THE CENTRE IN BRIEF

In December 1993, during the 14th GCC summit in Riyadh - Saudi Arabia, the Leaders of the GCC states laid down the first fundamental brick of the GCC Commercial Arbitration Centre by being gracious enough to adopt the Charter of the Centre.

The Charter of the Centre came into effect three months after being adopted by the Supreme Council of Co-operation Council of the Arab States of the Gulf (the Summit).

Based on the basic principles of the Charter the “Arbital Rules of Procedure” for the Centre has been prepared by legal experts from the GCC States.

The said Rules came into effect immediately after being ratified by the GCC Commercial Co-operation Committee (Ministers of Commerce in the GCC States) in November 1994.

In March 1995 it was officially announced that the Centre had become fully functional and ready to fulfil its duties.

The offices of the Centre located at the 4th floor of the Bahrain Chamber of Commerce building. The Panel of Arbitrators at the Centre consists of around 370 arbitrators who have been nominated by all Chambers of Commerce & Industry in the GCC States. The number of the Panel is rapidly increasing.

The preparation of another Panel (Panel of Experts) is undergoing now and will be ready soon.

The distinguished experts would assist the Arbitration Tribunal, if needed, in some specific/technical and specialized matters.

MESSAGE FROM THE CHAIRMAN

We would like to present before our readers the first edition of this bulletin eight months after the official announcement of the commencement of this centre. It is our first experiment which we are undertaking with confidence.

Though such experiment will not be free of obstacles, we will not spare any effort to make this bulletin successful and achieve its objectives.

The main objective of this bulletin is to enlighten the concerned people on the centre’s activities as well as introduce them to the most recent developments in the field of commercial arbitration and its legal aspects in the GCC. This should expand to cover the Arab and international fields.

The importance of issuing such a specialized bulletin is being welcomed by the concerned people as it will address and rectify weakness in certain areas of the commercial and legal activities in the area. This will definitely assist in improving awareness about arbitration and legal matters in the industrial, financial and commercial sectors in the region.

This will also assist in the realisation in such sectors of the importance of arbitration in various commercial and market relations. This is a modest contribution for which we hope to get the required morale support and guidance as well as constructive criticism.

Chairman
Ebrahim Zainal
In accordance with Article (5) of the Centre’s Charter the Centre shall have a Board of Directors which shall consist of six members. The Chamber of Commerce and Industry in each of the GCC States shall nominate one member. The Board shall convene a meeting at least once every six months or whenever such meeting is deemed necessary. Chairmanship of the Board of Directors shall be in rotation in keeping with the practice followed in the GCC meetings. The Board of Directors shall appoint from its members a Deputy Chairman.

Membership of the Board of Directors shall be for a three-year term of office which is renewable once only. Meetings of the Board of Directors shall be held in the host country or in any of the GCC member states, if necessary, upon the summons of the Chairman or Deputy Chairman in the case of the former’s absence. A Board meeting shall not be validly convened except in the presence of at least four of its Members including the Chairman or his Deputy. Resolutions of the Board of Directors shall be adopted by a majority vote of the Members present. In case of an equality of votes, the Chairman shall have the deciding vote [Article (6) of Charter].

According to Article (7) of the Charter the Powers of the Centre’s Board of Directors shall be the following:

(a) Approve the Centre’s financial and administrative regulations.
(b) Appoint the Centre’s Secretary General.
(c) Approve the Centre’s annual budget.
(d) Approve the annual report on the Centre’s activities.

According to Article (8) of the Centre’s Charter “The Centre shall have a Secretary General who shall be a GCC national and shall be appointed by the Board of Directors”. The Board of Directors shall determine his service conditions, duties and entitlements provided that he shall enjoy the required expertise and have specialised knowledge in this field. The Secretary General shall be the Centre’s legal representative in all relations before the law courts, public agencies and private entities.

Mr. Yousif Zain Al-Abeddin M. Zainal the candidate of the Bahrain Chamber of Commerce and Industry has been nominated as the first Secretary General of the Centre effective 1st of January 1995.
ESTABLISHMENT OF THE GCC CENTRE
WELCOMED

The Centre has recently received letters from several International / National Arbitration Institutions welcoming the establishment of the newly-born GCC Centre...

"Thank you for your telefax dated March 9, 1995, announcing the foundation of the commercial arbitration within the GCC member states.

I have taken steps to ensure that our court is aware of this important new development."

Eric A. Schwartz
Secretary General
ICC Int'l Court of Arbitration

"The Establishment of the GCC Commercial Arbitration Centre is an important and welcome development, which will contribute significantly to the promotion of international commercial arbitration. We congratulate you on the achievement of this project and wish your centre every success."

Francis Gurry
Director
WIPO Arbitration Centre

"The Thank you for your letter dated April 9, 1995. We are pleased to learn with great interest of the new establishment of the GCC Commercial Arbitration Centre...

Thank you for your cooperation. We would also like to assure you of our willingness to be of assistance to you.

Hiroshi Hattori
General Manager
Arbitration Department
Japan Commercial Arbitration Association

"May I, on behalf of the Hong Kong International Arbitration Centre, congratulate you on the formation of your new Centre. May we wish you every success in facilitating the resolution of disputes in your region..."

Peter S. Caldwell
Secretary General
Hong Kong International Arbitration Centre
AN INTRODUCTION TO ARBITRATION

By BRIAN W. TOTTERDILL
Consulting Engineer & Arbitrator

When two people sign a contract, they or their companies, agree to carry out certain obligations, in return for which they will receive certain benefits. However, during the execution of the contract there may be problems, either concerning its interpretation, or arising from the application of the contract conditions to a particular situation. If either party feels that they have not received the benefits which they expected, then there may be claims and subsequently a dispute.

Any contract must include provision for the resolution of any such disputes, either by reference to the appropriate courts, or by arbitration. The arbitration may be informal, with the procedures determined by the arbitrator, or the contract may require that it is conducted under the Rules of an established arbitral organisation, such as the GCC Commercial Arbitration Centre.

Arbitration Centres publish rules for the conduct of arbitrations, which provide a framework for the arbitration, to ensure fairness for both parties in accordance with international practice, the applicable law and the customs of the region and trade. Additional requirements may have been agreed by the Parties, either in the contract, or in a separate Arbitration Agreement.

The advantages of referring a dispute to arbitration, rather than to the Courts, are that the Parties retain a greater control over the procedure, can choose their own Tribunal and generally achieve a faster and cheaper resolution of their dispute. However, the speed and cost of resolution will always remain in the hands of the parties and any delaying tactics, by either side, will frustrate this ambition.

The Contract between the parties will generally include specific requirements for the size and method of formation of the Arbitral Tribunal. For international contracts this will normally be a Tribunal of three, with one Arbitrator nominated by each side and the Chairman being either agreed or designated by the Arbitration Centre. This procedure ensures that each side will have Arbitrator of their choice, who will understand the culture of that party. However, the nominated Arbitrators have a duty to be completely independent and to consider the dispute on its merits, without bias towards either side. Arbitration Centres publish lists of Arbitrators, who are available for appointment, either by a party or as Chairman.

When the Tribunal has been established it will control the Arbitration procedures, in accordance with the rules. The parties will explain their point of view, generally by written submissions prepared by their Legal Advisers, followed by response to the opposing submissions. The Tribunal will then call a Hearing, during which they will hear oral presentations, together with evidence from witnesses. This may include both factual and expert evidence. The witnesses may be questioned by the representative of the opposing side and by the members of the Tribunal. The Tribunal may also visit the site of a construction project, or examine other evidence of substance.

During the arbitration proceedings, the parties will generally continue to try and achieve an agreed settlement to their dispute. The Arbitration Rules may allow for an attempt at Conciliation and for the issue of an Award by agreement, to confirm the terms of any settlement.

Having considered all the submissions, the responses and the evidence, the Tribunal will publish its Award. This award is then obligatory on both parties, subject only to any specific exceptions which are permitted by the Arbitration Rules or the applicable law.

Brian W. Totterdill is a Civil Engineer and Arbitrator, with a particular interest in the resolution of disputes by negotiation, conciliation or arbitration. He has many years experience of construction disputes in the Gulf Region.
TALK TO R.I.C.S. BAHRAIN

The Centre has been invited to deliver a talk before the Royal Institute of Chartered Surveyors (R.I.C.S.), Bahrain Branch, on May 16, 1995.

The main objective of the talk for R.I.C.S. members was to have a full understanding of the GCC Arbitration Centre and the role it can play in facilitating the resolution of commercial disputes in the region.

The presentation which has been delivered by Mr. Yousif Zain Al-Abbedin Zainal, the Secretary General of the Centre, was well received by the audience.

Following letters illustrate the impression about the event which proved that the objective of the talk has been achieved.

The Royal Institution of Chartered Surveyors

Hon. Secretary
Malcolm Evans
MBA, M.Sc., FRICS, FCIOB
P.O. Box 25054
Bahrain

R.I.C.S. Bahrain Group

Dear Mr. Zainal,

TALK TO R.I.C.S. ON 16 MAY 1995

I would very much like to thank you for such an interesting programme you put together for us on Tuesday last.

Members present have since expressed that they were impressed with the presentation and informative talk about the newly formed GCC Commercial Arbitration Centre.

I wish you well and success in your role as General Secretary.

The enthusiasm expressed by you makes one feel that one would like to be part of such an exciting new venture.

Thank you once again.

Yours sincerely,

Malcolm Evans
MBA, M.Sc., FRICS, FCIOB
Hon. Secretary
RICS (Bahrain Group)

Yousif Zainal
Secretary General
Gulf Arbitration Centre
P.O. Box 2338
Bahrain

Dear Yousif,

Thank you so much for delivering a most interesting and concise talk before the RICS Bahrain Branch on the evening of 16 May at the Bahrain Banker’s Club. Having chatted with members after the talks I was given the clear impression that the talks were extremely well received and I felt that the questions from the floor demonstrated the level of interest that had been generated.

On behalf of all members of the RICS Bahrain Branch and the committee, I take this opportunity to thank you very much indeed for giving of your valuable time so freely and we are extremely grateful for your participation in the event.

I wish your Centre every best wishes and for its future development. You may be interested to know that I have had several requests for the arbitrator’s registration forms.

No doubt I will see you around the building, in the meantime my best wishes.

Yours sincerely,

Edward Mackaness
For DTZ Debenham Thorpe International
RECOMMENDED ARBITRATION CLAUSE

The Centre encourages and urges all parties willing to inter into commercial agreements to insert or incorporate an arbitration clause as stated in Article 2/2 of the Arbitral Rules of Procedure on the bases of the certainty of the parties on the necessity of inserting / incorporating an arbitration clause from very beginning, in the said contracts, which we believe is the right step to refer the dispute, if it may arise in the future, to arbitration under the Rules and Procedures of the Centre as stated below:-

ARBITRATION CLAUSE IN ACCORDANCE WITH ARTICLE (2/2)
OF THE ARBITRAL RULES OF PROCEDURE AT THE CENTRE

In case of reference to arbitration, it is proposed that the following text be included in the Arbitration Agreement:

"If a dispute arises between the two (or more) parties over the interpretation or application of the agreement (contract), the dispute shall be referred to an Arbitral Tribunal in accordance with the rules and procedures provided for in the Charter of the Commercial Arbitration Centre for the States of the Co-operation Council for the Arab States of the Gulf."

The Centre is a member of IFCAI

The Centre recently become a member of New York based "International Federation of Commercial Arbitration Institutions" (IFCAI). The Centre has been invited to participate in the Seventh General Assembly Meeting of this Federation. The Secretary General of the Centre represented the Centre in this important meeting which took place in Hong Kong on 22/11/95. IFCAI's members consist of 92 institutions in the field of commercial arbitration from all over the world. Meanwhile the centre is seeking to join other international arbitration institutions in the future.

Kindly Address all correspondence to:
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