



ICLG

The International Comparative Legal Guide to:

Employment & Labour Law 2014

4th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group, with contributions from:

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Published by

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London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
March 2014

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ISBN 978-1-908070-xx-x

ISSN 2045-9653

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Egypt

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El-Borai & Partners

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

There are primarily four legislative sources that regulate employment law in Egypt. These are:

- Law N.47 for the year 1978, which applies to civil servants of the State.
- Law N.48 for the year 1978, with the object of organising the rules applicable to public sector employees.
- Law N.203 for the year 1991, which was promulgated to address special requirements for employees working in the public commercial (business) sector of the State.
- Law N.12 for the year 2003, which aims at regulating the relationship between employers and employees in the private sector.

In addition to the foregoing, and where no specific rules are applicable to address a given issue arising within the employment relationship, the provisions of the Egyptian Civil Code ought to be applied to the employment contract.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Workers are categorised pursuant to the laws applicable to their employment contracts. Each of the aforementioned laws bears a number of protective provisions in light of what the nature of the work in question entails. There are, nonetheless, few other laws of general applicability; for instance to those working with dangerous/toxic materials, mining and quarrying activities, medical and biomedical research, etc.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Article 32 of the Labour Law applicable to the private sector obligates the employer to issue three copies of the contract of employment: for itself; for the employee; and for the social insurance authority. That said, and where the employer fails to abide by such rules, the employment contract needs not to be in writing in order to be valid and enforceable. In general, labour laws in Egypt are protective of the weakest party to the employment relationship, i.e., the employee. As such, where no contract of employment exists in writing, an employee is allowed to present (before the court) all probative evidence (such as a pay slip or even

testimony of a co-worker) to prove the employment relationship.

1.4 Are any terms implied into contracts of employment?

There are implied terms in employment contracts, most of which derive from, and revolve around, the concept of fiduciary duties of the employee towards his/her employer. In other words, the employee must exert his/her best efforts to preserve the employer's interests and owes to the latter a duty of care and loyalty, among other obligations. This translates in more specific provisions in the Labour Law such as the obligation to keep and maintain work and trade secrets confidential, not to compete - whether directly or indirectly - with the business of the employer, etc. On the other hand, there are a number of implied obligations incumbent upon the employer, such as providing a safe and secure work environment, and abiding by mandatory provisions of the Labour Law, such as the computation of leave days, working hours, pay *in lieu* of leave, public holidays and social insurance.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Other than a few mandatory terms (which are implied in the employment contract) appurtenant to working hours, leave days and social insurance (all employees must be socially insured), the legislator has given the employer the upper hand in organising and overseeing the work relationship. It is worthy of mention that mandatory provisions, as stipulated in the Labour Law, set out minimal standards, terms and conditions that govern the employment relationship. In other words, employers cannot disregard provisions deemed as public policy but, they can certainly offer more advantageous terms (than those provided by law) to the employees.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

The Law N.12 for the year 2003 allows and regulates collective bargaining procedures in compliance with international labour standards. Despite the enactment of the aforementioned law in 2003, its entry into force has only taken place after the Egyptian revolution in 2011, whereupon workers started exercising their legitimate right to strike and have, by the same token, prodded employers to enter into collective agreements so as to enhance wages, profit incentives and shares. While collective agreements (resulting from collective bargaining/agreements) are enforceable,

they have only taken place at an institutional level rather than on an industry-wide level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The Law N.35 for the year 1976, which was the reference in terms of trade unions and their recognition, allows only for the establishment of one trade union for each profession. Preventing several trade unions for each sector is contrary to the ILO convention (87/1948) to which Egypt is a signatory. After the 2011 revolution, a ministerial decree was issued to allow the formation of unions, irrespective of their sector or field, by simple notification to the Ministry of Manpower and Immigration. Such a process remains the primary means for the creation and recognition of trade unions.

2.2 What rights do trade unions have?

After the 2011 Egyptian revolution, trade unions were endowed with rights and prerogatives as provided for under various International Labour Organisation (ILO) conventions and other international treaties. These rights include, among others, the following:

- The right to strike and to organise strikes as per the 1966 International Covenant on Economic, Social and Cultural Rights, which was ratified by Egypt in January 1982.
- The right to freely organise themselves (as trade unions), pursuant to the 48/87 ILO Convention, which was promulgated by ministerial decree in Egypt in March 2011 (Freedom of Association and Protection of the Right to Organise Convention, 1948 (N.87)).
- The right to pursue and engage in collective bargaining according to the 98/1949 ILO Convention (Right to Organise and Collective Bargaining Convention, 1949 (N.98)).

2.3 Are there any rules governing a trade union's right to take industrial action?

At the industrial level, there are no specific rules to allow or to organise trade union's prerogatives.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

As far as the public sector is concerned, the Law N.73 for the year 1973 requires employers to appoint two workers' representatives to the board of directors, with no special guidelines or rules to set up works councils. In 2010, targeting the private sector, a new investment law was introduced which obligates the employer to either afford workers/employees with a board of representatives or, in the alternative, to allow for work councils to be elected among workers/employees.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Work councils have no co-determination rights in Egypt. They can

nonetheless send their recommendations to the employer and can assist the latter in the decision-making process.

2.6 How do the rights of trade unions and works councils interact?

In most, if not all cases, work councils are elected among the members of trade unions within any given establishment. The degree of cooperation and interaction is not organised by law and hence, varying degrees of cooperation (or none) could be found within the establishment/business.

2.7 Are employees entitled to representation at board level?

They are entitled to two board seats only in the public sector. As regards the private sector, the employer may, at its own discretion, extend board seats to workers/employees.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Egyptian Labour Law N.12 for the year 2003 protects employees against all forms of discrimination. More specifically, Article 35 of the aforementioned law prohibits any discrimination on the basis of gender, origin, language, religion or other personal belief.

3.2 What types of discrimination are unlawful and in what circumstances?

All types of discrimination are unlawful under Egyptian law.

3.3 Are there any defences to a discrimination claim?

Defences to discrimination are often based on the precept that different legal situations may result in a different treatment by the employer. Distinction must be made between a differing treatment (by the employer) in light of a different status/position (of the employees) and discrimination on any given basis.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

An employee who alleges to be discriminated against can file a claim before the competent labour office, stating the circumstances he/she believes are discriminatory. If an amicable settlement does not ensue with the employer, the claim will be lodged before the competent court. Employers and employees can settle any claim at any stage in the judicial process.

3.5 What remedies are available to employees in successful discrimination claims?

A remedy to a successful discrimination claim is an injunctive relief in favour of the employee. The employer must abide by the court order issued and may be ordered to pay damages and legal costs.

3.6 Do “atypical” workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

There are no special protections for atypical workers. The same rules that apply to full-time workers apply to atypical workers.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

A worker, who has spent at least 10 months at work, has the right to a maternity leave of 90 days at a full basic wage payable by the social insurance authority. The employee in question has the right to choose the dates of her maternity leave, provided the post-delivery period is no less than 45 days.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During her maternity leave, a woman maintains all her employment and social insurance rights, benefits and seniority. Where her physical condition does not allow her to return to work, she has the right to claim sick leave (duly substantiated by medical reports) for up to 180 days. The first 90 days will be paid at 75 per cent of her wages and the second 90 days at 85 per cent of her wages.

4.3 What rights does a woman have upon her return to work from maternity leave?

As mentioned above, a woman preserves all her rights and benefits upon her return to work from maternity leave. Furthermore, she has the right to take leave for one hour (during working hours) every day to watch over her child. Over and above the foregoing, a woman may take an unpaid leave of absence for a period of two years for child care.

4.4 Do fathers have the right to take paternity leave?

The law does not provide for paternity leave.

4.5 Are there any other parental leave rights that employers have to observe?

Other than the maternity leave, the unpaid leave of absence and the two hours per day for child care, there are no other leave rights granted by the legislator.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

For institutions employing 100 employees or more, there is an obligation on the employer to provide for an in-house nursery, or in the alternative, to take charge of placing the employee’s children (until they reach the age for schooling) in adequate nurseries. Working flexible hours is not mandated by law; it is often implemented consensually between employer and employees.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Asset transfer does not entail an automatic transfer of employees to the acquirer. In contrast, when an acquisition takes place through a shares transfer, the employees, as much as the employer (the entity being sold), remain bound by the employment contracts in place. In other words, it is not that the employees are transferred; rather it is the shareholding structure of their employer (the entity subject to the sale) that changes, without any effect on the terms and conditions of the employment contracts in place.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Because Egyptian laws do not entail an automatic transfer in case of a sale or spin-off, employees may and can demand that all their rights and benefits remain unaffected by their purported transfer to a new employer, including their end of service benefits and seniority. It is noteworthy to mention that, post transfer of employees, the share of liability between the former and current employer (new) is not equal. The former employer will be required to discharge its former employees’ rights and entitlements that have accrued and vested as of the date of termination/non-renewal (typically occurring after the sale of business). The current (new) employer would be required to discharge all such employees’ entitlements that have accrued under the old and the new employment contract (with a right of recourse against the former employer for its share).

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Under Egyptian law, there is no consultation or information right to the benefit of employees. Practically nonetheless, employees (especially the upper management of a corporate entity) are unofficially informed of any potential structural changes to the extent such changes may affect their immediate or future position with their employer.

5.4 Can employees be dismissed in connection with a business sale?

They could be dismissed as a result of a business sale but such dismissal would nonetheless be construed as unjustified and would therefore give rise to a claim for damages/compensation. Unjustified dismissal is compensated, under Egyptian labour law, with a minimum of two months’ full wage for each year of service.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Employers are not free to change terms and conditions in the context of a business sale unless: i) such terms and conditions are more beneficial to the employees than the existing ones; or ii) each employee gives his consent to the proposed changes.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

For fixed-term contracts, the law foresees no notice period. The contract is supposed to terminate when it comes to its term. However, the parties (employer and employee) may contractually agree on a time span for notices of termination, whether presented by the employee or the employer.

For indefinite term contracts (open-ended), the notice is, pursuant to Egyptian law, two months for employees who have served less than 10 years with the employer and three months for those who have served for 10 years or more.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The employee's attendance to work during the notice period is left to the discretion of the employer. It should be noted, however, that irrespectively of whether or not the employer requires from the terminated employee to attend and pursue his work during the notice period, the employer must pay the full wage to the employee during that period. The employer may abstain from paying the notice period if the employee, at his/her own will, refuses to attend work during the notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Egyptian labour law recognises dismissal under two categories: i) dismissal for cause (or often referred to as justified dismissal); and ii) dismissal without cause. The first occurs where the employee in question is found to have been grossly negligent or has committed a serious mistake in the performance of his/her duties. In such a case, after due investigation and an interview wherein the employee appears (with the presence of a staff union delegate, if the employee so requires), the employer issues a written report to state the findings of the investigation and the decision it has led to. Where the decision is to terminate the employee in question, the report resulting from the investigation and interview, along with a motion to dismiss the employee, is presented to a special commission formed under the auspices of the court (with judicial authority over the matter). The latter must approve the decision to dismiss within 15 days from the date the claim is lodged. In practical terms, companies/employers seldom resort to this mechanism because the commission in question takes much longer than 15 days to decide on the matter (sometimes months and years), during which period the employer must pay the employee's wage in full until a decision is reached. Therefore, employers often resort to the second type of dismissal, known as a dismissal without cause.

Dismissal without cause, on the other hand, requires no such reports or interview. Instead, the employer will pay the employee a severance compensation, which, pursuant to Egyptian laws, cannot be less than two months' salary for each year of service, in addition to any leave days (unused by the said employee) as of the time of termination. In practice, two months is a generally agreed-upon term of severance and the employee/manager should preferably sign a resignation, a release form and an acknowledgment that

he/she was duly paid all his/her entitlements. Such a process would deter the terminated employee from initiating any lawsuit against the employer in the future.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The law affords special protection to trade union and staff union members to the extent such employees cannot be transferred without the prior written consent of the union they are affiliated with and cannot be dismissed unless a court order has been issued to that effect. Furthermore, where staff union members are unduly dismissed, the court may, by way of exception, reinstate them to their position with the employer.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

As stated earlier, employees may be dismissed for cause or without cause. The latter situation would entail, in terms of compensation/damages, a minimum of two months' full salary for each year of service in addition to any leave days (unused by the said employee) as of the time of dismissal. In contrast, where dismissal results from the employee's serious mistake or gross negligence, no compensation whatsoever will be owed to the dismissed employee. As regards business-related reasons, such as a restructuring, whether or not related to the financial condition of the employer, the law is rather stringent in this respect. To afford such option to the employer, the law requires an unequivocal proof of financial difficulty, at both the employer and the industry level, in addition to a formation plan so as to re-assign employees to other roles/tasks thereby avoiding their termination. Under Egyptian jurisprudence, restructuring plans are seldom approved to justify any dismissal. Differently said, dismissal is often, if not always, related to the individual employee rather than a business-related reason.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Dismissal for cause (or justified termination) requires, as detailed above, the lodging of a claim before the competent court (labour commission). Where the employer dismisses an employee without cause, no special formalism is required as long as the process is not vexatious to the employee. In such a case, the employee can have recourse to the court to claim damages for unlawful termination of contract and, possibly, for moral damages when the termination process is deemed vexatious or humiliating.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Claims brought forth by dismissed employees are labelled as "dismissal without cause" and, pursuant to the Labour Law, entail a minimum of two months' full pay for each year of service. Remedies always take the form of damages and no reinstatement of employees can take place under Egyptian law (except for staff union members).

6.8 Can employers settle claims before or after they are initiated?

Settlement of labour disputes is possible at any stage in the judicial process. In fact, before a lawsuit is initiated before the court, a claim must first be filed with the labour office (under the supervision of the Ministry of Manpower and Immigration) in an attempt to reach an amicable settlement between the parties involved.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Egyptian law does not allow for the dismissal of several employees except for economic/financial reasons. The employer wishing to dismiss several employees (without cause related to such employees) shall approach the competent labour office, with the purported restructuring plan, the reasons underlying such plan and the details of the employees that will be dismissed. The labour office may accept or reject such plans, or may reduce the number of employees to be dismissed. Where the labour office rejects the said plan, the employer may have recourse before a special committee formed to that effect (termination for economic/financial reasons) within the ministry of manpower and immigration. The decision of the committee shall be final but the employer has the right, nonetheless, to contest such a decision before the competent court.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Where a mass dismissal has taken place, employees may initiate a lawsuit against the employer for unjustified termination. While the overriding legal principles for compensation and assessment are the same as in any individual lawsuit, the judicial process and the court before which such claims should be filed are different. Contesting a mass dismissal by any given employer must take place before a special circuit to the court of appeals and a representative from the ministry of manpower and immigration shall be present. Remedies are always in the form of compensation for damages, computed on the same principle of at least two months' full pay for each year of service.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Egyptian law recognises three main restrictive covenants. These are:

- **Confidentiality:** the employee or former employee must maintain work and trade secrets so as to protect the employer's (or former employer's) interests.
- **Not to compete:** the employee must abstain from engaging, whether directly or indirectly, into any business competing with the business of his employer or former employer. Such a restriction nonetheless is more relevant and applicable to the managerial level of any institution.
- **Work inventions and product:** the employer is the sole legal owner of all work products and inventions.

7.2 When are restrictive covenants enforceable and for what period?

Restrictive covenants are enforceable. The period for which they are enforced depends on the type of covenants. For instance, confidentiality is treated on an *ad hoc* basis by the deciding judge. For the non-compete covenants, generally a period of two years is the norm, bearing into account that the restriction (not to compete) must be limited in both geographical area and length. The more overbroad the non-compete covenant is, the least likely it is that it will be upheld by a court of law.

7.3 Do employees have to be provided with financial compensation in return for covenants?

While the law does not address this matter, it is customary for the employer to compensate workers/employees in exchange for consenting to, and abiding by, restrictive covenants. However, compensation is not an obligation incumbent upon the employer.

7.4 How are restrictive covenants enforced?

Restrictive covenants are enforced through the traditional judicial route. The employer must file a claim before the competent court district, within which the infraction/breach is taking place. As in most other jurisdictions, the employer must demonstrate how the employee (or former employee) has breached his/her obligations and to what extent such a breach has caused damages to the employer. Remedies, for a successful claim, can result in an injunctive order (specific performance) against the employee to cease and desist from pursuing an activity in breach of the covenant in question, and where applicable, damages/compensation in favour of the employer could be decided.

8 Court Practice and Procedure

8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The labour circuit of the court of first instance is the competent forum of jurisdiction with respect to employment-related complaints and disputes. The court is composed by three judges and representation of both employer and employee is mandatory.

8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

An attempt for conciliation/amicable settlement, before filing a claim before the court, is mandatory. The labour office is the administrative institution before which all labour-related disputes begin. The labour office aims, on a best effort basis, at reaching an amicable settlement between the parties. Because the labour office is not endowed with any judiciary powers or authority, it must defer all unsettled claims to the court of competent jurisdiction within 21 days from the date of their submission. There are no fees, administrative or otherwise, due upon the submission of a claim before the labour office.

8.3 How long do employment-related complaints typically take to be decided?

One of the most significant shortcomings in the Egyptian judicial system is the pace of the litigation process. A labour-related dispute before the court of first instance may take up to three years to be adjudicated.



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Dr. Ahmed El Borai, founder and partner at El-Borai & Partners, is one of the few experts in labour law both in Egypt and in the Middle East. Dr. El Borai has been appointed, since 2004, as a member to the United Nations Committee on Migrant Workers. Dr. El Borai has held various academic and professional posts in the course of his blossoming career, among which one can cite: Visiting Professor, University of Mohammed Ibn Abdallah, Morocco (1977); Visiting Professor, University of Riyadh (1977); Legal Counsellor to the University of Cairo (1983); Visiting Professor, University of Rennes (1985); Cultural Counsellor for Egypt in Paris (1986); Permanent Representative of Egypt to UNESCO (1987); Member of the Supreme Council for Islamic Affairs (1991); Legal Counsellor to the Egyptian Parliament for the Committee on Labour Force (1993); Head of the Labour Relations Centre, University of Cairo (1995); Visiting Professor, University of Paris I Panthéon-Sorbonne (1997); former Minister to the Ministry of Manpower and Immigration (2011); and current Minister to the Ministry of Insurance and Social Affairs (2013). Dr. El Borai is currently a Law Professor and Head of the Social Legislation Department, Faculty of Law, University of Cairo and Advocate before the Egyptian Court of Cassation and the Conseil d'Etat (since 1983). From 1995, Dr. El Borai sits as member of the Committee of Legal Experts of the Arab Labour Organisation (ALO), and, since 1999, as member of the Committee of Experts-Counsellors of the International Labour Organization (ILO). Some of Dr. El Borai's publications include the following: "*The International Legal Framework for Migrant Workers: the United Nations Convention on the Protection of Rights of all Migrant Workers and Members of their Families*", July 2007; "*The Regulation of Immigration of Labor between the Arab States according to International and Arab Labor Practices*"; and "*Legal Framework for the Protection of Immigrant Labor in the Arab States*", research (in English and Arabic) commissioned by the ILO for the First Conference on Immigration of Labour between Arab States.

8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

It is possible to appeal against a judgment issued by the court of first instance. The court of appeals can render a judgment within a time span varying between one year and eighteen months.



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Dr. Ramy El Borai, managing partner at El-Borai & Partners, is admitted to practice law in Egypt and in the State of New York. He advises on various aspects of commercial, corporate, banking and finance law and has closed on diverse and complex transactions, covering a wide array of structures such as Project Finance, Asset-backed Finance, Capital Leasing, Derivatives, Loan Syndications; and Risk-Participation Agreements. He has accumulated extensive expertise in investment banking transactions, including initial public offerings, private placements, debt raising exercises along with the foundational and structural work such transactions implicate. He also advises on the establishment of on/offshore PE funds. Among other transactions he successfully closed, Dr. El Borai was the legal advisor, in 2009, to 23 lending banks in connection with the then largest loan syndication to ever take place in Egypt with an aggregate value surpassing USD 1 billion. In 2010, Dr. El Borai, this time in his capacity as legal counsel to the borrower, successfully closed on a landmark syndicated facility extended by 28 commercial banks to his client for a total loan amount of EGP 7.2 billion (USD 1.3 billion). In 2012, he was the advisor to a syndicate of lenders for a total loan amount of EGP 8.4 billion (USD 1.25 billion) in connection with the financing of a large petrochemical project.

Dr. El Borai has held such posts as: former assistant lecturer at the University of London, Queen Mary University and Westfield college; former assistant lecturer at Southern Methodist University, Dallas, Texas; lecturer for the ethics, conflict of interests and legal writing courses with the American Bar Association; Continued Legal Education Program (CLE); lecturer in Labour Law with the American University in Cairo - Management Centre; and lecturer in contract and commercial law in the MBA Programme of the *Ecole Supérieure Libre des Sciences Commerciales Appliquées* (ESLSCA). Dr. El Borai is a former legal consultant to the World Bank's financial sector in Washington, D.C. He holds a Ph.D. from the University of London in Cross-Border Corporate Insolvency, LL.M. from the University of Warwick (UK), LL.M. from Southern Methodist University (TX), LL.B. from Paris I Panthéon-Sorbonne, and an LL.B. from the University of Cairo.



El-Borai & Partners was established in 1986 by Dr. Ahmed El Borai. The Firm, initially specialising in labour and civil law matters, has recently been the subject of significant growth, both in terms of client base and specialties. With its exceptional attorneys, of-counsels and staff, the firm has expanded its scope of services and expertise onto business and commercial law, including private equity, M&As, banking, project finance, PPP, corporate restructuring, commercial agencies, real estate, energy and Information Technology.

Moreover, the Firm has a strong procedures and government relations department. The Firm enjoys a strong regional presence with a large local and international client base, including: leading local corporations; regional and international financial institutions; transnational corporations; and governmental organisations. The Firm has been selected to represent prominent local, regional, and international clients in major transactions that took place since its inauguration. Such transactions include, but are not limited to, strategic mergers & acquisitions, private placements, syndicated loans, real estate development and public concession agreements.