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Bahraini Court of Cassation Upholds the Principle of Kompetenz-Kompetenz in a Landmark Ruling

Reyadh Mohamed Seyadi (Supreme Judicial Council, Kingdom of Bahrain) · Friday, May 16th, 2025

In a significant decision issued on 24 June 2024 ([Case No. 200 of 2023](#)), the Bahraini Court of Cassation (“Court of Cassation”) reaffirmed the centrality of arbitral autonomy by upholding the principle of *Kompetenz-Kompetenz*. This doctrine, foundational in international arbitration, empowers arbitral tribunals to rule on their own jurisdiction, including disputes over the existence or validity of the arbitration agreement itself. In doing so, the Bahraini judiciary has reiterated its commitment to minimising premature judicial interference and enhancing Bahrain’s standing as an arbitration-friendly jurisdiction aligned with international norms.

Factual and Procedural Background

The dispute underlying the decision arose from a credit agreement between PSG Consultancy W.L.L. (“PSG”) and a group of companies operating under the *** brand. The agreement included an arbitration clause stipulating that any disputes between the parties would be submitted to arbitration in accordance with Bahraini laws.

When the group of companies allegedly defaulted, PSG sought to initiate arbitration and, in light of a disagreement over the selection of a sole arbitrator, turned to the Bahraini High Civil Court (“High Civil Court”) to request its assistance in the appointment of the sole arbitrator. The High Civil Court ([Case No. 8422 of 2023](#)) dismissed the request, citing the parties’ disagreement regarding the validity of the arbitration clause as a bar to proceeding further. This ruling was reversed on appeal by the Bahraini Court of Appeal ([Case No. 2318 of 2023](#)), whose judgment was ultimately upheld by the Court of Cassation ([Case No. 200 of 2023](#)).

Analysis of the Court of Cassation

The Court of Cassation’s analysis focused on two key legal propositions. First, it clarified that in the context of a petition for the appointment of an arbitrator, the court’s role is limited to a *prima facie* review of whether an arbitration agreement exists. It is not for the court at this stage to assess the enforceability or scope of the clause in depth.

Second, and more significantly, the court reaffirmed [Article 16 of the Bahraini Law No. 9 of 2015 Promulgating the Arbitration Law](#) (“Bahraini Arbitration Law”) based on the [UNCITRAL Model Law](#), which enshrines the *Kompetenz-Kompetenz* doctrine. Under this provision, the arbitral tribunal is empowered to rule on its own jurisdiction, including any objections with respect to the

existence or validity of the arbitration agreement. This allocation of authority ensures that arbitral tribunals may proceed without disruption from court interference at the early stages of proceedings, thereby safeguarding the integrity and functionality of the arbitral process.

The Court of Cassation upheld the appellate ruling and for the first time clarified two important principles:

1. ***Prima Facie* Review:** In petitions for the appointment of an arbitrator, the court's role is limited to verifying the apparent existence of an arbitration agreement. It must not delve into issues of validity, scope, or enforceability at this stage.
2. ***Kompetenz-Kompetenz* Principle:** Article 16 of the Bahraini Arbitration Law (based on the UNCITRAL Model Law) gives arbitral tribunals the authority to rule on objections regarding their jurisdiction, including those involving the arbitration agreement's existence or validity.

This division of responsibility ensures that the arbitral tribunal is the primary decision-maker on its jurisdiction, with the courts playing a supportive role that preserves the efficiency and autonomy of the arbitral process. Moreover, by clarifying the boundaries of judicial support, the decision reduces legal uncertainty. Judicial support includes enforcing interim measures, appointing arbitrators, and recognizing awards. Judicial interference, by contrast, occurs when courts prematurely assess arbitral jurisdiction. This judgment by the Court of Cassation strikes the right balance by enabling courts to assist arbitration without undermining it.

Doctrinal Foundations of *Kompetenz-Kompetenz*

Kompetenz-Kompetenz is a cornerstone of modern arbitration theory. Rooted in the principle of party autonomy, it reflects the understanding that parties who choose arbitration intend for a neutral arbitral tribunal—not national courts—to resolve their disputes, including procedural and jurisdictional challenges.

The doctrine functions as a safeguard against obstructionist litigation tactics. If every jurisdictional objection required judicial resolution before the arbitral tribunal could proceed, arbitration would become mired in inefficiency and delay. *Kompetenz-Kompetenz* thus helps preserve arbitration's comparative advantages: speed, confidentiality and finality.

The doctrine also supports arbitration's self-contained legal framework. Arbitral tribunals derive their authority from party agreements, and that authority extends to deciding whether the arbitral tribunal has jurisdiction. Courts, in turn, are expected to exercise judicial restraint, intervening only after the arbitral tribunal has had the first opportunity to determine its competence.

Closely linked to *Kompetenz-Kompetenz* is the doctrine of separability, also enshrined in Article 16 of the [UNCITRAL Model Law](#). It holds that the arbitration clause is a distinct agreement from the contract in which it is contained. Even if the main contract is deemed invalid, the arbitration clause may remain operative unless it too is specifically impugned.

This separation ensures that disputes over the contract's validity do not automatically nullify the parties' commitment to arbitration. By allowing the arbitral tribunal to determine its own jurisdiction—including through the lens of separability—the legal system seeks to avoid the paradox of having courts decide whether a dispute should be kept out of court.

Global Perspectives on *Kompetenz-Kompetenz*

Across jurisdictions, courts have adopted varying degrees of deference to arbitral tribunals in matters of jurisdiction:

- **France** follows a strong version of the doctrine. The landmark *Dalico case* (Cour de cassation, 20 December 1993) established that arbitration agreements are independent of any national law and grounded in the parties' common intention. French courts will only intervene where the arbitration agreement is "manifestly null and void."
- **United Kingdom** applies a moderate approach. In *Fiona Trust & Holding Corporation v Privalov* [2007] EWCA 20 at para 34, the Court of appeal stated that "... it is contemplated by the Act that it will, in general, be right for the arbitrators to be the first tribunal to consider whether they have jurisdiction to determine the dispute."
- **Singapore** demonstrates strong adherence to the doctrine, particularly in *Tomolugen Holdings Ltd v Silica Investors Ltd* [2015] SGCA 57. The Court of Appeal emphasised that arbitral tribunals must be the first to decide their jurisdiction, consistent with the UNCITRAL Model Law.

The key distinction between the approaches in Singapore and the UK, as highlighted in *Tomolugen*, lies in the standard courts apply when deciding whether to stay legal proceedings because of an arbitration agreement. In Singapore, the court uses a *prima facie* standard, partly due to concerns that a full review on the merits at this preliminary stage might undermine the practical effect of the *Kompetenz-Kompetenz* principle. Conversely, UK courts generally undertake a merits assessment, although they retain a residual discretion to stay the proceedings under their inherent jurisdiction, allowing the arbitral tribunal to rule on its own jurisdiction instead (*Aeroflot Russian Airlines v Berezovsky* [2013] 2 Lloyd's Rep 242 at para 73). These comparative models illustrate a global trend toward minimising judicial interference—a trend Bahrain has joined with its recent ruling.

The Bahraini Approach: Jurisdictional Restraint and Legal Maturity

The Bahraini Court of Cassation's position aligns with the strongest international models. It affirms that the court's role at the stage of appointing arbitrators is limited to a *prima facie* examination of whether the arbitration agreement exists. Issues of enforceability, scope, and validity of the arbitration agreement fall within the tribunal's purview. This approach reflects growing judicial maturity in Bahrain's legal landscape. It confirms Bahrain's alignment with international best practices and sends a reassuring message to investors and international parties that arbitration agreements will be respected and upheld.

Importantly, the court's reasoning reveals a sophisticated understanding of arbitration's philosophical foundations. Arbitration is not merely a set of procedural shortcuts—it is a consensual, private system of justice grounded in party autonomy. Doctrines such as *Kompetenz-Kompetenz* and separability are critical to preserving that autonomy. Without such doctrines, arbitration would be perpetually vulnerable to national court interference. With them, arbitration becomes a viable, self-sufficient, and trusted mechanism for resolving disputes. Bahrain's judiciary has shown that it understands and supports this vision.

Conclusion

This case is not merely about the interpretation of statutory provisions or the mechanics of appointing arbitrators. It is a reaffirmation of arbitration's central promise: that parties who choose

to resolve their disputes outside the courts will be afforded the institutional respect, procedural integrity, and substantive fairness necessary to give meaning to their agreement. *Kompetenz-Kompetenz* is indispensable to that promise. It preserves the arbitral tribunal's ability to hear and resolve disputes expeditiously and fairly, and it ensures that court intervention serves arbitration rather than subverts it.

In doing so, the Bahraini judiciary has demonstrated both doctrinal clarity and institutional confidence. It has signaled to international users of arbitration that Bahrain is a place where the law of arbitration is not only codified but also understood and applied with precision. For scholars, practitioners, and parties alike, this decision represents a mature and welcome development—one that not only upholds a core tenet of international arbitration law but also reinforces Bahrain's evolving role as a principled and progressive arbitration seat in the region.

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