

# Middle East Legal Insight: Bahrain Arbitration Law

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### Jurisdiction

Bahrain

### Related Legislation

Bahrain Law No. 9/2015, UNCITRAL Model Law on International Commercial Arbitration 1985 as amended, Bahrain Decree-Law No. 30/2009, Bahrain Decree-Law No. 9/1994, Bahrain Decree-Law No. 12/1971

### Abstract

In July 2015, Bahrain passed a stand-alone arbitration law, which repealed the few provisions regulating arbitral proceedings contained in Bahrain Decree-Law No 12/1971 and Bahrain Decree-Law No 9/1994.

### Analysis

Bahrain Law No. 9/2015 incorporates entirely the 1985 UNCITRAL Model Law on International Commercial Arbitration with the amendments adopted in 2006 (UML) and, in doing so, upholds the Kingdom's strategy to ensure fair and speedy resolution of disputes in the commercial field (as outlined in the Economic Vision 2030). The 2015 law highlights Bahrain's efforts to boost the recourse to arbitration as an alternative to litigation, by highlighting the legal standards implemented in the country to those accepted widely in international commercial arbitration. Bahrain Law No. 9/2015 can be understood as the logical consequence of Bahrain Decree-Law No. 30/2009 that established the Bahrain Chamber for Dispute Resolution (BCDR), the first arbitration freezone in the world, and introduced the concept of statutory arbitration or so called 'jurisdiction by law'.

Since the full UNCITRAL Model Law is part of Bahrain Law No. 9/2015, the arbitration law itself is extremely succinct and amounts to eight articles only.

## **Applicability**

Article 1 of Bahrain Law No. 9/2015 and Article 2 of Bahrain Law No. 9/2015 circumscribe the scope of its application. From a territorial and temporal point of view, the law regulates all arbitral proceedings taking place in Bahrain and those administered abroad when the parties to the dispute have agreed to its applicability.

One of the peculiarities of the law is that it applies to all arbitrations started after its entry into force, even if the arbitration agreement was signed before the arbitration law was promulgated. This is probably because the law mainly refers to the rules of the UNCITRAL Model Law, which were already an appendix to Bahrain Decree-Law No. 9/1994. In that regard, the new arbitration law is merely an updated version of Bahrain Decree-Law No. 9/1994 incorporating the latest version of the UNCITRAL Model Law.

The material scope of application is identified through the commercial nature of the dispute submitted to arbitration, even though the legislator distinguishes between national and international proceedings. In fact, Article 2(1) of Bahrain Law No. 9/2015 clarifies that the applicability of the UNCITRAL Model Law, as regulated in Article 1(1) of Bahrain Law No. 9/2015 does not represent in any way an impediment to the application of the Bahraini provisions to arbitral proceedings. This is a very important element, considering that the UNCITRAL Model Law provides, in a footnote to the same provision, the interpretation of the term 'commercial' in connection with international arbitration.

Article 2(2) of Bahrain Law No. 9/2015 emphasises the necessity to consider the criteria set forth in Article 2(A) of the UNCITRAL Model Law regarding the international origin of the dispute:

- the need to promote uniformity and guarantee an application in good faith of the rule of law; and
- the cross-reference to any general principle accepted in the arbitral arena whenever the Bahraini law has to be applied in international commercial arbitrations.

## **Arbitration agreement**

The Bahraini legislator in Article 3 of Bahrain Law No. 9/2015 opted for the first option of Article 7 of the UNCITRAL Model Law, which, between two alternatives offered by the Model Law in defining the arbitration agreement, is the most detailed one. According to Article 7 of the UNCITRAL Model Law, the arbitration agreement can take either:

- (i) the form of an arbitration clause contained in the underlying contract; or
- (ii) the form of a submission agreement, where the parties consent to submit to arbitration all or specific disputes, whether contractual or non-contractual.

In order to be valid, the agreement must be in writing, but the written requirement can be met in several ways. Indeed, according to the UNCITRAL Model Law, such requirement is fulfilled in any of the circumstances below:

- The content of the agreement is recorded in any form, although the clause or the contract have been concluded orally, by conduct, or by other means.
- The parties have exchanged electronic communications and the information contained in such communications are accessible and usable for future reference.
- The existence of the agreement can be inferred by an exchange of the statement of claim and the defence, in which one of the parties refers to the agreement and the other does not deny it.
- The underlying contract refers to any document between the disputants containing an arbitration clause, insofar as the reference can be used as to make the clause part of the contract.

### **Arbitral tribunal and legal representation**

The law does not establish specific rules for the composition of the arbitral tribunal, an aspect that is, consequently, regulated in accordance with the provisions of the Model Law. The only exception is represented in Article 3 of Bahrain Law No. 9/2015 where the legislator, abiding by Article 6 of the UNCITRAL Model Law states that the High Civil Court is Bahrain's competent authority to perform the following functions of arbitration assistance and supervision:

- Appointment of the arbitrator(s) if the parties fail to agree on a procedure to do so, or if the parties to the dispute, the arbitrator(s) or a third party fail to perform any of the duties entrusted to them respectively in this regard.
- Decision on the challenge of an arbitrator, whether the parties did not consent to any challenge procedure or the challenge has been not successful.
- Decision on the termination of the mandate of an arbitrator for failure or impossibility to act.
- Decision on the jurisdiction of an arbitral tribunal when the matter has been decided upon as a preliminary question.
- Power to set aside the arbitral award in specified hypotheses regulated under Article 34(2) of the UNCITRAL Model Law.

As far as the representation of the parties before the arbitral tribunal is concerned, the law states that non-Bahraini lawyers can serve as arbitrators only when the arbitral proceedings held in Bahrain is an international commercial dispute.

### **Arbitrator's civil liability**

The issue of the arbitrator's immunity in undertaking the tasks connected to his duties is highly debated and does not have a unanimous response in the jurisdictions worldwide. In this regard, the Bahraini legislator has adopted an intermediate solution, which seems to compromise between the freedom of the arbitrator to decide a dispute without fear of possible legal consequences, and the necessity to minimise careless behaviours in the decision-making process. In fact, Article 7 of Bahrain Law No. 9/2015 establishes that the arbitrator is considered liable for any act or omission in the performance of his duties only if he/she acted or omitted to act in bad faith or his/her conduct was the consequence of a serious mistake. The same principle applies to the employees of the arbitrator or any person authorised by him/her to complete an activity in connection with the arbitration. However, the arbitrator is considered liable if he/she resigns without serious reasons or at any time deemed improper.

### **Issues entirely regulated in accordance with the Model Law**

Due to the legislator's approach to incorporate the full text of the UNCITRAL Model Law as a part of Bahrain Law No. 9/2015, some important steps of the arbitral proceedings are not specifically regulated but are left to the norms included in the Model Law. Among others, the jurisdiction of the arbitral tribunal, the power to issue interim measures and preliminary orders, the issuance of the arbitral award and the termination of the proceedings are the major ones.

### **Conclusion**

Bahrain was one of the first states in the Gulf Cooperation Council to open the boundaries of its national legal system to international texts in the field of arbitration, in line with the Economic Vision 2030, and the country's long-standing strategy to attract foreign investments by ensuring a reliable, fair and transparent dispute resolution system for the business operators.

The arbitration law constitutes a key tool to achieving this goal, although it is just one element within the Bahraini legislative framework. A framework, which on the one hand, recognises as part of the domestic law other instruments of supranational nature relating to arbitration (among other things the New York Convention), and on the other has activated, in agreement with the American Arbitration Association, a chamber for dispute resolution with the aim of transforming the Kingdom into a regional hub for the settlement of commercial disputes by resorting to ADR mechanisms.

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