

BAHRAIN

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In its continuous effort to promote and improve arbitration in the country, Bahrain adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) with its 2006 amendments (the “**Model Law**”) through Law 9 of 2015, promulgating the Arbitration Law (the “**Arbitration Law**”). This followed the issuance of the law establishing the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution (the “**BCDR**”), which possesses mandatory jurisdiction over specific types of disputes. Bahrain also hosts the Gulf Cooperation Council Commercial Arbitration Centre.

Key places of arbitration in the jurisdiction	Manama.
Civil law / Common law environment?	Bahrain is a civil law country.
Confidentiality of arbitrations?	The Model Law does not contain an express provision stipulating the confidentiality of arbitrations. However, the procedural rules applicable to an arbitration may stipulate such a requirement. Furthermore, the parties to the arbitration can agree on its confidentiality.
Requirement to retain (local) counsel?	Non-Bahraini lawyers shall be authorized to represent the two parties to the dispute in case the international trade arbitration is held in the Kingdom of Bahrain. ¹
Ability to present party employee witness testimony?	There is no express restriction on the ability to present party employee witness statements under the Model Law.
Ability to hold meetings and/or hearings outside of the seat?	The arbitral tribunal has the discretion to convene, hear the witnesses, experts and parties, and examine goods, properties or documents, in any location it deems appropriate. ²
Availability of interest as a remedy?	A tribunal has the discretion to award interest as a remedy, to the extent that it remains in compliance with the law governing the dispute.
Ability to claim for reasonable costs incurred for the arbitration?	Taking into consideration the applicable procedural rules and the agreement between the parties, a tribunal may have the discretion to award costs. ³
Restrictions regarding contingency fee arrangements and/or third-party funding?	The Bahraini Advocacy Law prohibits contingency fee arrangements.
Party to the New York Convention?	Yes.
Other key points to note	∅
WJP Civil Justice score (2017-2018)	∅

¹ Arbitration Law, Article 6.

² Model Law, Article 20.

³ Except for Article 17 (G) of the Model Law which address the responsibility of costs in interim measures, there is no express provision governing the award of costs in an arbitration.

ARBITRATION PRACTITIONER SUMMARY

Bahrain adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) with its 2006 amendments (the “**Model Law**”) through Law 9 of 2015, promulgating the Arbitration Law (the “**Arbitration Law**”). Contrary to the UNCITRAL Model Law, Bahrain extended the Model Law’s scope of application to include all types of arbitrations, as opposed to limiting its application to international commercial disputes.

Date of arbitration law?	9 August 2015.
UNCITRAL Model Law? If so, any key changes thereto?	Bahrain adopted the Model Law verbatim. However, the Arbitration Law applies to all arbitrations and is not limited to international commercial disputes.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Not available.
Availability of <i>ex parte</i> pre-arbitration interim measures?	No, the court would require the presence of all relevant parties before hearing a pre-arbitration request for interim measures. However, the court may proceed to hear a request if the duly notified defendant fails to attend. ⁴
Courts’ attitude towards the competence-competence principle?	An arbitral tribunal may decide on its own jurisdiction and the validity and existence of an arbitration agreement. ⁵
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for refusing recognition or enforcement of an arbitral award under the Model Law are similar to those stipulated in the New York Convention.
Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	ϕ

⁴ Article 49 of the Civil and Commercial Procedures Law.

⁵ Article 16 (1) of the Model Law.

<p>Other key points to note?</p>	<ul style="list-style-type: none"> - Arbitrators are liable for any act or omission made in bad faith or resulting from gross mistake.⁶ - Any dispute exceeding BHD 500,000 and ordinarily within the jurisdiction of the courts of Bahrain shall be referred to the BCDR if: <ul style="list-style-type: none"> (a) it is an international commercial dispute; or (b) it is a dispute where one or more of the parties is a licensed financial institution,⁷ pursuant to the Central Bank of Bahrain (“CBB”) Law.⁸ <p>Any dispute that does not meet the above requirements falls within the jurisdiction of the Courts of Bahrain, unless agreed otherwise.</p>
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⁶ Article 7 of the Arbitration Law.

⁷ Please refer to Regulation 1 of 2007 Regarding the Services Regulated by the CBB and its later amendments for the list of financial institutions licenced pursuant to the CBB Law.

⁸ Article 9 of Decree Law 39 of 2009 Regarding the BCDR.

JURISDICTION DETAILED ANALYSIS

1. Legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? If yes, what key modification if any have been made to it?

Bahrain adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) with its 2006 amendments (the "**Model Law**") verbatim through Law 9 of 2015, promulgating the Arbitration Law (the "**Arbitration Law**"). Notwithstanding the foregoing, the Arbitration Law expanded the applicability of the Model Law to include all types of arbitrations, as opposed to limiting its application to international commercial disputes.⁹

In addition to the above, the Arbitration Law addresses the arbitrator's liability for its acts and omissions,¹⁰ and does not require the retention of local counsel in international commercial disputes seated in Bahrain.¹¹

1.2 When was the arbitration law last revised?

The Arbitration Law was promulgated in 2015 and is yet to be revised.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In the absence of an agreement between the parties on the law governing the arbitration agreement, the courts will apply the Bahraini conflict of laws rules to determine the applicable law.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, an arbitration clause is considered to be independent and separated from the other provisions of the contract in which it is set forth. As such, a tribunal's decision that a contract is null and void will not invalidate the arbitration clause contained in it.¹²

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Pursuant to Article 4 of the Arbitration Law, option I of Article 7 of the Model Law was selected to define and stipulate the form of an arbitration agreement. Consequently, an arbitration agreement must be in writing,¹³ a condition that can be met if the agreement is documented through electronic communication.¹⁴

Furthermore, an arbitration agreement that has been agreed upon orally, in writing or by conduct will constitute a valid arbitration agreement, as long as its content is recorded in any form.¹⁵

In addition to the above, Article 7(6) of the Model Law states that: "*any reference in a contract to a document containing an arbitration clause constitutes a written arbitration agreement, provided that the reference is such as to make the clause part of the contract*".

⁹ Articles 1 and 2 of the Arbitration Law.

¹⁰ Article 7 of the Arbitration Law.

¹¹ Article 6 of the Arbitration Law.

¹² Article 16 (1) of the Model Law

¹³ Article 7 (2) of the Model Law.

¹⁴ Article 7 (4) of the Model Law.

¹⁵ Article 7 (3) of the Model Law.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

As a general principle under the Bahraini Civil Law, the effect of rights and obligations established pursuant to a contract are limited to its parties. The same principle applies with respect to a party's right to refer a dispute to arbitration.¹⁶

2.5 Are there restrictions to arbitrability? If yes, do these restrictions relate to specific domains (such as IP, corporate law etc.)? or do they relate to specific persons (i.e. State entities, consumers etc.)?

There are several Court of Cassation judgments prohibiting the arbitrability of disputes relating to public policy, such as disputes regarding Family Law or Criminal Law.¹⁷ Nonetheless, these judgments are based on Article 233 of the Commercial Procedures Law, which was repealed by the Arbitration Law. The Arbitration Law does not address any restriction on arbitrability.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute? Does this stance differ if the seat of the arbitration is outside the jurisdiction?

If a dispute raised before a court is governed by an arbitration agreement, the court will refer the dispute to arbitration pursuant to a party's request, provided that the request is made before the party in question argues the merits of the case.¹⁸ No distinction is made under the Arbitration Law if the seat of the arbitration is outside Bahrain.

3.2 On what ground(s) can the courts intervene in an arbitration seated outside of the jurisdiction?

Article 1 of the Arbitration Law stipulates that it applies to arbitrations seated outside of Bahrain where agreed by the parties. Consequently, and pursuant to Article 3 of the Arbitration Law, the Bahraini High Civil Court may intervene in the circumstances referred to in Article 6 of the Model Law, in cases where the arbitration is seated outside of Bahrain.

3.3 Does the principle of staying civil proceedings until the conclusion of criminal proceedings apply to arbitrations?

Yes. The Bahraini Court of Cassation decided that an *"arbitral tribunal is compelled to apply the criminal [proceedings] staying civil [proceedings] principle if its conditions are met"*.¹⁹ A tribunal is compelled to stay arbitration proceedings if:

- (a) a case is raised before the Criminal Court before or during the arbitration;²⁰ and
- (b) liability in both cases is based on the same fact(s).²¹

¹⁶ Article 133 of the Civil Law.

¹⁷ Court of Cassation's judgment in Challenge 79 of 2005

¹⁸ Article 8 (1) of the Model Law.

¹⁹ [Court of Cassation's Judgment in Challenge 328 of 2005](#).

²⁰ Court of Cassation's Judgment in Challenge 161 of 2007.

²¹ Court of Cassation's Judgment in Challenge 66 of 2005.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Yes, provided it complies with the restriction included in Article 6 of the Arbitration Law, which only allows parties to retain foreign counsel in international commercial arbitration.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Given that the Arbitration Law was recently issued, there is no case law addressing the court's position on the independence and impartiality of arbitrators.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of an *ad hoc* arbitration)?

Where the Arbitration Law applies to an *ad hoc* arbitration, the court may intervene in the constitution of the arbitral tribunal in the following two scenarios:

- (a) In the absence of an agreement between the parties on the procedure of appointing an arbitrator, the High Civil Court would intervene to appoint one arbitrator upon request by a party to the arbitration:
 - I. In a three-member tribunal, where a party fails to appoint an arbitrator within 30 days of receiving a request from the other party or where the two arbitrators appointed by the parties fail to appoint a third arbitrator within 30 days of their appointment; or
 - II. In a one-member tribunal, where the parties fail to agree on an arbitrator.²²
- (b) Where the parties have agreed on the procedure regarding the appointment of the arbitrators and no other mechanism was agreed upon to ensure their appointment, the High Civil Court would only intervene if requested by a party where:
 - I. One of the parties fails to act as required by these procedures;
 - II. If the two parties or arbitrators fail to agree in accordance with these procedures; or
 - III. If a third party, including an arbitration center, fails to undertake the necessary duties referred to it pursuant to the procedures agreed upon by the parties.²³

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The courts have the power to issue interim measures relating to an arbitration.²⁴ However, a court would not hear an *ex parte* request for interim measures.²⁵ Nevertheless, it may proceed to rule on such requests in the absence of a party, provided that such party has been properly notified of the hearing.²⁶

²² Article 11 (3) of the Model Law.

²³ Article 11 (4) of the Model Law.

²⁴ Article 17 (j) of the Model Law.

²⁵ Interim and precautionary measures can be pursued in accordance with the Articles 176 to 182 of the Civil and Commercial Procedures Law.

²⁶ Article 49 of the Procedural Law.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

There is no express provision regarding the confidentiality of arbitration proceedings under the Arbitration Law.

4.5.2 Does it regulate the length of arbitration proceedings?

The Arbitration Law does not regulate the length of arbitration proceedings.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for or meetings.²⁷

4.5.4 Does it allow for arbitrators to issue interim measures? And if so, under what conditions?

Upon the request of one of the parties, the tribunal may grant interim measures, unless agreed otherwise. The tribunal may order an interim measure to:

- (a) Maintain or restore the status quo pending resolution of the dispute;
- (b) Take an action that would prevent, or refrain from taking an action that is likely to cause harm or prejudice to the arbitral process;
- (c) Provide means of preserving assets to satisfy a potential subsequent award; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute²⁸.

The party requesting the interim measures in (a), (b) and (c) above must demonstrate to the tribunal that:

- (a) the requested measures cannot be remedied through a subsequent award of damages;
- (b) the harm that the requesting party will suffer if the measures are not awarded far outweighs the harm that the party at which the interim measures are directed will suffer; and
- (c) the requesting party has a reasonable chance of succeeding based on the merits of its claim.

With respect to the interim measure in (d) above, the tribunal has the discretion to decide which of the above conditions must be met.²⁹

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Unless agreed otherwise by the parties, the tribunal has the discretion to decide on the admissibility, relevance, materiality and weight of any evidence.³⁰

4.5.6 Does it make it mandatory to hold a hearing?

A tribunal must hold hearings for oral arguments, unless the parties agreed otherwise.³¹

²⁷ Article 20 of the Model Law.

²⁸ Article 17 of the Model Law.

²⁹ Article 17 (A) of the Model Law.

³⁰ Article 19 (2) of the Model Law.

4.5.7 Does it prescribe principles governing the awarding of interest?

There are no express statutory provisions governing interest in arbitration awards.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

There are no express statutory provisions regarding the allocation of arbitration costs, except for Article 17(G) of the Model Law, which addresses the costs in interim measures and preliminary orders.

Article 17(G) allows the tribunal to order the party that requested the measure or order to bear all the costs of the measure or order at any stage of the proceedings, if it determines at a later stage of the proceedings that the request should have been denied.

4.6 Do arbitrators benefit from immunity to civil liability?

Arbitrators are liable for any act or omission made in bad faith or resulting from gross mistake. This rule also applies to individuals who work for an arbitrator, and to those to which an arbitrator delegates some of his duties.³²

4.7 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There are no specific provisions regarding the criminal liability of arbitrators under Bahraini law.

5. The award**5.1 Can parties waive the requirement for an award to provide reasons?**

The parties to an arbitration agreement can agree to exclude the requirement to provide reasons for a tribunal's award.³³

5.2 Can parties waive the right to seek the annulment of the award?

No.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no unusual requirements in respect of the validity of arbitration awards. An award must be in writing, signed by the arbitrators,³⁴ reasoned unless agreed otherwise between the parties, and it must include the date and the seat of the arbitration. Furthermore, a signed copy of the award must be delivered to each party.³⁵

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

No.

³¹ Article 24 (1) of the Model Law.

³² Article (7) of the Arbitration Law

³³ Article 31 (2) of the Model Law

³⁴ Where the tribunal is composed of more than one member, the award can be signed by a majority of the arbitrators provided that the award details the reasons behind the absence of the arbitrator(s) signature(s).

³⁵ Article 31 of the Model Law.

5.5 What procedures exist for the recognition and enforcement of award, what time-limits apply and is there a distinction to be made between local and foreign awards?

5.5.1 Executing arbitration awards in general

The same procedures that apply to the execution of court judgments apply to arbitration awards. A party seeking to enforce an award must submit a request to the Court of Execution containing:

- (a) The name of the requesting party, its capacity and address of residence;
- (b) The name of the party against which the judgment was rendered and his address of residence;
- (c) A summary of the request to execute;
- (d) A summary of the award and the body that issued the award;
- (e) A statement detailing the other party's assets the requesting party wishes to seize (if possible); and
- (f) A copy of the award.³⁶

Furthermore, the requesting party must submit a request for each party against which it wishes to execute the award, in addition to paying the necessary fees.

There is no specific time limit under Bahraini Law in respect of executing awards.

5.5.2 Foreign arbitration awards

Bahrain is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**")³⁷ The New York Convention requires any party seeking to enforce a foreign arbitral award to provide an original copy of the award and the agreement to arbitrate or a duly certified copy thereof. Moreover, foreign awards, if not made in Arabic, must be translated.³⁸

Foreign awards is subject to the same procedures applied for executing awards made in Bahrain in that country. The application to execute a foreign award must be submitted to the High Civil Court.³⁹

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

No. However, the party seeking to set aside the award may request the court to suspend its enforcement.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The courts of Bahrain may refuse to recognize and enforce an award at the request of the party against which the award has been rendered, if it can show that the award has been "*set aside or suspended by a court of the country in which, or under the law of which, the award was made*".⁴⁰

5.8 Are foreign awards readily enforceable in practice?

Yes, Bahrain is a signatory to several conventions, including the New York Convention and the Riyadh Arab Agreement for Judicial Cooperation.⁴¹

³⁶ Article 262 of the Procedures Law.

³⁷ Law Decree 4 of 1988 Regarding Bahrain's Agreement to Join the New York Convention Regarding the Recognition and Execution of Foreign Arbitration Awards with Reservations.

³⁸ Article 4 of the New York Convention.

³⁹ Article 252 and 253 of the Procedural Law.

⁴⁰ Article 36 (1) (a) (v) of the Model Law.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangement at the jurisdiction?

The Bahraini Advocacy Law prohibits contingency fee arrangements.⁴²

7. Is there likely to be any significant reform of the arbitration law in the near future?

The Arbitration Law was issued recently. As far as we are aware, no reform of the law is upcoming.

⁴¹ Law Decree 41 of 1999 Ratifying the Riyadh Arab Agreement for Judicial Cooperation (1983).

⁴² Advocacy Law, Article 31.