

CRCICA

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Cairo Regional Centre for International Commercial Arbitration

Historical background

The Cairo Regional Centre for International Commercial Arbitration (CRCICA or the Centre) is an independent non-profit international organisation established in 1979 under the auspices of the Asian-African Legal Consultative Organization (AALCO, www.aalco.int), pursuant to AALCO's decision taken at the Doha Session in 1978 to establish regional centres for international commercial arbitration in Asia and Africa with the following objectives:

- to promote international commercial arbitration in the Asian and African regions;
- to provide for arbitration under the auspices of the regional centres;
- to render assistance in the conduct of ad hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules;
- to coordinate and assist the activities of existing arbitral institutions, particularly among those within the two regions; and
- to assist in the enforcement of arbitral awards.

In 1979, an agreement was concluded between AALCO and the Egyptian government for the establishment of CRCICA for an experimental period of three years. In 1983, a further agreement was concluded between AALCO and the Egyptian government granting permanent status to CRCICA. In 1987, a headquarters agreement was concluded between AALCO and the Egyptian government, according to which CRCICA's status as an international organisation was recognised; moreover, CRCICA and its branches were endowed with all necessary privileges and immunities ensuring their independent functioning. (For more information about this agreement, CRCICA and its activities, please see www.crcica.org.eg.)

Branches and institutions established under CRCICA's auspices

CRCICA established the following branches:

- the Alexandria Centre for International Maritime Arbitration (ACIMA), 1992;
- the Alexandria Centre for International Arbitration (ASIA), 2001;
- the Mediation and Alternative Dispute Resolution Centre, 2001; and
- the Port Said Centre for Commercial and Maritime Arbitration, 2004.

A number of institutes have also been established under the auspices of CRCICA, including the Institute of Arab and African Arbitrators, 1991 and the Cairo Branch of the Chartered Institute of Arbitrators (CI Arb), 1999.

Organisation

CRCICA has a board of trustees and is headed by a director, who is assisted by an advisory committee.

The director is appointed by the board of trustees to, inter alia, head the different departments of CRCICA and handle its day-to-day management. The current director of CRCICA is Dr Mohamed Abdel Raouf.

The board of trustees is appointed in consultation with AALCO and is currently composed of 24 African and Asian specialists and experts, previously headed by Dr Esmat Abdel-Megid and currently headed by Dr Nabil Elaraby. The main tasks of the board of trustees are appointing the director of CRCICA, reviewing CRCICA's annual report presented to AALCO, and approving its strategies.

The advisory committee is appointed by the director and is currently composed of 12 members from among the members of the board of trustees in addition to other arbitration experts. The main tasks of the advisory committee are advising CRCICA with respect to the legal matters referred to in the CRCICA Arbitration Rules (eg, articles 12 and 13 concerning the removal and challenge of arbitrators).

Services

With its extensive experience and history in the field of arbitration and alternative dispute resolution (ADR), CRCICA provides a system for dispute settlement for parties engaged in trade, commerce and investment. It provides case management services and administers international and domestic arbitrations and other ADR mechanisms according to the CRCICA Rules. CRCICA also provides administrative and technical assistance to parties involved in ad hoc arbitrations. The detailed scope of services offered by CRCICA encompasses the following:

- administering domestic and international arbitrations as well as ADR techniques under its auspices;
- provision of institutional arbitration services according to its Rules or any other rules agreed upon by the parties, including the UNCITRAL Rules;
- providing advice to the disputants;
- promotion of arbitration and other ADR techniques in the Afro-Asian region through the organisation of international conferences and seminars as well as the publication of research serving both the business and legal communities;
- preparation of international arbitrators and legal scholars from the Afro-Asian region by organising training programmes and workshops in cooperation with other institutions and organisations;
- coordination with and provision of assistance to other arbitral institutions particularly those existing within the region;
- providing ad hoc arbitration with necessary technical and administrative assistance at the request of the parties;
- providing advice and assistance for the enforcement and translation of arbitral awards;
- conducting academic and practical researches and studies; and
- establishing a comprehensive library specialising in arbitration and ADR.

The CRCICA Arbitration Rules

Arbitration under the auspices of the CRCICA is of a flexible, simplified nature, allowing for expeditious and inexpensive resolution of disputes. The CRCICA Arbitration Rules grant the parties a great deal of autonomy in, inter alia, the conduct of the proceedings of arbitration, in the choice of the arbitrators, the place and language of the arbitration and the applicable laws to the dispute.

Since its establishment, CRCICA adopted, with minor modifications, the Arbitration Rules of 1976 of the United Nations Commission on International Trade Law (UNCITRAL), approved by the General Assembly of the United Nations by resolution No. 31/98 on 15 December 1976.

CRCICA has amended its Arbitration Rules in 1998, 2000, 2002, 2007 and 2011 (these amendments became effective as of 1 January 1998, 1 October 2000, 1 November 2002, 1 June 2007 and 1 March 2011, respectively). The 2007 version is available at www.crcica.org.eg/publication/arbitration_rules/pdf/English/CRCICA_Previous_arbitration_rules_en.pdf to ensure that they continue to meet the needs of their users, reflecting best practice in the field of international institutional arbitration.

The present CRCICA Arbitration Rules are based upon the new UNCITRAL Arbitration Rules, as revised in 2010, with minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority. (The present CRCICA Arbitration Rules entered into force on 1 March 2011 and are available at www.crcica.org.eg/publication/arbitration_rules/pdf/English/CRCICA_arbitration_rules_en.pdf.)

The revision of CRCICA's Arbitration Rules in 2011 builds on the amendments it has already introduced in 2007 and serves four basic purposes. First, it guarantees collegial decision-making with respect to several vital procedural matters, including the rejection of appointment, as well as the removal and the challenge of arbitrators. Second, it seeks to modernise the Rules and to promote greater efficiency in arbitral proceedings. Third, it fills in a few gaps that have become apparent over the years. Finally, it adjusts the original tables of costs to ensure more transparency in the determination of the arbitrators' fees.

Salient features of the current CRCICA Arbitration Rules

The current CRCICA Arbitration Rules give expression to CRCICA's long-standing commitment to offer users an arbitral procedure substantially modelled on the UNCITRAL Arbitration Rules and aim at confirming the Centre's position as a leading regional arbitral institution.

Section I of the Rules provides for the introduction. Articles 1 to 6 of the Rules regulate the commencement of arbitration proceedings at CRCICA including the notice of arbitration and the response to the notice of arbitration.

Article 6 of the Rules makes it possible for the Centre to decide – upon the approval of the advisory committee – not to proceed with an arbitration if it manifestly lacks jurisdiction over the dispute. Such decision will be taken *prima facie* following the respondent's response to the notice of arbitration.

Section II of the Rules regulates the composition of the arbitral tribunal. Articles 7 to 16 of the Rules address, inter alia, the number of arbitrators, method of appointment of arbitrators and the mechanism to be used in the event of removal, replacement or challenge of arbitrators.

Article 7 of the Rules retains the default position of having three arbitrators if the parties fail to agree on the use of a sole arbitrator. However, it provides more flexibility. Specifically, CRCICA may now appoint a sole arbitrator if one of the parties requests appointment of a sole arbitrator and any party fails to appoint a co-arbitrator, provided appointment of a sole arbitrator is 'more appropriate' in view of the circumstances of the case.

Pursuant to paragraph 5 of article 8 of the Rules, CRCICA may – upon the approval of the advisory committee – reject the appoint-

ment of any arbitrator due to the lack of any legal or contractual requirement or past failure to comply with his or her duties. The arbitrator in question and the parties should be given the opportunity to express their views before this decision is taken.

Article 10 of the Rules regulates the appointment of arbitrators in multiparty arbitrations. It provides that, where multiple parties are unable to agree upon the constitution of the tribunal, any party may ask CRCICA to constitute the tribunal. In such circumstances, CRCICA may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Pursuant to article 12 of the Rules, an arbitrator may – at the request of a party and by virtue of a decision from an impartial and independent tripartite ad hoc committee to be composed by CRCICA from among the members of the advisory committee – be removed in the event that it fails to act or in the event of *de jure* or *de facto* impossibility of performing its functions, or in the event that it deliberately delays the commencement or the continuation of the arbitral proceedings.

Article 13 of the Rules includes an innovation according to which a timeline is added for resolving any challenges (the former versions of the Rules had a deadline for raising a challenge but no timeline for resolution). Under the current Rules, if within 15 days the appointing party does not agree to the challenge or the challenged arbitrator does not withdraw, then the challenging party may elect to pursue its challenge. In such event, the challenge shall be finally decided by an impartial and independent tripartite ad hoc committee to be composed by the Centre from among the members of the advisory committee.

Paragraph 2 of article 14 of the Rules provides for a particularly noteworthy change. Under the said paragraph, in exceptional circumstances CRCICA can deprive a party of its right to appoint a substitute arbitrator and may either appoint the substitute arbitrator itself or, after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award. This new provision was direly needed to deal with 'strategic' resignations. It is the first time the Rules have permitted truncated tribunals.

Section III of the Rules regulates the arbitral proceedings. Paving the way for the administration of complex arbitrations, article 17 of the Rules permit the joinder of third parties to arbitrations if they are parties to the arbitration agreement.

Articles 18 to 32 regulate the procedural matters including place and language of arbitration, statements of claim and defence, their amendments and further statements, pleas as to the jurisdiction of the tribunal, periods of time, evidence, hearings, experts and interim measures.

Under article 26 of the Rules, the tribunal's powers relating to interim measures are amplified so as to include injunctive relief and preservation of evidence, set out the test for the grant of interim measures, and highlight costs and damages consequences in the event that interim measures are subsequently found to have been unjustified.

Section IV of the Rules regulates matters related to the award including its form, effect and additional awards, applicable law and the possibility to act as an *amiable compositeur*, settlement and termination of procedures, the interpretation and correction of the award as well as the confidentiality, retrieval and destruction of documents.

Article 35 of the Rules relates to the law applicable to the merits and refers to 'the rules of law' and not just 'the law' – which potentially enables the parties to specify, for example, the UNIDROIT Principles of International Commercial Contracts. The tribunal shall apply the law having the closest connection to the dispute in case the parties fail to designate the applicable law.

Section V of the Rules regulates the costs of arbitration and comprises an annex to the Rules, which includes tables of administrative and arbitrators' fees.

In the current Rules, CRCICA has implemented a significant change in the way it determines arbitrators' fees. Fees under the previous versions of the Rules were regarded as low. In their study comparing the costs of various arbitral institutions published in *Global Arbitration Review* in 2010 (www.globalarbitrationreview.com/news/article/28915/arbitration-costs-compared/), Louis Flannery and Benjamin Garel found CRCICA to be by far the most affordable of six worldwide institutions for cases of various values. In that study, CRCICA was compared with the DIAC, HKIAC, ICC, MKAS, SCC and the arbitration courts of the Swiss Chambers of Commerce. The fees have now been increased to show more respect to the legitimate expectations of parties and arbitrators.

The current Rules abolish the impractical distinction between fees in international and domestic cases. They also clarify that the sum in dispute, based on which both administrative and arbitrators' fees are determined, shall be the aggregate value of all claims, counterclaims and set-offs. They also fix ascending flat rate fees for disputes under US\$3 million in value, and allow CRCICA more discretion to determine fees for disputes of greater value, within certain boundaries. An arbitration costs calculator is now available on the Centre's website (www.crcica.org.eg/feescalculator.html).

CRCICA hopes that the new section on costs will help to attract more cases of all sizes, while not depriving the parties of their right to select the best international arbitrators. It is worth noting that one of the two authors of the above-mentioned study calls the adoption by the Centre of the new costs schedules a 'smart move' that will not deter current users of the Centre and 'will certainly persuade more arbitrators to accept appointments, which, in the mid- and long term, will help the Centre's image and reputation.' After updating his costs comparisons tables to factor in the changes to CRCICA's costs regime, the author concludes that the Centre remains the least expensive institution for smaller disputes (from US\$100,000 to US\$1 million in value) and that it is also the least expensive institution for cases in the US\$500 million to US\$1 billion range, although significantly more expensive than it used to be. He also considers the costs in mid-size cases to be 'in the same range as its most affordable competitors.' (see *Global Arbitration Review*, www.globalarbitrationreview.com/news/article/29328/all-change-cairo/.)

Below are three examples for the results given by the calculator for three different sums in dispute:

- US\$3,000,000 with a sole arbitrator:
 - administrative fees: US\$9,000
 - arbitrator's fees: US\$16,000
 - total: US\$25,000
- US\$5,000,000 with a tribunal of three arbitrators:
 - administrative fees: US\$13,000
 - tribunal's fees: minimum: US\$68,625, average: US\$184,503, maximum: US\$300,381
 - total based on minimum tribunal's fees: US\$81,625
- US\$25,000,000 with a tribunal of three arbitrators:
 - administrative fees: US\$24,500
 - tribunal's fees: minimum: US\$102,375, average: US\$287,253, maximum: US\$472,131
 - total based on minimum tribunal's fees: US\$126,875

The current version of the CRCICA Rules has thus far received a very positive appraisal. They were considered in the *Journal of Arab Arbitration* as 'modern and competitive' and an important step forward for CRCICA that will 'serve to increase its regional and international presence' as they 'distinguish the institution from its competitors' (Caline Mouawad and Rocio Digon, 'Modern and Competitive: The New CRCICA Rules', *International Journal of Arab Arbitration*, Vol 3, No. 1-2011, pp 17-24).

The Arabic version of the new CRCICA Arbitration Rules is neither a replica of the UNCITRAL's Arabic version nor a mere translation of the English version, but rather another original version of the Rules applicable to proceedings conducted in the Arabic language.

The time spent by CRCICA in selecting the right legal term, the correct verb and the most commonly used legal Arabic will soon make this version very popular among other Arab-speaking countries.

CRCICA's recent caseload

The total number of arbitration cases filed before CRCICA until the end of 2011 was 792 cases. In 2011, 66 new arbitration cases were filed before CRCICA, including 19 international cases against 16 cases in 2010, scoring as such a 19 per cent annual increase. In 2010, 66 new arbitration cases were filed before CRCICA against 51 cases in 2009, scoring a 30 per cent annual increase.

The average number of cases filed before CRCICA annually is 50 cases. The average period in which a case is concluded is 18 months.

In 2011, CRCICA cases involved disputes relating to construction, supply, media and entertainment, sale and purchase of shares, telecommunications, subcontracting agreements, agency agreements, consultancy agreements, escrow agencies, hotel management, payment of corporate debts, international sale of goods, shareholders' agreements, real estate, mergers and acquisitions, attorneys' fees, promissory notes, gas supply, food catering agreements, import of liquid commercial butane, Islamic finance, lease of construction equipment, management of financial portfolios, management of restaurants, mining and exploration concessions, privatisation, services, sports-related and turnkey construction.

The following table shows a breakdown of the types of disputed contracts during 2011.

| Types of disputed contracts | Number of cases | Percentage |
|------------------------------------|-----------------|------------|
| Construction | 12 | 17.9% |
| Supply | 6 | 9% |
| Media and entertainment | 5 | 7.5% |
| Sale and purchase of shares | 5 | 7.5% |
| Telecommunications | 5 | 7.5% |
| Subcontracting agreements | 3 | 4.5% |
| Agency agreements | 2 | 3% |
| Consultancy agreements | 2 | 3% |
| Escrow agencies | 2 | 3% |
| Hotel management | 2 | 3% |
| Payment of corporate debts | 2 | 3% |
| International sale of goods | 2 | 3% |
| Shareholders' agreements | 2 | 3% |
| Real estate | 2 | 3% |
| Mergers and acquisitions | 1 | 1.5% |
| Attorneys' fees | 1 | 1.5% |
| Promissory notes | 1 | 1.5% |
| Gas supply | 1 | 1.5% |
| Food catering agreements | 1 | 1.5% |
| Import of liquid commercial butane | 1 | 1.5% |
| Islamic finance | 1 | 1.5% |
| Lease of construction equipment | 1 | 1.5% |
| Management of financial portfolios | 1 | 1.5% |
| Management of restaurants | 1 | 1.5% |
| Mining and exploration concessions | 1 | 1.5% |
| Privatisation | 1 | 1.5% |
| Services | 1 | 1.5% |
| Sports-related | 1 | 1.5% |
| Turnkey construction | 1 | 1.5% |

In 2011, the parties were from Egypt, Lebanon, Saudi Arabia, the UK, British Virgin Islands, Kuwait, the US, Norway, Cyprus, Germany, Sweden, Jersey, Greece, Qatar, Jordan and Luxembourg.

The following table shows a breakdown of the nationalities of non-Egyptian parties during 2011.

| Nationalities | Number of parties | Percentage |
|------------------------|-------------------|------------|
| Lebanon | 3 | 13.6% |
| Saudi Arabia | 3 | 13.6% |
| United Kingdom | 2 | 9.1% |
| British Virgin Islands | 2 | 9.1% |
| Kuwait | 2 | 9.1% |
| United States | 1 | 4.5% |
| Norway | 1 | 4.5% |
| Cyprus | 1 | 4.5% |
| Germany | 1 | 4.5% |
| Sweden | 1 | 4.5% |
| Jersey | 1 | 4.5% |
| Greece | 1 | 4.5% |
| Qatar | 1 | 4.5% |
| Jordan | 1 | 4.5% |
| Luxembourg | 1 | 4.5% |

In 2011, arbitrators acting under the auspices of CRCICA came from Egypt, Lebanon, Canada, France, Syria, Columbia, Belgium, the Netherlands, Switzerland and Germany.

Panels of international arbitrators and experts

CRCICA maintains two panels of international arbitrators and experts that include eminent personalities from all over the world. The panel of arbitrators currently includes 664 names out of which 407 are Egyptians and Arabs and 257 are non-Egyptians and non-Arabs. Various specialisations are represented in CRCICA's panels, which allow the parties a wide range of freedom for the selection of their arbitrators or experts according to the nature of the dispute. The parties are not, however, obliged to appoint their arbitrators or experts from such panels, while CRCICA is bound to appoint from the panels when exercising its role as appointing authority under its Rules.

Alternative dispute resolution (ADR)

In 1990, CRCICA issued the ADR Rules including rules on conciliation, mini-trials and claims review board. Subsequently, CRCICA established a Mediation and ADR Centre in 2001.

By issuing the ADR Rules and establishing the Mediation and ADR Centre, CRCICA founded an international institutional infrastructure for mediation and ADR in the region. CRCICA's prime priority in that regard is to maintain a reliable and well-established regional mechanism for the due processing of mediation and ADR techniques. This has been insinuated by the increasing global importance of mediation and the relative need of individual as well as institutional mediation capacity-building on the regional level.

CRCICA encourages parties to consider mediating or conciliating their disputes before resorting to arbitration. Nonetheless, the numbers of CRCICA mediation and conciliation cases remain limited. Therefore, in 2009, CRCICA entered into a cooperation agreement with the International Finance Corporation (IFC) (a member of the World Bank Group) for a joint ADR Project, the IFC Mediation Project. The main objectives of the IFC Mediation Project are promoting Egypt's capacity as a regional centre of excellence for commercial mediation training and strengthening the mediation culture and demand necessary to support a regional ADR initiative; and operationalising the practice of commercial mediation as an effective alternative method of resolving commercial disputes in Egypt.

Training, conferences and seminars

CRCICA has developed one of the most authoritative and methodological mechanisms for the organisation of international conferences, seminars and training programmes in the region. The seminars and conferences are organised by CRCICA solely or by CRCICA in cooperation with various prominent organisations including the UNCITRAL, UNIDROIT, UNCTAD, WTO, the World Bank, OECD and WIPO. The seminars and conferences are usually held to address and discuss emergent issues related to arbitration, ADR, trade and investment.

As for the CRCICA training programmes, CRCICA offers training for arbitrators including training held in cooperation with the Cairo Branch of the Chartered Institute of Arbitrators (CI Arb) and the Queen Mary University of London, School of International Arbitration (SIA). CRCICA also offers continuing legal education programmes for young lawyers, including programmes held in cooperation with the American Bar Association (ABA), Rule of Law Initiative. CRCICA is also very active in offering training for judges, administrators and business people from countries inside and outside the region, including Uzbekistan, Iraq and Albania.

In addition, CRCICA holds mediation conferences and training courses. Previous courses were held in cooperation with, inter alia, the German Arab Chamber of Industry and Commerce, the

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CIArb and the Centre for the Study of the United Nations System and the Global Legal Order (SUNSGLO). Moreover, CRCICA has been selected as a local partner for the IFC to build local capacities and train mediators. IFC/CRCICA cooperation is seen to be highly instrumental in qualifying professional mediators and building a sound mediation culture in Egypt and neighbouring countries.

In addition to the above activities, CRCICA collaborates with and advises several countries in the region on drafting arbitration laws and establishing arbitral institutions. The latest collaboration in this field relates to consultations on Iraq's draft law on arbitration.

Future CRCICA events in 2012 shall include:

- the third official meeting of the Institute for the Promotion of Arbitration and Mediation in the Mediterranean (ISPRAMED), April 2012, Cairo, Egypt;
- a conference on the Independence and Impartiality of Arbitrators, to be held on the occasion of the third ISPRAMED meeting, April 2012, Cairo, Egypt;

- CRCICA's Four-Module Arbitration Training Round 2012; and
- CRCICA's conference, which takes place every two years, Sharm El Sheikh IV: The Role of State Courts in Arbitration, November 2012, Sharm El Sheikh, Egypt.

Recent publications

CRCICA publishes a newsletter, a biannual journal on Arab arbitration as well as other books and articles.

Recent books related to CRCICA include books titled *CRCICA Arbitral Awards, Volume 2* (2010) and *CRCICA Arbitral Awards, Volume 3* (2011) both books are prepared in Arabic by Dr Mohi-Eldin Alam Eldin, CRCICA's senior legal adviser; as well as a book titled *Construction Arbitral Awards rendered under the Auspices of CRCICA* (2010) compiled and commented on by Dr Mohi-Eldin Alam Eldin and published by Lambert Academic Publishing.

As for journals, CRCICA issued volumes 14, 15 and 16 of the *Journal of Arab Arbitration* (2010–2011).