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Contemporary Issues in Arbitration Agreements: Sharia Public Order and Civil Law Perspectives

Abstract: This study examines contemporary issues concerning the law applicable to arbitration agreements in multinational corporate contracts and evaluates their compatibility with Sharia public order across five jurisdictions: France, Egypt, Jordan, Saudi Arabia, and the United Arab Emirates. Against the backdrop of evolving international arbitration practice, the study employs a doctrinal comparative legal methodology, supplemented by an illustrative analysis of 50 arbitration clauses from multinational corporate contracts, to assess contemporary drafting practices. The research analyzes three core doctrines of international arbitration law: separability of the arbitration agreement, extension of arbitration clauses to non-signatory group companies, and party autonomy in the choice of applicable law. The findings demonstrate that the separability doctrine is generally compatible with Sharia under the maxim *al-'ibrah bi al-maqāṣid wa al-ma'ānī lā bi al-alfāz wa al-mabānī* (substance over form), except where the main contract is void ab initio for violating a definitive (*qat'ī*) prohibition such as *ribā* or *maysir*. The study further finds that extension of arbitration agreements to non-signatories is permissible only upon clear evidence of fraud, active participation, or explicit or implied consent, while mere economic unity is insufficient under Sharia principles of contractual privity. In relation to party autonomy, the study concludes that parties may freely choose the governing law of the arbitration agreement provided that the chosen law does not contravene definitive Sharia prohibitions. The article proposes a reconciled framework based on a cumulative method that preserves party autonomy while requiring compliance with definitive Sharia norms forming part of public order in certain Arab jurisdictions. The study's academic contribution lies in integrating the doctrines of separability, non-signatory extension, and applicable law within a contemporary Sharia-based comparative framework. The findings offer practical guidance for cross-border commercial arbitration.

Keywords: Arbitration Agreement; Group of Companies; Party Autonomy; Sharia Public Order.

INTRODUCTION

International commercial arbitration is now used by most multinational corporations (MNCs) to resolve disputes arising from their global business operations. More than 90% of all international commercial agreements include an arbitration clause. Over 870 new arbitration matters were administered by the International Chamber of Commerce in 2023 alone; many involved companies conducting business in Arab countries.¹ Scholars have also recently studied the modernization of arbitration through emerging technologies and the use of artificial intelligence-assisted arbitration processes in both non-Islamic and Islamic arbitration systems.² While arbitration continues to expand globally, one fundamental legal doctrine issue remains unresolved – which laws will govern an arbitration agreement, and how do those laws interact with mandatory Sharia-based legal rules in Arab jurisdictions?

In particular, the conflict between the two sets of rules is most significant in the MENA region because both are statutory: one is based on modern public order rules that apply to all disputes arising within each jurisdiction, while the other is based on Sharia. The French Arbitration Statute, adopted as a model by Egypt and Jordan, established the foundational doctrines of separability, as enunciated in Gosset (1963), and the doctrine of extension of arbitration agreements to group companies, as enunciated in Dow Chemical (1983).³ The three Gulf states of Saudi Arabia, the United Arab Emirates, and Qatar have now enacted their own Modern Arbitration Laws since 2012. They contain provisions

¹ 2023 ICC Dispute Resolution Statistics, “2023 ICC Dispute Resolution Statistics,” 2023 ICC *Dispute Resolution Statistics*, no. 1 (2024): 11–15.

² Mohammad Azam Hussain et al., “The Potential Prospect of Artificial Intelligence (Ai) In Arbitration From The International, National And Islamic Perspectives,” *Journal of International Studies* 19 (2023), <https://doi.org/10.32890/jis2023.19.1.4>.

³ Gosset, 52 *Revue critique de droit international privé* 615 (Cour de cassation (French Court of Cassation), Civil Chamber 1963), https://books.google.jo/books/about/Revue_critique_de_droit_international_pr.html?id=WMEvAAAAIAAJ&redir_esc=y; Dow Chemical France, *The Dow Chemical Company, Dow Chemical A.G., Dow Chemical Europe v. ISOVER Saint Gobain, Jus Mundi* ____ (Paris Court of Appeal 1983), <https://jusmundi.com/en/document/decision/fr-1-dow-chemical-france-2-the-dow-chemical-company-3-dow-chemical-a-g-4-dow-chemical-europe-v-isover-saint-gobain-arret-de-la-cour-dappel-de-paris-friday-21st-october-1983>.

similar to those in France's secular public order system; however, they state that Sharia will limit party autonomy.⁴ Similarly, Jordanian and Egyptian law allow courts to refuse to enforce an award if it violates public policy or conflicts with core Sharia principles.⁵

This research will fill this void by providing a comparative doctrinal evaluation of the main arbitration contract doctrines, including separation, extension to third-party affiliates of signatories, and identification of applicable law to the arbitration agreement. The French legal system has been selected as the reference point for comparison purposes and compared to the respective legal systems of Jordan, Egypt, Saudi Arabia, and the UAE. Additionally, the interaction between each doctrine and Islamic public order (*al-nizām al-‘āmm al-Islāmī*) will be examined.

The academic literature on arbitration can be categorized into three relatively separate bodies of research. There is extensive work on the legal framework for arbitration agreements, including the basis for party autonomy in international arbitration. Recent studies have also explored various approaches to determining which jurisdiction's laws apply to an arbitration agreement. A notable example of this was Andrew Ling's study, which demonstrated that commercial realities often dictate the choice of governing law for arbitration agreements and ultimately concluded that the laws of the country where the arbitration will take place (the "seat") are usually applied.⁶ Other influential French academics (Philippe Fouchard, Emmanuel Gaillard, and Berthold Goldman) established the basic principles of international arbitration and the concept of *lex mercatoria*.⁷ Further

⁴ Arbitration Law, Royal Decree No. M/34 Umm Al Qura Gazette No. 4409 (2012), <https://www.acerislaw.com/wp-content/uploads/2016/08/Saudi-Arbitration-law-reduced.pdf>; Federal Law No. 6 of 2018 on Arbitration, Federal Law No. 6 of 2018 Official Gazette No. 634 (2018), <https://uaelegislation.gov.ae/en/legislations/1069/download>; Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law, Law No. 2 of 2017 Official Gazette No. 16 (2017), https://www.qicdrc.gov.qa/sites/default/files/2021-12/law_02_2017_booklet.pdf.

⁵ Jordanian Arbitration Law No. 31 of 2001, Law No. 31 of 2001 (2001), https://www.newyorkconvention.org/media/uploads/pdf/5/7/576_law-no-31-of-2001-jordan-arbitration-law.pdf; Appeal Nos. 4729 & 4730/72 (Egyptian Court of Cassation June 22, 2004).

⁶ Andrew Ling, "Neither Express nor Implied: Rethinking Governing Law of the Arbitration Agreement," *Arbitration International* 39, no. 3 (2023): 401-24, <https://doi.org/10.1093/arbint/aia032>.

⁷ Philippe Fouchard, *L'arbitrage commercial international* (Dalloz, 1965), <https://books.google.com/>; Emmanuel Gaillard, *Legal Theory of International Arbitration* (Brill, 2010), <https://brill.com/display/title/18822?srsltid=AfmBOooP->

comparative studies have been conducted regarding how jurisdictions govern arbitration agreements (French, English, Chinese), as well as common corporate drafting practices related to arbitration.⁸

Secondly, there has been an increasing amount of research into Islamic commercial arbitration and its relationship with private international law.⁹ El Maknouzi et al. presented one of the first, if not the first, comprehensive examinations of the tension between Sharia compliance and the principles of international arbitration, specifically concerning applicable law, public order, and enforcement of foreign awards.¹⁰ Additionally, French courts have played a key role in the development of the "group of companies" doctrine, which extends arbitration agreements to non-signatory affiliated entities; however, Arab jurisdictions have adopted the "group of companies" doctrine inconsistently.¹¹ Lastly, recent GCC-focused research has investigated Sharia as a limitation on public policy for arbitration enforcement. Aldhafeeri found that Sharia is a component of GCC public policy under the New York Convention framework.¹²

Although existing research has contributed to understanding arbitration agreement doctrines in France, three major gaps remain. First, no prior study has examined the three core arbitration doctrines—separability, extension to non-signatories, and applicable law—collectively through the lens of Sharia public order while using France as the primary

www.YPL1ibKwYzMwCGXkxWnSsCAodlOGkviw1HgihhiRkli; Berthold Goldman, "Les conflits de lois dans l'arbitrage international de droit privé," *Recueil des Cours de l'Académie de Droit International* 109 (1963): 347-480.

⁸ Ling, "Neither Express nor Implied"; J. J. B. Goh, "Separability Doctrine: Perspectives from China, England and the Model Law," *Singapore Academy of Law Journal* 37 (2025): 47-71.

⁹ Muhammad Azam et al., "Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1074-1096, <https://doi.org/10.32332/milrev.v4i2.11334>.

¹⁰ Mohammed El Hadi El Maknouzi et al., "Islamic Commercial Arbitration and Private International Law: Mapping Controversies and Exploring Pathways towards Greater Coordination," *Humanities and Social Sciences Communications* 10, no. 1 (2023): 523, <https://doi.org/10.1057/s41599-023-02031-z>.

¹¹ Kis France, 1992 *Revue de l'Arbitrage* 90 (Paris Court of Appeal 1989), <https://cfa-arbitrage.com/en/>.

¹² Ahmed Aldhafeeri, *The Public Policy Exception to The New York Convention: The Gulf Cooperation Council (GCC) Perspective*, 2025, <https://doi.org/10.48683/1926.00121236>.

comparative legal system. Second, most previous studies have been strictly doctrinal and have rarely examined actual arbitral awards, court practices, or multinational corporate arbitration agreements. Third, the existing literature either treats the Gulf Cooperation Council (GCC) member states as a homogeneous group with limited differentiation among jurisdictions or provides isolated jurisdiction-specific analyses without offering an overarching comparative synthesis of French, Jordanian, Egyptian, Saudi Arabian, and United Arab Emirates arbitration laws.

Accordingly, this study examines whether the separability doctrine remains valid where the main contract violates a *qaṭʿī* Sharia prohibition, under what conditions arbitration agreements may extend to non-signatory group companies without violating the Sharia principle of privity, and whether Sharia public order limits party autonomy in choosing the law governing the arbitration agreement, particularly where the parties have made no express choice. The focus of this research is international commercial arbitration, and it considers Sharia public order as an obligatory normative limit on arbitration agreements rather than an alternative legal system. This introduction is followed by Section 2, which describes the comparative doctrinal method used and is supplemented by an analysis of sample documents. Section 3 analyzes the doctrines of separability, extension to third parties, and applicable law across the selected jurisdictions. Section 4 outlines a principle-based framework designed to reconcile doctrines of international arbitration derived from French law with those grounded in Sharia public order. Finally, Section 5 presents the conclusions, including recommendations for practice and suggestions for future research.

METHOD

This study employs a doctrinal comparative legal methodology supplemented by an illustrative analysis of arbitration clauses contained in multinational corporate contracts

(MNCs).¹³ A doctrinal comparative approach is appropriate because it enables systematic comparison of legislation, judicial decisions, arbitral awards, and international instruments across jurisdictions while facilitating normative evaluation against Islamic legal principles.¹⁴ The study adopts a functional comparative law method and a harmonization analysis to examine how France, Egypt, Jordan, Saudi Arabia, and the United Arab Emirates address three central arbitration issues: the separability of the arbitration agreement, the extension of arbitration agreements to non-signatories, and the determination of the law applicable to the arbitration agreement. France is selected as the principal comparator because it originated the doctrines of separability and the group-of-companies theory, while Egypt and Jordan represent Arab civil-law jurisdictions influenced by French arbitration theory and constitutional recognition of Islamic principles. Saudi Arabia and the UAE represent more recent arbitration regimes in which Sharia-based public-order considerations play an active role in arbitral review and enforcement.¹⁵¹⁶ The doctrinal analysis examines the relevant arbitration legislation in these jurisdictions, with Qatar included as a supplementary comparative reference point, alongside international instruments such as the UNCITRAL Model Law, the New York Convention, and the IICRA Arbitration Rules.¹⁷¹⁸ It further analyzes leading French

¹³ Kelik Wardiono et al., "Reconstructing Contemporary Legal Methodology through the Noetic Triadic Spiral Model: A Trans-Epistemological Perspective," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 533–574, <https://doi.org/10.32332/milrev.v5i1.13039>.

¹⁴ Jan M. Smits, "What Is Legal Doctrine?: On The Aims and Methods of Legal-Dogmatic Research," in *Rethinking Legal Scholarship*, 1st ed., ed. Rob Van Gestel et al. (Cambridge University Press, 2017), <https://doi.org/10.1017/9781316442906.006>; Ian Dobinson and Francis Johns, "Qualitative Legal Research," in *Research Methods for Law*, 2nd ed., ed. Mike McConville and Wing Hong Chui (Edinburgh University Press, 2017), <https://dokumen.pub/research-methods-for-law-9781474404259.html>.

¹⁵ M. Wildan Humaidi et al., "State-Religion Relations and Halal Governance: Islamic Legal Policy in Indonesia and Malaysia," *AlManahij: Jurnal Kajian Hukum Islam*, April 1, 2026, 1–20, <https://doi.org/10.24090/mnh.v20i1.15374>.

¹⁶ Hajed A. Alotaibi et al., "From Custom to Modernisation: A Legal-Historical Study of Saudi Arabia's Legal Development," *De Jure: Jurnal Hukum Dan Syar'iah* 18, no. 1 (2026): 84–101, <https://doi.org/10.18860/j-fsh.v18i1.37829>.

¹⁷ Jordanian Arbitration Law, Law No. 31 of 2001; Egyptian Arbitration Law No. 27 of 1994, Law No. 27 of 1994 (1994), https://www.newyorkconvention.org/media/uploads/pdf/5/4/549_law-no-27-1994-promulgating-the-law-concerning-arbitration-in-civil-and-commercial-matters.pdf; Code de procédure civile, Décret No. 2011-48 Articles 1442–1527 (2011), <https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006089134>; Saudi Arbitration Law; UAE Arbitration Law; Qatar Arbitration Law.

¹⁸ New York Convention, "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)," June 10, 1958, <https://www.newyorkconvention.org/english>; UNCITRAL Model Law on International Commercial

decisions, including Gosset (1963), Dow Chemical (1983), Kis France (1989), and 'Arī (1990), alongside Egyptian and Jordanian judicial decisions, selected ICC awards concerning non-signatory participation, and two anonymized IICRA awards addressing Sharia public-order challenges.^{19,20,21,22}

To complement the doctrinal analysis, the study undertakes a purposive review of fifty arbitration clauses drawn from SEC EDGAR filings involving MNCs operating in the MENA region, model clauses published by the ICC, IICRA, and DIFC, and publicly available contractual documents. The review examines arbitral institutions, arbitration seats, governing law provisions, references to Sharia or public order, and contractual limitations on party autonomy. The purpose is not to generate statistically representative findings but rather to identify contemporary drafting patterns and provide a practical context for the doctrinal analysis. Sharia compatibility is evaluated through a hierarchical normative framework grounded in *uṣūl al-fiqh* and *qawā'id fihiyyah*, distinguishing between

Arbitration, UN Doc. A/40/17, Annex I (1985), https://digitallibrary.un.org/record/622718/files/UNCITRAL_Model_Law.pdf; IICRA Award No. 2022-09/B (International Islamic Centre for Reconciliation and Arbitration (IICRA) 2022).

¹⁹ Gosset; "Dow Chemical v. ISOVER, Judgment of the Paris Court of Appeal, 21 Oct 1983," accessed May 19, 2026, <https://jusmundi.com/en/document/decision/fr-1-dow-chemical-france-2-the-dow-chemical-company-3-dow-chemical-ag-4-dow-chemical-europe-v-isover-saint-gobain-arret-de-la-cour-dappel-de-paris-friday-21st-october-1983>; *Kis France*.

²⁰ *Egyptian Court of Cassation Appeals 4729 & 4730/72*; Decision No. 1783/2010 (Jordanian Court of Cassation (Legal Panel) October 6, 2010).

²¹ ICC Award No. 1434/1975, 1976 *Journal du Droit International (Clunet)* 973 (International Chamber of Commerce (ICC) Arbitration 1975), https://www.trans-lex.org/196143/_/derains-yves-note-to-icc-award-no-1434-clunet-1976-at-982-et-seq/; ICC Award No. 4131/1982, 1983 *Journal du Droit International (Clunet)* 899 (International Chamber of Commerce (ICC) Arbitration 1982), https://www.trans-lex.org/204131/_/icc-award-no-4131-ya-1984-at-131-et-seq/; ICC Award No. 5721/1990, 1991 *Journal du Droit International (Clunet)* 1020 (International Chamber of Commerce (ICC) Arbitration 1990), <https://jusmundi.com/en/document/decision/en-icc-case-ndeg5721-final-award-in-case-ndeg-5721-extract>; ICC Award No. 6673/1992, 1992 *Journal du Droit International (Clunet)* 992 (International Chamber of Commerce (ICC) Arbitration 1992), https://www.trans-lex.org/206673/_/icc-award-no-6673-clunet-1992-at-992-et-seq/.

²² IICRA Award No. 2021-17/A (International Islamic Centre for Reconciliation and Arbitration (IICRA) 2021); IICRA Award No. 2022-09/B.

qaṭ'ī rules, ḥannī rules, and maqāṣid al-Sharia.^{23,24,25} The principal maxims applied are al-'āqid sharī'at al-muta'āqidayn, al-'ibrah bi al-maqāṣid wa al-ma'ānī lā bi al-alfāz wa al-mabānī, al-darar yuzāl, and al-'ādah muḥakkamah.²⁶ For each doctrinal issue, the analysis first identifies the positive-law rule, then evaluates its compatibility with definitive Sharia principles, and, where necessary, formulates a reconciled rule, taking into account the constitutional and public-order status of Sharia in the selected jurisdictions.²⁷ The study is limited to international commercial arbitration, relies partly on published excerpts of ICC awards and anonymized IICRA awards, and utilizes a purposive rather than representative sample of arbitration clauses.²⁸ Consequently, its conclusions are primarily directed toward transnational commercial arbitration within the MENA region, where Sharia public-order considerations remain relevant.

RESULTS AND DISCUSSION

The results of the doctrinal comparative study and review of examples of arbitral agreements in relation to each of the research questions are presented in this section. In relation to each principle, separability, applicability to non-signatory companies, and applicable law, the rules according to positive law under French, Egyptian, Jordanian, Saudi

²³ Imam Syafi'i et al., *Harmonization of Islamic Law and Local Wisdom: A Methodological Reconstruction of Ijtihad in Family Law Based on Yusuf al-Qaradawi's Istinbāṭ Approach*, January 24, 2026, <https://doi.org/10.5281/ZENODO.18359276>.

²⁴ Mohamad Ridhuan Mohd Zawawi et al., "Rethinking Hisbah and Sharia Proceduralism: A Comparative Approach to Justice in Contemporary Islamic Law," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 234-268, <https://doi.org/10.32332/milrev.v4i1.10391>.

²⁵ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008), <https://doi.org/10.2307/j.ctvkc67tg>; Mohammad Hashim author Kamali, *Principles of Islamic Jurisprudence*, with Internet Archive (Cambridge, United Kingdom: The Islamic Texts Society, 2003), <http://archive.org/details/principlesofisla0000kama>.

²⁶ Jalāl al-Dīn Al-Suyūṭī, *Al-Ashbāh wa al-Nazā'ir* (Dār al-Kutub al-'Ilmiyyah, 1990), <https://shamela.ws/book/21719>.

²⁷ Constitution of the Arab Republic of Egypt, Article 2 (2014), <https://sis.gov.eg/media/67726/dustor-eng.pdf>; Constitution of the Hashemite Kingdom of Jordan, Article 2 (1952), https://istd.gov.jo/EBV4.0/Root_Storage/EN/EB_Pages/Constitution_of_the_Hashemite_Kingdom_of_Jordan.pdf; Constitution of the United Arab Emirates, Article 7 (1971), https://www.difccourts.ae/application/files/3115/9465/4789/United_Arab_Emirates_2004.pdf; Basic Law of Governance, Article 1 (1992), <https://www.acerislaw.com/wp-content/uploads/2021/03/Saudi-Arabia-Basic-Law-of-Governance.pdf>.

²⁸ ICC Award No. 1434; ICC Award No. 4131; ICC Award No. 5721.

Arabian, and UAE laws will be presented. Thereafter, their compatibility with the principle of Sharia public order is assessed using the hierarchy approach (*qaṭʿī, ḡannī, maqāḡsid*).

Separability of the Arbitration Clause: Positive Law Findings

The separability principle states that the arbitration agreement is separate and autonomous from the rest of the contract; hence, invalidity, annulment, or termination of the rest of the contract does not necessarily affect the arbitration agreement.²⁹ However, according to Zarra, separability should not be completely divorced from the validity of the arbitration agreement, especially when public policy principles are involved.³⁰ Additional scholarly research on England, China, and the UNCITRAL Model Law provides evidence of the separability doctrine's international prevalence, despite ongoing controversy over its scope and boundaries.³¹

It was provided for by French law through Gosset (1963) and in Article 1447 of the Code of Civil Procedure.³² The Egyptian Arbitration Law (Art. 22) and Jordanian Arbitration Law (Art. 22) utilize the approach used under the Model Law, where the separation between the arbitral agreement and the main contract provides that the arbitration agreement will survive even in the case of nullity of the main agreement.³³ Both Saudi Arabia's Arbitration Law (Art. 22) and UAE Federal Law No. 6 of 2018 (Art. 23) have the same provision.³⁴ According to Al-Serhan, UAE courts have followed the separability doctrine despite the absence of clear guidelines.³⁵

²⁹ Gary B. Born, *International Commercial Arbitration*, 3rd ed. (Kluwer Law International, 2021), <https://law-store.wolterskluwer.com/s/product/international-commercial-arbitration-3e-3-volume-set/01t4R00000OkdUZQAZ>.

³⁰ Giovanni Zarra, "Separability and the Law Applicable to the Substantive Validity of Arbitration Agreements," *Journal of International Arbitration* 41, no. Issue 1 (2024): 29–50, <https://doi.org/10.54648/JOIA2024002>.

³¹ Goh, "Separability Doctrine."

³² Gosset; French Code of Civil Procedure.

³³ Egyptian Arbitration Law, Law No. 27 of 1994; Jordanian Arbitration Law, Law No. 31 of 2001.

³⁴ Saudi Arbitration Law; UAE Arbitration Law.

³⁵ Bakr A. F. Al-Serhan, "The Separability of Arbitration Agreement in the Emirati Law," *Arbitration International* 32, no. 2 (2016): 313–330, <https://doi.org/10.1093/arbint/aiv073>.

The sample analysis of 50 multinational contracts reveals that 46 contracts (92%) either explicitly include a separability provision or make an indirect reference through institutional provisions. For instance, according to the Model Arbitration Clause (2021) of the International Chamber of Commerce, the arbitral tribunal is empowered to decide objections relating to the “existence, validity or scope of the arbitration agreement.”³⁶ The results of the comparative analysis clearly show that the main contemporary problem does not lie in acknowledging separability, but rather in maintaining its absolute character in the face of Sharia rules of obligatory nature. The contradiction indicates the necessity of developing an approach that would preserve the efficiency features of contemporary arbitration while, at the same time, acknowledging the validity of Sharia prohibitions.

Sharia Compatibility Evaluation

In light of this hierarchical approach, the criterion of separation depends on the rule that says that *al-‘ibrah bi al-maqāṣid wa al-ma‘ānī lā bi al-alfāz wa al-mabānī* (substance over form).³⁷ It is used to distinguish between the procedural agreement for arbitration, which settles any dispute arising out of another substantive agreement, and the substantive agreement itself.³⁸ There is no *qaṭ‘ī* (definitive) rule in the Qur’an and Sunnah against the separation of the procedural from the substantive agreement. On the other hand, the general rule requiring the fulfillment of contracts (Qur’an 5:1) must be observed by each separate contract. However, an important exception can be made: When the main contract is invalid due to a violation of a *qaṭ‘ī* Sharia prohibition, such as *ribā* (interest), *maysir* (gambling), or the trade in alcohol, the arbitration agreement shall be deemed null and void.³⁹ This represents the principal point of divergence between positive law and Sharia. According to the doctrinal literature, the issue is whether separability must be treated as an

³⁶ International Chamber of Commerce, *ICC Arbitration Rules* (2021), <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/>.

³⁷ Al-Suyūṭī, *Al-Ashbāh wa al-Naẓā’ir*.

³⁸ Mahmood Alaloosh et al., “Securing Digital Trade: A Techno-Legal Analysis of E-Commerce Safeguards in Iraq’s Regulation No. 4/2025,” *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 44–60, <https://doi.org/10.5281/zenodo.18452737>.

³⁹ Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī* (Maktabat al-Qāhirah, 1968), 6:89–92, <https://shamela.ws/book/8463>.

absolute legal fiction wholly unconnected to the validity of the main contract.⁴⁰ Under French, Egyptian, Jordanian, Saudi, and UAE laws, even a void agreement does not impact the arbitration agreement.⁴¹ In the same regard, Dewan & Chandrashekar observe that recent developments in arbitration doctrine have expanded the concept of separability beyond its justification grounds, especially when the underlying agreement is fundamentally invalid.⁴²

In light of the above-tiered approach, an absolute prohibition (*qaṭʿī*) renders the entire contract unlawful, including the arbitration agreement, since the arbitration agreement itself arises from the contracting parties' consent to enter into a valid relationship.⁴³ The objectives (*maqāṣid*) of safeguarding wealth and family, therefore, cannot be achieved by enforcing the arbitration agreement about the transaction declared entirely invalid by Sharia.⁴⁴ It is suggested that the rule of separability should be fully recognized in respect of those contracts which are either *ṣaḥīḥ* or *fāsid*, but not in the case of the *bāṭil* contract, which involves violation of a *qaṭʿī* prohibition. Such a position is in accord with that of the Hanbalites, who make a distinction between void and voidable contracts; most modern Arab arbitration laws have not made this distinction to date.⁴⁵

Extension of Arbitration to Non-Signatory Group Companies: Positive Law Findings

The “group of companies” doctrine, developed by French courts, allows the binding effect of an arbitration agreement on non-signatory affiliates of the group when the group's economic unity and common intention justify disregarding the affiliates' separate legal

⁴⁰ Simon Camilleri, “Sense And Separability,” *International and Comparative Law Quarterly* 72, no. 2 (2023): 509–525, <https://doi.org/10.1017/S0020589323000131>.

⁴¹ Born, *International Commercial Arbitration*, 802–805.

⁴² Nakul Dewan and Sathvik Chandrashekar, “Stretching Separability to Its Yield Point,” *Arbitration International* 41, no. 3 (2025): 535–564, <https://doi.org/10.1093/arbint/aiae050>.

⁴³ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuhu*, 4th ed. (Dār al-Fikr, 2018), 5:450–52.

⁴⁴ Tunis Abu Bakr Rahman et al., “Legal and Sharia Analysis of Commercial Paper Discounting and Islamic Banking Finance Alternatives,” *Nusantara: Journal of Law Studies* 5, no. 1 (2026): 84–101, <https://doi.org/10.5281/zenodo.18676735>.

⁴⁵ ‘Alī ibn Sulaymān Al-Mardāwī, *Al-Inṣāf*, vol. 8 (Dār Ihya’ al-Turāth, 1998), <https://shamela.ws/book/21609>.

entities.⁴⁶ In the case of Dow Chemical (1983), the Paris Court of Appeal applied the clause to the parent company and one of the non-signatory affiliated companies, given their direct involvement in negotiations, the execution, and termination of agreements.⁴⁷ As for the Kis France case (1989), it was based on common management and financial control.⁴⁸ The Swiss Federal Tribunal (1979) and the Egyptian Court of Cassation (2004) have been stricter in that matter.⁴⁹

In the example contract analysis, of the 50 contracts analyzed, 12 (24%) had provisions regarding affiliates, while 38 (76%) lacked such provisions. Of the 12 with such provisions, 8 referred to the ICC or IICRA, which grant permission for the application of the group of companies principle through their arbitration procedures.⁵⁰ The parallel also highlights the current conflict between the expansion of arbitration law and the requirement for consent under Sharia. The new approach attempts to address this problem by balancing business considerations while restricting the extension of an arbitration agreement to cases justified by participation, fraud, or abuse.

Sharia Compatibility Evaluation

The general principle for contracts in Islamic law is that of privity; namely, “*al-‘āqid sharī‘at al-muta‘āqidayn*” meaning “the contract is the law of the contracting parties”.⁵¹ While the Qur’an instructs the faithful to discharge the obligations placed upon them (Qur’an 5:1), such obligations apply only when the person chooses to accept them. The

⁴⁶ Emmanuel Gaillard, “The Group of Companies Doctrine in International Arbitration,” in *Liber Amicorum Pierre Lalive* (Helbing & Lichtenhahn, 2013), 223–239, <https://www.abeebooks.com/LALIVE-Pierre-%25C3%2589tudes-droit-international-lhonneur/32268598210/bd>.

⁴⁷ *Dow Chemical v. ISOVER Saint Gobain*.

⁴⁸ *Kis France*.

⁴⁹ Decision of 10 October 1979, 1980 *Journal du Droit International* (Clunet) 581 (Swiss Federal Tribunal 1979); *Egyptian Court of Cassation Appeals 4729 & 4730/72*.

⁵⁰ International Chamber of Commerce, *ICC Arbitration Rules*; International Islamic Centre for Reconciliation and Arbitration, *IICRA Arbitration and Reconciliation Rules* (International Islamic Centre for Reconciliation and Arbitration, 2022), <https://iicra.com/download/iicra-arbitration-and-reconciliation-rules/>.

⁵¹ Al-Suyūṭī, *AlAshbāh wa al-Nazā‘ir*.

extension of contractual duties to a third party is an exception based on specific grounds, such as *al-darar yuzāl* and *ghishsh*.⁵²

One such example in which there was an application of the exception is the case involving France, known as 'Arī (1990). In the latter, the court tore apart the concept of corporate personality due to fraud committed by a Saudi businessman who conducted maritime business through shell companies.⁵³ According to Sharia law, a case of this sort does not merit legal protection due to the fraudulent conduct. Nonetheless, the absence of evidence regarding the aforementioned facts makes application of the rule difficult. The restrictive approach adopted by the Egyptian Court of Cassation (2004) in not binding the parent company, since it was neither a party nor involved in performance, is in line with the general caution in Islam against extending contractual liabilities beyond those who have consented.⁵⁴

As Jordan's Al Maaiteh (2024) noted, the court's reluctance to include non-signatory third parties to an arbitration clause in the absence of fraud and an agent is in line with the concept of privity as stipulated by Jordanian and Sharia law.⁵⁵ The IICRA awards analyzed, in both redacted cases, required the third party to have expressly consented (for example, through a group arbitration policy) or to have behaved in a manner that would constitute an abuse of rights not to arbitrate (*ta'assuf fī isti'māl al-ḥaqq*).⁵⁶ Thus, the harmonized rule is that extension will only occur in circumstances where there is proof of fraud or abuse in the creation of the corporate entity, actual involvement of the party not signing the agreement in the bargaining or execution of the contractual obligations, or

⁵² Abdulrahman Yahya Baamir, *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia* (Routledge, 2016), <https://www.routledge.com/Sharia-Law-in-Commercial-and-Banking-Arbitration-Law-and-Practice-in-Saudi-Arabia/Baamir/p/book/9781138277069>.

⁵³ 'Arī, 1992 Revue de l'arbitrage 95 (Paris Court of Appeal 1990), https://www.academia.edu/33427131/Circulation_of_the_international_arbitration_clause_French_and_Swiss_cases.

⁵⁴ Egyptian Court of Cassation Appeals 4729 & 4730/72.

⁵⁵ Yazan Al Maaiteh, "Joining Non-Signatory Third Parties to Arbitration Agreements in Jordan," *Journal of International Arbitration* 41, no. Issue 6 (2024): 745–68, <https://doi.org/10.54648/JOIA2024033>.

⁵⁶ IICRA Award No. 2021-17/A.

express or implied consent to arbitration among other members of the group. The mere economic interrelationship between the parties is not enough.

Applicable Law to the Arbitration Agreement: Positive Law Findings

The autonomy of parties is the basis for the choice of law in arbitrations.⁵⁷⁵⁸ Modern arbitrations have also been identified as possessing the autonomy of the parties and procedural flexibility as their core elements.⁵⁹ In recent times, legal doctrine scholars have emphasized that the identification of the law governing the arbitration agreement would differ from the substantive contract law and procedural law of the seat of arbitration.⁶⁰

Article 1496 of the French Code of Civil Procedure gives the arbitration tribunal authority to apply the law agreed upon by the parties or, in the absence of such an agreement, the law which it considers applicable, bearing in mind the practices of trade.⁶¹ This is virtually identical to Article 28 of the UNCITRAL Model Law and Article 36 of the Jordanian Arbitration Law, under which the arbitral tribunal applies the law chosen by the parties or, in the absence of such choice, the law it determines to be applicable under its conflict-of-laws rules.⁶² Saudi Arabia's Arbitration Law (Art. 38) and UAE Law No. 6/2018 (Art. 39) share the principle that the parties may choose the applicable law, provided it does not violate Sharia.⁶³

Recently published literature on UAE arbitration law emphasizes the ongoing controversy between the principles of autonomy in modern arbitration and mandatory

⁵⁷ Abdul Hakim Pratama et al., "The Position of Choice of Forum and Alternative Dispute Resolution Principles in Contemporary Sharia-Based Property Dispute," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 184–207, <https://doi.org/10.32332/milrev.v4i1.10140>.

⁵⁸ Rana Saad Shakar et al., "Balancing National Sovereignty: The Impact of Bilateral Investment Treaties on Contemporary Islamic Economic Law," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 31–63, <https://doi.org/10.32332/milrev.v4i1.10265>.

⁵⁹ A. Alsharqawi et al., "International Arbitration: Law and Practice under Dispute Settlement Understanding," *Journal of Legal, Ethical and Regulatory Issues* 23, no. 6 (2020): 1–9.

⁶⁰ Hilary HW So, "Lex Contractus Arbitratus: A Critical Evaluation of Doctrine, Policy, and Law," *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 91, no. 1 (2025), <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\AMDM\AMDM2025002.pdf>.

⁶¹ French Code of Civil Procedure.

⁶² UNCITRAL Model Law; Jordanian Arbitration Law, Law No. 31 of 2001.

⁶³ Saudi Arbitration Law; UAE Arbitration Law.

limitations imposed by Sharia public policy requirements in the Gulf region.⁶⁴ The recently conducted stakeholder analysis of UAE arbitration law indicates that the current framework is considered efficient enough to address complex commercial arbitrations, but legal certainty and public policy constraints remain problematic.⁶⁵

The analysis of 50 contracts reveals that only 41 (82%) had an explicit choice of law, with the following options: English law (20 cases, 40%), Swiss law (8 cases, 16%), and the law of the arbitration seat (10 cases, 20%). In addition, only 3 contracts (6%) had the option of Sharia law as the governing law, and 7 contracts (14%) were governed by the law of MENA countries, i.e., "laws of Saudi Arabia without prejudice to Sharia." This may be explained by the persistence of transnational business conventions, along with international companies' preference for adopting legal systems recognized across the international community, such as English or Swiss law. This also indicates that arbitration is more likely to try and deal with issues arising from the Sharia indirectly via public policy measures than by directly applying Sharia law.

Current trends in Saudi Arabia and the UAE are especially important because both legal jurisdictions have successfully positioned themselves as regional centers of arbitration while maintaining the importance of Sharia-based norms of public order.^{66,67} These developments provide evidence of an emerging trend in which international arbitral standards have become increasingly reconcilable with national law without compromising Sharia-based norms. The modern issue, then, lies not in questioning the existence of party autonomy, but in how it must function when the expectations of international business

⁶⁴ Aymen K. Masadeh and Ahmed Alozn, "Contemporary Issues of Arbitration under UAE Law," *Arab Law Quarterly* 40, nos. 1-2 (2024): 157-173, <https://doi.org/10.1163/15730255-bja10175>.

⁶⁵ Adel Salem Allouzi et al., "Assessing Stakeholder Perceptions of the Effectiveness of the UAE Arbitration Law in Resolving Off-Plan Real Estate Disputes in Dubai," *Social Sciences & Humanities Open* 12 (2025): 102090, <https://doi.org/10.1016/j.ssaho.2025.102090>.

⁶⁶ Muhammad Azam et al., "Contemporary Trade Governance and Cross-Border Data Flows: A Comparative Study of Shari'ah Principles and International Legal Frameworks," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 686-721, <https://doi.org/10.32332/milrev.v5i1.13387>.

⁶⁷ Sahat Maruli Tua Situmeang et al., "Contemporary Human Rights Safeguards in Islamic Law Justice: A Comparative Study in Indonesia, Saudi Arabia, and Egypt," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 575-610, <https://doi.org/10.32332/milrev.v5i1.13066>.

collide with mandatory Sharia public policy. The aggregate method, as suggested by this research, would consider both aspects by retaining the chosen law whenever possible and excising any portion that contradicts Sharia law.

Sharia Compatibility Evaluation

"*Al-'āqid sharī'at al-muta'āqidayn*" (the contract is the law of the contracting parties) recognizes and supports party autonomy in determining the law applicable to the agreement, provided that such law does not contradict any *qaṭ'ī* ruling of Sharia.⁶⁸ For instance, the prohibition against *ribā* and *maysir* in verses 2:275 and 5:90, respectively, are *qaṭ'ī* rulings of Sharia. This means that, if the parties to an agreement select English law, *ribā* and *maysir* will not be enforced.

In a similar vein, Farah and Hattab held that the use of Sharia principles of finance for the settlement of international commercial disputes calls for distinguishing between fundamental prohibitions (such as *ribā*, *gharar*, and *maysir*) and legitimate commercial activities, and hence supports the cumulative approach proposed in this paper.^{69,70} However, the entire law need not be disregarded. The *maqāṣid* approach supports a cumulative/severance approach: "The law should be followed in all other cases except where it runs counter to a *qaṭ'ī* (definitive) ruling in Sharia; on *ṣaḥnī* issues where disagreement existed among the classical jurists, the chosen law should be given

⁶⁸ Kamali, *Principles of Islamic Jurisprudence*.

⁶⁹ Ahmad Q. Farah and Rasha M. Hattab, "The Application of Shari'ah Finance Rules in International Commercial Arbitration," *Utrecht Law Review* 16, no. 1 (2020): 117-139, <https://doi.org/10.36633/ulr.592>.

⁷⁰ Reni Anggriani et al., "Agreement of Waqf in Indonesia and Malaysia: Harmonisation with Quranic Principles and Modern Legal Frameworks," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (2025): 231-55, <https://doi.org/10.18326/ijtihad.v25i2.231-255>.

preference".^{71,72} This approach is supported by the IICRA Arbitration Rules, which states that "the Tribunal shall apply the law chosen by the Parties except as modified herein."⁷³

Where there is no express choice on the part of the parties, according to Fernandez Rozas, the lack of an express choice on the part of the parties continues to be one of the major contentious areas in modern arbitration jurisprudence, especially in relation to whether the arbitrators should give preference to the law of the place of arbitration, the law governing the contract, or the law that has the closest connection with the arbitration agreement.⁷⁴ This follows the assertion by El Maknouzi et al.⁷⁵ Therefore, it is inappropriate to apply the law of the seat or the most closely related law without regard to Sharia compliance. Rather, it is better first to consider whether there exists an issue that can be termed *qaṭʿ* in Sharia and then apply the appropriate Islamic law; otherwise, apply the most closely related law with consideration to international business practice (*al-ʿādah muḥakkamah*), provided that it does not contradict Sharia. This is what Baamir terms the "tiered default rule."⁷⁶

Operationalizing the Reconciled Framework in Contemporary Arbitration Practice

The suggested approach in this research provides an established system to resolve any potential conflicts between modern arbitration doctrines and Sharia public order. According to this model, the arbitrators will have to ascertain the law governing the arbitration agreement and apply it in accordance with ordinary standards of party autonomy. It will then be determined if applying the law would result in consequences that conflict with a definitive (*qaṭʿ*) Sharia prohibition. In the absence of any conflict, the law

⁷¹ Auda, *Maqasid AlShariah as Philosophy of Islamic Law*.

⁷² Istianah Zainal Asyiqin et al., "From Hybrid Contracts to Waqf-Musyarakah-Based Takaful: A Maqāṣid al-Syarī'ah Comparative Legal Analysis of Indonesia and Malaysia," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (2026): 61-81, <https://doi.org/10.31958/juris.v25i1.13147>.

⁷³ International Islamic Centre for Reconciliation and Arbitration, *IICRA Arbitration Rules*.

⁷⁴ José Carlos Fernández Rozas, "Ley Aplicable al Convenio Arbitral En Ausencia de Elección Expresa de Las Partes," *Cuadernos De Derecho Transnacional* 16, no. 2 (2024): 646-673, <https://doi.org/10.20318/cdt.2024.8936>.

⁷⁵ El Maknouzi et al., "Islamic Commercial Arbitration and Private International Law."

⁷⁶ Baamir, *Shari'a Law in Commercial and Banking Arbitration*.

is to be applied as-is without making any changes. If a conflict arises, only the offending component is to be severed from the rest, which will remain intact and be implemented accordingly. In proceedings concerning the recognition and enforcement of an award, judges will have to make a distinction between conflicting and non-conflicting provisions of the arbitration agreement according to Sharia public order.

Summary of Comparative Findings Across Jurisdictions

The following table summarizes the compatibility of each doctrine with Sharia public order across the five jurisdictions, based on the tiered framework and the illustrative analysis. The table includes the data sources from the statutes, case law, and contract review.

Table 1 :Compatibility of Arbitration Doctrines with Sharia Public Order by Jurisdiction

No.	Doctrine	France (Secular Model)	Egypt & Jordan (Hybrid Civil Law Model)	Saudi Arabia & UAE (Sharia- Influenc ed Arbitrati on Model)	Degree of Normative Conflict	Harm onizat ion Mode l	Proposed Reconciled Rule
1	Separability	Fully recognized irrespective of the validity of the main contract	Recognized, but potentially limited by Sharia public-order considerations	Recognized, subject to Sharia public-order review	Moderate	Conditional Recognition	The arbitration agreement remains separate except where the underlying contract is <i>bāṭil</i> due to a <i>qaṭʿ</i> prohibition.
2	Extension to Non-Signatories	Permitted based on economic unity and common intention	Generally restricted to consent, participation,	Generally restricted to consent, participation, agency, or fraud	High	Restricted Extension	Privity remains the default rule; extension permitted only upon fraud, active

			agency, or fraud				participation, or express/implied consent.
3	Party Autonomy (Choice of Law)	Broad party autonomy with minimal substantive limitations	Party autonomy is recognized d but constrained by Sharia public order	Party autonomy is recognized, subject to explicit Sharia-based limitations	Moderate to High	Cumulative/ Severance Approach	Parties may choose applicable law, but provisions conflicting with <i>qaṭʿī</i> Sharia rules are severed or disregarded.

Data Source: Statutory analysis of Jordanian Arbitration Law No. 31/2001, Egyptian Law No. 27/1994, French Code of Civil Procedure arts. 1447, 1496, Saudi Royal Decree M/34 arts. 22, 38, UAE Federal Law No. 6/2018 arts. 23, 39; case law: Gosset (1963), *Dow Chemical* (1983), *Kis France* (1989), *Arī* (1990), Egyptian Court of Cassation Appeals 4729 & 4730/72 (2004); IICRA Arbitration Rules (2022); illustrative contract review of 50 MNC clauses (SEC EDGAR filings, model clauses, supplier codes).

Theoretical Implications and Predictive Observations

There are three main theoretical implications of these findings. First, the principle of separability requires a Sharia-specific exception not recognized in secular legal systems: a contract invalid under Sharia law cannot contain an arbitration clause. Thus, one could argue that the universal applicability of the concept of separability is questionable, and Arab arbitration laws must introduce a "*bāṭil* exception." Second, the group-of-companies doctrine, when applied in Arab legal environments, needs to be qualified to safeguard privity. The example set by IICRA may prove helpful in doing so.

Third, party autonomy of choice of law not only represents procedural freedom but is also limited by the Sharia public order rules. As a result, arbitral awards based on laws permitting *ribā* will likely be invalidated or unenforceable in the GCC countries, Egypt, and Jordan, except for those that distinguish between lawful and unlawful aspects. This

conjecture is consistent with Aldhafeeri's findings, which indicate that Sharia is part of the GCC's public policy.⁷⁷ Such enforcement challenges have been noted in cross-jurisdictional comparisons of the recognition of Sharia awards, particularly regarding their compatibility with public policy abroad and compliance with the New York Convention criteria.⁷⁸

Likewise, Abdallah, while identifying Sharia as a component of public policy in GCC jurisdictions, is optimistic that this does not mean foreign awards cannot be enforced; rather, they are enforceable in part only after severing their illegal components, such as interest. This aligns with the proposed cumulative approach.⁷⁹ Furthermore, beyond the MENA region, the research also sheds light on discussions regarding legal pluralism, public policy beyond national borders, and the harmonization of international arbitration law. The suggested model shows how multiple normative structures may coexist in international arbitration without achieving full harmonization. The relationship between international arbitration principles and Sharia public order rules has exemplified this particular topic.

CONCLUSION

This study focused on the law governing the arbitration agreements in international business arrangements involving France, Egypt, Jordan, Saudi Arabia, and the UAE, analyzing the applicability of three major legal doctrines relative to Sharia public policy via a classification of rules into *qaṭʿī* (definitive) and *ẓannī* (speculative) rules. The findings provide clear answers to the three research questions. Regarding the separability doctrine, it is generally acceptable under Sharia, as per the maxim *al-ʿibrah bi al-maqāṣid* (substance over form). Nevertheless, there is one significant exception to the rule. If the agreement in which the clause was made is *bāṭil* due to its violation of a *qaṭʿī* prohibition (*ribā*, *maysir*), then the separability rule shall not apply. This is unlike secular laws that allow for separability even in cases of void agreements. As regards its application to non-signatory

⁷⁷ Aldhafeeri, *The Public Policy Exception to The New York Convention*.

⁷⁸ Abdul Jamil et al., "Recognition and Enforcement Of Indonesian Sharia Arbitration Awards In Foreign Countries: Challenges And Opportunities," *IIUM Law Journal* 31, no. 1 (2023): 309-332, <https://doi.org/10.31436/iiumlj.v31i1.827>.

⁷⁹ Amel K. Abdallah, "Islamic Sharia and Arbitration in GCC States: The Way Ahead," *International Review of Law* 9, no. 2 (2021): 318-336, <https://doi.org/10.29117/irl.2020.0114>.

subsidiaries, the concept of Sharia privity, known as (*al-'āqid sharī'at al-muta'āqidayn*), remains the governing rule. To avoid deceit or injury, the rule that extension may be allowed only if specific criteria are met applies, including the non-signatory party's actual participation. The economic unity requirement is not sufficient on its own.

As to the role of party autonomy in choice of law, there is one rule that provides for full party autonomy except in one area, namely, if there is a conflict between the agreed-upon law and the *qaṭ'ī* prohibition from Sharia. Using the cumulative approach preserves party expectations while maintaining compliance with mandatory Sharia limitations. Where the parties fail to agree on which law to use, the suggested hierarchical rule requires arbitrators to apply Islamic law where the issue is *qaṭ'ī* and otherwise the connected law.

More broadly, the study shows that while there is no absolute incompatibility between the two, there remains an avenue for their harmonization through their tiering system, which addresses issues such as *qaṭ'ī* prohibition, *ẓannī* issues, and *maqāṣid*. Regarding this achievement, it must be noted that this research not only resolves conflicting interests but also provides a model for applying certain norms in arbitral tribunal proceedings when issues arise concerning the incompatibility between party autonomy and Sharia public-order provisions. Of all the doctrines analyzed above, the issues of non-signatory parties' participation in an arbitration agreement and of party autonomy in selecting the law are the most crucial areas of conflict between arbitration practice and the Sharia contract doctrine of privity. It is within such a conflict that the proposed solution aims to reconcile merchants' expectations and ensure respect for Sharia principles in situations that mandate it.

Future research could expand the scope of the examination by including other samples of arbitration clauses, further analysis of IICRA and commercial arbitration awards, review of court and tribunal practice as to the application of the distinction between *qaṭ'ī* and *ẓannī* rules, and evaluation of the functioning of the suggested harmonization framework in recognition and enforcement actions in the GCC states. This will not only close the gap between theory and practice but also test the applicability of the

proposed harmonization model. The study demonstrates that a principled approach to the three doctrines enables their reconciliation with Sharia public order and achieves legal certainty for multinational corporations conducting business activities in the MENA.

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AUTHOR CONTRIBUTIONS STATEMENT

GA and MS contributed to the conceptualization of the study, the development of the research framework, the comparative legal analysis, and the drafting of the manuscript. AA contributed to the analysis of arbitration law, the interpretation of comparative jurisprudence, and the critical revision of the manuscript for intellectual content. MJ contributed to the Sharia legal analysis, doctrinal interpretation, methodology design, and final review of the manuscript. All authors participated in reviewing, editing, and approving the final version of the manuscript prior to submission.

CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest regarding the publication of this article. The authors have no financial, professional, personal, or institutional relationships that could have influenced the research design, data collection, analysis, interpretation of the findings, or the decision to publish the results.

AI USAGE STATEMENT

The authors declare that artificial intelligence (AI)-assisted tools were used solely to improve the language quality, grammar, readability, and overall clarity of the manuscript. All conceptual development, research design, data collection, analysis, interpretation of

findings, and the final intellectual content of the manuscript were conducted exclusively by the authors. The authors have carefully reviewed and take full responsibility for the accuracy, originality, and integrity of the work presented in this article.

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