

GAR KNOW HOW COMMERCIAL ARBITRATION

Bahrain

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Infrastructure

1. Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Bahrain acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 6 April 1988 pursuant to Decree-Law No. 4 of 1988, subject to the reciprocity reservation that the Bahrain courts will enforce awards made in a state that is also party to the Convention, and the commercial reservation that Bahrain will only apply the Convention to disputes that are considered as commercial under Bahraini law.

2. Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Bahrain is a party to a number of bilateral and multilateral treaties regarding the recognition and enforcement of arbitral awards.

Bahrain is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ICSID Convention), the Riyadh Arab Agreement for Judicial Cooperation of 1983 (the Riyadh Convention); the Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications of 1995 (the GCC Convention); and the Convention for the Pacific Settlement of International Disputes of 1907. Additionally, Bahrain is also a party to the GCC-Peru Framework Agreement (1 October 2012); the GCC-US Framework Agreement (25 September 2012); the GCC-New Zealand Free Trade Agreement (31 October 2011); the GCC-European Free Trade Association Free Trade Agreement (22 June 2009); the GCC-Singapore Free Trade Agreement (15 December 2008); the Bahrain-US Free Trade Agreement (14 September 2004); the GCC-India Framework Agreement (25 August 2004); the GCC-Lebanon Free Trade Agreement (11 May 2004); the Bahrain-US Trade and Investment Framework Agreement (18 June 2002); the EU-GCC Cooperation Agreement (15 June 1988); the GCC Economic Agreement (11 November 1981); the Organisation of Islamic Cooperation Investment (5 June 1981); the League of Arab States Investment (26 November 1980); the Arab League Investment Agreement (29 August 1970); and the Arab Economic Unity Agreement (3 June 1957).

Bahrain is also a party to a total of 24 bilateral investment treaties, of which 22 are in force.

3. Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

The Law No. of 2015 on the Arbitration Law (the Arbitration Law) adopts:

- the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, without amendments;
- Decree-Law No. 30 of 2009 with respect to the Bahrain Chamber of Economic, Financial and Investment Dispute Resolution, as amended, (the BCDR Law); and
- section 2 of Chapter Two titled 'Chamber Jurisdiction by Parties' Agreement', deals with the jurisdiction of the BCDR as an arbitral institution where the parties have agreed in writing to refer a dispute to be settled by the BCDR.

The Arbitration Law will apply to BCDR arbitrations only to the extent there is no special provision in the BCDR Law.

4. What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The Bahrain Chamber for Dispute Resolution (BCDR) was set up in 2009 pursuant to Decree-Law No. 30 of 2009 with respect to the Bahrain Chamber of Economic, Financial and Investment Dispute Resolution, as amended, (the BCDR Law). BCDR also acts as appointing authority. It is worth noting that, separate from the BCDR arbitration body, is the BCDR statutory court, which under Section One of Chapter Two of the BCDR Law titled 'Chamber Jurisdiction by Law', has jurisdiction over disputes, previously under the jurisdiction of Bahrain courts or other competent judicial authority or body, excluding bankruptcy cases, in which the value of the claim exceeds BHD 500,000 and which involves a financial institution licensed by the Central Bank of Bahrain or disputes between commercial companies established under the Bahrain Commercial Companies Law No. 21 of 2001, as amended, or it is an international commercial dispute. Also, the Gulf Cooperation Council Commercial Arbitration Centre (GCC CAC) is headquartered in Bahrain. The GCC CAC also acts as appointing body.

5. Can foreign arbitral providers operate in your jurisdiction?

Yes, arbitrations can be and often are conducted in Bahrain under the rules of numerous foreign arbitral providers who are based outside Bahrain.

6. Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with, and supportive of, the law and practice of international arbitration?

While there is no specialised arbitration court in arbitration, there are certain circuits within the courts designated to handle arbitration-related judicial proceedings. Pursuant to the Arbitration Law, the Civil High Court is the national court with jurisdiction to hear disputes relating to arbitration prior to, during, or subsequent to arbitration proceedings. In general, Bahrain courts are familiar with arbitration and Bahrain is considered to be an arbitration-friendly jurisdiction.

Agreement to arbitrate

7. What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

The arbitration agreement may cover existing or future disputes provided it satisfies the following requirements:

- it must satisfy the essential elements of a contract such as consent, capacity, and the existence of a legal relationship;
- it must be in writing, otherwise it is invalid, and the writing requirement is satisfied if the agreement to arbitrate is within the parties' contract or in a separate document, including an exchange of correspondences or other means of communication, or by incorporation into the contract by reference to a document containing an arbitration clause provided that the reference clearly makes the arbitration clause part of the parties' contract; and
- it must deal with matters that are arbitrable.

An arbitration agreement in administrative contracts must be approved by the competent minister, or whoever assumes his or her authority with respect to public authorities.

An arbitration agreement may cover future disputes.

8. Are any types of dispute non-arbitrable? If so, which?

Yes. Disputes not capable of conciliation are non-arbitrable and include, by way of example, criminal matters, personal status and most family matters. Court jurisdiction may not be excluded in respect of certain types of relationship, such as employment relationships. Whether court jurisdiction may be excluded in respect of a real estate property dispute requires a case-by-case consideration.

9. Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

In principle, an agreement is binding only on the parties to that agreement and their successors and, in principle, joinder of a third party, whether at the request of a party or at the request of the third party, may not be allowed unless all the parties consent.

The Arbitration Law does not contain specific provisions regarding the extension of arbitration agreements to non-signatory third parties. Whenever the Bahrain Law is the *lex arbitri*, the question of extension would be treated under the general provisions of the law, which include, *inter alia*, the requirements of a written contractual documentation, consent of parties to arbitrate, and the procedure for appointment of arbitrators in multi-party proceedings, in addition to the general legal principles, such as the privity of contract and the independence of legal persona.

In its interpretation of arbitration agreements, Bahrain courts have traditionally taken a conservative view and have been reluctant to effectively let parties access private tribunals for the resolution of disputes and favoured a constrictive construction in the interpretation of parties' intent to arbitrate and the scope of arbitration. The Court of Cassation went as far as establishing that in a multi-party dispute, where the subject of the dispute is indivisible and some (but not all) parties are subject to arbitration, as a precaution to prevent conflicting rulings, it is the good conduct of justice to consider the dispute in its entirety with all the parties involved before one judicial body and, therefore, the court shall have the exclusive jurisdiction to hear the claim, and the parties' defence of non-jurisdiction on the basis of the existence of an arbitration agreement was denied (Court of Cassation Ruling No. 11 of 2005 dated 17 October 2005). A more recent and welcomed approach by the Court of Cassation Ruling No. 590 of 2020 dated 16 November 2020, has taken a more relaxed approach in its consideration of who is a "party" to an arbitration agreement. In this recent judgment, the Court filled this gap by explicitly listing and recognising the doctrines for extending arbitration agreements to third parties in international commercial arbitration. The judgment in question 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 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 Bahrain courts. It has been 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.

10. Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

The Arbitration Law does not contain specific provisions regarding consolidation. In general, an arbitral tribunal with its seat in Bahrain may not consolidate separate arbitral proceedings without the consent of the parties (which can be express or implied by choosing arbitration rules that allow for consolidation of proceedings in certain circumstances).

11. Is the "group of companies doctrine" recognised in your jurisdiction?

The 'group of companies doctrine' has not been recognised under Bahrain law, and as the Bahrain courts, to the authors' knowledge, have not had the opportunity to address the matter, this requires a case-by-case consideration of the facts and the law.

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

Yes, arbitration clauses are considered separable from the main contract. Therefore, their validity is not affected by the main contract's invalidity, non-enforceability, termination or rescission.

13. Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

Yes, the principle of competence-competence is generally recognised in Bahrain. An arbitral tribunal may decide on its own jurisdiction, either as a preliminary issue or in an award on the merits. If the arbitral tribunal rules as a preliminary issue that it has jurisdiction, any party may request the Civil High Court to rule conclusively on the jurisdiction of the arbitral tribunal within 30 days of receiving notice of the tribunal's decision. The court's ruling cannot be appealed. While a request to the court is pending, the arbitral tribunal may continue the arbitral proceedings and render an award.

Additionally, the Bahrain courts may review the jurisdiction of the arbitral tribunal in the context of enforcement proceedings if the party resisting enforcement or seeking annulment seeks to prove there was no arbitration agreement binding upon it under the law.

14. Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

Careful considered thought should be given to drafting an appropriate, clear and comprehensive arbitration agreement rather than the approach of using a 'one-size-fits-all' template. It is encouraged for the parties to explicitly agree on:

- the nature and scope of the disputes covered by arbitration as courts in Bahrain construe arbitration agreements narrowly as the exception to the parties' right to recourse to the courts;
- the proper reference to the applicable procedural rules (whether it is an ad hoc or an institutional arbitration);
- the seat of arbitration;
- the substantive law applicable to the contract;
- the number of arbitrators and the process of appointing the tribunal;
- the language of the arbitration; and
- in the case of adopting multi-tiered dispute resolution clauses, the parties must clearly define the exact procedures and time limits required prior to proceeding to the arbitration stage.

15. Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

There is no data on the number of ad hoc arbitrations vs institutional arbitrations in Bahrain, however, in the authors' experience, in international arbitrations, institutional arbitration is increasingly more common than ad hoc arbitration. While not common, in the authors experience, UNICTRAL Rules are sometimes used in ad hoc international arbitrations in Bahrain in certain industry sectors, such as commodities, oil & gas and shipping.

16. What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

Particular points to note when negotiating and drafting a multi-party contract or a number of related contracts with different parties where, in circumstances, you would likely wish to join parties or consolidate arbitrations are:

- The arbitration clause in each contract should be the same, similar, or, at the very least, compatible.
- All parties should expressly record their consent to joinder or consolidation in the contract from the outset to make clear the parties' intention on the issue of consent at a later date.
- An umbrella arbitration agreement (ie, an overarching agreement that provides arbitration rules for disputes arising out of subordinate agreements) could be useful where there are various contracts with different parties that are likely to give rise to related disputes.
- In institutional arbitration, it is helpful to consider when deciding on the applicable institutional rules if such rules include specific provisions relating to multi-party agreements.
- In relation to the appointment of arbitrators, explicit reference to whether several parties shall jointly appoint one or more arbitrators or, whether the appointing authority (in an institutional arbitration or an ad hoc arbitration) will solely appoint the entire tribunal if one side (claimants or respondents) is unable to agree on a nomination. Commencing the arbitration

17. How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Unless otherwise agreed by the parties directly in the arbitration clause or by reference to arbitration rules, the arbitral proceedings will commence on the date on which the request for arbitration is received by the respondent. Aside from the limitation provisions that may apply to the particular dispute, if governed by Bahraini law, there is no specific provision regarding limitation periods relating to the commencement of arbitral proceedings.

Choice of law

18. How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

Party autonomy with respect to the choice of the applicable law is well established under Bahraini law and the parties are free to choose the applicable substantive law, subject to statutory exceptions where the application of Bahraini law is mandatory.

Where the substantive law has not been explicitly or implicitly agreed, the tribunal will apply the substantive law deemed to be most closely connected to the dispute and determined in accordance with the conflict of law rules.

Appointing the tribunal

19. Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

Unless otherwise agreed by the parties (nationality, professional experience and/or qualifications, etc), there are no specific limitations or restrictions in respect of a party's choice of arbitrator and the arbitrator may

be any person who has attained the age of majority, has full legal capacity and is capable of disposing of his or her own rights and has not been finally convicted of a crime involving immorality or breach of public trust. Any arbitrator must be and remain impartial and independent of the parties throughout the arbitration proceedings.

Where the Bahrain court is the appointing authority, the arbitrator is appointed from a list of approved arbitrators registered with the Ministry of Justice, Islamic Affairs and Waqf (an inalienable charitable endowment under Islamic law).

20. Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

Unless otherwise agreed by the parties, non-nationals may, and often do, act as arbitrators where the seat is in Bahrain or hearings are held there. There are no immigration or other special requirements, except for visa requirements that might apply depending on their country of nationality.

21. How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

In an institutional arbitration, the applicable institutional rules for the appointment of arbitrators and the proper constitution of the tribunal shall apply. In ad hoc arbitration, where the parties have not agreed on a mechanism for the constitution of the tribunal or the mechanism fails, the High Civil Court shall have the power to appoint the arbitrators upon the request of one of the parties. If there is no agreement by the parties on the number of arbitrators, the default number shall be three.

22. Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

Albeit the law is silent regarding immunity from suit, generally, arbitrators are afforded immunity from suit for anything done or omitted in the discharge of their functions except for cases of corruption, fraud, wilful misconduct or gross negligence.

23. Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

The law is silent regarding the fees of arbitrators and payment. It is therefore important in ad hoc arbitration for the arbitrators to enter into an agreement regarding their fees and payment with all the parties. Should the tribunal decide to proceed with the arbitration case and render an award in the absence of an agreement by all the parties, there is the risk that the court will not endorse the fees where the party who has not accepted the fees objects to the enforcement of the portion of the award on the arbitrators' fees (where an award of fees and expenses has been made against such party) and the court shall assess and determine the appropriate fees.

In institutional arbitration, all the main institutions rules have specific provisions on fees and payment and provide a fundholding service, which ensures payment of the arbitrators' fees.

Challenges to arbitrators

24. On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

The appointment of an arbitrator may be challenged if the circumstances give rise to serious and justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the requisite competence or other requirements agreed to by the parties. Furthermore, if an arbitrator is or becomes unable to perform his or her functions, or for other reasons fails to act without undue delay, his or her mandate will terminate when he or she resigns or by agreement between the parties.

Unless a procedure for challenging an arbitrator's appointment is agreed by the parties directly in the arbitration clause or, in the case of institutional arbitration, by reference to arbitration rules, the challenging party must, within 15 days of the date of knowledge of the circumstances send a written statement of the reasons for the challenge to the tribunal. If the challenged arbitrator does not resign or the other party objects to the challenge, the tribunal has the power to decide on the challenge. If a challenge is dismissed by the tribunal, the challenging party has 30 days to submit its challenge application to the Civil High Court to decide thereon. While the challenge to an arbitrator is pending before the court, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and render an award.

Bahrain courts do not refer to the IBA Guidelines on Conflicts of Interest in International Arbitration as they are non-binding. However, arbitrators are nonetheless encouraged to take the IBA Guidelines on Conflicts into account when deciding what to disclose and when deciding on a challenge in line with internationally accepted best practice.

Interim relief

25. What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

An arbitral tribunal has the power to order provisional or interim measures, including in relation to the preservation of assets and evidence and to prevent any prejudice to the arbitration procedure. An arbitral tribunal may require the party requesting the interim measure to provide appropriate security and may modify, suspend, or terminate the interim measure either on the application by one of the parties or, in exceptional circumstances, on its own initiative. Alternatively, a party may directly seek to obtain such provisional or interim relief directly from the court of competent jurisdiction in Bahrain and this is not considered incompatible with an arbitration agreement. Although not prohibited from doing so, courts do not order anti-suit injunctions where proceedings are brought elsewhere in breach of an arbitration agreement.

26. Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

Bahraini law allows for the court or the tribunal to order a party to provide security for costs but this is not done in practice.

Procedure

27. Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

Mostly, the procedural rules in Bahrain that govern the conduct of the arbitration and they are nonmandatory and the parties are free to agree to exclude or vary them, save a few exceptions such as the non-arbitrability of certain type of disputes, the requirement for the tribunal to be comprised of an odd number of arbitrators to avoid a deadlock and the parties are not permitted to agree to waive the right to apply for setting aside of an award before the award is rendered.

28. What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Where a respondent fails to participate in an arbitration, the tribunal may proceed to an award on the basis of the evidence before it. The non-participating party must be duly notified of all the documents submitted and orders issued and must be given a proper and adequate opportunity to present its case and defences at every stage of the proceedings.

29. What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

Subject to any contrary agreement between the parties, the arbitral tribunal enjoys a broad discretion to determine the admissibility, relevance, materiality and weight of any evidence and how evidence is obtained, and will decide, inter alia, whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings should be conducted on the basis of documents only and whether to appoint experts.

30. Will the courts in your jurisdiction play any role in the obtaining of evidence?

If a party unreasonably fails to comply with the orders of the arbitral tribunal, the tribunal may seek the support of the courts to make orders, inter alia, for the taking of witness evidence, the inspection of property and ordering the production of documents.

31. What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

The relevant law relating to document production in Bahrain is Decree-Law No. 14 of 1966 with respect to the Law of Evidence in Civil and Commercial Matters, as amended. The prevailing practice in international arbitration in Bahrain is for the parties to agree for the IBA Rules on the Taking of Evidence in International Commercial Arbitration to apply or to be guided thereby as discovery and/or production of documents under Bahraini law is limited to exceptional cases.

32. Is it mandatory to have a final hearing on the merits?

While it is not mandatory, it is standard practice to hold a final hearing on the merits if one party requests it.

33. If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Yes, if Bahrain is selected as the seat of arbitration, hearings and procedural meetings may be conducted elsewhere as deemed to be appropriate by the tribunal as the seat is construed as the legal rather than the physical place of proceedings. Hearings and procedural meetings may be conducted remotely online if it is so agreed by all the parties or in institutional arbitration in accordance with the applicable rules.

Award

34. Can the tribunal decide by majority?

Yes, unless the parties' agreement requires unanimity, the tribunal can decide by majority.

35. Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

There are no specific remedies or relief that an arbitral tribunal may not grant, unless it is contrary to public policy.

36. Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Dissenting opinions are permitted under Bahraini law and are not uncommon.

37. What, if any, are the legal and formal requirements for a valid and enforceable award?

An award must be made in writing and signed by the arbitrators and a signed copy must be delivered to each party. In arbitral proceedings with more than one arbitrator, the signatures of the majority will suffice, provided that the reason for any omitted signature is stated. The award must be well reasoned, unless the parties have agreed that no reasons are needed or it is an award on agreed terms. The award must also state the date and the place of arbitration and will be deemed to have been made at that place.

38. What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

Unless a time limit is agreed upon by the parties, the tribunal is not subject to a time limit in rendering its award. The arbitral tribunal may correct an award on its own initiative or on the application of either party within the time limit of 30 days from the date of receipt of the award. If agreed by the parties, a party may request the interpretation of a specific part of the award within 30 days from the date of receipt of the award. If the tribunal considers the request to be justified, the tribunal shall make the correction or give the interpretation within 30 days of receipt of the request. A party may request the tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award within 30 days of receipt of the award and, if the tribunal considers the request to be justified, the tribunal shall have 60 days to make the additional award. The tribunal has a discretionary power to extend, if necessary, the abovementioned time limits for making the correction, interpretation or additional award.

Costs and interest

39. Are parties able to recover fees paid and costs incurred? Does the “loser pays” rule generally apply in your jurisdiction?

In general, fees paid and costs incurred are recoverable by the parties and the rule that the ‘costs should follow the event’ or the ‘loser pays’ is being increasingly applied in Bahrain to the extent that the winning party’s fees and costs are determined to be justified and reasonable and are substantiated. Subject to any agreement between the parties on the allocation or recovery of fees paid and costs, the arbitral tribunal enjoys broad discretion on the allocation of the fees and costs among the parties.

40. Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

Yes, it is standard practice to include an award where it is sought by the parties. Subject to any agreement between the parties to the contrary, the arbitral tribunal enjoys broad discretion in the determination of the interest rate.

Challenging awards

41. Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

No, an award may not be appealed under Bahraini law.

42. Are there any other bases on which an award may be challenged, and if so what?

Under Bahraini law, a party can submit an application to the High Civil Court to set aside an award if:

- the applicant party can prove that a party to the arbitration agreement was under some incapacity, or the agreement is invalid under the law to which the parties have subjected it or, failing any indication thereof, under Bahraini law; or
- the party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or was otherwise prevented from presenting its case;
- 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 that are beyond the scope of arbitration; however, if these can be separated from the rest of the award, only that part of the award that contains decisions on matters not submitted to arbitration will be set aside; or
- the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the parties’ agreement (unless the agreement conflicts with Bahraini law) or the law;
- the court finds that the subject matter of the dispute is not arbitrable under the Bahraini law; or
- the award is in conflict with Bahraini public policy.

43. Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

It is open to the parties to agree to waive their right of recourse but only after the awards is rendered and notified to the parties.

Enforcement in your jurisdiction

44. Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

A foreign award being set aside by the courts in the seat of arbitration is not in and of itself a ground for refusing enforcement in Bahrain and the Bahrain courts will assess on a case-by-case basis whether a foreign award that has been set aside by the courts in the seat of arbitration is enforceable in Bahrain.

45. What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

Recent enforcement decisions show a pro-enforcement trend and the increasingly prevalent approach of the courts in this regard is to be an enforcement-friendly jurisdiction and public policy as a ground for refusing recognition or enforcement is narrowly constructed.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

A state defence of state or sovereign immunity is unlikely to be successful at the enforcement stage in Bahrain.

Further considerations

47. To what extent are arbitral proceedings in your jurisdiction confidential?

In Bahrain, it is accepted that arbitration proceedings are confidential and an arbitral award may not be published, in whole or in part, unless agreed by the parties. Where an award is subject to annulment or enforcement proceedings, its content will then fall into the public domain.

48. What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

Yes, evidence produced and pleadings filed in the arbitration are confidential. Production of any such confidential or legally privileged information in other proceedings requires consent of the parties or an order by the court or, as appropriate, the tribunal.

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

The ethical codes and other professional standards of Bahrain-qualified lawyers who are admitted to practice before the Bahraini courts are set out in the Bahrain Legal Profession Law. The Arbitration Law does not contain specific provisions regarding ethical codes, but arbitrators and counsel are, generally, expected to adhere to the ethical standards in accordance with good practice.

50. Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

Each seat of arbitration will have its legal and cultural particularities but there is no unusual procedural framework of which counsel or arbitrators participating in an international arbitration with its seat in Bahrain should be aware.

51. Is third-party funding permitted in your jurisdiction? If so, are there any rules governing its use?

Bahraini law does not address third-party funding. It is permissible in principle, provided there is no impropriety such as conflict of interests, or where the funding is characterised as a gambling or an excessively speculative contract or, in the case of counsel funding, as champerty. This requires a case-by-case analysis. In the experience of the authors, third-party funding is still uncommon in arbitrations in Bahrain.



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Amel Alaseeri leads the Commercial, Corporate and Finance Practice at Zeenat Al Mansoori & Associates. She has broad practice advising and representing multinational corporations in a wide range of sectors. Amel is a Fellow of the Chartered Institute of Arbitrators and has served as sole arbitrator and as tribunal member in several domestic and international commercial arbitration disputes, conducting both institutional and ad hoc arbitrations. She frequently represents clients in complex commercial arbitration disputes across different industry sectors and areas of law.



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Noor Sadiq is a Senior Associate at Zeenat Al Mansoori & Associates with approximately 10 years of experience in complex litigation and arbitration disputes. Noor focuses her practice on representing multinational corporations in financial disputes and in construction and real estate disputes. She has undertaken a long-term part-time secondment to YBA Kanoo Group real estate division in Bahrain, KSA and the UAE.

Zeenat Al Mansoori & Associates

Zeenat Al Mansoori & Associates Full Law Practice was established in Bahrain over 30 years ago, in 1989. The firm's founding partner Zeenat Al Mansoori is recognized as a leader in arbitration in the region and is included in The Legal 500 Arbitration Powerlist for the Middle East for 2023.

The firm provides legal advice, assistance and representation to multinational corporations in diverse industries and sectors and to the State. The firm has a highly regarded litigation and dispute resolution practice, representing clients in disputes before all courts and judicial tribunals in Bahrain and representing clients in large-scale and complex domestic and international arbitrations, both under the rules of the major arbitral institutions and ad-hoc. The firm is known for setting precedents and winning the tough cases that no one else can.

Zeenat Al Mansoori & Associates is consistently recognized in leading law firm directories. In 2021, the firm was awarded "Bahrain Dispute Resolution Law Firm of the Year" by Chambers and Partners and in 2022, the firm was a finalist for "Law Firm of the Year – Bahrain" at the Oath Middle East Legal Awards.

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