the Centre relate to domestic and international disputes. In 2012 and 2013, the sectors involved in the disputes submitted to the CRCICA related to various sectors such as construction and real estate. For several years, construction disputes topped the ranking; however in 2013 disputes related to services were ahead with sixteen cases whereas only twelve new cases pertained to construction. Cases in the field of services for example included a dispute relating to the catering and management of restaurants and hotels and a dispute on the maintenance services of a European car manufacturer. Construction disputes often involve FIDIC contracts and real estate disputes often raise issues of development of lands for agriculture or in touristic regions.¹¹⁷ Other sectors include petroleum services and concession agreements (i.e. the processing of crude oil), sports (i.e. broadcasting of sports events and shows), media and entertainment, agency agreements, investment agreements (i.e. relating to the potential purchase of shares of a medical venture, a touristic project, the financing of a factory, etc.), supply agreements, agreements for the transfer of technology, loan agreements and telecommunications.¹¹⁸

¹¹⁴ CRCICA Annual Report 2012/2013, p. 5.

¹¹⁵ The Centre's rules generally and this issue specifically will be further detailed below.

¹¹⁶ CRCICA Rules, Articles 7 to 10.

¹¹⁷ CRCICA Newsletter 4/2013.

¹¹⁸ CRCICA Newsletter 4/2012; CRCICA Newsletter 1/2013; CRCICA Newsletter 2/2013; CRCICA Newsletter 4/2013.

104. With regards to the amounts in dispute, a new record was recently set when a case with an amount in dispute reaching US\$ 1 billion was filed. The average amount in dispute in CRCICA cases is approximately US\$ 3 million. In arbitration cases filed up to 31 December 2013, the sums in dispute amount to USD 1,547,758,635.¹¹⁹
105. When focusing on the origin of the parties, it is worth noting the increasing number of proceedings involving parties from outside of Egypt, notably from Arab countries outside the African continent, Europe and North America. In 2013, the only non-Egyptian parties to have participated in CRCICA arbitrations were from outside the African continent, mainly from Saudi Arabia, Russia and Spain.¹²⁰ In 2012, the non-Egyptian parties from within the African continent were from Libya and Morocco.¹²¹ It clearly appears that the CRCICA is not widely used within Africa. It is also interesting to note that 27% of the new cases filed in the third quarter of 2013 were multiparty arbitrations.¹²²
106. The arbitrators involved in CRCICA arbitrations are of diverse origins, although in the majority of cases arbitrators are of Egyptian nationality. In 2012, the only non-Egyptian arbitrators from the African continent to have been appointed to a CRCICA arbitration were from Libya and Tunisia and none was appointed in 2013. Non-Egyptian arbitrators were mainly from Lebanon, Jordan and the U.K. in 2012 and only from Europe in 2013 (Germany, Belgium, France, and the U.K.).¹²³
107. The Centre often administers cases involving States and State-owned entities. A recent case administered by the Centre involved two State-owned natural gas suppliers and a fertilizer company in a dispute with regards to a claim to amend long-term gas supply contracts, which included a price determination mechanism. The claimants, the State-owned entities, argued that a series of decrees issued by the Egyptian Government and providing for a higher price prevailed over the contractual mechanism and were to be applied retroactively. A majority in the arbitral tribunal found in favour of the respondent company in a final award issued on 16 May 2013 which was made public in August 2013. The parties have since renegotiated the contractual mechanism to determine the price of the supplied gas. This decision may have an important impact in Egypt as several other similar disputes brought before the CRCICA and also at ICSID, are ongoing.¹²⁴

¹¹⁹ CRCICA Newsletter 4/2013.

¹²⁰ CRCICA Newsletter 4/2013. Other countries of origin of non-Egyptian parties in 2013 were Ukraine, the United Kingdom, Korea, Italy, Germany and the British Virgin Islands.

¹²¹ CRCICA Newsletter 4/2012. In 2012, parties to CRCICA arbitrations came from more diverse origins than in 2013: Saudi Arabia was already at the top of the ranking, followed by Libya, Switzerland, Iraq, Kuwait, the United Kingdom, Italy, Lebanon, the Netherlands, the British Virgin Islands, the Cayman Islands, the USA, Morocco, Bermuda, Qatar, Canada, Russia and China.

¹²² CRCICA Newsletter 3/2013.

¹²³ CRCICA Newsletter 4/2013.

¹²⁴ K. Karadelis, "Cairo panel rules on Egyptian gas price decrees", in *GAR News* (7 August 2013).

B. The CRCICA Arbitration Rules

108. The CRCICA Arbitration Rules (the “**CRCICA Rules**” or the “**Rules**”) are based on the UNCITRAL Arbitration Rules and were modified in 1998, 2000, 2002 and 2007 respectively. A new set of CRCICA Rules was implemented in 2011 which takes into account modifications brought in 2010 to the UNCITRAL Rules.¹²⁵ These new Rules apply to proceedings commenced after 1 March 2011.¹²⁶
109. The Rules apply to disputes “*in respect of a defined legal relationship, whether contractual or not*” which were “*referred to arbitration under the Rules of Arbitration of the Cairo Regional Centre for International Commercial Arbitration*”.¹²⁷ Article 1 explicitly specifies that parties may agree to modify the Rules in writing.

i. Initiating CRCICA proceedings and establishing the arbitral tribunal

110. The CRCICA Rules provide that arbitral proceedings are initiated by filing a notice of arbitration with the Centre. This notice should notably include “*a brief description of the claim and an indication of the amount involved, if any*”.¹²⁸ The Centre sends this notice to the respondent, who in turn has thirty (30) days to submit a response.¹²⁹ This response may include a “*brief description of counterclaims or claims for the purpose of a set-off*”.¹³⁰
111. The parties are free to agree on the number of arbitrators. If no such agreement has been reached within thirty (30) days of the receipt by the respondent(s) of the notice of arbitration, then three arbitrators are appointed pursuant to Article 7 (1) of the Rules. Notwithstanding this provision, if no other party has responded to a party’s proposal to appoint a sole arbitrator within the same time limit, and no second arbitrator has been appointed in accordance with Articles 9 and 10 of the Rules, the Centre may, at the request of a party, appoint a sole arbitrator if it determines that this is more appropriate in view of the circumstances of the case.¹³¹
112. The parties are free to agree on the procedure to appoint the tribunal.¹³² Generally, if a three-member tribunal is to be appointed, each party appoints one arbitrator, and the two arbitrators thus appointed nominate the president of the tribunal.¹³³ In case of default by a party, the Centre makes the appointment. Absent an agreement of the parties within thirty (30) days of receipt by the Centre of a party’s request for appointment, the appointment takes place pursuant to Articles 8 to 10 of the Rules. The Centre appoints the

¹²⁵ Caline Mouawad, Rocio Digon, “Modern and Competitive: the new CRCICA Rules”, *Int. Journ. of Arab Arb.* Vol. 3, Issue 1 (2011), 17.

¹²⁶ CRCICA Rules, Article 1 (2).

¹²⁷ CRCICA Rules, Article 1 (1).

¹²⁸ CRCICA Rules, Article 3 (3) (e).

¹²⁹ CRCICA Rules, Article 4 (1).

¹³⁰ CRCICA Rules, Article 4 (2) (d).

¹³¹ CRCICA Rules, Article 7 (2).

¹³² CRCICA Rules, Article 8 (1).

¹³³ CRCICA Rules, Article 9 (1).

sole arbitrator if one should have been appointed and the parties failed to reach an agreement on the arbitrator.¹³⁴ For this purpose, the Centre sends a list of at least three names of arbitrators to the parties.¹³⁵ The parties are required to cross out the names of arbitrators to which they have an objection, and rank the remaining names in order of preference.¹³⁶ The Centre then appoints the sole arbitrator in accordance with the order of preference indicated by the parties.¹³⁷

113. Challenges to arbitrators and similar issues are addressed at Articles 11 to 13 of the Rules. Arbitrators may be challenged within fifteen (15) days of appointment, or fifteen (15) days after the circumstances justifying the challenge became known to the challenging party, “*if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence*”.¹³⁸ As mentioned above, the challenge is finally decided by an impartial and independent tripartite *ad hoc* committee which is established by the Centre from amongst the members of the Advisory Committee.¹³⁹ The replacement of an arbitrator takes place under the standard appointment procedure,¹⁴⁰ unless the Centre determines that “*in view of exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator*”.¹⁴¹ In such a case, the Centre may, upon approval by the Advisory Committee, appoint the substitute arbitrator.¹⁴²
114. If an arbitrator is replaced, at least one hearing must take place in the presence of the substitute arbitrator, which may entail repetition of hearings.¹⁴³ This provision was inserted in the Rules with the 2011 amendments following a decision of the Cairo Court of Appeal which set aside a CRCICA award on the basis that the members of the tribunal who rendered the award had not all been present at the hearings, one of the initial arbitrators having been replaced after the hearings. Under the former rules, the repetition of hearings was not required in the event that an arbitrator had to be replaced and the Arbitration Act was silent in this regard. The Court of Appeal applied the Code of Civil and Commercial Procedure which provides that judges may not deliberate before hearing the parties. The Court considered this provision as an element of due process and therefore of public policy.

¹³⁴ CRCICA Rules, Article 8 (2).

¹³⁵ CRCICA Rules, Article 8 (3) (a).

¹³⁶ CRCICA Rules, Article 8 (3) (b).

¹³⁷ CRCICA Rules, Article 8 (3) (c).

¹³⁸ CRCICA Rules, Article 13 (1).

¹³⁹ CRCICA Rules, Article 13 (6).

¹⁴⁰ CRCICA Rules, Article 14 (1).

¹⁴¹ CRCICA Rules, Article 14 (2).

¹⁴² CRCICA Rules, Article 14 (2).

¹⁴³ CRCICA Rules, Article 15.

ii. The arbitral proceedings

115. The Rules provide that the Centre may, “upon approval of the Advisory Committee, decide not to proceed with the arbitral proceedings if it manifestly lacks jurisdiction over the dispute”.¹⁴⁴ Absent such decision, competence to rule on jurisdiction lies with the arbitral tribunal itself, including any objection with respect to the existence or validity of the arbitration agreement (principle of Kompetenz-Kompetenz).¹⁴⁵
116. The parties are free to choose the seat (or “*place*” as per the Rules) of the arbitration. Absent an agreement of the parties, the seat is determined by the tribunal “*having regard to the circumstances of the case*”.¹⁴⁶ Unless otherwise agreed by the parties, the tribunal may also meet at any other location for other purposes, including hearings and deliberations.¹⁴⁷ The Director of the Centre has confirmed that a large majority of CRCICA cases (around 90%) were arbitrations seated in Cairo. There are no statistics regarding the parties’ choice of seat in CRCICA arbitrations. The Director of the Centre notes that in 2012 and 2013 the seats chosen by the parties – other than Cairo – included Madrid, Dubai, London, Paris and Manama (Bahrain).
117. The language of the arbitration is chosen freely by the parties. Absent an agreement with regard to this, the tribunal is required to promptly determine the language or languages to be used in the proceedings.¹⁴⁸ Again, there are no statistics regarding the languages in which CRCICA proceedings are effectively held. When the arbitral tribunal must make a choice, the Centre’s Director notes that the tribunal usually chooses the language(s) of the underlying contract to the dispute.
118. Each party may be represented or assisted by one or more persons of its choice. The names and addresses of potential counsel of the party must be communicated to the Centre. When the counsel is appointed, the tribunal may, at any time, require proof of authority granted to the representative in such a form as the tribunal may determine.¹⁴⁹
119. The law applicable to the substance of the dispute is chosen by the parties. Failing such determination by the parties, the tribunal applies the law which “*has the closest connection to the dispute*”.¹⁵⁰ The tribunal may rule *ex aequo et bono* only if the parties have expressly authorised the tribunal to do so.¹⁵¹ The tribunal is in any case required to decide in accordance with the terms of the contract and takes into account trade usages applicable to the relevant transaction.¹⁵²

¹⁴⁴ CRCICA Rules, Article 6.

¹⁴⁵ CRCICA Rules, Article 23 (1).

¹⁴⁶ CRCICA Rules, Article 18 (1).

¹⁴⁷ CRCICA Rules, Article 18 (2).

¹⁴⁸ CRCICA Rules, Article 19.

¹⁴⁹ CRCICA Rules, Article 5.

¹⁵⁰ CRCICA Rules, Article 35 (1).

¹⁵¹ CRCICA Rules, Article 35 (2).

¹⁵² CRCICA Rules, Article 35 (3).

120. The tribunal may also, at the request of a party, grant interim measures¹⁵³ and require the party requesting an interim measure to provide appropriate security in connection with the measure.¹⁵⁴

iii. Costs

121. Upon filing the notice for arbitration, the claimant pays a non-refundable registration fee of US\$ 500. This amount is also paid by the respondent when filing a counterclaim. Administrative fees are determined based on the sum in dispute in accordance with Table (1) annexed to the Rules.¹⁵⁵
122. The fees of the arbitrators are determined in proportion with the amount in dispute and in accordance with Tables (2) and (3) annexed to the Rules. The arbitrator may not directly or indirectly enter into agreements with the parties or their representatives with respect to his or her fees or the costs of arbitration.¹⁵⁶ For sums in dispute up to US\$ 3,000,000, Table (2) sets a fixed fee.¹⁵⁷ The fees range from US\$ 1,000 for sums in dispute up to US\$ 50,000 to US\$ 16,000 for sums in dispute between US\$ 2,500,001 and US\$ 3,000,000. Beyond US\$ 3,000,000 in dispute, Table (3) provides a scale of minimum and maximum fee ranges, proportionate to the amount in dispute.¹⁵⁸ In exceptional circumstances, the Centre may, with the approval of the Advisory Committee, set the fees of the tribunal at a higher or lower amount than that provided by Table (2), or outside the ranges provided by Table (3), provided that such determination does not exceed 25%.¹⁵⁹
123. Unless agreed otherwise by the members of the tribunal, the arbitrators' fees are allocated as follows: 40% for the Chairman of the tribunal, and 30% for each Co-arbitrator.¹⁶⁰ The costs of the arbitration are, in principle, borne by the unsuccessful party,¹⁶¹ although the tribunal may apportion the costs between the parties if it determines such an apportionment to be reasonable taking into account the circumstances of the case.¹⁶²

¹⁵³ CRCICA Rules, Article 26 (1).

¹⁵⁴ CRCICA Rules, Article 26 (6).

¹⁵⁵ CRCICA Rules, Article 44 (1) and Table (1).

¹⁵⁶ CRCICA Rules, Article 45 (11).

¹⁵⁷ CRCICA Rules, Article 45 (4) and Table (2).

¹⁵⁸ CRCICA Rules, Article 45 (5) and Table (3).

¹⁵⁹ CRCICA Rules, Article 45 (12).

¹⁶⁰ CRCICA Rules, Article 45 (6).

¹⁶¹ CRCICA Rules, Article 46 (1).

¹⁶² CRCICA Rules, Article 46 (1).

C. The Arbitration Law of Egypt

i. Background

124. Before the enactment of the first arbitration law in Egypt, arbitration in Egypt took place under the *Shari'a* law according to the Hanafi doctrine.¹⁶³ During significant legal reforms in Egypt inspired by French law in the second half of the 18th century, a new Chapter was inserted in the Code of Civil and Commercial Procedure (the “**CCCP**”) to set out a comprehensive system for arbitration in Egypt.¹⁶⁴ This system was reformed in 1949¹⁶⁵ and again in 1968.¹⁶⁶
125. Following a proposal from the CRCICA in 1985, the Minister of Justice of Egypt consented to the creation of a Committee based at the CRCICA headquarters for the drafting of a new Egyptian law on commercial arbitration inspired by the recently adopted UNCITRAL Model Law.¹⁶⁷ The Committee’s draft proposal was promulgated on 18 April 1994 as *Law No. 27 of 1994 concerning Arbitration in Civil and Commercial Matters* (the Arbitration Law) and came into force on 22 May 1994 (hereafter the “**Law**”).
126. This Law remains in force as of today, notwithstanding certain amendments: in 1997, the scope of the Law was extended to administrative contracts;¹⁶⁸ in 2000, the procedure for challenging arbitrators was modified;¹⁶⁹ in 2001, the impossibility to appeal against an order granting enforcement (*exequatur*) was held to be unconstitutional by the Supreme Constitutional Court;¹⁷⁰ and in 2008, a Ministerial Decree was issued introducing certain provisions governing the deposit of domestic awards before competent courts under Article 47 of the Law.¹⁷¹ Some of these changes will be further elaborated below.
127. While inspired from the UNCITRAL Model Law, the Law of Egypt indeed contains certain differences. Notably, the Law has a broad scope of application and governs both domestic and international arbitrations. Furthermore, the Law may be applied to arbitrations conducted outside of Egypt if the parties so decide (extra-territorial application). In such cases, pursuant to the Law, there must be an odd number of arbitrators. Further, pursuant to the Law, the ruling on a challenge made against an arbitrator is vested with the competent national court and not with the arbitral tribunal (as is the case under the CRCICA Rules, see above). Finally, the tribunal does not

¹⁶³ Mohamed Abdel Raouf, “Egypt”, in Loukas Mistelis, Laurence Shore, Stavros Brekoulakis (eds), *World Arbitration Reporter Vol. 1* (2nd Juris 2012), 1 [World Arbitration Reporter Egypt].

¹⁶⁴ World Arbitration Reporter Egypt, 1.

¹⁶⁵ Code of Civil and Commercial Procedure No. 77 of 1949, Articles 818 to 850.

¹⁶⁶ Code of Civil and Commercial Procedure No. 13 of 1968, Articles 501 to 513.

¹⁶⁷ World Arbitration Reporter Egypt, 3.

¹⁶⁸ Arbitration Law, Article 1 as amended by Law No. 9/1997 of 13 May 1997, see World Arbitration Reporter Egypt, 5; Dr Mohamed Abdel Raouf, “Chapter 4.2 – Egypt”, in Lise Bosman (eds), *Arbitration in Africa: A Practitioner’s Guide* (Kluwer 2013), 281 [M. A. Raouf].

¹⁶⁹ Arbitration Law, Article 19(1), following the Supreme Constitutional Court Decision of 6 November 1999 cited in World Arbitration Reporter Egypt, 6.

¹⁷⁰ Supreme Constitutional Court Decision of 6 January 2001 cited in M. A. Raouf, 282.

¹⁷¹ Ministerial Decree 8310/2008 of 21 September 2008.

have the powers to order interim or provisional measures unless the parties have agreed to grant such powers¹⁷² (as mentioned above, the CRCICA Rules contain such provisions).

ii. Arbitrability of disputes and Jurisdiction of arbitral tribunals

128. Arbitrability is conceived widely in Egypt as encompassing any legal dispute which can be subject to a compromise between natural or legal persons having the capacity to dispose of their rights, regardless of the legal nature of the relationship which is the subject-matter of the dispute.¹⁷³
129. Pursuant to Article 22 of the Law, arbitral tribunals have jurisdiction to rule on objections to their own jurisdiction, including objections relating to the existence, validity and scope of the arbitration agreement (principle of *Kompetenz-Kompetenz*). An appeal against this decision is not possible except through recourse against the award.¹⁷⁴

iii. Domestic and international arbitrations

130. The Law applies to any arbitration conducted in Egypt (whether international or not), as well as arbitrations seated abroad but to which the parties have agreed to apply the provisions of the Law.¹⁷⁵
131. Pursuant to Article 3 of the Law, proceedings will be deemed “*international*” if their subject-matter relates to international trade, in one of the following cases: (i) if the respective head offices of the parties are situated in two different countries at the time of conclusion of the arbitration agreement, (ii) if the parties to the arbitration agree to resort to a “*permanent arbitral organization or to an arbitration centre*” having its headquarters in Egypt (notably the CRCICA) or abroad, (iii) if the subject matter of the dispute falling within the scope of the arbitration agreement is linked to more than one State and (iv) if the “*principal places of business*” of the parties are located in the same State at the time of conclusion of the arbitration agreement but one of the following places is located in a different State: (a) the place of arbitration, (b) the place of performance of an essential part of the legal obligations arising out of the contract, or (c) the place closely connected to the subject matter of the dispute.
132. As will be discussed below, a distinction must be made between awards with seat in or outside of Egypt. The difference between domestic and international arbitrations cannot be compared to such distinction, as the definitions above make clear.

¹⁷² World Arbitration Reporter Egypt, 4.

¹⁷³ Arbitration Law, Articles 1 and 11.

¹⁷⁴ Arbitration Law, Article 22 (3).

¹⁷⁵ Arbitration Law, Article 1.

iv. Confidentiality

133. Confidentiality of arbitration under the Law is governed notably by Article 44, which provides that awards may not be published without the approval of the parties. It is generally perceived that there is an implied duty of confidentiality with respect to the proceedings, the documents submitted and the award.¹⁷⁶ As mentioned above, the Centre publishes awards rendered under its auspices in redacted form to observe confidentiality requirements.
134. In contrast, the CRCICA Rules create an obligation of confidentiality extending to awards, decisions and materials submitted in the proceedings and not otherwise available in the public domain.¹⁷⁷ This explains why CRCICA awards must be published in redacted form as mentioned above.

v. Setting aside proceedings

135. The distinction between arbitrations with seat in or outside of Egypt is important for the issue of setting aside, notably to determine the competent court. Firstly, regarding awards rendered in Egypt, the competent Egyptian court to hear setting aside actions is the Cairo Court of Appeal for international arbitration, unless the parties have agreed on another appellate court in Egypt.¹⁷⁸ For domestic arbitrations, jurisdiction lies with the court of appeal having jurisdiction over the tribunal that would initially have had jurisdiction over the dispute.¹⁷⁹ Secondly, regarding awards rendered outside of Egypt, the Cairo Court of Appeal has affirmed the principle that Egyptian courts have no jurisdiction to rule on the setting aside of foreign awards. An exception is made in cases in which the parties have decided to apply the Arbitration Law as the *lex arbitri* to the arbitration seated abroad.¹⁸⁰
136. Article 53 of the Law contains an exhaustive list of the grounds for setting aside arbitral awards. These grounds are the following:
- i) *If there is no arbitration agreement, if it was void, voidable or its duration had elapsed,*
 - ii) *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,*
 - iii) *If either party to the arbitration was unable to present its case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond its control,*
 - iv) *If the arbitral award failed to apply the law agreed upon by the parties to govern the subject matter in dispute,*

¹⁷⁶ World Arbitration Reporter Egypt, 8.

¹⁷⁷ CRCICA Rules, Article 40 (1).

¹⁷⁸ Arbitration Law, Articles 54 and 9.

¹⁷⁹ Arbitration Law, Articles 54 and 9.

¹⁸⁰ Cairo Court of Appeal Decision of 29 January 2003, cited in World Arbitration Reporter Egypt, 44.

- v) *If the composition of the tribunal or the appointment of the arbitrators was in conflict with the Arbitration Law or the parties' agreement,*
- vi) *If the award dealt with matters not falling within the scope of the arbitration agreement or exceeding the limits of the 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, or*
- vii) *If the award itself or the arbitration procedures affecting the award contain a legal violation that causes nullity.*
137. Setting aside proceedings do not constitute an appeal against the award. This action does not extend to reviewing the merits of the dispute or reconsidering the reasoning of the award.¹⁸¹ It is thus “*not possible to seek the annulment of the award due to an error committed by the arbitral tribunal in interpreting the provisions of the law, in comprehending the facts of the case or in considering the documents, or due to the lack of reasoning of the arbitral award, since such causes are not among the grounds of setting aside the arbitral awards, as exhaustively enumerated in Article 53 of the Law*”.¹⁸² The Cairo Court of Appeal recently reaffirmed this exhaustive nature of Article 53.¹⁸³
138. The filing of a motion to set aside the award does not suspend the enforcement of the award, although the competent court may order such suspension if the motion is “*based upon serious grounds*”.¹⁸⁴ The application for the enforcement of an award is not admissible until the period for filing of a setting aside action has expired.¹⁸⁵

vi. Recognition and Enforcement of foreign awards in Egypt

139. It has been noted that Egyptian courts generally take a favourable approach to the enforcement of awards, including foreign awards, rendered against Egyptian nationals or Egypt itself.¹⁸⁶ For **enforcement** purposes, an important distinction must be made between awards rendered by a tribunal with seat in or outside of Egypt.
140. Awards rendered by arbitral tribunals **seated in Egypt** are enforced under the Law (Part VII). The competent court before which such proceedings are brought is the Cairo Court of Appeal.¹⁸⁷

¹⁸¹ World Arbitration Reporter Egypt, 43.

¹⁸² M. A. Raouf, 289.

¹⁸³ Cairo Court of Appeal Decision of 29 January 2006 cited in World Arbitration Reporter Egypt, 44.

¹⁸⁴ Arbitration Law, Article 57.

¹⁸⁵ Arbitration Law, Article 58.

¹⁸⁶ Sami Houerbi, “Part IV: North Africa – Chapter 4: Arbitration in North Africa: an Overview”, in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013), p. 272.

¹⁸⁷ Arbitration Law, Articles 56 and 9.

141. Article 56 of the Law lists the documents to be submitted with the application for an enforcement order, namely: (i) the (complete¹⁸⁸) original award or a signed copy¹⁸⁹, (ii) a copy of the arbitration agreement, (iii) an authenticated Arabic translation of the award if not rendered in Arabic, (iv) a copy of the *procès-verbal* certifying the deposit of the award with the competent court pursuant to Article 47 of the Law (the “deposit certificate”).
142. Pursuant to Article 58 of the Law, leave for enforcement is granted subject to the following conditions: (i) the award does not contravene any judgment previously rendered by the Egyptian courts on the subject matter in dispute, (ii) the award does not contravene any principle of Egyptian public policy, (iii) the award has been duly and validly notified to the party against whom it was rendered.
143. **Foreign awards** are enforced in Egypt in accordance with the New York Convention of 1958, to which Egypt acceded in 1959 with no reservations.¹⁹⁰ Until 2005, the enforcement of foreign awards was made under the relevant provisions of the CCCP as Article 1 of the Law explicitly provides in that it applies to arbitrations “*conducted in Egypt, or when an international commercial arbitration is conducted abroad and its parties agree to submit it to the provisions of this Law*”, thereby excluding foreign awards absent such agreement between the parties.
144. The specific regime for enforcement of foreign awards was subject to a highly debated decision of the Egyptian Court of Cassation in 2005.¹⁹¹ The Court held that, in accordance with the New York Convention of 1958, the provisions of the Law pertaining to enforcement of awards (and not the relevant provisions of the CCCP) were applicable, notwithstanding the limitation of the scope of Article 1. Foreign awards were thus enforceable by virtue of the same procedure as for the enforcement of domestic awards.¹⁹² This decision rests on the assumption that the Law provides for a substantially less onerous enforcement regime than that provided by the CCCP (including an *ex parte* application - *ordonnance sur requête*). In compliance with Article III of the New York Convention of 1958, relating to more favourable enforcement standards, the Court consequently ruled that foreign awards should be enforced pursuant to the Law rather than the CCCP.¹⁹³

¹⁸⁸ Ahmed S. El Koshery, “*Procedure for Enforcement of Foreign Awards, Egypt*” *ICC Court Bulletin, Special Supplement* (2012), Question 12(b) [ICC Spec. Bull.].

¹⁸⁹ This requirement has been interpreted as meaning “*the signed award in copy*”: ICC Spec. Bull., Question 12(c).

¹⁹⁰ Presidential Decree No. 171/1959 of 3 February 1959. The Convention came into force on 7 June 1959.

¹⁹¹ Court of Cassation Decision of 10 January 2005, cited in *World Arbitration Reporter Egypt*, 48, M. A. Raouf, 287, ICC Spec. Bull., Question 5.

¹⁹² *World Arbitration Reporter Egypt*, 48.

¹⁹³ ICC Spec. Bull., Question 19.

145. The 2005 decision was highly debated in doctrine. Critics argued that the decision created a confusion between *conditions* for enforcement laid down by the CCCP (which they argue are no more onerous than those prescribed by the Law) and the *procedure* it prescribes (an action launched by writ of summons, *demande initiale par voie ordinaire*) which is allegedly not inconsistent with Egypt's obligations as per the New York Convention of 1958.¹⁹⁴ Critics further argued that the Law's silence on several issues in relation to enforcement proceedings forces courts to seek answers in the CCCP, creating confusion and legal uncertainty.¹⁹⁵ Allegedly, this decision also created anomalous practices pursuant to which the application to enforce the award is made *ex parte* however, conversely and somewhat inconsistently, the applicant is required to serve notice on the respondent, who must then show cause (within a certain time limit that the court may impose, usually two (2) weeks) and provide reasons why enforcement should be denied.¹⁹⁶
146. Notwithstanding such criticism, the 2005 decision remains positive law.¹⁹⁷ This decision does not *preclude* enforcement in accordance with the CCCP, if so elected by the claimant.¹⁹⁸
147. In Egypt, there is no clear distinction made between the regime applicable to enforcement and to **recognition** of awards.¹⁹⁹ If a CRCICA award which has been rendered in Egypt seeks to be enforced abroad, it may be necessary – depending on the legislation in force in the place of enforcement – that the award be recognized in the place where it was rendered. In such a case, a CRCICA award rendered in Egypt will be recognized in accordance with the provisions of the Law, for the enforcement of awards rendered in Egypt as discussed above. This situation will notably arise if the place of enforcement is a country which is not a State-party to the New York Convention of 1958 and which, prior to enforcement of foreign awards, requires that such award be recognized in the State where it was rendered (“*double exequatur* requirement”).

¹⁹⁴ ICC Spec. Bull., Question 5; World Arbitration Reporter Egypt, 48.

¹⁹⁵ ICC Spec. Bull., Question 5. It should be noted however that the Court of Cassation also held in 2009 that an arbitral award cannot be set aside for causes stipulated in the CCCP which are not explicitly required under the Arbitration Law. It is therefore not always recommended to address the loopholes of the Arbitration Law by referring to provisions of the CCCP: Court of Cassation Decision of 23 April 2009, cited in M. A. Raouf, 289.

¹⁹⁶ ICC Spec. Bull., Question 9.

¹⁹⁷ World Arbitration Reporter Egypt, 50.

¹⁹⁸ Karim Hafez, “*National Report for Egypt (2013)*”, in J. Paulsson (ed.), *International Handbook on Commercial Arbitration* (Kluwer Law International 1984, last updated in March 2013 in *Supplement* No° 73, pp. 1 to 44), 36 [Hafez].

¹⁹⁹ In relation to the recognition of domestic awards, see World Arbitration Reporter Egypt, 47: “*The Law does not know the distinction between recognition and enforcement of arbitral awards*”. In relation to the recognition of foreign awards, see ICC Spec. Bull., Question 20 : “*Statutory law does not specifically address the recognition (as opposed to enforcement) of foreign awards, and this omission has given rise to the argument that foreign awards cannot be recognized in Egypt.*”

vii. General trends

148. Some observations may be made with regards to the friendliness of Egyptian courts in arbitration matters. This friendliness has been demonstrated in a few recent cases but has also been adversely affected by other court decisions and regulatory texts.
149. **Some Egyptian court decisions have hindered the arbitral process.** In *Case No. 10635* of 2007, the Court of Cassation of Egypt set aside an award on the basis that the award did not contain the original arbitration clause, although a copy of such agreement had been submitted in the Court proceedings.²⁰⁰ Such position was criticised as being excessively formalistic.
150. In the *Chromalloy* case, the Cairo Court of Appeal granted a request to set aside an award on the basis that the tribunal had not applied administrative law to the dispute but had incorrectly decided the matter on the basis of civil law.²⁰¹ However, in more recent cases, the Court has held that such error does not constitute a ground for annulment.²⁰²
151. Also, a *Ministerial Decree of 2008*²⁰³ (amended in 2009²⁰⁴) introduced certain provisions governing the deposit of awards under Article 47 of the Law. Pursuant to this 2008 Decree, awards had to be granted “*permission for enforcement*” by a body of the Ministry of Justice, the “*Technical Bureau for Arbitration*” which notably verified whether the dispute was arbitrable and did not violate public policy. This Decree was widely contested by Egyptian jurists and practitioners.²⁰⁵ An amendment was therefore introduced on 7 July 2009 in order to limit the discretionary powers of the Ministry, however this amendment was considered insufficient. On 6 September 2010, the Cairo Court of Appeal refused to apply the Decree, considering that it created unwarranted restrictions under the Law.²⁰⁶

²⁰⁰ Court of Cassation Decision of 27 February 2007 of which excerpts can be found in “*Rila Netex for touristic town v. Agro Trade Company for reclamation of lands, Court of Cassation, Commercial Circuit, 10635/1976, 27 February 2007*”, *Int. Journ. of Arab Arb.*, Vol. 1 Issue 2 (2009) pp. 93 – 96.

²⁰¹ Cairo Court of Appeal Decision of 5 December 1995, in XXIV YBCA 265 (1999).

²⁰² Cairo Court of Appeal Decision of 26 February 2003 cited in Borham Atallah, “*The 1994 Egyptian Arbitration Law Ten Years On*”, *ICC Bull* Vol. 14 No. 2 (2003), 14.

²⁰³ Minister of Justice Decree 8310/2008, entitled “*Regulating the Deposit of Arbitral Awards in Accordance with Article 47 of the Egyptian Arbitration Law No 27 of 1994*”, amended on 7 July 2009 by Ministerial Decree 6570/2009.

²⁰⁴ Ministerial Decree 6570/2009 issued on 7 July 2009.

²⁰⁵ Khaled El Shalakany, “*Arbitration in Egypt, the need for a systemic review*”, *IBA Arbitration News*, Vol. 15 No. 1 (March 2010), 63; M.A. Raouf, 283.

²⁰⁶ Cairo Court of Appeal Decision of 6 September 2010 for a commentary of which see Dr. Mohamed S Abdel Wahab, “*Enforcement of Foreign arbitral awards in Egypt: exequatur requirements between law and regulation – mitigating the risks*”, *IBA Arbitration News*, Vol. 16 No. 1 (March 2011).

152. This led to a second amendment of the Decree in 2011²⁰⁷ which “*has in fact neutralized the negative ramifications of the first Ministerial Decree by stipulating that the role of the Technical Bureau on Arbitration of the Ministry of Justice is henceforth to issue an opinion rather than deciding as to whether the application to deposit the arbitral award is acceptable.*”²⁰⁸ Dr. Abdel Raouf of the CRCICA submits that, following the two amendments, today this Decree represents “a non-issue”.
153. The Arbitration Act deviates in some aspects from the Model Law. One notable issue is that, under the Arbitration Act, challenges to arbitrators should be brought before domestic courts rather than before the arbitral tribunal.²⁰⁹ The Court of Cassation has not yet been given the opportunity to address this issue and it remains unclear whether this rule applies to institutional arbitration proceedings seated in Egypt. Commentators have argued that party autonomy should prevail and the rule set aside in favour of the applicable institutional rules, such as Article 13(6) of the CRCICA Rules for example.
154. Egypt is generally considered to provide an arbitration-friendly environment where most commercial and construction disputes are settled through arbitration.²¹⁰ **Many Egyptian court decisions demonstrate such “pro-arbitration” approach.**
155. In a ruling of 2009, the Cairo Court of Appeal reaffirmed the principle that “*the annulment court is not competent either to review the merits of the award or to examine the substance of the dispute subject to arbitration. The scope of review aims at examining the arbitral procedure that were followed, and not the result of those procedures, nor even to judge which party had the best argument.*”²¹¹
156. In the *Silver Night* case of 1997,²¹² the Egyptian Antiquities Organisation sought to set aside a domestic CRCICA award on the basis that the underlying administrative contract was non-arbitrable. The Court of Appeal dismissed the motion, ruling that disputes arising out of administrative contracts may be settled by way of arbitration under the Law.²¹³

²⁰⁷ Ministerial Decree 9739/2011 issued on 5 October 2011.

²⁰⁸ M. A. Raouf, 283.

²⁰⁹ Arbitration Act, Article 19.

²¹⁰ See e.g. Sami Houerbi, “Part IV: North Africa – Chapter 4: Arbitration in North Africa: an Overview”, in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013), p. 259.

²¹¹ Cairo Court of Appeal Decision of 9 June 2009 of which excerpts can be found in “*Sobhy Hussein Ahmed (Contractor) v. Cooperative Association of Construction and Housing for the employees of a petroleum company “Suez Gulf” (Owner)*, Cairo Court of Appeal, 7th Commercial Circuit, 102/123, 9 June 2009”, *Int. Journ. of Arab Arb.* Vol. 1 Issue 3 (2009), 71.

²¹² Cairo Court of Appeal Decision of 19 March 1997, in XXIII YBCA 169 (1998).

²¹³ Thomas Childs, “*Enforcement of foreign arbitral awards in Egypt, Syria and Saudi Arabia*”, *IBA Arbitration News*, Vol. 15 No. 2 (September 2010), 71.

157. In this regard it can be noted that specific rules apply to disputes arising out of administrative contracts, i.e. contracts which are entered into by a State or State entity (public law persons). In such cases, the arbitration agreement must be authorised by a competent minister or official.

*“With regard to disputes relating to administrative contracts, agreement on arbitration shall be reached upon the approval of the competent minister or the official assuming his powers with respect to public juridical persons. No delegation of powers shall be authorized in this respect.”*²¹⁴

158. The provision above was inserted in the Law to clarify that administrative contracts could include a dispute resolution clause providing for arbitration, an issue which until then, had been controversial. Nevertheless, the issue has not been fully settled; a debate is now ongoing as to the normative value of the requirement for a ministerial approval. It remains unclear whether this provision has a mandatory character and whether it is part of public policy.²¹⁵

159. The practitioners consulted warned that although the Egyptian courts tend to be very supportive of arbitration, the approach of the Egyptian Conseil d'Etat regarding the ministerial approval is strict. Several decisions have found the arbitration agreement to be null without the required ministerial approval.²¹⁶ A CRCICA award was set aside by the Cairo Court of Appeal for the lack of such approval.²¹⁷

160. This issue might therefore be of great concern at the enforcement stage but also during the course of the arbitration, as one of the parties (notably the defendant) could raise this argument to object to the arbitration. This issue is not specific to CRCICA proceedings but may be relevant for any other arbitration in Egypt. This strict position might be mitigated as a result of a decision of the Egyptian Supreme Constitutional Court dated 15 January 2012²¹⁸ which applied the Law in proceedings related to a CRCICA award. In this decision, the Court held that, in a situation where there is a positive conflict of jurisdictions, the Cairo Court of Appeal, rather than the Egyptian Conseil d'Etat, had exclusive jurisdiction over challenges filed against awards rendered on the basis of arbitration agreements contained in administrative contracts, provided that the proceedings related to an international commercial arbitration as per Articles 2 and 3 of the Law.²¹⁹

²¹⁴ Law No. 9/1997, published in the Official Gazette on 15 May 1997.

²¹⁵ Hafez, p. 1.

²¹⁶ See the references in Hafez, Note 22.

²¹⁷ Cairo Court of Appeal Decision in Case no. 111/126J setting aside CRCICA arbitral award No 567/2008 cited in Hafez, p. 7 and Note 23.

²¹⁸ Supreme Constitutional Court Decision of 15 January 2012 cited in M. A. Raouf, 288.

²¹⁹ For a commentary, see M. A. Raouf, 288.

161. Recently, a new law was adopted to “*regulate certain procedures for challenging State contracts*”.²²⁰ This law notably intended to curb the number of domestic proceedings filed after the 2011 revolution which aimed at “*challenging the validity of a contract to which the State or its entities*” is a party by limiting such proceedings to the actual parties to the contract and not to third parties, absent “*an unchallengeable court judgment*” or criminal conduct of one of the parties. These lawsuits have in turn triggered various arbitrations against Egypt. It is believed that the law should “*restore confidence*” on the part of investors, although it remains to be seen how courts indeed interpret and apply this law.²²¹ Leave has been granted for review of the law before the Constitutional Court, whose decision is, to-date, pending.
162. The pro-arbitration approach of the Egyptian courts can be seen in their application of time-limits. Under the Law, the arbitral tribunal must render its award within twelve (12) months from the beginning of the proceedings, if the parties have not agreed otherwise and if no extension was decided by the tribunal.²²² In contrast, the CRCICA Rules do not mention any time limit to render an award.
163. As a result of the arbitrators’ failure to comply with the time-limit requirement set out in the Law, the issue was raised as to whether a CRCICA award could be set aside. This case led to a series of contradictory decisions on the matter. The Court of Appeal initially hearing an annulment request considered that the parties’ agreement to have their dispute administered under the CRCICA Rules meant that they did not wish for any time-limit to apply. The request to set aside the award was therefore dismissed. However, this decision was set aside by another circuit of the Court of Appeal which argued that absent any provision relating to time-limits for awards in the CRCICA Rules, the Court should consider that there was no agreement between the parties: the one (1) year limit of the Law therefore applied.²²³

²²⁰ Decree of the President of the Arab Republic of Egypt promulgating Law 32 of 2014 regulating certain procedures for challenging State contracts. Accessible at http://www.globalarbitrationreview.com/cdn/files/gar/articles/Translation_of_Law_No_32_of_2014.pdf. See also Richard Woolley, “Egypt legislates to safeguard public contracts”, in *GAR News* (7 May 2014).

²²¹ Richard Woolley, “Egypt legislates to safeguard public contracts”, in *GAR News* (7 May 2014)

²²² Article 45 of the Law. The arbitral tribunal may decide on a time extension of up to six (6) months.

²²³ Hafez, pp. 24 and 25 and references mentioned therein.

164. The matter was brought before the Court of Cassation which found that Article 45 of the Law and the time limit it sets out is not mandatory.²²⁴ Adopting the same position, the Court relied in a more recent decision²²⁵ on the fact that the legislator had granted parties the right to contractually determine such time limit and extend it for six months beyond the twelve month period set out in the Law. As such, the statutory time limit to render an award does not constitute a mandatory procedural provision. The Court further found that if a party failed to object before the arbitral tribunal, *i.e.* during the arbitration proceedings and until the award is rendered, that the time limit to render such award was not complied with, this party is considered to have accepted the manner in which the arbitrators have conducted the proceedings and waived its right to object under Article 8 of the Law.²²⁶ The award, although it had been rendered after the statutory time limit in a case in which the parties had not agreed on a different time limit, was thus not set aside. The Court indeed noted that the aggrieved party had failed to invoke the proper remedies set out in the Law, *i.e.* requesting that a time limit be determined or the proceedings terminated.²²⁷ This decision has been confirmed by the Court of Cassation on another occasion regarding an award rendered under the UNCITRAL Rules.²²⁸
165. More generally, objections relating to procedural issues must be raised in due time before the arbitral tribunal; absent such objection, the party is considered to have waived its right to object under Article 8 of the Law.

viii. International conventions

166. Egypt is a party to the following arbitration-related multilateral conventions:
- The Convention of 1974 on the Settlement of Investment Disputes between the States hosting Arab investments and Nationals of other Arab States. This Convention was signed on 10 June 1974 and came into force on 20 August 1974. Egypt adhered to this Convention by virtue of the Presidential Decree No. 1700 of 22 October 1974. It was published in the Official Gazette issue No. 45 on 4 November 1976 and came into force as of 19 August 1976.
 - The Unified Agreement for the Investment of Arab Capital in the Arab States dated 26 November 1980. Egypt became a member of this Convention on 19 April 1992.
 - For a full list, see K. Hafez, “National Report for Egypt (2013)”, in J. Paulsson (ed), *International Handbook on Commercial Arbitration*, pp. 34 and 35.

²²⁴ Hafez, p. 25 and reference mentioned therein.

²²⁵ Court of Cassation, Civil and Commercial Circuit, challenges nos. 3869 & 7016 /78U, 23 April 2009.

²²⁶ See Arbitration Act, Article 8.

²²⁷ See Arbitration Act, Article 45 para. 2.

²²⁸ Hafez, p. 25 and reference mentioned therein.

167. Egypt is also a party to numerous bilateral investment treaties, of which 76 are in force.²²⁹

III. Conclusion

168. As mentioned in the Introduction, the undersigned highlights the fact that whenever possible and in view of the long term purpose of this Report, he disregarded, the ongoing political situation in Egypt. All the practitioners consulted nevertheless confirmed that the Cairo Centre was functioning very well and that the current political situation did not have any impact on the organisation of the Centre and its ability to properly administer the arbitral proceedings. The Centre's Director even highlighted the fact that 2012 had been a record year in terms of new cases registered with the Centre. Recently, difficulties have been observed with regard to logistics and the *place of arbitration* was transferred in some cases outside of Cairo (for instance near the airport) or even outside of Egypt (notably to Dubai, Paris and London); however this situation does not appear to affect the attractiveness of Cairo as a *seat of arbitration*.
169. The status of CRCICA as an independent non-profit international organisation, coupled with its very good functioning in the recent years despite the political situation, is evidence of the public confidence entrusted to the Centre.
170. With regards to the suitability of the CRCICA, the undersigned concludes that the Centre remains one of the best arbitration centres across the African continent and can readily be recommended for use by parties from both the African continent and elsewhere.
171. This view has been confirmed after the visits to different African countries in the framework of the previous report submitted to the Bank. The professionalism of the Centre and the suitability of the CRCICA Rules for the conduct of important international arbitration proceedings have been stressed by various interlocutors. The undersigned has received no negative feedback regarding the Centre. The only issue, which relates to practical rather than legal concerns, relates to the fact that to date the Centre does not administer cases in French and there is no French version of the Rules. The Director of the Centre has, however, mentioned that members of the CRCICA staff, including himself, a case manager and a legal adviser, are fluent in French. The Advisory Committee also consists of several French-speakers, including the Chairman and the two Vice-Chairmen. Moreover, the CRCICA Rules are based on the UNCITRAL Arbitration Rules which are available in French, and in light of the Centre's aim to attract parties from the whole of the African continent, it appears that a French version of the CRCICA Rules may be prepared, but to date no such initiative has been undertaken.

²²⁹ Sami Houerbi, "Part IV: North Africa – Chapter 4: Arbitration in North Africa: an Overview", in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013), p. 273.

172. With regards to the Bank's requirement that the arbitration be held in a neutral venue, as understood by the undersigned (see above, Introduction), it is the undersigned's opinion, following the desk review of CRCICA arbitration and discussions held with the Centre and various practitioners, that even in cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, i.e. Egypt, the neutral venue requirement can be regarded as being fulfilled. The system as a whole appears to provide the necessary safeguards to guarantee a suitable framework to all parties to the arbitration.
173. The difficulty mentioned regarding the enforcement of awards rendered absent the ministerial approval required under Egyptian law could be avoided if the Bank explicitly requested evidence of such approval at the time of the signing of the contract containing the arbitration clause.

174. Extract from Appendix I-3:

Analysed Criteria	CRCICA, Egypt
<p>Modern set of Rules, comparable to the standard guaranteed by the ICC, LCIA, Swiss Rules or similar modern arbitration Rules</p>	<p>Criteria fulfilled. The Rules are based on the UNCITRAL Arbitration Rules.</p>
<p>Arbitration friendly environment at the seat of the Institution (notably regarding the laws of the seat of the Institution, if such is the place of arbitration)</p>	<p>Criteria fulfilled. The Law is based on the UNCITRAL Model Law, with modifications.</p>
<p>Arbitration friendly State Court intervention (if seat of Institution is the place of arbitration)</p>	<p>Criteria fulfilled. The Cairo Court of Appeal has adopted a firm pro-arbitration approach, although some courts have rendered decisions which are not really supportive of arbitration.</p>
<p>Parties are free to choose the place of arbitration</p>	<p>Criteria fulfilled.</p>
<p>Autonomy of parties to select arbitrators</p>	<p>Criteria fulfilled. The parties are not bound by a specific list. If the arbitrators are to be appointed by the Institution, then they must be chosen from the panel of arbitrators of CRCICA.</p>
<p>Open list of highly professional arbitrators</p>	<p>Criteria fulfilled. The Centre holds an open list of arbitrators consisting of around 800 specialists in the field of arbitration (arbitrators, counsel, experts), from Egypt and abroad.</p>
<p>Good language skills (French and English) of employees of arbitration institution</p>	<p>Criteria fulfilled as regards the Centre's employees, who could administer cases in French although this is not currently done in practice. Criteria not yet fulfilled as regards the Rules. The Rules and the website are in English and Arabic, not in French.</p>
<p>No impediment to enforcement</p>	<p>Criteria fulfilled. Applications are made to the Cairo Court of Appeal. Very limited grounds to refuse to grant <i>exequatur</i>.</p>
<p>State Court intervention limited or representing no risk in light of the neutrality requirement</p>	<p>Criteria fulfilled.</p>
<p>In cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, the neutral venue requirement is fulfilled</p>	<p>Yes.</p>

IV. Model Clause suggested by the institution (CRCICA)

“Any dispute, controversy or claim arising out of or relating to this contract, its interpretation, execution, the termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Arbitration of the Cairo Regional Centre for International Commercial Arbitration.”

Note — Parties should consider adding:

- a. The number of arbitrators shall be ... (one or three);
- b. The place of arbitration shall be ... (town and country);
- and
- c. The language to be used in the arbitral proceedings shall be...

Note — Parties may consider adding:

The time limit within which the arbitral tribunal shall make its final award shall be...

V. Bibliography

A. Legal documents

Law No. 27/1994 promulgating the Law concerning arbitration in civil and commercial matters.

Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011.

Decree of the President of the Arab Republic of Egypt promulgating Law 32 of 2014 regulating certain procedures for challenging State contracts.

B. Case law and case notes

Cairo Court of Appeal Decision of 5 December 1995, in XXIV YBCA 265 (1999).

Cairo Court of Appeal Decision of 19 March 1997, in XXIII YBCA 169 (1998).

Fathi WALI, "Note - 27 February 2007, Court of Cassation, Commercial Circuit", *Int. Journ. of Arab Arb.*, Vol. 1 Issue 2 (2009) pp. 97 - 101.

Court of Cassation, Civil and Commercial Circuit, challenges nos. 3869 & 7016 /78U, 23 April 2009.

"Sobhy Hussein Ahmed (Contractor) v. Cooperative Association of Construction and Housing for the employees of a petroleum company "Suez Gulf" (Owner), Cairo Court of Appeal, 7th Commercial Circuit, 102/123, 9 June 2009", *Int. Journ. Of Arab Arb.* Vol. 1 Issue 3 (2009).

C. Doctrine and other texts

Dr. Mohamed ABDEL RAOUF, "Egypt", in Loukas Mistelis, Laurence Shore, Stavros Brekoulakis (eds), *World Arbitration Reporter Vol. 1* (2nd Juris 2012) [World Arbitration Reporter Egypt].

Dr. Mohamed ABDEL RAOUF, "Chapter 4.2 – Egypt", in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013) [M. A. Raouf].

Dr. Mohamed S ABDEL WAHAB, "Enforcement of Foreign arbitral awards in Egypt: exequatur requirements between law and regulation – mitigating the risks", *IBA Arbitration News*, Vol. 16 No. 1 (March 2011).

Essam AL TAMIMI, *Practitioner's Guide to Arbitration in the Middle East and North Africa* (Excelencia 2009) [Al Tamimi].

Borham ATALLAH, "The 1994 Egyptian Arbitration Law Ten Years On", *ICC Bull* Vol. 14 No. 2 (2003), 14.

Thomas CHILDS, "Enforcement of foreign arbitral awards in Egypt, Syria and Saudi Arabia", *IBA Arbitration News*, Vol. 15 No. 2 (September 2010).

Ahmed S. EL KOSHERI, "Procedure for Enforcement of Foreign Awards, Egypt" *ICC Court Bulletin, Special Supplement* (2012) [ICC Spec. Bull.].

Khaled EL SHALAKANY, "Arbitration in Egypt, the need for a systemic review", *IBA Arbitration News*, Vol. 15 No. 1 (March 2010).

Laila EL SHENTENAWI, "Cairo Regional Centre for International Commercial Arbitration (CRCICA)", in Loukas Mistelis, Laurence Shore, Stavros Brekoulakis (eds), *World Arbitration Reporter Vol. 3* (2nd Juris 2012) [World Arbitration Reporter CRCICA].

Karim HAFEZ, "National Report for Egypt (2013)", in J. Paulsson (ed.), *International Handbook on Commercial Arbitration* (Kluwer Law International 1984, last updated in March 2013 in *Supplement* No° 73, pp. 1 to 44) [Hafez].

Sami HOUERBI, "Part IV: North Africa – Chapter 4: Arbitration in North Africa: an Overview", in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (Kluwer 2013)

Kyriaki KARADELIS, "Cairo panel rules on Egyptian gas price decrees", in *GAR News* (7 August 2013).

Caline MOUAWAD, Rocio DIGON, "Modern and Competitive: the new CRCICA Rules", *Int. Journ. of Arab Arb.* Vol. 3, Issue 1 (2011).

Richard WOOLLEY, "Egypt legislates to safeguard public contracts", in *GAR News* (7 May 2014).

D. Websites and news reports

Website of the CRCICA: <http://www.crcica.org.eg/home.html>

CRCICA Annual Report 2011/2012, at www.crcica.org.eg/pub_annual.html.

CRCICA Annual Report 2012/2013, at http://www.crcica.org.eg/publication/annual/pdf/English/13/CRCICA_ANNUAL_REPORT_2012_2013.pdf.

CRCICA Newsletter 4/2012, at <http://crcica.org.eg/newsletters/nl201204/crn142012a001.html>.

CRCICA Newsletter 1/2013, at <http://crcica.org.eg/newsletters/nl012013/nl012013a001.html>.

CRCICA Newsletter 2/2013, at <http://crcica.org.eg/newsletters/nl022013/nl022013a001.html>.

CRCICA Newsletter 3/2013, at <http://crcica.org.eg/newsletters/nl032013/nl032013a001.html>.

CRCICA Newsletter 4/2013, at <http://crcica.org.eg/newsletters/nl042013/nl042013a001.html>.

"Arbitration News", *Int. Journ. Of Arab Arb.* Vol. 4 Issue 4 (2012).

VI. List of persons consulted

Dr Mohamed ABDEL RAOUF, Director of the Cairo Regional Centre for International Commercial Arbitration, Lecturer on international commercial arbitration at the Institute of International Business Law (IDAI), Cairo University-Paris I Panthéon-Sorbonne, Attorney-at-Law at the Abdel Raouf Law Firm, non-practicing since 2009.

Several practitioners practicing inside or outside of Egypt were consulted for the purposes of preparing this Report. For confidentiality reasons their names were omitted from this Report.

Chapter III. MAURITIUS

175. Mauritius is new on the international arbitration field and there is therefore little precedent – whether arbitral awards or case law, to be analysed. However, Mauritius seems to offer a very attractive and modern legal framework which can also be used to describe the new arbitration centre which is the focus of this Report.

I. Establishment, Organisation and Activities of the LCIA-MIAC

A. Establishment

176. Following the adoption of the new International Arbitration Act of 2008 in Mauritius, which will be discussed further below, an arbitration centre was established in July 2011 through the joint initiative of the Government of the Republic of Mauritius, the London Court of International Arbitration (the “**LCIA**”) and the Mauritius International Arbitration Centre Limited (a private Mauritian company incorporated specifically for the establishment of the new Centre). This Centre is named the LCIA-MIAC (the “**LCIA-MIAC**” or the “**Centre**”) ²³⁰ and is located in Cybercity in Ebène. ²³¹

177. The website of the Centre describes the objectives of the LCIA-MIAC as follows:

*“Drawing upon the experience and expertise of the LCIA, one of the longest-established arbitral institutions in the world, [the LCIA-MIAC] offers all the services offered by the LCIA in the UK, and with the same care to ensure the expeditious, cost effective and totally neutral administration of arbitration and other forms of ADR conducted under its auspices, whether according to LCIA-MIAC's own rules, or the UNCITRAL rules, or any other procedures agreed by the parties.”*²³²

178. There are various reasons behind the decision to develop international arbitration and establish such a Centre in Mauritius. Primarily, the Centre was opened to fulfil the need for a prominent, recognised and credible arbitration centre in Sub-Saharan Africa.²³³ According to the founders of the Centre, parties to arbitrations across the African continent have traditionally been concerned about 1) impartiality and independence of arbitral tribunals, 2) the legal regime in which the arbitration has to take place and 3) the quality and independence of the judiciary (generally the attitude of the State courts with regards to arbitration).

²³⁰ See the official website of the centre: <http://www.lcia-miac.org/>

²³¹ See notably D. Bagshaw, *LCIA-MIAC Arbitration Centre, international arbitration: essential features of the law and infrastructure of Mauritius* (the “**LCIA-MIAC presentation notes**”).

²³² <http://www.lcia-miac.org/>

²³³ The *LCIA-MIAC presentation notes*, Note 1: “*The GAR Guide, published in 2013, did not have a section on Africa at all, but included North Africa with the Middle East and ignored Sub-Saharan Africa completely.*”

179. The second reason was to attract foreign investors and large African companies, including States and State companies. Although domestic arbitration can be administered by the Centre, its services are mainly addressed to other African (i.e. non Mauritian) entities, including States, and foreign investors.
180. Arbitration practitioners, including the Centre's Registrar, Duncan Bagshaw, highlight the fact that Mauritius can be considered as a seat of choice for various reasons. These include its hybrid legal regime, based on both civil and common law:²³⁴ with a legal tradition anchored in French law, and the recent adoption of legislation drawn on common law, as can be seen in the Company Act²³⁵ and Insolvency Act²³⁶. Moreover, Mauritius is a bilingual State (French and English) and therefore has particular synergies with both Anglophone and Francophone countries. The Mauritian legal community is trained in both legal systems, with a legal education often acquired in Europe. Culturally and geographically, through its population and history, Mauritius is a link between Africa and Asia.
181. Another important issue, notably with regards to the objective of attracting foreign investors, is the fact that Mauritius is seen as a stable democracy with a predictable legal regime.²³⁷ Mauritius also has an efficient, modern system of banking and company regulation²³⁸ and offers a successful, growing, well-regulated and transparent offshore business sector.²³⁹ The legal regime

²³⁴ For a brief overview of the Mauritian legal tradition see S. Moollan, "Brève introduction à la nouvelle loi mauricienne sur l'arbitrage international", in *Revue de l'Arbitrage*, Vol. 2009 Issue 4, pp. 934 to 936.

²³⁵ The Companies Act No 15 of 2001 to amend and consolidate the law relating to companies and to provide for certain ancillary and consequential matters.

²³⁶ The Insolvency Act No 3 of 2009 to amend and consolidate the law relating to insolvency of individuals and companies and the distribution of assets on insolvency and related matters. See for example, S. Moollan, "Brève introduction à la nouvelle loi mauricienne sur l'arbitrage international", in *Revue de l'Arbitrage*, Vol. 2009 Issue 4, pp. 935.

²³⁷ Mauritius ranks in the top third of most competitive countries in the world, despite structural bottlenecks (limited land, capital and human resources). Mauritius has strong and transparent public institutions, with well protected property rights and reasonable levels of judiciary independence. *2009-2013 Mauritius-Country Strategy Paper*, Memorandum of African Development Bank Group, May 2009, p. 7. Moreover Mauritius has a very positive track record of good governance and strong institutions. Legal and regulatory reforms have focused on creating an enabling environment for enhanced business practices and ensuring good governance, transparency, rule of law and accountability, *Mauritius – The Competitiveness and Public Sector Efficiency Programme (CPSE) – Appraisal Report of African Development Bank Group in October 2009*, p.4. According to the Corruption Perception Index, which ranks countries and territories based on how corrupt their public sector is perceived to be, Mauritius ranks 43rd internationally (with 57 points whereas Somalia as the most corruptive country is ranked with 8 points), *Corruption Perception Index 2012 of Transparency International*. One illustration of this is the fact that Mauritius ranks first on the Mo Ibrahim Index with regards to good governance and rule of law; see <http://www.moibrahimfoundation.org/mauritius/>.

²³⁸ Mauritius has good rankings in the World Bank Ease of Doing Business Report 2013 (1st in Africa, 19th worldwide) where it is mentioned that it is "the region's strongest performer on Doing Business indicators", *World Bank Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises*, Washington DC, World Bank Group, p. 22.

²³⁹ Mauritius as an offshore business sector is the "regional hub between Asia and Africa and could share its comparative advantage of doing business, serving as a model for Southern Africa.", 2011-2015 - Southern Africa - Regional Integration Strategy Paper of African Development Bank Group in 2011, p.30. Mauritius' economy succeeded in sustaining a long period of high growth (real GDP

relating to Mauritian offshore companies was explicitly taken into account in the new arbitration framework to mutually strengthen the two fields.²⁴⁰

182. Discussions have confirmed that this initiative has been welcomed by practicing lawyers across the African continent. In this respect, it is interesting to note that the arbitration practitioners who were interviewed for this Report consider that in the future Mauritius might be, a valuable and suitable seat of arbitration in disputes involving parties of their respective countries and foreign investors. Some of these practitioners have confirmed that in their business practice, they have already advised some of their clients to include arbitration clauses referring to LCIA-MIAC.
183. The Centre was opened in the context of a “rethinking”²⁴¹ of the whole arbitration framework in Mauritius. Prior to 2005, the arbitration regime in Mauritius was based on the French system however it did not include any of the new amendments and reforms of the French system.²⁴² It was therefore outdated. In 2005, the Government of Mauritius undertook “*to promote the use of Mauritius as a jurisdiction of choice in the field of international arbitration*” and this served as the spirit of the new Arbitration Act enacted in 2008. The amendments made in 2013 did not change the fundamental principles laid out in the Arbitration Act of 2008.
184. An interesting aspect of the new arbitration framework in Mauritius is the establishment of a permanent representative of the Permanent Court of Arbitration in The Hague (the “PCA”) who fulfils the statutory functions set out in the Arbitration Act (see below). The PCA has unique expertise in assisting parties with UNCITRAL arbitrations and enjoys an impeccable reputation of independence and efficiency among international arbitration practitioners worldwide. This cooperation was set out in a Host Country Agreement between the PCA and the Mauritian Government which provides for funding from the Government. In addition, the Mauritian Government provides the office spaces, the utilities and the necessary funds for the PCA Representative’s travels and conferences.

growth averaged 5-6% over the past three decades). At present the engines of economic growth are foreign direct investment inflows into real estate devoted to tourism and off-shore banking, as well as rebound in textile exports. 2009-2013 Mauritius-Country Strategy Paper, Memorandum of African Development Bank Group in May 2009, p. 2.

²⁴⁰ International Arbitration Act No 37 of 2008, *Travaux préparatoires prepared by the State Law Office, assisted by Messrs Salim Moollan, Toby Landau QC and Ricky Diwan* paragraph 17(c): “*it is hoped that the link between the thriving offshore sector of Mauritius and the new intended arbitration sector will provide a significant boost for international arbitration in Mauritius*”. The First Schedule of the Arbitration Act specifically relates to companies holding global business licences.

²⁴¹ M. Maisonneuve, “*Compte rendu du colloque mauricien sur l'arbitrage international (MIAC) des 13 et 14 décembre 2010*”, in *Revue de l'Arbitrage*, Vol. 2011 Issue 1, pp. 329 to 334.

²⁴² Inspired by the French “*Décrets*” of 1980 and 1981 (*Décrets* No 80-354 and No 81-500), the arbitration law in Mauritius was revised in 1981 and was included in the third book of the Mauritian Code of Civil Procedure (Articles 1003 to 1008). While this regime is still applicable to domestic arbitrations, international arbitrations are exclusively governed by the new law. For a brief overview of the system previously applicable in Mauritius, see S. Moollan, “*Brève introduction à la nouvelle loi mauricienne sur l'arbitrage international*”, in *Revue de l'Arbitrage*, Vol. 2009 Issue 4, pp. 935 to 936.

185. The independence of the PCA Representative is not undermined by the fact that the Mauritian Government provides funding for it. The current PCA Representative, Ms Fedelma Claire Smith, highlighted the fact that the permanent representative actually remains a PCA employee and reports back to the PCA Secretary General and not to the Mauritian Government. Moreover, the position is filled on a two-year rotation basis.
186. The Registrar of the LCIA-MIAC and the PCA Representative often participate together in conferences to explain their specific roles (see in detail below). In addition to promoting international arbitration and the adoption of the New York Convention of 1958 in African countries, they also seek to avoid any confusion between the two institutions.
187. Prior to the establishment of the LCIA-MIAC, the only other existing arbitration centre was the Permanent Court of Arbitration of the Mauritius Chamber of Commerce and Industry (“**MCCI**”). Although this arbitration centre focused more on domestic arbitration, it also offered some services relating to the administration of international arbitration proceedings. When the development of international arbitration in Mauritius was decided, discussions were held regarding whether this should be done by building upon the existing Mauritian institution (with a very close link to the Government and to the local businesses) or by creating a new, entirely independent centre. The latter option was chosen as it was believed that the international character of the Centre would thus be more clearly shown. .
188. A recent case administered under the ICC Rules illustrates the perceived increase of Mauritius’ attractiveness as a seat for international arbitrations. In this particular case, no seat had been chosen by the parties who were from the United Kingdom and Zambia, and Mauritius was chosen as the seat.
189. The Centre strives to meet the interests of users from both the African continent and abroad. According to the Centre’s Registrar, the symbolic significance of the seat of the LCIA-MIAC, located in an African country, should not be underestimated. With regards to the name of the institution containing “LCIA”, the Centre’s Registrar expressed the view that a good balance was being maintained in order to dissipate any “*imperialistic concerns*”.
190. Firstly, the involvement of an established centre was very important to secure the LCIA-MIAC’s future. The LCIA brings credibility and reliability to the new institution. It also provides support, guidance and expertise to the staff of the LCIA-MIAC. The administration of the LCIA-MIAC aims at achieving the quality standards of the LCIA.
191. However, secondly, the LCIA does not own LCIA-MIAC. The latter is not a subsidiary of the LCIA in Mauritius. The LCIA-MIAC is a company incorporated in Mauritius and obtains financing from the local Government. There is indeed a high involvement on the part of the Government. From the Centre’s perspective, this is very important as such involvement leads to the adoption of legislation favourable to arbitration, and the promotion of good practices within the State Courts, for example through the training of judges. In order to

ensure the continuity of the Centre, the Government has entered into an agreement with the LCIA-MIAC to fully finance the activities of LCIA-MIAC for a period of ten (10) years (starting in 2012).

B. Organisation

192. The LCIA-MIAC has a Board of Directors, an Arbitration Court and a Secretariat.
193. The responsibilities of the **Board of Directors** are mainly administrative and notably include the “*operation and development of LCIA-MIAC business*”.²⁴³ The Board of Directors is made up of five members, two of which are appointed by the LCIA (notably including the LCIA Director General) and two of which are appointed by the Mauritian Government (currently a civil servant and a parliamentary counsel). The fifth member, who acts as President, is jointly appointed by the other members. The current President is a Senior Barrister QC.
194. The **Arbitration Court** is the LCIA Court and is vested with the “*final authority for the proper application of the LCIA-MIAC Rules*”.²⁴⁴ This also includes such responsibilities as the appointment of tribunals, the determination of challenges to arbitrators and the control of costs.
195. The members of the LCIA Court are located around the world. Out of the 37 members, a maximum of five members are of British nationality and two members are dual nationals from Europe and Africa.²⁴⁵ This means that the LCIA Court cannot be considered as a purely British institution. The Court has an inherent international character. However, there are no specific members of the LCIA Court for Mauritius and no special representative of the LCIA in Mauritius.
196. Finally, the **Secretariat** – headed by the Registrar²⁴⁶ – carries out administrative functions and administers the arbitration proceedings on a day-to-day basis. The staff of the LCIA-MIAC includes a qualified attorney and an assistant. The current Registrar, Mr. Bagshaw, uses his experience as a practicing lawyer to smoothly run the institution. Moreover, the Centre has implemented a software for the management of funds, of cases and deadlines.

²⁴³ <http://www.lcia-miac.org/about-us/organisation-structure.aspx>

²⁴⁴ <http://www.lcia-miac.org/about-us/organisation-structure.aspx>

²⁴⁵ The two current judges from the African continent are Mr. Salim Moollan from Mauritius and France (currently practicing in the UK) and Justice Edward Torgbor from the UK and Ghana. The latter was a Judge of the High Court of Kenya and is a Fellow of the Chartered Institute of Arbitrators for England and Kenya.

²⁴⁶ As of 23 July 2012, the Registrar of the LCIA-MIAC is Mr. Duncan Bagshaw. See <http://www.lcia-miac.org/news/lcia-miac-welcomes-duncan-bagshaw-as-registrar.aspx>

C. Activities

197. The LCIA-MIAC organises conferences, seminars, workshops and lectures through its Users' Council which are open to any person or institution interested in the field of arbitration. A newsletter is also published.²⁴⁷ One of the objectives of the Centre, apart from administering arbitrations, is to create a regional training centre to help the development arbitration in Mauritius and also in other African countries.
198. As the Centre is fairly recent, one of the priorities of the Registrar has been to undertake lobbying and marketing activities and to seek the involvement of other actors in arbitration in Africa. To this end, joint conferences were organised with other institutions such as the arbitration centre of Kigali in Rwanda and, in September 2013 with OHADA countries.²⁴⁸ The Registrar's tasks include visits to different jurisdictions in order to develop a good knowledge of and familiarity with arbitration in Africa. During these visits, he meets with various members of the local arbitration community, namely arbitrators, practitioners, in-house counsel, members of government etc. His aim is to counter the perceived shortage of experts in arbitration within Africa.
199. According to the Registrar, this approach has been successful and has received positive reactions. The Registrar also noticed that in Africa, it is widely perceived that larger arbitrations are all held in London, Paris or outside of Africa. However, Mauritius provides a good platform as a country, which can attract investors and it is located in Africa. The symbolic importance of the latter is, again, not to be forgotten. As mentioned above, the undersigned can only confirm that the Centre indeed received positive reactions across the African continent.
200. The Centre is very active with regards to organising international conferences. Recent conferences include the conference with the Mauritius Bar Association and the Mauritian Law Association which was held in August 2013 and the international arbitration symposium held in Johannesburg in December 2013. It is worth noting that the largest concentration of international law firms in Sub-Saharan Africa is located in Johannesburg
201. According to the current Registrar, there is a large community of practitioners in Africa who wish to improve their skills and expertise in arbitration and this was confirmed during the site visit. This objective will be more easily achieved if there is a centre within proximity. This explains why the LCIA-MIAC not only organises large events but also smaller events for smaller audiences, for example for a group of lawyers in a law firm. The Registrar also received a positive response from the lawyers in Mauritius who expressed their eagerness in participating and in being involved in the development of

²⁴⁷ <http://www.lcia-miac.org/membership.aspx>

²⁴⁸ <http://www.ridaa-conference.com/>. The undersigned attended this conference which was held in Grand Baie, Mauritius in September 2013. The topics covered at this conference confirmed the views expressed in this Report. In particular, this conference confirmed the commitment of the LCIA-MIAC to put important resources into the marketing of the Institution. The conference was well organised with participants originating from approximately 13 different African States attended it.

arbitration in Mauritius. The Centre will be part of a wider training platform to further develop judges' and lawyers' awareness and knowledge of arbitration.

202. The LCIA-MIAC also provides for administered or supported mediation and the Centre has its own mediation rules. Parties can also agree on expert determination or mutual evaluation or other such dispute resolution mechanisms. However in these cases, the Centre does not have rules; it simply offers support, for example by arranging a neutral venue, by providing translation services, etc.
203. Although the Centre does not have hearing rooms within its premises, it can make arrangements to that effect using the contacts it has within the building or with hotels in the surroundings. The International Council for Commercial Arbitration (ICCA) is organising a major conference in Mauritius in May 2016 and it is expected that the Centre will have a hearing centre by then. However, an unrelated detail which might cause practical problems in the future, is that in terms of flight connections Mauritius is not well-connected to major cities of the African continent.
204. Over the last two years, the marketing activities of the LCIA-MIAC have been very prominent on the international arbitration scene. This has led to a general awareness of practitioners worldwide about the existence of the LCIA-MIAC. However, a general scepticism can be observed as to whether the marketing activities will indeed lead to the general acceptance of the Centre. The success of the Centre will certainly depend to a large extent, on whether in the future the parties include LCIA-MIAC arbitration clauses in their contracts.

II. Arbitration in Mauritius

A. The LCIA-MIAC Arbitration Rules

205. The LCIA-MIAC Arbitration Rules (the “**LCIA-MIAC Rules**” or the “**Rules**”) are based on the LCIA Rules and only apply to arbitrations commencing on or after 1 October 2012. The working languages of the Centre are French and English, the staff being fluent in both. The Registrar mentioned that the Rules were currently being translated into Chinese and a Portuguese translation is also expected soon.
206. **No cases have been administered by the Centre yet.** It has only been contacted to arrange hearings. Since the Centre has only existed for a year, the focus has been more on raising awareness and encouraging the use of the LCIA-MIAC arbitration clause. Some parties have come to the Centre for support only for certain aspects of their arbitration, for instance for hearings, rather than requesting full administration of the proceedings.

207. The Centre's Rules provide that arbitral proceedings are initiated by a request for arbitration sent to the Registrar.²⁴⁹ The respondent must submit its response within thirty (30) days.²⁵⁰ The parties decide on the constitution of the tribunal, which will generally either be a sole arbitrator or a three-member panel (two party-appointed arbitrators who jointly appoint the chair). Absent such agreement, the default provision in the Rules provides that a sole arbitrator shall be appointed, unless the circumstances of the case justify a three-member tribunal.²⁵¹
208. The LCIA-MIAC Centre runs an open database, which is part of the LCIA database of **arbitrators**²⁵², and which contains a list of arbitrators qualified in Africa or who have experience within arbitration in Africa. This database lists 250 specialists, but less than 100 of them are based on the African continent.²⁵³ The parties are however free to appoint anyone. If the nominated arbitrator does not appear on the list, the Centre requires a curriculum vitae before confirming the appointment. In any case a written declaration of impartiality, independence and availability is required.²⁵⁴ If the parties do not agree on the arbitrator (sole arbitrator or chairman) or if one party fails to appoint its arbitrator, the LCIA Court is empowered to appoint arbitrators who will be chosen from the list.²⁵⁵ In so doing, due consideration must be taken of the dispute (nature of the transactions and of the facts, number, location and languages of the parties) and of the parties' agreement on some attributes requested from the arbitrators (qualification, nationality, proficiency in a particular language...)²⁵⁶ Article 6.1 of the Rules provides that an arbitrator appointed as sole arbitrator or chairman must not have the same nationality as one of the parties, except upon specific written agreement of the parties.
209. **Challenges** to arbitrators and similar issues are addressed at Articles 10 and 11 of the Rules which provide the jurisdiction of the LCIA Court.

²⁴⁹ Article 1 of the LCIA-MIAC Rules provides that the request shall be in writing and include the identification of the parties. It also specifies that the request shall be accompanied by a copy of the Arbitration Agreement, a copy of the contract in which the agreement is contained or in respect of which the arbitration arises, a brief statement of the facts and of the claims, a brief statement of any procedural matters on which the parties may already have agreed upon (seat, language...), the Claimants' appointment of an arbitrator (if applicable), the relevant fee, and a confirmation that the request for arbitration and all accompanying documents have been sent to the respondent.

²⁵⁰ LCIA-MIAC Rules, Article 2.

²⁵¹ LCIA-MIAC Rules, Article 5.4.

²⁵² The LCIA's database is not public. However, the practical experience of the undersigned confirms that the list of arbitrators of the LCIA only contains high profile arbitration practitioners. The undersigned has no reason to doubt the professionalism of the arbitrators listed for LCIA-MIAC arbitrations.

²⁵³ According to the Registrar, the most qualified candidates appearing on the list come from Nigeria, South Africa and Kenya.

²⁵⁴ LCIA-MIAC Rules, Article 5.3. The LCIA Court may refuse to confirm an arbitrator's appointment if it appears that he is not suitable, independent or impartial, LCIA-MIAC Rules, Article 7.1.

²⁵⁵ LCIA-MIAC Rules, Articles 5.4 and 7.2.

²⁵⁶ LCIA-MIAC Rules, Article 5.5.

210. The parties are free to choose, in writing, the **seat** (or “legal place”) of the arbitration.²⁵⁷ If the parties do not agree, the LCIA-MIAC Rules provide that the seat shall be Mauritius “*unless and until the LCIA Court determines in view of all the circumstances, and after having given the parties an opportunity to make written comments, that another seat is more appropriate*”.²⁵⁸ Hearings and other events may nevertheless be held outside the seat of arbitration without any legal consequences.²⁵⁹ The LCIA-MIAC Rules do not provide specific rules which will be applied should a State or a State owned company be party to the arbitration agreement.
211. The language of the proceedings is the language of the arbitration agreement or the language chosen by the parties.²⁶⁰ There is no restriction as to a foreign lawyer’s capacity to represent parties or to act as arbitrator in international arbitration proceedings in Mauritius.²⁶¹ Absent an agreement to the contrary, awards are kept confidential and the decisions of the LCIA Court are not published.²⁶²
212. The Rules are accompanied by a **Schedule of Arbitration Costs** effective since 1 October 2012. This Schedule sets out the administrative charges, which include a non-refundable registration fee of MUR 50,000 (around US\$ 1,500/€ 1,200) which must be paid in advance with the request for arbitration. The Schedule also provides the fees of the LCIA Court and of the arbitral tribunal. As per the LCIA Rules and contrary to other institutions which determine the fees according to the amount in dispute, the fees of the arbitrators are calculated by hourly rates. The hourly rates of the arbitrators will be determined in accordance with the particular circumstances of each case but shall not exceed MUR 20,000 (around US\$ 620/€ 475).²⁶³

B. The Arbitration Law of Mauritius

213. The law in Mauritius is attractive and, as recent legislative developments show, favourable to arbitration. Today, Mauritius offers separate legal regimes for domestic and international arbitration.²⁶⁴ The law does not promote arbitration under one specific set of rules but seeks to promote arbitration generally, under any set of institutional (with or without a local centre) or *ad hoc* rules.²⁶⁵ The aim of the law is to make Mauritius a safe legal environment

²⁵⁷ LCIA-MIAC Rules, Article 16.

²⁵⁸ LCIA-MIAC Rules, Article 16.1.

²⁵⁹ LCIA-MIAC Rules, Article 16.2.

²⁶⁰ LCIA-MIAC Rules, Article 17.1.

²⁶¹ LCIA-MIAC Rules, Article 18.1.

²⁶² LCIA-MIAC Rules, Article 30.

²⁶³ See Appendix I.1 to this Report for a comparative overview of the fee structures of the various centres.

²⁶⁴ See for example, R. Diwan and S. Moollan, “*The New Mauritian International Arbitration Act 2008*”, in *Les Cahiers de l’Arbitrage*, 2010, Vol. 1; S. Moollan, “*Brève introduction à la nouvelle loi Mauricienne sur l’arbitrage international*”, in *Revue de l’Arbitrage*, Vol. 2009 Issue 4, pp. 933 to 941.

²⁶⁵ *Travaux préparatoires*, paragraph 18: “*the Act does not link international arbitration in Mauritius with any given arbitral institution, or with any institutional rules. The aim of the proposed Act is to make Mauritius a favourable jurisdiction for all international commercial arbitrations, whether such arbitrations arise under ad hoc arbitration agreements, or under institutional rules such as (without*

in order to be as attractive a seat as possible and to ensure that Mauritius remains a state-of-the-art modern legal system for arbitration.

214. On 25 November 2008, the Parliament of Mauritius enacted the International Arbitration Act No 37 of 2008 (the “**Act**” or the “**Arbitration Act**”) which came into force on 1 January 2009.²⁶⁶ The Act is unique²⁶⁷ for although it is based on the UNCITRAL Model Law²⁶⁸ as amended in 2006²⁶⁹ it draws on both the possibilities offered by the Model Law and the particular features of the Mauritian legal system.²⁷⁰ The new Arbitration Act was drafted by a team including eminent specialists such as Messrs. Salim Moollan, Ricky Diwan and Toby Landau QC. The Act also drew on the international arbitration laws of New Zealand and the United Kingdom. It must be noted that the Third Schedule of the Arbitration Act is a table of corresponding provisions between the Act and the amended Model Law.
215. The Act was slightly amended in 2013, but the underlying principles, which will be described below, were not changed. The amendment reflects the undertaking of the Government, as stipulated in the *Travaux Préparatoires*,²⁷¹ to monitor and actively consider amendments in order to ensure that Mauritius remains an attractive place for arbitration. The main changes to the Act relate to the introduction of provisions relating to interim measures.²⁷²
216. In 1996 Mauritius acceded to the New York Convention of 1958. To give effect to this Convention, the Mauritian Parliament enacted the Act on the Enforcement of Foreign Arbitral Awards in 2001 (the “**Foreign Arbitral**

limitation) those of the International Chamber of Commerce or of the London Court of International Arbitration”. (emphasis in original)

²⁶⁶ Proclamation No 25 of 2008 published in the Government Gazette of Mauritius No 119 of 13 December 2008.

²⁶⁷ Even described as a “*ground-breaking piece of legislation*” in D. Bagshaw, *Mauritius refines its international arbitration law*, unpublished.

²⁶⁸ The UNCITRAL Model Law is a widely used model text drafted by the United Nations Commission on International Trade Law to assist States with the reform and modernisation of their arbitration framework. The Model Law includes a world-wide consensus on the fundamental issues of international arbitration. The original text was prepared in 1985 and was modified in 2006.

²⁶⁹ The Third Schedule of the Act shows the corresponding provisions of the Act with those of the Amended Model Law. Moreover, the Act specifically refers to the amended Model Law at Article 3(9) where it is mentioned that “*In applying and interpreting this Act [...] regard shall be had to the origin of the Amended Model Law [...] and to the need to promote uniformity in its application and the observance of good faith [...] and recourse may be had to international materials relating to the Amended Model Law and to its interpretation, including [...] relevant reports of UNCITRAL [...] relevant reports and analytical commentaries of the UNCITRAL Secretariat [...] relevant case-law from other Model Law jurisdictions, including the case-law reported by UNCITRAL in its CLOUT database; and [...] textbooks, articles and doctrinal commentaries on the Amended Model Law.*”

²⁷⁰ For example, the First Schedule of the Act sets out optional supplementary provisions for international arbitrations to which the parties may freely opt in. Moreover, Mauritian Judges are prepared to take French and English case law into consideration.

²⁷¹ For the context of these *travaux préparatoires*, see S. Moollan, “*Brève introduction à la nouvelle loi mauricienne sur l'arbitrage international*”, in *Revue de l'Arbitrage*, Vol. 2009 Issue 4, p. 933.

²⁷² Applications for interim relief are allowed under Article 6 and Part IV of the Arbitration Act. They are heard by one judge (usually within a few hours or days) and another hearing (the “return date hearing”) is later held before three judges, including the one who heard the application, for reconsideration (usually after a few weeks).

Awards Act). Mauritius is also party to the Washington Convention of 1965 which was introduced into Mauritian law through the Investment Disputes Enforcement of Awards Act of 1969. The Supreme Court recently heard the first case to be adjudicated under the Foreign Arbitral Awards Act.²⁷³ The Court dismissed the constitutional challenges made to the Act and granted enforcement of two LCIA awards. It also analysed the notion of public policy and considered that it would only refuse enforcing the awards if it found that they violated the international public policy of Mauritius; and not that of India as the respondents had argued. To reach its conclusions, the Court took a comparative law approach (as allowed by the Arbitration Act) and considered foreign judgments and legal scholars.

217. In parallel to the reform of the international arbitration regime, the rules applied by the Supreme Court were recently revised in order to more clearly establish the support provided by the Supreme Court in arbitration cases. It was indeed recognised that specific rules governing court proceedings related to international arbitrations should be adopted to further promote the development of international arbitration in Mauritius and notably to establish Mauritius as a potential major seat of international arbitration in the future.²⁷⁴ The Supreme Court (International Arbitration Claims) Rules 2013 (the **"Supreme Court Arbitration Rules"**) were adopted for this purpose.²⁷⁵ They notably relate to the support provided by Supreme Court in the arbitral proceedings and to challenges brought to awards rendered in Mauritius. These Rules provide for a strict timetable. The above mentioned decision of the Supreme Court is a first sign that these Rules regarding deadlines are applied, as the decision was handed down less than a year after the application was filed.
218. At a reception for the launch of the LCIA-MIAC Arbitration Centre, the Honourable Chief Justice of Mauritius Y K J Yeung Sik Yuen GOSK recognised the importance of arbitration and the role of the Courts in supporting these proceedings.²⁷⁶ One of the objectives of the Arbitration Act was to limit the points of contact with the judiciary; for instance the functions of the *juge d'appui* are held not by the State Courts but by the **PCA**. However, some points of contact between the two systems – arbitration and State Courts – are inevitable.

²⁷³ Supreme Court of Mauritius, *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor*, 2014 SCJ 100, 28 March 2014. See also Alison Ross, "Mauritian court shows hand on enforcement", in *GAR News* (2 May 2014).

²⁷⁴ D. Bagshaw, *New Mauritius Supreme Court Rules to Regulated International Arbitration Matters*, unpublished.

²⁷⁵ "The Courts Act, Rules made by the Chief Justice, after consultation with the Rules Committee and the Judges, under section 198 of the Courts Act, of 29 May 2013". These Rules were drafted on the basis of the Civil Procedure Rules (CPR) of England and Wales which are "regarded as representing a modern and effective framework for civil procedure", in D. Bagshaw, *New Mauritius Supreme Court Rules to Regulated International Arbitration Matters*, unpublished.

²⁷⁶ <http://www.lcia-miac.org/news/chief-justice-of-mauritius-reception-speech.aspx>.

219. Judges indeed remain competent for interim measures and for enforcement proceedings for example. In these cases, the Arbitration Act clearly limits the judge's powers to intervene in arbitration cases. For example, interim measures may be granted "*in support of arbitration*", "*the Court shall have regard to the specific features of international arbitration*" and "*the Court shall [grant interim measures] in such a manner as to support, and not to disrupt, the existing or contemplated arbitration proceedings*".²⁷⁷
220. The Arbitration Act is applicable whenever parties choose Mauritius as the seat of their arbitration²⁷⁸ or if they agree that the Act applies.²⁷⁹ Some of the provisions of the Act are mandatory and cannot be contracted out of.²⁸⁰ LCIA-MIAC arbitrations which are conducted in Mauritius will therefore be subject to some of the provisions of the Act. However, the provisions of the Act relating to the intervention of the PCA do not apply to LCIA-MIAC arbitration proceedings. Indeed, the tasks undertaken in this regard by the PCA fall under the responsibility of the LCIA Court. Provisions of the Act relating to the enforcement of an award are also relevant for LCIA-MIAC arbitrations.
221. A hearing in any arbitration matter is heard by three judges of the Supreme Court²⁸¹ who are chosen from the group of (currently 6) **Designated Judges**.²⁸² These judges have received a specific training. The new framework highly values the training of the judges who will hear arbitration cases. For instance, they are encouraged to attend high-profile courses such as the Arbitration Academy or the advanced PIDA training courses of the ICC. Eminent professors and arbitrators have supported this initiative. The interview with the President of the Supreme Court and two of the Designated Judges has established that the practical experience of these Judges is rather limited due to the lack of cases pending before the Court. In total, only 10 cases have been submitted for annulment before the Supreme Court of Mauritius. However, the President and the Designated Judges appeared highly professional and well aware of their responsibilities. Particularly, and most importantly, they expressed very arbitration friendly views.
222. The State Courts will only undertake a *prima facie* analysis of the validity of the arbitration clause (whether there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed) and will refer the parties to arbitration. Hence, the arbitral tribunal decides on its own **jurisdiction** and the "*parties will be referred to arbitration*

²⁷⁷ Respectively Arbitration Act, Articles 6(1), 23(1)(b), and 23(2A). Other examples can be found in Arbitration Act, Articles 2A, 2C(1), 23(5), and 23(6).

²⁷⁸ The Act refers to "*juridical seat of the arbitration*" rather than the Model Law's expression "*place of arbitration*" in order "*to avoid any ambiguity in distinguishing between the important legal concept referred to in Article 20(1) of the Amended Model Law [...] and the geographical location where hearings and meetings may take place referred to in article 20(2) of the Amended Model Law.*" *Travaux préparatoires*, paragraph 52.

²⁷⁹ *Travaux préparatoires*, paragraph 18.

²⁸⁰ For example, the case of the provisions of Article 24(1) setting out the duties of the arbitrators to "*treat the parties with equality and give them a reasonable opportunity of presenting their case*".

²⁸¹ Supreme Court Arbitration Rules, Article 11.

²⁸² Arbitration Act, Articles 42(1) and 43(1).

save in the most exceptional circumstances".²⁸³ This principle, called *Kompetenz Kompetenz* principle is guaranteed by Article 5 of the Arbitration Act²⁸⁴ which reflects Article 8 of the UNCITRAL Model Law and Article II.3 of the New York Convention of 1958.²⁸⁵

223. Mauritius offers an interesting legal framework for all the **challenges** against arbitrators and issues arising during the arbitral proceedings. The State Courts are indeed not competent for these matters; rather, the parties must address these issues to the PCA if the arbitration is governed by the Arbitration Act or to the LCIA Court if the arbitration is governed by the LCIA-MIAC Rules. So far, this has been done only once in practice in a case in which the claimant requested the nomination of the arbitrator which the respondent had failed to appoint. This case is currently still pending. The decisions of the PCA and of the LCIA Court are final and irrevocable. Any complaint will have to be made against the award itself, provided the proceedings have been affected in such a way as to give the aggrieved party a right to challenge or set aside an award under Article 39 of the Arbitration Act (see below). The purpose of these rules is to avoid delaying tactics from a party.
224. Article 19 of the Arbitration Act supplements the Amended Model Law as it provides for "*protection from liability and finality of decisions*". This mandatory provision sets out the rules relating to the **immunity** of arbitrators "*in the discharge of his functions [...] unless the act or omission is shown to have been in bad faith*"²⁸⁶ and of arbitral institutions.²⁸⁷ It is based on Sections 29 and 74 of the English Arbitration Act of 1996. Moreover, it has been recognised that English case law may be of assistance in future interpretations of this provision.²⁸⁸

²⁸³ *Travaux préparatoires*, paragraph 41.

²⁸⁴ Arbitration Act, Article 5 provides:

(1) *Where an action is brought before any Court, and a party contends that the action is the subject of an arbitration agreement, that Court shall automatically transfer the action to the Supreme Court [...].*

(2) *The Supreme Court shall [...] refer the parties to arbitration unless a party shows, on a prima facie basis, that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, in which case it shall itself proceed finally to determine whether the arbitration agreement is null and void, inoperative or incapable of being performed.*

(3) *Where the Supreme Court finds that the agreement is null and void, inoperative or incapable of being performed, it shall transfer the matter back to the Court which made the transfer.*

(4) *Where an action referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and one or more awards may be made, while the issue is pending before any Court.*

²⁸⁵ Moreover, this principle is explicitly set out in the Supreme Court Arbitration Rules, Part III, Article 13 paragraphs 1, 3 and 5.

²⁸⁶ Arbitration Act, Article 19(1).

²⁸⁷ Arbitration Act, Article 19(3 and 4).

²⁸⁸ *Travaux préparatoires*, paragraph 71.

225. In Mauritius, awards are generally not subject to appeal.²⁸⁹ The limited grounds for **setting aside** an award are listed at Article 39 of the Arbitration Act.²⁹⁰ Under the new legislation, only one award has been contested. It was a challenge to an award based on jurisdiction however the Court was very robust in denying it.²⁹¹ An application for setting aside must be made within three (3) months of the date on which the award was received by the parties²⁹² and a decision relating thereto will generally be rendered within six (6) months.
226. The enforcement of arbitral awards is governed by the Foreign Arbitral Awards Act, pursuant to Article 40 of the Act.²⁹³ Applications are made to three judges of the Supreme Court in first instance with an appeal open before the Judicial Committee of the Privy Council of England and Wales.²⁹⁴ When an international award has been rendered in Mauritius and is to be enforced there, the unsuccessful party may choose to challenge the award in Mauritius under Article 39 or prefer not to challenge the award but wait and object to the successful party's application for enforcement under the New York Convention of 1958.²⁹⁵
227. To conclude, practitioners from Mauritius considered that there is no threat from the intervention of State Courts. They also note that two factors are to be taken into account:
- There is less need to go before State Courts. Indeed, challenges to arbitrators, requests for nomination of arbitrators and other such issues are not made before the State Courts. As mentioned earlier, they are made before the PCA for arbitrations under the Arbitration Act or first to the LCIA Court for arbitrations under LCIA-MIAC Rules. If the challenge is declined in the latter case, an application can be made to the PCA.
 - When courts are involved, it is at Supreme Court level (lower courts do not have jurisdiction) and before designated panels, which means before judges with experience.

²⁸⁹ The parties may however have chosen to opt in the second Section of the First Schedule (Optional supplementary provisions for international arbitrations – appeals on questions of Mauritius law).

²⁹⁰ These grounds reflect Article 34 of the Model Law and are divided in two categories. Under the first category, the party making the application must show that the arbitration agreement was invalid, that it was unable to present its case, that the tribunal acted *ultra* or *infra petita*, or that the arbitral tribunal or procedure were not in accordance with the parties' agreement. Under the second category, the award can be set aside if the Supreme Court finds that the dispute was not arbitrable or if the award violates the public policy of Mauritius. Two additional grounds are included in the latter category as compared to the Model Law: the award was induced or affected by fraud and there was a breach of the rules of natural justice which substantially prejudiced the rights of a party. These modifications were made "*in line with modifications already made in Singapore and in New Zealand*", *Travaux préparatoires*, paragraph 125.

²⁹¹ *Liberalis Limited and anor V Golf Development International Holdings Ltd and others*, 2013 SCJ 211, SCR No 107600. See for example, D. Bagshaw, "*Mauritian Supreme Court Robustly Rejects Challenge to Arbitrator Jurisdiction*", in *Kluwer Arbitration Blog*, 19 July 2013.

²⁹² Arbitration Act, Article 39(4).

²⁹³ *Travaux préparatoires*, paragraph 126.

²⁹⁴ Foreign Arbitral Awards Act, Article 4.

²⁹⁵ *Travaux préparatoires*, paragraph 127.

228. As a conclusion from the interviews with the President of the Supreme Court and two Designated Judges, the undersigned can add to this list the fact that the President and the Designated Judges take an extremely arbitration friendly position and fully support the activities of the LCIA-MIAC.

III. Conclusion

229. In general, it appears that practitioners across the African continent and abroad particularly in China and other Asian countries are very much aware of the existence of the Centre and the good established framework. Several practitioners who were contacted mentioned that they were aware of LCIA-MIAC clauses being inserted in contracts both within Mauritius and outside, which shows that the marketing activities of the institution are working. However, some remain sceptical because of the absence of any cases to date. This situation is nevertheless understandable as the rules of the Centre – and of international arbitration in Mauritius more generally – are very recent. However, this should not be a ground in itself for not considering the Centre as a possible venue for arbitration.
230. Some practitioners have also stressed the fact that the Centre is very dependent on the LCIA and the Mauritian Government. However, any risk seems to be minor in practice, once the stability of the Government and the high profile of the concerned institution are taken into account.
231. It should also be underlined that whenever parties agree on LCIA-MIAC arbitration but do not mention the seat of the arbitration, the institutional rules provide that the seat shall be in Mauritius. Therefore, a safe seat is guaranteed to parties who do not reach an agreement on this issue.
232. It remains to be seen whether the warm welcome which the Registrar has encountered on his visits to other African States will mean close cooperation and use of the LCIA-MIAC in practice. According to some practitioners, it is still too premature to speculate whether good marketing and publicity will be sufficient to convince the users of arbitration across the African continent or whether they will keep using ICC or ICSID clauses with which they feel more comfortable, even though this frequently leads to an arbitration with a seat located outside of the African continent. Following the interviews held in preparation of this Report, it can be concluded that users across the African continent are already familiar with this new Institution. The Institution is perceived rather positively among specialists and arbitration practitioners consider this Institution as truly “*African*”, despite the strong link with the LCIA in London.²⁹⁶

²⁹⁶ According to the Registrar, LCIA-MIAC’s competitors across the African continent are the arbitration centres in Egypt, Burkina Faso, Nigeria, Rwanda, South Africa, and the CCJA.

233. Arbitration proceedings in Mauritius benefit from a good legal framework and those specifically administered by the LCIA-MIAC will benefit from the experience and support of a trusted and renowned system. The risk of political change may be lower than in other countries but cannot be fully obliterated. The fact that currently no cases have been administered by the Centre makes it impossible to assess any practical issues which may arise.
234. According to Mr. Moollan, who is well known internationally and who plays an important role at UNCITRAL,²⁹⁷ there is a current momentum which is leading to Mauritius being accepted as a seat for international arbitration.
235. With regards to the suitability of the LCIA-MIAC, the final conclusion of the undersigned is that the Centre has the potential to become a successful arbitration centre, as it is endowed with a very modern set of arbitration rules, the Centre's Registrar has responded to all requests for information in a very professional and efficient manner, and the local arbitration law also seems to meet all international standards.
236. With regards to the Bank's requirement that the arbitration be held in a neutral venue, as understood by the undersigned (see above, Introduction), it is the opinion of the undersigned, following the desk review of LCIA-MIAC arbitration and the discussions held with the Institution, some practitioners and Designated Judges of the Supreme Court of Mauritius, that such requirement is fulfilled. This conclusion relies, for the most part, on an analysis of the theoretical framework of arbitration in Mauritius, as there has only been limited practice to date. Even in cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, i.e. Mauritius, then the neutral venue requirement can be regarded as being fulfilled. The system as a whole seems to indeed provide the necessary safeguards to guarantee all parties to the arbitration a suitable framework. Mauritius does seem to be a safe and neutral seat. The State court's intervention, if any, is regulated at the Supreme Court level by two panels of three designated, arbitration friendly judges.

²⁹⁷ Mr. Salim Moollan is a past Chairman of UNCITRAL and is currently the Chairman of the UNCITRAL Arbitration Working Group.

237. Extract from Appendix I-3:

Analysed Criteria	LCIA-MIAC, Mauritius
Modern set of Rules , comparable to the standard guaranteed by the ICC, LCIA, Swiss Rules or similar modern arbitration Rules	Criteria fulfilled. The Rules are based on the LCIA Rules.
Arbitration friendly environment at the seat of the Institution (notably regarding the laws of the seat of the Institution, if such is the place of arbitration)	Criteria fulfilled. Modern, arbitration friendly laws inspired by the UNCITRAL Model Law; arbitration friendly State Courts
Arbitration friendly State Court intervention (if seat of Institution is the place of arbitration)	Criteria fulfilled. International arbitration-related matters are heard by designated, specialised judges who express arbitration friendly views
Parties are free to choose the place of arbitration	Criteria fulfilled. Absent the Parties' agreement, Mauritius will be considered by default the place of arbitration.
Autonomy of parties to select arbitrators	Criteria fulfilled. The parties are not bound by a specific list. The LCIA-MIAC list is only applicable if the arbitrators are to be appointed by the Institution
Open list of highly professional arbitrators	Criteria fulfilled. The selection process follows the requirements of LCIA and requires experience with arbitration in Africa
Good language skills (French and English) of employees of arbitration institution	Criteria fulfilled. Also note that the Rules are being translated into Chinese and Portuguese.
No impediment to enforcement	Criteria fulfilled. Applications for enforcement are made to three Judges of the Supreme Court with an appeal open before the Judicial Committee of the Privy Council of England and Wales. Very limited grounds to refuse to grant <i>exequatur</i> . Arbitration friendly system.
State Court intervention limited or representing no risk in light of the neutrality requirement	Criteria fulfilled. Limited State court intervention by designated and qualified judges.
In cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, the neutral venue requirement is fulfilled	Yes. The system as a whole seems indeed to provide the necessary safeguards to guarantee all parties to the arbitration a suitable framework. Mauritius does indeed seem to be a safe and neutral seat

IV. Model clauses suggested by the institution (LCIA-MIAC)

Arbitration only:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA-MIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be [one/three]. The seat, or legal place, of arbitration shall be [City and/or Country]. The language to be used in the arbitration shall be []. The governing law of the contract shall be the substantive law of [].”

Mediation and arbitration:

“In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the LCIA-MIAC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

If the dispute is not settled by mediation within [] days of the appointment of the mediator, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA-MIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The language to be used in the mediation and in the arbitration shall be []. The governing law of the contract shall be the substantive law of []. In any arbitration commenced pursuant to this clause, (i) the number of arbitrators shall be [one/three]; and (ii) the seat, or legal place, of the arbitration shall be [City and/or Country].”

V. Bibliography

A. Legal documents

The International Arbitration Act 2008 No 37 of 2008 amended by the International Arbitration Act 2013.

The International Arbitration Act, Travaux préparatoires relating to the International Arbitration Act No 37 of 2008, prepared by the State Law Office, assisted by Messrs Salim Moollan, Toby Landau QC and Ricky Diwan.

LCIA-MIAC 2012 Arbitration Rules adopted to take effect for arbitrations commencing on or after 1 October 2012.

Supreme Court (International Arbitration Claims) Rules of 2013, Rules made by the Chief Justice, after consultation with the Rules Committee and the Judges, under section 198 of the Courts Act.

Convention on Recognition and Enforcement of Foreign Arbitral Awards Act of 2001 proclaimed on 15 March 2004.

Proclamation No 25 of 2008 published in the Government Gazette of Mauritius No 119 of 13 December 2008.

The Companies Act 2001 to amend and consolidate the law relating to companies and to provide for certain ancillary and consequential matters, Act No 15 of 2001.

The Insolvency Act 2009 to amend and consolidate the law relating to insolvency of individuals and companies and the distribution of assets on insolvency and related matters, Act No 3 of 2009.

B. Case law

Liberalis Limited and anor V Golf Development International Holdings Ltd and others, 2013 SCJ 211, SCR No 107600

Supreme Court of Mauritius, *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor*, 2014 SCJ 100, 28 March 2014

C. Doctrine and other texts

Duncan BAGSHAW, *Mauritius refines its international arbitration law*, unpublished.

Duncan BAGSHAW, *New Mauritius Supreme Court Rules to Regulated International Arbitration Matters*, unpublished.

Duncan BAGSHAW, *LCIA-MIAC Arbitration Centre, international arbitration: essential features of the law and infrastructure of Mauritius*.

Duncan BAGSHAW, “Mauritian Supreme Court Robustly Rejects Challenge to Arbitrator Jurisdiction”, in *Kluwer Arbitration Blog*, 19 July 2013.

Ricky DIWAN and Salim MOOLLAN, “The New Mauritian International Arbitration Act 2008”, in *Les Cahiers de l'Arbitrage*, 2010 Vol. 1.

Pierre LALIVE, “Mauritius: Première Conférence d'Arbitrage”, in *ASA Bulletin*, 2011 Vol. 29 Issue 1, pp. 233 and 234.

Mathieu MAISONNEUVE, “Compte rendu du colloque mauricien sur l'arbitrage international (MIAC) des 13 et 14 décembre 2010”, in *Revue de l'Arbitrage*, Vol. 2011 Issue 1, pp. 329 – 334.

Salim MOOLLAN, “Brève introduction à la nouvelle loi mauricienne sur l'arbitrage international”, *Revue de l'Arbitrage*, Vol. 2009 Issue 4, pp. 933 – 941.

Alison ROSS, “Mauritian court shows hand on enforcement”, in *GAR News* (2 May 2014).

World Bank Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises, Washington DC, World Bank Group.

2009-2013 Mauritius-Country Strategy Paper, Memorandum of African Development Bank Group, May 2009.

Mauritius – The Competitiveness and Public Sector Efficiency Programme (CPSE) – Appraisal Report of African Development Bank Group in October 2009.

Corruption Perception Index 2012 of Transparency International.

2011-2015 - Southern Africa - Regional Integration Strategy Paper of African Development Bank Group in 2011.

D. Websites

<http://www.lcia-miac.org/>

<http://www.moibrahimfoundation.org/mauritius/>

<http://www.ridaa-conference.com/>

VI. List of persons consulted

Duncan Bagshaw, Registrar of the LCIA-MIAC

Asraf Caunye, Supreme Court Justice of the Republic of Mauritius, designated to hear international arbitration matters under the IAA

David Chan Kan Cheong, Supreme Court Justice of the Republic of Mauritius, designated to hear international arbitration matters under the IAA

Salim Moollan, Barrister, Essex Court Chambers, London

Fedelma Claire Smith, Legal Counsel, PCA Representative in Mauritius

Hon. Y.K.J. Yeung Sik Yuen, Chief Justice of the Republic of Mauritius

Several practitioners practicing inside or outside of Mauritius were consulted for the purposes of preparing this Report. For confidentiality reasons their names were omitted from this Report.

APPENDIX: COMPARISON TABLES

I. Comparison of the arbitration fees of each Centre

Centre	Registration Fee	Advance on Costs	Arbitration Fees	References and Comments
CCJA Côte d'Ivoire	200,000 CFA francs (around US\$ 400/€ 300)	Determined by the CCJA Court	<p>Administrative fees: Between 500,000 and 30 million CFA francs depending on the amount in dispute (between US\$ 1,000/€ 760 and US\$ 60,000/€ 45,700).</p> <p>Fees of the arbitral tribunal: For disputes below 25 million CFA francs (around US\$ 50'000/€ 38,000), minimum 500,000 CFA francs (around US\$ 1,000/€ 760) and maximum 10% of the amount in dispute. For disputes over 5 billion CFA francs (around US\$ 10 million/€ 7,5 million) the fees are comprised between 0,01 and 0,05% of the amount in dispute.</p>	<p>CCJA Rules, Articles 11 and 24</p> <p>CCJA Decision No 004/99/CCJA of 3 February 1999 on arbitral costs</p>
CRCICA Egypt	US\$ 500 (around € 370)	Determined by the Centre	<p>Administrative fees: Between US\$ 750 and 50,000 depending on the amount in dispute (between € 550 and 37,000)</p> <p>Fees of the arbitral tribunal: For disputes below US\$ 3 million (€ 2,2 million), minimum US\$ 1,000 (€ 740) and maximum US\$ 16,000 (€ 12,000). For disputes over US\$ 3 million, minimum US\$ 17,615 (€ 13,000) + 0.263% of the amount over US\$ 3 million, and maximum US\$ 249,027 (€ 185,000) + 0.042% of the amount over US\$ 1 billion.</p>	<p>CRCICA Arbitration Rules, Articles 42-48</p> <p>Annex to the Rules detailing the administrative fees and arbitrator's fees</p>
LCIA-MIAC Mauritius	MUR 50,000 (US\$ 1,500/€ 1,200)	Determined by the LCIA Court	<p>Administrative fees: Hourly rates of the Secretariat are MUR 6,000 (US\$ 190/€ 140) for the Registrar and MUR 4,000 (US\$ 130/€ 95) for other Secretariat personnel</p> <p>Fees of the arbitral tribunal: Hourly rates of the arbitrators are to be determined in accordance with the particular circumstances of each case, maximum of MUR 20,000 (around US\$620/€475)</p> <p>LCIA-MIAC general overhead: 5% of the fees of the Tribunal (excluding expenses)</p>	<p>LCIA-MIAC Arbitration Rules, Articles 24 and 28 Schedule of Costs</p> <p>Any dispute regarding administration costs or the fees and expenses of the Tribunal shall be determined by the LCIA Court.</p>

II. Comparison of the main issues relevant for arbitration proceedings under the rules of each Centre

Centre	Rules, date	Arbitral Tribunal	Competent authority for interim measures	Average duration in practice	Remedies against the award	Enforcement
<p>CCJA</p> <p>Côte d'Ivoire</p>	<p>CCJA Rules, 1999</p>	<p>Sole arbitrator or 3-member panel, upon Parties' agreement</p> <p>Absent such agreement, the appointing authority must follow the criteria listed at Art. 3.3 and is bound by the institution's list of arbitrators</p>	<p>State Courts or President of the CCJA</p>	<p>Nine (9) months</p>	<p>The CCJA Court hears requests for annulment, <i>révision</i>, and <i>tierce opposition</i></p> <p>Following annulment, the Court can judge the dispute on the merits</p> <p>Note that the CCJA Court undertakes a formal control of the award</p> <p><i>Res judicata</i> effect in all OHADA States</p>	<p>For OHADA awards: <i>exequatur</i> by the CCJA Court; for non-OHADA awards: 1958 New York Convention</p> <p>Refusal only for the grounds listed in Art. 30.6 CCJA Rules: 1. the award was rendered although the arbitration agreement was inexistent, not valid or had expired, 2. the arbitrator did not comply with the terms of submission to arbitration, 3. in case of violation of due process, or 4. in case of violation of international public policy</p>
<p>CRCICA</p> <p>Egypt</p>	<p>CRCICA, 1979 last revised in 2010</p>	<p>Sole arbitrator or 3-member panel, upon Parties' agreement</p>	<p>The arbitral tribunal, possibility to address State Courts</p>		<p>"Nullity of the arbitration award" (annulment proceedings) may be requested for one of the following grounds:</p> <p>"1. a) If no arbitral agreement exists, or if it is void, voidable or expired; b) If at the time of entering into the arbitral agreement one of the parties thereto was minor or incapacitated pursuant to the law governing his capacity; c) If one of the parties to the arbitration was unable to present his defence because he was not properly notified of the appointment of an arbitrator or</p>	<p>The President of the Cairo Court of Appeal hears enforcement proceedings.</p>

Centre	Rules, date	Arbitral Tribunal	Competent authority for interim measures	Average duration in practice	Remedies against the award	Enforcement
					<p>of the arbitral proceedings, or for any other reason beyond his control; d) If the arbitral award fails to apply the law agreed to by the parties to the subject matter of the dispute; f) If the arbitral tribunal was constituted or the arbitrators were appointed in a manner contrary to law or to the agreement between the parties; g) If the arbitral award rules on matters not included in the arbitral agreement or exceeds the limits of such agreement. Nevertheless, if the parts of the award relating to matters which are amenable to arbitration can be separated from the parts relating to matters which are not, then nullity shall apply only to the latter parts; h) If nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award; or</p> <p>2. if its contents violate public policy in the Arab Republic of Egypt. (Art. 53 of the Arbitration Act)</p>	
<p>LCIA-MIAC Mauritius</p>	<p>LCIA-MIAC Arbitration Rules, 2012</p>	<p>Sole arbitrator or 3-member panel, upon Parties' agreement</p> <p>In case of default, an</p>	<p>LCIA Court, with possibility to address the PCA in case the request is declined</p>	<p>No case has been administered to date.</p>	<p>All hearings for arbitration-related matters held before three Designated Judges of the Supreme Court.</p> <p>Setting aside may only be granted for</p>	<p>Applications for enforcement are made to three Judges of the Supreme Court with an appeal open before the Judicial Committee of the Privy Council of England and Wales.</p> <p>Article 40 of the Mauritian Arbitration Act refers to the Foreign Arbitral</p>

Centre	Rules, date	Arbitral Tribunal	Competent authority for interim measures	Average duration in practice	Remedies against the award	Enforcement
		<p>arbitrator listed in the database is appointed, with due consideration of specific criteria: LCIA-MIAC Rules, Articles 5.4, 5.5 and 7.2.</p> <p>Origin of the sole arbitrator/chairman must be different from that of the parties, save written agreement of the parties to the contrary.</p>			<p>the grounds listed at Article 39 of the Arbitration Act of 2008:</p> <p>1. the subject matter of the dispute is not capable of settlement by arbitration under Mauritian law; 2. the award is in conflict with the public policy of Mauritius; 3. the making of the award was induced or affected by fraud or corruption; or 4. a breach of the rules of natural justice occurred during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced</p>	<p>Awards Act, under which recognition and enforcement may only be refused for the grounds listed in Article V:</p> <p>1. [...] (a) The parties to the agreement [...] were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d) The composition of the arbitral authority or the arbitral procedure was not in</p>

Centre	Rules, date	Arbitral Tribunal	Competent authority for interim measures	Average duration in practice	Remedies against the award	Enforcement
						<p>accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.</p> <p>2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.</p>

III. Table setting out the specific criteria examined for each arbitration institution and degree of fulfilment

Analysed Criteria	CCJA Côte d'Ivoire	CRCICA Egypt	LCIA-MIAC Mauritius
<p>Modern set of Rules, comparable to the standard guaranteed by the ICC, LCIA, Swiss Rules or similar modern arbitration Rules</p>	<p>Criteria fulfilled. The Rules were inspired by the ICC Rules. However, the Rules only apply if one of the Parties has its domicile/usual residence in one of the OHADA States or if the contract is enforced on such territory. No scrutiny of award.</p>	<p>Criteria fulfilled. The Rules are based on the UNCITRAL Arbitration Rules.</p>	<p>Criteria fulfilled. The Rules are based on the LCIA Rules.</p>
<p>Arbitration friendly environment at the seat of the Institution (notably regarding the laws of the seat of the Institution, if such is the place of arbitration)</p>	<p>Criteria fulfilled as long as CCJA Rules apply.</p>	<p>Criteria fulfilled. The Arbitration Law is based on the UNCITRAL Model Law, with modifications.</p>	<p>Criteria fulfilled. Modern, arbitration friendly laws inspired by the UNCITRAL Model Law; arbitration friendly State Courts</p>
<p>Arbitration friendly State Court intervention (if seat of Institution is the place of arbitration)</p>	<p>Criteria fulfilled as long as CCJA Rules apply. Very limited State Court intervention in general</p>	<p>Criteria fulfilled. The Cairo Court of Appeal has adopted a firm pro-arbitration approach, although some courts have rendered decisions which are not really supportive of arbitration.</p>	<p>Criteria fulfilled. International arbitration-related matters are heard by designated, specialised judges who express arbitration friendly views</p>
<p>Parties are free to choose the place of arbitration</p>	<p>Criteria fulfilled. However, due to the specificities of the CCJA Rules, it is recommended to choose a seat in an OHADA State. In practice, the Côte d'Ivoire is the preferred choice.</p>	<p>Criteria fulfilled.</p>	<p>Criteria fulfilled. Absent the Parties' agreement, Mauritius will be considered by default as the place of arbitration.</p>

Analysed Criteria	CCJA Côte d'Ivoire	CRCICA Egypt	LCIA-MIAC Mauritius
Autonomy of parties to select arbitrators	Criteria fulfilled. The Parties are not bound by a specific list. The list of CCJA is only applicable if the arbitrator is to be appointed by the Court	Criteria fulfilled. The parties are not bound by a specific list. If the arbitrators are to be appointed by the Institution, then they must be chosen from the panel of arbitrators of CRCICA.	Criteria fulfilled. The parties are not bound by a specific list. The LCIA-MIAC list is only applicable if the arbitrators are to be appointed by the Institution,
Open list of highly professional arbitrators	Criteria fulfilled. The selection process is transparent and follows strict guidelines; the process satisfies the expectations of a modern arbitration institution	Criteria fulfilled. The Centre holds an open list of arbitrators comprised of around 800 specialists in the field of arbitration (arbitrators, counsel, experts), from Egypt and abroad.	Criteria fulfilled. The selection process follows the requirements of LCIA and requires experience with arbitration in Africa
Good language skills (French and English) of employees of arbitration institution	Criteria not fulfilled. It is recommended to use only French as language of the arbitration.	Criteria fulfilled as regards the Centre's employees , who could administer cases in French although this is not currently done in practice. Criteria not yet fulfilled as regards the Rules. The Rules and the website are in English and Arabic, not in French.	Criteria fulfilled. Also note that the Rules are being translated into Chinese and a translation is shortly expected in Portuguese.
No impediment to enforcement	Criteria fulfilled. CCJA Court has jurisdiction to rule on the enforcement of the award inside the OHADA zone. Very limited grounds to refuse to grant <i>exequatur</i> . Easy enforcement in OHADA States even if State is not member to the New York Convention of 1958	Criteria fulfilled. Applications are made to the Cairo Court of Appeal. Very limited grounds to refuse to grant <i>exequatur</i> .	Criteria fulfilled. Applications for enforcement are made to three Judges of the Supreme Court with an appeal open before the Judicial Committee of the Privy Council of England and Wales. Very limited grounds to refuse to grant <i>exequatur</i> . Arbitration friendly system.
State Court intervention limited or representing no risk in light of the neutrality requirement	Criteria fulfilled.	Criteria fulfilled.	Criteria fulfilled. Limited State Court intervention by designated and qualified judges.

Analysed Criteria	CCJA Côte d'Ivoire	CRCICA Egypt	LCIA-MIAC Mauritius
In cases of commonality of origin between one of the parties to the arbitration (notably if it is the State party) and the State in which the Centre is located, the neutral venue is fulfilled	Yes. The participation of a State or State entity in CCJA proceedings seems to have no impact on the way the dispute will be administered by the Centre. Moreover, the State Courts are not called upon to intervene in the proceedings, as competence is exclusively given to the CCJA Court	Yes.	Yes. The system as a whole seems indeed to provide the necessary safeguards to guarantee all parties to the arbitration a suitable framework. Mauritius does indeed seem to be a safe and neutral seat

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