

PANORAMIC

# ARBITRATION

Iraq



LEXOLOGY

# Arbitration

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## LAWS AND INSTITUTIONS

### **Multilateral conventions relating to arbitration**

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Iraq has joined the Convention of Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) by its law No. 14, 2021 'the law', published in the Iraqi official Gazette in publication No. 4633, 31 May 2021. Joining the Convention was valid at the law publication date, according to article 12 of the same law, the Convention will be deemed in force on 9 February 2022.

Based on the provisions of article 1 of the law, Iraq has restricted the enforcement scope to countries that apply the principle of reciprocity and to cover disputes of legal contractual relationships of a commercial nature.

Given the authority to join treaties and international conventions is the exclusive authority of article 110 /First, Iraqi Constitution 2005), the Convention's scope of application is extended to cover the republic of Iraq including the Kurdistan region. No action was taken by the Iraqi government side regarding article 11 of the Convention.

In addition to the New York 1958 Convention, Iraq is a signatory to:

- the Arab Amman Convention on Commercial Arbitration 1987;
- the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (64), 2012; and
- the Al-Riyadh Convention for Judicial Cooperation 1983.

**Law stated - 12 March 2024**

### **Bilateral investment treaties**

Do bilateral investment treaties exist with other countries?

The Treaty of the Encouragement and Mutual Protection of Investments between the government of the Republic of Iraq and the government of the Islamic Republic of Iran, ratified by Law No. 84, 2017.

**Law stated - 12 March 2024**

### **Domestic arbitration law**

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Articles 251–276/Part II (Arbitration) of the Third Book (Various Measures) of the Iraqi Civil Proceeding Law No. 83, 1969 are the only arbitration measures' provisions govern the domestic arbitration; while international treaties recognised by Iraqi laws regulate the enforcement of arbitral awards issued by the foreign tribunal.

Law stated - 12 March 2024

### **Domestic arbitration and UNCITRAL**

**Is your domestic arbitration law based on the UNCITRAL Model Law?  
What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?**

Iraq applies domestic arbitration rules that differ from the UNICITRAL Law in the following areas:

- judicial notifications provisions;
- arbitration announcement rules;
- tribunal formation the mechanism for appointing an odd number of arbitrators, a sole arbitrator or a tribunal chairman;
- objecting arbitrators' appointment decisions, replacement provisions, standing down and dismissal by opponents; and
- arbitration territory, language, preceding mechanism, defending procedures, petitions, applicable law, resolution interpretation authority, arbitrator's fee, arbitration timeline and many other related issues that the Iraq laws left uncovered.

Law stated - 12 March 2024

### **Mandatory provisions**

**What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?**

- Invoking the arbitration clause should be made during the first hearing session before the court and before addressing the subjective side of the case.
- Arbitrators working for the judicial authority can only be appointed with the approval of the Higher Judicial Authority in Iraq.
- The arbitrator should not be a minor, interdicted, deprived of their civil rights or non-prohibited bankrupt.
- The arbitrator's numbers should be odd.
- Arbitrators' appointment decisions are unchallengeable, and arbitrators can only be challenged for reasons similar to judges' challenges stipulated by law.
- An arbitration decision must be made within six months of the arbitrator's appointment date unless otherwise decided by the opponents.

If the arbitrators are provided with a preliminary issue that goes beyond their jurisdiction, or a document is objected for forgery, and criminal proceedings are taken regarding its forgery or another criminal incident, the arbitrators must suspend their work.

Law stated - 12 March 2024

### Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Except for the conflict of laws' rules stipulated in the Iraqi Civil Code No. 40, 1951 (articles 17–33), the parties to a dispute are free to agree on the applicable substantive law, and arbitrators are obliged to apply the chosen law.

Law stated - 12 March 2024

### Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

No arbitration institutions have yet been established in Iraq by law.

Law stated - 12 March 2024

## ARBITRATION AGREEMENT

### Arbitrability

Are there any types of disputes that are not arbitrable?

Arbitration is only valid in matters in which reconciliation is permissible; it is also valid between spouses.

The laws kept silent in terms of permissibility or prohibition in matters related to (the Copyright Protection Law No. 3, 1971, as amended; the amended Companies Law No. 21, 1997, Trade Marks and Information Law No. 21, 1957, as amended; Competition and Anti-trust Law No. 14, 2010, and the Patent and Industrial Designs Law No. 65 of 1970); as such, disputes related to those laws are arbitrable except for irreconcilable disputes. The Provisional Securities Law No. 74, 2004, stipulated the right of the stock exchange market authority to set rules for resolving disputes between market members, and between members with clients.

Law stated - 12 March 2024

### Requirements



## | What formal and other requirements exist for an arbitration agreement?

According to Iraqi Civil Procedure Law, an arbitration agreement shall only be established in writing (article 252 of the Iraqi Civil Procedure Law). Both parties can waive adherence to this clause, and the other party can acknowledge the existence of the arbitration agreement, even if the party seeking arbitration lacks documentary evidence. If the opponent denies the existence of an arbitration clause, the party adhering to it can request a decisive oath. If they refuse to take it, it is considered an acknowledgment of the existence of the arbitration clause.

**Law stated - 12 March 2024**

## | Enforceability

### | In what circumstances is an arbitration agreement no longer enforceable?

Iraqi law [does](#) not include provisions specifying the effect of avoidance, rescission, termination of the underlying agreement or the arbitration agreement itself, insolvency, death or legal incapacity on arbitration. However, it provided an explicit legal stipulation to confirm the continuous validity of the agreement if one of the parties dies. However, in the case of death, the time limit for issuing the arbitration decision will be extended to allow the heirs to take their place in the arbitration proceedings.

As for the termination of the arbitration agreement, it would nullify the agreement according to the general rules of rescission (article 1/138 Iraqi Civil Law), while termination of the underlying agreement would not affect the validity or the enforceability of the arbitration agreement as the two will be treated as independent contracts even if the arbitration agreement was included in the underlying contract.

**Law stated - 12 March 2024**

## | Separability

### | Are there any provisions on the separability of arbitration agreements from the main agreement?

No provisions in Iraqi law cover the separability of arbitration agreements from main agreements, but separation is recognised by the jurisprudence in Iraq, and thus, termination, rescission or the passage of time on it does not affect the validity and enforceability of the arbitration agreement.

**Law stated - 12 March 2024**

## | Third parties – bound by arbitration agreement

### | In which instances can third parties or non-signatories be bound by an arbitration agreement?

The Iraqi Civil Procedure Law, which regulates arbitration provisions, does not include a specific provision addressing the situation of possibly compelling third parties to arbitration.

The Iraqi judiciary has not issued any stance on this point. Therefore, it is a matter that will be resolved in light of the jurisprudential opinions around the world and the practices adopted by courts or international arbitration chambers, based on the choices made by the Federal Supreme Court when considering challenges to arbitral awards.

**Law stated - 12 March 2024**

### **Third parties – participation**

**Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?**

The Iraqi Civil Procedure Law does not stipulate a specific ruling regarding the inclusion or participation of third parties in arbitration proceedings. However, this law requires arbitrators to conduct arbitration according to the procedural rules set forth in the Iraqi Civil Procedure Law. These rules permit the court and arbitrators to accept the entry or inclusion of third parties according to article 69 of the Iraqi Civil Procedure Law.

**Law stated - 12 March 2024**

### **Groups of companies**

**Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?**

The subsidiary companies concept is not recognised by Iraqi law and jurisprudence, while a branch of a parent company is not seen as an independent entity but as an extension of the parent company, and the latter is the one to be sued in the case of a dispute.

**Law stated - 12 March 2024**

### **Multiparty arbitration agreements**

**What are the requirements for a valid multiparty arbitration agreement?**

According to Iraq law and jurisprudence, a multi-party arbitration agreement is subject to the same requirements and conditions as the rest of the arbitration agreements; if there is no agreement on the arbitrator, the court will appoint one upon the request of one of the parties (article 256/1 Civil Procedure Law).

**Law stated - 12 March 2024**

### **Consolidation**

## Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

According to article 265/1 of the Civil Procedure Law, the parties are allowed to exempt arbitrators from following the procedures and conditions stipulated in that law and setting their own specific procedures instead. Also, if arbitrators are authorised to conciliate, they are exempted from adhering to pleading procedures except those related to public order (article 265/2 of the Civil Procedure Law).

Law stated - 12 March 2024

## CONSTITUTION OF ARBITRAL TRIBUNAL

### Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Iraq has not adopted an approved list of arbitrators, and there is no legal stipulation or custom to adopt specific criteria for selecting arbitrators; religion, gender and nationality have no impact on the selection process. It is permissible to select a judge as an arbitrator; if the arbitrator is an active judge, the approval of the Supreme Judicial Authority will be needed (article 255, Civil Procedure Law).

Law stated - 12 March 2024

### Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

The arbitrators are often chosen by agreement of the parties or by court order from lawyers, retired judges, law professors and academic specialists working in fields related to the dispute subject; in cases of a special nature, government employees or active judges have been selected to arbitrate in a dispute. Nothing in the law prohibits a woman from being an arbitrator, but often arbitrators are men.

Law stated - 12 March 2024

### Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

If there is no agreement between parties to select arbitrators or they are unable to be selected, the law stipulates that they be appointed (one or more) by a court decision based on one of the parties' requests (article 256/1 Civil Procedure Law). In the case of one arbitrator, the court tends to all disputed parties to plead and agree on them; in the case of disagreement between parties, the court will decide on what it finds appropriate. In the case of more than one arbitrator, the judicial custom tends to request each party to nominate

an arbitrator; if there is no nomination or absence of a party, the court will choose all the arbitrators, the court will always appoint the chairman of the tribunal. In the case of many opponents, the court usually appoints arbitrators unless all parties otherwise agree on the number of arbitrators.

Law stated - 12 March 2024

### **Challenge and replacement of arbitrators**

**On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?**

Challenging an arbitrator is a permissible action if one of the below reasons was found:

- If he is a husband, brother-in-law, or a relative to one of the opponents up to the fourth degree.
- If he, his wife, one of his children or one of his parents has an existing dispute with one of the parties or with his wife, one of his children or one of his parents.
- If he is an agent, custodian, trustee or heir to one of the litigants, or is he is related by kinship or marriage up to the fourth degree to the agent, guardian, custodian of one of the litigants, or to one of the members of the board of directors of the company that is a party to the case, or to one of its managers.
- If he, his wife, his ascendants, their spouses, his descendants, their spouses or whoever is his agent, guardian or trustee has an interest in the current litigation.
- If he has given a fatwa or pleaded on behalf of one of the parties in the case, or if he had previously been heard as an expert, judge or arbitrator, or had given testimony in it.
- If one of the parties was employed by him, if he was accustomed to eating or living with one of the parties, or if he had received a gift before or after filing the case.
- If there is enmity or friendship between him and one of the parties, it is likely that he will not be able to be neutral.
- If he prematurely expressed an opinion in the dispute.

The request to challenge the arbitrator should be submitted to the court, and the court's decision is not subject to any appeal method (article 261/2) of the Civil Procedure Code. If an arbitrator is rejected, the court will appoint another arbitrator to replace them.

The Iraqi law does not address cases of replacing an arbitrator due to illness, death or bias; rather, the law permits the dismissal of an arbitrator by agreement of the parties. The arbitrator is also permitted to step down if they had a reasonable cause (article 260 Civil Procedure Code) with no stipulation on the mechanism to replace them.

In the case of the arbitrator's illness, death, dismissal or resignation, although it is not stipulated by law, they would be replaced by the agreement of all parties or a court order.

In the case of bias, Iraqi law does not allow the arbitrator to be replaced, except in accordance with the provisions of a judge's recusal.

Law stated - 12 March 2024

### **Relationship between parties and arbitrators**

**What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.**

When the Iraqi Civil Procedure Law regulated arbitration, it did not address the nature of the relationship between the arbitration parties and the arbitrators. This means that the matter is left to the discretion of jurisprudence and the judiciary. And the Iraqi judiciary has not issued a specific stance on this point.

As for Iraqi jurisprudence, it is divided in determining this relationship. Some consider it a contractual relationship, while others consider it a judicial one, others see it as a mixed relationship. Some jurisprudence adopts the independent nature of arbitration.

Supporters of the contractual relationship view arbitration as a private transaction between individuals based on their agreement, with arbitrators not being judges but individuals entrusted with executing the parties' agreement. Therefore, arbitrators derive their authority from the arbitration agreement.

Supporters of the judicial relationship theory consider arbitration to be an act of the judiciary because, although it begins with an arbitration agreement, it ends with a judgment according to procedures, rules, and criteria determined by law.

In light of these differences, proponents of each theory differ in defining the nature of the relationship between arbitrators and parties. Some supporters of the contractual theory argue that arbitrators are agents of the arbitration parties, while others argue that the relationship between arbitrators and parties is a service providing relationship.

As for proponents of the other theory (judicial relationship), arbitrators are temporary judges or judges for a specific dispute only.

However, the prevailing theory is the independent nature of arbitration, which makes the arbitrator a chosen individual entrusted by the parties to resolve the dispute between them independently, regardless of the parties' will when they appoint the arbitrator to settle the dispute.

Law stated - 12 March 2024

### **Duties of arbitrators**

**What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?**

Neither the Iraqi law nor custom or judiciary have come across the duties of arbitrators regarding impartiality and independence throughout arbitration proceedings.

Law stated - 12 March 2024

### **Immunity of arbitrators from liability**

**To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?**

No Iraqi law, juristic opinion or decision by any court precedent holds the arbitrator liable for the way they administer or decide in a dispute. There is also no law or jury's opinion to adhere the arbitrators to the rules governing the performance of judges. It is likely that the judiciary would apply immunity on arbitrators' simple non-gross errors.

Law stated - 12 March 2024

## **JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL**

### **Court proceedings contrary to arbitration agreements**

**What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?**

Iraqi law prohibits filing a lawsuit with the court except after exhausting the method of arbitration (253/10 (ICPCL Civil Procedure Code)). If one of the parties files a lawsuit before the court, they may either remain silent about the other party's violation of the arbitration agreement – in this case, the court may consider the arbitration clause invalid and continue hearing the case (253/2 ICPCL) – or they will object to the arbitration method having been ignored. In the first hearing session the court will then delay the case until the arbitrators make their decision (253 ICPCL).

By way of clarification: If one of the previously agreed parties to resolve their disputes through arbitration breaches the agreement, the other party can take one of the following actions:

- First scenario: They remain silent and do not object to the breach of the arbitration clause, or they agree to waive the arbitration clause. In this case, the court will consider the arbitration clause void and will proceed to hear the case without regard to the arbitration clause.
- Second scenario: They object to the breach of the arbitration clause. In this case, they must object to the breach of the arbitration clause during the first session they attend. If they fail to object to the breach of the arbitration clause in the first session they attend, the court will consider the arbitration clause void and will continue to hear the case even if the other party objects to the breach of the arbitration clause in subsequent sessions after the first session.

Law stated - 12 March 2024

### **Jurisdiction of arbitral tribunal**

## What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

According to the provisions of the ICPCL, the Iraqi judiciary is the one to decide on the jurisdiction of the arbitration panel and the validity and integrity of the existing arbitration agreement when appointing the arbitrators or when ratifying arbitrators' decisions.

The ICPCL does not stipulate any mechanism to examine the jurisdiction of the arbitration panel directly and independently. If the arbitration took place without the intervention of the court, the arbitration panel would decide on that point without any opportunity to review its decision or appeal it. If the court issues the final arbitration decision – when asked to ratify the arbitrators' decision – it will first consider the arbitral tribunal's jurisdiction by verifying the existence and integrity of the arbitration agreement and that it is not related to accountability, in which case reconciliation is not permissible.

Arbitration in Iraq is only permissible for matters where reconciliation is allowed. Matters where reconciliation is not permitted by law cannot accept an agreement for arbitration in related disputes, such as issues concerning public order, like the distribution of inheritance shares and real estate ownership judgments.

However, if one of the parties requests that the court appoint arbitrators – and if the two parties are unable to agree on them – the court will consider, as a preliminary matter, the existence, validity and proof of the arbitration agreement. Otherwise, it will reject the request to appoint arbitrators, and its decision will be subject to appeal by cassation before the District Court of Appeal in its cassation capacity.

**Law stated - 12 March 2024**

## Distinction between admissibility and jurisdiction of tribunal

### Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

Whether a dispute is arbitrable or not is a matter that the arbitration panel will remain silent about if one of the parties insists on that before it. The party objecting to the arbitration decision can raise the non-adjudication of the dispute by arbitration when a lawsuit is filed to request the annulment of the arbitrators' decision or to request its ratification, either by way of a lawsuit or by way of the defence submitted during the proceeding of the case to ratify the arbitrator's decision.

**Law stated - 12 March 2024**

## ARBITRAL PROCEEDINGS

### Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

No reference in the Iraqi law is made to the place of arbitration. However, parties to arbitration can agree on the place of arbitration, and the place of arbitration must not be in the same area where the competent court hears the dispute regarding approving the arbitrators' decision.

The Civil Procedure Law does not explicitly specify the language of arbitration but rather stipulated that arbitrators follow the conditions and procedures stipulated in the Civil Procedure Law to consider and decide on arbitration and, since the Arabic language is the language of those procedures and conditions, it implicitly means that the local arbitration language is Arabic. However, the law allows the two parties to arbitration to agree to explicitly exempt the arbitrators from those situations and procedures or to establish specific procedures for the arbitrators to follow ([article 265 ICPCL](#)), which allows the arbitration parties to agree on another language for arbitration.

The Iraqi law did not address criteria for determining the applicable law in arbitration disputes, nor did it grant arbitrators the authority to determine the applicable law. However, Iraqi Civil Law No. 1951, in articles 17-33 under the title 'International Conflict of Laws', addresses provisions concerning conflicts of laws and sets criteria for determining the applicable law in cases involving a foreign element. These provisions can be consulted to determine the applicable law.

**Law stated - 12 March 2024**

## Commencement of arbitration

### How are arbitral proceedings initiated?

Iraqi law obliges arbitrators to follow the conditions and procedures stipulated in the Civil Procedure Law in considering and deciding arbitration. This requires that arbitration be initiated by submitting a petition of claim for arbitration signed by the applicant or their representative and its supporting evidence with copies for each litigant, and to be notified to the other litigants in accordance with the rules stipulated in the Civil Procedure Code unless the two parties exempt the arbitrators from following those rules and set other rules for them to follow when considering the arbitration and deciding on it. Likewise, if they are authorised to conciliate, the arbitrators are exempted from following the conditions and procedures stipulated in the law, except for those related to public order.

**Law stated - 12 March 2024**

## Hearing

### Is a hearing required and what rules apply?

Hearings are required because Iraqi law requires following the conditions and procedures stipulated in the ICPCL provisions, which require hearings to be held unless the arbitrators are exempted from following those conditions and procedures by agreement of the parties, or if they are authorised to conciliate.

**Law stated - 12 March 2024**



## Evidence

### By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The ICPCL obliges the arbitration panel to settle a dispute considering the arbitration agreement and the documents, regulations and defences presented by the opponents. It can decide on the dispute based on the requests and documents submitted by one party if the other party fails to present its defences within the specified period (article? 266 ICPCL).

The arbitrators follow the same mechanisms, rules and procedures related to proof, written evidence, hearing witness testimonies, seeking the assistance of experts, and conducting inspections stipulated in the Iraqi Evidence Law No. 107 of 1979, as amended.

The Evidence Law requires the courts and similar arbitrators to assign the two parties to agree on experts if they decide to seek the assistance of experts on a technical issue. If they disagree, the court or arbitration panel appoints the experts (article? 133 of the Evidence Law).

It is not permissible for parties to give their own testimonies. It is not permissible for an opponent to be an opponent and a witness at the same time. Rather, opponents may provide clarifications, defences and written or oral statements without taking an oath.

There is no interest in requesting assistance from the International Bar Association in Iraq, nor requesting or following its guidance, and there is no adoption of the International Bar Association's rules regarding evidence.

**Law stated - 12 March 2024**

## Court involvement

### In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

If deciding the case requires judicial deputies or taking a specific measure resulting from the failure of witnesses or their refusal to answer, the arbitration panel can refer to the court competent to hear the dispute to issue its decision in this regard (article 269 ICPCL).

There is no provision in the ICPCL allowing the court, on its own initiative, to interfere in arbitration procedures or in the arbitration being decided by the arbitrators, but the court may issue certain decisions based on the request of the opponents or one of them, such as issuing a decision to add a new period if the arbitrators do not settle the dispute within the period specified for them or within six months, and one of the opponents refers to the court to consider the matter, and other arbitrators have been appointed to rule on the dispute instead of adding a new time limit (article 263 ICPCL).

The courts only intervene when the case is considered to ratify the arbitrator's decision to invalidate or amend the arbitrator's award, and they have the right to return the case to the arbitrators to correct any errors or defects in the arbitration decision. They also have the right to rule on the dispute themselves with a ruling issued by the court if the dispute is able to be decided (article 274 ICPCL).

Law stated - 12 March 2024

## **Confidentiality**

### **Is confidentiality ensured?**

The Iraqi Civil Procedure Code does not reference confidentiality regarding the arbitration dispute, arbitration procedures, evidence, information, documents, the arbitration decision and subsequent procedures provided by both parties.

However, the law obliges arbitrators to follow the conditions and procedures stipulated in the ICPL: to consider the dispute and decide on it in the same manner and with the same rules the courts follow in settling disputes. Since the principle of court pleadings is that they are public, this means that arbitration pleadings are also subject to publicity. The issuance of the arbitration decision shall also be made public.

However, the law gives the two parties the right to exempt arbitrators from following the conditions and procedures stipulated in the Civil Procedure Law and to set special rules for them to follow in examining and deciding on the arbitration dispute. This gives them the opportunity to agree on confidentiality according to what they deem appropriate.

However, the practical norm is that all arbitration procedures, the dispute presented therein, the information and documents provided by the opponents, the arbitral decision and subsequent procedures are all confidential for parties other than the parties to the arbitration dispute, and the arbitrators and courts are realistically bound by that confidentiality as regards everyone other than the parties to the arbitration.

Law stated - 12 March 2024

## **INTERIM MEASURES AND SANCTIONING POWERS**

### **Interim measures by the courts**

#### **What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?**

Iraqi law does not stipulate any temporary measures that courts may order before and after arbitration proceedings.

Law stated - 12 March 2024

### **Interim measures by an emergency arbitrator**

#### **Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?**

The 'emergency arbitrator' is not known by Iraqi law, nor is it stipulated in the law, either explicitly or implicitly, and local Iraqi arbitration institutions have not adopted any rules of their own so far.

Law stated - 12 March 2024

### **Interim measures by the arbitral tribunal**

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Iraqi law does not include granting the arbitral tribunal jurisdiction or authority to order interim measures, and Iraqi law did not address the issue of guaranteeing costs and expenses.

Law stated - 12 March 2024

### **Sanctioning powers of the arbitral tribunal**

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Iraqi law does not address the issue of harassment of witnesses, attempts to delay the resolution of an arbitration dispute, or other measures that endanger the integrity of arbitration, and did not grant arbitrators any authority to impose penalties or take other measures. The arbitral tribunal was also not granted the possibility of referring to the court to address such matters.

The only treatment for guerrilla tactics is that some of them, such as threatening witnesses or seducing them, are criminalised according to the Penal Code and can be resorted to in the criminal courts to request a complaint against their perpetrator. Iraqi law is silent on non-criminal cases, and has not established provisions for it.

Law stated - 12 March 2024

## **AWARDS**

### **Decisions by the arbitral tribunal**

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Iraqi law allows arbitrators to issue their decision by agreement or by the majority of opinions after deliberation among themselves collectively (article 270 ICPC).

The arbitral decision issued by a majority of the arbitrators' opinions does not differ in its validity and integrity from the decision issued unanimously, and any violation by one of the arbitrators does not result in any consequences.

Law stated - 12 March 2024

### **Dissenting opinions**

#### **How does your domestic arbitration law deal with dissenting opinions?**

Iraqi law deals with the dissenting opinion of the arbitrator just as it deals with the dissenting opinion of the judge. It suffices for the dissenting member to write down their opinion and the reasons for their dissent and keep them in the case file. No copies of these are given out and have no effect on the validity and integrity of the decision (article 160/2 ICPCL).

**Law stated - 12 March 2024**

### **Form and content requirements**

#### **What form and content requirements exist for an award?**

Iraqi law requires arbitrators to write their decision in the same way that courts write their decisions, provided that the award includes in particular a summary of the arbitration agreement, the parties' statements, their documents, the reasons for the decision, it is the place where it was issued, the date of its issuance, and the arbitrators' signatures (article 270 ICPCL).

**Law stated - 12 March 2024**

### **Time limit for award**

#### **Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?**

Iraqi law requires the arbitrators to issue their decisive arbitration decision within the period during which the two parties agree that the arbitration decision will be issued. If the two parties do not agree to specify a period for the arbitration decision, the arbitrators are required to decide on the dispute and issue the arbitration decision within six months of the date of their acceptance of the arbitration (article 262 ICPCL).

If the arbitrators do not settle the arbitration dispute and do not issue an arbitration decision within the agreed-upon period or within six months – in the absence of an agreement on the period – or if the arbitrators are unable to issue their decision for a compelling reason, each opponent in the arbitration may request the competent court of first instance either to add a new period, for it to settle the dispute itself or to appoint other arbitrators (article 263 ICPCL).

**Law stated - 12 March 2024**

### **Date of award**

#### **For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?**

The arbitration decision must be issued within the period specified by the two parties, otherwise within a period not exceeding six months from the date of the arbitrators' acceptance of the arbitration. If they issue their decision, they must give a copy of it to both parties and deliver the decision along with the original arbitration agreement to the court competent for the dispute within three days of the issuance of the arbitral decision (article 271 ICPCCL).

According to Iraqi law, an arbitral decision is not subject to appeal but is not accepted for implementation unless the court ratifies it. The law does not specify a period for requesting ratification of the arbitrator's decision. Therefore, ratification of the arbitrator's decision can be requested at any time after its issuance, and its invalidity can be maintained while the case is pending. Ratification of the arbitrator's decision (articles 272 and 273 ICPCCL).

**Law stated - 12 March 2024**

### **Types of awards**

#### **What types of awards are possible and what types of relief may the arbitral tribunal grant?**

Iraqi law only refers to the arbitral decision that decides the dispute, and no other types of arbitrator's decisions exist except those related to the investigation, proof procedures and procedures for proceeding with the case for a final arbitral decision.

**Law stated - 12 March 2024**

### **Termination of proceedings**

#### **By what other means than an award can proceedings be terminated?**

Since Iraqi law requires arbitrators to follow the conditions and procedures stipulated in the ICPCCL to consider and decide on arbitration, arbitration can be ended by the same means of ending the case before the courts in accordance with what is stipulated in the Code of Civil Procedure.

Arbitration may be ended by reconciliation between the two parties or by a settlement. The arbitral tribunal may issue a decision that includes the details of the reconciliation or settlement that the two parties agreed upon. Iraqi law does not stipulate any official requirements regarding issuing an arbitration decision in accordance with what both parties agreed or in accordance with the settlement they concluded.

**Law stated - 12 March 2024**

### **Cost allocation and recovery**

#### **How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?**

Iraqi law does not specifically address the costs of arbitration but rather referred to the rules of the Civil Procedure Code, which require that the court or arbitral tribunal decide –

on its own initiative – the expenses of the case on the adjudicated party (whether plaintiff or defendant), including expenses, expertise fees, arbitrators' fees, witness expenses, translation fees and lawyers' fees (article 166 ICPCL) within the limits specified by article 63 of the Law on the Legal Profession, which is an amount not exceeding 500,000 dinars.

**Law stated - 12 March 2024**

### **Interest**

#### **May interest be awarded for principal claims and for costs, and at what rate?**

The Iraqi Civil Code permits a ruling on interest (legal or conventional) in accordance with articles 171–176 thereof, if the subject of the obligation is a sum of money, the amount was known at the time the obligation arose and the debtor delays paying it.

The legal interest rate is 4 per cent in civil matters and 5 per cent in commercial matters, and it is due from the date of its claim unless the agreement or custom specifies another date for its effectiveness, or unless the law stipulates otherwise (article 171 of the Iraqi Civil Code).

As for the agreed interest rate, the law prohibits it from being more than 7 per cent (article 172 of the Civil Code).

**Law stated - 12 March 2024**

## **PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD**

### **Interpretation and correction of awards**

#### **Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?**

Iraqi law does not stipulate that the arbitral tribunal should be given the authority or jurisdiction to interpret its decisions, neither on its own initiative nor on the initiative of one or both parties. However, article 10 of the amended Implementation Law No. 45 of 1980 permits the executor to seek clarification from the court about what was stated in the court's award to clear any ambiguity. Since the arbitration decision cannot be implemented unless ratified by the court, clarification of the ambiguity or award interpretation is a matter for the court that ratified the arbitration decision and not for the arbitrators.

**Law stated - 12 March 2024**

### **Challenge of awards**

#### **How and on what grounds can awards be challenged and set aside?**

Iraqi law prohibits the implementation of arbitration awards unless they are approved by the competent court of first instance, and, when it considers the request to ratify the arbitration award gives that court the authority to nullify the arbitrators' decision, amend it in whole or in part, or return it to the arbitrators to correct any errors or ambiguities. It also gives it the

authority to settle the dispute by itself if it is suitable to be decided upon (articles 273 and 274 ICPCL).

**Law stated - 12 March 2024**

### **Levels of appeal**

**How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?**

The arbitral award is not subject to appeal by any means of appeal. However, the court's decision to ratify, invalidate or amend the arbitrators' decision or decide the dispute itself is subject to appeal by the methods of appeal stipulated in the ICPCL (appeal if the value of the dispute is more than one million Iraqi dinars, cassation, retrial – objection by others) except the objection to the absentia judgment, which is not subject to appeal in this way (275 ICPCL).

The initial ruling that confirms the arbitral award invalidates, amends it or settles the dispute shall be subject to appeal by cassation within 30 days if the value of the dispute is 1 million dinars or less. However, if the value of the dispute is more than 1 million dinars, the initial ruling is subject to appeal within 15 days, and cassation before the Federal Court of Cassation within 30 days of the day following the issuance of the initial ruling.

If their conditions are met, the first instant court ruling may be appealed through a retrial or objection by third parties.

The preliminary ruling may be appealed in the interest of the law if its conditions are met.

However, the first instant ruling – even if it is a ruling in absentia – cannot be appealed by objecting to the ruling in absentia.

**Law stated - 12 March 2024**

### **Recognition and enforcement**

**What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?**

The general rule is that arbitration awards are not enforceable until they are approved by the competent Court of First Instance (article 272 of the Iraqi Civil Procedure Law). The legal text does not differentiate between domestic arbitration awards and foreign arbitration awards in this regard. Both may be subject to approval by an Iraqi court to proceed with enforcement before the national enforcement departments, similar to any judicial ruling issued by Iraqi courts.

The party seeking to enforce the arbitration award must file a lawsuit before the competent Court of First Instance to request its approval. If the court grants approval and the decision becomes final either by the lapse of the legal period or through exhaustion of appeals, the judgment creditor can then proceed to the competent enforcement department to

initiate enforcement procedures according to the Iraqi Enforcement Law No. 45 of 1980 as amended. For the recognition and implementation of a foreign arbitration award, the procedure is different from the system of ratification of arbitration awards, as foreign arbitration awards can be recognised and implemented in accordance with the provisions of international agreements that Iraq has ratified or joined, such as the Riyadh Convention and the New York Convention of 1958.

In accordance with the Law on Iraq's Accession to the Convention on the Recognition and Implementation of Foreign Arbitral Awards No. 14 of 2021, neither party to the arbitration award shall request recognition of the arbitration award and its implementation in the decision if the following conditions are met:

- the arbitration decision must be issued after the entry into force of the accession law on 31 May 2021;
- reciprocity with respect to the state on whose territory the arbitration decision was issued; and
- the arbitration decision must be issued regarding disputes related to a contractual legal relationship that are considered commercial according to Iraqi law.

The request for recognition of a foreign arbitral award and its implementation shall be through filing a lawsuit before the competent court of first instance, along with submitting the documents stipulated in article 4 of the Agreement. The court then invites the other party or parties to the arbitration award to plead, listens to the two parties' statements, and issues its ruling either by dismissing the lawsuit or issuing a ruling.

#### Recognising and implementing the foreign arbitral award

If the judgment is issued for recognition and implementation, the convicted person may visit any enforcement department in Iraq to implement the recognised foreign arbitral award in accordance with the provisions of the Iraqi enforcement law, just like any national Iraqi judgment.

The reasons for refusing to recognise a foreign arbitral award are the same as those stated in the New York Convention 1958.

The scientific reality in Iraq indicates that the Iraqi courts do not deal positively with arbitration awards in general and their continuous efforts to invalidate them and decide on the dispute regarding them.

As for recognising and implementing foreign arbitration awards, the courts are still reluctant to act on them and view them with great scepticism and negativity.

**Law stated - 12 March 2024**

### **Time limits for enforcement of arbitral awards**

**Is there a limitation period for the enforcement of arbitral awards?**



Iraqi law does not provide for a statute of limitations or expiration of enforceability for arbitration awards after a certain period. Instead, it follows the provisions related to the dismissal of executive judicial decisions after seven years of leaving the said decision (starting from the date of the last enforcement action). Additionally, article 114 stipulates that judgments lose their enforceability after seven years from the date they become final and conclusive. Therefore, arbitration awards or foreign arbitration recognition judgments become susceptible to expiration of enforceability after seven years from their finalisation.

However, the Iraqi judiciary has endeavored to restore enforceability to judgments that have lost their power by filing lawsuits for the renewal of enforceability.

**Law stated - 12 March 2024**

### **Enforcement of foreign awards**

#### **What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

The rulings of foreign courts to ratify or recognise arbitration awards and enforce them at the place of arbitration are not recognised by Iraqi courts except within the limits of what is stipulated in the international agreements that Iraq has ratified or acceded to.

Whoever wishes to recognise a foreign arbitral award in Iraq must file a lawsuit before the Iraqi courts to request the issuance of a ruling recognising it and enforcing it in accordance with the agreements or treaties that Iraq has joined or ratified, such as the New York Convention of 1958 or the Riyadh Agreement.

Although there are Iraqi texts on the permissibility of ruling on the implementation of foreign court rulings in Iraq in accordance with Foreign Court Judgment Implementation Law No. 30 of 1928, there hasn't been any judicial interpretation explicitly permitting the enforcement of a recognised foreign court judgment or a foreign arbitral award as a foreign court judgment subject to enforcement in Iraq according to the mentioned law, despite the existence of an Iraqi jurisprudential opinion suggesting otherwise.

**Law stated - 12 March 2024**

### **Enforcement of orders by emergency arbitrators**

#### **Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?**

Iraqi law does not define emergency orders within the framework of arbitration procedures, and no texts address them, nor does jurisprudence or rules of arbitration institutions.

**Law stated - 12 March 2024**

### **Cost of enforcement**

#### **What costs are incurred in enforcing awards?**

The arbitrators' ruling – after it is ratified by the competent court of first instance – is considered a ruling issued by that court and is subject to the same rules for implementing court rulings stipulated in Implementation Law No. 45 of 1980 and to the same fees stipulated in the amended Judicial Fees Law No. 114 of 1981, where a fee of 5,000 dinars is collected when the judgment is registered. A fee is collected from the debtor at 3 per cent of the debt collected from them and from the creditor at a rate of 2 per cent of the debt collected in their favour.

Law stated - 12 March 2024

## OTHER

### **Influence of legal traditions on arbitrators**

**What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?**

In arbitrations, the rules of evidence stipulated in Law No. 107 of 1979, as amended, apply. This law prohibits proof other than in writing for contractual obligations, except for amounts not exceeding 5,000 Iraqi dinars. Official documents certified under this law constitute conclusive evidence against all people for the matters they officially establish within the scope of the issuing authority. Ordinary documents serve as evidence of their contents, while confessions or acknowledgment are considered absolute and binding evidence against the confessing party. Testimonial evidence is not admissible for legal acts if the value exceeds 5,000 Iraqi dinars, but it is permissible for proving material facts and legal acts valued at less than five thousand dinars.

Witness testimony is only admissible if the witness appears before the arbitral tribunal and provides testimony during a session to which both parties are invited after identifying themselves and swearing an oath ('I swear by God to tell the truth'). Written testimonies outside of the arbitration council or hearing sessions are not acceptable, having no legal value or effect.

The arbitral tribunal has the authority to assess the evidence presented by both parties, whether written or otherwise. If one party is deemed unable to provide evidence of payment, they are granted the right to request their opponent to swear an oath, formulated by themselves. If the opponent agrees to swear the oath, the party must either swear it or refute it. If the incapable party refuses to request their opponent to swear the oath, they are considered the loser due to the refusal of the oath.

Law stated - 12 March 2024

### **Professional or ethical rules**

**Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?**

No professional rules for arbitrators in international arbitration in Iraq have been developed or applied so far.

Law stated - 12 March 2024

### **Third-party funding**

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

No regulatory restrictions against a third party's funding of arbitral claims.

Law stated - 12 March 2024

### **Regulation of activities**

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Entering Iraq requires foreigners to obtain a visa, except for citizens of countries exempted by Iraq from obtaining entry visas. However, working as an arbitrator does not require foreign arbitrators to obtain a work permit. Arbitration practice is not considered a form of legal representation, so the conditions for foreign lawyers' work in Iraq under Iraqi law do not apply.

Law stated - 12 March 2024

## **UPDATE AND TRENDS**

### **Legislative reform and investment treaty arbitration**

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

There have been efforts to pass a law to join the Singapore Mediation Convention (the United Nations Convention on International Settlement Agreements Resulting from Mediation for 2018, which came into force on 9 December 2020).

There are many bilateral agreements signed by Iraq regarding encouraging investment and protecting investors with the Emirates, Qatar and others that are awaiting completion of ratification procedures.

Law stated - 12 March 2024