

GUIDE TO ARBITRATION PLACES (GAP)

BAHRAIN

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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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

Arbitration is a popular method of dispute resolution in the Kingdom of Bahrain and across the GCC.<sup>1</sup> Since the issuance of Law No. 9 of 2015,<sup>2</sup> promulgating the Arbitration Law, Bahrain adopted the UNCITRAL Model Law with its 2006 Amendments on International Commercial Arbitration, as is, [hereinafter referred to as the "Arbitration Law"]. The Arbitration Law governs both international and domestic Arbitration, with Bahrain courts recognising both local and foreign arbitral awards. The introduction of this new law signified the unification with the international UNCITRAL regime in the Kingdom, positioning Bahrain as an attractive jurisdiction to settle commercial disputes.

In Bahrain, there are two arbitration institutions:

- (a) The GCC Commercial Arbitration Centre.
- (b) The Bahrain Chamber for Dispute Resolution ("BCDR").

It is worth mentioning that the BCDR created what has been called the world's first "Free Arbitration Zone". As such, unless they have agreed to do in advance, the parties do not have the right to challenge the arbitral award in Bahrain after it has been issued.<sup>3</sup> The BCDR adopted its first arbitration rules in 2010, which closely followed those of the International Centre for Dispute Resolution (ICDR). The BCDR revised its arbitration rules in 2017 and, most recently, in 2022.

Bahrain has ratified a number of judicial conventions concerning the recognition and enforcement of arbitral awards with the majority of Arab nations, including the GCC Treaty, pursuant to Legislative Decree No. (9) of 1996 and Riyadh Convention, pursuant to Legislative Decree No. (41) of 1999. Bahrain formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards pursuant to Legislative Decree No. (4) of 1988. Bahrain has also ratified the Hague Convention for the Pacific Settlement of International Disputes, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 ('ICSID').

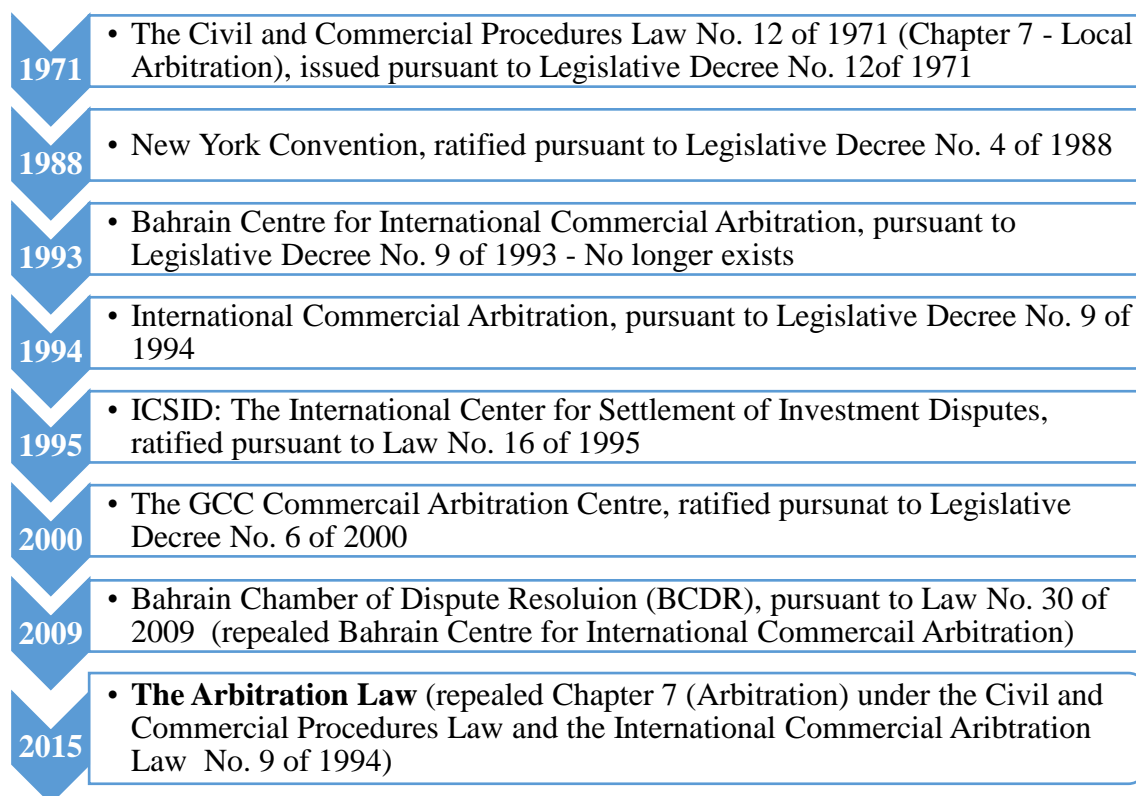
Please find below a general overview of the arbitration framework in Bahrain:

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<sup>1</sup> "GCC" refers to the Gulf Cooperation Council, a regional, intergovernmental, political, and economic union comprising of the Kingdom of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

<sup>2</sup> Law No. [9] of 2015, promulgating the Arbitration Law.

<sup>3</sup> Article 35.5 of the BCDR Rules of Arbitration, 2022.



Key places of arbitration in the jurisdiction?	Manama
Civil law / Common law environment? (if mixed or other, specify)	Mixed legal system, combining elements of Civil Law principles, English Common Law and Islamic Law [Sharia].
Confidentiality of arbitrations?	The Arbitration Law does not include any express provisions relating to the confidentiality of an arbitral proceeding. Typically, confidentiality in arbitration is dealt with through the rules selected by the parties or the arbitration institution overseeing the proceedings. It is a common practice for the parties to include confidentiality provisions in their arbitration agreements or select arbitration rules that explicitly address confidentiality concerns.
Requirement to retain (local) counsel?	As per the Arbitration law, <sup>4</sup> parties are permitted to be represented by foreign counsel, provided that the arbitration is classified as international commercial arbitration and is conducted within the Kingdom.
Ability to present party employee witness testimony?	The Arbitration Law does not explicitly delineate provisions concerning witness testimonies, leaving their admissibility to be generally governed by the applicable law of the dispute. According to the Bahraini Law of Evidence, the status of being an employee

<sup>4</sup> Article 6 of the Arbitration Law.

	<p>does not serve as a ground for dismissing a witness' statement. Nevertheless, it is crucial for the witness to disclose this essential information to the tribunal.<sup>5</sup> The tribunal, possessing sole discretion, will then determine the acceptance or rejection of the presented testimony based on the disclosed information.</p> <p>Additionally, the Bahraini Court of Cassation has established that rules of evidence are not inherently of a public policy nature.<sup>6</sup> Consequently, parties are afforded the freedom to mutually agree upon rules of evidence congruous to the governing law, providing them with flexibility in shaping the evidentiary framework in arbitration proceedings.</p>
<p>Ability to hold meetings and/or hearings outside of the seat and/or remotely?</p>	<p>In accordance with the Arbitration Law, the tribunal is granted the authority to convene at any location it deems suitable for various purposes, including member consultations, hearing testimonies from witnesses or experts, and inspecting goods, properties, or documents.<sup>7</sup> This flexibility entails that conducting meetings and/or hearings outside the initially agreed seat of arbitration or opting for remote proceedings does not impact the validity of the arbitration proceedings. The law affirms the tribunal's discretion in determining the most appropriate venue for these activities.</p> <p>Similarly, under the BCDR Arbitration Rules, the tribunal has the authority to convene at any location it deems suitable for various purposes.<sup>8</sup> This aligns with the flexibility granted by the Arbitration Law. However, it's noteworthy that the BCDR Arbitration Rules explicitly state that if activities occur elsewhere than the agreed-upon seat of arbitration, the arbitration shall be deemed conducted at the designated seat of arbitration. Any award shall be deemed made at the seat of arbitration. This distinct provision underscores the importance of the agreed seat in the BCDR Arbitration Rules.</p>
<p>Availability of interest as a remedy?</p>	<p>According to the Arbitration Law, the claimant is required to state to the Tribunal, inter alia, the relief or remedy sought in the arbitration proceedings. While the Arbitration Law does not address the matter of interest as a remedy, Legislative Decree No. 7 of 1987<sup>9</sup> promulgating the Law of Commerce ["Law of Commerce"] explicitly acknowledges the entitlement to interest in commercial debts. The Law of Commerce, therefore, serves as the governing framework when addressing the issue of interest in the context of commercial transactions.</p>
<p>Ability to claim for reasonable costs incurred for the arbitration?</p>	<p>The Arbitration Law does not provide specific guidelines on the allocation of costs. The issue of costs is typically left to the sole discretion of the tribunal in light of the parties' agreement. In the</p>

<sup>5</sup> Article 83 of Decree Law No. [14] of 1996 promulgating the Evidence Law in Civil and Commercial Matters.

<sup>6</sup> Appeal No. 631 of 2014, hearing dated 16 January 2017, Bahrain Court of Cassation.

<sup>7</sup> Article 20 of the Arbitration Law.

<sup>8</sup> Article 19.3 of the BCDR Rules of Arbitration, 2022.

<sup>9</sup> Legislative Decree No. [7] of 1987 Promulgating the law of Commerce; Bahrain Government, 1987.

	absence of such an agreement, the tribunal may consider the parties' claims at their discretion.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The Advocacy Law is silent with respect to contingency fee arrangements or third-party funding in arbitration proceedings. However, such fees (i.e. contingency) are common practice and dependent on a law firm's internal policy.
Party to the New York Convention?	Yes, Bahrain is a party to the New York Convention. Bahrain formally acceded to the convention with reservations through Legislative Decree No. (4) of 1988. This legislative act signifies Bahrain's commitment to the principles outlined in the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958.
Party to the ICSID Convention?	Yes, Bahrain is a party to the ICSID Convention. Bahrain formally ratified the treaty through Decree Law No. (16) of 1995, thereby approving the International Centre for Settlement of Investment Disputes (ICSID) Agreement.
Compatibility with the Delos Rules?	To a certain extent. Please see heading 9.0 ["Jurisdiction Detailed Analysis"] below for further explanation.
Default time-limitation period for civil actions (including contractual)?	<p>The Bahraini law encompasses several statutory limitation periods. The most notable categories can be outlined as follows:</p> <ul style="list-style-type: none"> <li>a) <b>Long Statute of Limitations [15 Years]:</b> Applicable to general civil liabilities. It is referred to as "long" due to its duration surpassing other limitations. It commences from the establishment of the right to submit a claim.<sup>10</sup></li> <li>b) <b>Ten-Year Statute of Limitations:</b> Applicable to commercial obligations and commences when the debt or obligation is due.<sup>11</sup></li> <li>c) <b>Five-Year Statute of Limitations:</b> This limitation period applies to the sums payable periodically at recurring intervals such as rent, salaries, and pensions, provided the debtor does not acknowledge the debt. It also extends to independent practitioners in professions, such as doctors, pharmacists, lawyers, engineers, experts, and brokers. Moreover, this five-year limit encompasses claims regarding taxes and dues owing to the State.<sup>12</sup></li> <li>d) <b>Three-Year Statute of Limitations:</b> This three-year limitation period applies to a range of legal situations, including actions for damages from unlawful acts, claims for compensation due to unjust enrichment, restitution of undue payments, actions arising from a voluntary agency, actions to set aside an act of alienation, claims related to warranties against architects or contractors, and cases involving insurance.<sup>13</sup></li> <li>e) <b>Annual Statute of Limitations [One Year]:</b> This period applies to labour claims arising from employment contracts</li> </ul>

<sup>10</sup> Legislative Decree No. [19] of 2001 with Respect to Promulgating the Civil Code.

<sup>11</sup> Article 87 of Legislative Decree No. [7] Of 1987 Promulgating the Law of Commerce.

<sup>12</sup> Articles 366, 367 and 368 of Legislative Decree No. [19] of 2001 with Respect to Promulgating the Civil Code.

<sup>13</sup> Articles 180, 183, 190, 200, 239, 619, and 722 of Legislative Decree No. [19] of 2001 with Respect to Promulgating the Civil Code.

	after termination. <sup>14</sup> Additionally, this limitation applies to various rights of action, including merchants, manufacturers supplying non-traders, and hotel/restaurant proprietors seeking payment for accommodation, food, and client-related expenses. This period also covers the rights of action for domestic servants and similar individuals. <sup>15</sup>
Other key points to note?	ϕ
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	76. <sup>16</sup>
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2023, if available?	ϕ

<sup>14</sup> Article 136 of Law No. [36] of 2012 Promulgating the Labour Law for the Private Sector.

<sup>15</sup> Article 369 of Legislative Decree No. [19] of 2001 with Respect to Promulgating the Civil Code.

<sup>16</sup> Available at: [BHR.pdf \(doingbusiness.org\)](https://www.doingbusiness.org).

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Arbitration Law was officially issued on 5 July 2015. It was subsequently published in the official gazette on 9 July 2015 and came into effect one month after the date of publication. <sup>17</sup>
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Bahrain embraced the UNCITRAL Model Law with its amendments adopted in 2006, incorporating them without any changes to the provisions outlined in the Arbitration Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	According to the Arbitration Law, the High Civil Court holds jurisdiction over matters related to arbitration as stipulated in the UNCITRAL Model Law, <sup>18</sup> such as, but not limited to, the appointment of an arbitrator in case of a disagreement between the parties.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The parties may seek <i>ex parte</i> pre-arbitration interim measures unless otherwise agreed upon. The arbitral tribunal has the authority to grant such measures upon request, and to enforce these measures, a request must be submitted to the competent court. Alternatively, interim measures can be sought from the competent court, <sup>19</sup> and the court is empowered to grant them without conflicting with the arbitration agreement or waiving the right to arbitrate. This flexibility allows parties to choose the most suitable forum for seeking interim measures based on their preferences or the circumstances of the case. <sup>20</sup>
Courts' attitude towards the competence-competence principle?	Bahrain has incorporated the UNCITRAL Model Law in its Arbitration Law, embracing the principle of competence-competence. <sup>21</sup> Consequently, Bahraini courts adhere to this principle, granting the arbitration tribunal the authority to rule on its jurisdiction. <sup>22</sup> Moreover, Bahrain recognizes the parties' right to appeal decisions on jurisdiction, to the competent court.  Furthermore, key regional arbitration institutions, including the BCDR <sup>23</sup> and the GCCCAC, <sup>24</sup> have expressly incorporated this principle into their arbitration rules, reinforcing their commitment to the competence-competence principle.
May an arbitral tribunal render a ruling on jurisdiction (or other	According to the Arbitration Law <sup>25</sup> and the BCDR Arbitration Rules, <sup>26</sup> unless otherwise agreed upon between the parties, the arbitral tribunal is required to provide reasoning for its decisions.

<sup>17</sup> Article 9 of the Arbitration Law; the Official Gazette, Issue No. 3217, Thursday, 9 July 2015.

<sup>18</sup> Article 3 of the Arbitration Law, and Article 6 of the UNCITRAL Model Law with its amendments adopted in 2006.

<sup>19</sup> Article 3 of the Arbitration Law.

<sup>20</sup> Articles 9 and 17 of the Arbitration Law, and Articles 14 and 26 of the BCDR Rules of Arbitration, 2022.

<sup>21</sup> Article 16 of the Arbitration Law.

<sup>22</sup> Appeal No. 940 of 2020, hearing dated 5 January 2021, Bahrain Court of Cassation.

<sup>23</sup> Article 27 of the BCDR Arbitration Rules, 2022.

<sup>24</sup> Article 20 of the GCCCAC Arbitration Procedures.

<sup>25</sup> Article 31.2 of the Arbitration Law.

<sup>26</sup> Article 35.2 of the BCDR Arbitration Rules, 2022.

issues) with reasons to follow in a subsequent award?	This principle underscores that parties have a legitimate right to understand the underlying rationale behind the tribunal's decisions.
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 Arbitration Law and the BCDR Arbitration Rules do not provide specific additional grounds for the annulment of awards beyond those based on the criteria for recognition and enforcement of awards under the New York Convention.
Do annulment proceedings typically suspend enforcement proceedings?	Annulment proceedings do not typically result in an automatic suspension of enforcement proceedings. Instead, the court has the discretion to adjourn its decision on its own accord or upon request. <sup>27</sup>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The attitude of Bahraini courts towards the recognition and enforcement of foreign arbitral awards that have been annulled at the seat of the arbitration is generally aligned with international arbitration principles and practices such as that stipulated by the New York Convention.
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?	Under the Arbitration Law, <sup>28</sup> the tribunal holds the broad authority to conduct proceedings at their discretion, provided they adhere to the principles of equality and each party is afforded a full opportunity to present their case.  Challenges to recognizing or enforcing an award typically require specific grounds according to the applicable law or procedural rules. Conducting a remote hearing is unlikely to be sufficient ground for challenging recognition or enforcement unless the challenging party demonstrates that the remote arrangement deprived them of a fair opportunity to present their case.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	There is nothing in any written law or regulation concerning any immunity to which public bodies are entitled as sovereign entities. However, while Government entities can be sued, their assets are not available for attachment.  Circular No. 13 of 2015, issued by the Ministry of Finance on 31st December 2015, mandates that ministries and official authorities in the Kingdom adhere to specific requirements upon entering into a contract including an arbitration clause. These requirements include (i) the utilization of the BCDR Model Arbitration Clause, (ii) the arbitration proceedings must be exclusively before the BCDR and (iii) the arbitration must align with the BCDR's Rules. Failure to comply with these requirements will result in the Ministry of Finance withholding payments for contracts executed following the issuance of this Circular.

<sup>27</sup> Article 36 of the Arbitration Law.

<sup>28</sup> Articles 18 – 24 of the Arbitration Law.



<p>Is the validity of blockchain-based evidence recognised?</p>	<p>Currently, there are no provisions in the law pertaining to the recognition of blockchain-based evidence in court. In our experience, if evidence can be supported by an expert report, it is likely that its validity will be recognised.</p> <p>In 2017, Bahrain’s Economic Development Board [“EDB”] first endorsed blockchain, with its approval of over 28 blockchain companies.<sup>29</sup> Whilst the law is yet to recognise the validity of blockchain-based evidence, Bahrain continues to be regarded as the fintech capital of the GCC. With its growing popularity in the region, we can presume rules pertaining to its use could soon be reflected in the legal system.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>In continuance of the above, there are currently no provisions pertaining to the recording of an award on a blockchain or its validity. However, it is our experience that in light of the courts' increasing acceptance and integration of electronic court services whereby parties can now stray from physical documents, pay court fees, file cases, etc, it is probable that the courts would be accepting of an award recorded on a blockchain. As such, this is yet to be regulated in the Kingdom and remains untested; thus, there is no express assurance that awards on blockchains will be deemed valid.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>ϕ</p>
<p>Other key points to note?</p>	<p>ϕ</p>

<sup>29</sup>

Available at: [Bahrain Emerges as a Blockchain Leader in the Middle East](#) | by [Jibrel](#) | [Jibrel](#) | [Medium](#)

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Bahrain has adopted the UNCITRAL Model Law with its 2006 amendments, including its Explanatory Note on International Commercial Arbitration, into its Arbitration Law without any changes.<sup>30</sup>

#### 1.2 When was the arbitration law last revised?

The Arbitration Law has not been revised since its promulgation in 2015.

### 2. The arbitration agreement

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

If the parties have expressly stated the governing law in the agreement, it is generally respected and upheld by the courts. In the absence of an explicit choice of law provision, courts may infer the parties' intention based on the circumstances surrounding the agreement, such as the seat of the arbitration, the place of performance, or the parties' nationality.

#### 2.2 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?

In the absence of an express designation of a 'seat' in the arbitration agreement, courts may turn to references to a 'venue' or 'place' of arbitration to determine the legal location or jurisdiction most closely associated with the arbitration. While the terms 'seat', 'venue', and 'place' are frequently used interchangeably, their legal implications can differ. Courts typically interpret these terms according to their context and the parties' intentions.

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

Yes, according to the Arbitration Law,<sup>31</sup> the arbitration clause within a contract is treated as a separate agreement unaffected by the nullity of the overall contract. The Bahraini courts have upheld this principle.<sup>32</sup>

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

It is important to highlight that the Arbitration Law adopted Option 1 under Article 7 of the Model Law with respect to the Definition and Form of Arbitration Agreement, as adopted in 2006. Option 1 offers many acceptable forms of an arbitration agreement. Therefore, the arbitration agreement must be made in writing, and this can take any form, including a separate agreement, exchanged letters, emails, or other written communications.<sup>33</sup> The agreement should express a clear intention to arbitrate and be agreed upon by parties with legal capacity. The subject matter should be arbitrable, complying with applicable laws and public policy, and ensuring clarity and certainty in its terms to ensure enforceability.

<sup>30</sup> Law No. 9 of 2015, promulgating the Arbitration Law

<sup>31</sup> Article 16/1 of the Arbitration Law.

<sup>32</sup> Appeal No. 185 of 2013, hearing dated 2 February 2015, Bahrain Court of Cassation.

<sup>33</sup> Article 7 of the Arbitration Law.

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

In Bahrain, the general principle follows the concept of privity of contract. In principle, only the original contract's signatories are bound by the arbitration agreement. However, third parties may be bound in instances of assignment, successorship, incorporation by reference, agency or representation, group of contracts, and within a group of companies.

## **2.6 Are there restrictions to arbitrability?**

Yes.

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law, etc.)?**

In Bahrain, parties generally have the flexibility to opt for arbitration in most disputes, except for criminal matters, disputes relating to family law matters, disputes contravening public policy, and matters where conciliation is not allowed.<sup>34</sup>

### **2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers, etc.)?**

Yes, restrictions on arbitrability can sometimes relate to specific persons or entities in Bahrain. In general, Bahraini law does not permit minors or persons with a legal disability to arbitrate.

## **3. Intervention of domestic courts**

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

The prevailing principle in Bahrain dictates that courts lack jurisdiction over cases with a valid arbitration agreement. This fundamental stance underscores that such an agreement prevents the court from hearing the case.

It is incumbent upon one of the parties to plead the existence of an arbitration agreement no later than submitting their initial defence. Failure to do so is deemed an implicit waiver, resulting in jurisdiction reverting to the court based on the general principle. Moreover, upon request during the initial statement on the substance of the dispute, Bahraini courts must refer parties to arbitration in matters governed by arbitration agreements.<sup>35</sup>

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

The arbitration agreement, being unrelated to public order,<sup>36</sup> necessitates that the courts refrain from autonomously rendering judgments on it. The parties must plead the existence of the arbitration clause before the court, as explained under paragraph 3 above. Moreover, the fact that the place of arbitration is within the jurisdiction does change the prevailing practice that courts are inclined to refer parties to arbitration when faced with a valid arbitration agreement.

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

As a signatory to the New York Convention, Bahrain is obligated to recognize written agreements where parties commit to arbitrate disputes related to a defined legal relationship.<sup>37</sup> Consequently, if the place of

<sup>34</sup> Appeal No. 132 of 2022, hearing dated 26 July 2022, Bahrain Court of Cassation.

<sup>35</sup> Article 8 of the Arbitration Law.

<sup>36</sup> Appeal No. 159 of 2014, hearing dated 28 April 2015, Bahrain Court of Cassation.

<sup>37</sup> Article II of New York Convention.

arbitration falls outside Bahrain's jurisdiction, the Bahraini courts are generally inclined to acknowledge and enforce such agreements, provided they are valid.

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

Injunctions issued by an arbitral tribunal are deemed binding and enforceable when presented to the competent court, irrespective of the jurisdiction in which they were issued. However, refusal of recognition or enforcement may occur under specific conditions outlined in Article 17 I of the Arbitration Law.

These conditions encompass scenarios where, at the request of the party against whom the injunction is invoked, the court is satisfied that the refusal is warranted based on grounds specified in articles 36(1)(a)(i), (ii), (iii), or (iv) of the Arbitration Law. Such grounds may include non-compliance with the arbitral tribunal's decision concerning providing security in connection with the injunction, or if the injunction was terminated or suspended by the arbitral tribunal or, where empowered, by the court of the State in which the arbitration takes place or under the law of which that injunction was granted.

Additionally, refusal may be based on court findings, such as incompatibility with its conferred powers unless reformulated, or if any of the grounds in article 36(1)(b)(i) or (ii) of the Arbitration Law apply to the recognition and enforcement of the interim measure.

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

Bahrain adheres to international arbitration principles by upholding party autonomy and restricting judicial intervention in arbitration cases.<sup>38</sup>

Nevertheless, there are specific scenarios where a court may intervene in arbitrations seated outside its jurisdiction. These instances include matters related to the enforcement of arbitration agreements, setting aside arbitral awards, or issues conflicting with public policy. This approach reflects a commitment to upholding the integrity of arbitration proceedings while striking a balance in addressing particular legal matters.

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

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

Parties are free to retain the services of foreign counsels for representation, provided the dispute is an international commercial arbitration dispute seated in Bahrain.<sup>39</sup> Moreover, the Arbitration Law does not restrict parties from representing themselves, offering flexibility in choosing their legal representation.

### **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 a gravity such as to justify this outcome?**

Underscoring the paramount importance of disclosure, Article 12 of the Arbitration Law accentuates its significance by prescribing the exclusion of the arbitrator as a penalty for non-compliance.

In the event of a dispute brought before the court regarding an arbitrator's failure of their obligation to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, the court's determination is likely to hinge on the specific circumstances and the consequential impact. It is common for courts to meticulously assess whether the undisclosed information is material and raises legitimate concerns about the arbitrator's capability to render an impartial award.

<sup>38</sup> Article 5 of the Arbitration Law.

<sup>39</sup> Article 6 of the Arbitration Law.

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

In *ad hoc* arbitrations, courts may intervene to facilitate the constitution of the arbitral tribunal, practically under specific circumstances. These instances include scenarios where, in three-arbitrator panels, parties fail to appoint arbitrators within the designated time frame or upon their failure to agree on a sole arbitrator. Additionally, court involvement may occur when parties fail to agree on the selection of the tribunal's chairperson or to address vacancies created by the withdrawal or resignation of an appointed arbitrator. Moreover, parties may request court intervention if the prescribed appointment procedure is not followed.

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

Article 9 of the Arbitration Law explicitly permits parties to request that the court issue interim measures before or during the arbitration proceedings without conflicting with the arbitration agreement. Moreover, Article 17 (j) reaffirms the court's authority to issue interim measures related to arbitration proceedings, irrespective of the place of the arbitration.

The court exercises this power in accordance with its procedures, acknowledging the unique aspects of international arbitration. The willingness of Bahraini courts to consider *ex parte* requests for interim measures is contingent on case-specific facts and the urgency or necessity demonstrated by the requesting party. Courts in Bahrain typically entertain such requests when there is a clear showing of urgency or risk of irreparable harm.

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

The regulation of arbitration conduct extends beyond arbitrators' duty of being independent and impartial. While the primary focus is ensuring arbitrators' impartiality, the Arbitration Law governs various facets of the arbitration procedures. This includes addressing procedural matters, enforcing awards, and regulating the conduct of the arbitrating parties. Provisions within the law extend to pivotal areas, such as arbitrator selection, submission of evidence, and the form and contents of the award.

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

The Arbitration Law does not contain explicit provisions concerning confidentiality. Typically, confidentiality in arbitration is addressed through the rules chosen by the parties or the arbitration institution overseeing the proceedings. It is common for parties to incorporate confidentiality provisions in their arbitration agreements or opt for arbitration rules that expressly cover confidentiality concerns.

In accordance with Article 40.1 of the BCDR Arbitration Rules, confidential information disclosed by the parties or witnesses during the arbitration proceedings must not be divulged by any relevant party, witness, arbitrator, emergency arbitrator, expert, secretary of the arbitral tribunal or by the Chamber [including its officers and employees]. This underscores the commitment to maintaining confidentiality throughout the arbitration process.

Moreover, Article 40.2 adds a layer to the confidentiality provisions by specifying that an award can only be published where the parties' consent has been given. However, the Chamber retains the right to publish specific awards, orders, decisions, and rulings that were already publicized during the course of enforcement. Unless otherwise agreed in writing by both parties, the Chamber may publish the aforementioned documents after redacting the parties' names and other personal details.

Save where the parties agree in writing otherwise, the arbitral tribunal may issue an order concerning the confidentiality of the arbitration or any matters related to it. The tribunal is empowered to employ any necessary means to protect confidential information, including trade secrets. This provision underscores the commitment to protecting confidential information unless both parties explicitly agree otherwise in writing.

Where the parties' counsel is subject to different rules concerning privilege, the arbitral tribunal shall, to the extent possible, apply the same rule to all parties, noting that preference should be given to the rule providing the highest level of protection.

Furthermore, the communications between a client and their counsel are privileged by default according to the Advocacy Law, the Penal Code and, most importantly, the Protection of Personal Data Law No. 30 of 2018 ("PDPL").

Moreover, Article 1 of Law No. (7) of 2003 on Trade Secrets stipulates that any natural or legal person is prohibited from disclosing information in his possession where such information is confidential or inaccessible for those who usually deal with such type of information, where such information is of commercial value due to its confidentiality, or if its confidentiality is dependent on the effective measures undertaken by its legal holder to preserve it.

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

The Arbitration Law does not prescribe the length of the arbitration proceedings. Instead, it specifies the commencement date of arbitral proceedings,<sup>40</sup> leaving the timeline for subsequent phases to the parties' agreement or the rules of the relevant arbitration institution. The institution rules, such as BCDR<sup>41</sup> and GCCCAC,<sup>42</sup> set specific timeframes for issuing the final award. However, these provisions offer guidance rather than comprehensive regulation, allowing flexibility based on party consensus or particular circumstances.

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

The Arbitration Law does not prescribe a fixed location for hearings and meetings, offering parties and the arbitral tribunal the flexibility to determine such venues at their convenience. The law further grants the tribunal the authority to opt for remote hearings and/or meetings, even when faced with objections, as long as it does not impede on a party's fair ability to present their case.

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

Yes, arbitrators are permitted to issue interim measures. The party seeking such measures must demonstrate to the arbitral tribunal that:

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.<sup>43</sup>

#### **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 Arbitration Law does not explicitly regulate the arbitrators' authority to admit or exclude evidence, leaving the matter to the governing law of the dispute. However, empowered by the Law of Evidence, the

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<sup>40</sup> Article 21 of the Arbitration Law.

<sup>41</sup> Article 35.1 of the BCDR Arbitration Rules, 2022.

<sup>42</sup> Article 32 of the GCCCAC Arbitration Procedures.

<sup>43</sup> Article 17 (A) of the Arbitration Law.

tribunal has the discretion to assess evidence with due justification. In light of this, arbitrators play a pivotal role in demonstrating integrity, justice, and fairness, particularly given the discretion granted to them.

Employment status alone does not warrant the dismissal of a witness's statements. However, the witness must transparently disclose their employment to the tribunal.<sup>44</sup> With sole discretion, the tribunal will decide whether to admit or exclude their testimony according to the disclosed information.

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

No, the Arbitration Law does not make it mandatory to hold a hearing. The decision to conduct a hearing is typically contingent on the parties' agreement or the tribunal's discretion.. Despite the absence of a mandatory requirement, hearings are often considered an integral part of arbitration proceedings, especially in complex disputes. Conducting hearings provides parties with the opportunity to present their case, cross-examine witnesses, and respond to evidence, contributing to the fairness and transparency of the arbitration procedures.

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

The Arbitration Law does not prescribe principles governing the awarding of interest. Instead, Legislative Decree No. 7 of 1987<sup>45</sup> promulgating the Law of Commerce ["Law of Commerce"] addresses the entitlement to interest in commercial debts.

As outlined in Article 81 of the Law of Commerce, the interest for the delay of payment is to be accrued upon the maturity of such debts, unless the law or the agreement between the parties provides otherwise. Moreover, the article explicitly states that the total interest charged by the creditor should not exceed the principal amount for debts with a repayment period not exceeding seven years. Any provision contrary to this stipulation is deemed null and void.<sup>46</sup>

Furthermore, in accordance with Article 76.3<sup>47</sup> of the Law of Commerce, interest rates are calculated at the legally applicable rate unless parties agree otherwise, ensuring the rate does not surpass legally prescribed limits.

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

No, the Arbitration Law does not explicitly prescribe principles governing the allocation of arbitration costs. The determination of arbitration costs is typically subject to the parties' agreement or the arbitral tribunal's discretion. In the absence of such an agreement, the tribunal shall have the authority to decide on the allocation of arbitration costs based on the circumstances of the case.

### **4.6 Liability**

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

The Arbitration Law provides arbitrators with limited immunity in that they may be held liable for any gross misconduct, act, or omission conducted in bad faith. This provision further applies to all personnel working for the arbitrator or those authorised by them to carry out their assigned duties.

<sup>44</sup> Article 83 of Decree Law No. [14] of 1996 promulgating the Evidence Law in Civil and Commercial Matters.

<sup>45</sup> Legislative Decree No. [7] of 1987 Promulgating the law of Commerce; Bahrain Government, 1987.

<sup>46</sup> Saad Al Doseri, Shooq Mohamed and Maryam Al Hashemi, Litigation & Dispute Resolution, Global Legal Insights, 2022, p. 40.

<sup>47</sup> Article 76.3 of the Law of Commerce; Economic Development Board, 2001.

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

The Arbitration Law does not prescribe provisions for criminal liability for parties' participating in arbitration proceedings. However, this does not imply immunity from criminal liability for participants. Instead, criminal liability arising from unlawful acts is subject to the applicable laws, such as the Penal Code,<sup>48</sup> which prescribes offences and penalties independently from the Arbitration Law.

### **5. The award**

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

Yes, the Arbitration Law affords the parties the authority to mutually agree on granting the tribunal the discretion to issue an award without specifying reasons.<sup>49</sup>

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

In order for an arbitration award rendered at the seat of the jurisdiction to be valid, it must meet several crucial requirements. These include being in writing and signed by the majority of arbitrators. Unless otherwise agreed, the award should explicitly state the reasons for the decision and specify the date and place of arbitration.<sup>50</sup> The tribunal is obligated to adhere to the parties' agreement and the procedural law governing the dispute. If the award's issuance timeframe is stipulated, the tribunal should abide by it. Ensuring all parties involved have received adequate notice and an opportunity to present their case is paramount. Other vital considerations comprise maintaining arbitrator impartiality, adherence to procedural rules, conformity with public policy, and application of the agreed governing law. These collective elements guarantee the award's validity, integrity, and enforceability within the jurisdiction.

Unlike other jurisdictions in the region, there is no further requirement that an award must be issued in the name of His Majesty the King.

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

While the general principle in arbitration dictates the final and binding nature of awards, the distinctive character of arbitration permits parties to tailor their dispute resolution process. Accordingly, parties possess the autonomy to include appeal mechanisms within their arbitration agreements.

The Arbitration Law typically designates court applications for setting aside as the exclusive recourse against arbitral awards.<sup>51</sup> However, parties can potentially agree to an appeal process before an arbitral tribunal. This flexibility is evidenced in practical cases where parties have opted to integrate appeal provisions into their arbitration agreements, showcasing arbitration's adaptability to the specific preferences and requirements of the involved parties.

#### **5.4 What procedure exists for the recognition and enforcement of awards, what time limits apply and is there a distinction to be made between local and foreign awards?**

Enforcement procedures for arbitration awards, whether local or foreign, adhere to uniform processes. It is imperative to note that Bahrain entered the New York Convention with certain reservations explicitly

<sup>48</sup> Decree Law No. [15] of 1976 Promulgating the Penal Code.

<sup>49</sup> Article 31 (2) of the Arbitration Law.

<sup>50</sup> Ibid.

<sup>51</sup> Article 34 of the Arbitration Law.



pertaining to reciprocity. It exclusively recognizes and enforces arbitration awards from countries that are signatories to the Convention.<sup>52</sup>

To initiate enforcement, a formal request, accompanied by the prescribed fee, the award, and the arbitration agreement, shall be submitted to the competent court with due notification to the opposing party. Following a meticulous review, the competent court shall issue an enforcement order, provided that the award complies with conditions outlined in the New York Convention, the Arbitration Law, and/or the procedural law.<sup>53</sup>

If a foreign award is made by another signatory's arbitral tribunal, the Bahraini courts will enforce it on the condition that no other nullifying procedures have been initiated, and provided that the party applying for enforcement supplies a duly authenticated original award or a duly certified copy thereof, the original agreement referring to arbitration (which must be duly translated to Arabic). There are two conditions to Bahrain's implementation of the foreign arbitration awards under the Convention: (1) that it will only enforce arbitral awards issued in other signatory states of the Convention; and (2) that the awards relate only to disputes which arise from commercial legal relationships (as defined under Bahraini law).

Under the terms of the Convention, Bahrain courts will be entitled to refuse to enforce a foreign arbitration award only on certain narrowly defined grounds. Broadly speaking, enforcement may be refused where (i) the arbitration agreement was invalid, (ii) a party was not given an opportunity to present its case, (iii) the tribunal of arbitrators that decided the dispute was incorrectly formed or acted beyond its competence, (iv) the award is not final in the state in which it was made, (v) under Bahraini Law the subject matter of the dispute cannot be decided by arbitration and (vi) enforcement of the award would be against the public policy of Bahrain.

The timeframe for enforcement may vary, typically requiring a few months, contingent upon the unique aspects of each claim. Subsequent to obtaining the enforcement order, a dedicated file shall be opened in the enforcement court to facilitate the initiation of measures to collect awarded amounts and/or to impose relevant procedural actions.

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

The introduction of annulment or appeal proceedings does not automatically suspend the exercise of the right to enforce an arbitral award in Bahrain. The court retains discretionary authorities and may adjourn its enforcement decision if deemed appropriate. Furthermore, upon the application of the party seeking recognition or enforcement of the award, the court has the authority to order the other party to provide appropriate security.<sup>54</sup> This nuanced approach allows for flexibility in the enforcement process, with the court considering the specific circumstances of each claim.

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

Yes. According to Article 36 of the Arbitration Law, recognition or enforcement of an arbitral award, regardless of the country in which it was made, may be refused only upon request of the party against whom it is invoked. This refusal can be based on furnishing proof to the competent court, where recognition or enforcement is sought, 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.

<sup>52</sup> Article 1 of Legislative Decree No. (4) of 1988 with respect to approving the State of Bahrain's accession, with reservations, to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, of 1958.

<sup>53</sup> Article 3 of Decree Law No. [22] of 2021, Promulgating the Execution Law in Civil and Commercial Matters.

<sup>54</sup> Article 36 of the Arbitration Law, and Article VI of New York Convention.

## 5.7 Are foreign awards readily enforceable in practice?

Foreign awards that meet the specified criteria in applicable laws, particularly those in alignment with the New York Convention, are typically readily enforceable in Bahrain. The specific procedures for enforcement, grounds for refusal, and the overall ease of enforcement are subject to the provisions outlined in the applicable legal framework and the extent of reciprocity between Bahrain and the jurisdiction of the award's origin. It is imperative to note that the enforceability of such awards is contingent on their compliance with Bahrain's public policy.

## 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 laws, regulations or restrictions?

There are no express provisions in relation to third-party funding in Bahrain that are applicable to arbitration or litigation. Additionally, there is no professional funding market for litigation or arbitration in Bahrain. Under the Advocacy Law, an attorney is entitled to fees as per his agreement with his client. An attorney is prohibited from taking a percentage of the claimed amount or the ruled amount. In general, an attorney may not enter into an agreement that personally benefits him, due to a dispute. In the absence of agreement, the High Civil Court shall determine the attorney's fees.

The Advocacy Law is silent in respect of contingency fees. However, such fees are common practice in the market, and depend on the law firms' policies.

## 7. Arbitration and technology

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

Not regulated yet. It will likely be subject to experts' reports.

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

Not regulated yet.

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

Not regulated yet.

### 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?

While the Arbitration Law is silent in regard to acceptance of awards which have been electronically signed, whether (a) by inserting the image of a signature, or (b) using encrypted electronic keys authenticated by a third-party certificate as an original for the purposes of recognition and enforcement, Article 7 (4)<sup>55</sup> of the Arbitration Law stipulates that the requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; *"electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic,*

<sup>55</sup> Article 7 (4) of the Arbitration Law.

*optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy”.*

Additionally, the Legislative Decree No. (54) of 2018 on Electronic Transactions and Communications<sup>56</sup> which repealed Legislative Decree No. (28) of 2002 on Electronic Transactions<sup>57</sup> set forth provisions governing transactions and dispositions of all types, including the legality and enforceability of electronic signatures in the formation of contracts. Specifically, Article 6 of the Law permits the use of e-signatures provided that a method is used to identify that party and to indicate that party's intent to bind itself.

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

As of December 2023, there are no apparent indications of imminent reforms to the Arbitration Law. However, the legal landscapes can evolve, and there might be a possibility of future changes or reforms.

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

We have not identified any provision in the Delos Rules that would, in principle, directly conflict with the Arbitration Law in the Kingdom of Bahrain.

#### **10. Further reading**

Saad Al Doseri, Shooq Mohamed and Maryam Al Hashemi, *Litigation & Dispute Resolution, Global Legal Insights*, 2022.

Saad Al Doseri, Maryam Al Hashemi, *Bahrain Chapter, ICLG's International Arbitration 2021*.

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<sup>56</sup> Legislative Decree No. [54] of 2018 on Electronic Transactions and Communications.

<sup>57</sup> Legislative Decree No. [28] of 2002 on Electronic Transactions.

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	The G.C.C Commercial Arbitration Centre ["GCCAC"] and the Bahrain Chamber for Dispute Resolution ["BCDR"].
Main arbitration hearing facilities for in-person hearings?	The BCDR & GCCAC.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	In-house. Easy Printing Bahrain. <sup>58</sup>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	∅ Usually, outsourced from UAE.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	TransPerfect.
Other leading arbitral bodies with offices in the jurisdiction?	∅

<sup>58</sup>

See [Easy Printing Services Bahrain - Official Website \(easyprinting-bh.com\)](https://www.easyprinting-bh.com)