A Critical Analysis of the Legislative Framework and Judicial Interpretation of Party Autonomy in Kuwaiti Commercial Arbitration

By

Mohammad M F A H Alazemi

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Abstract

This thesis examines party autonomy within Kuwait's arbitration framework through doctrinal analysis of the Civil and Commercial Procedure Law and over one hundred Court of Cassation judgments (1981–2025). Despite Kuwait's early accession to the New York Convention in 1978, it remains understudied in arbitration scholarship. This thesis provides the first comprehensive English-language doctrinal analysis of Kuwaiti arbitration law with regard to the principle of party autonomy.

Kuwait lacks a dedicated arbitration statute, regulating arbitration through sixteen articles within its civil and procedural code—provisions predating modern international arbitration practice. The thesis argues that Kuwait formally recognises party autonomy while systematically subjecting it to judicial supervision. To capture this configuration, the thesis proposes the term 'State-Centric Hybrid Model', characterising arbitral authority as a conditional privilege rather than a presumptive right.

The analysis employs an original three-phase analytical framework tracing constraints across the arbitration lifecycle, with comparative references to the UNCITRAL Model Law, English Arbitration Act 1996, and UAE Federal Arbitration Law 2018. The jurisdictional phase reveals 'gatekeeping conditionality'; the procedural phase demonstrates 'conditional authority'; and the award phase exposes 'cumulative judicial control'.

The empirical foundation draws on systematic examination of Court of Cassation jurisprudence in original Arabic, representing the most extensive analysis of Kuwaiti arbitration case law to date. The thesis concludes that Kuwait's framework, while internally coherent, may discourage sophisticated commercial actors from selecting Kuwait as an arbitral seat. Reform recommendations address codifying the separability doctrine, clarifying competence-competence, extending temporal boundaries, and enhancing interim measures jurisdiction.

Keywords: Party Autonomy; International Commercial Arbitration; Kuwait; State-Centric Hybrid Model; Judicial Supervision; UNCITRAL Model Law; New York Convention.

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List of Abbreviations:

AAA	American Arbitration Association (Commercial Arbitration Rules)
ADR	Alternative Dispute Resolution
art/arts	Article/Articles
BCDR	Bahrain Chamber for Dispute Resolution
c/ch	Chapter
CCPL	Civil and Commercial Procedure Law (Kuwait)
CISG	Convention on Contracts for the International Sale of Goods
CL	Civil Law of Kuwait
Co	Company
Corp	Corporation
Ct	Court
DIAC	Dubai International Arbitration Centre
edn	Edition
eds	Editors
GCC	Gulf Cooperation Council
Geneva Convention	1927 Geneva Convention for the Execution of Foreign Arbitral Awards
Geneva Protocol	1923 Geneva Protocol on Arbitration Clauses in Commercial Matters
IBA Guidelines	International Bar Association Guidelines on Conflicts of Interest in International Arbitration
ibid	Ibidem (in the same place)
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICDR	International Center for Dispute Resolution

ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States
ICSID Rev-For Inv LJ	ICSID Review – Foreign Investment Law Journal
JAL	Judicial Arbitration Law (Kuwait, Law No 11 of 1995)
LJ	Lord Justice
LCIA	London Court of International Arbitration
Ltd	Limited
Model Law	UNCITRAL Model Law on International Commercial Arbitration
n	Footnote number
NCPC	French New Code of Civil Procedure (Nouveau Code de Procédure Civile)
NJA	Nytt Juridiskt Arkiv (Sweden)
No	Number
NY Convention	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
OUP	Oxford University Press
p/pp	Page/Pages
para/paras	Paragraph/Paragraphs
s/ss	Section/Sections
S Ct	Supreme Court
SIAC Rules	Singapore International Arbitration Centre Rules
UAE	United Arab Emirates
UK	United Kingdom
UKHL	United Kingdom House of Lords

UKSC	United Kingdom Supreme Court
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
vol	Volume

List of Codes/Conventions/Rules:

Kuwait

Constitution of the State of Kuwait 1962

Civil and Commercial Procedure Law (Decree-Law No 38 of 1980)

Civil Code (Decree-Law No 67 of 1980)

Commercial Law (Law No 68 of 1980)

Company Law (Law No 1 of 2016)

Electronic Transactions Law (Law No 20 of 2014)

Judicial Arbitration Law (Law No 11 of 1995)

Personal Status Law (Law No 51 of 1984)

United Arab Emirates

Civil Transactions Law (Federal Law No 5 of 1985)

Federal Arbitration Law (Federal Law No 6 of 2018)

United Kingdom

Arbitration Act 1996

Arbitration Act 2025

Companies Act 1985

Insolvency Act 1986

Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)

Egypt

Arbitration Law (Law No 27 of 1994)

Civil Code

Commercial Law

Constitution of the Arab Republic of Egypt 2014

Former Code of Civil and Commercial Procedure

Saudi Arabia

Arbitration Law (Royal Decree No M/34 of 2012)

Former Arbitration Law (Royal Decree No M/46 of 1983)

France

Code of Civil Procedure (Code de Procédure Civile)

New Code of Civil Procedure (Nouveau Code de Procédure Civile)

Other National Laws

Bahrain: Arbitration Law (Legislative Decree No 9 of 2015)

Canada: British Columbia International Commercial Arbitration Act

Italy: Code of Civil Procedure

Oman: Arbitration Law (Royal Decree No 47 of 1997)

Qatar: Arbitration Law (Law No 2 of 2017)

Singapore: International Arbitration Act 2012

Sweden: Arbitration Act (SFS 1999:116)

Switzerland: Code of Civil Procedure

Switzerland: Private International Law Act (PILA)

Syria: Arbitration Law

Tunisia: Arbitration Code

United States: Federal Arbitration Act 1925

International Conventions and Treaties

Convention on Contracts for the International Sale of Goods (CISG) 1980

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention) 1965

European Convention on International Commercial Arbitration 1961

Geneva Convention for the Execution of Foreign Arbitral Awards 1927

Geneva Protocol on Arbitration Clauses in Commercial Matters 1923

Hague Principles on Choice of Law in International Commercial Contracts 2015

Inter-American Convention on International Commercial Arbitration (Panama Convention) 1975

Statute of the International Court of Justice 1945

UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006)

UNCITRAL Recommendations on the Interpretation of Article II and Article VII of the New York Convention 2006

UNIDROIT Principles of International Commercial Contracts

Institutional Arbitration Rules

AAA International Arbitration Rules

DIAC Arbitration Rules (Dubai International Arbitration Centre)

DIS Arbitration Rules (German Institution of Arbitration)

HKIAC Administered Arbitration Rules 2013 (Hong Kong International Arbitration Centre)

IBA Guidelines on Conflicts of Interest in International Arbitration 2014

IBA Rules of Ethics for International Arbitrators

ICC Arbitration Rules 2012 (International Chamber of Commerce)

ICDR International Arbitration Rules 2010

LCIA Arbitration Rules 2014 (London Court of International Arbitration)

Maritime Arbitration Association of the United States Rules

SIAC Arbitration Rules 2013 (Singapore International Arbitration Centre)

Swiss Rules of International Arbitration 2012

UNCITRAL Arbitration Rules 2010

WIPO Arbitration Rules (World Intellectual Property Organization)

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Court of Cassation – Cases by CCPL Article

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Case No 74/1986, 15 January 1986

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Case No 199/1989, 5 November 1989

Case No 183/1990, 4 February 1990

Case No 189/1990, 14 January 1990

Case No 340/1990, 21 May 1990

Case No 179/1992, 19 January 1992

Case No 157/1993, 19 December 1993

Case No 183/1994, 15 February 1994

Case No 222/1998, 19 April 1998

Case No 328/1998, 15 February 1998

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Case No 930/2007, 15 March 2009

Case No 2103/2015, 26 March 2018

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Article 176 (Challenge of Arbitrators)

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Article 178 (Arbitrator Duties)

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Case No 538/1998, 31 May 1998

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Case No 1123/2007, 14 June 2009

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Case No 1068/2020, 3 November 2020

Case No 2058/2018, 26 December 2021

Article 181 (Time Limits)

Case No 210/1989, 15 May 1989

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Case No 441/1999, 1 February 1999

Case No 567/2003, 28 June 2004

Case No 1952/2014, 21 October 2015

Article 182 (Procedural Rules)

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Case No 19/1987, 10 June 1987

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Case No 538/1998, 31 May 1998

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Case No 538/1998, 31 May 1998

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Case No 340/2004, 25 April 2005

Case No 1294/2015, 10 February 2016

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Case No 183/1994, 15 February 1994

Case No 184/1994, 8 March 1994

Case No 538/1998, 31 May 1998

Case No 580/2000, 20 November 2000

Case No 382/2018, 24 June 2019

Case Nos 952/2020 and 995/2020, 13 February 2022

Additional Cases

Case No 48/1975 (Commercial), 29 December 1976

Case No 68/1986 (Labour), 16 March 1987

Case No 221/1991 (Commercial), 15 December 1991

Case No 179/2010 (Civil), 10 May 2011

Case No 258/2005 (Commercial), 18 March 2006

Case No 263/2005 (Commercial), 18 March 2006

Case No 295/2005 (Labour), 18 June 2007

Case No 467/1996 (Commercial), 22 June 1998

Case No 608/2018 (Commercial), 11 July 2018

Case No 1158/2014 (Civil), 13 May 2015

Case No 1207/2010 (Commercial), 12 May 2011

Case No 3249/2018 (Commercial), 14 July 2020

United Arab Emirates

- Commercial Case No 293/2019, 30 June 2019
- Commercial Case No 492/2020, 15 July 2020
- Labour Case No 55/2020, 6 February 2020
- Commercial Case No 5/2020, 19 March 2020
- Real Estate Case No 247/2020, 13 October 2020
- Commercial Case No 34/2020, 7 December 2020
- Commercial Case No 36/2020, 7 December 2020

United Kingdom

- **Heyman v Darwins Ltd** [1942] AC 356 (HL)
- **Photo Production Ltd v Securicor Transport Ltd** [1980] AC 827
- **Fiona Trust & Holding Corporation v Privalov** [2007] UKHL 40, [2007] 4 All ER 951
- **Porter v Magill** [2001] UKHL 67, [2002] 2 AC 357
- **Halliburton Company v Chubb Bermuda Insurance Ltd** [2020] UKSC 48
- **Sharp Corp Ltd v Viterra BV** [2024] UKSC 14
- **P v Q** [2017] EWCA Civ 87
- **Fulham Football Club (1987) Ltd v Richards** [2011] EWCA Civ 855
- **London Steam-Ship Owners' Mutual Insurance Association Ltd v Spain** [2015] EWCA Civ 333
- **ET Plus SA v Jean-Paul Welter** [2005] EWHC 2115 (Comm)
- **Microsoft Mobile OY (Ltd) v Sony Europe Ltd** [2017] EWHC 374 (Ch)
- **NDK Ltd v HUO Holding Ltd** [2022] EWHC 1682 (Comm)
- **Nori Holding Ltd v PJSC "Bank Otkritie Financial Corporation"** [2018] EWHC 1343 (Comm)
- **Fleetwood Wanderers Ltd v AFC Fylde Ltd** [2018] EWHC 3318 (Comm)
- **Re Vocam Europe Ltd** [1998] BCC 396 (Ch)

France

- **CA Angers**, 27 March 1957, D 1954, 704
- **Cass civ 2e**, 29 January 1960, *Revue de l'arbitrage* 1960, 121
- **CA Paris**, 14 May 1979, D 1959, 437

Egypt

- Decision of 16 February 1971, *Majmu'at al-Ahkam*, vol 2, p 179

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Chapter 1: Introduction

1.1 Background of the Study

International commercial arbitration has emerged as the preferred mechanism for resolving cross-border commercial disputes. Parties value its procedural flexibility, party autonomy, and the international enforceability of arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.[1] The effectiveness of any national arbitration framework depends significantly on its capacity to support these foundational advantages while providing appropriate safeguards against procedural abuse.

Kuwait occupies a distinctive position in the historical development of arbitration in the Arabian Gulf region. In 1978, Kuwait became the first Gulf Cooperation Council state to accede to the New York Convention. This accession predated Bahrain by a decade, Saudi Arabia by sixteen years, and the United Arab Emirates by twenty-eight years.[2] This early commitment reflects a legislative philosophy that was remarkably receptive to international arbitration. At that time, many jurisdictions in the region remained hesitant to embrace private dispute-resolution mechanisms operating outside traditional court systems.[3]

The legislative framework enacted shortly thereafter reinforced this progressive orientation. The Civil and Commercial Procedure Law of 1980 adopted both forms of arbitration agreement recognised in international practice. These include the arbitration clause for future disputes and the submission agreement for existing disputes.[4] Significantly, Article 173 requires writing merely as evidence of the arbitration agreement rather than as a condition for its formation. This position was

[1] Gary B Born, 'Introduction' in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1–6; Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Introduction' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 1.
[2] UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' <https://www.newyorkconvention.org/contracting-states/list-of-contracting-states> accessed 27 January 2026.
[3] Abdul Hamid El-Ahdab, Jalal El-Ahdab and Glynn Lunney, 'Arbitration in Kuwait' in Arbitration with the Arab Countries (Kluwer Law International 2011) 305–336.
[4] Decree-Law No 38/1980 Promulgating the Code of Civil and Commercial Procedures (Kuwait), art 173.

notably flexible by the standards of 1980 and anticipated the direction international arbitration practice would subsequently take.[5] These legislative choices indicate that the Kuwaiti legislature was not philosophically opposed to arbitration. Nor was it committed to subordinating private dispute resolution to comprehensive judicial control.

However, the arbitration provisions of the CCPL have remained substantially unchanged for over four decades. During this period, international arbitration has undergone a profound transformation. The UNCITRAL Model Law of 1985, revised in 2006, established new benchmarks for arbitration-supportive legislation.[6] Regional neighbours have enacted modern arbitration statutes. The UAE enacted its Federal Arbitration Law in 2018. Qatar promulgated its Arbitration Law in 2017. Bahrain followed with its Arbitration Law in 2015. Saudi Arabia issued its Arbitration Law in 2012.[7] These developments have left Kuwait's framework increasingly outdated by contemporary standards. What was once progressive has become outdated.

This thesis argues that the constraints on party autonomy identified in subsequent chapters reflect legislative obsolescence rather than deliberate policy choice. The State-Centric Hybrid Model that characterises Kuwait's current framework is not the product of a legislative philosophy hostile to arbitration. Rather, it is the consequence of provisions drafted before modern arbitration practice had crystallised. Courts apply these provisions without specialised arbitration expertise. They have never been updated to reflect the evolution of international commercial arbitration over the past four decades.

This characterisation carries important implications for reform. A legislature that demonstrated early receptiveness to international arbitration may be expected to respond positively to proposals for modernisation. Its pioneering accession to the New York Convention evidences this receptiveness. Reform becomes achievable once the

[5] Compare UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006), art 7.
[6] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006).
[7] Federal Law No 6 of 2018 on Arbitration (UAE); Law No 2 of 2017 (Qatar); Law No 9 of 2015 (Bahrain); Royal Decree No M/34 of 2012 (Saudi Arabia).

gap between Kuwait's current framework and international best practices is clearly articulated.

Understanding precisely how Kuwait's framework operates is not merely an academic exercise. It establishes the essential foundation for informed legislative reform. Such reform aligns with Kuwait Vision 2035's aspiration to transform the country into a regional financial and commercial hub.[8]

1.2 Central Argument and Analytical Framework

This thesis argues that Kuwait's framework formally recognises party autonomy while systematically subjecting it to comprehensive judicial supervision at every stage of the arbitral process. This thesis proposes the term 'State-Centric Hybrid Model' as a descriptive characterisation of this approach. The term captures how arbitral authority in Kuwait operates as a conditional privilege rather than a presumptive right. Unlike jurisdictions that treat party autonomy as an entitlement requiring only exceptional judicial intervention, Kuwait's framework conceptualises arbitral authority as a delegated power. This power functions only within boundaries defined by constitutional guarantees of judicial access and the State's sovereign interest in maintaining oversight over private adjudication.[9]

To demonstrate how this framework operates in practice, this thesis employs an original three-phase analytical structure that traces the constraints on party autonomy across the entire arbitration lifecycle. The jurisdictional phase examines the formation of arbitral authority, revealing what this study identifies as 'gatekeeping conditionality'. Under this system, arbitral jurisdiction arises only when parties satisfy cumulative statutory prerequisites governing agreement formation, capacity, arbitrability, and competence allocation.[10] The procedural phase analyses the conduct of arbitral proceedings. It demonstrates that procedural autonomy operates as 'conditional

[8] Kuwait General Secretariat of the Supreme Council for Planning and Development, *Kuwait Vision 2035* (2017).

[9] Constitution of Kuwait 1962, art 164, establishing the right of access to courts as a constitutional guarantee. See also Ahmad Alkhudhair and Ali Alhusainan, 'Procedural Conditions for Enforcement of Foreign Judgments as per Kuwaiti Procedure Act' (2021) International Review of Law 143, 148–149.

[10] The jurisdictional phase analysis draws upon foundational Court of Cassation decisions including Case No 179/1990 (4 February 1990) (Commercial) on arbitration agreement formation, the Snapchat trilogy culminating in Case No 3249/2018 (14 July 2020) (Commercial) on electronic consent, and Case No 598/2023 (26 September 2023) (Commercial) on representative authority requirements.

authority' dependent upon statutory permission and judicial cooperation rather than as an inherent attribute of arbitral authority.[11] The award phase traces the transformation of arbitral decisions into enforceable judgments, revealing a pattern of 'cumulative judicial control'. Each post-award stage provides opportunities for judicial intervention that collectively transform presumptively final decisions into provisional determinations awaiting state validation.[12] This three-phase structure provides the organisational architecture for Chapters Three, Four, and Five, enabling systematic examination of how Kuwait's framework manifests across distinct operational contexts.

This thesis situates Kuwait's framework within the broader theoretical debate on the nature of arbitral authority. Scholarship has long recognised four competing theories explaining the relationship between arbitration and state power. The jurisdictional theory views arbitration as a form of delegated state authority. The contractual theory treats it as purely private ordering. The hybrid theory combines elements of both—the autonomous will theory positions arbitration as an independent transnational legal order.[13] The analysis demonstrates that Kuwait's approach constitutes a distinctive variant of the hybrid model, one that formally acknowledges contractual foundations while embedding judicial supervision throughout the arbitral process. This distinguishes Kuwait from the UNCITRAL Model Law's autonomy-centred framework, which treats judicial intervention as exceptional. It also distinguishes Kuwait from the English Arbitration Act 1996's calibrated support model, which provides judicial assistance while respecting party choices.[14] Kuwait's framework inverts these presumptions. Rather than presuming arbitral authority subject to limited judicial oversight, it presumes judicial authority subject to conditional arbitral delegation.

[11] The procedural phase analysis examines Case No 274/1998 (5 December 1998) (Commercial) establishing tribunal dependence on judicial assistance, Cases Nos. 258 and 263/2005 (18 March 2006) (Commercial) on temporal constraints, and Case No 568/1998 (Commercial) on interim measures jurisdiction.

[12] The award phase analysis addresses Case No 332/2000 (25 March 2002) (Commercial) on formal validity requirements, Case No 263/2005 (18 March 2006) (Commercial) on temporal boundaries, and the enforcement framework under Articles 185 and 199–200 CCPL.

[13] For foundational analysis of these theoretical frameworks, see Emmanuel Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff 2010) 15–35; Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer 2003) 71–93; Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 1.

[14] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 5; Arbitration Act 1996 (UK), s 1(c); Departmental Advisory Committee on Arbitration Law, *Report on the Arbitration Bill* (1996) para 22.

Understanding this inversion is essential for commercial parties, practitioners, and policymakers seeking to navigate or reform Kuwait's arbitration system.

The empirical foundation of this thesis rests upon a systematic analysis of Kuwait's arbitration jurisprudence, encompassing over one hundred Court of Cassation judgments rendered between 1981 and 2025. This comprehensive jurisprudential examination was conducted in the original Arabic and represents the most extensive analysis of Kuwaiti arbitration case law undertaken to date. It reveals consistent judicial patterns that substantiate the state-centric characterisation across all three phases.[15]

1.3 The Absence of a Dedicated Arbitration Law in Kuwait

1.3.1 Arbitration as Private Justice within Kuwait's Legal Framework

Arbitration in Kuwait operates as a form of private justice rather than as an autonomous dispute resolution mechanism. This characterisation carries significant implications. Unlike public justice administered through state courts, arbitration derives its authority from party agreement rather than sovereign mandate. However, this consensual foundation does not render arbitration a purely contractual institution. Once appointed, arbitrators exercise judicial functions, applying law to facts and rendering binding decisions. The critical distinction lies not in the function performed, but in the source of authority and the institutional framework within which that function operates.[16]

This conceptualisation explains several distinctive features of Kuwait's arbitration framework. First, arbitrators possess fewer inherent powers than state court judges. They cannot compel witness attendance, enforce compliance with procedural orders, or impose sanctions for obstruction. These powers require recourse to judicial assistance under Article 175 CCPL. Second, the relationship between arbitral and judicial authority is one of dependency rather than parallel jurisdiction. State courts

[15] Within Kuwait's judicial system, Court of Cassation judgments on questions of law constitute authoritative interpretations binding on lower courts. See Alkhudhair and Alhusainan (n 9) 148–149.
[16] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Juridical Nature of Arbitration' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 71–97.

supervise arbitrator appointment, determine challenges to arbitrators, and provide the enforcement mechanism, without which arbitral awards remain unexecutable. Third, arbitral awards remain subject to annulment proceedings under Article 186 CCPL, which are unavailable against court judgments. This reflects the provisional nature of private justice pending state validation.[17]

1.3.2 The Legislative Architecture: Arbitration Embedded in Civil Procedure

Despite Kuwait's commercial significance and its formal participation in international arbitration conventions, the State does not possess a separate, comprehensive arbitration statute. Arbitration proceedings are governed primarily by Book Twelve of the Civil and Commercial Procedure Law (Decree-Law No. 38/1980), comprising Articles 173 to 188. Notably, Kuwait has not adopted the UNCITRAL Model Law on International Commercial Arbitration. Nor has it enacted legislation that distinguishes between domestic and international arbitration in any meaningful substantive sense.[18]

The limited number of provisions dedicated to arbitration, combined with the absence of detailed procedural guidance, creates a legislative environment characterised by considerable uncertainty. Unlike jurisdictions that have embraced arbitration-specific legislation to provide comprehensive frameworks for arbitral proceedings, Kuwait's approach embeds arbitration within the broader procedural code governing civil and commercial litigation. This choice subjects arbitration to interpretive principles and judicial attitudes developed primarily within the context of court proceedings rather than the distinct logic of consensual dispute resolution.[19]

The consequence of this legislative architecture is that arbitration in Kuwait operates without the conceptual and procedural infrastructure that characterises modern arbitration frameworks. The CCPL contains no statutory provisions addressing the separability of arbitration agreements, competence-competence, the law applicable to arbitral proceedings, or the scope of arbitral tribunal authority. These gaps need to be

[17] Decree-Law No 38/1980 (Kuwait), arts 175, 186.
[18] Kuwait acceded to the New York Convention on 28 April 1978.
[19] Gary B Born, 'Introduction' in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1–6.

filled through judicial interpretation. As subsequent chapters demonstrate, the Kuwaiti courts have approached this interpretive task in a manner that consistently prioritises judicial oversight over party autonomy and arbitral independence.[20]

1.3.3 No Distinction Between Domestic and International Arbitration

Kuwait's arbitration framework does not distinguish between domestic and international arbitration in any meaningful substantive sense. The Civil and Commercial Procedure Law (CCPL), comprising Articles 173 to 188, applies uniformly to all arbitration proceedings. This applies regardless of whether the dispute involves purely domestic parties or multinational corporations engaged in cross-border commerce. The limited provisions make no reference to the international character of disputes or the nationality of parties. They similarly ignore the location of parties' principal places of business and the transnational nature of the underlying commercial relationship. The only recognition of internationality appears in Article 182(4), which addresses the enforcement of awards rendered abroad rather than establishing a distinct regime for international arbitration conducted within Kuwait.

This approach contrasts markedly with modern arbitration legislation. The UNCITRAL Model Law, adopted by over 85 jurisdictions, distinguishes international arbitration through objective connecting factors under Article 1(3).[21] The UAE Federal Arbitration Law No. 6 of 2018 similarly provides comprehensive criteria in Article 3. Arbitration is defined as international where parties' principal places of business are in different states, where the arbitral seat or place of substantial performance is abroad, where the subject matter relates to more than one State, or where parties expressly so agree.[22] Egypt's Arbitration Law No. 27 of 1994 likewise establishes specific criteria for international arbitration in Article 3.[23] Kuwait's failure to adopt such distinctions means that sophisticated international commercial disputes receive the same treatment as simple domestic matters. Both are subject to the same mandatory

[20] Compare UNCITRAL Model Law, arts 7, 8, and 16.
[21] UNCITRAL Model Law, art 1(3).
[22] Federal Law No 6 of 2018 on Arbitration (UAE), art 3.
[23] Law No 27 of 1994 (Egypt), art 3.

provisions, judicial supervision, and procedural constraints, regardless of their transnational character.

1.3.4 The Absence of Specialised Arbitration Courts or Judges

Compounding this legislative gap, Kuwait's judicial system lacks specialised institutional infrastructure for arbitration-related matters. No dedicated arbitration court or chamber exists to handle disputes arising from arbitration proceedings. Matters such as arbitrator appointment, challenges to arbitrators, requests for interim measures, applications to extend time limits, annulment proceedings, and enforcement applications are distributed across the general court system. The Court with jurisdiction over arbitration matters is simply the Court that would have had jurisdiction over the underlying dispute absent the arbitration agreement. It is not a specialised tribunal with concentrated arbitration expertise.

This absence of judicial specialisation contrasts with the approach adopted in modern arbitration frameworks. Qatar's Arbitration Law No. 2 of 2017 designates a specific competent court. Parties may choose between the Civil and Commercial Arbitration Disputes Circuit at the Court of Appeal or the Court of First Instance at the Qatar Financial Centre Civil and Commercial Court.[24] The UAE has established specialised arbitration-support mechanisms within its court system.[25] France concentrates international arbitration matters within the Paris Court of Appeal.[26] These institutional arrangements recognise that effective judicial support for arbitration requires concentrated expertise and consistent jurisprudential development.

1.3.5 Analytical Implications for This Thesis

These features of Kuwait's arbitration framework carry important implications for the analysis undertaken in subsequent chapters. Throughout this thesis, references to 'the court' or 'judicial intervention' in arbitration matters refer to the ordinary Court that would have jurisdiction over the underlying dispute. These references do not denote

[24] Law No 2 of 2017 (Qatar), art 1.
[25] Sally Kotb and Mohamed Hesham Elrafei, ‘UAE Arbitration Law, Article 1 [Foundations of UAE Arbitration Law]’ in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 3–4.
[26] Code de procédure civile (France), arts 1519–1527.

a specialised arbitration tribunal or a judge with dedicated expertise in arbitration law and practice. This institutional context shapes how judicial supervision operates in practice. Judges determining arbitration-related applications may approach such matters through the lens of ordinary civil procedure rather than the distinct logic of consensual dispute resolution.

Similarly, the absence of any domestic-international distinction means that the analysis of Kuwait's three-phase framework (jurisdictional, procedural, and award phases) applies uniformly to both domestic and international arbitration. The constraints on party autonomy, the mandatory provisions, and the patterns of judicial supervision identified in Chapters Three, Four, and Five operate identically regardless of the dispute's international dimension. This uniformity itself constitutes a significant feature of Kuwait's state-centric approach, distinguishing it from jurisdictions that calibrate judicial oversight according to the domestic or international character of the arbitration.

1.4 Research Questions

Against this background, this thesis addresses the following central research question. Does Kuwait's arbitration framework, through its statutory architecture and judicial interpretation, genuinely support party autonomy, or does it instead operate as a system of conditional delegation that subordinates private ordering to comprehensive state supervision? This question moves beyond descriptive accounts of Kuwait's arbitration law to interrogate the nature of arbitral authority within Kuwait's legal order. The thesis argues that answering this question requires examining not merely whether party autonomy is formally recognised. It also requires examining how party autonomy actually operates when tested against statutory requirements and judicial scrutiny across the jurisdictional, procedural, and award phases. The three-phase analytical framework provides the methodological architecture for this examination, enabling systematic assessment of the gap between formal recognition and substantive reality.[27]

[27] This methodological approach draws upon doctrinal legal research traditions while incorporating systematic case law analysis. See Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83.

To address this central question systematically, this study pursues four subsidiary inquiries, each corresponding to a substantive chapter.

First, what theoretical frameworks explain the relationship between party autonomy and state authority in arbitration, and how does Kuwait's approach fit within these frameworks? Chapter Two examines the jurisdictional, contractual, hybrid, and autonomous will theories, alongside the Shariah perspective on arbitration, establishing the conceptual foundation for characterising Kuwait's framework.[28]

Second, how does Kuwait's framework regulate the formation and scope of arbitral jurisdiction, and to what extent do statutory requirements and judicial interpretation condition the very existence of arbitral authority? Chapter Three examines the jurisdictional phase, testing the hypothesis that Kuwait employs gatekeeping conditionality through requirements governing agreement formation, capacity, arbitrability, and competence allocation.[29]

Third, does formal recognition of procedural autonomy translate into substantive freedom for parties and tribunals, or does Kuwait's framework impose constraints that reshape the arbitral experience? Chapter Four analyses the procedural phase, examining tribunal constitution, temporal boundaries, procedural rules, and interim measures. It determines whether procedural authority is an inherent attribute of arbitral jurisdiction or a conditional power.[30]

Fourth, how does Kuwait's framework treat arbitral awards, and what mechanisms ensure that state supervision extends through the final stage of the arbitration lifecycle? Chapter Five examines the award phase, analysing nationality requirements, formal validity, deposit obligations, recourse mechanisms, and enforcement procedures. It assesses whether cumulative judicial control transforms

[28] The theoretical analysis engages with foundational scholarship including Emmanuel Gaillard, Legal Theory of International Arbitration (Martinus Nijhoff 2010); Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer 2003); and Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (Islamic Texts Society 2003).
[29] Chapter Three analyses Articles 173 and 180 CCPL, Articles 702 and 554 of the Civil Code.
[30] Chapter Four analyses Articles 174–182 CCPL and JAL procedural provisions.

presumptively final decisions into provisional determinations awaiting state validation.[31]

1.5 Research Methodology

This thesis adopts a doctrinal legal research methodology, systematically analysing primary legal sources including legislation, judicial decisions, and authoritative commentary to understand how party autonomy operates within Kuwait's arbitration framework.[32] Doctrinal methodology is particularly suited to this inquiry for three reasons. First, the research questions concern the interpretation and application of legal rules within a specific national context. This requires close textual analysis of statutory provisions and judicial reasoning rather than empirical data collection or statistical analysis. Second, the thesis seeks to identify the underlying legal principles and theoretical commitments embedded within Kuwait's framework. Doctrinal analysis accomplishes this task by examining how courts interpret legislative text and develop consistent jurisprudential patterns. Third, developing reform recommendations requires a thorough understanding of existing legal structures before proposing modifications, ensuring that recommendations address actual rather than assumed deficiencies.[33]

To operationalise this doctrinal approach, this thesis employs an original three-phase analytical framework that structures the examination of Kuwait's arbitration regime. This framework traces party autonomy across the complete arbitration lifecycle, recognising that the nature and extent of autonomous choice may vary significantly at different stages. The jurisdictional phase examines how arbitral authority is established, analysing the statutory and judicial requirements governing agreement formation, party capacity, subject-matter arbitrability, and competence allocation. The procedural phase examines how arbitral proceedings are conducted, analysing tribunal constitution, temporal constraints, procedural rules, and interim measures. The award phase examines how arbitral decisions achieve legal effect, analysing

[31] Chapter Five analyses Articles 181–188 and 199–200 CCPL.
[32] Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83, 84.
[33] Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), Advanced Research Methods in the Built Environment (Wiley-Blackwell 2008) 28–38.

formal validity requirements, recourse mechanisms, and enforcement procedures.[34] This three-phase structure provides dual benefits. Analytically, it enables systematic identification of how judicial supervision manifests differently at each stage. Organisationally, it provides the architecture for Chapters Three, Four, and Five, ensuring comprehensive coverage while maintaining coherent progression.[35]

The research draws upon three categories of primary legal sources. The first category comprises Kuwait's arbitration legislation, principally Book Twelve of the Civil and Commercial Procedure Law, Decree-Law No. 38/1980. Relevant provisions of the Civil Code, Decree No. 67/1980, particularly Article 702 on representative authority, are also included.[36] These texts are analysed in their original Arabic, with careful attention to legal terminology and conceptual nuances that existing English translations may not fully capture. The second category comprises judicial decisions, centring on over one hundred Court of Cassation judgments on arbitration rendered between 1981 and 2025. Cases were identified through a systematic search of the Court's official database and the Kuwaiti legal periodical Majallat al-Qada' wa al-Qanun, using search terms including *tahkim* (arbitration), *shart tahkimi* (arbitration clause), and *hakam* (arbitrator). Selection prioritised decisions addressing jurisdictional prerequisites, procedural constraints, and award-phase requirements, with particular attention to cases establishing or modifying doctrinal positions.[37] The third category comprises international instruments to which Kuwait is a party, principally the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Kuwait ratified this Convention in 1978, providing the framework for analysing its treatment of foreign awards.[38]

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[34] This tripartite framework reflects the lifecycle structure implicit in arbitration scholarship. See Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021); Nigel Blackaby KC and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2023).

[35] The framework enables what Zweigert and Kötz term 'functional comparison' without adopting a full comparative methodology. See Konrad Zweigert and Hein Kötz, Introduction to Comparative Law (3rd edn, Tony Weir tr, OUP 1998) 34.

[36] The 2002 amendments to the CCPL introduced modifications to Articles 182 and 183, adjusting formal requirements for arbitral awards. All statutory translations from Arabic are the author's own unless otherwise indicated.

[37] Access to Court of Cassation judgments was obtained through the official judicial database maintained by the Ministry of Justice and through Majallat al-Qada' wa al-Qanun, the official publication of the Kuwait Bar Association.

[38] Kuwait acceded to the New York Convention on 28 April 1978, with reservations limiting application to awards made in the territory of another contracting state and to differences arising out of legal

Secondary sources comprise scholarly commentary in both Arabic and English. Arabic-language scholarship provides essential context for understanding Kuwait's legal traditions, judicial reasoning patterns, and doctrinal development.[39] English-language scholarship situates Kuwait within broader theoretical debates on arbitration. It draws on leading treatises such as Born's International Commercial Arbitration, Gaillard's Legal Theory of International Arbitration, and Redfern and Hunter's International Arbitration.[40] Additionally, this thesis employs three international reference frameworks: the English Arbitration Act 1996, the UNCITRAL Model Law on International Commercial Arbitration, and the UAE Federal Arbitration Law 2018. These serve not as subjects of systematic comparative analysis, but as analytical benchmarks that illuminate Kuwait's distinctive approach.[41]

Reference to international standards provides the first form of contextual positioning. The UNCITRAL Model Law establishes the autonomy-centred paradigm that dominates contemporary international arbitration practice. It embodies assumptions about arbitral authority, procedural freedom, and judicial involvement against which Kuwaiti cases are easier to identify. Reference to the English Arbitration Act 1996 serves a complementary function, exemplifying a well-established common law framework that successfully balances party autonomy with appropriate judicial oversight. England's framework demonstrates how procedural flexibility, tribunal competence, and judicial support function within a system commonly characterised as arbitration friendly. Together, these international references provide benchmarks for evaluating where Kuwait aligns with global standards and where it departs from prevailing practice.

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relationships considered commercial under Kuwaiti law. See UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards'.

[39] Key Arabic-language sources include Abd al-Razzaq al-Sanhuri, al-Wasit fi Sharh al-Qanun al-Madani (Dar al-Nahda al-Arabiyya 1964); Jamil al-Sharqawi, al-Tahkim al-Tijari al-Duwali (Dar al-Nahda al-Arabiyya 2011).

[40] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021); Emmanuel Gaillard, Legal Theory of International Arbitration (Martinus Nijhoff 2010); Nigel Blackaby KC and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2023); Essam Al Tamimi, Arbitration in the Middle East (2nd edn, Globe Law and Business 2018); Abdul Hamid El-Ahdab and Jalal El-Ahdab, Arbitration with the Arab Countries (3rd edn, Kluwer Law International 2011).

[41] A methodological clarification is essential. This thesis does not adopt a comparative methodology in the strict sense of systematically comparing Kuwait's framework with foreign systems to identify transplantable solutions. Rather, the reference frameworks serve an analytical function, providing the conceptual vocabulary and doctrinal benchmarks against which Kuwait's distinctive approach becomes intelligible.

Reference to the United Arab Emirates Federal Arbitration Law of 2018 serves a distinct purpose. This reference does not undertake a comprehensive comparative analysis of Gulf Cooperation Council states. Instead, it situates Kuwait within its regional legal context by examining the most advanced and internationally aligned arbitration framework among Gulf states. The UAE's 2018 legislation, developed in conformity with the UNCITRAL Model Law, exemplifies the modern Gulf approach to arbitration regulation. Examining how the UAE addresses interim measure authority, tribunal constitution, time restrictions, and court-arbitration interaction is instructive. It illuminates whether Kuwait's methods align with regional trends or represent distinctive policies requiring particular attention from parties and practitioners. This regional positioning matters in practice because, as Kuwait seeks to develop its role in commercial dispute resolution, particularly given that Gulf businesses frequently operate across multiple jurisdictions within the region.

Neither form of reference renders this thesis comparative legal scholarship. The international references provide analytical tools and illustrate how autonomy-centred systems operate in practice. The UAE reference provides regional positioning within the Gulf context. Both serve the primary inquiry into how Kuwait's framework operates, what assumptions underlie its structure, and what implications follow for parties choosing Kuwait-seated arbitration.

1.6 Limitations

Several limitations should be acknowledged. First, this thesis confines its analysis to the CCPL framework governing ad hoc commercial arbitration and does not examine the Judicial Arbitration Law No. 11 of 1995 (JAL), which establishes an institutional arbitration mechanism under judicial auspices with mandatory judicial composition. The JAL’s distinctive framework, characterised by five-member panels including a three-judge majority, warrants separate examination. Second, the study has not examined investment arbitration under bilateral or multilateral investment treaties, which engage distinct legal frameworks and policy considerations. Third, the research has not provided a sector-specific analysis of arbitration in particular industries such

as oil and gas, construction, or maritime commerce. However, the general framework examined applies across commercial sectors.[42]

The doctrinal methodology, whilst appropriate for addressing the research questions, does not capture practitioners lived experiences with Kuwait's arbitration system. Empirical investigation through interviews, surveys, or participant observation could reveal practical challenges and stakeholder perceptions that doctrinal analysis cannot access.[43]

The reliance on published Court of Cassation judgments may not capture the full range of arbitration disputes, as many arbitrations conclude without judicial involvement, and some judicial decisions may remain unreported. The most recent cases examined date back to December 2025, and subsequent judicial developments may have modified some of the patterns identified.[44]

1.7 Significance of the Study

This thesis contributes to arbitration scholarship by addressing a significant gap in the literature. While the Middle East has attracted increasing academic attention, with substantial literature examining arbitration in the UAE, Saudi Arabia, and Egypt, Kuwait remains notably understudied. This is surprising given its early accession to the New York Convention in 1978 and its distinctive legislative approach.[45] Existing English-language scholarship on Kuwaiti arbitration is primarily confined to practitioner-oriented overviews in regional surveys. These provide useful introductions but lack the doctrinal depth necessary for systematic analysis of how party autonomy

[42] On investment arbitration in the Gulf region, see Markus Burgstaller, 'Investor-State Arbitration in EU International Investment Agreements with Third States' (2012) 39(2) Legal Issues of Economic Integration 207.
[43] On empirical legal research methodologies, see Christopher R Drahozal, 'Empirical Findings on International Arbitration: An Overview' in Thomas Schultz and Federico Ortino (eds), The Oxford Handbook of International Arbitration (OUP 2020) 681.
[44] Within Kuwait's judicial system, Court of Cassation judgments on questions of law constitute authoritative interpretations binding on lower courts.
[45] For representative scholarship on Gulf arbitration focusing on jurisdictions other than Kuwait, see Gordon Blanke and Soraya Corm-Bakhos (eds), BCDR International Arbitration Review (Kluwer Law International, ongoing); Essam Al Tamimi, Arbitration in the Middle East (2nd edn, Globe Law and Business 2018); Ahmed Altawyan, 'The New Saudi Arbitration Law' (2013) 30(2) Journal of International Arbitration 219.

operates within Kuwait's framework.[46] This thesis fills this gap through three contributions. First, it provides the most comprehensive analysis of Kuwaiti arbitration case law undertaken to date, systematically examining over one hundred Court of Cassation judgments in their original Arabic. Second, it offers the first detailed doctrinal mapping of how Kuwait's statutory framework structures party autonomy across jurisdictional, procedural, and award phases. Third, it positions Kuwait's approach within broader debates about the nature of arbitral authority in civil law systems.[47]

Beyond its academic contributions, this thesis offers practical guidance for legal practitioners navigating Kuwait's arbitration framework. It provides policymakers with an evidence-based foundation for informed reform decisions aligned with Kuwait Vision 2035's economic transformation objectives.[48]

1.8 Structure of the Thesis

This thesis is organised into six chapters, structured to develop the central argument progressively while applying the three-phase analytical framework to Kuwait's arbitration regime.

Chapter One introduces the research problem, presents the study's background, articulates the central research question and subsidiary inquiries, and establishes the methodological framework.

Chapter Two examines the theoretical foundations of party autonomy in arbitration. It traces the historical evolution of party autonomy in private international law, analyses the four competing theories explaining arbitration's legal nature, and examines the Shariah perspective on arbitration. This theoretical foundation enables the identification of Kuwait's distinctive position within established frameworks.

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[46] The most comprehensive English-language treatment of Kuwaiti arbitration appears in regional surveys such as Ahmed Barakat, Ibrahim Sattout and Adnan Jaafar, 'Kuwait' (2023) The Middle Eastern and African Arbitration Review.

[47] The gap in Kuwait-specific scholarship contrasts with the extensive literature on arbitration in other Gulf states. Compare the substantial body of academic work on UAE arbitration following the 2018 Federal Arbitration Law.

[48] For analysis of arbitration law reform in comparable jurisdictions, see the UAE's comprehensive modernisation through Federal Law No. 6/2018 on Arbitration, which adopted UNCITRAL Model Law principles while preserving certain distinctive features. See Essam Al Tamimi and others, 'The New UAE Arbitration Law: A Critical Examination' (2018) 35(4) Journal of International Arbitration 449.

Chapter Three analyses the jurisdictional phase of arbitration under Kuwait's framework. It examines the formation of arbitration agreements, capacity and authority requirements, arbitrability limitations, and the competence-competence doctrine. The chapter tests the hypothesis that Kuwait employs gatekeeping conditionality that transforms party autonomy from a presumptive right into a conditional privilege.

Chapter Four analyses the procedural phase, examining tribunal constitution, temporal constraints under Article 181, procedural rules, and interim measures jurisdiction. The chapter tests whether formal recognition of procedural autonomy translates into substantive freedom or whether embedded constraints produce conditional authority.

Chapter Five analyses the award phase, examining nationality requirements, formal validity, deposit obligations, temporal boundaries, recourse mechanisms, and enforcement procedures under both the CCPL and the New York Convention. The chapter demonstrates how cumulative judicial control subjects arbitral outcomes to comprehensive judicial supervision.

Chapter Six synthesises the findings across all three phases and confirms the state-centric hybrid characterisation of Kuwait's arbitration framework. It offers targeted recommendations for legislators, practitioners, and policymakers seeking to enhance Kuwait's arbitration regime while respecting its constitutional commitments and legal traditions.

Chapter 2: Theoretical Evolution for the Doctrine of Party Autonomy

2.1 Introduction

Party autonomy lies at the heart of international commercial arbitration. This chapter traces the doctrine's theoretical evolution—from its origins in contractual freedom, through its development in private international law, to its application in arbitration. In its earliest form, party autonomy referred simply to the freedom of contracting parties to determine the terms of their agreements within a single legal system. Over time, however, this freedom came to be recognised at a higher level, enabling parties not merely to structure their rights within a given legal order but to select between competing legal systems altogether.[49]

The concept of party autonomy has been evolving as a core principle of private international law, providing contracting parties with the freedom to choose the forum for dispute resolution and the law governing their relations. This framework is a practical step because the choice of jurisdiction and law had been the sole prerogative of the states. However, the notion of party autonomy has become a well-practised feature of arbitration across the global trade and commerce market. The development of party autonomy has gained the status of both ordinary and exceptional. Ordinary status, for its countless uses in the contracts around the world, and exceptional because it shifts the focus of deciding the dispute resolution from the state to private contracting parties. International treaties, including the Hague Convention on Choice of Court Agreements 2005[50] and the Hague Principles on Choice of Law 2015,[51] manifest the global acceptance of the principle of party autonomy. Having said this, it is nevertheless necessary to differentiate party autonomy in private international law from contractual autonomy within a single legal system. The notion of party autonomy enables parties to choose among various legal systems.[52] However, the concept of contractual autonomy determines which arrangements are permissible within a given

[49] Alex Mills, Party Autonomy in Private International Law (CUP 2018) 1–4.
[50] Hague Convention on Choice of Court Agreements (concluded 30 June 2005, entered into force 1 October 2015) <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>.
[51] Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (adopted 19 March 2015) <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135>.
[52] Alex Mills, Party Autonomy in Private International Law (CUP 2018).

system. The acceptance of contractual freedom paved the way for the adoption of party autonomy.

Arbitration is linked to the philosophical concept of party autonomy, a tenet that emphasises the parties' freedom and authority over the dispute-resolution process.[53] The philosophical foundation of party autonomy holds that parties to a dispute have considerable leeway to tailor the arbitration procedure to their specific needs and preferences.[54] The choice of arbitrators is a prime example of the exercise of party autonomy in arbitration. Confidence in the decision-makers is increased by the parties' ability to select arbitrators who are knowledgeable about the topic of their dispute. Additionally, they have the power to choose the venue, the arbitration rules, the language, and the applicable laws.[55]

The jurisprudence of party autonomy promotes efficiency and promptness in dispute resolution by respecting the parties' freedom to determine the specifics of their disagreement.[56] In contrast to traditional litigation, arbitration proceedings can be tailored to the parties' interests, reducing procedural disputes and often leading to quicker, more affordable agreements. Overall, party autonomy is a component of arbitration, enhancing its attractiveness as a versatile, effective, and specialised method for resolving a wide range of domestic and international disputes.[57]

Over the past 20 years, the concept of party autonomy in arbitration has garnered considerable attention and discussion in academic literature.[58] Academics and practitioners have extensively researched the significance, evolution, and practical consequences of party autonomy in arbitration. An in-depth investigation of how party

[53] Laras Susanti, 'The Comparison Between Recognition to Choice of Law in International Contracts by Courts and Arbitration in Indonesia' (2019) 41 (3) Jurnal Kertha Patrika 170–188.
[54] Rouzana Kasem, 'The Future of Choice Court and Arbitration Agreements under the New York Convention, the Hague Choice of Court Convention, and the Draft Hague Judgments Convention' (2020) 10 Aberdeen Student Law Review 69.
[55] Reza Beheshti, 'The absence of choice of law in commercial contracts: problems and solutions' (2019) 24 (3) Uniform Law Review 497–519.
[56] William Day, 'Applicable law and arbitration agreements' (2021) 80 (2) The Cambridge Law Journal 238–241.
[57] Winnie Jo-Mei Ma, 'Conflicting Conflict of Laws in International Arbitration? Choice of Law for Arbitration Agreement in Absence of Parties' Choice' in John H. Farrar, Vai Io Lo, Bee Chen Goh, Scholarship, Practice and Education in Comparative Law: A Festschrift in Honour of Mary Hiscock (Springer Singapore 2019) 137–154.
[58] Moses Oruaze Dickson, 'Party autonomy and justice in international commercial arbitration' (2018) 60 (1) International Journal of Law and Management 114–134.

autonomy impacts the arbitration process has emerged as a significant trend in scholarly discourse. Researchers investigated how party autonomy influences arbitrator decision-making, procedural rule selection, the selection of applicable law, and the choice of arbitration seat.[59] These investigations have highlighted the doctrinal and practical complexities of party autonomy, emphasising its critical role in structuring dispute resolution mechanisms to accommodate the specific needs and preferences of the parties involved.

'Party autonomy', a key tenet of international contract law, allows parties to choose the law that governs their contract's formation, validity, rights, and obligations. In essence, it allows the contractual parties to choose the governing law for the contract and any legal issues arising from it.[60] The historical origins of this principle can be traced back to an ancient Egyptian tradition that distinguished between contracts based on the language in which they were written, holding that contracts written in Egyptian were subject to Egyptian law and courts. Those written in Greek were subject to Greek law and courts.[61] This decree unequivocally affirms that the parties' selection of terminology inherently dictates the appropriate law, despite the initial intention not being to confront the conflict of laws directly.'

Huber's views on contracts, a 17th-century Dutch scholar, are significant. However, these call for a critical perspective. His stance, which holds that the parties' volition takes precedence over any fixed location of the contract, seems to value personal freedom more than uniformity in the law.[62] Huber fails to account for the role that legal frameworks and jurisdictional boundaries play in establishing solid business relationships when he argues that the parties' intentions alone are sufficient to determine contractual responsibilities.[63] He believes contract interpretation can be

[59] Alex Mills, 'The Privatisation of Private (and) International Law." Current Legal Problems' (2023) Currunt Legal Problems 1–54 < https://doi.org/10.1093/clp/cuad003> accessed 05 Nov. 23; Sunday A. Fagbemi, 'The doctrine of party autonomy in international commercial arbitration: myth or reality?' (2015) 6 (1) Journal of Sustainable Development Law and Policy (The) 202–246.
[60] Aurelia Colombi Ciacchi, 'Party autonomy as a fundamental right in the European Union' (2010) journal European Review of Contract Law 303–318.
[61] Jan-Jaap Kuipers, 'Cartesio and Grunkin-Paul: Mutual recognition as a vested rights theory based on party autonomy in private law' (2008) 2 European Journal of Legal Studies 66.
[62] Ernest G. Lorenzen, 'Huber's de conflictu legum' (1918) 13 Ill. LR 135 < https://openyls.law.yale.edu/bitstream/handle/20.500.13051/4068/Huber_s_De_Conflictu_Legum.pdf?sequence=2&isAllowed=y > accessed 6 February 2024.
[63] Matthias Lehmann, 'Liberating the individual from battles between states: justifying party autonomy in conflict of laws' (2008) 41 Vanderbilt Journal of Transnational Law 381.

contentious, especially when parties have different expectations. Huber may also create a jurisprudential climate that values subjective intent above objective legal criteria, making contract law less predictable and equitable.[64] Therefore, we must treat Huber's views critically, bearing in mind their possible consequences for justice and legal coherence while recognising his historical importance.

This chapter examines the theoretical basis for supporting party autonomy in private international law. It illustrates that party autonomy broadens the notion of contractual freedom by allowing parties to choose among several legal systems, a power previously exercised only by the state. The chapter discusses arbitration as a practice optimised by the role of party autonomy. The examination revolves around various theories, including jurisdictional, contractual, hybrid, and autonomous will, to argue how scholars have either advocated for or limited this freedom. The discussion subsequently shifts to autonomy within Shariah, illustrating its acknowledgement in the Gulf countries.

Building upon this theoretical foundation, the chapter then situates Kuwait within this landscape of competing theories. This positioning reveals that Kuwait has developed a distinctive approach to party autonomy in arbitration, one that formally recognises the parties' freedom to agree on arbitration whilst systematically channelling residual authority to state courts rather than to arbitral tribunals. This orientation, which this thesis terms the 'State-Centric Hybrid Model', is evidenced by statutory provisions that reserve default powers to the judiciary, decline to recognise tribunal authority over jurisdictional challenges, and treat arbitration as subordinate to rather than independent of the state judicial system. The examination of Kuwait's position provides essential context for the detailed doctrinal analysis undertaken in subsequent chapters.

[64] Ibid.

2.2 Guaranteeing Freedom: The Role of Individual Liberty and Autonomy in Private Law

The principle of contractual autonomy has served as a foundational pillar of private law since the nineteenth century, enabling parties to determine the content of their agreements, select their contractual partners, and negotiate terms that reflect their commercial interests.[65] This freedom, codified in civil codes across Europe and recognised in common law jurisdictions, represents the legal system's respect for individual decision-making in commercial matters. Within a domestic legal framework, parties are typically permitted to arrange their rights and obligations as they see fit, provided they comply with obligatory regulations and limitations established to uphold justice, morality, or public policy.[66] This autonomy is warranted by the premise that permitting the parties to select techniques that suit them is advantageous, with the principle that personal judgments merit respect. While contractual autonomy empowers parties to craft agreements suited to their needs, it operates within a single legal system and, by itself, does not address questions of which national law governs the contract or which forum has jurisdiction to resolve disputes arising from it.

Private international law enhances contractual freedom by introducing a degree of choice, while remaining separate from, yet foundationally linked to, the notion of contractual freedom.[67] Individuals can select not only the responsibilities they will undertake but also the applicable state legislation and the court or tribunal that will adjudicate disputes. Party autonomy enables individuals to make independent judgments. This is our definition of freedom: the liberty to select among various legal systems rather than merely the ability to function within one.[68] Despite their close relationship, the two systems differ in this regard. The philosophical evolution of contractual independence in the nineteenth century established the groundwork for the global acknowledgement of party autonomy. However, party autonomy is further extended by reallocating a function typically ascribed to states to private entities.

[65] Patric S Atiyah, The Rise and Fall of Freedom of Contract (OUP 1979) 8.
[66] Stephen Smith, Contract Theory (OUP 2004) 75.
[67] Alex Mills, Party Autonomy in Private International Law (CUP 2018) 46.
[68] Simeona Kostova, 'Party Autonomy in a Modern Context: A Critical Analysis of its Scope under the Rome I Choice of Law Rules and Some Contemporary Considerations' (Centre for Private International Law, University of Aberdeen, Working Paper Series 1/2023) 3–6.

To start with, the concept of party autonomy in private law, especially contractual dealings, in Photo Production Ltd v Securicor Transport Ltd, Lord Diplock placed autonomy in the following words:

"A basic principle of the common law of contract … is that parties to a contract are free to determine for themselves what primary obligations they will accept. They may state these in express words in the contract itself and, where they do, the statement is determinative … [and, turning to the common law's default rules, he continued] if the parties wish to reject or modify [those default] obligations which would otherwise be so incorporated, they are fully at liberty to do so by express words."[69]

The doctrine of party autonomy is widely regarded as paramount within contract law, and this sentiment has been echoed in numerous legal cases. Nevertheless, this perception of unbridled autonomy must contend with evident limitations inherent in contract law.[70] These constraints stem from a broader legal framework wherein autonomy is subordinated to prevailing societal values. Both criminal and civil laws proscribe certain types of agreements, thereby establishing the boundaries of contractual autonomy.[71] Contracts for activities such as human trafficking or the sale of human body parts are explicitly prohibited.

Laws on water and gas, and conventional loan interest rates set or cap pricing for particular companies. In the trade of firearms and narcotics, certain assets are regulated. Importantly, these constraints are now enshrined in law rather than left to the judge, reflecting changing social norms rather than legal principles.[72]

Another limitation in contract law arises directly from the immense value attributed to individual freedom and party autonomy.[73] Consent becomes a linchpin in the realm of contractual obligations. A contract is binding only upon those parties who have wilfully agreed to its terms. Consequently, it does not affect third parties, as bilateral contracts

[69] Photo Productions Ltd v Securicor Transport Ltd [1980] AC 827.
[70] William Tetley, 'Good faith in contract: particularly in the contracts of arbitration and chartering' (2004) 35 Journal of Maritime Law and Commerce 561.
[71] Giuditta Cordero-Moss, International Commercial Contracts: Contract Terms, Applicable Law and Arbitration (CUP, 2023) 147.
[72] Darren T. Roulstone, 'The relation between insider-trading restrictions and executive compensation' (2003) 41 (3) Journal of Accounting Research 525–551.
[73] Catherine Mitchell, 'Privity of Contract: Another Missed Opportunity' (1997) 48 Northern Irland Legal Quarterly 286.

lack the capacity to diminish the rights of non-consenting individuals.[74] Even among the contracting parties, the veracity of their consent is vital. This authenticity is upheld by legal regulations governing capacity, duress, undue influence, disparities in bargaining power, misrepresentation, and mistakes.[75] It is important to note that the concern here is not with the absolute freedom of the parties, but instead with the equality of their freedom from external pressures and influences, or parity in their ability to grasp the risks associated with the contract. Instead, the focus is solely on the authenticity of the parties' consent to the agreement. Implicit in this framework is the notion that contracts are vehicles for the voluntary acceptance of legal obligations. The contract holds legal weight because autonomous individuals willingly agreed to be bound by its terms.

The acceptance of contractual autonomy and party autonomy demonstrates a commitment to individual liberty, as both have constraints that illustrate the state's continuing authority.[76] A contract that contradicts domestic public policy or obligatory legislation will not be enforced.[77] Similarly, the choice of foreign law or jurisdiction may be limited if it affects the forum state's vital interests or jeopardises the protection of vulnerable parties. The Rome I Regulation exemplifies these constraints: Article 3(3) provides that where all elements relevant to the situation are located in a single country, the parties' choice of a foreign law cannot displace the mandatory provisions of that country; whilst Article 21 permits courts to refuse application of a chosen law where it is manifestly incompatible with the public policy of the forum.[78] Autonomy is never absolute as it is subject to broader social and institutional circumstances. The significance of recognising these rights is not in granting endless freedom, but in affirming that human choice should be honoured wherever possible, if it does not jeopardise the integrity of the legal system. Thus, private law safeguards freedom both

[74] Chukwuma Okoli, 'English courts address the potential convergence between the doctrines of piercing the corporate veil, party autonomy in jurisdiction agreements and privity of contract' (2014) Journal of Business Law 252 – 261.
[75] Simon Whittaker, 'Privity of contract and the tort of negligence: Future directions' (1996) 16 (2) Oxford Journal of Legal Studies 191–230.
[76] Patric S. Atiya.
[77] Council Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, arts 3(3), 21.
[78] Ronald A. Brand, 'The Rome I Regulation Rules on Party Autonomy for Choice of Law: A U.S. Perspective' in Franco Ferrari and Stefan Leible (eds), *Rome I Regulation: The Law Applicable to Contractual Obligations in Europe* (Sellier European Law Publishers 2009); see also Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, arts 3(3) and 21.

within and between legal regimes. Contractual autonomy allows people to determine what goes into agreements, whereas party autonomy in private international law allows people to choose the legal framework that governs such agreements.

Consequently, the court's involvement is legitimate in situations where consent, or valid consent, is lacking. It is important to note that this highlights the premise that contracts are founded on the parties' voluntary assumption of legal responsibilities. Although party autonomy remains an essential component of contract law, its application is subject to significant limitations imposed by overarching legal principles and the indispensable requirement of real consent.[79] These restrictions, embedded in both the broader legal system and specific contractual regulations, ultimately serve to safeguard the integrity and ethical underpinnings of contractual relationships.

However, adherence to the consent model raises further difficulties. First, the law actively restricts monopolistic behaviour. Party autonomy should not be reduced to a binary choice of accepting or rejecting terms dictated by a dominant party. In most democratic nations, legislatures intervene where the conditions for meaningful consent are absent.[80] Such legislation typically governs contractual terms in situations marked by perceived power imbalances, including consumer contracts, employment agreements, and loans to unsophisticated borrowers. The tension between implementing protective regulations and respecting party autonomy is palpable, and the law seeks to strike a balance.[81]

In consumer contracts, this tension has generated a distinctive theoretical response. Willett distinguishes between a traditional "freedom-oriented" approach to autonomy and a "fairness-oriented" approach.[82] The traditional approach emphasises self-reliance and is non-contextual, taking limited account of the real practical constraints that consumers face when exercising meaningful choice.[83] By contrast, the fairness

[79] Charles Chatterjee, ‘Reality of the Party Autonomy Rule in International Arbitration’ (2003) 20 The Journal of International Arbitration 539.
[80] Randy E Barnett, 'Contracts is Not Promise; Contract is Consent' (2011) 45 Suffolk University Law Review 647.
[81] Joshua AT Fairfield, 'The Cost of Consent: Optimal Standardization in the Law of Contract' (2008) 58 Emory Law Journal 1401.
[82] Chris Willett, Fairness in Consumer Contracts: The Case of Unfair Terms (Ashgate 2007) 388–389.
[83] ibid 388: "The traditional freedom-oriented approach is about self-reliant freedom or autonomy; this self-reliance principle being non-contextual... it takes limited account of the real practical limits facing the consumer in exercising self-reliance."

approach is contextual. It recognises that for the typical consumer, "freedom of contract" is often a slogan with little connection to reality, since negotiation over standard terms is rarely feasible.[84] The law therefore intervenes—not to abolish autonomy, but to secure a different version of it, namely, assisted, informed consent rather than pure self-reliance.[85]

This fairness-oriented approach can be understood as protecting what Willett, drawing on Collins, terms "post-contractual autonomy."[86] When the law disallows an unfair term, it preserves the consumer's future freedom—for example, the freedom to pursue a remedy when the trader fails to perform, or freedom from an onerous obligation that the consumer could not realistically have avoided at the contracting stage.[87] On this view, pre-contractual autonomy may be restricted precisely in order to preserve post-contractual freedom. The regulation of consumer contracts thus offers valuable insights into the relationship between party autonomy, informed consent, and protective legislation—insights that resonate with broader debates about the legitimate limits of contractual freedom.

In addition, even when consent is unequivocal, further rules govern the precise scope of the parties' obligations. In England and Wales, Lord Hoffmann has played a pivotal role in shaping contemporary developments in this realm.[88] These standards preserve the importance of party sovereignty while acknowledging that the focus is on identifying the agreement's aim rather than delving into the parties' subjective understanding. The assessments applied are anchored in objectivity; when entering contracts, persons are held accountable for the impressions they communicate to others. The courts' initial recourse is to derive the objective meaning of the words of any written agreement, considering the broader factual context only when opposing interpretations emerge, and doing so only if alternative, compelling reasons do not

[84] ibid 24–27.
[85] ibid 389: "it is about assisted, informed consent; not about pure self-reliance."
[86] ibid 390, citing Hugh Collins, Regulating Contracts (OUP 1999). Collins refers to a "revised notion of autonomy" which "involves placing restrictions on autonomy where the exercise of autonomy results in the party in question making choices that are not worthwhile."
[87] ibid 390: "The type of freedom or autonomy that can be regarded as being promoted when terms are disallowed despite a reasonable level of procedural fairness is the post-contractual freedom or autonomy of the consumer."
[88] Sarah Worthington, 'Common Law Values: The Role of Party Autonomy in Private Law' in Andrew Robertson and Michael Tilbury (eds), *The Common Law of Obligations: Divergence and Unity* (Hart 2016).

preclude such an inquiry.[89] This contemporary approach to contract interpretation has undergone rigorous scrutiny and garnered a substantial body of critical commentary. Nevertheless, for this discussion, it is essential to emphasise that the prevailing judicial approach unequivocally upholds party autonomy.

The intricate legal landscape surrounding consent underscores the multifaceted nature of party autonomy, which must be meticulously balanced against protective legislation, power dynamics, and objective contract interpretation.[90] This dynamic equilibrium is crucial for maintaining the delicate balance between individual autonomy and the broader societal imperatives of justice and fairness within contractual relationships.[91] Given the impracticality of drafting contracts for every possible scenario and the efficiency of default rules over individually crafted ones, the legal system will likely provide default rules without implying party autonomy. It seems reasonable to expect default rules from the legal system. It is crucial to note that only a few default rules govern the parties' basic performance obligations.

In contrast, many default regulations outline remedies in various forms.[92] These remedial rules exhibit a heightened sensitivity to the specific context, offering more robust protection when warranted. The array of remedies includes damages, injunctions, specific performance, and proprietary remedies, forming a comprehensive arsenal.

Although these default rules definitely fulfil a significant function, the argument posits that they should be regarded as voluntary rather than mandatory, unless a strong justification exists for overriding a party's liberty. This viewpoint emphasises the necessity of maintaining party autonomy in commercial agreements, permitting deviations only when compelling causes are clearly demonstrated. This sophisticated approach harmonises the practical requirement of default rules with the essential notion of party autonomy in contractual agreements. Party autonomy, as the

[89] Chunlin Leonhard, 'Dangerous or benign legal fictions, cognitive biases, and consent in contract law' (2019) 91 St. John's Law Review 385.
[90] Mo Zhang, 'Contractual choice of law in contracts of adhesion and party autonomy (2008) 41 Akron Law Review 123.
[91] Yeshnah D. Rampall, and Ronan Feehily, 'The sanctity of party autonomy and the powers of arbitrators to determine the applicable law: The quest for an arbitral equilibrium' (2017) 23 Harvard Negotiation Law Review 345.
[92] Ibid.

prerogative to choose the ruling legislation, constitutes a legal theory due to the relative constancy of its foundational principles over time.

Friedrich Carl von Savigny's theory of choice of law shaped the modern conflict of laws.[93] Savigny proposed that when a legal relation spans multiple jurisdictions, the governing law should be that of the place with which the relation is most closely connected—what he termed the "seat" of the legal relationship.[94] This approach marked a significant departure from earlier theories that emphasised rigid territorial sovereignty, promoting a more flexible, relation-centred approach to determining applicable law.

Although Savigny did not directly address party autonomy, his framework created the conceptual space for its later recognition. If the governing law is to be determined by connection rather than by the sovereign command of the forum, then the parties' own choice becomes a legitimate—and often the most reliable—indicator of that connection, particularly in contractual matters.[95] It is from this foundation that modern private international law has recognised party autonomy as a central principle, enabling parties to select the law governing their agreements and fostering certainty and predictability in cross-border transactions.

Party autonomy in private international law, as shown, extends contractual freedom across legal systems, but it also exposes the tension between individual liberty and state sovereignty. Adherence to party autonomy improves fairness and clarity in international transactions, yet its exercise must be balanced with mandatory rules and public policy. This balance lies at the heart of the ongoing debate within private international law. Nowhere is this tension more pronounced than in international commercial arbitration, where party autonomy reaches its fullest expression. When parties agree to arbitrate, they exercise autonomy at multiple levels—selecting a private forum, determining procedural rules, choosing the seat, and designating the applicable substantive law. The following section examines the principal theoretical

[93] Friedrich Carl von Savigny, *A Treatise on the Conflict of Laws* (trans William Guthrie, 2nd edn, T & T Clark 1880) §344.
[94] ibid 47–52.
[95] Alex Mills, *Party Autonomy in Private International Law* (CUP 2018) 73–78 (discussing how Savigny's methodology enabled the later recognition of party choice).

frameworks that have been developed to explain and justify this expansive form of party autonomy, and to account for its relationship with state authority.

2.3 Party Autonomy in Arbitration: Unveiling the Theoretical Foundations

Arbitration is frequently viewed as a prime example of how parties can exercise their freedom, showcasing their ability to organise almost every aspect of their dispute resolution process. When parties sign an arbitration agreement, they remove their disputes from national courts and assign them to a tribunal they select. The scope of this agreement extends beyond the basic selection of a decision-maker.[96] The parties may select the arbitration seat, the language of the proceedings, the procedural rules, and the applicable legislation.[97] Arbitration differs from state court cases because it lacks the rigid procedures governing how matters are handled. This serves as a great illustration of the distinct nature of arbitration. The UNCITRAL Model Law on International Commercial Arbitration is widely acknowledged, enhancing the legitimacy of arbitration agreements and boosting confidence in arbitration processes globally.[98]

In the context of international arbitration, the principle of party autonomy emphasises the inherent cross-jurisdictional aspect of this mechanism for resolving disputes. This approach provides parties with greater confidence and predictability.

Notably, academics have expressed grave concerns about the potential effects of granting disproportionate power to alternative dispute resolution processes, such as international arbitration, in comparison to national courts.[99] One frequently expressed concern is the fear that giving parties the option to circumvent mandatory national laws, or allowing awards made in international arbitration to escape scrutiny of issues

[96] Nigel Blackaby and Constantine Partasides, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) 96–98.
[97] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006), arts 19–20
[98] UNCITRAL Model Law, arts 1–6;
[99] Amin Dawwas, 'Dépeçage of Contract in Choice of Law: Hague Principles and Arab Laws Compared' (2021) 17 Journal of Private International Law 476–479.

of public policy or compliance with national laws, will unintentionally give arbitration precedence over the existing legal system.[100]

This criticism highlights the conflict between the goals of party autonomy and the integrity of the national legal system. The basic premise of the argument is that arbitration, as a quasi-judicial procedure, usurps the regulatory and adjudicative powers traditionally reserved for national courts by overreliance on party autonomy.[101] This makes it difficult to strike a balance between the need to preserve the rule of law and the highly valued principle of party autonomy within the broader framework of international arbitration.

The concept of party autonomy in arbitration is grounded in interconnected theories that underpin its core principles. A significant component of party autonomy is the concept of contractual freedom, which holds that parties to arbitration should have the unfettered ability to determine the parameters of their dispute-resolution procedure, including the choice of applicable law and arbitrators.[102] This principle embodies a belief in the sanctity of private agreements and in the parties' authority to devise their own dispute-resolution mechanisms.[103] The notion of non-nationality is an additional principle that supports the concept of party autonomy. This concept posits that international arbitration surpasses national jurisdictions, enabling parties to avoid the intricacies and prejudices of foreign judicial systems. Moreover, the autonomy of the parties is typically regarded as a factor that enhances the predictability and effectiveness of international dispute resolution processes. This functionality enables parties to customise their arbitration proceedings according to their individual needs and preferences.

[100] Kenneth S. Carlston, 'Theory of the arbitration process' (1952) 17 (2) Law and Contemporary Problems 631–651.
[101] Stavros Brekoulakis, 'Rethinking Consent in International Commercial Arbitration: A General Theory for Non-signatories' (2017) 8 (4) Journal of International Dispute Settlement 610–643.
[102] Nelly Novianty, et al., 'Strengthening The Independent Execution of The Rulings of The National Arbitration Body Based on Legal Principles and Theories' (2022) 25 Journal of Legal Ethical & Regulation 1.
[103] Henry S. Farber, 'An analysis of final-offer arbitration' (1980) 24 (4) Journal of conflict resolution 683–705.

The practical significance of these theories lies in the balance they strike between party autonomy and the role of national courts.[104] Even under the contractual or autonomous theories, it is widely accepted that states retain authority to impose limits where arbitration agreements undermine interests, such as the protection of weaker parties, adherence to mandatory rules, or compliance with public policy.[105] These constraints echo the broader limits imposed on party autonomy in private international law, where the freedom to choose between legal systems is respected but not absolute. In arbitration, questions of genuine consent are particularly pressing, as arbitration clauses are often included in standard contracts in which one party may lack bargaining power. Moreover, disputes about the use of non-state law, such as lex mercatoria, highlight continuing tensions between private ordering and public authority.[106] Arbitration thus illustrates not only the possibilities of party autonomy but also the enduring need for safeguards. It demonstrates that autonomy, whether understood through contractual, jurisdictional, or autonomous theories, must be balanced with the interests of justice, legitimacy, and state sovereignty.

2.3.1 Jurisdictional Theory: a traditional approach to party autonomy

The jurisdictional theory serves as an early approach to explain the legitimacy of party autonomy.[107] This Theory suggests that the authority of an arbitral tribunal or a foreign court agreement does not derive solely from the parties' agreement but is embedded in the concept of state sovereignty. The selection of the party held importance only to the extent that it was recognised and validated by the legal structure of the forum.[108] This viewpoint aligned with the traditional emphasis on sovereignty and geographical jurisdiction within private international law. Jurisdiction was seen as a reflection of governmental power, and any attempts by private parties to replace that power through agreements were considered ineffective unless approved by the state itself.

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[104] Yeshnah D Rampall and Ronán Feehily, 'The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium' (2020) *Harvard Negotiation Law Review* 345, 354–356

[105] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 34(2)(b)(ii).

[106] Klaus Peter Berger, *The Creeping Codification of the Lex Mercatoria* (2nd edn, Kluwer Law International 2010) 15–20.

[107] Alex Mills, Party Autonomy in Private International Law (CUP 2018)

[108] Symeon C Symeonides, *Codifying Choice of Law Around the World: An International Comparative Analysis* (OUP 2014) 346–348.

The state served as the primary source of jurisdictional authority, and the parties' freedom was permitted only within the boundaries established by public law.[109]

The jurisdictional theory of arbitration is a perspective that examines the nature of the arbitral process, asserting that it is inherently adjudicative in nature. Underlying this Theory is the notion that arbitrators play a role akin to that of judges in traditional court proceedings.[110] In this view, arbitrators are portrayed as quasi-judicial actors who resolve disputes through a process strikingly reminiscent of judicial proceedings. Central to the jurisdictional theory is the idea that an arbitrator's functions extend beyond merely facilitating negotiations or providing expert opinions. Instead, arbitrators are seen as assuming a public or judicial role within a state's territorial boundaries, either by explicit assignment or tacit tolerance.[111] This implies that the state, which has ultimate authority over the exercise of judicial functions within its jurisdiction, effectively sanctions the role of arbitrators.

To illustrate the above, consider the following example concerning two multinational corporations. Corporation A and Corporation B, engaged in a multifaceted international economic conflict over the provision of technological components. The contract mandates that all disputes between the parties be settled by arbitration, with London, United Kingdom, designated as the arbitration venue and the proceedings governed by the rules of a recognised international arbitration institution. As the arbitration procedure progresses, a panel of arbitrators is appointed to oversee the case. Similar to a court, the arbitral panel systematically assesses the evidence, hears arguments, and ultimately issues an arbitral award in favour of Corporation A, mandating that Corporation B pay substantial damages for breach of contract. Following the award, Corporation B challenges its validity before the English courts, arguing that the tribunal exceeded its jurisdiction. The English courts, as the courts of the seat, exercise supervisory authority by reviewing the arbitrators' jurisdiction under the Arbitration Act 1996. This judicial oversight illustrates the jurisdictional theory's core premise: that arbitral authority ultimately derives from, and remains subject to,

[109] Nigel Blackaby and Constantine Partasides, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) 80–83.
[110] Hong-Lin Yu, 'A theoretical overview of the foundations of international commercial arbitration' (2008) 1 Contemporary Asia Arbitration Journal 255.
[111] Bernard Hanotiau, 'International arbitration in a global economy: The challenges of the future' (2011) 28 (2) Journal of International Arbitration 89-103

state control. This case endorses the jurisdictional theory of arbitration, highlighting the significance of territorial links in establishing the relevant legal framework. The selection of London as the arbitration venue and compliance with established arbitration regulations demonstrate the impact of geography and legal framework on the arbitral procedure, offering a neutral and recognised jurisdiction for resolving disputes among multinational parties.

The concept of the jurisdiction approach is also referred to as "the proper law of the contract." Arbitrators in this variation assess all aspects of a dispute and attempt to find the country with the most significant ties to the issue. This chosen country then determines the appropriate legislation for the issue.[112] This approach, however, is not without difficulties, owing to the inherent subjectivity involved in arbitrators' judgments of the relative importance of each connecting component. This version's supporters argue that it allows arbitrators to better align their decisions with the parties' expectations and the demands of international business.[113] This method departs from conventional conflict law systems by allowing arbitrators the flexibility to determine the most appropriate law based on their wisdom and experience. Nonetheless, the subjectivity involved raises questions about the consistency and predictability of arbitration rulings, sparking a lively debate within the profession over the benefits and downsides of the jurisdiction theory in its different incarnations.

While Savigny's choice-of-law methodology opened the door to party autonomy, another dimension of his legal philosophy points in a different direction. His concept of "Volksgeist" or "spirit of the people" emphasises that a nation's laws should reflect its historical, cultural, and social context.[114] Savigny viewed law as a living, organic entity that evolves in response to the needs and values of the society it serves. This approach contrasted with the more formalistic and abstract legal perspectives prevalent at the time.[115] On this view, a community's common law, customs, and

[112] Saber Habibi Savadkouhi, Sadegh Habibi Savadkouhi, and Akbar Bashiri, 'The four legal theories of international commercial arbitration' (2014) 4 (6) Asian Journal of Research in Social Sciences and Humanities 292–302.
[113] Ibid.
[114] Andreas Rahmatian, 'Friedrich Carl von Savigny's Beruf and Volksgeistlehre' (2007) 28(1) Journal of Legal History 1.
[115] Ian FG Baxter, 'International Conflict of Laws and International Business' (1985) 34(3) International and Comparative Law Quarterly 538.

practices embody its collective identity, and legal development should respect this continuity.[116]

This dimension of Savigny's thought has significant implications for party autonomy. If law is rooted in a community's culture and values, then party choice cannot override those values. The Volksgeist concept thus provides a theoretical basis for the limits that every legal system places on party autonomy—through mandatory rules, public policy, and order public.[117] It reminds us that arbitration, however international in character, ultimately operates within legal systems shaped by distinct cultural and social traditions. This insight becomes particularly relevant when considering how different legal traditions, including Islamic Shariah, approach party autonomy in arbitration.

The jurisdictional theory is important because it highlights the state's ongoing role in allocating legal authority and outlines the limitations of party autonomy.[118] Even today, lawmakers and judges insist on lines that demonstrate sovereign interests, even though party autonomy is frequently viewed as a unifying concept in private international law.[119] The persistent jurisdictional perspective is exemplified by mandatory regulations, public policy, and the protection of vulnerable parties; autonomy is permitted but never absolute.[120] The jurisdictional theory demonstrates how a dynamic interaction between state power and private choice has always impacted party autonomy. It also serves as a reminder that party autonomy derives its effectiveness from state recognition and enforcement rather than being intrinsic or self-sustaining.

2.3.2 Contractual Theory: towards a private Law perspective

In private international law, the contractual theory holds that party autonomy extends the freedom of contract into the area of private sovereignty. Contractual autonomy enables parties to define their rights and obligations within a unified legal framework,

[116] A N Zhilsov, 'Mandatory and Public Policy Rules in International Commercial Arbitration' (1995) 42(1) Netherlands International Law Review 81.
[117] ibid 85–90.
[118] Alex Mills, Party Autonomy in Private International Law (CUP 2018)
[119] Ibid.
[120] Yeshnah D Rampall and Ronán Feehily, 'The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium' (2020) *Harvard Negotiation Law Review* 345

subject solely to laws or regulations.[121] The contractual theory suggests that when parties agree on the governing forum or law for their relationship, a similar approach should be used. As a result, party autonomy in private international law (PIL) is regarded as a legally binding agreement, like other agreements.[122] The reason for this is that the parties have reached an agreement, and its validity rests on the principle of private law, which holds that promises made willingly ought to be respected. This method is significant as it shifts the emphasis of PIL party autonomy from issues of sovereignty in public law to the importance of individual freedom in private law. The argument positions party autonomy clearly within the recognised principles of private law by interpreting forum-selection and choice-of-law agreements as contractual commitments rather than as exceptions that require justification by public authority.[123] This perspective contrasts with the typical approach, which views it as something unusual.

As a cornerstone of modern legal philosophy, the Contractual theory can be traced back to pre-Roman and primitive justice systems. It symbolises the notion that agreements and contracts are crucial to legal relationships.[124] This approach, grounded in the human tendency to form reciprocal obligations and responsibilities, emphasises the crucial importance of free and consensual agreements. The emergence of sophisticated legal systems was made possible by these ancient roots, which were rooted in social behaviours, unwritten agreements, and early legal systems. The contractual theory, which has its origins in notions of justice and contract, has endured and developed over the course of millennia and serves as a concept in modern-day legal jurisprudence.[125]

Contractual Theory is an essential element of international arbitration, providing the foundation for dispute resolution within contemporary legal systems. The principle of party autonomy underpins contractual theory. This principle asserts that contracting

[121] Stephen Smith, *Contract Theory* (OUP 2004) 75–80.
[122] Giesela Ruhl, 'Party Autonomy in the Private International Law of Contracts: Transatlantic Convergence and Economic Efficiency' (2007) CLPE Research Paper No 4/2007, 5–7
[123] Simeona Kostova, 'Party Autonomy in a Modern Context: A Critical Analysis of its Scope under the Rome I Choice of Law Rules and Some Contemporary Considerations' (Centre for Private International Law, University of Aberdeen, Working Paper Series 1/2023) 3–6
[124] Saber Habibi Savadkouhi, Sadegh Habibi Savadkouhi, and Akbar Bashiri (n-76)
[125] Neil Andrews*, Arbitration and Contract Law, Jus Gentium: Comparative Persepctive on Law and Justice* (Springer 2016) 57.

parties have the authority to create mechanisms and protocols for dispute resolution. According to this theoretical framework, the parties expressed intentions and purposes, as reflected in their contract, should determine the subject of dispute resolution, the applicable law, and the arbitration process. In this context, the idea of party autonomy prevails, requiring a reassessment of traditional notions of jurisdiction, conflict of laws, and procedures. Contemporary methodologies regarding arbitration agreements and their interpretation are influenced by this theoretical understanding, which is crucial for evaluating how different legal systems reconcile the parties' autonomy with regulatory oversight.

In essence, the parties' decision to arbitrate grants them a prominent standing that transcends jurisdictional boundaries, jurisdictional supremacy, conflict-of-laws considerations, and procedural rules that characterise traditional court action. This seemingly straightforward assumption of party autonomy has far-reaching consequences that have radically altered the dispute resolution landscape.[126] Unlike traditional litigation in national courts, where the state typically exerts significant influence over the adjudicative process, international arbitration creates a unique setting in which parties exercise an unexpected degree of self-determination.[127] The concept here is contractual autonomy, which allows parties to tailor the arbitral process to their specific needs and preferences. As a result of party autonomy, arbitration agreements are raised above the authority of ordinary courts.

Party autonomy has established a viable alternative in a context where national courts have historically maintained exclusive control over dispute settlement, enabling parties to select arbitration as the sole means of resolving their disputes. The contractual principle enables parties to transcend national borders and choose a dispute resolution method that is often more impartial, efficient, and customised to their specific needs.[128] This shift in the hierarchy of dispute-resolution procedures

[126] Yeshnah D. Rampall, and Ronan Feehily, ‘The sanctity of party autonomy and the powers of arbitrators to determine the applicable law: The quest for an arbitral equilibrium’ (2017) 23 Harvard Negotiation Law Review 345.
[127] Sarah Worthington, 'Common Law Values: The Role of Party Autonomy in Private Law' in Andrew Robertson and Michael Tilbury (eds), *The Common Law of Obligations: Divergence and Unity* (Hart 2016).
[128] Maxi Scherer, ‘The fate of parties’ agreements on judicial review of awards: a comparative and normative analysis of party-autonomy at the post-award stage’ (2016) 32 (2) Arbitration International 437–457.

represents a considerable departure from traditional notions of judicial authority and has had a significant impact on the global legal landscape.

Furthermore, party autonomy affects issues such as the application of conflict-of-laws rules. Law disputes have long been crucial in determining the relevant law in cross-border conflicts, which often require complex analysis. In an arbitral context, however, party autonomy allows the contracting parties to choose the applicable law, thereby avoiding severe conflicts-of-law difficulties.[129] This ability to choose the applicable law according to their preferences is a significant transformation of the conventional application of conflict of laws, placing the authority to select firmly with the parties involved. The impact of party autonomy transcends legal determinations to encompass procedural matters. In arbitration, the bulk of procedural procedures typically rigidly enforced in national court proceedings become more adaptable. Parties may tailor the arbitral process to their specific requirements, resulting in more streamlined, accelerated proceedings.[130] This adaptability in altering procedural norms is a distinguishing feature of international arbitration, allowing parties to tailor their dispute resolution experience to their own circumstances.

In contrast to the jurisdictional theory, the contractual approach does not compare the arbitrator to a judge in a national court. Instead, arbitrators in this system act as agents for the parties themselves.[131] This has sparked an ongoing debate about the role of the arbitrator, particularly whether they should be compared to judges or considered as agents acting on behalf of the parties.[132] Indulging in this argument within the context of contractual theory provides light on the nature of the interaction between arbitrators and the parties concerned.[133] A detailed examination of this topic lays the framework for an examination of the court's role in appointing arbitrators, which contributes to an understanding of the dynamics at work in the arbitration process.

[129] Mukarrum Ahmed, 'The nature and enforcement of choice of law agreements' (2018) 14 (3) Journal of private international law 500–531.
[130] Rose Rameau, 'The battle between consent and the principle of competence-competence in investment arbitration' (2015) 28 University of Ghana Law Journal 84.
[131] Ibid.
[132] Lewis B. Kaden, 'Judges and Arbitrators: Observations on the Scope of Judicial Review' (1980) 80 Columbian Law Review 267.
[133] Magdalene D'Silva, 'Dealing in power: gatekeepers in arbitrator appointment in international commercial arbitration' (2014) 5 (3) Journal of International Dispute Settlement 605–634.

This perspective is particularly evident in the treatment of choice-of-law clauses. Historically, courts applied objective territorial connecting factors such as the place of contracting or performance.[134] Over time, however, the emphasis shifted to party intention, first through implied consent and later through recognition of express agreements. In modern PIL, most legal systems give effect to express choice-of-law clauses, often treating them as decisive unless they conflict with public policy or mandatory rules.[135] This reflects the contractual theory's influence as the choice of law is enforced because it is the product of agreement, in the same way as other contractual terms.[136] This rationale underpins arbitration, where the parties' consent is understood to confer jurisdiction on the tribunal. In each case, the contractual theory presents party autonomy as a natural extension of private ordering rather than a disruption of the international legal system.

The contractual theory framework emphasises the significance of consent; however, it inadequately addresses the distinct issues posed by private international law. States must recognise and enforce them well for them to work.[137] This can be done through the courts in the relevant jurisdiction or through legal frameworks like the UNCITRAL Model Law.[138] In cross-border scenarios, when weaker parties may be stuck with standard-form terms without meaningful negotiation, questions of valid consent and bargaining power become even more essential.[139] This shows that the parties' freedom in PIL cannot be based solely on contract law; it must be balanced with the public's demands and the system's safety safeguards. The contractual perspective is crucial, as it shows that the main idea of the PIL principle of party autonomy is to treat international agreements as enforceable private obligations. This extends the private law notion of freedom of contract to a global level.

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[134] K Zweigert and H Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998) 270–72.
[135] Council Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, art 3
[136] R A Brand, *Party Autonomy and the International Rule of Law: The Hague Principles on Choice of Law* (OUP 2020) 45–47.
[137] Ronald A Brand, *Party Autonomy and the International Rule of Law: The Hague Principles on Choice of Law* (OUP 2020) 51–53.
[138] UNCITRAL Model Law on Cross-Border Insolvency (1997), art 7
[139] Jürgen Basedow, 'The State's Private Law and the Economy: Commercial Law as an Instrument of National Policy' (2015) 60 *American Journal of Comparative Law* 873, 880–82.

2.3.3 Hybrid Theory: Finding the balance

The hybrid theory of arbitration seeks to strike a balance between the jurisdictional and contractual views of party autonomy. It acknowledges that arbitration agreements are based on the parties' agreement and reflects the principle of private law that individuals can choose how to resolve their conflicts. It also recognises that these agreements cannot operate without a legal framework. National courts need to acknowledge and support arbitration to provide legitimacy to arbitral processes and ensure compliance with their decisions. The UNCITRAL Model Law clearly demonstrates a fair approach by allowing parties significant freedom to shape the arbitration process, while fitting it into a legal framework that promotes justice and benefits the public. This contrast highlights the core of private international law, which continually navigates the tension between state authority and personal freedom.

Professor Surville's Hybrid theory, as expanded by Professor Sauser-Hall, represents a novel and intricate perspective in the field of international commercial arbitration.[140] According to this viewpoint, international arbitration is a dualistic procedure that includes contractual and jurisdictional aspects.[141] This hybrid approach provides a theoretical foundation for understanding how modern arbitration systems balance party autonomy with necessary regulatory oversight. The formulation of this Theory by Professor Sauser-Hall created a contrast that underscores the dynamic challenges of arbitration as a dispute-resolution tool.

On the one hand, Sauser-Hall underlines the contractual nature of international arbitration.[142] He emphasises that the origins of arbitration lie in private contractual domains, where parties retain the authority to define the essential elements of the arbitration process. They possess the authority to select their arbitrators, establish the regulations governing the arbitration process, and shape the substantive issues in their dispute. This contractual clause emphasises the principle of party autonomy, a defining characteristic of contemporary arbitration, in which the parties mutually

[140] L. A. Ayinla, A. K. Adebayo, and Bilikis Ayinla Ahmad, 'An appraisal of the nexus and disparities between arbitration and Alternative Dispute Resolution (ADR)' (2018) 8 (1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 182–191.
[141] Kendall Grant, 'ICSID's Reinforcement: UNASUR and the Rise of a Hybrid Regime for International Investment Arbitration' (2014) 52 Osgoode Hall Law Journal 1115.
[142] Flavia Foz Mange, 'Homenagem a Andreas Lowenfeld, the Two Way Mirror: International Arbitration as Comparative Procedure' (2014) 11 Revista Brasileira de Arbitragem 184.

agreed goals prevail.[143] In this context, arbitration intersects with Contractual theory by emphasising the crucial role of private agreements in shaping the arbitration process.

Sauser-Hall acknowledges the importance of jurisdictional theory in international arbitration. He acknowledges that the arbitration procedure takes place within the framework of national legal systems, which make important decisions.[144] These decisions include the delegation of authority among the parties, the validity of the arbitration agreement, and the enforceability of arbitral judgments. This jurisdictional component highlights the relationship between the parties' autonomy and the overall legal architecture within which arbitration occurs. It emphasises the importance of state legal systems in protecting the rights and obligations of the parties to arbitration.

While innovative and thought-provoking, the Hybrid theory is not without criticism. Detractors contend that, although intended to harmonise contractual and jurisdictional features, this method may blur the distinctions between these paradigms, potentially leading to uncertainty and legal ambiguity.[145] Finding the right balance between these competing characteristics is difficult, and applying the Hybrid theory in real-world arbitration situations is even more so. Arbitration resists easy categorisation as a legal institution and is best defined as a 'mixed juridical institution, sui generis.'[146] This separate classification emphasises the complex nature of arbitration, which is based on the parties' agreement and exhibits characteristics that distinguish it from both traditional litigation in national courts and other alternative dispute resolution procedures.[147] Arbitration, as a result, functions as a distinct entity, drawing its jurisdictional effects from the civil law tradition while depending on the binding force of the arbitration agreement entered into by the disputing parties.

Arbitration possesses a jurisdictional element. This characteristic is evident in the procedural elements of the arbitration process, where regulations and standards

[143] Andrew Barraclough, and Jeff Waincymer, 'Mandatory rules of law in international commercial arbitration' (2005) 6 (2) Melbourne journal of international law 205–244.
[144] Ibid.
[145] Anthea Roberts, 'State-to-state investment treaty arbitration: a hybrid theory of interdependent rights and shared interpretive authority' (2014) 55 Harvard International Law Journal 1.
[146] Sergey A. Kurochkin, 'The Latest Trends in the Foreign Doctrine of International Commercial Arbitration: An Overview' Herald Civil Procedure 43.
[147] L. A. Ayinla, A. K. Adebayo, and Bilikis Ayinla Ahmad (n-100)

govern the conduct of hearings, ensuring that the conflict-resolution mechanism operates within a structured framework. Due to these procedural constraints, arbitration offers an appealing choice for parties seeking a more expedient, less formal alternative to litigation in national courts. The jurisdictional facet of arbitration stems from its reliance on established procedural rules, which ensure the equitable and systematic execution of the process.[148]

Arbitration, on the other hand, is primarily effective because of the arbitration agreement the parties have entered into. This agreement serves as the foundation of the arbitration procedure, enabling it to resolve the dispute at hand. It incorporates the concept of party autonomy, in that the parties' voluntary decision to resort to arbitration vests the arbitration panel with the authority to resolve their disputes. The effectiveness of arbitration is thus contingent on the existence and validity of an arbitration agreement, which establishes jurisdiction and renders arbitral awards enforceable.[149] The explanation of arbitration's jurisdictional nature and its reliance on the arbitration agreement underscores the intricacy of this conflict-resolution process. Arbitration is a one-of-a-kind institution that combines civil law jurisdiction with party-driven agreement.[150] This dichotomy distinguishes arbitration, and its dynamics serve as a focal point for legal scholars and practitioners in the field, sparking debates and discussions aimed at unravelling the complexities and nuances inherent in this unique style of dispute resolution.

Jean Robert's approach emphasises the intricate duality that distinguishes arbitration, in which its nature is inextricably linked to the specific processes employed and the choice of arbitration forum.[151] He clarifies how the structure of the arbitration procedure and the power granted to arbitrators are inextricably linked to the disputing parties' free and voluntary consent. However, adherence to legal principles, such as public policy and statutory regulations as specified by the relevant legal systems, is necessary for arbitration to be effective, particularly regarding the validity of the

[148] Ibid.
[149] Hong-Lin Yu, 'A theoretical overview of the foundations of international commercial arbitration' (2008) 1 Contemporary Asia Arbitration Journal 255.
[150] Eman Jasim Hussain AlRaeesi and Udechukwu Ojiako, 'Examination of legal perspective of public policy implementation on construction projects arbitration' (2021) 13 (3) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 03721002.
[151] Jean Robert, 'Administration of evidence in international commercial arbitration' (1976) 1 Yearbook Commercial arbitration 221–26.

arbitration agreement and the enforceability of arbitral awards.[152] This includes the rules of the *lex fori*, which govern the forum's legal proceedings, as well as the laws of the country where the arbitral award is to be enforced.[153] Robert's analysis captures the subtle interplay between the inherent contractual liberty in arbitration and the requirement to adhere to the broader legal framework, shedding light on the multifaceted nature of this unique dispute-resolution method.

The hybrid theory explains the importance of understanding party sovereignty in arbitration through the lens of private international law.[154] Arbitration demonstrates that individuals can modify the terms of their agreements and the rules governing their disputes. However, it also shows the significance of state authority in ensuring that those decisions are effective in practice. Courts encourage contracting parties to engage in arbitration, ensure that the process is fair, and uphold the resulting decisions.[155] Nonetheless, they may be declined if they conflict with public policy or mandatory regulations.[156] The hybrid theory navigates between the two extremes of perceiving arbitration solely as a private agreement or merely a mechanism for the state to relinquish its authority. It instead presents arbitration as a method for individuals to collaborate while still maintaining a degree of privacy and public oversight. This is the core balance of private international law.

The hybrid theory provides a valuable analytical lens for understanding how different jurisdictions position themselves along the spectrum between contractual freedom and state control. However, its application varies significantly across legal systems. Some jurisdictions lean towards the contractual end, granting parties extensive autonomy with minimal judicial intervention, as exemplified by the English Arbitration Act 1996. Others adopt a more state-centric posture, maintaining robust judicial oversight throughout the arbitral process while still recognising party choice within defined parameters. Civil law jurisdictions with constitutional commitments to judicial authority

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[152] Susan Franck, 'International Arbitration: Between Myth and Reality' (2018) 5 McGill Journal of Dispute Resolution 1.

[153] Andreas Kulick, *State-state investment arbitration as a means of reassertion of control-from antagonism to dialogue; Reassertion of Control over the Investment Treaty Regime* (CUP 2016) 128-152.

[154] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 6–9

[155] Horatia Muir Watt, 'Private International Law and the Constitutional Order of States' (2003) 52 *International and Comparative Law Quarterly* 347, 355–57.

[156] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 34(2)(b)(ii).

and religious legal traditions often fall within this latter category. As the subsequent chapters will demonstrate, Kuwait exemplifies a distinctive variant of the hybrid approach—one that acknowledges party autonomy as a legitimate principle whilst subordinating it to sustained judicial supervision across the jurisdictional, procedural, and award phases of arbitration.

2.3.4 The Autonomous Will Theory: A Modern View

The autonomous will theory offers a modern perspective on party autonomy that departs from earlier frameworks. Whereas the jurisdictional theory treats party autonomy as a concession granted by the state (permissible only to the extent that sovereign authority tolerates private choice) and the contractual theory views it as an extension of domestic freedom of contract operating within national legal boundaries, the autonomous will theory posits that party choice possesses independent validity in international commerce. Under this conception, parties establish legal authority through their selection of forum or applicable law, deriving legitimacy not from state permission but from the inherent requirements of international commercial relations. This Theory suggests that the parties involved establish legal authority by choosing the venue or law that aligns with their requirements, rather than relying on the state, thereby allowing for party autonomy. Unlike choice-of-law agreements, which allow parties to choose any legal system without regard to objective connections, arbitration is defined by the processes parties establish for dispute resolution, regardless of geographical boundaries. This idea illustrates how trade has become global, with individuals and companies working across different countries, necessitating a level of adaptability that surpasses strict national regulations.

The Autonomous theory, a relatively contemporary perspective in the field of international commercial arbitration, marks a departure from conventional approaches, notably challenging the conventional wisdom surrounding the integration of arbitration within existing legal frameworks. Instead, it prioritises the underlying purpose of international commercial arbitration.[157] At its core, the Autonomous theory redefines arbitration as an independent, self-sufficient institution distinct from the legal framework in which it operates. This conceptualisation liberates arbitration from the

[157] Mehren Von, Arthur Taylor, 'International Commercial Arbitration: The Contribution of the French Jurisprudence' (1985) 46 Louisiana Law Review1045.

traditional limitations dictated by the legal framework of its jurisdiction. Consequently, this Theory advocates for the unconstrained autonomy of parties in designing the conduct and boundaries of their arbitration hearings.[158] It is within this novel framework that parties have broad latitude to determine the procedural aspects and rules governing their arbitration, thereby profoundly reorienting traditional paradigms and underscoring the principle of party autonomy in international arbitration.[159] This paradigm shift challenges established notions of legal constraints on arbitration, prompting a critical re-evaluation of the relationship between arbitration and the legal landscape in which it operates.

Dr Mann contests the notion of "international" arbitration, deeming it flawed, as he posits that no arbitration can exist in a legal vacuum.[160] His critical examination is primarily directed at delocalisation and autonomous theories, both of which advocate the emancipation of international commercial arbitration from the constraints of the lex fori.[161] Mann firmly contends that there is no entity such as international commercial arbitration in the strict legal sense, drawing a parallel with the misleading nomenclature of private international law—both, he argues, operate within national legal systems.[162]

Mann's critique thus aligns with the jurisdictional theory, which holds that arbitral authority derives from and remains subject to the law of the seat. However, the autonomous theory also competes with the contractual theory, though in a different way. Both theories recognise party autonomy as the foundation of arbitration and accept that it is subject to constraints. The difference lies in the source of those constraints. Under the contractual theory, the limits on party autonomy derive from national law—mandatory rules and public policy of the relevant legal system. Under the autonomous theory, by contrast, these constraints are conceived as transnational in nature, grounded in international standards, transnational public policy, or the lex mercatoria, rather than in any single national legal order.[163]

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[158] Hong-Lin Yu, 'A theoretical overview of the foundations of international commercial arbitration' (2008) 1 Contemporary Asia Arbitration Journal 255.
[159] Moses Oruaze Dickson, ‘Party autonomy and justice in international commercial arbitration’ (2018) 60 (1) International Journal of Law and Management 114–134.
[160] Roy Goode, 'Rule, Practice, and Pragmatism in Transnational Commercial Law' (2005) 54(3) International and Comparative Law Quarterly 539.
[161] Ibid.
[162] FA Mann, 'Lex Facit Arbitrum' (1986) 2 Arbitration International 241.
[163] Emmanuel Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff 2010) 35–48.

Nevertheless, despite Mann's theoretical position, many national legal systems have developed specialised frameworks that recognise and provide distinct treatment for international arbitration.[164] The UNCITRAL Model Law on International Commercial Arbitration illustrates this trend, establishing a dual system in which international arbitrations are afforded a degree of autonomy from domestic procedural limitations while retaining ties to national legal frameworks.[165] This pragmatic legislative approach suggests a middle ground between Mann's strictly territorial conception and the complete delocalisation advocated by his theoretical opponents.

In a notable departure from the conventional discourse that sought to position arbitration along a spectrum between jurisdictional and contractual theories, Rubellin-Devichi pursued an alternative path, offering an autonomous theory grounded in practical considerations.[166] In her paradigm, the essence of international commercial arbitration lay in the celerity and adaptability inherent in the arbitral process. She intended that a cogent theoretical framework for arbitration should emerge through a thorough examination of its actual utility and objectives.[167] Intending to foster a conducive environment for arbitration in the international commercial realm, Rubellin-Devichi advocated the recognition of arbitration's autonomous character.[168] In doing so, she forcefully repudiated both the traditional jurisdictional and contractual theories, asserting that these constructs failed to align with the realities of arbitration and were mutually contradictory. Her critique extended to the hybrid theory, which she dismissed for its lack of precision and definitive applicability.[169] This radical departure from established theories and the emphasis on the practicality and autonomy of international commercial arbitration underpin Rubellin-Devichi's efforts to present a redefined, pragmatic perspective on arbitration dynamics, ultimately engendering a

[164] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 156–164.
[165] Emmanuel Gaillard, 'The Representations of International Arbitration' (2010) 1(2) Journal of International Dispute Settlement 271.
[166] Jacqueline Rubellin-Devichi, ‘Family law: the continuity of national characteristics; The European Family: The Family Question in the European Community (Springer Netherlands, 1997) 45–60.
[167] Ibid.
[168] Yeshnah D. Rampall, and Ronan Feehily, ‘The sanctity of party autonomy and the powers of arbitrators to determine the applicable law: The quest for an arbitral equilibrium’ (2017) 23 Harvard Negotiation Law Review 345.
[169] Ibid.

critical reconsideration of the theoretical landscape governing this mode of dispute resolution.[170]

Rubellin-Devichi's novel perspective on arbitration diverges from traditional debates on its jurisdictional and contractual nature. Instead, she posits that arbitration's true character must be gleaned from its practical use and purpose, elevating it to a "supra-national" level while acknowledging its autonomy.[171] By examining the socio-economic demands of international commercial arbitration, she contends that to accommodate its expansion within defined boundaries, one must recognise that it defies categorisation as purely contractual, jurisdictional, or hybrid; rather, its essence is inherently autonomous. This perspective challenges prevailing theoretical paradigms and underscores the self-sustaining and distinctive nature of international commercial arbitration.

This Theory underscores the imperative for arbitration to exist as an autonomous entity elevated to a 'supra-national level.'[172] According to Lew, the essence of international arbitration resides in its autonomy, serving as a self-contained mechanism for resolving a wide spectrum of international commercial disputes.[173] Over time, this perspective has gained increasing support, with Emmanuel Gaillard emerging as a prominent advocate.[174] Gaillard posits that arbitrators' authority is not derived from any particular national legal framework, whether the law of the arbitration's seat or the law governing enforcement. Instead, it emanates from a distinct, transnational or 'arbitral legal order.'[175] Gaillard's perspective is predicated on the notion that international arbitrators do not act as agents of any single state but serve the broader interests of the international community. Much like Rubellin-Devichi, Gaillard underscores the imperative of catering to the arbitration community's specific needs.

Furthermore, Gaillard, akin to Rubellin-Devichi, rejects other prevailing theories of arbitration, albeit for different reasons. He and Paulsson contend that the ever-

[170] Ibid.
[171] Julian Critchlow, 'The Authority of Arbitrators to Make Rules' (2002) 68 (4) The International Journal of Arbitration, Mediation and Dispute Management 369-388
[172] Ibid.
[173] Julian DM Lew, 'Achieving the dream: Autonomous arbitration' (2006) 22 (2) Arbitration International 179–204.
[174] Emmanuel Gaillard, 'Transnational Law: A Legal System or a Method of Decision Making?' (2014) 17 (1) Arbitration International 59–72.
[175] Ibid.

increasing volume of international transactions and the consequent potential to enforce arbitral awards across multiple jurisdictions render the binding nature of a single legal order 'anachronistic'.[176] However, like Paulsson, Gaillard does not substantiate the claim that the jurisdictional theory is obsolete, nor does he provide a compelling rationale for deeming problematic a singular legal order's power to confer binding force on arbitration. This engenders a critical discourse on the underlying premises and justifications of the prevailing theoretical paradigms in arbitration.

While proponents of the autonomous theory characterise the detachment of the arbitral procedure from municipal legal systems as a hallmark of international commercial arbitration, this claim remains contested. Many jurisdictions, particularly those with civil law traditions or constitutional commitments to judicial oversight, maintain that arbitration derives its authority from and remains accountable to state legal frameworks. This unique feature necessitates the recognition of this autonomy through the framework of an international convention. Such a convention not only legitimises the autonomy aspect of international commercial arbitration but also harmonises it with the national legal systems of the participating states.[177] When the autonomy granted to the parties allows them to regulate the entire arbitration procedure independently of domestic law, and when international regulations provide them with the necessary tools and resources to conduct arbitration without resorting to municipal courts, a critical threshold is crossed.[178] At this juncture, we can affirm that international commercial arbitration has been acknowledged in its genuine international character by the legal systems of the states that are parties to the convention.

The importance of this recognition cannot be overstated. It underpins the efficiency and efficacy of international commercial arbitration by allowing parties to tailor the process to their specific needs, thus fostering a more conducive environment for international trade and dispute resolution.[179] Moreover, the acknowledgement of

[176] Jan Paulsson, 'Arbitration in three dimensions' (2011) 60 (2) International & Comparative Law Quarterly 291–323.
[177] Joshua Karton, 'Party autonomy and choice of law: Is international arbitration leading the way or marching to the beat of its own drummer' (2010) 60 University of New Brunswick Law Journal 32.
[178] Jan Kleinheisterkamp, 'Overriding mandatory laws in international arbitration' (2018) 67 (4) International & Comparative Law Quarterly 903–930.
[179] Edward M. Morgan, 'Contract Theory and the sources of rights: an approach to the arbitrability question' (1986) 60 Southern California Law Review1059.

arbitration's autonomy through international conventions helps bridge the gap between the international and national legal spheres, ensuring the enforceability and legitimacy of arbitral awards across borders. In a world where cross-border transactions and disputes are increasingly common, the continued development and recognition of international commercial arbitration as a robust and autonomous mechanism is vital for the smooth functioning of the global economy.[180] International conventions play a pivotal role in achieving this goal by providing a universal framework for parties from diverse legal backgrounds to engage in fair, impartial, and effective dispute resolution, ultimately enhancing the rule of law in the international commercial arena.

Conceptions of arbitration have significantly shaped the field of alternative conflict resolution. The growth of these ideas illustrates the discipline's dynamic nature, ranging from classical positivist views that stress the contractual structure of arbitration agreements to more modern relational theories that emphasise the importance of justice and fairness. As arbitration becomes increasingly popular for resolving conflicts, it is essential to consider and incorporate diverse theoretical perspectives to ensure a robust, efficient process. Whether grounded in social justice, economic efficiency, or legal principles, these theories work together to improve arbitration procedures and enhance its legitimacy and effectiveness as a vital tool for contemporary dispute settlement.

The autonomous will hypothesis is pivotal in private international law as it highlights the growing acknowledgement of individual liberty as a distinct source of legal authority. [181] The Hague-Principles on Choice of Law in International Commercial Contracts and the UNCITRAL Model Law on arbitration exemplify this contemporary perspective by prioritising party autonomy, while incorporating limited safeguards such as public policy and mandatory norms.[182] The concept faces criticism for seemingly disregarding the requirements of nations and potentially allowing dominant entities to

[180] Rashri Baboolal-Frank, 'A review of judicial enforcement of arbitral awards in South Africa' (2022) 40 (2) Conflict Resolution Quarterly 271–277.
[181] Horatia Muir Watt, 'Private International Law and the Production of Normativity: The Example of Party Autonomy in Contract Law' (2010) 10(3) ERCL 343.
[182] Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (adopted 19 March 2015) <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135> accessed 9 September 2025.;

impose unfavourable conditions on weaker counterparts.[183] Its impact is evident, illustrating the broader trend of privatisation aspects of global governance and empowering individuals to determine the allocation of legal authority. The autonomous will theory encompasses the present state of private international law, which increasingly views party sovereignty not as a diversion from state authority, but as an essential feature of the international legal framework.

The theoretical plurality examined in this chapter—spanning jurisdictional, contractual, hybrid, and autonomous conceptions—reveals that no single framework adequately captures the diversity of national approaches to party autonomy in arbitration. While international harmonisation instruments such as the UNCITRAL Model Law have promoted convergence, significant variations persist in how states balance private ordering against public authority. These variations are not merely technical but reflect deeper constitutional commitments, legal traditions, and policy choices regarding the proper relationship between private dispute resolution and state judicial systems. This theoretical foundation is essential for understanding how Kuwait's arbitration framework, analysed in the following chapters, navigates between international standards and domestic legal imperatives to produce what this thesis terms a 'State-Centric Hybrid Model'—an approach that formally embraces party autonomy whilst embedding it within a framework of pervasive judicial oversight.

2.4 Tracing Arbitration and Party Autonomy in Shariah

Shariah acknowledges the principle of party autonomy, albeit within the limitations imposed by its religious and ethical tenets.[184] In early jurisprudence, contracts were frequently obligatory for the parties, with mutual consent seen as a key foundation of obligations.[185] This emphasis on permission corresponds with the contractual principle of party liberty; however, it is tempered by restrictions designed to prevent exploitation, ambiguity, or transactions that contravene public morals. For example, while parties can set the terms of their business deals, they cannot include conditions that contravene rules such as riba (interest) or gharar (severe uncertainty). Shariah has

[183] Ralf Michaels, 'The Mirage of the Multinational State: Party Autonomy in Private International Law' in Horatia Muir Watt and Diego P. Fernández Arroyo (eds), Private International Law and Global Governance (OUP 2014) 103.
[184] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 2003) 289.
[185] Abdullahi Ahmed An-Na'im, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20 Cornell Intl LJ 317, 322.

long recognised the practice of tahkim in arbitration, in which competing parties appoint an arbiter to resolve their dispute.

From the perspective of private international law, Shariah presents both opportunities and challenges for party autonomy. In modern business, parties to Islamic finance agreements often state that any disputes should be resolved in accordance with Shariah principles.[186] When parties seek to choose Shariah as the law that applies in a choice-of-law situation, problems arise because certain jurisdictions do not recognise non-state law as a valid alternative under conflict-of-laws rules. In these cases, courts often view Shariah as part of commercial contracts rather than as a separate legal system. This shows how strong and limited party autonomy is in Shariah. It shows that the principle of consent is fundamental in Islamic law. However, it also shows that the global enforcement of such choices depends on whether states are willing to include non-state or religious law in their conflict-of-laws systems.

For instance, the practice of Umar ibn al-Khattab, Islam's second Caliph, provides convincing support for party autonomy in dispute resolution.[187] His stance, as shown in his command to "dispel the disputants until they settle amicably with one another," underscores the importance of encouraging parties to find amicable solutions on their own.[188] Umar ibn al-Khattab correctly recognised that lengthy adjudication processes frequently breed rancour and conflict, emphasising the potential drawbacks of rigorous legal involvement. Furthermore, in his important work "*Durar al-Hukkam fi Sharh Ghurar al-Ahkam*," the eminent scholar Molla Khosrow emphasises the importance of party-driven amicable solutions by placing the chapter on adjudication after the chapter on *"sulh"* (amicable settlement).[189] He persuasively argues that adjudication should be used only when reconciliation between litigants is impossible, putting the

[186] Mahmoud A El-Gamal, *Islamic Finance: Law, Economics, and Practice* (CUP 2006) 58
[187] Maskun Maskun, et al. 'Arbitration: Understanding It in Theory and Indonesian Practice' (2019) 50 (2) Hasanuddin Law Review 220–234.
[188] Aseel Al-Ramahi, 'Sulh: A crucial part of Islamic arbitration' (2008) LSE Law, Society and Economy Working Papers 12/2008 08–45 < https://www.lse.ac.uk/law/working-paper-series/2007–08/WPS2008–12-Al-Ramahi.pdf > accessed 13 November 2023; Justin Jones, 'Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain' (2020) 40 (1) Journal of Muslim Minority Affairs 48–66.
[189] Chibli Mallat, 'From Islamic to Middle Eastern Law-A Restatement of the Field (Part II)' (2004) 52 American Journal of Comparative Law 209.

onus on parties to pursue amicable alternatives as the primary way of dispute resolution.[190]

Nonetheless, it is critical to emphasise that this emphasis on party autonomy does not imply turning away from parties when reconciliation becomes difficult. Instead, Umar ibn al-Khattab's approach, as represented in his correspondence with Muslim Empire leaders, emphasises the importance of diligently pursuing reconciliation efforts until the delivery of judgment becomes superfluous or untimely.[191] In this view, the pro-party autonomy argument gains weight, advocating a system in which parties are empowered to resolve their disputes amicably, with adjudication serving as a last resort rather than a default.[192] A framework like this not only respects the autonomy of the parties but also coincides with the knowledge of past luminaries in the field of dispute settlement.

The viewpoints of famous jurists from the rich tapestry of Islamic legal heritage provide light on the inherent importance of supporting amicable solutions and preserving party sovereignty in the context of dispute resolution. Al-Shirazi presents an intriguing perspective, arguing that even when a judge understands the equitable judgment in a given case, it is still encouraged (*mustahab*) for the judge to encourage the parties to reach an amicable settlement, known as *"sulh*."[193] This viewpoint emphasises the disputing parties' active participation in resolving their problems, recognising their autonomy and capacity to reach mutually acceptable solutions. Notably, Al-Shirazi argues that if these reconciliation efforts fail, the judge must desist from any attempts to pressure the parties into a settlement. In such cases, the shift to judgment is considered obligatory (*al-hukm lazim*), and postponement of judgment without the approval of the entitled party is considered unlawful.[194]

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[190] Aida Othman '"And Amicable Settlement Is Best": Sulh and Dispute Resolution in Islamic Law' (2007) 21 (1) Arab Law Quarterly 64–90.
[191] Harianto Wijaya, and Laras Shesa, 'The Existance of National Sharia Arbitration Agency in The Settlement of Sharia-law Banking Dispute In Rejang Lebong District' (2021) 6 (2) AL-FALAH: Journal of Islamic Economics 215–230.
[192] Kamal Halili Hassan, 'Employment dispute resolution mechanism from the Islamic perspective' (2006) 20 Arab Law Quarterly 181.
[193] Qazi Attaullah, and Lutfullah Saqib. "Sulh Facts And Effects In Shari 'Ah Vis-A-Vis Efficacy Of Pakistani Statutes And Efficiency Of The Judges' (2018) 41 Hamdard Islamicus 1.
[194] Hussein Ahmed Alghushami, 'Relations between tribal arbitration and Formal Judiciary' (2020) 4 (2) Journal of Economic Administrative & Legal Sciences 165-183

This stance emphasises the importance of resolving issues quickly when amicable agreements are impossible. Ibn Hajar al-Asqalani agrees with Al-Shirazi, stating that in most circumstances, a judge should direct disputants towards the pursuit of "*sulh*" even if the right judgment appears obvious.[195] This viewpoint emphasises the critical role of party-driven peaceful agreements in maintaining harmony while adhering to Islamic jurisprudential principles that value consensus and mutual agreement. As a result, the counsel of these great jurists emphasises the critical importance of amicable solutions and party sovereignty as the basic foundations of Islamic dispute resolution.[196]

The terminology of arbitration in Islamic law is extensive, underscoring the profound relevance of alternative dispute-resolution processes within the Islamic legal tradition. The primary notion of arbitration is "*Tahkim",* which encapsulates the core principles of impartiality and equity. It refers to the procedure for resolving disputes and issuing awards.[197] The term "*Hakam*" refers to an arbitrator or mediator who has the authority to make binding rulings. Furthermore, "*Tahkim Shara'i"* emphasises the interaction between arbitration and Islamic law (Sharia), emphasising the conformity of arbitration proceedings with Islamic jurisprudence principles.

Furthermore, "*Sulh*" refers to a broader concept of reconciliation that may be reflected in the form of arbitration. The phrase "Aqd al-Tahkim" refers to an arbitration agreement, a legal document that lays out the rules and conditions of the arbitration process. The phrase "Qada' al-Hakam" refers to the arbitral decision, which contains the final and binding outcome of the arbitration.[198] Finally, "Mu'aridh" refers to a party that is disobedient, obstinate, and unwilling to comply with the arbitration award. These expressions emphasise the multifaceted and complicated nature of arbitration in Islamic law, reflecting its historical and jurisprudential importance.

Tahkim, a well-established dispute settlement procedure, has a specific place in dispute resolution, similar to the Western concept of arbitration in some ways. Its pre-

[195] Mohammad H. Fadel, 'Religious Law, Family Law and Arbitration: Shari'a and Halakha in America.' (2015) 90 Chicago-Kent Law Review 163.
[196] Aseel Al-Ramahi (n-146)
[197] Cristina Puglia, 'Will Parties Take to Tahkim: The Use of Islamic Law and Arbitration in the United States' (2012) 13 Chicago-Kent Journal of International & Comparative Law 151.
[198] Meir Jacob Kister, *Concepts and Ideas at the Dawn of Islam* (Routledge, 2022) 131

Islamic origins were later accepted by the Islamic community and given legitimacy in the Quran. Unlike the Western arbitration paradigm, which often results in a binding ruling, the essence of *tahkim* is dependent on the disputing parties' voluntary acceptance and implementation of an award, as it is heavily reliant on mutual consent.[199] Notably, these parties' willingness to comply with the ruling is heavily reliant on the arbitrators' perceived credibility and honesty.

According to historical documents in Islamic tradition, the Prophet Muhammad (peace be upon him) endorsed arbitration, or *tahkim,* in its context.[200] He strongly urged his community to use arbitration to resolve their issues and emphasised the need to follow the arbitrated outcomes.[201] On various occasions, Muhammad (peace be upon him) not only served as an arbiter but also actively presided over cases, emphasising the importance of this technique in Islamic jurisprudence. Nonetheless, *tahkim* differs significantly from Western arbitration due to the installation of an additional layer of judicial scrutiny during the reign of Muawiya, the first Caliph of the Umayyad dynasty.[202] An organised legal system was formed during his reign, requiring the state's consent to enforce the arbitration.

The development of arbitration in Islamic societies has differed from that in other societies due to its distinct divine and cultural nature. Furthermore, there are numerous distinctions between Islamic and Western alternative dispute settlement techniques. One such distinction is the legitimacy of arbitration provisions in Sharia law for resolving foreseeable issues. Unlike in Western arbitration, where such clauses are common, the *tahkim* method requires parties to voluntarily submit their disagreement to settlement when it arises, rather than agreeing to arbitration in advance through a clause.[203] This distinguishing feature has generated concerns about the legitimacy and enforcement of arbitration agreements, as they are widely understood in the West under Sharia law.[204]

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[199] Ibrahim Zein, and Ahmed El-Wakil, 'The Ṣiffīn Arbitration Agreement and statecraft in early Islamic political documents' (2022) 33 (2) Journal of Islamic Studies 153–202.
[200] Ibid.
[201] Ibid.
[202] Amel K. Abdallah, 'Islamic Sharia and arbitration in GCC States: The way ahead' (2020) International Review of Law 318.
[203] Muhammad Arifina, and Adi Mansar, 'Features of Arbitration in Islamic Law when Resolving Disputes in Muamalah' (2019) 9 (10) International Journal of Innovation, Creativity and Change 295–31.
[204] Rabea Benhalim, 'The Case for American Muslim Arbitration' (2019) Wisconsin Law Review 531.

The atypical Western perspective stems from the fact that *tahkim* was not included in the corpus of contract law, meaning that future arbitration agreements may not necessarily have binding status under Sharia law.[205] The underlying issue stems from the difference between Islamic Law, which focuses on public welfare and societal interests, and the Western concept of arbitration, which emphasises individual rights and liberties.[206] The root of the problem lies in differing interpretations of what constitutes "public policy interests" across these legal paradigms. As a result, an arbitral ruling delivered in a Western jurisdiction, such as the United States, is likely to be written without appropriate regard for the subtle concerns entrenched in Sharia law, making such awards difficult to implement in Sharia-based countries.[207] The absence of a globally accepted and uniform definition of "public policy" under the New York Convention, which governs the recognition and enforcement of arbitral awards, exacerbates the dispute. [208] The failure to define "public policy" precisely has resulted in Sharia-based countries finding themselves at a competitive disadvantage on the world stage.[209] This disadvantage has exacerbated the gap between the "Sharia-based system" and the "international system," sustaining a difficult juxtaposition of contradictory legal concepts and priorities.

Islamic law, or Sharia, and Western jurisprudence are two distinct legal traditions that emphasise community benefit and individual freedom and liberty. The overarching principle of Islamic law is to ensure the well-being and tranquillity of the community as a whole.[210] Islamic law is founded on the concept of "*maslaha*," or the public interest, in which laws and regulations are intended to promote societal well-being, justice, and equity.[211] It tries to address collective needs with an emphasis on economic, social,

[205] Ilias Bantekas, 'Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration." (2021) 12 (3) Journal of International Dispute Settlement 505–523.
[206] Kudirat Magaji W. Owolabi, 'Understanding the Place of Islamic Arbitration within the Nigerian Law' (2023) 14 (1) Jurnal Hukum Novelty 69-87
[207] Munira Hamzah, Arfin Hamid, and Famauri A. Tenri 'Optimization of Justice Institutions in Cancellation of Sharia Arbitration Decisions' (2019) 6 (5) International Journal of Multicultural and Multireligious Understanding 250–256.
[208] Yunus Emre, 'A refusal reason of recognition and enforcement of foreign arbitral awards: Public policy' (2019) 56 (2) Zbornik radova Pravnog fakulteta u Splitu 503–522.
[209] Muhammad Arifina, and Adi Mansar, 'Features of Arbitration in Islamic Law when Resolving Disputes in Muamalah' (2019) 9 (10) International Journal of Innovation, Creativity and Change 295–31.
[210] Eman Jasim Hussain AlRaeesi, and Udechukwu Ojiako, 'Examination of legal perspective of public policy implementation on construction projects arbitration' (2021) 13 (3) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 03721002.
[211] Mohamad Hafifi Hassim, et al. 'Alternative dispute resolution (adr) via sulh processes' (2019) 17 (4) International Journal 25–33.

and moral components. On the other hand, Western jurisprudence, while not devoid of concern for the general good, places a greater focus on protecting individual rights, personal liberties, and autonomy.[212] Individualism, due process, and the protection of private property rights are all important concepts in Western legal systems. This duality in approach highlights the underlying differences between these two legal systems: prioritising social welfare and the moral fabric of society and protecting individual liberty and freedoms. The interaction of these opposing perspectives has far-reaching implications for legal philosophy, ethics, and the state's role in regulating and protecting societal interests.

Because arbitration enables parties to resolve their dispute in a manner consistent with their values and ideals, Islamic law recognises and encourages parties' freedom to arbitrate. The basis for party autonomy in arbitration in Islamic law is the concept of arbitration, which refers to the delegation of authority or power to a third party.[213] This concept acknowledges the parties' right to designate an arbitrator of their choice to resolve their dispute. The parties are free to agree on the procedures and requirements that the arbitrator must follow to resolve the dispute in accordance with Islamic law, provided that these do not conflict with the principles of Islamic law.[214] The basics of Islamic law value arbitration as a form of dispute resolution and recognise the value of party liberty in arbitration.[215] Islamic law recognises the need to ensure that the arbitration process is fair and impartial. In accordance with Islamic law, arbitrators must render fair, impartial, and consistent decisions that adhere to its tenets.[216] The parties may also contest the arbitrator's decision if they believe it does not conform to Islamic law.

In Islamic law, there are some restrictions on party autonomy, particularly regarding public policy issues and binding legal rules. Islamic law acknowledges that some disputes, such as those involving criminal charges or the infringement of public rights

[212] Maura Pilotti, et al. 'The New and the Old: A Qualitative Analysis of Modes of Conflict Resolution in the Kingdom of Saudi Arabia' (2020) 25 (2) International Negotiation 329–344.
[213] Maria Bhatti, 'Managing Shariah non-compliance risk via Islamic dispute resolution' (2019) 13 (1) Journal of Risk and Financial Management 2.
[214] Ibid.
[215] Md Shahadat Hossain, 'Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview' (2013) 1 (5) Journal of Philosophy, Culture and Religion 1–13.
[216] Morr Link, Yoram Z. Haftel, 'Islamic legal tradition and the choice of investment arbitration forums' (2021) 28 (3) Review of International Political Economy 559–583.

or interests, cannot be resolved through arbitration.[217] According to Islamic law, protecting human rights and the environment are examples of mandatory legal rules that cannot be waived or changed by the parties. The concept of party autonomy in arbitration is significant in Islamic law and is regarded as an effective means of resolving disputes.[218] The parties must therefore ensure that their arbitration agreement complies with the guiding principles of Islamic law and does not infringe any binding legal rules.

Shariah jurisprudence provides a significant historical foundation for arbitration principles in Islamic legal traditions. In contrast, modern theories of international commercial arbitration have primarily developed within Western legal systems that prioritise individual rights and contractual duties. Theoretical frameworks originating in the West that underpin contemporary arbitration practice emphasise the sanctity of contracts and individual autonomy, potentially neglecting the unique cultural and historical backdrop of Middle Eastern civilisations. The primary variance arises from the distinct cultural and historical paths of Eastern and Western legal traditions. Kuwaiti society, akin to much of the Middle East, upholds strong communal ties. It emphasises communal interests, starkly contrasting with Western legal systems that generally favour individualised perspectives on rights and responsibilities. This cultural distinction is evident in social interactions, daily activities, and notably, methods of conflict resolution. Therefore, the theoretical frameworks of international commercial arbitration must be understood through the lens of these cultural distinctions when considering their practical application within Kuwait's legal landscape. The appreciation of these cultural perspectives provides essential context for evaluating how jurisdictional, contractual, hybrid, and autonomous theories might be adapted or reconceptualised within Middle Eastern arbitration systems.

Kuwait occupies a distinctive position within this landscape. Article 2 of the Kuwaiti Constitution establishes Islamic Shariah as a main source of legislation, whilst the legal system itself operates within a civil law tradition influenced by Egyptian jurisprudence. This dual heritage shapes Kuwait's approach to party autonomy in

[217] Haitham Haloush, 'Rethinking traditional approaches of parties' autonomy in construction contracts: decennial liability as a case study' (2020) 62 (6) International Journal of Law and Management 577–589.
[218] Abdul Karim Aldohni, 'A Compatibility Analysis of Islamic Financial Disputes: English International Law and Islamic Law' 14 Journal of Comparative Law 218.

arbitration. The Shariah tradition of tahkim, with its emphasis on consensual dispute resolution tempered by substantive constraints, resonates with the civil law emphasis on codified procedures and judicial supervision. Rather than adopting the autonomous or purely contractual theories prevalent in common law jurisdictions, Kuwait's framework reflects what might be termed a 'sovereignty-anchored' approach to arbitration—one in which party autonomy operates not as an independent source of legal authority but as a delegated freedom exercised within boundaries established and enforced by state institutions. This conceptualisation, developed in greater detail in the subsequent analytical chapters, provides a coherent framework for understanding the specific doctrinal choices examined throughout this thesis.

Having examined the Shariah foundations that inform Kuwait's legal culture, it becomes possible to situate Kuwait's arbitration framework within the broader theoretical landscape examined in this chapter.

2.5 Situating Kuwait within the Theoretical Framework

Having examined the four principal theories of arbitration, namely the jurisdictional, contractual, hybrid, and autonomous theories, it becomes essential to situate Kuwait's legal framework within this theoretical landscape. This positioning is not merely academic. It provides the conceptual foundation for understanding how Kuwaiti law operationalises party autonomy throughout the arbitral process. As the subsequent analytical chapters will demonstrate, Kuwait has developed a distinctive approach that this thesis terms the 'State-Centric Hybrid Model'. This approach formally recognises party autonomy whilst systematically subordinating it to judicial oversight.

2.5.1 The Judicial Character of Arbitration in Kuwaiti Legal Thought

Contemporary Kuwaiti legal scholarship, influenced significantly by Egyptian jurisprudence, has gravitated towards characterising arbitration as judicial in nature.[219] This characterisation proceeds from the premise that arbitration possesses the three essential elements of judicial activity. These elements are the claim (*al-iddi'a'*), the

[219] The influence of Egyptian legal scholarship on Kuwaiti arbitration law is well documented. See Fathi Wali, Qanun al-Tahkim fi al-Nazariyya wa al-Tatbiq (Arbitration Law in Theory and Practice) (Munsha'at al-Ma'arif 2007) para 21, 52–54. See also Abdel-Razzaq Al-Sanhuri, Al-Wasit fi Sharh al-Qanun al-Madani (The Intermediary in Explaining Civil Law) (Dar al-Nahda al-Arabiyya 1964) vol 2, para 351.

dispute (*al-munaza'a*), and the adjudicating organ (*al-'udw*).[220] The claim encompasses the economic and social outcomes that a party seeks through the application of legal rules. The dispute arises from the parties' divergence of perspectives regarding the conformity of the facts with the applicable legal rule. The adjudicating organ is the person empowered to resolve this dispute.

When these criteria are applied to arbitration, proponents of the judicial theory argue that all three elements are satisfied.[221] The arbitrator is a person whom the law authorises to resolve the claim and determine whether it conforms to the applicable legal rules. This functional approach, which prioritises the nature of the activity over its source, has gained prominence in modern French jurisprudence and has significantly influenced Kuwaiti legal thought.[222]

The Kuwait Court of Cassation has endorsed this judicial characterisation, holding that an arbitrator is a judge appointed by the parties' mutual will rather than an agent of either party.[223] This position explicitly rejects the contractual theory's characterisation of arbitrators as agents of the parties, aligning instead with the judicial conception of arbitrators as adjudicators performing a quasi-judicial function. This position aligns with the prevailing view in modern procedural jurisprudence.[224] However, the Kuwaiti judiciary has been careful to qualify this characterisation. Whilst the arbitrator performs a judicial function, this does not mean that the arbitrator temporarily exercises the state's public judicial function.[225] As the French Court of Cassation has observed, the arbitrator performs no public function, and the state bears no responsibility for the arbitrator's acts. The ordinary rules of civil responsibility applicable to private individuals govern liability proceedings against arbitrators.[226] The arbitrator is thus an

[220] Wajdi Raghib, Al-Nazariyya al-'Amma li-l-'Amal al-Qada'i fi Qanun al-Murafa'at (The General Theory of Judicial Activity in the Law of Procedure) (Munsha'at al-Ma'arif 1974) 18–28.
[221] Henri Motulsky, Écrits: Études et notes sur l'arbitrage (Dalloz 1974) para 8, 14–15.
[222] Patrick Level, 'L'arbitrage: Nature et objet' (1961) Revue de l'arbitrage para 53. For the French jurisprudence endorsing this approach, see the cases cited in Motulsky (n 3) 11, fn 37.
[223] Kuwait Court of Cassation, Case No 48/1975 (29 December 1976) (Commercial), judgment of 29 December 1976, published in Majmu'at al-Qawa'id al-Qanuniyya (Collection of Legal Principles) (Technical Office of the Court of Appeal 1972–1979) 91.
[224] Motulsky (n 3) 32. See also Jean Vincent and Jacques Prévault, *Voies d'exécution et procédures de distribution* (17th edn, Dalloz 1999).
[225] Glasson, Tissier and Morel, Traité théorique et pratique d'organisation judiciaire, de compétence et de procédure civile (3rd edn, Sirey 1925–1936) para 1851.
[226] Cass civ 2e, 29 January 1960, *Revue de l'arbitrage* 1960, 121.

ordinary individual whom the law permits to exercise a judicial function. In this sense, the arbitrator may be described as a 'judge by circumstance' (*qadin bi-l-sudfa*).

2.5.2 The Statutory Framework and the Primacy of State Courts

A distinctive feature of Kuwaiti arbitration law, reflecting its state-centric orientation, is the allocation of default powers to the state. The provisions governing arbitration in the Kuwaiti Code of Civil and Commercial Procedures, contained in Articles 173-188, consistently vest supplementary authority in state courts rather than in arbitral tribunals. Where the parties have not reached an agreement on procedural matters, the law directs them to seek judicial intervention rather than empowering the arbitral tribunal to fill the gap. This choice stands in marked contrast to contemporary arbitration legislation in other jurisdictions.

Under modern arbitration statutes such as the English Arbitration Act 1996 and the UAE Federal Arbitration Law of 2018, arbitral tribunals are granted residual authority to determine procedural matters in the absence of party agreement.[227] These laws reflect the principle that arbitration should be a self-contained mechanism capable of resolving procedural deficiencies without routine recourse to national courts. The UNCITRAL Model Law similarly empowers arbitral tribunals to make necessary procedural determinations where the parties have not agreed otherwise.[228]

The Kuwaiti framework adopts a different approach. Several provisions illustrate this state-centric orientation. Article 173(6) reserves interim and conservatory measures to the competent court, precluding arbitral tribunals from exercising such powers unless the parties have expressly agreed otherwise.[229] Article 178 subjects arbitrators to challenge on the same grounds as judges, thereby importing the judicial recusal framework into the arbitral context.[230] Article 180 mandates the suspension of arbitral proceedings when a preliminary question (*mas'ala awwaliyya*) arises that falls outside

[227] Arbitration Act 1996 (UK), ss 33–41, which grant tribunals broad procedural powers subject to party agreement. UAE Federal Arbitration Law No 6 of 2018, arts 19–23, which similarly empower tribunals to determine procedural matters.
[228] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 19(2).
[229] Kuwaiti Code of Civil and Commercial Procedures, art 173(6). This provision is analysed in detail in Chapter Four.
[230] ibid art 178. The implications of this provision for arbitrator independence are examined in Chapter Four.

the arbitral tribunal's competence, requiring the parties to seek a determination from the appropriate court before arbitration may resume.[231] These provisions, examined in detail in subsequent chapters, reveal a legislative design that treats arbitration as subordinate to, rather than independent of, the state judicial system.

Perhaps most significantly, Kuwaiti law has not embraced the principle of competence-competence that has become a cornerstone of modern arbitration practice. Under this principle, arbitral tribunals possess the authority to rule on their own jurisdiction, including challenges to the existence or validity of the arbitration agreement. The UNCITRAL Model Law, the English Arbitration Act, and numerous other contemporary arbitration statutes have adopted the principle.[232] In Kuwait, however, jurisdictional challenges must be determined by state courts, reflecting a legislative preference for judicial oversight over arbitral self-determination. This aspect of Kuwaiti law will be analysed comprehensively in Chapter Three.

2.5.3 Implications for the Concept of Arbitral Jurisdiction

The acceptance of arbitration's judicial character carries significant implications for understanding the arbitrator's jurisdiction (*ikhtisas*). Proponents of the contractual theory have traditionally resisted the notion that arbitrators possess jurisdiction, arguing that the arbitrator's authority derives from agreement rather than from rules of judicial organisation.[233] On this view, speaking of arbitral 'jurisdiction' represents either an overstatement or a mere metaphor.

However, under the prevailing judicial characterisation in contemporary Kuwaiti legal thought, the recognition of genuine arbitral jurisdiction is necessary.[234] This jurisdiction, understood as the arbitrator's authority (*sulta*) or competence (*wilaya*), is a logical corollary of the principle that state courts lack jurisdiction over disputes submitted to arbitration.[235] Article 173(5) of the Kuwaiti Code of Civil and Commercial

[231] ibid art 180. The operation of this provision and its impact on arbitral autonomy is discussed in Chapter Four.
[232] UNCITRAL Model Law, art 16(1). Arbitration Act 1996 (UK), s 30. For a comparative analysis, see Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1048–1167.
[233] René Savatier, annotation to CA Angers, 27 March 1957, D 1954, 704.
[234] CA Paris, 14 May 1979, D 1959, 437, annotation by Jean Robert.
[235] Kuwaiti Code of Civil and Commercial Procedures, art 173(5).

Procedures expressly provides that state courts lack jurisdiction to hear disputes that the parties have agreed to submit to arbitration.

Importantly, the nature of arbitral jurisdiction differs from the traditional categories of subject-matter and territorial jurisdiction that govern state courts.[236] The arbitration agreement simultaneously defines the subject matter of the dispute, its nature, and the tribunal that will hear it. This occurs without the traditional distinction between these jurisdictional categories.[237] This analysis of arbitral jurisdiction as authority or competence has been adopted by modern French jurisprudence, which rejected the contractual characterisation of arbitration and recognised that the arbitrator, as a judge performing a judicial function, necessarily possesses genuine jurisdiction. This recognition, however, does not entail all the consequences that attach to the jurisdictional rules governing state courts.

2.5.4 Arguments Supporting the Judicial Characterisation

Several arguments support the judicial characterisation of arbitration that has influenced Kuwaiti legal thought. First, the arbitrator performs the same function as a judge, namely, resolving disputes. The determination of arbitration's nature should focus on the task entrusted to the arbitrator and on the role that arbitration plays as a dispute-resolution mechanism permitted by positive law.[238]

Second, the organic criterion (*al-mi'yar al-'udwi*) of judicial activity, often invoked by opponents to argue that arbitrators are not judges, is in fact satisfied in arbitration. The arbitrator derives the capacity to perform the judicial function from the law itself.[239] From the moment the law permits a private individual to exercise the judicial function, the organic criterion advocated by Carré de Malberg is fulfilled.[240] Similarly, the material criterion (*al-mi'yar al-mawdu'i*) supported by Hauriou is satisfied because the arbitrator decides disputes according to substantive law as a general rule.[241] The

[236] Jean-Denis Bredin, 'La compétence de l'arbitre: Propos introductifs' in *L'arbitrage: Questions de procédure* (LGDJ 1994) para 9.
[237] Pierre Hébraud, 'Observations' (1961) *Revue trimestrielle de droit civil* 162.
[238] Wali (n 1) para 21, 52–54.
[239] Raghib (n 2) 19.
[240] Raymond Carré de Malberg, *Contribution à la théorie générale de l'État* (Sirey 1920) vol 1, 768.
[241] Maurice Hauriou, 'Les éléments du contentieux' (1907) 24 Revue du droit public et de la science politique 149–191. See also Raghib (n 2) 43.

formal criterion (*al-mi'yar al-shakli*) is met because parties may, and in Kuwaiti law often must, require arbitrators to observe procedural rules. Arbitrators are bound by such rules without party agreement where they relate to public policy or the right of defence.[242] Finally, the criterion of internal structure (*al-bina' al-dakhili*) advocated by Duguit is present, as the distinction between arbitral justice and state justice applies only to certain external aspects of the judge's and arbitrator's work.[243]

Third, the realities of positive law support the judicial characterisation. Kuwaiti legislation addresses disputes, parties, and awards in the provisions governing arbitration, found in Articles 173-188 of the Code of Civil and Commercial Procedures.[244] It is inconceivable that these matters relate to a contractual rather than a judicial act. The legislation permits arbitrators to issue awards with immediate enforcement under Article 182/3, permits appeals against arbitral awards where the parties so agree under Article 186/1, permits arbitrators to conduct investigative procedures on their own initiative under Article 179/2, and permits arbitration agreements even where proceedings are pending before state courts under Article 181/1.[245]

Fourth, arbitrators are subject to challenge for the same reasons as judges under Article 178/4 and exhaust their jurisdiction upon issuing their award, as do judges.[246] Arbitral awards enjoy the authority of res judicata even before the issuance of an enforcement order. Modern legislation permits arbitrators to correct and interpret their awards.[247] These features are inconsistent with a purely contractual characterisation.

Fifth, the arbitrator decides according to law, as does the judge, and indeed enjoys broader powers than the judge in resolving disputes where parties may exempt the arbitrator from strict application of law.[248] French law has evolved to permit parties to exempt even state court judges from the strict application of law under Article 12/5 of

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[242] ibid 23.
[243] Léon Duguit, 'L'acte administratif et l'acte juridictionnel' (1906) 23 *Revue du droit public et de la science politique* 413, 471. See also Raghib (n 2) 23.
[244] Kuwaiti Code of Civil and Commercial Procedures, arts 173–188.
[245] ibid arts 182/3, 186/1, 179/2, 181/1.
[246] ibid art 178/4.
[247] French Code of Civil Procedure, arts 1476, 1475/2. See also Kuwaiti Code of Civil and Commercial Procedures (as amended by Law No 36 of 2002) and Egyptian Arbitration Law No 27 of 1994.
[248] Azmi Abdel-Fattah, Asas al-Iddi'a' Amam al-Qada' al-Madani (The Basis of Claims before Civil Courts) (Kuwait University Press 1987) 279–286. See also the second edition published in 2001.

the New Code of Civil Procedure, thereby aligning the powers of arbitrators and judges in this respect.[249]

2.5.5 Towards a State-Centric Hybrid Model

The foregoing analysis reveals that Kuwaiti legal thought does not align neatly with any single theoretical framework. On one hand, the emphasis on arbitration's judicial character and the arbitrator's status as a judge reflects elements of the jurisdictional theory, which views arbitral authority as embedded within state sovereignty. On the other hand, the recognition that the arbitrator's jurisdiction derives from party agreement and is limited to the scope determined by the parties reflects core tenets of the contractual theory.

This suggests that Kuwait occupies a position within the hybrid theoretical framework, but with a distinctive orientation. Unlike jurisdictions that have embraced delocalisation or autonomous theories, Kuwait maintains that arbitration derives its legitimacy from state recognition and remains accountable to state institutions throughout its operation. The formal recognition of party autonomy coexists with pervasive judicial oversight at each critical phase of the arbitral process.

This thesis terms this distinctive approach the 'State-Centric Hybrid Model.' The model is 'hybrid' because it acknowledges both the contractual foundation of arbitration in the parties' agreement and its jurisdictional effects in the judicial function performed by arbitrators and supervised by courts. It is 'state-centric' because, at every critical juncture, state judicial authority retains supervisory competence that constrains party autonomy within defined parameters. These junctures include the validity of the arbitration agreement, the conduct of proceedings, and the recognition and enforcement of awards.

The state-centric character of the Kuwaiti model is further evidenced by the statutory allocation of default powers discussed above. Where contemporary arbitration laws empower tribunals to act autonomously in procedural matters, Kuwaiti law channels such matters through the courts. Where modern practice recognises tribunal authority

[249] French Code of Civil Procedure, art 12/5.

over jurisdictional challenges, Kuwaiti law reserves this determination to the judiciary. Where other systems permit tribunals to grant interim relief, Kuwaiti law assigns this function primarily to state courts. These choices collectively reveal a legislative philosophy that treats party autonomy as a delegated freedom operating within judicially supervised boundaries rather than as an autonomous source of legal authority.

Two differences between arbitral awards and court judgments further underscore this model. The first is the requirement of an enforcement order (*amr al-tanfidh*), and the second is the availability of annulment proceedings (*da'wa al-butlan*) against arbitral awards. Neither of these applies to court judgments.[250] These mechanisms ensure that party autonomy in arbitration operates within boundaries established and enforced by state institutions.

The subsequent chapters will demonstrate how this State-Centric Hybrid Model manifests across the three phases of arbitration in Kuwait. Chapter Three examines the jurisdictional phase, where questions of arbitrability, the validity of arbitration agreements, and the absence of competence-competence are analysed. Chapter Four addresses the procedural phase, exploring the conduct of arbitral proceedings, the role of courts in filling procedural gaps, and the treatment of preliminary questions under Article 180. Chapter Five considers the award phase, where the recognition, enforcement, and annulment of arbitral decisions are governed. This phased analysis will reveal the systematic subordination of party autonomy to judicial oversight that characterises Kuwait's distinctive approach to international commercial arbitration.

[250] These two features, namely the enforcement order requirement and the availability of annulment proceedings, are examined in detail in Chapter Five.

2.5.6 Conclusion

This chapter has traced the theoretical evolution of party autonomy from its origins in contractual freedom through its development in private international law to its contemporary application in international commercial arbitration. The examination of the four principal theories—jurisdictional, contractual, hybrid, and autonomous—reveals that each captures important dimensions of arbitration practice whilst offering different explanations for the relationship between private ordering and state authority. The analysis demonstrates that party autonomy in arbitration is neither absolute nor illusory. It represents a calibrated freedom that persists only within boundaries established by public authority. The Shariah tradition of *tahkim*, with its emphasis on consensual dispute resolution tempered by substantive constraints, provides additional perspective on how legal traditions may balance private choice with communal interests.

Against this theoretical backdrop, Kuwait emerges as occupying a distinctive position. The preceding analysis has established that Kuwait's framework reflects what this thesis terms the 'State-Centric Hybrid Model'—an approach that formally recognises party autonomy whilst systematically channelling residual authority to state courts rather than arbitral tribunals. This theoretical characterisation now requires empirical validation through detailed examination of Kuwait's statutory provisions and judicial practice.

The chapters that follow undertake this task. Chapter Three examines the jurisdictional phase, testing whether Kuwait's treatment of arbitration agreements, capacity requirements, and arbitrability reflects the gatekeeping conditionality suggested by this model. Chapter Four analyses the procedural phase, investigating whether formal recognition of procedural autonomy translates into substantive freedom. Chapter Five addresses the award phase, examining whether cumulative judicial control transforms arbitral outcomes into provisional determinations awaiting state validation. Together, these chapters will demonstrate how Kuwait's theoretical orientation manifests in specific doctrinal rules and judicial practices.

Chapter 3: The Jurisdictional Phase – Formation, Validity, Arbitrability and Competence under the Kuwaiti Arbitration Framework

3.1 Introduction

Party autonomy is the basis for arbitration's legitimacy as an alternative to state courts.[251] The decision to submit disputes to arbitration represents an exercise of contractual freedom. Through this decision, parties agree to exclude the jurisdiction of national courts in favour of a private tribunal whose authority flows exclusively from their consent.[252] This consensual foundation distinguishes arbitration from litigation. It explains why legal systems universally require that arbitral jurisdiction rest upon a valid agreement between the parties.[253] This principle finds express recognition in Kuwaiti law. Article 196 of the Civil Code enshrines the principle that 'the contract is the law of the contracting parties', establishing party autonomy as a cornerstone of Kuwait's private law framework.[254] The Court of Cassation has consistently affirmed this principle, holding that contractual agreements freely concluded between parties with full capacity bind them as law.

The recognition of party autonomy in arbitration varies across legal systems. International frameworks such as the UNCITRAL Model Law and the New York Convention treat party autonomy as a presumptive right subject to limited exceptions.[255] These instruments reflect a policy choice favouring minimal judicial intervention at the formation stage. Substantive review is ordinarily deferred to the award challenge phase. The arbitral tribunal is presumed competent to determine its

[251] Gary B. Born, International Commercial Arbitration (Third Edition), §2.01 (Kluwer Law International, Updated August 2022).
[252] Giuditta Cordero-Moss, 'Limits on Party Autonomy in International Commercial Arbitration' (2015) 4 Penn St JL & Int'l Aff 186
[253] Moses Oruaze Dickson, 'Party Autonomy and Justice in International Commercial Arbitration' (2018) 60 Int'l JL & Mgmt 114
[254] Civil Code (Kuwait), Decree-Law No 67/1980, art 196: 'The contract is the law of the contracting parties, and may not be revoked or modified except by mutual consent of the parties or for reasons permitted by law.'
[255] Gary B. Born, International Commercial Arbitration (Third Edition), §4.04[2][a] (Kluwer Law International, Updated August 2022).

own jurisdiction, and courts are expected to refer parties to arbitration unless the agreement is manifestly null and void.

Although Kuwait's Civil and Commercial Procedure Law acknowledges party autonomy in the arbitral jurisdiction phase, it adopts a different approach. It requires judicial oversight based on certain conditions.[256] These prerequisites govern the formation of the arbitration agreement and the capacity and authority of the contracting parties. They also address the arbitrability of the subject matter and the allocation of competence between courts and tribunals.[257] The result is a framework in which party autonomy operates within limits defined by statute and supervised by the judiciary. This supervision occurs at the early stage of the arbitration lifecycle rather than primarily at the enforcement stage.[258] Should courts or tribunals decide first in matters of jurisdiction? This question becomes a pivotal point of debate when considering Kuwait's preference for front-loaded control as opposed to the Model Law's reliance on back-end review. Kuwait's front-loaded judicial oversight contrasts with the Model Law's post-award examination of arbitral jurisdiction.

This chapter introduces the concept of gatekeeping conditionality to describe Kuwait's approach to the jurisdictional phase. The term refers to the requirements of Kuwaiti law that parties meet both formal and substantive criteria before arbitral proceedings can begin. Only then does it transfer judicial authority. Unlike frameworks that accept arbitration agreements and allow tribunals to address jurisdiction disputes with later judicial review, this approach differs.[259] What specific challenges do Kuwait's gatekeeping measures present to the comparative theory of arbitration? By stating this chapter's core inquiry early, this can clearly grasp the unique issues at hand, thereby

[256] Saad Aljadean Badah, 'Rules Relevant to the Recognition and Enforcement of Foreign Arbitral Awards in Kuwait' (2015) 11(2) Asian International Arbitration Journal 117.
[257] Ahmed Barakat and Adnan Jaafar, 'Arbitration in Kuwait: Public Policy Limits, Capacity Pitfalls and the Need for Legislative Overhaul' (2025) Asian Dispute Review 173 https://www-kluwerarbitration-com.uea.idm.oclc.org/document/kli-ka-adr-2025–03–007 accessed 21 January 2025.
[258] Al Awadhi N, Al Awadhi M and Abdullah M, 'Arbitration in Kuwait' (Practical Law UK Practice Note w-044–4159, Thomson Reuters, law stated as at 1 March 2025) https://uk.practicallaw.thomsonreuters.com/w-044–4159 accessed 15 January 2025.
[259] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.119.

better preparing them for the exploration of how Kuwait's legal framework contrasts with international norms.

The State-Centric Hybrid Model proposed in Chapter Two provides the theoretical lens through which this arbitration framework may be understood.[260] Kuwait formally acknowledges the contractual basis of arbitration while embedding judicial control throughout the arbitral process. Arbitral authority functions as a conditional delegation from the state rather than as an autonomous power derived solely from party agreement. The jurisdictional phase discussed in this chapter exemplifies the initial appearance of this hybrid nature. It sets a precedent for conditional autonomy that continues throughout the procedural and award phases addressed in later chapters.

The analysis proceeds through four sections. Section 3.2 examines the arbitration agreement and written form requirement under Article 173 of the Civil and Commercial Procedure Law. It traces the evolution of judicial interpretation from formalistic approaches requiring explicit terminology to functional standards recognising agreements that substantively confer binding adjudicative authority. To illustrate this evolution, consider a scenario where two companies engage in a joint venture and outline a brief agreement on the back of a napkin, agreeing to resolve disputes through arbitration without using the formal term 'arbitration.' Initially, such agreements might have been dismissed; however, contemporary interpretation would see this as a valid agreement, focusing on the intent rather than formality. Section 3.3 discusses the capacity and authority to conclude an arbitration agreement. Section 3.4 analyses arbitrability as the primary limitation on party autonomy. It examines how the composability principle derived from Article 554 of the Civil Code excludes certain categories of disputes from arbitral jurisdiction. For instance, consider a commercial contract involving the sale of pharmaceuticals that subtly entangle public health policies. Despite the parties' agreement to arbitrate, the state would assert judicial oversight, deeming these disputes non-arbitrable under the composability principle due to their impact on public welfare. Section 3.5 examines competence-competence and the mandatory suspension requirement under Article 180, showing how Kuwait's framework allocates jurisdictional authority to courts rather than tribunals. Section 3.6 addresses the separability doctrine, examining Kuwait's treatment of the relationship

[260] See Chapter Two of this Thesis.

between the arbitration clause and the underlying contract. Section 3.7 synthesises findings across all dimensions and establishes the conceptual bridge to Chapter Four's examination of the procedural phase.

The empirical foundation draws upon Court of Cassation jurisprudence spanning four decades. Instead of presenting these cases chronologically, they are synthesised into thematic categories that reveal emerging legal doctrines. In the context of agreement formation, key decisions such as Cassation 179/1990 through the Snapchat trilogy culminating in Cassation 3249/2018 illustrate evolving interpretations of what constitutes a valid arbitration agreement. Capacity and authority issues are examined through cases like Cassation Case No 741 and 752/2019[261] and Case No 598/2023[262], highlighting the emphasis on the parties' ability to enter into binding agreements. Arbitrability decisions outline the judicial perspective on the boundaries of non-arbitrable matters, demonstrating a nuanced balance between private autonomy and public policy. Competence-competence cases, from Cassation 39/1987 through Cassation 588/2011, reflect the judiciary's consistent approach to maintaining the integrity of arbitral jurisdiction in light of constitutional guarantees of access to state courts. These thematic groupings reveal underlying patterns in judicial reasoning and highlight the interaction between party autonomy and judicial oversight in the evolving framework of Kuwaiti arbitration law.

3.2 The Arbitration Agreement: Formation and Validity

The arbitration agreement represents the primary vehicle through which parties exercise the Doctrine of Party Autonomy. It displaces judicial jurisdiction in favour of private adjudication.[263] Without a valid agreement, no tribunal possesses authority to bind the parties, and courts retain exclusive competence over the dispute.[264] Therefore, the formation requirements governing arbitration agreements determine the threshold conditions under which party autonomy may effectively operate.[265] This

[261] Court of Cassation (Kuwait), Case No 741/2019 (15 December 2021); Case No 752/2019 (15 December 2021).
[262] Court of Cassation (Kuwait), Commercial Circuit, Case No 598/2023 (26 September 2023).
[263] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 661.
[264] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 100.
[265] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.01.

section examines the formal and substantive requirements for valid arbitration agreements under Kuwaiti law. It traces the evolution of judicial interpretation and situates Kuwait's approach within the broader international context.

Arbitration agreements can be classified into two principal forms, namely the arbitration clause and the submission agreement.[266] The distinction between these two forms lies in their temporal focus. The arbitration clause is prospective, as it anticipates future disputes. The submission agreement, on the other hand, is retrospective, as it addresses disputes that have already materialised. The arbitration clause has become the predominant form of dispute resolution in contemporary practice.[267] It is typically incorporated within the main contract between the parties, providing for the resolution of any disputes that may subsequently emerge through arbitration. Both forms derive their binding force from party consent and are treated as contractually equivalent in their capacity to confer arbitral jurisdiction.

3.2.1 Arbitration Clauses

The prospective nature of arbitration clauses explains their characteristic brevity. At the time of drafting, the parties cannot foresee the specific nature of any dispute that might arise. Nor can they determine the most appropriate method for its resolution.[268] This uncertainty leads parties to adopt standardised wording, typically in the form of model clauses provided by established arbitral institutions.

Historically, these provisions received inadequate attention during contractual negotiations.[269] They acquired the designation "midnight clauses" because they were frequently the final matters addressed, often in the late evening hours as negotiations concluded. The parties tended to avoid detailed consideration of dispute resolution mechanisms, perhaps because they were psychologically reluctant to anticipate the potential breakdown of their commercial relationship at the very moment of its formation. This inattention frequently resulted in unsatisfactory compromises,

[266] Blackaby and others (n 12) para 2.02.
[267] Moustafa Alameldin and Ahmed Abdrabou, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/kuwait-evolving-arbitration-framework> accessed 28 January 2026.
[268] Blackaby and others (n 12) para 2.03.
[269] Blackaby and others (n 12) para 2.04.

including inappropriate choices of governing law or an unsuitable arbitral seat. Contemporary commercial practice reflects a growing recognition that the effectiveness of all contractual rights may ultimately depend on the adequacy of the dispute-resolution provisions.[270] In the Kuwaiti context, deficiently drafted arbitration clauses of this nature are particularly problematic. Any ambiguity or inadequacy in the arbitration agreement may result in the dispute being channelled back to the ordinary judicial system, thereby defeating the parties' original intention to resolve their differences through arbitration.

3.2.2 Submission Agreements

Submission agreements are characteristically more extensive than arbitration clauses. Because a submission agreement concerns a dispute that has already arisen, it should incorporate provisions tailored to the specific circumstances of that particular controversy.[271] Beyond identifying the arbitral seat and the applicable substantive law, a submission agreement will frequently designate the arbitrators and delineate the scope of the matters to be arbitrated. It will also establish procedural frameworks governing matters such as documentary disclosure, written pleadings, witness evidence, and procedural timetables.

The dynamics surrounding the negotiation of submission agreements differ from those attending the drafting of arbitration clauses.[272] The emergence of an actual dispute introduces an adversarial dimension to the relationship between the parties. Moreover, because the parties and their legal representatives now understand the nature of the controversy, each side will naturally seek to configure the arbitral procedure in a manner advantageous to its position. This may generate conflicting demands. Additionally, the parties may have divergent interests regarding the pace of proceedings, with claimants typically favouring expeditious resolution while respondents may perceive strategic advantage in prolonging the process. These factors render the negotiation of submission agreements potentially protracted and

[270] Moustafa Alameldin and Ahmed Abdrabou, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/kuwait-evolving-arbitration-framework> accessed 28 January 2026.
[271] Blackaby and others (n 12) para 2.05.
[272] Blackaby and others (n 12) para 2.06.

contentious. The practical difficulties associated with submission agreements have contributed to the predominance of arbitration clauses in contemporary practice, making submission agreements considerably less common.[273]

Nevertheless, within the Kuwaiti legal framework, this form of arbitration agreement may offer greater insulation from judicial intervention.[274] This is provided that the parties demonstrate a genuine willingness to submit their dispute to an arbitral tribunal and possess a thorough understanding of the mandatory requirements of Kuwaiti arbitration law. It must be acknowledged, however, that these mandatory provisions remain largely predated and, in certain respects, diverge considerably from established international arbitration practices, as will be shown through this thesis.[275]

International practice and conventions set specific requirements for arbitration agreements. For example, the New York Convention imposes a written-form requirement under Article II.[276] The Convention applies only to arbitration agreements which are in writing. Article II(2) defines this as including an arbitral clause in a contract, an arbitration agreement signed by the parties, or an arbitration agreement contained in an exchange of letters or telegrams.[277] This formulation reflects the technological context of 1958 and has been subject to interpretive adaptation as commercial practice has evolved.[278] The relationship between Articles II(1) and II(2) of the Convention has generated interpretive debate.[279] On the one hand, some commentators hold that Article II(2) provides an exhaustive definition of writings, such that only signed agreements or exchanges of letters satisfy formal requirements. On the other hand, some scholars adopt a different view, treating Article II(2) as providing representative examples rather than an exhaustive catalogue.[280] Under this

[273] Moustafa Alameldin and Ahmed Abdrabou, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/kuwait-evolving-arbitration-framework> accessed 28 January 2026.
[274] Mohamed Morad Samir Eldib, 'The Parochial Kuwaiti Arbitration Regime: A Case Study of the Extension of Arbitration Agreements to Non-Signatories' (LLM thesis, Queen's University, March 2021).
[275] Abdul Hamid El-Ahdab, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101–108 <https://doi.org/10.1093/arbitration/12.1.101> accessed 28 January 2026.
[276] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) art II(1).
[277] ibid art II(2).
[278] Born (n 1) 701–705.
[279] Albert Jan van den Berg, *The New York Arbitration Convention of 1958* (Kluwer Law International 1981) 175.
[280] Born (n 1) 709–712.

interpretation, Article II(1)'s writing requirement may be satisfied by forms of written evidence beyond those specifically enumerated in Article II(2).

The UNCITRAL Model Law originally adopted a writing requirement similar to the Convention.[281] Article 7(2) of the 1985 version required that the arbitration agreement be in writing. Writing was defined as a document signed by the parties, an exchange of communications providing a record of the agreement, or an exchange of statements of claim and defence in which one party alleges an agreement and the other does not deny it.[282] However, the 2006 amendments to the Model Law incorporated two alternative formulations, each representing different policy approaches to formal requirements. [283] Option I retains the writing requirement but provides a liberalised definition. It states that an arbitration agreement is in writing if its terms are recorded in any form, whether or not the agreement or contract is concluded orally, by conduct, or by other means.[284] This formulation eliminates requirements for signatures or exchanges and focuses solely on whether a written record of the agreement exists. Option II eliminates the writing requirement, defining an arbitration agreement simply as an agreement to submit disputes to arbitration without formal requirements.[285]

Moreover, the 2006 UNCITRAL Recommendations addressed the relationship between the Convention and national law.[286] The first Recommendation provided that Article II(2) should be interpreted non-exhaustively, permitting recognition of agreements that do not strictly comply with signature or exchange requirements. The second Recommendation confirmed that Article VII(1) permits Contracting States to apply more favourable national law. This enables recognition of agreements valid under domestic provisions even where Convention requirements are not literally satisfied.[287]

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[281] UNCITRAL Model Law (n 4) art 7(2) (1985 version).
[282] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, ‘Agreement to Arbitrate’ in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.19.
[283] ibid art 7 (2006 revision).
[284] ibid art 7(3) (Option I).
[285] ibid art 7 (Option II).
[286] UNCITRAL, 'Recommendation Regarding the Interpretation of Article II, Paragraph 2, and Article VII, Paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (7 July 2006).
[287] ibid.

It should be noted that the writing requirement serves dual functions that support rather than restrict party autonomy.[288] The warning function ensures that parties appreciate the significance of waiving their right to judicial recourse before binding themselves to arbitration. The evidentiary function ensures that the existence and terms of the agreement can be established with sufficient certainty for judicial enforcement. In this way, both functions protect the integrity of party choice by ensuring that arbitration proceeds only where genuine consent exists and can be verified. Juxtaposed with this, the Model Law's efficiency rationale prioritises the practical aspect of swiftly addressing jurisdictional questions within the arbitral process, ensuring minimal interruption. This side-by-side comparison illuminates the normative stakes, highlighting Kuwait's emphasis on verification against the Model Law's focus on procedural efficacy.[289]

International practice treats formal requirements as serving evidentiary rather than constitutive functions.[290] The validity of the parties' consent is the substantive question, while writing requirements establish how that consent must be proved rather than how it must be created.[291] This difference permits flexibility in recognising agreements concluded through modern commercial practices, including electronic communications, standard terms, and course of dealing. Sufficient formality is maintained to ensure that waivers of judicial access are demonstrable and verifiable.[292]

[288] Gary B Born, 'Part I: International Arbitration Agreements' in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 251–254.
[289] Husam Botosh, 'The Arbitration and Party Autonomy: A Comparative Review between the English Law, the UNCITRAL Model Law and the Qatari Law' (2018) 6(3) Kilaw Journal 51–80 <https://journal.kilaw.edu.kw/wp-content/uploads/2018/12/Husam-Botosh.pdf> accessed 28 January 2026.
[290] Ibid.
[291] Richard M Mosk and Tom Ginsburg, 'Evidentiary Privileges in International Arbitration' (2001) 50(2) International and Comparative Law Quarterly 345–385 <https://doi.org/10.1093/iclq/50.2.345> accessed 28 January 2026.
[292] Abdul Hamid El-Ahdab, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101–108 <https://doi.org/10.1093/arbitration/12.1.101> accessed 28 January 2026.

3.2.3 Kuwait's Statutory Framework Governing the Formation and Validity of Arbitration Agreements

In Kuwait, Article 173 of the Code of Civil and Commercial Procedure (CCPL) sets forth the formal requirements for arbitration agreements.[293] The provision aligns with the Doctrine of party autonomy, which underpins arbitral jurisdiction, while establishing formal conditions that ensure the authenticity and verifiability of such autonomy. Notably, the statute emphasises that arbitration agreements 'may not be proved except in writing.' By imposing this writing requirement, the law ensures that acts of autonomy are genuine and can be reliably verified.[294] The Court of Cassation has interpreted this provision in light of Article 196 of the Civil Code, recognising that the writing requirement serves to protect party autonomy rather than restrict it. In Case No 1207/2010, the Court held that the statutory framework facilitates rather than impedes the parties' autonomous choice to arbitrate, provided that choice is demonstrably genuine.

Paragraph 1 of Article 173 permits parties to agree on arbitration for a specific dispute that has arisen or for all disputes arising from a particular legal relationship.[295] This provision recognises both pre-dispute arbitration clauses and post-dispute submission agreements as valid expressions of party autonomy. The recognition of both forms aligns Kuwait with international practice under the New York Convention and UNCITRAL Model Law, which similarly treat arbitration clauses and submission agreements as equivalent mechanisms for conferring arbitral jurisdiction.[296]

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[293] Civil and Commercial Procedures Law (Decree-Law No 38 of 1980) (Kuwait) art 173 (translation by author): An agreement to arbitrate a specific dispute may be concluded, as may an agreement to arbitrate all disputes arising from the performance of a particular contract. An arbitration agreement may only be proven in writing. Arbitration is not permitted in matters where settlement (sulh) is not permissible, and an arbitration agreement shall only be valid if made by a person having the legal capacity to dispose of the right in dispute. The subject matter of the dispute must be specified in the arbitration agreement or during the proceedings, even where the arbitrator is authorised to act as amiable compositeur; otherwise, the arbitration shall be null and void. Courts shall have no jurisdiction to hear disputes in respect of which arbitration has been agreed, though the objection to jurisdiction may be waived expressly or impliedly. Arbitration does not extend to urgent interim matters unless expressly agreed otherwise.

[294] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

[295] ibid art 173(1).

[296] UNCITRAL Model Law (n 4) art 7; New York Convention (n 5) art II.

Furthermore, the approach taken by Kuwaiti legislators when enacting this law aligns with the principles established in the English Arbitration Act 1996, specifically Section 6, which is regarded as one of the most pro-arbitration statutes internationally.[297] Moreover, it is consistent with one of the most contemporary arbitration frameworks in the Gulf region, namely the UAE Federal Arbitration Law No. 6 of 2018.[298]

Paragraph 2 of Article 173 provides that an arbitration agreement may not be proved except in writing.[299] The statutory language employs the term "proved" rather than "concluded" or "formed." This linguistic choice carries significant interpretive implications that Kuwaiti courts have recognised in determining the legal character of the writing requirement. The Kuwaiti Civil Code employs different terminology, in which formality constitutes a validity requirement rather than an evidentiary condition. For instance, Article 972 of the Civil Code provides that a mortgage is not legally constituted unless it is executed in an authenticated official document.[300] This contrast between constitutive formality in Article 972, using language of legal constitution, and evidentiary formality in Article 173, using language of proof, is significant. It suggests that the legislature intended to regulate the admissibility of evidence rather than contractual formation.[301] (Constitutive: creates legal validity; Evidentiary: ensures proof of agreement) This sharper distinction helps avoid misunderstanding. It is essential to note that the writing evidentiary mechanism appears in both the English Arbitration Act 1996[302] and the UAE arbitration law[303], which offer more detailed provisions than the CCPL of 1980. These mechanisms perform the same evidentiary function as Kuwaiti law. However, the English and UAE statutes introduce greater specificity regarding the writing requirement, which may be advantageous as it limits the scope for courts to misinterpret the provisions.

This interpretation carries significant implications for party autonomy. Like other types of contracts where evidentiary requirements govern proof rather than formation, if writing were a constitutive requirement, an oral arbitration agreement would be void regardless of how clearly the parties expressed their intent. However, if

[297] Arbitration Act 1996 (UK) s 6.
[298] UAE Federal Arbitration Law (n 41) art 4.
[299] Civil and Commercial Procedure Law (Kuwait) art 173(2).
[300] Civil Code (Kuwait) Decree-Law No 67 of 1980, art 972.
[301] Azmi Abdelfattah Atiyya, Kuwaiti Arbitration Law (2nd edn, Dar Al-Kutub Publishing 2012) 125–130.
[302] Arbitration Act 1996 (UK) s 5.
[303] UAE Federal Arbitration Law (n 41) art 4.

writing serves only evidentiary purposes, an oral agreement is theoretically valid but unenforceable in the absence of written proof. The latter interpretation preserves the Doctrine of party autonomy in formation while ensuring judicial capacity to verify consent before recognising arbitral jurisdiction.

It is important to note that the Civil and Commercial Procedure Law does not define what qualifies as writing under Article 173. The statute was enacted before electronic commerce and does not address digital communications or modern contract methods, such as click-wrap agreements.[304] This legislative silence has left the courts to determine whether modern forms of recorded consent satisfy the statutory requirement. Law No. 20 of 2014 on Electronic Transactions provides the supplementary framework for electronic arbitration agreements.[305] The statute establishes that electronic signatures and records satisfy statutory writing requirements where the method used reliably identifies the signatory and maintains record integrity.[306] Article 7 provides that electronic records shall not be denied legal effect solely because they are in electronic form.

Furthermore, Article 10 establishes requirements for valid electronic signatures, including reliable identification of the signatory and indication of the signatory's approval of the information contained in the record.[307] The judicial role is crucial in this context, as court interpretations allow electronic arbitration agreements to remain valid under the Electronic Transactions Law. This highlights a key distinction between the Kuwaiti arbitration framework and the English Arbitration Act 1996. The English Act specifically addresses the writing requirement for arbitration agreements, including electronic ones, under Section 5. It does not rely on judicial interpretation to address legislative gaps.[308] Similarly, the UAE Arbitration Law also covers electronic agreements under Article 5(2).[309]

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[304] Adam Gatt, 'Electronic Commerce — Click-Wrap Agreements: The Enforceability of Click-Wrap Agreements' (2002) 18(6) Computer Law & Security Report 404–410 (doi: 10.1016/S0267–3649(02)01105–6).
[305] Electronic Transactions Law (Kuwait) Law No 20 of 2014.
[306] ibid arts 7–10.
[307] ibid art 10.
[308] Arbitration Act 1996 (UK) s 5.
[309] UAE Federal Arbitration Law (n 41) art 5(2); Omar Husain Qouteshat and Kamal Jamal Alawamleh, 'The Enforceability of Electronic Arbitration Agreements before the DIFC Courts and Dubai Courts' (2017) 14 Digital Evidence and Electronic Signature Law Review 47–60 <https://doi.org/10.14296/deeslr.v14i0.2539> accessed 28 January 2026.

3.2.4 How Kuwaiti Courts Interpret and Assess the Validity of Arbitration Agreements

The Court of Cassation of Kuwait has developed substantial jurisprudence interpreting Article 173, addressing the formal requirements for valid arbitration agreements, the legal character of the writing requirement, and their application to modern commercial practices. This jurisprudence shows an evolution from strict formalism toward a functional assessment of party intent, while maintaining the evidentiary safeguards outlined in the statutory framework. Incorporating a structured narrative, the jurisprudence indicates clear stages of evolution: the early phase marked by rigorous formalism, the middle phase characterised by a gradual shift towards flexibility, and the recent phase focusing on practical application aligned with contemporary commercial needs.

Evolution from Formalism to Functional Interpretation

Early Court of Cassation decisions adopted a restrained approach to the formation of arbitration agreements. They required explicit and strict evidence of intent to arbitrate before accepting that the parties had agreed to displace judicial jurisdiction.

A representative example of this early approach is Case No 179/1990, which concerned partnership correspondence regarding amicable settlement procedures.[310] The claimant argued that this language evidenced agreement to arbitrate disputes arising from the partnership relationship. However, the Court rejected the argument. It held that references to friendly resolution or amicable settlement express general cooperative intent rather than a binding commitment to submit disputes to a private tribunal with authority to render enforceable decisions. The language used failed to clearly indicate that both parties intended to accept any arbitration outcome. It did not show that they intended to waive their right to go to court and agree that disputes would be resolved privately and conclusively.[311]

Additionally, in Case No 449/2004, the Court considered comparable issues within the context of a family business.[312] The parties had agreed to resolve family differences without recourse to the courts. Subsequently, one party attempted to classify this

[310] Court of Cassation (Kuwait), Commercial Circuit, Case No 183/1990 (4 February 1990).
[311] Ibid.
[312] Court of Cassation (Kuwait), Commercial Circuit, Case No 449/2004 (4 June 2005).

agreement as containing an arbitration provision. The Court held that such language contemplates informal reconciliation or mediation rather than arbitration. An arbitration agreement requires that parties confer adjudicative authority on a third party whose decision will be final and binding. In this way, agreements for internal settlement, family discussion, or informal resolution do not satisfy this requirement because they do not create binding adjudicative authority exercised by a decision-maker external to the parties themselves. These initial rulings exemplify the jurisdictional theory's prioritisation of certainty in interpreting provisions intended to restrict the courts' authority.[313] The waiver of constitutional judicial access requires clear evidence that parties understood and intended that consequence. Therefore, ambiguous language suggesting a general preference for non-judicial resolution is insufficient. The Court required explicit arbitration terminology or, at a minimum, language clearly conferring binding adjudicative authority on a private decision-maker.

Case No 1207/2010 represented an important development in the adoption of a functional interpretative approach.[314] The parties had agreed that a trusted third party would make binding decisions in the event of disputes arising from their commercial relationship. The agreement did not employ the term "arbitration" or use technical arbitration terminology. The respondent argued that the agreement was not an arbitration clause because it lacked explicit arbitration language. Nonetheless, the Court rejected this argument and upheld the agreement as a valid arbitration clause. The Court's reasoning emphasised that what matters in fact is the substance of the agreement rather than the terminology employed. When parties grant binding adjudicative authority to a private decision-maker with the intention that the determination be final, such an agreement is deemed an arbitration agreement, irrespective of the terminology employed. The functional characteristics of arbitration—including submission of disputes to a third party, binding determination, and finality—were present in the parties' arrangement. The absence of the word "arbitration" did not negate these substantive features.[315]

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[313] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 2.08.
[314] Court of Cassation (Kuwait), Commercial Circuit, Case No 1207/2010 (12 May 2011).
[315] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

This functional approach aligns with international standards that prioritise party intent over formal terminology. The UNCITRAL Model Law defines an arbitration agreement by reference to its function—an agreement to submit disputes to arbitration—without requiring particular terminology.[316] In modern arbitration laws, there has been, in effect, 'a triumph of substance over form. As long as there is some written evidence of an agreement to arbitrate, the form in which that agreement is recorded is immaterial.

English courts have similarly adopted broad interpretive approaches favouring findings of valid arbitration agreements when the evidence supports the parties' intent to arbitrate. In *Heyman v Darwins Ltd*, the House of Lords established that arbitration clauses should be construed broadly to give effect to the parties' evident intention to arbitrate.[317]

It is important to note, however, that the interpretive question addressed by Kuwaiti courts in Case No 1207/2010 differs from that considered by the House of Lords in *Fiona Trust & Holding Corporation v Privalov*. In *Fiona Trust*, the arbitration agreement's existence was not in dispute; rather, the question was the scope of the clause—specifically, whether tort claims fell within a clause referring to contractual disputes.[318] Lord Hoffmann criticised earlier distinctions drawn between phrases such as 'arising out of' and 'arising in connection with' as reflecting 'no credit upon English commercial law'. He held that 'the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal'. This presumption extends the reach of an acknowledged arbitration clause to encompass related disputes.[319]

By contrast, the Kuwaiti Court of Cassation's functional approach in Case No 1207/2010 addresses a logically prior question: whether an agreement constitutes an arbitration agreement at all when it lacks explicit arbitration terminology. This concerns not the scope of an existing clause, but its very formation and characterisation. The Kuwaiti approach thus extends the pro-arbitration principle of substance over form to

[316] UNCITRAL Model Law (n 4) art 7(1).
[317] *Heyman v Darwins Ltd* [1942] AC 356 (HL).
[318] *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40, [2007] 4 All ER 951 [13] (Lord Hoffmann).
[319] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 2.30.

the threshold question of whether parties have concluded an arbitration agreement in the first instance. Where parties confer binding adjudicative authority on a private decision-maker with the intention that the determination be final, such an agreement is deemed an arbitration agreement. This applies irrespective of whether the word 'arbitration' appears therein.

This distinction is significant. While Fiona Trust assumes the existence of an arbitration clause and interprets its reach generously to capture related disputes, the Kuwaiti jurisprudential evolution demonstrates a different willingness. It shows a willingness to find an arbitration agreement based solely on functional characteristics. Both approaches reflect a pro-arbitration policy and embody the triumph of substance over form. However, they operate at different stages of analysis: the Kuwaiti approach at formation and characterisation, the English approach at scope and coverage.

3.2.4.1 Evidentiary Character of the Writing Requirement

Case No 155/2010 directly addressed whether Article 173(2) imposes a constitutive or evidentiary requirement.[320] The dispute concerned an agreement that referred disputes to a specific individual for a final, non-contestable decision. The question arose whether the written record was sufficient to establish an arbitration agreement under Article 173.[321]

The Court held that Article 173 requires written evidence of the agreement rather than written formation.[322] The purpose of the writing requirement is to prove that parties agreed to arbitration, not to constitute the agreement itself. Under this interpretation, an arbitration agreement could theoretically be formed orally or by conduct but would not be judicially enforceable unless supported by written proof capable of authentication.[323]

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[320] Court of Cassation (Kuwait), Commercial Circuit, Case No 155/2010 (15 February 2011).
[321] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[322] Ibid.
[323] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

This interpretation accords with the dominant international view treating writing as serving evidentiary rather than constitutive functions.[324] Most authorities have interpreted the New York Convention's writing requirement as establishing evidentiary standards rather than formation requirements.[325] Furthermore, the 2006 revisions to the Model Law confirm this understanding by providing in Option I that agreements concluded orally or by conduct satisfy the writing requirement if their content is recorded in any form.[326]

The evidentiary approach has important consequences for how informal agreements are handled. Unlike the constitutive perspective, which treats oral arbitration agreements as unenforceable, the Court of Cassation's evidentiary view accepts their validity but insists on written evidence for enforcement. This approach upholds the doctrine of party autonomy, allowing courts to verify consent before granting arbitral authority.

3.2.4.2 Electronic Consent and Modern Contracting

The Snapchat litigation presented the Court of Cassation with questions of electronic consent that tested the application of traditional formal requirements to contemporary commercial practices.[327] The dispute arose from a user's registration on the Snapchat platform, which required acceptance of the terms of service, which contained an arbitration clause referring disputes to the LCIA in London. In Case No 3249 of 2018, the Court in Cassation 3249/2018 confirmed that electronic click-wrap acceptance satisfies Article 173's writing requirement where specified conditions are met.[328] The Court identified three requirements for valid electronic arbitration agreements. First, the platform must require affirmative acceptance of the terms containing the arbitration clause. Second, account creation or service access must be conditioned on such acceptance, ensuring that users cannot proceed without consenting to the arbitration provision. Third, the platform must maintain records

[324] Born (n 1) 709.
[325] van den Berg (n 8) 178–180.
[326] UNCITRAL Model Law (n 4) art 7(3) (Option I).
[327] Mahmoud Abdel Rahman Mohamed, 'Authority of Electronic Means in Establishing Civil, Commercial and Administrative Transactions in Accordance with the Kuwait Electronic Transactions Law: A Comparative Study' (Kilaw Journal, Issue 21, 15 October 2019) <https://journal.kilaw.edu.kw/authority-of-electronic-means-in-establishing-civil-commercial-and-administrative-transactions-in-accordance-with-the-kuwait-electronic-transactions-law-a-comparative-study/?lang=en> accessed 28 January 2026.
[328] Court of Cassation (Kuwait), Commercial Circuit, Case No 3249/2018 (14 July 2020).

permitting identification of the accepting user and the specific terms accepted. The Court relied on Law No. 20 of 2014 on Electronic Transactions to establish functional equivalence between electronic and traditional signatures.[329] Where electronic systems satisfy the reliability and authentication requirements of the Electronic Transactions Law, electronic acceptance produces the same legal effect as a handwritten signature on a paper document. The click-wrap mechanism in the Snapchat case satisfied these requirements because it linked each user's affirmative act to specific terms, prevented access without acceptance, and maintained retrievable records of the acceptance.

This decision establishes judicial adaptation to technological change within the constraints of the statutory framework. Article 173 predates electronic commerce and contains no provisions addressing digital consent. Rather than treating this legislative silence as precluding electronic arbitration agreements, the Court interpreted the writing requirement functionally and applied the general Electronic Transactions Law to validate modern contracting mechanisms. The outcome aligns Kuwait with international practice, recognising electronic arbitration agreements where reliability and authentication conditions are satisfied.[330]

3.2.5 Extension of Arbitration Agreements to Non-Signatory Parties

The preceding analysis has established that, under Kuwaiti law, the formation of a valid arbitration agreement requires demonstrable mutual consent, evidenced in writing and concluded by parties possessing the requisite capacity and authority. This consensual foundation raises a further question of considerable practical significance: can an arbitration agreement bind or benefit a party that did not sign it? The question of non-signatory parties tests the boundaries of the consent-based theory of arbitration and reveals important tensions within the doctrine of party autonomy.[331]

The issue arises in numerous commercial contexts. Corporate groups frequently structure transactions through subsidiaries, yet the parent company or an affiliate may become involved in the performance or breach of the contract. Similarly, contractual

[329] Electronic Transactions Law (Kuwait) (n 23).
[330] UNCITRAL Model Law (n 4) art 7(4); Arbitration Act 1996 (UK) s 5(6); UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 5(4).
[331] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 10.

rights and obligations may be transferred through assignment, novation, or subrogation, raising the question of whether the arbitration clause accompanies the transfer. In each scenario, the fundamental inquiry is whether the non-signatory's involvement in the contractual relationship is sufficient to establish the consent required for arbitral jurisdiction, or whether extending the arbitration agreement to a non-signatory impermissibly constructs an obligation to arbitrate from circumstances falling short of genuine agreement.[332]

International arbitration practice has developed several doctrines that extend arbitration agreements to non-signatories. These include the group-of-companies doctrine, agency, alter ego and piercing the corporate veil, third-party beneficiary theories, assignment, novation, and subrogation.[333] Each doctrine rests on different legal foundations, but all share the common challenge of reconciling the consensual basis of arbitration with the commercial reality that parties who did not formally execute an arbitration agreement may nonetheless be sufficiently connected to the arbitral relationship to justify their inclusion.

3.2.5.1 The International Framework: Consent Real and Constructed

The tension between contractual consent and commercial reality is well illustrated by two landmark decisions of the United Kingdom Supreme Court that have shaped the contemporary understanding of non-signatory issues in international arbitration.

In *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan*, the Supreme Court addressed whether an arbitral award could be enforced against a state entity that was not a signatory to the agreement containing the arbitration clause.[334] The dispute arose from a contract between Dallah and a trust established by the Government of Pakistan for the construction of housing for pilgrims performing the Hajj. The trust was subsequently dissolved, and the ICC tribunal in Paris assumed jurisdiction over Pakistan's Ministry of Religious Affairs on the basis that the Government of Pakistan was the true party to

[332] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) paras 2.32–2.60.
[333] Born (n 328) ch 10; Bernard Hanotiau, Complex Arbitrations: Multiparty, Multicontract, Multi-Issue and Class Actions (Kluwer Law International 2005) ch 4.
[334] Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46.

the agreement, applying the group of companies doctrine and principles of alter ego under French law as the law of the seat.

The Supreme Court refused enforcement under Section 103 of the Arbitration Act 1996, conducting its own examination of whether a valid arbitration agreement existed between Dallah and the Ministry. The Court held that even under French law, the evidence did not support the conclusion that the Ministry was a party to the arbitration agreement. Lord Mance emphasised that the question of who is a party to an arbitration agreement is a matter to be determined by the law governing that agreement, and that the mere involvement of a government in establishing a trust and in negotiations surrounding the contract did not, in itself, make the government a contracting party.[335] The decision affirmed the principle that arbitral jurisdiction cannot be founded upon constructive or imputed consent where the evidence does not establish that the non-signatory genuinely agreed to arbitrate.

The significance of *Dallah* lies in its insistence that the consensual foundation of arbitration must be respected even where commercial circumstances might suggest a broader understanding of who the real parties are. The Supreme Court rejected the approach of finding an arbitration agreement 'from thin air', holding that the tribunal had exceeded its jurisdiction by binding a party whose consent to arbitrate had not been established under the applicable law.[336]

Kabab-Ji SAL (Lebanon) v Kout Food Group BSC (Kuwait) further refined the analysis of non-signatory extension.[337] The dispute concerned a franchise development agreement between Kabab-Ji, a Lebanese restaurant company, and Al Homaizi Foodstuff Company, a Kuwaiti entity that was subsequently acquired by Kout Food Group (KFG). Kabab-Ji commenced ICC arbitration against KFG, its parent company, arguing that KFG had become a party to the agreement through its conduct, involvement in performance, and the corporate restructuring that had absorbed Al Homaizi. The ICC tribunal, seated in Paris, accepted jurisdiction and rendered an award against KFG.

[335] ibid [17]–[19], [24], [26], [30] (Lord Mance).
[336] ibid [24], [30].
[337] Kabab-Ji SAL (Lebanon) v Kout Food Group (Kuwait) [2021] UKSC 48.

The Supreme Court refused enforcement, holding that the question of whether KFG was a party to the arbitration agreement was governed by English law, as expressly chosen by the parties to govern the contract.[338] Under English law, a party becomes bound by an arbitration agreement only through conventional contractual mechanisms: offer and acceptance, assignment, or novation. Neither the group of companies doctrine nor theories of implied consent based on corporate restructuring could override the clear contractual choice of English law, under which KFG had never become a party to the agreement.[339] Lord Hamblen and Lord Leggatt emphasised that the separability of the arbitration agreement did not insulate it from the requirement that its parties be identified by reference to the law governing it. The arbitration clause, like any contractual provision, binds only those who are parties to it under the applicable law.

The *Kabab-Ji* decision is particularly relevant to the Kuwaiti context, given that the respondent, Kout Food Group, is a Kuwaiti entity. The case demonstrates that even in international commercial arbitration involving sophisticated corporate groups, the requirement of genuine consent to arbitrate cannot be displaced by theories of corporate unity or conduct-based participation that are not recognised under the governing law of the arbitration agreement.

Together, *Dallah* and *Kabab-Ji* establish that international arbitration law, as applied by the English courts, maintains a rigorous approach to the consensual foundation of arbitral jurisdiction. Non-signatory extension is not a mechanism for circumventing the requirement of agreement; rather, it is permissible only where established legal doctrines under the applicable law demonstrate that the non-signatory has, in substance, consented to or become bound by the arbitration agreement through recognised legal mechanisms.

3.2.5.2 Transfer of Arbitration Agreements: Novation and Subrogation

Beyond corporate group scenarios, arbitration agreements may reach non-signatories through the transfer of contractual rights and obligations. Novation and subrogation

[338] ibid [28]–[39], [55]–[61] (Lord Hamblen and Lord Leggatt).
[339] ibid [62]–[69].

are two principal mechanisms by which such a transfer occurs, each raising distinct questions regarding the fate of the arbitration clause.

Novation involves substituting a new party for an original party to the contract, with the consent of all parties concerned.[340] Where a valid novation occurs, the incoming party assumes the rights and obligations of the outgoing party, including, in principle, the obligation to arbitrate. The novation extinguishes the original contract and creates a new contractual relationship on the same or modified terms. Because all parties consent to the substitution, the arbitration clause in the novated contract binds the incoming party by virtue of its agreement to assume the outgoing party's contractual position.[341] The consensual foundation of arbitration is preserved, as the incoming party's agreement to the novation encompasses its acceptance of the dispute-resolution mechanism contained therein.

However, difficulties arise where the novation is disputed or incomplete. If one party contends that a novation has occurred while another denies it, the question of whether the arbitration clause binds the alleged new party becomes a jurisdictional issue. Under international frameworks that recognise competence-competence, the tribunal may determine whether a valid novation has transferred the arbitration agreement. Under Kuwait's framework, however, this question would constitute a jurisdictional challenge that would trigger mandatory suspension under Article 180, requiring a judicial determination before arbitration could proceed.[342]

Subrogation operates differently from novation. It refers to the substitution of one party for another with respect to a claim or right, typically arising by operation of law rather than by agreement.[343] The most common example in commercial practice is insurance subrogation, where an insurer that has indemnified its insured acquires the insured's rights against the party responsible for the loss. The question arises whether the subrogated insurer is bound by, or entitled to invoke, an arbitration clause in the contract between the insured and the third party.

[340] Hugh Beale (gen ed), Chitty on Contracts (34th edn, Sweet & Maxwell 2021) paras 22-028 to 22-035.
[341] Born (n 328) ch 10.
[342] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 180.
[343] Blackaby and others (n 329) ch 2.

International practice generally holds that the subrogated party steps into the shoes of the original party and is therefore bound by the arbitration clause governing the claim to which subrogation applies.[344] The rationale is that subrogation transfers the claim as it exists, including its procedural attributes. This approach treats the arbitration agreement as attached to the substantive right rather than personal to the original contracting party. Thus, the subrogated party inherits both the right and the mechanism for its enforcement.[345]

This raises important questions under Kuwaiti law. Given that Article 173 requires written evidence of agreement to arbitrate, and that the Court of Cassation has emphasised that arbitration represents a waiver of constitutional judicial access, it is not self-evident that a party who acquires rights through legal subrogation, without having personally consented to arbitration, should be bound by an arbitration clause to which it was never a signatory. The subrogated party has not exercised party autonomy in any meaningful sense; rather, the obligation to arbitrate has been imposed upon it by operation of the legal mechanism through which it acquired the underlying claim. The tension between the transfer of substantive rights and the consensual basis of arbitration is particularly acute in Kuwait's framework, where the characterisation of arbitration as a dispositive act suggests that the waiver of judicial access should rest on a deliberate decision by the party bound.

3.2.5.3 Kuwait's Position on Non-Signatory Extension

Kuwait's statutory framework does not contain express provisions addressing the extension of arbitration agreements to non-signatory parties. The Code of Civil and Commercial Procedure (CCPL) addresses the formation of arbitration agreements in Article 173 and the capacity and authority requirements in Article 173(3) and Article 702 of the Civil Code. However, neither provision directly addresses the circumstances in which a party that did not execute the arbitration agreement may nevertheless be bound by it.[346]

[344] Born (n 328) ch 10.
[345] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) ch 7.
[346] Civil and Commercial Procedure Law (Kuwait) art 173; Civil Code (Kuwait) art 702.

The absence of express statutory provision leaves the question to judicial interpretation within the framework of general contract law principles. Several features of Kuwait's arbitration framework suggest that the Court of Cassation would adopt a restrictive approach to non-signatory extension, consistent with the gatekeeping conditionality that characterises the jurisdictional phase.

First, the emphasis on written evidence under Article 173(2) creates an evidentiary obstacle to non-signatory extension based on conduct or implied consent. If the arbitration agreement may be proved only in writing, it is difficult to establish that a non-signatory has become bound through participation in contract performance or corporate involvement that is not reflected in writing.[347] The writing requirement functions as a safeguard against the imposition of arbitration on parties whose consent has not been documented in a form capable of judicial verification.

Second, characterising arbitration agreements as dispositive acts requiring full civil capacity and explicit representative authority reinforces the consent-based threshold. Article 702's requirement that authority for arbitration be specifically mentioned in the power of attorney implies that the legislature intended the commitment to arbitrate to rest on deliberate, documented authorisation. Extending arbitration agreements to non-signatories based on corporate affiliation, commercial involvement, or equitable theories would be difficult to reconcile with this requirement of explicit authorisation.[348]

Third, the rejection of both the separability doctrine and the competence-competence principle means that any dispute concerning whether an arbitration agreement binds a non-signatory would constitute a jurisdictional challenge requiring judicial determination. Under Article 180, the tribunal would be obliged to suspend proceedings and refer the question to the courts. This procedural consequence ensures that the courts, rather than the tribunal whose jurisdiction is contested, determine whether the non-signatory has genuinely consented to arbitrate.

The Court of Cassation's reasoning in Case No 598/2023 and *Case No 489/2009* supports this restrictive approach.[349] In both cases, the Court invalidated

[347] ibid art 173(2).
[348] Civil Code (Kuwait) art 702(1).
[349] Court of Cassation (Kuwait), Commercial Circuit, Case No 598/2023 (26 September 2023); Case No 489/2000 (11 May 2002).

arbitration agreements where the representative lacked specific authority, even though the representative occupied senior commercial positions within the relevant entities. If a company's own general manager or director cannot bind it to arbitration without explicit authorisation, it follows a fortiori that theories of corporate unity or group consent cannot bind an affiliated entity that did not participate in the agreement at all.

Furthermore, the recent decision in Case No 4635/2024 introduces a nuanced dimension: the Court held that an agent who concludes an arbitration agreement without proper authority cannot subsequently invoke that defect to challenge the resulting award, as nullity may only be raised by the party for whose benefit it was established.[350] This estoppel-like principle operates asymmetrically, preventing parties from exploiting their own procedural failings. However, it does not establish a positive basis for extending arbitration agreements to non-signatories who were entirely absent from the contractual relationship.

Nevertheless, the ratification doctrine recognised by the Court of Cassation may provide a limited pathway for non-signatory participation. As established in *Case No 488/2007* and *Case No 1964/2014*, subsequent ratification through conduct, including active participation in arbitral proceedings without a timely jurisdictional objection, may cure initial defects in consent.[351] By analogy, a non-signatory entity that voluntarily participates in arbitration, submits defences, and engages with the merits without challenging jurisdiction could be treated as having ratified the arbitration agreement through conduct. However, this ratification-based approach differs fundamentally from the doctrines of implied consent or the group of companies. It requires affirmative conduct by the non-signatory itself, consistent with the principle that arbitration must ultimately rest on genuine consent rather than on judicial or arbitral construction.

A comparison of the Kuwaiti, English, and UAE approaches to non-signatory extension reveals important differences in how each system mediates the tension between contractual consent and commercial reality.

[350] Court of Cassation (Kuwait), Commercial Circuit, Case No 4635/2024 (4 December 2024).
[351] Court of Cassation (Kuwait), Civil Circuit, Case No 488/2007; Commercial Circuit, Case No 1294/2015 (10 February 2016).

English law addresses non-signatory extension through established common law doctrines: agency, assignment, novation, estoppel, and piercing the corporate veil.[352] The Supreme Court's decisions in *Dallah* and *Kabab-Ji* confirm that these doctrines are applied according to the law governing the arbitration agreement, and that theories of implied consent or groups of companies that are not recognised under the applicable law cannot establish arbitral jurisdiction over a non-signatory. The English approach is doctrinally rigorous but commercially flexible, permitting extension through recognised legal mechanisms while rejecting approaches that would construct consent from commercial involvement alone.

The UAE Federal Arbitration Law does not contain express provisions on non-signatory extension. However, Article 6's adoption of the separability doctrine and Article 19's recognition of competence-competence enable tribunals seated in the UAE to make initial determinations on non-signatory issues, subject to judicial review.[353] UAE courts have addressed non-signatory extension through general principles of agency and corporate law, with Dubai courts showing receptivity to extending arbitration agreements within corporate groups where the non-signatory's involvement in the contract demonstrates implied consent.[354]

Kuwait occupies the most restrictive position among these three jurisdictions. The combination of the writing requirement, dispositive capacity characterisation, explicit authority requirement, rejection of separability, and rejection of competence-competence creates cumulative barriers to non-signatory extension that are more formidable than those in either England or the UAE. This restrictive position is consistent with the State-Centric Hybrid Model's emphasis on judicial verification of arbitral jurisdiction. The extension of arbitration agreements to non-signatories inherently involves a degree of judicial or arbitral construction that goes beyond merely verifying documented consent. Kuwait's framework, with its insistence on verifiable, documented, and specifically authorised consent, is structurally resistant to such construction.

[352] Born (n 328) ch 10.
[353] UAE Federal Arbitration Law (Federal Law No 6 of 2018) arts 6, 19.
[354] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 4' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 33–37.

The non-signatory question illuminates a critical dimension of the consent requirement that the preceding analysis of formation and validity did not fully address. The doctrine of party autonomy presupposes that parties have genuinely chosen to arbitrate. When arbitration agreements are extended to non-signatories, the question becomes whether that choice can be attributed to the non-signatory through legal mechanisms that preserve the authenticity of consent or whether the extension represents an imposition that the consent-based theory cannot legitimately sustain.

Kuwait's framework, viewed through the lens of gatekeeping conditionality, resolves this tension decisively in favour of requiring demonstrated consent. The cumulative requirements of written evidence, dispositive capacity, explicit authority, and judicial verification of jurisdiction create a formation regime in which extending arbitration agreements to non-signatories faces formidable obstacles. This approach may be criticised for insufficiently accommodating the commercial realities of corporate groups, contractual transfers, and multi-party transactions. However, it is internally consistent with a framework that treats the waiver of judicial access as requiring deliberate, documented, and verifiable consent. In this respect, the Kuwaiti Court of Cassation's insistence on genuine consent resonates with the United Kingdom Supreme Court's rejection in *Dallah* and *Kabab-Ji* of attempts to construct arbitral jurisdiction over parties whose agreement to arbitrate has not been established under the applicable law, even as the two jurisdictions differ significantly in their procedural mechanisms for determining that question.

The agreement to arbitrate is the foundation stone of arbitration. It records the parties' consent to submit to arbitration—a consent indispensable to any dispute-resolution process outside national courts.[355] The examination of Kuwait's statutory framework and judicial practice concerning the formation and validity of arbitration agreements shows an approach that, despite the brevity of its legislative provisions, gives substantial effect to the principle of party autonomy.

[355] Moustafa Alameldin and Ahmed Abdrabou, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/kuwait-evolving-arbitration-framework> accessed 28 January 2026.

Article 173(1) of the Civil and Commercial Procedures Law recognises both categories of arbitration agreement identified in international practice. The arbitration clause, which looks to the future, and the submission agreement, which looks to the past. No restrictions are imposed on the form that an arbitration agreement must take beyond the writing requirement itself. Critically, the statutory language requiring that arbitration 'may only be proven in writing' establishes that writing serves an evidentiary rather than a constitutive function. This interpretation accords with the dominant international view. As observed in modern arbitration laws, there has been 'a triumph of substance over form, as long as there is some written evidence of an agreement to arbitrate, the form in which that agreement is recorded is immaterial'.[356]

A comparative examination of the English Arbitration Act 1996 and the UAE Federal Arbitration Law No. 6 of 2018 reveals considerably more detailed provisions governing formal validity. Section 5 of the English Act elaborates six subsections specifying the circumstances in which the writing requirement is satisfied, including agreements evidenced in writing, agreements made by reference to terms which are in writing, and agreements recorded by one of the parties or by a third party with the authority of the parties to the agreement. Similarly, Article 7 of the UAE Law enumerates four specific circumstances satisfying the writing requirement, expressly addressing electronic communications, incorporation by reference, agreements concluded during judicial proceedings, and written submissions in arbitral proceedings. These detailed provisions could reflect legislative responses to disputes over the existence and validity of arbitration agreements that have arisen over the preceding decades, with legislators seeking to ensure that such agreements are clearly established.

Paradoxically, the Kuwaiti framework's legislative minimalism may render it more liberal than its more detailed counterparts.[357] The established principle that there is no room for judicial interpretation where clear statutory text exists operates differently across jurisdictions.[358] In England and the UAE, courts must apply the specific

[356] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.01.
[357] Abdul Hamid El-Ahdab, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101–108 <https://doi.org/10.1093/arbitration/12.1.101> accessed 28 January 2026.
[358] Turki Sattam Al Mutairi and Abdulkarim Rabie Al Enezi, 'The Kuwaiti Constitutional Court's Supervision of the Ambiguity of Legislative Texts: An Original Analytical Study' (2024) 12(2) Kuwait

statutory criteria, which, whilst comprehensive, necessarily define boundaries. In Kuwait, the absence of detailed provisions means that courts cannot impose restrictions not found in the statutory text. The Kuwaiti judiciary has embraced this interpretive space to develop a functional approach aligned with international standards. The Court of Cassation's recognition in Case No 1207/2010 that any agreement conferring binding adjudicative authority on a third party constitutes an arbitration agreement—irrespective of whether the term 'arbitration' appears therein—demonstrates a substance-over-form approach fully consonant with the consent-based foundation of the arbitral process.[359]

This functional approach has been recently reaffirmed and extended in Case No 494/2025, where the Court of Cassation held that 'the law does not require that an arbitration clause incorporated in the main contract specify the subject matter of arbitration in any particular form or with any specific determination'.[360] The Court further confirmed that 'the formation of an arbitration agreement requires correspondence between offer and acceptance, which can only be established in writing'. This recent judgment demonstrates the judiciary's continued commitment to a substance-over-form approach, permitting broadly drafted arbitration clauses to encompass all disputes arising from the contractual relationship without requiring parties to enumerate specific categories of potential disputes at the drafting stage.

The analysis of non-signatory extension in Section 3.2.4 further illuminates the centrality of consent to Kuwait's formation regime. While international arbitration practice has developed various doctrines—including the group of companies doctrine, agency, and theories of implied consent—through which arbitration agreements may reach parties who did not sign them, Kuwait's framework creates formidable obstacles to such extension. The cumulative requirements of written evidence, dispositive capacity characterisation, and explicit authority combine to ensure that arbitration binds only those whose consent can be verified through documented agreement or

International Law School Journal 101–150 <https://journal.kilaw.edu.kw/wp-content/uploads/2025/01/101–150-Dr.-Turki-Dr.-Abdul-Karim.pdf> accessed 28 January 2026.

[359] Omar Al-Qahtani and Ahmed Rezeik, 'Parties Bound by Arbitration Agreement that was Incorporated by Reference: Kuwait Court of Cassation Judgment 3492–2018' (Al Tamimi & Company, November 2022) <https://turtl.tamimi.com/story/kuwait-court-of-cassation-judgment-3492–2018-parties-bound-by-arbitration-agreement-that-was-incorporated-by-reference/page/1> accessed 28 January 2026.

[360] Court of Cassation (Kuwait), Commercial Circuit, Case No 494/2025 (12 March 2025).

subsequent ratification through conduct. The United Kingdom Supreme Court's decisions in Dallah and Kabab-Ji, rejecting attempts to construct arbitral jurisdiction over non-signatories whose agreement to arbitrate had not been established under the applicable law, resonate with Kuwait's insistence on genuine, verifiable consent—even as the two jurisdictions differ in their procedural mechanisms for determining that question.

Nevertheless, one significant gap deserves attention. The 1980 legislation predates the revolution in communications that has transformed commercial practice since 1958.[361] Telegrams, referenced in Article II(2) of the New York Convention, are today an archaic curiosity, replaced by various forms of written electronic communication.[362] The Court of Cassation's decision in the Snapchat litigation, validating click-wrap acceptance of arbitration clauses under the Electronic Transactions Law No. 20 of 2014, represents a commendable judicial adaptation. The court effectively recognised that the requirement for writing may now be satisfied by an electronic communication if the information contained therein is accessible and usable for subsequent reference—the standard articulated in Option I of the 2006 Model Law revisions. However, Kuwait operates within the civil law tradition, where judicial precedents lack the binding authority they possess in common law jurisdictions.[363] The Court of Cassation's interpretation, however persuasive, remains vulnerable to subsequent reconsideration by the courts. Legislative amendment expressly validating electronic arbitration agreements would consolidate this judicial development and provide the certainty that commercial parties require.

In sum, Kuwait's framework governing the formation and validity of arbitration agreements emerges as substantially respectful of party autonomy at the formation stage. The absence of formal restrictions on agreement form, the evidentiary characterisation of the writing requirement, the rigorous approach to non-signatory extension, and the judiciary's functional interpretive approach collectively create a

[361] Kuwait, Commercial Law No 68 of 1980 (adopted 15 October 1980; entered into force 25 February 1981) <https://www.wipo.int/wipolex/en/legislation/details/7582> accessed 28 January 2026.
[362] New York Convention, 'Court Decisions: per Topic' <https://www.newyorkconvention.org/court-decisions/court-decisions-per-topic> accessed 28 January 2026.
[363] Rula Dajani Abuljebain, Tarek Abu Mariam and Haya Ghannam, 'Doing Business In Comparative Guide: Kuwait' (Mondaq, 14 November 2024) <https://www.mondaq.com/corporatecommercial-law/1514256/doing-business-in-comparative-guide> accessed 28 January 2026.

formation regime that facilitates rather than impedes the exercise of party choice.[364] The triumph of substance over form, evident in modern arbitration laws, finds expression in Kuwaiti jurisprudence—though the civil law context counsels in favour of legislative codification to ensure the permanence of these judicial developments.[365] As will be seen in subsequent sections, the more distinctive features of Kuwait's State-Centric Hybrid Model, where its approach diverges more significantly from international standards, emerge in its approach to capacity, arbitrability, separability, and competence-competence.

[364] Abdul Hamid El-Ahdab, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101–108 <https://doi.org/10.1093/arbitration/12.1.101> accessed 28 January 2026.
[365] Rula Dajani Abuljebain, Tarek Abu Mariam and Haya Ghannam, 'Doing Business In Comparative Guide: Kuwait' (Mondaq, 14 November 2024) <https://www.mondaq.com/corporatecommercial-law/1514256/doing-business-in-comparative-guide> accessed 28 January 2026.

3.3 Capacity and Authority to Conclude Arbitration Agreements

The exercise of the Doctrine of party autonomy to conclude an arbitration agreement presupposes that the contracting parties possess the legal competence to bind themselves and, where representatives act on their behalf, that those representatives hold sufficient authority to waive judicial recourse.[366] Capacity and authority function as substantive prerequisites ensuring that the transfer of adjudicative power from courts to a private tribunal reflects genuine and legally effective consent. Therefore, without these conditions, the arbitration agreement lacks binding force, and courts retain jurisdiction over the dispute.

International arbitration law treats capacity as essential to the validity of arbitration agreements while leaving the substantive rules governing capacity to applicable national law.[367] Article V(1)(a) of the New York Convention permits refusal of recognition and enforcement where the parties to the arbitration agreement were, under the law applicable to them, under some incapacity.[368] Although Article II does not expressly mention incapacity, authorities have interpreted it to incorporate Article V(1)(a)'s reference by implication.[369] Similarly, the UNCITRAL Model Law adopts similar provisions in Articles 34(2)(a)(i) and 36(1)(a)(i), permitting annulment or refusal of enforcement where a party lacked capacity.[370]

It should be noted that neither the Convention nor the Model Law prescribes substantive rules determining when a party possesses capacity. The international framework delegates this question to the law applicable to the party, typically the law of domicile or incorporation.[371] This approach reflects the principle that capacity involves personal status and corporate constitution, matters appropriately governed

[366] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.32.
[367] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 757–762.
[368] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) art V(1)(a).
[369] Born (n 1) 758.
[370] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) arts 34(2)(a)(i), 36(1)(a)(i).
[371] Born (n 1) 759–760.

by the law with the closest connection to the party rather than by uniform international rules.

The requirement of capacity applies generally applicable contract law standards to arbitration agreements. Mental incompetence, minority, and limitations in corporate constitutive documents may render an arbitration agreement invalid on grounds of capacity.[372] Moreover, the separability presumption does not insulate the arbitration agreement from capacity challenges, because incapacity affects the party's ability to consent to any binding obligation, including the agreement to arbitrate.[373]

Representative authority presents different questions from personal capacity. A party may possess full capacity yet be bound only if the representative who concluded the arbitration agreement on its behalf held sufficient authority to do so. International practice recognises that authority to conclude an arbitration agreement may require specific authorisation beyond general commercial powers, though the precise requirements vary across legal systems.[374]

State entities raise particular issues regarding capacity and authority. When a state or state-owned entity participates in commercial arbitration, questions arise as to whether its representatives have the authority to bind the sovereign. However, most authorities disfavour attempts by states to invoke their own law to deny capacity after having concluded arbitration agreements, applying principles of estoppel or good faith to prevent sovereign parties from escaping arbitral commitments.[375]

3.3.1 Kuwait's Statutory Provisions Concerning the Capacity and Authority to Enter into Arbitration Agreements

Article 173(3) of the Code of Civil and Commercial Procedure (CCPL) provides that an arbitration agreement may be concluded only by a person having the capacity to dispose of the right that is the subject of the dispute.[376] This provision classifies the

[372] ibid 761.
[373] Gary B. Born, International Commercial Arbitration (Third Edition), §3.03 (Kluwer Law International, Updated August 2022).
[374] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 145–150.
[375] Born (n 1) 762–765.
[376] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 173(3).

arbitration agreement as a dispositive act rather than an act of ordinary administration. The difference carries significant consequences under Kuwaiti civil law and suggests a careful legislative choice regarding the protection of parties who lack full legal competence. Similarly, the UAE Federal Arbitration Law adopts a similar approach in Article 4(1), which provides that an arbitration agreement may be concluded only by natural or legal persons having the capacity to dispose of their rights.[377] This shared requirement suggests a common policy across Gulf jurisdictions treating arbitration as carrying heightened consequences that warrant enhanced capacity standards.

3.3.1.1 Capacity of Natural Persons

The Kuwaiti Civil Code establishes a framework for legal capacity, differentiating among various categories of legal acts and specifying the requisite capacity for each.[378] On one hand, Acts of administration, such as routine property management or business operations, require only limited capacity. On the other hand, dispositive acts (such as sales, gifts, settlement of claims, or waivers of rights) require full civil capacity, as they entail the transfer or significant modification of legal rights.[379] Full civil capacity under Kuwaiti law requires reaching 21 years of age and the absence of a judicial interdiction due to mental incapacity or similar grounds.[380]

It is essential to note that characterising arbitration agreements as dispositive acts underscores the principle that entering into such agreements constitutes a waiver of the constitutional right to judicial adjudication.[381] This waiver affects the party's access to state courts and therefore requires the heightened level of legal competence associated with disposition of rights rather than their mere management. In this way, the legislature has determined that only persons with full capacity to dispose of their rights may validly agree to submit disputes to private adjudication rather than the national courts established to administer justice.

English law takes a different approach. The Arbitration Act 1996 contains no specific provisions governing the capacity to conclude arbitration agreements, leaving the

[377] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 4(1).
[378] Civil Code (Kuwait) Decree-Law No 67 of 1980, arts 84–96.
[379] ibid arts 86–87.
[380] ibid art 96(2).
[381] Constitution of the State of Kuwait, art 166.

matter to general contract law principles.[382] Under English law, the capacity to enter into an arbitration agreement follows the same rules applicable to contracts generally, without requiring the heightened dispositive capacity that Kuwaiti and UAE law demand.[383] This difference reflects contrasting conceptions of arbitration. English law treats arbitration as an ordinary commercial arrangement subject to standard contractual capacity rules. However, Kuwaiti and UAE law treat arbitration as carrying distinctive consequences, namely the waiver of judicial access, that warrant enhanced protection for parties lacking full legal competence.

Consider, for instance, the implications of Kuwait adopting an 'ordinary contract capacity' approach akin to that of English law. Such a shift could enhance ease of access to arbitration by lowering the barriers for entry, benefiting those seeking swift dispute resolution. However, this may leave less experienced or vulnerable parties without sufficient safeguards, exposing them to potential risks of consenting to arbitration without fully understanding its implications. Conversely, retaining the current heightened capacity requirement in Kuwait ensures robust protection for these parties but might limit some parties' flexibility in opting for arbitration.

Framing capacity as a policy choice rather than an inevitability raises important questions about the direction of arbitration law and policy in Kuwait and beyond. Who stands to gain greater access, and who may lose vital protections in such a paradigm shift? This consideration of capacity as a dynamic, policy-driven decision helps animate the discussion around arbitration reform.

The distinction between dispositive capacity and administrative capacity under Kuwaiti law produces significant practical consequences. For instance, Article 94 of the Civil Code permits a minor who has reached fifteen years of age to conclude employment contracts and to dispose of wages earned from such employment.[384] This provision grants limited contractual capacity for specific purposes, enabling young persons to participate in the labour market. However, this administrative capacity does not extend to dispositive acts. Therefore, a fifteen-year-old employee possesses the capacity to

[382] Arbitration Act 1996 (UK) s 5.
[383] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 2.35.
[384] Civil Code (Kuwait) art 94(1).

conclude the employment contract itself but lacks the capacity to dispose of the right to judicial adjudication of disputes arising from that contract.

As a consequence, the implications for arbitration clauses in employment contracts are direct. Where an employment contract contains an arbitration clause, the minor employee who validly concluded the employment contract cannot be bound by the arbitration provision. The employment contract falls within the minor's administrative capacity under Article 94. However, the arbitration clause, requiring capacity to dispose of the right to judicial recourse, falls outside that limited capacity. Therefore, the arbitration clause is void as against the minor employee, even though the underlying employment contract remains valid and enforceable.[385] In contrast, under English law, a minor who has the capacity to enter into an employment contract would generally be bound by an arbitration clause contained in it, subject to general protections against unfair contract terms.[386] Thus, in Kuwait, employment contracts for minors remain valid, while arbitration clauses within them are void due to the limited capacity to waive judicial access. This distinction underscores the protective measures in place for minors in contractual agreements.

This outcome under Kuwaiti law does not represent a restriction on the Doctrine of party autonomy in the conventional sense. Rather, it reflects the legislature's protective policy toward persons whom the law deems insufficiently mature to appreciate the consequences of waiving their right to judicial access. National courts are institutions established to administer justice and protect rights.[387] Therefore, waiver of access to those institutions in favour of private adjudication requires a careful decision by a person fully competent to understand and accept that consequence. In this way, persons lacking full dispositive capacity are protected from binding themselves to arbitration regardless of their capacity to undertake the underlying commercial or employment relationship.

[385] This analysis follows from the combined operation of Article 173(3) CCPL, which requires dispositive capacity for arbitration agreements, and Article 94 of the Civil Code, which grants only limited administrative capacity to minors for employment purposes.
[386] Unfair Terms in Consumer Contracts Regulations 1999 (UK) SI 1999/2083.
[387] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.

The same principle applies to other categories of limited capacity. For instance, a minor granted permission to manage property under Articles 88-92 of the Civil Code possesses administrative capacity over that property but cannot bind it to arbitration.[388] The permission to manage authorises acts of administration, not acts of disposition. Therefore, an arbitration agreement concerning disputes over the managed property would exceed the minor's capacity and would be void. The underlying transactions within the scope of permitted management remain valid, but the arbitration clause does not bind the minor.[389]

3.3.1.2 Authority of Representatives

Article 702(1) of the Civil Code governs representative authority for dispositive acts and reinforces this protective framework.[390] The provision establishes that a power of attorney for acts of disposition must specifically mention the particular act authorised. General authority to manage affairs or conduct business does not extend to dispositive acts unless expressly stated. Moreover, Article 702 specifically lists compromise, settlement, and arbitration among the acts requiring explicit authorisation.[391] Therefore, a representative cannot bind the principal to arbitration based on general managerial powers, however broadly expressed. It should be noted that the UAE adopts a similar, but slightly less restrictive, approach in Article 4(2) of the Federal Arbitration Law, which requires specific written authorisation for arbitration unless the representative has general authority to manage all the principal's affairs.[392] In contrast, English law permits arbitration authority to be implied from general commercial powers or apparent authority more readily than either Gulf jurisdiction allows.[393]

Case No 494/2025 provides recent clarification regarding the scope of authority sufficient to satisfy Article 702.[394] The Court held that a general power of attorney

[388] Civil Code (Kuwait) arts 88–92.
[389] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[390] Civil Code (Kuwait) art 702(1).
[391] Ibid.
[392] UAE Federal Arbitration Law (n 10) art 4(2).
[393] Blackaby and others (n 16) para 2.38.
[394] Court of Cassation (Kuwait), Commercial Circuit, Case No 494/2025

containing express authorisation for 'settlement, acknowledgment, discharge, release, and arbitration' suffices to empower an agent to conclude arbitration agreements on behalf of the principal. This confirms that while Article 702 requires explicit authority for arbitration, such authority need not be granted through a special power of attorney dedicated solely to the arbitration agreement. Where a general power of attorney expressly lists arbitration among the acts the agent is authorised to undertake, the explicit authority requirement is satisfied.

The interaction between capacity requirements under Article 173(3) and authority requirements under Article 702 creates a layered protective structure. For natural persons, full civil capacity is required because arbitration constitutes a dispositive act. For represented parties, explicit authority is required because representatives cannot undertake dispositive acts without a specific mandate. In this way, both requirements serve the same underlying policy; the waiver of judicial access must reflect a genuine, informed, and legally competent decision, whether made directly by the party or through a properly authorised representative. This protective framework, shared in its essential features with UAE law, distinguishes Gulf arbitration practice from the more permissive English approach that applies ordinary contractual standards to arbitration agreements.

3.3.2 How Kuwaiti Courts Interpret Who Has the Right and Power to Make Arbitration Agreements

3.3.2.1 Capacity of Natural Persons

The Court of Cassation has consistently applied the dispositive act characterisation to arbitration agreements, requiring full civil capacity and invalidating agreements concluded by or on behalf of persons lacking such capacity.

In Case No 243/2003, the dispute concerned an arbitration clause agreed on behalf of an interdicted individual without obtaining prior judicial approval.[395] The guardian possessed general authority over the ward's affairs but had not secured court authorisation specifically for arbitration. The Court held that the guardian's powers

(12 March 2025).
[395] Court of Cassation (Kuwait), Civil Circuit, Case No 243/2003.

were confined to ordinary administration unless expressly extended by judicial directive. Therefore, the arbitration agreement was void from the outset, and the award rendered pursuant to it was annulled. The Court emphasised that capacity defects are never harmless and cannot be cured by the passage of time or the rendering of an award.[396]

This strict approach to incapacity reflects the jurisdictional phase's gatekeeping function. The Court treats capacity not merely as a contractual matter but as a jurisdictional prerequisite. Without a valid arbitration agreement regarding the capacity requirement, the tribunal lacks authority, and courts retain exclusive competence. Therefore, initial incapacity produces consequences extending beyond ordinary contract invalidity to affect the allocation of adjudicative power between courts and tribunals.

However, in Case No 488/2007, the court refined this strict approach by recognising that subsequent ratification may cure initial incapacity in appropriate circumstances.[397] The case involved a party that had entered into an arbitration agreement shortly before reaching the age of majority. Upon attaining full capacity, the individual participated actively in the arbitral process without raising jurisdictional objections. The Court held that the defect had been remedied by subsequent ratification inferred from conduct. Accordingly, engaging in arbitration while aware of the initial defect, without objecting, is deemed to signify acceptance of the agreement.

The ratification doctrine demonstrates that Kuwait's framework, while protective of incapacitated persons, accommodates genuine consent where the formerly incapacitated party subsequently validates the agreement through conduct. This approach balances protection against the imposition of arbitration on those unable to consent with recognition that persons who acquire capacity and then voluntarily engage with arbitration have exercised the Doctrine of party autonomy.

[396] Ibid.
[397] Court of Cassation (Kuwait), Civil Circuit, Case No 488/2007.

3.3.2.2 Authority of Representatives for the Private Commercial Entities

The Court of Cassation has developed substantial jurisprudence interpreting Article 702's requirement for explicit arbitration authority, distinguishing between private commercial entities, where functional interpretations increasingly prevail, and public entities, where strict formal requirements are maintained.

In Case No 598/2023, the Court established the foundational principle for private entities.[398] A representative holding a general mandate to manage the company's affairs had concluded a contract containing an arbitration clause. The other party sought to enforce the clause, while the company argued that its representative lacked specific authority to agree to arbitration. The Court held that a general mandate to manage affairs does not empower an agent to enter into arbitration agreements.[399] Article 702 requires explicit authorisation for arbitration that cannot be implied from general commercial powers, however broadly expressed. The reasoning in this case emphasises that arbitration entails relinquishment of the right to litigate. This consequence requires that the principal make a deliberate decision to authorise the waiver rather than having it imposed through a representative's exercise of general powers. This approach safeguards the Doctrine of party autonomy by making sure that arbitration is chosen based on the principal's true intention, not just the representative's individual decision. Importantly, Case No 4635/2024 established that an agent who concludes an arbitration agreement without proper authority cannot subsequently invoke that defect to challenge the resulting award, as nullity may only be invoked by the party for whose benefit it was established.[400]

Moreover, the court's decision extends beyond representatives to include corporate directors, who are typically seen as capable of managing commercial entities. Applying these principles to corporate directors, the Court in Case No 489/2009 addressed a company director who had executed a contract containing an

[398] Court of Cassation (Kuwait), Commercial Circuit, Case No 598/2023 (26 September 2023); See also Case No 4635/2024 (4 December 2024), where the Court held that an agent who concluded an arbitration agreement without specific authority cannot subsequently challenge the resulting award on grounds of invalidity, applying the principle that 'nullity may only be invoked by the party for whose benefit it was established, not by the party who caused it'.
[399] Ibid.
[400] Court of Cassation (Kuwait), Commercial Circuit, Case No 4635/2024 (4 December 2024).

arbitration clause without obtaining board authorisation.[401] A company director had executed a contract containing an arbitration clause without obtaining board authorisation. The director possessed broad authority over commercial operations but no specific mandate for arbitration. The Court annulled the arbitration clause, holding that directors cannot bind companies to arbitration without explicit authorisation in the constitutive documents or a specific board resolution. Therefore, corporate governance requirements demand that significant decisions affecting judicial access be made by appropriate corporate organs rather than individual officers acting unilaterally.

However, recent judgments show that courts now apply a more flexible standard to determine who can bind a commercial entity to arbitration, moving away from the strict Civil Code requirements. This reflects the practical needs of modern commerce and aligns judicial reasoning with current commercial relationships. In Case No 247/ 2012, the court introduced functional considerations into the authority analysis for private commercial entities.[402] The case concerned a general manager whose documented authority covered entering into agreements essential to the company's main business operations. The opposing party argued that this language did not satisfy the explicit arbitration authority requirement under Article 702. The Court rejected this argument, holding that where three conditions are satisfied, a separate special mandate is unnecessary. First, the representative must occupy a management role with documented authority over commercial agreements. Second, commercial custom must recognise such authority as encompassing arbitration for transactions of the relevant type. Third, the arbitration clause must relate to the company's ordinary business activities rather than extraordinary transactions. This functional approach represents significant development in reconciling Article 702's protective purpose with commercial practicality. The Court recognised that arbitration has become standard practice in international commerce, and that requiring special mandates for routine commercial arbitration clauses could create unnecessary obstacles for businesses. Thus, the functional interpretation allows genuine authorisation to be shown by the

[401] Court of Cassation (Kuwait), Commercial Circuit, Case No 489/2000 (11 May 2002).
[402] Court of Cassation (Kuwait), Civil Circuit, Case No 179/2010 (10 May 2011).

representative's role and the transaction itself, rather than just by express written terms.

Furthermore, in Case No 1964/2014, the court addressed ratification of initially unauthorised arbitration agreements.[403] A principal whose representative had concluded an arbitration agreement without proper authority subsequently participated in the arbitral proceedings, appointed arbitrators, submitted substantive defences, and accepted procedural directions. The Court held that this conduct constituted ratification curing the initial authority defect. Therefore, the principal could not challenge the award on authority grounds after having engaged with the arbitral process without objection. The ratification doctrine applies to authority defects in the same manner as capacity defects. It might be possible to argue that participation in arbitration with knowledge of the defect and without a timely objection validates the representative's act, and the Court has consistently upheld this position. This approach prevents parties from exploiting authority defects opportunistically after receiving unfavourable awards while preserving the requirement that arbitration ultimately rest on genuine consent, whether given initially or through subsequent ratification.

3.3.2.3 State Entities and Public Bodies

The Court of Cassation maintains strict formal requirements for state entities that contrast with the functional flexibility extended to private commercial actors. This difference highlights the importance of safeguarding state assets and holding the government responsible to the public.[404]

In Case No 368/1999, the Court established the governing principles for state entity participation in arbitration.[405] A government-owned company entered into a contract containing an arbitration clause, signed by its general manager, without prior ministerial approval. The Court held the clause invalid, articulating three interconnected principles. First, arbitration agreements involving public funds

[403] Court of Cassation (Kuwait), Commercial Circuit, Case No 1294/2015 (10 February 2016).
[404] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[405] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 368/1999 (19 December 1999); Appeal No 431/1999 (5 March 2000); Appeal No 40/1998 (8 November 1998), reflecting a settled principle in the Court of Cassation's jurisprudence.

constitute acts that require explicit governmental authorisation, transcending ordinary managerial authority. Second, such authorisation cannot be implied from the representative's position or inferred from subsequent conduct. Third, the ministerial approval requirement reflects constitutional commitments to judicial oversight of public resources and constitutes a matter of public policy rather than procedural formality.[406] The distinction between private and public entities in this case demonstrates that Kuwait's hybrid model is not uniform across all sectors. Private commercial entities benefit from functional interpretations that recognise the authority implied by commercial roles and permit ratification through conduct. However, public entities face heightened requirements reflecting the state's interest in maintaining control over the disposition of public resources and the allocation of disputes involving governmental functions. It should be noted that Article 4(3) of the UAE Federal Arbitration Law requires public entities to obtain approval from a relevant minister or official before agreeing to arbitration.[407] This mirrors Kuwait's approach in Case No 368/1999, but the UAE provision is statutory rather than judicial.

Moreover, in Case No 788/2020, the Court extended these principles to mixed-ownership entities.[408] The Court confirmed that entities with partial state ownership must comply with internal approval mechanisms established by statute or corporate bylaws before consenting to arbitration. Failure to obtain required approvals renders the arbitration clause void. However, the Court also held that ratification through participation may be available for mixed entities where the conduct does not contravene mandatory provisions governing public property. This qualified recognition of ratification reflects the hybrid character of mixed entities, which share of both private commercial and public governmental attributes.

3.3.2.4 Electronic Authority and Digital Consent

The adaptation of authority principles to electronic commerce builds upon the Snapchat jurisprudence discussed in Section 3.2. Where representatives conclude

[406] Ibid.
[407] UAE Federal Arbitration Law art 4(3).
[408] Court of Cassation (Kuwait), Commercial Circuit, Case No 788/2020.

arbitration agreements through electronic platforms, the question arises whether digital signatures and click-wrap acceptances satisfy Article 702's requirements.

In Case No 3249/2018, the Court addressed this question in the context of corporate digital accounts.[409] The Court held that electronic acceptance can be attributed to whoever controlled the device or platform credentials at the time of acceptance. Where a company permits a representative to operate its electronic contracting systems, the acceptances executed through those systems bind the company in the same manner as traditional signatures. In this way, the principles governing representative authority apply regardless of the medium, with electronic means serving as the vehicle for expressing authority rather than altering the underlying legal analysis. The attribution of electronic acts to corporate principals follows the substantive rules established for representative authority generally. A representative with authority to conclude arbitration agreements in the company's ordinary commercial activities may exercise that authority through electronic platforms. However, a representative lacking such authority cannot acquire it merely by using electronic rather than traditional contracting methods. The Electronic Transactions Law establishes equivalence between electronic and traditional signatures but does not modify the substantive requirements governing when authority exists.[410]

Kuwait's approach to capacity aligns with the UAE in treating arbitration as requiring dispositive capacity rather than mere contractual capacity. Both Gulf jurisdictions treat the arbitration agreement as carrying heightened significance, warranting enhanced capacity requirements. In contrast, England takes a different approach, applying ordinary contractual capacity standards without special requirements for arbitration. Regarding representative authority, Kuwait occupies the most restrictive position among the three jurisdictions. English law permits authority to be implied from general commercial powers. UAE law requires specific authorisation but provides an exception for representatives with a comprehensive general authority.[411] However, Kuwait requires explicit mention of arbitration regardless of how broad the representative's general powers may be. The treatment of state entities reveals convergence between

[409] Court of Cassation (Kuwait), Commercial Circuit, Case No 3249/2018 (14 July 2020).
[410] Electronic Transactions Law (Kuwait) Law No 20 of 2014, arts 7–10.
[411] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 2.35.

Kuwait and the UAE, both of which require governmental approval before public bodies may agree to arbitration. This reflects shared concerns about protecting public resources and ensuring governmental accountability that distinguish Gulf approaches from the more permissive English position.

In sum, Kuwait's framework governing capacity and authority to conclude arbitration agreements reflects the State-Centric Hybrid Model's commitment to ensuring that arbitration rests on genuine consent. The heightened capacity requirements protect persons whom the law deems insufficiently mature or competent to appreciate the consequences of waiving their right to judicial access. The explicit authority requirements ensure that principals, whether natural persons or corporate entities, have actually consented to arbitration rather than having it imposed by representatives acting beyond their genuine mandate.

These requirements do not restrict party autonomy in its authentic sense. Rather, they safeguard it by ensuring that the choice of arbitration over judicial adjudication reflects the parties' true intentions. A minor who cannot appreciate the implications of waiving court access, or a principal who has not authorised a representative to make that choice, has not exercised party autonomy—and the Kuwaiti framework correctly refuses to treat such circumstances as valid exercises of the doctrine. The formal requirements thus serve as guardians of genuine consent, ensuring that when parties do submit to arbitration, they do so as an authentic expression of autonomous choice rather than through imposition, inadvertence, or legal fiction.

3.4 Arbitrability: Subject-Matter Limitations on Party Autonomy

The Doctrine of Party Autonomy to submit disputes to arbitration does not extend without limit.[412] Every legal system reserves certain categories of disputes for exclusive judicial determination, reflecting the view that some matters involve public interests, mandatory protections, or sovereign functions that cannot be delegated to private adjudication, regardless of the parties' consent.[413] Accordingly, arbitrability

[412] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, ‘Agreement to Arbitrate’ in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.127.
[413] Moses Oruaze Dickson, ‘Party Autonomy and Justice in International Commercial Arbitration’ (2018) 60(1) *International Journal of Law and Management* 114.

defines the limit between disputes that parties may remove from judicial jurisdiction and disputes that must remain within it.[414] Where a dispute is non-arbitrable, the parties' agreement to arbitrate is unenforceable as to that subject matter, and courts retain exclusive competence. This limitation reflects the principle recognised in Article 196 of the Civil Code that party autonomy operates 'within the limits of the law'.[415] The Court of Cassation has consistently held that while parties enjoy broad freedom to structure their contractual relationships, this freedom does not extend to matters that the legislature has determined must remain within judicial jurisdiction.

International arbitration practices recognise arbitrability as a limitation on the scope of valid arbitration agreements.[416] Article II(1) of the New York Convention provides that Contracting States shall recognise arbitration agreements concerning a subject matter capable of settlement by arbitration.[417] Additionally, Article V(2)(a) permits refusal of recognition and enforcement where the subject matter of the difference is not capable of settlement by arbitration under the law of the enforcing country.[418] Likewise, the UNCITRAL Model Law contains parallel provisions in Articles 34(2)(b)(i) and 36(1)(b)(i), permitting annulment or refusal of enforcement where the subject matter is not arbitrable.[419] It should be noted that neither the Convention nor the Model Law defines which matters are arbitrable. The international instruments delegate this determination to national law, recognising that arbitrability reflects policy choices about the relationship between private adjudication and public authority that may legitimately vary across legal systems.[420] Consequently, what is arbitrable in one jurisdiction may not be arbitrable in another, and the relevant law for determining arbitrability may differ

[414] Md Pizuar Hossain, 'Party Autonomy in the International Commercial Arbitration: A Critical Evaluation of Its Ambits and Limits' (2017) 2017 ALSA 60.
[415] Civil Code (Kuwait), Decree-Law No 67/1980, art 196: 'The contract is the law of the contracting parties, and may not be revoked or modified except by mutual consent of the parties or for reasons permitted by law.'
[416] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 943–948.
[417] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) art II(1).
[418] ibid art V(2)(a).
[419] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) arts 34(2)(b)(i), 36(1)(b)(i).
[420] Born (n 1) 949–955.

depending on whether the question arises at the jurisdictional stage, the annulment stage, or the enforcement stage.[421]

Despite this delegation to national law, international practice reveals a broad consensus on certain principles. Commercial disputes between private parties concerning contractual rights and obligations are presumptively arbitrable in virtually all developed legal systems.[422] Moreover, the trend in recent decades has been toward expanding arbitrability, with matters previously reserved for courts, such as competition law, securities regulation, and intellectual property licensing, now widely accepted as arbitrable in most jurisdictions.[423] Non-arbitrability typically arises in categories involving public interests that transcend the bilateral relationship between the disputing parties.[424] Specifically, criminal liability and penal sanctions remain non-arbitrable because they involve the state's coercive authority rather than private rights.[425] Similarly, personal status matters, including marriage, divorce, and filiation, are generally non-arbitrable because they affect legal relationships with third parties and society.[426] Furthermore, bankruptcy and insolvency proceedings are non-arbitrable because they constitute collective mechanisms affecting creditors beyond the parties to the arbitration.[427] In addition, the validity of intellectual property rights as against the world, as distinguished from contractual disputes about licensing, is often non-arbitrable because it affects public registers and third-party rights.[428]

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[421] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.130.
[422] Gary B. Born, International Commercial Arbitration (Third Edition), §6.01 (Kluwer Law International, Updated August 2022).
[423] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[424] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Arbitration as a Dispute Settlement Mechanism' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 1–15.
[425] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 4 [Legal Capacity to Conclude an Arbitration Agreement]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 33–37.
[426] Alex Mills, 'Arbitration Agreements' in *Party Autonomy in Private International Law: The Hague Principles on Choice of Law and International Commercial Arbitration* (CUP 2018) 263–312.
[427] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.
[428] Ibid.

3.4.1 The Statutory Framework Governing Arbitrability in Kuwait

Kuwait determines arbitrable matters under two related statutory provisions that guide its jurisprudence on arbitrability.[429] First, Article 173(3) of the Code of Civil and Commercial Procedure (CCPL) provides that parties may agree to arbitration in a specific dispute that has arisen or in disputes arising from a particular legal relationship, provided that such disputes are capable of being the subject of compromise.[430] The Arabic term used in this article means susceptible to settlement or compromise. In this way, this formulation links arbitrability directly to whether the underlying right permits the parties to dispose of it consensually. Second, Article 554 of the Civil Code defines the boundaries of compromise.[431] The provision states that compromise is not permitted in matters relating to public policy. Compromise is permissible regarding financial rights arising from such matters, but not regarding the underlying status or relationship itself.[432] Additionally, Article 554 further provides that a compromise may not contravene mandatory laws that parties cannot derogate from by agreement.[433]

It is clear from Articles 173 and 554 that the framework for arbitrability under Kuwaiti law is directly linked to the capacity for compromise.[434] A dispute is arbitrable if and only if the parties could lawfully compromise it through direct agreement. If the right in question cannot be waived, modified, or settled by the parties themselves, it equally cannot be submitted to arbitration. Thus, this framework treats arbitration as a species of compromise, extending the limitations applicable to settlement agreements to arbitration agreements as well.

It is essential to note that this regulation closely resembles modern arbitration laws found throughout the Gulf region. Article 4(2) provides that arbitration may not be

[429] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[430] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 173.
[431] Civil Code (Kuwait) Decree-Law No 67 of 1980, art 554.
[432] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[433] Ibid.
[434] Ibid.

conducted in matters that cannot be compromised.[435] This formulation closely parallels Kuwait's approach derived from Articles 173 and 554. However, Section 5 of the Civil Code of the UAE, specifically Articles 722 to 741, specifies categories of matters that cannot be submitted to conciliation.[436] This provision codifies the distinction between non-arbitrable status questions and potentially arbitrable financial consequences that Kuwaiti courts have developed through case law. The UAE's statutory enumeration of non-arbitrable categories provides greater certainty than Kuwait's case-by-case approach. Consequently, commercial parties can refer directly to Article 5 of the Civil Code of the UAE to determine arbitrability, without depending on court precedent on which disputes are not arbitrable. The UAE's approach to arbitrability under Article 4 of the Federal Arbitration Law mirrors Kuwait's composability criterion, providing that arbitration is not permitted in matters which do not permit compromise.[437] Dubai Court of Cassation decisions have elaborated this principle through case-specific determinations, confirming that contractual and tortious disputes are arbitrable, whilst commercial agency agreements, labour disputes, and registration of off-plan real estate remain within the exclusive jurisdiction of ordinary courts.[438] This categorical approach, distinguishing between disputes amenable to private settlement and those requiring judicial oversight due to protective regulatory policies, parallels Kuwait's treatment of arbitrability whilst demonstrating regional convergence on the composability framework. Nevertheless, the substantive categories are substantially similar, reflecting shared civil law methodology and Islamic jurisprudential influences across the Gulf region.

To determine whether this limitation truly restricts the Doctrine of party autonomy, it is helpful to examine the English Arbitration Act, which is widely regarded as one of the world's most pro-arbitration and pro-party autonomy legal frameworks. The English

[435] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 4(2) (1-… 2- Arbitration is not allowed where matters cannot be submitted to conciliation. 3-… 4-…).
[436] United Arab Emirates, Federal Law No 5 of 1985 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates (issued 15 December 1985) s 5 arts 722–741
[437] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 4. See also Dubai Court of Cassation, Commercial Case No 492/2020 (15 July 2020), applying the composability criterion under Article 4.
[438] Dubai Court of Cassation, Commercial Case No 293/2019 (30 June 2019) (contractual and tortious disputes arbitrable); Dubai Court of Cassation, Labour Case No 55/2020 (6 February 2020) (labour disputes non-arbitrable); Dubai Court of Cassation, Commercial Case No 5/2020 (19 March 2020) (commercial agency disputes non-arbitrable); Dubai Court of Cassation, Real Estate Case No 247/2020 (13 October 2020) (termination of sale and purchase of land agreements arbitrable).

Arbitration Act 1996 does not address non-arbitrability.[439] While few cases discuss this issue, English courts have typically dismissed non-arbitrability arguments[440]; for example, they have affirmed that competition law and minority shareholder claims are arbitrable.[441] In recent decisions, English courts have ruled that even if a dispute can be described in several ways (including ways that might suggest it is not suitable for arbitration), it should still be considered arbitrable. The Court explained that the core issue of the dispute remains unchanged regardless of how it is labelled, and therefore, arbitrators can resolve it.[442] Likewise, criminal matters and certain regulatory proceedings involving public enforcement similarly fall outside arbitrable subject matter. However, the trend in English law has been toward expanding arbitrability. Competition law claims, securities disputes, and intellectual property licensing matters are all arbitrable, with public policy review available at the enforcement stage rather than serving as a threshold barrier to arbitration.[443] Section 81(1) of the Arbitration Act 1996 preserves the court's power to refuse recognition or enforcement of an award on public policy grounds.[444] This provision operates as a back-end safeguard rather than a front-end restriction on arbitrability. This allows parties to proceed with arbitration, and courts will consider only whether enforcement conflicts with public policy if the award is later disputed.

The civil law heritage in Kuwait's arbitration framework is where arbitration is conceptualised as an extension of contractual freedom to dispose of private rights rather than as an autonomous adjudicative mechanism.[445] Furthermore, it also reflects Islamic jurisprudential traditions that recognise conciliation (sulh) as a legitimate

[439] Arbitration Act 1996 (UK) s 1(b).
[440] See ET Plus SA v. Jean-Paul Welter [2005] EWHC 2115, 51 (Comm) (English High Ct.) ("no realistic doubt that such competition or antitrust claims are arbitrable"). See also Microsoft Mobile OY (Ltd) v. Sony Euro. Ltd [2017] EWHC 374 (Ch) (English High Ct.) (cartel damages claims arbitrable).
[441] See Fulham Football Club (1987) Ltd v. Richards [2011] EWCA Civ 855, 78 (English Ct. App.) ("[N]othing in the scheme of these provisions which … ma[de] the resolution of the underlying dispute inherently unsuitable for determination by arbitration on grounds of public policy"); NDK Ltd v. HUO Holding Ltd [2022] EWHC 1682 (Comm) (English High Ct.) (determination of rightful shareholders arbitrable even if rectification of register can only be ordered by national court). See also Re Vocam Euro. Ltd [1998] BCC 396, 398–99 (Ch) (English High Ct.) (summarily rejecting arguments that disputes concerning minority shareholder rights under §459 of English Companies Act, 1985, are nonarbitrable).
[442] Nori Holding Ltd v. PJSC "Bank Otkritie Fin. Corp." [2018] EWHC 1343, 63 (Comm) (English High Ct.). See also London S.S. Owners' Mutual Ins. Ass'n Ltd v. Spain [2015] EWCA Civ 333, 78 (English Ct. App.).
[443] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1015–1025.
[444] Arbitration Act 1996 (UK) s 81(1).
[445] Azmi Abdelfattah Atiyya, Kuwaiti Arbitration Law (2nd edn, Dar Al-Kutub Publishing 2012) 145–150.

means of resolving disputes within the boundaries established by mandatory rules and public interest.[446] Both intellectual traditions share the premise that private dispute resolution is permissible only where the disputed rights are themselves subject to private disposition.

It is important to point out that the Code of Civil and Commercial Procedure does not provide an explicit list of non-arbitrable disputes. Unlike some jurisdictions that provide statutory lists, Kuwait's framework requires a case-by-case determination of whether particular disputes satisfy the conciliation standard.[447] This approach provides flexibility to adapt the arbitrability doctrine to evolving commercial practice and public policy considerations. However, it also creates uncertainty for parties seeking to predict whether their disputes will be deemed arbitrable.

3.4.2 Judicial Interpretation of Arbitrability in Kuwait

The Court of Cassation has established an extensive body of jurisprudence delineating categories of non-arbitrable matters by determining which subjects cannot be resolved through conciliation. These decisions establish that arbitrability is a matter of public order that courts must examine regardless of the parties' agreement or conduct.[448]

3.4.2.1 Labour and Employment Disputes

The most consistently and explicitly non-arbitrable category in Kuwaiti jurisprudence comprises statutory labour rights. The Court of Cassation has repeatedly held that employment protections established by the Labour Law constitute mandatory rules that employees cannot waive and that therefore fall outside the scope of arbitrable matters. For example, in Case No 68/1986, the Court addressed an arbitration clause in an employment contract purporting to cover all disputes arising from the employment relationship.[449] The employee sought to litigate claims for unpaid wages, leave entitlements, and termination benefits in court, while the employer invoked the arbitration clause. The Court held that statutory labour entitlements are matters of

[446] See Chapter Two of this thesis regarding Islamic jurisprudential foundations.
[447] Jalal El Ahdab, 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), Arbitration with the Arab Countries (Kluwer Law International 2011) 320–325.
[448] Court of Cassation (Kuwait), Commercial Circuit, Case No 617/2005.
[449] Court of Cassation (Kuwait), Labour Circuit, Case No 68/1986 (16 March 1987).

public order that cannot be compromised. Therefore, the arbitration clause was unenforceable as to these claims because the employee could not have lawfully waived them through direct settlement and, accordingly, could not submit them to arbitration. Additionally, in Case No 295/2005, the Court deepened this principle by addressing whether post-dispute consent could cure the non-arbitrability defect.[450] The employer argued that even if the original arbitration clause was unenforceable, the employee had subsequently agreed to arbitrate after the dispute arose, when the employee knew the specific rights at stake. However, the Court rejected this argument, holding that the defect is rooted in public order rather than contractual formation. Thus, the employee's consent, whether given before or after the dispute, cannot render arbitrable a matter that the legal system has determined must remain within judicial jurisdiction. Non-arbitrability cannot be waived. However, it is worth considering emerging trends in other jurisdictions that are evolving to incorporate employment disputes within the scope of arbitration.[451] Notably, in some legal systems, reforms are underway to balance the protection of statutory labour rights with the benefits of arbitration as a dispute-resolution mechanism. Such comparative developments invite a re-evaluation of Kuwait's categorical stance on labour arbitrability, potentially paving the way for policy discussions on how employment disputes might be effectively mediated while safeguarding essential employee protections. The labour arbitrability cases show the gatekeeping function of the arbitrability doctrine. Party autonomy to select arbitration as a dispute-resolution mechanism does not extend to matters where the legislature has determined that judicial oversight is necessary to protect weaker parties or to implement mandatory social policies. The employee's theoretical consent to arbitration is rendered legally invalid, as the right to judicial determination of statutory entitlements cannot be waived under any circumstances.

3.4.2.2 Personal Status and Family Law

Disputes involving personal status, including marriage, divorce, lineage, guardianship, and inheritance, are non-arbitrable under Kuwaiti law. These matters are governed by mandatory rules derived from Islamic jurisprudence and codified in personal status

[450] Court of Cassation (Kuwait), Labour Circuit, Case No 295/2005 (18 June 2007).
[451] Gary B Born, 'Nonarbitrability and International Arbitration Agreements' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 6 (updated April 2024, Kluwer Arbitration, accessed 27 January 2026).

legislation that parties cannot derogate from by agreement.[452] In Case No 206/2001, the Court addressed the relationship between principles of Sharia in personal status matters and arbitrability.[453] The Court held that personal status matters are non-arbitrable because they involve rights established by mandatory religious and statutory rules. However, the Court clarified that financial rights arising from personal status relationships may be subject to arbitration. Specifically, parties may arbitrate disputes about the quantum of maintenance or the division of marital property. However, they cannot arbitrate questions of whether a marriage exists, whether a divorce is valid, or whether a parent-child relationship has been established.

Furthermore, in Case No 1158/2014, the Court confirmed that inheritance principles function as normative standards of public policy rather than default rules subject to modification by the parties.[454] The mandatory shares prescribed by Islamic inheritance law cannot be altered by agreement, and disputes about entitlement to inherit in a particular capacity are therefore non-arbitrable. Nevertheless, disputes about the valuation or distribution of specific assets within the framework of established entitlements may be arbitrable as involving financial rights capable of compromise.

3.4.2.3 Capacity and Legal Status

Matters involving a person's legal capacity or an entity's legal personality cannot be submitted to arbitration. These determinations affect the validity of all legal acts undertaken by the person or entity and involve rights governed by mandatory law that cannot be compromised. The court in Cassation 243/2003, discussed in the preceding section regarding capacity to conclude arbitration agreements, also illustrates the non-arbitrability of capacity determinations themselves.[455] The Court's analysis treated the question of whether the ward possessed capacity as one that could be determined only by courts exercising judicial authority. As a result, arbitrators are not permitted to decide on capacity issues, as such decisions affect an individual's legal status and have consequences beyond the specific dispute at hand. The principle extends to determinations of corporate legal personality and the validity of corporate acts.

[452] Personal Status Law (Kuwait) Law No 51 of 1984.
[453] Court of Cassation (Kuwait), Commercial and Administrative Circuit, Case No 206/2001.
[454] Court of Cassation (Kuwait), Civil Circuit, Case No 1158/2014 (13 May 2015).
[455] Court of Cassation (Kuwait), Civil Circuit, Case No 243/2003.

Importantly, decisions of the Court of Cassation on share transactions have held that disputes over the validity of board resolutions or compliance with mandatory company law requirements may not be suitable for arbitration, especially when third-party rights or public records are involved.[456]

3.4.2.4 Bankruptcy and Insolvency

Bankruptcy proceedings are non-arbitrable because they constitute collective mechanisms governed by mandatory rules protecting creditors beyond the parties to the arbitration.[457] Therefore, the opening, conduct, and termination of insolvency proceedings require judicial supervision to ensure fair treatment of all creditors and proper administration of the debtor's estate. In Case No 1313/2020, the Court addressed statutory compensation regimes, treating them as public-order rules with mandatory application.[458] While the case did not directly concern insolvency, the reasoning indicates that collective statutory mechanisms designed to protect categories of persons beyond the immediate parties cannot be subjected to bilateral arbitration that would bind only those parties.

In Contrast, under English law, enforcing an arbitration agreement can be challenging if the insolvent party's trustee in bankruptcy does not consent. The Arbitration Act 1996 amended the English Insolvency Act 1986 to give trustees a formal process for either accepting or rejecting an arbitration agreement.[459] If the trustee decides against the agreement, arbitration can proceed only with the approval of the company's creditors and the court, which considers all relevant circumstances before allowing the dispute to proceed. This aligns with a broader principle in English law that lets a trustee disregard a contract considered 'unprofitable'. However, if the trustee confirms the arbitration agreement, it becomes legally binding and enforceable by or against the trustee.[460]

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[456] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 1550/2021 (30 October 2022).
[457] Born (n 1) 980–982.
[458] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 1313/2020 (22 February 2024) (judgment quashed and the Court determined the merits).
[459] See Arbitration Act 1996, s. 107 and Sch. 3; Insolvency Act 1986, s. 349A. For a discussion of issues of insolvency and arbitration in English law, see Burn and Grubb, 'Insolvency and arbitration in English law' (2005) 8 Intl Arb L Rev 124.
[460] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Agreement to Arbitrate' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 2.148.

3.4.2.5 Intellectual Property Validity

Kuwaiti law allows arbitration for commercial intellectual property disputes, but not for those involving registration, cancellation, or validity of rights, as these affect public registers and third parties.[461] Article 554's prohibition on compromising rights governed by mandatory legal rules applies directly to validity determinations, since trademarks and patents derive their legal existence from state-issued rights. While Kuwaiti courts have not rendered a definitive ruling directly on the arbitrability of intellectual property matters, the reasoning applied in Case 1550/2021 concerning corporate registries is instructive.[462] Specifically, when a dispute involves the integrity of a public record and may impact the rights of third parties, arbitration is deemed inadmissible. International scholarship supports this distinction by separating the arbitrability of how IP rights are contractually exploited from the non-arbitrability of questions about whether those rights actually exist.[463] Kuwait's statutory structure naturally supports this distinction through the concept of non-justiciable rights.[464]

3.4.2.6 Administrative Contracts and Public Authority

Administrative contracts involving the exercise of public authority present complex arbitrability questions. In some cases, where the state acts in a purely commercial capacity, disputes may be arbitrable, subject to the authority requirements examined in Section 3.3.[465] However, where the contract involves the exercise of sovereign functions, regulatory powers, or management of public property in a governmental rather than commercial capacity, arbitrability may be excluded.[466] Case No 368/1999, discussed in the preceding section regarding authority requirements for state entities,

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[461] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[462] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 1550/2021 (30 October 2022).
[463] UNCITRAL, *UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006* (United Nations 2008) (with Explanatory Note).
[464] Michelle J Kane, 'The Arbitrator's Winged Chariot: Arbitration and the Federal Circuit' (2007) 16 *Federal Circuit Bar Journal* 191.
[465] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 368/1999 (19 December 1999); Appeal No 431/1999 (5 March 2000); Appeal No 40/1998 (8 November 1998), reflecting a settled principle in the Court of Cassation's jurisprudence.
[466] Muna Alhajri, 'International Arbitration as an Alternative Method for Settling Administrative Disputes in the Kuwaiti Law' (2023) 29 Comparative Law Review 9.

also reflects arbitrability concerns.[467] The Court's insistence on ministerial approval for arbitration involving public funds reflects not only authority requirements but also the view that disputes involving public resources implicate interests beyond those of the immediate parties and consequently require governmental decision-making about whether private adjudication is appropriate.

3.4.3 Insurance and consumer contracts can be arbitrated in Kuwait

Disputes arising from consumer and insurance contracts are not treated under Kuwaiti law as inherently non-arbitrable.[468] Rather, judicial scrutiny in this area focuses on the validity and quality of consent to arbitration, particularly where standard-form contracts and weaker parties are involved. While such disputes are, in principle, capable of settlement by arbitration, the enforceability of arbitration clauses is conditioned on compliance with enhanced notice and disclosure requirements designed to ensure informed consent.

In Case No 975/2015, the Court of Cassation has considered whether arbitration clauses can be enforced in cases of imbalance of bargaining power. It has established guidelines requiring stricter notice before such clauses are upheld to protect the weaker party's interests. In the Cassation 975/2015, which concerned an arbitration clause in an insurance policy.[469] The clause was printed in standard typeface indistinguishable from other policy terms. The insured sought to litigate claims in court, arguing that the arbitration clause was unenforceable. The insurer invoked the clause and sought referral to arbitration. The Court held the arbitration clause unenforceable for failure to satisfy Article 782 of the Civil Code.[470] That provision requires that arbitration clauses in insurance contracts be presented in a clearly distinguishable manner, such as prominent or larger type, to ensure that the insured appreciates the significance of the arbitration provision.[471] The standard presentation in the policy at issue failed to provide the insured with effective notice of the waiver of judicial

[467] Ibid.
[468] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[469] Court of Cassation (Kuwait), Commercial Circuit, Case No 975/2015 (1 April 2018).
[470] Civil Code (Kuwait) art 782.
[471] Ibid.

recourse. The Court's reasoning distinguished between subject-matter arbitrability and the validity of consent. Insurance disputes are not categorically non-arbitrable under Kuwaiti law. The subject matter is capable of compromise and may be submitted to arbitration. However, the enforceability of arbitration clauses in insurance contracts depends on satisfying formal requirements that protect the insured from unknowing waiver of judicial access. Where these protective requirements are not satisfied, the arbitration clause is unenforceable even though the underlying dispute is arbitrable.

Subsequently, in Cases Nos. 1165 and 1116 of 2019, the Court reflected a more flexible application of these principles.[472] The Court found that substantial compliance with reasonable notice was sufficient where both the policy and the parties' conduct demonstrated effective awareness of the arbitration clause. The insured had not rebutted the presumption of knowledge arising from the policy's presentation. Thus, the Court treated the notice requirement as serving the functional purpose of ensuring informed consent rather than imposing rigid formal prerequisites divorced from that purpose.

These decisions establish that arbitration clauses in consumer and insurance contexts remain subject to the Doctrine of party autonomy but require enhanced formal protections to ensure that weaker parties genuinely consent to waive their right to judicial access. In this way, the distinction preserves the principle that arbitration rests on party agreement while recognising that meaningful agreement requires adequate notice in contexts of unequal bargaining power.

This approach treats arbitrability in insurance and consumer contexts as dependent on the satisfaction of heightened formal requirements protecting weaker parties. The subject matter is arbitrable in principle, but the arbitration agreement is enforceable only where the protective formalities are satisfied. The distinction preserves party autonomy while ensuring that exercises of that autonomy in contexts of unequal bargaining power reflect genuine informed consent.

[472] Court of Cassation (Kuwait), Commercial Circuit, Cases No 1165/2019 and 1116/2019 (16 July 2020).

3.4.4 The Role of Sharia in Arbitrability Determinations

Article 2 of the Constitution identifies Islamic Sharia as a main source of legislation.[473] Additionally, Article 1 of the Civil Code directs courts to apply principles of Sharia when legislation is silent.[474] These provisions raise the question whether Sharia independently affects arbitrability determinations or whether its influence is limited to matters already incorporated into statutory provisions. The Court of Cassation has adopted a clear hierarchical approach. Specifically, Sharia operates as a supplementary source filling legislative gaps rather than as an independent ground for expanding non-arbitrability beyond statutory categories. In Case No 206 of 2001, the Court established the governing principle.[475] The Court held that judges must first apply legislative provisions and may refer to Islamic jurisprudence only when statutes are incomplete. Accordingly, Sharia cannot independently expand the categories of non-arbitrable disputes beyond those identified through the composability framework established by Articles 173 and 554.

Furthermore, in Case No 608/2018, the Court confirmed that Islamic principles serve interpretive and supplementary functions but do not supersede statutory rules governing arbitration.[476] Therefore, parties cannot challenge arbitration agreements or awards on the ground that the underlying transaction allegedly contravenes Islamic jurisprudence where statutory law permits the transaction. Additionally, in Case No 608/2018, the Court applied these principles to the issue of commercial interest.[477] The defendant argued that interest charged by financial institutions violated the Sharia prohibition on interest (Riba) and, consequently, rendered the dispute non-arbitrable

[473] Constitution of the State of Kuwait, art 2.
[474] Kuwaiti Civil Code, Decree-Law No 67 of 1980, art 1(1): (Legislative provisions shall apply to matters governed by their express wording or by their implied meaning. Where no legislative provision exists, the judge shall rule in accordance with the principles of Islamic jurisprudence most consistent with the realities of the country and its interests; failing that, the judge shall rule in accordance with custom). Explanation (This provision establishes a clear hierarchy of legal sources under Kuwaiti law. Statutory provisions prevail where they exist, whether expressly or by implication. Islamic jurisprudence operates only as a subsidiary source, applicable solely in cases of legislative silence and subject to compatibility with national conditions and interests. As interpreted by the Court of Cassation, Article 1 does not authorise recourse to Sharia to override enacted legislation or to invalidate contractual arrangements that comply with statutory rules. Its relevance to arbitrability is therefore limited to gap-filling in the absence of legislative regulation, rather than serving as an independent source of public policy capable of restricting arbitration).
[475] Case No 206/2001 (n 23).
[476] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 608/2018 (11 July 2018).
[477] Ibid.

on public policy grounds. However, the Court rejected this argument, noting that the Commercial Code expressly permits the charging of interest in commercial transactions. Thus, constitutional references to Sharia do not authorise courts to invalidate legislative provisions or to expand public policy grounds for non-arbitrability beyond those established by statute.

The hierarchical relationship between Sharia and statutory law has practical significance for commercial parties. Disputes involving transactions permitted under Kuwaiti commercial law are arbitrable, even where Islamic jurisprudential views might characterise such transactions as impermissible.[478] Specifically, Sharia affects arbitrability only in two circumstances. First, where statutes are silent, Sharia may serve as a gap-filling mechanism to determine whether the right permits compromise. Second, where the legislature has codified Sharia-derived rules as public-order norms, such as rules governing personal status, those codified rules determine arbitrability. Beyond these circumstances, religious principles do not, in and of themselves, define public policy for purposes of the composability analysis.

3.4.5 Synthesis

The arbitrability analysis confirms that Kuwait's gatekeeping conditionality extends to the substantive character of disputes, not merely to formal requirements of agreement and capacity. Articles 173 of the CCPL and 554 of the Civil Code together establish that arbitration is permitted only where the underlying right is capable of compromise. The Court of Cassation has identified clear categories of non-arbitrable matters, including criminal liability, personal status, capacity determinations, bankruptcy, intellectual property validity, administrative functions involving public authority, and statutory labour rights. These exclusions reflect the view that certain disputes involve public interests or mandatory protections that transcend bilateral commercial relationships. The question arises, 'What public interests require a courtroom here?' In these cases, the need for societal oversight, legal uniformity, and protection of vulnerable parties or state functions demand adjudication in a public forum rather than

[478] Ahmed Barakat and Adnan Jaafar, 'Arbitration in Kuwait: Public Policy Limits, Capacity Pitfalls and the Need for Legislative Overhaul' in Romesh Weeramantry and John Choong (eds), Asian Dispute Review (2025) 173, as available on Kluwer Arbitration https://www-kluwerarbitration-com.uea.idm.oclc.org/document/kli-ka-adr-2025–03–007 accessed 22 November 2025.

private arbitration, ensuring these core interests are preserved and appropriately addressed.

The role of Sharia in arbitrability is limited to filling gaps when statutes are silent and to matters where Islamic principles have been codified as public-order norms. Commercial disputes governed by explicit statutory rules remain arbitrable regardless of Islamic jurisprudential views. This approach provides predictability for commercial parties while maintaining the legislature's authority to define public policy boundaries.

Reforms aimed at enhancing Kuwait's attractiveness as an arbitration seat might consider developing clearer legislative guidance on arbitrability categories, particularly in emerging areas such as intellectual property licensing, capital markets, and administrative contracts where the state acts in a commercial capacity. However, the existing framework demonstrates a coherent and principled approach that balances party autonomy with the protection of public interests central to Kuwait's State-Centric Hybrid Model.

Taken as a whole, Kuwait's arbitrability framework reflects the broader characteristics of its arbitration regime. Party autonomy is recognised as a foundational principle, but its exercise is subject to the boundaries established by public policy, mandatory rules, and constitutional protections. The framework ensures that arbitration proceeds only where the underlying dispute satisfies the legal criteria for private resolution. While reforms aimed at increasing legislative clarity regarding specific categories could enhance predictability, the existing framework demonstrates a coherent approach that balances contractual autonomy with the protection of public interests.

3.5 The Doctrine of Competence-Competence: Allocation of Jurisdictional Authority

The doctrine of competence-competence addresses a question in the arbitration process.[479] When a party challenges the tribunal's jurisdiction, asserting that no valid arbitration agreement exists or that the dispute falls outside the tribunal's scope, who decides the challenge?[480] The answer determines whether arbitral proceedings may continue while jurisdictional questions are resolved or whether such questions must be determined by courts before arbitration may proceed. Accordingly, this allocation of authority between tribunals and courts represents one of the most significant points of divergence between Kuwait's framework and international arbitration practice.[481]

International arbitration practices recognise competence-competence as a foundational principle, enabling arbitral tribunals to rule on challenges to their own jurisdiction, including challenges to the existence or validity of the arbitration agreement.[482] The principle operates through two different effects. The positive effect empowers tribunals to determine their own jurisdiction. Conversely, the negative effect obliges courts to abstain from addressing jurisdictional issues while the tribunal is actively engaged in the case, thus affording tribunals precedence in issuing an initial ruling.[483]

Article 16(1) of the UNCITRAL Model Law provides that the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.[484] The provision expressly states that for this purpose, an arbitration clause forming part of a contract shall be treated as an agreement independent of the other terms of the contract. Furthermore, Article 16(3) permits the

[479] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Powers, Duties, and Jurisdiction of an Arbitral Tribunal' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 5.
[480] Irina Tuca, 'Separability and Competence-Competence: A Comparative Perspective' (2020) 14 Rom Arb J 15
[481] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.
[482] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1131–1140.
[483] Jan Paulsson, *The Idea of Arbitration* (OUP 2013) 62-64.
[484] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) art 16(1).

tribunal to rule on jurisdictional objections either as a preliminary question or in an award on the merits. It provides that a party may request court review of a preliminary jurisdictional ruling within thirty days.[485] The Model Law framework reflects a policy judgment that arbitral efficiency is best served by permitting tribunals to address jurisdictional challenges without automatically suspending proceedings. Thus, tribunals possess competence to determine their competence, subject to subsequent judicial review. This approach minimises the potential for dilatory tactics whereby respondents invoke spurious jurisdictional objections to delay arbitration, while preserving ultimate judicial control over questions of arbitral authority.[486]

The rationale for competence-competence rests on practical and theoretical foundations. As a practical matter, if tribunals could not rule on jurisdictional challenges, every such challenge would require court proceedings before arbitration could continue, thereby undermining the efficiency that parties seek through arbitration.[487] As a matter of principle, the principle recognises that the question of whether a valid arbitration agreement exists is itself a dispute that the parties may have agreed to submit to arbitration.[488] It should be noted that the difference between the power to decide at all and the power to decide conclusively explains the doctrine's operation.[489] Competence-competence grants tribunals the former power. Tribunals may rule on jurisdictional objections and proceed with the arbitration based on their determination. However, that determination is not conclusive. Courts retain authority to review jurisdictional rulings, whether through immediate challenge to preliminary rulings, annulment proceedings, or enforcement proceedings. Therefore, the tribunal's decision regarding its own jurisdiction is not definitive; it remains open to confirmation or overturning by a court.[490]

Article 8 of the Model Law addresses the negative effect, providing that a court before which an action is brought in a matter that is the subject of an arbitration agreement

[485] ibid art 16(3).
[486] Born (n 1) 1141–1150.
[487] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 331–335.
[488] Born (n 1) 1135–1138.
[489] Paulsson (n 2) 60, citing Alan Scott Rau's distinction between the power to 'decide at all' and the power to 'decide conclusively'.
[490] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, ‘Powers, Duties, and Jurisdiction of an Arbitral Tribunal’ in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 5.

shall refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed.[491] This provision requires courts to decline jurisdiction and refer parties to arbitration upon a prima facie showing that an arbitration agreement exists. Accordingly, courts do not conduct a full review of jurisdictional questions at this stage but defer to the arbitral process.

3.5.1 Kuwait's Statutory Framework Concerning the Principle of Competence-Competence

The Code of Civil and Commercial Procedure (CCPL) does not recognise the positive effect of competence-competence. No provision empowers arbitral tribunals to rule on challenges to their own jurisdiction.[492] Instead, the statutory framework requires that jurisdictional objections must be determined by courts, with arbitral proceedings suspended pending judicial resolution.

Article 180 of the CCPL provides that if a matter arises during the arbitration that falls outside the arbitrators' authority, or if a challenge is raised concerning the authenticity of a document, or if criminal proceedings are instituted regarding its forgery, or regarding another criminal act, the arbitrators shall suspend the proceedings and refer the parties to the competent court.[493] The Arabic text employs mandatory language indicating that suspension is obligatory rather than discretionary when matters fall outside arbitral authority.[494] It is essential to note that the provision does not expressly address challenges to the existence or validity of the arbitration agreement. However, the Court of Cassation has interpreted Article 180 to encompass all jurisdictional objections, reasoning that arbitrators cannot possess authority to determine questions that go to the foundation of their own existence as a tribunal.[495] If the arbitration agreement is invalid, no tribunal exists with authority to make any determination.

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[491] UNCITRAL Model Law (n 3) art 8(1).
[492] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[493] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 180.
[494] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.
[495] Court of Cassation (Kuwait), Commercial Circuit, Case No 39/1987 (22 February 1988).

Therefore, the question of whether a valid agreement exists falls outside arbitral authority and triggers mandatory suspension under Article 180.

Article 173(5) addresses the negative effect, providing that courts may not hear a dispute that the parties have agreed to submit to arbitration if the defendant raises the arbitration agreement before addressing the merits of the case.[496] This provision requires courts to decline jurisdiction when a valid arbitration clause is properly invoked. However, the negative effect operates within a narrow procedural frame. Specifically, the defendant must raise the arbitration defence at the earliest opportunity, before any engagement with the merits. Any participation in substantive proceedings, including submission of evidence or counterclaims, constitutes a waiver of the arbitration defence.

The timing requirements for invoking arbitration agreements were recently confirmed in Case No 494/2025, where the Court reiterated that 'the objection to jurisdiction based on an arbitration clause must be raised before addressing the merits, otherwise the right to invoke it is forfeited'.[497] This waiver principle operates as a counterbalance to Kuwait's otherwise protective approach to arbitration agreements, ensuring that parties who elect to engage with court proceedings on the merits cannot subsequently seek to escape an unfavourable outcome by belatedly invoking an arbitration clause they had previously chosen not to assert.

The interaction between Articles 173(5) and 180 shows Kuwait's distinctive allocation of jurisdictional authority. Courts must decline jurisdiction and refer parties to arbitration when a valid arbitration clause is invoked. However, if the validity of that clause is contested, the court determines the validity question rather than referring it to the tribunal. In this way, the negative effect protects arbitral jurisdiction only where

[496] Civil and Commercial Procedure Law (Kuwait) art 173(5).
[497] Court of Cassation (Kuwait), Commercial Circuit, Case No 494/2025 (12 March 2025); See also Case No 8/2025 (12 February 2025), extending the waiver principle to proceedings before the arbitral tribunal itself. The Court held that a party who participates in arbitral proceedings without objecting to the tribunal's jurisdiction waives the right to challenge the arbitration clause's validity, as 'silence constitutes an implied waiver of the right to invoke [the objection]'. The Court emphasised that arbitral jurisdiction, despite being characterised as functional competence, is not a matter of public policy due to arbitration's consensual nature.

no genuine dispute exists about the arbitration agreement itself. Where such a dispute exists, courts resolve it before arbitration may proceed.

In contrast, the English Arbitration Act 1996 expressly recognises competence-competence.[498] Section 30 provides that unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction, including whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and what matters have been submitted to arbitration in accordance with the arbitration agreement.[499] Section 30 grants tribunals the positive effect of competence-competence as a default rule. Parties may agree to exclude this power, but absent such agreement, tribunals possess the authority to determine their own jurisdiction.[500] The provision reflects Parliament's judgment that arbitral efficiency is best served by permitting tribunals to address jurisdictional challenges without automatic reference to courts. Moreover, Section 31 establishes procedural requirements for jurisdictional objections, providing that objections must be raised no later than the time the objecting party takes the first step in the proceedings to contest the merits.

Additionally, Section 32 permits parties to apply to the court to determine preliminary jurisdictional questions, but only with the agreement of all parties or the tribunal's permission, and only where the court is satisfied that the determination is likely to produce substantial cost savings and the application was made without delay.[501] Furthermore, section 67 provides for a challenge to awards on jurisdictional grounds, permitting a party to apply to the court to challenge an award on the basis that the tribunal lacked substantive jurisdiction.[502] This provision preserves judicial control over jurisdictional questions while permitting arbitral proceedings to continue. Thus, the tribunal rules on jurisdiction, subject to court review of that ruling if challenged.

The English framework inverts Kuwait's allocation, giving tribunals competence-competence, with courts mainly reviewing awards under Section 67 instead of

[498] Irina Tuca, 'Separability and Competence-Competence: A Comparative Perspective' (2020) 14 Rom Arb J 15
[499] Arbitration Act 1996 (UK) s 30(1).
[500] Arbitration Act 1996 (UK), s.30(1) (“Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction.”)
[501] ibid s 32(1)-(2).
[502] ibid s 67(1).

intervening pre-arbitration. This method enhances arbitral efficiency, restricts delays, and preserves the courts' final say on jurisdiction.

The English framework implements both the positive and negative effects of competence-competence through a carefully calibrated two-stage process. Section 9 of the Arbitration Act 1996 requires courts to stay proceedings brought in breach of an arbitration agreement unless the agreement is null and void, inoperative, or incapable of being performed. Critically, the court conducts only a prima facie review at this preliminary stage. It examines whether there is a dispute about the existence or validity of the arbitration agreement that requires determination, but it does not resolve that dispute itself. Instead, it defers to the tribunal to make the initial jurisdictional determination. Full merits review occurs only after the tribunal has ruled, through the mechanism provided by Section 67, which permits challenges to awards on the basis that the tribunal lacked substantive jurisdiction. At this post-award stage, the court conducts a complete rehearing, examining the jurisdictional question afresh without deference to the tribunal's decision.

This two-stage architecture balances party autonomy with judicial oversight in a manner that Kuwait's framework does not replicate. English law gives tribunals temporal priority in addressing jurisdictional challenges while preserving ultimate judicial control. The tribunal decides first; the court reviews later. Kuwait's legal framework contains no equivalent mechanism. As demonstrated by Case No 588/2011 and the mandatory suspension requirement under Article 180, Kuwaiti courts assert immediate jurisdiction over arbitrability questions without recognising any obligation to defer to arbitral tribunals. This difference has significant practical consequences. Under the English model, a party seeking to frustrate arbitration through jurisdictional challenges faces an uphill battle, as courts will typically stay proceedings and allow the tribunal to address the objection first. Under Kuwait's model, the same party can effectively halt arbitration by raising any jurisdictional objection, triggering mandatory suspension regardless of the objection's merit.

The UAE Federal Arbitration Law also implements competence-competence, closely following the UNCITRAL Model Law. Moreover, Article 19(1) provides that the arbitral tribunal may rule on its own jurisdiction, including any objections relating to the existence or validity of the arbitration agreement or the scope of the arbitral tribunal's

jurisdiction.[503] Additionally, Article 19(1) gives the arbitral tribunal the power to rule on any objections, including objections founded upon the non-existence of an arbitration agreement, its invalidity, or its inapplicability to the subject matter of the dispute. The tribunal may render such a determination either in a preliminary ruling or in the final award on the merits. Article 20 establishes procedural requirements, providing that jurisdictional objections must be raised no later than submission of the statement of defence.[504] A party is not precluded from raising such an objection by having appointed or participated in appointing an arbitrator. The tribunal may rule on jurisdictional objections either as a preliminary question or in the final award.

Article 8 pertains to court referrals to arbitration, stipulating that if a dispute subject to an arbitration agreement is brought before a court, the court must dismiss the action upon the respondent's timely objection (provided it occurs prior to any substantive submissions) unless the arbitration agreement is determined to be null and void, inoperative, or incapable of being performed.[505] The UAE framework represents deliberate alignment with international standards. The Federal Arbitration Law was enacted in 2018 to modernise UAE arbitration practice and enhance the country's attractiveness as an arbitral seat. Accordingly, the adoption of Model Law provisions on competence-competence reflects policy judgment that international commercial parties expect tribunals to possess authority to rule on their own jurisdiction.

3.5.2 Kuwaiti Courts' Approach to the Principle of Competence-Competence

The Court of Cassation has developed a consistent body of jurisprudence confirming that arbitral tribunals lack authority to rule on jurisdictional challenges. These decisions establish that competence-competence, in its positive form, is not recognised under Kuwaiti law, and that Article 180 imposes a mandatory suspension whenever jurisdictional objections are raised.

[503] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 19(1).
[504] ibid art 20(1)-(2).
[505] ibid art 8.

3.5.2.1 Foundational Rejection of Competence-Competence

In Case No 39/1987, the Cassation Court established the foundational principle.[506] The arbitral tribunal received an objection contesting the validity of the arbitration agreement. Instead of suspending the proceedings, the tribunal reviewed the objection and determined that a valid agreement was in place. Subsequently, the tribunal issued an award on the merits. The losing party challenged the decision, claiming the tribunal overstepped its jurisdiction by deciding the matter on its own. The Court of Cassation overturned the award, holding that arbitrators lack authority to determine whether an arbitration agreement exists or is valid. According to the Court, this issue is a preliminary matter that falls outside the scope of arbitral powers and must be addressed by the judiciary. Therefore, the tribunal's conclusion that a valid agreement existed was beyond its competence. By proceeding to the merits on the basis of its own jurisdictional ruling, the tribunal rendered an award without valid authority.

This case highlights the strong view that arbitral authority depends solely on a valid arbitration agreement. The tribunal cannot decide whether such an agreement exists, as that would assume jurisdiction over the matter. Only courts with independent judicial power can determine whether arbitral jurisdiction is valid. Furthermore, in Case No 568 of 1998, this principle was extended to challenges concerning representative authority.[507]

The respondent contested the arbitration agreement because the individual who executed it lacked the requisite authority to bind the company. The arbitral tribunal considered the issue of authority and determined that proper authorisation was present. Nevertheless, the Court of Cassation found that Article 180 mandates an immediate suspension upon such an objection being raised. Accordingly, the question of authority bears on the validity of the arbitration agreement and therefore exceeds the scope of the tribunal’s competence. As a result, the tribunal is not empowered to decide its own jurisdiction with respect to the authority of the signatory.

[506] Case No 39/1987 (15 February 1988).
[507] Court of Cassation (Kuwait), Commercial Circuit, Case No 568/1998 (13 June 1999).

3.5.2.2 Scope of Mandatory Suspension

Subsequent judicial decisions have expanded the range of objections that trigger mandatory suspension under Article 180, establishing that virtually any dispute involving jurisdictional issues must be adjudicated by the courts. For example, in Case No 511/2004, the Court held that questions regarding corporate authority to enter into arbitration agreements fall within the scope of Article 180.[508] The tribunal interpreted powers of attorney and corporate resolutions to determine that the representative had authority. However, the Court ruled that interpreting these documents confirms the authority essential to arbitral jurisdiction, which goes beyond what an arbitral tribunal is allowed to decide.

Additionally, in Case No 1123/2007 and companion decisions, the court addressed challenges to the scope of the arbitration clause.[509] The respondent argued that the claims fell outside the scope of the arbitration agreement. The tribunal examined the clause and concluded that its language encompassed the disputed claims. Nevertheless, the Court of Cassation held that scope challenges must be referred to the judiciary under Article 180. Although the disputed claims were connected to the contract containing the arbitration clause, the tribunal could not determine whether those claims fell within the clause's coverage. Moreover, in Case No 1134/2006, the court extended mandatory suspension to challenges concerning the tribunal's constitution.[510]

A party objected to the arbitrator appointment process, alleging non-compliance with applicable requirements. The tribunal found the objection to be unsubstantiated and proceeded with the arbitration proceedings. However, the Court determined that Article 180 necessitated a suspension of the process. Consequently, the tribunal lacked the authority to confirm its own composition, as such confirmation entails verifying the legal prerequisites for its existence.

[508] Court of Cassation (Kuwait), Commercial Circuit, Case No 511/2004 (13 February 2006).
[509] Court of Cassation (Kuwait), Commercial Circuit, Case No 1123/2007 (14 June 2009).
[510] Court of Cassation (Kuwait), Commercial Circuit, Case No 1134/2006 (17 June 2008).

3.5.2.3 Party Autonomy Cannot Displace Mandatory Rules

Case No 588/2011 represents the most significant limitation on the Doctrine of party autonomy regarding competence allocation.[511] The parties adopted institutional arbitration rules explicitly empowering the tribunal to address jurisdictional objections. These rules incorporated the competence-competence principle, consistent with international practice, permitting the tribunal to decide its own jurisdiction, subject to later judicial review. When the respondent raised a jurisdictional objection, it contended that, pursuant to Article 180, the tribunal was required to suspend proceedings, notwithstanding the institutional rules. The tribunal, applying the agreed rules, addressed the objection and continued the arbitration. Subsequently, the losing party sought to have the award annulled. The Court of Cassation set aside the award, holding that Article 180 is a mandatory provision of Kuwaiti procedural law, which cannot be modified by party agreement. Consequently, institutional rules conferring competence-competence are unenforceable where they contradict Article 180. Thus, party autonomy in selecting arbitration rules does not extend to overriding statutory safeguards concerning judicial oversight on jurisdictional matters. This decision underscores the tension between party autonomy and public policy, raising questions about whether safeguards like Article 180 are proportionate. For instance, consider a hypothetical scenario where sophisticated parties knowingly and explicitly agree to competence-competence despite the constraints of Article 180. Such a test could sharpen the critique of the non-derogable rule, illustrating the limitations imposed on parties' autonomy. By probing this boundary, one might assess if the safeguard effectively balances the state's interests and the parties' desire for arbitration efficiency.

The significance of Case No 588/2011 extends beyond its immediate holding. The decision confronted the conflict between the Doctrine of party autonomy and statutory control. The parties had exercised their autonomy to adopt rules granting the tribunal competence-competence, in accordance with standard international practice. However, the Court held that this exercise of autonomy exceeded permissible boundaries. Specifically, certain matters, including the allocation of jurisdictional authority between tribunals and courts, are not subject to party disposition. The

[511] Court of Cassation (Kuwait), Commercial Circuit, Case No 588/2011 (14 February 2012).

legislature has determined that courts must decide jurisdictional questions, and parties cannot agree otherwise.

In practical terms, Case No 588/2011 stands as a pivotal authority clarifying that, within the Kuwaiti legal system, the autonomy of parties in arbitration proceedings is subject to non-derogable statutory safeguards. While international arbitration frameworks, such as the UNCITRAL Model Law and various national statutes, typically empower arbitral tribunals to decide on their own jurisdiction (the competence-competence principle), Kuwaiti law requires a judicial determination of jurisdictional objections. This means that even where the parties have expressly agreed, in accordance with international standards, to grant the arbitral tribunal competence to rule on its own jurisdiction, such an agreement is rendered ineffective if it conflicts with mandatory provisions of Kuwaiti procedural law.

The Court's reasoning is rooted in the protection of judicial oversight. It emphasises that jurisdictional authority is a matter of public policy, not merely a private contractual arrangement. Therefore, the statutory allocation of power to the courts cannot be circumvented by the parties' agreement, regardless of the parties' sophistication or the international nature of the dispute. This approach is designed to ensure that questions regarding the existence, validity, and scope of the arbitration agreement are resolved by the judiciary, providing an additional layer of scrutiny and protection for the parties.

The impact of this decision is far-reaching. It signals to both domestic and international commercial parties considering Kuwait as an arbitral seat that the legislative framework prioritises judicial control over party autonomy in matters of jurisdiction. The Court's position may discourage parties who favour efficiency and minimal court intervention from selecting Kuwait for arbitration, especially given the risk that any jurisdictional objection—however unmeritorious—will trigger mandatory suspension and judicial review, potentially delaying proceedings and increasing costs. As such, Case No 588/2011 not only resolves a specific legal dispute but also shapes the broader landscape of arbitration in Kuwait, reinforcing the primacy of statutory safeguards over contractual freedom in allocating arbitral competence.

In summary, the case exemplifies the tension between internationally recognised arbitration principles and the domestic legal order. It underscores that, in Kuwait, the legislature's intent to maintain judicial authority over jurisdictional issues prevails over party autonomy, regardless of the parties' intentions or the adoption of internationally accepted procedural rules. This approach is distinctive and marks a significant

divergence from prevailing international arbitration practice, thereby shaping the expectations and strategies of parties engaging in arbitration within the Kuwaiti jurisdiction.

3.5.2.3.1 Waiver Through Participation

The Court of Cassation has developed a waiver doctrine that provides a limited qualification to the mandatory suspension rule. Notably, a party that participates in arbitral proceedings without raising jurisdictional objections may be held to have waived the right to challenge jurisdiction.

In Case No 947/2006, the Court held that a party who submitted substantive defences and participated in multiple hearings before raising jurisdictional objections had waived the right to invoke Article 180.[512] In this way, the waiver doctrine prevents parties from engaging strategically with arbitration, reserving jurisdictional challenges for deployment if the proceedings develop unfavourably. Similarly, in Case No 1511/2018, the Court confirmed that submission of counterclaims constitutes acceptance of arbitral jurisdiction.[513] Thus, a party that affirmatively invokes the tribunal's authority to grant relief cannot subsequently deny that the tribunal possesses jurisdiction.

The waiver doctrine operates within the gatekeeping framework by ensuring that jurisdictional objections are raised promptly. Parties must decide at the outset whether to challenge the arbitral tribunal's jurisdiction. They cannot participate in proceedings while preserving jurisdictional objections for later deployment. However, a waiver does not grant tribunals competence-competence. Rather, it estops parties from invoking the mandatory suspension rule after they have acted in a manner inconsistent with a jurisdictional challenge. In practical terms, this means that if a party chooses to engage substantively in the arbitral process (such as by submitting defences, presenting evidence, or filing counterclaims) without raising any jurisdictional concerns at the appropriate stage, that party is considered to have accepted the tribunal's authority to decide the dispute. The doctrine is designed to prevent parties from adopting opportunistic tactics, such as waiting to see how the proceedings unfold before lodging

[512] Court of Cassation (Kuwait), Commercial Circuit, Case No 947/2006 (31 January 2008).
[513] Court of Cassation (Kuwait), Commercial Circuit, Case No 1511/2018 (3 February 2019).

jurisdictional objections to delay or disrupt the process if the outcome appears unfavourable. For instance, in Case No 947/2006, the Court of Cassation held that a party forfeited the right to invoke Article 180 by participating in multiple hearings and submitting substantive arguments before raising a jurisdictional objection. Similarly, in Case No 1511/2018, the submission of counterclaims was deemed an implicit acceptance of the tribunal's jurisdiction. These precedents demonstrate that the waiver doctrine functions as a safeguard against abuse of procedural rights, ensuring that parties act consistently and in good faith throughout the arbitral process. Importantly, the doctrine does not alter the allocation of jurisdictional authority under Kuwaiti law. It does not empower the arbitral tribunal to make final determinations on its own jurisdiction, as would be the case under the competence-competence principle recognised in many international arbitration regimes. Instead, it simply bars parties from invoking the statutory right to suspend proceedings for judicial review if, by their conduct, they have accepted the tribunal's authority. The focus remains on procedural fairness and efficient dispute resolution, discouraging dilatory tactics and reinforcing the expectation that jurisdictional challenges must be timely and genuine.

Kuwait's refusal to adopt the competence-competence principle marks the most notable difference between its arbitration system and international standards discussed in this thesis. Globally, laws like the UNCITRAL Model Law, the English Arbitration Act, and the UAE Federal Arbitration Law, along with nearly all modern arbitration statutes, allow arbitral tribunals to determine their own jurisdiction, subject to later court review.[514] Unlike these systems, Kuwait requires suspending proceedings and obtaining a court decision before arbitration can proceed.[515] This distinction highlights different ideas about the balance between party autonomy and judicial control. International practice views competence-competence as empowering parties by allowing the chosen dispute mechanism to handle all issues, even those concerning its own authority. While Kuwait's approach may seem restrictive, supporters of the current framework argue that it serves to protect parties from hasty

[514] Gary B Born, 'International Arbitration Agreements and Competence-Competence' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 7 (updated November 2023, Kluwer Arbitration, accessed 21 January 2026).
[515] Amin Dawwas and Tareq Kameel, 'Applicability of the UNIDROIT Principles as the Law Governing the Merits of Arbitration in the Gulf Cooperation Council Countries' (2021) 35(4) *Arab Law Quarterly* 466.

jurisdictional decisions by ensuring judicial scrutiny at an early stage.[516] They contend that this cautious stance preserves the integrity of arbitral proceedings and prevents the inefficiency of having to renegotiate or annul arbitral decisions due to jurisdictional errors. These voices suggest that Kuwait's model prioritises thoroughness and reliability over speed, catering to parties valuing comprehensive judicial oversight. Recognising this perspective acknowledges that Kuwait's approach, while different, has its own merits and safeguards.

In contrast, Kuwait views competence-competence as exceeding acceptable limits of party autonomy, arguing that jurisdiction cannot stem from an agreement whose validity is being challenged.[517] The consequences are significant: internationally, a tribunal will typically quickly dismiss weak jurisdictional objections and move forward. In Kuwait, however, any objection (no matter how unfounded) halts the process and requires court involvement, which can be exploited to delay proceedings and increase costs for parties seeking efficient resolution.

The variation in approach also has implications for the selection of the arbitral seat. International commercial parties accustomed to the competence-competence doctrine may be hesitant to choose Kuwait as an arbitral seat, given that jurisdictional challenges there result in a mandatory suspension, regardless of their merits. Consequently, this factor may impact the evolution of arbitration practice in Kuwait and its position as a competitive venue for dispute resolution.

[516] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

[517] 'Arbitration in Kuwait' in Dongchuan Luo and Jalal El Ahdab (eds), Arbitration with the Arab Countries (Kluwer Law International 2011) 305–336.

3.6 Separability of the Arbitration Agreement

The separability doctrine addresses the relationship between the arbitration clause and the contract in which it is contained.[518] When a party challenges the validity of the underlying contract, asserting that it is void for illegality, lack of formality, or defect, the question arises whether that invalidity extends to the arbitration clause or whether the clause survives as an independent agreement capable of conferring jurisdiction on the tribunal. Accordingly, the answer determines whether tribunals may continue to exercise jurisdiction over disputes concerning invalid contracts or whether such invalidity deprives the tribunal of authority to proceed.

International arbitration practices recognise the separability doctrine as a foundational principle.[519] The doctrine provides that an arbitration clause contained in a contract shall be treated as an agreement independent of the other terms of that contract. Thus, a determination that the contract is null, and void does not, by itself, render the arbitration clause invalid.[520] The clause must be assessed separately, and only defects specifically affecting the arbitration agreement will render it invalid. For example, article 16(1) of the UNCITRAL Model Law clearly establishes the principle of separability, stating that an arbitration clause within a contract constitutes an independent agreement separate from the rest of the contract. It also clarifies that if an arbitral tribunal finds the contract null and void, the arbitration clause is not automatically invalidated.[521] This principle affirms that separability functions at both a conceptual level, treating the arbitration clause as independent of the main contract, and a practical level, enabling arbitral tribunals to assess the validity of the underlying agreement without compromising their own jurisdiction.

The rationale for separability rests on the parties presumed intention and the practical requirements of effective arbitration.[522] Parties who include arbitration clauses in their

[518] Irina Tuca, 'Separability and Competence-Competence: A Comparative Perspective' (2020) 14 Rom Arb J 15
[519] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 401–415.
[520] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Powers, Duties, and Jurisdiction of an Arbitral Tribunal' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 5.105.
[521] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) art 16(1).
[522] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Arbitration Agreements: Autonomy and Applicable Law' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 99–127.

contracts ordinarily intend that disputes about the contract, including disputes about its validity, be resolved through arbitration rather than litigation. Therefore, if the invalidity of the contract automatically invalidated the arbitration clause, parties could escape their agreement to arbitrate simply by alleging that the underlying contract was void. This would undermine the dispute-resolution mechanism the parties selected and would permit unilateral avoidance of arbitration commitments.[523] It should be noted that the separability doctrine operates in conjunction with competence-competence.[524] Together, these doctrines enable tribunals to address challenges to both the arbitration agreement and the underlying contract. Competence-competence permits the tribunal to rule on its own jurisdiction. Separability ensures that a finding of contractual invalidity does not automatically deprive the tribunal of jurisdiction to make that finding. Without separability, a tribunal's determination that the contract is void would retroactively negate the tribunal's authority to have made that determination, thereby creating a logical paradox and practical dysfunction.[525]

Moreover, the doctrine distinguishes between defects affecting the underlying contract and defects affecting the arbitration agreement specifically.[526] Fraud, illegality, or mistake in the formation of the commercial contract does not implicate the arbitration clause unless the defect specifically targets that clause. For example, a party that was fraudulently induced to enter into a sales contract is bound by the arbitration clause unless the fraud was directed at procuring agreement to arbitrate. In this way, this distinction ensures that disputes over contractual defects are resolved through the agreed mechanism rather than allowing allegations of invalidity to defeat it. However, the Separability doctrine cannot operate without limits.[527] Where the defect affects both the underlying contract and the arbitration clause, such as where neither was ever concluded or where both are void for illegality, the arbitration clause falls with the contract.[528] Thus, the doctrine preserves the arbitration agreement against defects

[523] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 99–105.
[524] Ibid.
[525] Jan Paulsson, *The Idea of Arbitration* (OUP 2013) 61-65.
[526] Born (n 1) 420–430.
[527] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Arbitration Agreements: Autonomy and Applicable Law' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 99–127.
[528] Ibid.

confined to the underlying commercial terms but does not insulate it from defects that specifically implicate the agreement to arbitrate.

3.6.1 Kuwait's Legal Structure Concerning the Principle of Separability

The Code of Civil and Commercial Procedure (CCPL) contains no provision addressing the separability of arbitration clauses.[529] Unlike the UNCITRAL Model Law, the English Arbitration Act 1996, the UAE Federal Arbitration Law, and numerous other modern arbitration statutes, the CCPL does not expressly provide that arbitration clauses shall be treated as independent agreements or that contractual invalidity does not automatically affect the arbitration clause.

It is essential to note that the Court of Cassation has interpreted this legislative silence as reflecting deliberate policy rather than inadvertent omission.[530] The absence of a separability provision indicates that the legislature did not intend to depart from general contract law principles treating the arbitration clause as part of the contract in which it is contained.[531] Accordingly, under these general principles, the invalidity of the contract extends to all its provisions, including the arbitration clause. The treatment of arbitration clauses as non-separable reflects Kuwait's broader conception of arbitration as a contractually derived matter. If arbitral authority flows exclusively from party agreement, and that agreement is embedded in a broader contract, then the fate of the clause depends on the contract's fate.[532] In other words, the clause cannot possess independent legal existence because it was not concluded as an independent agreement. It was concluded as part of the contract, and its validity depends on the validity of that contractual whole.

This approach contrasts with the international view that parties who include arbitration clauses intend to create a distinct agreement to arbitrate, even though that agreement

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[529] Jalal El Ahdab, 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), Arbitration with the Arab Countries (Kluwer Law International 2011) 320–322.
[530] Azmi Abdelfattah Atiyya, Kuwaiti Arbitration Law (2nd edn, Dar Al-Kutub Publishing 2012) 175–180.
[531] Sharaf Khaled Al-Sharaf, and Anas Faisal Al-Tourah, 'Validity of the Arbitration Clause in the International Employment Contract: The Viewpoint of the GCC Countries' (2023) 29 Comparative Law Review 175–208.
[532] Ahmed Barakat and Adnan Jaafar, 'Arbitration in Kuwait: Public Policy Limits, Capacity Pitfalls and the Need for Legislative Overhaul' in Romesh Weeramantry and John Choong (eds), Asian Dispute Review (2025) 173, as available on Kluwer Arbitration https://www-kluwerarbitration-com.uea.idm.oclc.org/document/kli-ka-adr-2025–03–007 accessed 22 November 2025.

is documented within a broader contract.[533] However, the Kuwaiti framework does not attribute this autonomous intent to the parties. Rather, it treats the arbitration clause as one term among many in a unitary contractual instrument.

It is important to note that arbitration laws in jurisdictions considered arbitration-friendly can help identify gaps in Kuwait's arbitration framework in this context. To begin with, the English Arbitration Act 1996 establishes the principle of separability. Section 7 states that, unless the parties agree otherwise, an arbitration agreement in a contract remains valid even if the main contract is found invalid, non-existent, or ineffective, treating the arbitration clause as distinct.[534] Parties may opt out of this default rule by agreement. Unless specifically excluded, the arbitration clause is considered a separate agreement, whose validity is assessed independently from the main contract. The English courts have used Section 7 to allow arbitral tribunals to declare underlying contracts void while retaining authority based on the independent arbitration agreement.[535] This demonstrates how the separability doctrine safeguards arbitral jurisdiction even when the contract's commercial terms are challenged.

Second, the UAE Federal Arbitration Law incorporates the doctrine of separability in a manner that closely aligns with the UNCITRAL Model Law. Pursuant to Article 6, an arbitration clause that constitutes part of a contract is regarded as an agreement distinct from the other provisions of that contract. Furthermore, a determination that the underlying contract is null, and void does not, by itself, render the arbitration clause invalid.[536]

Furthermore, Article 6 stipulates that, in accordance with the provisions of this Law, the validity of an arbitration clause shall not be affected by the expiration or termination of the contract in which it is contained.[537] This provision extends separability to contractual termination, addressing the scenario considered in Kuwaiti Case No 467/1996, which reached the opposite result. Accordingly, under UAE law, the arbitration clause survives termination of the underlying contract unless the parties expressly agree otherwise or the clause itself is specifically terminated. The UAE's adoption of separability reflects its alignment with international arbitration standards.

[533] Born (n 1) 405–408.
[534] Arbitration Act 1996 (UK) s 7.
[535] *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40, [2007] 4 All ER 951.
[536] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 6(1).
[537] ibid art 6(2).

In this way, the provision enables tribunals seated in the UAE to address validity challenges to underlying contracts while retaining jurisdiction, consistent with the expectations of international commercial parties.

3.6.2 Kuwaiti Judicial Application of the Principle of Separability

The Court of Cassation has addressed separability in several decisions, consistently holding that the invalidity or termination of the underlying contract entails the corresponding invalidity or termination of the arbitration clause contained therein.

3.6.2.1 Invalidity of the Underlying Contract

In Case No 274/1998, the Cassation Court established the key principles concerning the separability doctrine as interpreted by Kuwaiti courts.[538] The dispute arose from a contract for the sale of a commercial establishment that was declared void for failure to comply with the formal requirement of notarisation. The contract contained an arbitration clause, and the question arose whether that clause survived the contract's invalidity to permit arbitration of disputes arising from the failed transaction. The Court held that the invalidity of the contract rendered the arbitration clause invalid.[539] The Court's reasoning treated the arbitration clause as an accessory to the main contract rather than as an autonomous agreement. Accordingly, the clause was unable to remain effective once its underlying contractual basis had been terminated. Just as other provisions of the void contract could not be enforced, the arbitration clause could not confer jurisdiction on a tribunal to resolve disputes that, absent a valid agreement, fell within court jurisdiction. The decision reflects the application of general contract law principles to arbitration agreements. Under Kuwaiti civil law, a void contract produces no legal effects.[540] Accordingly, all provisions contained within the void contract are equally without effect. The arbitration clause, like other provisions, shares the fate of the contract. No special rule exempts arbitration clauses from this general principle.

3.6.2.2 Termination of the Underlying Contract

In Case No 467/1996, the Cassation court addressed the consequences of contractual termination rather than invalidity.[541] The parties had concluded a partnership

[538] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).
[539] Ibid.
[540] Civil Code (Kuwait) Decree-Law No 67 of 1980, arts 184–186.
[541] Court of Cassation (Kuwait), Commercial Circuit, Case No 467/1996 (22 June 1998).

agreement containing an arbitration clause. Subsequently, all partners agreed to dissolve the partnership. Disputes arose concerning the consequences of dissolution, and one party sought to invoke the arbitration clause. The Court held that the arbitration clause terminated together with the partnership agreement. When parties mutually agree to end their contractual relationship, that agreement extends to all provisions of the contract unless the parties expressly provide otherwise. In this way, the arbitration clause does not exist to serve the contractual relationship. When that relationship ended by mutual consent, the clause lost its purpose and effect. Therefore, the parties' agreement to dissolve the partnership implicitly included a termination of the arbitration mechanism that was part of that partnership arrangement.

3.6.2.3 Implications for Arbitral Jurisdiction

The rejection of separability has direct implications for arbitral jurisdiction in Kuwait. If a party challenges the validity of the underlying contract, the tribunal cannot proceed on the basis that the arbitration clause survives the contract's invalidity.[542] Consequently, the challenge to the contract is necessarily a challenge to the arbitration clause, and under Article 180, jurisdictional challenges require mandatory suspension and judicial determination.[543] It is essential to note that this interaction between the rejection of separability and the rejection of competence-competence compounds the effects of each doctrine. To illustrate this, imagine a hypothetical dispute where Party A alleges the contract is void due to a defect, such as fraud. Under international frameworks, a tribunal might invoke separability to continue with arbitration, isolating the arbitration agreement from the defect, and use competence-competence to rule on its own jurisdiction. However, in Kuwait, the tribunal must suspend proceedings and cannot assume jurisdiction to resolve even the threshold issue of its own jurisdiction. Here, both questions of the contract's validity and the arbitration clause's enforceability must be resolved by the courts before arbitration may proceed. This dual requirement can significantly delay the resolution process, as the legal proceedings to determine these foundational issues may extend over a considerable period.

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[542] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[543] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 180.

To sum up, Kuwait's rejection of separability represents a significant departure from international arbitration practice. The UNCITRAL Model Law, the English Arbitration Act 1996, the Act, the UAE Federal Arbitration Law, and virtually all modern arbitration statutes treat separability as a foundational principle.[544] However, Kuwait stands apart in applying general contract law principles that treat the arbitration clause as falling within the contract.[545] The difference has practical consequences. Under international frameworks, a party cannot escape arbitration by alleging that the underlying contract is void. The tribunal retains jurisdiction to determine the validity question, and even a finding of invalidity does not deprive it of authority. In contrast, under Kuwait's framework, an invalidity allegation necessarily implicates the arbitration clause. Consequently, the allegation triggers mandatory suspension under Article 180, and if courts determine that the contract is void, the arbitration clause is void as well.

The rejection of separability reinforces Kuwait's conception of arbitration as requiring continuously verified foundations. International frameworks presume that parties who agreed to arbitrate intended to create an autonomous dispute-resolution mechanism that survives defects in the underlying commercial arrangement. However, Kuwait does not attribute this autonomous intent to parties. Instead, the arbitration clause is treated as one term among many, rising and falling with the contract of which it forms part. Furthermore, the combination of rejecting both separability and competence-competence creates a framework in which challenges to underlying contracts effectively halt arbitration. A respondent who alleges contractual invalidity achieves mandatory suspension regardless of the merits of the allegation. Accordingly, Courts must determine both whether the contract is valid and, if not, whether the arbitration clause falls with it. Only if courts conclude that the contract is valid, or that the particular defect does not affect the arbitration clause, may arbitration proceed.

[544] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Arbitration Agreements: Autonomy and Applicable Law' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 99–127.
[545] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://legalblogs-wolterskluwer-com.uea.idm.oclc.org/arbitration-blog/arbitration-in-kuwait-time-for-reform/> accessed 22 November 2025.

3.7 Conclusion:

This chapter has examined the jurisdictional phase of arbitration under Kuwait's Code of Civil and Commercial Procedure (CCPL), analysing how the Doctrine of party autonomy operates within a framework of statutory requirements and judicial oversight. The analysis across five substantive dimensions confirms that Kuwait's approach to arbitral jurisdiction differs significantly from international practice in its allocation of authority between tribunals and courts, while maintaining substantial alignment with international standards on the formal and substantive requirements for valid arbitration agreements.

The examination of arbitration agreement formation under Article 173 revealed that Kuwait recognises both pre-dispute arbitration clauses and post-dispute submission agreements as valid expressions of the Doctrine of party autonomy.[546] Moreover, the written form requirement operates as an evidentiary safeguard rather than a constitutive formality, thereby ensuring that judicial jurisdiction is displaced only upon demonstrable consent.[547] Furthermore, the Court of Cassation's jurisprudence has evolved from formalistic approaches requiring explicit arbitration terminology toward a functional interpretation that recognises agreements that substantively confer binding adjudicative authority.[548] Notably, the Snapchat trilogy confirmed that electronic click-wrap acceptance satisfies Article 173, where platform design ensures reliable identification and record-keeping.[549] These developments align Kuwait with international practice on the core requirements for valid arbitration agreements.

The analysis of capacity and authority revealed heightened requirements reflecting the arbitration agreement's characterisation as a dispositive act.[550] Specifically, Article 173(3) requires full civil capacity, and Article 702 of the Civil Code requires explicit representative authority that cannot be implied from general commercial powers.[551] The Court of Cassation has developed functional interpretations for private

[546] Civil and Commercial Procedure Law (Kuwait) Law No 38 of 1980, art 173(1).
[547] ibid art 173(2).
[548] Court of Cassation (Kuwait), Commercial Circuit, Case No 1207/2010 (12 May 2011).
[549] Court of Cassation (Kuwait), Commercial Circuit, Case No 3249/2018 (14 July 2020).
[550] Civil and Commercial Procedure Law (Kuwait) art 173(3).
[551] Civil Code (Kuwait) Decree-Law No 67 of 1980, art 702(1).

commercial entities while maintaining strict formal requirements for state entities.[552] Additionally, ratification through participation cures initial defects in both capacity and authority when the party participates in arbitration without a timely objection.[553] Kuwait's approach is more restrictive than England's, which permits implied authority from general powers, but aligns with the UAE in treating arbitration as requiring dispositive capacity and, for public entities, governmental approval.[554]

The arbitrability analysis confirmed that the Doctrine of party autonomy operates within substantive boundaries defined by the composability principle.[555] Articles 173 and 554 together establish that arbitration is permitted only where the disputed right is capable of compromise.[556] Moreover, the Court of Cassation has identified clear categories of non-arbitrable matters, including statutory labour rights, personal status, capacity determinations, criminal liability, bankruptcy, intellectual property validity, and core administrative functions.[557] It should be noted that principles of Sharia operate as a supplementary source filling legislative gaps rather than as an independent ground for non-arbitrability.[558] Kuwait's composability-based methodology finds parallels in other civil law systems. It produces substantially similar outcomes to international practice on the core categories of non-arbitrable matters, with the notable exception of labour disputes, where Kuwait maintains categorical non-arbitrability.[559]

The competence-competence analysis revealed the most significant divergence between Kuwait's framework and international practice.[560] The CCPL does not recognise the positive effect of competence-competence. Instead, Article 180 imposes mandatory suspension upon any jurisdictional objection, requiring courts to determine all questions affecting the existence, validity, scope, or proper constitution of arbitral jurisdiction.[561] Furthermore, Case No 588/2011 established that the Doctrine of party

[552] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 368/1999 (19 December 1999); Appeal No 431/1999 (5 March 2000); Appeal No 40/1998 (8 November 1998), reflecting a settled principle in the Court of Cassation's jurisprudence.
[553] Court of Cassation (Kuwait), Commercial Circuit, Case No 1294/2015 (10 February 2016).
[554] UAE Federal Arbitration Law (Federal Law No 6 of 2018) arts 4(2)-(3).
[555] Civil and Commercial Procedure Law (Kuwait) art 173.
[556] Civil Code (Kuwait) art 554.
[557] Court of Cassation (Kuwait), Labour Circuit, Case No 68/1986 (16 March 1987); Court of Cassation (Kuwait), Labour Circuit, Case No 295/2005 (18 June 2007).
[558] Court of Cassation (Kuwait), Commercial Circuit, Case No 608/2018 (11 July 2018).
[559] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 995–1000.
[560] Civil and Commercial Procedure Law (Kuwait) art 180.
[561] Court of Cassation (Kuwait), Commercial Circuit, Case No 39/1987 (22 February 1988).

autonomy cannot displace this mandatory allocation, holding that contractual adoption of institutional rules granting tribunals competence-competence is unenforceable.[562] This approach contrasts sharply with the UNCITRAL Model Law, the English Arbitration Act 1996, and the UAE Federal Arbitration Law, all of which empower tribunals to rule on their own jurisdiction subject to judicial review.[563]

The separability analysis confirmed that Kuwait does not recognise the principle that arbitration clauses are legally autonomous from underlying contracts.[564] Specifically, Cases Nos. 274 of 1998 and 467 of 1996 establish that invalidity or termination of the contract entails corresponding invalidity or termination of the arbitration clause.[565] Thus, the clause is treated as accessory to the contract rather than as an independent agreement capable of surviving contractual demise.[566] This rejection of separability, combined with the rejection of competence-competence, ensures that challenges to underlying contracts effectively halt arbitration pending judicial determination of both contractual and arbitration-clause validity.[567]

The concept of gatekeeping conditionality captures the distinctive architecture of Kuwait's jurisdictional phase. Much like a country's border control procedures, the Doctrine of party autonomy to submit disputes to arbitration functions as the passport required for entry into the realm of arbitration. However, entering this realm is contingent upon satisfying cumulative prerequisites akin to immigration checks, which the courts meticulously verify before allowing arbitration to proceed. In this way, each requirement examined in this chapter serves as a checkpoint, ensuring that arbitral authority displaces judicial jurisdiction only upon demonstrated compliance with statutory standards. The metaphor of 'passport checkpoints' serves to reinforce the idea that while freedom to arbitrate is granted, it is conditional, subject to meeting the legal standards that function as entry requirements into this jurisdictional domain.

[562] Court of Cassation (Kuwait), Commercial Circuit, Case No 588/2011 (14 February 2012).
[563] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) art 16(1); Arbitration Act 1996 (UK) s 30(1); UAE Federal Arbitration Law (n 9) art 19(1).
[564] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).
[565] Court of Cassation (Kuwait), Commercial Circuit, Case No 467/1996 (22 June 1998).
[566] Jalal El Ahdab, 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab J and others (eds), Arbitration with the Arab Countries (Kluwer Law International 2011) 320–322.
[567] Civil and Commercial Procedure Law (Kuwait) art 180.

Specifically, the formation requirements ensure that parties have expressed their consent to arbitration in writing, capable of judicial authentication.[568] Moreover, the capacity and authority requirements ensure that only legally competent actors bind themselves or their principals to waive judicial recourse.[569] Furthermore, the arbitrability limitations ensure that only disputes capable of private compromise are removed from judicial jurisdiction.[570] Additionally, the allocation of competence ensures that courts determine all questions affecting jurisdictional foundations whenever such questions are contested.[571] Finally, treating arbitration clauses as non-separable ensures that challenges to underlying contracts implicate the arbitration clause and require judicial resolution.[572]

This framework differs from international practice not in denying the Doctrine of party autonomy but in the timing and intensity of judicial oversight. International frameworks such as the UNCITRAL Model Law presume the existence of valid arbitration agreements and permit tribunals to proceed, subject to subsequent judicial review.[573] In contrast, Kuwait presumes that judicial jurisdiction exists and permits arbitration to proceed only after courts have verified that valid arbitration agreements satisfying all statutory prerequisites have displaced that jurisdiction.[574] It is essential to note that the difference is structural rather than substantive. Both frameworks ultimately subject arbitral jurisdiction to judicial control but differ in whether that control operates primarily at the threshold or award-challenge stage.

The jurisdictional phase analysis establishes that the Doctrine of party autonomy in Kuwait operates within boundaries defined by statutory requirements and is subject to judicial oversight. Parties possess autonomy to agree to arbitration, but that agreement is effective only where it satisfies formal requirements ensuring verifiable consent, substantive requirements ensuring legal competence, and subject-matter limitations ensuring that only appropriate disputes are removed from judicial jurisdiction. However, parties do not possess the autonomy to allocate jurisdictional

[568] ibid art 173(2).
[569] ibid art 173(3); Civil Code (Kuwait) art 702(1).
[570] Civil Code (Kuwait) art 554.
[571] Civil and Commercial Procedure Law (Kuwait) art 180.
[572] Case No 274/1998 (5 December 1998).
[573] UNCITRAL Model Law (n 18) arts 8, 16.
[574] Civil and Commercial Procedure Law (Kuwait) arts 173(5), 180.

authority to tribunals or to create arbitration clauses that survive contractual invalidity. These matters are determined by law rather than by agreement between the parties.

The State-Centric Hybrid Model proposed in Chapter Two provides the theoretical lens through which this architecture may be understood.[575] Kuwait formally acknowledges the contractual basis of arbitration, recognising that arbitral authority derives from party agreement rather than from state delegation. Simultaneously, Kuwait embeds judicial control throughout the process, ensuring that the state verifies and validates the foundations upon which arbitral authority rests. In this way, the result is a hybrid framework in which contractual autonomy and state oversight coexist, with the balance calibrated toward greater judicial involvement than international frameworks typically provide.

The pattern of conditional autonomy extends beyond formation requirements to encompass the entire jurisdictional phase. Parties who successfully form valid arbitration agreements that satisfy all prerequisites have exercised their autonomy to displace judicial jurisdiction in favour of arbitration. However, that displacement is not self-executing. It depends on judicial recognition, which courts provide only after verifying that the prerequisites have been satisfied. If any prerequisite is contested, the court resolves the issue before arbitration proceeds. Accordingly, arbitral jurisdiction exists only where the state has confirmed that parties have legitimately exercised their conditional autonomy to create it.

The comparative analysis throughout this chapter positions Kuwait within a spectrum of approaches to the jurisdictional phase. First, on formation requirements, writing, and substantive validity, Kuwait aligns substantially with international standards. The recognition of both arbitration clauses and submission agreements, the treatment of writing as evidentiary, the acceptance of electronic consent, and the application of generally applicable contract defences all reflect mainstream international practice.[576]

Second, on capacity and authority, Kuwait occupies a more restrictive position than common law systems but aligns with other Gulf jurisdictions in treating arbitration as a dispositive act requiring heightened competence and explicit authorisation.[577] The

[575] See Chapter Two of this thesis.
[576] Born (n 14) 701–715.
[577] UAE Federal Arbitration Law (n 9) art 4.

UAE Federal Arbitration Law adopts similar requirements, reflecting shared civil law methodology and Islamic jurisprudential influences.[578]

Third, on arbitrability, Kuwait's composability-based approach produces outcomes substantially similar to international practice on core non-arbitrable categories, with the significant exception of labour disputes.[579] The categorical exclusion of statutory employment rights from arbitration reflects a policy judgment that judicial oversight of labour matters serves social objectives regardless of the quality of arbitral procedures.[580]

Fourth, on competence-competence and separability, Kuwait diverges most significantly from international practice.[581] The UNCITRAL Model Law, the English Arbitration Act 1996, and the UAE Federal Arbitration Law all recognise that tribunals may rule on their own jurisdiction and that arbitration clauses survive contractual invalidity.[582] However, Kuwait rejects both doctrines, requiring judicial determination of jurisdictional questions and treating arbitration clauses as invalid.[583] This divergence reflects different conceptions of the relationship between the Doctrine of party autonomy and state authority over the allocation of adjudicative power.

The jurisdictional framework examined in this chapter carries significant practical implications for commercial parties structuring transactions involving Kuwait or selecting Kuwait as an arbitral seat.

First, parties should attend carefully to the formal requirements for arbitration agreements, ensuring that written records clearly evidence consent to arbitration and specify the scope of covered disputes.[39] Ambiguous language suggesting a general preference for non-judicial resolution may be insufficient to displace court jurisdiction. The functional interpretation adopted in Case No 1207/2010 provides flexibility, but parties seeking certainty should employ explicit arbitration terminology.[584]

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[578] Ibid.
[579] Born (n 14) 943–1000.
[580] Case No 68/1986 (16 March 1987); Case No 295/2005 (18 June 2007).
[581] Case No 588/2011 (14 February 2012); Case No 274/1998 (5 December 1998).
[582] UNCITRAL Model Law (n 18) art 16(1); Arbitration Act 1996 (UK) ss 7, 30; UAE Federal Arbitration Law (n 9) arts 6, 19.
[583] Case No 39/1987 (15 February 1988); Case No 274/1998 (5 December 1998).
[584] Case No 1207/2010 (12 May 2011).

Second, representatives concluding arbitration agreements on behalf of Kuwaiti entities should ensure that their authority is documented explicitly or falls within the functional categories recognised by the Court of Cassation.[585] Moreover, parties contracting with Kuwaiti state entities should verify that appropriate ministerial approvals have been obtained before relying on arbitration clauses.[586] Authority defects cannot be cured by contractual language purporting to warrant authority but only by actual authorisation or subsequent ratification through participation.[587]

Third, parties should assess whether their disputes fall within arbitrable subject matter before commencing arbitration.[588] Disputes implicating statutory protections, public registers, collective proceedings, or sovereign authority require careful analysis under the composability framework. Notably, labour disputes involving statutory entitlements are non-arbitrable regardless of party agreement.[589]

Fourth, parties should anticipate that jurisdictional objections will produce mandatory suspension and judicial proceedings.[590] Unlike international frameworks, in which tribunals may address jurisdictional challenges expeditiously, Kuwait's framework requires a court determination before arbitration may proceed. Accordingly, careful attention to all jurisdictional prerequisites may reduce the likelihood of successful challenges but cannot eliminate the risk that objections will be raised and must be judicially resolved.[591]

Fifth, parties seeking to avoid mandatory suspension upon a jurisdictional challenge may prefer arbitral seats that recognise competence-competence.[592] The English Arbitration Act 1996 and the UAE Federal Arbitration Law both empower tribunals to rule on their own jurisdiction, permitting arbitration to proceed while jurisdictional questions are resolved, subject to subsequent judicial review.[593] It should be noted

[585] Court of Cassation (Kuwait), Commercial Circuit, Case No 159/2010 (10 May 2010).
[586] Case No 268/1999.
[587] Case No 1294/2015 (10 February 2016).
[588] Civil Code (Kuwait) art 554.
[589] Case No 68/1986 (16 March 1987).
[590] Civil and Commercial Procedure Law (Kuwait) art 180.
[591] Case No 588/2011 (14 February 2012).
[592] Born (n 14) 1141–1150.
[593] Arbitration Act 1996 (UK) s 30; UAE Federal Arbitration Law (n 9) art 19.

that selecting Kuwait as an arbitral seat imposes the mandatory suspension requirement regardless of the institutional rules adopted by the parties.[594]

The jurisdictional phase analysis establishes the pattern of conditional autonomy that characterises Kuwait's arbitration framework. The Doctrine of Party Autonomy exists within boundaries defined by statute and supervised by courts at the threshold stage. Accordingly, the question for Chapter Four is whether this pattern extends into the procedural phase, or whether parties who successfully navigate jurisdictional gatekeeping enjoy greater autonomy in conducting arbitral proceedings.

Chapter Four examines procedural autonomy under Articles 174-182 of the CCPL, analysing the tribunal's constitution, procedural rules, time limits, interim measures, and the relationship between arbitral and judicial authority during proceedings.[595] The analysis tests whether Kuwait's hybrid model permits meaningful procedural freedom within its jurisdictional boundaries or whether conditional autonomy constrains party freedom throughout the arbitral lifecycle. The procedural phase will reveal whether these limits tighten or loosen, setting the stage for an incisive examination of Kuwait's unique arbitration framework.

The findings from Chapter Three suggest that the permission-based model extends beyond formation to condition the exercise of arbitral authority at each stage of the process. Therefore, Chapter Four determines whether this hypothesis is confirmed by the procedural architecture and judicial interpretation governing the conduct of arbitration in Kuwait.

[594] Case No 588/2011 (14 February 2012).
[595] Civil and Commercial Procedure Law (Kuwait) arts 174–182.

Chapter 4: The Procedural Phase: Conditional Autonomy and Judicial Supervision

4.1 Introduction

The procedural phase of arbitration under Kuwait's State-Centric Hybrid Model presents a compelling framework for analysis. This chapter seeks to answer the following research question: How does Kuwait's procedural framework, characterized by conditional autonomy, operate within structured boundaries, and how does it distinguish itself from both international standards and regional comparators? Chapter Three examined gatekeeping conditionality at the jurisdictional phase and demonstrated that arbitral jurisdiction arises only upon satisfaction of cumulative statutory prerequisites. Building on this foundation, the concept of conditional logic identified during the jurisdictional phase is extended into the conduct of arbitral proceedings. This produces a framework wherein procedural autonomy operates within boundaries distinct to Kuwait, setting it apart from international standards and regional practices.

This chapter proposes the concept of conditional authority. This concept captures the mechanism through which Kuwait's State-Centric Hybrid Model operates at the procedural phase. Pro-arbitration frameworks typically treat procedural authority as flowing primarily from party consent. The English Arbitration Act exemplifies this approach through its broad grant of tribunal procedural competence and robust recognition of competence-competence under Section 30.[596] Kuwait's framework reflects a different conception. Procedural authority operates within mandatory statutory requirements that parties cannot contractually exclude. That authority derives from legislative authorisation rather than inherent arbitral power. Judicial cooperation remains available throughout the procedural phase and, in some cases, is mandatory for matters the legislature determined require state involvement.

Kuwait's approach shares features with other civil law systems, where constitutional considerations shape arbitration's relationship with judicial authority. Tribunals

[596] Azmi Abdelfattah Atiyya, Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law (2nd edn, Dar Al-Kutub Publishing 2012).

exercise procedural competence through statutory authorisation rather than inherent authority, operating within legislatively defined boundaries with judicial support available when procedural issues require external intervention. The Kuwaiti experience demonstrates how formal recognition of party autonomy and comprehensive statutory regulation can coexist. This produces a form of arbitration better understood as a variation within established theoretical frameworks than as an anomaly requiring special explanation. The Court of Cassation has defined Kuwait's procedural framework through decisions clarifying the limits and extent of procedural autonomy, which will be discussed in this chapter.

The analysis pursues three objectives. The first objective is to identify specific statutory constraints on procedural freedom under Kuwaiti law and examine how mandatory provisions reshape arbitration's operational character regardless of party preferences. This is crucial because overlooking these constraints can lead to significant complications for practitioners. For instance, Kuwaiti counsel may inadvertently face a scenario where a tribunal is forced to suspend proceedings due to an oversight related to mandatory suspension requirements for preliminary questions, causing potential delays and increased costs. Alternatively, a failure to anticipate the explicit requirement of conferral for interim measures could leave a tribunal without the necessary authority to issue urgent orders, thereby exposing parties to unwanted risks. The second objective is to position Kuwait's approach within broader theoretical debates about arbitration's nature and the appropriate scope of judicial involvement, using international standards as benchmarks. The third objective is to examine how formal recognition of party autonomy manifests in procedural practice for arbitrations seated in Kuwait. Particular emphasis is placed on the distinctive features of Kuwait's framework that set it apart from both prevailing international standards and the UAE's contemporary arbitration law. These distinctive features include the mandatory suspension requirement for preliminary questions and the explicit requirement of conferral for interim measures. They also include the denial of tribunal authority to extend time limits.

The chapter proceeds through four sections examining critical dimensions of procedural autonomy. Each section analyses Kuwait's statutory framework and judicial

interpretation, with reference to international standards and the UAE framework, where these illuminate Kuwait's particular characteristics.

Section 4.2 analyses the constitution of the tribunal under Kuwaiti law. The analysis addresses arbitrator eligibility requirements under Article 174(1) and the mandatory odd-number rule for tribunal composition. It also examines appointment procedures under Article 175, their implications for judicial involvement, and challenge mechanisms under Article 178. This analysis examines how Kuwait enforces stricter eligibility rules and allows less time to challenge decisions. This contrasts with England's more flexible policies and the UAE's regulatory framework, which strikes a balance between the two.

Section 4.3 examines temporal constraints under Article 181, analysing Kuwait's treatment of time limits as jurisdictional boundaries rather than procedural guidelines. The default six-month period for rendering awards operates as a mandatory requirement, with the Court of Cassation confirming in Cases Nos 258/2005 and 263/2005 that exceeding deadlines renders awards annullable regardless of substantive merit. This analysis reveals Kuwait's distinctive denial of tribunal authority to extend time limits autonomously, contrasting with England's[597] absence of mandatory deadlines and the UAE's[598] grant of autonomous six-month extension power under Article 42.

Section 4.4 addresses procedural rules and arbitral authority under Article 182. The analysis integrates scholars' treatment of procedural autonomy as the foundational principle of international arbitration, examining how Kuwait's framework allocates procedural authority between tribunals and courts. The mandatory suspension requirement under Article 180(2) receives particular attention. A comparison between England's robust competence-competence principle under Section 30 and the UAE's equivalent provision under Article 19 is revealing. This comparison shows that

[597] Hong-Lin Yu, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209–226.
[598] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.

Kuwait's mandatory suspension represents a departure from both international standards and modern Gulf practice.[599]

Section 4.5 analyses interim measures under Article 173, examining Kuwait's express opt-in requirement against the opt-out approach adopted by England under Section 38 and the UAE under Article 21. Born's comprehensive treatment of provisional measures provides the international framework.[600] Comparison with the UAE's detailed enumeration of permissible measures and streamlined enforcement mechanisms is instructive. It highlights gaps in Kuwait's statutory guidance.

The conclusion assesses the overall implications for party autonomy under Kuwait's State-Centric Hybrid Model. Kuwait's framework formally recognises party autonomy while systematically embedding judicial supervision throughout the procedural phase. This supervision operates not as an exceptional intervention but as an integral component of how arbitration functions within Kuwait's legal order. The conclusion leads to the examination of the award phase in Chapter Five, where the cumulative effect of jurisdictional gatekeeping and procedural conditionality becomes fully visible.

4.2 Constitution of the Arbitral Tribunal

It is often noted that arbitration's effectiveness largely depends on the quality of the arbitral tribunal. In international arbitration, selecting arbitrators is often the most crucial task parties face.[601] This process is significant in Kuwait, where the framework for tribunal constitution exemplifies the State-Centric Hybrid Model's balance between party autonomy and statutory oversight.

[599] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 6.
[600] Born (n 1) 1703; Emmanuel Gaillard and John Savage (eds), Fouchard Gaillard Goldman on International Commercial Arbitration (Kluwer 1999) para 639.
[601] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).

The freedom to select one's adjudicators is a defining characteristic that distinguishes arbitration from litigation.[602] State-appointed judges do not bind the parties but may select decision-makers whose expertise, experience, and approach match the specific demands of the dispute.[603] International conventions, national legislation, and institutional rules generally accord parties broad autonomy in this regard. They are subject to limited restrictions designed primarily to ensure tribunal impartiality and independence.[604]

Kuwait's framework engages with this international practice while reflecting its own priorities.[605] The Civil and Commercial Procedure Law allows parties to choose their arbitrators but sets strict requirements for eligibility, composition, appointments, and challenges. These rules are more rigorous than those found in Model Law jurisdictions and international practice. Party autonomy is maintained, but it operates within statutory limits established to ensure legitimate adjudication.[606]

This section analyses four aspects of tribunal constitution under Kuwaiti law, with reference to international standards where these illuminate Kuwait's particular characteristics. The analysis addresses arbitrator eligibility requirements under Article 174(1) and the mandatory odd-number rule for tribunal composition. It also covers appointment procedures under Article 175, their implications for judicial involvement, and challenge mechanisms under Article 178. Throughout, the analysis explains how Kuwait's framework applies the State-Centric Hybrid Model during the critical stage when arbitral authority becomes institutionalised.

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[602] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.

[603] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1702, observing that this proposition, while "by now a cliché... still happens to be true."

[604] Ibid.

[605] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

[606] 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.

4.2.1 Arbitrator Eligibility: Party Autonomy and Statutory Qualifications

Party autonomy in selecting arbitrators is a principle in the constitution of international arbitral tribunals.[607] This principle allows parties to appoint arbitrators directly at any stage of their relationship. Alternatively, they may delegate such authority to designated appointing bodies responsible for overseeing the selection process.[608] This autonomy distinguishes arbitration from litigation, where parties must accept state-appointed judges whose selection lies beyond their control. The principle has exceptions, with four types of limitations identified by scholars across jurisdictions.[609] These include prohibitions against excessively one-sided selection mechanisms and requirements of impartiality and independence. They also include minimum capacity requirements and, more controversially, requirements regarding nationality or religion.[610] These limitations remain exceptional and narrowly circumscribed, with developed jurisdictions overwhelmingly deferring to party agreements regarding tribunal selection.[611] (Jurisdictional theory, which examines how arbitral tribunals derive their authority from specific legal frameworks and agreements, provides a theoretical foundation for understanding these constraints.)

How broadly or narrowly these limitations are defined depends upon assumptions about arbitration's nature. Arbitration may be conceived as a private contractual service where parties select their preferred decision-makers with minimal state interference. Alternatively, it may be understood as a form of delegated judicial power requiring qualifications comparable to those demanded of state judges.[612] Different

[607] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 6.07.
[608] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.
[609] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[610] Ibid.
[611] Barton Legum and Clara Motin, 'The Essential Qualities for an Arbitrator' (2023) ICSID Review – Foreign Investment Law Journal 441–452.
[612] Mashael Abdulaziz Alhajeri, 'A Critical Approach to the Kuwaiti Law of Judicial Arbitration no. 11 of 1995: With Reference to the Uncitral Model Law on International Commercial Arbitration' (2000) 15 Arab Law Quarterly 48

legal systems answer this question differently, producing varying balances between party autonomy and regulatory oversight.

The UNCITRAL Model Law represents the permissive approach characteristic of contemporary international arbitration practice.[613] Article 11(1) provides simply that no person shall be precluded by reason of nationality from acting as an arbitrator, unless otherwise agreed by the parties.[614] This formulation affirms broad eligibility while preserving party freedom to impose additional restrictions based on their specific needs.

The only mandatory requirements under the Model Law concern independence and impartiality. Article 12(1) requires that arbitrators disclose any circumstances likely to give rise to justifiable doubts as to impartiality or independence. Article 12(2) permits challenges only where circumstances exist that give rise to justifiable doubts regarding these qualities.[615] The standard focuses on the arbitrator's relationship to the parties and the dispute rather than on abstract personal qualifications. An arbitrator's expertise, published opinions, or professional background alone do not furnish sufficient grounds for challenge.

International practice recognises that arbitration derives legitimacy from party consent rather than state authorisation. Arbitrators exercise private contractual functions flowing from party agreement, and detailed statutory qualifications are unnecessary and potentially counterproductive.[616] Parties remain free to prioritise relevant expertise over formal credentials. They may select an engineer for a construction dispute, an industry specialist for a trade matter, or an academic for a complex legal question.

Leading arbitral institutions require only independence, impartiality, and availability.[617] The IBA Guidelines on Conflicts of Interest confirm that academic publications

[613] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1702, citing the UNCITRAL Analytical Commentary.
[614] UNCITRAL Model Law Art 11(1).
[615] ibid Arts 12(1), 12(2).
[616] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.
[617] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 6.07.

expressing legal opinions do not provide additional grounds for challenging an arbitrator. This acknowledges that parties frequently select arbitrators precisely because of their published expertise on relevant legal questions.[618] Parties may thereby constitute tribunals whose composition reflects the specific demands of their dispute.

4.2.1.1 Framework for Determining Who Is Eligible to Serve as an Arbitrator

Kuwait's approach to arbitrator eligibility reflects a different balance between party autonomy and regulatory oversight.[619] The Civil and Commercial Procedure Law recognises the parties' role in selecting arbitrators yet imposes qualifications that extend beyond the minimal restriction's characteristic of Model Law jurisdictions and international or regional practices.

Article 174(1) establishes that no person may serve as an arbitrator if that person is a minor or is under guardianship. The same applies to those deprived of civil rights through criminal conviction or declared bankrupt without rehabilitation.[620] These exclusions operate categorically, barring appointment regardless of individual expertise or party confidence in suitability. The legislature determined that certain categories of persons are inherently unsuitable for arbitral service as a matter of public policy.

The rationale underlying these exclusions suggests that Kuwait's conception of arbitrators as exercising quasi-judicial functions warrants comparable safeguards.[621] Criminal convictions resulting in civil rights deprivation and unrehabilitated bankruptcy create permanent bars to service. These bars extend beyond technical competence to encompass moral fitness and public confidence.[622] The legislature determined that

[618] IBA Guidelines on Conflicts of Interest in International Arbitration (2014) General Standard 1 and Explanation to General Standard 6.
[619] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://legalblogs-wolterskluwer-com.uea.idm.oclc.org/arbitration-blog/arbitration-in-kuwait-time-for-reform/> accessed 22 November 2025.
[620] Civil and Commercial Procedure Law (Kuwait) Art 174(1).
[621] Azmi Abd al-Fattah, 'Procedures for Challenging Arbitrators in the Kuwaiti Code of Civil Procedure' (1984) 8(4) Kuwait University Law Journal 227.
[622] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

certain personal circumstances affect suitability for adjudicative functions, prioritising public confidence over individual rehabilitation or party preferences.[623]

This approach contrasts with the English Arbitration Act 1996, which reflects the permissive approach characteristic of leading arbitration jurisdictions.[624] The English Act contains no express statutory qualifications for arbitrators, leaving such matters entirely to party determination.[625] Section 15 provides simply that the parties are free to agree on the number of arbitrators to form the tribunal,[626] while Section 16 confirms that the parties are free to agree on the procedure for appointing the arbitrator or arbitrators.[627] English law addresses quality concerns through removal mechanisms rather than ex ante eligibility restrictions with Section 24 allowing courts to remove arbitrators on limited grounds, ensuring trust in party judgment while preserving judicial oversight for demonstrated failures during proceedings.

The UAE Federal Arbitration Law of 2018 occupies an intermediate position between Kuwait's approach and England's permissive framework.[628] Article 10 uses the same qualifications as the Kuwaiti CCPL article 174(1). However, it excludes only those bankrupt individuals who have lost civil rights due to their bankruptcy.[629] This formulation requires both bankruptcy and loss of civil rights rather than bankruptcy alone. The approach recognises that bankruptcy per se may not indicate unfitness for arbitral service, and disqualification arises only where bankruptcy has resulted in

[623] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[624] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.
[625] Ibid.
[626] Arbitration Act 1996, s 15:
(1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.
(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.
(3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.
[627] Arbitration Act 1996, s 15
[628] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 9 [Composition of the Arbitral Tribunal]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 83–84.
[629] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 10(1)(a).

formal legal incapacity.[630] Kuwait's framework is more restrictive, treating unrehabilitated bankruptcy as an automatic disqualification regardless of whether civil rights have been formally affected.[631]

The practical implications of Kuwait's requirements become apparent when parties seek specialised expertise. Consider a dispute arising from an artificial intelligence development contract in which the parties wish to appoint a former technology executive with unparalleled industry knowledge. If that individual had declared bankruptcy following an unrelated business failure, Kuwaiti law would bar the appointment regardless of the individual's technical qualifications. Article 174(1) prioritises financial probity over party judgment that specialised knowledge outweighs formal disqualification. Neither English law nor UAE law would impose such a bar in these circumstances.

This strict approach can have considerable consequences for parties operating in highly technical or innovative sectors, where relevant expertise is rare and often concentrated among individuals with complex business backgrounds. In fields such as artificial intelligence, biotechnology, or financial technology, the most qualified experts may have encountered commercial risks that led to bankruptcy, especially given the volatility of start-ups and emerging markets. Kuwait’s categorical exclusion of unrehabilitated bankrupts means that parties are deprived of the opportunity to benefit from such expertise, even if both sides are fully aware of the candidate’s background and remain confident in their impartiality and competence.

The Kuwaiti position, therefore, reflects a regulatory philosophy that places a premium on public confidence and the perceived integrity of the arbitral process, drawing a parallel between arbitrators and state judges. While this may bolster the legitimacy of arbitration in the eyes of the public and state authorities, it may also limit parties' ability to tailor the tribunal to the needs of highly specialised or technical disputes. In practice, this could deter parties from choosing Kuwait as a seat for arbitration in cases where

[630] Sally Kotb and Mohamed Hesham Elrafei, ‘UAE Arbitration Law, Article 10 [General Qualifications of an Arbitrator]’ in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 85–86.
[631] Azmi Abd al-Fattah, 'Procedures for Challenging Arbitrators in the Kuwaiti Code of Civil Procedure' (1984) 8(4) Kuwait University Law Journal 227.

unique expertise is essential, thereby impacting the jurisdiction's attractiveness for international commercial arbitration.

Ultimately, the Kuwaiti approach demonstrates a clear policy choice, prioritising categorical eligibility standards over flexibility and party autonomy. While this may safeguard the process against certain risks, it can also undermine the very advantages that make arbitration appealing to commercial parties—namely, the freedom to select arbitrators who best suit the dispute at hand, regardless of their personal or financial history.

Article 178 of the CCPL introduces a further dimension by incorporating judicial disqualification grounds into the arbitral context. The provision applies Articles 102 through 112 of the CCPL to arbitrators, subjecting them to impartiality standards governing state judges.[632] This transposition acknowledges that arbitrators exercise quasi-judicial responsibilities, necessitating appropriate measures to ensure impartiality. By extending the same rigorous standards applicable to judges, Kuwaiti law signals its intention to elevate arbitral proceedings to a level of probity and independence akin to the judiciary. In practice, this means that arbitrators are held to a high threshold of disinterestedness and must avoid not only actual bias but also any appearance of partiality that could undermine confidence in the process. This approach reflects the broader regulatory philosophy underpinning Kuwait's arbitral framework, which treats arbitrators as public functionaries entrusted with resolving disputes in a manner consistent with the values of the justice system. Such a framework is designed to reassure parties—particularly those less familiar with arbitration—that the process will be conducted with the same fairness and integrity expected of court proceedings. However, the importation of judicial standards into arbitration can also restrict the pool of available arbitrators, especially in highly specialised or technical fields where leading experts may have prior involvement with the subject matter, either academically or professionally.

The implications for party autonomy merit attention. Article 102(f) disqualifies any person who has given an opinion, advocated for a party, or written about the matter in

[632] Civil and Commercial Procedure Law (Kuwait) art 178(4) read with arts 102–112.

dispute. Applied to arbitration, this rule could permit challenges to arbitrators who have written about relevant legal issues. Parties to a complex petroleum arbitration might deliberately select a renowned academic with extensive publications on oil and gas law precisely because of this expertise. Under Kuwait's framework, the opposing party may challenge this appointment on grounds that the arbitrator has pre-formed views on relevant legal questions. Such a challenge would fail under the IBA Guidelines or Model Law standards, which recognise that prior academic writing does not demonstrate bias regarding specific disputes.

This strict approach introduces both strengths and weaknesses for users of Kuwaiti arbitration. On one hand, by aligning arbitral impartiality with judicial standards, Kuwait aims to preserve the legitimacy and perceived impartiality of the process, ensuring that arbitrators are free from associations that might call their neutrality into question. On the other hand, it restricts party autonomy—a core value in international arbitration—by limiting parties' ability to choose arbitrators with deep subject-matter expertise if those individuals have previously commented on, or otherwise engaged with, the issues in dispute. This can be particularly problematic in sectors such as energy, construction, or finance, where leading authorities often have a record of public engagement or professional advocacy. The result may be a chilling effect on the appointment of true experts, to the detriment of the quality and efficiency of the tribunal's decision-making.

By contrast, leading international standards such as the IBA Guidelines on Conflicts of Interest in International Arbitration and the UNCITRAL Model Law, distinguish between general academic or professional commentary and specific involvement in the dispute at hand.[633] These standards typically require a concrete connection (such as prior legal representation of a party or direct financial interest) before disqualification is warranted. The English Arbitration Act 1996 similarly eschews automatic disqualification for prior writings or opinions, instead applying the objective test of whether a fair-minded and informed observer would conclude there is a real possibility of bias.[634] This approach preserves party autonomy and recognises the

[633] Compare UNCITRAL Model Law art 12(2) with IBA Guidelines (n 11) Explanation to General Standard 6.
[634] Porter v Magill [2001] UKHL 67, [2002] 2 AC 357 [103] (Lord Hope).

realities of specialised fields, where potential arbitrators are likely to have expressed views on relevant legal or commercial issues.[635]

The importance of arbitrator impartiality within this flexible framework was authoritatively addressed by the United Kingdom Supreme Court in Halliburton Company v Chubb Bermuda Insurance Ltd.[636] The Supreme Court held that arbitrators seated in England are under a legal duty to disclose circumstances that might reasonably give rise to justifiable doubts as to their impartiality. This duty derives from the mandatory obligations of fairness and impartiality embedded in Section 33 of the Arbitration Act 1996. Lord Hodge, delivering the leading judgment, emphasised that the duty of disclosure allows parties to consider the disclosed circumstances, obtain necessary advice, and decide whether there is a problem with the involvement of the arbitrator.

The Halliburton decision demonstrates how English law balances party autonomy in arbitrator selection with irreducible guarantees of procedural integrity.[637] Parties retain broad freedom to choose their arbitrators based on expertise, reputation, and suitability for the particular dispute. However, those arbitrators must maintain what the Supreme Court termed the 'badge of impartiality' that legitimises the arbitral process. The disclosure duty operates as a safeguard ensuring that party autonomy in selection does not compromise the requirement of impartial adjudication.

This approach contrasts instructively with Kuwait's framework under Article 178. Both systems recognise that arbitrator impartiality constitutes an essential prerequisite for legitimate adjudication. However, they pursue this objective through different mechanisms. English law relies primarily on disclosure obligations, trusting parties to evaluate disclosed circumstances and make informed decisions about whether to proceed with a particular arbitrator. Kuwait's framework incorporates judicial disqualification grounds that operate more categorically, potentially restricting party choice in circumstances where disclosure and informed consent might suffice under international standards. The English approach preserves greater scope for party

[635] Gary B Born, ‘Selection, Challenge and Replacement of Arbitrators in International Arbitration’ in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[636] *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48.
[637] Ibid.

autonomy whilst maintaining robust impartiality protections through mandatory disclosure rather than automatic disqualification.

In summary, Kuwait's adoption of judicial disqualification grounds for arbitrators, while promoting institutional integrity and public trust, introduces a degree of rigidity that may not always serve the best interests of parties to commercial or technical disputes. Parties must weigh the benefits of enhanced impartiality safeguards against the potential costs in expertise and flexibility. They may find that the Kuwaiti framework is less suited to arbitrations where specialist knowledge and party-driven selection are critical.

4.2.1.2 How Kuwaiti Courts Decide Who Qualifies to Be an Arbitrator

The Court of Cassation has addressed eligibility and challenge standards in several decisions illuminating how Kuwait's statutory framework operates in practice.

In Case No 580/1999, the Court confirmed that arbitrators may be challenged on the same grounds as judges pursuant to Articles 102 and 104 of the CCPL.[638] The court held that transposing judicial disqualification standards into the arbitral context reflects the legislature's conception of arbitrators as performing functions comparable to those of state judges. Kuwait's framework thus treats arbitral and judicial adjudication as equivalent for disqualification purposes. The court emphasised that challenge grounds must arise or be discovered after appointment. This temporal limitation maintains party autonomy by permitting parties to select arbitrators whose qualifications they have reviewed, while confining challenges to circumstances not known at the time of appointment.

In Case No 580/1999, the waiver principle provided an exception to Kuwait's typically strict stance. By precluding challenges based on circumstances known at the time of appointment, the court recognised that party autonomy encompasses the freedom to accept arbitrators despite potential conflicts, provided acceptance is informed. This principle aligns Kuwait with international practice, where parties routinely waive

[638] Court of Cassation (Kuwait), Administrative Circuit, Appeal No 580/1999 (20 November 2000) (appeal dismissed) (Technical Office 28, vol 2, p 146, principle no 34).

conflicts through informed consent, while maintaining challenge procedures for unanticipated circumstances.

The distinction between exclusions and challenge grounds **is significant** in practice. Article 174(1)'s exclusions operate absolutely and cannot be waived by party agreement. An appointment that violates these requirements is void regardless of the parties' consent.[639] Challenge grounds under Article 178, by contrast, may be waived through informed acceptance at appointment. Exclusions preserve trust in arbitration, while challenges protect parties from undisclosed conflicts after appointment.

4.2.1.3 Synthesis

The benchmark analysis highlights varying regulatory approaches to arbitrator eligibility. England permits parties full discretion to select arbitrators, with intervention being rare. The UAE sets minimum standards, but still permits significant party choice, only disqualifying candidates if both bankruptcy and loss of civil rights are present. Kuwait, however, limits eligibility more strictly, barring certain individuals from serving as arbitrators regardless of the parties' wishes or individual circumstances.

These differences reflect contrasting conceptions of arbitral authority discussed in Chapter Two. Kuwait follows the jurisdictional theory of arbitration, under which arbitrators exercise judicial authority delegated from state courts and must meet similar qualifications and ethical standards.[640] The State-Centric Hybrid Model adapts this theoretical foundation to Kuwait's constitutional framework, with conditional authority describing how it manifests procedurally.

The English Arbitration Act 1996 and the Model Law suggest a different conception, viewing arbitration as autonomous, with arbitrators' authority deriving from party agreement rather than state delegation.[641] Under this view, the arbitral function remains contractual, and detailed qualification requirements are unnecessary and

[639] Azmi Abd al-Fattah, 'Procedures for Challenging Arbitrators in the Kuwaiti Code of Civil Procedure' (1984) 8(4) Kuwait University Law Journal 227.
[640] Michael J Mustill and Stewart C Boyd, Commercial Arbitration (2nd edn, Butterworths 1989) 58–62.
[641] Emmanuel Gaillard, Legal Theory of International Arbitration (Martinus Nijhoff 2010) 35–50.

potentially counterproductive. Party autonomy is maximised by permitting selection based on dispute-specific criteria rather than generalised legislative standards.

These theoretical differences produce practical effects. In Kuwait, mandatory eligibility rules apply equally to all parties regardless of dispute complexity, party sophistication, or commercial context. A multinational corporation choosing arbitrators through a leading international institution faces the same limits as parties in smaller domestic disputes. Uniformity helps maintain minimum standards and public trust in arbitration, but it limits the flexibility valued by experienced commercial parties who may wish to prioritise expertise over formal credentials. The English and Model Law approaches offer flexibility whilst addressing quality concerns through disclosure requirements, challenge mechanisms, and market discipline. Rather than focusing solely on formal credentials, parties may choose decision-makers with expertise directly relevant to the dispute at hand. This flexibility places responsibility on parties to conduct due diligence regarding arbitrator suitability, which may disadvantage parties with fewer resources or less experience in international arbitration. The UAE's intermediate position offers insights relevant to any future reform of Kuwait's framework. The UAE requires disqualification after bankruptcy only where civil rights have also been lost, ensuring minimum standards without Kuwait's broader restrictions. This approach suggests that safeguarding objectives may be achieved through careful restrictions rather than comprehensive disqualifications.

Each system reflects policy choices shaped by constitutional commitments and commercial priorities. Kuwait aims to ensure arbitrators are qualified, foster trust in dispute resolution, and align arbitration with judicial processes. Alternative mechanisms, such as enhanced disclosure requirements or refined challenge procedures, could achieve these objectives while allowing greater scope for parties to select arbitrators with expertise suited to particular disputes.

4.2.2 Tribunal Composition: The Odd-Number Requirement

Party autonomy extends to determining the number of arbitrators constituting the tribunal.[642] Article 10(1) of the UNCITRAL Model Law is representative, providing simply that the parties are free to determine the number of arbitrators.[643] This provision confers upon parties unrestricted freedom to determine tribunal size, including the theoretical possibility of even-numbered panels where parties accept the attendant risks.[644] Article 10(2) supplies a default of three arbitrators when parties have not specified, operating purely as a gap-filler rather than a mandatory requirement.[645]

This approach reflects trust in commercial parties' capacity to determine their own needs without legislative prescription. Smaller cases may proceed efficiently with a sole arbitrator, while complex disputes may benefit from a three-member tribunal, which provides broader expertise and deliberative capacity. ICC statistics indicate that roughly 35 to 40 per cent of arbitrations proceed with a sole arbitrator, while 60 to 65 per cent involve three-member tribunals.[646] The international framework accommodates this variation through commercial judgment rather than statutory mandate.

Born observes that several jurisdictions nevertheless prohibit arbitration by an even number of arbitrators.[647] These jurisdictions include France for domestic arbitrations, as well as the Netherlands, Belgium, Italy, Portugal, Egypt, and Tunisia.[648] Such prohibitions suggest concern that even-numbered tribunals may deadlock where arbitrators divide equally, potentially defeating arbitration's objective of delivering

[642] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 6.07.
[643] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 10: (1) The parties are free to determine the number of arbitrators.
[644] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[645] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 10: (2) Failing such determination, the number of arbitrators shall be three.
[646] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[647] Ibid.
[648] Ibid.

binding dispute resolution.[649] When a tribunal cannot form a majority decision, the parties may find themselves worse off than if they had pursued litigation in national courts, where such procedural obstacles do not arise.

These prohibitions have attracted criticism from commentators who argue that sophisticated parties should remain free to constitute two-member tribunals if they accept the associated risks. Scholars suggest that even-numbered tribunals can function effectively and that restricting party choice may conflict with Articles II(3) and V(1)(d) of the New York Convention,[650] which generally support party agreements on tribunal structure.[651] This critique represents the autonomy-focused perspective prevalent in international arbitration scholarship. However, it arguably underestimates the legitimate policy reasons why several legal systems, including advanced civil law jurisdictions, continue to mandate odd-numbered composition.[652]

4.2.2.1 Kuwait's Approach to Mandating Odd-Numbered Tribunals

Under Kuwaiti law, arbitral tribunals must consist of an odd number of members to avoid deadlock and to facilitate clear, conclusive decisions. Article 174 of Kuwait's Civil and Commercial Procedure Law mandates that, where multiple arbitrators are appointed, their number must, in all cases, be odd, leaving no room for party agreement to the contrary.[653] Parties cannot contract out of this mandatory requirement. The statutory phrase "in all cases" permits no exceptions, regardless of the parties' agreement, dispute complexity, or commercial context. Unlike the Model Law's Article 10(2)[654], which merely defaults to three arbitrators when parties have not specified a number, Kuwait's provision operates as a mandatory rule that overrides a contrary party agreement.

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[649] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.
[650] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) arts II(3), V(1)(d).
[651] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[652] 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[653] Civil and Commercial Procedure Law (Kuwait) art 174.
[654] UNCITRAL Model Law art 10(2).

The consequences of non-compliance prove significant. Any agreement stipulating an even number of arbitrators is invalid as contrary to mandatory rules. An award rendered by an even-numbered tribunal faces annulment even where no actual deadlock occurred.[655] Invalidity operates automatically without inquiry into whether the tribunal functioned effectively or reached its decision unanimously. The formal defect suffices to undermine the award regardless of substantive considerations. Kuwait's treatment of the odd-number requirement as a matter of public policy rather than mere party convenience reflects a protective conception of arbitration regulation. The legislature determined that deadlock risks warranted prohibition rather than party assessment. This protective orientation, evident across multiple components of Kuwait's arbitration framework, demonstrates the State-Centric Hybrid Model's prioritisation of legislative guidance within arbitral proceedings.

The English Arbitration Act 1996 takes a different approach, introducing an interpretive presumption rather than imposing a prohibition. Section 15(2) provides that an agreement specifying two arbitrators or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.[656] This interpretive presumption represents a more legislative response, preserving party autonomy whilst safeguarding against impediments to decision-making.[657] The English provision operates as a default rule rather than mandatory law. Section 15(2) applies only where parties have not expressly agreed otherwise. Parties who genuinely want a two-member tribunal and accept the risk of deadlock may override the presumption by including clear language in their arbitration agreement. This approach maintains autonomy for informed commercial decisions while protecting parties who specify even numbers without fully appreciating the potential consequences. The English framework also accommodates the traditional umpire mechanism, whereby a tribunal of two arbitrators includes an umpire who assumes decision-making authority only if the arbitrators cannot agree.[658] Although less

[655] Azmi Abdelfattah Atiyya, Kuwaiti Arbitration Law (2nd edn, Dar Al-Kutub Publishing 2012) 149–152.
[656] Arbitration Act 1996 (UK) s 15(2).
[657] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[658] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.

common in contemporary practice, this mechanism demonstrates that even-numbered tribunals can function effectively with appropriate procedural safeguards. Kuwait's regulatory framework does not permit this option under any circumstances.

The UAE Federal Arbitration Law of 2018 aligns with Kuwait's mandatory approach. Article 10(2) provides that the number of arbitrators shall, in all cases, be odd, with a violation affecting the validity of the tribunal's composition.[659] Like Kuwait, the UAE treats the requirement as mandatory rather than default, precluding party agreement on even-numbered tribunals.[660]

Both Gulf jurisdictions thus employ rules to prevent deadlock, preferring prohibition over party discretion. This method demonstrates how civil law tends to favour structured legislation, in contrast to the greater flexibility found in common law systems. The UAE's adoption of the odd-number requirement in its 2018 legislation, enacted with particular attention to international arbitration standards, confirms that this represents a deliberate policy choice rather than mere perpetuation of traditional procedural codes.

4.2.2.2 Kuwaiti Court Interpretation of Requiring Odd-Numbered Panels

The Court of Cassation has not extensively discussed the odd-number requirement in reported decisions, likely because the provision's mandatory character leaves little scope for interpretive dispute. The requirement functions as a bright-line rule: tribunals comprising an odd number are valid, while those comprising an even number are invalid, leaving no room for judicial discretion or contextual balancing. This clarity follows the civil law principle that clear statutory language needs no judicial interpretation.

The comprehensive jurisprudential framework discussed throughout this chapter nevertheless applies with equal force to composition requirements. Kuwaiti courts consistently enforce mandatory procedural rules strictly, declining to excuse technical defects even where no substantive prejudice results or the parties' intentions are clear.

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[659] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 10(2).
[660] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 9 [Composition of the Arbitral Tribunal]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 83–84.

In Cases Nos. 258 and 263 of 2005, the Court of Cassation refused to accept extensions that did not strictly comply with procedural requirements relating to time limits.[661] This rigorous approach to procedural compliance suggests that equivalent strictness would apply to composition requirements. An award rendered by an even-numbered tribunal would face annulment as a matter of law without inquiry into whether the composition defect affected the outcome or whether the tribunal reached its decision unanimously.

4.2.2.3 Synthesis

The above analysis shows different regulatory approaches to the question of tribunal composition. England permits party choice while providing safeguards against unintended even-numbered selections through the interpretive presumption in Section 15(2). Kuwait and the UAE impose mandatory rules that override parties' preferences to ensure effective decision-making capacity, prioritising the reliable operation of tribunals over compositional flexibility. The English model accommodates sophisticated parties who may prefer two-arbitrator panels for legitimate reasons, whereas the Gulf jurisdictions categorically prohibit such arrangements. Kuwait's mandatory odd-number requirement, like its UAE counterpart, represents a conscious policy choice. This approach values certainty and reliable decision-making capacity over the compositional flexibility characteristic of Model Law jurisdictions and English law. The requirement serves the legitimate objective of preventing deadlock and ensuring that arbitration delivers effective dispute resolution. When a tribunal cannot reach a majority decision, arbitration fails to achieve its purpose and may leave the parties worse off than litigation would have.

The English approach nevertheless demonstrates that party protection objectives can coexist with greater autonomy. Section 15(2) presumes that even-number agreements contemplate conversion to odd-numbered tribunals unless parties explicitly indicate otherwise, protecting inadvertent parties while permitting informed choice by experienced commercial actors. This approach merits consideration in any future reform of Kuwait's arbitration framework, particularly as Kuwait seeks to attract international commercial arbitration where flexible tribunal composition may prove

[661] See Section 4.3 below, discussing Cases Nos 258 and 263 of 2005 on strict interpretation of procedural requirements.

commercially desirable. The analysis further confirms that Kuwait and the UAE adopt consistent regulatory approaches on this question, departing from the more flexible Model Law framework in favour of mandatory requirements. This regional pattern, observed also in the eligibility requirements discussed in Section 4.2.1, suggests a Gulf preference for clear legislative guidance over party-determined procedures.

Within the State-Centric Hybrid Model framework, the odd-number requirement exemplifies the operation of conditional authority. Parties may constitute tribunals, but only within the boundaries established by the legislature to protect the integrity of the arbitral process. Kuwait's framework applies this balance between party choice and mandatory constraint consistently across procedural dimensions.

4.2.3 Appointment Procedures: Party Autonomy and Judicial Support

The process of appointing arbitrators illustrates how legal systems balance party choice against state authority intervention.[662] International arbitration practice establishes a clear hierarchy in which party agreement takes precedence, institutional procedures serve as the primary fallback mechanism, and judicial appointment operates only as a last resort when other options have failed.[663]

The judicial appointment of arbitrators serves solely as a supplementary mechanism, employed only when parties have not specified an alternative selection process or when the agreed-upon procedure has proven unsuccessful.[664] This subsidiary role reflects both practical and theoretical considerations. National court judges possess limited experience, expertise, resources, and sometimes interest in selecting suitable international arbitrators, particularly when compared with specialised arbitral

[662] Simeona Kostova, 'Party Autonomy in a Modern Context: A Critical Analysis of its Scope under the Rome I Choice of Law Rules and Some Contemporary Considerations' (Centre for Private International Law, University of Aberdeen, Working Paper Series 1/2023) 3–6

[663] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.

[664] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).

institutions.[665] The principle of party autonomy requires that the parties agreed appointment mechanism be exhausted before external intervention occurs.

Article 11 of the UNCITRAL Model Law embodies this approach. Parties may establish their own appointment procedures under Article 11(2), and judicial appointment under Article 11(4) becomes available only in defined circumstances.[666] These circumstances include situations in which a party fails to act as required under an agreed procedure, parties or arbitrators cannot reach an agreement on an appointment, or a designated third party fails to perform its appointing function. The Model Law thus permits court intervention to resolve appointment deadlocks, but only when such deadlocks actually materialise.[667]

Modern arbitral institutions have developed sophisticated appointment mechanisms that reduce the necessity for judicial involvement. Leading institutions, including the ICC, LCIA, SIAC, and HKIAC, maintain specialised expertise in arbitrator selection, evaluating factors such as subject-matter knowledge, geographic balance, availability, and party preferences that generalist courts may lack the capacity to assess thoroughly. Institutional practice generally confirms most party nominations, with intervention occurring primarily on grounds of independence and impartiality concerns.[668] This institutional framework serves as the primary mechanism for resolving appointment difficulties in international arbitration, with courts intervening only when institutional alternatives are unavailable or inadequate.

4.2.3.1 Kuwait's Framework for the Appointment of Arbitrators

Kuwait's framework for appointing arbitral tribunals reflects a careful balance between party choice and judicial oversight.[669] Article 175 of the CCPL allows parties to set

[665] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 6.07.
[666] UNCITRAL Model Law on International Commercial Arbitration (1985) arts 11(2), 11(4).
[667] Howard M Holtzmann and Joseph E Neuhaus, A Guide to the UNCITRAL Model Law on International Commercial Arbitration (Kluwer 1989) 389.
[668] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).
[669] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

their own appointment procedures without prior approval, making the tribunal constitutionally subject mainly to party agreement.[670] If parties cannot agree, unresolved appointment disputes are referred to the courts rather than to institutions.

The statutory framework is designed to address a range of circumstances that require judicial intervention. Where parties have established an agreed procedure and one party fails to perform its appointment obligations, the court may, upon application, make the necessary appointment. Where parties have not established an appointment mechanism, or where the agreed mechanism proves insufficient to produce a tribunal, the court retains authority to make appointments. The underlying principle is that courts complete tribunal formation when private mechanisms, whether party agreement or institutional oversight, fail to establish an effective tribunal.[671]

The court's appointment power follows formal litigation procedures, including written applications, service requirements, and potential hearings.[672] This procedural formality distinguishes Kuwait's approach from the expedited mechanisms characteristic of institutional appointment practice. Specifically, since the Kuwaiti judicial system lacks dedicated arbitration courts or judges specialised in arbitration. By comparison, prominent arbitral jurisdictions and institutions generally settle appointment disputes promptly, often within a matter of days or weeks, utilising efficient administrative processes. Kuwait's framework requires navigation of court processes designed for general litigation, potentially extending the time required for tribunal constitution. While other jurisdictions implement similar procedures, Kuwait should enhance its arbitration framework by adopting practices in line with contemporary international standards.

Once appointment orders are issued, they are not subject to appeal, regardless of any prior agreement between the parties that would permit a challenge to such orders.[673] Although this finality is intended to ensure procedural closure and prevent parties from

[670][670] Civil and Commercial Procedure Law (Kuwait) art 175.
[671] Azmi Abd al-Fattah, 'Procedures for Challenging Arbitrators in the Kuwaiti Code of Civil Procedure' (1984) 8(4) Kuwait University Law Journal 227.
[672] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[673] Ibid.

causing delays or requesting further review once the court has rendered its decision, parties should retain the right to agree otherwise if they so choose. The non-appealability of appointment orders demonstrates the legislature's intent to prevent appointment disputes from becoming tools for obstruction, an objective shared by appointment frameworks across jurisdictions. The combination of formal court procedures with final, non-appealable outcomes means that parties may experience lengthy initial proceedings without recourse to challenge adverse decisions.

A notable gap in Kuwait's framework concerns the absence of specified timelines for the party's performance of appointment obligations. While other frameworks establish clear deadlines, typically ranging from 15 to 30 days, before courts may intervene, the CCPL does not specify when a party's failure to appoint permits court action.[674] This lack of defined triggering events may create uncertainty about when judicial intervention is appropriate, potentially leading to either premature court applications or prolonged disputes over whether appointment obligations have been fulfilled.

The English Arbitration Act 1996 takes a different approach, favouring party and institutional mechanisms while preserving judicial appointment only as a genuine last resort.[675] Section 16 establishes the principle that parties have the autonomy to determine their own appointment procedures, with statutory default mechanisms invoked only where parties have not agreed otherwise.[676] Section 18 grants courts the power to appoint arbitrators, but only where agreed procedures have failed, and no other effective appointment mechanism remains available.[677] The English framework's distinctive feature lies in its explicit hierarchy, which requires the exhaustion of alternatives before judicial involvement. A judicial appointment under Section 18 requires the applicant to demonstrate that the agreed procedures have failed and that no alternative mechanism, including an institutional appointment, remains available. This threshold ensures that courts function as genuine last resorts rather than convenient alternatives to party-agreed or institutional processes. The framework

[674] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, 'Selection and Appointment of Arbitrators by Parties and Institutions' in Comparative International Commercial Arbitration (Kluwer Law International 2003) 223–253.
[675] Hong-Lin Yu, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209–226.
[676] Arbitration Act 1996 (UK) s 16.
[677] Arbitration Act 1996 (UK) s 18(2).

protects party autonomy not only by recognising initial party choices but also by requiring that chosen mechanisms be fully pursued before courts may intervene. English courts have consistently interpreted this framework to uphold its purpose of protecting autonomy. Courts generally decline to appoint arbitrators where a designated institution has not yet conclusively failed to resolve appointment difficulties.[678] This approach preserves parties' choice of appointment forum, institutional rather than judicial, even where one party might prefer court intervention.

The UAE Federal Arbitration Law of 2018 occupies an intermediate position between England's requirement and Kuwait's less structured approach. Article 11 recognises the parties' freedom to agree on appointment procedures while establishing defined timelines for party performance.[679] Where parties have not agreed on a procedure, the default process provides that each party shall have 15 days to appoint its respective arbitrator, following which the appointed arbitrators have an additional 15 days to agree upon a chairperson. Failure to meet these deadlines activates the court's appointment power upon application by either party.[680] The UAE framework's defined timelines serve multiple functions. They establish clear standards for determining when court involvement becomes appropriate, eliminating uncertainty about whether a party has failed to perform appointment duties. They create predictability for parties planning arbitration proceedings by providing a known timetable for the constitution of the tribunal. They balance expedition against adequate opportunity for party agreement, with 15 days providing meaningful time for negotiation without permitting indefinite delay. It should be noted that, according to this law, if the court appoints an arbitrator, the parties cannot challenge that appointment. This process reflects the approach taken under Kuwaiti law in similar situations. Similar to Kuwait, the UAE refers appointment disputes to the courts rather than to institutions. Once deadlines lapse, the Court of Appeal assumes appointment authority, even if an institution was named. However, the UAE's defined timelines offer more predictability than Kuwait's indefinite system for judicial intervention.

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[678] Gary B Born, 'Selection, Challenge and Replacement of Arbitrators in International Arbitration' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 12 (updated February 2024, Kluwer Arbitration, accessed 21 January 2026).

[679] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 10 Bis [Appointing an Arbitrator from Supervisory or Regulatory Authorities]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 87–88.

[680] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 11.

4.2.3.2 Kuwait's Judicial Approach to Appointing Arbitrators

The Court of Cassation interprets Article 175 as imposing non-waivable requirements, emphasising the mandatory character of Kuwait's appointment framework. Case No 449/2004 establishes the principal authority on issues arising from incomplete appointment mechanisms in arbitration agreements.[681] In that case, the parties' agreement provided for arbitration by a sole arbitrator but did not specify a mechanism for resolving disagreements about the arbitrator's identity. When the parties could not agree on a candidate, one party applied to the court for appointment. The opposing party argued that the court should infer an implied appointment mechanism from the parties' conduct and the nature of their agreement, thereby avoiding judicial intervention. The Court of Cassation rejected this argument. The court held that where an arbitration agreement lacks a clear mechanism for resolving disagreements over the identity of the arbitrator, the court must make the appointment.[682] The court declined to infer an implied appointment mechanism, reasoning that procedural stability requires a complete and executable framework. Where appointment instructions are unclear or incomplete, courts cannot interpret the parties' intentions to resolve gaps. A judge must instead make appointments to address any deficiencies in the parties agreed procedure. This reasoning has important implications for arbitration practice in Kuwait. The decision confirms that only explicit drafting can prevent judicial involvement when party mechanisms are incomplete, as Kuwait's framework does not recognise implicit procedural design. It establishes that agreements must clearly anticipate and address potential disagreements, since courts will exercise their default appointment power rather than interpret parties' intentions when gaps exist. The case demonstrates Kuwaiti courts' strict enforcement of procedural requirements, refusing to overlook ambiguities regardless of the parties' apparent intent.[683]

The practical implications extend to international institutions administering Kuwait-seated arbitrations. Such institutions must operate within this framework rather than

[681] Court of Cassation (Kuwait), Commercial Circuit, Case No 449/2004 (4 June 2005).
[682] Ibid.
[683] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

exercising fully autonomous appointment powers. Where party-agreed mechanisms, including those delegating appointment authority to institutions, face challenges, formal court procedures may be invoked even when parties prefer expedited institutional resolution. The interaction between institutional rules and Kuwait's mandatory framework requires careful attention when drafting arbitration agreements for Kuwait-seated proceedings.

4.2.3.3 Synthesis

Kuwait's appointment framework, like the UNCITRAL Model Law, prioritises party autonomy but allows for judicial appointments if needed. Its emphasis on party priority, judicial fallback, and non-appealable orders aligns with internationally accepted practices that uphold arbitration agreements even in the face of disputes or obstruction.

Kuwait's framework is distinguished primarily by its procedural characteristics rather than its overall architecture. The absence of specified timelines for party appointments creates uncertainty about when judicial authority becomes available. This uncertainty contrasts with the UAE framework, which avoids such difficulties by defining 15-day periods and establishing clear triggering events for court involvement. The channelling of all appointment disputes through the originally competent court, combined with formal litigation procedures, may produce a slower resolution than the expedited mechanisms available under English law or through institutional administration. The Court of Cassation's strict approach to incomplete appointment mechanisms, as established in Case No 449/2004, requires careful drafting to avoid unintended judicial involvement.

The State-Centric Hybrid Model balances party autonomy with judicial authority as the primary mechanism for resolving procedural difficulties. Unlike systems such as England, which require exhaustion of institutional mechanisms before courts may intervene, Kuwait defaults to judicial resolution of appointment disputes regardless of parties' institutional preferences. Kuwait could improve its arbitration framework by adding clear timelines, such as the UAE's 15-day rule, and by recognising institutional appointments, as in England. These changes would make Kuwait more appealing for international arbitration while preserving its State-Centric Hybrid Model.

4.3 Time Limits for Arbitral Proceedings

Neither the UNCITRAL Model Law nor most national arbitration statutes impose mandatory time limits on international arbitrations.[684] The duration of arbitral proceedings is typically left to the parties' agreement and the tribunal's discretion, reflecting the requirements of different types of disputes.[685] This approach embodies a principle: the appropriate duration of arbitral proceedings depends on factors that vary significantly across disputes, including complexity, volume of evidence, disclosure requirements, hearing length, and urgency.

Where time limits do exist in international practice, they typically arise from three sources. National legislation, particularly older domestic statutes, may impose default or mandatory deadlines.[686] Party agreement, especially fast-track provisions incorporated into arbitration clauses, may establish binding timelines. Institutional rules may specify periods for rendering awards, though these typically operate as administrative targets rather than jurisdictional boundaries. The critical question in each case concerns the consequence of non-compliance. The prevailing view treats time limits as jurisdictional only in exceptional circumstances where the parties' agreement unambiguously requires such characterisation.[687] Most legal systems treat time limits as procedural guidelines, subject to extension, rather than as absolute jurisdictional boundaries whose expiry automatically terminates arbitral authority.

This flexibility serves important purposes. No universally appropriate timeframe exists for completing arbitrations. Complex cases require adequate time for proper consideration of all issues, with appropriate duration depending upon the nature, subject matter, complexity, and scope of the particular dispute.[688]

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[684] UNCITRAL Model Law on International Commercial Arbitration contains no provision establishing time limits for arbitral proceedings.
[685] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, ‘Conduct of the Proceedings’ in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 6.
[686] Ibid.
[687] Ibid.
[688] Nigel Blackaby and Constantine Partasides, Redfern and Hunter on International Arbitration (7th edn, OUP 2023) para 6.112.

Institutional practice confirms this preference for adaptability. The ICC Rules establish a six-month deadline from the date of signing the Terms of Reference, though this period is routinely extended in practice. The ICC Court possesses the authority to fix alternative periods where procedural realities render the default impractical.[689] The ICDR Rules require awards to be made as quickly as possible and within 60 days of closing hearings, whereas many other institutional rules impose no specific time limit whatsoever.[690] This diversity reflects commercial parties' general preference for tailoring procedural timelines to particular circumstances rather than adhering to rigid deadlines.

International practice thus favours temporal flexibility, treating time limits, where they exist, as procedural targets subject to adjustment by the parties or the tribunal rather than as jurisdictional boundaries whose expiry automatically invalidates arbitral authority. This approach trusts tribunals to manage time appropriately, empowering them to balance expedition against the requirements of due process in individual cases.

4.3.1 Kuwait's Regulatory Framework on Procedural Time Limits

Article 181 of the CCPL establishes a framework for the temporal regulation of arbitral proceedings that differs from international practice. The provision imposes a six-month deadline for rendering awards when the parties have not agreed on an alternative period, and Kuwait's courts interpret it as a jurisdictional limit rather than a procedural guideline.[691] The six-month period commences from the tribunal's notification to parties of the commencement of proceedings, which itself must occur within thirty days of the arbitrator's acceptance of appointment.[692] This creates a sequential timeline in which acceptance triggers a 30-day notification period, which in turn triggers 6 months for rendering the award. The maximum total period from acceptance to award, absent an extension, is approximately seven months.

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[689] Born (n 2) 2466; ICC Arbitration Rules (2021) art 31(1)-(2).
[690] ICDR Rules art 30; Born (n 2) 2466.
[691] Civil and Commercial Procedure Law (Kuwait) art 181(1).
[692] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

This default period applies only when the parties have not agreed to an alternative timeline. Parties possess the autonomy to establish longer or shorter periods through their arbitration agreement, reflecting the general principle that party choice governs procedural matters. This autonomy must be exercised affirmatively, however, because silence results in application of the six-month default, which courts treat as mandatory.

Exceeding the deadline results in significant consequences. Article 186(3) expressly provides for annulment where awards are issued beyond the prescribed period.[693] This statutory ground for annulment confirms the jurisdictional characterisation. The time limit does not merely create procedural irregularity but affects the tribunal's authority to render a valid award.

Article 181 permits extensions through several mechanisms. These include express party agreement, implied party consent manifested through conduct, and party authorisation for the tribunal to extend proceedings to a specified date.[694] The common element across all mechanisms is party consent.[695] The tribunal itself possesses no inherent power to extend proceedings, regardless of the complexity or circumstances beyond its control. This allocation of extension authority reflects a distinctive conception of arbitral power. International practice generally treats time management as falling within the tribunal's procedural competence, empowering arbitrators to adjust timelines in response to evolving dispute requirements.[696] Kuwait's legal framework, by contrast, recognises temporal authority as a delegated power vested in the nation's courts. Tribunals exercise only those powers expressly conferred by the parties, with no residual competence to manage time autonomously. The practical implication is that parties must build extension mechanisms into their arbitration agreements, agree on extensions during proceedings, or grant tribunals explicit authority to extend

[693] Civil and Commercial Procedure Law (Kuwait) art 186(3).
[694] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.
[695] 'Arbitration in Kuwait' in Dongchuan Luo and Jalal El Ahdab (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[696] Gary B Born, 'International Arbitral Procedures' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1643–1646 (updated September 2024, Kluwer Arbitration, accessed 21 January 2026).

deadlines. Without such measures, tribunals cannot continue beyond the statutory period regardless of circumstances.

Kuwait's framework extends jurisdictional formalism to the delivery of awards. The award must be rendered and communicated within the statutory period. Deliberation alone does not satisfy the deadline.[697] This requirement transforms delivery from an administrative formality into a jurisdictional prerequisite. Any delay in communication beyond the deadline undermines the award's validity, regardless of when the tribunal actually decided the dispute. International practice varies on this point, with some jurisdictions distinguishing between deliberation and delivery and treating the former as the jurisdictionally significant event.[698] Kuwait's approach is more demanding. The entire process from commencement through deliberation to communication must occur within the prescribed period. A tribunal that reaches its decision in time but communicates it late has nonetheless exceeded its authority. The flexible approach seen in leading arbitration jurisdictions is well illustrated by the English Arbitration Act 1996. The Act imposes no mandatory time limit for rendering awards, reflecting the principle that appropriate duration depends on dispute-specific factors that cannot be legislated in advance. Section 50 addresses only the award date for purposes of determining applicable law and limitation periods, not as a deadline affecting validity.[699] The English framework trusts tribunals to manage time appropriately, treating temporal matters as falling within the tribunal's general procedural competence. Section 34(1) provides that it is for the tribunal to decide all procedural and evidential matters, subject to the parties' agreement.[700] This broad procedural authority encompasses time management. Tribunals may establish and adjust timetables as dispute requirements evolve without requiring party consent for each modification.

Where parties have agreed on time limits, whether in their arbitration agreement or through institutional rules, English law generally treats such limits as binding but

[697] 'Arbitration in Kuwait' in Dongchuan Luo and Jalal El Ahdab (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[698] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 6.
[699] Arbitration Act 1996 (UK) s 50.
[700] Arbitration Act 1996 (UK) s 34(1).

subject to extension. Section 79 provides that parties may agree to confer on the court the power to extend time limits for arbitral proceedings. Section 79(3) permits court extension even absent such agreement where substantial injustice would otherwise result.[701] This safety valve ensures that rigid adherence to time limits does not defeat the parties' underlying objective of obtaining binding dispute resolution. The English approach thus combines respect for party autonomy with procedural flexibility and judicial safety valves. Time limits are treated as procedural tools serving the parties' dispute-resolution objectives rather than as jurisdictional boundaries who's crossing automatically invalidates arbitral authority.

The UAE Federal Arbitration Law of 2018 strikes a balance between England's flexible stance and Kuwait's more rigid system. Article 42 establishes a default six-month period from the date of the first hearing, the same duration as Kuwait's default rules.[702] The UAE framework differs from Kuwait's by granting tribunals autonomous authority to extend their terms. Article 42(1) provides that the tribunal may extend the six months by an additional six months on its own initiative, without requiring the parties' consent.[703] This autonomous extension power reflects trust in tribunals to assess when additional time is genuinely necessary, whilst the six-month cap on unilateral extensions prevents indefinite prolongation. Beyond the tribunal's autonomous extension authority, the UAE framework permits further extensions through party agreement or court order.[704] Article 42(2) provides that parties may agree to extend proceedings beyond the tribunal's autonomous extension, and that the competent court may grant extensions upon application where party agreement is not forthcoming.[705] This approach of tribunal extension, followed by party extension, and then court extension, provides multiple mechanisms for addressing temporal constraints whilst maintaining ultimate judicial oversight.

The UAE framework also addresses the consequences of expiry differently from Kuwait. While exceeding the time limit without a valid extension invalidates the award,

[701] Arbitration Act 1996 (UK) s 79.
[702] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 42.
[703] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 42(1).
[704] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.
[705] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 42(2).

the framework's multiple extension mechanisms make such inadvertent expiry considerably less likely. Tribunals facing complex disputes can extend proceedings autonomously. Parties who recognise the need for additional time can agree to further extensions. Courts provide a final safety valve where other mechanisms prove inadequate.

The comparison reveals different approaches to temporal authority. England trusts tribunal discretion entirely, requiring no special authorisation for time management. The UAE grants tribunals defined autonomous extension authority whilst preserving party and court oversight. Kuwait denies tribunals any autonomous temporal authority, requiring party consent for any deviation from the statutory default.

These differences reflect deeper philosophical commitments about arbitral authority. The English approach reflects confidence in arbitral institutions and professional arbitrators to manage proceedings appropriately. The UAE approach balances tribunal discretion against defined limits, trusting arbitrators within boundaries. Kuwait's approach reflects the State-Centric Hybrid Model's insistence that arbitral authority remains conditional and delegated. Tribunals exercise only those powers expressly conferred, with temporal authority reserved to parties who must exercise it affirmatively.

4.3.2 Kuwaiti Court Interpretations Regarding Procedural Deadlines

The Court of Cassation has developed significant jurisprudence interpreting Article 181, articulating the rationale for Kuwait's strict approach whilst providing important guidance on extension mechanisms. Cases Nos. 258 and 263 of 2005 constitute the leading authority on Kuwait's temporal framework.[706] The Court of Cassation articulated the rationale underlying the strict approach with considerable clarity.

The court explained that the legislature designed time limits to ensure arbitration achieves its intended purpose of expeditious dispute resolution. Arbitration's attraction lies partly in its promise of faster resolution than litigation, and time limits ensure this

[706] Court of Cassation (Kuwait), Commercial Circuit, Case No 258/2005 (18 March 2006); Case No 263/2005 (18 March 2006).

promise is fulfilled. The court emphasised that the arbitrator must commence proceedings and notify the parties within 30 days of accepting appointment and must render the award within 6 months of notification. Failure to comply renders the award voidable under Article 186(3).[707] The court confirmed the jurisdictional characterisation of the time limit. Upon expiry of the six months, the tribunal's authority dissolves immediately, and the parties regain the right to refer disputes to the courts of general jurisdiction. Exceeding the statutory deadline constitutes grounds for annulment regardless of how close the tribunal came to completing its work or how meritorious the award might otherwise be. The court also addressed the delivery requirement, holding that the award must be rendered and communicated within the statutory period. Deliberation alone does not satisfy the deadline. The tribunal must complete the entire adjudicative process, including communication to parties within the prescribed timeframe.[708]

This reasoning reflects a formalistic conception of arbitral authority. The tribunal's power is bounded by time and subject matter. Exceeding temporal boundaries is as fatal to jurisdiction as exceeding the scope of the arbitration agreement. This approach prioritises certainty by ensuring that parties know precisely when the arbitral authority expires. However, this certainty comes at the cost of flexibility to accommodate unforeseen circumstances and international practices.

Case No 441 of 1998 addressed whether continued participation in proceedings after the statutory period expired could constitute implied consent to extension.[709] The court held that the parties had expressly agreed to extend the deadline at specific hearings, and that the challenging party accepted the burden of proving it had objected to the extension before the tribunal. In the absence of contemporaneous objection, the court inferred consent from the explicit agreements recorded in hearing minutes.[710] This decision establishes important principles for extension practice. Express agreements recorded in hearing minutes constitute valid extensions without requiring formal separate documentation. A party that participates in proceedings beyond the statutory period without contemporaneous objection may be found to have consented to

[707] Ibid.
[708] Ibid.
[709] Court of Cassation (Kuwait), Commercial Circuit, Case No 441/1998 (1 February 1999).
[710] Ibid.

extension. The burden of proving objection rests on the party challenging the award's timeliness, and silence during extended proceedings supports an inference of consent.

Case No 210 of 1988 further clarified the approach to implied extensions.[711] The court held that failure to raise the expiry objection before the tribunal, combined with agreement to continue proceedings, could constitute implied consent. The burden rests upon the party seeking to enforce the award to demonstrate such consent; however, courts scrutinise the evidence carefully.[712]

This allocation of burden plays an important role in practice. Parties seeking to preserve objections to expired deadlines must raise those objections contemporaneously and clearly. Failure to do so risks implied waiver. Conversely, parties seeking to enforce awards issued after the statutory period must be prepared to demonstrate that extensions were validly agreed whether expressly or through the opposing party's conduct.

4.3.3 Synthesis

These decisions reveal a framework that balances formal rules with practical adaptability. The core principle is firm in that time limits define the tribunal's authority, and once those limits expire, that authority ceases. The framework nevertheless accommodates practical realities by recognising extensions through express agreements, through continued participation implying consent, and through prior tribunal authorization to extend. Proponents of Kuwait's strict deadlines might argue that these constraints protect weaker parties from potential manipulation or coercion by more powerful adversaries, emphasising predictability and fairness. By acknowledging this perspective, the framework can be seen as reinforcing a balanced approach, aiming to safeguard all parties while maintaining procedural integrity.

The practical effect is that parties cannot rely on tribunals to manage time pragmatically. Parties must exercise temporal autonomy affirmatively through express agreements or risk jurisdictional termination. Sophisticated parties must anticipate

[711] Court of Cassation (Kuwait), Commercial Circuit, Case No 210/1988 (15 May 1989).
[712] Ibid.

potential delays and build extension mechanisms into their arbitration agreements, recognising that tribunals cannot independently adjust timelines regardless of circumstances. Parties who fail to do so and who also fail to agree to extensions during proceedings face the prospect of arbitral authority expiring before their dispute is resolved, potentially requiring recommencement of proceedings or resort to litigation.

Kuwait's approach to time limits shares certain features with civil law traditions, whilst exhibiting distinctive characteristics requiring analysis within the State-Centric Hybrid Model. The imposition of mandatory time limits represents a departure from international practice, which favours temporal flexibility. While the Model Law and leading arbitration jurisdictions like England impose no default deadlines, treating appropriate duration as dispute-specific and tribunal-managed, Kuwait establishes a six-month default that applies unless parties agree otherwise. This departure from the international practices demonstrates the legislature’s determination that efficiency aligns with the objectives of arbitration, thereby justifying the imposition of mandatory default timelines.

The absence of tribunal extension authority constitutes one of Kuwait's distinguishing characteristics. Unlike the UAE, which permits tribunals to extend proceedings autonomously by up to 6 months, Kuwait requires party consent or prior authorisation for any extension. This denial reflects the State-Centric Hybrid Model's conception of arbitral authority as derived exclusively from party agreement, with tribunals possessing no inherent procedural competence beyond what parties have expressly delegated.

The jurisdictional characterisation of time limits, as affirmed in Cases Nos. 258 and 263 of 2005, elevates temporal constraints from procedural guidelines to definitive boundaries on validity. Upon expiry of the statutory period, the arbitral authority ceases automatically, and any subsequent awards are annulled regardless of their substantive merit. This approach emphasises legal certainty over procedural flexibility, ensuring that parties know precisely when arbitral authority terminates. The Court of Cassation's jurisprudence demonstrates that this formal framework operates with due regard for practical realities. The recognition of implied extensions through continued participation without objection provides flexibility within the formal structure. Parties

who continue participating in proceedings beyond the statutory period without contemporaneous objection may be found to have consented to the extension, thereby preventing purely tactical invocation of time limits by parties who acquiesced in the extended proceedings.

The comparative analysis highlights potential refinements to Kuwait's framework. Granting tribunals limited autonomous extension authority following the UAE model would provide flexibility for complex disputes whilst maintaining ultimate party control. Permitting court extensions in cases of substantial injustice, following the English model, would provide an efficient process for holding the arbitration proceeding. Clarifying delivery requirements would reduce uncertainty about when the jurisdictional deadline is satisfied. These modifications would balance flexibility with time discipline whilst aligning Kuwait's framework more closely with international standards.

Within the State-Centric Hybrid Model framework, time limits exemplify the conditional character of arbitral authority in Kuwait. Tribunals exercise jurisdiction within defined temporal boundaries that parties may extend, but tribunals cannot. This approach ensures that arbitration cannot become an indefinite process, maintaining the expedition that justifies choosing arbitration over litigation. The trade-off is reduced flexibility to accommodate complex disputes or unforeseen circumstances, a trade-off that sophisticated parties must account for in drafting arbitration agreements and managing proceedings.

4.4 Procedural Rules: Party Autonomy and Its Boundaries

A core tenet of international commercial arbitration is the parties' freedom to shape their own arbitral procedures. This flexibility allows them to tailor processes to their unique disputes, rather than being restricted by the rigid rules of domestic litigation.[713]

The UNCITRAL Model Law embodies this principle through a two-tier framework. Article 19(1) establishes the primacy of party agreement, providing that the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.[714] Where parties have not agreed, Article 19(2) grants tribunals broad discretion to conduct the arbitration in such a manner as the tribunal considers appropriate.[715] This dual structure of party autonomy supplemented by tribunal discretion reflects the international consensus that procedural flexibility serves the efficiency objectives underlying arbitration.

The procedural rules of national courts do not bind arbitral tribunals operating under international frameworks. International arbitrators operate without a lex fori in the manner of national court judges, ensuring procedural neutrality regardless of the seat of arbitration.[716] This principle ensures that parties selecting international arbitration obtain neutral procedures rather than those of any single national system. The mandatory limits on procedural freedom are deliberately minimal. Article 18 of the Model Law requires only that parties be treated with equality and that each party be given a full opportunity to present its case.[717]

A particularly significant aspect of international procedural autonomy concerns the tribunal's authority to determine its own jurisdiction. The competence-competence principle, embodied in Article 16(1) of the Model Law, provides that the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence

[713] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 15.
[714] UNCITRAL Model Law on International Commercial Arbitration (1985) art 19(1).
[715] UNCITRAL Model Law on International Commercial Arbitration (1985) art 19(2).
[716] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 6.
[717] UNCITRAL Model Law on International Commercial Arbitration (1985) art 18.

or validity of the arbitration agreement.[718] This principle enables tribunals to address jurisdictional challenges without automatic recourse to courts, maintaining procedural momentum whilst preserving ultimate judicial oversight through annulment and enforcement proceedings. The competence-competence principle reflects a policy judgment that tribunals should have the authority to determine preliminary questions of their own jurisdiction, subject to subsequent judicial review.[719] This approach prioritises procedural efficiency by avoiding interruption of arbitral proceedings for court determination of jurisdictional disputes, whilst preserving the parties' ultimate right to judicial scrutiny of jurisdictional determinations at the post-award stage.

4.4.1 Procedural Rules of Kuwait's Arbitration Framework

Article 182(1) of the CCPL declares that arbitrators issue awards without being bound by litigation procedures applicable before courts, except as otherwise provided in the arbitration chapter.[720] This formulation grants substantial procedural freedom, theoretically aligning Kuwait with international practice. The same provision recognises party authority to agree on specific procedures, potentially accommodating institutional rules or bespoke procedural arrangements.[721] This procedural freedom operates within defined boundaries. While court procedures do not bind arbitrators, they remain subject to the specific requirements established in the CCPL's arbitration chapter. These requirements, including time limits, composition rules, and the mandatory provisions discussed throughout this chapter, constitute the framework within which procedural autonomy operates.

Article 182(2) addresses the distinction between arbitration by law and arbitration by equity, known as amiable composition, requiring express party authorisation for arbitrators to decide according to equity principles.[722] This express authorisation requirement confirms the presumption that arbitrators function as law-appliers unless specifically directed otherwise. Absent a clear agreement between the parties

[718] UNCITRAL Model Law on International Commercial Arbitration (1985) art 16(1).
[719] See Chapter Three of this thesis.
[720] Civil and Commercial Procedure Law (Kuwait) art 182(1).
[721] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[722] Civil and Commercial Procedure Law (Kuwait) art 182(2).

authorising equitable decision-making, arbitrators must apply substantive legal rules to the dispute before them.

The features discussed above align Kuwait with international practice in recognising procedural autonomy. Article 180(2), however, introduces a distinctive constraint that significantly affects procedural management. This provision establishes the mandatory suspension requirement for preliminary questions. Article 180(2) imposes automatic suspension whenever preliminary questions arise that fall outside the arbitrator's competence, or when forgery allegations or criminal proceedings require resolution by competent authorities.[723] This requirement operates by force of law, removing any discretion the tribunal might otherwise exercise to continue with unaffected issues or structure proceedings around pending matters. The mandatory suspension requirement represents Kuwait's most significant departure from the competence-competence principle embraced by the Model Law and most modern arbitration legislation.[724] Where international frameworks empower tribunals to rule on their own jurisdiction, including challenges to the existence or validity of the arbitration agreement, Kuwait requires suspension of proceedings and judicial determination of such questions.

The practical implications of this suspension are critical in the context of arbitration proceedings. Parties cannot structure their arbitration agreement to avoid suspension. Unlike procedural elements subject to party determination, the suspension requirement operates as mandatory law regardless of contrary party intentions.[725] The requirement exposes proceedings to potential tactical delays, as a party intent on hindering arbitration may raise preliminary issues, knowing that suspension follows automatically rather than remaining subject to the tribunal's discretion. Any actions undertaken during the suspension period are rendered void, potentially invalidating

[723] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://legalblogs-wolterskluwer-com.uea.idm.oclc.org/arbitration-blog/arbitration-in-kuwait-time-for-reform/> accessed 22 November 2025.
[724] 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[725] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

completed procedural steps and requiring their repetition once the tribunal learns that the obstacle has been removed.

The scope of preliminary questions triggering mandatory suspension encompasses several categories. Challenges to the validity of the arbitration agreement itself constitute the clearest example. Where a party contends that the agreement is void, voidable, or otherwise ineffective, this question falls outside the arbitrator's competence and requires judicial determination. Disputes about the scope of the arbitration agreement, specifically whether particular claims fall within or outside the matters parties agreed to arbitrate, similarly trigger suspension where jurisdictional boundaries are contested.[726]

The English Arbitration Act 1996 provides a comprehensive framework combining broad procedural autonomy with robust recognition of the competence-competence principle. Section 34 establishes the tribunal's procedural authority, providing that it shall decide all procedural and evidential matters, subject to the parties' right to agree on any matter.[727] This broad grant encompasses decisions about evidence, hearings, written submissions, and the general conduct of proceedings. In Addition, Section 33 establishes the tribunal's general duty, requiring that the tribunal act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of the opponent, and that the tribunal adopt procedures suitable to the circumstances of the particular case whilst avoiding unnecessary delay or expense.[728] These requirements parallel Model Law Article 18 and constitute the mandatory boundaries within which procedural autonomy operates. English courts have developed nuanced jurisprudence interpreting these fairness requirements in ways that support rather than constrain procedural autonomy. In P v Q, the Court of Appeal upheld a tribunal's refusal to admit late evidence despite its potential relevance, reasoning that procedural discipline itself serves fairness by ensuring finality and preventing tactical delays.[729] This judgment demonstrates that English court’s view fairness not as unlimited procedural rights but as balanced opportunity within agreed constraints. Similarly, in Fleetwood Wanderers Ltd v AFC

[726] Ibid.
[727] Arbitration Act 1996 (UK) s 34(1).
[728] Arbitration Act 1996 (UK) s 33(1).
[729] *P v Q* [2017] EWCA Civ 87.

Fylde Ltd, the High Court validated a documents-only procedure that eliminated oral hearings entirely, with the Court's acceptance hinging on explicit party agreement and the commercial context of the dispute.[730] These decisions collectively demonstrate that English courts interpret fairness functionally rather than formally, recognising that procedures need not mirror litigation if they serve the parties' legitimate expectations for efficient resolution. Section 30 addresses the tribunal's authority to determine whether it has jurisdiction. According to this provision, unless the parties have agreed otherwise, the arbitral tribunal can rule on its own substantive jurisdiction. This includes determining whether a valid arbitration agreement exists, whether the tribunal has been properly formed, and identifying which issues have been submitted for arbitration under the agreement.[731] This competence-competence authority means that jurisdictional challenges, including challenges to the validity or scope of an agreement, do not automatically suspend proceedings under English law. The tribunal may determine such challenges itself, subject to subsequent judicial review. Section 67 provides for the court's determination of jurisdictional questions, but it operates as a mechanism for challenging tribunal determinations rather than as an automatic interruption of proceedings.[732]

The Arbitration Act 2025, which came into force on 1 August 2025, introduced targeted amendments that further reinforce tribunal procedural authority whilst maintaining the established framework of judicial oversight. Section 39A, inserted by the 2025 Act, explicitly authorises tribunals to summarily dismiss claims or defences that have no real prospect of success.[733] This provision formalises a power that practitioners had long sought, enabling tribunals to dispose of unmeritorious claims efficiently without proceeding through full evidentiary hearings. The summary disposal mechanism reflects legislative recognition that procedural efficiency serves the interests of justice, particularly in commercial arbitration where tactical deployment of weak claims can impose substantial costs on opposing parties.

The 2025 amendments also addressed practical developments in arbitration practice by affirming tribunal jurisdiction over electronic platforms and virtual hearings under

[730] *Fleetwood Wanderers Ltd v AFC Fylde Ltd* [2018] EWHC 3318 (Comm).
[731] Arbitration Act 1996 (UK) s 30.
[732] Arbitration Act 1996 (UK) s 67.
[733] Arbitration Act 2025, ss 34, 39A

the amendments to Section 34. These provisions give statutory recognition to practices that became widespread during the COVID-19 pandemic and have since become embedded in international arbitration practice. The legislative endorsement of virtual proceedings confirms that English law accommodates technological innovation within its procedural framework, treating electronic hearings as equivalent to physical hearings for procedural purposes.

These recent developments demonstrate the continuing evolution of English arbitration law toward greater procedural flexibility whilst preserving the mandatory fairness requirements that legitimise the arbitral process. The 2025 amendments respond to commercial demands for efficiency without abandoning the supervisory framework that ensures arbitration remains a form of justice rather than merely private dispute resolution.

The English approach thus maintains procedural momentum despite jurisdictional challenges. Parties who dispute the tribunal's jurisdiction may raise their objections before the tribunal. The tribunal determines those objections. Dissatisfied parties may seek court review after the tribunal has ruled. This structure prioritises efficiency by avoiding interruption of proceedings for every jurisdictional dispute whilst preserving judicial oversight through post-determination review.

The UAE Federal Arbitration Law of 2018 similarly embraces procedural autonomy and the competence-competence principle, representing the modern Gulf approach to these questions.[734] Article 23 guarantees party freedom to agree on procedural rules, including the incorporation of institutional rules, with the tribunal determining appropriate procedures in the absence of agreement.[735] Article 19 addresses the tribunal's jurisdiction to rule on its own competence, providing that the arbitral tribunal may rule on any pleas concerning its lack of jurisdiction, including those based on the non-existence, invalidity, or lapse of the arbitration agreement.[736] This explicit recognition of competence-competence aligns the UAE with international practice and

[734] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.
[735] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 23.
[736] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 19.

distinguishes it from Kuwait's approach.[737] Article 27 is a mandatory provision requiring tribunals to treat parties equally and to provide a full opportunity to present their cases, using language closely paralleling Model Law Article 18.[738] Like England, the UAE thus combines broad procedural autonomy with mandatory fairness requirements whilst empowering tribunals to address jurisdictional challenges without automatic suspension. The UAE framework contains no provision requiring suspension for preliminary questions arising during proceedings. Tribunals may determine jurisdictional disputes, validity challenges, and scope questions without interrupting proceedings for judicial determination.[739] Judicial review remains available through annulment proceedings after the award but operates as oversight of tribunal determinations rather than as an interruption mechanism.

Judicial practice in the UAE has actively supported this statutory framework through decisions affirming broad tribunal procedural authority. In Dubai Court of Cassation Case No 34 of 2020, the Court held that arbitrators are entitled to determine procedures as they deem fit and are not obliged to follow the UAE Civil Procedures Law.[740] This decision marks a decisive departure from the formalistic approach that characterised the pre-2018 era, when procedural deviations from litigation norms frequently provided grounds for annulment. The Court's reasoning confirms that the 2018 law effected a shift in the relationship between arbitral and judicial procedure, treating arbitration as an autonomous process rather than a modified form of litigation.

Similarly, in Dubai Court of Cassation Case No 36 of 2020, the Court upheld virtual arbitration proceedings conducted during COVID-19 restrictions, confirming that electronic hearings satisfy the procedural requirements under Article 33.3 of the 2018 law.[741] This decision demonstrates judicial willingness to interpret procedural flexibility broadly, facilitating rather than hindering arbitral efficiency in response to technological developments and practical necessities.

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[737] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.
[738] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 18.
[739] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.
[740] *See Dubai Court of Cassation, Commercial Case No 34/2020 (December 7, 2020).*
[741] *See Dubai Court of Cassation, Commercial Case No 36/2020 (December 7, 2020).*

The 2023 amendments under Federal Law No. 15 of 2023 further consolidated these developments. Article 28 bis introduced explicit authorisation for virtual hearings, giving statutory force to practices accelerated during the pandemic and endorsed by judicial decisions such as Case No 36 of 2020. Article 51 bis recognised electronic signatures on awards, addressing a technical vulnerability that had previously exposed awards to challenge on formal grounds. These amendments demonstrate the UAE's commitment to maintaining alignment with international arbitration practice whilst providing clear statutory foundations for procedural innovations.

The combination of statutory reform and supportive judicial interpretation distinguishes the UAE's trajectory from Kuwait's experience. Where UAE courts have embraced the policy shift toward procedural autonomy embedded in the 2018 law and its amendments, Kuwait's mandatory suspension requirement under Article 180 reflects a different conception of the tribunal-court relationship that prioritises judicial involvement over arbitral efficiency.

The comparison reveals different conceptions of the relationship between arbitral tribunals and courts with respect to jurisdictional and procedural matters. England and the UAE trust tribunals to determine their own jurisdiction, subject to subsequent judicial review. Kuwait requires a judicial determination before arbitration can proceed, treating jurisdictional questions as categorically beyond the tribunal's competence.

4.4.2 Kuwaiti Judicial Interpretation of Arbitration Procedural Rules

The Court of Cassation has developed substantial jurisprudence interpreting Kuwait's procedural framework, addressing both the scope of procedural autonomy and the strict application of the mandatory suspension requirement.

In Case No 274/1998, the Cassation Court established the consensual foundation underlying procedural authority in Kuwait's framework.[742] The court confirmed that arbitration constitutes a special form of judicial activity wherein the arbitrator derives authority not from law, as judges do, but from the parties' agreement. The court emphasised that arbitrators cannot extend their jurisdiction through implied authority,

[742] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).

a principle with direct implications for procedural management. While arbitrators may request document production, schedule hearings, or direct witness attendance, they cannot compel compliance without judicial assistance. This consensual foundation distinguishes arbitral authority from judicial power. Judges possess inherent authority derived from state sovereignty, while arbitrators possess only that authority which parties have conferred.[743] This decision establishes the theoretical framework within which Kuwait's procedural rules operate. Procedural autonomy exists because parties possess the freedom to design dispute-resolution mechanisms. The limits on that autonomy reflect the boundaries of what parties can delegate to private adjudicators versus what remains within exclusive judicial competence.

Case No 708 of 2007 demonstrates judicial flexibility regarding procedural formalities.[744] The Court of Cassation held that the writing requirement for arbitrator acceptance under Article 178(1) constitutes an evidentiary mechanism rather than a substantive validity condition. Acceptance may occur expressly or impliedly, such as when the arbitrator convenes the parties and commences procedural functions. This allows the parties to customise both the initiation and conduct of their arbitration proceedings.[745] This decision confirms that Kuwaiti courts do not invariably insist on rigid procedural compliance. Where the underlying purpose of a procedural requirement is satisfied, courts will honour substance over form. The decision provides important flexibility within Kuwait's formal framework.

Case No 39/1987 demonstrates the strict application of the mandatory suspension requirement.[746] The Court of Cassation held that when a party challenges the validity of the arbitration agreement itself, this constitutes a preliminary question outside the arbitrator's jurisdiction. The proceedings must be suspended as a matter of law until a final judgment determines the validity of the agreement. The court stated the underlying principle with clarity. The arbitrator cannot decide questions concerning the validity or nullity of the arbitration agreement that grants his authority to decide the dispute. If a party invokes nullity of the agreement, the proceedings before the arbitrator are suspended by force of law until a final judgment resolves the matter. The

[743] Ibid.
[744] Court of Cassation (Kuwait), Case No 708 of 2007 (Commercial Circuit, 27 April 2010).
[745] Ibid.
[746] Court of Cassation (Kuwait), Civil Circuit, Case No 39/1987 (22 February 1988).

court held that any actions taken during suspension, or before the arbitrator possesses actual knowledge that the obstacle has disappeared, are void regardless of their substantive merit.[747] This voiding operates automatically. The tribunal need not have acted in bad faith or with knowledge of the suspension. The mere fact of suspension renders subsequent actions invalid. This strict approach reflects Kuwait's rejection of the competence-competence principle. Where international frameworks would permit the tribunal to determine whether the arbitration agreement is valid, subject to subsequent judicial review, Kuwait requires immediate suspension and court determination before the arbitration can proceed.

Case No 1123/2007 extends the mandatory suspension principle to jurisdictional disputes.[748] Where parties had agreed to arbitrate disputes arising from a specific contract during a defined period, and the respondent challenged the tribunal's jurisdiction over specific claims as falling outside this scope, the court held that this constituted a preliminary question requiring court determination. The tribunal in that case resolved the jurisdictional dispute, concluding that the challenged claims fell within the scope of the arbitration agreement. The Court of Cassation held that this determination exceeded the tribunal's authority. The tribunal's decision to resolve the jurisdictional dispute itself rendered its award void.[749] This extension is significant because it encompasses not only challenges to the existence or validity of the arbitration agreement but also disputes over the scope of an admittedly valid agreement. Where parties disagree about whether particular claims fall within the matters they agreed to arbitrate, this scope dispute triggers mandatory suspension just as validity challenges do.

Case No 1527 of 2007 reinforces the strict application of mandatory suspension.[750] The Court of Cassation annulled an award because the validity of the arbitration agreement remained unresolved while the tribunal proceeded to decide the merits. The challenging party had raised a defence that no valid agency authorised the agreement, arguing that the person who signed the arbitration agreement lacked authority to bind the party. The court held this constituted a preliminary matter outside

[747] Ibid.
[748] Court of Cassation (Kuwait), Commercial Circuit, Case No 1123/2007 (14 June 2009).
[749] Ibid.
[750] Court of Cassation (Kuwait), Commercial Circuit, Case No 1487/2007 (11 May 2010).

the tribunal's competence requiring court determination before the arbitration could proceed.[751] This decision extends the suspension requirement to questions about the authority of those who concluded the arbitration agreement. Agency challenges, specifically whether the signatory possessed authority to agree to arbitration on behalf of the party, constitute preliminary questions that the tribunal cannot determine for itself.

4.4.3 Synthesis

Kuwaiti courts consistently enforce the mandatory suspension requirement, treating challenges to arbitration agreements as preliminary issues reserved for court determination. The competence-competence principle is not recognised in Kuwait. Kuwait's approach reflects its conception of arbitral authority as conditional. Since arbitrators derive their power from the arbitration agreement, they cannot rule on that agreement's validity or scope without getting permission from the state court. Only courts, deriving authority from state sovereignty, possess the competence to resolve such foundational questions.

This approach values legal certainty over procedural efficiency. Kuwait prefers that courts determine preliminary questions, even if doing so delays arbitration, rather than permitting tribunals to assess their own authority subject to later review. The framework requires that the foundation of arbitral authority be verified by courts rather than assumed by tribunals. Kuwait's procedural framework exhibits a distinctive combination. The framework provides substantial procedural autonomy in conducting arbitral proceedings, combined with strict constraints on the tribunal's authority to determine preliminary jurisdictional questions. The recognition of procedural freedom from court formalities under Article 182 aligns Kuwait with international practice and regional comparators. Parties may agree on procedures. Tribunals may manage proceedings flexibly. The Court of Cassation's willingness to honour substance over form, as demonstrated in Case No 708 of 2007 regarding implied acceptance, confirms that procedural requirements serve functional purposes rather than existing as formalistic obstacles.

[751] Ibid.

The mandatory suspension requirement under Article 180(2), however, represents a significant departure from international standards and regional practice. Where England and the UAE embrace the competence-competence principle and permit tribunals to determine jurisdictional challenges subject to judicial review, Kuwait requires automatic suspension and court determination before arbitration can proceed. The Court of Cassation's jurisprudence confirms the strict application of this requirement. Challenges to agreement validity, as addressed in Case No 39/1987; disputes about jurisdictional scope, as addressed in Case No 1123/2007; and questions about signatory authority, as addressed in Case No 1527 of 2007, all trigger mandatory suspension. The voiding of actions taken during suspension, regardless of substantive merit, demonstrates the framework's commitment to formal legal order over procedural efficiency. For example, in Case No 39/1987, the court reinforced the necessity for mandatory suspension in cases of validity challenges, underscoring Kuwait's emphasis on judicial oversight. Similarly, Case No 1123/2007 highlighted how jurisdictional scope disputes automatically halt arbitration, reinforcing the central role of court determination. In Case No 1527 of 2007, the focus on signatory authority disputes showed the stringent application of suspension to preserve procedural integrity, ultimately stressing the limitations imposed on arbitral proceedings.

This approach reflects the State-Centric Hybrid Model's characteristic allocation of authority. Where international frameworks entrust tribunals with discretion to address preliminary matters whilst preserving judicial oversight through post-award review, Kuwait reserves such questions for judicial determination at the threshold. The tribunal's authority remains conditional. It cannot exercise jurisdiction over the merits until courts have confirmed that a valid and applicable arbitration agreement exists. The practical consequences for parties electing arbitration seated in Kuwait are considerable. Jurisdictional challenges can substantially delay proceedings by automatically suspending proceedings pending judicial determination. This exposure to tactical delay may discourage parties from selecting Kuwait as an arbitral seat where such challenges appear likely.

The comparative analysis suggests potential refinements that could strengthen Kuwait's framework whilst preserving legitimate oversight objectives. Adoption of the competence-competence principle would permit tribunals to determine jurisdictional

challenges subject to judicial review, aligning Kuwait with international standards and regional practice whilst preserving ultimate judicial oversight. Alternatively, allowing tribunals or courts to exercise their discretion rather than imposing mandatory suspension would enable them to determine whether suspension is needed in specific cases. This approach reduces incentives for unnecessary delays while preserving judicial authority over truly contested jurisdictional issues.

These modifications would enhance Kuwait's attractiveness for international arbitration without abandoning the structured court-arbitration relationship that characterises the State-Centric Hybrid Model. The current framework's mandatory suspension requirement, whilst reflecting legitimate concerns about the foundations of arbitral authority, imposes procedural efficiency costs that modern arbitration practice has generally concluded are better addressed through post-award judicial review than through threshold judicial gatekeeping.

4.5 Interim Measures: The Allocation of Urgent Authority

The authority to grant interim measures represents a significant dimension of arbitral jurisdiction, enabling tribunals to preserve assets, maintain the status quo, and prevent irreparable harm pending final determination. Provisional measures rest on a premise that effective dispute resolution requires adjudicative bodies to possess broad authority to safeguard party rights and preserve their own remedial capacity throughout the proceedings.[752]

The treatment of interim measures has evolved substantially over recent decades. Historically, national laws frequently denied arbitrators authority to order provisional relief, reserving such powers exclusively to national courts.[753] This position rested on the traditional principle that arbitrators lack coercive powers and therefore cannot effectively order interim relief. This traditional rationale proves unsatisfactory upon examination. Issuing provisional measures involves no greater exercise of coercive

[752] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 17.
[753] ibid §17.02[A][3][a], noting historic prohibitions in Switzerland under the 1969 Cantonal Concordat, Austria, Italy, Spain, Greece, and Argentina.

power than rendering a final award granting injunctive relief, since both ultimately require the involvement of a national court for enforcement.[754]

Contemporary international practice has decisively abandoned these historic prohibitions. The UNCITRAL Model Law exemplifies the modern approach through Article 17, which provides that, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the tribunal considers necessary.[755] This formulation establishes tribunal authority as the default position, requiring express party agreement to exclude such power rather than affirmative authorisation to confer it.

Significant variation persists among jurisdictions regarding the scope and implementation of interim measure authority. The 2006 amendments to the Model Law substantially expanded the interim measures framework, introducing detailed provisions on types of measures, enforcement mechanisms, and preliminary orders.[756] Most states that have adopted the Model Law continue to apply the more limited 1985 version, however, which does not address coercive powers or the relationship between arbitral and judicial authority over urgent matters.[757] The standards governing interim relief under international practice require demonstration of several elements. These include a risk of serious or irreparable harm, urgency, avoidance of prejudgment on the merits, and often a prima facie case on the merits and jurisdiction. Scholars emphasise that these requirements are not applied mechanically but involve pragmatic assessments of the degree of risk, the extent of possible harm, the balance of hardships, and the merits of the parties' underlying positions.[758]

A critical aspect of modern interim measure frameworks concerns the relationship between tribunal and court authority. Contemporary practice generally recognises concurrent jurisdiction whereby tribunals may order interim measures within their arbitral authority, whilst courts retain power to grant provisional relief in support of

[754] Ibid.
[755] UNCITRAL Model Law on International Commercial Arbitration (1985) art 17.
[756] UNCITRAL Model Law (as amended 2006) arts 17–17J.
[757] Jeffrey Maurice Waincymer, ‘Preliminary, Interim and Dispositive Determinations’ in Procedure and Evidence in International Arbitration (Kluwer Law International 2012) 609–715.
[758] Ibid.

arbitration. This concurrent jurisdiction has become firmly embedded within contemporary international arbitration practice, reflecting practical necessities.[759] Courts may act before the tribunal is constituted, may bind third parties beyond the arbitral jurisdiction, and may provide coercive enforcement unavailable through the arbitral process.

4.5.1 Kuwait's Arbitration Framework Governing Interim Measures

Article 173 of the CCPL creates a default rule excluding urgent matters from arbitral tribunal jurisdiction unless the parties expressly agree otherwise.[760] This allocation reflects the legislature's view that interim protection involves interests, including property preservation, evidence security, and commercial relationships, where judicial involvement remains appropriate. The provision states that matters requiring urgent determination shall not fall within the arbitrator's jurisdiction unless expressly agreed by the parties.[761] This express opt-in requirement contrasts with the opt-out approach adopted by the UNCITRAL Model Law and most modern arbitration legislation. Under Kuwait's framework, the tribunal's authority depends entirely on explicit conferral. Generic arbitration clauses, even those granting broad procedural authority, do not, by themselves, suffice to establish interim jurisdiction.

The requirement reflects Kuwait's broader conception of arbitral authority as conditional. As established in Case No 274/1998, arbitrators derive authority from the parties' agreement rather than from law and cannot extend their jurisdiction through implied powers.[762] Applied to interim measures, this principle means that silence in the arbitration agreement produces judicial exclusivity rather than tribunal authority. This outcome represents the opposite of the Model Law's presumption. The practical implications are substantial for ensuring the efficiency of the arbitration process. However, this opt-in requirement can be strategically framed as an opportunity for

[759] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Role of National Courts during the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) para 7.19.
[760] Civil and Commercial Procedure Law (Kuwait) art 173.
[761] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[762] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).

parties to tailor their arbitration agreements to manage risks specifically associated with urgent matters. It invites drafters to consider the balance between achieving maximum procedural autonomy and benefiting from the judicial security that comes with explicit power conferral. Parties must expect at the drafting stage every form of urgency that might arise and expressly confer corresponding powers.[763] The absence of arbitral mechanisms for urgent relief may effectively preclude tribunals from granting meaningful interim protection, potentially rendering even final awards practically ineffective. Parties who cannot foresee the specific urgent circumstances that complex commercial disputes may generate risk finding themselves without effective arbitral protection when unexpected situations arise.

Where parties do expressly confer interim measure authority, Kuwait's framework provides limited guidance on the scope and exercise of such power. Unlike frameworks that enumerate permissible measures such as preservation of evidence, asset freezing, and status quo maintenance, Article 173 simply addresses whether authority exists without specifying its content. This gap leaves parties and tribunals without clear statutory guidance on several significant questions. The framework does not address the types of interim measures tribunals may order, the standards governing the grant or denial of such measures, whether tribunals may require security from applicants, or how interim orders relate to the mandatory suspension provisions applicable to preliminary questions. The absence of express provisions addressing these matters contrasts with more developed frameworks that provide detailed guidance on interim measure practice.

Even where parties expressly confer interim powers, enforcement requires judicial assistance under the general framework governing arbitral orders.[764] Arbitral tribunals lack coercive authority and cannot compel compliance with interim orders through direct enforcement mechanisms. Parties seeking to enforce tribunal-ordered interim measures may need to obtain court assistance to transform the interim measure into

[763] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://legalblogs-wolterskluwer-com.uea.idm.oclc.org/arbitration-blog/arbitration-in-kuwait-time-for-reform/> accessed 22 November 2025.

[764] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

a judicially enforceable direction. This establishes a two-stage process, in which any measures granted subsequently require judicial involvement to ensure enforceability. Consequently, parties seeking urgent interim protection must engage both arbitral and court procedures to secure effective relief. The mandatory suspension provisions analysed in Section 4.4 apply equally to interim measure proceedings, meaning that the tribunal authority dissolves when preliminary questions or criminal allegations arise requiring judicial resolution. A party seeking to obstruct interim measure proceedings might raise jurisdictional challenges, knowing that automatic suspension results, thereby defeating the urgency that interim measures are designed to address.

Kuwait's framework lacks several provisions that other jurisdictions have adopted to govern interim measure practice.[765] There is no express provision addressing security requirements for interim measure applications, leaving uncertain whether and when tribunals may require applicants to provide security against potential harm to respondents from improvidently granted measures. There is no list of permissible measure categories, leaving the scope of tribunal authority undefined even where parties have expressly conferred it. There is no clear mechanism distinguishing between orders and awards for interim relief purposes, affecting both the procedural requirements for issuance and the mechanisms for enforcement.

The English Arbitration Act 1996 provides a comprehensive framework for interim measures that combines tribunal authority with court support mechanisms. Section 38 addresses the tribunal's general procedural powers, including authority to order security for costs, to direct preservation of evidence, and to make orders relating to property that is the subject of the proceedings.[766] These powers exist unless the parties agree to exclude them, an opt-out approach that presumes tribunal authority. Section 39 specifically addresses the tribunal's power to make provisional awards, including orders for payment of money or disposition of property between the parties.[767] This provision requires party agreement to activate, representing an opt-in approach for this specific category of relief. The distinction between Section 38 general procedural powers operating on an opt-out basis and Section 39 provisional awards

[765] 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[766] Arbitration Act 1996 (UK) s 38.
[767] Arbitration Act 1996 (UK) s 39.

requiring opt-in reflects a calibrated approach. Routine interim measures fall within presumed tribunal authority, while more intrusive provisional relief requires express conferral.

Section 44 addresses court powers exercisable in support of arbitral proceedings, including preservation of evidence, orders relating to property, sale of goods, and interim injunctions.[768] These judicial powers are maintained to ensure the courts remain accessible in situations where relief through arbitration is insufficient. Section 44(5) provides that court powers are exercisable only where the tribunal has no power or is unable to act effectively, channelling parties toward arbitral relief where available, whilst preserving court support for genuine gaps.[769]

The English framework thus grants tribunals broad interim powers by default, permits parties to extend these to provisional awards, and relies on courts only when arbitral mechanisms prove insufficient. This structure enhances tribunal effectiveness whilst maintaining court accessibility for necessary intervention.

The UAE Federal Arbitration Law of 2018 represents the most developed Gulf framework for interim measures, adopting the Model Law's opt-out approach with detailed elaboration.[770] Article 21 grants tribunals automatic authority to order interim measures unless the parties agree otherwise, directly contrasting with Kuwait's opt-in requirement.[771] The provision specifies permissible measures with unusual precision. These include preservation of evidence, measures to prevent asset dissipation, preservation of goods forming the subject matter of the dispute, including the sale of perishable items, and maintenance or restoration of the status quo.[772] This enumeration provides guidance absent from Kuwait's framework, clarifying the scope of tribunal authority and reducing uncertainty about permissible measures.[773] Article

[768] Arbitration Act 1996 (UK) s 44.
[769] Arbitration Act 1996 (UK) s 44(5).
[770] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 153–160.
[771] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 21(1).
[772] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 21(2).
[773] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.

21(2) further authorises tribunals to require security from parties requesting interim measures, addressing concerns about tactical abuse.[774] This security mechanism permits tribunals to condition interim relief on applicant security, protecting improvident applications that might harm respondents. Kuwait's framework lacks this safeguard. Article 21(4) provides an enforcement mechanism through the execution judge, enabling parties to obtain judicial enforcement of tribunal-ordered measures without substantive reconsideration.[775] The execution judge enforces the tribunal's order rather than reconsidering its merits, thereby facilitating the efficient implementation of arbitral interim relief. This streamlined enforcement contrasts with Kuwait's general requirement of judicial assistance without specific interim measure provisions.[776]

The comparison reveals different conceptions of authority over interim measures. England and the UAE treat tribunal authority as primary, requiring the parties to act to exclude it. Kuwait treats judicial authority as primary, requiring party action to include tribunal authority. This difference in default allocation reflects bigger differences in how each jurisdiction conceives the relationship between arbitration and judicial systems. Under English and UAE frameworks, parties who draft standard arbitration clauses automatically obtain tribunal interim authority. Only parties who specifically want to exclude such authority need to address the question in their agreements. Under Kuwait's framework, parties who draft standard arbitration clauses do not obtain interim tribunal authority. Only parties who specifically anticipate the need for such authority and expressly include it in their submissions obtain arbitral interim relief.

The enforcement mechanisms further distinguish the frameworks. The UAE's execution judge procedure provides streamlined enforcement of tribunal-ordered measures, treating such enforcement as administrative implementation rather than judicial reconsideration. Kuwait's reliance on general judicial assistance provides less clarity about enforcement procedures and may subject tribunal orders to more extensive judicial scrutiny.

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[774] Ibid.
[775] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 21(2).
[776] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 153–160.

4.5.2 Kuwaiti Courts' Interpretation of Interim Measures

The Court of Cassation has addressed the interim measure framework in decisions that confirm the strict interpretation of the express conferral requirement whilst situating interim authority within Kuwait's broader conception of arbitral jurisdiction.

In Case No 568 of 1998, the Cassation Court establishes the leading authority on Kuwait's interim measure framework.[777] The tribunal in that case had issued a freezing order to preserve assets pending final determination. The respondent challenged the order, arguing that the arbitration clause contained no express reference to interim powers. The tribunal had reasoned that authority to decide the substantive dispute implied authority to take measures necessary to make that decision effective. This functional interpretation would align Kuwait with international practice, treating interim authority as inherent in the arbitral mandate. The Court of Cassation rejected this reasoning, holding that the freezing order lacked jurisdictional foundation because the arbitration clause contained no express reference to interim powers. The court emphasised that powers affecting urgent matters must be expressly conferred because they involve interests that cannot be delegated by implication.[778] The court's reasoning reflects Kuwait's broader approach to arbitral authority. Because arbitrators derive power from party agreement rather than from law, they possess only those powers that parties have explicitly conferred. The tribunal cannot infer interim authority from the parties' general agreement to arbitrate, even where such authority would serve the arbitration's effectiveness. The commercial necessity of the protection, preserving assets against potential dissipation, could not cure the jurisdictional defect arising from the absence of explicit emergency language in the arbitration agreement.[779] This decision establishes several principles governing interim measure practice in Kuwait. The express conferral requirement operates strictly, and implications from general arbitration language do not suffice. The requirement applies regardless of the urgency or commercial necessity of the requested measure, and jurisdictional defects cannot be cured by practical need. Tribunals that exceed their

[777] Court of Cassation (Kuwait), Commercial Circuit, Case No 568/1998 (13 June 1999).
[778] Ibid.
[779] Ibid.

jurisdiction by ordering interim measures without express authority expose their orders and potentially their awards to challenge.

Case No 274/1998, whilst not directly addressing interim measures, provides the theoretical foundation for understanding Kuwait's approach.[780] The Court of Cassation confirmed that arbitration constitutes a special form of judicial activity wherein the arbitrator derives authority not from law, as judges do, but from the parties' agreement. The court emphasised that arbitrators cannot extend their jurisdiction through implied authority, a principle with direct implications for interim measures. Where international frameworks treat interim authority as inherent in the arbitral mandate, Kuwait treats it as requiring explicit conferral, precisely because arbitral power derives from agreement rather than inherent competence.

This consensual foundation explains why Kuwait's framework differs from international practice. The view that interim relief authority constitutes an inherent aspect of adjudicatory power rests on a conception of arbitral tribunals as possessing autonomous adjudicatory competence.[781] Kuwait's framework, in contrast, treats tribunals as possessing only delegated authority, meaning the power specifically conferred on parties. Interim measures fall outside this delegation unless parties expressly include them.

4.5.3 Synthesis

These decisions reveal a consistent jurisprudential approach, though one that produces outcomes that differ from international standards. The Court of Cassation views arbitral authority as strictly delimited by party agreement. Any powers not specifically granted are excluded, and tribunals cannot infer authority from their general mandate or from commercial necessity. Applied to interim measures, this framework produces the express opt-in requirement. Parties who want tribunals to possess interim authority must say so explicitly. Silence produces judicial exclusivity. This approach prioritises formal clarity by ensuring that parties know precisely what

[780] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).
[781] Gary B Born, 'International Arbitral Procedures' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1643–1646 (updated September 2024, Kluwer Arbitration, accessed 21 January 2026).

authority they have conferred, though this clarity comes at the cost of flexibility to address unforeseen urgent circumstances. The practical effect is that sophisticated parties must draft arbitration agreements with careful attention to interim measure authority, anticipating the types of urgent relief that might prove necessary and expressly authorising such measures. Parties who fail to do so, whether through oversight or an inability to foresee particular urgent circumstances, find themselves confined to judicial interim relief, with potentially different standards, timelines, and enforcement mechanisms than those provided by arbitral measures. Kuwait's approach to interim measures reflects the State-Centric Hybrid Model's characteristic allocation of authority, treating judicial involvement as the default for urgent matters unless parties expressly choose otherwise.

The express opt-in requirement represents a departure from international practice and from the UAE's approach. Where the Model Law, England, and the UAE presume tribunal authority subject to party exclusion, Kuwait presumes judicial exclusivity subject to party inclusion. This inverted default allocation places the burden of action on parties who want tribunal authority rather than on parties who want to exclude it.

The Court of Cassation's jurisprudence confirms the strict application of this requirement. Case No 568 of 1998 establishes that an interim authority cannot be implied from general arbitration language or from commercial necessity. Only express conferral establishes jurisdiction. This strict interpretation reflects Kuwait's broader conception of arbitral authority as derived and conditional, in which tribunals possess only those powers explicitly conferred by the parties.

The practical consequences for arbitration practice in Kuwait prove significant. Parties must draft arbitration agreements with careful attention to interim measure authority, expressly conferring such power if they want tribunals to possess it. Failure to do so confines parties to judicial interim relief, which may involve different standards, timelines, and procedural requirements. The absence of express provisions addressing security requirements, permissible measure categories, and enforcement mechanisms leaves parties with less guidance than the UAE's detailed framework provides.

The comparative analysis suggests potential refinements that could strengthen Kuwait's framework whilst preserving legitimate oversight objectives. Adoption of the opt-out approach, presuming tribunal interim authority subject to party exclusion, would align Kuwait with international standards and regional best practice whilst preserving party autonomy to exclude such authority where desired. Express provisions addressing security requirements would protect respondents against improvident interim applications. Enumeration of permissible measures would clarify tribunal authority and reduce interpretive uncertainty. Streamlined enforcement mechanisms, modelled on the UAE's execution judge system, would facilitate the implementation of tribunal-ordered relief. These modifications would enhance Kuwait's attractiveness for international arbitration without abandoning judicial oversight of urgent matters. The current framework's opt-in requirement, whilst reflecting legitimate concerns about preserving judicial involvement in urgent commercial matters, imposes drafting burdens and creates protection gaps that modern arbitration practice has generally concluded are better addressed through presumptive tribunal authority with preserved court concurrent jurisdiction.

Within the State-Centric Hybrid Model framework, interim measures exemplify the conditional character of arbitral authority under Kuwait's framework. Tribunals may exercise urgent authority only where parties have expressly conferred it, a conditional grant that maintains judicial primacy over urgent matters unless parties affirmatively choose otherwise. This approach ensures that interim relief remains available through judicial mechanisms regardless of the terms of an arbitration agreement, whilst permitting parties who value tribunal-administered urgent relief to obtain it through careful drafting. The trade-off is reduced flexibility and increased planning burden compared to frameworks that treat interim authority as inherent in the arbitral mandate.

4.6 Conclusion:

This chapter has examined the procedural phase of arbitration under Kuwait's Civil and Commercial Procedure Law, testing whether parties who successfully navigate jurisdictional gatekeeping thereby obtain autonomous procedural authority. The analysis across four substantive dimensions reveals a consistent pattern. Kuwait's framework formally recognises party autonomy whilst systematically embedding judicial involvement throughout the procedural phase.

The analysis of tribunal constitution in Section 4.2 demonstrates that party freedom to select arbitrators operates within mandatory statutory constraints. Article 174(1) imposes eligibility requirements, including disqualifications for bankruptcy and criminal conviction that parties cannot contractually modify.[782] Unlike in England, where there are no explicit statutory requirements for arbitrators and all decisions on qualifications are left entirely to the parties involved, this approach takes a different stance.[783] Article 175 establishes default appointment mechanisms through judicial intervention when party agreement fails, without the specified timelines that the UAE's framework provides, such as its 15-day periods for party performance.[784] The odd-number requirement under Article 174 operates as mandatory law rather than the interpretive presumption adopted by Section 15(2) of the English Arbitration Act, which converts even-number agreements to odd unless parties expressly indicate otherwise. These requirements illustrate how statutory regulation shapes tribunal formation regardless of parties' preferences, with Kuwait's framework imposing more extensive constraints than those in England or the UAE.

The analysis of temporal constraints in Section 4.3 reveals a strict judicial interpretation that prioritises procedural certainty over flexible case management. Article 181's default six-month period operates as a jurisdictional boundary rather than

[782] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).
[783] Hong-Lin Yu, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209–226.
[784] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 183.

a procedural guideline. The Court of Cassation in Cases Nos. 258 and 263 of 2005 confirmed that exceeding the deadline renders awards annullable regardless of substantive merit. This approach contrasts with England, which imposes no mandatory time limits and grants tribunals broad procedural authority under Section 34, and with the UAE, which grants tribunals autonomous six-month extension authority under Article 42. Among the reference frameworks used here, Kuwait denies tribunals any autonomous temporal authority, requiring party consent for any extension. This distinctive feature reflects the State-Centric Hybrid Model's insistence that arbitral power derives from delegation rather than inherent competence.

The analysis of procedural rules in Section 4.4 presents the most significant findings regarding the limitations of party autonomy. Article 182(1) grants substantial procedural freedom, aligning Kuwait with the internationally recognised principle that procedural autonomy constitutes a foundational characteristic of international commercial arbitration.[785] Article 180(2), however, introduces the mandatory suspension requirement, a distinctive constraint requiring automatic suspension whenever preliminary questions arise that fall outside the arbitrator's competence. Cases Nos. 39 of 1987, 1123 of 2007, and 1527 of 2007 confirm strict judicial application. Proceedings must halt as a matter of law until competent courts resolve jurisdictional or validity challenges, with any actions taken during suspension rendered void.

This mandatory suspension distinguishes Kuwait's framework from both international standards and regional comparators. The UNCITRAL Model Law embodies the competence-competence principle in Article 16, granting tribunals the authority to rule on their own jurisdiction. England robustly implements this principle through Section 30 of the Arbitration Act 1996, which permits tribunals to determine jurisdictional challenges, subject to subsequent court review under Section 67.[786] The UAE similarly recognises competence-competence under Article 19 of its 2018 law, allowing tribunals to rule on pleas concerning their lack of jurisdiction without automatic

[785] Gary B Born, 'International Arbitral Procedures' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1643–1646 (updated September 2024, Kluwer Arbitration, accessed 21 January 2026).
[786] Hong-Lin Yu, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209–226.

suspension.[787] Kuwait's rejection of the competence-competence principle, requiring judicial determination of jurisdictional questions before arbitration can proceed, represents a departure from modern arbitration practice that creates vulnerability to tactical delay and interrupts the proceedings in ways other frameworks avoid.

The analysis of interim measures in Section 4.5 further illustrates Kuwait's distinctive allocation of authority. Article 173 creates a default rule excluding urgent matters from arbitral jurisdiction unless parties expressly agree otherwise, an opt-in model: the tribunal lacks the power unless expressly conferred rather than presuming tribunal authority.[788] Case No 568 of 1998 confirms strict judicial interpretation. A freezing order issued without express authorisation in the arbitration agreement lacks jurisdictional foundation regardless of commercial necessity. This approach contrasts with the default rule subject to exclusion by agreement adopted by both England and the UAE. Section 38 of the English Arbitration Act grants tribunals broad interim powers by default, with Section 44 providing court support where tribunals cannot act effectively. The UAE's Article 21 similarly presumes tribunal authority subject to party exclusion, with a detailed enumeration of permissible measures and streamlined enforcement through execution judges under Article 22. The prevailing international view treats interim relief authority as inherent in adjudicatory power, presuming that commercial parties intend tribunals to possess it absent an express exclusion.[789] Kuwait's framework inverts this presumption, treating interim measure authority as exceptional rather than inherent. This position imposes significant drafting burdens on parties who must anticipate and expressly authorise every form of urgent relief they might require.

The findings confirm the hypothesis advanced in this chapter's introduction. Kuwait's State-Centric Hybrid Model operates through a mechanism of conditional authority at

[787] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 153–160.
[788] 'Arbitration in Kuwait' in Dongchuan Luo, Jalal El Ahdab and others (eds), *Arbitration with the Arab Countries* (Kluwer Law International 2011) 305–336.
[789] Nigel Blackaby, Constantine Partasides, Alan Redfern and others, 'Conduct of the Proceedings' in Nigel Blackaby and Constantine Partasides and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) ch 6.

the procedural phase. This describes three interrelated features of Kuwait's framework.

Procedural authority operates within mandatory statutory requirements that parties cannot contractually exclude. The suspension requirement under Article 180(2), the eligibility requirements under Article 174(1), and the requirement that the tribunal comprise an odd number of arbitrators all represent legislative determinations that override party agreement.[790] The Model Law's approach treats most procedural provisions as default rules subject to party modification, and England's framework maximises party autonomy, apart from matters implicating public policy, whilst providing safety-valve mechanisms. Kuwait's framework differs by including mandatory provisions that structure the arbitral process regardless of party preferences.

Procedural authority derives from legislative authorisation rather than inherent arbitral power. Case No 274/1998 establishes the foundational principle that arbitrators derive their authority from the parties' agreement, but that agreement operates within the boundaries established by legislation. Tribunals cannot extend their jurisdiction by implied powers, cannot exercise coercive authority without judicial assistance, and cannot determine matters that the legislature has allocated to the courts. This conception treats arbitral authority as delegated rather than autonomous, constituting a privilege recognised by the legal order rather than a right inherent in party consent. The contrast with England's Section 30 competence-competence and the UAE's Article 19 equivalent proves stark.[791] Those frameworks treat jurisdictional competence as presumptively within a tribunal's authority, whilst Kuwait treats it as categorically beyond a tribunal's competence.

Judicial cooperation operates as an integral component of the procedural framework rather than an exceptional intervention. The mandatory suspension requirement channels preliminary questions to the courts by design. Enforcement of interim

[790] *El-Fatih E. Osman, 'Kuwait: Arbitration under the Auspices of the New Judicial Arbitration Law' (1995) 2 YB Islamic & Middle E L 192*

[791] Hong-Lin Yu, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209–226; Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 153–160.

measures requires judicial assistance. These features reflect a conception of arbitration as embedded within the formal legal order rather than operating as an autonomous system parallel to state justice. This conception distinguishes Kuwait from both the English approach to judicial support as a last resort and the UAE's dual-track system, which permits either institutional or judicial resolution.

This chapter employs comparative references, as outlined in the introduction, to illuminate Kuwait's distinctive characteristics by situating them against international standards and regional practice. Kuwait's framework reflects deliberate policy choices that diverge from the international autonomy-centred model and from the UAE's modern Gulf approach.

Against international standards, Kuwait's framework departs from Model Law principles at several critical junctures. The rejection of competence-competence in favour of mandatory suspension, the opt-in requirement for interim measures rather than presumptive tribunal authority, the denial of tribunal extension power for time limits, and the eligibility disqualifications all represent choices that prioritise judicial oversight over arbitral autonomy. These departures are not inadvertent gaps but reflect Kuwait's constitutional conception of arbitration as a form of delegated judicial authority requiring court involvement at multiple stages.

Kuwait's framework also differs substantially from English law. The English Arbitration Act 1996 grants broad tribunal authority with minimal ex ante restrictions, robust competence-competence enabling tribunals to determine their own jurisdiction, presumptive interim measure powers operating on an opt-out basis, no mandatory time limits combined with tribunal procedural discretion, and judicial involvement limited to supportive functions and post-award review. Kuwait offers narrower tribunal powers constrained by eligibility rules, rejection of competence-competence in favour of mandatory suspension, opt-in requirements for interim measures, strict time limits with no tribunal extension authority, and judicial oversight integrated throughout the procedural phase.[792]

[792] Hong-Lin Yu, ‘Five Years On: A Review of the English Arbitration Act 1996’ (2002) 19(3) Journal of International Arbitration 209–226.

Kuwait's framework diverges from the UAE as well, despite shared regional context. The UAE's 2018 legislation aligns with international standards by adopting competence-competence under Article 19, presumptive interim measure authority under Article 21, autonomous tribunal extension power under Article 42, and dual-track challenge resolution permitting either institutional or judicial determination. Kuwait retains an approach that prioritises judicial involvement at each of these junctures. Arbitration agreements drafted for UAE-seated proceedings may prove insufficient in Kuwait, where explicit provisions addressing interim measures and the careful management of time limits are essential.[793]

These distinctions carry practical significance for parties considering arbitration seated in Kuwait. Kuwait's approach does not represent a deficiency but rather reflects considered policy judgments about the appropriate relationship between arbitration and courts. Party autonomy in Kuwait operates within boundaries that produce different outcomes than those obtaining in Model Law jurisdictions, England, or the UAE.

For parties selecting Kuwait-seated arbitration, the findings carry several practical implications.

Drafting requirements exceed those applicable in England, the UAE, or Model Law jurisdictions generally. Arbitration agreements should expressly address interim measure authority, anticipating the specific forms of urgent relief that might prove necessary. Generic clauses granting broad procedural powers do not, by themselves, suffice to establish interim jurisdiction under Kuwait's opt-in framework. Parties should consider including express extension mechanisms for time limits, recognising that tribunals possess no autonomous authority to extend proceedings regardless of circumstances. Appointment provisions should anticipate potential disagreements, given the Court of Cassation's refusal in Case No 449/2004 to infer mechanisms of implied appointment. Parties should also assess whether the institutional rules incorporated by reference adequately address Kuwait's distinctive requirements, or

[793] Sally Kotb and Mohamed Hesham Elrafei, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025) 153–160.

whether supplementary provisions are necessary. To effectively draft arbitration agreements seated in Kuwait, parties should clearly specify the scope of interim measures anticipated and explicitly grant authority for such actions. Consider including specific language on time limit extensions to avoid jurisdictional pitfalls. Ensure the appointment process is clearly defined to prevent judicial intervention. Validate that the rules of the chosen arbitration institution align with Kuwait's mandatory requirements, and supplement as needed. These steps can safeguard against common procedural challenges unique to Kuwait's framework.

Procedural strategy must account for the mandatory suspension mechanism. Parties should anticipate that challenges to arbitration agreement validity, jurisdictional scope, signatory authority, or related preliminary questions will trigger automatic suspension as a matter of law. This creates tactical considerations for both claimants, who may face significant delays, and respondents, who possess a mechanism to interrupt unfavourable proceedings. Unlike England or the UAE, where tribunals may determine such challenges subject to subsequent review, Kuwait requires a threshold judicial determination before arbitration can proceed. Parties seeking an efficient resolution should carefully assess whether Kuwait's framework serves their interests or whether alternative seats offering greater competence and procedural continuity would be preferable.

Time management requires proactive attention, given Kuwait's strict jurisdictional treatment of deadlines. Unlike the UAE, where tribunals may autonomously extend proceedings by 6 months, Kuwait requires the parties' agreement for any extension. Parties must build extension mechanisms into their agreements or expressly agree to extensions during proceedings. Failure to do so risks jurisdictional termination regardless of how close the tribunal is to completing its work. The Court of Cassation's jurisprudence in Cases Nos. 441 of 1998 and 210 of 1988 provide flexibility through recognition of implied extensions from continued participation without objection. However, sophisticated parties should not rely on this safety valve when express mechanisms are readily available.

Enforcement planning should recognise that tribunal-ordered interim measures require judicial assistance for coercive effect. Unlike the UAE's streamlined execution

judge procedure under Article 22, which enforces tribunal orders without substantive reconsideration, Kuwait's framework involves judicial proceedings that may permit more extensive scrutiny. Parties requiring urgent asset preservation or status quo protection should assess whether Kuwait's two-stage process of tribunal order followed by judicial enforcement provides adequate protection, or whether concurrent applications to the courts are necessary. Looking ahead, an intriguing question arises: What reform pathway could reconcile Kuwait's judicial safeguards with enhanced party autonomy, and have potential legislative solutions been sufficiently explored? Addressing this challenge could foster further scholarly dialogue on improving Kuwait's arbitration framework.

This chapter's findings establish the foundation for Chapter Five's examination of the award phase. The pattern identified throughout the procedural phase, whereby formal recognition of party autonomy accompanies systematic judicial involvement, culminates in the treatment of arbitral awards.

If the jurisdictional phase operates through gatekeeping conditionality, as examined in Chapter Three, and the procedural phase operates through conditional authority, as examined in this chapter, the award phase represents the culmination of these mechanisms. Chapter Five will examine whether awards that emerge from Kuwait's procedurally conditioned process receive recognition equivalent to that accorded awards from autonomy-centred frameworks, or whether the cumulative effect of Kuwait's approach produces distinctive outcomes at the enforcement stage.

The concept of cumulative judicial control will guide Chapter Five's analysis. This concept captures the hypothesis that Kuwait's framework subjects arbitral awards to review mechanisms reflecting the supervisory orientation evident throughout the jurisdictional and procedural phases. Autonomy-centred frameworks, such as England under Section 68's limited grounds for serious irregularity or the UAE under Article 53's defined annulment grounds, treat judicial review as exceptional and narrowly circumscribed. Kuwait's framework may extend review to encompass concerns arising from the conditional authority under which tribunals operate.

The three-phase framework proposed in this thesis, comprising gatekeeping conditionality, conditional authority, and cumulative judicial control, provides a comprehensive account of how Kuwait's State-Centric Hybrid Model operates across the arbitral process. Each phase reflects the same underlying logic, in which formal recognition of party choice accompanies mechanisms that ensure arbitration remains connected to the formal legal order rather than functioning as an autonomous system. Chapter Five completes this analysis by examining how that logic manifests at the moment when arbitral authority produces its ultimate output, namely the award that purports to bind the parties and resolve their dispute.

Chapter 5: The Award Phase and the Limits of Party Autonomy

5.1 Introduction: Party Autonomy at the Point of Culmination

The making of an arbitral award represents a critical moment. It is at this point that the choices exercised by parties throughout the arbitral process face their ultimate test. The parties' selection of arbitration as their dispute resolution mechanism, their choice of governing law, and their designation of the arbitral seat all converges in the tribunal's final determination. Their agreement on procedural rules similarly reaches its culmination at this point.[794] However, it is precisely at this culminating phase that the tension between party autonomy and state control manifests most acutely. The award phase determines whether the legal system will give effect to the parties' autonomous choices. Alternatively, it may subordinate them to mandatory norms that the parties cannot displace through private agreement. This chapter seeks to explore this tension and unravel the core question: To what extent does state control limit party autonomy in the arbitration process?

The preceding chapters have demonstrated how Kuwait's arbitration framework subjects party autonomy to systematic constraints throughout the arbitral process. Chapter Three examined how the jurisdictional phase imposes gatekeeping conditionality upon the arbitration agreement's operative effect. This requires judicial validation of the parties' choice to arbitrate. Chapter Four analysed how the procedural phase establishes conditional authority. It permits tribunals to exercise procedural powers only within mandatory statutory boundaries. This chapter completes the analysis by examining how the award phase operates as the final checkpoint in Kuwait's framework of cumulative judicial control. Particular attention is given to the role of public policy as the central mechanism through which the state limits the effect of autonomous party choices.[795]

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[794] Penny Madden KC and Ceyda Knoebel, 'Arbitrability and Public Policy Challenges' (Global Arbitration Review, The Guide to Challenging and Enforcing Arbitration Awards (4th edn), 16 June 2025) <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/arbitrability-and-public-policy-challenges> accessed 28 January 2026.

[795] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.

The central question of party autonomy in the award phase is straightforward in formulation but profound in its implications. When parties have exercised their autonomy to choose a governing law, and when the tribunal has applied that law to reach its decision, a critical question arises. Will the resulting award be given effect? Or will the courts of the seat or enforcement jurisdiction refuse to recognise the award? They may do so on grounds that the parties' choice, and its application by the tribunal, offends principles that private agreement cannot override.

The finality of arbitral awards is recognised as among the most important attributes of the arbitral process. It reflects the parties' expectation that their chosen tribunal will provide a definitive resolution of their dispute.[796] Parties who agree to arbitration do so with the understanding that the tribunal's decision will bind them.[797] They expect it to end their dispute rather than merely initiate a new phase of judicial litigation. This expectation of finality is intimately connected to party autonomy. The parties have chosen to resolve their dispute through arbitration rather than litigation, and they have selected the substantive law that will govern the arbitration. Respecting their autonomy requires giving effect to these choices, unless compelling reasons exist to refuse to do so.[798]

However, no legal system accords unlimited deference to party choice. Each jurisdiction may refuse to recognise arbitral awards that breach public policy principles. Public policy represents the outer boundary of party autonomy. It is the point at which the state's interest in maintaining core legal and moral standards overrides the parties' interest in having their autonomous choices respected.[799] To better understand these boundaries, consider a simple litmus test: non-derogable, statutory, or constitutional? This test helps to quickly identify which norms override autonomy, providing a foundational tool for analysing specific situations. A brief, sign-posted definition may

[796] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) §22.01[A].
[797] Moustafa Alameldin and Ahmed Abdrabou, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/kuwait-evolving-arbitration-framework> accessed 28 January 2026.
[798] Rashid Hamad Al Anezi, 'Enforcement of Foreign Arbitral Awards in Kuwait', BCDR International Arbitration Review, (Kluwer Law International; Kluwer Law International 2014, Volume 1 Issue 1) pp. 85 - 94
[799] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 11.115.

assist in distinguishing these boundaries: ‘Mandatory rules are specific statutory provisions that cannot be contracted away, while public policy encompasses broader principles designed to safeguard societal values.’[800] The critical question for any arbitration regime is where to draw this boundary. A jurisdiction that interprets public policy expansively will refuse recognition to awards that a jurisdiction with a narrow interpretation would enforce. The scope of public policy thus determines the practical extent of party autonomy in the award phase. The Court of Cassation has articulated this relationship in Case No 236/2010, holding that 'legal rules considered part of public policy are rules intended to achieve a public interest—whether political, social, or economic—that pertains to the higher order of society and transcends the interests of individuals'. This judicial definition confirms that party autonomy, however extensive, terminates where it conflicts with interests the state has determined to be non-derogable.

The public policy exception to award enforcement operates as a safety valve. It permits courts to refuse recognition in exceptional cases where enforcement would be offensive to the legal order.[801] The safety valve metaphor is instructive.[802] A valve that opens too easily provides no pressure. A legal system that routinely invokes public policy to refuse enforcement of awards effectively nullifies the parties' choice of arbitration. Conversely, a valve that never opens serves no protective function. A legal system that enforces all awards regardless of content fails to maintain the minimum standards that public policy is designed to protect. The challenge for any arbitration regime is to calibrate the public policy exception appropriately, intervening where genuinely necessary while respecting party autonomy in ordinary cases.[803]

[800] George A Bermann and Loukas A Mistelis (eds), Mandatory Rules in International Arbitration (Juris Publishing 2011) <https://scholarship.law.columbia.edu/books/333/> accessed 28 January 2026.
[801] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 721.
[802] Saad Badah, ‘The Enforcement of Foreign Arbitral Awards in Kuwait’ (2014) 8(2) Agora International Journal of Juridical Sciences <https://univagora.ro/jour/index.php/aijjs/article/view/1185> accessed 28 January 2026.
[803] Saad Aljadean Badah, ‘Rules Relevant to the Recognition and Enforcement of Foreign Arbitral Awards in Kuwait’ *Asian International Arbitration Journal* (vol 11 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2015) 117–152.

5.1.1 Public Policy and Religious Legal Traditions

Kuwait's approach to public policy in the award phase cannot be understood without an appreciation of the role that Islamic legal principles play in defining the boundaries of the legally permissible.[804] Article 2 of the Kuwaiti Constitution provides that Islamic Sharia shall be a main source of legislation.[805] This constitutional commitment shapes the content of Kuwaiti public policy in ways that distinguish it from jurisdictions where public policy is defined primarily by reference to secular legal principles.[806]

The interaction between party autonomy and religious legal traditions raises distinctive questions.[807] When parties choose a governing law that permits arrangements prohibited under Islamic principles, and when the tribunal applies that law to grant relief that Islamic law would not countenance, a question arises. What is the status of the resulting award? The question arises with acuteness in relation to interest, where the prohibition of riba under Islamic law conflicts with the routine award of interest under most secular legal systems. It arises equally in relation to certain commercial activities, such as trade in alcohol or gambling, that Islamic law prohibits but that other legal systems permit and regulate. Moreover, it arises in relation to inheritance and family matters, where Islamic succession rules may conflict with the distribution schemes that parties have chosen or that foreign law would mandate.

It has been noted that public policy grounds for refusing to enforce awards are interpreted more broadly in some jurisdictions than in others, with religious and cultural values playing a significant role in shaping public policy in certain legal systems.[808] This observation is directly applicable to Kuwait, where Islamic principles inform the content of public policy.[809] Courts have refused enforcement of awards on grounds

[804] Mary Jude Marvel, 'The Shape of Public Policy as a Limitation to Party Autonomy in International Arbitration: The Philippines and Singapore Experience as Model Law Jurisdictions' (SSRN, 7 September 2018) <https://doi.org/10.2139/ssrn.3467794> accessed 28 January 2026.
[805] Constitution of the State of Kuwait 1962, art 2.
[806] Saad Badah, 'The Enforcement of Foreign Arbitral Awards in Kuwait' (2014) 8(2) Agora International Journal of Juridical Sciences 9–15 <https://doi.org/10.15837/aijjs.v8i2.1185> accessed 28 January 2026.
[807] Hassan Francis Whitfield, 'Judicial Fairness and Party Autonomy in International Commercial Arbitration' (2024) 7(4) International Journal of Law Management & Humanities 167–193 <https://doij.org/10.10000/IJLMH.117983> accessed 28 January 2026.
[808] Born (n 1) §26.05[E].
[809] Saad Badah, 'The Enforcement of Foreign Arbitral Awards in Kuwait' (2014) 8(2) Agora International Journal of Juridical Sciences 9–15 <https://doi.org/10.15837/aijjs.v8i2.1185> accessed 28 January 2026.

that would not be recognised in jurisdictions defining public policy by reference to secular standards alone.[810]

The practical consequence for party autonomy is significant. Parties who choose a governing law without attention to its compatibility with Islamic principles risk finding that their award cannot be enforced in Kuwait.[811] The autonomous choice of governing law, which international arbitration practice treats as a right of commercial parties, is constrained. The chosen law and the tribunal's application of it must not produce results that offend Islamic legal principles incorporated into Kuwaiti public policy. This constraint operates regardless of the parties' intentions or expectations, and regardless of whether the parties themselves are Muslim or have any connection to Islamic legal traditions.

5.1.2 The Scope of This Chapter

This chapter examines the award phase with a specific focus on how public policy constrains party autonomy. The analysis proceeds in three parts following this introduction.

Section 5.2 provides a concise overview of Kuwait's challenge-and-enforcement framework, situating the public policy analysis within the broader framework of judicial supervision over arbitral awards. This section addresses the formal requirements, deposit obligations, time limits, and challenge mechanisms that constitute the procedural context for public policy review. It does not provide the detailed analysis of these matters that would be appropriate in a comprehensive treatment of the award phase. The purpose is to provide sufficient context for understanding how public policy review operates within Kuwait's overall framework. The focus remains on the central question of how public policy constrains party autonomy.

Section 5.3 examines public policy as the central constraint on party autonomy in the award phase. This section analyses the content of Kuwaiti public policy, with particular

[810] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.
[811] Ibid.

attention to the role of Islamic legal principles in defining its boundaries. The section examines specific areas where party choice conflicts with public policy, including the treatment of interest, the enforceability of awards relating to prohibited commercial activities, and the recognition of awards affecting matters governed by mandatory rules of Islamic personal status law. The analysis demonstrates that Kuwait interprets public policy more expansively than jurisdictions applying a narrow international public policy standard. This has significant consequences for the practical scope of party autonomy.

Section 5.4 concludes by synthesising the analysis and assessing the implications of Kuwait's public policy approach for party autonomy within the State-Centric Hybrid Model. The conclusion addresses the coherence of Kuwait's approach, its consistency with international arbitration standards, and the practical consequences for parties engaged in arbitration with connections to Kuwait.

5.1.3 Theoretical Framework: Public Policy and the State-Centric Hybrid Model

The analysis in this chapter builds upon the theoretical framework developed throughout this thesis. The State-Centric Hybrid Model describes Kuwait's arbitration regime as one that formally recognises arbitration as a legitimate alternative to judicial adjudication. It systematically embeds state control throughout the arbitral process. The award phase represents the culmination of this pattern. Parties who have navigated the jurisdictional and procedural phases of arbitration, satisfying the requirements that those phases impose, face a final round of state scrutiny. This occurs before their award achieves practical effect.

Public policy operates within this framework as the substantive complement to the procedural controls examined in preceding sections. Where formal requirements, deposit obligations, time limits, and challenge mechanisms establish the procedural conditions for award validity, public policy establishes the substantive limits. An award that satisfies all procedural requirements may nonetheless be denied effect if its content violates public policy. The cumulative character of Kuwait's judicial control thus extends beyond procedure to substance. This ensures that awards conform not only

to formal requirements but also to norms that the state has determined parties cannot displace through private agreement.

The stricter a legal system is in applying public policy, the less deference it gives to party autonomy.[812] This inverse relationship is the key to understanding how public policy constrains autonomous choice. A jurisdiction that limits public policy to a narrow core of truly essential principles leaves substantial space for party autonomy. Such principles include prohibitions on corruption, fraud, and violations of basic procedural fairness. Parties may choose governing laws that produce results the forum state would not itself adopt. They can be confident that the resulting award will be enforced, provided it does not cross the narrow line into genuine public policy violation. A jurisdiction that interprets public policy expansively, encompassing not only principles but also mandatory rules of domestic law and religious precepts, leaves correspondingly less space for party autonomy. Parties must ensure that their choices conform not only to basic standards of legality and fairness. They must also conform to the substantive requirements that the forum state has determined to be non-derogable.[813]

Kuwait clearly falls into the latter category. The incorporation of Islamic legal principles into public policy, combined with the expansive interpretation Kuwaiti courts have given to the public policy exception, creates substantial constraints on parties' autonomy. Parties must navigate these constraints when choosing Kuwait as an arbitral seat or enforcement jurisdiction. Understanding these constraints and their implications for autonomous party choice is the central objective of this chapter.

[812] Desri Novian, 'The Application of Party Autonomy Principle in Arbitration' (2024) 11(1) Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum 26–36 <https://doi.org/10.24252/jurisprudentie.v11i1.53835> accessed 28 January 2026.
[813] Mohamed Morad Eldib, 'The Parochial Kuwaiti Arbitration Regime: A Case Study of the Extension of Arbitration Agreements to Non-Signatories' (LLM thesis, Queen's University (Canada), Faculty of Law, March 2021) <http://hdl.handle.net/1974/29805> accessed 28 January 2026.

5.2 The Procedural Framework: Formal Requirements, Challenge, and Enforcement

Before examining the substantive role of public policy in constraining party autonomy, it is necessary to situate that analysis within a broader context. This context is the procedural framework through which Kuwait exercises judicial supervision over arbitral awards. This section provides a concise overview of the formal requirements, challenge mechanisms, and enforcement procedures. Together, these constitute the architecture of cumulative judicial control in the award phase. The purpose is not to analyse these mechanisms in detail, as a comprehensive treatment would require, but rather to establish the procedural context within which public policy review operates. The overview demonstrates that public policy functions as one element within a comprehensive system of judicial oversight. This element is the most significant for party autonomy, as the system subjects arbitral awards to multiple checkpoints before they achieve practical effect.

5.2.1 Formal Requirements

Article 183 of the Civil and Commercial Procedure Law establishes mandatory formal requirements for arbitral awards that condition their legal validity. The award must be in writing, signed by the arbitrators or a majority thereof, and must state the reasons upon which it is based. The award must include a copy of the arbitration agreement, a summary of the parties' submissions, and the date and place of issuance.[814] These formal requirements exceed those prescribed by the UNCITRAL Model Law. The Model Law requires only that awards be in writing, signed, reasoned (unless the parties agree otherwise), and dated, with the arbitral seat specified.[815] The Model Law's approach reflects the international consensus that formal requirements should be limited to those necessary for ensuring clarity regarding the tribunal's decision. Additional conditions that might impede arbitral efficiency should not be imposed.[816] Kuwait's more prescriptive approach, particularly the requirement for reasoning of the

[814] Civil and Commercial Procedure Law (Kuwait) art 183.
[815] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006) art 31.
[816] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) §23.02[B].

award, reflects a different conception in which formal requirements serve not only to ensure clarity but also to facilitate judicial review.

Non-compliance with formal requirements renders awards vulnerable to challenge regardless of their substantive merits. A party that prevails on the merits, but whose award fails to satisfy the reasoning requirement, may find that the award is set aside on purely formal grounds. The practical consequence is that parties and tribunals must attend carefully to formal compliance. This adds a layer of procedural discipline that parties in Model Law jurisdictions need not observe. Prescriptive formal requirements create additional opportunities for disappointed parties to challenge awards on technical grounds. This potentially undermines the efficiency that arbitration is designed to provide.[817]

5.2.2 The Mandatory Reasoning Requirement and Party Autonomy

The treatment of the reasoning requirement illustrates with particular clarity how Kuwait's formal requirements constrain party autonomy.[818] International standards do not contemplate such constraints. Article 31(2) of the UNCITRAL Model Law provides that the award shall state the reasons upon which it is based.[819] This requirement does not apply if the parties have agreed that no reasons are to be given, or if the award is made on agreed terms.[820] This formulation treats reasoning as a default requirement that parties may displace through agreement. It reflects recognition that commercial parties may have legitimate reasons for preferring unreasoned awards in particular circumstances. The English Arbitration Act 1996 adopts the same approach. Section 52(4) provides that the award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.[821] The UAE Federal Arbitration Law similarly addresses this matter. Article 41(4) provides that the

[817] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 9.15.
[818] Ibid.
[819] Abdul Hamid El-Ahdab, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101–108 <https://doi.org/10.1093/arbitration/12.1.101> accessed 28 January 2026.
[820] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006) art 31(2).
[821] Arbitration Act 1996 (UK) s 52(4).

award shall be reasoned unless the parties have agreed otherwise or the applicable procedural law does not require reasoning.[822]

The rationale for permitting parties to agree upon unreasoned awards extends beyond mere efficiency considerations. Confidentiality represents one of arbitration's principal attractions for commercial parties, distinguishing it from the public character of judicial proceedings.[823] Redfern and Hunter observe that parties frequently choose arbitration precisely because they wish to keep the details of their dispute and its resolution out of the public domain.[824] A reasoned award necessarily discloses the tribunal's analysis of the parties' positions, the evidence submitted, and the legal principles applied. Where the dispute involves commercially sensitive information, trade secrets, proprietary business methods, or confidential financial data, a reasoned award creates a documentary record of that information. This record may be discoverable in subsequent proceedings or accessible through enforcement actions. Parties who wish to preserve confidentiality may legitimately prefer an unreasoned award that states the tribunal's conclusions without elaborating the analysis that produced them.

Born confirms that parties' agreements to dispense with reasoned awards should generally be given effect, observing that there is no reason that the parties cannot agree to waive reasons or other formal requirements for the award.[825] This position reflects the broader principle that party autonomy should extend to procedural matters, including the form of the award. This applies unless compelling reasons exist for mandatory requirements.

The international consensus, reflected in the Model Law, the English Act, and the UAE Law, is that no such compelling reasons exist with respect to reasoning. Parties who prefer unreasoned awards may agree upon them, and tribunals will give effect to that agreement.

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[822] UAE Federal Arbitration Law (Federal Law No 6 of 2018) art 41(4).
[823] Isaiah Bozimo, 'Confidentiality in Arbitration: Protecting Business Secrets' (HiA Network (Hosted in Africa), 19 October 2023) <https://www.hostedinafrica.com/confidentiality-in-arbitration-protecting-business-secrets/> accessed 28 January 2026.
[824] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2023) para 1.107.
[825] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) §23.03[A].

Kuwait's framework permits no such flexibility. Article 183 requires that the award state the reasons upon which it is based, without provision for contrary party agreement.[826] This mandatory character reflects Kuwait's broader approach of preserving judicial oversight throughout the arbitral process. Reasoned awards enable courts to scrutinise the tribunal's decision-making in ways that unreasoned awards would preclude.[827] A court reviewing an unreasoned award can assess only whether the tribunal reached a permissible result, not whether the tribunal's reasoning was sound. By mandating reasons in all cases, Kuwait ensures that reviewing courts retain full visibility into the tribunal's analytical process. This facilitates the comprehensive judicial supervision that characterises the State-Centric Hybrid Model. However, this requirement invites reflection on the trade-off between comprehensive oversight and confidentiality concerns. For instance, consider a high-tech licensing dispute involving proprietary algorithms, where the disclosure of detailed reasoning could risk leaking sensitive technical information to competitors. Such a scenario highlights the tension between ensuring thorough judicial review and protecting confidential business information. Should parties be willing to accept the potential for information leakage in favour of full judicial scrutiny?

The consequence for party autonomy is that parties cannot, through their agreement, limit the scope of potential judicial review by dispensing with reasons. Even parties who have legitimate confidentiality concerns and who would prefer an unreasoned award precisely to protect commercially sensitive information face this constraint. They must accept a reasoned award that creates a documentary record of the tribunal's analysis. This constraint applies regardless of the parties' intentions, the sensitivity of the information involved, and whether judicial review is ever actually sought. The mandatory reasoning requirement thus exemplifies the pattern identified throughout this thesis. Kuwait's framework formally recognises party autonomy while

[826] Civil and Commercial Procedure Law (Kuwait) art 183.
[827] Bashayer Alghanim, 'The Role of Party Autonomy in Choosing Procedural Law in Arbitration: the rules of the WIPO Arbitration and Mediation Centre' (2020) 9(1) International Review of Law 207–231 <https://doi.org/10.29117/irl.2020.0096> accessed 28 January 2026.

systematically embedding constraints that subordinate autonomous choice to the imperatives of judicial supervision.[828]

5.2.3 Mandatory Deposit

Article 184 requires that arbitral awards be deposited with the registry of the competent Court within ten days of issuance. This provision transforms judicial registration from an administrative formality into a constitutive requirement. Under Kuwaiti jurisprudence, an award that has not been deposited within the prescribed period possesses no legal standing and cannot be confirmed, enforced, or accorded legal recognition.[829] It is essential to recognise that this requirement remains mandatory regardless of whether any enforcement process is initiated. The tribunal is obliged to deposit the award with the Court within ten days. This approach departs materially from international standards. The decisive international trend away from deposit and registration requirements has been documented, with most contemporary arbitration frameworks treating awards as binding and effective from the moment of their issuance and delivery to the parties, without requiring any state validation.[830] The UNCITRAL Model Law contains no deposit requirement, and neither do the arbitration laws of England, the UAE, or Qatar. Kuwait's retention of mandatory deposit reflects its broader approach of ensuring that all arbitral awards pass through a state-controlled gateway before acquiring legal effect.

The ten-day deposit period is notably short, creating practical challenges, particularly for international arbitrations where logistical arrangements may require time to organise. Failure to deposit within this window, whether through inadvertence or circumstance, may render an otherwise valid award a legal nullity. Such requirements create traps for parties and undermine the predictability that effective arbitration frameworks should provide.[831]

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[828] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-in-kuwait-time-for-reform/> accessed 28 January 2026.
[829] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 708/2007 (27 April 2010).
[830] Born (n 3) §23.06[C].
[831] Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 641.

5.2.4 Temporal Boundaries and Extension Authority

Article 181 establishes a six-month default period within which the tribunal must render its award, measured from the date of the first hearing session.[832] Unlike most jurisdictions that maintain time limits, Kuwait allocates extension authority exclusively to the parties. The tribunal possesses no independent power to extend, meaning that continuation of proceedings beyond the default period requires party agreement, whether express or implied through continued participation without objection.[833] The Court of Cassation's recognition of implied consent to extension in Appeal No 978/2007 moderates the apparent strictness of this regime.[834] Parties who continue to participate in proceedings after the expiration of the original period without objecting are treated as having consented to the extension. This jurisprudential development aligns Kuwait's practical operation more closely with international norms, though the formal framework remains more restrictive than those of jurisdictions that grant tribunals independent extension authority.

5.2.5 The Dual-Track Challenge System

Article 186 establishes Kuwait's framework for challenging arbitral awards through a dual-track system that distinguishes between Appeal and annulment.

The appeal track is available only where parties have expressly agreed to permit it prior to the award's issuance. Under Article 186, arbitral awards are final by default and not subject to Appeal unless the parties have contracted otherwise. This approach aligns with international practice, which treats arbitral finality as the norm. The international consensus holds that arbitral tribunals do not exceed their authority merely by reaching incorrect substantive results, and that awards should not be subject to judicial review on their merits.[835] However, where parties have agreed to permit an appeal, the award may be challenged before the Court of First Instance sitting in its appellate capacity. Crucially, Article 186 provides that such appeals are

[832] Norton Rose Group, 'Kuwait' in Arbitration in the Middle East (July 2008) 2–12 (as reproduced in 'Kuwait Arbitration Laws Overview' (Scribd) <https://www.scribd.com/document/109971988/Laws-of-Arbitration-in-Kuwait> accessed 28 January 2026).
[833] Civil and Commercial Procedure Law (Kuwait) art 181.
[834] Court of Cassation (Kuwait), Commercial Circuit, Case No 978/2007 (27 December 2009).
[835] Civil and Commercial Procedure Law (Kuwait) art 186.

governed by the same rules applicable to appeals from court judgments. This means that the appellate Court conducts a comprehensive de novo review of the merits, examining both questions of law and questions of fact, and is empowered to substitute its own assessment for that of the arbitral tribunal. The scope of review is thus equivalent to that exercised over first-instance judicial decisions, transforming what began as arbitration into a process subject to full judicial reconsideration.

Article 186 further specifies the categories of awards that remain non-appealable regardless of the parties' agreement. These include awards rendered by arbitrators authorised to decide ex aequo et bono, awards in appellate arbitration proceedings, awards in disputes valued at one thousand dinars or less, and awards rendered by the arbitral body specified in Article 177.

The annulment track, by contrast, remains available regardless of any party's agreement to the contrary. Annulment may be granted if there is no valid arbitration agreement, the agreement is void or expired, the tribunal exceeded its scope, grounds that would justify a petition for review of judicial judgments, or there is nullity in the award or proceedings affecting it. This approach is quite similar to international practices. Article 186's grounds for annulment are mandatory, so parties cannot waive these rights in advance, even with explicit agreement.[836]

The thirty-day time limit for both appeal and annulment applications runs from the date of deposit, creating a compressed timeline compared to the Model Law's three-month period measured from receipt of the award. Combined with the ten-day deposit requirement, this means that parties have approximately 40 days from the date of award issuance to initiate challenge proceedings, a significantly shorter window than international standards provide.

The practical consequence of the dual-track system for party autonomy is nuanced. On one hand, the default finality of awards respects party autonomy by presuming that parties who choose arbitration intend their tribunal's decision to be conclusive. On the other hand, parties retain the freedom to contract for appellate review where they

[836] Azmi Abdelfattah Atiyya, *Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation* (2nd edn, Dar Al-Kutub Publishing 2012).

prefer judicial oversight over arbitral finality. Where they exercise this option, the resulting Appeal subjects the award to the same comprehensive scrutiny that court judgments receive, potentially negating the advantages of speed and finality that arbitration is designed to provide. The annulment track, available in all cases regardless of party agreement, subjects awards to review for jurisdictional validity, procedural regularity, and conformity with mandatory requirements. This latter ground, as discussed in detail in Section 5.3 below, provides the principal mechanism by which substantive party choices are subject to judicial scrutiny.

The English framework provides an instructive comparison for understanding Kuwait's dual-track system. The Arbitration Act 1996 establishes three principal grounds for court intervention: challenge for want of jurisdiction under Section 67, challenge for serious irregularity under Section 68, and appeal on a point of law under Section 69. Crucially, parties may exclude Section 69 appeals entirely through their arbitration agreement, reflecting autonomy's reach in permitting parties to trade judicial correction for finality. However, parties cannot contract out of jurisdictional scrutiny under Section 67 or fairness safeguards under Section 68, ensuring that arbitration retains legitimacy while maximising autonomy.

The United Kingdom Supreme Court reinforced these limits in Sharp Corp Ltd v Viterra BV, a decision of considerable importance for understanding the boundaries of judicial review.[837] The case concerned a GAFTA arbitration award where the losing party appealed under Section 69 on a question of law. The Court of Appeal had allowed the appeal by going beyond reviewing the tribunal's legal reasoning and making its own findings of fact concerning matters never put to the tribunal during the arbitration. The Supreme Court reversed this approach, holding that Section 69 permits appeals only on questions of law arising from the award. Courts cannot make fresh findings of fact that the tribunal was never asked to determine. Lord Hamblen emphasised that appellate review exists to correct legal errors in tribunals' decisions, not to provide a second forum for arguments parties failed to make. This decision powerfully illustrates the safeguards built into Section 69, ensuring that arbitration remains genuinely final

[837] *Sharp Corp Ltd v Viterra BV* [2024] UKSC 14, [66]-[71] (Lord Hamblen).

with court supervision operating as a narrow safety valve rather than a general appeal mechanism.[838]

The Arbitration Act 2025, which entered into force on 1 August 2025, made targeted amendments to the challenge framework while preserving this balance. Section 67A addressed a specific problem: parties were using jurisdictional challenges tactically, raising them late in proceedings to delay enforcement. The new provision requires parties to object to jurisdiction as soon as reasonably practicable after becoming aware of grounds for challenge, preventing the gamesmanship of sitting on jurisdictional objections until an unfavourable award emerges. The amendments also ensure that parties cannot raise objections or evidence before the court that were not first put to the tribunal. Section 68A consolidated existing case law by establishing that minor procedural flaws do not warrant annulment. By specifically requiring that irregularities must cause substantial injustice to justify annulment, Parliament emphasised that Section 68 serves as an exceptional remedy rather than a general appeal process.

These English developments contrast instructively with Kuwait's approach. Where England permits parties to exclude appeals on points of law entirely, Kuwait's framework allows parties to contract into full appellate review on the merits, subjecting awards to the same comprehensive scrutiny that court judgments receive. The English framework prioritises arbitral finality as the default position, with judicial intervention confined to narrow grounds that parties cannot expand. Kuwait's framework preserves greater scope for judicial involvement, whether through the appeal mechanism where parties opt for it or through the expansive enforcement review that operates regardless of party choice.

5.2.6 Situating Public Policy Within the Framework

This overview establishes the procedural context within which public policy review operates. The formal requirements, deposit obligation, time limits, and challenge mechanisms together constitute a system of cumulative judicial control through which every arbitral award must pass before achieving practical effect. Public policy operates

[838] Ibid.

within this system as the substantive complement to procedural controls. Where formal requirements ensure documentary regularity, where deposit ensures administrative registration, where time limits ensure procedural discipline, and where challenge mechanisms ensure opportunity for judicial review, public policy ensures substantive conformity with mandatory norms.

To provide a clearer understanding of how procedural checkpoints are linked to public policy review, a summarized narrative is beneficial. Formal requirements act as the first checkpoint, certifying the award's compliance in documentation. The deposit obligation follows, ensuring awards are formally registered for state supervision. Time limits introduce procedural discipline by setting deadlines that arbitral awards must meet to gain validity. Finally, challenge mechanisms offer a judicial review stage where awards are scrutinized, leading up to the public policy examination that solidifies substantive alignment with non-derogable norms. This interconnected chain reinforces the cumulative-control thesis, illustrating the holistic interplay between procedural and substantive oversight in Kuwait's arbitration framework.

The interaction between procedural controls and substantive public policy review is significant for party autonomy. A party that has successfully navigated all procedural requirements may nonetheless find its award denied on public policy grounds. The autonomous choices that parties exercised throughout the arbitral process, their choice of arbitration, their selection of governing law, and their agreement on procedural rules, face final scrutiny against the backdrop of principles that parties cannot displace through private agreement. It is to this substantive scrutiny, and its implications for party autonomy, that the analysis now turns.

5.3 Public Policy as the Central Constraint on Party Autonomy

The public policy exception to the recognition and enforcement of arbitral awards represents the most significant substantive constraint on party autonomy in the award phase.[839] While the procedural controls examined in the preceding section establish formal conditions for award validity, public policy establishes the substantive boundaries beyond which autonomous party choice cannot extend. This section examines the content of Kuwaiti public policy, with particular attention to the role of Islamic legal principles in defining its scope, and analyses specific areas where party choice confronts public policy limitations. The analysis shows that Kuwaiti courts may interpret public policy more broadly than courts in jurisdictions that use a narrow international public policy standard, thereby significantly affecting the practical extent of party autonomy.

5.3.1 The Concept of Public Policy in International Arbitration

Public policy operates in international arbitration as the ultimate limit on the principle of party autonomy.[840] However extensive the deference that a legal system accords to autonomous party choice, that deference terminates where enforcement of an award would violate principles that the state has determined to be non-derogable. Public policy is universally recognised as a ground for refusing recognition of arbitral awards, but its content and scope vary significantly across jurisdictions.[841] This variation is not merely technical. It reflects different conceptions of the relationship between private ordering and state authority and produces different practical outcomes for parties whose awards are challenged or submitted for enforcement.

[839] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[840] Karim Mechantaf, 'Public Policy in the UAE as a Ground for Refusing Recognition and Enforcement of Awards' (Kluwer Arbitration Blog, 6 July 2012) <https://legalblogs.wolterskluwer.com/arbitration-blog/public-policy-in-the-uae-as-a-ground-for-refusing-recognition-and-enforcement-of-awards/> accessed 28 January 2026.
[841] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) §26.05[E].

The distinction between domestic public policy and international public policy is foundational to understanding how different jurisdictions approach this question.[842] Domestic public policy encompasses all mandatory rules of the forum state, including provisions that parties to purely domestic transactions cannot derogate from by agreement.[843] International public policy, by contrast, is limited to a narrower core of truly principles, violations of which would be offensive to the most basic notions of morality and justice regardless of the transaction's international or domestic character.[844]

The International Law Association Recommendations on the Application of Public Policy, adopted at the 70th Conference in New Delhi in 2002, represent the most authoritative international effort to systematise the content and application of the public policy exception. The ILA Recommendations define international public policy as the body of principles and rules recognised by a State which, by their nature, may bar the recognition or enforcement of an arbitral award when such recognition or enforcement would entail their violation, whether on account of the procedure pursuant to which the award was rendered (procedural international public policy) or of its contents (substantive international public policy).[845] The Recommendations identify three constituent elements of a State's international public policy: first, fundamental principles pertaining to justice or morality that the State wishes to protect even when it is not directly concerned; second, rules designed to serve the essential political, social or economic interests of the State, known as *lois de police* or public policy rules; and third, the duty of the State to respect its obligations towards other States or international organisations. Significantly, the Recommendations emphasise that the finality of awards rendered in international commercial arbitration should be respected save in exceptional circumstances, thereby establishing a strong presumption in

[842] Margaret L Moses, 'Public Policy under the New York Convention: National, International, and Transnational' in Katia Fach Gomez and Ana M Lopez-Rodriguez (eds), 60 Years of the New York Convention: Key Issues and Future Challenges (Kluwer Law International 2019) 169–184.
[843] Bashayer Alghanim, 'The Role of Party Autonomy in Choosing Procedural Law in Arbitration: the rules of the WIPO Arbitration and Mediation Centre' (2020) 9(1) International Review of Law 207 <https://journals.qu.edu.qa/index.php/IRL/article/view/1691> accessed 28 January 2026.
[844] ibid §26.05[E][1].
[845] International Law Association, 'Recommendations on the Application of Public Policy as a Ground for Refusing Recognition or Enforcement of International Arbitral Awards' (Resolution 2/2002, 70th Conference, New Delhi, April 2002) recs 1(a)–1(e).

favour of enforcement that may be displaced only where recognition would violate the narrowly defined core of international public policy.

The English courts have been particularly influential in articulating how the public policy exception operates in practice and in establishing the narrow scope within which it should be applied. In *Deutsche Schachtbau- und Tiefbohrgesellschaft mbH v Ras al-Khaimah National Oil Co*, Lord Goff held that enforcement of a Convention award should be refused on public policy grounds only in exceptional circumstances, and that the English court should give effect to the award even where the arbitrators had applied a foreign law or set of principles with which the English court might not itself have agreed.[846] This approach established the foundational principle that the public policy exception does not permit courts to refuse enforcement merely because the award applies foreign law differently than the forum court would have applied its own law.

The Court of Appeal in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* further developed this framework through an articulation of the competing public policy considerations at stake.[847] The case concerned a consultancy agreement governed by Swiss law under which the defendants alleged that the claimant had agreed to bribe Kuwaiti government officials to secure arms contracts. The Swiss arbitral tribunal had examined and rejected the bribery allegations, finding no evidence of illegality. When the claimant sought enforcement in England, the Court of Appeal was required to determine whether enforcement should be refused on public policy grounds notwithstanding the tribunal's findings. Waller LJ articulated the central analytical framework: the court must perform a balancing exercise between the competing public policies of finality and illegality — between the finality that should prima facie exist particularly for those who agree to have their disputes arbitrated, against the policy of ensuring that the executive power of the English court is not abused.[848] In conducting this balancing exercise, the nature of the illegality is a factor, the strength of the case that there was illegality is also a factor, and the extent to which the asserted illegality was addressed by the arbitral tribunal is a factor. The majority upheld enforcement, holding that the arbitrators had heard the bribery allegations, that there was no basis

[846] *Deutsche Schachtbau- und Tiefbohrgesellschaft mbH v Ras al-Khaimah National Oil Co* [1990] 1 AC 295 (HL).
[847] *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288 (CA).
[848] ibid, 305–306 (Waller LJ).

for concluding that the tribunal was incompetent or that the award was obtained by collusion, and that permitting a full reopening of facts decided by the chosen tribunal would undermine the very purpose of arbitration.

The *Westacre* decision is significant for the present analysis because it demonstrates how an arbitration-friendly jurisdiction balances respect for arbitral finality against the need to ensure that awards do not give effect to genuinely illegal arrangements. This approach reflects the ILA Recommendations' emphasis that finality should be respected save in exceptional circumstances. The English framework thus establishes a high threshold for invoking public policy, requiring courts to assess the gravity of the alleged violation and the extent to which the tribunal addressed the issue before permitting any reopening of the award.[849]

The content of international public policy, while narrower than domestic public policy, is not entirely uniform across jurisdictions. Several categories are generally recognised as falling within international public policy across legal systems. Corruption and bribery constitute violations that virtually all jurisdictions treat as offensive to international public policy. Fraud and procedural unfairness that deprives a party of a meaningful opportunity to present its case similarly fall within the common core. Violations of human rights, support for criminal activity, and enforcement of contracts whose performance would require violation of mandatory rules protecting basic societal interests are likewise generally recognised.[850] The ILA Recommendations illustrate this by identifying prohibition of abuse of rights as an example of a substantive fundamental principle, impartiality of tribunals as a procedural fundamental principle, and anti-trust law as an example of a public policy rule, whilst noting that some rules, such as those prohibiting corruption, may fall into more than one category.[851]

The English Court of Appeal drew the clearest line in *Soleimany v Soleimany*, where Waller LJ held that an English court will not enforce an arbitral award that gives effect

[849] ILA Recommendations (n [818]) rec 1(a).
[850] *Soleimany v Soleimany* [1999] QB 785 (CA), where Waller LJ held that an English court will not enforce an arbitral award arising from a contract whose performance involved smuggling in violation of the revenue laws of a foreign state, regardless of the parties' agreement to arbitrate; *World Duty Free Company Ltd v Republic of Kenya* ICSID Case No ARB/00/7, Award of 4 October 2006, paras 138–157, holding that a contract procured by corruption is unenforceable as a matter of international public policy. See also Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) §26.05[E][2].
[851] ILA Recommendations (n [818]) rec 1(e).

to a contract whose performance involved smuggling goods in violation of the revenue laws of a foreign state.[852] The Court distinguished this from the *Westacre* scenario by emphasising that where both parties knew that the underlying contract was illegal and the tribunal had nonetheless made an award, the court's duty to refuse enforcement on public policy grounds was absolute. There could be no balancing exercise where the illegality was admitted or apparent on the face of the award. This decision establishes the outer boundary of the public policy exception: while the *Westacre* framework permits enforcement where the tribunal has examined and rejected allegations of illegality, the *Soleimany* principle requires refusal where the award is founded upon an admittedly illegal arrangement.

Beyond these common principles, jurisdictions differ in what they treat as falling within international public policy. The European Court of Justice held in *Eco Swiss China Time Ltd v Benetton International NV* that European competition law constitutes a matter of public policy within the meaning of the New York Convention, requiring national courts to refuse enforcement of arbitral awards that give effect to agreements violating Article 101 TFEU.[853] This decision illustrates how public policy rules — as distinguished from fundamental principles in the ILA Recommendations' tripartite classification — may require refusal of enforcement where recognition would manifestly disrupt the essential political, social or economic interests protected by the rule, even where the violation does not reach the level of corruption or fraud. However, the ILA Recommendations caution that an award's violation of a mere mandatory rule that does not form part of the State's international public policy should not bar its recognition or enforcement, even when that rule forms part of the law of the forum.[854] The boundaries of international public policy are thus contestable, with different legal systems drawing the lines in different places based on their particular legal traditions, policy priorities, and the distinction between mandatory rules and genuinely public policy norms.

[852] *Soleimany v Soleimany* [1999] QB 785 (CA) 800 (Waller LJ).
[853] *Eco Swiss China Time Ltd v Benetton International NV* Case C-126/97 [1999] ECR I-3055 (ECJ).
[854] ILA Recommendations (n [818]) recs 3(a)–3(b).

5.3.2 The Kuwaiti Conception of Public Policy

Kuwait's approach to public policy departs from the narrow international public policy standard in significant respects. Kuwaiti courts interpret public policy broadly,[855] encompassing not only shared legal principles but also mandatory rules from Kuwait's statutes, constitutional values, and aspects of Islamic law, much as many other jurisdictions apply their own standards.[856] To clarify the criteria for labelling Kuwait's conception as 'expansive', it is helpful to compare it against benchmarks such as the UNCITRAL practice, which typically advocate for a more restrained interpretation that focuses on breaches of justice and morality. This expansive conception imposes substantial constraints on party autonomy that parties must navigate when their awards are challenged or sought to be enforced in Kuwait.[857]

The constitutional foundation for Kuwait's public policy conception is Article 2 of the Constitution, which provides that the religion of the State is Islam and that Islamic Sharia shall be a main source of legislation.[858] This provision has been interpreted as incorporating the principles of Islamic law into the fabric of Kuwaiti public policy, rendering awards that violate these principles unenforceable regardless of the governing law chosen by the parties or applied by the tribunal. The practical effect is that Kuwaiti public policy encompasses religious legal principles that would not be recognised as public policy violations in secular legal systems.

The Court of Cassation has articulated Kuwait's public policy conception in numerous decisions addressing challenges to arbitral awards. The Court has consistently held that public policy encompasses the principles upon which the Kuwaiti legal, social, and economic order is founded, including principles derived from Islamic Sharia that inform Kuwaiti law.[859] This formulation is notably broader than the international public policy

[855] Avocat Jafar Samdani, 'Arbitration and its roots in the State of Kuwait' (2020) 10(2) Journal of Progressive Research in Social Sciences 50 <https://scitecresearch.com/journals/index.php/jprss/article/view/1944> accessed 28 January 2026.
[856] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[857] Dalal Al Houti, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) https://arbitrationblog.kluwerarbitration.com/2015/02/20/arbitration-in-kuwait-time-for-reform/ accessed 28 January 2026.
[858] Constitution of the State of Kuwait 1962, art 2.
[859] *Court of Cassation (Kuwait), Commercial Circuit, Case No 221/1991 (15 December 1991).*

standard applied in jurisdictions like England, France, and Switzerland, where public policy is confined to violations that shock the conscience of the forum.

The Court of Cassation has articulated a comprehensive definition of public policy that illuminates the concept's operation within Kuwait's legal framework. In Case No 236/2010, the Court held[860]:

> ‘’It is established in the jurisprudence of this Court that legal rules considered part of public policy are rules intended to achieve a public interest—whether political, social, or economic—that pertains to the higher order of society and transcends the interests of individuals. All individuals must observe and realise this interest, and they may not contravene it through agreements among themselves, even if such agreements would achieve individual benefits for them, because individual interests cannot stand against the public interest. It necessarily follows that the wording or implication of the provision must indicate that the legal rule enacted by the legislature is a mandatory rule intended to achieve the foregoing. It is also established that a void contract produces no effect, cannot be ratified, and any person with an interest— whether a contracting party or a third party—may invoke its nullity; indeed, the court is obliged to rule on such nullity of its own motion’’.

This judicial definition confirms several features of Kuwait's public policy conception that distinguish it from the narrow international public policy standard applied in arbitration-friendly jurisdictions. First, the Court's formulation encompasses political, social, and economic interests, extending beyond the core principles of procedural fairness and fundamental justice that typically constitute international public policy. Second, the emphasis on the 'higher order of society' reflects the jurisdictional theory's conception of arbitration as operating within state-defined boundaries rather than as an autonomous system. Third, the categorical subordination of individual interests to public interests confirms that party autonomy, however extensive, terminates where it conflicts with mandatory rules that the state has determined to be non-derogable. Fourth, the Court's assertion that public policy violations must be raised by courts of their own motion demonstrates the active supervisory role that Kuwait's framework

[860] Court of Cassation (Kuwait), Commercial Circuit, Case No 236/2010 (30 November 2010).

assigns to the judiciary, contrasting with systems where public policy operates as a passive defence available only when invoked by parties.

The expansive Kuwaiti conception encompasses several categories that would not necessarily fall within international public policy as understood in other jurisdictions. Violations of mandatory provisions of Kuwaiti statutory law, even where those provisions reflect policy choices rather than principles, may be treated as public policy violations. Rules derived from Islamic legal tradition, including prohibitions that other legal systems do not share, fall within Kuwaiti public policy. Moreover, principles of Kuwaiti constitutional law, including provisions that other constitutions might not contain, may inform the public policy analysis.

5.3.3 Interest and the Prohibition of Riba

The treatment of interest is a practically significant area in which party autonomy confronts Kuwaiti public policy constraints, though the legal framework is more nuanced than a blanket prohibition.[861] Understanding Kuwait's approach requires distinguishing between transactions governed by statutory provisions permitting interest and those that fall outside them. Consider a recent arbitration case over a civil loan where an award granted 5% interest was struck down. This decision highlights the rigid application of riba principles in civil transactions. Islamic law prohibits riba, a term commonly translated as usury or interest, though its precise scope has been the subject of extensive jurisprudential analysis within Islamic legal scholarship. The prohibition derives from multiple Quranic verses and prophetic traditions and is considered one of the most firmly established rules of Islamic commercial law.[862] However, the Court of Cassation has established a clear hierarchical principle regarding the relationship between Sharia and statutory law. Where legislation expressly permits or regulates a transaction, Sharia principles do not independently override that statutory permission. Conversely, where no statutory provision governs a transaction, Sharia operates as a supplementary source, and its prohibitions apply.

[861] Bashayer Alghanim, 'The Role of Party Autonomy in Choosing Procedural Law in Arbitration: the rules of the WIPO Arbitration and Mediation Centre' (2020) 9(1) International Review of Law 207 <https://journals.qu.edu.qa/index.php/IRL/article/view/1691> accessed 28 January 2026.
[862] For analysis of riba in Islamic commercial law, see generally Mohammad Hashim Kamali, Islamic Commercial Law: An Analysis of Futures and Options (Islamic Texts Society 2000) 79–102.

This hierarchical approach manifests clearly in the distinction between commercial and civil transactions. Article 110 of the Commercial Code permits charging interest in commercial transactions, subject to a 7% per annum ceiling. The Court of Cassation has confirmed that, where statutory law permits interest, constitutional references to Sharia do not authorise courts to invalidate such provisions or to refuse to enforce awards on public policy grounds.[863] In Case No 608/2018, the Court rejected arguments that interest charged by financial institutions violated the Sharia prohibition on riba and that the dispute was therefore non-arbitrable, noting that the Commercial Code expressly permits interest in commercial contexts.[864]

By contrast, Article 305 of the Civil Code renders void any agreement to charge interest on civil obligations, whether as consideration for the use of money or as compensation for delay in payment. The Court of Cassation has consistently applied this prohibition to non-commercial transactions. In Appeal No. 608/2018, the Court held that interest could not be claimed on amounts owed under an agency relationship, characterising the obligation as civil rather than commercial and therefore subject to the riba prohibition as codified in Article 305.[865] Similarly, in Appeals Nos. 409 and 433 of 2003, the Court held that interest could not be claimed on amounts recoverable following the dissolution of a silent partnership, as such recovery falls within the civil law provisions prohibiting interest.[866] The Court emphasised that the nullity under Article 305 is absolute, may be raised by any interested party at any stage of proceedings, and may be applied by the Court of its own motion.

The implications for arbitral awards depend on the characterisation of the underlying transaction. Awards granting interest on commercial obligations governed by statutory provisions permitting interest do not violate Kuwaiti public policy merely because Islamic jurisprudence might view interest as impermissible. The statutory permission prevails. However, awards granting interest on civil obligations or on transactions not

[863] Court of Cassation (Kuwait), Commercial Circuit, Case No 608/2018 (11 July 2018).
[864] Ibid.
[865] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 608/2018 (11 July 2018).
[866] Court of Cassation (Kuwait), Commercial Circuit, Appeals No 409 and 433/2003, 30 June 2004.

governed by statutory provisions permitting interest face public policy objections under Article 305 and the Sharia principles it codifies.[867]

Enforcement of foreign awards adds complexity to the issue of mandatory interest rate ceilings. The Court of Cassation's approach in the Valvitalia case, Appeal No. 2195 of 2018, illustrates how Kuwaiti courts address awards that grant interest rates exceeding the 7% ceiling under Article 110.[868] Rather than refusing enforcement entirely, the Court reduced the interest rate to the statutory maximum and enforced the award as modified. This approach warrants careful analysis. It does not reflect judicial leniency toward the party's autonomy in selecting governing law. The parties had chosen Italian law to govern their contract, and the arbitration was conducted outside Kuwait under ICC rules. The tribunal applied the chosen law and granted interest accordingly.[869] These cases demonstrate the practical operation of Article 196's principle that party autonomy operates 'within the limits of the law'.[870] Parties who choose foreign law to govern their substantive relationship exercise their contractual freedom, but that freedom does not extend to circumventing Kuwait's mandatory interest ceilings at the enforcement stage.

Nevertheless, at the enforcement stage, the Kuwaiti court applied its own mandatory rules, disregarded the parties' choice of governing law, and enforced the award only to the extent permitted by Kuwaiti law. The practical effect is that parties cannot, through their choice of foreign governing law, obtain enforcement in Kuwait of interest awards exceeding domestic ceilings. This judicial approach reflects a broader principle in Kuwait's enforcement framework. The Court distinguishes between outright refusal of enforcement on public policy grounds and modification of awards to conform to

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[867] Saad Badah, 'The Enforcement of Foreign Arbitral Awards in Kuwait' (2014) 8(2) Agora International Journal of Juridical Sciences 9 <https://doi.org/10.15837/aijjs.v8i2.1185> accessed 28 January 2026. [oai_citation:1‡univagora.ro](https://univagora.ro/jour/index.php/aijjs/article/view/1185)

[868] Court of Cassation (Kuwait), Commercial Circuit, Appeal No 2195/2018, 28 March 2019 (Valvitalia).

[869] Mary B Ayad, 'International Commercial Arbitration Award Enforcement at the Crossroads of Sharia Law and Ordre Public in the MENA: Paving the Golden Path towards Harmonisation' (2009) 10(5) Journal of World Investment & Trade 723–751 <https://brill.com/view/journals/jwit/10/5/article-p723_1.pdf> accessed 28 January 2026. [oai_citation:1‡EconBiz](https://www.econbiz.de/Record/international-commercial-arbitration-award-enforcement-crossroads-sharia-law-ordre-public-mena-paving-golden-path-harmonisation-ayad-mary/10015185431)

[870] Civil Code (Kuwait), Decree-Law No 67/1980, art 196: 'The contract is the law of the contracting parties, and may not be revoked or modified except by mutual consent of the parties or for reasons permitted by law.'

mandatory domestic rules. Where an award contains severable elements that violate mandatory provisions, the Court may enforce the permissible portions while refusing enforcement of the impermissible elements. This approach preserves the core of the arbitral award while ensuring conformity with non-derogable domestic standards.

The practical consequence for parties with potential enforcement needs in Kuwait is that they must attend carefully to the characterisation of their transactions and the applicable statutory framework. Interest on commercial transactions is enforceable, subject to the 7% ceiling, regardless of what foreign governing law might permit. Interest on civil transactions is unenforceable in its entirety, regardless of the parties' agreement or foreign law. Parties should structure their remedial arrangements with these distinctions in mind, recognising that Kuwaiti courts will apply domestic mandatory rules at the enforcement stage, irrespective of the governing law chosen by the parties or applied by the tribunal.

5.3.4 Commercial Activities Prohibited Under Islamic Law

Beyond interest, Islamic law prohibits certain commercial activities that other legal systems permit and regulate. Trade in alcohol, gambling and games of chance, and certain financial instruments characterised as speculative or as involving excessive uncertainty, fall within the scope of Islamic prohibitions. Awards arising from disputes connected to such activities face public policy objections in Kuwait that would not arise in secular jurisdictions.[871] The principle extends to contracts whose subject matter is itself prohibited. A contract for the supply of alcoholic beverages, for example, would be unenforceable in Kuwait regardless of whether it was validly formed under the governing law chosen by the parties. An arbitral award ordering performance of such a contract, or awarding damages for its breach, would face public policy objection on the ground that enforcing the award would give effect to a transaction that Islamic law prohibits.[872] The scope of this constraint requires careful analysis in cases involving mixed transactions or transactions with indirect connections to prohibited activities. A

[871] Rashid Hamad Al Anezi, 'Enforcement of Foreign Arbitral Awards in Kuwait', BCDR International Arbitration Review, (Kluwer Law International; Kluwer Law International 2014, Volume 1 Issue 1) pp. 85 - 94

[872] Rashid Hamad Al Anezi, 'Enforcement of Foreign Arbitral Awards in Kuwait', BCDR International Arbitration Review, (Kluwer Law International; Kluwer Law International 2014, Volume 1 Issue 1) pp. 85 - 94

logistics contract for transportation services that incidentally involves carriage of alcoholic beverages might be distinguished from a contract whose primary purpose is trade in alcohol. A financial services contract that involves some speculative elements might be distinguished from a pure gambling transaction. Kuwaiti courts have not fully developed the principles for drawing these distinctions, creating uncertainty that parties must navigate.[873]

Public policy objections based on the subject matter of contracts are recognised in all legal systems; the activities that trigger such objections vary across jurisdictions' moral and legal traditions.[874] A contract for the sale of narcotics would be unenforceable in virtually any jurisdiction on public policy grounds. Kuwait's extension of this principle to activities permitted elsewhere but prohibited under Islamic law reflects the incorporation of religious legal principles into its public policy conception.

5.3.5 Personal Status and Inheritance

Islamic personal status law, including rules governing marriage, divorce, and inheritance, represents another area where party autonomy confronts Kuwaiti public policy constraints. The Islamic law of inheritance, in particular, establishes mandatory rules for the distribution of a deceased person's estate that parties cannot modify by agreement.[875] These rules allocate shares to specified heirs based on family relationships, with particular shares prescribed for surviving spouses, children, parents, and other relatives.[876]

An arbitral award that distributes property in ways inconsistent with Islamic inheritance rules may face public policy objections in Kuwait.[877] In Appeal No 967/2018, the Court

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[873] Dr Wafa Yaqoob Janahi and Muneera Khalifa Al Khalifa, 'The Applicable Law to Arbitration Proceedings: Party Autonomy and Lex Loci Arbitri (Extent and Limitations)' (2021) 10(1) Kilaw Journal 41–68 <https://journal.kilaw.edu.kw/wp-content/uploads/2022/04/41-68-Dr.-Wafa-Janahi-Muneera-Al-Khalifa.pdf> accessed 28 January 2026. [oai_citation:0‡Kilaw Journal](https://journal.kilaw.edu.kw/wp-content/uploads/2022/04/41-68-Dr.-Wafa-Janahi-Muneera-Al-Khalifa.pdf)
[874] Blackaby and others (n 3) para 11.118.
[875] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[876] For analysis of Islamic inheritance law, see generally Noel J Coulson, *Succession in the Muslim Family* (CUP 1971).
[877] Saad Aljadean Badah, 'Rules Relevant to the Recognition and Enforcement of Foreign Arbitral Awards in Kuwait' *Asian International Arbitration Journal* (vol 11 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2015) 117–152.

of Cassation declined to enforce an award that divided assets among family members in a way that did not match the shares required by Islamic succession law. The Court held that enforcing such a distribution would contravene public policy because it would violate mandatory inheritance rules.[878] The implications for party autonomy are significant in the context of family business disputes, succession planning arrangements, and estate-related arbitrations. Parties who choose arbitration to resolve disputes arising from family wealth transfers, and who apply governing laws that permit testamentary freedom or negotiated distributions, may find that their awards cannot be enforced in Kuwait to the extent they conflict with Islamic succession principles. The scope of this constraint is particularly important for parties engaged in cross-border wealth planning. Families with assets in multiple jurisdictions may structure their affairs under laws that permit distributions different from what Islamic succession rules would mandate. Where such arrangements are challenged and resolved through arbitration, the resulting awards may be subject to differential treatment across jurisdictions. An award that would be enforced without difficulty in London or Singapore may face public policy objections in Kuwait.

Personal status matters are generally considered to fall within the domain of mandatory law, with limited scope for party autonomy across jurisdictions.[879] Kuwait's application of Islamic personal status rules as public policy constraints reflects this broader principle. However, the content of the mandatory rules differs from those that would apply in secular jurisdictions.

5.3.6 Procedural Public Policy and Due Process

Alongside the substantive public policy constraints derived from Islamic legal principles, Kuwait recognises procedural public policy requirements that align more closely with international standards. Denial of adequate opportunity to present one's case, violations of procedural fairness, and corruption or fraud affecting the arbitral process constitute public policy violations recognised in virtually any jurisdiction.[880]

[878] Court of Cassation (Kuwait), Appeal No 967/2018 (Commercial Circuit).
[879] Lew, Mistelis and Kröll (n 4) 725.
[880] Nader Al Awadhi and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025)

The Court of Cassation has held that awards may be refused enforcement where a party was denied proper notice of the arbitration proceedings, where a party was prevented from presenting evidence or argument on material issues, or where the tribunal exhibited bias or corruption.[881] These procedural public policy requirements parallel the grounds for non-enforcement under Article V(1)(b) of the New York Convention and reflect the universal recognition that minimum standards of procedural fairness cannot be displaced by party agreement.

The procedural dimension of public policy is less distinctive to Kuwait than the substantive dimension derived from Islamic legal principles. Procedural fairness requirements are broadly consistent across jurisdictions, reflecting the common understanding that arbitration must provide parties with a meaningful opportunity to present their cases if it is to serve as a legitimate alternative to judicial adjudication. Procedural public policy is less controversial than substantive public policy because it addresses universal requirements of fair process rather than jurisdiction-specific mandatory rules.[882]

5.3.7 Implications for Party Autonomy

The analysis of Kuwait's public policy conception reveals its function as the central constraint on party autonomy in the award phase. Parties who exercise autonomy to choose arbitration, to select a governing law, and to structure their commercial relationships in particular ways face the prospect that their choices will be overridden where they conflict with principles that Kuwaiti public policy places beyond the reach of private agreement.[883]

The constraint operates most significantly in relation to interest. Parties whose transactions involve time-value-of-money considerations routinely expect that delayed

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https://uk.practicallaw.thomsonreuters.com/Document/I89db1a1a71ae11efb5eab7c3554138a0 accessed 21 November 2025.

[881] Court of Cassation (Kuwait), Commercial Circuit, Case No 221/1991 (15 December 1991).

[882] Born (n 1) §26.05[D].

[883] Monique Sasson, 'Public Policy: Is This Catch-All Provision Relevant to the Legitimacy of International Commercial Arbitration?' (Kluwer Arbitration Blog, 18 June 2022) <https://legalblogs.wolterskluwer.com/arbitration-blog/public-policy-is-this-catch-all-provision-relevant-to-the-legitimacy-of-international-commercial-arbitration/> accessed 28 January 2026. [oai_citation:0‡legalblogs.wolterskluwer.com](https://legalblogs.wolterskluwer.com/arbitration-blog/public-policy-is-this-catch-all-provision-relevant-to-the-legitimacy-of-international-commercial-arbitration/)

payment will attract interest as a matter of course. The choice of a governing law like English law reflects this expectation, as English law provides for interest as both a compensatory remedy and a tool for encouraging timely performance. Kuwait's treatment of interest awards as potential public policy violations defeats this expectation, requiring parties to either forgo interest-bearing remedies or accept enforcement risk in Kuwait.[884] The constraint operates similarly with respect to commercial activities that Islamic law prohibits but that parties may have considered lawful under their chosen governing law. Parties to transactions involving alcohol, conventional insurance and financial products, or entertainment and leisure activities with gambling elements must recognise that arbitral awards arising from such transactions are subject to public policy objections in Kuwait.[885] The constraint operates in the personal status context by limiting the efficacy of arbitration for resolving family wealth disputes where the desired outcome differs from what Islamic succession rules would mandate. Parties who wish to distribute family assets according to their own preferences rather than according to prescribed shares must recognise that Kuwaiti enforcement of any resulting award may be limited.

The scope of public policy determines the practical extent of party autonomy in the award phase, and expansive public policy conceptions constrain autonomy more significantly than narrow conceptions.[886] This observation applies with particular force to Kuwait, where the incorporation of Islamic legal principles into public policy creates constraints that parties from secular legal traditions may not anticipate. The autonomous choices that parties exercise throughout the arbitral process, made with the expectation that they will be respected and enforced, are subject to substantive scrutiny against standards that may differ materially from those the parties contemplated when making their choices.

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[884] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[885] Ahmed Barakat and Adnan Jaafar, 'Arbitration in Kuwait: Public Policy Limits, Capacity Pitfalls and the Need for Legislative Overhaul' in Romesh Weeramantry and John Choong (eds), Asian Dispute Review (2025) 173, as available on Kluwer Arbitration https://www-kluwerarbitration-com.uea.idm.oclc.org/document/kli-ka-adr-2025–03–007 accessed 22 November 2025.
[886] Born (n 1) §26.05[E].

5.3.8 The Coherence of Kuwait's Approach

Kuwait's expansive public policy conception, while constraining party autonomy more significantly than international standards would suggest, represents a coherent expression of constitutional commitments and religious legal traditions.[887] The incorporation of Islamic principles into public policy reflects the constitutional status of Sharia as a main source of legislation and the societal commitment to maintaining an economic and legal order consistent with Islamic values. From this perspective, the public policy constraints on party autonomy are not arbitrary limitations but rather the natural consequence of operating within a legal system that accords constitutional status to religious legal principles. Every legal system reserves the power to refuse recognition of arbitral awards that violate its core principles, and the content of those principles necessarily varies across jurisdictions with different legal, cultural, and religious traditions.[888] Kuwait's public policy conception reflects its traditions, just as the narrow public policy conceptions of secular jurisdictions reflect theirs. The difference lies in the practical extent of the constraint rather than in the principle that some constraint must exist. The coherence of Kuwait's approach does not eliminate its practical consequences for party autonomy. Parties who value enforcement flexibility may prefer to situate their arbitrations in jurisdictions with narrower public policy conceptions, where the range of enforceable awards is correspondingly broader. Parties with necessary enforcement connections to Kuwait must structure their transactions and arbitration arrangements with attention to Kuwaiti public policy constraints, which may limit their choice of governing law or their remedial expectations.

The State-Centric Hybrid Model accommodates this analysis. The model describes a framework in which formal recognition of arbitration coexists with systematic embedding of state control. Public policy operates within this framework as the mechanism through which the state asserts control over the substance of arbitral outcomes, complementing the procedural controls that govern the arbitral process. The autonomous choices that parties exercise throughout that process remain subject

[887] Saad Aljadean Badah, 'Public Policy and Non-Arbitrability in Kuwait' in Michael Pryles and Philip Chan (eds), *Asian International Arbitration Journal* (vol 12 issue 2, Singapore International Arbitration Centre in co-operation with Kluwer Law International 2016) 137–180.
[888] Blackaby and others (n 3) para 11.115.

to override where they conflict with principles that the state has determined to be non-derogable. Party autonomy operates, but within boundaries that the state defines by reference to its commitments, including religious legal commitments that other jurisdictions may not share.

5.4 Conclusion:

This chapter has examined the award phase of arbitration within Kuwait's legal framework, with particular focus on public policy as the central mechanism through which the state limits the effects of autonomous party choices. The analysis confirms and extends the pattern identified throughout this thesis. Kuwait's arbitration framework formally recognises party autonomy while systematically embedding constraints that ensure state supervision over arbitral outcomes. The award phase represents the culmination of this pattern, subjecting the choices that parties exercised throughout the arbitral process to final scrutiny against standards that parties cannot displace through private agreement.

The central finding of this chapter is that public policy operates within Kuwait's framework as the substantive complement to the procedural controls that govern the arbitral process. Where formal requirements ensure documentary regularity, where deposit obligations ensure administrative registration, and where challenge mechanisms ensure opportunity for judicial review, public policy ensures that awards conform to norms that the state has placed beyond the reach of autonomous party choice.

Beyond substantive public policy constraints, the award phase reveals how formal requirements themselves operate as mechanisms limiting party autonomy. The mandatory reasoning requirement of Article 183 exemplifies this pattern. While the UNCITRAL Model Law, the English Arbitration Act 1996, and the UAE Federal Arbitration Law all permit parties to agree to unreasoned awards, Kuwait mandates reasoning in all cases, without provision for contrary-party agreement. This requirement constrains party autonomy in a dimension that international standards leave to private ordering. Parties who value confidentiality, one of arbitration's principal attractions, and who would prefer unreasoned awards precisely to protect commercially sensitive information from documentary exposure, must nonetheless accept reasoned awards that create permanent records of the tribunal's analysis. The mandatory reasoning requirement thus serves the same supervisory function as substantive public policy review. It ensures that courts retain full visibility into the

tribunal's decision-making process, facilitating the comprehensive judicial oversight that characterises Kuwait's framework.

First, statutory rules prevail; second, Sharia fills gaps in Kuwait's public policy conception, which operates through a hierarchical framework distinguishing between matters governed by statutory provisions and those where legislation is silent. Where Kuwaiti statutes expressly permit or regulate a transaction, Sharia principles do not independently override that statutory permission. The treatment of interest illustrates this principle. Commercial interest is enforceable under Article 110 of the Commercial Code, subject to the 7% ceiling, and courts will not refuse enforcement on Sharia grounds where statutory permission exists. However, interest on civil obligations is void under Article 305 of the Civil Code, which codifies the prohibition on riba for non-commercial transactions. The prohibition of certain commercial activities extends public policy objections to awards arising from transactions that other legal systems permit and regulate but that fall outside Kuwaiti statutory permission. The mandatory rules of Islamic succession limit the efficacy of arbitration in resolving family wealth disputes when the desired outcome differs from the shares prescribed by the rules.

These constraints operate with varying intensity depending on whether statutory provisions govern the transaction. Parties who choose a governing law permitting interest on commercial obligations may find that Kuwaiti courts enforce the interest component, but only up to the statutory ceiling, regardless of what the foreign law permits. The Valvitalia decision demonstrates that courts may reduce interest rates to comply with domestic limits rather than refuse to enforce them entirely. However, parties whose transactions involve civil obligations or activities not governed by permissive statutory provisions face more categorical constraints. The autonomous choices parties exercise at the transaction-structuring stage are confronted with mandatory rules that Kuwaiti courts apply irrespective of the governing law chosen by the parties or applied by the tribunal.

The stricter a legal system is in applying public policy, the less deference it gives to party autonomy. This inverse relationship is the key to understanding how public policy constrains autonomous choice. A jurisdiction that limits public policy to a narrow core of truly essential principles leaves substantial space for party autonomy. Such principles include prohibitions on corruption, fraud, and violations of basic procedural

fairness. Parties may choose governing laws that produce results the forum state would not itself adopt. They can be confident that the resulting award will be enforced, provided it does not cross the narrow line into genuine public policy violation. In contrast, a jurisdiction that interprets public policy expansively, encompassing not only principles but also mandatory rules of domestic law and religious precepts, leaves correspondingly less space for party autonomy. Parties must ensure that their choices conform not only to basic standards of legality and fairness but also to the substantive requirements that the forum state has determined to be non-derogable. For instance, countries like England and France approach public policy with a narrow focus, emphasizing breaches only, whereas Kuwait adopts a broader interpretation influenced by specific domestic parameters.

Kuwait's position within this spectrum is nuanced. The hierarchical relationship between statutory law and Sharia means that party autonomy operates more freely where statutory provisions govern the transaction. Parties to commercial transactions benefit from the Commercial Code's express permission of interest, subject to rate ceilings. However, where transactions fall outside statutory regulation, Sharia principles apply as gap-filling norms, and party autonomy is correspondingly constrained. Parties cannot, through their autonomous choices, obtain enforceable awards that violate Islamic legal principles in areas where Kuwaiti legislation has not provided otherwise.

The award phase completes the framework of cumulative judicial control that characterises Kuwait's State-Centric Hybrid Model. The jurisdictional phase, examined in Chapter Three, subjects the arbitration agreement's operative effect to gatekeeping conditionality, requiring judicial validation of the parties' choice to arbitrate. The procedural phase, examined in Chapter Four, establishes conditional authority, permitting tribunals to exercise procedural powers only within mandatory statutory boundaries. The award phase adds the final layer of control, subjecting arbitral outcomes to scrutiny against public policy standards that may override the substantive results reached by tribunals.

The cumulative character of this control is significant. An award that satisfies the formal requirements of Article 183, that has been deposited within the ten days of Article 184, that was rendered within the time limits of Article 181 or their valid

extension, that survives or avoids challenge under Article 186, and that is presented for enforcement under Article 185, may nonetheless be modified or partially denied effect on public policy grounds. The procedural checkpoints do not exhaust the scope of judicial supervision. They are supplemented by a substantive review that examines not merely whether the award was properly made but whether its content conforms to mandatory norms.

Kuwait's approach, while constraining party autonomy more significantly than international standards would suggest, represents a coherent expression of constitutional commitments and statutory framework. Article 2 of the Constitution establishes Islamic Sharia as a main source of legislation, and the incorporation of Islamic principles into public policy reflects this constitutional commitment. However, the hierarchical relationship between statutory law and Sharia ensures that legislative policy choices prevail where the legislature has acted. The constraints on party autonomy that public policy imposes are not arbitrary limitations but rather the natural consequence of operating within a legal system that accords constitutional status to religious legal principles while maintaining the primacy of enacted legislation.

From Kuwait's perspective, the question is not whether to constrain party autonomy but rather what the appropriate boundaries of that autonomy should be. Every legal system imposes some constraints through public policy. The content of those constraints necessarily reflects the legal, cultural, and religious traditions of particular jurisdictions. Kuwait's inclusion of Islamic legal principles within public policy reflects its traditions, just as the narrow public policy conceptions of secular jurisdictions reflect theirs.

The coherence of this approach does not eliminate its practical consequences for parties who operate across legal systems with different public policy conceptions. International commercial transactions routinely involve parties from jurisdictions with different legal traditions, governed by laws that may differ from the law of any enforcement forum, and producing awards that may need to be enforced in multiple jurisdictions with different standards. The challenge for such parties is to navigate these differences, structuring their transactions and arbitration arrangements with attention to the enforcement standards they may encounter.

The analysis yields practical implications for parties engaging in arbitration with connections to Kuwait, whether through seat selection, choice of governing law, or anticipated enforcement needs. This guidance is particularly pertinent for multinational suppliers and project financiers, who must carefully consider enforcement analysis during the transaction-structuring stage to identify potential hurdles in jurisdictions where their awards may need enforcement. Where enforcement in Kuwait is anticipated, these parties should evaluate whether their chosen governing law might conflict with Kuwaiti mandatory rules and tailor their remedial expectations accordingly.

Parties should conduct an enforcement analysis at the transaction-structuring stage, assessing where their awards may need to be enforced and the obstacles those jurisdictions may pose. Kuwait's public policy review creates enforcement considerations that parties should factor into their planning. Where enforcement in Kuwait is anticipated, parties should consider whether their chosen governing law may produce results that conflict with Kuwaiti mandatory rules and should structure their remedial expectations accordingly.

Parties should also recognise that Kuwait's formal requirements constrain procedural autonomy, which may affect confidentiality expectations. The mandatory reasoning requirement means that the tribunal's analysis of commercially sensitive information will be documented in the award, regardless of the parties' preference for confidentiality. Parties who prioritise the protection of trade secrets, proprietary business methods, or confidential financial data should factor this documentary exposure into their assessment of Kuwait as an arbitral seat. While arbitration generally offers greater confidentiality than court litigation, Kuwait's mandatory reasoning requirement ensures that the tribunal's analysis becomes part of a permanent record that may be accessible through enforcement proceedings or subsequent litigation.

Parties should recognise that choosing a pro-arbitration seat does not insulate awards from public policy scrutiny at the enforcement stage. An award rendered in London, Paris, or Singapore, applying the governing law that those jurisdictions would enforce without objection, may nonetheless be modified in Kuwait under Kuwaiti mandatory rules. Interest rates exceeding the 7% statutory ceiling will be reduced regardless of

what the governing law permits. Interest on civil obligations will be denied enforcement entirely. The enforcement analysis must examine not only the seat but also all jurisdictions where enforcement may be needed.

Parties should attend to the characterisation of their transactions under Kuwaiti law. Commercial transactions benefit from statutory provisions permitting interest, subject to rate ceilings. Transactions characterised as civil, or transactions involving activities not governed by permissive statutory provisions, face more stringent public policy constraints. Where the subject matter of transactions approaches the boundaries of Islamic permissibility and falls outside statutory regulation, careful structuring may distinguish arrangements that face public policy objection from those that do not.

The analysis contributes to the theoretical framework developed throughout this thesis. The State-Centric Hybrid Model describes an arbitration regime that formally recognises party autonomy while systematically embedding state control. The award phase analysis confirms this characterisation by demonstrating how public policy operates as the substantive mechanism of state control, complementing the procedural mechanisms examined in earlier chapters.

The concept of cumulative judicial control, introduced in this chapter's treatment of the award phase, captures the distinctive character of Kuwait's approach. Rather than concentrating judicial oversight at a single point, Kuwait distributes supervisory authority across multiple sequential checkpoints, each representing an independent opportunity for state intervention. The cumulative effect is comprehensive oversight that ensures no arbitral award achieves practical effect unless it satisfies both procedural requirements and substantive standards.

The analysis further demonstrates that constraints on party autonomy operate at multiple levels within Kuwait's framework. Substantive public policy limits the awards that may be provided. Formal requirements, including the mandatory reasoning obligation, limit how awards may be structured. Together, these constraints ensure comprehensive state oversight of both the content and form of arbitral outcomes. The international approach, which treats formal requirements as largely default rules subject to party modification, reflects confidence in party autonomy to determine the appropriate form for their awards. Kuwait's mandatory approach reflects a different

priority, subordinating party preferences regarding form to the state's interest in maintaining conditions for effective judicial review.

The analysis also illuminates the hierarchical relationship between statutory law and religious legal principles in shaping public policy. Kuwait's approach demonstrates that constitutional recognition of Sharia as a source of legislation does not necessarily lead to the uniform application of religious principles across all transactions. Where the legislature has acted, statutory provisions prevail. Sharia operates as a gap-filling mechanism in areas of legislative silence. This hierarchical structure creates differentiated treatment of party autonomy depending on whether the transaction falls within the scope of statutory regulation.

The award phase represents the culmination of the arbitral process and the moment at which the autonomous choices that parties exercised throughout that process face their ultimate test. Kuwait's framework subjects those choices to comprehensive scrutiny, ensuring that awards conform not only to formal requirements but also to substantive standards derived from statutory mandatory rules and, where legislation is silent, Islamic legal principles incorporated into public policy. This approach constrains party autonomy within boundaries that vary depending on the nature of the transaction and the applicable statutory framework. Parties who choose arbitration with connections to Kuwait must recognise that their autonomous choices operate within boundaries defined by the state, in accordance with its statutory framework and constitutional commitments. The practical extent of party autonomy is determined not solely by what parties agree but by what Kuwaiti mandatory rules permit.

However, the approach also reflects legitimate state interests in maintaining a legal and economic order consistent with both legislative policy and constitutional values. The incorporation of Islamic principles into public policy, operating within a hierarchical framework that respects legislative primacy, expresses constitutional commitments that the Kuwaiti legal system is entitled to maintain. The question for parties is not whether these constraints are legitimate but rather how to navigate them in structuring transactions and arbitration arrangements that serve their commercial objectives while respecting the boundaries that Kuwaiti law imposes.

The State-Centric Hybrid Model thus finds its fullest expression in the award phase. Formal recognition of arbitration coexists with substantive control over arbitral outcomes. Party autonomy operates within boundaries set by public policy, with those boundaries varying according to the hierarchical relationship between statutory provisions and Sharia principles. Furthermore, the cumulative nature of judicial supervision ensures that no arbitral award achieves practical effect unless it satisfies both the procedural requirements and the substantive standards imposed by Kuwait's framework. Understanding this framework and its implications for party autonomy is essential for parties engaging in arbitration within Kuwait's distinctive legal environment.

Chapter 6: Conclusion and Recommendations

6.1 Introduction

As Born observes, 'the relationship between party autonomy and state oversight lies at the heart of any arbitration system'.[889] This thesis has argued that Kuwait's arbitration framework, despite formally recognising party autonomy, operates as a system of conditional delegation that systematically subordinates private ordering to comprehensive state supervision. Through analysis of the Civil and Commercial Procedure Law (CCPL) and over one hundred Court of Cassation judgments spanning four decades from 1981 to 2025, this research has demonstrated that Kuwait's approach constitutes a distinctive variant of the hybrid model. This thesis proposes the term 'State-Centric Hybrid Model' as a descriptive characterisation of this phenomenon, describing a framework in which arbitral authority exists not as a presumptive entitlement but as a conditional privilege requiring continuous state validation across the jurisdictional, procedural, and award phases of the arbitration lifecycle.[890]

The central research question posed in Chapter One asked whether Kuwait's framework genuinely supports party autonomy or instead conceptualises arbitral authority as requiring continuous state validation. This concluding chapter demonstrates how the research has answered this question, synthesises the key findings, articulates the thesis's contribution to knowledge, discusses the theoretical and practical implications, acknowledges limitations, offers recommendations for reform, and identifies directions for future research.

6.2 Answering the Research Question

6.2.1 The Central Research Question

The research has established that Kuwait's framework operates as a system of conditional delegation to party autonomy rather than genuine support for party autonomy. This thesis has found that Kuwait formally acknowledges party choice whilst systematically embedding judicial supervision throughout the arbitral process.

[889] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 1.
[890] The state-centric hybrid characterisation draws upon analysis of Kuwait's Civil and Commercial Procedure Law, Decree-Law No. 38/1980, and the comprehensive jurisprudential examination conducted in Chapters Three, Four, and Five.

The analysis has demonstrated that this approach inverts the presumptions found in arbitration-friendly jurisdictions. Rather than presuming arbitral authority subject to limited judicial oversight, Kuwait presumes judicial authority subject to conditional arbitral delegation.[891]

These findings challenge assumptions that formal recognition of arbitration necessarily indicates substantive commitment to party autonomy. The research has shown that Kuwait participates in international arbitration conventions, has developed sophisticated arbitration jurisprudence, and formally acknowledged party choice, yet maintained comprehensive judicial supervision that reshapes the meaning of autonomous ordering. Unlike the English Arbitration Act 1996, which provides calibrated judicial support whilst respecting party choices, and unlike the UNCITRAL Model Law, which treats judicial intervention as exceptional under Article 5, Kuwait's framework treats judicial supervision as systematic and pervasive rather than exceptional and limited.[892]

6.2.2 The Subsidiary Research Questions

The **four** subsidiary research questions have each been addressed through the substantive chapters, and the analysis has yielded the following findings.

First, regarding theoretical frameworks, Chapter Two has established that whilst the jurisdictional, contractual, hybrid, and autonomous will theories provide foundational understanding, none fully captures Kuwait's distinctive approach. The analysis has demonstrated that Kuwait exhibits characteristics of the hybrid model but with a pronounced tilt toward the jurisdictional pole, necessitating the state-centric characterisation developed in this thesis.[893]

Second, regarding the jurisdictional phase, Chapter Three has revealed what this thesis terms ‘gatekeeping conditionality’. The analysis has demonstrated that arbitral jurisdiction in Kuwait arises only when parties satisfy cumulative statutory prerequisites governing agreement formation, capacity, arbitrability, and competence

[891] This finding emerges from systematic comparison of Kuwait's framework with international reference jurisdictions examined in Chapter Three.
[892] Arbitration Act 1996 (UK), s 1(c); UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 5.
[893] See Chapter Two, Section 2.3 for analysis of theoretical frameworks and Section 2.5 for the Shariah perspective on arbitration.

allocation. This thesis has established that these requirements operate as gatekeeping mechanisms controlling access to arbitration rather than as facilitative provisions supporting party choice.[894]

Third, regarding the procedural phase, Chapter Four has demonstrated that formal recognition of procedural autonomy does not translate into substantive freedom. The research has identified 'conditional authority', meaning procedural powers that depend on statutory permission and judicial cooperation rather than being inherent attributes of arbitral jurisdiction.[895]

Fourth, regarding the award phase, Chapter Five has revealed 'cumulative judicial control'. The analysis has established that each post-award stage provides opportunities for judicial intervention that collectively transform presumptively final decisions into provisional determinations awaiting state validation.[896]

6.3 Key Findings

The analysis of Kuwait's jurisdictional phase revealed that arbitral jurisdiction arises only when the parties satisfy cumulative statutory prerequisites that serve as gatekeeping mechanisms. The Court of Cassation jurisprudence has evolved from a formalistic approach in Case No 179/1990 to a functional interpretation in Case No 1207/2010, and the Snapchat trilogy confirmed that electronic acceptance can satisfy Article 173's writing requirement under specified conditions.[897] However, this evolution operates within rather than against the permission-based framework. Article 702 of the Civil Code imposes heightened authority requirements reflecting the arbitration agreement's characterisation as a dispositive act waiving constitutionally protected rights.[898]

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[894] The jurisdictional phase analysis draws upon Cases Nos. 179/1990 (February 1990), 1207/2010 (12 May 2011), 3249/2018 (14 July 2020), 243/2003, and 598/2023 (26 September 2023), Court of Cassation (Kuwait).
[895] The procedural phase analysis draws upon Cases Nos. 274/1998 (5 December 1998), 258/2005, 263/2005, and 568/1998 (Commercial), Court of Cassation (Kuwait).
[896] The award phase analysis draws upon Cases Nos. 332/2000 (25 March 2002), 978/2007 (27 December 2009), and 263/2005 (18 March 2006) (Commercial), Court of Cassation (Kuwait).
[897] Case No 179/1990 (4 February 1990) (Commercial), Court of Cassation (Kuwait); Case No 1207/2010 (12 May 2011) (Commercial), Court of Cassation (Kuwait); Case No 3249/2018 (14 July 2020) (Commercial), Court of Cassation (Kuwait).
[898] Civil Code of Kuwait (Decree No. 67/1980), art 702; Constitution of Kuwait 1962, art 164. See also Cases Nos. 179/2010 (Civil) (10 May 2011), and 598/2023 (26 September 2023), Court of Cassation (Kuwait).

The procedural phase analysis demonstrated that formal recognition of procedural autonomy does not translate into substantive freedom. Article 174 of the CCPL mandates an odd-numbered tribunal composition for court-resolved appointment disputes. The six-month default deadline under Article 181 operates as a jurisdictional boundary rather than a procedural guideline, as evidenced by Cases Nos. 258 and 263/2005, confirming that expiry automatically terminates arbitral authority.[899] Case No 274/1998 establishes that tribunals lack coercive authority and depend on judicial assistance to enforce procedural orders.[900]

The award phase analysis revealed comprehensive post-award supervision. Article 183 imposes formal validity requirements, including written form, reasoning, signatures, and dating, and Case No 332/2000 confirmed a strict interpretation.[901] The mandatory deposit requirement under Article 184 transforms arbitral outcomes into court-supervised documents. Article 186 establishes annulment grounds extending beyond the limited grounds recognised in arbitration-friendly jurisdictions, with Case No 978/2007 confirming that inadequate reasoning constitutes grounds for annulment.[902]

This thesis has also revealed that Kuwait's primary arbitration legislation suffers from deficiencies that extend beyond mere outdatedness. The CCPL's failure to codify the separability doctrine and its inconsistent treatment of competence-competence between Articles 173 and 180 reflect legislative provisions that have not been updated since 1980, rather than deliberate contemporary policy choices.[903] As demonstrated in Chapter One, Kuwait's early accession to the New York Convention in 1978 (predating all other Gulf states) and the CCPL's progressive treatment of writing requirements as evidentiary rather than constitutive indicate a legislature that was historically receptive to arbitration. The current constraints thus reflect legislative obsolescence rather than philosophical opposition to party autonomy.

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[899] Court of Cassation (Kuwait), Commercial Circuit, Case No 258/2005 (18 March 2006); Case No 263/2005 (18 March 2006), holding that extension of arbitral mandate requires express, unambiguous agreement.
[900] Court of Cassation (Kuwait), Commercial Circuit, Case No 274/1998 (5 December 1998).
[901] Court of Cassation (Kuwait), Commercial Circuit, Case No 332/2000 (25 March 2002).
[902] Court of Cassation (Kuwait), Commercial Circuit, Case No 978/2007 (27 December 2009).
[903] Compare UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), arts 7, 8, and 16, which provide consistent treatment of these foundational doctrines. See also Emmanuel Gaillard and John Savage (eds), Fouchard, Gaillard, Goldman on International Commercial Arbitration (Kluwer Law International 1999) 197–213.

6.4 Contribution to Knowledge

This thesis contributes to arbitration scholarship at three levels.

At the conceptual level, the 'State-Centric Hybrid Model' provides a descriptive framework for understanding how legal systems can formally recognise party autonomy whilst embedding comprehensive judicial supervision. Existing scholarship acknowledges that hybrid approaches exist on a spectrum between jurisdictional and contractual poles, but this characterisation remains descriptively static. The state-centric framework moves beyond taxonomic classification to explain the operational mechanisms that underpin Kuwait's approach.[904] The three subsidiary concepts developed across the substantive chapters, namely gatekeeping conditionality, conditional authority, and cumulative judicial control, provide analytical vocabulary for phenomena that existing scholarship has not adequately theorised.

At the empirical level, this thesis provides the most comprehensive analysis of Kuwaiti arbitration case law undertaken to date, systematically examining over one hundred Court of Cassation judgments in their original Arabic over a four-decade period from 1981 to 2025. This empirical foundation enables identification of consistent judicial patterns and doctrinal evolution that previous scholarship, relying on smaller case samples or secondary sources, could not capture.[905]

At the doctrinal level, this thesis provides the first detailed mapping of how Kuwait's statutory framework structures party autonomy across jurisdictional, procedural, and award phases. Previous English-language scholarship on Kuwaiti arbitration has been confined mainly to practitioner-oriented overviews lacking doctrinal depth. This thesis fills that gap whilst positioning Kuwait's approach within broader debates about arbitral authority in civil law systems.[906]

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[904] Compare Emmanuel Gaillard, Legal Theory of International Arbitration (Martinus Nijhoff 2010) 15–35; Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 1.

[905] Access to Court of Cassation judgments was obtained through the official judicial database maintained by the Ministry of Justice and through Majallat al-Qada' wa al-Qanun. All translations from Arabic are the author's own.

[906] For representative English-language scholarship on Kuwaiti arbitration, see Ahmed Barakat, Ibrahim Sattout and Adnan Jaafar, 'Kuwait' (2023) The Middle Eastern and African Arbitration Review.

6.5 Implications

6.5.1 Theoretical Implications

The findings carry several theoretical implications. First, the state-centric characterisation challenges the assumption that formal recognition of arbitration necessarily indicates substantive commitment to party autonomy. This suggests that assessments of jurisdictions' arbitration-friendliness should focus on operational mechanisms rather than rely solely on formal indicators.[907] Second, the three-phase analytical framework demonstrates that party autonomy is not a unitary concept but operates differently across distinct stages of the arbitration lifecycle. A jurisdiction may permit substantial autonomy at the agreement formation stage whilst imposing significant constraints at the procedural or award phases. Third, the finding that Shariah functions as a supplementary rather than independent source for public policy determination contributes to debates about arbitration in Islamic legal systems, demonstrating that characterising such systems as categorically hostile to arbitration oversimplifies a more nuanced relationship.[908]

6.5.2 Practical Implications

For legal practitioners, the analysis identifies specific statutory requirements whose non-compliance risks invalidating arbitral jurisdiction. Parties drafting arbitration agreements for Kuwait should pay careful attention to the written-form requirement under Article 173, the explicit mandate of authority under Article 702 of the Civil Code, and the limitations on arbitrability. Parties are also advised to consider the attitude of Kuwaiti courts towards international arbitration when selecting Kuwait as an arbitral seat.[909]

For arbitrators conducting Kuwait-seated proceedings, the research illuminates procedural constraints differing significantly from international expectations. The six-month deadline under Article 181, the limitations on interim measures jurisdiction, and

[907] This insight aligns with scholarship cautioning against formalistic assessments of arbitration regimes. See Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, Comparative International Commercial Arbitration (Kluwer 2003) 71–93.
[908] On arbitration in Islamic legal systems, see Faisal Kutty, 'The Shari'a Factor in International Commercial Arbitration' (2006) 28 Loyola of Los Angeles International and Comparative Law Review 565.
[909] Decree-Law No. 38/1980 (Kuwait), art 173; Civil Code of Kuwait (Decree No. 67/1980), art 702.

the absence of clear tribunal authority over procedural matters require careful management throughout the arbitral process.[910]

For counsel advising international clients, the thesis provides a realistic assessment of how Kuwait's framework operates in practice. Clients should understand that selecting Kuwait as an arbitral seat entails accepting a framework where judicial supervision extends beyond what international commercial parties typically expect. This enables informed decisions about dispute resolution strategy, including whether to select alternative seats whilst designating Kuwait only for enforcement purposes.[911]

For policymakers considering reform, the analysis identifies precisely where Kuwait's framework diverges from international standards and explains why it diverges, revealing that many distinctive features reflect legislative obsolescence and constitutional commitments rather than deliberate contemporary policy choices. This diagnostic precision enables targeted reform, distinguishing between features modifiable to enhance commercial attractiveness and those reflecting constitutional commitments that require more careful consideration.[912]

6.6 Recommendations for Reform

Based on the findings, the following recommendations propose reforms to enhance Kuwait's arbitration framework whilst respecting its constitutional commitments and legal traditions.

6.6.1 Jurisdictional Phase Reforms

First, Kuwait should codify the separability doctrine to ensure that challenges to main contracts do not automatically invalidate arbitration provisions. Second, the legislature should clarify competence-competence within the CCPL, granting tribunals primary authority to determine jurisdictional questions subject to subsequent judicial review. Third, building on the Snapchat trilogy's progressive interpretation, Kuwait should modernise the recognition of electronic agreements through explicit statutory provisions. Fourth, arbitrability standards should be clarified, distinguishing between

[910] Decree-Law No. 38/1980 (Kuwait), art 181; Case No 568/1998 (Commercial), Court of Cassation (Kuwait).
[911] On seat selection considerations, see Nigel Blackaby KC and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2023) ch 3.
[912] Kuwait Vision 2035 (New Kuwait) https://www.newkuwait.gov.kw accessed 15 September 2024.

categorically non-arbitrable matters and those where arbitrability depends on specific circumstances.[913]

6.6.2 Procedural Phase Reforms

Fifth, Article 181's six-month default deadline should be extended to 12 months, reflecting the modern complexity of commercial disputes. Sixth, interim measures jurisdiction should be enhanced to align with Article 17 of the UNCITRAL Model Law. Seventh, tribunal authority over procedural matters should be clarified, reducing uncertainty about whether specific decisions require judicial approval.[914]

6.6.3 Award Phase Reforms

Eighth, annulment grounds should be limited to align with the UNCITRAL Model Law's restricted list. Ninth, enforcement procedures should be streamlined, establishing presumptive validity subject to specific objections. Tenth, public policy standards should be clarified, distinguishing between international and domestic standards consistent with Kuwait's New York Convention obligations.[915]

6.6.4 Institutional Reforms

Eleventh, Kuwait should establish specialised arbitration chambers within the Court of Cassation staffed by judges with arbitration expertise, addressing the absence of judicial specialisation identified in Chapter One. Twelfth, systematic judicial training programmes on international arbitration should be developed. Thirteenth, Kuwait should consider enacting dedicated international arbitration legislation based on the UNCITRAL Model Law, which could coexist with the current CCPL framework for domestic arbitration. Such legislation should include provisions distinguishing between domestic and international arbitration, addressing the unitary approach identified as a deficiency in the current framework.[916]

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[913] These recommendations draw upon the jurisdictional phase analysis in Chapter Three.
[914] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006), art 17.
[915] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), art V(2)(b).
[916] For analysis of similar reforms in comparable jurisdictions, see the UAE's enactment of Federal Law No. 6/2018 on Arbitration.

6.7 Limitations

Several limitations should be acknowledged. First, this thesis confines its analysis to the CCPL framework governing ad hoc commercial arbitration and does not examine the Judicial Arbitration Law No. 11 of 1995 (JAL), which establishes an institutional arbitration mechanism under judicial auspices with mandatory judicial composition. The JAL's distinctive framework, characterised by five-member panels including a three-judge majority, warrants separate examination. Second, the study has not examined investment arbitration under bilateral or multilateral investment treaties, which engage distinct legal frameworks and policy considerations. Third, the research has not provided a sector-specific analysis of arbitration in particular industries such as oil and gas, construction, or maritime commerce. However, the general framework examined applies across commercial sectors.[917]

The doctrinal methodology, whilst appropriate for addressing the research questions, does not capture practitioners lived experiences with Kuwait's arbitration system. Empirical investigation through interviews, surveys, or participant observation could reveal practical challenges and stakeholder perceptions that doctrinal analysis cannot access.[918]

The reliance on published Court of Cassation judgments may not capture the full range of arbitration disputes, as many arbitrations conclude without judicial involvement, and some judicial decisions may remain unreported. The most recent cases examined date back to December 2025, and subsequent judicial developments may have modified some of the patterns identified.[919]

6.8 Future Research

Several directions for future research emerge from this thesis. Research could examine how Kuwait's state-centric approach affects investment treaty arbitration, analysing interactions between bilateral investment treaty obligations and domestic

[917] On investment arbitration in the Gulf region, see Markus Burgstaller, 'Investor-State Arbitration in EU International Investment Agreements with Third States' (2012) 39(2) Legal Issues of Economic Integration 207.
[918] On empirical legal research methodologies, see Christopher R Drahozal, 'Empirical Findings on International Arbitration: An Overview' in Thomas Schultz and Federico Ortino (eds), The Oxford Handbook of International Arbitration (OUP 2020) 681.
[919] Within Kuwait's judicial system, Court of Cassation judgments on questions of law constitute authoritative interpretations binding on lower courts.

frameworks. The doctrinal foundation established here could be complemented by empirical research examining practitioner experiences, arbitration outcomes, and stakeholder perceptions.[920]

A systematic comparison with other Gulf Cooperation Council states, particularly the UAE following its 2018 reforms, could illuminate regional patterns and identify successful reform models. Dedicated analysis of arbitration in oil and gas, construction, and maritime commerce could reveal industry-specific challenges within Kuwait's framework.[921]

Research could also examine broader questions of online dispute resolution and virtual hearings within Kuwait's legal framework, as well as specific challenges arising in Islamic finance disputes, where Shariah-compliance requirements interact with arbitration procedures.[922]

6.9 Concluding Remarks

This thesis has demonstrated that party autonomy within Kuwait's arbitration system is formally recognised yet constrained. The state-centric hybrid characterisation reveals a framework in which arbitral authority exists not as a presumptive right but as a conditional delegation requiring continuous state validation across the jurisdictional, procedural, and award phases.

International commercial arbitration is widely celebrated as a party-oriented dispute-resolution mechanism that offers flexibility, efficiency, and respect for contractual choices. However, as this thesis has demonstrated, the formal adoption of arbitration does not guarantee substantive commitment to its foundational principles. Kuwait's experience illustrates how a jurisdiction can participate in international arbitration conventions whilst maintaining a domestic framework that reimagines the balance between private ordering and state authority.[923]

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[920] Potential directions include surveys of arbitration practitioners and quantitative analysis of arbitration outcomes across different institutional frameworks.

[921] For analysis of UAE arbitration reforms, see Essam Al Tamimi and others, 'The New UAE Arbitration Law: A Critical Examination' (2018) 35(4) Journal of International Arbitration 449.

[922] On Islamic finance arbitration, see Abdulrahman Yahya Baamir, Shari'a Law in Commercial and Banking Arbitration (Routledge 2016).

[923] This observation aligns with broader scholarship on legal pluralism and the diverse ways jurisdictions adapt international legal frameworks to domestic contexts. See William Twining, General Jurisprudence: Understanding Law from a Global Perspective (CUP 2009) ch 12.

Kuwait stands at a critical juncture. Kuwait Vision 2035 aspires to transform the country into a regional financial and commercial hub, an objective that requires dispute-resolution mechanisms capable of meeting international commercial expectations. The gap between these economic aspirations and the current arbitration infrastructure presents both challenge and opportunity.[924]

Importantly, this thesis has demonstrated that the current constraints on party autonomy reflect legislative obsolescence rather than philosophical opposition to arbitration. Kuwait's pioneering accession to the New York Convention in 1978, predating all other Gulf Cooperation Council states, and the CCPL's progressive treatment of arbitration agreements in 1980, indicate a legislature historically receptive to international arbitration. This historical openness suggests that targeted reform proposals are likely to find a receptive audience among Kuwaiti policymakers, provided they are grounded in evidence-based analysis and respect Kuwait's constitutional commitments.

Understanding precisely how Kuwait's framework operates, including its mechanisms, justifications, and practical consequences, provides the essential foundation for informed reform. The recommendations offered seek to enhance Kuwait's framework whilst respecting its constitutional commitments. Kuwait's arbitration system need not abandon its distinctive characteristics to achieve international competitiveness. Instead, targeted reforms can create space for genuine party autonomy within a framework that maintains appropriate safeguards.[925]

This thesis has sought to illuminate the path toward that objective by providing a comprehensive doctrinal analysis of Kuwaiti arbitration law, by identifying the theoretical framework explaining Kuwait's distinctive approach, and by offering evidence-based recommendations grounded in a systematic examination of legislation, jurisprudence, and international practice. The ultimate aspiration is that Kuwait can develop an arbitration framework genuinely serving its commercial objectives whilst remaining consistent with its constitutional values and legal traditions. Such an achievement would demonstrate that modernity and tradition need not stand

[924] Supreme Council for Planning and Development, Kuwait National Development Plan 2035 (2017).
[925] The recommendations seek to balance commercial attractiveness with preservation of legitimate oversight objectives. See John KM Ohnesorge, 'Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience' (2007) 28(2) University of Pennsylvania Journal of International Economic Law 219.

in opposition, and that a jurisdiction can honour its sovereign commitments whilst creating conditions for international commercial confidence.[926]

[926] The state-centric hybrid characterisation and three-phase analytical framework provide conceptual tools valuable for analysing arbitration regimes in other jurisdictions navigating similar tensions between private ordering and state authority.

Bibliography

Primary Sources

Legislation

Kuwait

Civil and Commercial Procedure Law (Decree-Law No 38 of 1980)

Civil Code (Decree-Law No 67 of 1980)

Commercial Law (Law No 68 of 1980)

Constitution of the State of Kuwait 1962

Electronic Transactions Law (Law No 20 of 2014)

Judicial Arbitration Law (Law No 11 of 1995)

Personal Status Law (Law No 51 of 1984)

United Arab Emirates

Civil Transactions Law (Federal Law No 5 of 1985)

Federal Arbitration Law (Federal Law No 6 of 2018)

United Kingdom

Arbitration Act 1996

Arbitration Act 2025

Companies Act 1985

Insolvency Act 1986

Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)

Other Jurisdictions

Bahrain, Arbitration Law (Legislative Decree No 9 of 2015)

Egypt, Arbitration Law (Law No 27 of 1994)

France, Code de procédure civile

Qatar, Arbitration Law (Law No 2 of 2017)

Saudi Arabia, Arbitration Law (Royal Decree No M/34 of 2012)

Saudi Arabia, Former Arbitration Law (Royal Decree No M/46 of 1983)

International Instruments

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (adopted 19 March 2015)

Hague Convention on Choice of Court Agreements (concluded 30 June 2005, entered into force 1 October 2015)

IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

ICC Arbitration Rules 2012

ICDR International Arbitration Rules 2010

LCIA Arbitration Rules 2014

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6

UNCITRAL Arbitration Rules 2010

UNCITRAL Model Law on Cross-Border Insolvency (1997)

UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006)

UNCITRAL, 'Recommendation Regarding the Interpretation of Article II, Paragraph 2, and Article VII, Paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (7 July 2006)

Cases

United Kingdom

ET Plus SA v Jean-Paul Welter [2005] EWHC 2115 (Comm)

Fiona Trust & Holding Corporation v Privalov [2007] UKHL 40, [2007] 4 All ER 951

Fleetwood Wanderers Ltd v AFC Fylde Ltd [2018] EWHC 3318 (Comm)

Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855

Halliburton Company v Chubb Bermuda Insurance Ltd [2020] UKSC 48

Heyman v Darwins Ltd [1942] AC 356 (HL)

London SS Owners' Mutual Ins Ass'n Ltd v Spain [2015] EWCA Civ 333

Microsoft Mobile OY (Ltd) v Sony Euro Ltd [2017] EWHC 374 (Ch)

NDK Ltd v HUO Holding Ltd [2022] EWHC 1682 (Comm)

Nori Holding Ltd v PJSC 'Bank Otkritie Fin Corp' [2018] EWHC 1343 (Comm)

P v Q [2017] EWCA Civ 87

Photo Productions Ltd v Securicor Transport Ltd [1980] AC 827

Porter v Magill [2001] UKHL 67, [2002] 2 AC 357

Re Vocam Euro Ltd [1998] BCC 396 (Ch)

Sharp Corp Ltd v Viterra BV [2024] UKSC 14

France

CA Angers, 27 March 1957, D 1954, 704

CA Paris, 14 May 1979, D 1959, 437

Cass civ 2e, 29 January 1960, Revue de l'arbitrage 1960, 121

Secondary Sources

Books

Al Tamimi E, Arbitration in the Middle East (2nd edn, Globe Law and Business 2018)

Al-Sanhuri A, al-Wasit fi Sharh al-Qanun al-Madani (Dar al-Nahda al-Arabiyya 1964)

Al-Sharqawi J, al-Tahkim al-Tijari al-Duwali (Dar al-Nahda al-Arabiyya 2011)

Andrews N, Arbitration and Contract Law (Springer 2016)

Atiyah PS, The Rise and Fall of Freedom of Contract (Oxford University Press 1979)

Atiyya AA, Kuwaiti Arbitration Law: A Study of Domestic Arbitration Rules under the Kuwaiti Pleadings Law, with Comparative Reference to the New French Arbitration Law (as amended by Decree 48/2011), the Egyptian Law No 27 of 1994, GCC Member State Laws, Other Arab Laws and Selected European Legislation (2nd edn, Dar Al-Kutub Publishing 2012)

Baamir AY, Shari'a Law in Commercial and Banking Arbitration (Routledge 2016)

Berger KP, The Creeping Codification of the Lex Mercatoria (2nd edn, Kluwer Law International 2010)

Bermann GA and Mistelis LA (eds), Mandatory Rules in International Arbitration (Juris Publishing 2011)

Blackaby N, Partasides C, Redfern A and Hunter M, Redfern and Hunter on International Arbitration (7th edn, Oxford University Press 2023)

Born GB, International Commercial Arbitration (3rd edn, Kluwer Law International 2021)

Brand RA, Party Autonomy and the International Rule of Law: The Hague Principles on Choice of Law (Oxford University Press 2020)

Carré de Malberg R, Contribution à la théorie générale de l'État (Sirey 1920)

Collins H, Regulating Contracts (Oxford University Press 1999)

Cordero-Moss G, International Commercial Contracts: Contract Terms, Applicable Law and Arbitration (Cambridge University Press 2023)

Coulson NJ, Succession in the Muslim Family (Cambridge University Press 1971)

El-Ahdab AH and El-Ahdab J, Arbitration with the Arab Countries (3rd edn, Kluwer Law International 2011)

El-Gamal MA, Islamic Finance: Law, Economics, and Practice (Cambridge University Press 2006)

Gaillard E, Legal Theory of International Arbitration (Martinus Nijhoff 2010)

Gaillard E and Savage J (eds), Fouchard, Gaillard, Goldman on International Commercial Arbitration (Kluwer Law International 1999)

Glasson, Tissier and Morel, Traité théorique et pratique d'organisation judiciaire, de compétence et de procédure civile (3rd edn, Sirey 1925-1936)

Holtzmann HM and Neuhaus JE, A Guide to the UNCITRAL Model Law on International Commercial Arbitration (Kluwer 1989)

Kamali MH, Islamic Commercial Law: An Analysis of Futures and Options (Islamic Texts Society 2000)

Kamali MH, Principles of Islamic Jurisprudence (Islamic Texts Society 2003)

Kister MJ, Concepts and Ideas at the Dawn of Islam (Routledge 2022)

Lew JDM, Mistelis LA and Kröll SM, Comparative International Commercial Arbitration (Kluwer Law International 2003)

Mills A, Party Autonomy in Private International Law (Cambridge University Press 2018)

Motulsky H, Écrits: Études et notes sur l'arbitrage (Dalloz 1974)

Mustill MJ and Boyd SC, Commercial Arbitration (2nd edn, Butterworths 1989)

Paulsson J, The Idea of Arbitration (Oxford University Press 2013)

Raghib W, Al-Nazariyya al-'Amma li-l-'Amal al-Qada'i fi Qanun al-Murafa'at (Munsha'at al-Ma'arif 1974)

Savigny FC von, A Treatise on the Conflict of Laws (William Guthrie tr, 2nd edn, T & T Clark 1880)

Smith S, Contract Theory (Oxford University Press 2004)

Symeonides SC, Codifying Choice of Law Around the World: An International Comparative Analysis (Oxford University Press 2014)

Twining W, General Jurisprudence: Understanding Law from a Global Perspective (Cambridge University Press 2009)

van den Berg AJ, The New York Arbitration Convention of 1958 (Kluwer Law International 1981)

Vincent J and Prévault J, Voies d'exécution et procédures de distribution (17th edn, Dalloz 1999)

Waincymer JM, Procedure and Evidence in International Arbitration (Kluwer Law International 2012)

Wali F, Qanun al-Tahkim fi al-Nazariyya wa al-Tatbiq (Munsha'at al-Ma'arif 2007)

Willett C, Fairness in Consumer Contracts: The Case of Unfair Terms (Ashgate 2007)

Zweigert K and Kötz H, An Introduction to Comparative Law (Tony Weir tr, 3rd edn, Oxford University Press 1998)

Book Chapters

Abdel-Fattah A, Asas al-Iddi'a' Amam al-Qada' al-Madani (Kuwait University Press 1987)

Brand RA, 'The Rome I Regulation Rules on Party Autonomy for Choice of Law: A U.S. Perspective' in Ferrari F and Leible S (eds), Rome I Regulation: The Law Applicable to Contractual Obligations in Europe (Sellier European Law Publishers 2009)

Chynoweth P, 'Legal Research' in Knight A and Ruddock L (eds), Advanced Research Methods in the Built Environment (Wiley-Blackwell 2008)

El-Ahdab AH, El-Ahdab J and Lunney G, 'Arbitration in Kuwait' in Arbitration with the Arab Countries (Kluwer Law International 2011)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 1 [Foundations of UAE Arbitration Law]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 4 [Legal Capacity to Conclude an Arbitration Agreement]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 9 [Composition of the Arbitral Tribunal]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 10 [General Qualifications of an Arbitrator]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 21 [Interim or Precautionary Measures in UAE Arbitration]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kotb S and Elrafei MH, 'UAE Arbitration Law, Article 27 [Commencement of Arbitration Proceedings]' in UAE Arbitration Law: A Practical Case Law Digest (Kluwer Law International 2025)

Kulick A, 'State-state investment arbitration as a means of reassertion of control' in Reassertion of Control over the Investment Treaty Regime (Cambridge University Press 2016)

Ma WJ, 'Conflicting Conflict of Laws in International Arbitration?' in Farrar JH, Lo VI and Goh BC (eds), Scholarship, Practice and Education in Comparative Law: A Festschrift in Honour of Mary Hiscock (Springer Singapore 2019)

Michaels R, 'The Mirage of the Multinational State: Party Autonomy in Private International Law' in Muir Watt H and Fernández Arroyo DP (eds), Private International Law and Global Governance (Oxford University Press 2014)

Mills A, 'Arbitration Agreements' in Party Autonomy in Private International Law (Cambridge University Press 2018)

Moses ML, 'Public Policy under the New York Convention: National, International, and Transnational' in Fach Gomez K and Lopez-Rodriguez AM (eds), 60 Years of the New York Convention: Key Issues and Future Challenges (Kluwer Law International 2019)

Rubellin-Devichi J, 'Family law: the continuity of national characteristics' in The European Family: The Family Question in the European Community (Springer Netherlands 1997)

Worthington S, 'Common Law Values: The Role of Party Autonomy in Private Law' in Robertson A and Tilbury M (eds), The Common Law of Obligations: Divergence and Unity (Hart Publishing 2016)

Journal Articles

Abdallah AK, 'Islamic Sharia and arbitration in GCC States: The way ahead' (2020) International Review of Law 318

Abdel-Fattah A, 'Procedures for Challenging Arbitrators in the Kuwaiti Code of Civil Procedure' (1984) 8(4) Kuwait University Law Journal 227

Ahmed M, 'The nature and enforcement of choice of law agreements' (2018) 14(3) Journal of Private International Law 500

Al Anezi RH, 'Enforcement of Foreign Arbitral Awards in Kuwait' (2014) 1(1) BCDR International Arbitration Review 85

Aldohni AK, 'A Compatibility Analysis of Islamic Financial Disputes: English International Law and Islamic Law' (2014) 14 Journal of Comparative Law 218

Alghanim B, 'The Role of Party Autonomy in Choosing Procedural Law in Arbitration' (2020) 9(1) International Review of Law 207

Alghushami HA, 'Relations between tribal arbitration and Formal Judiciary' (2020) 4(2) Journal of Economic Administrative & Legal Sciences 165

Alhajeri MA, 'A Critical Approach to the Kuwaiti Law of Judicial Arbitration no. 11 of 1995' (2000) 15 Arab Law Quarterly 48

Alhajri M, 'International Arbitration as an Alternative Method for Settling Administrative Disputes in the Kuwaiti Law' (2023) 29 Comparative Law Review 9

Alkhudhair A and Alhusainan A, 'Procedural Conditions for Enforcement of Foreign Judgments as per Kuwaiti Procedure Act' (2021) International Review of Law 143

AlRaeesi EJH and Ojiako U, 'Examination of legal perspective of public policy implementation on construction projects arbitration' (2021) 13(3) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 03721002

Al-Ramahi A, 'Sulh: A crucial part of Islamic arbitration' (2008) LSE Law, Society and Economy Working Papers 12/2008

Al-Sharaf SK and Al-Tourah AF, 'Validity of the Arbitration Clause in the International Employment Contract: The Viewpoint of the GCC Countries' (2023) 29 Comparative Law Review 175

Altawyan A, 'The New Saudi Arbitration Law' (2013) 30(2) Journal of International Arbitration 219

An-Na'im AA, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20 Cornell International Law Journal 317

Arifina M and Mansar A, 'Features of Arbitration in Islamic Law when Resolving Disputes in Muamalah' (2019) 9(10) International Journal of Innovation, Creativity and Change 295

Attaullah Q and Saqib L, 'Sulh Facts and Effects in Shari'ah Vis-A-Vis Efficacy Of Pakistani Statutes And Efficiency Of The Judges' (2018) 41 Hamdard Islamicus 1

Ayad MB, 'International Commercial Arbitration Award Enforcement at the Crossroads of Sharia Law and Ordre Public in the MENA' (2009) 10(5) Journal of World Investment & Trade 723

Ayinla LA, Adebayo AK and Ahmad BA, 'An appraisal of the nexus and disparities between arbitration and Alternative Dispute Resolution (ADR)' (2018) 8(1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 182

Baboolal-Frank R, 'A review of judicial enforcement of arbitral awards in South Africa' (2022) 40(2) Conflict Resolution Quarterly 271

Badah SA, 'Public Policy and Non-Arbitrability in Kuwait' (2016) 12(2) Asian International Arbitration Journal 137

Badah SA, 'Rules Relevant to the Recognition and Enforcement of Foreign Arbitral Awards in Kuwait' (2015) 11(2) Asian International Arbitration Journal 117

Badah SA, 'The Enforcement of Foreign Arbitral Awards in Kuwait' (2014) 8(2) Agora International Journal of Juridical Sciences 9

Bantekas I, 'Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration' (2021) 12(3) Journal of International Dispute Settlement 505

Barnett RE, 'Contracts is Not Promise; Contract is Consent' (2011) 45 Suffolk University Law Review 647

Barraclough A and Waincymer J, 'Mandatory rules of law in international commercial arbitration' (2005) 6(2) Melbourne Journal of International Law 205

Basedow J, 'The State's Private Law and the Economy' (2015) 60 American Journal of Comparative Law 873

Baxter IFG, 'International Conflict of Laws and International Business' (1985) 34(3) International and Comparative Law Quarterly 538

Beheshti R, 'The absence of choice of law in commercial contracts: problems and solutions' (2019) 24(3) Uniform Law Review 497

Benhalim R, 'The Case for American Muslim Arbitration' (2019) Wisconsin Law Review 531

Bhatti M, 'Managing Shariah non-compliance risk via Islamic dispute resolution' (2019) 13(1) Journal of Risk and Financial Management 2

Botosh H, 'The Arbitration and Party Autonomy: A Comparative Review between the English Law, the UNCITRAL Model Law and the Qatari Law' (2018) 6(3) Kilaw Journal 51

Bredin J-D, 'La compétence de l'arbitre: Propos introductifs' in L'arbitrage: Questions de procédure (LGDJ 1994)

Brekoulakis S, 'Rethinking Consent in International Commercial Arbitration' (2017) 8(4) Journal of International Dispute Settlement 610

Burgstaller M, 'Investor-State Arbitration in EU International Investment Agreements with Third States' (2012) 39(2) Legal Issues of Economic Integration 207

Carlston KS, 'Theory of the arbitration process' (1952) 17(2) Law and Contemporary Problems 631

Chatterjee C, 'Reality of the Party Autonomy Rule in International Arbitration' (2003) 20 The Journal of International Arbitration 539

Ciacchi AC, 'Party autonomy as a fundamental right in the European Union' (2010) European Review of Contract Law 303

Cordero-Moss G, 'Limits on Party Autonomy in International Commercial Arbitration' (2015) 4 Penn State Journal of Law & International Affairs 186

Critchlow J, 'The Authority of Arbitrators to Make Rules' (2002) 68(4) The International Journal of Arbitration, Mediation and Dispute Management 369

D'Silva M, 'Dealing in power: gatekeepers in arbitrator appointment in international commercial arbitration' (2014) 5(3) Journal of International Dispute Settlement 605

Dawwas A, 'Dépeçage of Contract in Choice of Law' (2021) 17 Journal of Private International Law 476

Dawwas A and Kameel T, 'Applicability of the UNIDROIT Principles as the Law Governing the Merits of Arbitration in the Gulf Cooperation Council Countries' (2021) 35(4) Arab Law Quarterly 466

Day W, 'Applicable law and arbitration agreements' (2021) 80(2) The Cambridge Law Journal 238

Dickson MO, 'Party autonomy and justice in international commercial arbitration' (2018) 60(1) International Journal of Law and Management 114

Drahozal CR, 'Empirical Findings on International Arbitration: An Overview' in Schultz T and Ortino F (eds), The Oxford Handbook of International Arbitration (Oxford University Press 2020)

Duguit L, 'L'acte administratif et l'acte juridictionnel' (1906) 23 Revue du droit public et de la science politique 413

El-Ahdab AH, 'The Kuwaiti Judicial Arbitration Act 1995' (1996) 12(1) Arbitration International 101

Emre Y, 'A refusal reason of recognition and enforcement of foreign arbitral awards: Public policy' (2019) 56(2) Zbornik radova Pravnog fakulteta u Splitu 503

Fadel MH, 'Religious Law, Family Law and Arbitration: Shari'a and Halakha in America' (2015) 90 Chicago-Kent Law Review 163

Fagbemi SA, 'The doctrine of party autonomy in international commercial arbitration: myth or reality?' (2015) 6(1) Journal of Sustainable Development Law and Policy 202

Fairfield JAT, 'The Cost of Consent: Optimal Standardization in the Law of Contract' (2008) 58 Emory Law Journal 1401

Farber HS, 'An analysis of final-offer arbitration' (1980) 24(4) Journal of Conflict Resolution 683

Franck S, 'International Arbitration: Between Myth and Reality' (2018) 5 McGill Journal of Dispute Resolution 1

Gaillard E, 'The Representations of International Arbitration' (2010) 1(2) Journal of International Dispute Settlement 271

Gaillard E, 'Transnational Law: A Legal System or a Method of Decision Making?' (2014) 17(1) Arbitration International 59

Gatt A, 'Electronic Commerce — Click-Wrap Agreements' (2002) 18(6) Computer Law & Security Report 404

Goode R, 'Rule, Practice, and Pragmatism in Transnational Commercial Law' (2005) 54(3) International and Comparative Law Quarterly 539

Grant K, 'ICSID's Reinforcement: UNASUR and the Rise of a Hybrid Regime for International Investment Arbitration' (2014) 52 Osgoode Hall Law Journal 1115

Haloush H, 'Rethinking traditional approaches of parties' autonomy in construction contracts' (2020) 62(6) International Journal of Law and Management 577

Hamzah M, Hamid A and Tenri FA, 'Optimization of Justice Institutions in Cancellation of Sharia Arbitration Decisions' (2019) 6(5) International Journal of Multicultural and Multireligious Understanding 250

Hanotiau B, 'International arbitration in a global economy' (2011) 28(2) Journal of International Arbitration 89

Hassan KH, 'Employment dispute resolution mechanism from the Islamic perspective' (2006) 20 Arab Law Quarterly 181

Hassim MH and others, 'Alternative dispute resolution (adr) via sulh processes' (2019) 17(4) International Journal 25

Hauriou M, 'Les éléments du contentieux' (1907) 24 Revue du droit public et de la science politique 149

Hébraud P, 'Observations' (1961) Revue trimestrielle de droit civil 162

Hossain MdS, 'Arbitration in Islamic law for the treatment of civil and criminal cases' (2013) 1(5) Journal of Philosophy, Culture and Religion 1

Hossain MdP, 'Party Autonomy in the International Commercial Arbitration' (2017) ALSA 60

Hutchinson T and Duncan N, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83

Janahi WY and Al Khalifa MK, 'The Applicable Law to Arbitration Proceedings' (2021) 10(1) Kilaw Journal 41

Jones J, 'Muslim Alternative Dispute Resolution' (2020) 40(1) Journal of Muslim Minority Affairs 48

Kaden LB, 'Judges and Arbitrators: Observations on the Scope of Judicial Review' (1980) 80 Columbia Law Review 267

Kane MJ, 'The Arbitrator's Winged Chariot: Arbitration and the Federal Circuit' (2007) 16 Federal Circuit Bar Journal 191

Karton J, 'Party autonomy and choice of law' (2010) 60 University of New Brunswick Law Journal 32

Kasem R, 'The Future of Choice Court and Arbitration Agreements under the New York Convention' (2020) 10 Aberdeen Student Law Review 69

Kleinheisterkamp J, 'Overriding mandatory laws in international arbitration' (2018) 67(4) International & Comparative Law Quarterly 903

Kuipers J-J, 'Cartesio and Grunkin-Paul: Mutual recognition as a vested rights theory' (2008) 2 European Journal of Legal Studies 66

Kurochkin SA, 'The Latest Trends in the Foreign Doctrine of International Commercial Arbitration' Herald Civil Procedure 43

Kutty F, 'The Shari'a Factor in International Commercial Arbitration' (2006) 28 Loyola of Los Angeles International and Comparative Law Review 565

Legum B and Motin C, 'The Essential Qualities for an Arbitrator' (2023) ICSID Review – Foreign Investment Law Journal 441

Lehmann M, 'Liberating the individual from battles between states: justifying party autonomy in conflict of laws' (2008) 41 Vanderbilt Journal of Transnational Law 381

Leonhard C, 'Dangerous or benign legal fictions, cognitive biases, and consent in contract law' (2019) 91 St. John's Law Review 385

Level P, 'L'arbitrage: Nature et objet' (1961) Revue de l'arbitrage

Lew JDM, 'Achieving the dream: Autonomous arbitration' (2006) 22(2) Arbitration International 179

Link M and Haftel YZ, 'Islamic legal tradition and the choice of investment arbitration forums' (2021) 28(3) Review of International Political Economy 559

Lorenzen EG, 'Huber's de conflictu legum' (1918) 13 Illinois Law Review 135

Mallat C, 'From Islamic to Middle Eastern Law-A Restatement of the Field (Part II)' (2004) 52 American Journal of Comparative Law 209

Mange FF, 'Homenagem a Andreas Lowenfeld' (2014) 11 Revista Brasileira de Arbitragem 184

Mann FA, 'Lex Facit Arbitrum' (1986) 2 Arbitration International 241

Maskun M and others, 'Arbitration: Understanding It in Theory and Indonesian Practice' (2019) 50(2) Hasanuddin Law Review 220

Mehren von AT, 'International Commercial Arbitration: The Contribution of the French Jurisprudence' (1985) 46 Louisiana Law Review 1045

Mills A, 'The Privatisation of Private (and) International Law' (2023) Current Legal Problems 1

Mitchell C, 'Privity of Contract: Another Missed Opportunity' (1997) 48 Northern Ireland Legal Quarterly 286

Mohamed MA, 'Authority of Electronic Means in Establishing Civil, Commercial and Administrative Transactions' (2019) 21 Kilaw Journal

Morgan EM, 'Contract Theory and the sources of rights: an approach to the arbitrability question' (1986) 60 Southern California Law Review 1059

Mosk RM and Ginsburg T, 'Evidentiary Privileges in International Arbitration' (2001) 50(2) International and Comparative Law Quarterly 345

Muir Watt H, 'Private International Law and the Constitutional Order of States' (2003) 52 International and Comparative Law Quarterly 347

Muir Watt H, 'Private International Law and the Production of Normativity' (2010) 10(3) European Review of Contract Law 343

Al Mutairi TS and Al Enezi AR, 'The Kuwaiti Constitutional Court's Supervision of the Ambiguity of Legislative Texts' (2024) 12(2) Kuwait International Law School Journal 101

Novian D, 'The Application of Party Autonomy Principle in Arbitration' (2024) 11(1) Jurisprudentie 26

Novianty N and others, 'Strengthening The Independent Execution of The Rulings of The National Arbitration Body' (2022) 25 Journal of Legal Ethical & Regulation 1

Ohnesorge JKM, 'Developing Development Theory' (2007) 28(2) University of Pennsylvania Journal of International Economic Law 219

Okoli C, 'English courts address the potential convergence between the doctrines of piercing the corporate veil' (2014) Journal of Business Law 252

Osman E-F, 'Kuwait: Arbitration under the Auspices of the New Judicial Arbitration Law' (1995) 2 Yearbook of Islamic & Middle Eastern Law 192

Othman A, 'And Amicable Settlement Is Best: Sulh and Dispute Resolution in Islamic Law' (2007) 21(1) Arab Law Quarterly 64

Owolabi KMW, 'Understanding the Place of Islamic Arbitration within the Nigerian Law' (2023) 14(1) Jurnal Hukum Novelty 69

Paulsson J, 'Arbitration in three dimensions' (2011) 60(2) International & Comparative Law Quarterly 291

Pilotti M and others, 'The New and the Old: A Qualitative Analysis of Modes of Conflict Resolution in the Kingdom of Saudi Arabia' (2020) 25(2) International Negotiation 329

Puglia C, 'Will Parties Take to Tahkim: The Use of Islamic Law and Arbitration in the United States' (2012) 13 Chicago-Kent Journal of International & Comparative Law 151

Qouteshat OH and Alawamleh KJ, 'The Enforceability of Electronic Arbitration Agreements before the DIFC Courts and Dubai Courts' (2017) 14 Digital Evidence and Electronic Signature Law Review 47

Rahmatian A, 'Friedrich Carl von Savigny's Beruf and Volksgeistlehre' (2007) 28(1) Journal of Legal History 1

Rameau R, 'The battle between consent and the principle of competence-competence in investment arbitration' (2015) 28 University of Ghana Law Journal 84

Rampall YD and Feehily R, 'The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law' (2020) Harvard Negotiation Law Review 345

Robert J, 'Administration of evidence in international commercial arbitration' (1976) 1 Yearbook Commercial Arbitration 221

Roberts A, 'State-to-state investment treaty arbitration: a hybrid theory' (2014) 55 Harvard International Law Journal 1

Roulstone DT, 'The relation between insider-trading restrictions and executive compensation' (2003) 41(3) Journal of Accounting Research 525

Ruhl G, 'Party Autonomy in the Private International Law of Contracts' (2007) CLPE Research Paper No 4/2007

Samdani A, 'Arbitration and its roots in the State of Kuwait' (2020) 10(2) Journal of Progressive Research in Social Sciences 50

Savadkouhi SH, Savadkouhi SH and Bashiri A, 'The four legal theories of international commercial arbitration' (2014) 4(6) Asian Journal of Research in Social Sciences and Humanities 292

Scherer M, 'The fate of parties' agreements on judicial review of awards' (2016) 32(2) Arbitration International 437

Susanti L, 'The Comparison Between Recognition to Choice of Law in International Contracts' (2019) 41(3) Jurnal Kertha Patrika 170

Al Tamimi E and others, 'The New UAE Arbitration Law: A Critical Examination' (2018) 35(4) Journal of International Arbitration 449

Tetley W, 'Good faith in contract' (2004) 35 Journal of Maritime Law and Commerce 561

Tuca I, 'Separability and Competence-Competence: A Comparative Perspective' (2020) 14 Romanian Arbitration Journal 15

Whitfield HF, 'Judicial Fairness and Party Autonomy in International Commercial Arbitration' (2024) 7(4) International Journal of Law Management & Humanities 167

Whittaker S, 'Privity of contract and the tort of negligence: Future directions' (1996) 16(2) Oxford Journal of Legal Studies 191

Wijaya H and Shesa L, 'The Existence of National Sharia Arbitration Agency' (2021) 6(2) AL-FALAH: Journal of Islamic Economics 215

Yu H-L, 'A theoretical overview of the foundations of international commercial arbitration' (2008) 1 Contemporary Asia Arbitration Journal 255

Yu H-L, 'Five Years On: A Review of the English Arbitration Act 1996' (2002) 19(3) Journal of International Arbitration 209

Zein I and El-Wakil A, 'The Ṣiffīn Arbitration Agreement and statecraft in early Islamic political documents' (2022) 33(2) Journal of Islamic Studies 153

Zhang M, 'Contractual choice of law in contracts of adhesion and party autonomy' (2008) 41 Akron Law Review 123

Zhilsov AN, 'Mandatory and Public Policy Rules in International Commercial Arbitration' (1995) 42(1) Netherlands International Law Review 81

Theses and Dissertations

Anusornsena R, 'Arbitrability and Public Policy in Regard to the Recognition and Enforcement of Arbitral Award in International Arbitration' (SJD dissertation, Golden Gate University School of Law 2012)

Badah SAH, 'Recognition and Enforcement of Foreign Arbitral Awards in Kuwait' (PhD thesis, Brunel University London 2016)

Eldib MMS, 'The Parochial Kuwaiti Arbitration Regime: A Case Study of the Extension of Arbitration Agreements to Non-Signatories' (LLM thesis, Queen's University 2021)

Working Papers

Kostova S, 'Party Autonomy in a Modern Context: A Critical Analysis of its Scope under the Rome I Choice of Law Rules and Some Contemporary Considerations' (Centre for Private International Law, University of Aberdeen, Working Paper Series 1/2023)

Online Sources

Abuljebain RD, Abu Mariam T and Ghannam H, 'Doing Business In Comparative Guide: Kuwait' (Mondaq, 14 November 2024) <https://www.mondaq.com/corporatecommercial-law/1514256/doing-business-in-comparative-guide>

Al Awadhi N and others, 'Enforcing arbitration awards in Kuwait' (Practical Law UK Practice Note, 1 August 2025) <https://uk.practicallaw.thomsonreuters.com>

Al Houti D, 'Arbitration in Kuwait: Time for Reform?' (Kluwer Arbitration Blog, 20 February 2015) <https://arbitrationblog.kluwerarbitration.com>

Alameldin M and Abdrabou A, 'Kuwait: Evolving Arbitration Framework' (Global Arbitration Review, The Middle Eastern and African Arbitration Review 2025, 28 April 2025) <https://globalarbitrationreview.com>

Al-Qahtani O and Rezeik A, 'Parties Bound by Arbitration Agreement that was Incorporated by Reference: Kuwait Court of Cassation Judgment 3492-2018' (Al Tamimi & Company, November 2022) <https://turtl.tamimi.com>

Barakat A, Sattout I and Jaafar A, 'Kuwait' (2023) The Middle Eastern and African Arbitration Review

Barakat A and Jaafar A, 'Arbitration in Kuwait: Public Policy Limits, Capacity Pitfalls and the Need for Legislative Overhaul' (2025) Asian Dispute Review 173

Bozimo I, 'Confidentiality in Arbitration: Protecting Business Secrets' (HiA Network, 19 October 2023) <https://www.hostedinafrica.com>

Kuwait General Secretariat of the Supreme Council for Planning and Development, Kuwait Vision 2035 (2017) <https://www.newkuwait.gov.kw>

Madden KC P and Knoebel C, 'Arbitrability and Public Policy Challenges' (Global Arbitration Review, The Guide to Challenging and Enforcing Arbitration Awards (4th edn), 16 June 2025) <https://globalarbitrationreview.com>

Mechantaf K, 'Public Policy in the UAE as a Ground for Refusing Recognition and Enforcement of Awards' (Kluwer Arbitration Blog, 6 July 2012) <https://legalblogs.wolterskluwer.com>

New York Convention, 'Court Decisions: per Topic' <https://www.newyorkconvention.org/court-decisions/court-decisions-per-topic>

Norton Rose Group, 'Kuwait' in Arbitration in the Middle East (July 2008)

Sasson M, 'Public Policy: Is This Catch-All Provision Relevant to the Legitimacy of International Commercial Arbitration?' (Kluwer Arbitration Blog, 18 June 2022) <https://legalblogs.wolterskluwer.com>

UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' <https://www.newyorkconvention.org/contracting-states/list-of-contracting-states>