

# Egypt's Personal Data Protection Law and Arbitration: The Ambiguous Position

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Egypt recently set out a legal framework for the protection and regulation of personal data. The legislation was brought about to regulate the protection of personal data which is stored and processed electronically. However, the law is silent on its application to arbitration and arbitral proceedings. The intersection between arbitration and data protection is not unknown. This post discusses the ambiguity with regards to arbitration and whether it forms a part of the exemptions provided in the law or not.

## **Nature of the New Personal Data Protection Law and Its Interaction with Arbitration**

The long anticipated [Egyptian Personal Data Protection Law No. 151/2020 \(DPL\)](#) will come into force in October 2020. Prior to this legislation, there was no specific law in Egypt pertaining to data protection. This law is modelled to a large extent on the European General Data Protection Regulation. The new law is in consonance with the constitutional principles of right to privacy enshrined in the [constitution of Egypt](#). Article 57 of the constitution protects privacy of communication and guarantees confidentiality for the same. Further, Article 99 stipulates that

inviolability of the private lives of citizens shall be considered to be a crime. The law includes a comprehensive framework of rights of data subjects, obligations of controller and processor, conditions for collecting and processing of data and related procedures.

A significant amount of personal data is processed in the course of resolving a dispute through arbitration. Further, data controllers and processors do not just involve the parties to the dispute, but also the tribunal, counsel, arbitrators and the experts who will have to concern themselves with ensuring the compliance of the law if it is seen to be applicable to arbitration.

### **Arbitration in The Context of DPL: To Exempt or Not to Exempt?**

The DPL imposes various explicit obligations on both the data controller and data processor to respect the privacy of individuals and to ensure compliance with privacy obligations. Accordingly, collection, storing and most importantly processing of personal data without the consent of the data subject is not permitted. However, the exceptions to these obligations lie in Article 3 of the said law.

Consequently, it is imperative to specifically analyze Article 3(2) where exemption from compliance is granted for the purpose of processing personal data if it is "*in accordance with a legal provision*" and also Article 3(4) which sets out an exemption if it is "*related to judicial records, investigations and judicial proceedings*".

### **Is It in Accordance With a Legal Provision?**

The necessity of processing personal data, producing documents and evidence in arbitration proceedings would *prima facie* appear to fall under the exemption laid down under Article 3(2) that of complying with a legal provision. The Egyptian Arbitration Law (EAL) No. 27/1994 governs the arbitration process in Egypt. The legal provisions therein create obligations of sharing personal data and other related information for the purpose of solving the disputes. This is laid down in Article 31 and Article 36 of the DPL.

Article 31 of the EAL requires the parties to share briefs, statements, documents, and other information not only with the arbitral tribunal but also with the other party. In addition to this, it requires parties to submit copies of all original documents to the tribunal and the opposite party, for examination, objections, and to store for the record. Article 36(2) imposes an obligation on the parties to furnish relevant information concerning the dispute to the expert. This may take the form of production of documents, providing access to property for inspection and even copies of necessary data.

Since sharing, processing and storing the data is sanctioned by the law of the land itself, it can thus be held conclusive that arbitration would fall under the exception laid down in Article 3(2) of the DPL, as it is according to the legal provisions laid down in the Egyptian Arbitration Law.

### **Is Arbitration Covered Under The Ambit of ‘Judicial Proceedings’?**

The key issue here is whether the exemption granted to ‘judicial proceedings’ from applying the said law, as laid down in Article 3(4) of the DPL, would include arbitral proceedings. It is pertinent to note that there exists inconsistency over the nature of the arbitration process in Egypt. In essence, the nature of arbitral proceedings has continuously been a matter of debate. However, certain key findings of the Egyptian courts can provide a better understanding of the nature of these proceedings and its effects.

The constitutional jurisprudence laid down by various courts indicates that there exists a judicial nature in the arbitration process. This can be seen in the judgements of the Supreme Constitutional Court (SCC) wherein it has repeatedly held that the arbitration process is judicial in nature.[fn]Supreme Constitutional Court, Challenge No. 8 of 22 JY, session dated 4 August 2001 and Challenge No. 9 of 1 JY, session dated 5 December 1981.[/fn] Similarly, the Cairo Court of Appeal has reflected the same view in this regard by laying down that “*arbitration is a technical mean with a judicial nature that aims to settle a dispute*”.[fn]Cairo Court of Appeal, Circuit (50), Challenge No. 17 of 135 JY, session dated 31 December 2018.[/fn]

The Supreme Administrative Court has held that an arbitral tribunal is a tribunal of judicial competency.[fn]Supreme Administrative Court, Challenge No. 35839 of 57

JY, session dated 7 February 2018.[/fn] This was in support of the stance taken by the SCC wherein it held that it has jurisdiction to decide on contradictions between court judgements and arbitral awards because just like courts, arbitral tribunals are tribunals of judicial competence.[fn]Supreme Constitutional Court, Challenge No. 8 of 22 JY, session dated 4 August 2001 and Challenge No. 9 of 1 JY, session dated 5 December 1981.[/fn] This factor of judicial competency is also exhibited by Article 13 of the EAL which lays down that if action is brought before a court, concerning a dispute which is subject to an arbitration agreement, the court shall hold itself incompetent and dismiss the matter. Clause 2 of Article 13 of the EAL also ensures that arbitral proceedings are not prevented thereby allowing for their continuance.

In furtherance to the aforementioned points, the SCC has held that the decisions of an arbitral tribunal should be “*treated the same as court judgements*” where a Public Sector Law is concerned.[fn]Supreme Constitutional Court, Challenge No. 95 of 20 JY, session dated 11 May 2003.[/fn] The court in this particular case highlighted that “*all arbitral awards are of a judicial nature*”. The court also made reference to the fact that “*all voluntary arbitrations under Egyptian Arbitration Law are of a judicial nature*”. This denotes that the judicial nature of arbitral awards vis-à-vis arbitral proceedings give the arbitration process some sort of judicial power and meaning. This plays an important role in the enforcement factor of awards. The awards rendered by the tribunal can thus be enforced as court judgements, which implies that the result of such arbitral proceedings possess a judicial nature as well. Further, this is strengthened by the provision of Article 55 of the EAL which confers awards with the authority of *res judicata*.

It can thus be established that arbitral proceedings are of a judicial nature and arbitral awards are enforced as court judgements. However, there has been no clear cut clarity on whether the term ‘judicial proceedings’ can or is actually intended to encompass ‘arbitral proceedings’. Arbitral proceedings can be considered to be similar to judicial proceedings on account of its judicial nature, but the fundamental difference lies between the establishment of an ‘arbitral tribunal’ and a ‘court’ as well as between ‘arbitrators’ and ‘judges’.

## **Conclusion**

Arbitration proceedings involve a huge amount of data, as mentioned above, including both personal data and sensitive data at times, which is necessary for storage, usage and processing. To answer the question, of whether or not exemptions laid down in Article 3(2) and 3(4) of the DPL extend cover to arbitration, in light of the aforementioned, it seems that arbitration related data would be exempt from compliance under the law. It can be argued that arbitration satisfies at least one of the two exemptions analyzed above. However, ambiguity still persists.

It is likely that arbitration will be excluded from the application of the new law. Despite this, it is necessary to deal with data protection issues arising within arbitration in an efficient manner. Huge amounts of data are involved in arbitration proceedings. Therefore, it is important to develop a robust framework of measures which can be applied to arbitration to ensure that such personal data is not misused. Hence, even if the DPL, *inter alia*, does not entail arbitration, a careful balance between the rights of the data subjects and maintaining the feasibility of the arbitral process should be taken into consideration. This is because, potentially, the need for data protection in arbitration proceedings is becoming more accepted and will raise key issues in times to come.