

## GUIDE TO ARBITRATION PLACES (GAP)

# IRAQ

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 any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Iraq has a complicated and multi-faceted arbitration framework, which is constantly developing despite the widespread political uncertainty in the country. The Iraqi government has historically resisted including foreign-seated arbitration clauses in public contracts as they were considered a violation of the territorial jurisdiction of Iraqi courts.<sup>1</sup> The influx of foreign investment, along with the subsequent economic development of the country in the past few years, has led to a gradual shift in this traditional attitude. It has now become common practice for contracts between investors and Iraqi government entities to provide for the resolution of disputes by arbitration.

Arbitration in Iraq is not governed by a distinct legislation. Instead, the law on arbitration is found primarily in the Civil Procedure Code (Law No. 83 of 1969) (the “**CPC**”). The CPC contains only one chapter, with 26 provisions, outlining the procedures in relation to Iraq-seated arbitrations. It should be noted that the Iraqi parliament recently ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”). The Law on the Accession of the Republic of Iraq to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards No. (14) of 2021 (the “**Law of Accession**”) has been recently published in the official law gazette. However, Iraqi courts have not yet reacted to the Law of Accession. It should also be noted that the Law of Accession shall not apply retroactively whereby the provisions of the New York Convention prior to the ratification date shall not be enforced. Several problems arise in relation to the enforcement of foreign-seated awards in Iraq. The CPC makes no provision for foreign-seated arbitrations, let alone their enforcement, as the CPC does not envisage arbitration outside Iraq. The legal framework for the enforcement of foreign-seated awards in Iraq can be found in separate legislation, namely the Enforcement of Foreign Judgments Law (Law No. 30 of 1928).

In an attempt to overcome the difficulties associated with arbitration in the jurisdiction, Iraq embarked in 2010 on an ambitious project to develop a draft arbitration law based on the 2006 UNCITRAL Model Law on International Commercial Arbitration (the “**UNCITRAL Model Law**”). The reform process, however, has been slowed down by more pressing political and security issues. The new draft law would substitute for the arbitration chapter of the CPC and is hoped to lay the foundations for a modern arbitration regime in Iraq.

That being said, there have been certain notable developments in the judicial application of the CPC. For example, after the Iraq government lost a Paris-seated arbitration against an Italian shipbuilder, the Baghdad Commercial Court stayed a parallel claim brought by the Iraqi government until the French courts had decided on the Iraqi government’s annulment applications.<sup>2</sup> The Baghdad Commercial Court’s deferral to the French courts came on the basis of Article 253(3) of the CPC which stipulates that the court shall decide to postpone a suit until an arbitral award is issued. By applying the CPC to a foreign-seated arbitration for the first time, the Baghdad Commercial Court deviated from the traditional interpretation and application of the CPC which was limited to Iraq-seated arbitrations.

Although a decision on the enforcement of the arbitral award was not made by the Baghdad Commercial Court, this decision may open the door to a more streamlined process for the recognition and enforcement of foreign-seated arbitration agreements under the CPC, until Iraq joins the New York Convention. In addition, it shows willingness by Iraqi courts to revisit the country’s outdated arbitral framework.

Key places of arbitration in the jurisdiction?	Baghdad.
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<sup>1</sup> Abdel Hamid El-Ahdab & Jalal El-Ahdab, *Arbitration with the Arab Countries* (Third Revised and Expanded Version, Wolters Kluwer Law & Business 2015) 231.

<sup>2</sup> *Iraqi Ministry of Finance v Financeri-Cantieri Navali Italiani SpA*, Court reference: No./1932/1952/Civil Panel/Coped/2012 t/2081/2082 (available [here](#) in Arabic).

Civil law / Common law environment?	Civil law jurisdiction.
Confidentiality of arbitrations?	There is no express reference in the CPC to the confidentiality of arbitrations. There is no precedent that has exclusively dealt with confidentiality of arbitrations in Iraq. An arbitration could become confidential if the parties expressly provide for that in their agreement. Failing to observe confidentiality obligations in that case would give rise to contractual liability.
Requirement to retain (local) counsel?	Parties may choose to retain counsel in arbitral proceedings. There are no provisions under the CPC and Legal Profession Law (No. 173 of 1965) (the “ <b>Legal Professions Law</b> ”) which require the appointment of local Iraqi counsel. However, the Legal Professions Law allows for lawyers in Arab countries to plead before the courts of Iraq on a condition of reciprocity. In addition, Article 3(2) of said law provides that counsellors from non-Arab countries may participate with a local counsellor provided that they obtain the permission and approval of the Ministry of Justice. As regards Arab lawyers, they must obtain the approval of the Iraqi Bar Association. Although there is no precedent on this matter, it is generally understood that the Legal Profession Law extends to arbitration.
Ability to present party employee witness testimony?	There is no provision on this.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	There is no prohibition on holding hearings outside of the seat under the CPC.
Availability of interest as a remedy?	Article 171 of Law No. 40 of 1951 (the “ <b>Civil Code</b> ”) provides that the debtor who has delayed a payment shall be obligated to pay to the creditor, by way of damages for delay, statutory interest at the rate of 4% per annum in civil matters and 5% per annum in commercial matters.  The parties may agree on the applicable interest rate provided it does not exceed 7% per annum. It is understood that Iraqi courts limit the recovery of interest to these interest caps in the context of enforcing foreign judgments and arbitral awards. <sup>3</sup>
Ability to claim for reasonable costs incurred for the arbitration?	The CPC is silent on this matter. Please, however, refer to para. 4.5.8 below for details regarding the allocation of arbitration costs.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fees are not prohibited in Iraq and there are no rules prohibiting third-party funding.
Party to the New York Convention?	Yes.

<sup>3</sup> Dr. Kilian Balz & Dahlia Zamel, Iraq: Interest Rate Caps in International Finance Transactions, [2013] International Bar Association Legal Practice Division, 27.

Party to the ICSID convention?	In November 2015, Iraq ratified the ICSID Convention. Its impact remains severely limited in practice due to the lack of bilateral investment treaties ("BITs") and multilateral investment treaties ("MITs") signed by Iraq. To date, Iraq has only signed BITs with Kuwait, Japan and Jordan. Iraq is also a signatory to some agreements and memoranda of understanding which afford certain limited protections to investors.
Compatibility with the Delos Rules?	After reviewing the Delos Rules, there are no provisions which would be deemed incompatible with local arbitration law.
Default time-limitation period for civil actions (including contractual)?	Article 429 of the Civil Code provides that a case shall not be heard in respect of an obligation, whatever its cause may be, if it has not been claimed without lawful cause for a period of 15 years. The time limitation barring the hearing of the case begins to run from the day when the obligation becomes due for fulfilment.
Other key points to note?	Over the past two decades, Iraq has faced a series of calamities which have hampered the country's ability to effectively progress its legal system. Significant changes have taken place, which are aimed at positively changing the country's outdated arbitration and commercial legal practice, including ratifying the ICSID Convention and the New York Convention. These changes have occurred in an attempt to restructure the foreign investment environment in Iraq and safeguard investors in the event that disputes arise within the jurisdiction. Despite progress being slow, all these developments exhibit Iraq's efforts to develop an effective legal framework.
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020 year, if available?	Iraq ranks 147 <sup>th</sup> with a score of 48.0 in 2020.
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2022, if available?	φ

## ARBITRATION PRACTITIONER SUMMARY

Arbitration is governed by Articles 251 to 276 of the CPC, which set out the procedural framework for Iraq-seated arbitrations. As mentioned above, the CPC does not make reference to the enforcement of foreign-seated arbitral awards and this is dealt with in the Enforcement of Foreign Judgments Law. The difficulties and restrictions surrounding international arbitration in Iraq are evident as this law limits the enforcement of foreign awards to designated jurisdictions. To put this in context, an Iraqi court will only enforce a foreign judgment in Iraq if the foreign judgment is issued in one of the jurisdictions listed in the regulations named under the Enforcement of Foreign Judgments Law (Article 11) or if that jurisdiction has an international agreement with Iraq allowing for the enforcement of foreign judgments, in either case, subject to a condition of reciprocity.

Iraq is therefore limited in the enforcement of foreign judgments, and *a fortiori* of foreign-seated awards, to decisions rendered in the following jurisdictions: Canada, Cyprus, Egypt, Hong Kong, India, Italy, Jamaica, Jordan, Lebanon, Malta, New Zealand, Palestine, Syria, and the United Kingdom – in addition to the contracting Parties to the Riyadh Arab Agreement for Judicial Cooperation of 1983 (the “**Riyadh Convention**”), which permits the enforcement of any final judgment rendered in a contracting state, in other contracting states. The contracting parties to the Riyadh Convention (excluding Iraq) are Algeria, Bahrain, Djibouti, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the UAE, and Yemen.

Date of arbitration law?	No standalone arbitration law. The arbitration chapter can be found in the CPC.
UNCITRAL Model Law? If so, any key changes thereto?	The relevant arbitration provisions in the CPC are not based on the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	In 2010, Iraq established specialised commercial courts and commenced a formal programme to train Iraqi judges in aspects of international commercial law and complex international transactions. In March 2014, the Iraqi government officially implemented these workshops in order for judges to become more familiar with these areas of the law and with hearing related domestic and international commercial disputes. <sup>4</sup> The training and the implementation of these specialised courts have been a success, as shown by the number of cases that have been heard by these courts since 2010. Concerns remain over the application of foreign law to disputes before Iraqi courts. However, these new commercial courts have contributed to the development of Iraqi commercial law, mainly in the area of arbitration.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Unless agreed otherwise by the parties, arbitrators are required to abide by the rules and procedures stipulated in the CPC. The CPC refers to interim measures in the course of litigation proceedings. The application of these interim measures should extend to arbitration (please see para. 4.4 below). However, no precedent exists as to whether Iraqi courts have accepted the enforcement of interim measures from arbitration courts.

<sup>4</sup> Adam Al-Sarraf, ‘Specialized Commercial Courts in Iraq’ Gazette for Business Law in the Middle East and North Africa [2016], 61.

Courts' attitude towards the competence-competence principle?	The application of the competence-competence principle has not yet been tested in Iraqi courts.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The CPC broadly authorises arbitrators to resolve the dispute according to the arbitration agreement or clause, the documents and what the parties submit thereto. It is presumed that such authority allows the arbitral tribunal to render a ruling on jurisdiction and other relevant issues. However, if there are any issues that fall outside the arbitrators' authority, or an allegation of forgery in a document, or if criminal procedures were undertaken to investigate the alleged forgery or any other criminal incident, then the arbitrators shall suspend their work and request the parties to submit their claims to the competent court. (Details regarding how courts render a ruling in relation to the laws governing the arbitration agreement, please see <i>detailed analysis on jurisdiction</i> – 2).
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>The grounds for annulment of awards are found in domestic Iraqi law, as Iraq is not a party to the New York Convention. In light of this, an Iraqi court may decide to annul an award under Article 273 of the CPC on any of the following grounds:</p> <ul style="list-style-type: none"> <li>(i) The arbitral agreement was invalid or the limits of the agreement were exceeded;</li> <li>(ii) The award was not made in accordance with the rules of public order;</li> <li>(iii) If any reasons for a retrial arise; or</li> <li>(iv) There has been a substantial error or irregularity that has influenced the validity of the award.</li> </ul> <p>In regard to Article 273 (iii) of the CPC, the following are general grounds for retrial in Iraqi litigation proceedings:</p> <ul style="list-style-type: none"> <li>(i) The counter party committed a cheat that has affected the judgment.</li> <li>(ii) If a written confession was a forgery.</li> <li>(iii) If the judgment was based upon a perjury.</li> <li>(iv) If after the judgment the interested litigant has obtained productive documents to which the court was precluded by the other litigant.</li> </ul>
Do annulment proceedings typically suspend enforcement proceedings?	<p>There are no provisions in the arbitration chapter of the CPC that envisage this. Applications for annulment are filed with the Court of First Instance, and it is presumed that the question of whether enforcement is suspended will be examined on a case-by-case basis.</p> <p>If the decision of a Court of First Instance is appealed in the Court of Appeal, then enforcement of the award is suspended until a decision has been rendered by the Court of Appeal.</p>
Courts' attitude towards the recognition and enforcement of	Iraqi courts are likely generally to refuse to recognise or enforce an arbitral award that has been annulled at its seat.

foreign awards annulled at the seat of the arbitration?	
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	According to our knowledge, remote hearings have not been conducted in Iraq. However, if a party refuses to respond or objects to the arbitration proceedings, Article 269 of the CPC allows arbitrators to refer to the competent court originally assigned for the dispute to issue its decision for any outstanding or pending matters that may be necessary in settling the dispute. There are no provisions or precedent regarding whether this would affect the recognition or enforceability of an award in the jurisdiction – however it is the case that refusal by a recalcitrant party (for any reason) must be resolved before arbitration.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>The practical difficulties in relation to the enforcement of awards in Iraq have been outlined throughout this chapter (specifically in the summary above).</p> <p>In addition to these points, there are difficulties for the enforcement of awards, if they relate to the enforcement of State assets. Specifically, the underlying issue lies in Article 62 of the Enforcement Law No. 45 of 1980, which prohibits taking possession of, or selling, state funds to settle a state debt, and which is applied strictly. This essentially means that the Iraqi state, and any state-owned entities, are immune from enforcement against their assets. This restriction is limited to state owned government entities or 'funds' (as described in the provision) which are located within the region.</p>
Is the validity of blockchain-based evidence recognised?	Blockchain based evidence is not recognised under Iraqi law.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	ϕ
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	ϕ
Other key points to note?	ϕ

## JURISDICTION DETAILED ANALYSIS

### 1. Legal Framework

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law?

The CPC has a chapter on arbitration, which is not based on the UNCITRAL Model Law.

#### 1.2 If not, what form does the arbitration law take?

The CPC chapter on arbitration consists of Articles 251-276. One must also refer to the Iraqi Civil Code in order to take a comprehensive view of the arbitration regime in Iraq.

### 2. The arbitration agreement

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

Where the seat of the arbitration is in Iraq, the courts will generally consider that the arbitration agreement is governed by domestic law as there is no framework regarding the circumstances under which a foreign law might govern an arbitration agreement.

Where parties have agreed on a foreign seat, it is unclear what law Iraqi courts will apply to the arbitration agreement. Where parties have not expressly agreed on a seat, the governing law of the arbitration agreement will be determined by the Iraqi courts, although here too it is unclear how they would approach this question.

In both of these situations, Iraqi courts may refer to the Civil Code. Article 32 of the Civil Code stipulates that the parties may select a law other than Iraqi law to apply to their contract (and, therefore, the substance of a dispute), subject to Iraqi public policy and morals. Article 25 of the Civil Code provides that the contractual obligations of the parties shall be governed by the law of the state in which the domicile of the contracting parties (if they have a common domicile) is located; if the parties have different domiciles, the law of the state in which the contract was concluded will be applied, unless the contracting parties have agreed otherwise or if another law was intended to apply.

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

There is no express provision relating to the independence of an arbitration agreement from the rest of the contract. The independence of an arbitration agreement can only be inferred from the provisions within the Civil Code. Under Iraqi law, an arbitration clause within a contract is arguably independent from the main contract. Therefore, the invalidity of the contract does not necessarily invalidate the arbitration clause. This assumption is based on Article 139 of the Civil Code, which states that, in case of invalidity of a provision of a contract, such invalidity does not affect the rest of the contract, unless the invalid provision was a condition precedent to the agreement.

#### 2.3 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

(Please see Question 2 above – the CPC does not envisage foreign arbitration, therefore the courts generally consider the jurisdiction, as well as the arbitration agreement, as being governed by Iraqi law).

#### 2.4 What are the requirements for the validity and/or enforceability of the arbitration agreement?

Article 252 of the CPC governs the validity of an arbitration agreement and notes that arbitration agreements can be entered into either before, during or after a dispute has arisen. It can also be agreed upon in a

separate contract.<sup>5</sup> In order to conclude a valid arbitration agreement, it should be made in writing. Only disputes or differences that can be resolved by conciliation are arbitrable.<sup>6</sup>

## 2.5 Application of arbitration agreements to non-signatory parties

An arbitration agreement will generally only bind its signatories. Article 272(2) of the CPC states that the arbitrators' award only applies to the disputing parties who have acknowledged the appointment of the arbitrators and to the subject matter of the arbitration.

## 2.6 Are there restrictions to arbitrability (anti-trust, employment law etc.)?

According to Article 704 of the Civil Code, the matters which are not capable of settlement are matters relating to public policy, criminal acts or personal matters such as inheritance and family law disputes. This interpretation is understood to extend to arbitration.

## 3. Intervention of domestic courts

### 3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

#### 3.1.1 If the place of the arbitration is inside of the jurisdiction?

Yes. If a party has commenced proceedings in an Iraqi court in relation to a contract that includes a valid arbitration agreement, the other party can contest the court's jurisdiction and invoke the arbitration agreement, provided that it does so at the first hearing and before putting forward any arguments on the merits, as per Article 253 of the CPC. A failure to do so will be deemed a waiver of the litigant's right to arbitrate and the arbitration agreement becomes null and void.

When ascertaining the existence and validity of the arbitration agreement, the courts will conduct a *prima facie* review of the arbitration agreement, and not review the merits of the dispute.

#### 3.1.2 If the place of the arbitration is outside of the jurisdiction?

There is no clear answer available at present to this question, although the limited available case law suggests that the answer may be 'yes'.

According to Article 76 of the CPC, a single case may not be filed in more than one court. Given that Iraqi law does not envisage the existence of foreign-seated arbitrations, it is unclear whether this provision would be applied by Iraqi courts to stay litigation before them.

In a decision of 2012, the Baghdad Commercial Court stayed litigation where annulment proceedings were pending in Paris in connection with a Paris-seated arbitration.<sup>7</sup> The court applied Article 253(3) of the CPC, which states that if a party objects to litigation based on the existence of an ongoing arbitration, the court shall postpone the suit until an arbitral award is issued.

Noteworthy aspects of this case are: (i) the applicant in this case (and the party seeking annulment in Paris) was the Iraqi Ministry of Finance; and (ii) in assessing the validity and enforceability of the arbitration agreement, the court relied on provisions within the UNCITRAL Model Law. More specifically, the court referred to Article 30 of the Civil Code, which states that, in the absence of a statutory provision concerning a situation of conflict of laws, the principles of private international law which are most commonly known (or prevalent) shall apply. In making a determination on the validity of the arbitration agreement, the Baghdad Commercial Court then relied on Article 8 of the UNCITRAL Model Law 2006, which provides that "*a court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so*

<sup>5</sup> This does not apply to insurance policies, as per Article 985 of the Civil Code.

<sup>6</sup> Article 254 of the CPC.

<sup>7</sup> *Iraqi Ministry of Finance v Fincanteri-Cantieri Navali Italiani SpA*, Court reference: No./1932/1952/Civil Panel/Coped/2012 t/2081/2082 (available [here](#) in Arabic).

*requests not later than when submitting its first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."*

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to stay litigation proceedings?**

Iraqi arbitration law does not expressly refer to the regulation of any interim measures of protection and there is no provision or precedent on this issue.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction, anti-arbitration injunctions or orders but not only)**

Articles 251 to 276 of the CPC do not make any express reference to circumstances where Iraqi courts can intervene in foreign-seated arbitrations.

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

Self-representation, although not expressly recognised under Iraqi law, is allowed.

As for retaining external counsel, there are no provisions under the CPC which require the appointment of local Iraqi counsel as opposed to foreign counsel. However, the Legal Profession Law (No. 173 of 1965) allows lawyers in Arab countries to plead before the courts of Iraq on a condition of reciprocity. In addition, Article 3(2) of said law provides that counsellors from non-Arab countries may participate with a local counsellor provided that they obtain the permission and approval of the Ministry of Justice. As regards Arab lawyers, they must obtain the approval of the Iraqi Bar Association. Although there is no precedent on this matter, it is generally understood that the Legal Profession Law extends to 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 be of such gravity such as to justify this outcome?**

Arbitrators are expected to possess full legal capacity and be impartial.<sup>8</sup> The detailed rules for the conduct of arbitrators and any grounds for dismissal are found in Articles 91-96 of the CPC, which stipulate that any of the followings grounds would render the arbitration proceedings null and void:

- (i) If the arbitrator is the spouse or relative (up to the fourth degree) of one of the parties;
- (ii) If the arbitrator, his spouse, one of his children, or parents has an interest in the dispute;
- (iii) If the arbitrator is the agent or lawyer of one of the parties; and/or
- (iv) If the arbitrator has already examined the dispute as a judge, expert or arbitrator, and if he has given any testimony regarding the matter.

Article 93 of the CPC provides for instances where, subject to the discretion of the courts, the arbitrator may be dismissed or disqualified:

- (i) If one of the parties is an employee of the arbitrator, has lived with him, or received a gift from him before or after his appointment;
- (ii) If there is any hostility or friendship between the arbitrator and one of the parties; and/or
- (iii) If the arbitrator had previously given an opinion about the dispute.

The decision of the court to disqualify an arbitrator is subject to appeal as stated in Article 261 of the CPC. Furthermore, according to Article 260 of the CPC, an arbitrator may not resign unless he/she has legitimate reasons to do so.

<sup>8</sup> Saleh Majid, 'Iraq Arbitration Law' (2004) Arab Law Quarterly (Vol. 19) 269.

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

Under Article 256(1) of the CPC, the court may intervene if the parties cannot agree on the choice of the arbitrator(s) and/or if one or more of the arbitrators appointed by them fail to act, withdraw or are dismissed. The court may also intervene if a recalcitrant party intentionally fails to nominate its co-arbitrator in order to frustrate the constitution of the tribunal.

Under Article 256(2), the court's decision to refuse the appointment of an arbitrator may be challenged before the Court of Cassation within seven days following the notification of the court's decision. The decision of the Court of Cassation is final.

#### **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 CPC provisions on arbitration do not deal with interim measures. It is considered that courts can issue interim measures in connection with arbitrations, as further explained below at para. 4.5.4. It is unclear whether the courts would be willing to consider an *ex parte* application for interim measures in support of an arbitration.

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

There is a rather flexible approach by Iraqi courts in that the parties may slightly deviate from the standard procedural practices depending on the terms of the arbitration agreement. Article 266 notes that arbitrators shall resolve the dispute according to the arbitration agreement and that they have the right to specify the timeframes for the parties to submit their pleadings and documents.

Although the courts are less stringent in requiring compliance with the rules of the CPC, if a matter falls outside the arbitrators' authority (i.e. a criminal procedure), the arbitrators are obliged to stay the proceedings and direct the parties to submit their claims to the competent court, as per Article 268 of the CPC.

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

There is no express rule regulating the confidentiality of arbitrations however arbitration proceedings may become confidential by the parties' agreement.<sup>9</sup>

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

The length and time period of arbitration is found under Article 262(1) of the CPC which notes that arbitration shall end upon the expiry of an agreed time period. As for the arbitrators, they must make their awards within 6 months from the date on which they accepted their role unless the parties have agreed otherwise.

##### **4.5.3 Does it regulate the place where hearings and/or meetings may be held and can hearings be held remotely even if a party objects?**

The CPC does not regulate the place for holding hearings and meetings. That said, Iraqi courts have not yet recognised explicitly the distinction between the seat or legal place of an arbitration and the venue of arbitration hearings and meetings. As regards hearings being held remotely, Iraqi arbitral courts have yet to undertake hearings remotely, therefore we cannot comment on whether it can be held remotely, despite a party's objection.

<sup>9</sup> Please refer to table in the in-house and corporate counsel summary (row 2) for additional details on confidentiality of arbitrations.

#### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

Given the absence of provisions in the CPC on this question, it is considered that, where a party requires interim measures in an arbitration seated in Iraq, it would apply to the tribunal, which can stay the proceedings and grant the moving party leave to submit its application for interim measures to the competent local court in line with the provisions of the CPC.

#### **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?**

The CPC empowers the arbitral tribunal to conduct proceedings and weigh evidence (Article 267). To the extent that a witness refuses to appear before the tribunal or abstains from answering questions, the tribunal may seek the assistance of the supervising court (Article 269). Further, the CPC does not contain specific provisions that impose restrictions on the presentation of witness evidence in arbitration.

#### **4.5.6 Does it make it mandatory to hold a hearing?**

There are no particular circumstances stipulated under the CPC where it is mandatory to hold a hearing.

#### **4.5.7 Does it prescribe principles governing the awarding of interest?**

Although the arbitration chapter in the CPC does not address the issue of interest, Article 171 of the Civil Code stipulates that late payments attract simple interest at the rate of 4% per annum in civil matters and 5% per annum in commercial matters. Furthermore, Article 172 provides that the parties may contract out of the statutory interest rate, provided the agreed rate does not exceed 7% per annum. It is understood that these provisions also apply to Iraq-seated arbitrations because rules relating to interest are considered as forming part of Iraqi public policy.<sup>10</sup>

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

There is no express legal provision that governs the allocation of arbitration costs. However, as a matter of practice, Iraqi courts have extended the application of provisions concerning the allocation of litigation costs to arbitration. The general rule under Iraqi law is that costs follow the event; that is, the losing party bears the legal fees of the successful party. However, legal fees (attorney fees) are nominal under the Iraqi legal system and are capped at 500,000 Iraqi Dinars (equivalent to EUR 378, at the time of writing) irrespective of the amount in dispute. The parties may agree a different allocation of arbitration costs, as the CPC is silent on this matter. The provisions relating to arbitration only refer to arbitrator fees. In particular, Article 276 of the CPC provides that arbitrator fees can be specified and varied through agreement of the parties in the arbitration contract or in a subsequent agreement. This is understood to mean that the allocation of arbitration costs may also be varied by agreement of the parties. If the parties cannot agree on the allocation of costs, such fees shall be determined by the competent tribunal.

### **4.6 Liability**

#### **4.6.1 Do arbitrators benefit from immunity from civil liability?**

It is generally agreed that an arbitrator becomes contractually bound to carry out his/her obligations, and that he/she must accordingly abide by the requirements of due process and the legal time limits for conducting the arbitration. As the arbitrator is under a contractual duty to carry out the arbitration accordingly, they may be liable for damages.

This notwithstanding, it is arguable that arbitrators could be held liable in tort if the court is satisfied that (a) the arbitrators have committed an unlawful act that falls outside the scope of the contractual relationship

<sup>10</sup> Dr. Kilian Balz & Dahlia Zamel, Iraq: Interest Rate Caps in International Finance Transactions, [2013] International Bar Association Legal Practice Division, 27.

between the arbitrators and the parties, and (b) the unlawful act caused damage to the claimant. Such a situation seems unlikely, however, would presumably be limited to instances of fraud and potentially gross negligence.

Pursuant to Article 265(1) of the CPC, Iraqi courts will uphold any agreement by the parties to waive the tribunal's liability, for example if such a waiver is contained in institutional rules, save that fraud cannot be excluded under Iraqi law.

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

There is no precedent or provisions envisaging potential criminal liability and it appears to be unlikely that arbitrators would be subject to criminal liability.

### **5. Award**

#### **5.1 Can parties waive the requirement for an award to provide reasons?**

Parties cannot waive the requirement for a reasoned award since Article 270(2) of the CPC requires that the award set out the reasons for the decision, describing, in detail, the evidence, claim, and arguments of the parties.

#### **5.2 Annulment and setting aside of Awards**

Iraqi law allows the parties to waive their right of revision for any judgments, and there is no express provision stating that parties cannot similarly waive their right to seek the annulment of an award. It should be noted that Iraqi law has limited the circumstances under which an award can be set aside. In addition to the grounds discussed at para. 4.2 above, Article 273 of the CPC stipulates the following grounds for setting aside an award:

- (i) If the award was not issued in a written document, or was based on an invalid agreement, or if it exceeded the limits of the agreement;
- (ii) If the award contradicts a rule pertaining to public policy, morality, or any of the arbitration rules set out in the CPC;
- (iii) If any of the reasons for retrial have occurred; and/or
- (iv) If there was a substantial error in the award or in any of the proceedings that might influence the validity of the award.

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

The process for the enforcement of foreign and local arbitral awards differ significantly under Iraqi law. The enforcement methods for Iraq-seated and foreign-seated awards respectively are outlined below.

##### **5.3.1 Iraq-seated arbitration – enforcement of arbitral awards**

Article 270 of the CPC provides that the arbitrators must issue their award in writing, either unanimously, or by majority. The structure of an arbitral award shall be similar to that of court judgment. The decision shall include a summary of the arbitration proceedings, and the parties' respective positions and documents, and provide reasons for the decision (as noted at para. 5.1 above).

Article 271 of the CPC provides that, after the arbitrators issue the award, they shall deliver an original copy thereof to each of the parties, and hand over an original of the award to the competent court along with the original arbitration agreement. This is to be done within three days after issuance of the award. Under Article 272 of the CPC, once the award is made and officially registered, the winning party may request the court to ratify the award. Only after the competent court ratifies the award will it be considered enforceable.

### 5.3.2 Foreign-seated arbitration – enforcement of arbitral awards

The general consensus is that foreign-seated awards are governed by the Enforcement of Foreign Judgments Law, provided the award has acquired the status of a judgment in its country of origin.

If the award has acquired the status of a judgment in its country of origin, the application for enforcement of the award must be filed with the Iraqi Court of First Instance in the jurisdiction which the defendant has their domicile. An official translation of the foreign court's decision upholding the foreign award, if it was not originally rendered in Arabic, should be attached to the application, which should state the reasons that formed the basis for the foreign court decision. An order will be issued if the judgment is final according to the legal provisions of the country of issue and the enforcement of the foreign judgment is not in conflict with Iraqi public policy.

### 5.3.3 Time-limits

Parties are under no obligation to request to set aside or annul an arbitral award within a certain time period.

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

There are no particularly atypical mandatory requirements that apply under Iraqi law to the rendering of a valid award in an arbitration seated in Iraq.

### 5.5 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Under Iraqi arbitration law, it is not possible to appeal an award.

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

There are no provisions in the arbitration chapter of the CPC that envisage the above. Applications for annulment are filed with a Court of First Instance, and it is presumed that the question of enforcement will be examined on a case-by-case basis.

If the decision of a Court of First Instance is appealed to the Court of Appeal, then enforcement of the award is suspended until a decision has been rendered by the Court of Appeal.

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

While Iraqi courts have not issued any decisions that determine a position on the matter, Iraqi courts are likely to refuse to recognise or enforce an arbitral award that has been annulled at its seat.

### 5.8 Are foreign awards readily enforceable in practice?

See above: the introduction to the arbitration practitioner summary and para. 5.3.2.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

Contingency fee arrangements are not prohibited in Iraq and there are no laws or regulations prohibiting third-party funding. Although there are no precedents on this issue yet, there are no particular reasons to suggest that such agreements would not be enforceable.

## 7. Arbitration and blockchain

### 7.1 Is the validity of blockchain-based evidence recognised?

Blockchain-based evidence is not recognised in Iraq.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

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### 7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

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### 7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Under Iraqi law, an electronically signed signature will only be recognised and accepted if it is in relation to electronic transactions made, or entered into, by persons or entities, or for transactions under which parties agree to execute electronically. Law No. 78 of 2012 (the “**Electronic Signature and Transactions Law**”) stipulates that electronic signatures submitted for court procedures and judicial announcements shall not be accepted as originals.

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

In 2010, the Iraqi Council of Ministers’ General Secretariat established a committee, comprising professors, judges and legal advisors, to draft a new arbitration law that would replace the CPC. Initial efforts to prepare a draft arbitration law have been impeded by security and political challenges, and progress on the draft arbitration law has stalled. There have been no recent reports regarding developments to this draft. It is therefore difficult to predict when Iraq might promulgate the anticipated arbitration law.

## 9. Compatibility of the Delos Rules with local arbitration law.

There are no provisions which would be deemed incompatible with the Iraqi Arbitration Law.

## 10. Further reading

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Iraq's arbitration infrastructure is severely underdeveloped as it is still in its rebuilding phase. The Iraqi government has launched programmes and workshops aimed at training judges and lawyers to better understand areas of commercial arbitration, both internationally and domestically. This then led to the establishment of specialised courts which heard more complex commercial disputes and led to an increased caseload. Despite the domestic success of these courts, as shown by the number of cases heard by these courts since 2010, there are issues in relation to the application of foreign laws to disputes held before Iraqi courts. Additionally, as parties are free to choose the resolution of disputes through international (or regional) centres, foreign parties are more likely than not to elect this option due to Iraqi courts' lack of expertise in international commercial arbitration.

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	ϕ
Main arbitration hearing facilities for in-person hearings?	ϕ
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	ϕ