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THE DISPUTE SETTLEMENT SYSTEM IN
THE EGYPTIAN CAPITAL MARKET AND ECONOMIC DEVELOPMENT

A DISSERTATION
SUBMITTED TO THE SCHOOL OF LAW
AND THE COMMITTEE ON GRADUATE STUDIES
OF STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF THE SCIENCE OF LAW

Sameh Y. El-Torgoman
June, 1997
I certify that I have read this dissertation and that in my opinion it is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of the Science of Law.

John H. Barton, Principal Advisor

I certify that I have read this dissertation and that in my opinion it is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of the Science of Law.

Linda A. Mabry

I certify that I have read this dissertation and that in my opinion it is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of the Science of Law.

Joseph A. Grundfest

Approved For The University Committee Of Graduate Studies.

Thomas Wasow
Abstract

In order to achieve its goals for economic development, Egypt launched an economic reform program. One of the main tools Egypt is using in this program is the rejuvenation of the capital market. The Egyptian government enacted a Capital Market Law (CML) in 1992. The CML introduced a dispute settlement system (the System) to solve capital market disputes in an efficient and speedy way.

The System is divided into three pillars: (a) a mandatory arbitration (the Arbitration) which functions as a mandatory arbitration for disputes that arise from securities market transactions; (b) the Grievance of Body (the Body) which serves as an appellate panel for investors and financial institutions with regards to administrative decisions of the CMA and the Minister of Economy; and (c) the courts, where the parties can challenge the outcome of the previous two pillars.

The System is faced with several problems that hinder it from playing its role. The problems of the System can be divided into three main areas: (a) a Constitutional problem as result of a ruling of the Constitutional court that a mandatory arbitration stipulated by law is considered unconstitutional (contractual arbitration is valid and protected by the Arbitration Act) because it deprives the disputant of the constitutional right to solve disputes through the courts, (b) the lack of qualified neutrals (judges and arbitrators), (c) the lack of clear rules for the System process.

A two-stage solution can overcome these problems. The first stage (short term) is where the courts will have a full scope review over the outcome of both the Arbitration and the Body. Judges and arbitrators must be well trained on how to solve the disputes that arise from the securities markets. Clear rules for the procedures that govern the process of the System should be developed. The second stage (long term) is the development of a securities dispute resolution similar to the mechanism that exist in the United States.
An effective dispute resolution system will lead to a well-functioning securities market, and enable the capital market to play its role in the economic development process in Egypt.
To Dr. Zaki Hashem
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Last but not least to my mother, my sister and my brother, for being always beside me in every major decision in my life, supporting and encouraging me.
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Introduction

Since the collapse of the Soviet Union, the world as we knew it has changed dramatically, and in the aftermath of the process the world has discovered that economic power has become equally as important as military power and may exceed it in some circumstances. As a result, both developed and developing nations have started to focus more on economic policy. Needless to say, the goals of such focus are totally different for developed and the developing countries. For instance, in developed countries, the focus is, generally, on how to strengthen the economy to be able to compete more effectively in the global arena. For developing nations, the focus is on how to establish an efficient economy that will be able to provide economic prosperity and stability. The scope of my study is economic development in developing countries, and the role of capital market regulation in this process.

Economic development is virtually impossible to define because this process has different aspects, and focusing on just one of them could be misleading. However, I present the following definition as a reasonable one, if only by virtue of the fact that it is the most common definition given in most developmental economics textbooks. Thus, economic development is defined as the process whereby the real per capita income of a country increases over a long period of time, subject to the stipulation that the number of people below an
"absolute poverty line" does not increase and the distribution of income does not become more unequal.\textsuperscript{1}

Immediately, we observe that economic development is a long-term process, requiring certain conditions. Over the past decade many economic scholars have contributed very valuable studies on economic development in developing countries with all but a few trying to examine the right conditions in order to make this process achieve its aim (as stated in the definition above). It is vital to consider that "economic development" has both economic and non-economic aspects, and that both are very important for the overall success of the development process. In the early years of economic development studies, scholars paid a great deal of attention to the economic aspects; however, recently, they have come to recognize that the second non-economic aspect is just as crucial for economic revival.

The non-economic aspect, which includes, among other things, a well-developed legal framework, an efficient administrative system, and well-functioning judicial institutions, provides a stable and predictable environment in which economic development can flourish. Such an environment will encourage the flow of domestic and foreign investment into the economy\textsuperscript{2}.

Egypt launched an economic reform program in order to achieve its goals for economic development. One of the main tools that Egypt is using in this program is the rejuvenation of the capital market. In 1992, the Egyptian

\textsuperscript{1} GERALD M. MEIR, LEADING ISSUES IN ECONOMIC DEVELOPMENT 7 (1995).
government enacted a Capital Market Law (CML), and the Capital Market Authority (CMA) became the regulatory agency responsible for monitoring and developing the capital market in Egypt. The CML introduced a dispute settlement system (the System) to be able to provide the capital market with a mechanism that can help in solving capital market disputes in an efficient and speedy way. The CMA is working on developing the System in order to be able to achieve its goals.

In order for economic development to achieve its goals and provide real changes in social welfare, a well-functioning financial system must exist. Those governments that have embarked on an economic development plan have doubtless discovered the need to rely on the capital market to provide the necessary capital required for investment that can lead to sustainable long-term growth.

An efficient capital market provides a variety of benefits for investors that will encourage them to enter the market and provide the capital for investment projects. For instance, investors must be able to evaluate the risk to which they are exposing themselves. The three type of risks associated with any financial contract are: credit risk, liquidity risk, and price risk. By having an efficient capital market, lenders can obtain all the necessary information they need before lending their money, and this helps reduce the risks to which they are exposed by removing the veil of knowledge that separates the investor from the asset. By reducing such risks, those seeking finance in the market will be able to find it for a lower cost. Furthermore, investors will enter the market with the goal of increasing the return

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4Id. 33.
on their investment, and, as a result, their personal wealth. This will lead investors to view capital market instruments as effective vehicles for increasing their level of savings—what is needed for effective economic development is to encourage saving in the society. Such saving will lead to the accumulation of wealth within the society where it can be used to finance the projects that will be needed for economic growth. However, in order for the capital market to be able to achieve its intended role in the economic development process, it needs to be well organized with a legal framework that sets the rules of the game where all players involved in the market can see them and, thus, play accordingly. These include rules that govern disclosure and accounting standards. The role of the government in this regard will be very important, to the extent that it must monitor the market and provide an effective mechanism for enforcing the rules of the game on the participants in the market.

The judicial system is crucial in this process because investors need assurance that financial contracts or obligations will be fulfilled. Time is critical in this regard, as the courts need to provide solutions for such problems quickly. Market participants will not tolerate delay in the courts in such matters, as they can switch their funds to another market.

Egypt is no exception and the Egyptian government recognizes this fact. The purpose of the revival of the capital market in Egypt, as I mentioned earlier, has been to help finance the economic development program. This has weighed

\footnote{MEIR, supra note 1, at 161.}
heavily more recently due to the government's increasing reliance on foreign aid, as oil and Suez canal revenues decline.

This begs the question: what does the government need to do in order to best structure the capital market to be able to finance its economic development program? The government's role is especially pivotal in this delicate time of transition, because what the government does now will determine the course that the capital market, and the larger economic market as a whole, will take.

The government's role can be divided in two parts. The first part is the role of providing the legal framework for the market which already exists through the enactment of the CML. The second part, which is the primary part of the role, will be enforcement of its provisions. Monitoring the market and providing the necessary stability to it will help keep the market functioning correctly and will encourage capital flow into the market.

Doubtless disputes will arise as a result of the capital market's day-to-day transaction business. It is the government's responsibility, therefore, to provide the market with a dispute resolution mechanism to overcome any irregularities in market function that may occur as a result. The dispute settlement system is considered the tool for the market to solve its disputes and assist the investors in continuing their transactions in the market. So by developing the System we are developing a very important tool for the market.

In my opinion, the dispute settlement system will play a central role in the development of the capital market and economic development in Egypt. It is well

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known in Egypt that the judicial system, like most of the judicial systems all over the world, is faced with a case backlog and is a very slow process to resolve disputes. In addition, many of the judges are not equipped to deal with the type of disputes that could arise from capital market transactions. As the market matures, the level of sophistication involved in the transaction will increase. This will necessitate the development of a very specialized dispute settlement system with a well-trained staff. However, in order for the System to be able to accomplish its goals, a comprehensive plan with a clear vision about the problems of the system and how it can solved will be needed to make the system efficient and reliable for the development of the capital market.

In my dissertation I will focus on the System and its role in the capital market development in Egypt. I believe that such a study is very important for Egypt at this stage in its economic and social development for several reasons. First, a sound dispute settlement system is considered a prerequisite for a well-functioning capital market. Second, such a system will be able to maintain confidence in the capital market, especially for investors (both domestic and foreign). Third, the System will serve as a primary mechanism in correcting market irregularities, which will contribute positively to both stability and liquidity in the market. Finally, a well-developed dispute settlement system can be transferred in the future to other areas, e.g., intellectual property dispute settlement.

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This dissertation is divided into four chapters. In Chapter One, "The Capital Market in Egypt," I will briefly discuss the historical development of the capital market until now and how it has contributed to economic development in Egypt since its inception. The first chapter will also include a brief discussion of the CML and the CMA. Chapter Two, "The Capital Market Dispute Settlement System," will explore the present state of the dispute settlement system in Egypt. This chapter will lay the groundwork about the System from both a regulatory and an institutional perspective. In Chapter Three, "An Assessment of the Dispute Settlement System," I will adopt a critical and analytical approach in evaluating and examining the System in order to figure out the System's competence in solving capital market disputes and provide recommendations to enable it work more efficient. Finally, in Chapter Four, "Toward a New Capital Market Dispute Resolution System," I will contribute my recommendations to establish a new mechanism that can work more effectively and assist in the development of the securities market and economic development in Egypt.
Chapter One
The Capital Market in Egypt

The capital market in Egypt has recently been getting a great deal of attention from the Egyptian government. The main reason for the government’s attention is the capital market’s ability to provide a reliable source of finance for the economic development program which has been taking place in Egypt since 1990. However, it is important to mention that the revival of the capital market in Egypt—as many of the developing countries—was driven by political rather than economic factors.

I believe it is important before embarking on my endeavor to analyze and examine the capital market dispute settlement system, to give a brief idea about the structure and function of the capital market in Egypt, as it stands today. My goal in this chapter is to give a clear picture about what the System is trying to serve. I will discuss below the relation between the political system and the capital market development in Egypt, the role of the capital market in the economic development plan, and finally, its regulatory framework.

I. The Political System and the Capital Market Development in Egypt

The capital market in Egypt was very active and the stock market was considered to be the main source for corporate finance until 1952.7 This was due to the domination of the private sector in the economic activities of this period8. However, in 1952, the Free Officer Revolution took place and Egypt started a

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7In fact, Egypt has a long history with the stock market. The first stock exchange in the world was established in Alexandria in 1889 and the Cairo Stock Exchange was established in 1901.
8ILIYA HARIK, ECONOMIC POLICY REFORM IN EGYPT, 16 (1997).
new era in Egyptian history. The capital market was affected by the political agenda that has driven Egyptian economic policy since then. I will focus on the development of the capital market from 1952 to the present. My study will be from the political prospective. The analysis of the Egyptian economic policies and its effect on the capital market development is beyond the scope of this study.

A. The Nasser Era

President Gamal Abd Al Nasser was essentially the first president in this era. Nasser took office while the British army was in its final stages of withdrawal from Egypt. In his desire to rid Egypt of its stigma as a British colony, Nasser focused on the major popular issue of the time, how to strengthen Egypt’s independent position in the Arab world. Nasser thought that it was necessary to build what he termed a national front. In Nasser’s opinion this would protect the country by uniting the Egyptian populace in one massive body against the influence of foreigners and the “old evil private sector” that serve only its personal interest instead of the public interest. He created what some scholars described as a “patron state” where “the state is made up of a set of rules in which the provisions of livelihood of citizens and the management of business enterprises fall in the public domain as responsibility of government”.

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9 The real first President was Mohammed Nagib who held this position for a very short time before he was ousted by Gamal Abd Al-Nasir.
11 Id.
12 Id.
13 Harik, supra note 8, at 5.
This agenda influenced his policy toward building the Egyptian economy based on a powerful public sector, and eliminating the role of the private sector. By the 1960s the economy was dominated by the public sector, and became responsible for almost all the economic activities. During this period the public sector controlled 80% of export trade, 100% of insurance companies, banks, import trade, transport and communication. In addition, in the same period the public sector provided 75% of industrial output and 90% of all new investment in industry. The role of the private sector declined after the nationalization movement in the 1960s and existed only on the scale of small to mid-size companies with a highly regulated system. The foreign investment dramatically declined as a result of such policies and it was limited to the petroleum sector.

In fact, Nasser economic policies created a great mass to the economy, which came as a result of the philosophy that was adopted by the decision makers and the managers of the public enterprises during this period. The core of this strategy was profitability is not the main goal of an industry. Such a goal was replaced with social and political functions. As a result, public enterprises were allowed to operate on an uneconomic basis. For instance, any company was allowed to ask a public bank to extend it loans though there was no hope of repayment.

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14Id. at 19.
15Id.
16Id. at 10.
17Id.
However, the Egyptian economy witnessed a growth of 6% of the GDP between 1960 to 1965\(^{18}\) and 4.3% between 1965 to 1970\(^{19}\). But such growth was accompanied by an increased deficit in the foreign trade which was 2.3% of the GDP in 1960, 10.1% in 1966 and 7.5% in 1963\(^{20}\). It occurred as a result of the decline in the export and the increase of the imports from 16.5% of the GDP in 1960, to 24.0% in 1964\(^{21}\). This deficit was financed by foreign aid, mainly from the Soviet Union. However by the mid-1960s, after Egypt get involved in several wars in Africa and the Middle East, the foreign aid was not able to cover it.\(^{22}\) In addition, the industrial sector which had witnessed an annual growth of 8.5% during 1960 to 1965, started to decline and its growth was only 3% between 1965 and 1970\(^{23}\). Moreover, Egypt, after the drain in the domestic resources, started in the mid-1960s to borrow heavily from foreign sources on unfavorable rates\(^{24}\).

Also, the savings rate declined as share of the GDP in Egypt during the same period; 12.7% in 1960; 13.9% in 1965; and 9.4% in 1970\(^{25}\).

As a result, President Nasser wasn’t able to achieve his goals from his policies, especially that of wanting the country to reach total self-sufficiency (\textit{uktifa dhaati})\(^{26}\). In fact, Egypt by the end of his regime in 1970, was faced with low growth, lack of investment capital, consumer goods and spare parts and

\(^{19}\)Id.
\(^{20}\)Id.
\(^{21}\)Id.
\(^{22}\)Id.
\(^{23}\)HARIK, supra note 8, at 18.
\(^{24}\)Id.
\(^{25}\)Rivilian, supra note 18, at 42.
\(^{26}\)Harik, supra note 8, at 18.
increase independent on foreign imports for food. The capital market lost its role in corporate finance, especially the companies that relied on the government for their finances. The activities at the stock exchange were almost frozen, though it was kept open.

B. The Sadat Era

President Anwar Al-Sadat succeeded President Nasser and inherited the economic problems. President Sadat knew that he had to make major changes in the economy. He also recognized that he needed to start a new approach for both the domestic and the foreign policy to support his economic reform plan. As a result, he started his open door policy (*infitah*) to jump-start the economy by drastically increasing the role of the private sector.\(^{27}\) However, this policy did not contribute to radical economic reform.

President Sadat who understood both the domestic and the international political conditions during the 1970s very well, first realized that the legacy of Nasser policies would probably take a significant period of time to turn around, and second, realized that he did not have the institutions nor a reliable private sector to achieve a comprehensive economic policy reform and finally, that the strategic foreign alliance to Egypt (the Soviet Union) would not support such policies.

As a result, though he declared the open door policy as a necessary policy to rescue the Egyptian economy, he also emphasized that the role of the public sector would always be the cornerstone of the economy. This was true because

\(^{27}\) Id. at 18.
during this policy in the 1970s the public sector continued to dominate 70% of investment, 80% of foreign trade, 90% of the banking sector, 95% of the insurance sector, and by 1975 its share remained above 50% of the GDP.\textsuperscript{28}

Though he started to encourage the private sector to participate more in the economic activities, its role was still very limited to the economy. This came as a result of several factors, among them the fear of a new wave of nationalization, inspired by the constitutional reform that Sadat introduced in 1970, which declared the protection of private property.\textsuperscript{29} In addition, the private sector after the 1960s lacked the qualification and the experience to carry out major economic projects.

On the foreign policy front, he gradually freed his country from the iron clench of the Soviet Union while building a bridge of confidence with the United States. The U.S. was more than ready for such rapprochement after a peace treaty was signed between Egypt and Israel in Camp David. As a result, the U.S. pledged a large amount of financial and technical aid to Egypt to support the peace between the two countries. In addition, Sadat began to focus on foreign investment as a rescue for the Egyptian economy and thus the Foreign Investment Law (Law 43 in 1974) was enacted to encourage foreign investment in Egypt.

In fact, this policy helped Egypt increase the level of economic growth to an average of 9% between 1974 and 1981.\textsuperscript{30} however, the real problems facing the Egyptian economy was still existing. In my opinion, this was due to the lack of

\textsuperscript{28}Id. at 20.
\textsuperscript{29}Rivlin supra note 18, at 48.
clear vision from the government to define what measures needed to be taken to reform the economy, and how and when they could implement them, though it is fair to say that there were some circumstances affecting the government in fashioning a coherent economic plan. The policy was faced with powerful resistance from the nationalist wing. The peak of this resistance was demonstrated in the riots that took place in January 1977, when the government lifted part of the subsidies to implement the recommendation of the International Monetary Fund (IMF). This led to keeping the public sector operating in the same way without any reforms, in addition to weakening of the private sector. Moreover, Egypt did not benefit from the foreign investment because most of the projects were established in the free zone and mainly focused on exporting without real access to the domestic markets.

Of course, when President Sadat started his open door policy, the capital market was still undeveloped and the policy did not contribute to the capital market any changes. This came about for several reasons, among them, the lack of any genuine reform to the financial system. In addition, most of the projects during this period involved short, rather than long-term capital. They were self financed—basically the capital came from families or friends. President Mubarak succeeded President Sadat, and a new chapter in the economic development and capital market began to evolve in 1983.

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30 L&F EDMOND DE ROTHSCHILD SECURITIES LIMITED, COUNTRY FUND RESEARCH COUNTRY PROFILE EGYPT 6 (October 1994).
31 Supra note 4.
32 Supra note 10, at 172.
C. The Mubarak Era

From his first day in the office, President Mubarak realized that economic problems would be his primary challenge, and thus he would focus on economic development as a vehicle to propel Egypt into the 21st century. Egypt by the mid-1980s was faced with an imminent economic crisis with foreign debts totaling nearly $55 billion, or the equivalent of 185% of Egypt’s GDP.33 The country was heading straight into bankruptcy due to the lack of foreign reserve as a result of the declining oil exports and Suez canal revenues34, an inflation rate of 21.2% (1989), and a significant increase in the budget deficit as a result of maintaining existing welfare payment schedules which represented 20% of the GDP35. President Mubarak and his senior advisers were convinced that a major reform should be introduced to the economic system. However, the key question remained: what type of reform and how could they implement it?

Egypt turned to the World Bank and the IMF seeking economic aid and received approval for it. However, this aid was accompanied by a package of economic policy reforms which were required by the Egyptian Government which aimed to liberalize the economy and reduce the role of the government in economic life, opening the door for the private sector to take the lead in the economic process. As a result of this suggestion, in 1990 the Egyptian Government embarked on an Adjustment and Structural Economic Reform

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33 Id., at 180.
34 Peter N. Marber, Sheikhs and Souks: Capital Market Formation in the Middle East, 49/1 I. OF INT’L AFF. 75 1995).
35 Id., at 878.
Program (ASERP). The main goal of the program is to shift the economy from a centrally planned to a free market economy.

However, its important to mention that many of the key members of the government (especially during President Mubark's first term in the 1980s) were skeptical about the free market economy as a solution to the Egyptian economy problems\textsuperscript{36}. The fear of social and economic effects on the stability of the political system and the country in general was always the main concern in their point of view. However, President Mubark believed that radical measures needed to be introduced to the public sector and that an increase in the role of the private sector in the Egyptian economy was essential for a better economic future for new generations of Egyptians. But since he is known as a cautious person rather than a revolutionary one, he decided to follow a step-by-step rather than fast-track path in introducing the reforms to the economy. His aim was to minimize the effects of the economic reforms on the Egyptian people as much as possible.

As a result, the Egyptian government started to introduce policies that took effect slowly, such as gradual reduction of subsidies and value-added taxes\textsuperscript{37} in addition to other measures such as dismantling of the price, production and marketing controls\textsuperscript{38}. Investment in the private sector started to grow faster than in the public sector (see Table 1.1 below), and began to provide 40\% of industrial production\textsuperscript{39}.

\textsuperscript{36}Harik, supra note 8, at 28.
\textsuperscript{37}Id. at 28.
\textsuperscript{38}UNION BANK OF SWITZERLAND COUNTRY REPORT, EGYPT: POISED FOR REFORM AND GROWTH, May 1996 (hereinafter the Union Bank Report).
\textsuperscript{39}Harik, supra note 8, at 19.
Table 1.1: Domestic investment in Egypt (millions of Egyptian pounds).
Source: the IMF.

<table>
<thead>
<tr>
<th>Year</th>
<th>Private Domestic Investment</th>
<th>Public Domestic Investment</th>
<th>Exchange Rate (LE/US dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986/87</td>
<td>8,720</td>
<td>5,380</td>
<td>1.996</td>
</tr>
<tr>
<td>1987/88</td>
<td>11,958</td>
<td>9,292</td>
<td>2.23</td>
</tr>
<tr>
<td>1988/89</td>
<td>15,300</td>
<td>8,200</td>
<td>2.389</td>
</tr>
<tr>
<td>1989/90</td>
<td>15,538</td>
<td>10,326</td>
<td>2.61</td>
</tr>
<tr>
<td>1990/91</td>
<td>15,330</td>
<td>9,420</td>
<td>2.974</td>
</tr>
<tr>
<td>1991/92</td>
<td>15,644</td>
<td>10,856</td>
<td>3.331</td>
</tr>
<tr>
<td>1992/93</td>
<td>14,400</td>
<td>11,100</td>
<td>3.323</td>
</tr>
<tr>
<td>1993/94</td>
<td>18,300</td>
<td>10,700</td>
<td>3.621</td>
</tr>
<tr>
<td>1994/95</td>
<td>21,500</td>
<td>11,300</td>
<td>3.454</td>
</tr>
<tr>
<td>1995/96</td>
<td>25,381</td>
<td>12,681</td>
<td>3.33</td>
</tr>
<tr>
<td>1996/97</td>
<td>30,685</td>
<td>14,271</td>
<td>3.5</td>
</tr>
</tbody>
</table>

Also, gradual steps to lower tariffs and to liberalize trade were taken to encourage foreign direct investment (FDI). In fact, the FDI share in Egypt in the last several years had not been impressive, compared to the total share of FDI in the emerging markets (see, Table 1.2). The necessary measure that Egypt needs to take to raise its share from the FDI is beyond the scope of this study. However, in summary I can mention that the magnitude of FDI is usually determined by long-term consideration of cost, profitability, and stability\textsuperscript{40}. Egypt will need to continue focusing on structural reforms of legal and regulatory systems combined with stable economic policies to reduce risk and attract more foreign investors\textsuperscript{41}.

\textsuperscript{40} Shiata, supra note 2, at 391-422.
\textsuperscript{41} Id.
Table 1.2: FDI in Egypt and the Emerging Markets (millions of dollars).
Sources: IMF (FDI in Egypt) and Emerging Stock Markets Fact Book 1996, IFC (FDI in Emerging Markets).

<table>
<thead>
<tr>
<th>Year</th>
<th>FDI in Egypt</th>
<th>FDI in Emerging Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986/87</td>
<td>1,114</td>
<td>10,253.3</td>
</tr>
<tr>
<td>1987/88</td>
<td>1,016</td>
<td>14,576.1</td>
</tr>
<tr>
<td>1989/90</td>
<td>1,259</td>
<td>21,181.7</td>
</tr>
<tr>
<td>1990/91</td>
<td>1,236</td>
<td>25,687.1</td>
</tr>
<tr>
<td>1991/92</td>
<td>136</td>
<td>25,000.0</td>
</tr>
<tr>
<td>1992/93</td>
<td>359</td>
<td>35,000.0</td>
</tr>
<tr>
<td>1993/94</td>
<td>453</td>
<td>46,600.0</td>
</tr>
<tr>
<td>1994/95</td>
<td>677</td>
<td>68,300.0</td>
</tr>
</tbody>
</table>

The IMF complained that the trade liberalization efforts were not going as fast as they expected. However, due to its political role in the Middle East, Egypt has been able to resist many of the IMF pressures, especially with regard to sensitive economic policies, i.e., the devaluation of the Egyptian pound, and speedy implementation of the privatization program. With an ongoing peace process to end the conflicts between the Arab countries and Israel, and the Gulf crisis, the western alliance led by the U. S. recognized that Egypt was a vital element in the stability of the area and gave Egypt some advantage in negotiating the terms of the IMF and the World Bank agreements for the measures needed for the economic reform. The influence of the Western alliance and the IMF and the World Bank on the economic reform policies in Egypt is undeniable, but is primarily a matter of speed and methods of implementation.

President Mubarak and his cabinet also recognized that the public sector will not be self-sustainable in the future. As a result, a privatization program became the center element of the ASERP. The aims of the privatization program are,
among other things, to: (1) upgrade the efficiency of the public sector companies, (2) reduce the drain on the government’s fiscal resources, (3) secure enhanced accesses to foreign market, technologies and capital, and (4) widen the base of ownership of Egyptian companies. The privatization strategy is built on the sale of public sector assets whether through the stock exchange or the sale of a strategic stake to an anchor investor by public auction. Again the government (which took a very slow path in executing the program) was criticized by the IMF, World Bank and both the domestic and the foreign investors for such a policy. For instance, until 1995 there were only four public enterprises which were sold through private placement to anchor investors. From over a three hundred public enterprises targeted in the privatization program, only eleven public enterprises were sold through the stock exchange.

There are several factors which led to delay in the implementation of the privatization program—among them the pricing and the valuation of the shares of the public companies, the fear of the liability of selling such assets, and the expected layoff of the redundant labor after the privatization program. However, the government, in order to overcome the problems effecting the implementation of the program, decided to obtain collective approval by the cabinet for selling public assets, to avoid the approvals problems. In addition, the

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THE ECONOMIST INTELLIGENCE UNIT, EGYPT, COUNTRY REPORT, 3rd Quarter 1996.


44 The Union Bank Report, supra note 38.

45 Harik, supra note 8, at 22.

46 The Economist Intelligence Unit, supra note 42.

47 Id.
government started to study several approaches to solve the labor problem, among them paying the worker their salaries until they reached retirement age, or provide them with sufficient capital to start their own project, or retrain them with marketable skills.\footnote{id}{48}

The results of the new measures was reflected in a major turning point in May 1996, when the government decided to sell its first major stake, 75\% in a public company (Nasr City & Construction), through the stock exchange. It was followed by selling off a 70\% stake in a state fertilizer firm (Egyptian Financial and Industrial).\footnote{id}{49} The government promised to conclude the sale of eighty-five companies by the end of 1997.\footnote{id}{50}

President Mubarak's economic policies started to pay off: the inflation rate fell to 5.4\% and the budget was reduced to 1\% of the GDP.\footnote{id}{51} In addition, the external debt came down to $28.7 billion, 50\% of the GDP by the end of 1995,\footnote{id}{52} and the foreign received reached $8 billion.\footnote{id}{53}

II. The Role of the Capital Market in the Economic Development in Egypt

The revival of the capital market in Egypt aims to provide the companies with a vehicle to raise its middle and long-term capital through capital market instruments (stocks and bonds), instead on relying on the commercial banks. As

\footnote{id}{48}Id.\footnote{id}{49}Id.\footnote{id}{50}Harik, supra note 8, at 22.\footnote{id}{51}Egypt Economy: Sinkhole No More, THE ECONOMIST, March 15, 1997 at 76.\footnote{id}{52}The Union Bank report, supra note 38.\footnote{id}{53}Scott Macleod & Radwan, Egypt's Smiling Sphinx: with a Raft of Reforms, Egypt Cracks Down on the Bureaucracy and Corruption Riddling its Economy, THE TIMES, December 23, 1996, at 34.
mentioned earlier, for the last forty years, commercial banks dominated the financial system and provided most of the capital to finance the public and private activities. The problem with such a source of finance was that the private sector in Egypt was not able to obtain the required capital to finance long-term projects unless the borrower provided a collateral (usually twice the value of the loan). In fact, the lack of a well-developed securities market in Taiwan has raised a similar problem and the government provided several measures to curb the problem by enhancing the regulation of the securities market to be a reliable source for investors to raise capital.\textsuperscript{54} Available capital for the investors will be short term. In addition, the government wanted to use the capital market to implement the privatization program.

The capital market started to get the attention of both domestic and the foreign investors when the government adopted the sale of major stakes in public enterprises, for instance the Nasr City Construction offer (2.8 million shares at EL 65 each) raised LE 435m; the share of the foreign institutions was 1 million shares (23%); 1.6 million shares (58%) was allocated to retail investors; and employees received 400,000 shares.\textsuperscript{55} The majority strategy is attracting more foreign investors to Egyptian capital market because it gives them the chance to restructure the company and install new management in the company\textsuperscript{56}. Egyptian enterprises started to enter the international capital market to seek capital through

\textsuperscript{54}Michael S. Bennett, \textit{Unleashing a Tiger: Financial Deregulation in Taiwan}, 11 UCLA PAC. BASIN L. J. 1 (1992)
\textsuperscript{55} Supra note 40.
the Global Depository Receipt (GDR) issued by the Commercial International Bank (CIB) at London in July 1996. The offer raised $120 million\(^\text{57}\).

Moreover, the private sector is now using the stock market as a vehicle to raise the necessary capital to finance expansion plans. The first private floating took place in January 1997 by the Olympic group (a trading and electrical manufacturing company), by raising LE.25.5 m. from offering 16.7% of its Cairo Persian Industries subsidiary\(^\text{58}\).

There are twelve funds operating in the Egyptian stock market, and foreign fund mergers are focusing on the market as a promising market\(^\text{59}\). Due to the low price earning ratio of Egyptian equity (between six and seven times), the market attracted $90 million from the foreign portfolio investment\(^\text{60}\). However, such an amount is considered modest compared to the aggregate amount foreign portfolio flow to the emerging market in the same year (approximately $22 billion)\(^\text{61}\).

Foreign investors are cautious about investing in the Egyptian market because they complain of the lack of transparency and depth reports, the shortage of well-capitalized brokers for processing large orders, and the problems of clearance and settlement in the market\(^\text{62}\). As a result, the CMA introduced a new clearance and settlement mechanism in October 1996, and started to take a more aggressive approach toward the implementation of the disclosure rules.

\(^{57}\text{Id.}\)
\(^{58}\text{Egyptian Groups Takes the Public Road: Mark Huband on the Attraction of the Cairo Stock Exchange to New Generation of Business Leaders, FINANCIAL TIMES, March, 27, 1997 at 8.}\)
\(^{59}\text{Barraclough, supra note 56.}\)
\(^{60}\text{Id.}\)
\(^{61}\text{INTERNATIONAL FINANCE CORPORATION, Emerging Stock Market Fact book 1996.}\)
\(^{62}\text{Barraclough, supra note 59.}\)
The Egyptian government has shown a strong commitment to the development of the capital market. However, in order to achieve this goal, long-term policies and strategies need to be adopted.

III. The Regulatory Framework

The legal framework for the capital market in Egypt can be found in the CML which governs all aspects of it with regard to the regulatory agency, the activities, and the institutions that are working in the capital market. In this section I will discuss the CMA and the CML.

A. The Capital Market Authority

The CMA was established in 1979 by Presidential Decree No. 520 of 1979 (13 years before the new law). Its goal was to develop the capital market in Egypt. Under Decree No. 520, the CMA was governed by a board of directors responsible for carrying out all its functions, but all their decisions had to be submitted to the Minster of Economy for ratification. As a result, the Board set the strategy for the CMA role in the development of the capital market, set the rules that govern the CMA, and reviewed the CMA budget. The Board was composed of the Chairman of the CMA, the Vice Chairman of the CMA, and seven members (three from government authorities and four from the private sector). In fact, because of government economic policies during the 1970s and

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63 The Presidential Decree No. 520 of 1979, Article 9.
64 Id.
65 Id. Article 6.
the 1980s (relying on the public sector to lead the economy), the CMA was not able to contribute radical reforms to the capital market\textsuperscript{66}.

When the CML was enacted, it made the CMA the regulatory agency for the capital market. The CMA is now governed by Chapter 4 of the CML. It is a public authority under the auspices of the Ministry of Economics\textsuperscript{67}. The CMA is governed by a board of directors, composed of the Chairman of the CMA, the Vice Chairman of the CMA, the Deputy Governor of the Central Bank, and four experts appointed by the Prime Minister for two-year terms\textsuperscript{68}. The Chairman and Vice Chairman of the CMA are appointed by the President for three-year terms. The Board sets the strategy and the policies for the CMA, approves its budget, and approves the rules that govern the CMA in carrying out its functions\textsuperscript{69}.

1. The Role of the CMA

The main task of the CMA is to enforce the provisions of the CML\textsuperscript{70}. The basic aim of the CML is to regulate the securities market in Egypt. As a result, the main responsibilities for the CMA are (a) to develop and maintain efficient primary and secondary securities market; (b) protect investors against unlawful or unfair practices; and (c) ensure that investors have sufficient information to assist them in their investment strategy\textsuperscript{71}. To achieve its role the CML gave the CMA powers with regard to the companies, the market, the market participants’ arbitration, and

\textsuperscript{66} Mahmoud Fahmy, Legal and Judicial Reforms in Egypt, Unpublished paper submitted to the Private Sector Development Conference in Egypt (October, 1994).
\textsuperscript{67} The Capital Market Law, Article 42.
\textsuperscript{68} Id. Article 45.
\textsuperscript{69} Id. Article 44.
\textsuperscript{70} Id. Article 43.
\textsuperscript{71} Id.
education and training. In this section I will briefly discuss such functions and powers.

2. Companies

The CML gave the CMA several functions in relation to the companies: incorporation, the maintenance of the public record, the monitoring and enforcement of the legal requirement related to public issuance of securities, trading securities, and the conduct of the affairs of a company. As a result, any company intending to issue a security (stocks or bonds) needs to notify the CMA three weeks prior to issuing the security\(^72\). The CMA must approve the prospectus of any company offering security to the public\(^73\).

The companies that issue securities to the public must submit semi-annual reports to the CMA. These reports should disclose all the necessary financial information about the company\(^74\). The staff of the CMA inspects these reports and provides the companies with their instructions. The companies should follow these instructions or publish it to the public\(^75\).

The CMA has the authority to inspect the companies' records to be assured that the information provided by the companies is accurate\(^76\). Shareholders with a stake of five percent in a company may request that the CMA board of directors suspend the decisions of the general assembly of a company provided that there is

\(^{72}\) Id. Article 2.

\(^{73}\) Id. Article 4.

\(^{74}\) Id. Article 6.

\(^{75}\) Id.

\(^{76}\) Id. Article 7.
evidence a decision was unfairly made. In addition, financial institutions operating in the securities markets must be incorporated in the CMA.

3. The Market

The CML gave the CMA the power to monitor the stock exchange, and the Chairman of the CMA has the power to interfere and suspend transactions that violate the trading rules at the stock exchange. An establishment of any stock exchange requires the approval of the CMA.

4. Market Institutions

Market institutions operating in the securities market need to obtain licenses from the CMA. The CMA monitors them and has the power to suspend their licenses either temporally or permanently if they violate the CML provisions.

5. The Dispute Resolution System

The CML established a dispute resolution system under the auspices of the CMA to solve the disputes that will arise from the securities market transactions.

I will discuss the system in detail throughout my dissertation.

6. Training and Education

The CMA is responsible for supervision and training programs for the participants in the capital market and the securities market. The CMA is now in

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77 Id. Article 10.
78 Id. Article 27.
79 Id. Article 21.
80 Id. Article 26.
81 Id. Article 28.
82 Id. Article 30.
83 Id. Articles 50 & 52.
the process with USAID of launching a comprehensive training program for
participants in the Egyptian capital market as part of a project to provide technical
assistance to the CMA and the market institutions.

The CMA is very aggressive in implementing the CML provisions. The
chairman and the staff of the CMA understand that they need to establish a well-
organized market in order to make it able to play its role in economic
development. Its important to mention that part of the CMA attitude toward
monitoring the market is due to the investment fund crisis that took place in Egypt
last decade.

In this case, a group of fund managers claimed they could provide investors
with high returns which would exceed what the banks deposits already offered, and
the managers succeeded in attracting around LE 2 billion from investors. By the
mid-1980s, they became a very powerful economic entity. Toward the end of the
last decade, the government launched an investigation around the activities of
these funds. The investigations came as a result of accusations from some
investors and authorities that the fund managers were engaged in speculative
investments that could expose the investors’ money to great risks. The
investigation concluded that many of these entities were involved in building
pyramid schemes for the investors, and they relied on the flow of capital from the
new investors to pay the returns of the previous ones.84

This led to government intervention and by the end of the 1980s, all the
funds collapsed and the investors lost their investment. This episode was known in
Egypt as “the Islamic Investment Fund” crisis. In the aftermath of the crisis, the investors and the scholars accused the government of not taking the necessary measures in the early stages to prevent the crisis. The CMA took the main part of the criticism for its passive role in supervising and monitoring the fund activities. It responded to the accusations by stating that the CMA staff did not have the necessary powers to prevent the crisis. Under the influence of this financial tragedy, the CMA asked for, and received, all the powers it needed to prevent a similar financial crisis.

My main concern in this stage is how the CMA will use its power in monitoring and regulating the market. In my opinion, the CMA needs to be very careful in using its power in order to avoid having an over-regulated market. The success of the CMA as a regulatory agency will depend on its ability to provide the market with rules that will stimulate competition and growth and prevent fraud and instability. On the other hand the CMA needs to invest in training its staff, creating a skillful staff which can monitor the market, and setting the recommendations for any rules or interventions measures.

B. The Capital Market Law

The enactment of the CML and its Executive Regulations was an important step toward the revival of the capital market. One of the goals of the law was to help the companies raise the required capital for their operations through alternative financial instruments instead of relying heavily on loans from the commercials banks. The main focus at the CML is on the securities market in

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Egypt. The CML is divided into eight chapters, and its Executive Regulations is divided to five chapters.

The first chapter of the CML and the Executive Regulations\(^{65}\) regulates the securities issuance process by stipulating the requirements for the companies that issue shares to the public. A prior approval from the CMA is deemed necessary before issuing shares to the public.\(^{66}\) The company in such a process is also obligated to issue a prospectus\(^{67}\) that includes specific information about the company\(^{68}\). The company that issue shares to the public will be subject to continuing disclosure requirements\(^{69}\).

Chapter Two of the CML and its Executive Regulations regulates the stock exchange. The CML through Chapter Three of the CML and its Executive Regulations introduced the formation of the capital market institutions such as mutual funds, brokerage firms, underwriting firms, clearance and settlement, and venture capitals\(^{70}\) to help build the necessary infrastructure for the market.

Chapter Four, as discussed earlier, regulates and stipulates the functions and the powers of the CMA. Chapter Five of the CML and its Executive Regulations provides the market with a mechanism to solve disputes in an efficient

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\(^{65}\) This chapter of the Capital Market Law includes the articles from 1-14.  
\(^{66}\) The Capital Market Law, Article 2.  
\(^{67}\) Id. Article 5.  
\(^{68}\) According to article 5 of the Capital Market Law the prospectus should include the following: (a) purpose and duration of the company; (b) issued and paid up capital of the company (c) characteristics of the shares being offered and the terms of the offer; (d) names of the founders, the capital subscribed by each and the payment in kind, if any; (e) the company’s plans for the use of proceeds of sale and its expected results; and (f) places where the certified prospectus could be obtained.  
\(^{69}\) The Capital Market Law, Article 6.  
\(^{70}\) Id. Article 27.  

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and speedy way which will be discussed in detail throughout this dissertation. The penalties for violation of the provisions of the CML is stipulated in Chapter Six of the CML. The penalties aim to provide protection to the investors from fraud activities. Chapter Seven organizes the access to documents and fees. Finally, Chapter Eight of the CML allows the establishment of federations of shareholders’ employment at joint stock companies and partnership companies limited by shares, and Chapter Four of its Executive Regulations stipulated its functions.

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91 Chapter 6 of the Capital Market Law include articles 63-69.
Chapter Two
The Capital Market Dispute Settlement System

The CML introduced the System to provide the capital market with a mechanism that will assist the investors in rapidly solving the disputes that arise from their transactions. In fact, it will be their primary resort to solve such disputes. Needless to say, the nature of the disputes and the problems of the judicial system were behind the establishment of the System.

According to Chapter 5 of the CML, we can divide the System into three pillars: (1) the Mandatory Arbitration (the Arbitration), which functions as a mandatory system to solve the disputes that arise from the securities transactions; (2) the Grievance Body (the Body), which serves as an appellate panel for investors with regards to administrative decisions of the CMA and the Minister of Economy; and (3) the courts, where parties can challenge the outcome of the previous two pillars.

The System have been already used by the investors, and the cases will be discussed later in this chapter. The cases have raised questions with regard to several matters such as asset evaluation, corporate governance, trading in the Cairo Stock Exchange (CSE) and the distribution of dividends to the shareholders.

In my opinion, the cases have raised very simple disputes, and the System needs to be developed to be able to receive more sophisticated and complex disputes. For instance, the Arbitration should be ready to deal with the civil cases that will arise from insider trading disputes,\(^2\) disputes between the brokers and

\(^{2}\)Insider trading is considered a crime and the District Attorney office will handle the criminal aspect of such transaction.
their clients i.e., the suitability of investments,93 unauthorized trading and churning cases,94 and handling of accounts. Moreover, with the investment banks approaching the market, I expect to see (especially in the early stage of their activities) disputes between the banks and their clients with regard to the pricing of shares in an initial public offering of the financial products that they produce for their clients.

If the trend of the market development went in the right direction, one could expect to see the market heading to its maturity in the next five years. And when it reaches it, I can see all types of sophisticated and complex disputes coming to the System.

As a result, in developing the System we need to focus not only on its current stage, but also on how the System will be able to deal with all the disputes that are expected to arise in the near future. We need the System to be ready for its role in the market as a dispute resolution system viewed as efficient, fair, and arbitrary. Throughout this chapter, I will lay out the foundations of the System to explain how it operates.

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93 The suitability case is a common cause of action for arbitration in the US—they seek to measure the factors to determine whether a particular investment or investment strategy was appropriate for the customer. See, Margo E.K. Reder, Securities Law and Arbitration: the Enforceability of the Predispute Arbitration Clauses in Broker-Customer Agreements, COLUM. BUS. L. REV. 91 (1990).
94 Churning arises if a broker excessively trades a securities account to generate large commissions. Id.
I. The Mandatory Arbitration

The Mandatory Arbitration (the Arbitration) was introduced by the CML to solve the disputes that arise between the investors from securities transaction. In addition, it covers the disputes that arise from corporate governance disputes. The theory behind the Arbitration is to provide the investors with a mechanism to solve their disputes before taking their case to the court. It is a fact that arbitration has been used as a method to solve the commercial disputes for a long time. The main advantage of arbitration over the judicial system can be found in the ability of the parties to get a neutral expert who provides them with a final decision to end their disputes. The informality of the arbitration procedures can help the parties adopt the rules that fit their disputes. It also can assist the parties in reducing the risk of the disputes on their business by stipulating a confidentiality clause that will prevent the leak of information to the public.

The CMA, in the preparation of the CML, was concerned by the problems of the judicial system in Egypt. As a result, the Arbitration came as a solution for the securities market disputes. In my opinion, the CML, by introducing the Arbitration, has provided the securities market with a vital mechanism. It was created upon the recommendation and request of both the investors and international development agencies, i.e. the World Bank. However, it is important

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55 Article 52 section 1 from the CML stipulated that “all the disputes arising from the implementation of this law in connection with dealing in securities, shall be only adjudicated by means of arbitration”.
56 Id.
58 Id.
59 Id.
to mention that the CMA was convinced from the early stages of drafting the CML that an arbitration system should be introduced to the securities market. Thus, the recommendations of the investors and the World Bank came to confirm the CMA position. The CML and its Executive Regulation have outlined the rules that govern the Arbitration. I will discuss below the Arbitration jurisdiction, the Arbitration Panel, the Procedures, and the award.

A. The Arbitration Jurisdiction

The Arbitration panel (the Panel) has jurisdiction over two types of disputes: (a) the securities transactions disputes and (b) corporate governance disputes. Below I will discuss the Panel jurisdiction over each type of dispute.

1. Securities Transaction Disputes

The Panel has jurisdiction over the disputes that arise from the securities transactions governed by the CML. This can be found in the language of Article 52 section 1 of the CML “All the disputes that arise from the securities transaction governed by this law shall be adjudicated only by means of arbitration”. It should be clear that the term “arbitration” refers to the Panel mentioned in section 2 of the same Article, which I will discuss infra.

As a result, the Arbitration is considered the only forum that has the initial jurisdiction over securities transactions disputes. In fact, the language of the article is very broad to cover all type of disputes related to the securities transactions, i.e. broker/customer disputes, and initial public offerings.
2. The Corporate Governance Disputes

The Panel have jurisdiction over the corporate governance disputes that arise from implementation of Article 10 of the CML. According to Article 10 section 1 of the CML "The board of directors of the CMA upon petition from the shareholders who control not less than 5% of the company shares, and after a careful examination, have the power to suspend the company general assembly decisions, if such decision were unfairly taken in favor of a given group of shareholders, or causing harm to them, or unfairly provides benefits to the members of the board of directors or others." However, the decision of the CMA board of directors will last for only 15 days and the concerned shareholders should request the nullification of the disputed decision. If the shareholders do not take this action, the suspension decision will be nullified.

B. The Arbitration Panel

The panel for the Arbitration is composed of three members. The chairman should be a senior Justice. The Ministry of Justice names the chairman of the panel, then each party chooses an arbitrator to join the panel. In case one of the parties fails to choose an arbitrator, the office will ask the Ministry of Justice to name a senior Justice instead.
C. The Procedure

The procedure starts with a request to the Arbitration office, which sends to the Ministry of Justice a name for the Chairman of the panel, and the parties name their arbitrators. The office is responsible for the communication between the panel and the parties. The panel is free to choose the procedure that will govern the arbitration. The only restriction is due process. The panel reviews the facts of the case and issues the award in thirty days. The panel can take more than the thirty days for thirty days is not a restricted deadline and is considered an administrative deadline with no sanctions for its violations. The party can take a copy of the award to enforce it and any questions about the award enforcement should be addressed to the Panel.

The parties have the right to challenge the award in the appellate court, however, the article haven’t set the scope of the review. I will discuss this issue in more details infra in the next chapter. The Executive Regulation of the CML sets the rules for the fees and which party should bear them.

D. The Qualification of the Arbitrators

As mentioned previously, the Chairman of the panel should be a senior Justice named by the Ministry of Justice, and the parties choose the other members. However, the CML does not require the panel members to have any especial knowledge about securities law. The CML assumed that parties will

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104 Id.
105 Id. Article 55.
106 Id.
107 Id. Article 60.
108 Id. Article 52.
choose a qualified arbitrator to join the panel, and maybe this is the reason why it did not set rules for the arbitrators' qualifications.

E. The Award

The award should be written in Arabic and summarize the facts of the case and the reasons for the Panel decision, signed by the Chairman of the panel. 109

II. The Grievance Body

The Grievance Body (the Body) is governed by articles 50 and 51 of the CML and to articles 206-212 of the CML’s Executive Regulation. Its main task is to review the disputes that arise between the investors or the companies and the Minister of Economics or the CMA with regard to the administrative decisions. Below, I will discuss the Body jurisdictions, the Body members, and the Procedures.

A. The Body Jurisdiction

The Body has jurisdiction over the administrative disputes that arise from the implementation of the CML provisions. Such jurisdiction is found in Article 51 of the CML section 1 “The Body specified in the preceding article will be responsible for the examination of complaints raised by the concerned parties against administrative decisions taken the Ministry of Economics or the Capital Market Authority.” It should be clear that the term “Body” refers to the Body established by the Article 50 of the CML, which I will discuss infra, and the term

109 Id. Article 60, section 2.
“parties” refers to both investors and financial institutions. In fact, the Body has to review such disputes before it can be challenged at the Administrative Courts.110

B. The Body Members

The Body 111 is composed of five members: the Chairman of the Body must be one of the Vice Presidents of the Administrative Court112 and the other members are two Justices from the Administrative Court, a representative from the CMA, and an appointed expert by the Chairman of the CMA.

C. The Procedures

The procedures starts with a request from the investor or the company to the Body office at the CMA. 113 The request should have the following information:114 (1) the name of the person submitting the request and his or her address and title; (2) the date of the challenged decision and when the challenger received it;115 (3) the grounds for challenging the decision and why he or she is seeking the body review; and (4) a receipt to certify that the challenger has deposited the required fees.116

The Body staff registers the request and provides the challenger with a copy stamped with the number and the date of the registration. After the registration process, the staff delivers the request to the Chairman of the Body to

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110 Id. Article 51 section 3.
111 Article 50 of the CML.
112 The Administrative court in Egypt was established in 1940 to review the Government administrative and executive decisions.
113 The Capital Market Law, Executive Regulation, Article 206. Of the CML.
114 Id.
115 According to Article 208 from the Capital Market Law, Executive Regulation, the challenger should seek the Body review within thirty days from receiving the decision.
start the process. During the reviewing process, the Body can ask the challenger to submit more documents or memorandums to elaborate more on his or her position regarding the challenged decision.\textsuperscript{117}

The Body will issue its decision within sixty days from receiving the request or within sixty days of the last procedure and the decision is final (unless of course it was challenged at the Administrative Courts). The Body Office will inform the challenger of the final decision regarding the request\textsuperscript{118}, and the CMA will bear the fees for the Body members.\textsuperscript{119}

III. The Courts

Egypt has a bilateral judicial system where the civil courts have jurisdiction over the private civil and commercial disputes, including the government business disputes. The Administrative courts (the Counsel of the State) have jurisdiction over disputes that arise from the acts of public administrations' authorities acting in their capacity as public powers\textsuperscript{120}.

With regard to commercial and civil disputes, the civil courts are divided into the Primary courts were the parties litigate their disputes and the Appellate courts where the parties appeal the Primary courts rulings. Both the Primary and the Appellate courts review facts and legal issues. The Court of Cassation is the highest court in the civil court system and reviews only legal issues.

\textsuperscript{116}According to Article 211 of the Capital Market Law the fees for the request is LE 5,000 and the plaintiff shall have the right to get it back if the Body accepted the request after 10% discount for the administrative fees.
\textsuperscript{117}The Capital Market Executive Regulations, Article 208.
\textsuperscript{118}Article 209 of the CML Executive Regulations.
\textsuperscript{119}Article 212 of the CML Executive Regulations.
The Conseil d’Etat is divided into three major divisions: the Judicial Division, the Legal opinion Division and the Legislative Divisions\textsuperscript{121}. The Judicial Division is composed of the High Administrative Court acting as the final resort for the appellate process for the administrative courts; the Administrative Judicial Courts, which has jurisdiction over all the administration law disputes except for those within the jurisdiction of the Administrative court and disciplinary court; the Administrative court which has limited jurisdiction to specific administration law disputes; and the Disciplinary court which has jurisdiction over employee disciplinary issues\textsuperscript{122}.

The CML gave investors the right to challenge both the Body decision and the Arbitration award at the courts. Investors challenging the Body decision seek the Administrative Judicial court to revoke the decision.\textsuperscript{123} The Arbitration award can be challenged at the Appellate courts.\textsuperscript{124} The main issue with regard to the role of the courts in the System is the scope of review. In other words, the question is what can the investors expect from the courts in the System? The answer to this question will be discussed in the next chapter after we understand the constitutional question that could threaten the System.

\textsuperscript{121} Id. at 367.
\textsuperscript{122} Id. at 368.
\textsuperscript{123} The Capital Market Law, Article 51.
\textsuperscript{124} Id. Article 52 section 4.

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IV. The System Cases

The records of both the Arbitration and the Body show that in the last three years they have received forty cases.\textsuperscript{125} thirty cases to the Body and ten cases to the Arbitration. In this section I will discuss the cases to enable the reader to understand the types of cases the System has been dealing with.

A. The Arbitration Cases

The records of the Arbitration Office shows that it has reviewed ten cases: four were finished by the Arbitration panel and six cases are still pending.

The first case\textsuperscript{126} raised the question of whether a claimant was eligible to buy company shares without the approval of the board of directors. The claimant stated in his request that he accepted an offer from a shareholder to buy her shares on 19/3/1992, and the transaction was concluded at the CSE through a broker on 2/8/1992. However, the company (the respondent) refused to certify the transaction in its records and submit the certified shares to him. The respondent argued that the claimant was not eligible to buy the disputed shares on the ground that the respondent had bought the claimant’s shares. As a result, the claimant wasn’t a shareholder when he concluded the transaction for the disputed shares on 27/7/1992 (the date when the transaction was concluded by the broker), and according to the articles of association of the company, a shareholder cannot sell his or her shares to a non-shareholder without the board of directors’ approval.

\textsuperscript{125} According to the CMA records, the Body office received thirty cases in the period from 1/1/1994 to 3/1/1997, and the Arbitration office received ten cases in the same period.

\textsuperscript{126}Case No 1 1995, the Arbitration Office, the CMA.
and the board will have priority to buy those shares. The respondent added that
the claimant did not seek the board's approval prior to the transaction of the
disputed shares, which made it invalid.

The Arbitration panel supported the respondent's argument and ruled that
the claimant did not have the right to buy the disputed shares without the board of
directors' approval. The claimant arbitrator wrote in his dissident opinion that the
panel should consider the initial day of the agreement between the plaintiff and the
shareholder (19/3/1992—on this date the claimant was a shareholder and was
eligible to acquire the disputed shares) in evaluating whether or not he needed to
seek the approval of the board of directors.

The facts of the second case started with a request from three
shareholders (the claimants) to the CMA seeking to use its powers to suspend the
general assembly decision of the company to elect a new board of directors on the
ground that that the decision was unfairly taken. On 24/6/1995, the CMA Board
of Directors suspended the decision of the general assembly. The claimants
submitted a request to arbitrate their dispute according to Article 10 of the CML.
The company (the respondent) argued that the three shareholders who sought to
suspend the general assembly decision did not have the right to be granted such
decision. The respondent's argument was that the first claimant (a Bank)
controlled 25% of the shares and was increased to 55.5%, the second claimant (an
investor) controlled 1,500 shares in addition to 4,500 shares by proxy, and the

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127 The company is a closely-held company. Id.
128 Id.
129 Case No 2 1995, the Arbitration Office, the CMA.
third claimant (an investment company) controlled 1,000 shares. By the end of the first term of the company board of directors, the first and the third claimant asked the company general assembly to elect a new board, and the first claimant stipulated in the request that the board should be composed of seven members, and it should be represented by four in this board. The general assembly refused such a request on the ground that the articles of association prevented its approval because the first claimant did not control the required quota to be represented by four members of the company board of directors. In addition, the general assembly refused to accept the request of the third claimant to be represented at the company board of directors because it violated the deadline stipulated for such a request in the Executive Regulations for the Company laws. The Arbitration panel refused the claimants' argument and confirmed the general assembly decision.

The third case raised the question of the validity of a CEO transaction with regard to selling the shares of the company to an investor. The claimant (President and shareholder in the company) claimed in his request for arbitration that he and the respondents (the CEO of the company and others) established an investment company in 29/12/1992. The claimant became the president of company and the first respondent became the CEO of the company. In 3/4/1983 a

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130 Article 22 of the company articles of association stipulated that the board of directors should be at least composed of three members and not to exceed seven members, and that the shareholder who controls 15% of the company shares has the right to be represented by a member in the Board of directors and that the multiplication of the shares increase the number of representatives. Supra note 41.

131 According to Article 221 section 2 of the Executive Regulation of the Company Law (the General Assembly of company should receive any request before 15 days from its meeting).

132 Case No. 1 1994, the Arbitration Office, the CMA.
construction company was established and the shareholders were the investment
company controlling 50% of the shares, the claimant with 20% of the shares (who
became its President), and the first respondent with 30% of the shares (who
became its CEO). In the 27/6/1992, the general assembly of the investment
company decided to eliminate the CEO after it accused him of fraudulent activities.
The claimant added that the investment company discovered that the CEO
succeeded in selling his shares in the construction company, though he did not
have the capacity to conclude such a transaction.

The panel ruled that it did not have jurisdiction over the matter and decided
to send the case to the courts. The panel mentioned that the arbitration raised
questions that don’t fall in the ambit of the CML, which is whether or not the
respondent had the capacity to conclude the disputed transaction.

The last case\textsuperscript{133} raised the question of whether a company has the right not
to distribute dividends to a shareholder and give that person their compensation for
work as a member of the board of directors. The panel ruled that it lacked
jurisdiction over the matter because the question did not regard a securities
transaction.

\textbf{B. The Body Cases}

The Body has reviewed a variety of matters with regard to asset evaluation,
corporate governance, and trading at the stock exchange. I will briefly discuss the
different types of cases that the Body has reviewed since it was established by the

\textsuperscript{133}Case No. 2 1994, the Arbitration Office, the CMA.
CML in order to provide an understanding of what type of cases come to the Body.

The majority of the cases in the Body records are asset evaluation cases.\textsuperscript{134} As noted, there were thirty cases reviewed by the Body in the last three years, twenty-eight cases were regarding asset evaluation disputes.\textsuperscript{135} In all the cases that I reviewed, the facts are almost the same. They start with a company submitting a request to the CMA to increase its capital and issue new shares to an investor. The new shares in this case will be financed through an asset owned by the investor.\textsuperscript{136} An evaluation committee (the Committee) will evaluate the asset to confirm its value to the issued shares.\textsuperscript{137} The CML gives the investor the right to seek the Body review and challenge the Committee decision.\textsuperscript{138}

The Body decisions on this type of cases vary from one case to another. The Body confirms the Committee decisions in many cases\textsuperscript{139}, however, in other cases, the Body modifies the Committee decisions\textsuperscript{140}.

\textsuperscript{134} According to the Chief staff member of the Body office, 70\% of the cases at the Body docket arises the questions around the decision of the asset evaluation committee, an interview in Cairo at the Capital Market Authority in 13 of June 1996.
\textsuperscript{135} Source the Body Grievance Office at the Capital Market Authority.
\textsuperscript{136} According to Article 3 of the CML: the value of shares which are issued for the payment in kind or in case of merger, should be equal to the value of the in-kind payment, or the merger assets, as defined by the relevant valuation of the committee. The proponents to this valuation shall have the right to contest the contesting committee stipulated in Chapter Five of this Law and subject to the rules and the procedures stipulated in the Executive Regulations. The translation of the article came from the English version of the CML issued by the CMA.
\textsuperscript{137} The valuation committee is governed by Article 25 of the Companies Law (Law 159/1981). The committee is composed from a Justice as Chairman and four experts in economics, accounting and law as members. However, if the asset was owned by the Government or any General Authority or the Public Sector, a representative of the Ministry of Finance and the National Investment Bank should be included in the committee.
\textsuperscript{138} Supra note 35.
\textsuperscript{139} See case No. 1/1996 the Body office.
\textsuperscript{140} See case No. 2/1996 the Body office.
The second type of cases (one case)\textsuperscript{141} was in regard to a corporate governance dispute\textsuperscript{142} where a company challenged the CMA board of directors' decision when it used its power stipulated in the CML\textsuperscript{143} to suspend the decision of the general assembly meeting for the shareholders, the fact of the case was discussed \textit{supra}.\textsuperscript{144}

The Body confirmed the CMA Board of directors decision. In its analysis, the Body mentioned that the CMA Board of Directors had properly used its power and the company general assembly violated the articles of association during the procedures for electing its new board of directors.

The third type of case (one case)\textsuperscript{145} was in regard to trading at the stock exchange when the Chairman of the CMA used his power to interfere and cancel a transaction at the CSE.\textsuperscript{146} The case started with a request from the National Egyptian Bank (NIB) and the International Finance Corporation (IFC) to the Body to review the decision of the Chairman of the CMA to suspend a transaction between the two challengers. They explained in their request that the IFC had

\textsuperscript{141}Id.
\textsuperscript{142}The Body records show that there was only one case in this regard until October 1996, case No. 6/1995 the Body records.
\textsuperscript{143}According to Article 10 of the CML, upon a petition on the substantive reasons of shareholders who own no less than five percent of the company shares, the Board of the CMA may suspend, after verification, the decisions of the general assembly of the company that are taken unfairly in favor of the given group of shareholders, or causing harm to them or unfairly bringing about a benefit to the members of the board of directors or others. The concerned shareholders should appeal to the arbitration council which is defined in Chapter Five of its law, to request the nullification of the decisions of the general assembly, within 15 days from the date of the suspension decision. In case this action is not taken within such period, the suspension decision shall be nullified.
\textsuperscript{144}See case No. 2/1995 of the Arbitration Office.
\textsuperscript{145}Supra note 125.
\textsuperscript{146}According to Article 21 of the CML, the Chairman of the CMA can take the powers of the Chairman of the stock exchange and suspend the trading of shares that aim to manipulate the prices or violate the laws and its executive regulation.
agreed to buy from the NIB part of its shares (66,681) in the Commercial
International Bank (CIB),\footnote{By this time the CIB was a closely-held company.} and the transaction was concluded through a broker
at the CSE in 24/10/1993. However, in 27/11/1993 the Chairman of the CMA
issued a decision to suspend the transaction on the ground that challengers violated
the law by using a temporary certificate instead of the shares to conclude the
transaction. The challengers argued that the shares weren’t available during the
transaction. In addition, the CIB stipulated the number of shares that will be
issued in exchange for the temporary certificate. The Body refused the challengers’
argument and confirmed the disputed decision on the ground that shares of the
CIB were available during the transaction and should have been used.

In my opinion, the System is good step in helping the investors solve their
disputes. In addition, the market will benefit from this mechanism because it will
assist in making it more efficient and better developed. However, we need to
evaluate it to diagnose problems that could hinder its role in the market. As a
result, throughout the next chapter, I will try to answer a major question, which is
whether the System, in its current form, has helped the investors and the capital
market. This question is an appraisal question, and its very important for any
successful dispute resolution system to answer such a question.\footnote{Harry T. Edwards, Alternative Dispute Resolution Panacea or Anathema 99 HARV. L. REV. 668 (1986).} By diagnosing
the problems of the System, I will be able to set my recommendations that can help
the development of an efficient capital market dispute resolution system.
I know it may be premature to try this endeavor at this early stage, however, I believe that this early appraisal could be helpful for the System to be developed, and to curb some of the problems that can hinder this development. The CMA, the Ministry of Justice, and the investors are relying on the system to help avoid using the court system which requires an endless amount of time, money, and effort to settle disputes.
Chapter Three
An Assessment Of The Capital Market Dispute Settlement System

In this chapter I will evaluate the three arms of the System (the Arbitration, The Body, and the Courts). The discussions throughout this chapter will elaborate more on the problems of the System, and provide solutions and recommendations for the decision makers at the CMA and the Ministry of Justice to overcome such problems. The chapter will be divided into three parts, Part I discusses the Mandatory Arbitration, Part II, discusses the Grievance Body, and Part III, discusses the Courts.

I. The Mandatory Arbitration

As noted in the previous discussion, the Arbitration came as an attempt of the CMA to provide the securities market with a mechanism to solve disputes that arise from the securities market transactions. However, in my opinion, the CML has not provided the market with a clear arbitration system where the investors and the financial institutions can use it efficiently. In this Part, I will focus on the Arbitration and analyze it to examine exactly what it has already provided to the securities market and what it is still lacking. I will focus on the major issues that are considered to be essential for the Arbitration in order to be a reliable source in delivering justice to the disputant. I will start with discussing the constitutional aspect of the Arbitration, in fact, this discussion is crucial for the System in general. Its importance comes from the ruling of the Constitutional Court that a mandatory arbitration violates the constitutional rights of the parties. As a result, a
close analyses of the ruling will be very important to understand the court’s position and the effects of such a ruling on the Arbitration. The discussion will continue by evaluating the qualification of the arbitrators and the procedures of the Arbitration, and conclude by discussing the role of the Office and its staff.

A. The Constitutional Aspect

A constitutional question for the Arbitration has been already raised in one of the cases reviewed by the Arbitration panel.\textsuperscript{149} The roots of the question came from the ruling of the Constitutional Court (the Court) that a mandatory arbitration system is considered unconstitutional.\textsuperscript{150} This ruling has turned the attention to a crucial point in the Arbitration. It became necessary to answer the constitutional question for the Arbitration, because this question affects its existence. To answer the question, I will start by analyzing the Court decision on the mandatory arbitration, then I will examine the Arbitration in the light of this analysis to see whether or not it will pass the constitutional test.

In this case a bank was established by a law,\textsuperscript{151} and the law stipulated a mandatory arbitration system to solve disputes.\textsuperscript{152} According to this mandatory arbitration, disputes between the shareholders would be resolved by the bank board of directors, which would act as an arbitration panel for such disputes. Disputes between the bank and the investors would be referred to an arbitration panel where each party would choose an arbitrator, and then the two arbitrators would choose the third arbitrator. The arbitrators in their initial meeting would

\textsuperscript{149}Case No. 2/1995, the Arbitration Office at the CMA.
\textsuperscript{150}Case No. 13, Y 15 judicial Constitutional Court.
\textsuperscript{151}Bank Faisal Al Islami (The Islamic Fasil Bank) was established by Law No. 48/1977.
decide who would act as the chairman of the panel. If the panel failed to determine the chairman, a committee at the bank would conclude the task. The panel would set the procedures for the arbitration and the award would be final and binding. This arbitration system was challenged by an investor at the Court, where it ruled the previous ruling.

The Court in its analysis mentioned that the arbitration goes through three stages. In the first stage the parties agree to refer their dispute to an arbitrator to render an award to resolve the dispute. This stage is crucial for the arbitration, because it allows the arbitrator to have jurisdiction over the subject matter of the dispute. In the second stage, the arbitrator starts the procedures for the arbitration. In the third stage, the award is rendered, and is binding and final.

It is the Court's position that the first stage allows the arbitration as a result of the parties' agreement—a statute cannot force the parties to arbitrate their dispute. However, the Court argued that in the second stage the role of the parties will be reduced and the arbitration process will be subject to the rules and the procedures that govern it. And in the final stage the panel renders the award and the parties accept it as a final and binding resolution for their dispute.

In other words, the Court distinguishes between two types of arbitration: a traditional arbitration where the parties agree to enter a contract that refers their disputes to an arbitration panel to solve it. This arbitration is governed by the

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152 Law No. 48/1977, Article 18 section 2.
153 Case No. 13, Y. 15, Judicial Constitutional Court.
154 Id.
Arbitration Act (the Act). The other type is a mandatory arbitration were the parties are forced to go to arbitration by statute. The Court approved the traditional arbitration, and rejected the mandatory arbitration.

The Court’s position was based on the following argument: first, that according to the language of Article 68 of the Constitution, “The right to litigation is inalienable for all, and every citizen has the right to refer to his combatant judge,” thus, the parties have a Constitutional right to use the courts to solve their disputes. Moreover, section three of the same Article stipulated that “Any provision in the law stipulating the immunity of any act or administrative decisions from the control of the judicature is prohibited”. Secondly, the Court mentioned that in order to waive such right, the parties need to agree to refer their disputes to an arbitration. In this case, the courts will lose their jurisdiction for these disputes, and will focus only on the validity of the arbitration clause and its enforcement. The Court summarized its opinion when it mentioned that arbitration by its nature cannot be mandatory, in fact, it has to be the result of an agreement between the parties. The Court examined both the Constitution and the Act provisions to reach its conclusion and provides us with clear criteria of how to evaluate an arbitration system from a constitutional aspect.

155 An Arbitration Act (the Act) was issued on 18 April 1994 by Law No. 27/1994. The Act came as a result of great effort for the special commission was formed by the Egyptian Government to produce a new arbitration law inspired by the UNCITRAL Model Law on arbitration. See, Abdul Hamid El-Ahmad, The New Arbitration Act in the Civil and Commercial Matters, 12 J. OF INT’L ARB 65 (1995)

156 Case No. 13, Y. 15 Judicial Constitutional Court.

157 Id.
Through my careful examination of this ruling, I need to emphasize the following points. First, the court respects traditional arbitration as an important method to solve commercial and civil disputes. It understood that in modern business, arbitration is considered vital for its success. Second, in my opinion, the Court has provided a key measure to run a constitutional test of any Alternative Dispute Resolution system (ADR)\textsuperscript{158}: the parties' approval. In other words, the parties need to agree not to use the courts to solve their disputes.

I agree with the Court position because the parties, when they choose to use arbitration or any ADR method to solve their dispute, need to be aware of such choices to approve it. Moreover, the provision of the Constitutional article is clear and doesn’t leave any room for a different interpretation.

Now to turn to the Arbitration. To run the constitutional test to examine it, we need first to identify what the constitutional problem is; second, to examine the problem in the light of the previous ruling, and finally, to provide the answer for the matter.

To identify the constitutional problem, we need to ask what type of arbitration we are dealing with. In fact, we are dealing with a mandatory arbitration\textsuperscript{159}. In other words, the parties are referred to arbitration without any consent or agreement to use it as a method to solve their disputes. This

\textsuperscript{158} Alternative Dispute Resolution (ADR) includes arbitration, negotiation, mediation, early neutral evaluation, and other methods to solve the parties disputes without using the traditional litigation process.

\textsuperscript{159} As I mentioned in the previous chapter Article 52 of the Capital Market Law stipulated that "any disputes that arise from the securities transactions according to this law, will be solved through arbitration".
mandatory aspect will trigger the concerns that the Court mentioned in its opinion (blocking the road to the courts).

As a result, the key question will be whether or not the Arbitration is blocking the road to the courts. In my opinion, however, the Arbitration is not blocking the road to the courts. As I mentioned in the previous chapter, the award is subject to the Appellate courts’ review. In other words, it is not final or binding unless the parties choose to accept it. The scope of review will determine whether or not there is a constitutional concern, though as some scholars have mentioned, there is an ambiguity with regard to the role of the Appellate Courts because the CML provisions did not give guidelines for such review.  

In my opinion, the Appellate courts should have a full scope review on the subject matter of the arbitration award. I believe that the Appellate courts are the primary courts that have jurisdiction over the capital market disputes. As a result, once the award is challenged in the Appellate court, the Appellate court will have the power to review the dispute without any restriction on the scope of the review. The parties in the Appellate courts must have the chance to develop their case as if it is a new trial, and the Appellate courts will have the right to set aside the award and have full jurisdiction on the subject matter.

The counter argument to this opinion is that this is against the notion and the goal of arbitration. This argument will be valid in the traditional arbitration as it is governed by the Act, and the role of the courts is stipulated in details in it. A

\[160\] Fahmy, supra note 66.
party in traditional arbitration who asks the courts to set aside the award should know that courts scope of review is limited to grounds specified by the Act\textsuperscript{161}.

But the Arbitration is a mandatory arbitration which cannot exist under the constitutional test. The full scope review of the Appellate courts is the only constitutional solution for the Arbitration. In fact, I am taking the position that respects the choice of the parties when they choose the arbitration as the method to solve their disputes and the award will be final and binding. However, when we are faced with a mandatory arbitration, the role of the courts will be different. In fact, the role of the courts will be similar to role of the courts in the U.S. when they review the outcome of a binding arbitration, i.e., an annexed court arbitration\textsuperscript{162}. In this type of arbitration, the parties are forced to use it, however, its outcome is not final or binding, and the courts give the parties the right to develop their case and have a de nova trial\textsuperscript{163}.

RECOMMENDATION

- To overcome the constitutional concerns the Appellate court should have a full-scope review over the rulings of the Arbitration panel.

II. The Arbitrator’s Qualifications

The qualifications of the arbitrators are considered a vital point for building confidence in the Arbitration. The investors and the financial institutions will be able to trust the outcome of the Arbitration if they knew that their disputes were decided by skillful and qualified arbitrators. The importance of such an issue was

\textsuperscript{161} The Egyptian Arbitration Act, Article 53.
\textsuperscript{162} A. Leo Leven, Court-Annexed Arbitration, 16 MICH. J. L. REF. 537 (1983).
\textsuperscript{163} Id.
noted in several studies to evaluate arbitration’s programs in the U.S. Among them was a recent study that evaluated the National Association of Securities Dealers (NASD) securities arbitration system.\textsuperscript{164}

As noted in the previous chapter, in spite of its importance, the CML did not stipulate any especial background for the arbitrators. In fact, the only requirement mentioned the chairman of the panel (senior justice)\textsuperscript{165}. However, it is important to mention that the CML provided the panel with a great advantage by naming a Justice to the chairman of the panel. Such a chairman will be able to convey a message to the parties that they will have a fair hearing for their case and through the chairman they can trust that they will have the same quality of justice as if they have been to court.

In fact, the basic argument for the CML position with regard to the arbitrators’ qualification is that the parties to the Arbitration are capable of evaluating the arbitrators and choosing a competent and a qualified one to join the Arbitration panel. Of course, such an argument can be accepted from a theoretical point of view. However, the U.S. securities’ experience has proved that such an argument is not always right.\textsuperscript{166} As a result, the institutions that provide securities arbitration in the U.S. recently started to pay a great deal of attention to setting standards for the required qualifications of their arbitrators in addition to

\textsuperscript{164} SECURITIES ARBITRATION REFORM, REPORT OF THE ARBITRATION POLICY TASK FORCE TO THE BOARD OF GOVERNORS NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. January 1996 (hereinafter the Task Force Report). See also, the REPORT OF THE SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION, ENSURING COMPETENCE AND QUALITY IN DISPUTE RESOLUTION PRACTICE, April 1995, Report No.2 of the SPIDR Commission on Qualifications (hereinafter SPIDR).

\textsuperscript{165} Article 52 section 2 of the CML.
organizing a comprehensive training program to develop their skills and knowledge as securities arbitrators\textsuperscript{167}.

In my opinion, the Office should start to think about this issue and provide standards for the required qualifications of the securities arbitrators in Egypt. Such standards will insure the competence and the qualifications of the arbitrators who will join the Arbitration panel. However, it is important to mention that ensuring the competence of any dispute resolution system is a shared responsibility\textsuperscript{168} and that all the stake holders in the Arbitration (the CMA, the Ministry of Justice, the lawyers and the parties) should work together to achieve it.

However, before setting the standards for the qualification of the arbitrators, it is important to identify what we expect from them. In my opinion, the Arbitration will need competent and qualified arbitrators who have the skills, knowledge, and the ability to use them to provide the disputant with a opinion that will solve their dispute. The Office, with the cooperation of the other stake holders, will establish standards that will allow these arbitrators to be available for the parties in the securities disputes.

Once the standards of qualification and competence for the arbitrators have been established, the Office will start to focus on the candidate arbitrators invited to join an arbitrators list (I will discuss infra the arbitrator's list). Experience in the securities industry, education, and reputation will be among the basic elements

\textsuperscript{166} J. Kirland Grant, Securities Arbitration: is Required Arbitration Fair to Investors? 24 NEW ENG. REV. 389, 495 (1989).
\textsuperscript{167}Id.
\textsuperscript{168}SPIDER, supra note 171, at 4.
in securing the candidate arbitrators and assessing their qualifications to be
securities arbitrators and join the arbitrators panel.

A training program will be designed for the arbitrators to enhance their
skills and knowledge of securities disputes. However, as noted in some studies,
training by itself is not sufficient to insure the competence and the qualification of
the arbitrators. As a result, it will be necessary to establish a process of
assessment of the arbitrators' performance. This process will be on a continuing
basis, and there will be several methods of assessing, such as the parties'
evaluation of the arbitrators.

RECOMMENDATIONS

The following recommendations summarize what can assist in providing
the panel with qualified and competent arbitrators:

- Provide a training program for the Justice who will act as chairman of
  the panel. The program should aim to acquaint the Justice with securities
  regulations and practice.

- The office should provide standards for the competence and
  qualification of the arbitrators who join the Arbitration panel. Education,
  experience, and the reputation of the arbitrators should be emphasized.

- Design a training program on a continuing basis for the arbitrators.
  This training program should cover similar areas of training programs for dispute
resolution centers,\textsuperscript{169} as well as the ethical requirements for arbitrators, and the knowledge and skills required for the securities arbitrators.

- Provide an assessment process to evaluate the performance of the arbitrators. The process should use several measures in this task.

III. The Arbitration Procedures

In my opinion, the Arbitration procedures have two major problems: (a) the arbitrator's selection process, and (b) the procedures that govern the process.

A. The Arbitrator's Selection

As mentioned earlier, the process for selecting the arbitrators starts with naming the chairman of the panel from the Ministry of Justice and at the same time each party chooses an arbitrator for the panel\textsuperscript{170}. It is well known by practitioners in securities arbitration that the background and the skills of the arbitrators involved in the arbitration can effect the outcome of the arbitration.\textsuperscript{171} The main goal of the law in this process is to select a partial neutral arbitrator for the panel. In my opinion, there are two main problems facing the Arbitration with regard to the arbitrators selection: (1) delay in selecting the arbitrators, and (2) lack of disclosure rules for the arbitrators.

1. Delay in Selecting the Arbitrators

The main reason for the delay in the arbitrators selection can be due to the long period of time that it takes the Ministry of Justice to name the chairman of the

\textsuperscript{169} Id. at 21.
\textsuperscript{170} The Capital Market Law, Article 52 section 2.
\textsuperscript{171} Grant, supra note 166, at 490.
panel\textsuperscript{172}. The same scenario can happen if the a party fails to choose an arbitrator. This delay will affect the commencement of the arbitration and make the parties lose the advantage of having a speedy forum to solve their disputes.

In my opinion, to prevent the delay of naming the chairman of the panel, the Ministry of Justice and the Office should work together to create a list of Justices who can be named chairman of the panel. Once an arbitration request is submitted to the Office, the Chairman will be named from this list. The selection will rotate among the Justices on this list in a strict order to avoid any delay in this process.

On the other hand, a second list prepared by the Office by using the standards of qualification and competence that I discussed in the previous section should be established to assist the parties in choosing an arbitrator. In my opinion, due to small number of cases that the Office has received (ten cases in three years), the list of the arbitrators can start with as little as thirty qualified arbitrators. The list will be updated on a continuing basis and the number of the arbitrators will increase to cover any increase in the cases received by the Office.

B. The Disclosure Rules

In fact, neither the CML nor the Office have established any disclosure rules for the arbitrators, though such rules are considered vital for the parties because disclosure will allow them to assess the suitability of the arbitrator for their case. It will also protect the integrity of the Arbitration by avoiding the

\textsuperscript{172} According to the Chairman of the Arbitration Office, it takes at least one to two months to name the Justice who will be the Chairman of the panel (an interview with the Chairman of the Arbitration Office at the Capital Market Authority).
selection of an arbitrator who may have a conflict of interest that will prevent impartiality in solving the dispute.

Some argue that there is an assumption that each arbitrator will adopt the position of the party that selected him or her. In fact, this argument is not acceptable because the main task for the panel is to provide justice to the parties in their disputes. The selected arbitrators need to act independently of the parties. The assumption that they will represent the parties who selected them jeopardizes the efforts to build a reliable arbitration system that the parties can respect.

Second, the background of the arbitrators will affect the outcome of the arbitration and the parties have the right to know all the available knowledge that will enable them to evaluate whether they can live with such a choice in the panel or not.

In my opinion, the Office should establish disclosure rules for the arbitrators and provide a database for the parties in order to enable them to examine the background of the arbitrators. The disclosure rules will create transparency in the process of selecting the arbitrators and will increase confidence in the fairness of the arbitrators.

C. The Arbitration Procedures

The CML gave the arbitrators and the parties the authority to formulate the procedures that govern the Arbitration. The CML position in this regard is to support the flexibility and the informality so the arbitration can provide for the disputant. In my opinion, however, the Office should work in developing the rules that govern that Arbitration.
The rules should cover the basic procedures of the Arbitration such as the rules of evidence that govern the arbitrators, the rules we discussed earlier in this section with regard to the arbitrator selection process, and so forth. These rules will help the parties prepare their cases and will assist the arbitrators in handling the procedural questions that arise during the arbitration. However, the rules will stipulate that the parties will have the authority to waive any rule of the procedure to save time in the arbitration.

RECOMMENDATIONS

The following recommendations aim to summarize what will be necessary to enhance the arbitration procedures

- The establishment of a list that contains the name of the Justice that will be named as chairman of the panel to avoid the delay in naming the chairman of the panel.

- The establishment of the non-justice arbitrators’ list to assist the parties in choosing the arbitrators for the panel.

- The establishment of disclosure rules that will help the parties to notice reasons of conflict of interest for the arbitrator, or affect its fairness as an arbitrator.

- The establishment of arbitration procedures rules.

IV. The Administration

The role of the Office is considered crucial for the Arbitration success. For the Arbitration to be a reliable way to solve securities market disputes, it needs to
provide a prompt and efficient service. As a result, the role of the Office and its staff in managing the Arbitration and streamlining its management needs to be fully addressed.

The chairman of the Office and its staff are members of the legal department at the CMA. Their main task is to prepare the cases and provide the communication between the parties and the Arbitration panel. They also provide the documents through the parties to the panel. It's fair to mention that the staff is trying to do their best according to their skills and knowledge.

However, one can argue that the staff has a passive role in administrating the Arbitration and a lack of creative skills to produce new measures to develop it. For instance, the staff has not taken the initiative to develop rules for the Arbitration expect the rules that were mentioned in the Executive Regulation of the CML. In addition, the staff has not developed any evaluation procedure for the arbitrators' performance or whether the Arbitration is efficient in solving disputes for the investors. Also, the staff has not tried to reach the investors to educate them about the Arbitration and what they can expect from it. A classification and publication of the principles that the panels have established in the cases they reviewed was not concluded.

In my opinion, the main task of the CMA will be to assure the investors that the Office is functioning independently and it isn't under the influence of the CMA or any government authority. To achieve this, the Office has to be fully isolated from CMA pressure and act as an independent body. The Office should
maintain its independence through having an independent manager who is well trained and skillful on both the Egyptian judicial and legal system, and also familiar with the rules of arbitration. Such a manager should be able to evaluate the problems that are facing the Arbitration and provide the solutions to it.

In addition, he or she will work with stakeholders who are involved in the Arbitration, i.e., the Ministry of Justice, the CMA, and the investors, to enhance the Arbitration process and develop it. The Manager and the staff will take the leading role in establishing the standards of qualification and competence of the arbitrators. They will also be responsible for screening and assessing the candidate arbitrators to decide if they are qualified to join the arbitrators list. The Manager and the staff will take the main role in implementing the new rules and procedures that need to be introduced to develop the Arbitration.

The Office should also be supported with qualified staff who will be trained in how to undertake their job and how to assist the Manager in achieving his or her task. They will also assist the investors and the arbitrators in solving the problems they face. They can also help the arbitrators by providing them with advanced research about the rules that govern the securities markets. This research will allow the arbitrators to be updated with all the new developments in the these areas. In addition, it will build confidence in the arbitrators and the staff.

The Office should have an independent budget to finance its activities, especially in recruiting the manager and staff and also implementing the recommended measures. This budget will come from the fees the investors pay to
use the Arbitration, besides the funds that the government will allocate whether
directly or through the CMA.

RECOMMENDATIONS

The following recommendations summarize measures to enhance the Office role in the Arbitration:

- The Office should be independent and provided with an independent budget.
- The Office shall train the staff for their tasks.

V. The Grievance Body

As previously mentioned, the Body’s role is to solve the disputes that arise between the CMA or the Minister of Economics and the investors and the financial institutions with regard to the administrative decisions. Throughout this section of Chapter Three, I will discuss the Body to analyze and diagnose its performance and problems. The Body has reviewed thirty cases in the last three years, twenty-eight cases were regarding asset evaluation.

In my opinion, the role of the Body is crucial for the investors and the financial institutions in their administrative disputes with the CMA. As I mentioned in Chapter One, the CMA and its Chairman have been granted a variety of powers to be used to protect the investors. For instance, the Chairman of the CMA can exercise his discretionary powers and suspend a brokerage firm temporarily for its violation of the CML rules or of the internal rules that are issued by the CMA to the brokerage firms to follow. Also granted to the CMA is
the power entrusted in Article 10 of the CML. However, the Body has two main problems: (a) the qualification of the Body members; and (b) the conflict of interest for the members of the Body.

A. The Qualification of the Body Members

As noted from the discussion in the previous chapter, the majority of the members of the Body are Justices from the Administrative court (three members including the chairman of the Body). The others two members include a representative from the CMA and an expert appointed by the Chairman of the CMA. The dangers of this combination will be the lack of knowledge of modern securities and capital market rules and disputes. One is not surprised by the lack of clear understanding on the part of the Body members regarding such disputes; for the revival of the capital market and the legal reform which was concluded to implement the ASERP are creating a set of new issues for both the lawyers and the judges to deal with.

As a result, a comprehensive training program should be designed for the members of the body to enable them to enhance their role as referee in the administrative disputes between the CMA and the investors and the financial institution. Such a training program should focus on how to develop the skills of the Body members to evaluate and create a balance between the authority of the CMA in governing the market and their role in protecting the investors and the financial institution from the misuse of power by the CMA.

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173 The Capital Market Law, Article 10 section 1, gives the CMA Board of Directors the power to temporarily suspend a decision of a company general assembly.
B. Conflict of Interests

A strong argument against the composition of the Body members is the conflict of interest for some of the members of the Body. As noted, a member of the CMA staff is represented in the Body as a member. The concern with such representation will be how he or she will avoid the conflict of interest when the body handles a dispute around a CMA decision, considering that the CMA representative in the Body will be usually a senior member and may have already participated in issuing the decision.

In my opinion, to avoid any conflict of interest, the Body should be fully independent. As such, in order to have a real independent body, the members of the CMA or the Ministry of Economics should be excluded from the Body. However, the real solution to the administrative dispute in the securities and capital market in Egypt will be by avoiding the causes of disputes.

C. Avoiding the Causes of Disputes

The CMA should focus on analyzing the disputes that arise from their administration decisions and try to provide solutions to prevent such disputes from occurring in the future. The CMA, in its analysis for the disputes, should consider the opinion of the investors and the key players in the market. Its fact, that CMA will always have the final decision on the issues that govern the market, however, gathering the information from the parties and the investors will help the CMA in avoiding many of the disputes in the future.
In my opinion, a good example of how the CMA can avoid an increase of administrative disputes can be found in the asset evaluation cases. I believe the investors can be confused by the Body’s decisions in these cases. My main concern with the Body decisions in this regard is the lack of clear rules on how they reach their decisions. In fact, neither the Body office nor the assets evaluation committee have published their standards in the evaluation process. In all the cases that I reviewed, I found that the Body decision refers to the asset evaluation committee’s decision that they followed the right economic measures in their evaluation, without precisely identifying what exactly is meant by this. As a result, this type of dispute is increasing.

To avoid such disputes, I believe it is necessary to publish rules of evaluation for the investors. These rules should be discussed with the experts to be sure that they reflect the right measures for evaluation. It may be very useful for the purpose of implementing this rules by the Body to enact a law which articulates these rules and creates the procedures for updating them.

In addition, monitoring and evaluating the implementation of the rules should be the responsibility of a powerful entity. This entity can be attached to the Prime Minister’s office to harmonize the asset evaluation rules with the other legal reforms that are being undertaken in the country. The entity needs to use domestic and international experts to appraise the rules and recommend what needs to be updated to accommodate the rapid changes in both the economics factors and the
technology and then take all the necessary measures to implement their recommendations.

Having such rules will reduce the amount of disputes with regard to these matters, and will also help the investors know how to evaluate their assets, in the case of a dispute they will be able to know and understand the rules that the Body is applying in their disputes. In addition, the Administrative courts will be able to monitor the Body decisions to see how it apply such rules. Such an approach to the Administrative disputes can help the investors and the market reduce their disputes with the CMA.

RECOMMENDATIONS

The following summarizes the recommendations to enhance the role of the Body:

- Train the Body members to enhance their skills and knowledge for their task.
- Eliminate the conflict of interest that could arise by excluding the members of the CMA staff from being a member of the Body.
- Avoid the causes of the disputes by creating clear rules to govern the administrative decision.

VI. The Courts

It is important to mention that studies show that countries which concluded an economic reforms programs usually face several problems with regard to the judicial system. The skill of the judges and their ability to deal with disputes that
arise from the implementation of the new rules that were created to facilitate the economic reforms are considered among the major problems.\textsuperscript{174}

Both the Appellate and Administrative courts will play a crucial role in the System. We have noted from the previous discussion that the outcome from both the Arbitration and the Body will not be binding or final for the parties. As a result, it is expected that the courts will host a number of the System cases.\textsuperscript{175} This will lead to an important question: are the courts ready to host the System cases?

To answer this question we need to explore where the judicial system stands now with regard to civil, commercial, and administrative litigation. The Egyptian judicial system is faced with problems that lead to delays and backlog in the courts. The problems of the judicial system in Egypt can be divided into three basic categories: first, physical problems due to the lack of sufficient buildings, facilities, and financial resources; second, human resource problems due to the number and qualification of the judges and the court support staff; and finally, judicial process problems due to the poor system of case management and the applicable procedures.\textsuperscript{176} However, the delay and the backlog in civil and commercial cases are considered one of the main concerns for investors and the private sector in general in Egypt.\textsuperscript{177}

\textsuperscript{174} Shihata, supra note 2.
\textsuperscript{175} The statistics of the Arbitration Office show that of the four cases that were decided by the Arbitration panel, all of the parties chose to go to the Appellate court. The statistics for the Body decisions were not available.
\textsuperscript{176} Shihata, supra, note 2, at 513-528.
\textsuperscript{177} Id.
A comprehensive study concluded by an Egyptian-American team\textsuperscript{178} pointed out that the problems of the delay and the backlog of commercial and civil litigation has several reasons, among them that the judges are distracted by non-adjudicative responsibilities and the judicial rotation system\textsuperscript{179}.

The Ministry of Justice, in its efforts to provide a solution to the delay and backlog problem, is in the process of introducing a case management and a judicial mediation system\textsuperscript{180}. The implementation of these measures is beyond the scope of this dissertation, however, I will discuss it briefly in order to evaluate its effects on the commercial and civil courts and whether it will help the Appellate courts in its task to review the capital market and securities cases. Egypt is part of the civil law family, so as a result their judicial system is considered an inquisitorial system. In the inquisitorial system, the judges have a very active role in investigating the facts of the claim and determining the legal rules that applied to the disputed claim\textsuperscript{181}. Needless to say, the role of the judges in the common law system will be different because in such a system the judicial system is adversarial and the parties play a key role in the factual investigation and the development of legal argumentation\textsuperscript{182}.

As a result, the Egyptian judges carry out the major task of leading the judicial process. They dominate the preparation procedures and instruct the parties

\textsuperscript{178}The Ministry of Justice, in its efforts to introduce a judicial reform to support the economic reform in Egypt, appointed the Institute for the Study and Development of Legal Systems (ISDLS) to conclude a study about the problem of delay and backlog in the commercial and civil courts. The study was funded by a participating agency agreement between the United States Agency for International Development (USAID) and the United States Information service (USIS). See, Hiram Ghodosh, et al. \textit{Egyptian Civil Justice Process Modernization: a Functional and Systemic Approach}, 17 MICH. J. INT. L. 885 (1996).
\textsuperscript{179}Id. at 896.
\textsuperscript{180}Id. at 901.
\textsuperscript{181}Id. at 883.
with the relevant documents and materials relevant to the disputed issues. However, with the increase of cases in the judges' dockets, the judges started to lose their traditional control over the judicial process and the parties started to abuse the system and use all the available legal tactics to delay the procedures. Moreover, because the judges were busy trying to reduce their dockets, they were not able to respond strongly enough to stop these delaying practices by both the parties and their lawyers. In addition, due to the rotation judicial system where each judge needed to serve in different part of the country every five years, the judges started to lose track of the cases, and some judges found it necessary to start the preparation all over again. This, of course, led to a duplication in the process and was a major factor in contributing to the delay and backlog problem. For instance, the previous study shows that the preparation phase can take two years (if concluded smoothly and without distraction) and the adjudication process will take around two months. In fact, the same scenario has evolved in many of the civil law systems, i.e., Latin America Countries.

The Ministry of Justice hopes that by introducing the case management system to the civil and the commercial courts, the judges will be able to focus on the adjudication process. In my opinion, such measures can be helpful to the judicial process and the judges, because the case manager will be a judge with at

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182 Id. at 884.
183 Id. at 896.
184 Id.
least 4-5 years' experience on the bench devoted only to the preparation phase,\textsuperscript{186} and will be able to control the process and provide a restricted time table for the parties to provide the required evidence and documents.

Judicial mediation will be provided to the parties who will start to consider solving their dispute as a result of evaluation of their position in the litigation process during the preparation phase. The mediation will be concluded by a retired judge who will act as mediator\textsuperscript{187}. A training program will be held for the designated judicial mediators to develop the required skills.

In fact, the mediation method has succeeded in solving many disputes in different countries whose judicial system was facing similar problems\textsuperscript{188}. However, in my opinion, the Ministry of Justice should consider inviting non-judicial mediators to join the program. A non-judicial mediator having the experience and the skills to solve disputes in sophisticated areas such as banking, intellectual property, and other complex commercial cases can be very helpful for the parties.

The Administrative courts are also faced with similar problems. As a result, the courts in Egypt may not be able to play their role and provide the investors and the financial institutions with a reliable final resort in the System.

RECOMMENDATIONS

In order for the courts to play their role in the System, a comprehensive judicial reform should be accomplished. The aim of the judicial reform will focus on how to make the courts reliable in solving the disputes of the investors

\textsuperscript{186} Ghodaosh, et al. supra note 178, at 902.
\textsuperscript{187} Id. at 908.
\textsuperscript{188} Shiata, supra note 2, at 520.
efficiently, fairly and in a reasonable time. However, it is important to mention that judicial reform is a long-term process\(^{189}\) and needs to be divided into stages\(^{190}\). In my recommendations I will focus on how to enhance the delivery of justice with regard to the System cases, and such recommendations can be used for commercial cases in general.

- The establishment of special courts to review the System case. The courts will be within the Appellate and the Administrative Courts jurisdiction.
- The judges who will be reviewing the outcome of both the Arbitration and the Body should be trained to be familiar with the capital market and securities disputes. The training program should not only include the rules and the regulations that govern the capital market and the securities, but also needs to train the judges on how to research and think about such disputes. The program needs to develop their skills on the legal research for such cases.
- It is important in judicial reform to build an information system which allows the judges to obtain all the necessary information related to their cases\(^{191}\). An information system that will provide the judges with all the material for their research in their cases is vital for the success of their task. Such a system should, in particular, provide the judges with the regulations and the rules that govern the capital and securities.
- The predictability of the outcome of the disputes will always be important for the investors and the financial institutions. The creation of a system

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\(^{189}\)Dokolias, supra note 195, at 226.
\(^{190}\)Id.
\(^{191}\)Shihata, supra note 2, at 147-182.
that can help the judges to determine what the rules are that need to be applied to the System disputes is considered very important. For instance, the Ministry of Justice can start to think about introducing what is called “free scientific research” to the Egyptian courts. The goal of this method of research is to set specific rules for the judge to follow in researching a dispute that he is not familiar with, so that he does not, as Justice Cardozo said, “innovate at pleasure.” The importance of this method is obvious in a new area such as the capital market and securities laws.

- The training of the support staff of the courts and the modernization of the courts’ equipment will assist in reducing the time to solve the disputes in the judicial system.

- In case the Ministry of Justice starts to implement the case management program, it will be important to introduce this program in the Appellate courts that handle the Arbitration cases. This will assist the parties in the dispute to reduce the preparation process time for their case and will enable the Appellate courts to render their judgment in a reasonable amount of time. In addition, the judges who will be managing the cases will have a chance to be educated in this type of case and obtain the necessary experience that will prepare them to be qualified to handle these cases when they become Justices at the Appellate courts.

In my opinion, the recommended measures will assist the System in achieving its work in the market, however, there are still major problems pending.
This problem is that the outcome of the main arms of the System (Arbitration and Body) aren’t final or binding. As a result, the investors and the financial institutions will not be able to benefit from the System as a speedy vehicle to solve their disputes. This will lead the decision makers in Egypt to consider introducing a new, improved capital market dispute resolution mechanism which will focus like the existing System on solving the securities market dispute. Throughout the next chapter I will discuss the major issues that should be addressed in implementing such a proposed mechanism for the securities market in Egypt.
Chapter Four
Toward a New Capital Market Dispute Resolution Settlement System

An efficient dispute system should provide the disputants with a variety of procedures to choose from to solve disputes. In this chapter I will lay out the foundation for a dispute resolution mechanism (the Mechanism) for the securities market. The Mechanism will focus on disputes that arise between investors and financial institutions. As noted from the discussion in the previous chapter, the administrative decisions cannot be subject to arbitration or mediation. The Mechanism that I propose in this chapter will have jurisdiction over disputes through a contract between the disputant in which they agree to refer their dispute to the Mechanism.

In fact, before I start my attempt, I need to admit that because this area of disputes is considered a new area for the lawyers and judges in Egypt, it makes my endeavor to provide such mechanism not perfectly detailed. However, the guidelines that will be provided in this chapter can be used as an initial stage for such a Mechanism.

In this chapter, I will discuss the proposed Mechanism. I will start the discussion by setting the goals of the Mechanism; the methods that will be provided for the disputant: how the investors, financial institutions and the lawyers can began to think about designing the right approach to use the available procedures to solve their disputes; the administration of the Mechanism; and finally, a strategy for the implementation.
I. The Goals

In my opinion, the goal of the new Mechanism should be to provide the securities market with a dispute resolution system that serves two main aspects: first, to provide investors and the financial institutions with a diversity of methods to solve the disputes in order to help them to choose what fits with their disputes; second, to help the development of the securities market. Needless to say reducing the costs of the disputes and providing an efficient and fair solution in reasonable time are the main goals of this dispute resolution system.

II. The Methods

In fact, the basic question that needs to be answered is what we mean by resolving a dispute. The answer to this question can vary from one person to another because the motivation and the causes of the disputes can be diverse as the people who are involved in the dispute. However, in general, I believe, as was mentioned by some scholars, to solve a dispute means “to turn opposed positions—the claim and its rejection—into a single outcome”\(^{195}\).

There are several methods to solve a dispute: first, the interest approach which focuses on reconciling the interest of the disputant, i.e., negotiation and mediation; second, the adjudicative approach where the disputants will use a neutral third party to decide the outcome of the dispute, i.e., arbitration; and third, the contest power approach where each party at the dispute will try to use the powers that they possess to end the dispute, i.e., strikes\(^{196}\).

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\(^{196}\) Id. 3-19.
In my opinion, the Mechanism should provide the disputant with an adjudication method (arbitration) and an interest approach method (mediation) to solve their disputes. Below I will discuss both the arbitration and mediation.

A. Arbitration

In the previous chapters, I discussed the Arbitration system provided by the CML. As I mentioned, it is a mandatory arbitration. In contrast, the recommended arbitration in the Mechanism will be a contractual arbitration governed by the Act. In fact, I will refer to the previous discussion with regard to the arbitrators’ qualification, training, and selection, and procedures for the arbitration. However, in this section I will discuss arbitration in Egypt according to the Act, and what it can provide to the securities market.

It is important to mention that arbitration is now considered the main forum to solve securities disputes in the U.S., since the Supreme court ruled in Shearson/American Express, Inc. v. McMahon\(^{197}\), and accepted the enforcement of a predispute arbitration clause\(^{198}\). The brokerage firms in the U.S. prefer arbitration as a forum to solve their disputes with investors for several reasons, among them the arbitrators’ knowledge of securities disputes\(^{199}\). In addition, U.S. brokerage firms insist on arbitration in transactions that include more than


executing an order for an investor to buy or sell a security. A good example is the margin account transactions. Investors in this type of transaction are allowed to borrow capital to finance their transactions. In this case the brokerage firm is exposed to credit risk. As a result, they require a fast method to solve the disputes with regard to these accounts to quickly recover the damage from the dispute.\(^200\)

B. Arbitration in Egypt

Prior to the 1994 Act, commercial arbitration in Egypt was governed by Articles 501 to 513 of the Code of Civil and Commercial Procedures.\(^201\) When the Act was enacted, its aim was to solve the problems that faced arbitration in Egypt. The major problem that faced arbitration in Egypt was that Article 502 of the old arbitration law stipulated “without prejudice to the provisions of the special laws, the arbitrators must be appointed by name in the agreement to arbitrate or in a separate agreement.” This language prevented institutional arbitration from existing\(^202\). The foreign investors who seek arbitration as the main resort to solve the dispute in the international business were confused with regard to this problem and it became an obstacle for them to invest in Egypt\(^203\). The government, in its efforts to encourage foreign investment, provided the Act which is inspired by the UNCITRAL Model Law on arbitration.

\(^{199}\)Grant, supra note 166, at 400.
\(^{200}\)Id. at 401.
\(^{202}\)El-Ahbab, supra note 162, at 66.
\(^{203}\)Id.
C. The Egyptian Arbitration Act

The Act governs both national and international arbitration in Egypt. This includes any arbitration that takes place in Egypt, and also any international arbitration taking place abroad if it is subject to the Egyptian law. However, the Act will not be applied to international arbitration awards that take place abroad and do not apply the Egyptian law. The enforcement of such awards will be subject to Articles 296 and 301 of the Code of Civil and Commercial Procedures and also the provisions of the 1958 New York Convention for the recognition and enforcement of foreign arbitration awards. I will discuss the main provisions of the Act below.

D. The Arbitration Clause

The Act requires that the arbitration clause should be written, however, the Act stipulates that any written communication between the parties i.e., fax, can be valid evidence in proving the arbitration clause. It is important to mention that the arbitration clause should determine the subject matter of the dispute or it will be void. On the other hand, the Act does not require the arbitration clause to name the arbitrators. This will avoid the problem created by the old Arbitration law for institutional arbitration. The Act considers the arbitration clause an

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204 The Egyptian arbitration Act, Article 1.
205 Id.
206 Id. supra note 162, at 67.
207 Id.
208 Id.
209 Id. Article 10 section 2.
210 Id., supra note 162, at 69.
independent agreement that will not be affected if the contract that carries it is void\textsuperscript{211}.

The arbitration clause can cover any legal dispute. The only restriction will be with regard to the disputes that raise a question of a public order and disputes that are not subject to compromise i.e., criminal disputes and administration decisions\textsuperscript{212}.

E. The Courts Jurisdiction

The Act distinguishes between national and international arbitration with regards to the courts that will settle any question that arise from the implementation of the arbitration clause or the enforcement of the arbitration award. As a result, in the case of a national arbitration, the court that originally had jurisdiction over the dispute will be the designated court to settle the arbitration questions, and the Cairo Appellate Court will be the site of an international arbitration\textsuperscript{213}.

F. The Arbitrators

The parties have the power to determine any number of arbitrators for their dispute, however, if they decide to have more than one arbitrator, the arbitral tribunal should consist of an odd number\textsuperscript{214}. The parties also have the power to determine the method and the time for selecting the arbitrators\textsuperscript{215}. In case the parties fail to select the arbitrators, the courts will have the power to conclude

\textsuperscript{211}The Egyptian Arbitration Act, Article 23.
\textsuperscript{212}Id. Article 11.
\textsuperscript{213}Id. Article 9.
\textsuperscript{214}Id. Article 15 section 2.
\textsuperscript{215}Id. Article 17 section 1
such a task. The parties also can delegate the authority of selecting the arbitrators or setting the arbitration procedures to an Egyptian or a foreign arbitration center.

An arbitrator can only be challenged if there are circumstances indicating that there serious doubts about his or her ability to be impartial or independent. Also, an arbitrator appointed by one of the parties cannot be challenged by this party. However, there is an exception to this rule in case the party discovers a cause to challenge the arbitrator after he or she was already appointed. The request to challenge the arbitrator should be submitted to the arbitral tribunal within fifteen days following the date when the challenging party became aware of the causes justifying his or her request. If the arbitral tribunal refuses to grant the request of the challenging party, this party has the right to appeal to the courts within thirty days from being notified. The court decision in this matter will be final.

G. The Arbitration Procedures

As noted from the discussion above, the Act gives the parties the powers to stipulate the procedures that will govern the arbitration, however; such procedures should give the parties to arbitration equal treatment and a full opportunity to

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216Id.
217Id. Article 21.
218Id. Article 18 section 1.
219Id. Article 18 section 2.
220Id.
221Id. Article 19 section 1.
222Id. Article 19 section 3.
present their claims\textsuperscript{223}. The parties also can choose the place of the arbitration and in case they fail to do so, the arbitral tribunal will do so\textsuperscript{224}.

H. The Award

The arbitrators should render the award within the time stipulated by the parties' agreement\textsuperscript{225}. In case there is a lack of agreement, the arbitrators will have the period of twelve months to conclude the arbitration\textsuperscript{226}. The arbitrators also have the authority to extend the deadline for arbitration up to six months unless the parties agree to a longer period\textsuperscript{227}. If the arbitrators fail to conclude the arbitration within the requested time, the parties have the right to seek the approval of the President of the court to terminate the arbitration\textsuperscript{228}. In this case, the parties will take their dispute to the courts.

I. Challenging the Award

The parties have the right to ask the courts to set aside the award. This request should be made within ninety days following the date the challenging party is notified of the award\textsuperscript{229}. The Act does not allow the parties to use any means of challenge prescribed in the Code of Civil and Commercial Procedures by stipulating "Arbitral awards issued in accordance with the provisions of this law may not be challenged by any means of challenge prescribed in the Code of Civil and Commercial Procedures"\textsuperscript{230}.

\textsuperscript{223}Id. Article 26.
\textsuperscript{224}Id. Article 28
\textsuperscript{225}Id. Article 45, section 1.
\textsuperscript{226}Id.
\textsuperscript{227}Id.
\textsuperscript{228}Id.
\textsuperscript{229}Id. Article 54.
\textsuperscript{230}Id. Article 52, section 1.
The Act specifies the grounds for setting aside the award when it stipulated that “An action to procure the nullity of the arbitral awards is admissible only in the following cases”\(^{231}\). The grounds for setting aside the award according to the Act are the following:

“(A) If no arbitral agreement exists, or if it is void, voidable or expired.

(B) If at the time of entering into the arbitral agreement one of the parties thereto was devoid of or lacking in capacity pursuant to the law governing his capacity.

(C) If one of the parties to the arbitration was unable to present his defense because he was not properly notified of the appointment of an arbitrator or of the arbitral proceeding, or because of any reason beyond his control.

(D) If the arbitral award fails to apply the law agreed by the parties to the subject matter of the disputes.

(E) If the Arbitral Panel was constituted or the arbitrators were appointed in a manner contrary to law or to the agreement between the parties.

(F) If the arbitral award rules on matters not included in the arbitral agreement or overlaps the limits of such agreement. Nevertheless, if the parts of the award relating to matters which are amenable to arbitration can be separated from the parts relating to matters which are not, then nullity shall apply to the latter parts.

\(^{231}\)Id. Article 53 section 1.
(G) If nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award.\(^{232}\)

The Egyptian legislature has provided the award with all the necessary protection to allow the parties to benefit from the advantage of using arbitration as a method of solving their disputes.

J. Investor’s Protection

As noted from the discussion above, the arbitration in the Mechanism will focus on the securities transactions disputes and the main concern in the process is the investor’s protection. In fact, securities arbitration will always raise this concern. A good example can be found in the U.S. Before I discuss how to provide a protection for the investors in the securities arbitration in Egypt, it is important to analyze the US experience in this regard.

1. Investor’s Protection in the U.S.

In the U.S., the major argument in this regard is whether investors have the power to refuse an arbitration clause and still be able to open an account with a brokerage firm. Some argue that in securities arbitration the investors are not in an equal position with regard to the predispute arbitration clause\(^{233}\) because the investors know the only way to purchase a security is through a brokerage firm. In addition, many of the investors are not sophisticated and knowledgeable about

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\(^{232}\) Id.

\(^{233}\) Harding, supra note 196.
brokerage firms\textsuperscript{234}. Moreover, the investors may play no role in drafting or negotiating the agreement that contains such a clause\textsuperscript{234}.

Scholars noted that investors in securities arbitration may be treated unfairly because of the securities industry influence on the process, especially in the Self Regulatory Organizations (SRO), that offers securities arbitration\textsuperscript{236}. Also there are no reported reasons and decisions, and there are uncertainties regarding the standards for admissibility of evidence.

But on the other hand, the major counter argument is that the investors are not really powerless in this respect; that, for instance, institutional investors have a powerful position that can allow them to refuse to accept a predispute arbitration clause\textsuperscript{237}.

Securities arbitration in the U.S. went through several reforms since the MacMahon ruling. The reform focused on developing the skills and knowledge of the arbitrators through the developing of training programs\textsuperscript{238}. Such programs intended to educate the arbitrators on their duties and responsibilities\textsuperscript{239}.

In addition, a disclosure policy with regard to securities arbitration has been developed; the goal of the policy is to make the investors aware of the effects of executing an arbitration agreement, especially with regard to the fact that arbitration is final and binding\textsuperscript{240}.

\textsuperscript{234}Posser, supra note 198, at 1096.
\textsuperscript{235}Id.
\textsuperscript{236}Lipton, supra note 198, at 883.
\textsuperscript{237}Grant, supra note 165, at 400.
\textsuperscript{238}Karties, supra note 198, at 1127.
\textsuperscript{239}Id. at 1131.
\textsuperscript{240}Lipton, supra note 198, at 889. See also, Task Force Report, supra note 164, at 17.
The Securities and Exchange Commission (SEC) supervises the process, and any changes in the rules governing the securities arbitration are approved by the SEC. This supervision has enabled the MacMahon court to approve the enforcement of the arbitration clauses for securities disputes\(^{241}\).

2. **Investor's Protection in Egypt**

The starting point in investor protection in Egypt will be the Arbitration Act. It is clear from the discussion above that the Act protects the arbitration agreement, and a party in such agreement will have a very limited ground to challenge it.

As result, to protect the investors from being subject to a contract they may not really understand, a disclosure policy should be developed. The policy will help the investors understand what the arbitration agreement is and what its effects are. This policy will essentially be for unsophisticated investors. In addition, according to the Act, the subject matter of the dispute must be determined in the arbitration clause\(^{242}\).

On the other hand, the CMA should monitor the securities arbitration and evaluate the process, especially with regard to its fairness. The CML gives the CMA all the powers to take any measure to protect the investors\(^{243}\). Therefore, in my opinion, the CMA should develop rules that will require any institution that offers securities arbitration to seek CMA approval for its rules.

\(^{241}\) 107 S. Ct., at 2341.
\(^{242}\) The Egyptian Arbitration Act, Article 10, section 2.
\(^{243}\) The CML, Article 43 section 1.
When reviewing the awards, the courts must also very carefully examine the award to be sure that the parties in the securities arbitration have properly presented their defense. As noted, the Act gives the courts such power.\textsuperscript{244}

The U.S. experience in securities arbitration can be a good example of what to consider with respect to investors’ protection in securities arbitration in Egypt. In my opinion, the efforts to protect the investors should focus on the unsophisticated investors. To provide these investors with the required protection, we can use some of the successful measures that have been used in the U.S.

For instance, all brokerage firms will have an obligation to provide full disclosure about arbitration and its effects on the investors. Also a major safeguard for the protection of the investors will be the CMA role in reviewing and approving the rules that govern the securities arbitration.\textsuperscript{245} Moreover, the CMA should require that the brokerage firms not make the arbitration agreement a condition to open an account for the investors.

In my opinion, securities arbitration in Egypt will be very effective in solving the securities market disputes. By focusing on protecting the process of arbitration from any bias or fraud, confidence in the process will be enhanced and the investors will be able to use it more efficiently in solving their disputes.

\textbf{K. Mediation}

In mediation the disputants use the assistance of a third person to reach an agreement. In the last several years mediation started to play a vital role in solving

\textsuperscript{244} The Egyptian Arbitration Act, Article 53 section 1.
securities disputes in the U.S. The main advantage of mediation is that it provides
the parties with a solution that they have reached through mutual agreement.
Mediation serves the needs of the disputants that want to solve their disputes
without damaging their relationship.

III. The Mechanism in Action

Disputants who will be using the mechanism will need to examine their
case to decide which they will use. In fact, the main task for the staff of the
Mechanism will be to provide an efficient screening and referral process for the
disputants. There are several elements the staff can use in this process.²⁴⁶

The nature of the dispute and the relation between the disputants is
considered a major element in such a consideration.²⁴⁷ For instance, in broker-
customer disputes (where there is a continuing relationship), the disputants may
prefer to use mediation because it will not affect the relationship in the long term.
Also, the staff can consider what outcome the disputants are considering. For
instance, in corporate governance disputes it will be important to examine whether
the dispute between the shareholders and the board of directors is because of poor
communication or, instead, a policy conflict about what is right for the company.
In the light of the of this analysis, the staff will refer the case either to mediation or
arbitration. They can also use both methods by starting with mediation to get the

²⁴⁵ In fact the continuing revision of the securities arbitration process to ensure that such process
is fair and equitable is considered a vital element in protecting the unsophisticated investors. See
Grant, supra note 196, at 534.
²⁴⁶ Goldberg et al, supra note 97, at 435-437.
²⁴⁷ Id.
disputants to negotiate their dispute, and if the mediation failed, they can take the case to arbitration to have a final and binding solution for the dispute.

The lawyers will also play a vital role in assisting the disputant to use the Mechanism. The lawyers will need to focus on why the dispute has not been solved between the disputants in order to be able to advise their clients and the staff of the Mechanism to select the method that will fit with the dispute.

The staff of the Mechanism can use an expert to create a computer program that will have data on the type of the disputes the Mechanism has already received and what method was used to solve it, and the results of using the method. Such data can be used to assist the staff and the disputant in their choice of what method in the Mechanism they should use.

IV. The Administration

The organization that will administer the Mechanism needs to have three main elements: (1) a good knowledge of the securities market and capital market transaction and disputes; (2) experience with administering the methods of dispute resolution; and (3) human and the financial resources to carry out the task of administrating the Mechanism.

In fact, there are three organizations in Egypt that can be potential candidates to administer the Mechanism: the International Arbitration Center in Cairo (IAC), the Egyptian Association for Securities Dealers (EASD), and the Cairo Stock Exchange.

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248 Ralph C. Ferrara & Entel, BEYOND ARBITRATION DESIGNING ALTERNATIVES TO SECURITIES LITIGATION, 40, (1990).
The IAC was established in 1982 by a decision of the Afro-Asian committee to provide arbitration as a method to promote economic development in Africa and Asia. There will be several advantages for the Mechanism if the decision makers at the IAC decided to administer the Mechanism. The IAC has the experience and the skills for administrating a dispute resolution center, and it has accumulated through its work a good experience of the problems that can face the mechanism. It already has the human resources to manage the mechanism efficiently.

However, the IAC will need to develop the skills and knowledge about the securities disputes and provide the rules that will govern it. A good example for the IAC to follow will be the securities dispute section of the American Arbitration Association (AAA) in the U.S.

The EASD was established in the summer of 1996 in Cairo and it has several goals to achieve, among them is to work with the CMA to develop the securities market. I expect that EASD will play a vital role in the future of the securities market, and it will follow the NASD in the U.S.

The main advantage of the EASD will be in the knowledge of the problems of the securities market. However, they will need to invest to obtain skillful people to administer the mechanism. Of course, they will be under the supervision of the CMA in order to avoid any bias rules or procedures against the investors.

The CSE has a disciplinary panel that has jurisdiction over the violations of the brokers' rules of trade at the CSE. However, it will need to develop a more
advanced mechanism in order to be able to host more sophisticated cases and all the type of brokers-client disputes.

In fact, each of them can administer the Mechanism and provide the necessary human and financial resources for its operation. However, the choice of administrator will be up to the decision makers in each institution. In my opinion, each of them should establish a mechanism because this will provide the securities market with several forums which can help the market and the investors.

V. The Implementation Strategy and Policy

The implementation of the new mechanism will face several problems, among them, the need to obtain approval of the key players in the security market for the Mechanism, and the lack of knowledge of the disputants and their lawyers on how to utilize the available methods. As a result, I will lay down a plan to assist in tailoring a strategy for implementation. The elements of the plan are: getting the acceptance of the key players, dealing with obstacles, securing a budget for the mechanism, technical assistance, training and evaluation process and using the power of media. Needless to say, the person responsible for the implementation task (the Designer) will need to be a creative negotiator and mediator to accomplish the task.

A. Getting the Acceptance

It is important to build a consensus for the implementation of the new mechanism. As a result, the first step of the plan is to target the key players in the securities market and seek their support. This will include both domestic and
international investors, financial institutions, the Ministry of Justice and the CMA. In order to have a successful approach with such players, the Designer will need to understand the interest of each player in the Mechanism and work on it to develop the necessary consensus.

For instance, both domestic and foreign investors will have a genuine interest in implementing the Mechanism as a tool to reduce their risk in the securities market. They will be the primary users of the Mechanism, and the Designer can seek their support for it by demonstrating the measures and the safeguards that will insure that their disputes will be effectively and fairly resolved. Financial institutions will support the mechanism when they feel the impact of the Mechanism on their relationships with their clients. In addition the Mechanism will reduce the costs of their operations in the securities market.

The CMA will support the mechanism as an effective tool for developing the securities market. In addition, the CMA will realize that implementing the recommendations in the previous chapter can take many financial and human resources without providing a final and binding outcome. This fact can make the Mechanism attractive to the CMA to support.

The Ministry of Justice will support the mechanism as part of its efforts to provide solutions to solve the commercial disputes. It will also assist the Ministry in evaluating whether to enlarge the scope of the judicial mediation project and to consider providing a full ADR program to the courts.
The Designer can also use several other measures that can help in building consensus for the Mechanism among the key players. A good method in this regard is the formation of a joint committee that will have a representative of each of the key players review and provide recommendations for the procedures and the rules of the Mechanism.\textsuperscript{249}

B. Dealing with obstacles

In my opinion, the main resistance for the Mechanism will be from the lawyers who will not be familiar with it and afraid of its implementation because it can affect their work and fees. To avoid such obstacles, the Designer will need to work very closely with the lawyers’ syndicate to explain and prepare training programs for the lawyers on how to use the methods of the Mechanism. Once the lawyers start to master the skills to use these methods, it will help them to react positively and begin to assist their clients in getting the best results.

There will be obstacles that the day-to-day process of the implementation will face and the Designer of the Mechanism will need to be available to solve it immediately or think about what can be done to solve it. As I mentioned earlier, the Designer will need to have the skills to negotiate and come up with durable solutions for these problems.

C. Securing a Budget

Securing a budget for the implementation process is very important. I believe that there are several sources for the budget. For instance, an international development institution i.e., the World Bank and the USAID, will be reliable

\textsuperscript{249}Ury et al. supra note 195, at 65-83.
candidates for at least the initial costs of the implementation. The financial institutions can also provide part of the budget.

My main concern will be how to use the available financial sources for the implementation. Its also important that the initial requirement for the implementation not require a large amount of capital.

D. Technical Assistance

Implementation will require technical assistance from institutions that have experience in securities disputes, i.e., the New York Stock Exchange (NYSE), NASD, and AAA. This assistance will be valuable for the Mechanism, and will provide it with the experience and the knowledge of these institutions. This will encourage foreign investors and financial institutions to use it with more confidence, especially when the Mechanism will be applying methods and adopting rules the investors are familiar with.

E. Evaluation

An evaluation in the early stages of the implementation process will assist the Designer to enhance such a process. The evaluation can be conducted by the Designer and the staff of the Mechanism or by an independent evaluator, or a combination.

Several questions can be used to assist the evaluator in the evaluation task\textsuperscript{250}, and they can be divided into three sets of questions, each focusing on an area to be addressed in the evaluation.

\textsuperscript{250}Id. at 20-40.
The first set of questions will focus on the kinds of disputes that are coming to the mechanism and who the disputants are. The evaluator will start to focus on the nature of the case and what is causing it. The second set of questions will focus on the methods that are used by the disputant to solve their disputes. In this set, the evaluator needs to monitor which method the disputant uses more often (arbitration or mediation). It will be also be important to understand the motivation of the disputants is in using the method. The third set of questions will focus on the outcome of the disputes, where the evaluator will examine how reliable the outcome was for the disputant in solving their dispute and whether it was likely to prevent the raising of disputes for the same cause between other parties.

The evaluation process will help the Designer to achieve the following:

- Examine the success of the implementation process.
- Recognize and understand the problems that can prevent the mechanism from achieving its task.
- Decide whether to introduce any changes to the rules that is governing the methods in the mechanism to make more efficient to solve the disputes.

F. Training

The training for the new methods or how the investors and their lawyers can use the methods of the mechanism is considered an important element in the implementation process.
G. Using the Power of the Media

Both the local and international media are focusing on the development of the capital and securities market in Egypt. Using the momentum that is building in the media to support any measures that help in the development of the securities market can be very useful in the implementation process. The Designer can use the media to provide the investors and the financial institutions with successful stories of the Mechanism in solving the disputes of the securities market.

In my opinion, the Mechanism can be implemented in Egypt. It can also be a step towards the beginning of a genuine movement in introducing special centers that can solve disputes without using the judicial system and provide an efficient, faster, and reliable solution for the disputant. But bear in mind that the success of the mechanism will depend on the people who will be carrying out the first steps in the implementation process.
CONCLUSION

The capital market can play a vital role in the economic development of Egypt, however, there are several measures that need to be taken to make the capital market play this role. The stability of policies within the capital market (a powerful regulatory agency to supervise and enforce the CML provisions) is considered a prerequisite for the development of the capital market.

The System can play a very important role in the development of the capital market and the securities market. However, the System needs to overcome the problems that are facing it to achieve this role. As is noted in the discussions in this dissertation, the major problems of the System can be found in its mandatory character, which trigger the concerns for a constitutional problem, the lack of qualified members (judges, arbitrators) for the System to handle its disputes, and finally the lack of clear rules that govern the System process.

To overcome such problems, the decision makers at the Ministry of Justice and the CMA must take several measures to enhance the System. The measures need to aim at developing the skills of the members of the System through the design of a training program that will enable the members to understand the method of research that will allow them to solve the System disputes. In addition, a development of clear rules for the System process will be needed. The rules will enable the disputants to understand the process of the System and assist them in preparing their cases.

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However, due to a constitutional problem, the outcome of the Arbitration and the Body will not always be final or binding. As a result, it is essential to provide the securities market with a new mechanism to solve its disputes. The mechanism will focus on the disputes that will arise from securities transactions.

The new mechanism will have jurisdiction over disputes through agreement of the parties. The mechanism will be similar to securities dispute resolution in the U.S. The theory behind that is to provide a mechanism that investors (especially foreign investors) can easily understand. In addition, the large amount of securities dispute experienced in the U.S. will provide the designer of the mechanism with several solutions for the problems that can face the mechanism.

However, it is important to mention that development of the mechanism is a long-term process, and will require developing a long-term strategy for it. The main feature of such a strategy is to make all the key players (investors, financial institutions, CMA and the Ministry of Justice), work together in the development of the mechanism.
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