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Bahrain
International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Bahrain.

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Bahrain: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The primary legislation governing arbitration in Bahrain is Law No. (9) of 2015 Promulgating the Arbitration Law, which adopts the UNCITRAL Model Law on International Commercial Arbitration (1985), including the 2006 amendments ("**Arbitration Law**"). This law applies to all arbitrations, regardless of the nature of the legal relationship between the parties, provided that the arbitration is conducted in Bahrain or if the parties have agreed to subject their arbitration to the provisions of this law, even if conducted elsewhere.

This legislation ensures that its provisions are applicable to all arbitration agreement, regardless of the nature of the relationship between the parties involved in the dispute. There are also mandatory laws within this framework, particularly concerning procedural requirements and certain public policy considerations, which cannot be waived or altered by agreement between the parties.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Bahrain is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Bahrain acceded to the Convention through Legislative Decree No. (4) of 1988 ("**New York Convention**"), with specific reservations. These reservations are in line with Article 1 of the Legislative Decree No. (4) of 1988 and were outlined as follows:

- Bahrain's accession to the New York Convention does not imply recognition of Israel, nor does it create any legal or diplomatic relationship with it.
- Bahrain applies the New York Convention on a reciprocity basis, meaning it will only recognize or enforce awards made in another contracting state that is also a party to the Convention.
- Bahrain limits the application of the New York Convention to disputes arising from legal relationships, whether contractual or not, that are considered commercial under Bahraini law.

We are not aware of any published legislative amendments to these reservations, even after the signing of the Abraham Accords between Bahrain and Israel. Consequently, these reservations remain legally in effect.

However, in practice, there has been growing cooperation between Bahrain and Israel across various sectors since the signing of the Abraham Accords. To date, we are not aware of any cases brought before Bahraini courts seeking the recognition and enforcement of arbitration awards made in Israel. It also remains unclear whether a reciprocity arrangement for the enforcement of arbitral awards has been established between Bahrain and Israel.

3. What other arbitration-related treaties and conventions is your country a party to?

Bahrain is a party to various arbitration-related treaties and conventions that contribute to its robust framework for international dispute resolution, including:

- Legislative Decree No. (16) of 1995 Ratifying the Convention of the International Centre for Settlement of Investment Disputes (ICSID) of 1965 – Facilitates the arbitration of investment disputes between states and foreign investors.
- Legislative Decree No. (41) of 1999 on the ratification of the Riyadh Arab Agreement for Judicial Cooperation of 1983 – Encourages judicial cooperation, including the recognition and enforcement of arbitral awards among Arab states.
- Decree No. (9) of 1996 ratifying the Agreement on the Enforcement of Judgments, Letters Rogatory and Judicial Notices of the States Members of the Cooperation Council for the Arab States of the Gulf (GCC) – Enhances the enforcement of arbitral awards among GCC states.
- Law No. (10) of 2008 approving the accession of the Kingdom of Bahrain to the Convention for the Peaceful Settlement of International Disputes concluded in The Hague on 18 October 1907 (Hague Convention I) – Promotes peaceful dispute resolution mechanisms, including arbitration.
- Decree No. (6) of 2000 Approving the Constitution of the Gulf Cooperation Council's

Commercial Arbitration Centre – Establishes a regional arbitration mechanism for the Gulf States, with Bahrain being a founding member.

These treaties, along with various bilateral treaties, demonstrate Bahrain's commitment to providing a comprehensive legal framework for arbitration, fostering international and regional cooperation in commercial and investment disputes.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes. Law No. (9) of 2015 Promulgating the Arbitration Law adopts the UNCITRAL Model Law on International Commercial Arbitration (1985), including the 2006 amendments.

5. Are there any impending plans to reform the arbitration laws in your country?

We are not aware of any official plans to reform the arbitration laws in Bahrain at this stage.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

In Bahrain, there are two prominent arbitral institutions:

- The GCC Commercial Arbitration Centre: The Centre's Rules were last amended in 1999.
- The Bahrain Chamber for Dispute Resolution (BCDR): The BCDR adopted its first set of arbitration rules in 2010, which were closely aligned with those of the International Centre for Dispute Resolution (ICDR). The rules were revised in 2017 and most recently in 2022.

Currently, there are no publicly available indications that further amendments to the rules of either institution are under consideration.

7. Is there a specialist arbitration court in your country?

No, there is no specialist arbitration court in Bahrain.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Under Article 7 of the Arbitration Law, an "Arbitration agreement" is an agreement between parties to submit all or specific disputes that have arisen or may arise between them to arbitration, whether the legal relationship in question is contractual or not. To be valid, the Arbitration Law requires that the arbitration agreement must be in writing either as a clause within a contract or as a separate agreement.

The Bahrain Cassation Court established in the Appeal No. 596 of 2017, hearing dated 24 December 2018 that: *"As stipulated, an arbitration agreement that is considered valid, as defined in Article 7 of this law (Law No. 9 of 2015 promulgating the Arbitration Law), is an agreement between two parties to refer to arbitration all or some of the disputes that have arisen or may arise between them regarding a specific legal relationship. This agreement must be in writing, either in the form of an arbitration clause in a contract or as a separate agreement. Once the parties agree in this manner, it constitutes a valid and enforceable agreement."*

Please note that the arbitration agreement is also considered in writing in the following:

- if its content is recorded in any form, regardless of whether it was concluded orally, by conduct, or through other means.
- The requirement for writing is also satisfied through electronic communication, as long as the information is accessible and usable for future reference. This includes emails, electronic data interchange (EDI), or similar forms of electronic communication.
- An arbitration agreement is valid if it is mentioned in the exchange of statements of claim and defense, and its existence is alleged by one party without being denied by the other.
- A reference in a contract to a document containing an arbitration clause constitutes a valid written arbitration agreement, provided that the reference is explicit enough to incorporate the clause into the contract.

9. Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main contract.

Article 16 of the Arbitration Law affirms that an arbitration clause, which forms part of a contract, is regarded as an independent agreement separate from the terms of the original contract. This principle was established by the Cassation Court in Appeal no. 254 of 2002, dated May 19, 2003. The Court confirmed that an agreement to arbitrate, where parties agree to submit their dispute regarding the performance of a specific contract to arbitrators rather than to ordinary courts, constitutes a distinct contract with its own legal identity, independent of the original contract in dispute. This agreement remains valid and enforceable regardless of whether it is included as a clause in the main contract or exists in a separate document. Its validity is not affected by the nullification or termination of the original contract, as long as the dispute arising from its execution remains subject to the arbitration agreement.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

No, the courts in Bahrain do not apply a validation principle to the arbitration agreement. Bahrain courts do not consider multiple national laws. Instead, the validity and enforceability of an arbitration agreement in Bahrain are determined by the Arbitration Law.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The Arbitration Law does not specifically refer to multi-party or multi-contract arbitration. However, the BCDR Arbitration Rules 2022 address these issues in some of their provisions.

Article 28 allows for the joinder of an additional party to the arbitration, providing:

"28.1 At any time following the Chamber's notice of the commencement of the arbitration pursuant to Article 3, and before the appointment of the arbitral tribunal, a party wishing to join an additional party to the arbitration shall submit to the Chamber, and at the same time to all other parties to the arbitration and to the additional party, a written request for arbitration against the additional party (the "Request for Joinder"), including or accompanied by all the items prescribed for a Request in accordance with Article 2.2."

Additionally, Article 29 allows for the consolidation of two or more arbitrations into a single arbitration:

"29.1 If two or more arbitrations subject to these Rules are commenced pursuant to the same arbitration agreement and between the same parties, the Chamber may, in its discretion and after consultation with the parties, consolidate the arbitrations into a single arbitration subject to these Rules, provided that no arbitral tribunal has yet been appointed in any of the arbitrations to be consolidated."

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The application of an arbitration agreement is limited to its parties. The agreement does not extend to third parties who are not signatories and did not participate in the agreement. Consequently, any dispute involving a third party would fall under the jurisdiction of the competent courts.

This principle was established in the Cassation Court judgment in Appeals Nos. 204, 205, 206, 208 of 2021, and No. 27 of 2022, Session of 16/5/2022, which stated:

"As established by the agreement, the subject of the dispute was made between the first and second respondents only regarding the distribution of cars (…) within the Kingdom of Bahrain. Article 30 thereof states that 'any dispute that may arise between the two parties concerning this agreement, which cannot be settled by mutual agreement, must be resolved through arbitration.' Therefore, the arbitration clause in this article is limited in its application to the two parties to the agreement—the first and second respondents—and does not extend to the appellant or the other parties. It does not apply to them as they are not connected to the agreement and are not parties to it. Consequently, the dispute between them and the first respondent regarding his claim for compensation falls outside the scope of arbitration and within the jurisdiction of the competent courts. As the contested judgment adhered to this view, it has correctly applied the law, rendering the appeal baseless."

We are not aware of any court decisions in Bahrain that have bound third parties or non-signatories to an arbitration agreement. However, a different situation may arise in cases involving a branch of a parent company; noting that a branch is not considered a third party, as it

is not a separate legal entity from the parent company. Therefore, if the arbitration agreement was signed by the parent company, the agreement may also apply to the branch. This was established in Appeal No. 590 of 2020, Session of 16/11/2020, which noted:

"When both appellants based their request to annul the arbitration award in question, the second appellant argued that it was not a party to the arbitration agreement contained in the construction contract entered into between the first appellant and the respondent on 17/9/2008, as the second appellant was established in 2010. However, it is evident from the documents that at the time the contract was made, it was a branch of the first appellant company—Branch No. 25—and it was responsible for executing the construction work. Therefore, it is represented in the agreement as a branch of the parent company, and its later incorporation as an independent company does not affect its retention of previous obligations and its subjection to the arbitration clause included in the original contract."

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

In general, parties can agree to arbitration for any dispute, except for non-arbitrable issues. These typically include matters that cannot be settled amicably, such as family law issues and those related to public order. Such matters cannot be resolved amicably, necessitating their exclusion from arbitration. However, rights or financial interests arising from these issues may be waived or settled by the entitled parties, and such agreements can be subject to arbitration.

It is important to note that if it is proven that enforcing the arbitration clause would be practically impossible, the arbitration agreement will not be considered valid. This is particularly relevant in employment contracts, where arbitration could lead to a loss of rights for either party, especially the employee. Consequently, arbitration clauses in such contracts may not be recognized.

This principle is established by the Court of Cassation's judgment in Appeal No. 132 of 2022, Session of 26/7/2022. The court held:

"It is established in the jurisprudence of the Court of Cassation that it is permissible to agree to arbitration in any dispute except for matters that cannot be settled amicably. The matters referred to are those related to public order, the rules and provisions of which have been codified by the legislator in mandatory texts that cannot be overridden by agreement. This necessitates that such matters cannot be settled amicably. However, any rights or financial interests that arise from these matters can be waived or settled by those entitled to them. Moreover, the application of the law and its purpose, along with the logic that does not contradict reason, imply that it must be possible to implement and activate the arbitration clause in practice, meaning that any party should be able to resort to this avenue to claim their rights. If it is proven that it is impossible or nearly impossible to do so—an issue that the court of first instance must determine based on reasonable inference—then the arbitration clause should not be recognized, so that it does not become a means of depriving any party, particularly the worker, of their rights. The legislator has taken care to protect workers' rights from being lost or infringed upon by mandatory provisions related to public order that are included in the Labor Law."

The following key cases illustrate the evolving landscape of non-arbitrable disputes:

- In **Appeal No. 46 of 2020, Session of 22/9/2020**, the cassation court found that the worker had a claim of 2,570 Dinars. The provision in the employment contract requiring arbitration in another country would impose costs that might prevent the worker from pursuing their rights, leading to the loss of these entitlements, which contradicts the legislative intent to protect workers' rights. Thus, the arbitration clause should not be upheld in such cases.
- In **Appeal No. 79 of 2005, Session of 24/10/2005**, the court ruled that the agreement on arbitration does not pertain to the provisions of labor law and its mandatory rules related to public order as such; rather, it pertains to the financial rights of the appellant that arise from these rules. The rights of the worker arising from the employment contract after the right has matured may be amicably settled or waived because once established, they become financial interests that can be settled or waived. This does not contravene the law.
- In **Appeal No. 595 of 2012, Session of 14/1/2013**, the court established that civil law does not prevent a land seller from stipulating that the construction on the land complies with the overall project plan and serves all participants. The stipulation that the construction must include a basement for parking vehicles does not violate the

appellant's property rights. This condition does not infringe upon the fundamental interests of society or public order, allowing for the resolution of disputes related to this matter through arbitration. The contested ruling adhered to this view, making the objection based on legal violation unfounded.

Through these rulings, the legal landscape regarding non-arbitrable disputes has evolved to prioritize the protection of fundamental rights related to public order, particularly in employment contexts, while still allowing for arbitration in appropriate circumstances particularly in matters related to financial interests which can be waived or settled amicably.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

We are not aware of any court decisions concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The law applicable to the substance of a dispute is generally determined by the parties involved, who may agree to choose the applicable law or select international commercial law and its customs. However, it is essential that the chosen law's provisions do not contradict the public order of the Kingdom of Bahrain.

According to Bahrain's Law No. 6 of 2015 on Conflict of Laws in Civil and Commercial Matters with a Foreign Element (Conflict of Law Rules), the parties to the dispute are required to submit the provisions of the chosen applicable law. If the parties fail to submit the provisions of that law, Bahraini law may be considered the applicable law for the subject matter of the dispute. In the event of a disagreement between the parties over the applicable law, the authority reviewing the dispute is responsible for determining the applicable law before addressing the substance of the dispute.

16. In your country, are there any restrictions in the appointment of arbitrators?

There are no restrictions on the appointment of arbitrators unless the parties agree to impose such restrictions to ensure that the arbitrator is appropriate and qualified to decide the dispute.

Article 11 of the Arbitration Law states that no person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

If the arbitrator is to be appointed by the competent court, the court will make the appointment after considering the arbitrator's qualifications, in line with the parties' agreement, and other relevant considerations to ensure the appointment of an independent and neutral arbitrator.

In cases involving the appointment of a sole arbitrator or a third arbitrator, the court will take into account the possibility of appointing an arbitrator of a different nationality from the parties involved in the dispute. Are there any default requirements as to the selection of a tribunal?

In the case of a sole or third arbitrator, the court shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties. There are default requirements for the selection of a tribunal. Specifically, when appointing a sole or third arbitrator, the court will ensure that the arbitrator possesses the necessary qualifications as agreed upon by the parties. Additionally, the court will take into account other relevant factors to ensure the appointment of an independent and neutral arbitrator. This approach helps maintain the integrity of the arbitration process and fosters confidence in the tribunal's impartiality.

17. Are there any default requirements as to the selection of a tribunal?

N/A

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, local courts can intervene in the selection of arbitrators under certain circumstances. According to Article 11 of the Arbitration Law, the parties have the freedom to agree on a procedure for appointing arbitrators; however, if they fail to reach an agreement, the following provisions apply:

- In an arbitration involving three arbitrators, each party appoints one arbitrator, and the two appointed arbitrators then select the third. If a party does not appoint their arbitrator within

thirty days of receiving a request to do so, or if the two arbitrators cannot agree on the third within thirty days, either party can request the court to make the appointment.
- If the parties cannot agree on a sole arbitrator, the court will appoint one upon request from either party.

If a party fails to act as required under the agreed appointment procedure, or if the parties or arbitrators cannot reach an expected agreement, any party may request the court to take necessary measures, unless the appointment procedure specifies alternative means for securing the appointment. The cassation court established in Appeal no. 466 of 2019, hearing dated 4/11/2019 and Appeal no. 492 of 2021, hearing dated 7/9/2021 that:

The provisions of Article 11(3) and (4) of the UNCITRAL Model Law on International Commercial Arbitration, attached to Law No. 9 of 2015 on the Issuance of the Arbitration Law, state that if the parties do not agree on the procedure to be followed in appointing the arbitrator or arbitrators, in the case of arbitration with three arbitrators, each party appoints one arbitrator, and the two appointed arbitrators then appoint the third arbitrator. If either party fails to appoint the arbitrator within thirty days of receiving a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment must be made by the court named in Article 6, which is the High Civil Court, in accordance with Article 3 of the Issuance Law. This also applies if the arbitration is to be conducted by a sole arbitrator and the parties cannot agree on the arbitrator.

In the case of agreed-upon procedures for the appointment of arbitrators, either party may request the competent court to take the necessary measures if one of the parties fails to act according to these procedures, if the parties or the arbitrators cannot reach the required agreement in accordance with these procedures, or if a third party, including an institution, fails to perform any task entrusted to it in these procedures, unless the agreement on the appointment procedures specifies another method to ensure the appointment.

When the court intervenes, it will consider any qualifications required by the parties' agreement and aim to ensure the appointment of an independent and impartial arbitrator. Decisions made by the court regarding arbitrator appointments are not subject to appeal, ensuring a prompt resolution in the selection process.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator can be challenged under specific grounds as outlined in Articles 12 and 13 of eth Arbitration Law.

When an individual is considered for appointment as an arbitrator, they must disclose any circumstances that might give rise to justifiable doubts regarding their impartiality or independence. The challenge can be made if such circumstances arise or if the arbitrator does not meet the qualifications that the parties agreed upon. Notably, a party can only challenge an arbitrator they appointed or were involved in appointing if they become aware of the grounds for the challenge after the appointment.

As for the challenge procedure, parties may agree on their own process for such challenges. In the absence of such an agreement, a party intending to challenge an arbitrator must submit a written statement of reasons for the challenge to the arbitral tribunal within fifteen days of learning about the tribunal's composition or the relevant circumstances. If the challenged arbitrator does not withdraw and the other party does not agree to the challenge, the tribunal will decide on the matter. If the challenge is unsuccessful, the challenging party can seek a decision from the court or designated authority within thirty days of receiving notice of the rejection, and this decision is final and cannot be appealed. Importantly, while the request is pending, the arbitral tribunal may continue with its proceedings and issue an award.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

No, there have not been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In the case of a truncated tribunal, the remaining arbitrators have the authority to continue with the proceedings. According to Arbitration Law, if an arbitrator

becomes unable to perform their functions, whether de jure or de facto, their mandate may be terminated. This termination can occur if the arbitrator withdraws or if the parties agree on the termination. However, if there is a dispute regarding the termination, any party may request the court or the relevant authority to decide on the matter, and that decision is not subject to appeal (Article 14).

If the tribunal consists of more than one arbitrator, the remaining members can proceed with the arbitration, as long as the minimum number of arbitrators required for a valid tribunal is maintained. Decisions by the arbitral tribunal must generally be made by a majority of all its members, although procedural questions can be decided by a presiding arbitrator if authorized by the parties or all members (Article 29). Finally, the award must be in writing and signed by the arbitrators, with the signatures of the majority sufficing in cases involving multiple arbitrators, provided the reasons for any omitted signatures are stated (Article 31).

22. Are arbitrators immune from liability?

According to Article 7 of the Arbitration Law, arbitrators are generally immune from liability for any acts or omissions occurring in the course of performing their duties. This immunity applies unless the arbitrator acts in bad faith or commits gross wrongdoing. The same rule extends to individuals working for the arbitrator or those authorized by him to perform specific tasks related to his duties. However, this immunity does not protect the arbitrator if he resigns without a justifiable cause or at an inappropriate time.

23. Is the principle of competence-competence recognised in your country?

Yes, the principle of competence-competence is recognized in Bahrain. According to Article 16 of the Arbitration Law, the arbitral tribunal has the authority to rule on its own jurisdiction, including any objections related to the existence or validity of the arbitration agreement. Any plea asserting that the tribunal lacks jurisdiction must be raised no later than the submission of the statement of defense. Importantly, a party is not precluded from raising such a plea even if they have appointed or participated in the appointment of an arbitrator. Additionally, if a party believes the tribunal is exceeding its authority, this plea should be raised as soon as the matter in question arises during the proceedings. The tribunal may consider accepting a later plea if it finds the delay to be justified. Furthermore, the tribunal can address these pleas either as preliminary questions or as part of an award on the merits. If the tribunal rules on jurisdiction as a preliminary question, any party may request the relevant court to decide the matter within thirty days of receiving notice of that ruling. This court decision is not subject to appeal, and while the request is pending, the arbitral tribunal can continue its proceedings and issue an award.

The cassation court established in Appeal no. 840 of 2020, hearing dated 5/1/2021 that:

Law No. 9 of 2015 regarding arbitration, in Article 16, grants the arbitration tribunal sole authority to decide disputes related to its jurisdiction, including disputes concerning the existence or validity of the arbitration itself. The law does not allow such disputes to be presented to the High Civil Court before the issuance of the arbitration award. However, it permits concerned parties to raise these issues later before that court when challenging the arbitration award, but only according to the specific reasons and situations stipulated by the law, which are limited to procedural matters related to the arbitration process and do not affect the substantive core of the dispute arising from it. The law explicitly prohibits the High Court from exercising any jurisdiction not expressly granted by the law.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

According to Article 8 of the Arbitration Law, if a party initiates litigation on a matter subject to an arbitration agreement, the court must refer the parties to arbitration if requested by a party and made at the time of submitting their first statement regarding the dispute. This referral will occur unless the court finds the arbitration agreement to be null and void, inoperative, or incapable of being performed.

Please note that the court will not dismiss the case solely based on the arbitration clause unless a party raises this as a plea before the court of first instance. The lack of jurisdiction due to the arbitration clause is not considered a matter of public order. If a party fails to raise this objection before the competent court within the specified timeframe, the plea will not be accepted, and the court will proceed to decide its jurisdiction over the matter

The Cassation Court established in Case No. 285 of 2020, Session on 15/3/2021:

"Since the second defendant did not appear before the Case Management Office and did not present any plea or

defense there, her defense regarding the lack of jurisdiction based on the arbitration clause, which is not related to public order, cannot be raised for the first time before the competent court. This also applies to the Court of Appeals, in accordance with Article 222 of the Civil Procedure Law, which states that the rules and procedures applicable to the case before the court must also apply in the Court of First Instance. The provision in Article 224 of the same law allowing for the submission of new evidence or defenses before the Court of Appeals refers only to cases filed directly with the Case Registration Department as outlined in Article 23. Furthermore, the restrictions mentioned in Article 7 (bis), which state that neither party may submit any request or defense unrelated to public order, or new evidence, after the conclusion of case management, apply only to cases that must be managed through the Case Management Office, including the present case. Therefore, the contested ruling, which allowed the plea raised by the second defendant in the appeal regarding the lack of jurisdiction based on the arbitration clause, and ruled accordingly, violated the law, thereby preventing it from examining the subject matter of the case against the second defendant."

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

According to Article 25 of the Arbitration Law, unless otherwise agreed by the parties, if the respondent fails to participate in the arbitration and/or communicate their statement of defense without showing sufficient cause, the arbitral tribunal will continue the proceedings without treating the failure as an admission of the claimant's allegations. The tribunal proceeds based on the available evidence.

There is no provision in the Arbitration Law that allows the courts to compel the respondent's participation.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Arbitration Law does not explicitly regulate the process for third parties to intervene or join arbitration proceedings. However, certain arbitration institutions include provisions for third-party joinder in their rules. For example, under the BCDR Arbitration Rules 2022, Article 28 governs joinder:

- Before Tribunal Appointment: A party may request the BCDR to join an additional party by submitting a written request (Request for Joinder). The additional party must respond, and the BCDR will join them if an arbitration agreement exists between all parties including the additional party.
- After Tribunal Appointment: Joinder is only possible if all parties, including the additional party, agree in writing. In addition to their agreement that the additional party waives any right it may have had to participate in the selection of the arbitral tribunal, had it been joined prior to the appointment of the tribunal. The arbitral tribunal will then decide whether to allow the joinder, considering justice, efficiency, and the stage of the arbitration.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The available interim measures include any temporary measure, whether in the form of an award or another form, by which the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending the determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures. Additionally, it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection from a court, which the court may grant.

According to Article 17 of the Arbitration Law, an interim measure issued by an arbitral tribunal is binding and can be enforced in the competent court of any country, unless specified otherwise by the tribunal. Additionally, the court may require the requesting party to provide security if the tribunal has not addressed this issue or if necessary to protect third-party rights.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Yes, a party may seek anti-suit and/or anti-arbitration injunctions from the tribunal, once constituted, or from the court in the seat of arbitration to stop foreign proceedings that breach the arbitration agreement. However, these injunctions are not common in Bahrain, and there is no legal prohibition against them.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

There are no specific rules in the Arbitration Law to govern evidentiary matters in arbitration. According to Article 19 of the Arbitration Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings and evidentiary matters. In the absence of such an agreement, the arbitral tribunal may conduct the arbitration in a manner it considers appropriate. This includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

Regarding court assistance in taking evidence, Article 27 of the Arbitration Law states that the arbitral tribunal or a party, with the tribunal's approval, may request assistance from a competent court for taking evidence. The court may fulfill this request within its competence and according to its rules.

Under the Law no. 14 of 1996 on Evidence in Civil and Commercial Matters, a party may request the court to prove facts through witness testimony. They must indicate in writing or orally during the session the facts they wish to prove and the names and addresses of the witnesses. The court will issue a ruling to order the proof through witness testimony if the party fails to present their witness or does not summon them for the specified hearing. The court can obligate the party to bring the witness or summon them to another hearing, as long as the deadline for the investigation has not expired. Failure to do so results in the loss of the right to call that witness. This is without prejudice to any other penalties that the law imposes for such delays.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Counsel representing the parties in arbitration are subject to Law No. 26 of 1980, which promulgates the Advocacy Law. Regarding arbitrators, there are no specific ethical codes established; however, Article 7 of the Arbitration Law clearly states that arbitrators can be held accountable for any actions or omissions during their assignment if such actions were committed in bad faith or involved gross negligence. This accountability also extends to any staff working with the arbitrators or authorized individuals carrying out tasks related to the arbitration.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

There are no specific provisions in the Arbitration Law concerning confidentiality. Typically, the confidentiality of arbitration proceedings is governed by the agreed arbitration rules.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The Arbitration Law does not specifically address the costs of arbitration proceedings. However, it mentions in Article 17/G of the Arbitration Law, that the party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages incurred by that measure or order if the arbitral tribunal later determines that, under the circumstances, the measure or order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

The allocation of costs can be further detailed in the arbitration rules agreed upon by the parties.

Yes, depending on the agreed applicable law. If Bahrain law is applied, it allows for the imposition of interest for delays in payment of commercial debts as part of compensation. According to Article 81 of the Legislative Decree No. (7) of 1987, which promulgates the Law of Commerce, interest for the delay in payment of commercial debts shall accrue upon the maturity of such

debts, unless otherwise specified by law or agreement. Additionally, it is common court practice to require the losing party to pay legal interest on the awarded amount in commercial transactions starting from the maturity date until full payment is made. The rate of interest is not defined and is at the court's discretion.

However, it is uncommon to impose interest on costs incurred.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

An arbitral award, regardless of the country in which it was issued, is recognized as binding and may be enforced upon written application to the Bahrain High Court. According to Article 3 of the Law No. (22) of 2021 on the Issuance of the Enforcement Law in Civil and Commercial Matters, enforcement of arbitral awards can be ordered by the High Court, provided that a copy of the arbitration agreement is included. If the award is issued in a language other than Arabic, a translation into Arabic must accompany the request. The court clerk prepares the necessary documentation for the enforcement request, which is served to the party against whom enforcement is sought. The High Court will review the award and the arbitration agreement, issuing an order confirming that there are no impediments to enforcing the award. The next step is to submit the application for enforcement to the Execution Court.

According to Article 36 of the Arbitration Law, recognition or enforcement of an arbitral award before the High Court may be refused only if the opposing party provides proof of one of the following:

(a)

- A party to the arbitration agreement was incapacitated or the agreement is invalid under the governing law or, if unspecified, under the law of the country where the award was made;
- The party against whom the award is invoked did not receive proper notice of the arbitrator's appointment or the arbitral proceedings, or was otherwise unable to present their case;
- The award addresses a dispute not contemplated by the arbitration submission or contains decisions beyond its scope;
- The composition of the arbitral tribunal or procedure was inconsistent with the parties' agreement or the law of the arbitration's location;
- The award has not yet become binding on the parties or has been set aside or suspended by a court in the jurisdiction where it was made.

(b) The High Court may refuse enforcement if:

- The subject matter of the dispute is not arbitrable under local law;
- Enforcing the award would contravene the public policy of this State.

While the award must state the reasons upon which it is based, this requirement does not apply if the parties have agreed that no reasons need to be provided, or if the award is based on a settlement agreement.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The estimated timeframe for the High Court to recognize the arbitration award and order its enforcement is typically between 1 to 3 months. However, this is an estimate and may vary depending on the court's case load and any responses or challenges submitted by the respondent. The respondent will be notified to attend the hearing and is entitled to submit a response and defense; therefore, the court will not issue the order for recognition and enforcement on an ex parte basis.

Once the High Court issues a decision to recognize and enforce the judgment, that judgment is final and not subject to appeal. The respondent can only file a case to set aside or nullify the arbitration award within 3 months from the date of issuance or notification, as per Article 34 of the Arbitration Law. However, if the High Court refuses to recognize the arbitration award for any reason, that judgment can be appealed to the Appeal Court within 45 days from the date of its issuance.

The estimated time for the Execution Court to enforce the arbitration award is difficult to determine, as it depends on the availability of assets and the respondent's cooperation in settling the awarded amount.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No, the arbitration law of Bahrain does not provide a

different standard of review for the recognition and enforcement of a foreign award compared to a domestic award. The same legal requirements and procedures apply to both types of awards under the applicable laws.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Yes, the law imposes limits on the available remedies. According to Article 36 of the Arbitration Law, the court may refuse the recognition and enforcement of an arbitral award if it finds that:

- The subject matter of the dispute is not capable of settlement by arbitration under the law of Bahrain; or
- The recognition or enforcement of the award would be contrary to the public policy of Bahrain.

These provisions indicate that certain remedies may not be enforceable by local courts based on these limitations.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Yes, arbitration awards can be challenged in local courts through an application for setting aside, as stipulated in Article 34 of the Arbitration Law. An application for setting aside must be made within three months from the date the party received the award.

The court may suspend the setting aside proceedings if requested by a party, allowing the arbitral tribunal time to address the issues that led to the application for setting aside.

An arbitral award may be set aside by the court only if:

a) the party making the application furnishes proof that:

i) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

i) the subject matter of the dispute is not capable of settlement by arbitration under the law of this State; or

ii) the award is in conflict with the public policy of Bahrain.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Yes, parties may agree to waive their rights to appeal an arbitration award issued by the arbitral tribunal before the dispute arises, including through the arbitration clause.

The Cassation court established in Appeal no. 59 of 2005 hearing dated 24/10/2005 that:

It is established that the court of first instance has absolute authority to understand the facts of the case and interpret agreements, stipulations, and all documents to reveal the intention of the parties and the true purpose they intended. Since the challenged ruling ruled that the appeal was not accepted based on the provisions in the lease contract executed between the two parties, which included their agreement on the finality of the arbitral award in any dispute arising from that contract, it concluded that they waived their right to appeal the judgment issued by the arbitral tribunal by way of appeal. The conclusion reached by the judgment and upon which the ruling was based is a reasonable interpretation of the parties' agreement, grounded in an acceptable understanding of the facts of the case and does not involve any violation of the law.

39. In what instances can third parties or non-

signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Arbitration awards acquire the authority of res judicata (the binding effect of a final judgment) immediately upon issuance, provided they have not been annulled. They are binding regarding the rights they have determined, and no evidence contradicting this finality is admissible.

The Cassation Court established in Appeal No. 14 and 252 of 2021, hearing on 15/12/2021, that arbitral awards, like judicial rulings, acquire the authority of res judicata upon issuance. This authority remains effective as long as the award is in effect and has not been annulled. The judge is bound to respect this authority when considering the same dispute for which the arbitral award was issued.

According to Article 99 of Law No. (14) of 1996, which governs the Law of Evidence in Civil and Commercial Matters, judgments that have acquired the authority of res judicata are only binding in disputes between the same parties, without any change in their capacities, and concerning the same right in terms of subject matter and cause.

Consequently, the binding effect of arbitration awards is limited to the parties involved regarding the same rights. Third parties or non-signatories cannot be bound by an arbitration award since it was not issued against them; therefore, they may challenge the rights determined by such an award. However, an arbitration award remains highly regarded as evidence in court, possessing the same evidentiary weight as a final court judgment.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

We are not aware of any recent court decisions in Bahrain jurisdiction specifically addressing third-party funding in connection with arbitration proceedings.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The Arbitration Law does not explicitly address emergency arbitrator relief. However, the Arbitration Law permits interim measures or emergency relief to be issued either by the arbitral tribunal or by the court, as previously explained in our answer to Question 26.

This emergency arbitrator relief is detailed in the BCDR Arbitration Rules 2022. Article 14 of the BCDR Arbitration Rules states that any party may submit a written request for the appointment of an emergency arbitrator when submitting a request for arbitration or after its submission, but before the appointment of the arbitral tribunal. The decision made by the BCDR emergency arbitrator will have the same effect as interim measures issued by an arbitral tribunal in accordance with Article 17 of the Arbitration Law. These decisions are binding and can be enforced by the competent court of the country.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The Arbitration Law does not explicitly address expedited procedures for claims under a certain value. However, this is detailed in Article 14 of the BCDR Arbitration Rules 2022 which states that the provisions of expedited procedures shall apply:

A. If the parties have not agreed otherwise in writing, and there is a specified monetary value in the arbitration for the claim and any counterclaim, and the total value of the claim and the counterclaim does not exceed one million US dollars, or

B. If the parties have agreed in writing to apply expedited procedures regardless of the value of the claim or the counterclaim.

These expedited procedures are often used in low-value and straightforward cases, especially when parties choose to apply the BCDR Arbitration Rules. This approach provides a quicker resolution and reduces the costs associated with arbitrator fees.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Diversity in the choice of arbitrators and counsel is not actively promoted in Bahrain and is largely left to the parties' agreement when appointing arbitrators. When the court intervenes, it does not place a significant emphasis on diversity in terms of gender, age, or origin. However, the court will consider the advisability of appointing an arbitrator of a nationality different from those of the parties involved. There are default requirements for the selection of a tribunal, ensuring that when appointing a

sole or third arbitrator, the court ensures the arbitrator possesses the necessary qualifications as agreed upon by the parties. Additionally, the court takes into account other relevant factors to ensure the appointment of an independent and neutral arbitrator.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

We are not aware of any recent court decisions in Bahrain considering the setting aside of an award that has been enforced in another jurisdiction or vice versa.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

We are not aware of any recent court decisions addressing corruption in arbitration. The party alleging corruption involving an arbitrator or counsel in the arbitration proceedings bears the burden of proof. The local court will consider the claim only if there is a final judgment issued by a criminal court confirming the corruption.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In response to the COVID-19 pandemic, the Ministry of Justice, Waqf, and Islamic Affairs, in cooperation with the Information and eGovernment Authority, launched an e-services platform that allows parties to file cases, pay court fees, submit pleadings, and receive judgments online.

In October 2022, the Bahrain Chamber for Dispute Resolution (BCDR) published amended arbitration rules to ensure alignment with current best practices, including those developed to address the challenges posed by the pandemic. These rules encourage the increased use of electronic communications. Specifically, Articles 14.10 and 35.6 explicitly provide for the prompt communication of electronic versions of orders and awards.

Furthermore, Article 16.3 mandates that the tribunal and the parties, during the preliminary procedural conference, consider how technology can be utilized to improve efficiency and reduce costs. Article 22.1 clearly states that hearings and meetings may be conducted in person or via any electronic means directed by the tribunal, ensuring that all relevant parties can attend.

Article 16.3 mandates the tribunal and the parties, at the preliminary procedural conference, to consider how technology may best be used to improve efficiency and economy.

Article 22.1 states unequivocally that hearings and meetings may be conducted in person or by any electronic means directed by the tribunal that allow all those who should attend to do so.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Please see our answer to Question 47.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Bahrain has not seen recent developments related to disputes on climate change or human rights. However, Bahrain is committed to promoting human rights through initiatives like the King Hamad Global Center for Peaceful Coexistence, established by Royal Order No. (15) of 2018. This center focuses on highlighting the values and commonalities uniting civilizations, fostering awareness and enriching paths toward tolerance and peaceful coexistence. It emphasizes the importance of dialogue, combats extremist ideologies, and promotes the positivity of plurality and diversity in Bahraini society and its cultural heritage.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Yes, Bahraini courts consider international economic sanctions as part of their public order. Public order revolves around the public interest, encompassing

fundamental principles that uphold the political system, social agreements, economic rules, and moral values on which society is based, ensuring the common good. The Central Bank of Bahrain (CBB) oversees Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures, regularly updating blacklists within the financial sector. Although an Israeli boycott law remains in place, Bahrain's normalization of relations with Israel in 2020 through the Abraham Accords may affect future enforcement of such sanctions. Additionally, Bahrain imposed sanctions on Qatar in 2017, which were lifted in 2021.

As such, international economic sanctions can affect the recognition and enforcement of arbitration awards if they conflict with sanctions applied in Bahrain.

We are not award of issuing any recent court judgments specifically address the impact of sanctions on arbitration proceedings.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No, Bahrain has not yet implemented specific rules or regulations regarding the use of artificial intelligence (AI), generative AI, or large language models in the context of international arbitration. However, Bahrain is continuously developing its regulatory framework for technology and innovation, and it is possible that future regulations could address the use of AI in arbitration proceedings. At present, parties and arbitrators are free to use AI tools and technologies as part of their arbitration processes in accordance with their agreement, but there are no formal guidelines or rules governing their use in this context.

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