

---

# THE DISPUTE RESOLUTION REVIEW

---

EIGHTH EDITION

EDITOR  
JONATHAN COTTON

LAW BUSINESS RESEARCH

# THE DISPUTE RESOLUTION REVIEW

---

The Dispute Resolution Review  
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Dispute Resolution Review - Edition 8  
(published in February 2016 – editor Jonathan Cotton)

For further information please email  
[Nick.Barette@lbresearch.com](mailto:Nick.Barette@lbresearch.com)

# THE DISPUTE RESOLUTION REVIEW

---

Eighth Edition

Editor  
JONATHAN COTTON

LAW BUSINESS RESEARCH LTD

PUBLISHER  
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER  
Nick Barette

SENIOR ACCOUNT MANAGERS  
Thomas Lee, Felicity Bown, Joel Woods

ACCOUNT MANAGER  
Jessica Parsons

MARKETING ASSISTANT  
Rebecca Mogridge

EDITORIAL ASSISTANT  
Sophie Arkell

HEAD OF PRODUCTION  
Adam Myers

PRODUCTION EDITOR  
Caroline Herbert

SUBEDITOR  
Anna Andreoli

CHIEF EXECUTIVE OFFICER  
Paul Howarth

Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
© 2016 Law Business Research Ltd  
[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2016, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – [gideon.roberton@lbresearch.com](mailto:gideon.roberton@lbresearch.com)

ISBN 978-1-909830-83-7

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND  
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND  
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW  
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW  
THE CARTELS AND LENIENCY REVIEW  
THE TAX DISPUTES AND LITIGATION REVIEW  
THE LIFE SCIENCES LAW REVIEW  
THE INSURANCE AND REINSURANCE LAW REVIEW  
THE GOVERNMENT PROCUREMENT REVIEW  
THE DOMINANCE AND MONOPOLIES REVIEW  
THE AVIATION LAW REVIEW  
THE FOREIGN INVESTMENT REGULATION REVIEW  
THE ASSET TRACING AND RECOVERY REVIEW  
THE INTERNATIONAL INSOLVENCY REVIEW  
THE OIL AND GAS LAW REVIEW  
THE FRANCHISE LAW REVIEW  
THE PRODUCT REGULATION AND LIABILITY REVIEW  
THE SHIPPING LAW REVIEW  
THE ACQUISITION AND LEVERAGED FINANCE REVIEW  
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW  
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW  
THE TRANSPORT FINANCE LAW REVIEW  
THE SECURITIES LITIGATION REVIEW  
THE LENDING AND SECURED FINANCE REVIEW  
THE INTERNATIONAL TRADE LAW REVIEW  
THE SPORTS LAW REVIEW

# ACKNOWLEDGEMENTS

---

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADAMS & ADAMS

ARTHUR COX

ATTIAS & LEVY

AZB & PARTNERS

BAKER & PARTNERS

BONELLIEREDE

BREDIN PRAT

BUFETE HERNÁNDEZ ROMO

CONSULEGIS ABOGADOS

CRAVATH, SWAINE & MOORE LLP

DITTMAR & INDRENIUS

HENGELER MUELLER

HERGÜNER BILGEN ÖZEKE ATTORNEY PARTNERSHIP

JUN HE LAW OFFICES

KBH KAAUNUN

KYRIAKIDES GEORGOPOULOS LAW FIRM

LS HORIZON LIMITED

MANNHEIMER SWARTLING ADVOKATBYRÅ AB

MAPLES AND CALDER

*Acknowledgements*

---

MOHAMMED AL-GHAMDI LAW FIRM IN ASSOCIATION WITH  
NORTON ROSE FULBRIGHT US LLP

MOLITOR AVOCATS À LA COUR

MOTIEKA & AUDZEVIČIUS

NIEDERER KRAFT & FREY

OSLER, HOSKIN & HARCOURT LLP

PATRIKIOS PAVLOU & ASSOCIATES LLC

PINHEIRO NETO ADVOGADOS

PIPER ALDERMAN

SCHRECK LAW OFFICES

SHIN & KIM

SLAUGHTER AND MAY

SOFUNDE, OSAKWE, OGUNDIPE & BELGORE

STRELIA

SZECSKAY ATTORNEYS AT LAW

TSMP LAW CORPORATION

ȚUCA ZBÂRCEA & ASOCIAȚII

URÍA MENÉNDEZ

UTEEM CHAMBERS

WOLFF GSTOEHL BRUCKSCHWEIGER ADVOKATURBÜRO

WU & PARTNERS, ATTORNEYS-AT-LAW

YOUNG CONAWAY STARGATT & TAYLOR, LLP



# CONTENTS

---

<b>Editor's Preface</b>	.....vii
	<i>Jonathan Cotton</i>
<b>Chapter 1</b>	AUSTRALIA..... 1
	<i>Malcolm Quirey and Gordon Grieve</i>
<b>Chapter 2</b>	BAHRAIN ..... 49
	<i>Haifa Khunji and Natalia Kumar</i>
<b>Chapter 3</b>	BELGIUM..... 61
	<i>Jean-Pierre Fierens and Joanna Kolber</i>
<b>Chapter 4</b>	BRAZIL ..... 74
	<i>Gilberto Giusti and Ricardo Dalmaso Marques</i>
<b>Chapter 5</b>	BRITISH VIRGIN ISLANDS ..... 93
	<i>Arabella di Iorio and John MacDonald</i>
<b>Chapter 6</b>	CANADA ..... 114
	<i>David Morrirt and Eric Morgan</i>
<b>Chapter 7</b>	CAYMAN ISLANDS..... 128
	<i>Aristos Galatopoulos and Luke Stockdale</i>
<b>Chapter 8</b>	CHINA..... 141
	<i>Xiao Wei, Zou Weining and Wang Lihua</i>
<b>Chapter 9</b>	CYPRUS ..... 155
	<i>Eleana Christofi and Katerina Philippidou</i>
<b>Chapter 10</b>	ECUADOR ..... 168
	<i>Xavier Castro-Muñoz and Fabrizio Peralta-Díaz</i>

<b>Chapter 11</b>	ENGLAND AND WALES.....	178
	<i>Jonathan Cotton and Damian Taylor</i>	
<b>Chapter 12</b>	FINLAND .....	202
	<i>Jussi Lehtinen and Heidi Yildiz</i>	
<b>Chapter 13</b>	FRANCE .....	215
	<i>Tim Portwood</i>	
<b>Chapter 14</b>	GERMANY .....	233
	<i>Henning Bälz and Carsten van de Sande</i>	
<b>Chapter 15</b>	GIBRALTAR.....	252
	<i>Stephen V Catania</i>	
<b>Chapter 16</b>	GREECE .....	263
	<i>John Kyriakides and Harry Karampelis</i>	
<b>Chapter 17</b>	HONG KONG .....	273
	<i>Mark Hughes</i>	
<b>Chapter 18</b>	HUNGARY .....	298
	<i>Dávid Kerpel</i>	
<b>Chapter 19</b>	INDIA .....	312
	<i>Zia Mody and Aditya Vikram Bhat</i>	
<b>Chapter 20</b>	IRELAND.....	329
	<i>Andy Lenny and Peter Woods</i>	
<b>Chapter 21</b>	ISRAEL.....	345
	<i>Shraga Schreck</i>	
<b>Chapter 22</b>	ITALY .....	376
	<i>Monica Iacoviello, Vittorio Allavena, Paolo Di Giovanni and Tommaso Faelli</i>	

<b>Chapter 23</b>	JERSEY.....	396
	<i>William Redgrave and James Sheedy</i>	
<b>Chapter 24</b>	KOREA.....	408
	<i>Hyun-Jeong Kang</i>	
<b>Chapter 25</b>	KUWAIT .....	421
	<i>Haifa Khunji and Diego Carmona</i>	
<b>Chapter 26</b>	LIECHTENSTEIN .....	432
	<i>Christoph Bruckschweiger</i>	
<b>Chapter 27</b>	LITHUANIA.....	442
	<i>Ramūnas Audzevičius and Mantas Juozaitis</i>	
<b>Chapter 28</b>	LUXEMBOURG .....	456
	<i>Michel Molitor</i>	
<b>Chapter 29</b>	MAURITIUS.....	468
	<i>Muhammad R C Uteem</i>	
<b>Chapter 30</b>	MEXICO .....	485
	<i>Miguel Angel Hernández-Romo Valencia</i>	
<b>Chapter 31</b>	NIGERIA.....	501
	<i>Babajide Oladipo Ogundipe and Lateef Omoyemi Akangbe</i>	
<b>Chapter 32</b>	PORTUGAL.....	516
	<i>Francisco Proença de Carvalho and Tatiana Lisboa Padrão</i>	
<b>Chapter 33</b>	ROMANIA .....	529
	<i>Levana Zigmund and Dan Cristea</i>	
<b>Chapter 34</b>	SAUDI ARABIA.....	542
	<i>Mohammed Al-Ghamdi and Paul J Neufeld</i>	

<b>Chapter 35</b>	SINGAPORE ..... 563 <i>Thio Shen Yi, Freddie Lim and Niklas Wong</i>
<b>Chapter 36</b>	SOUTH AFRICA..... 578 <i>Grégor Wolter, Jac Marais, Andrew Molver and Renée Nienaber</i>
<b>Chapter 37</b>	SPAIN ..... 597 <i>Ángel Pérez Pardo de Vera and Francisco Javier Rodríguez Ramos</i>
<b>Chapter 38</b>	SWEDEN ..... 618 <i>Jakob Ragnvaldh and Niklas Åstenius</i>
<b>Chapter 39</b>	SWITZERLAND ..... 631 <i>Daniel Eisele, Tamir Livschitz and Andreas Blattmann</i>
<b>Chapter 40</b>	TAIWAN ..... 650 <i>Simon Hsiao</i>
<b>Chapter 41</b>	THAILAND ..... 666 <i>Lersak Kancvalskul, Prechaya Ebrahim, Wanchai Yiamsamatha and Oranat Chantara-opakorn</i>
<b>Chapter 42</b>	TURKEY ..... 677 <i>H Tolga Danişman</i>
<b>Chapter 43</b>	UNITED ARAB EMIRATES..... 697 <i>D K Singh and Bushra Ahmed</i>
<b>Chapter 44</b>	UNITED STATES ..... 708 <i>Timothy G Cameron, Lauren R Kennedy and Daniel R Cellucci</i>
<b>Chapter 45</b>	UNITED STATES: DELAWARE ..... 726 <i>Elena C Norman and Lakshmi A Muthu</i>
<b>Appendix 1</b>	ABOUT THE AUTHORS..... 747
<b>Appendix 2</b>	CONTRIBUTING LAW FIRMS' CONTACT DETAILS .. 777

# EDITOR'S PREFACE

---

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 45 jurisdictions. In a world where commercial disputes frequently cross international boundaries, it is inevitable that clients and practitioners across the globe will need to look for guidance beyond their home jurisdictions. *The Dispute Resolution Review* offers the first helping hand in navigating what can sometimes, at first sight, be an unknown and confusing landscape, but which on closer inspection often deals with familiar problems and adopts similar solutions to the courts closer to home.

This eighth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward looking and the contributors offer their views on the likely future developments in each jurisdiction.

Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments. For instance, over the past year the EU has adopted a new regulation on jurisdiction which fortifies the freedom of parties of any nationality to choose to litigate in their preferred forum and grants Member State courts discretion to stay proceedings in favour of proceedings already on foot in non-Member State courts. At the other end of the spectrum, 2015 saw the Supreme Court in the United Kingdom clarify the law on penalty clauses 101 years after the seminal House of Lords' case on this issue (see the review of *ParkingEye Ltd v. Beavis* and *Cavendish Square Holding BV v. El Makdessi* [2015] UKSC 67 at page 181). But even seemingly local decisions such as this have a broad audience and can have far-reaching consequences in global commerce. It is always a pleasure – and instructive for my own practice – to observe the different ways in which jurisdictions across the globe tackle common problems – sometimes through concerted action under an umbrella international organisation and sometimes individually by adopting very different, but often equally effective, local solutions.

Over the lifetime of this review the world has plunged into deep recession and seen green shoots of recovery emerge as some economies begin to prosper again, albeit

uncertainly. One notable development over the course of 2015 has been the sharp and sustained fall in the oil price (along with commodities more generally). This has had, and will continue to have, far-reaching economic and geo-political effects which may take some time to manifest themselves fully. As many practitioners will recognise from previous global shocks, these pressures typically manifest themselves in an increased number of disputes; whether that is joint venture partners choosing to fight over the diminishing pot of profits, customers seeking to exit what have become hugely expensive long-term contracts, struggling states renegotiating or exiting their contracts (or simply expropriating commercial assets) or insolvency-related disputes as once-rich parties struggle to meet their obligations. The current economic climate and short to medium term outlook suggests that dispute resolution lawyers operating in at least the energy and commodities sectors will continue to be busy and tasked with resolving challenging multi-jurisdictional disputes for years to come.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 747 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

**Jonathan Cotton**  
Slaughter and May  
London  
February 2016

## Chapter 2

---

# BAHRAIN

*Haifa Khunji and Natalia Kumar*<sup>1</sup>

### **I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK**

#### **i Bahrain's judiciary background**

Bahrain's legal system consists of a blend of Islamic shariah,<sup>2</sup> British common law and civil law drawn principally from Egypt's civil law tradition. Bahrain's established system of law courts goes back to the 18th century, but the form its judiciary takes today can be traced back directly to developments that took place during the 1930s, when its national courts were organised for the first time by virtue of a promulgation issued by the Adviser in 1938; and in 1966 and 1971, when Bahrain issued the Code of Criminal Procedure and the Civil Commercial Procedures Law (CCPA)<sup>3</sup> respectively.

#### **ii The CCPA and the judiciary**

The CCPA was promulgated in 1971 and specifies the procedures for litigation before courts of civil and commercial jurisdiction. The procedures covered by the CCPA include those for bringing cases to court, hearing evidence, managing cases following hearings, ordering interim measures, examining cases and challenging and executing verdicts. The CCPA also contains a chapter dedicated to arbitration.

Many amendments have been made to the CCPA since its promulgation, including:

---

1 Haifa Khunji is a partner and Natalia Kumar is an associate at KBH Kaanuun.

2 Shariah is the moral code and religious law of Islam. It is derived from two primary sources: the precepts set forth in the Qur'ān, and the example set by the Islamic prophet Muhammad in the Sunna.

3 Hassan Ali Radhi, 'Judiciary and Arbitration in Bahrain'; Arab and Islamic Law Series, Volume 25, 2003.

- a* Decree No. 8 of 1978, which amends some provisions, notably in relation to the procedures for the payment of debts and deposits;
- b* Decree No. 9 of 1980, which amends some provisions, notably in relation to the jurisdiction of the courts and the periods for appealing judgments;
- c* Decree No. 19 of 1983, which lays down new rules on summary proceedings;
- d* Decree No. 15 of 1985, which amends the Junior Court's jurisdiction; and
- e* Decree No. 1 of 1990, which substitutes some provisions, notably in relation to the case management powers of the courts and appeals. Three new provisions have been included in the CCPA in relation to the Court of Cassation and judgments. A new section has also been included that deals with payment orders.

### **iii Structure and competence of the civil and commercial courts**

According to Article 7 of the CCPA, Bahrain's civil and commercial courts are composed of the following:

- a* the Court of Cassation;
- b* the High Court of Appeal;
- c* the High Court; and
- d* the Court of Minor Causes and the Court of Execution.

## **II COURT PROCEDURE**

### **i Procedures and time frames**

There is currently no pre-action protocol that has to be followed by parties contemplating litigation in Bahrain. It is a common fact that Bahrain's courts currently lack the necessary case management procedures that are often taken for granted in other jurisdictions.<sup>4</sup>

The CCPA does, however, lay down some basic rules. Cases must be filed with the relevant court by means of a statement of claim (Article 23). On submission of the statement of claim the claimant must pay a fee and enclose copies of documents he or she wishes to submit to support his or her case (Article 24). Following this, the case registration department fixes a sitting for hearing the case and serves the summons upon the claimant to appear at the hearing. The service of summons upon the claimant is effected by acknowledgment of receipt of the summons by the claimant. The defendant is served with the summons along with the statement of claim on the following day and is instructed to appear in court. Apart from the summary proceedings or cases for which the CCPA requires a certain time limit, the appearance before the High Civil Court or the High Court shall be within 15 days and appearance before the Court of Minor Causes shall be within eight days. Invalidation of the above does not constitute non-compliance with the time limit for appearance without prejudice to the right of the party served with the summons to seek a postponement of the time limit (Article 25). In all cases other than summary proceedings or cases where the CCPA provides for

---

<sup>4</sup> In England and Wales, for example, the Civil Procedure Rules give judges wide case management powers.



another time limit, the defendant shall lodge with the case registration department a memorandum of his or her defence accompanied by his or her supporting documents at least three days before the hearing (Article 26).

The proceedings commence at the first hearing (Article 54). However, once the first hearing takes place, there is no established procedure for the management of the case, including no established rules for disclosure and inspection of documents. The timeline and management of a case will depend on the particular circumstances of the case and the judge's discretion. There is also no established system of checks and balances to ensure that the parties abide by case procedural requirements. A defendant can potentially stall legal proceedings by abusing the process, for example, by failing to submit documents that may be required of him or her.<sup>5</sup> Many legal professionals agree that this aspect of litigation in Bahrain is in great need of reform and that cases need to be tried within specific time frames established at the beginning of a case. This is something that does take place within Bahrain's arbitration procedure, notably within the ambit of the Bahrain Chamber for Dispute Resolution. Comparative law provides the local community with examples of jurisdictions where courts have strict case management powers and where parties are induced through various coercive measures to abide by all the procedural requirements of a case, especially time frames. For this reason the local legal community expects the same kind of procedural requirements from its own court system and feels a proposal for reform is in great need of discussion to ensure that claimants receive more legal certainty, as currently defendants benefit from a system where procedures relating to time can be used to delay cases for their own benefit.

Bahrain's CCPA contains protective and interim measures for the benefit of claimants. Article 176 allows court orders for the sequestration of a defendant's property if a claimant has serious grounds for fearing that a defendant will abscond or smuggle his or her property abroad. This is known as a 'freezing order' in common law jurisdictions.

Article 178 of the CCPA allows a court to prevent a defendant from travelling out of the jurisdiction if there are serious grounds for suspecting that he or she is likely to abscond and if he or she has not provided a form of surety acceptable to the court or a form of bail in cash that would guarantee the future execution of a judgment.

## **ii Class actions**

In theory, the court may allow claimants to file a case as one party or to defend a case in unison, otherwise known as 'class actions'. However, in practice, class actions in Bahrain are rare. The judge usually opts to conduct independent trials for each claimant.

## **iii Representation in proceedings**

Article 40 of the CCPA allows litigants to appear without a lawyer for a hearing, and litigants, whether natural or legal persons, may represent themselves throughout the case or alternatively may appoint an advocate pursuant to a power of attorney.

---

<sup>5</sup> In contrast to England and Wales, where the judge has the power to strike out a statement of claim if a claimant fails to abide by the procedural rules.

The above does not apply to proceedings before the Court of Cassation, which requires a party to be represented by a lawyer.

**iv Service out of the jurisdiction**

Defendants living outside Bahrain can be served with summons outside the jurisdiction. If the court establishes that a defendant is living outside Bahrain and that he or she has no agent in Bahrain to accept delivery of summons on his or her behalf, it may order the summons to be served to him or her through diplomatic channels if possible, or by sending the writs by registered mail.

**v Appeals**

According to Article 200, there are four ways of appealing a judgment, as set out below:

- a* objection to the verdict by a non-litigant affected by the judgment: the time limit for raising an objection is 15 days from the date judgment is issued;
- b* appeal: the time limit for lodging an appeal is 45 days from the date notice of the judgment was provided to the losing party (Article 216). The court shall examine the appeal on the basis of the evidence, pleas and any new pleadings or evidence submitted to it as well and those submitted to the court of first instance (Article 224). If the court decides to annul the initial ruling, it will refer the case to the court of first instance to decide the precautionary claims. It will return the case to the court that issued the initial ruling to annul the initial ruling on grounds of having no jurisdiction (Article 228);
- c* requesting a retrial: the request for a retrial is submitted to the court that issued the initial ruling. The time limit for a retrial is 45 days from the date of issue of the judgment or from the date of its notification to the losing party (Article 230); and
- d* an appeal to the Court of Cassation: the Court of Cassation is the supreme court of appeal and it serves as the final court of appeal for all civil, commercial, personal status of non-Muslims and criminal matters.

**vi Execution of judgments**

The Court of Execution has competence to execute judgments and verdicts made by all the courts in Bahrain. According to Article 256, the judge of the Court of Execution may issue orders that include:

- a* placement of attachment on the property of a convicted party or lifting of such attachment;
- b* sale of property that is under attachment; and
- c* imprisonment of a convicted party.

**vii Enforcement of foreign judgments and assistance to foreign courts**

Articles 252 to 255 of the CCPA cover the rules for the enforcement of foreign court judgments and awards.

Article 252 of the CCPA stipulates the conditions that must be satisfied for a foreign judgment to be enforced in Bahrain. Those conditions may be summed up as follows:

- a* there must be reciprocity between the state in which the judgment was delivered and Bahrain;<sup>6</sup>
- b* the foreign judgment must have been passed by a court having appropriate jurisdiction;
- c* litigants in the foreign country should have been duly summoned and properly represented;
- d* the foreign judgment must have become final according to the law of the country where it was passed;
- e* the foreign judgment should not conflict with a judgment previously passed by the Bahraini courts; and
- f* the judgment should not contain anything contrary to public order or morals in the country in which it should be enforced.

Upon ascertaining whether the above conditions are satisfied, an applicant must make a request for an order of enforcement, which must be submitted to the High Civil Court pursuant to the ordinary procedures for filing lawsuits and subject to the payment of a prescribed fee.<sup>7</sup>

Bahrain ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Agreement on the Enforcement of Court Judgments among the Gulf Cooperation Council (GCC) states and the 1983 Riyadh Agreement for Judicial Cooperation. All contain additional rules regarding the enforcement of foreign judgments by Bahraini courts as well as rules regarding providing assistance to foreign courts that complement the CCPA rules.

#### viii Litigation costs

The Bahraini courts have broad discretion in determining how to apportion the costs of a case. Article 192 of the CCPA gives the court power to order costs, including lawyers' fees, to be paid by the losing party. However, in practice lawyers' fees are borne by each party and the winning party's legal fees will not be ordered to be reimbursed by the losing party.

The courts tend to see the client–lawyer relationship as a personal one that has no financial bearing on the case. This is despite the fact that legal fees have increased exponentially over the past decades, especially for commercial cases, which have become not only lengthy but also complicated and technical, thus requiring specialist knowledge from lawyers. For a claimant this means he or she is likely to bear legal costs that make litigation a less cost-effective method of obtaining compensatory damages, whereas for a

---

6 Otherwise known as the 'equal treatment condition' or 'condition of reciprocity'. A foreign judgment will be treated in Bahrain, from the point of view of its enforceability, in the same way as a Bahraini judgment is treated in the foreign country from which the judgment in question ensues.

7 Jalila Sayed Ahmed, 'Enforcement of Foreign Judgments in some Arab Countries – Legal Provisions and Court Precedents: Focus on Bahrain', *Arab Law Quarterly* [1999] pp. 169–176.

defendant it is an incentive to make a case drag on to the point of financial harassment of the other party. Many legal professionals agree that they urgently need a system where the winning party can submit his or her schedule of costs including his or her lawyer's professional fees and disbursements to the judge, and request that the fees associated with having to lodge and pursue the case are borne by the losing party.

#### **ix Rents Dispute Committee**

The Rent Law (No. 27 of 2014) that came into effect on 7 February 2014 brought in much-needed reform in the real estate sector in Bahrain. For one, it established the Rents Dispute Committee. Any dispute relating to or arising out of any lease agreement now has to be brought before the Rents Dispute Committee and not the Court of First Instance or the Court of Urgent Matters. However, once a judgment is issued by the Rents Dispute Committee in a case, the losing party may lodge an appeal with the Bahraini courts as detailed above.

### **III DOCUMENTS AND THE PROTECTION OF PRIVILEGE**

Part 5 of the CCPA covers the procedure for the disclosure of documentary evidence.<sup>8</sup> According to Article 140 of the CCPA, a litigant may request his or her opponent to submit any document in his or her possession that has a bearing on the case:

- a* if the law permits that the opponent be required to submit such a document;
- b* if it is a joint document applying jointly to both parties that establishes their mutual rights and obligations; or
- c* if one of the parties has used this document as a form of support at any stage during the case.

A petition has to be drafted and submitted to the judge giving a description of the document sought, as well as its purpose and evidence that the document is actually in the possession of the other party. The applicant must also outline the grounds on which he or she believes the document should be disclosed.

There is no obligation on either party to submit a document that would undermine its own case or support the other party's case. The CCPA rules on disclosure therefore contrast sharply with those found in the civil procedure rules of well-known jurisdictions such as England and Wales. For example, Part 31 of the Civil Procedure Rules of England and Wales requires a party to disclose all documents in relation to the case even if a document benefits or adversely affects its case.

In an attempt to tackle some of the loopholes in the CCPA with reference to disclosure that may result in significantly increasing the period for settling cases, the legislature attempted to resolve this in labour cases through the new Labour Law of 2012, which imposes a pretrial management stage known as the labour dispute administrative

---

<sup>8</sup> Known as disclosure in the United Kingdom or discovery in the United States. The approach to disclosure in Bahrain is somewhat less invasive than in common law jurisdictions.

office. Judges issue a fixed timetable for the management of the case<sup>9</sup> and there are strict time frames within which the parties are required to submit all supporting documents and evidence.<sup>10</sup> This legislation strictly regulates the disclosure of documentation in a case at the initial administrative stage, as well as the number of sessions taking place in which the parties submit their pleas and evidence. The legislation prevents litigants from submitting new pleas, claims or evidence once the case goes from the labour dispute administrative office to the higher courts.<sup>11</sup> Therefore, claimants are forced to disclose all documents in their possession on which they may wish to rely during the proceedings when the matter is examined fully before the higher courts. The CCPA does not regulate the abuse of process concerning disclosure, and it is in need of amendment to regulate such cases along with the behaviour of litigants.

#### IV ALTERNATIVES TO LITIGATION<sup>12</sup>

##### i Overview of alternatives to litigation

Bahrain has a strong tradition of alternative dispute resolution, in particular arbitration and mediation. In the early 1990s the Bahrain International Commercial Arbitration Centre and the Gulf Cooperation Council Commercial Arbitration Centre were established in Bahrain. In 2009 institutional alternative dispute resolution was brought to Bahrain in the form of the Bahrain Chamber for Dispute Resolution, which was established in partnership with the American Arbitration Association (BCDR-AAA) under the legislative instrument Royal Decree 30 of 2009 (Decree 30), to provide more options to parties who found themselves in the middle of a dispute.

The BCDR-AAA operates within two jurisdictions. The first is determined by law, namely under Section 1 of Decree 30. Where parties have a dispute and do not have an arbitration clause in their agreement, the dispute would normally fall under the jurisdiction of the Bahraini courts or any other judicial jurisdiction. However, pursuant to Section 1, if the amount in dispute is more than 500,000 Bahraini dinars and either of the parties is a financial institution licensed by the Central Bank of Bahrain (CBB), or if the dispute is of the nature of international commerce, then the dispute will fall under the BCDR-AAA's jurisdiction, pursuant to Article 9 of Decree 30, and will not be subject to the jurisdiction of the Bahraini courts. The second instance of the BCDR-AAA having jurisdiction is when the agreement between the parties includes an arbitration or mediation clause that refers disputes to the BCDR-AAA.

##### ii Arbitration

Under the Bahraini legal system, if an arbitration agreement does not contain a clause that renders the arbitration award final, the parties may seek the jurisdiction of the courts, leaving all arbitral efforts wasted, as the issue will be reconsidered *ab initio*. As a result,

---

9 Article 122 Labour Law No. 36 of 2012.

10 Article 124 Labour Law No. 36 of 2012.

11 Article 132 Labour Law No. 36 of 2012.

12 See footnote 8.

following arbitration the ‘losing’ parties always found a way through the appeal process to have the case reconsidered before the courts. The BCDR-AAA addressed this loophole as its judgments are rendered ‘final’ under Decree 30. The BCDR-AAA judgments can only be appealed at the Court of Cassation under the specific circumstances mentioned under Section 2 of Decree 30. This characteristic of the BCDR-AAA encourages investors and commercial entities to establish themselves in Bahrain as it has ensured that its decisions are final and enforceable.

In accordance with Article 9 of Decree 30, the jurisdiction under the law of the BCDR-AAA is for cases where the value of the claim exceeds 500,000 Bahraini dinars and the case involves:

- a* disputes among financial institutions licensed according to the provisions of the law of the CBB or between these institutions and other institutions, companies or individuals; or
- b* international commercial disputes. The dispute shall be deemed international if the location of one of the parties or the place where a substantial part of the obligations of the commercial relationship is to be performed, or the location most closely connected with the dispute, is outside Bahrain.

Under Decree 30, claims conforming to (a) or (b) above, which would otherwise have been within the jurisdiction of the courts of Bahrain, are required to be, and will be, referred to the BCDR-AAA. The applicable rules for jurisdiction under the law are contained in Resolution No. (65) for the Year 2009 (Jurisdiction under the Law Rules). Pursuant to these rules, non-Bahraini lawyers may represent parties before statutory dispute resolution tribunals, but only if they work jointly with a Bahraini lawyer who is licensed to appear before the Court of Cassation. The default language is Arabic and the default laws are the laws of Bahrain.

Article 19 of the Decree additionally creates a free arbitration zone (FAZ) whereby parties can agree in writing to have disputes referred to the BCDR-AAA, regardless of the value or subject of the claim, or whether the dispute is international in nature. Non-Bahraini lawyers are entitled to represent parties and conduct any necessary actions in FAZ arbitration proceedings without being required to work jointly with a Bahraini lawyer.

The BCDR-AAA Arbitration Rules are the default rules that apply where parties have agreed to have disputes referred to the BCDR-AAA without designating particular rules (as distinct from the rules that apply to the statutory arbitration proceedings). The parties may, however, adopt, in writing, modifications to the BCDR-AAA Arbitration Rules. These rules are based largely upon the International Centre for Dispute Resolution Rules, and allow the parties to nominate the applicable law and language of the proceedings. For Section 2 arbitration proceedings, where the parties have failed to agree on the relevant language and laws, the tribunal shall determine the most applicable law.

Enforcement of arbitral awards outside Bahrain may prove to be difficult in circumstances where the parties have not agreed to arbitrate any dispute (an agreement to arbitrate being a requirement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

Arbitration has been a reasonably common method of dispute resolution in Bahrain in the past; however, there has also been reluctance to arbitrate in Bahrain

arising out of concerns that the courts of Bahrain would not uphold arbitral awards.<sup>13</sup> The establishment of the BCDR-AAA and its provisions for recognising awards has countered some of those insecurities.

Since becoming operational in 2010 and until November 2014, the BCDR-AAA had handled 126 cases. 13 cases were filed in 2010, 34 cases were filed in 2011, 25 cases were filed in 2012, 32 cases were filed in 2013 and 21 cases were filed until November 2014. All these cases were filed under Section 1 of Decree 30, whereby the BCDR-AAA has automatic jurisdiction. One arbitration case was filed under Section 2 in 2013 (this, however, did not include FAZ) and a few cases of mediation.

*Available rights of appeal under Section 1 of Decree 30*

Technically, there is no right of appeal from a dispute resolution tribunal award rendered through Section 1 of Decree 30. Article 15 of Decree 30 provides that an award under Section 1 is deemed to be a final judgment issued by the courts of Bahrain. However, Article 13 of Decree 30 provides for limited circumstances in which a party may challenge an award issued by the tribunal and may seek nullification of the award in the Court of Cassation. These circumstances are set out in Articles 13(1) to (8) and include the following situations:

- a* where there was a failure to properly serve notice of the appointment of a member of the tribunal or the dispute resolution procedures, or the respondent was not allowed to present a defence (Article 13(1));
- b* the composition of the tribunal or the dispute resolution procedure is contrary to what is stipulated in the regulation (Article 13(2)); the award contradicts the public order of Bahrain (Article 13(3));
- c* there is an act of deception or fraud by a party or its representative that influences the judgment (Article 13(4)); if, after the issue of the judgment, it is admitted or adjudicated that papers on which the judgment is based were forged, or if it is determined that a witness gave false testimony (Article 13(5));
- d* if a party obtains decisive papers in the case after the issue of the judgment that were obstructed by the opposing party (Article 13(6)); and
- e* if the tribunal ruled on an issue not claimed by a party or ruled for more than had been claimed (this may, however, lead only to the nullification of those rulings, and not the entire judgment) (Article 13(7)); or if the judgment contradicts another judgment having *res judicata* status (Article 13(8)).

Article 14 of Decree 30 provides that a challenge on the above grounds must be made within 30 days of the date of issue of the award (or the date of its notification to the parties). In the circumstances set out in Article 13(4) to (6) (that is, where there has been a finding of some misconduct by a party after the issue of the award), the challenge must be filed within 30 days of the day on which the misconduct is discovered.

---

13 John M Townsend, "The New Bahrain Arbitration Law and the Bahrain "Free Arbitration Zone"", *Dispute Resolution Journal*, February/April 2010, p. 76.

*Available rights of appeal under Section 2 of Decree 30*

For Section 2 disputes under jurisdiction of the BCDR-AAA by parties' agreement, a party may challenge an order of the High Court of Appeal for the enforcement of an arbitral award pursuant to Article 24 of Decree 30 for the following reasons:

- a there is no valid arbitration agreement, because of the incapacity of one of the parties or the arbitration agreement contravening provisions of the applicable law chosen by the parties (Article 24(a)(1));
- b there have been procedural irregularities (Article 24(a)(2));
- c the composition of the tribunal or the procedures are contrary to what was stipulated in the arbitration agreement (Article 24(a)(3));
- d the award ruled on matters not contained in the scope of the arbitration agreement or not put forward by a party (although only those rulings will be held to be set aside, not the entire award); or
- e the award goes against public order in Bahrain.

*Enforcement of foreign arbitral awards in Bahrain*

Bahrain has been a signatory of the New York Convention since 1998. Provided that the conditions of the New York Convention are met, a foreign arbitral award from a country that is also a signatory to the New York Convention may be enforced through the courts of Bahrain, without further review of the merits. The courts of Bahrain, will, however, take into consideration whether the dispute is one that is arbitrable under Bahraini law, whether the award is final and binding on both parties, and whether the award is contrary to public policy in Bahrain.

**iii Mediation<sup>14</sup>**

Mediation is renowned in the international legal community as the fastest and most effective means to resolve disputes. Mediation can be characterised as a non-belligerent form of dispute resolution that strives to preserve relationships between the parties. The latter is very important when considering the future of mediation in a country like Bahrain and in the GCC, where 85 per cent of businesses are family businesses that own in excess of US\$2 trillion worth of assets worldwide, represent more than 83 per cent of the GCC private sector and control 62 per cent of the wealth in the GCC.

In fact the BCDR-AAA is playing a pivotal and instrumental role in promoting a culture of mediation in Bahrain and the GCC. In Bahrain the BCDR-AAA has provided training to over 300 individuals. The BCDR-AAA's objective has been to promote mediation in the GCC region. The concept of mediation (i.e., remunerating an independent third party to settle a dispute and decide on an award, if any) is different from the manner in which disputes have traditionally been settled in the GCC region, which has been in an informal and non-contentious manner. The centre has aimed to demonstrate to businessmen how mediation is undertaken and works in practice.

---

14 KBH Kaanuun would like to thank Mr Ahmed Husain, Chief Registrar and Assistant Chief Executive for Arbitration at the Bahrain BCDR-AAA, for providing information for this section.



Thus, during these training sessions, the businessmen are given the opportunity to play the role of a mediator to understand the role, duty, responsibilities and skills required of a mediator. Most of these individuals have not necessarily been trained to work at the centre but to raise their awareness and understanding of the role and benefits of mediation as an alternative to litigation.

The BCDR-AAA has certified over 20 individuals as mediators registered to be on the roster of BCDR-AAA mediators.

The BCDR-AAA works alongside academic and professional bodies including St Joseph University in Beirut, the Accord Group in Australia and the Singapore Mediation Centre. These institutions are able to provide professional certification for individuals who wish to become qualified mediators.

In line with the BCDR-AAA's vision and strategy to be a hub for training and education in the region, the BCDR-AAA has conducted several training programmes, workshops, seminars and conferences in cooperation with both academic and professional bodies regionally and internationally, such as but not limited to the Chartered Institute of Arbitrators in London, where a couple of their programmes have been translated to Arabic. The BCDR-AAA has targeted faculties of law and university students and established an arbitration training programme tailored to meet their needs. The BCDR-AAA has its own journal, namely the *BCDR International Arbitration Review*, which was first published in September 2014 in both Arabic and English. The first issue covered enforcement of arbitral awards in the Gulf States. The journal is published twice a year.

The BCDR-AAA has promoted mediation in the Kingdom of Saudi Arabia, Oman and Sharjah. The BCDR-AAA has also provided training in Morocco and Syria as well as in Lebanon, and has participated in AAA mediation workshops. It is also in talks with Bahrain providers of superior education for a project to create a mediation diploma similar to the one currently offered by St Joseph University in Lebanon.<sup>15</sup> The BCDR-AAA is therefore truly at the forefront of the alternative dispute resolution developments in Bahrain.

## V OUTLOOK AND CONCLUSIONS

Bahrain is striving to develop a reputation as a regional hub for commerce and finance. An important factor in attracting international business to the country involves having in place effective means for dispute resolution that are both cost-effective and timely. It is widely considered, however, that current court procedures are not ideal and would benefit from much-needed reform. In particular, as highlighted above, there is a lack of effective case management once a first hearing has been held, and no system for ensuring that parties comply with time frames.

Through the establishment of the BCDR-AAA Bahrain has addressed, in particular, the issue of delay in litigation proceedings, and provided for statute-mandated dispute resolution for certain domestic cases and a free arbitration zone for international disputes.

---

15 In fact the St Joseph diploma in mediation was created with the help of the BCDR-AAA.

This unique approach is likely to be attractive particularly to financial corporations considering engaging in business in Bahrain. International financial institutions may be encouraged to know that disputes carrying a significant monetary value will be heard by the BCDR-AAA in a more timely fashion than would otherwise be the case in litigation through the courts. Moreover, the judges presiding as arbitrators in these cases are specially trained by the BCDR-AAA and equipped to handle financial and international disputes, thus creating a specialist body for disputes of this nature.

The innovative developments resulting from the establishment of the BCDR-AAA, and more so if coupled with reforms of court procedures and the legal profession, will no doubt serve to make Bahrain a very attractive option for international business and a forum of choice for alternative dispute resolution.

## Appendix 1

---

# ABOUT THE AUTHORS

### **HAIFA KHUNJI**

*KBH Kaanuun*

Haifa Khunji has more than 14 years' experience in transactional work and litigation. She trained and subsequently worked with leading international law firms in Dubai, Doha and Kuwait prior to joining KBH Kaanuun at its inception, and she now manages the Bahrain operation. She advises on a range of contentious and non-contentious matters with an emphasis on corporate finance and banking. Haifa acts for major local and international banks as well as leading international and regional companies both in arbitration and court proceedings taking place in Bahrain and Kuwait. In non-contentious matters she advises on corporate structures, corporate finance and activities such as acquisitions, mergers, demergers and joint ventures, as well as both conventional and Islamic banking and finance.

### **NATALIA KUMAR**

*KBH Kaanuun*

Natalia Kumar is an English-qualified solicitor. Natalia trained at JMW Solicitors LLP in Manchester, England, where she gained vast experience in civil and commercial litigation, employment law, clinical negligence and private client matters including taxation, trusts and probate. Prior to that Natalia worked at DWF LLP. Natalia works in KBH's Bahrain team and undertakes a broad range of work including corporate and commercial, banking and finance and real estate matters.

**KBH KAANUUN**

Al Zamil Tower

Office No. 151, Building 31

Road 383, Block 305

PO Box 65005

Manama Center

Kingdom of Bahrain

Tel: +973 172 12130

Fax: +973 172 12132

bahrain@kbh.bh

h@kbh.bh

natalia.kumar@kbh.bh

[www.kbh.ae](http://www.kbh.ae)