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The Arbitration in Intellectual Property Disputes from Economic Perspective

Hesham Kamal Kotb Gaafar

The Arbitration in Intellectual Property Disputes from Economic Perspective

Hesham Kamal Kotb Gaafar*

Abstract:

Arbitration is the foundation or the origin of litigation as people resorted to it before the existence of the judiciary in any state all over the world.

It is said that one of the main advantages of arbitration compared by the litigation is confidentiality, which is contrary to the principle of publicity or transparency that exists in litigations before courts.

Confidentiality was considered a proper reason why parties prefer arbitration vs. litigation, especially in disputes related to intellectual property rights (IPR) such as undisclosed information.

Studies and surveys in this issue resulted that confidentiality in arbitration constitutes approximately 21% of the reasons why parties prefer to arbitrate than to litigate.

In this paper, some countries were selected to compare their jurisdictions and their economic status with Egypt's status, to find out if there is a correlation between the arbitration regimes that adopt the duty of confidentiality and the attraction of IPRs, also if there is a positive or negative correlation with the global competitiveness.

This paper outlines that obliging confidentiality may decrease the global competitiveness, thus, declining the necessity of any reform in the Egyptian arbitration act which is silent about the

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obligation of preserving confidentiality, keeping it as an exception, if needed, only.

Chapter 1: The Research Argument and Methodology

1.1 Introduction:

The Egyptian legislator during the year 2017 enacted two important legislation, the sport law and the investment law.

The Centre of Arbitration and Settlement for Sports disputes was established by the Sport Law, it was granted the competence to form arbitration tribunals, when agreed to arbitrate before it¹.

The mentioned tribunals will examine disputes arising out of the interpretation or the execution of contracts, including some contracts related to IP, such as television broadcasting contracts for the sports games and competitions, the usage of trademarks during sports competitions and some other contracts.²

The legislator asserted parity between investors whether citizens or foreigners, in the application of the investment law provisions, affirming that intellectual property rights are considered assets that enter into investments projects³.

The investment law established the Egyptian Centre for Arbitration and Mediation, which will handle the settlement of investments disputes if parties agree to arbitrate before it⁴.

On the international level, the French civil procedures code (CPC), which was amended in 2011, obliged privacy and confidentiality in domestic arbitration, unless agreed otherwise⁵.

1 The Egyptian Sport Law promulgated by Law No71/2017, Art. ٦٦.

2 The Sport Law, Art. 67.

3 The Egyptian investment Law promulgated by Law No. 72/2017, Art. 1.

4 The investment Law, Art. 91.

5 Decree No. 48/2011 reforming the French law governing arbitration, article (1464) of the new French arbitration law states that "... subject to legal requirements, and unless otherwise agreed by the parties, arbitral proceedings

Unlike the French CPC, the Egyptian arbitration act didn't categorize arbitration into two groups, national and international¹.

This act seems silent in obliging the privacy or confidentiality, in either national or international arbitration, except for publishing the awards².

It granted the parties the right to agree on which procedures should be applied by the tribunal, including the right to subject these procedures to rules in force in any organization or arbitration Centre in Egypt or outside it³.

1.2 The Problem:

The Egyptian arbitration act neglected to assert the privacy or confidentiality obligation, unlike some other legislations such as the French CPC, which raises the following questions:

Should the Egyptian legislator follow the French peer by amending the arbitration act to include articles preserving confidentiality by law?

Will failure to adopt powerful arbitration regime distract IPRs holders, citizens or foreigners, from trading and investing in Egypt?

What are the potential economic benefits from obliging confidentiality in Arbitration?

shall be confidential", the authentic words in French are: "... Sous réserve des obligations légales et à moins que les parties n'en disposent autrement, la procédure arbitrale est soumise au principe de confidentialité." As published at: https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=19D6C8FB583FD347D1A2F84B7BBBA004.tplgfr23s_3?idArticle=LEGIARTI000023450821&cidTexte=LEGITEXT000006070716&dateTexte=20181109 , visited on 19th Feb. 2019, on 1:30 P.M.

1 The Egyptian arbitration act No. 27 of 1994.

2 The arbitration act, Art.44.

3 The arbitration act, Art.25.

1.3 The Arguments:

This paper argues that there is no specific legal regime of the duty of confidentiality that provide protection against the disclosure of undisclosed and vital information during arbitral proceedings.

The impact of preserving confidentiality in arbitration, by law, on the national economy is negative, thus, no legislation amendments should take place.

In order to attract IPRs holders to trade and invest in Egypt, more transparency should be adopted.

In the last 50 years, every major developed nation has considerably revised or replaced its international arbitration legislation completely, to facilitate the arbitral procedures and promote utilization of international arbitration¹.

1.4 The Objectives:

The paper has the following objectives:

to clarify, compare and contrast the way in which confidentiality in international commercial arbitrations is addressed, i.e. whether it is protected or not, in the chosen jurisdictions;

(٤) to consider the economic impact of confidentiality in arbitration to promote the future development of international commerce, especially IPRs, by analyzing this important factor of it.

1.5 The Scope:

This paper focuses on the legal duty of confidentiality as derived from law and it excludes the contractual duty of confidentiality when agreed to arbitrate without applying institutional rules.

1 Born, Gary. (2015). "International Arbitration: Cases and Materials, Aspen Casebook Series.", Second Edition, Kindle Edition, Wolters Kluwer, New York, U.S.A. Location 2649 of 47097.

This paper highlights on the domestic and commercial international arbitration and excludes the international investment arbitration as will be illustrated later.

1.6 The Methodology:

The analytical comparative technique will be exploited in the paper:

First: Analytical method, which focuses on trying to form an appropriate model to express the relationship between the inclusion of articles that preserve confidentiality and inducing IPRs holders and investors to invest or trade in Egypt.

Second: Comparative in vertical comparison method, which helps to clarify the pillars of arbitration regimes and provisions of different countries laws or arbitration Centres' rules, as based on the fact that confidentiality is only one factor, among others, provided in many comparative arbitration legislations.

Chapter 2: Notions about Intellectual Property and Arbitration

2.1 Notions about Intellectual Property (IP):

IP is a product of the human mind that has value in the commercial marketplace, it is divided into two groups, first: industrial property which includes patents, trademarks, industrial designs, geographical indications, trade secrets and protection against unfair competition, second: artistic and literary property that includes copyrights and neighboring rights¹.

1 Gadallah, Yasser. (2012). "Intellectual Property and Competitiveness of SMEs in Developing Countries with reference to Egypt", Chinese- Egyptian Research Centre, Cairo, Egypt. p. 75.

However, “IP can be crucial for turning innovative ideas and inventions into goods or services capable to compete in the markets, hence more of profits and income”¹.

2.2 Arbitration as an Alternative Dispute Resolution (ADR) Method

IPRs holders who are significantly dependent on transnational actions in a trade context encounter danger of counterfeiting, free-riders and conducting business in countries whose IP regimes differ considerably from the regime of their Home Country².

They may benefit from when settling disputes by ADR over the state judicial system, using the most known types of ADR, which are negotiations, mediation, conciliation, and arbitration³.

Arbitration is based on two things, first, the will of the parties, where they agree to bring the dispute to a person or persons to adjudicate by a binding award, second, the law recognizes the role of that will, taking into account that people shall not be denied to litigate, that will alone is insufficient to arbitrate but must be done within limits established by law to regulate arbitration procedures⁴.

It is basically relying on parties’ agreement, the agreement shall be for the establishment of an independent tribunal, the agreement have a role in the management of the arbitration process controlled and directed by general rules of procedures in the law⁵.

1 Gadallah, Yasser. (2012). “Intellectual Property and Competitiveness of SMEs in Developing Countries with reference to Egypt”, Ibid. p. 76.

2 Vanhonnaeker, Lukas. (2015). “Intellectual Property Rights as Foreign Direct Investments: From Collision to Collaboration”, Edward Elgar Publishing Limited, Cheltenham, U.K. p. 1.

3 Salama, Ahmed. (2017). “Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes” (In Arabic), Dar Al Nahda Al Arabia, Cairo, Egypt, p. 10.

4 Salama, Ahmed. (2017). “Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes” (In Arabic), Ibid. p. 195.

5 Salama, Ahmed. (2017). “Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes” (In Arabic), Ibid. pp. 20, 21.

Arbitration offers some advantages over the judicial system, one of those advantages is the confidentiality of the proceedings and awards, which is contrary to the transparency or publicity principle in litigating before courts¹.

The Egyptian Court of Cassation ruled in a judgment, that regard to what the appellant asserted before the Court of Appeal the nullity of the arbitration award because the arbitrator appointed by the respondent disclosed the secrecy of deliberations to the representative four days before the award, the court adjudicated that the secrecy of deliberations means that only the arbitrators that heard the case can participate without hearing it by others, and disclosing the secrecy does not invalidate the award, although liabilities can be found for those who disclosed the secrecy of the deliberation².

The Egyptian Supreme Administrative Court ruled that if the decision of the disciplinary board of the discipline of employees in the Giza court had been issued in secrecy rather than in public, then it had been issued in the contravention of provisions in Constitution and law, leading to the absolute invalidity, as it violates the public order³.

Press and people are generally eligible to be present during the proceedings of litigation, international arbitration isn't an open

1 Articles No. 169 of the revoked Constitution in Egypt, No. 187 of the current Egyptian Constitution, No. 18 of the Egyptian Judicial Authority Act No. ٤٦ year ١٩٧٢, they all have the same provisions that "Court hearings shall be held in public unless the court orders that they be made confidential in order to keep morality or maintain public order and that the sentence shall in any event be pronounced in public ..."

2 The Egyptian Court of Cassation judgment in the appeal No. 240, Judicial year 74 on 9/2/2010, Technical Office 61, page No. 212.

3 The Supreme Administrative Court Judgment in Appeal No. 14772, Judicial year 51, on 5/5/2007, Technical Office 52, part 1, P. 665.

to the public proceeding, it is really an essential and an exclusive process and therefore gets the prospect of remaining confidential¹.

2.3 The Concept of Arbitration:

Arbitration² is the origin of judiciary; it was originated before the judiciary was organized by the Governing authority throughout the history of human justice³.

There might be various definitions for “Arbitration” as a system, but the chosen one is that it is a special judiciary system, in which the parties select their own judges and entrust them, under a written agreement, with the task of settling disputes that may arise or already arisen between them, in respect of their contractual or non-contractual relations, which may be settled by arbitration, in accordance with to the requirements of law and justice and to issue a binding legal decision⁴.

In some other terms, arbitration is actually a very simple approach to resolve disputes where disputants' consent is met to submit their disputes to a person or persons, in short, the arbitrator, who listens to disputants, considers facts and arguments, and then makes a decision⁵.

2.4 Types of arbitration

1 Blackaby, Nigel. And others. (2015). “Redfern and Hunter on international arbitration: student version”, Sixth edition, Kindle edition, Oxford University Press, New York, U.S.A, Location 6327 of 27903.

2 Linguistically, in the Oxford Dictionary of English, third edition, 2010, Oxford university press, U.K, the word “Arbitrate” is a verb and it means “reach an authoritative judgement or settlement.”, the word “Arbitrator” is a noun and it means “An independent person or body officially appointed to settle a dispute.” and the word “Arbitration” is a noun and it means “The use of an arbitrator to settle a dispute.”.

3 Salama, Ahmed. (2017). “Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes” (In Arabic), Op. Cit. p. 195.

4 Salama, Ahmed. (2017). “Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes” (In Arabic), Ibid. p. 199.

5 Blackaby, Nigel. And others. (2015). “Redfern and Hunter on international arbitration: student version”, Op. Cit. Location 3259 of 27903.

2.4.1 Institutional Arbitration and Ad Hoc Arbitration

One of selections disputants must make if they opt to cope with disputes through arbitration is usually if they wish their arbitration to become administered by an arbitral institution, or if they desire the arbitration to be ad hoc¹.

2.4.1.1 Institutional Arbitration

This type of arbitration is promoted by permanent Centres and bodies, established specifically to provide advisory and judicial services to disputes' parties in the areas of trade, industry and other sectors of production and service, whether in national or international transactions².

2.4.1.2 Ad hoc Arbitration

There is no administering institution and the parties have more chances to tailor a procedure, they could draft their own guidelines then the applicable rules in details, or they may select the UNCITRAL Arbitration Rules, which are generally used in ad hoc arbitrations³.

2.4.2 Arbitration by Law and by Principles of Fairness and Justice

2.4.2.1 Arbitration by Law

It is the obligation that the arbitral tribunal shall adjudicate the dispute in accordance with the rules of substantive or procedural law determined by the parties concerned or by the arbitral tribunal itself, the general origin of most, if not all, comparative laws is

1 Moses, Margaret. (2017). "The Principles and Practice of International Commercial Arbitration", Third edition, Cambridge University Press, U.K. p. 10.

2 Salama, Ahmed. (2017). "Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes" (In Arabic), Op. Cit. pp. 216, 217.

3 Moses, Margaret. (2017). "The Principles and Practice of International Commercial Arbitration", Op. Cit. p. 10.

arbitration by law, if the term "arbitration" is used, the meaning imposed is arbitration by law¹.

2.4.2.2 Arbitration by Principles of Fairness and Justice

The tribunal doesn't have to strictly apply the regulations or laws but can render a decision founded on reasonableness and fairness².

2.4.3 National arbitration and International Arbitration:

2.4.3.1 National Arbitration

National arbitration is subject to a different legal regulation from international arbitration, originating from domestic substantive and procedural rules that have been established in each state by national jurisdiction³.

2.4.3.2 International Arbitration

In Egypt, two conditions are required for characterizing the arbitration as an international one: first, that the subject of the dispute is related to international trading; second, that one of the 4 cases listed in art. 3 of the Egyptian Arbitration act is applicable⁴.

International arbitration is split into two types: commercial arbitration and investment arbitration⁵.

1 Salama, Ahmed. (2017). "Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes" (In Arabic), Op. Cit. pp. ٢١3, ٢١4.

2 Moses, Margaret. (2017). "The Principles and Practice of International Commercial Arbitration", Op. Cit. p. 83.

3 Salama, Ahmed. (2017). "Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes" (In Arabic), Op. Cit. p. 220.

4 Salama, Ahmed. (2017). "Arbitration and Friendly Methods for the Settlement of Intellectual Property Disputes" (In Arabic), Op. Cit. p. 225.

5 Remy, Alice. (2013). "L'Arbitrage International, entre Confidentialité et Transparence", thesis in European comparative law, p. 8, published on the Internet at: <http://doczz.fr/doc/639770/l-arbitrage-international-entre-confidentialite%20et-trans> , visited on 14 Feb 2019 at 10:15 P.M.

If the state or state entity participate in a commercial deal, it'll be thought to have waived immunity it has against individuals and will be held to its agreement to arbitrate¹.

A state may also be obliged to arbitrate under the provisions of a bilateral investment treaty, it could have entered into a treaty known as the Washington Convention on the Settlement of Investment Disputes between States and citizens of various other States (ICSID Convention) which handles investor-state arbitration instead of commercial arbitration².

Chapter 3: The Impact of Arbitration on the Economy

3.1 Introduction:

Statistics are the main basis that this paper will depend on to find out the impact of arbitration on the economy.

Statistics play a vital role in collecting, summarizing and interpreting data designed to empirically evaluate a principle³.

The function that statistics serves in social research can best be briefly illustrated by looking at the ways in which it is involved in testing a principle⁴.

Measure of association, in statistics, is any of various factors or coefficients used to quantify a relationship between two or more variables⁵.

1 Moses, Margaret. (2017). "The Principles and Practice of International Commercial Arbitration", Op. Cit. p. 15.

2 Moses, Margaret. (2017). "The Principles and Practice of International Commercial Arbitration", Loc. Cit.

3 Cramer, Duncan. (2000). "Fundamental Statistics for Social Research: Step-by-step calculations and computer techniques using SPSS for Windows", Routledge, New York, U.S.A p.1.

4 Cramer, Duncan. (2000). "Fundamental Statistics for Social Research: Step-by-step calculations and computer techniques using SPSS for Windows", Loc. Cit.

5 Haug, Mark. (2019). "Measure of Association.", Encyclopedia Britannica, Retrieved

A measure of association may be determined by any of several different analyses, including correlation analysis and regression analysis¹.

There are different methods of analysis, such as Pearson’s correlation coefficient, Spearman rank-order correlation coefficient, Chi-square test, relative risk and odds ratio and a number of other measures of association for a variety of circumstances².

3.2 Notions about Correlation Coefficient

Pearson’s (1896) product moment correlation coefficient, r (rho), which will be the applied method in this paper, assesses the strength, direction and probability of the linear association between two interval or ratio variables by measure of the linear association and varies between -1 and $+1$.

There are multiple formulas that can be used to compute Pearson’s r , it can be calculated using this formula⁴:

$$r = \frac{\text{covariance of variable A and B}}{\sqrt{(\text{variance of variable A}) \times (\text{variance of variable B})}}$$

Where:

$$\text{Covariance} = \frac{\text{sum of } [(\text{mean A} - \text{each A score}) \times (\text{mean B} - \text{each B score})]}{\text{no. of cases} - 1}$$

and:

$$\text{Variance} = \frac{\text{sum of } (\text{mean} - \text{each score})^2}{\text{no. of cases} - 1}$$

<http://www.iku.academy.edu.eg/levels/collegiate/article/measure-of-association/>, visited on 25th April 2019 at 1:00 A.M.

1 Haug, Mark. (2019). “Measure of Association.”, Loc. Cit.

2 Haug, Mark. (2019). “Measure of Association.”, Loc. Cit.

3 Cramer, Duncan. (2000). “Fundamental Statistics for Social Research: Step-by-step calculations and computer techniques using SPSS for Windows”, Ibid. p. 168.

4 Cramer, Duncan. (2000). “Fundamental Statistics for Social Research: Step-by-step calculations and computer techniques using SPSS for Windows”, Ibid. p. 170.

The significance level of r can be computed by converting it into t using the following formula¹:

$$t = r \times \sqrt{\frac{n-2}{1-r^2}}$$

The degrees of freedom (df) are the number of cases (N) minus 2.

The advanced and specialized software such as IBM SPSS and recent versions of Microsoft excel, which I used in calculations, can easily and accurately calculate the Pearson correlation after entering the necessary data and using the built-in functions.

It is important to note that values of -1 or $+1$ indicate a perfect linear relationship between two variables, whereas a value of 0 indicates no linear relationship, while negative values simply indicate that when one variable increases, the other decreases².

3.3 Statistics and Reports Used in the Study

The first report is the Investing Across Borders (IAB) report 2010 including arbitrating commercial disputes, published by the World Bank Group (WBG)³.

Second report is the one authored by Sophie Pouget, namely arbitrating and mediating disputes (AMD): benchmarking arbitration and mediation regimes for commercial disputes related to foreign direct investment, published by the Global Indicators and

1 Cramer, Duncan. (2000). "Fundamental Statistics for Social Research: Step-by-step calculations and computer techniques using SPSS for Windows", Ibid. p. 172.

2 Haug, Mark. (2019). "Measure of Association.", Loc. Cit.

3 The report is published on the internet at: <http://siteresources.worldbank.org/BULGARIAEXTN/Resources/305438-1224088560466/InvestingAcroosBordersReport.pdf> , visited 25/4/2019 at 4 A.M.

Analysis Department (GIA) of the World Bank Group¹, The last is the global competitiveness report 2018².

3.4 Correlation Between ADR and Global Competitiveness

3.4.1 Introduction

The IAB report comprises three indexes, strength of laws index, ease of process index and extent of judicial assistance index.

Since the answers to questions related to the confidentiality obligation was only published in IAB report 2010 and its related data, not in the afterwards reports, it will be the main report that will be subject to extracting data from to conduct calculations in this regard.

The AMD report 2013 includes three sets of indicators, AMD1, measures the strength of ADR laws and institutions, AMD 2, looks at the ease of process, before and after initiating arbitration proceedings and AMD 3 which deals with judicial assistance in recognizing and enforcing foreign arbitral awards (60 countries).

The global competitiveness index 2018 (GCI 4.0) has an overall score and has sub-categories that some of them are related to IP, which will be subject to calculations made.

3.4.2 Correlation Between ADR and GCI

1 Pouget, Sophie. (2013). "Arbitrating and Mediating Disputes: Benchmarking Arbitration and Mediation Regimes for Commercial Disputes Related to Foreign Direct Investment", World Bank Policy Research Working Paper no. 6632. Published at: <http://documents.worldbank.org/curated/en/554271468340163221/Arbitrating-and-mediating-disputes-benchmarking-arbitration-and-mediation-regimes-for-commercial-disputes-related-to-foreign-direct-investment> , Last visited on 23rd Feb. 2019 at 10:00 P.M.

2 Published by the World Economic Forum on the internet at: <https://www.weforum.org/reports/the-global-competitiveness-report-2018> , last visited on 25th April 2019 at 4:00 P.M.

I extracted data of 60 selected common countries with the GCI report and calculated the average of the three indexes, Pearson correlation (r) and significance (p) as shown in the table below.

A positive correlation was found between scores in IAB and AMD reports and the overall score of GCI 2018 as shown in table 1.

**Table 1: Correlation between ADR
and Global Competitiveness Index 2018**

Type	Name	Arbitrating commercial disputes report 2010		Arbitrating and Mediating disputes report 2013	
		r	p	r	P
Overall Score	GCI 2018	0.568	2.25814E-06	0.245	0.059462261
Sub-factors	Market size	0.344	0.007133636	0.140	0.285878065
	Growth of Innovative Companies	0.325	0.011159625	0.101	0.442094042
	Innovative capabilities	0.527	1.54104E-05	0.268	0.03847242

Figure 1: Correlation between IAB 2010 and GCI 2018

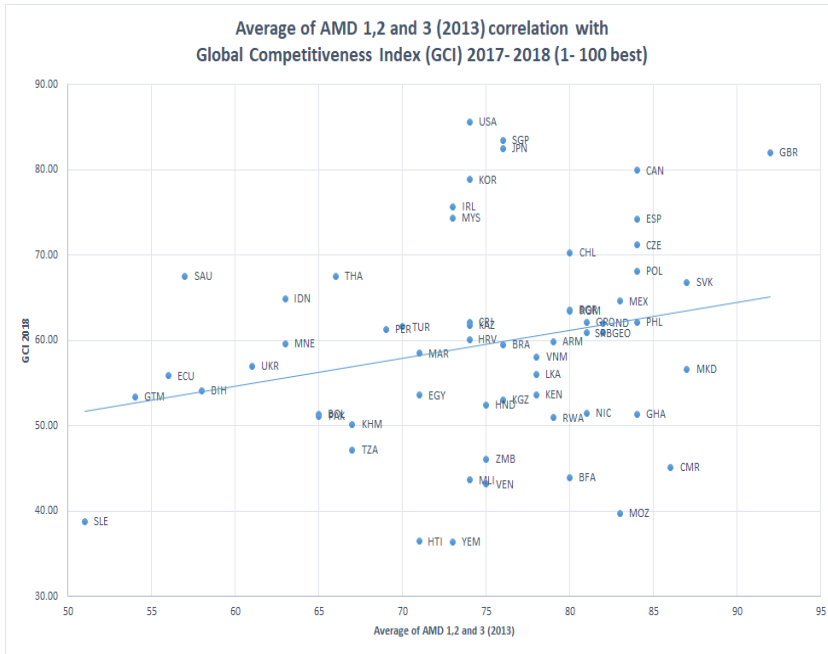
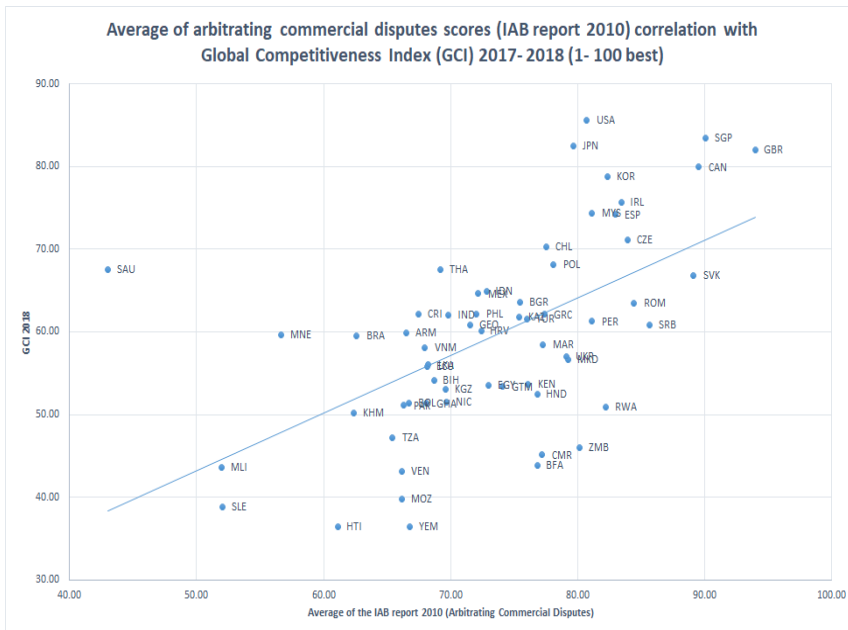


Figure 2: Correlation between AMD 2013 and GCI 2018



3.4.3 Correlation Between ADR and IPRs sub-factors:

A positive correlation was also found with the IP related sub-factors as shown in table 2.

Table 2: Correlation between ADR and Sub-categories related to IP in the Global Competitiveness Index GCI 4

Type	Name	IAB report 2010		AMD report 2013	
		r	P	r	P
Sub-factors To the Innovation capabilities	International patent applications (per million pop.)	0.584	9.45539E-07	0.272	0.035675172
	Patent applications (per million pop.)	0.541	7.99072E-06	0.278	0.031228043
	Trademark applications (per million pop.)	0.497	5.38362E-05	0.277	0.032446645

3.5 Weighing Confidentiality of Arbitration

3.5.1 Introduction

It is said that preserving confidentiality of arbitration is one of the main merits of arbitration, but no researches were found on assessing the impact of it, solely, on economy and persuading IPRs holders to invest and do business in the country.

Based on responses provided in the IAB report 2010, which includes responses to two questions, among others, in the ease of process index.

These questions were as follows:

Under your national law, are arbitrators expressly bound to preserve confidentiality of arbitration proceedings in a domestic arbitration?

Under your national law, are arbitrators expressly bound to preserve confidentiality of arbitration proceedings in an international arbitration? 1

Since the methodology of the survey used mostly "Yes" or "No" questions, I applied the same method of reading responses which was used in the IAB 2010 report and AMD report 2013.

The responses were entered as "yes=1" and "no=0". The final score is a mean of each data point, so, if one question response was yes and the other is no, the data shall be entered as "0.5", if any.

3.5.2 Correlation Between Confidentiality and GCI

Taking care of parity, I selected 60 states, the number of countries which had the yes responses (1 in data) were 30, and an exact number of states which had the no responses (0 in data).

A negative correlation was found between responses to the questions related to confidentiality in the IAB report 2010 and the overall score of GCI 2018 ($r = - 0.296/ p = 0.0216$).

1 The questions can be found on the website, such as responses from Egypt contributors as an example, on the internet: <http://iab.worldbank.org/Data/ExploreEconomies/egypt/arbitrating-commercial-disputes#arbprocess> , last accessed on 25th April 2019 at 10:30 P.M.

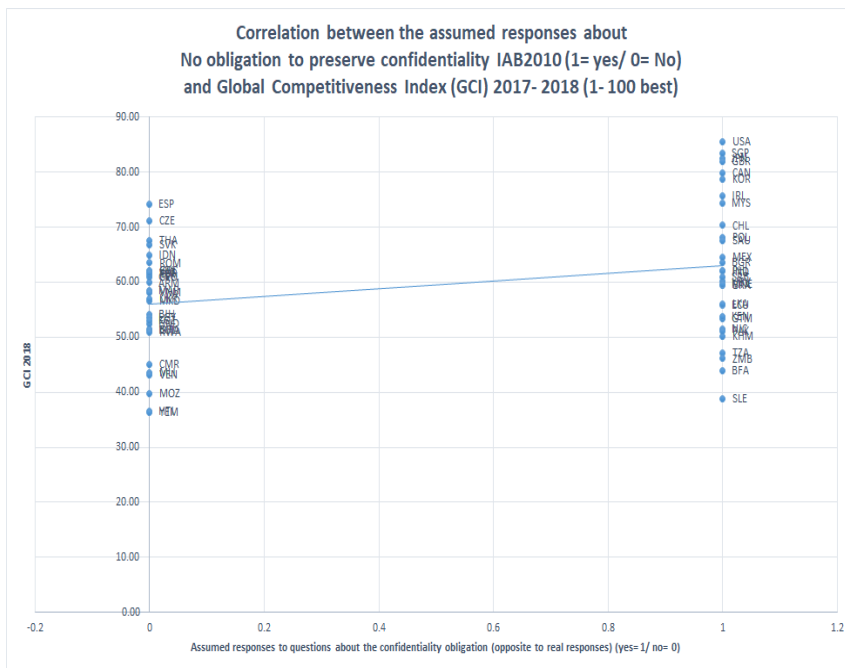
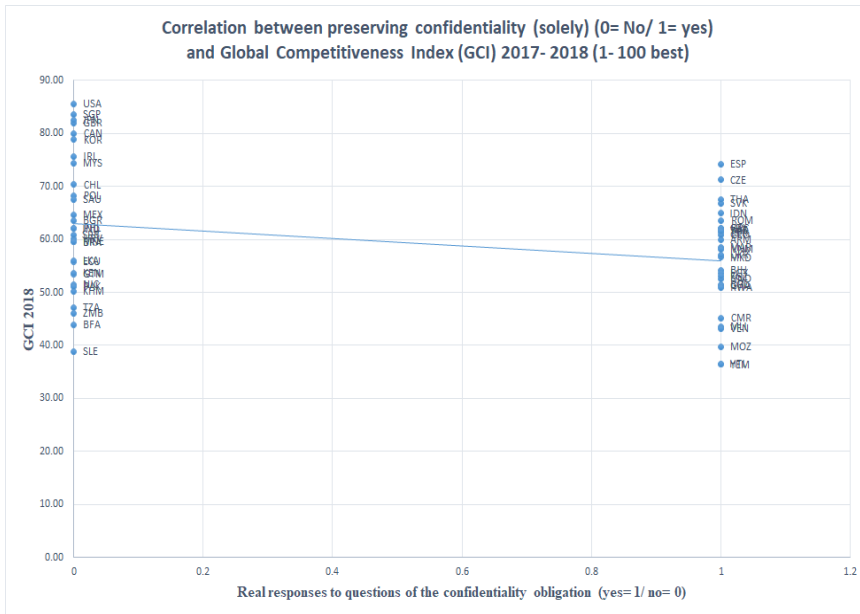


Figure 3: Correlation between Confidentiality and GCI 2018

3.5.3 The Assumption of Negative Form (no obligation)

Based also on the IAB report 2010, I assumed that the 2 questions of confidentiality were replaced with the negative form, such as, are arbitrators not bound to preserve confidentiality of arbitration proceedings in a domestic/international arbitration?

3.5.3.1 Entering data as 1/0

Using the assumed responses for the same countries, 30 for yes and 30 for no, a positive correlation was found with the GCI 2018 ($r = 0.296/ p = 0.0216$).

3.5.3.2 Addition and Deduction to the Original Scores

Based on the IAB report 2010 methodology¹, the 2 questions related to confidentiality are in the ease of process index, the score of this index is out of 35 (35 questions), then calculated to be out 100.

I assumed that all of the 60 countries responded to the assumed 2 questions of confidentiality which is in the negative form, questioning if the Country don't preserve confidentiality with the opposite response of their real response to the real question.

Since the 2 questions related to confidentiality were 2 out of 35, which is equivalent to 5.71 out of 100 in the ease of process index and also equivalent to 1.90 out of 100 of the average of the 3 indexes.

A deduction of 1.90 will be applied to the average score of each country answered with "yes" to the real questions, assuming that answers were changed to "no" to the negative form question.

¹ The methodology can be viewed at: <http://iab.worldbank.org/Methodology/Arbitrating-Commercial-Disputes>, accessed on 26th April 2019 at 11:30 P.M.

An addition of 1.90 will be applied to the score of each country answered with “no” to the original questions, assuming that answers were changed to “yes” to the negative form question.

This addition or deduction of scores is to find if the correlation score between these assumed scores and GCI will differ from correlation score between the original or real IAB 2010 scores and GCI.

After calculating the assumed scores with the deducted or added 1.90 the Pearson correlation coefficient was as follows:

$$r = 0.612676717 \text{ and } p = 1.96246E-07$$

it is noted here that correlation between the assumed average scores of IAB 2010 and GCI is higher than the correlation between the original or real responses and GCI which was 0.568, as shown in table 1.

Conclusion:

The impact of an effective ADR or arbitration regime on the global competitiveness, market size, growth of innovative Companies, innovative capabilities, international patent applications, patent applications and trademark applications is positive.

There are several elements that make the arbitration regime an effective one, confidentiality obligation was considered one of them, this study resulted that these other elements weigh more than 83% of all.

Neglection of obliging confidentiality, as a general principle subject to exceptions, in national and international commercial arbitration resulted higher correlation scores with GCI than when preserving confidentiality.

Since increasing global competitiveness capabilities or scores is beneficial for the public interests, neglecting to oblige

confidentiality in national and international commercial arbitration would make them even with the state judiciary and the international investment arbitration, where public interest is considered prior to disputants' interests.

There is no necessity for the Egyptian Legislator to walk in the French peer's shoes to reform the Egyptian arbitration act, since its' silence towards the confidentiality obligation supports considering it applicable upon disputants' agreement, only when needed.

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