



## Studying the Impact of International Arbitration on Foreign Tourism Investments in Egypt

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### Abstract

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The concept of international arbitration in investment management, which seeks to achieve the goal of continuity in the world of competition, and there is no doubt that foreign investments represent a major support for the economies of countries. The study aims to highlight the impact of international arbitration on foreign tourism investments in Egypt, through basic elements that considered as the elements of the study, which are the impact of international arbitration on the economic performance of the tourism sector. In addition to identifying the most important problems of the international arbitration in the tourism sector. And to achieve the aim of the research, the study depended on sample of managers in Tourism investment companies in Egypt and The Specialists in international arbitration; a set of questions covering the different elements of the research and obtained their feedback which helped us form the conclusions and outcomes of this research. The results of the study showed there is a relationship between international arbitration and the tourism sector in Egypt.

### Introduction

In light of rapid transformation and continuous development in the field of tourism investment, whether national or foreign investments, and the resulting necessity of finding effective ways and means to benefit from these investments in economic development and diversifying the sources of the Egyptian economy. In addition, foreign investment contracts may be silent about the applicable law for various reasons, such as neglect of the parties or their ignorance of the determination mechanism. In all these hypotheses, the parties decide to leave it to the arbitrator to determine the applicable law to the subject of the dispute, and they may apply a national or non-national law. Thus, the arbitrator may see in foreign investment contracts the application of a certain national law as long as the parties have not agreed on a specific law to govern the subject of the dispute. This may compel the state to cling to immunity, in the field of arbitration, whether it is judicial immunity of the state represented by not being subject to any jurisdiction other than its own national jurisdiction, or immunity against execution, that is, not implementing the arbitration award issued against it. The issue of determining the clarity of international arbitration rules, or the rules governing the subject of the arbitrated dispute, is one of the fundamental issues facing investors, whether Egyptian

or foreign investors (United Nations Commission on International Trade Law, 2013). And, when a dispute arises regarding the implementation of foreign investment contracts arbitrator deal with the resolution of the subject of the dispute. Therefore, it is necessary to determine the formal procedures required for the application of international arbitration rules. Given the importance of investments in general and foreign investments in the tourism sector it is necessary to be familiar with the rules of arbitration, especially when concluding and drafting investment contracts, in order to avoid financial losses resulting from paying compensation to foreign investors, which negatively affects the Egyptian economic performance (Elizabeth, 2009).

### **Problem of the Study**

The problem of the study revolves around the clarity and impact of international arbitration rules on foreign tourism investments in Egypt, and its effect on the economic performance of the tourism sector. Based on the foregoing, the problem of the study is manifested through the following questions:

- What is meant by international arbitration in foreign investments
- What is the impact of international arbitration on foreign tourism investments in Egypt.
- Are there any obstacles that affect the application of international arbitration rules in the tourism sector.

### **Importance of the study**

In light of the rapid transformation and continuous development in the field of tourism investment, whether domestic or foreign investments, and the necessity of finding effective ways and means to benefit from these investments in economic development and diversifying the sources of the Egyptian economy, it has become necessary to know the arbitration rules especially international rules, especially when concluding and formulating contracts for foreign tourism investment, in order to avoid paying large sums in the form of compensation in the event of disputes between the domestic investor and the foreign investor, which costs the economy losses and loss of high-return economic opportunities.

The importance of the study arises from the importance of investments in the tourism sector, especially foreign investments and the consequent injection of foreign capital into the Egyptian economy, creating real and sustainable development opportunities, avoiding the withdrawal of these investments from the local market, and reducing the losses incurred by the Egyptian economy in the event of disputes between Egyptian investors and foreign investors. Therefore, the importance of research in the field of international arbitration and its relationship to foreign tourism investment in Egypt.

### **Objectives of the study**

- Understanding the concept of international arbitration.
- Explaining the impact of international arbitration on foreign tourism investments in Egypt.
- Highlighting the main obstacles that affect the implementation of international arbitration rules in the tourism sector.

### Methodology of the study

In light of the nature of the study and its objectives, and in light of the questions the study seeks to answer, the descriptive-analytical method was used. This method relies on studying the phenomenon as it exists in reality, focusing on accurately describing it. It goes beyond collecting information related to the phenomenon in order to investigate its various aspects and relationships. It also involves analyzing and interpreting the phenomenon to reach conclusions that contribute to the development and improvement of reality. Therefore, the field survey method was applied using a sample in order to reach conclusions that serve the study's objectives.

1. Study population and sample: The study population includes tourism investment companies and experts in international arbitration in Egypt. A total of 60 survey questionnaires were distributed to managers of tourism investment companies and experts in international arbitration. 45 questionnaires were retrieved, resulting in a response rate of 75%. 40 questionnaires were eligible for analysis, as 5 questionnaires were excluded due to invalidity for analysis.
2. Study limitations: These limitations include the following: the study sample is limited to tourism investment companies and experts in international arbitration in Egypt, and the study will be conducted from May 2023 to June 2023.
3. Data collection tools: These tools can be classified into two main types:
  - a. Data collection tools related to the theoretical aspect: These include sources and references that address the topics of international arbitration and tourism investment in Egypt, as well as the discussion of some concepts related to the study's objectives.
  - b. Data collection tools related to the field aspect: The questionnaire is the main tool for obtaining primary data for the research. It adopts a Likert scale (strongly agree, agree, disagree, strongly disagree, neutral) to measure the responses of the sample individuals. The scale values range from 5 to 1 respectively. The questionnaire includes the basic variables of the study and consists of 11 statements distributed across the following main axes:
    - I. The impact of international arbitration on the economic performance of the tourism sector (5 statements).
    - II. Obstacles to the use of international arbitration in the tourism sector (6 statements).
4. Statistical tools used for data processing and extracting results: The data was entered and statistically processed using the SPSS statistical software package version 24. The following statistical tools were used to process the data:
  - Mean: to determine the level of response of the sample individuals to the research variables and their measures.
  - Standard deviation: to diagnose the degree of dispersion of the quarterly response values from their mean.
  - Cronbach's alpha coefficient: to determine the reliability of the study tool.
  - Chi-square test: to determine the significance of the established relationships between the calculated variables.

## The Theoretical Framework

### The concept of international arbitration

There are several definitions regarding the term international arbitration. Some focus on the function performed by arbitration, defining international arbitration as 'the referral of a dispute or disagreement between at least two individuals for resolution after hearing the parties in a judicial manner, by individuals who are not judges of the courts' (Khaled, 2020, p. 200.) Meanwhile, others give significant importance to the arbitration agreement when defining arbitration. They view arbitration as 'a means aimed at providing a solution to an issue concerning relations between several individuals, through one or more people called arbitrators, who derive their authority from a special agreement and make decisions based on that agreement without being granted this task by the state.' Or as 'the agreement of the parties to submit their disputes to ordinary people chosen by them' (Al-Ma'muri, 2016).

One of the laws that provided a definition of arbitration is the Egyptian Arbitration Law, which stated that 'the term arbitration, in the judgment of this law, refers to arbitration agreed upon by the parties to the dispute through their free will, whether the party conducting the arbitration proceedings is organized under the agreement of the parties, a permanent arbitration center, or not' (Article 4 of Egyptian Arbitration Law No. 27 of 1994). Judicial rulings have also provided various definitions, including the Egyptian Supreme Constitutional Court's definition that arbitration is 'the presentation of a specific dispute between the parties to an arbitrator appointed by them or authorized by them, according to conditions determined by him, to resolve this dispute with a decision that is impartial and final, without interfering with the substance of the dispute in its aspects that the parties referred to him, after each of them presents his detailed point of view through the main due process guarantees' (Al-Qalloubi, 2005).

Furthermore, the Egyptian Supreme Administrative Court, in one of its cases, defined arbitration as 'an agreement to submit the dispute to a specific person or persons to decide on it in a way other than the competent court' (Al-Shaikh, 2020). As for investment laws, this issue has not been addressed, as it only showed the possibility of resolving investment disputes through organized arbitration according to special laws. By referring to the Egyptian Investment Law No. 72 for the year 2017, it allows for the settlement of investment disputes related to the provisions of this law according to the provisions of the Arbitration Law in civil and commercial matters issued by Law No. 27 for the year 1994 (Brady, 2023).

Arbitration in foreign investments is known as the agreement between the contracting parties in foreign investment contracts to exclude the jurisdiction of the host state or any other state in resolving the existing or potential dispute between them, and to choose individuals or organizations with expertise in the field of investment relations to resolve that dispute, with their decision being binding (General Union of International Arbitration Consultants, 2021). For international agreements, we noticed that they may stipulate the return of parties to arbitration in investment disputes, even in cases where the investor does not conclude an investment agreement with the host state. Any arbitration agreement signifies its great importance. The ruling issued in the dispute between the Limited Agricultural Products Company AAPL and the Republic of Sri Lanka is the first ruling that establishes the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID) based on the existence of a provision in the investment treaty that refers to the ICSID (Salacuse, 2007).

The mentioned company, based in Hong Kong (which was leased to England at that time) filed an arbitration request with the ICSID on July 8, 1987, to compel Sri Lanka to compensate for the damages caused to its private facilities as a result of military operations carried out by the Sri Lankan forces against insurgents. AAPL based its request for recourse to the Centre on the bilateral treaty between the United Kingdom and Sri Lanka in 1980, which stated in Article that "each contracting state shall agree to submit any legal dispute arising between any (1)8 contracting party and nationals or a subsidiary of the other contracting party regarding the "\.latter's investment in the territory of the former to arbitration under the rules of the Centre The arbitration panel accepted its jurisdiction over the dispute, as the arbitrators considered themselves competent despite the absence of any arbitration agreement between the investor and Sri Lanka (Khaled, 2020). They based their ruling on the investment agreement which included the consent of the member state in the agreement to resort to arbitration under the rules of the ICSID, which represents a positive aspect of the state's acceptance of the Centre's arbitration by the foreign investor's acceptance of this positive aspect by submitting his arbitration request, which satisfies the requirement for the competence of the Centre's arbitration panels (World Bank, 2023).

### **International Arbitration in Foreign Investments**

The arbitral parties in foreign investment contracts are the same parties to these contracts These contracts are entered into between two parties, neither of whom is a national party namely the state, a company, an institution, or its public bodies. The second party is the foreign party represented by the foreign investor. The national party is usually represented by the state itself through the government, or in one of the companies, institutions, or public bodies affiliated with it. The state enters into many necessary contracts with foreign investors to achieve its economic development according to its need to implement its economic plans. These contracts may be concluded directly by a representative "head of state, prime minister, minister" or indirectly by one of the institutions or public bodies under its authority (Schwartz2019).

As for the foreign investor, it may be an individual, legal entity, or a group of people. The foreign party can be a unified entity or a number of self-contained entities that participate in commercial or industrial activity. Sometimes there are financial institutions among them to finance the project with sufficient capital to carry out its commercial, industrial, or tourist activities. Often, the foreign investor is a commercial company that accepts the participation ,of nationals in order to expand its external investment activity or secure its primary resources or because participation is the only way to establish this project in the host country for investment (Khatimah, 2023). This does not affect the nature of investments, as the foreign party contracting with the state can be a natural person as long as the location and content of the contract are related to economic development in the contracting state and contribute to its progress. Contemporary investment legislation explicitly states the possibility of the investor being a natural person (Brady, 2023).

### **International Arbitration and Tourism Investment in Egypt**

The increasing role played by tourism in the economic development issues of both developing and advanced countries is reflected in the strong interest of many governments in the tourism sector. This interest is manifested in encouraging foreign investments, as states recognize the importance of the tourism sector as one of the most attractive service projects for both domestic and foreign capital. Therefore, more attention has been given to the private tor, encouraging investment in tourism activities by facilitating various procedures for Egyptian and foreign investors to increase their investments in the tourism sector (Kassem, 2015). There is also a positive correlation between tourism and investment, as increased

tourism activity leads to increased investments in both tourism and non-tourism projects. This is because tourism directly contributes to the increase in small investment projects that produce handicrafts, jewelry, clothing, and souvenirs. Additionally, tourism is closely linked to major, investment projects, such as food industries and tourism-related goods and equipment. (Ali (2021

The net flow of foreign direct investment in Egypt reached approximately \$7.5 billion during the fiscal year 2019/2020, according to data released by the Central Bank of Egypt. These inflows increased during the fiscal year 2021-2022 to reach around \$8.9 billion making it the highest in 10 years for non-petroleum foreign direct investment. Net foreign direct investment in Egypt for the year 2019/2020 represents about 2.1% of the gross domestic product (UNCTAD, 2023).

Despite the increase in the contribution of the tourism sector to the total inflows of foreign direct investment in Egypt, recording about 0.9% for the year 2019/2020 with an increase of this percentage can be doubled with an increase in tourist numbers, service quality, and ,%0.1 diversification of tourism products provided. Lack of knowledge of international arbitration rules, especially investment legislation, which is reflected in the customs tariff, clarity in dealing with investors, methods of resolving international disputes, and the comprehensiveness of the investment law can lead to major financial crises for Egyptian investors when facing conflicts with foreign investors (Egyptian Observatory, 2022).

## Data Anylsis Results

### Honesty and Steadfastness

The (Chi-square) test was conducted to determine the significance of the correlation relationships established between the measured variables, as well as to identify the valid items from others. The results showed the validity of all items, as the calculated value of the Chi-square for the questionnaire axes was smaller than the tabular value of (3.74) at a degree of freedom of (1) and a significance level of (0.05). This is evidence of the apparent reliability of the questionnaire form, and thus all questionnaire items were accepted.

Regarding the stability of the questionnaire items, the reliability coefficient of the questionnaire form was calculated using the Cronbach's alpha coefficient to determine the stability of the study's tool, and its value was (0.82), indicating good stability of the questionnaire form.

**The first Axis:** The impact of international arbitration on the economic performance of the tourism sector.

Table number (1): Distribution of the sample according to the impact of international arbitration on economic performance.

Phrase		Strongly agree	Agree	Neutral	Disagree	Strongly Disagree	Total	Mean	Std. Deviation	Chi Square Test	P-value
1	n	4	20	9	5	2	40	13,15	7,17	25,750	0,00
	%	0,1	0,5	0,225	0,125	0,05	1				
2	n	4	16	13	6	1	40	11,95	4,70	19,750	0,00
	%	0,1	0,4	0,325	0,15	0,025	1				
3	n	5	15	13	6	1	40	11,40	4,28	17,000	0,00
	%	0,125	0,375	0,325	0,15	0,025	1				
4	n	4	19	12	3	2	40	13,35	6,31	26,750	0,00
	%	0,1	0,475	0,3	0,075	0,05	1				
5	n	3	12	16	5	4	40	11,25	5,00	16,250	0,00
	%	0,075	0,3	0,4	0,125	0,1	1				



Square test is significant for all - The table number 1 shows that the Chi-square test is significant for all the statements indicating the impact of international arbitration on the economic performance in the tourism sector. This indicates that there are no statistically significant differences in the response rates for the categories (Strongly agree, Agree, Neutral, Disagree, Strongly disagree), which suggests a significant relationship between the use of international arbitration and economic performance. The field study results indicate the following:

With regard to statement number 1, which indicates that knowledge of international arbitration rules leads to a reduction in financial losses in the tourism sector, the analysis shows that 60% (Agree, Strongly agree) of the sample individuals agreed with this, while 17.5% (Disagree, Strongly disagree) of the sample individuals disagreed and 22.5% were neutral.

As for statement number 2, which indicates that clarity of international arbitration systems leads to increased confidence of foreign investors in the tourism sector, the analysis shows that (Agree, Strongly agree) of the sample individuals agreed with this, while 17.5% %50 (Disagree, Strongly disagree) of the sample individuals disagreed and 32.5% were neutral.

Regarding statement number 3, which indicates that using international arbitration rules in foreign investment contracts leads to avoiding judicial disputes between investors, the analysis shows that 50% (Agree, Strongly agree) of the sample individuals agreed with this, while (Disagree, Strongly disagree) of the sample individuals disagreed and 32.5% were %17.5 neutral.

As for statement number 4, which indicates that using international arbitration systems and rules leads to an increase in foreign investments in the tourism sector, the analysis shows that (Agree, Strongly agree) of the sample individuals agreed with this, while 12.5% %57.5 (Disagree, Strongly disagree) of the sample individuals disagreed and 30% were neutral.

As for statement number 5, which indicates that the use of international arbitration leads to avoiding economic crises that the tourism sector may face, from the analysis we find that (agree, strongly agree) of the sample individuals agreed with that, and that 22.5% %37.5 (disagree, strongly disagree) of the sample individuals disagreed with that, and 40% are neutral.

### **Second Axis :**Obstaclesto the use of international arbitration in the tourism sector

The table number (2): shows the distribution of the sample according to the obstacles of using international arbitration in the tourism sector.

Phrase		Strongly agree	Agree	Neutral	Disagree	Strongly Disagree	Total	Mean	Std. Deviation	Chi Square Test	P-value
1	n	6	16	12	3	3	40	11,35	4,91	7,200	0,06
	%	0,15	0,4	0,3	0,075	0,075	1				
2	n	9	15	5	8	3	40	10,10	4,19	10,500	0,03
	%	0,225	0,375	0,125	0,2	0,075	1				
3	n	8	17	5	8	2	40	11,15	5,30	17,00	0,00
	%	0,2	0,425	0,125	0,2	0,05	1				
4	n	10	19	4	5	2	40	12,65	6,51	23,250	0,00
	%	0,25	0,475	0,1	0,125	0,05	1				
5	n	9	23	3	4	1	40	15,90	8,58	39,500	0,00
	%	0,225	0,575	0,075	0,1	0,025	1				
6	n	9	17	9	3	2	40	12,52	9,16	22,600	0,00
	%	0,225	0,425	0,225	0,075	0,05	1				

Square test is significant for all - Table 2 shows that the Chi-square test is significant for all statements related to the use of international arbitration in the tourism sector, indicating no statistically significant differences in response rates to the statements (strongly agree, agree, neutral, disagree, strongly disagree). The results of the field study indicate the following:

Regarding statement 1, which indicates the absence of specific criteria, clear policies, and plans for the use of international arbitration in the tourism sector, the analysis shows that 55% (agree, strongly agree) of the sample population agreed with this statement, while 15% (disagree, strongly disagree) disagreed, and 30% were neutral.

As for statement 2, which indicates the inadequacy of the role of special committees in resolving disputes in foreign investment contracts, the analysis shows that 60% (agree strongly agree) of the sample population agreed with this statement, while 27.5% (disagree, strongly disagree) disagreed, and 12.5% were neutral.

Regarding statement 3, which indicates the continuous decline in national awareness of legislation regulating foreign tourism investments, the analysis shows that 62.5% (agree, strongly agree) of the sample population agreed with this statement, while 25% (disagree, strongly disagree) disagreed, and 12.5% were neutral.

As for statement 4, which indicates the lack of human resources in the field of foreign tourism investment contracts, the analysis shows that 72.5% (agree, strongly agree) of the sample population agreed with this statement, while 17.5% (disagree, strongly disagree) disagreed, and 10% were neutral.

As for statement number 5, which refers to the lack of continuous training in the field of international arbitration, in the analysis we find that 80% (agree, strongly agree) of the sample individuals agreed with that, and 12.5% (disagree, strongly disagree) of the sample individuals do not agree with that, and 7.5% are neutral. As for statement number 6, which indicates the decrease in the experience of the national investor in the field of international arbitration, in the analysis we find that 65% (agree, strongly agree) of the sample individuals agreed with that, and 12.5% (disagree, strongly disagree) of the sample individuals do not agree with that, and 22.5% are neutral.

### **The Conclusion and Discussion**

1. International arbitration refers to an agreement between the parties of investment contracts (the national investor and the foreign investor) to submit their dispute to a specific person or persons with expertise in this field to resolve it in a manner other than through the relevant courts.
2. The nature of investments is not affected by whether the foreign party contracted with the state is a natural person or a legal person, as long as the goal of the investment is related to economic development in the contracting state and contributes to its progress.
3. There is a reciprocal relationship between tourism and investment, as the increase in tourism activity leads to an increase in investment in both tourism and non-tourism projects.
4. Lack of knowledge of the rules of international arbitration, especially investment legislation, including customs tariffs, clarity of the terms of dealing with investors methods of resolving international disputes, and the comprehensiveness of investment



laws, leads to the occurrence of massive financial crises for Egyptian investors when they have a dispute with foreign investors.

5. Approximately 60% of the study sample agreed that knowing the rules of international arbitration leads to reducing financial losses in the tourism sector.
6. Approximately 50% of the study sample indicated that the clarity of international arbitration systems leads to increasing the confidence of foreign investors in the tourism sector.
7. Approximately 50% of the study sample pointed out that using international arbitration rules when concluding foreign investment contracts leads to avoiding judicial disputes between investors.
8. Approximately 57.5% of the study sample agreed that using international arbitration systems and rules leads to increasing foreign investments in the tourism sector.
9. Approximately 40% of the study sample stated that they are unsure whether using international arbitration leads to avoiding economic crises that the sector may face.
10. There are some obstacles facing the use of international arbitration in the tourism sector, including the absence of specific standards, clear policies, and plans for using international arbitration in the tourism sector, limitations on the role of special committees to resolve disputes in foreign investment contracts, a lack of continuous national awareness of legislation regulating foreign tourism investments, a shortage of human resources in the field of foreign tourism investment contracts, and a lack of experience of national investors in international arbitration.

### **The Recommendations**

In light of the presented results, the following recommendations have been reached:

#### **Recommendations specific to tourism investment companies:**

- Tourism investment companies should be to show serious and clear attention to international arbitration, its procedures, and tools, through specialized human resources, given the continuous challenges and changes in the investment environment. Therefore, research in this field should be encouraged.
- Tourism investment companies should consider the important role of specialized human resources in this field and provide necessary training in appropriate amounts.
- Continuous awareness should be raised among tourism investment companies regarding legislations that regulate foreign tourism investments.

#### **Recommendations specific to the legislative authority:**

- It is necessary to review legislations regulating international arbitration, clarify the obligations of each party, and determine the civil and criminal liabilities resulting from international disputes in foreign tourism investment contracts.

- Legislative review should also be conducted regarding the role of committees dedicated to resolving disputes in foreign investment contracts.

#### **Recommendations specific to the Ministry of Tourism:**

- It is necessary to establish a specialized department within the Ministry of Tourism responsible for monitoring the performance of tourism investment companies and international arbitration offices that handle disputes arising in the field of tourism investment.

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## الملخص باللغة العربية

## دراسة أثر التحكيم الدولي على الاستثمارات السياحية الأجنبية في مصر

مصطفى أبو النيل<sup>1</sup> هاني خطاب<sup>2</sup> أحمد عبد الشافي سالم<sup>3</sup>قسم الدراسات السياحية ، كلية السياحة والفنادق ، جامعة 6 أكتوبر ، الجيزة ، جمهورية مصر العربية<sup>1,2,3</sup>

إن مفهوم التحكيم الدولي في إدارة الاستثمار يسعى إلى تحقيق هدف الاستمرارية في عالم المنافسة، ولا شك أن الاستثمارات الأجنبية تمثل دعماً كبيراً لاقتصاديات الدول. تهدف الدراسة إلى تسليط الضوء على أثر التحكيم الدولي على الاستثمارات السياحية الأجنبية في مصر، من خلال العناصر الأساسية التي تعتبر من عناصر الدراسة وهي أثر التحكيم الدولي على الأداء الاقتصادي لقطاع السياحة. بالإضافة إلى التعرف على أهم مشكلات التحكيم الدولي في قطاع السياحة. ولتحقيق هدف البحث اعتمدت الدراسة على عينة من مديري شركات الاستثمار السياحي في مصر والمتخصصين في التحكيم الدولي؛ مجموعة من الأسئلة تغطي عناصر البحث المختلفة وحصلنا على ردود أفعالهم مما ساعدنا في تكوين استنتاجات ونتائج هذا البحث. وأظهرت نتائج الدراسة وجود علاقة بين التحكيم الدولي وقطاع السياحة في مصر.

الكلمات الدالة: التحكيم الدولي، الاستثمارات الأجنبية، قطاع السياحة، مصر