Parties from outside the Gulf region have historically faced difficult choices in agreeing to dispute resolution provisions with parties from the Gulf. Litigation often has significant drawbacks, including difficulty in enforcing foreign judgments, but it often is not clear that international arbitration agreements will be respected or that arbitral awards will be enforced.

In recent years, many Gulf states have taken steps to make arbitration more attractive. Among other developments, a number of Gulf states have enacted modern arbitration laws, based on the UNCITRAL Model Law, which limit the role of the courts and recognise party autonomy and greater authority for arbitral tribunals. Several new arbitral institutions have also been established.

As discussed in more detail below, Dubai and Qatar have gone further by establishing separate common law jurisdictions in designated “international financial centres” – the Dubai International Financial Centre (DIFC) and the Qatar Financial Centre (QFC) – which they are actively promoting as arbitral centres.

Nevertheless, problems remain. Courts in many of the Gulf states have not been supportive of arbitration, and it is not yet clear how the courts will implement modernised laws. There is also ongoing uncertainty about the role of Sharia law, which can affect all aspects of arbitrations, including the applicable law, the validity of the arbitration agreement, procedural rules, the arbitrability of the dispute, and the choice and capacity of arbitrators. This uncertainty is often exacerbated by foreign parties’ lack of familiarity with Sharia.

Some local arbitral institutions have
modernised their rules and made them more accessible to parties from outside the region. However, most local arbitral institutions have administered very few international cases involving parties from outside the Gulf; this too creates uncertainty about arbitrating in the region. As a result, experienced international parties continue to insist on using leading international rules – e.g., the ICC, LCIA or UNCITRAL rules – when agreeing to arbitrate in the Gulf, although a significant recent development has been the establishment of local arbitral institutions with links to leading international institutions, most notably DIFC-LCIA in Dubai, but also BCDR-AAA in Bahrain.

We summarise below the status of international arbitration in the Gulf states, and options available in the region for foreign parties.

**Bahrain**

Bahrain has ratified the New York Convention and its international arbitration regime (the 1994 International Commercial Law and Decree No 30 of 2009) is based on the UNCITRAL Model Law. Bahrain's arbitration law does not refer expressly to Sharia, although it may be considered as a matter of public policy in the enforcement of a foreign arbitral award.

Bahrain has two noteworthy international arbitration centres. It is the home of the Gulf Co-operation Council's Commercial Arbitration Centre (GCAC), which was established in 1993 as a regional arbitration hub by the members of the GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and UAE), and which has become an established institution for intra-Gulf disputes. In addition, in 2010, the Bahrain Chamber for Dispute Resolution and American Arbitration Association launched BCDR-AAA to administer arbitrations using the AAA rules.

Through Decree No 30 of 2009, Bahrain characterises BCDR as a “Free Arbitration Zone”, which means that parties to arbitrations seated in Bahrain cannot challenge awards made under the BCDR rules in Bahrain court if enforcement is sought outside of Bahrain (BCDR awards can be challenged in Bahrain if enforcement is sought there). BCDR-AAA is still establishing itself for international proceedings, particularly those not involving a party from Bahrain.

**Kuwait**

Kuwait ratified the New York Convention in 1978, but does not have a modern international arbitration law. Kuwait's 1980 Code of Civil and Commercial Procedure governs domestic arbitration and the enforcement of foreign awards. Foreign arbitral awards are subject to the same conditions for enforcement as foreign judgments, which include the requirement that the award must not contradict a ruling previously made in Kuwait and must not be contrary to “public policy” or “good morals.” The Commercial Arbitration Centre of the Kuwait Chamber of Commerce and Industry (KCAC) does not have a significant international caseload.

**Oman**

Oman introduced a new Arbitration Code in 1997, based on the UNCITRAL Model Law, and ratified the New York Convention in 1999. However, Omani courts have little experience with international arbitration and, while Oman's arbitration code has no express reference to Sharia, it may be taken into account in the enforcement of awards as part of “public policy” or “good morals.” Oman has no local international arbitration institutions.

**Saudi Arabia**

In 2012, Saudi Arabia adopted a new Arbitration Law, based on the UNCITRAL Model Law, which is intended to restrict the broad supervisory role that courts previously played, grant arbitrators powers they were previously denied (e.g., the authority to rule on their own jurisdiction) and increase party autonomy (e.g., by permitting parties to choose the substantive law applicable to their dispute, a foreign seat of arbitration, the applicable arbitration rules and the language of the arbitration). However, implementing regulations have not yet been issued, and it is not clear whether Saudi courts will reverse their reputation for interfering with arbitration proceedings and not fully or properly enforcing arbitral awards.

In particular, the new law's effectiveness may be limited because it applies “without prejudice to the provisions of the Islamic Sharia” and obliges award creditors to “verify that [the award] does not contain anything contrary to the provisions of the Islamic Sharia or public order in the Kingdom.” This may impose limits on the parties' freedom...
Qatar ratified the New York Convention in 2002, which also applies to QFC. Outside of QFC, Qatar has not enacted a modern arbitration law; arbitrations in Qatar are regulated by the 1990 Commercial Code of Procedure, which includes provisions that limit the authority of arbitral tribunals and allow intervention by Qatari courts (e.g., under the CCP, only the courts have jurisdiction to appoint arbitrators). The CCP also provides that, if an award has not been rendered within three months of the constitution of the tribunal or within the time agreed by the parties, only a court may extend the time for the award, and the court has the authority to appoint a new tribunal or settle the dispute itself. Qatari courts must grant leave to seek enforcement of an award, and, while the law does not refer to Sharia, the court must find that the award does not contravene “public order” or “good morals.” Qatari courts also have a reputation for refusing to enforce foreign awards.

QFC’s Arbitration Regulations are based on the UNCITRAL Model Law, and the Qatar International Court (QIC) operates under “international common law,” with international judges – including a retired Lord Chief Justice of England and Wales. However, there appear to have been very few arbitrations seated in QFC, and the QIC has yet to issue any decisions relating to arbitration. And, while there is draft protocol of enforcement, there is not yet any provision to choose the applicable law and may impact on the choice of arbitration rules and arbitrators; for example, the law refers only to male arbitrators and requires that sole and presiding arbitrators hold degrees in Sharia or in law.

Under the previous law, Saudi courts used similar requirements to review the merits of awards, and have declared foreign awards void or rewritten them (sometimes to award damages to the losing party) on the grounds that the award did not comply with Sharia. Under the new law, sections of an award that are found to infringe Sharia (e.g., an order to pay interest on principal sums) can be separated and the rest of the award enforced. It remains to be seen, however, whether the Saudi courts will be more amenable to enforcing foreign arbitration awards under the new law. There is no recognised international arbitration institution based in Saudi Arabia.
governing how arbitral awards made in QFC are enforced in Qatar (or vice-versa).

In QFC, the Qatar International Court and Dispute Resolution Centre (QICDRC) was established in 2004 to administer arbitrations and mediations (in partnership with CEDR), but it does not have its own arbitration rules and has not administered an arbitration. In Qatar, the Qatar International Centre for Conciliation and Arbitration (QICCA) was established in 2001 and its Law on International Commercial Arbitration (LICA), enacted in 1997, is based on the UNCITRAL Model Law. The LICA does not expressly refer to Sharia law, but it may be taken into account in the law on enforcement of awards as part of “public policy” or “good morals.”

Arbitral institutions in Iran, including the Tehran Regional Arbitration Centre and the Arbitration Centre of the Iran Chamber, do not have significant experience with international commercial disputes.

Iran

Iran ratified the New York Convention in 2001 and its Law on International Commercial Arbitration (LICA), enacted in 1997, is based on the UNCITRAL Model Law. The LICA does not expressly refer to Sharia law, but it may be taken into account in the enforcement of awards as part of “public policy” or “good morals.”

Arbitral institutions in Iran, including the Tehran Regional Arbitration Centre and the Arbitration Centre of the Iran Chamber, do not have significant experience with international commercial disputes.

Iraq

Iraq is not a signatory to the New York Convention, and, while there is a discussion of a new arbitration law, the only statutory mechanism for enforcement of foreign judgments and arbitral awards in Iraq is the 1928 Enforcement of Foreign Judgment Act, which applies only to judgments or awards from certain countries, and allows Iraqi courts to refuse enforcement on “public order” grounds. There are no experienced international arbitral institutions in Iraq.

The recent trend towards modern arbitration laws in some Gulf states is welcome, and the financial free zones in particular provide foreign parties with new options. However, until courts in the region show that they will properly implement modern arbitration laws, and until the role of Sharia becomes clearer – particularly how it is used as a “public policy” ground for refusing the enforcement of awards – foreign parties will continue to struggle to identify effective and predictable dispute resolution options for contracts with parties from the Gulf.