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**In the name of His Majesty King Hamad Bin Isa Bin Salman Al Khalifa**

**King of the Kingdom of Bahrain**

**In the public hearing held at the**

**Court of Cassation, First Circuit – English Chamber**

**On 21 October 2024**

**The formation presided by**

**Sh. Khaled Al Khalifa**

**Head of the Court of Cassation**

**The Reporting Judge of this appeal**

**Judge Khaled Ajaji**

**Deputy President at the Court of Cassation**

**Judge Tarek Omran**

**Judge at the Court of Cassation**

**With the attendance of**

**Tribunal Secretary Nadeen Al Qattan**

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**The following judgement is issued**

**in Appeal No. 29/2024/00010/6**

**Filed by**

**Appellant:** [Redacted] (C.R.[Redacted])

**Address:** [Redacted]

**E-mail Address:** [Redacted]

**Appellant's Attorney:** Attorney Alaa Al Qassab, Al Salam Advocates

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**Against**

**Respondent:** [Redacted] (C.R.[Redacted])

**Address:** [Redacted]

**E-mail Address:** [Redacted]

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**Respondent's Attorney:** Attorney Yusuf Al Tajer

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After due deliberations, having reviewed and duly considered all written and oral submissions of both Parties in the present Case, and for the reasons set forth below, the Tribunal:

## **I. Introduction and Parties**

1. The facts pertinent to this appeal, as evidenced by the arbitral award (the “**Award**”) rendered on 7 August 2024 by the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution (the “**BCDR**”) in Arbitration Case No. [Redacted], and from the documents submitted to this Court, are set forth below.
2. The Appellant, [Redacted], is a limited liability company incorporated and registered under the laws of the Kingdom of Bahrain with commercial registration no. [Redacted], having its registered address as: [Redacted].

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3. The Respondent, [Redacted], is a limited liability company incorporated and registered under the laws of the Kingdom of Bahrain with commercial registration no. [Redacted], having its registered address as: [Redacted].
4. On 13 May 2012, [Third Party 1] and [Third Party 2] entered into a Property Management Agreement (the “**PMA**”), whereby [Third Party 1] was appointed as the exclusive managing agent of the Shopping Mall. The PMA included a dispute resolution clause under Article 17.2, stipulating that any disputes arising between the Parties shall be resolved in accordance with the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution Arbitration Rules (the “**BCDR Rules**”).
5. On 5 May 2022, following a dispute between the Parties concerning unpaid Management Income fees and other contractual obligations under the PMA, the Appellant issued a Notice of Dispute to the Respondent in accordance with the terms and conditions of the PMA.
6. On 9 November 2022, the Appellant initiated arbitration proceedings by submitting a Request for Arbitration to the BCDR. The BCDR confirmed the commencement date of the arbitration as 24 November 2022. The Respondent submitted its Response on 2 January 2023, followed by a Supplement to its Response on 19 January 2023.

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7. On 8 May 2023, the BCDR confirmed the appointment of the Arbitral Tribunal (the “**Tribunal**”). The Tribunal comprised:
- i. [Redacted];
  - ii. [Redacted]; and
  - iii. [Redacted],
8. On 30 May 2023, a preliminary procedural conference was held, during which the Parties, in agreement with the Tribunal, finalized the Terms of Reference (the “**ToR**”). The ToR established the procedural framework, defined the scope of the arbitration, and specified the reliefs sought by each Party. On the same day, the Tribunal issued its First Procedural Order (PO1), followed by subsequent orders on 14 July 2023 (PO2), 25 August 2023 (PO3), and 15 December 2023 (PO4).
9. The relief sought by the Appellant in the ToR included: (i) payment of outstanding Management Income fees and Other Services Costs; (ii) rescission of the PMA; (iii) compensation for loss of profit; and (iv) reimbursement of arbitration costs.
10. The Respondent, in turn, sought the: (i) dismissal of the Appellant’s claims; and (ii) counterclaims for damages arising from the premature termination of

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the PMA, including compensation for loss of rent, termination-related costs, and other associated damages.

11. On 7 August 2024, the Tribunal issued its final Award, deciding as follows:
- i. The Appellant's claim for the Management Income was dismissed;
  - ii. The Respondent was ordered to pay BHD 79,615 for Other Services Costs;
  - iii. The Appellant's claim for loss of profit was dismissed;
  - iv. The Tribunal determined that the Appellant had wrongfully terminated the PMA and breached its obligations concerning rent collection and Guaranteed Income for 2021;
  - v. The Respondent's first counterclaim was dismissed, while the second counterclaim was partially upheld, with the Appellant ordered to pay BHD 612,146 to the Respondent; and
  - vi. The Tribunal directed both Parties to share arbitration costs equally, with the Appellant awarded a nominal sum for its share of the hearing costs.
12. On 5 September 2024, the Appellant filed an appeal before the Court of Cassation (the "**Court**") as the competent court pursuant to Article 24 of Legislative Decree No. 30 of 2009 regarding the Bahrain Chamber for

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Economic, Financial and Investment Dispute Resolution, as amended (the “BCDR Law”), against the Award rendered by the BCDR on 7 August 2024. The Appellant seeks annulment of the Award under Article 24 of the BCDR Law on two grounds: Firstly: The Tribunal exceeded the scope of the arbitration agreement; and Secondly: The Award violates public policy.

## II. Appellant’s Request for Relief

13. In its Statement of Appeal submitted on 5 September 2024, the Appellant requested that the Court:

- i. Accept the appeal in form, as it was filed within the prescribed time set out in Article 24 of the BCDR Law.
- ii. Prior to issuing a dispositive ruling:
  - i. **AN ORDER** to stay the execution and enforcement of the entire Award until the Honorable Court of Cassation has finally determined the appeal to set aside the Award
  - ii. **Alternatively**, an order to stay the execution and enforcement of paragraph 907(g) of the Award until the Honorable Court of



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Cassation has finally determined the appeal to set aside the Award or parts thereof.

- iii. On the merits, primarily: pursuant to paragraph (1)(d) of Article 24 of the BCDR Law and paragraph (2)(a)(iii) of Article 34 of the UNICTRAL Model Law (Model Law), to issue **AN ORDER** setting aside the entire final Award dated 7 August 2024 made by the Arbitral Tribunal in the arbitration between the Appellant and the Respondent under BCDR Arbitration Case No. [Redacted] on the grounds that the Arbitral Tribunal adjudicated unintended claims not contained nor contemplated by the Terms of Reference.
- iv. **IN THE ALTERNATIVE:**
- i. Pursuant to paragraph (1)(d) of Article 24 of the BCDR Law and paragraph (2)(a)(iii) of Article 34 of the UNICTRAL Model Law, to issue **AN ORDER** setting aside paragraphs 856 -872 and 907(g) of the Award issued by the Arbitral Tribunal in the BCDR arbitration Case No. [Redacted] between the Appellant and the Respondent due to the lack of substantive jurisdiction in ordering the Appellant to pay Respondent an amount of BHD 612,146 (six hundred and twelve thousand and one hundred and forty six Bahraini Dinars) representing

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the balance due to the Respondent as at 20 January 2022 notwithstanding that the ToR did not include this relief within its scope, and;

- ii. Pursuant to paragraph (1)(e) of Article 24 of the BCDR Law and paragraph (2)(b)(ii) of Article 34 of the UNICTRAL Model Law, to issue **AN ORDER** setting aside paragraphs 856- 872 and 907(g) of the Award issued by the Arbitral Tribunal in the BCDR arbitration Case No. [Redacted] between the Appellant and the Respondent due its contradiction to the public policy of the Kingdom of Bahrain.
- iii. **TO ORDER** the Respondent to pay to the Appellant the arbitration costs, comprising: (i) Filing fee of BHD 1,131, and (ii) the Appellant's share of the case management fee amounting BHD 18,900.
- iv. **TO ORDER** the Respondent to pay to the Appellant the costs and expenses of this Appeal and attorney fees of BHD 5,000.

### III. Respondent's Request for Relief

14. In its Statement of Response submitted on 16 September 2024, the Respondent requested that the Court:

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- i. **REJECT** the Appellant's application for the stay of execution and enforcement of the Award.
- ii. **REJECT** the challenge in form, on the basis that the Appellant failed to pay the proportional fees payable to challenge the Award.
- iii. **IN THE ALTERNATIVE**, to reject the challenge for lack of legal merit, and to reject all relief sought by the Appellant.
- iv. **TO ORDER** the Appellant to pay the costs and expenses of the challenge including the advocacy fees incurred by the Respondent.

#### **IV. Language of Proceedings Before the Court**

15. The arbitration proceedings were conducted in the English language, as stipulated in Article 17.2 of the PMA and subsequently confirmed in the ToR. Both Parties explicitly consented to the use of English throughout the arbitration proceedings.
16. In accordance with Article 4 of Legislative Decree No. 42 of 2002, (the “**Judicial Authority Law**”), as amended, and Resolution No. 28 of 2023, the English language may be used in court proceedings where the arbitration was conducted in English and the contract value or disputed amount exceeds BHD 500,000.

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17. The Court finds that the conditions for the use of the English language outlined in Article 4 of the Judicial Authority Law, as amended, and Resolution No. 28 of 2023, are satisfied. Accordingly, these proceedings shall be conducted in English.

## **V. Form of the Appeal**

18. On 7 August 2024, the Tribunal issued the Award that is the subject of this appeal.

19. On 5 September 2024, Attorney Alaa Al Qassab, duly authorized counsel before the Court of Cassation, filed a Statement of Appeal on behalf of the Appellant with this Court's registry within the prescribed time limit pursuant to Article 24 of the BCDR Law. The Statement of Appeal, seeking to annul the Award, contained all the legal requisite information, including the grounds for annulment and the relief sought, accompanied by factual exhibits (C01 through C08).

20. On 16 September 2024, the Respondent submitted its Statement of Response within the prescribed time limit, accompanied by factual exhibits (R01 through R06). In its Response, the Respondent raised a preliminary objection challenging the admissibility of the appeal.

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21. Elaborating on this objection, the Respondent contends that the appeal is inadmissible due to the Appellant's alleged non-payment of the judicial fees mandated by Article 11(b) of Table No. (1) of Legislative Decree No. 3 of 1972 (the “**Judicial Fees Law**”). The Respondent submits that, pursuant to the Judicial Fees Law, any challenge to an arbitral award is subject to a fee proportional to the amount claimed in the arbitration proceedings.
22. The Respondent argues that the Appellant's non-compliance with this requirement renders the appeal inadmissible. Furthermore, the Respondent invokes Articles 1 and 4 of the Judicial Fees Law, which stipulate that judicial procedures cannot be initiated without the prior payment of the applicable fees, save for criminal matters.
23. In response, the Appellant contests the Respondent's objection, asserting that Section 2 of Chapter 2 of the BCDR Law governs the arbitration proceedings, and its specific fee provisions supersede the general provisions of the Judicial Fees Law and the UNCITRAL Model Law (*lex specialis derogat legi generali*). The Appellant invokes Article 24(b) of the BCDR Law, which mandates the payment of a deposit in accordance with the Court of Cassation Law, and affirms that the required BHD 50 deposit was duly paid upon filing.

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24. Furthermore, the Appellant refutes the Respondent's allegation that the appeal was erroneously filed under Section 1 of Chapter 2, contending that the Respondent has presented no evidence to substantiate this claim. The Appellant cites correspondence from the Ministry of Justice (Exhibit C09), as confirmation that the filing was made under the correct section. Consequently, the Appellant maintains that the Respondent's objection is legally unfounded and that the appeal satisfies all the formal requirements.

25. The Court is not persuaded.

26. As a preliminary matter, the Court observes that Article 24(b) of the BCDR Law addresses the payment of the requisite deposit for filing an appeal. The Article stipulates:

*“(b) The challenge or petition stipulated in paragraph (a) of this Article shall be filed in the ordinary manner for filing a case, and its plaint must include the reasons upon which it is based, otherwise it shall be void. **The challenger or petitioner must provide, upon filing the plaint, the deposit stipulated in the Court of Cassation Law.**”*

27. Moreover, Article 56 of the Court of Cassation Law No. 8 of 1989, as amended, stipulates:

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*“Without prejudice to any law that exempts judicial fees, a fixed fee of one hundred Dinars shall be applicable on appeals in the cassation court in civil and commercial matters, personal status of non-Muslims, and Sharia matters.”*

28. Furthermore, Article 13 of the Court of Cassation Law, stipulates:

*“The Court’s Clerk’s Office shall not accept the appeal writ unless it is accompanied by proof that the appellant has deposited fifty Dinars in the treasury of the Ministry of Justice as a surety.”*

29. Having considered these provisions, the Court is satisfied that the Appellant has complied with the formal requirements outlined in Article 24(b) of the BCDR Law and Articles 13 and 56 of the Court of Cassation Law.

30. Accordingly, the Court finds that the Respondent's request to declare the appeal inadmissible lacks merit and is hereby dismissed.

## **VI. Appellant's Request to Stay the Execution of the Award**

31. In its request for relief, the Appellant seeks a stay of the execution and enforcement of the Award in its entirety, pursuant to Article 10(1) of the Court of Cassation Law.

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- 32.** The Appellant contends that executing the Award, which imposes a financial obligation exceeding BHD 500,000, would cause serious and irreparable harm due to the significant burden it would place on the Appellant's financial resources.
- 33.** Furthermore, the Appellant asserts that there exists a high probability of the Award being set aside on grounds of nullity, as elaborated in the grounds for appeal presented before this Court. Alternatively, the Appellant seeks a partial stay, specifically pertaining to paragraph 907(g) of the Award, which directs the Appellant to remit BHD 612,146 to the Respondent.
- 34.** In response, the Respondent opposes the Appellant's request for a stay of execution of the Award.
- 35.** The Respondent contends that the Appellant has failed to provide valid justification for a stay, arguing that the grounds for appeal are unfounded and unlikely to succeed.
- 36.** The Respondent asserts that the Appellant, being a foreign-owned entity with no known assets in the Kingdom of Bahrain, might exploit a stay to conceal or remove any remaining assets. In contrast, the Respondent characterizes itself as a well-established Bahraini company with known assets, including



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the disputed Shopping Mall, thereby posing no risk of inability to refund enforced amounts should the Appellant's challenge succeed.

**37.** The Respondent maintains that the enforcement of the Award poses no risk of "serious or irreparable harm" to the Appellant, whereas the Respondent *would* suffer serious harm from an unjustified delay in enforcement proceedings. Consequently, the Respondent seeks dismissal of the Appellant's request for a stay.

**38.** The Court is not persuaded.

**39.** The Court, having reserved its ruling on the request for a stay of execution pending the determination of this appeal, finds that the Appellant has provided no evidence that the Respondent has initiated execution proceedings on the challenged Award.

**40.** On the basis of the above, the Court finds that the request lacks merit and accordingly dismisses it.

## **VII. Grounds of Appeal, Respondent's Submissions, and the Court's Analysis**

**41.** This appeal is brought before this Court pursuant to Article 24 of the BCDR Law.

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**42.** The Appellant raises several grounds challenging the Award rendered in accordance with the BCDR Rules. These grounds, if upheld, would warrant setting aside of the Award pursuant to Article 24(a) of the BCDR Law. The Court must determine whether the Arbitral Tribunal exceeded its jurisdiction or failed to adhere to the agreed-upon terms governing the arbitration. The Court will address each ground *seriatim*, summarizing the Appellant's contentions, the Respondent's counter-arguments, and its findings.

**A. Appellant's First Ground and First Legal Premise of the Second Ground of Appeal: Jurisdictional Exceedance and Lack of Substantive Jurisdiction**

**i. Appellant's Position**

**43.** The Appellant seeks the annulment of the Award dated 7 August 2024 on the ground that the Tribunal exceeded its jurisdiction. The Appellant's argument is predicated on two main contentions:

- a) The Tribunal erroneously relied on Clause 17.2 of the PMA instead of adhering to the mutually agreed-upon ToR, which the Appellant asserts defined the scope of the arbitration.

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b) The Tribunal lacked substantive jurisdiction to award the sum of BHD 612,146 to the Respondent.

**44.** The Appellant contends that the Tribunal's reliance on Clause 17.2 of the PMA renders the Award null pursuant to Article 24 of the BCDR Law and Article 34(2)(a)(iii) of Arbitration Law No. 9 of 2015 (UNCITRAL Model Law). These provisions stipulate that an arbitral award may be set aside if the arbitral tribunal addresses matters not contemplated by, or falling outside the scope of, the arbitration agreement, as delineated in the ToR.

**45.** The Appellant further submits that the ToR, duly executed by all Parties and the Tribunal, became the operative document defining the scope of the arbitration and the Tribunal's jurisdiction. The Appellant's position is grounded on two provisions of the ToR:

**Paragraph 82**, which stipulates that "*the Tribunal shall decide issues necessary to adjudicate the parties' claims for relief, based on the parties' submissions, statements, and pleadings*".

**Paragraph 106**, which explicitly states that the ToR constitutes "*an original arbitration agreement*" for the purposes of Article II and IV (1) of the New York Convention. The Appellant contends that this provision

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*unequivocally establishes the ToR as the governing arbitration agreement, superseding Clause 17.2 of the PMA.*

- 46.** The Appellant submits that the Tribunal exceeded its mandate by deviating from the ToR in its final Award. The Appellant contends that the Tribunal erroneously relied on Clause 17.2 of the PMA as the basis for its jurisdiction in paragraph 8 of the Award, while only briefly referencing the ToR in paragraph 65. This reliance, the Appellant argues, led the Tribunal to adjudicate matters beyond the scope of the arbitration agreement as delineated in the ToR.
- 47.** The Appellant further asserts that the Tribunal lacked substantive jurisdiction to award the sum of BHD 612,146 (six hundred and twelve thousand and one hundred and forty-six Bahraini Dinars) to the Respondent. This sum, detailed in paragraph 872 and ordered in paragraph 907(g) of the Award, represents an alleged negative balance as at 20 January 2022. The Appellant contends that this relief was neither included in the ToR, nor among the claims or counterclaims specified therein, and was granted without the requisite authorization for new claims as mandated by paragraph 83 of the ToR.
- 48.** The Appellant maintains that by adjudicating matters not contemplated within the ToR and awarding relief neither claimed nor counterclaimed by the

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Parties, the Tribunal acted *ultra petita* and exceeded its jurisdiction and the scope of the arbitration agreement.

**49.** Consequently, the Appellant invokes Article 24 of the BCDR Law and Article 34(2)(a)(iii) of the UNCITRAL Model Law, seeking to set aside paragraphs 856 - 872 and 907(g) of the Award.

## **ii. Respondent's Position**

**50.** The Respondent submits that both grounds of appeal lack merit and should be dismissed.

**51.** In response to the first ground of appeal, challenging the Tribunal's reliance on Clause 17.2 of the PMA, the Respondent contends that the ToR supplemented Clause 17.2 without superseding it. The Respondent cites paragraph 57 of the ToR as reflecting and affirming Clause 17.2 as the governing arbitration agreement. Moreover, the Respondent notes that the Appellant itself invoked Clause 17.2 in its Sur-Statement of Rejoinder dated 6 November 2023. The Respondent further emphasizes the Tribunal's numerous references to the ToR within the Award, refuting the Appellant's assertion that the Tribunal disregarded it.

**52.** Addressing the first legal premise of the second ground of appeal, , contesting the Tribunal's jurisdiction to award BHD 612,146, the Respondent maintains

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that this sum, representing the outstanding balance owed by the Appellant as of the PMA's termination on 20 January 2022, fell within the Tribunal's jurisdiction.

- 53.** In support of this argument, the Respondent relies on paragraph 82 of the ToR, drafted before the full submission of claims, which it argues empowered the Tribunal to address new issues and claims arising during the proceedings. The Respondent contends this claim of BHD 612,146 falls within the scope of both the ToR and the arbitration agreement, evidenced by its initial, broader claims for breach of the PMA and resulting losses, in paragraphs 79(c), 79(e), and 80(d) of the ToR.
- 54.** Furthermore, the Respondent maintains that paragraphs 80 and 82 of the ToR preserve its right to revise requested relief and add counterclaims. Pursuant to this right and in compliance with PO1, the Respondent filed its Counterclaim and Statement of Defence, including the BHD 612,146 claim, on 1 August 2023.
- 55.** The Respondent contends that this procedure conforms with Article 23(2) of the UNCITRAL Model Law, which permits amendments to claims during arbitration. The Respondent also cites paragraph 81 of the ToR, which

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provisionally quantified damages at BHD 29,388,704.189, as further support for the permissibility of amending claims.

**56.** The Respondent further notes the Appellant's failure to object to the inclusion of the claim of BHD 612,146 upon receiving the Statement of Defence and Counterclaim. The Respondent argues that this failure, pursuant to Article 39 of the BCDR Rules and Article 4 of the UNCITRAL Model Law, constitutes a waiver of the Appellant's right to object.

**57.** The Respondent additionally notes that the Agreed List of Issues explicitly included the determination of amounts owed as of the PMA's termination date. This inclusion, the Respondent contends, further supports the Tribunal's jurisdiction to award the disputed sum.

**58.** On the basis of the above, the Respondent submits that the Tribunal acted within its jurisdiction and in accordance with the ToR and the governing arbitration agreement, and therefore, both grounds of appeal lack merit and should be dismissed.

**iii. Court's Analysis of the Appellant's First Ground and First Legal Premise of the Second Ground of Appeal**

**59.** The Court having reviewed the Parties' submissions and evidence, finds that the Appellant's primary challenge to the Award rests on the argument that the

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Tribunal exceeded its jurisdiction by erroneously relying on Clause 17.2 of the PMA, instead of the ToR, which the Appellant contends superseded the PMA as the "original arbitration agreement". This challenge is grounded in Article 24(a)(4) of the BCDR Law, which stipulates the exclusive grounds for annulling an arbitral award:

*"The parties before the Chamber may challenge before the Cassation Court the award issued by the Dispute Resolution Tribunal [...] for any of the following reasons:*

- 4. The Dispute Resolution Tribunal award dealt with an unintended dispute or one not contained in the submitted agreement or contains orders in matters outside the scope of the agreement. However, if it is possible to isolate the orders related to the submitted matters to the Tribunal from the other orders not submitted thereto, then it is not permissible to set aside the Dispute Resolution Tribunal award except that part which contains the orders related to the matters which were not to be submitted to the tribunal."*



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60. Within the framework established by this statutory provision, the Court shall assess the validity of the Appellant's claims concerning the Tribunal's jurisdiction and the scope of its adjudication.
61. The Court emphasizes that its scope of review in annulment proceedings in this regard is limited. The Court's role is not to reassess the merits of the case, but rather to determine whether the Tribunal acted within its mandate as defined by the Parties' agreement and applicable law.
62. The Court begins by examining the relation between Clause 17.2 of the PMA and the ToR. The ToR, specifically in paragraph 57, states: “*The arbitration agreement is enshrined in Article 17.2 of the PMA (the ‘Arbitration Agreement’)*”. This explicitly demonstrates that the ToR neither superseded nor replaced the terms of the PMA, but instead incorporated and reaffirmed them.
63. It’s well-established that a ToR, drafted subsequent to the constitution of the arbitral tribunal, serves as a procedural instrument that supplements and do not supersede the original arbitration agreement unless the Parties have expressly and unequivocally agreed otherwise. The purpose of the ToR is to clarify procedural details and define the initial issues for adjudication, all while remaining within the framework of the Parties' original agreement.

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64. Arbitration agreements are generally interpreted broadly, conferring upon tribunals the authority to address all claims and counterclaims that stem from the contractual relationship, unless explicitly restricted by the Parties. In the present appeal, the arbitration agreement, as reflected in Clause 17.2 of the PMA and incorporated into the ToR, encompasses disputes arising from the underlying contract.
65. The Court observes that the ToR, operating within this broad framework, grants the Tribunal discretion to address issues arising during the proceedings. Specifically, Paragraph 82 of the ToR states: *"The Tribunal shall decide the issues necessary to adjudicate the claims for relief of the Parties set forth above. The Tribunal does not consider it appropriate at this stage of the proceedings to provide an exclusive list of issues to be determined."* This provision of the ToR does not constitute a restriction on the full application of the arbitration clause.
66. The Tribunal's discretionary authority, as noted in Paragraph 82, is further reflected in Paragraphs 74 through 76 of the ToR. These paragraphs stipulate that the Parties' position summaries are without prejudice to further contentions, arguments, or evidence. Similarly, paragraph 80 of the ToR preserves the Respondent's right to *"revise the relief sought, including its*

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*right to bring any additional counterclaims or set-off."* On the contrary, the ToR affirmed, rather than restricted, the application of the arbitration clause as set forth in the PMA.

**67.** This flexible framework, established by the ToR and reflected in the arbitration agreement of Clause 17.2 of the PMA and subsequently incorporated in the ToR, encompasses disputes arising from the underlying contract. The matters adjudicated by the Tribunal were directly related to the contract in dispute, thereby falling within the scope of arbitration. Thus, it is an established jurisprudence that arbitration agreements are broadly interpreted, conferring upon the arbitral tribunal the authority to address all claims and counterclaims stemming from the contractual relationship, unless explicitly restricted by the parties.

**68.** The Court now turns to the Appellant's argument regarding paragraph 106 of the ToR, which states: *"The present ToR form an original arbitration agreement for the purposes of Article II and IV (1) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention)"*. The Appellant contends that this provision establishes the ToR as the operative arbitration agreement, superseding Clause 17.2 of the PMA

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69. However, this interpretation is incorrect. In addition to being irrelevant, the purpose of paragraph 106 is to ensure the international enforceability of the award under the New York Convention, affirming the ToR's compliance with the Convention's requirements. This provision neither expressly nor implicitly modifies the substantive arbitration agreement in Clause 17.2 of the PMA; it merely complements it.

70. The Court, having addressed the matter of the PMA and the ToR, now examines the broader legal framework governing the arbitral proceedings. The BCDR Rules provide comprehensive provisions regarding the tribunal's powers, which are fundamental to understanding both the function of arbitration agreements and the extent of the tribunal's authority. These Rules establish binding procedures that govern arbitration proceedings, delineating the specific powers vested in the tribunal and providing a clear, enforceable framework.

71. The Court notes that the tribunal's jurisdiction is established under Article 27(1) of the BCDR Rules, which provides:

*"The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the Arbitration Agreement, or with respect to whether all of the claims and*

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*counterclaims made in the arbitration may be determined in a single arbitration."*

72. The Tribunal's authority is further reinforced by Article 27(2), which provides:

*"The arbitral tribunal shall have the power to determine the existence or validity of a contract of which the Arbitration Agreement forms a part."*

73. Article 27(3) further grants the tribunal procedural flexibility regarding time limits and objections:

*"The arbitral tribunal has the power to extend these time limits and may rule on any objection under this Article as a preliminary matter or as part of the final award."*

74. The provisions of Article 27, when read as a whole, confers broad jurisdiction upon the Tribunal, empowering it to address not only matters directly related to its competence but also those essential for the resolution of the dispute.

75. The Court finds that the ToR did not supersede nor replace the PMA as the operative arbitration agreement. Instead, the ToR incorporated and reaffirmed

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the PMA's terms, specifically Clause 17.2, which establishes the Tribunal's jurisdiction. The Court, therefore, holds that the matters adjudicated by the Tribunal fell within the scope of the arbitration agreement and, consequently, it is irrelevant to examine the effect of Article 39 of the BCDR Rules.

**76.** Accordingly, the Court dismisses the Appellant's first ground and first legal premise of its second ground of appeal.

**B. Appellant's Second Legal Premise of the Second Ground of Appeal:  
Violation of Public Policy**

**i. Appellant's Position**

**77.** The Appellant contends that the Award is null and void alleging a violation of the public policy of the Kingdom of Bahrain, pursuant to Article 24 of the BCDR Law and Article 34(2)(b)(ii) of the UNCITRAL Model Law. This alleged violation, the Appellant argues, arises from the Tribunal's reliance on an inadmissible expert report submitted by the Respondent

**78.** The Appellant argues that the expert report is inadmissible due to the expert's failure to disclose potential impartiality issues and to complete the required neutrality questionnaire, as mandated by Article 134 of Legislative Decree No. 14 of 1996 (the "**Evidence Law**") and Ministerial Resolution No. 116 of

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2021. This failure, according to the Appellant, renders both the expert's report and the subsequent joint expert statement inadmissible.

**79.** Furthermore, the Appellant contends that the procedural framework of the BCDR does not supersede the public policy requirements established in the Bahraini law, and thus the Tribunal was obligated to adhere to the mandatory provisions of the Evidence Law, lacking any discretion to disregard them.

**80.** On the basis of the above, the Appellant seeks the annulment of the Award in its entirety, or alternatively, the annulment of paragraph 907(g) thereof. The Appellant maintains that the Tribunal's reliance on the allegedly inadmissible expert report violates the public policy of the Kingdom of Bahrain, thereby rendering the Award, or at least the specified portion, null and void.

## **ii. Respondent's Position**

**81.** The Respondent refutes the Appellant's assertion that the Award violates the public policy of the Kingdom of Bahrain. The Respondent cites paragraphs 873-876 of the Award, wherein the Tribunal addressed the expert report issue, making the following determinations:

- i.** The Appellant failed to establish the applicability of Article 134 of the Evidence Law to the arbitration proceedings or its precedence over the Tribunal's procedural orders.

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ii. The Respondent's expert complied with all procedural requirements set forth in paragraph 32 of PO1, including the submission of a statement of impartiality and independence.

82. The Respondent contends that the Evidence Law is inapplicable to arbitration proceedings and that its provisions do not relate to public policy, citing relevant Bahraini Court of Cassation appeals<sup>1</sup> in support of this position.

83. Furthermore, the Respondent emphasizes that the Tribunal's decision was based on a comprehensive review of all evidence, not solely on the expert report in question.

84. On the basis of the above, the Respondent submits that the Appellant's claim that the Award violates the public policy of the Kingdom lacks merit and should be dismissed.

### iii. Courts Analysis on the Appellant's Second Legal Premise of the Second Ground of Appeal

85. In addressing the Appellant's second legal premise of the second ground of appeal seeking annulment of the Award, the Court reaffirms the fundamental

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<sup>1</sup> Respondent cited Court of Cassation Challenge No. 590 of 2020 and No. 555 of 2022 that establishes Evidence Law provisions did not relate to public policy.



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principle of party autonomy in arbitration. This principle, firmly established in Bahraini law and international arbitration practice, empowers parties to determine their procedural rules and, in the absence of such agreement, grants the Tribunal discretion to adopt procedures as it deems appropriate.

**86.** The Appellant's argument necessitates an examination of whether the Evidence Law constitutes a matter of public policy. On this point, it is well-established in the jurisprudence of this Court that the provisions of the Evidence Law do not constitute matters of public policy<sup>2</sup>. Furthermore, Article 134 of the Evidence Law does not expressly stipulate that an expert's report lacking the prescribed questionnaire renders such report inadmissible or null.

**87.** The Court observes that in the ToR, under "Applicable Procedural Rules", paragraph 65, the parties mutually agreed to a hierarchical order of procedural rules governing the arbitration. These rules, in order of priority, are:

- i. Those contained in the BCDR Rules;*
- ii. Those contained in the present ToR; and*
- iii. The procedural rules agreed upon by the Parties or determined by the Tribunal through Procedural Orders.*

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<sup>2</sup> Cassation Court Appeal no. (4) of 2006

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- 88.** The Tribunal, in accordance with the parties' agreement, issued PO1 on 30 May 2023, with paragraph 32 therein delineating comprehensive requirements for expert reports, including their form, content, and submission procedures. The parties' consent to the ToR demonstrates their explicit agreement to be bound by such procedural orders.
- 89.** The Court determines that this mutual agreement established a procedural framework superseding the general provisions of the Evidence Law with respect to the arbitration proceeding. The Tribunal's adherence to this agreed framework in accepting and evaluating the expert report does not constitute a violation of public policy or a fundamental procedural error.
- 90.** On the basis of the above, the Court finds that the Appellant's argument regarding the inadmissibility of the expert report, premised on alleged non-compliance with Article 134 of the Evidence Law, lacks merit. The Tribunal acted in accordance with the agreed-upon procedural order. Accordingly, the second legal premise of the second ground of appeal is dismissed.

**The following judgment was rendered:**

After due deliberations, having reviewed and duly considered all oral and written submissions of both Parties in the present appeal, and for the reasons set forth above,



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the Court hereby accepts the appeal in form but dismisses it on the merits. The Appellant is ordered to bear all costs of the proceedings, including the confiscation of the deposited surety and to pay legal costs in the amount of BHD 5,000 as assessed by the Court.