



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# **The Legal 500 Country Comparative Guides**

## **Bahrain**

# **INTERNATIONAL ARBITRATION**

### **Contributor**

Newton Legal



#### **Aamal Al Abbasi**

Managing Partner | [aamal.alabbasi@newtonlegalgroup.com](mailto:aamal.alabbasi@newtonlegalgroup.com)

#### **Ahmed Alfardan**

Partner | [ahmed.alfardan@newtonlegalgroup.com](mailto:ahmed.alfardan@newtonlegalgroup.com)

#### **Maryam Al Bastaki**

Associate | [maryam.albastaki@newtonlegalgroup.com](mailto:maryam.albastaki@newtonlegalgroup.com)

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

For a full list of jurisdictional Q&As visit [legal500.com/guides](https://legal500.com/guides)

# BAHRAIN

## INTERNATIONAL ARBITRATION



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

Law no. 9 of 2015 Promulgating the Arbitration Law (**Arbitration Law**) applies to: (i) an arbitration seated in the Kingdom of Bahrain (**Bahrain**); or (b) an arbitration seated outside of Bahrain if the parties have agreed to the application of the Arbitration Law.<sup>1</sup>

Footnotes: <sup>1</sup> Article 1 of the Arbitration Law.

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

Bahrain is a signatory to the New York Convention subject to the following reservations:

(i) the recognition and enforcement of foreign awards will be limited to awards issued:

- in countries that are party to the New York Convention; and
- in relation to contractual or non-contractual commercial disputes as determined by the laws of Bahrain; and

(ii) the signing of the New York Convention shall not be considered as recognition of the State of Israel or lead to the establishment of diplomatic relationships.<sup>2</sup>

The Government of Bahrain informed the Secretary General of the United Nations of its intention to withdraw the reservation in point (ii) above following the signing of the Abraham Accords. However, no amendment to the relevant legislation has been issued to date.

Footnotes: <sup>2</sup> Article 1 of Legislative Decree no. 4 of 1988 in Relation to Approving the Accession of State of Bahrain with Reservations to the New York Convention on the Recognition and Enforcement of Foreign Arbitral

Awards of 1958.

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

In addition to the New York Convention, Bahrain is a party to the following treaties and conventions concerning arbitration:

(i) the International Centre for Settlement of Investment Disputes (ICSID) Convention of 1965<sup>3</sup>;

(ii) the Riyadh Arab Treaty for Judicial Cooperation of 1983<sup>4</sup>;

(iii) the Execution of Judicial Judgements, Delegations and Notifications Treaty for the Cooperation Council for the Arab States of the Gulf<sup>5</sup>;

(iv) the Convention for Pacific Settlement of International Disputes (Hague Convention I)<sup>6</sup>; and

(v) the Commercial Arbitration Centre Regulation for the Cooperation Council for the Arab States of the Gulf<sup>7</sup>.

Moreover, Bahrain has ratified several bilateral investment treaties with other states.

Footnotes: <sup>3</sup> Legislative Decree no. 16 of 1995 Ratifying the International Centre for Settlement of Investment Disputes Convention.

<sup>4</sup> Legislative Decree no. 41 of 1999 Ratifying the Riyadh Arab Treaty for Judicial Cooperation of 1983.

<sup>5</sup> Legislative Decree no. 9 of 1996 Ratifying the Execution of Judicial Judgements, Delegations and Notifications Treaty for the Cooperation Council for the Arab States of the Gulf.

<sup>6</sup> Law no. 10 of 2008 Approving the Accession of the Kingdom of Bahrain to the Convention for Pacific Settlement of International Disputes Executed in The Hague on 18 October 1907.

<sup>7</sup> Law no. 6 of 2000 Acceding to the Commercial Arbitration Centre Regulation for the Cooperation Council for the Arab States of the Gulf.

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

The Arbitration Law adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) as amended in 2006 (**Model Law**).

Article 1(1) of the Model Law restricts its application to commercial international arbitration. However, the Arbitration Law amends Article 1(1) of the Model Law by extending the scope of application to all arbitrations seated in Bahrain or seated outside of Bahrain if the parties have agreed to its application, irrespective of the nature of the legal relationship between the parties to the dispute.

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

We are not aware of any such plans.

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

The following institutions are based in Bahrain:

(i) The Bahrain Chamber of Dispute Resolution (**BCDR**). The BCDR Arbitration Rules were last amended in 2022 (**BCDR 2022 Arbitration Rules**). The BCDR additionally issued the 2022 Sports Arbitration Rules to govern sports-related disputes.

(ii) The Gulf Cooperation Council Commercial Arbitration Centre (**GCCCAC**). The GCCCAC Rules were last amended in 1999 (**GCCCAC Rules**).

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

No.

#### 8. What are the validity requirements for

#### an arbitration agreement under the laws of your country?

An arbitration agreement is an agreement between parties to refer to arbitration all or some disputes that have arisen or that may arise between the parties in respect of a specific legal relationship, whether the disputes are contractual or non-contractual. The arbitration agreement can be entered into in any form, including verbally, as long as its contents are documented in writing.

The Model Law additionally confirms that the following agreements shall be considered as documented in writing:

- (i) an arbitration agreement documented in electronic communication that is accessible and can be retrieved later on;
- (ii) if, in the course of exchanging pleadings, a party alleges that an arbitration agreement exists and the other party does not deny its existence; or
- (iii) if an agreement incorporates, by way of reference, an arbitration clause in another document.<sup>8</sup>

Footnotes: <sup>8</sup> Article 4 of the Arbitration Law and option 1, article 7 of the Model Law as adopted by the Arbitration Law.

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

Yes, an arbitration clause must be considered separately from other clauses in an agreement. A decision by the tribunal that an agreement is null and void does not automatically render the arbitration clause contained therein to also be null and void.<sup>9</sup> Interestingly, the Court of Cassation considered the parties' selection of a non-existent arbitration center as null and void but otherwise enforced the remaining provision of the arbitration agreement, thereby confirming that the unenforceability of a part-provisions of the arbitration agreement does not necessarily affect the enforceability of the remaining provisions of the arbitration agreement.<sup>10</sup>

Footnotes: <sup>9</sup> Article 16 of the Model Law as adopted by the Arbitration Law.

<sup>10</sup> Court of Cassation's ruling in challenge no. 545 of 2021.

**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?**

The application of a validation principle is irrelevant to Bahrain as the country does not have multiple national laws.

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

The Arbitration Law does not address multi-party arbitrations, or arbitrations related to multiple agreements. The BCDR 2022 Arbitration Rules include provisions that govern the nomination of arbitrators in a multi-party arbitration, the consolidation of multiple arbitrations that are subject to different arbitration agreements and joinder rules.<sup>11</sup> Additionally, the GCCAC Rules also include provisions that address the nomination of arbitrators in a multi-party arbitration.<sup>12</sup>

Footnotes: <sup>11</sup> Articles 9.8, 28 and 29 of the BCDR 2022 Arbitration Rules.

<sup>12</sup> Article 13 of the GCCAC Arbitral Rules.

**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 legal effects of an arbitration agreement are limited to the parties of that agreement and do not extend to third parties. Notwithstanding, non-signatories can be bound by an arbitration agreement in certain cases as demonstrated by a ruling from the Court of Cassation.

The ruling concerned an arbitration agreement signed between two parties in relation to construction works that were assigned and carried out by a branch of the contractor. This specific branch was then converted into a wholly-owned subsidiary of the contractor. Arbitration was commenced by the counterparty against both companies and the enforceability of the arbitration agreement against the new subsidiary was upheld by the courts of Bahrain.

The Court of Cassation concluded that the incorporation

of the subsidiary as a separate company does not relieve it of any obligation incurred prior to its incorporation, including the arbitration agreement in question.<sup>13</sup>

Footnotes: <sup>13</sup> Court of Cassation's ruling in challenge 590 of 2020.

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

Prior to the Arbitration Law, the Court of Cassation considered disputes that relate to public order as 'non-arbitrable'. The Court of Cassation interpreted public order as rules that are legislated in mandatory provisions that cannot be waived, settled or resolved by arbitration.<sup>14</sup> This was consistent with article 233 of Legislative Decree no. 12 of 1971 Promulgating the Civil and Commercial Procedures Law (**Civil and Commercial Procedural Law**). Although article 233 of the Civil and Commercial Procedural Law was repealed by the Arbitration Law, the courts of Bahrain have continued to set aside the enforcement of non-arbitral claims that relate to public order and that cannot be waived or settled. For example, the Court of Cassation considered employment disputes as non-arbitrable. The court concluded that certain rights under Law no. 36 of 2012 Promulgating the Labour in the Private Sector are considered as public order and consequently may not be waived or settled.<sup>15</sup>

Footnotes: <sup>14</sup> Court of Cassation's ruling in challenge 328 of 2005.

<sup>15</sup> Court of Cassation's ruling in challenge 132 of 2022.

**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?**

The Court of Cassation has not yet considered this matter.

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

The tribunal must apply the governing law selected by the parties. If the parties have not selected a governing law, the tribunal must determine the governing law in

accordance with the conflict of law rules the tribunal deems to be applicable.

It is important to note that the parties' choice of governing law must not be interpreted as an agreement by the parties to apply the conflict of law rules of that jurisdiction, unless this has been explicitly set out in the agreement between the parties.<sup>16</sup>

Bahrain's conflict of law rules are legislated in Law no. 6 of 2015 on Conflict of Laws in Civil and Commercial Matters with a Foreign Element (**Conflict of Law Rules**).

Footnotes: <sup>16</sup> Article 28 of the Model Law as adopted by the Arbitration Law.

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

There are no restrictions on the appointment of arbitrators under the Arbitration Law but the parties may agree to restrict the nationality of arbitrators that could be appointed. Moreover, when considering a request by one of the parties to appoint an arbitrator as discussed in more detail below, the court must consider the appropriateness of appointing an arbitrator from a different nationality to that of either party.<sup>17</sup>

Footnotes: <sup>17</sup> Article 11 of the Model Law as adopted by the Arbitration Law.

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

Any arbitrator appointed must be independent and impartial and must hold any qualifications required by the parties.<sup>18</sup>

Footnotes: <sup>18</sup> Article 12 of the Model Law as adopted by the Arbitration Law.

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

If the parties have not agreed on the process of selecting arbitrators, a party may request the High Civil Court to appoint an arbitrator:

(i) in a three-members tribunal, if the other party fails to select an arbitrator or if the party-selected arbitrators are unable to agree on the third member of the tribunal; or

(ii) in a one-member tribunal, if the parties are unable to agree on an arbitrator.

If the parties have agreed on a selection process, a party may still request the High Civil Court to appoint an arbitrator if:

(i) the other party fails to act as required pursuant to the selection process;

(ii) the parties or the party-selected arbitrators are unable to agree on the appointment of the third member of the tribunal; or

(iii) a third party, such as an arbitration institution, does not perform any act required by the selection process.<sup>19</sup>

Footnotes: <sup>19</sup> Article 11 of the Model Law as adopted by the Arbitration Law.

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

A party may challenge the appointment of an arbitrator if suspicious circumstances regarding the arbitrator's independence or impartiality have arisen or if the arbitrator does not hold the qualifications agreed on by the parties. However, a party is prohibited from seeking the removal of an arbitrator if it appointed or participated in the appointment of that arbitrator, unless such challenge is based on reasons that have arisen after the arbitrator's appointment.<sup>20</sup>

The parties may agree on the procedure to challenge the appointment of an arbitrator. In the absence of an agreement, a party may challenge the appointment of an arbitrator within 15 days from the date the party is notified of the constitution of the tribunal or becomes aware of the circumstances concerning his impartiality, independence or qualifications.

The tribunal must decide on the challenge if the arbitrator does not step down or if the other party does not agree to the challenge raised by the opposing party. If the tribunal rejects the challenge, the party that submitted the challenge may request the High Civil Court, within 30 days from the date that party is notified of the tribunal's decision, to consider the matter. The tribunal may proceed with the arbitration and issue an award while the High Civil Court is considering the challenge raised by one of the parties.<sup>21</sup>

Footnotes: <sup>20</sup> Article 12 of the Model Law as adopted by

the Arbitration Law.

<sup>21</sup> Article 13 of the Model Law as adopted by the Arbitration Law.

## 20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

There are no recent developments on the independence or impartiality of arbitrators, nor the duty of disclosure.

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

The Arbitration Law does not address the case of a truncated tribunal. Moreover, the Court of Cassation has not considered the validity of proceedings overseen by a truncated tribunal following the issuance of the Arbitration Law.

Nonetheless, under the Arbitration Law, the tribunal's decisions are made by a majority vote of its members, unless agreed otherwise by the parties in the arbitration agreement.<sup>22</sup> Moreover, there is no requirement for all members of the tribunal to sign the award; the Arbitration Law only requires the award to be signed by a majority of the tribunal's members.<sup>23</sup> In any event, the Arbitration law allows the parties to remove an arbitrator by mutual agreement if the arbitrator is unable to perform their duties or if the performance of their duties is unduly delayed.<sup>24</sup>

Footnotes: <sup>22</sup> Article 29 of the Model Law as adopted by the Arbitration Law.

<sup>23</sup> Article 31(1) of the Model Law as adopted by the Arbitration Law, which states that an award must explain the reasons concerning the absence of the signature of any member of the tribunal, if any.

<sup>24</sup> Article 14(1) of the Model Law as adopted by the Arbitration Law.

## 22. Are arbitrators immune from liability?

Arbitrators appointed pursuant to the Arbitration Law are not liable for any act or omission relating to the performance of their duties, unless such act or omission was made in bad faith or caused by gross wrongdoing. Individuals employed by an arbitrator or directly

authorised to carry out activities related to an arbitrator's duties are similarly immune under the Arbitration Law.<sup>25</sup>

Footnotes: <sup>25</sup> Article 7 of the Arbitration Law.

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

Yes, the Arbitration Law authorises a tribunal to rule on its jurisdiction. If the tribunal rules that it has the jurisdiction to consider a dispute before ruling on its merits, either party may request the High Civil Court to rule on the jurisdiction of the tribunal within 30 days from the date the party is notified of the tribunal's decision.<sup>26</sup>

Footnotes: <sup>26</sup> Article 16 of the Model Law as adopted by the Arbitration Law.

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

A court in Bahrain is required by the Arbitration Law to refer the parties to arbitration if requested by either party in the litigation. The party's request must be raised in its first pleading on the merits of the case. Similarly, any party that does not rely on an arbitration clause before the case management office cannot raise this argument before the competent court at a later stage. The same rule applies to parties that do not submit pleadings to the case management office as they lose the right to rely on the arbitration clause once the case is referred to the competent court.<sup>27</sup>

The court may dismiss any such request if it concludes that the arbitration agreement is null and void, unenforceable or has no effect.<sup>28</sup>

Footnotes: <sup>27</sup> Court of Cassation's ruling in challenge no. 255 of 2020.

<sup>28</sup> Article 8(1) of the Model Law as adopted by the Arbitration Law.

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

Unless agreed otherwise, the tribunal may continue the arbitration proceedings if the respondent fails to submit

its statement of defense, attend a hearing or provide supporting evidence.<sup>29</sup> There is no provision in the Arbitration Law that the courts can rely on to compel the respondent's participation.

**Footnotes:** <sup>29</sup> Article 25 of the Model Law as adopted by the Arbitration Law.

**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 regulate a third party intervening or joining the arbitration proceedings. Such matters will likely be addressed by the institutional rules agreed to by the parties. For example, article 28 of the BCDR 2022 Arbitration Rules governs the process of a third party joining or intervening in the arbitration proceedings.

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

The tribunal, unless agreed otherwise by the parties, may issue interim measures based on a request from one of the parties. The tribunal may order a party to:

- (i) maintain or restore the status quo pending the resolution of the dispute;
  - (ii) take action that would prevent current or imminent harm or interference with the arbitration proceedings, or to refrain from any action that may cause such harm or interference;
  - (iii) provide means to preserve assets that may be subject to a future decision; or
  - (iv) preserve evidence that may be crucial and material to the resolution of the dispute.<sup>30</sup>
- The courts of Bahrain may order interim measures before or during the arbitration proceedings based on a request from one of the parties.<sup>31</sup>

**Footnotes:** <sup>30</sup> Article 17 of the Model Law as adopted by the Arbitration Law.

<sup>31</sup> Article 9 of the Model Law as adopted by the Arbitration Law.

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

Parties can pursue an anti-arbitration injunction in Bahrain although this practice is uncommon.

**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?**

The tribunal or any party, with the approval of the tribunal, may seek the assistance of the competent court in obtaining evidence. The court can enforce the request of the party in accordance with its rules on obtaining evidence and to the extent of its authority,<sup>32</sup> which includes authority to compel witness testimony.<sup>33</sup>

**Footnotes:** <sup>32</sup> Article 27 of the Model Law as adopted by the Arbitration Law.

<sup>33</sup> Article 77 of Legislative Decree no. 14 of 1996 Promulgating the Law on Evidence in Civil and Commercial Matters.

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

The parties' counsels are subject to Legislative Decree no. 26 of 1980 Promulgating the Advocacy Law.

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

There are no provisions in the Arbitration Law regarding confidentiality. The confidentiality of the arbitration proceedings is usually addressed in the institutional rules selected by the parties and/or in any agreement between them.

**32. How are the costs of arbitration proceedings estimated and allocated?**

The party requesting an interim measure or a preliminary order shall be liable for costs and damages

caused by such measure or order, if the tribunal later determines that issuing the measure or order was inappropriate in the circumstances. The Tribunal may award such costs in any stage of the arbitration proceedings.<sup>34</sup> The Arbitration Law is otherwise silent on costs. However, the tribunal may award costs in accordance with the applicable institutional rules.

Separately, awarding interest on the principal claim is subject to the law governing the dispute. If the dispute is governed by the laws of Bahrain, the tribunal may award interest as damages. Awarding interest on costs is not a common practice in Bahrain.

**Footnotes:** <sup>34</sup> Article 17(g) of the Model Law as adopted by the Arbitration Law.

### **33. Can pre- and post-award interest be included on the principal claim and costs incurred?**

Question answered above.

### **34. 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?**

The recognition or enforcement of an award, irrespective of the country in which the award was issued, can only be rejected in the following cases:

(i) based on a substantiated request from the party facing execution proceedings if it demonstrates that:

a. either party to the arbitration agreement did not have the required legal capacity, or if the arbitration agreement is null and void under the governing law selected by the parties or, if the parties have not selected a governing law, the arbitration clause is null and void under the laws of the country in which the award was issued;

b. it was not notified correctly of the appointment of an arbitrator or the arbitration proceedings or if it was otherwise unable to present its case;

c. the award deals with a dispute that is not contemplated or covered by the arbitration agreement or includes decisions that are outside the scope of the arbitration agreement, provided that if such decisions are severable from decisions concerning disputes within the scope of the arbitration agreement then the court's

rejection of the award must be limited to the unenforceable decisions;

d. the constitution of the tribunal or the arbitration proceedings contravened with the arbitration agreement, or if such matters were not agreed in the arbitration agreement, contravened with the laws of the seat of arbitration; or

e. the award is not yet binding or has been set aside or suspended by a court in the country in which, or under the laws of which, that award was issued.

(ii) if the High Civil Court decides that:

a. the dispute cannot be resolved by arbitration under the laws of Bahrain; or

b. the recognition or enforcement of the award contravenes with public policy as applicable in Bahrain.<sup>35</sup>

The High Civil Court would enforce an award that is not reasoned if this requirement was waived in the arbitration agreement or if the award records an amicable settlement.<sup>36</sup>

The enforcement of an award is made by way of a decision from the President of the High Civil Court following the High Civil Court's review of the award and the arbitration agreement. A party seeking to enforce an award must make an application to the High Civil Court. The application must include an original copy of the award. A translation of the award must be submitted if the award is written in a language other than Arabic.<sup>37</sup>

**Footnotes:** <sup>35</sup> Article 36(1) of the Model Law as adopted by the Arbitration Law.

<sup>36</sup> Article 31(2) of the Model Law as adopted by the Arbitration Law.

<sup>37</sup> Article 3 of Decree Law no. 22 of 2021 Promulgating the Enforcement Law in Civil and Commercial Provisions.

### **35. 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 to recognise and enforce an award is subject to several factors, including the respondent's willingness to voluntarily execute the award. The timeframe for the enforcement of an award will be determined by the availability of assets of the

respondent in Bahrain that can be seized and sold if the respondent refuses to voluntarily execute the award. The High Civil Court's decision to enforce the arbitration award is final and cannot be appealed by the parties.<sup>38</sup>

Footnotes: <sup>38</sup> Court of Cassation's ruling in challenge 53 of 2021.

### **36. 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.

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

The High Civil Court will not recognise or enforce any remedies that conflict with public policy in Bahrain.<sup>39</sup>

Footnotes: <sup>39</sup> Article 36(1)(b)(2) of the Model Law as adopted by the Arbitration Law.

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

Yes, awards can be challenged based on the following grounds:

(i) if the party challenging the award can demonstrate using supporting evidence:

a. that either party to the arbitration agreement did not have the required legal capacity or that the arbitration agreement is null and void under the governing law selected by the parties or, if the parties have not agreed on a governing law, the arbitration agreement is null and void under the laws of Bahrain;

b. the same grounds to reject the recognition and enforcement of an award as set out in points (i) (b) and (i) (c) in question 33 above; or

c. the constitution of the tribunal or the arbitration proceedings contravened with the provisions of the arbitration agreement (to the extent such provisions do not breach a mandatory provision of the Arbitration Law) or if such matters were not agreed in the arbitration agreement, contravened with the Arbitration Law; or

(ii) if the High Civil Court finds that:

a. the dispute cannot be resolved by arbitration under the laws of Bahrain; or

b. the award contravenes with public policy as applicable in Bahrain.<sup>40</sup>

The party challenging the award must submit its challenge to the High Civil Court within 3 months from the date of the party's receipt of the award or from the date the tribunal rules on a request for a correction or an interpretation of an award, or a supplemental award.<sup>41</sup>

Notwithstanding, the Court of Cassation concluded that awards from the GCCAC are final and cannot be appealed or challenged by the parties in a separate action. The parties can only challenge the enforceability of the award when a request is made to the High Civil Court to enforce it. The Court of Cassation concluded that awards from the GCCAC can only be challenged in limited circumstances pursuant to Legislative Decree No. 6 of 2000 Acceding to the GCCAC Regulation.<sup>42</sup>

Footnotes: <sup>40</sup> Article 34(2) of the Model Law as adopted by the Arbitration Law.

<sup>41</sup> Article 34(3) of the Model Law as adopted by the Arbitration Law.

<sup>42</sup> Court of Cassation's ruling on challenge 849 of 2020.

### **39. 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)?**

The Court of Cassation has not yet considered the enforceability of a waiver of the parties' rights to challenge an award under article 34 of the Arbitration Law. However, article 34 of the Model Law as adopted by the Arbitration Law does not contemplate any such waiver.

### **40. 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?**

There are no legal provisions or published precedents regarding the enforceability of awards against third parties. By comparison, court judgements are only enforceable against real or provisional parties (e.g. successors or heirs) to the relevant dispute. The party

benefitting from the judgement may not enforce it against a third-party that was not represented in the dispute. However, a party may use the judgement as supporting evidence in another case. The persuasiveness of a party's reliance on a previous judgement as supporting evidence is subject to the discretion of the court.<sup>43</sup>

The Arbitration Law does not entitle third parties to challenge the recognition or enforcement of an award.

Footnotes: <sup>43</sup> Court of Cassation's ruling on challenge 110 of 1996.

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

No.

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

Parties to an arbitration that is subject to the 2022 BCDR Arbitration Rules may seek the appointment of an emergency arbitrator.<sup>44</sup>

Footnotes: <sup>44</sup> Article 14 of the BCDR 2022 Arbitration Rules.

**43. 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?**

Yes. The BCDR 2022 Arbitration Rules includes provisions in respect of expedited procedures for claims under USD 1,000,000 that will apply unless agreed otherwise by the parties. The expedited procedures will also apply if the parties have agreed to their application irrespective of the value of any claim and counterclaim.<sup>45</sup>

Footnotes: <sup>45</sup> Article 6 of the BCDR 2022 Arbitration Rules.

**44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin)**

**actively promoted in your country? If so, how?**

No.

**45. 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?**

No.

**46. 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?**

No.

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

The Ministry of Justice, Waqf and Islamic Affairs in cooperation with the Information and eGovernment Authority has launched the court's e-services platform that allows parties are to file cases, pay court fees, submit pleadings and receive judgment online.

**48. 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?**

A note was published by the BCDR in 2020 encouraged tribunals and parties to use electronic means of communication including in relation to preliminary conferences and the examination of witnesses.<sup>46</sup> In keeping with this objective, the BCDR 2022 Arbitration Rules permit meetings and hearings to be conducted through electronic means,<sup>47</sup> and instruct both the parties and the arbitral tribunal to consider how the use of technology might increase the efficiency of proceedings.<sup>48</sup> Furthermore, the BCDR introduced an online filing system on its website, through which parties

can make certain submissions and applications.

**Footnotes:** <sup>46</sup> See Note for Tribunals and Parties on the use of electronic means of communication in BCDR-administered arbitrations as published by the BCDR on 24 November 2020.

<sup>47</sup> Article 22.1 of the BCDR 2022 Arbitration Rules.

<sup>48</sup> Article 16.3 of the BCDR 2022 Arbitration Rules.

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

No.

**50. 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?**

Courts are required to consider international sanctions imposed pursuant to the United National Security Council sanctions list. Updates of the sanctions list are published in the Official Gazette.

**51. 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.

## Contributors

**Aamal Al Abbasi**  
Managing Partner

[aamal.alabbasi@newtonlegalgroup.com](mailto:aamal.alabbasi@newtonlegalgroup.com)



**Ahmed Alfardan**  
Partner

[ahmed.alfardan@newtonlegalgroup.com](mailto:ahmed.alfardan@newtonlegalgroup.com)



**Maryam Al Bastaki**  
Associate

[maryam.albastaki@newtonlegalgroup.com](mailto:maryam.albastaki@newtonlegalgroup.com)

