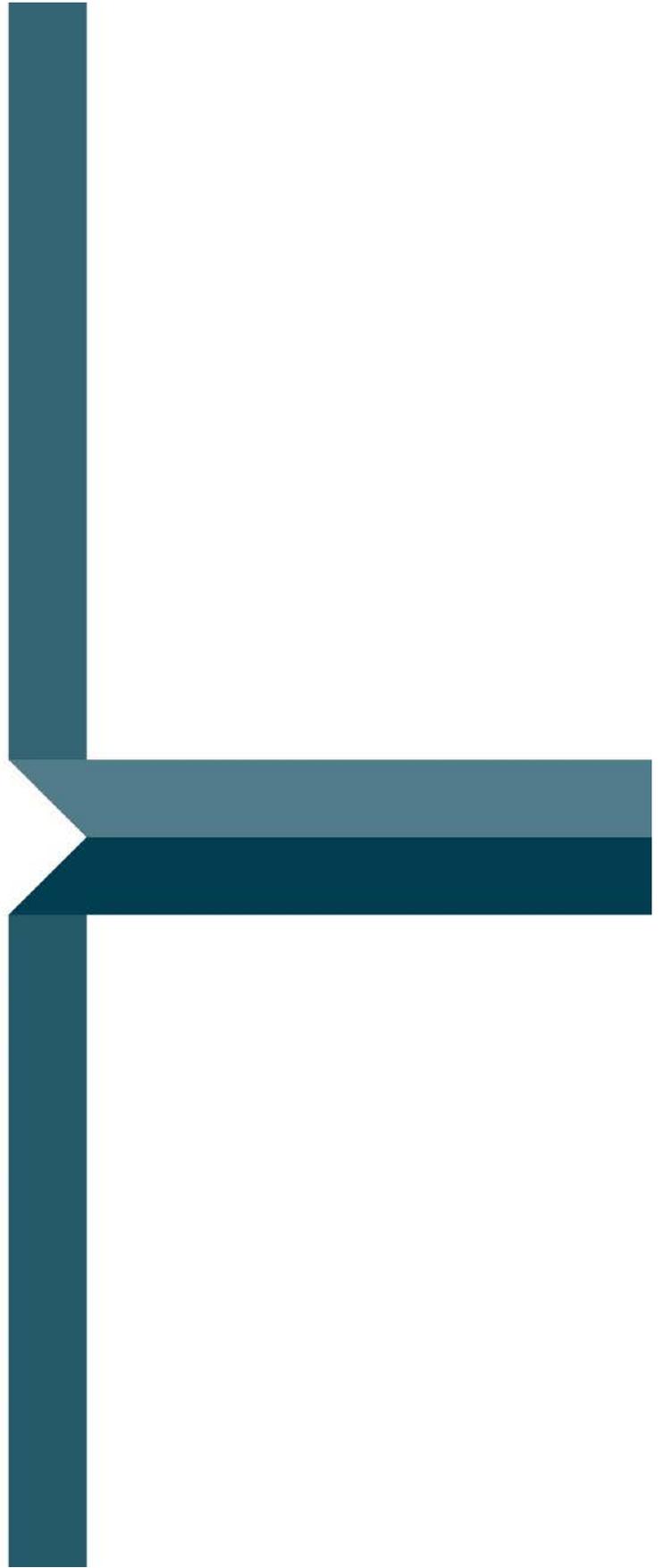


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**Arbitration in Bahrain**  
**Q&A for Lexology Navigator**

11 February 2016



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# Legal framework

## National arbitration laws

### What legislation applies to arbitration in your jurisdiction?

In July 2015 Bahrain issued Law 9/2015, promulgating the Arbitration Law. The new Arbitration Law is yet to be tested; however, it has incorporated the UNCITRAL Model Law in its entirety and will therefore likely accord with the worldwide consensus on key aspects of international arbitration practice.

Bahrain set up the Bahrain Chamber for Dispute Resolution (BCDR) in 2009, in partnership with the American Arbitration Association (AAA). The BCDR Arbitration Rules are modelled on those published by the AAA and the AAA's international arm, the International Centre for Dispute Resolution.

The BCDR is governed by Legislative Decree 30/2009 with respect to the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution and is devised as a dual mechanism for parties to resolve disputes, under either statutory court procedures or arbitration by express choice.

The Gulf Cooperation Council (GCC) Commercial Arbitration Centre is governed by the rules and procedures set out in the GCC Commercial Arbitration Centre Charter 1993 and is designed as a centre for commercial dispute resolution involving GCC nationals and commercial disputes arising from incorporation of the GCC Unified Economic Agreement.

## Mandatory laws

### Are there any mandatory laws?

The new Arbitration Law applies to all arbitrations in Bahrain.

Fees for applications for the recognition, enforcement and cancellation of arbitral awards are subject to the Judicial Fees Law.

## New York Convention

### Is your country a signatory to the New York Convention? If so, what is the date of entry into force?

Bahrain has been a signatory to the New York Convention since April 6 1988.

Are there any reservations to the general obligations of the convention?

Bahrain applies commerciality and reciprocity reservations, meaning that the New York Convention applies only to:

- disputes which are considered commercial under Bahraini law; and

- the recognition and enforcement of awards made in the territory of another contracting state.

## Treaties and conventions

### What other treaties and conventions in relation to arbitration is your jurisdiction party to?

Bahrain is a party to the following treaties:

- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965;
- the Riyadh Arab Agreement for Judicial Cooperation 1983;
- the Gulf Cooperation Council (GCC) Convention for the Execution of Judgments, Delegations and Judicial Notifications 1995; and
- the Hague Convention for the Pacific Settlement of International Disputes 1907.

Bahrain has entered into the following bilateral investment treaties:

- Algeria (June 11 2000; in force);
- Belarus (October 26 2002; in force);
- Belgium-Luxembourg Economic Union (July 11 2006; signed, but not in force);
- Brunei Darussalam (January 14 2008; in force);
- Bulgaria (June 26 2009; signed, but not in force);
- China (June 17 1999; in force)
- Czech Republic (October 15 2007; in force);
- Egypt (October 4 1997; in force);
- France (February 24 2004; in force);
- Germany (February 5 2007; in force);
- India (January 13 2004; in force);
- Iran (October 19 2002; in force);
- Italy (October 29 2006; in force);
- Jordan (February 8 2000; in force);
- Lebanon (August 26 1999; terminated);
- Lebanon (August 7 2003; in force);
- Malaysia (June 15 1999; signed, but not in force);
- Mexico (November 29 2012; in force);
- Morocco (April 7 2000; in force);
- Netherlands (February 5 2007; in force);
- Singapore (October 27 2003; in force);
- Spain (May 22 2008; signed, but not in force);
- Sudan (January 17 2000; signed, but not in force);
- Syrian Arab Republic (September 20 2000; in force);
- Thailand (May 17 2002; in force);
- Turkey (February 15 2006; in force);
- Turkmenistan (February 9 2011; signed, but not in force);
- United Kingdom (October 30 1991; in force);
- United States (September 29 1999; in force);
- Uzbekistan (November 16 2009; signed, but not in force); and

- Yemen (December 1 2002; signed, but not in force).
- Bahrain has also entered into the following investment agreements:
- the GCC-Peru Framework Agreement (October 1 2012);
- the GCC-US Framework Agreement (September 25 2012);
- the GCC-New Zealand Free Trade Agreement (October 31 2011);
- the GCC-European Free Trade Association Free Trade Agreement (June 22 2009);
- the GCC-Singapore Free Trade Agreement (December 15 2008);
- the Bahrain-US Free Trade Agreement (September 14 2004);
- the GCC-India Framework Agreement (August 25 2004);
- the GCC-Lebanon Free Trade Agreement (May 11 2004);
- the Bahrain-US Trade and Investment Framework Agreement (June 18 2002);
- the EU-GCC Cooperation Agreement (June 15 1988);
- the GCC Economic Agreement (November 11 1981);
- the Organisation of Islamic Cooperation Investment (June 5 1981);
- the League of Arab States Investment (November 26 1980);
- the Arab League Investment Agreement (August 29 1970); and
- the Arab Economic Unity Agreement (June 3 1957).

## UNCITRAL

### Has your jurisdiction adopted the UNCITRAL Model Law?

Bahrain has adopted the UNCITRAL Model Law in its entirety.

## Reform

### Are there any impending plans to reform the arbitration laws in your jurisdiction?

Bahrain recently implemented the new Arbitration Law. No further reform is planned.

# Arbitration agreements

## Validity

### What are the validity requirements for an arbitration agreement?

Under Bahraini law, an arbitration agreement is an agreement between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement.

To be valid, an arbitration agreement must be in writing. This requirement will be satisfied if its content is recorded in any form, whether the arbitration agreement or contract has been concluded orally, by conduct or any other means.

An arbitration agreement may be recorded in an electronic communication if the information contained therein is accessible for subsequent reference. Further, a reference in a contract to any document containing an arbitration clause constitutes a written arbitration agreement, provided that the reference is such as to make that clause part of the contract.

## Enforcement of agreements

### How are arbitration agreements enforced in your jurisdiction? What is the attitude of the national courts towards arbitration agreements?

Arbitration agreements may be enforced in the same manner as general contracts. The national courts will recognise and respect the choice of parties to contracts or disputes to enter into arbitration.

## Consolidation

### Can an arbitral tribunal with its seat in your jurisdiction consolidate separate arbitral proceedings under one or more contracts, and, if so, in what circumstances?

Bahraini law does not address the consolidation of arbitral proceedings. However, many institutional arbitration rules permit tribunals to consolidate separate arbitral proceedings – for example:

- the London Court of International Arbitration Rules 2014;
- the International Chamber of Commerce Rules 2012; and
- the American Arbitration Association/International Centre for Dispute Resolution Rules 2014.

In general, for a tribunal to consolidate proceedings, either all of the parties must agree to consolidation or, in certain circumstances, the tribunal may consolidate

the proceedings if they arise from the same arbitration agreement or involve the same parties.

## Choice of law

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

The substantive law will usually be stipulated by the parties to a contract.

Where the substantive law has not been determined or cannot be agreed between the parties, the tribunal will apply the substantive law(s) determined by the conflict of laws rules which it considers applicable.

In all cases, an arbitral tribunal's decision on the applicable substantive law(s) will be made in accordance with the terms of the contract and will take into account the trade applicable to the context of the dispute.

The arbitral tribunal will decide *ex aequo et bono* or as *amiable compositeur* (ie, based on what is fair and just, rather than on the letter of the law) only if the parties have expressly authorised it to do so.

## Separability

### Are there any provisions on the separability of arbitration agreements?

Yes – an arbitration clause which forms part of a contract will be treated as an agreement independent of the other terms of the contract, and a decision by the arbitral tribunal that a contract is null and void will not entail *ipso jure* (ie, by operation of law) the invalidity of the arbitration clause.

## Multiparty agreements

### Are multiparty agreements recognised?

Multiparty agreements are not prohibited under Bahraini law.

Many institutional arbitration rules contain administrative provisions that govern multiparty agreements in arbitral proceedings, particularly in respect of maintaining fairness and equal treatment between the parties (eg, during the appointment of the tribunal). Arbitral rules that include provisions relating to multiparty agreements include the London Court of International Arbitration Rules 2014 and the International Chamber of Commerce Rules 2012.

# Arbitral tribunal

## Criteria for arbitrators

### Are there any restrictions?

In principle, anyone can act as an arbitrator. However, in practice, an arbitrator should not be a minor, imprisoned or bankrupt, and should be independent, of full legal capacity and suitably qualified to rule on the dispute.

## Contractual stipulations

### What can be stipulated about the tribunal in the agreement?

The parties to an agreement are free to:

- determine the number of arbitrators and agree on a procedure for appointing the arbitrator(s);
- exclude certain nationalities from acting as arbitrator(s), but only by unanimous agreement; and
- agree on a procedure for challenging an arbitrator's appointment.

## Default requirements

### Are there any default legal requirements as to the selection of a tribunal - for example, concerning the number of arbitrators or their characteristics?

In the absence of an agreement between the parties on the number of arbitrators, the arbitral tribunal will comprise of three arbitrators.

In cases where there will be three arbitrators, and in the absence of an agreement between the parties on the appointment of arbitrator(s), the claimant and the respondent will each appoint an arbitrator and those arbitrators will appoint a third arbitrator. In cases where there will be only one arbitrator, any party may apply to the High Civil Court for it to appoint the arbitrator.

## Challenging the appointment of an arbitrator

### Can the appointment of an arbitrator be challenged? Can an arbitrator be disqualified? What is the procedure for this?

The appointment of an arbitrator may be challenged only if the circumstances give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the qualifications agreed to by the parties.

The parties may agree on a procedure for challenging an arbitrator's appointment. In the absence of such agreement, the challenging party must, within 15 days of the information relating to the challenge coming to light, send a

written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal will decide on the challenge.

If a challenge is unsuccessful, the challenging party has 30 days from receiving notice of the decision to request that the Civil High Court decide on the challenge.

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 withdraws from the post or by agreement between the parties.

## **Jurisdictional objections**

### **How should an objection to jurisdiction be raised?**

An objection to the arbitral tribunal's jurisdiction must be raised no later than the date on which the statement of defence is submitted. Further, any plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the relevant matter is raised in the arbitral proceedings. That said, the arbitral tribunal may admit a later objection if it considers the delay justified.

## **Replacement of an arbitrator**

### **Why and how can an arbitrator be replaced?**

Where the mandate of an arbitrator is terminated, a substitute arbitrator will be appointed according to the rules applicable to the appointment of the arbitrator who is being replaced.

## **Powers and obligations**

### **What powers and obligations do arbitrators have?**

Subject to any prior agreement on the arbitrator's power or arbitration procedures, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate. The power conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. The arbitral tribunal may appoint one or more experts to report on specific issues to be determined by the tribunal, and may require a party to give the expert any information or documents that it considers relevant to the issues surrounding the arbitration.

An arbitral tribunal also has the power to order interim measures, including in relation to the preservation of assets and evidence and in order to prevent any prejudice to the arbitral procedure. An arbitral tribunal may require the party requesting an interim measure to provide appropriate security, and may modify, suspend or terminate an interim measure either on application by one of the parties or, in exceptional circumstances, on its own initiative.

While conducting arbitration, an arbitral tribunal must treat parties equally and give each party a full opportunity to present its case.

## Liability of arbitrators

### Are arbitrators immune from liability?

Arbitrators will be held liable only in cases where losses stem from their intentional or negligent action or inaction.

## Communicating with the tribunal

### How do the parties communicate with the tribunal?

The parties are free to agree on the procedure to be followed by the arbitral tribunal when conducting the proceedings, including methods of communication. Failing such agreement, the arbitral tribunal may conduct the arbitration however it considers appropriate.

All statements, documents and other information supplied to the arbitral tribunal by one party must be communicated to the other party.

## Reaching decisions

### Is unanimous agreement of the tribunal required? If there is disagreement, does the will of the majority suffice? What are the implications of this?

In arbitral proceedings with more than one arbitrator, any tribunal decision must be made by a majority of its members, unless otherwise agreed between the parties. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

## Arbitrability

### Are there any disputes incapable of being referred to arbitration?

While there are no express statutory barriers, certain types of dispute may not be arbitrable in practice.

### Can the arbitrability of a dispute be challenged?

Yes, a party is free to challenge the arbitrability of a dispute before the arbitral tribunal or the Civil High Court.

## Jurisdiction and competence-competence

### 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?**

An arbitral tribunal may rule 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 ruling. The court's ruling cannot be appealed.

While a request to the court is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

# Arbitral proceedings

## Starting an arbitration proceeding

### What is needed to commence arbitration?

Unless otherwise agreed by the parties, the arbitral proceedings will commence on the date on which the request for the dispute to be referred to arbitration is received by the respondent.

## Limitation periods

### Are there any limitation periods for the commencement of arbitration?

No limitation periods exist in regard to the commencement of arbitration, unless provided for in the arbitration agreement.

If the governing law of the arbitration is Bahraini law, the usual limitation periods applicable to legal proceedings will apply. If the contract is governed by a foreign law, the limitation periods of that law will apply.

## Procedural rules

### Are there any procedural rules that arbitrators must follow?

Arbitrators must abide by the procedural rules agreed on by the parties, including the arbitration rules under which the arbitral tribunal must conduct the case. The arbitral tribunal remains subject to the general duties under the UNCITRAL Model Law, including the obligation to treat the parties equally and give each party a full opportunity to present its case.

## Dissenting arbitrators

### Are dissenting opinions permitted under the law of your jurisdiction?

In arbitral proceedings with more than one arbitrator, tribunal decisions must be made by a majority, unless otherwise agreed by the parties.

The majority principle also applies to the signing of the award. Further, if a minority of the arbitral tribunal dissents, reason(s) must be provided for any omitted signature(s).

## Judicial assistance

### Can local courts intervene in proceedings?

On request by one of the parties, local courts may intervene in arbitral proceedings in relation to:

- the appointment, challenge or termination of an arbitrator;
- the jurisdiction of an arbitral tribunal;
- the setting aside of an arbitral award;
- assistance in taking evidence or recognition of an arbitration agreement (including its compatibility with court-ordered interim measures);
- court-ordered interim measures; or
- the recognition and enforcement of interim measures and arbitral awards.

### **Can the local courts assist in choosing arbitrators?**

Where the appointment of the arbitral tribunal cannot be agreed, any party may apply to the Civil High Court for assistance.

### **What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration? Can the courts compel parties to arbitrate? Can they issue subpoenas to third parties?**

Unless otherwise agreed by the parties, the following apply:

- If the claimant fails to communicate its statement of claim, the arbitral tribunal will terminate the proceedings.
- If the respondent fails to communicate its statement of defence, the arbitral tribunal will continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.
- If any party fails to appear at a hearing or produce documentary evidence, the arbitral tribunal may continue the proceedings and make an award based on the evidence before it.

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request the Civil High Court's assistance in taking evidence. The court will execute the request according to its rules on taking evidence.

## **Third parties**

### **In what instances can third parties be bound by an arbitration agreement or award?**

An arbitration agreement or award will be binding only on the parties.

## **Default language and seat**

### **Unless agreed by the parties, what is the default language and location for arbitrations?**

There is no default language or location for arbitrations. In the absence of an agreement between the parties, the arbitral tribunal will determine the language

to be used in the proceedings and the location of the arbitration, having regard to the circumstances of the case, including the convenience of the parties.

## Gathering evidence

### How is evidence obtained by the tribunal?

Subject to any contrary agreement between the parties, the arbitral tribunal has broad discretion regarding how evidence is obtained. The arbitral tribunal will decide 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 and other materials. The tribunal also has the power to appoint experts.

### What kinds of evidence are acceptable?

Subject to any contrary agreement between the parties, the arbitral tribunal has broad discretion in deciding what kind of evidence is acceptable, including the power to determine the admissibility, relevance, materiality and weight of any evidence.

## Confidentiality

### Is confidentiality ensured?

Bahraini law contains no express provision regarding the confidentiality of arbitral proceedings. This will be a matter for the parties to agree on or, in the absence of any agreement, for the tribunal to decide.

### Can information in arbitral proceedings be disclosed in subsequent proceedings?

This will be a matter for the parties to agree on or, in the absence of any agreement, for the tribunal to decide.

## Ethical codes

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

Apart from the general requirements that the arbitral tribunal be independent, impartial and act fairly, there are no express ethical codes or other professional standards with which counsel and arbitrators must comply under Bahraini law.

The parties are free to decide on what, if any, standards will apply either by express choice (eg, the International Bar Association's Guidelines on Party Representation in International Arbitration) or by implication (eg, by appointing a member of the Chartered Institute of Arbitrators as the arbitrator, as he or she will be governed by that institution's code of professional and ethical conduct).

Certain arbitration rules (eg, the London Court of International Arbitration Rules 2014) include requirements relating to conduct that will apply to all arbitrations conducted thereunder.

# Costs

## Estimation & allocation

### How are the costs of arbitration proceedings estimated and allocated?

No express provisions regarding the costs of arbitral proceedings exist under Bahraini law. It will be a matter for the parties to agree on or, in the absence of any agreement, for the tribunal to decide.

Many arbitral institutions (eg, the Bahrain Chamber for Dispute Resolution and the London Court of International Arbitration) expressly provide for the calculation and allocation of administrative fees and arbitral tribunal fees.

Court fees for applications for the recognition and enforcement of arbitration awards and for challenges and appeals are subject to the rules based on which judicial fees are levied, as per the Judicial Fees Law.

## Security for costs

### Can the national court or tribunal order security for costs under the law in your jurisdiction?

In relation to applications for interim measures, the arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

With regards to enforcement, if an application to set aside or suspend an award has been made, the court in which recognition or enforcement is sought may, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

# The award

## Requirements

### **What legal requirements are there for recognition of an award? Must reasons be given for the award? Does the award need to be reviewed by any other body?**

An award must be made in writing and signed by the arbitrator(s). 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 state the reasons on which it is based, unless the parties have agreed that no reasons are needed or the award 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. After the award has been made, a copy signed by the arbitrators must be delivered to each party.

Awards need not be reviewed by any other body, unless the parties have expressly agreed that this be the case.

## Timeframe for delivery

### **Are there any time limits on delivery of the award?**

Under Bahraini law, no time limits are imposed on the delivery of awards. The parties may agree that the tribunal is subject to a time limit – for example, by adopting arbitration rules that stipulate a timeframe with which an award must be made (eg, the International Centre for Dispute Resolution Rules 2014).

## Remedies

### **Does the law impose limits on the available remedies? Are some remedies not enforceable by the court?**

While the parties are generally free to agree on the arbitral tribunal's scope to award remedies, any remedy considered unenforceable under Bahraini law or contrary to the public policy or ethics of Bahrain will be excluded from enforcement.

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

The arbitral tribunal may, at the request of one of the parties, grant interim measures, including to:

- maintain or restore the status quo pending resolution of the dispute;
- take action that would prevent, or refrain from taking action that is likely to cause, harm or prejudice to the arbitral process;
- provide a means of preserving assets out of which a subsequent award may be satisfied; or

- preserve evidence that may be relevant and material to resolution of the dispute.

The Civil High Court also has the power to order interim measures in relation to arbitral proceedings. The court will exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

## Interest

### Can interest be awarded?

Subject to any agreement to the contrary, the arbitral tribunal has broad discretion regarding the award of interest.

### At what rate?

Subject to any agreement to the contrary, the arbitral tribunal has broad discretion regarding the rates of interest awarded.

## Finality

### Is the award final and binding?

Unless otherwise agreed, an arbitral award will be final and binding, subject to limited grounds to challenge an award.

### What if there are any mistakes?

Unless otherwise agreed by the parties, within 30 days of receipt of the award, a party (with notice to the other party) may request the arbitral tribunal to:

- correct errors in computation;
- correct clerical or typographical errors or errors of similar nature; or
- give an interpretation of a specific point or part of the award.

Unless otherwise agreed by the parties, a party (with notice to the other party) may request the arbitral tribunal to make an additional award regarding claims presented in the arbitral proceedings but omitted from the award within 30 days of receipt of the award.

If the arbitral tribunal considers any of these requests to be justified, it will make the correction, interpretation or additional award.

### Can the parties exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

No.

## Appeal

### On what grounds can parties appeal an award?

Under Bahraini law, any party can apply to the Civil High Court to set aside an award if:

- the party making the application 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;
- the party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or was otherwise unable to present 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 which contains decisions on matters not submitted to arbitration will be set aside; or
- 
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement (unless the agreement conflicts with Bahraini law) or, failing such agreement, was not in accordance with Bahraini law; or
- 
- 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.

### What is the procedure for challenging awards?

The rights of parties to challenge arbitral awards will depend on the parties' choice of law and arbitration rules. In general, an award can be challenged only on limited grounds.

## Enforcement

### What steps can be taken to enforce the award if there is a failure to comply?

A party seeking enforcement of an award should apply to the Court of Execution. Available methods of enforcement include:

- issuing an attachment order on property;
- ordering the forced sale of property subject to the attachment order;
- ordering the payment of amounts under the judgment;
- collecting payment and transferring it to the successful party;
- authorising the use of force, where required;
- seeking assistance from the police, if necessary;
- ordering the arrest of the debtor;
- levying a distraint on the debtor's property (including stocks and bonds) in order to satisfy the debt; and

- ordering the sale of any property (moveable and immovable) by public auction.

### Can awards be enforced in local courts?

Yes.

### How enforceable is the award internationally?

Bahrain is a signatory to the New York Convention; thus, arbitral awards made in Bahrain should be effectively enforced in other signatories to the New York Convention.

In practice, the enforceability of an award will depend on the prevailing legal, political and socio-economic situation in the state in which enforcement is sought.

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

While a state or state entity may claim state or sovereign immunity at the enforcement stage, the Bahraini courts take their judicial independence and the rule of law seriously. As such, a party would need to show genuine and sufficient evidence in order to claim sovereign or state immunity.

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

An award will be unenforceable if:

- the arbitration agreement was invalid;
- a party to the arbitration was incapacitated;
- a party was not given notice of the proceedings or was unable to present its case;
- the subject matter of the award is outside the scope of, or goes beyond the circumstances contemplated in, the arbitration agreement;
- the appointment of the arbitral tribunal was not in accordance with the arbitration agreement, the law or the arbitration rules chosen by the parties;
- the award is not yet binding, or has been suspended or set aside in the jurisdiction in which or under whose laws it was made;
- the subject matter of the dispute is not arbitrable in the state in which enforcement is sought; or
- the award contravenes Bahraini public policy.

### How enforceable are foreign arbitral awards in your jurisdiction?

Bahrain is a signatory to the New York Convention; thus, foreign arbitral awards can be effectively enforced subject to the New York Convention.

Further, under the new Arbitration Law, arbitral awards are recognised as binding – irrespective of the country in which they were made – and on written application to the Civil High Court will be enforced, subject to the limited exceptions set out above.

In principle, the Bahraini courts will recognise foreign awards, subject to various conditions. However, in practice, differences between the legal system of Bahrain and those of other jurisdictions may lead to a case being effectively retried on its merits by the Bahraini courts.

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

The Bahraini courts may refuse to recognise and enforce an award at the request of the party against which it is invoked if that party can show that the award has been set aside or suspended by a court of the country in which or under whose law the award was made.

## Third-party funding

### Rules and restrictions

#### Are there rules or restrictions on third-party funders?

No express restrictions on third-party funders apply in relation to arbitration.

# Class-action or group arbitration

## Concept

**Is there a concept in your jurisdiction providing for class-action arbitration or group arbitration? If so, are there any limitations to the arbitrability of such claims or requirements that must be met before such claims may be arbitrated?**

To date, no such claims have been brought.

## Hot topics

### Emerging trends

#### Are there any hot topics or trends emerging in arbitration in your jurisdiction?

Arbitration is gaining momentum as a preferred method of resolving disputes in the intra-Gulf Cooperation Council market and internationally.

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