

Egypt: Legal Framework for Arbitration

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Egypt: Legal Framework for Arbitration

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SUMMARY Arbitration is becoming an increasingly important means of settling investment and commercial disputes in Egypt. The promulgation of Arbitration Law No. 27 of 1994 was a milestone in providing a comprehensive framework for the arbitration process in the country. The Law provides for the rules governing the formation and validity of arbitration agreements, arbitrability of legal disputes, composition of the arbitral tribunal, arbitral proceedings, and enforcement of an arbitral award. Judicial precedents of the Supreme Constitutional Court and the Court of Cassation have played an important role in supplementing the provisions of the Arbitration Law.

Although the Arbitration Law is the primary source for regulating the extrajudicial dispute resolution mechanism, the country's unrest over the past three years spurred the introduction of other quicker and more flexible mechanisms for the settlement of investment disputes. Egypt has also acceded to several international conventions governing the arbitral process, the provisions of which have been incorporated into the country's national legal system.

I. Introduction

Although the judiciary has traditionally been regarded as the primary and sometimes exclusive forum for the settlement of legal disputes in Egypt, the country's judicial system has become increasingly overloaded over the past few decades, rendering it incapable of keeping up with the swift pace of modern business transactions. Furthermore, the technicalities involved in many modern investment disputes have prevented state courts from issuing informed and timely decisions in these kinds of cases. These drawbacks for the conventional judicial system, coupled with the desire of investors to preserve confidentiality regarding their disputes and to have a say in the composition of settlement tribunals, spurred the Egyptian legislature to take a fundamental step towards encouraging arbitration as a parallel route for settling disputes, especially those disputes related to investment and commerce, with the promulgation of Law No. 27 of 1994 on Arbitration in Civil and Commercial Matters (Arbitration Law). The Law establishes an overarching framework authorizing and regulating arbitration as the main alternative dispute resolution mechanism in Egypt.¹

While the Arbitration Law stands as the primary source of procedural rules governing arbitration in Egypt, a comprehensive overview of the legal framework that governs arbitration in Egypt also requires an examination of relevant judicial decisions by the Supreme Constitutional Court

¹ Law No. 27 of 1994 (Arbitration in Civil and Commercial Matters), *al-Jarīdah al-Rasmīyah*, vol. 16, 21 April 1994, English translation incorporating 1997 amendments available at <http://www.crcica.org.eg/LawNo271994.pdf>.

and the Court of Cassation as a secondary source of law regarding these rules. Additionally, some investor-state disputes in Egypt are governed by other decrees, issued in the wake of what has become widely known as the 2011 revolution, that establish an extraordinary means for settling investment disputes, with the aim of encouraging international investors to remain in the Egyptian market. Finally, the international character of arbitration as a dispute resolution mechanism dictates a brief overview of the relevant international arbitration agreements to which Egypt is a signatory and their application in the Egyptian legal system.

This report briefly explores this legal framework and introduces the reader to the basics that govern arbitration procedures in Egypt, which are more or less in conformity with the prevailing international standards.

II. Arbitration Law

The Arbitration Law lays down the procedural rules that govern the arbitration process in Egypt. Based primarily on the UNCITRAL Model Law on International Commercial Arbitration,² the Arbitration Law is in harmony with prevailing international standards of arbitration. However, the Egyptian approach to arbitration includes the following specific rules that merit special emphasis.

A. Applicability

Article 1 of the Arbitration Law states that the Law applies to any arbitration proceedings taking place in Egypt, or international commercial arbitrations taking place outside of Egypt if the parties involved have agreed to subject their proceedings to the Egyptian law as *lex arbitri*.

In 1997, article 1 of the Arbitration Law was amended to condition the validity of any arbitration clause in a government contract upon the express approval of the concerned minister or head of governmental agency.³ That is, an arbitration clause in a government contract concluded between a government agency and a private person is effective only upon the approval of the concerned minister, or the head of the contracting agency where the agency is not subject to a specific minister. An exception to this ministerial approval requirement can be found in Law No. 67 of 2010 Regulating Public-Private Partnerships (PPP).⁴ Although PPP contracts usually qualify as government contracts, article 35 of the PPP Law explicitly authorizes arbitration clauses in PPP contracts subject to the approval of the Supreme Committee for PPP Affairs created by the PPP Law.

² UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, Annex I (June 21, 1985), as amended (July 7, 2006), http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html. The Model Law was adopted with a view to unifying the procedures that govern commercial arbitration throughout the world.

³ Law No. 9 of 1997 (Amending Some Provisions of the Arbitration Law), *al-Jarīdah al-Rasmīyah*, vol. 20, 15 May 1997.

⁴ Law No. 67 of 2010 (Private Sector Participation in the Infrastructure and Public Utilities Projects), *al-Jarīdah al-Rasmīyah*, vol. 19 (duplicate A), 18 May 2010.

B. Egyptian Law's Skepticism Toward Arbitration

Perceiving arbitration as an unconventional means of settling disputes within the Egyptian legal system, Egypt's legislature has been skeptical about surrendering the traditional jurisdiction of the state courts to newly-organized arbitral tribunals. This skepticism is directed at (1) the requirements applicable to arbitration agreements, (2) the types of legal disputes that may be encompassed under arbitration agreements, and (3) the rules that govern the mutual exclusivity of arbitration proceedings and state courts as parallel routes for settling legal disputes.

As for the validity requirements, article 12 of the Arbitration Law dictates that an arbitration agreement must be in writing, meaning that it must be contained in a document signed by both parties or in mutual written correspondence between the parties, and both parties must have full legal capacity. While the Arbitration Law allows the arbitration clause to be entered into either before or after a dispute arises, article 10 does not permit the incorporation of an arbitration clause by reference to another agreement containing the arbitration clause, unless this reference is unequivocally clear in incorporating the arbitration clause. A mere reference to another agreement to incorporate its provisions is generally insufficient to incorporate an arbitration clause.

As for the arbitrability of legal disputes, article 11 of the Arbitration Law establishes the general rule that matters not subject to compromise are nonarbitrable. In the application of this rule, arbitration cannot be the forum for settling disputes arising, *inter alia*, out of constitutional issues, criminal law violations, domestic relations, or personal affairs.⁵ In 2008, the Minister of Justice issued Ministerial Decree No. 8310 of 2008,⁶ which excludes from the scope of arbitrability any legal disputes relating to any right concerning real estate, including any dispute relating to the possession, ownership, or severance of real estate, or any dispute that otherwise relates to real estate. This Ministerial Decree significantly narrowed the scope of arbitrability under Egyptian law and it became unclear whether its scope encompasses disputes that relate to real estate but have conventionally been arbitrable, such as those relating to hotel management. Therefore, the decree was amended in October 2011 to refer solely to the provisions of the Arbitration Law in determining the arbitrability of legal disputes.⁷

The arbitrability of disputes arising out of government contracts has, however, become complicated since the issuance of the 2014 Constitution in Egypt. The current Constitution requires the submission of any administrative dispute to the exclusive jurisdiction of the State Council.⁸ The State Council's exclusive jurisdiction may cast some doubts on the arbitrability of

⁵ Law No. 131 of 1948 (Civil Code), art. 551, *al-Jarīdah al-Rasmīyah*, vol. 108, 29 July 1948, provides that “No compromise shall be held in an issue relating to personal affairs or a matter of public policy.” Moreover, the settlement of domestic relations disputes is governed by a distinct religious scheme regulated by Domestic Relations Law No. 29 of 1925, as amended by Law No. 100 of 1985 (Amending the Domestic Relations Law), *al-Jarīdah al-Rasmīyah*, 4 July 1985.

⁶ Ministerial Decree No. 8310 of 2008 (Regulating the Procedures for the Deposit of the Arbitral Award), *al-Waqā'i' al-Miṣrīyah*, vol. 230, 7 October 2008.

⁷ Ministerial Decree No. 9739 of 2011 (Amending the Ministerial Decree Regulating the Procedures for the Deposit of the Arbitral Award), *al-Waqā'i' al-Miṣrīyah*, vol. 236, 15 October 2011.

⁸ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 January 2014, art. 190.

disputes arising out of government contracts including, most notably, project contracts concluded between the granting authority and the project company pursuant to the PPP Law, as such disputes are administrative in nature.

With regard to the Egyptian legislature's skepticism toward arbitration in connection with the rules governing the mutual exclusivity between arbitration and the judiciary (that is, the rules favoring one form over the other where both arbitration and litigation come into play), article 13 of the Arbitration Law directs a court of law to dismiss a lawsuit that concerns a dispute subject to an arbitration clause if the respondent requests the dismissal of the case before any other substantive pleading is submitted before the court

C. Arbitral Tribunals and Proceedings

An arbitral tribunal must be composed of an odd number of arbitrators.⁹ In the absence of a specific agreement to the contrary, a tribunal will be made up of three arbitrators, with the claimant and respondent appointing one arbitrator each, and the two appointed arbitrators then appointing the third and presiding arbitrator.¹⁰ Should a party fail to appoint its arbitrator, or the two appointed arbitrators fail to agree on the appointment of the presiding arbitrator, the competent court must step in and appoint the arbitrator(s). The competent court is the court that would have had original jurisdiction over the dispute according to the applicable rules of civil procedure had the dispute not been subject to arbitration. However, in the case of international commercial arbitration, the competent court is presumed to be the Cairo Court of Appeal.¹¹

The Arbitration Law does not require the arbitrator to hold a law degree or any academic qualifications. However, an arbitrator cannot be a minor, under guardianship, or deprived of his civil rights by reason of a judgment against him for a felony or misdemeanor due to dishonesty or a declaration of bankruptcy, unless his civil status has been restored. Unless otherwise agreed by the parties, an arbitrator can be of any nationality or gender.¹²

An arbitrator may be disqualified only in circumstances that give rise to serious doubts about his impartiality or independence.¹³ Until 2000, the Arbitration Law authorized the arbitral tribunal to rule on a disqualification request submitted by either party challenging the impartiality or independence of an arbitrator. However, in November 1999, the Supreme Constitutional Court declared unconstitutional an arbitral tribunal's authority to rule on claims challenging the independence and impartiality of its members.¹⁴ Therefore, the Arbitration Law was amended in

⁹ Law No. 27 of 1994 (Arbitration in Civil and Commercial Procedures) art. 15, *al-Jarīdah al-Rasmīyah*, vol. 16, 21 April 1994.

¹⁰ *Id.* art. 17.

¹¹ *Id.* art. 9.

¹² *Id.* art. 16.

¹³ *Id.* art. 18.

¹⁴ Al-Maḥkamah al-Dustūrīyah al-‘Ulyā [Supreme Constitutional Court], Case No. 84, session of 19 November 1999, year 19.

April 2000 to give the authority to the competent court to rule on these disqualification challenges.¹⁵

Absent an agreement to the contrary, arbitral proceedings commence on the date the respondent receives the request for arbitration from the claimant.¹⁶ Usually, the request for arbitration includes the requests of the claimants, a brief statement of the factual and legal bases of the claims, reference to the arbitration agreement according to which the arbitration is initiated, and nomination of the claimant's arbitrator, as per the terms of the arbitration agreement. Subsequently, the claimant is required to serve on the respondent a statement of claim detailing the facts of the case, the determination of the points at issue in the dispute, and the relief or remedy sought. Within a time frame specified by the arbitral tribunal or agreed upon between the parties, the respondent serves the claimant with a statement of defense detailing its factual and legal defenses to the claims and, if applicable, any counterclaims it may have against the claimant.¹⁷

Once the arbitral proceedings have commenced, the arbitral tribunal must render its final award within the period agreed upon by the two parties. In the absence of such an agreement, the award must be made within twelve months of the date of commencement of the arbitral proceedings. In all cases, the arbitral tribunal may decide to extend the period of time, provided that the period of extension does not exceed six months, unless the two parties agree on a longer period.¹⁸ Failure to observe this maximum time limit entitles each party to resort to the competent court to request a termination of the arbitral proceedings, which will bring the dispute under the jurisdiction of the competent court.¹⁹

D. Enforcement of Arbitral Award

Once the arbitral tribunal renders its award, the award is final, and the dispute may not be reviewed by or relitigated before state courts.²⁰ However, the party against whom the award has been issued may request that the award be declared null and void.²¹ Article 53 of the Arbitration Law provides that an arbitral award may only be annulled if:

¹⁵ Law No. 8 of 2000 (Amending Some Provisions of the Arbitration Law), *al-Jarīdah al-Rasmīyah*, vol. 13, 4 April 2000.

¹⁶ Law No. 27 of 1994 art. 27.

¹⁷ *Id.* art. 30.

¹⁸ *Id.* art. 45.

¹⁹ *Id.*

²⁰ *Id.* art. 52.

²¹ *Id.*

- The award was based on an invalid arbitration agreement;
- 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;
- Either party was denied the opportunity to properly present its case before the tribunal;
- The arbitral award failed to apply the law agreed upon by the parties (and care should be taken to ensure that a claim of failure to apply the law agreed upon by the parties does not encompass a claim of misapplication of that law);
- The composition of the arbitral tribunal or the appointment of the arbitrators was in conflict with the Arbitration Law or the parties' agreement;
- The arbitral award dealt with matters not falling within the scope of the arbitration agreement or exceeded the limits of this agreement; or
- The arbitral award or award-related procedures contain a legal violation causing nullity.

It is worth noting that if the party claiming the annulment fails to object to the arbitral tribunal's ruling on matters outside the scope of the arbitration clause on a date not later than that of the submission of its statement of defense, this failure will be deemed as implied acceptance of the tribunal's jurisdiction to rule on those matters, and the party will not be allowed to subsequently request the setting aside of the award on that basis.²²

Finally, a court adjudicating the action for annulment must *ipso jure* annul an arbitral award if it is in conflict with Egyptian public policy.²³ Rules of public policy the violation of which voids an arbitral award must be overriding, mandatory rules that significantly affect the country's public policy—a standard that is not easy to meet.

The party seeking to enforce an arbitral award must first resort to the competent court to request an *exequatur* (i.e., leave for enforcement). An *exequatur* will be granted once the court satisfies itself that the award is not null or void pursuant to article 53, does not contradict a judgment previously rendered by the Egyptian Courts on the subject matter in dispute, and was properly notified to the party against whom it was rendered.²⁴ Although article 58 previously immunized from appeal the court order granting an *exequatur*, but not the order denying it, this provision was rendered unconstitutional by the Supreme Constitutional Court in January 2001, and therefore orders granting and denying an *exequatur* are equally subject to appeal.²⁵

III. Judicial Influence on Arbitration Rules

²² *Id.* art. 22.

²³ *Id.* art. 53(2).

²⁴ *Id.* art. 58.

²⁵ Al-Maḥkamah al-Dustūrīyah al-‘Ulyā [Supreme Constitutional Court], Case No. 92, session of 19 January 2001, year 21.

Being a civil law system based primarily on a philosophy of legal codifications, judicial precedents do not generally serve as a primary source of law in Egypt. Although judicial precedents of the Court of Cassation enjoy a high degree of persuasive effect, they do not have a *de jure* binding effect on lower courts, which are generally bound only by codified laws duly issued by the legislature. Conversely, when the Supreme Constitutional Court sets aside a law as unconstitutional, that law will be considered invalid as of the date of the publication of the Court's judgment, and therefore courts are bound by this judgment and may not continue applying the law any further.²⁶

In light of these facts, judicial influence over the legal framework for arbitration in Egypt can be viewed from two perspectives: (1) the binding judgments of the Supreme Constitutional Court regarding the constitutionality of the provisions of the Arbitration Law, and (2) the persuasive judicial precedents of the Court of Cassation establishing judicial principles in connection with the application of the Arbitration Law.

As mentioned above (see Part II(C) and (D)), the Supreme Constitutional Court has set aside two provisions of the Arbitration Law for being unconstitutional. In November 1999, the Supreme Constitutional Court set aside the first provision of article 19 of the Arbitration Law, which allowed an arbitral tribunal to decide on requests for the disqualification of any of its members.²⁷ In January 2001, the Court also set aside the third provision of article 58 of the Arbitration Law insofar as it immunized the decision of the competent court granting an *exequatur* from appeal.²⁸

The Court of Cassation has also established several judicial principles in connection with the application of the Arbitration Law, which are consistently followed by lower courts. For instance, in 1998, the Court of Cassation established the principle that the reasoning of the arbitral award is not related to the public order and hence, the parties can agree beforehand to discharge the arbitral tribunal from issuing its award, and in any case, the lack of reasoning in an arbitral award may not be invoked for the first time to support a challenge before the Court of Cassation.²⁹ The Court of Cassation has also ruled that an arbitration agreement must be deemed valid and effective in excluding the jurisdiction of national courts to decide on disputes even if the agreement does not provide the names of the arbitrators.³⁰ In addition, the Court has held that, when deciding on a request for an *exequatur*, the competent court may not reconsider matters subject to the substantive discretion of the tribunal or the fairness of its award.³¹

IV. Other National Frameworks for Arbitration

²⁶ Law No. 48 of 1979 (Establishing the Supreme Constitutional Court Law) art. 49, *al-Jarīdah al-Rasmīyah*, vol. 36, 6 September 1979.

²⁷ Al-Maḥkamah al-Dustūrīyah al-‘Ulyā , Case No. 84, session of 19 November 1999, year 19.

²⁸ Al-Maḥkamah al-Dustūrīyah al-‘Ulyā [Supreme Constitutional Court], Case No. 92.

²⁹ Maḥkamat al-Naqd [Court of Cassation], Petition No. 5539, session of 11 July 1998, year 66.

³⁰ Maḥkamat al-Naqd, Petition No. 2660, session of 27 March 1996, year 59.

³¹ *Id.*

Although the Arbitration Law stands as the primary legislative source for extrajudicial forums or alternative dispute resolution mechanisms in Egypt, Egypt has recently pursued various additional frameworks to accelerate the settlement of investment disputes between the state and investors. These frameworks were primarily motivated by the desire to provide confidence in the Egyptian economy, especially following the adverse economic consequences of the 2011 revolution.

Hence, in October 2012, the Prime Minister issued Decree No. 1067 of 2012,³² providing for the creation of a settlement committee charged with providing recommendations for settling investment disputes over contracts entered into between investors and any governmental entity. As this function does not affect the original jurisdiction of state courts or an arbitral tribunal to decide disputes,³³ the settlement committee can hardly be classified as a parallel forum for the settlement of investment disputes. At the same time, the Prime Minister issued Decree No. 1115 of 2012,³⁴ which provides for the constitution of a settlement committee similar to the committee created by Decree No. 1067 of 2012, with two exceptions: First, unlike the Decree No. 1067 committee, the Decree No. 1115 committee is not limited in its jurisdiction to contractual disputes between investors and government agencies; rather, its jurisdiction encompasses any investor-state dispute, regardless of the applicable cause of action. Secondly, the recommendations issued by the Decree No. 1115 committee constitute general principles that must be followed by state agencies in similar instances.³⁵

V. New York Convention and ICSID

Considering the international nature of arbitration as a mechanism for settling legal disputes, the legal framework that governs international arbitration in Egypt is relevant from two main perspectives. First, the recognition and enforcement of foreign arbitral awards in Egypt, as well as the foreign recognition and enforcement of arbitral awards rendered in Egypt, is, for the most part, governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention).³⁶ Secondly, the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 (the ICSID Convention)³⁷ provided for the establishment of the International Centre for Settlement of Investment Disputes (ICSID) as a member of the World Bank Group, which stands as the primary venue for the settlement of investment disputes between a member state and nationals of other member states.

³² Prime Ministerial Decree No. 1067 of 2012, *al-Jarīdah al-Rasmīyah*, vol. 44, 1 November 2012.

³³ *Id.* art. 2.

³⁴ Prime Ministerial Decree No. 1115 of 2012, *al-Jarīdah al-Rasmīyah*, vol. 44, 1 November 2012.

³⁵ *Id.* art. 4.

³⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), June 10, 1958, 21 U.S.T. 2517, T.I.A.S. 6997, 330 U.N.T.S. 3, <http://www.newyorkconvention.org/texts>.

³⁷ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. 6090, 575 U.N.T.S. 159, 4 I.L.M. 524 (1965), <https://icsid.worldbank.org/ICSID/ICSID/RulesMain.jsp>.

Egypt ratified the New York Convention in February 1959.³⁸ Pursuant to article 151 of the Egyptian Constitution, international conventions have the force of law upon ratification by the Parliament. Accordingly, the substantive provisions of the New York Convention are directly binding on Egyptian courts. In March 1999,³⁹ the Court of Cassation confirmed that the substantive provisions of the New York Convention are automatically incorporated into the Egyptian legal system, even if they contradict other legislative provisions in Egypt. Based on that premise, the Court of Cassation confirmed a lower court's refusal to apply article 43, paragraph 1⁴⁰ of the Arbitration Law when considering the recognition of a foreign arbitral award on the basis that such a provision is not stipulated in the New York Convention.⁴¹

Likewise, Egypt ratified the ICSID Convention in November 1971.⁴² According to article 25 of the ICSID Convention, ICSID jurisdiction extends to any legal dispute between a contracting state (including Egypt and 158 other states) and a national of another contracting state that arises directly out of an investment, if the parties to the dispute have consented in writing to submit to the ICSID. Egypt has followed the international trend of entering into Bilateral Investment Treaties (BITs) with other countries, whereby countries consent to the jurisdiction of the ICSID to rule on their investment disputes with nationals of other BIT-signatory states.

According to statistics published in 2012, Egypt ranked third (with seventeen cases) among the countries most frequently appearing as respondents before the ICSID, following Argentina and Venezuela.⁴³ For example, in July 2009, California-based H&H Enterprise Investment (H&H) brought ICSID proceedings against Egypt pursuant to the US-Egypt BIT. In May 2014, the ICSID rejected most of H&H's claims on a jurisdictional basis—that is, the ICSID viewed the “fork-in-the-road” provisions provided for in the US-Egypt BIT as preventing an investor who has pursued specific dispute-resolution proceedings from relitigating the dispute a second time in different dispute-resolution proceedings.⁴⁴ In a second ICSID ruling in Egypt's favor issued in April 2014, the ICSID tribunal declined jurisdiction to hear the case “due to [the] lack of foreign control of [the] ICSID claimant [National Gas].”⁴⁵

³⁸ Presidential Decree No. 171 of 1959 (Acceding to the New York Convention), *al-Jarīdah al-Rasmīyah*, vol. 27, 14 February 1959.

³⁹ Maḥkamat al-Naqq, Petition No. 10350, session of 1 March 1999, year 65.

⁴⁰ “The arbitral award shall be made in writing and shall be signed by the arbitrators. If the arbitral tribunal consists of more than one arbitrator, the signatures of the majority of the arbitrators shall suffice, provided that the award states the reasons for which the minority did not sign.” Law No. 27 of 1994 (Arbitration Law) art. 43(1), *as translated by CRCICA*.

⁴¹ Petition No. 10350, *supra* note 39.

⁴² Law No. 90 of 1971 (Acceding to the ICSID Convention), *al-Jarīdah al-Rasmīyah*, vol. 45, 11 November 1971.

⁴³ Inna Uchkunova, *ICSID: Curious Facts*, KLUWER ARBITRATION BLOG (Oct. 25, 2012), <http://kluwerarbitrationblog.com/blog/2012/10/25/icsid-curious-facts/comment-page-1>.

⁴⁴ Craig Tevendale & Jennifer Hartzler, *Egypt Prevails on “Fork-in-the Road” Provision*, ARBITRATION NOTES (Herbert Smith Freehills LLP, June 6, 2014), <http://hsfnotes.com/arbitration/2014/06/06/egypt-prevails-on-fork-in-the-road-provision>.

⁴⁵ Case Synopsis, *National Gas v. Egypt Award*, April 17, 2014 (Vol. 7, No. 9), INVESTMENT ARBITRATION REPORTER, <http://peterson.live.subhub.com/categories/PDF2014> (decision downloadable by subscription).

VI. Conclusion

The provisions of Egypt's Arbitration Law provide a relatively simple and straightforward framework for arbitration in Egypt, which harmonizes to a large extent with the prevailing international standards contained in the UNCITRAL Model Rules of International Commercial Arbitration. Seen as a more effective, expeditious, and flexible mechanism for settling investment disputes, arbitration has increasingly been used as a means for settling investment disputes in Egypt.

Events that ensued following the 2011 revolution have profoundly affected the arbitration process in Egypt from both a legal and factual perspective. From a legal perspective, one can argue that the drafting of the new Egyptian Constitution has prevented arbitration in connection with government contracts because it entrusts the State Council with exclusive jurisdiction over these disputes. Moreover, post-2011 events have motivated the Egyptian government to constitute more flexible and expeditious forums for settling investor-state disputes. From a factual perspective, the economic difficulties that Egypt has encountered since 2011 have rendered Egypt more susceptible to international claims before the ICSID.