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IBA ARBITRATION COMMITTEE

Arbitration Guide

BAHRAIN

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is widely used to resolve disputes in the Kingdom of Bahrain. In the past, the local business community preferred arbitration over litigation. However, since the reform made to the Bahraini courts creating specialist commercial courts and the substantial decrease in backlog, some observers suggest that some of the disputes that were referred to arbitration are now coming to the courts. This is due to the cost and speed of the process especially when the disputes are between local parties and the amount in dispute is relatively small.

Nonetheless, Bahrain has continuously taken steps to build itself as a credible seat arbitration in the region. It is the headquarter to the first arbitration centre in the region in 1994, the creating of the Bahrain Chamber of Dispute Resolution in 2009 and the issuance of the UNCITRAL Model law on International Commercial Arbitration, verbatim, in 2015. In 2019, Bahrain also created an arbitration specialist court and created a fast procedure to recognise and enforce arbitral awards. More recently, Bahrain created a path for application for recognition or setting aside for arbitral awards issued in English to be adjudicated in English by regionally and internationally renowned arbitrators.

The advantages of arbitration are many, particularly a dispute resolution process tailored by the parties in accordance with their needs and the requirements of their dispute. This including selection of specialised arbitrators, the applicable substantive and procedural laws. Confidentiality is also one of the main attractions to arbitration, however it is compromised if the matter is subject to court proceedings. International disputes benefit particularly from arbitration due to the ability to enforce arbitral awards almost worldwide.

On the other hand, arbitration have become more and more costly and less efficient than many courts around the world.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitration occurring in Bahrain are ad hoc and domestic. However, domestic parties do subject their arbitration to institutional arbitration under the Bahrain Chamber for Dispute Resolution ('BCDR') or the GCC Commercial Arbitration Centre ('GCCAC').

With regards to disputes arising from contracts with local and international parties, the arbitration is usually seated in the Dubai International Financial Centre or London with the London Court of International Arbitration and ICC International Court of Arbitration being the institutions of choice.

(iii) What types of disputes are typically arbitrated?

Arbitration commonly serves as the preferred method for resolving a range of disputes, spanning sectors such as construction, property, real estate, oil and gas and other commercial matters.

(iv) How long do arbitral proceedings usually last in your country?

The duration of arbitral proceedings usually depends on the nature, size and complexity of the dispute. Bahrain's Law No. 9 of 2015 on Arbitration (the 'Arbitration Law') does not provide any time limit for rendering an award. GCCAC rules provides for an award to be rendered within 100 days from the date the case is referred to the arbitral tribunal. This period may be extended by the approval of the Secretary General upon the tribunal request. Many cases administered by the GCCAC are completed within 200 days except if there are unusual circumstances.

For cases administered by the BCDR, the final award shall be issued no later than 60 days from the date of the close of proceedings.

In practice, ad hoc arbitrations usually last for nine to 12 months, although many proceedings last longer.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

The Arbitration Law provides that any person can be appointed as arbitrator regardless of his/her nationality, unless otherwise agreed upon by the parties.

In relation to counsel, the Arbitration Law allows foreign nationals to act as counsel in international commercial arbitrations, but it is not permitted in domestic arbitration. However, the BCDR law permits foreign licensed counsel to appear in domestic or foreign arbitral proceedings under its rules.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The Arbitration Law, which adopted the UNCITRAL Model Law on International Commercial Arbitration 1985, is the law governing arbitrations seated in Bahrain.

However, in the circumstances in which the arbitration is seated in Bahrain and is subject to the rules of the GCCCAC or the BCDR, then their respective laws apply: section 2 of Chapter Two titled 'Chamber Jurisdiction by Parties' Agreement' of 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 Decree No. (6) of 2000 Approving the Constitution of the Gulf Cooperation Council's Commercial Arbitration Centre, as amended (GCCCAC Law).

The Arbitration Law will apply to GCCCAC and BCDR arbitrations only to the extent that there is no special provision in those Laws.

The Arbitration Law governs both domestic and international arbitration proceedings seated in Bahrain which are not governed by the GCCCAC and BCDR. However, these laws also do not distinguish between domestic or international arbitrations.

The Arbitration Law in Bahrain is an exact copy of the UNCITRAL Model Law.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Arbitration Law applies equally to domestic and international arbitrations. Similarly, there is no distinction between domestic and international arbitration under the GCCCAC or BCDR Laws.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

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

- The Convention for the Pacific Settlement of International Disputes of 1907, ratified by the Kingdom of Bahrain by Law No. (10) of 2008;
- The 1980 Unified Agreement for the Investment of Arab Capital in the Arab States (the Arab Investment Agreement), ratified by the Kingdom of Bahrain by Legislative Decree No. (27) of 1980;
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified by the Kingdom of Bahrain on 6 April 1988 by Legislative Decree No. (4) of 1988;

- The Riyadh Arab Agreement for Judicial Cooperation of 1983, ratified by the Kingdom of Bahrain by Legislative Decree No. (41) of 1999; and
- The Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications of 1995, ratified in the Kingdom of Bahrain by Decree No. (9) of 1996.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The Bahrain Arbitration Law upholds the parties' autonomy to select the applicable law for the merit of their dispute. In cases where no such agreement exists, tribunals based in Bahrain are empowered to ascertain the relevant applicable law. In such instances, the Arbitration Law mandates tribunals to apply 'the law determined by the conflict of laws rules which it considers applicable'. Furthermore, tribunals are directed to consider the contractual terms and the trade usages applicable to the transaction.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

According to the Arbitration Law, the arbitration agreement must be documented in writing, which can be fulfilled through various means. This requirement is met if the agreement is contained in a signed document, exchanged correspondence, or retrievable electronic communications such as emails. The agreement can manifest as an arbitration clause within a contract, a standalone agreement or be incorporated by reference.

Moreover, an arbitration agreement can be considered in writing if one party asserts its existence in an exchange of statements of claim and defence and the other party does not dispute this claim.

Additionally, for an arbitration agreement to be valid, both parties must possess the necessary legal capacity and the subject matter of the dispute must be arbitrable under the law.

Moreover, arbitration clauses in insurance contracts shall be written in an identifiable manner to ensure that they are binding according to Article (696) of the Bahraini Civil Law.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Bahraini courts will dismiss any claims made before it in contravention of any arbitration agreement. The courts will not enforce an arbitration agreement (i) when it is rendered void (by, for example, fraud or incapacity), or (ii) where the subject matter of a dispute is non-arbitrable (eg matters of public policy), or (iii) when the opposing party fails to raise the arbitration defence at the appropriate time.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses are becoming more common in Bahrain.

Such clauses are enforceable. Where mandatory preconditions to arbitration are not followed, a respondent may argue that the claim is inadmissible and that a constituted tribunal does not have jurisdiction to hear the dispute. Awards made

notwithstanding a claimant's failure to follow the preconditions may be annulled by the courts. That said, the Arbitration Law provides for an automatic waiver of a party's right to object to its opponent's non-compliance with a requirement under the arbitration agreement if it did not raise the objection to such non-compliance within the agreed time limit.

In a case in 2023, the court clarified that the failure to refer a dispute to an expert before resorting to arbitration is a matter of admissibility rather than a precondition to arbitration affecting the jurisdiction of the arbitral tribunal. Consequently, this discrepancy does not provide grounds for challenging the award. It is noteworthy that the tribunal duly addressed this objection within its award, thereby affirming its jurisdiction and legitimacy in adjudicating the dispute.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The Arbitration Law does not provide for any specific requirements for a valid multiple-party arbitration agreement. The same requirements for a valid arbitration agreement will of course apply with any institutional rules applicable to the dispute.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Yes, such an agreement is enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

The Bahraini courts have taken the position that an arbitration agreement binds only the parties explicitly named within the agreement and their successors.

However, in practice, extension of arbitration agreements to third parties may be exceptionally permitted if it can be demonstrated that there is express or implied consent by such third party, or if the facts of the case and the law warrant such extension. The contract cannot be expansively extended to other parties that the Bahraini courts consider are unrelated to the contract or the commercial transaction.

The Bahrain Court of Cassation in two judgements in 2024 extended arbitration agreement to non-signatories based on the chain of contract principle and the delegation principle in Article 351(b) of Law No. 19 of 2001 (further details below).

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The law governing the arbitration agreement is usually the applicable law to the dispute. The courts in Bahrain yet to deal with a case where this is an issue.

In all events, any challenge to the validity of an arbitration clause will eventually be argued before the Bahraini courts and the governing law applied to the interpretation of the arbitration agreement will be Bahraini Arbitration law except if the parties choose a different law.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes, the Bahraini courts will only consider setting aside applications where Bahrain is the seat which is either agreed by the parties in their agreement or by the tribunal or prescribed by the institutional rules.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Yes, any dispute that could be settled by conciliation could be arbitrable including blockchain and NFT related disputes.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

Yes, but in very limited and exceptional circumstances. There were two judgements issued by the Bahraini courts where the enforcement of the arbitration agreement in labour contracts were found to be extremely onerous on the employee to peruse his rights. The courts have also found arbitration agreements inoperable if the arbitral institution identified by the parties does not exist anymore or never did.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

The Arbitration Law limits arbitration to matters which are capable of being resolved by conciliation. Matters which cannot be resolved by conciliation (ie are non-arbitrable) are those which have been reserved for the sole jurisdiction of the local courts such as those relating to personal status (eg marriage, inheritance and lineage). The law limits arbitral disputes to ones defined by legal relationship, whether contractual or not.

The tribunal will decide on the arbitrability of the dispute but the Arbitration Law provides that the award may be set aside if the subject matter of the dispute it purports to resolve is not capable of settlement by arbitration in accordance with Bahraini law.

The courts will also examine the arbitrability of the dispute when there is a substantive claim and the respondent submits that the court does not have jurisdiction to hear the dispute due to the existence of an arbitration agreement.

Further, the court usually examines the existence of a valid arbitration agreement and the dispute is arbitrable when it is requested to appoint an arbitrator as part of the default jurisdiction. In these circumstances this issue becomes *res judicata* when the issue arises again during application for recognition or setting aside. This matter was considered by the Court of Cassation in 2024 and it held that a *prima facie* review should be taken by the appointing court and the issue of arbitrability is reserved to the tribunal under the competence-competence principle. The principle was further discussed by the Court of Cassation committee tasked with unification of the court's principles. The committee emphasised that the role of the court when considering the request to appoint an arbitrator was limited to verifying on the face of it (a) the existence of an arbitration agreement, (b) the parties' acceptance of arbitration as a means of resolving all or some of the disputes that have arisen or may arise between them in connection with a specific legal relationship, and (c) the court's jurisdiction to appoint the arbitrator. The committee made clear that the appointing court shall not decide on the issue of the jurisdiction of the tribunal or rule on any objections related to the existence of arbitration clause or its validity pursuant to the provisions of Article 16 the Arbitration Law.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

If a party files a claim before the Bahraini courts notwithstanding an existing arbitration agreement, the respondent must object to the court's jurisdiction before presenting any arguments on the merits of the dispute to preserve the arbitration agreement. Failing to invoke the arbitration agreement before addressing the merits of the dispute would be deemed a waiver of the right to arbitrate and the courts would therefore restore their jurisdiction over the dispute. The respondent must object during the case management stage which is a procedural limitation that is concerned with deadlines for various submissions.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The Arbitration Law confirmed the principle of competence-competence, including with respect to the validity of the arbitration agreement.

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 apply to the court within 30 days of receiving notice of the tribunal's decision to rule conclusively on the jurisdiction of the arbitral tribunal. The court's decision is final. The arbitral tribunal may continue the arbitral proceedings and render an award while the court is considering the matter.

Additionally, the Bahrain courts may review the jurisdiction of the arbitral tribunal in the context of enforcement and setting aside proceedings upon the application of one of the parties.

In all events, the Arbitration Law provides for an automatic waiver of a party's right to object, if it did not raise the objection to such non-compliance within the agreed time limit.

Furthermore, the GCCCAC and the BCDR arbitration rules stipulate the power of the tribunal to rule on its own jurisdiction.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The Arbitration Law gives the parties to an arbitration the freedom to choose arbitrators.

The parties are also free to agree on the procedure for appointing arbitrators. The GCCCAC and BCDR rules do not impose any restrictions on the parties' choice of arbitrator. In the absence of the parties' agreement on a procedure for appointing arbitrators, or if one of the parties fails to appoint a party-appointed arbitrator, a default appointment can be made either by the designated arbitration centre or, in ad hoc arbitrations, by the Bahraini High Commercial Court from a list of approved arbitrators registered with the Ministry of Justice, Islamic Affairs and Waqf. The choice of the court is final.

The Court of Cassation in judgment in 2024, clarified that a rejection by the court to appoint an arbitrator, or to appoint an arbitrator in contravention to the parties' agreement will be appealable.

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. Any arbitrator must be and remain impartial and independent of the parties throughout the arbitration proceedings.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

The Arbitration Law creates an express duty on arbitrators to disclose in writing anything likely to give rise to doubts as to their impartiality or independence. This duty runs from the moment they are appointed as an arbitrator, throughout the entire arbitral proceedings. The Arbitration Law also provides for the disqualification of arbitrators if there are circumstances giving rise to 'justifiable doubts' as to their impartiality or independence. Accordingly, arbitrators are under a duty to disclose any conflicts or circumstances which are likely to give rise to justifiable doubts over their impartiality or independence.

Arbitrators may seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration (the IBA Guidelines) on the type of relationships that ought to be disclosed.

The Arbitration Law grants the parties autonomy to establish their own procedures for challenging arbitrators. Absent such procedures, a party must present a reasoned written challenge to the arbitral tribunal within 15 days of becoming aware of the tribunal's constitution or any circumstances impugning the arbitrator's impartiality or independence. If the arbitrator does not resign and the challenge is not accepted by the other party, the tribunal must adjudicate on the challenge. Should the challenge fail, the challenging party may petition the court. The court's decision is final. While the court is considering the challenge, the tribunal, inclusive of the challenged arbitrator, may proceed with the arbitration and render an award.

If the parties opted for institutional rules, arbitrator challenges will be governed by the procedure for challenge set forth therein. Institutional rules typically vest in the administering institution the power to decide on arbitrator challenges.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

There are few restrictions on the freedom of the parties to choose the members of the tribunal. Any person who satisfies the requirements of competence, impartiality and independence may serve as an arbitrator. Under Bahraini Arbitration Law, the arbitrator may be any person who has attained the age of majority, has full legal capacity and can dispose of his or her own rights and is impartial and independent of the parties.

Arbitrators are required to act with integrity and impartiality during their appointment and disclose any circumstances giving rise to 'justifiable doubts' as to their impartiality or independence.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

The Arbitration Law does not set out ethical rules of conduct for arbitrators beyond a few provisions on the qualifications of arbitrators. There are no rules in Bahrain that govern conflicts of interest for arbitrators. Arbitrators are subject to the professional standards embodied in the code of ethics applicable in their home jurisdiction. The parties are free to agree that the IBA Guidelines should be binding on the arbitral tribunal.

Bahrain courts have not referred to the IBA Guidelines. However, arbitrators do consider the IBA Guidelines as an internationally accepted best practice.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

The Arbitration Law empowers arbitral tribunals to issue interim and conservatory measures through an award or an order. The party requesting an interim measure shall satisfy the arbitral tribunal that: (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. A party may apply to enforce interim measures by order from the court.

An arbitral tribunal may require the party requesting the interim measure to provide 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.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Under the Arbitration Law, the court may, at the request of a party grant provisional relief in the form of interim or conservatory measures in support of a potential or existing arbitration. Such a measure shall remain in force even after the constitution of the arbitral tribunal until it is terminated by a subsequent decision of the court. Parties can seek provisional relief after the constitution of the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

If requested by the tribunal, whether on its own motion or if requested by a party with the approval of the tribunal, the Bahraini courts can grant evidentiary assistance in support of the arbitration. Such assistance includes orders compelling (i) witnesses to give oral testimony before a tribunal; or (ii) third parties to produce documents or other evidentiary materials as may be necessary in the proceedings.

(iv) Are decisions by emergency arbitrators enforceable in your country?

The decisions by the emergency arbitrator will be enforced in the same way as an award.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

The Bahraini courts do not issue anti-suit injunctions. However, they will enforce them from other courts and arbitral tribunals using the same recognition procedure of foreign-court order or award, respectively.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

The Bahraini courts will provide assistance in taking evidence upon request of the arbitral tribunal or a party with the approval of the arbitral tribunal in accordance with the Bahraini Evidence Law (the 'Evidence Law').

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

Disclosure obligations before the Bahraini courts are governed by the Evidence Law, typically involving production of documents relied on by each party in the possession of the other party or a third-party. In contrast, in arbitration proceedings, tribunals may order any kind of disclosure compliant with applicable arbitration rules and the parties' agreement on disclosure. Tribunals in Bahrain are often guided by the Evidence Law. As stated above, the Arbitration Law enables the tribunal, whether on its own motion or on either party's application, to seek the assistance of the court in taking evidence.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Given the limited nature of the principle of disclosure under Bahraini law, its scope will depend primarily on the specific agreement between the parties as well as the tribunal's directions.

(iii) Are there special rules for handling electronically stored information?

The Arbitration Law does not provide any specific guidance concerning electronically stored information.

Bahrain Personal Data Protection Law prescribes rules on processing personal data.

There are no specific rules or restrictions on how to present, prove or produce electronic documents.

It is, thus, up to the parties to agree or for the arbitrators to decide on an appropriate and efficient method to handle such documents.

It is noteworthy that Electronic Communications and Transactions Law No. (54) of 2018 stipulated that electronic documents have the same evidential weight as its equivalent non-electronic documents subject to some conditions outlined in the law.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

In Bahrain, it is accepted that arbitration proceedings are confidential and arbitral awards 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.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There is no specific provision as such under the Arbitration Law. That said, the arbitral tribunal may have such a power by granting interim measures to restrain the divulgence of protected information by either party.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

Bahraini law does not recognise the concepts of legal privilege or the protection of without-prejudice communications, absent specific agreement of the parties. A narrow exception is attorney-client privilege. Pursuant to Bahrain Legal Profession No. (26) of 1980, an attorney is prohibited from disclosing any information or fact that he came aware of during his engagement with the client, even after the termination of his power of attorney, except to prevent the commission of a crime or to report the occurrence of it. An attorney is prohibited from giving evidence in a litigation he has been engaged or in which his opinion was sought, except if authorized in writing by his client.

IX. Evidence and Hearings

- (i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

In domestic arbitrations, tribunals adopt the Evidence Law which addresses similar matters to the IBA Rules on the Taking of Evidence. On occasions, the IBA rules would apply if the parties agreed.

- (ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

In principle, the tribunal is bound by the parties' agreement on procedural rules for conducting the proceedings. In the absence of such an agreement, the tribunal may adopt the procedures it considers appropriate, provided that it observes due process as well as the provisions of the Arbitration Law. The Arbitration Law affords tribunals discretion to determine the rules of evidence to be followed and the admissibility, relevance or weight of evidence adduced by the parties.

- (iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Witness testimony is typically presented orally to the tribunal under oath. Usually, witness testimony involves a short direct examination and a full cross-examination. This applies to both expert and fact witnesses. If the Evidence Law applies, questions put to witnesses are usually done by the arbitrators on behalf of the parties. Arbitrators typically question both experts and fact witnesses, if any issue needed clarification.

- (iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are limited restrictions in the Evidence Law on the appearance of witnesses. Certain categories cannot give evidence as witnesses including public employees, individuals entrusted with a public service, lawyers, agents, doctors, auditors and others who learn of facts or obtain information as part of the performance of their profession, or as a result of acting in a specific capacity. Also, a spouse may not disclose, without consent of the other, the information informed thereby during marriage even after its termination, unless in case of a lawsuit filed by either of them against the other, or a lawsuit filed against either of them due to a felony or misdemeanour committed against the other.

All witnesses must swear the oath set out in the Evidence Law before giving evidence.

- (v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?**

Bahraini law does not distinguish between the testimony of witnesses who are connected with one of the parties and unrelated witnesses. The witness must share his/her connection with the parties. That said, arbitral tribunals retain a wide margin of discretion in weighing the credibility of witness testimony. Accordingly, the degree of connection to one of the parties will likely affect the evidentiary value of the testimony.

- (vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony must also be presented under oath. Expert witnesses are required to act with fairness and impartiality.

In accordance with the Evidence Law, parties appoint experts of their choice. The expert testimony is submitted through a report. The tribunal is entitled to direct written questions to the expert to clarify any ambiguities and order the expert to correct any errors in the report. Additionally, the tribunal may allow the parties to submit written questions to the expert and for the latter to respond. Other powers of the court include ordering a joint report and ordering the submission of a supplementary report.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

Under the Arbitration Law, unless otherwise agreed by the parties, the tribunal has the power to appoint one or more experts. In practice, it is common for tribunals to appoint experts besides those appointed by the parties. Those experts would most likely have greater evidentiary value.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is not common in Bahrain.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There are no rules relating to arbitral secretaries under the Arbitration Law. As in other jurisdictions, arbitral secretaries are common for larger disputes.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

No, there are no specific ethical codes or standards applicable to counsel and arbitrators conducting proceedings in Bahrain.

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 expected to adhere to the ethical standards in accordance with good practice and the ethical codes of the jurisdiction they are licensed.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

In general, there are no such rules. However, the BCDR rules allows arbitral tribunal to decline to approve an addition to any party's legal representatives if, on proper disclosure, a relationship exists between the proposed additional legal representative and any member of the arbitral tribunal that would create a conflict of interest jeopardizing the composition of the arbitral tribunal or the integrity of the proceedings.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

It is common for arbitral proceedings to be conducted remotely or through a hybrid model. The courts have enforced many awards where proceedings were conducted entirely remotely.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

The Arbitration Law set out formal requirements for a valid award. The award must be made in writing, signed by the arbitrators and delivered to the parties. 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 otherwise, or it is an award on agreed terms. The award must state the date and the place of arbitration.

The Court of Cassation held that the arbitrators must sign the final order.

There is no express limitation as to permissible remedies, as long as the award is in accordance with the law. However, the tribunal cannot award criminal or public remedies.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

In Bahraini law, there is no specific provision that states that an arbitrator can award punitive or exemplary damages. However, arbitrators may be able to award punitive or exemplary damages if the substantive law so permits.

(iii) Are interim or partial awards enforceable?

The Arbitration Law does not expressly confirm the tribunal's power to render interim and/or partial awards, but it does allow for interim measures and preliminary orders which are enforced by the courts as interim awards in the same manner as a final award.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

The Arbitration Law neither requires nor prohibits dissenting opinions.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Consent awards are permitted under the Arbitration Law and will be enforced in the same manner as an award. The law permits that no reasoning is provided in these circumstances.

The Arbitration Law confers power to the arbitral tribunal to an order for the termination of the arbitral proceedings when:

- the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- the parties agree on the termination of the proceedings;
- the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

The tribunal has the power to correct any material errors in its award, whether clerical, computational, typographical errors, or any errors of similar nature. The tribunal may make this correction whether on its own initiative or upon a party's request upon notice to the other party. The parties have 30 days following receipt of the award to request a correction unless another period has been agreed upon by the parties. If the arbitral tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. The interpretation shall form part of the award.

If agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award and the tribunal if considers it justified shall make the interpretation within 30 days of the request.

Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

The arbitral tribunal may extend, if necessary, the period within which it shall make a correction, interpretation, or an additional award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The Arbitration Law is silent on the issue of cost.

The Civil and Commercial Procedures Code states that the unsuccessful party bears the costs. However, there are circumstances where that is not the case such as if the prevailing party actions has led to unnecessary expenses being incurred or withheld documents that were decisive in the case.

(ii) What are the elements of costs that are typically awarded?

As a matter of practice, the losing party typically bears at least part of the costs of the arbitration (typically including the fees and expenses of the arbitrators, the costs of the administering authority, as well as legal and expert fees).

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The Arbitration Law does not confer any such power to the arbitral tribunal. The courts in Bahrain have held that the tribunal has the inherit power to award cost but in ad hoc proceedings can only award tribunal fees if the parties expressly agree, either in the arbitration clause or later, such as in the Terms of Reference. In the absence of such agreement, the courts have annulled the part of the award relating to tribunal fees on the basis that the tribunal cannot determine an issue it is considered to be a party. The courts suggested that in the absence of an agreement, the tribunal applies to the courts to determine its fees.

This issue does not arise in institutional arbitration as the tribunal's fees are determined in accordance with the institution's fee scale.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The courts in Bahrain have held that the tribunal have the discretion to apportion the costs between the parties as it sees fit. The Civil and Commercial Procedural Code provides some guidance in this regard.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

Absent agreement between the parties with respect to the tribunal fees, courts in Bahrain may, upon application of a party, annul this part of the award. It is also permissible, on the application of a party, adjust the tribunal's assessment of its fees.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

Application for annulment must be made in Arabic except if the award is in English and the sum exceeds BHD 500,000 (US\$1.3 million). The application must include (a) a copy of the award (with translation if necessary to the language of the court); and (b) a copy of the arbitration agreement. The application must be notified to the other party.

Awards may be challenged by means of an application for annulment within three months from their issuance to the High Civil Court. The main grounds for annulment of an arbitral award are provided for the Arbitration Law and include circumstances where:

- the arbitration agreement is invalid in accordance with the law of the arbitration agreement which is often Bahraini law; or the party is had no capacity to enter the arbitration agreement;
- 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;
- the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement or the Arbitration Law;
- the court finds that the subject matter of the dispute is not arbitrable under the Bahraini law; or
- the award conflicts with Bahraini public policy.

The High Civil Court may set aside an award on its own initiative based on the final two grounds for annulment relating to arbitrability and public policy only.

The Bahraini courts have interpreted grounds for annulment narrowly.

While an action to set aside an award does not automatically stay its enforcement, the court may order a stay if requested by a party showing good cause (and can order security to be granted).

The grounds for annulment of awards issued under the GCCAC and the BCDR rules are included in their respective laws and are very similar to the grounds in the Arbitration Law.

Challenges to awards rendered under the BCDR rules will be heard by the Court of Appeal and are appealable to the Court of Cassation.

Challenges to awards under the GCCAC rules can only be heard when an application for recognition is submitted before the court. In these circumstances, the Court of Cassation committee tasked with unification of the court's principles has clarified that the court considering the challenge shall issue a reasoned judgment subject to appeal. In the event that no challenge to recognition has been submitted, the court issues an order which is not appealable.

Annulment proceedings at first instance usually last three months and are subject to appeal to the Court of Appeal and the Court of Cassation.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

The Arbitration law is silent on this point. The BCDR law allows parties to agree in writing on challenging arbitral awards seated in Bahrain before a foreign competent court if the applicable substantive law to the dispute was not Bahraini law, under the BCDR rules or any arbitral institution licensed by the BCDR law.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

The parties have no right to appeal the award on the merits before the courts. The court would recognise the agreement of the parties to subject their dispute to an appeal before an arbitral tribunal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

The Arbitration Law provides for the tribunal's power to interpret, correct, or issue an additional award. The Arbitration Law empowers the court tasked with a setting aside application to suspend the proceedings, where appropriate and upon the request of a party, for the tribunal to amend the award to eliminate the grounds for setting aside. The Law allows a party to request the tribunal to interpret any obscurity or ambiguity in its award, which will then form part of the relevant award. Any correction of any material errors in an award by the tribunal, shall also form part of the award. The Law permits parties to request the tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the initial award. The period for annulment proceedings starts from the date on which these requests had been disposed of by the arbitral tribunal.

(v) Is there a specialist arbitration court in your jurisdiction?

Bahrain has designated an arbitration circuit in the High Civil Court, the Court of Appeal and the Court of Cassation. These courts are specialist arbitration courts.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

The Arbitration Law is silent in this regard, however the courts in Bahrain have annulled awards on the basis that the tribunal ignored the parties' choice of governing law. The courts on the other hand have often rejected arguments by parties to annul an award due to the wrongful interpretation by the tribunal to the applicable law. The courts said that this will be an appeal which the Arbitration Law does not permit.

XIII. Arbitrator Liability

- (i) **Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

The Arbitration Law expressly provides for immunity for any act or omission in the course of performing his duties unless such act or omission has been committed by him in bad faith or if it has been a result of gross wrongdoing.

This rule shall apply to those who are working for the arbitrator or those authorized by him to carry out certain acts related to the duties assigned to him. However, this shall not prejudice the arbitrator's liability if he has resigned without any justifiable cause or at an inopportune time.

In line with this, anyone appointed by the tribunal including experts, translators, interpreters will be afforded immunity.

- (ii) **Does this immunity, if any, extend to criminal liability?**

No, however it is unimaginable to see criminal liability arising from the arbitrator's performance of its duties in the arbitration proceedings.

XIV. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

All awards rendered whether in Bahrain or elsewhere are enforced through a ratification process before the High Civil Court.

Application for recognition must be made in Arabic except if the award is in English and for a sum exceeding BHD 500,000 (US\$1.3 million). The application must include (a) a copy of the award (with translation, if necessary, in the language of the court); and (b) a copy of the arbitration agreement. The application must be notified to the other party. The court shall ratify and enforce the award, unless it finds one or more grounds for refusing recognition which are the same as the grounds for annulment.

An award is binding on the parties and constitutes *res judicata* and, once confirmed by the court, becomes enforceable in the same way as a judicial ruling. Until the award is ratified, the award creditor will be unable to seek enforcement.

If an application for setting aside or suspension of an award has been made to the court, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Applications for recognition of awards rendered under the BCDR rules will be heard by the Court of Appeal and are appealable to the Court of Cassation.

- (ii) **If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Once an exequatur is issued by the court, the execution of the award will be carried out under the supervision of an enforcement judge in the same manner as a court judgement.

(iii) Are conservatory measures available pending enforcement of the award?

It is open to the award creditor to make an application for conservatory measures (in the form of a provisional attachment) in circumstances where there is a risk of dissipation of assets.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Courts in Bahrain routinely enforce domestic and foreign awards in accordance with the Arbitration Law and the New York Convention, respectively.

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 of the seat is enforceable in Bahrain.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The Arbitration Law does not provide any time limits to the issuance of the recognition and enforcement order. The court typically issues the order within seven to ten days unless it finds one or more of the grounds for refusing recognition. The decision to grant recognition and enforcement is final and is not subject to appeal. The decision to deny enforcement of an award must be reasoned and can be challenged before the Court of Appeal and the Court of Cassation. There is no time limit set out in the Arbitration Law for bringing an application for ratification and enforcement of an award. However, once ratified, the award creditor should bring its action for execution within a period of 15 years.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

Bahraini law does not expressly provide that foreign state parties enjoy immunity. Bahraini state parties are not immune from suit but do enjoy immunity from execution ie seizure and sale of assets.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

The order of recognition of an award will be given against domestic and foreign state- and state-owned entities. However, public, or private assets owned by the Bahraini state, foreign embassies and diplomatic missions that enjoy diplomatic immunity are immune from seizure and sale.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No.

XVI. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Bahrain is a party to Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ICSID Convention).

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.

- (ii) Has your country entered into bilateral investment treaties with other countries?**

Yes, as stated above.

- (iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?**

No.

XVII. Resources

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

- BCDR International Arbitration Review; and
- The Journal of Arab Arbitration.

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

No.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Bahrain is developing as an arbitration hub as it continues to promote arbitration. Arbitration has thus become a real alternative to court proceedings in many sectors. This is especially true for transactions involving multiple cross-border players.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Bahrain issued the Mediation Law in 2019 which provides a modern framework for mediation and sets procedures for the enforcement of domestic and foreign settlement agreements. Nevertheless, ADR procedures, such as mediation, are less frequently used than litigation or arbitration.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

Using the English language in court proceedings: The Minister of Justice issued Decision No. 28 of 2023 regulating the use of English before the Court in Bahrain which extended the use of English in the Bahraini commercial courts. The regulation stipulated that agreements drafted in English will be heard in English before the courts if the claim exceeds BHD 500,000. The regulation also stated that all proceedings relating to an arbitration where the language chosen by the parties is English and the claim or potential claim exceeds BHD 500,000 will be heard in English.

The BCDR rules were amended in 2022 to add provisions relating mainly to third-party funding, use of technology and security for cost.

Noteworthy case law:

In 2024, the Court of Cassation rendered two judgments allowing arbitration agreements to encompass parties not directly implicated in the original agreement but intricately linked to the same commercial transaction. The court held that the arbitration agreement could be extended to non-signatories within a chain of interrelated contracts. It underscores the principle that while explicit reference to arbitration clauses is preferred, such reference need not be explicit to warrant their incorporation into the related contracts.

Court of Cassation in June 2024 held that the issue of arbitrability of a dispute is reserved solely to the tribunal in accordance with the competence-competence principle and under the supervision of the competent court considering recognition or setting aside applications. Any court to appoint an arbitrator on behalf of a defaulting party or due to the failure of two arbitrators to appoint the president of the tribunal, could only apply a prima facie review of the arbitration agreement and the arbitrability of the dispute.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

No.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

The Arbitration Law is silent on third-party funding. Other laws neither expressly forbidden nor permitted third party funding. However, there is no prohibition against funding litigation or arbitration in Bahrain.

The Bahraini courts have not yet dealt with this issue.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Yes, Bahrain have implemented a sanctions regime that relates to international economic sanctions issued by the Security Council of the United Nations under Chapter VII and all sanctioned recognised by relevant entities in Bahrain such as CBB. These sanctions could be part of Bahrain international public policy. There have been few cases where the sanction regime was implemented but none relating to arbitration.