MESSAGE FROM THE CHAIRMAN

Since the announcement of commencing work at the Centre in March 1995, the centre has managed to achieve well planned steps forward and has strengthened its foundation to be a real regional and International mechanism for settling commercial disputes. It has not been easy to reach various economic sectors and to inform them on the Centre's role and the potential services it can offer to them, especially when we knew that some sectors are until now hesitating in accepting the idea of arbitration as a way for settling their commercial dis-

The Ninth Meeting of BOD of the Centre Doha, (Qatar, 6 Jan. 1997)

Qatar Chamber of Commerce and Industry hosted its premises in Doha on 6th January 97 the 9th meeting of the Board of Directors.

The meeting was chaired by Mr. Khalil Ibrahim Radhwani, representative of the Qatar Chamber of Commerce and Industry, who took over the chairmanship of the Centre from Mr. Ali Bin Khamees Al-Alawi, representative of Oman Chamber of Commerce and Industry. The rotating chairmanship of the Board of Director is in accordance with the G.C.C. rules for the period of one year.

The meeting was attended by all members of the Board representing their respective chambers of commerce in the six G.C.C. member states. The meeting discussed several administrative, financial and organisational is-

Report on WIPO Seminar

on page 3

CONGRATULATIONS TO GCC COMMERCIAL ARBITRATION CENTRE

On behalf of my colleagues at the Department of Trade and Industry of Bahrain, I would like to congratulate the G.C.C. Arbitration Centre on completing its second year of operation. Our congratulations are long overdue. However this formality has not prevented us in commending the valuable work of the Arbitration Centre to British companies working and trading in the Gulf.

The formation of the GCC Arbitration Centre and its international recognition is a welcome antidote to stereotypical attitudes to Commercial Law and its practice in the GCC.

Under the careful stewardship of its General Secretary and our good friend Mr. Yousif Zainal we can only feel optimistic for the future of GCC Commercial Arbitration Centre as a regional resource to increasing confidence and improving the legal climate, which is a vital encouragement to ongoing trade between Bahrain and the G.C.C. countries.

AHMED SULEIMAN
Banking & Finance Dispute Resolution Through Arbitration

Bahrain
April 14 - 15, 1997
The Private Consultative Firms Which Presented a Paper in This Seminar

أسماء المكاتب الاستشارية الخاصة التي ساهمت في تقديم الأوراق في هذه الندوة.

- مكتب د. عيسى عيسى المحمودة
  والمستشارين القانونيين (دولة البرقين)
- Dr. Abbas E. Hilal Law Firm
  Attorneys & Legal Consultants (Bahrain)
  P.O. BOX 1146
  المنامة - البحرين
  FAX: 213003 (973)
  هاتف: 225221

- المركز السوري للإستشارات المالية والخدمات
  (جمهورية سوريا العربية)
  The Syrian Centre For Services & Financial Consultancies (Syria)
  P.O. BOX 16006
  حلب - سوريا
  هاتف: 674577 - 21
  هاتف: 674553

- مكتب محمد خليفة محمود وماستورن
  قانونيون (المملكة العربية السعودية)
  The Law Firm of Majed M. Garoub (Saudi A)
  JIDDAH 21425
  P.O. BOX 189623
  هاتف: 6516269 (9662)
  هاتف: 6531675

- مكتب محمود السعدي والزوج ماهر حمامون وماستورن قانونيون
  (البرقين)
- Al-Mahmood & Zu’bi Attorneys & Legal Consultants (Bahrain)
  P.O. BOX 502
  المنامة - البحرين
  FAX: 224744 (973)
  هاتف: 225151

- مركز الاستشارات القانونية والتجارية
  (جمهورية مصر العربية)
- Legal & Commercial Consultation Centre
  41 Nobar Street, Bobel Louk, Cairo (Egypt)
  هاتف: 202 - 3549334
  هاتف: 202 - 3557899

- مكتب بوتيلر لب (ولايات المتحدة)
- Patton Boggs L. L. P (USA)
  شارع م. 2500 ن. واشنطن دي سي 20037
  2550 M Streer N W - Washington D. C. 20037
  هاتف: 202-576035
  هاتف: 202 457 315

- بالمر كورن (المملكة المتحدة)
  بالمشاركة مع مكتب حسين على ثاني محامون وماستورن قانونيون (البرقين)
- Palmer Cowen Solicitors (UK) With Association with
- Hussain Ali Taqi - Attorney & Legal Advisor
  (Bahrain)
  هاتف: 213343
  هاتف: 213392

- تورتن روز (المملكة المتحدة)
  Norton Rose (UK)
  P.O. Box 20437
  هاتف: 226424
  هاتف: 229810

- مكتب جونز، دي، ريفرس، اليوج (المملكة)
- Jones, Day, Reavis & Pogue (Germany)
  بروك أو هام إل إس 24 506323
  فوكوس، ألمانيا
  Bockenheimer Landstraw 42
  هاتف: 49 49 9726 3939
  هاتف: 49 49 9726 3939

- النسيم ومشارك (المملكة العربية المتحدة)
- Al-Tamimi & Company (UAE)
  P.O. BOX 9275
  دبي - الإمارات العربية المتحدة
  هاتف: 317090
  هاتف: 317090

- مكتب د. حسين ملا محامون وماستورن قانونيون
- Dr. Hasan M. Al-Mulla, Lawyers & Legal Consultants
  P.O. BOX 15185
  الرياض
  هاتف: 4655477
  هاتف: 4622134

Tel. : (973) 214800, Fax : (973) 214500, P. O. Box : 2338, Bahrain
Banking and Finance Dispute Resolution
Through Arbitration
April 14 - 15, 1997 - Manama, Bahrain

The use of arbitration by banks and financial institutions to settle their disputes is essentially new for the global financial community despite its obvious advantages, such as confidentiality, impartial, fair resolution by renowned, professional experts other than judges and speed. International financial centers like London, Paris and New York are re-evaluating the use of arbitration for resolving claims arising under banking and financial service contracts, including debt recovery. This was the topic of a symposium entitled, "Banking and Finance Dispute Resolution through Arbitration", organized by the GCC Commercial Arbitration Centre ("Centre") under the patronage of H.E. Dr. Mohammed Jassim Al-Ghatam, President of the University of Bahrain, on April 14 and 15, 1997, at the Gulf Hotel, Manama, Bahrain. The two day seminar attracted over 100 experts who focused their attention on the effects the Gulf states' laws and legal procedures have on the arbitration process. Speeches were given in Arabic or English and direct translation was available.

The first day opened with speeches from His Excellencies Dr. Mohammed Al-Ghatam, Mr. Khalil E. Al Radhwan (Chairman of the Centre's Board of Directors), Mr. Hassan Zeinalabeddeen (First Deputy Chairman of the Bahrain Chamber of Commerce and Industry), and Mr. Khalid H. Abdul Rahman (Director of the Banking Supervision Directorate, Bahrain Monetary Agency). The rest of the day was divided into three sessions of one and one-half hours each. The first session was chaired by Dr. Hussain Al Baharna (former Minister of State for Legal Affairs, Bahrain, member of the Council of the Bahrain Centre for International Arbitration, member of the Centre's panel of arbitrators, and a lawyer with a firm under his own name in Bahrain) and the two speakers were Dr. Hassan Essa Al Mulla (a member of the Centre's Board and who has a law firm under his name in Riyadh, K.S.A.) who spoke on "Banking Dispute Resolution in K.S.A. Between Settlement and Arbitration" and Joseph L. Brand (a partner in the Washington D.C. law firm, Patton Boggs, L.L.P.) whose speech was entitled, "America's Arbitration Experience: Lessons for the Middle East Banker". The second session was chaired by Mr. Zuhair S. Al Herbish (inhouse counsel to the Arab National Bank, Riyadh, K.S.A.) and the two speakers were Dr. Abdul Wahab Khayyatallah (President of the Syrian Centre for Services and Financial Consultancies, Syria) whose topic was entitled, "Arbitration in a Changing Banking and Financial World" and Mr. Majed M. Qaroub (a lawyer with a firm under his name in Jeddah, K.S.A.) who spoke on "The Arbitration of Banking and Finance Disputes in accordance with the Arbitration Regulation of Saudi Arabia." The third session was chaired by Mr. Abdulla Al-Ayoub (a member of the Centre's panel of arbitrators and a lawyer with a law firm under his own name in Kuwait) and the two speakers were Mr. Ma'awia El-Nayal (legal advisor with the law firm, Al-Mahmood and Zu'bi, Bahrain) whose speech was entitled, "Peculiar Aspects of Arbitration in Bahrain with Special Reference to Banking and Investment Matters" and Mr. Martin Valey (a partner specializing in banking in the international English law firm, Palmer Cowen, which has an office in Bahrain) whose talk was entitled, "Choice of Law and Jurisdiction and Enforcement of Awards in Banking Arbitrations".

The second day was also divided into three sessions of one and one-half hours each. Youssif Zainal (Secretary General of the GCC Commercial Arbitration Centre) was the chairman of the first session and the two speakers were Messrs. David Bennet and Terence Witzmann (assistants of the international English law firm, Norton Rose, which has an office in Bahrain) who both presented papers under the title, "Use of Arbitration in Banking Disputes" and Dr. Abass Helal (Chairman of the Bahrain Bar Society, Professor at the Arabian Gulf University and a lawyer specializing in commercial law at the Court of Cassation, Bahrain) whose topic was "Arbitration in Bank Credit". The second session was chaired by Dr. Lulu Al Mutlaq (Deputy Manager of the Training Unit at the Arab Banking Corporation B.S.C., Bahrain and a member of the Centre's panel of arbitrators) and the two speakers were Dr. Hesham S. Bissat (Regional Manager of the Arab Bank, P.L.C., Lebanon) who spoke on "Arbitration in Banking Operations" and Mr. Essam Al-Tamimi (managing partner of his law firm, Al Tamimi & Company, U.A.E.) whose speech was entitled, "Enforcement of Foreign Arbitration Awards in the GCC Countries". The third and final session was chaired by Mr. Hassan Radhi (a lawyer with a firm under his own name in Bahrain, a member of the Centre's panel of arbitrators and a member of the International Bar Association) and the two speakers were Mr. Richard H. Kreindler (partner in the Frankfurt, Germany office of the international American law firm, Jones, Day, Reavis & Pogue) Whose topic was "Arbitration under the GCC Commercial Arbitration Rules in the context of Banking and Finance Disputes" and Mr. Adel Al-Abyouki (legal consultant to the Ministry of Commerce, Bahrain) who spoke on "Arbitration at the Stock Market Exchanges in Bahrain and Kuwait".

On speaker who was unable to attend, Dr. Nariman Abdel Kader (an attorney at the Legal and Commercial Consultation Centre, Cairo, Egypt) sent her paper entitled, "Arbitration Agreement and the Standard Arbitration Clause in Relation to Banking Contracts", which was included in the file of materials handed out to all participants. (For those who are interested the materials and a video cassette of the speeches, without subtitles, can be purchased from the GCC Commercial Arbitration Centre.)
The symposium critically assessed the role and purpose of arbitration in a best picture scenario with what is actually happening in different jurisdictions in the Gulf. Experts advised solutions which combined practical avoidance techniques for the present pitfalls with proposed changes for stronger legislation. They explained on how to avoid expensive challenges through careful drafting of the arbitration clause by knowledgeable counsel; how to satisfy local peculiarities in legal procedure to increase the chances of regional enforcement of foreign arbitral awards; where and how certain legislation should be redrafted to recognize the arbitral process by giving full and final legal force and effect to arbitrators’ awards meeting international standards of natural justice and by granting effective powers to arbitrators for interim and conservatory relief. Legal experts emphasized the advantages of having a unified regional commercial law and of all GCC countries ratifying the New York Convention of 1958 because under the present systems the enforcement of foreign arbitral awards is both difficult and unpredictable. Banks and financial institutions are conservative so the end of the process must justify the process in dispute resolution. The traits of uncertainty and difficulty in executing an award will certainly deter banks and financial institutions from using arbitration other than in the usual exceptional case, such as with sovereign borrowers, which want to avoid any publicity of a default because it affects their credit rating. These institutions are then left with litigation when rescheduling and other negotiation fails. Those institutions which started or are comfortable with litigation clauses choosing venues in international financial centers such as London and New York will continue to use those clauses while they perceive that system is predictable, fair and cost effective. However, if these centers are re-evaluating the value of arbitration over litigation, even in debt recovery, then it is only a matter of time before counter parties there will negotiate arbitration in these centres as their dispute resolution mechanism.

The concept of regional legislators amending laws to strengthen arbitration as an effective alternative to litigation is not far fetched as it has already been recognized in Kuwait and elsewhere that this alternative system, when properly in place and functioning well, will encourage foreign investment into the country. Indeed, arbitration has been described in Kuwait as the new judicial system and is holding a very important three day conference on this topic. But, in fact, this is returning arbitration to its previous position as an esteemed dispute resolution system, as we learned from Mr. El-Nayal and others. Sometimes it is important to ask questions into basic assumptions rather than assume those assumptions as facts. Interestingly enough, a basic enquiry into whether or not there is arbitration in Saudi Arabia for banking matters and in Kuwait remains debated because of the role of the judiciary in the arbitral process in those jurisdictions. It is legally feasible for arbitrators in these jurisdictions to be considered judicial agents through delegated power rendering their awards judgements in reality, judgements are not arbitral awards so fall outside of the New York Convention. Therefore, parties arbitrating financial matters in Saudi Arabia and Kuwait will want to know beforehand whether or not they will receive a judgement or an award in the eyes of the jurisdiction of the country or countries in which they hope to execute a favorable decision.

A classic debate centers on whether or not drafters of an agreement should use a recommended standard arbitration clause of a particular center without any modification or whether the clause should be custom made. The answer appears to be a firm, ‘it depends’. Joseph L. Brand reviewed the U.S. federal court’s historical skepticism of arbitration to protect a party’s substantive legal rights and concluded with a detailed four paragraph arbitration clause designed to overcome validity and enforcement challenges brought by the losing party which might be well entertained by a sympathetic federal court. Gulf banks and financial institutions would find themselves in the federal court system through diversity and many are increasingly choosing New York law over English law. Consequently, these institutions should ask their drafters of these agreements with arbitration as the selected dispute resolution mechanism and a counter party or parties with substantial assets in the United States if the local peculiarities which must be satisfied to minimize the expenses and time in fighting enforcement challenges upon executing an award have been drafted into the agreement. Turning homewards, Mr. Essam Al-Tamimi advised that if the arbitration clause appears to be boiler-plate without any indica of negotiation by the parties, then the courts in the Emirates will vitiate the clause rendering the whole process and award an expensive nullity. At a minimum the boiler-plate clause should be initiated by both parties. Mr. Richard H. Kreindler reviewed and critiqued the Centre’s own arbitral rules and found some situations in which the parties might find themselves without clear guidance. The recommendation was for the drafter to think of these situations before execution of the agreement, and if relevant, the documentation will reflect the parties’ agreement on those issues, such as the place of arbitration where the parties have no nexus with Bahrain and multiparty arbitration.

The purpose of this seminar was two fold: to educate and to promote through education arbitration to banks and financial institutions not only because there are inherent advantages in this system being lost to litigation but also because counter parties may begin to insist on arbitration and it is wiser to know about the system beforehand rather than to be taken by surprise in a dispute. The stock market exchanges here require arbitration but the award is not final and highly advanced, technical, financing activities, such as derivatives trading, foreign exchange and letters of credit, will require the use of experts in these fields for knowledgeable dispute settlements; so banks and financial institutions which engage in these activities must become familiar with arbitration to best protect their assets. Governments must also do their part by recognizing that the system can protect parties’ substantive rights and taking the necessary steps to allow arbitration to function effectively and efficiently.
A two day symposium entitled, "WIPO National Seminar on the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and on Resolution of Commercial Disputes Involving Intellectual Property", was organized by the World Intellectual Property Organization (WIPO) in cooperation with the State of Bahrain's Ministry of Commerce and the GCC Commercial Arbitration Centre. It was held at the Conference Centre of the Holiday Inn, Manama, Bahrain on February 22 and 23, 1997. Arabic and English were spoken at the conference and the full comprehension of the audience was assured by the use of experienced direct translators provided by WIPO.

The Seminar opened with welcoming addresses from His Excellency Mr. Ali Saleh Al Saleh, Minister of Commerce, State of Bahrain; Mr. Khalil Radhwani BOD Chairman, GCC Commercial Arbitration Centre, State of Bahrain and Mr. Sherif Saadallah, Head of Development Cooperation and External Relations Bureau for Arab Countries, WIPO, Geneva, Switzerland. Presentations were given by a panel of internationally and locally renowned experts and practitioners in the field. The seminar was divided into two distinct aspects; the substantive features of the TRIPS Agreement was held on the first day and arbitration in the resolution of commercial disputes involving intellectual property was held on the second day. There were over 100 members from the Middle East in the audience which actively participated by asking challenging questions of the speakers and by voicing their views which addressed complex issues, such as the superimposition of common law discovery required by TRIPS on and its resultant disruption to the civilian court system of justice practised here in the Gulf.

In his opening address, the Commerce Minister, Mr. Al Saleh, emphasized the Bahrain government's high regard for intellectual and industrial property rights and its commitment to fully protect them in order to further encourage creative and original works. Mr. Al Saleh pointed out that Bahrain has been leading the way for the Gulf, working in cooperation with the other GCC states, but still intends to develop its patent law further.

Mr. Al Saleh highlighted Bahrain's historical recognition of intellectual property rights, starting from 1955 when the first regulations were promulgated. There regulations have been continuously amended, modified and expanded to include registration of service marks (1977), protection of trademarks (1991) and protection of author's rights (1993). In 1995 Bahrain became a member of WIPO and the WTO. He added Bahrain is currently in the process of becoming a member of the Berne Convention (protection of intellectual property relating to literature and the arts) and the Paris Convention (protection of industrial property relating to patents and trademarks) as well as considering membership in the Madrid Convention (international registration of trademarks).
After the welcoming addresses, Mr. Sherif Saadallah focused the audience's attention to the general provisions and basic principles of the TRIPS Agreement. Dr. Victor Nabhan, Professor of Law, Laval University, Quebec, Canada and Mr. Tawfiq Tabbas, Attaché, Development Cooperation (Industrial Property) and External Relations Bureau for Arab Countries, WIPO, specifically addressed the TRIPS provisions on copyright and related rights and industrial property rights respectively. Areas of uncertainty were pointed out. After lunch, hosted by the Ministry of Commerce, Dr. Nabhan discussed the enforcement of intellectual property rights under the TRIPS Agreement. Mr. Saadallah then described the cooperation between WIPO and the WTO in implementing the agreement. As the provisions of the TRIPS Agreement will become effective law in Bahrain in the year 2000, the audience, which included staff from the ministries, pursued the problems of interpretation of provisions in the TRIPS Agreement; of what constitutes effective enforcement and the ultimately dire consequences to member states accused of ineffective enforcement; of drafting effective laws with sensitivity to local, traditional values and of WIPO's review procedure of such draft laws before it is enacted with the speakers throughout the day as well as during the concluding Round Table Discussions session.

The second day concentrated on the use of arbitration as a forum to resolve commercial disputes involving intellectual property rights. Mr. Yousif Zainal started the day informing the audience about the GCC Arbitration Centre. A lively discussion developed as participants queried the Centre's present jurisdiction, scrutinized the meaning and scope of its regional and international reach, and suggested an expanded role necessitating amendments to its present constitutive documents and name. Mr. Zainal stated the Centre has decided to start by progressively developing a sound, first-class reputation in the international arbitration arena before it considers any expansion to its role and jurisdiction.

The audience was then informed about the services and rules of WIPO's Arbitration and Mediation Centre by Mr. Erik Wilbers, an adviser to the Centre Parallels were drawn between the GCC Commercial Arbitration Centre and the WIPO Arbitration and Mediation Centre by Mr. Wilbers to which Mr. Zainal agreed. It was a fitting and logical conclusion when the GCC Commercial Arbitration Centre's chairman, Mr. Al Radhwan, noted that the Centre is currently developing its relationship with WIPO and the WTO.

Sheikha Haya Rashed Al Khalifa, a highly regarded, practising attorney in Bahrain, traced the development of arbitration law in the GCC by comparing those laws in Bahrain and Kuwait. An interesting question was posed by Dr. Gerold Herrmann, Secretary of UNCITRAL, Vienna, on whether an arbitral award rendered by a Kuwaiti panel would fall within the New York Convention because the role of the judiciary in the arbitral proceeding might deem the award to be a judgement, thereby falling outside the Convention for enforcement.

Mr. Majid Garoub, a solicitor in Jeddah, Saudi Arabia, discussed arbitration and the regulations for the protection of intellectual property rights in the Kingdom with the audience. He shared his observations from first-hand experience on the shortcomings of foreign rights holders to protect their interests in the Kingdom and suggested practical ways they could better safeguard their products, in part, by changing their image while educating the public simultaneously.

A panel comprised of Dr. Herrmann, Mr. Wilbers and Mr. Alastair J. Hirst, a barrister from Edinburgh, Scotland, concluded the morning with a discussion of arbitration of licensing disputes under the WIPO Arbitration rules.

After lunch, Ms. Aaren Hanson, an attorney from Riyadh, Saudi Arabia and Corporate Secretary of Gulf Consultants for the Protection of Intellectual Property, presented the audience from snoozing with a stimulating case study on the behaviour of infringers in the GCC countries, drawn from her 'qux' experiences and replete with real examples of counterfeit and genuine products for the audience to see for themselves. Although we all may have come away with a "Startet's How To Infringe Kit" as Dr. Herrmann quipped, Ms. Hanson's talk demonstrated the real problems and time delays, not the least of which is in finding the infringer, facing attorneys and their clients in bringing infringement cases. All this translates into a loss of vast amounts of money to producers, a loss of confidence in the market place by both the consumer and the rights holder and a loss of jobs, ultimately. This is a very topical, regional concern as creation of jobs, as well as confidence in market morality, is vital to build and maintain a healthy, diversified economy less dependent on oil and oil products.

Dr. Herrmann then gave an enlightening, thorough synopsis, seasoned with amusing but pointed anecdotes, of the UNCITRAL Model Law on International Commercial Arbitration, which is the basis of Bahrain's International Commercial Arbitration Law.

The symposium closed with the morning's panel discussing mediation of intellectual property disputes. Dr. Herrmann noted that a somewhat atypical trend - the use of mediation, known also as conciliation, instead of litigation - was developing in the United States. He pointed out the fundamental shift in emphasis in the two procedures as litigation is a forward looking, dispute resolution process in that the parties negotiate the terms for a continuing relationship unlike litigation which concentrates on the parties' past relationship. Dr. Herrmann cautioned the audience that in using mediation one must not take the Statute of Limitations continues to toll; however, a valid written waiver by the parties to raise that procedural defense to bar an action should be effective.

The presentation of this seminar is one result of the Ministry of Commerce's dedication to its role in the field of intellectual property by ensuring confidence in rights holders about Bahrain's market morality through spreading awareness, by explanation, of laws and enforcement procedures to consumers and vendors about products or ideas with protected intellectual and industrial property rights. This symposium is also in keeping with the GCC Commercial Arbitration Centre's general commitment to present seminars and fora for discussions of the highest standards to ensure its members are informed of significant, contemporary, developments in international law either affecting or which will in the near future affect them and their clients. This symposium also fulfilled the Centre's specific commitment stated by Mr. Al Radhwan, in "making all efforts to enhance awareness about TRIPS among the business communities of the GCC."

Seminars and laws are not enough alone; Bahrain's recent and expeditious actions are proof of the Com-
**INVITATION**

The world has recently witnessed a widespread boom in international relations, particularly in the economic, commercial and investment areas. Subsequently, arbitration is more and more playing a significant role, being the sole option, and the most effective way of maintaining the transactions and resolving disputes arising in these areas.

This role has expanded to the extent it has been said that arbitration is the “future judiciary system”. Inherently believing in the effective role of arbitration, the State of Kuwait sincerely tends to adopt it as the applicable method of settling disputes arising from interlocking commercial relations, whether domestically or internationally.

Hence, it is a must to profoundly study all aspects of arbitration, in a high level, by attracting key figures in this specialised area, including top businessmen and financial activists. Therefore, the Ministry of Justice in the State of Kuwait has considered the question of holding an international conference on arbitration and its effective role in encouraging investment and capital in-flow, under the auspices of His Highness the Crown Prince & Prime Minister.

Moreover, performing its role as the national institution concerned with the scientific progress in all fields, Kuwait Foundation for the Advancement of Science is handling a prolific significant rather than prolific part in this conference. The Foundation’s participation in this event reflects its profound belief in the significance of arbitration and its evergrowing role in supporting the finance, business, trade and investment sectors, thus boosting the economy in all its aspects.

We hereby cordially invite you to participate effectively actively rather than effectively in the conference and warmly welcome you to the host country - the State of Kuwait.

Wishing you pleasant stay.

**ORGANIZING COMMITTEE**

**Themes**

1. International Arbitration and its role in the settlement of commercial and investment disputes.
2. Practical problems facing international Arbitration in commercial and investment disputes and the recommended remedies.
3. International Arbitration and its impact in promoting investment and capital in-flow.
4. Preparing international Arbitrators to deal with commercial and investment disputes.
5. Arbitration in Kuwait investment agreements concluded with other countries.
6. International Arbitration system in Islamic legislation in the field of commerce and investment.
7. Arbitration in Kuwait and its characteristics.

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**Accommodation and Hospitality**

The secretary of the conference has pleasure to introduce some hotels for those who wish to book hotel rooms. The conference will be held at Meridien Hotel - Kuwait.

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**Note**

To arrange booking through conference secretariat, please confirm to the conference correspondence address.

**Conference Correspondence**

All correspondence relating to the conference should be addressed to:
Ahmed Al-Jaber Street, Sharq, P.O. Box: 23937 Safat, 13001 Kuwait.
Tel.: (965) 2401095 or 2448927 - Fax: (965) 2452914 or 2433473
E-Mail: rbt@wcc.moc.kw
Home page: http://arbitration-kw.org/

**Registration Form**

Kuwait International Commercial Arbitration Conference

Name: ............................................

Qualification: ...................................

Employer: ...........................................

Job: ................................................

Address: ...........................................

Tel.: .............................................

Fax: ................................................

E-Mail: ...........................................

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**Note**

Kindly, reservation arrangement can be made through the committee in charge of organizing the conference, two weeks before the date of the conference. It is important to send a copy of your passport during this period with check of 100 $ transferred into Kuwait International Conference on Commercial Arbitration current account No. (011010914012/5) in Kuwait Finance House to be used to complete hotel reservation procedures; knowing that the registration for the conference is free of charges. Please do not hesitate to contact us on the following address:
Ahmed Al-Jaber Street, Sharq, P.O. Box: 23937 Safat, 13001 Kuwait.
Tel. (965) 2401095 or 2448927 - Fax: (965) 2452914 or 2433473 - E-Mail: rbt@wcc.moc.kw - Home Page: http://arbitration-kw.org/
AGREEMENT OF COOPERATION
between
THE ARBITRATION INSTITUTE OF
THE STOCKHOLM CHAMBER OF COMMERCE
and
G.C.C. COMMERCIAL ARBITRATION CENTRE

Being convinced that a wider use of commercial arbitration through fair and expeditious procedures lends confidence and stability to international trade, the Arbitration Institute of the Stockholm Chamber of Commerce and the G.C.C. Commercial Arbitration Centre agree as follows:

1. Each party will exchange information with the other concerning training and program development activities.

2. Each party, when so requested, will recommend resource persons to the other party for active participation in seminars, conferences or training activities.

3. Each party will exchange, at no charge, publications, information material and reference documents concerning international and domestic commercial arbitration.

4. Each party, when so requested, will recommend to the other party resource persons in specific fields to act in the capacity of technical expert, conciliator or arbitrator.

5. Each party, when so requested, shall provide administrative services or any other service necessary for conducting arbitration proceedings. Expenses incurred in providing these services will be charged to the other party.

6. Each party, when so requested, shall provide also administrative services for recording of evidence, storage of documents, etc.

It is understood that each party will assume the expenses of its own participation in an implementation of this Agreement.

Each party agrees to duly publicize the facilities available under this Agreement to the trade in the respective countries.

This Agreement will take effect upon signature and has an initial duration of one year, after which time it will remain in effect until one party or the other gives notice to discuss amendment or cancel.

This Agreement shall be prepared in two authentic copies in the English language.

The Arbitration Institute of
The Stockholm Chamber of Commerce

Ulf Franke
Secretary General
Stockholm, March, 1997

G.C.C. Commercial
Arbitration Centre

Yousif Z.A.M. Zainal
Secretary General
Bahrain, March, 1997
Institutional Characteristics

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute) was established in 1917 and is an independent entity within the Chamber of Commerce.

The SCC Institute has a Board composed of six members and a Secretariat headed by a Secretary General. The present Chairman of Board is the former Court of Appeal President Judge Birgitta Blom and the present Secretary General Mr. Ulf Franke.

Basic Features

Under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules) three arbitrators are appointed, unless otherwise agreed by the parties. Each party appoints one and the SCC Institute the third who will act as chairman. There are no lists but the parties may appoint anyone of any nationality as arbitrator as long as he is impartial and independent.

The parties are usually represented by counsel, who may be of any nationality.

The Arbitral Tribunal acts on the basis of presentations - both oral and written - submitted by the parties. The award shall be given within one year and no appeal is permitted on the merits.


Case Development

Number of cases filed per year (average)

<table>
<thead>
<tr>
<th>Decade</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970s</td>
<td>20</td>
</tr>
<tr>
<td>1980s</td>
<td>40</td>
</tr>
<tr>
<td>1990s</td>
<td>120</td>
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Subject - matters:

In particular, sales of goods, licensing, construction, turn-key projects, joint ventures.
The Gulf Cooperation Council Commercial Arbitration Centre has promulgated its Charter and Arbitral Rules of Procedure in both Arabic and English. The official version of both documents is considered the Arabic version. The following is a necessarily brief overview and critique of the Arbitral Rules, based on a more extensive lecture by the author on the same topic at the GCC Centre's April 14 - 15, 1997 conference in Manama.

Recommended Standard Arbitration Clause. Article 2(2) contains a recommended GCC standard clause built into the Arbitral Rules themselves. This standard clause does not contain a mention of situs, which may be in a GCC country or elsewhere. Second, it does not contain a provision for the language of the proceedings, the reason being that Article 7 of the Arbitral Rules stipulates that such language shall always be Arabic. Third, the standard clause correctly raises the possibility of multiparty arbitration, but the Arbitral Rules do not in fact contain any elaborate provisions regarding multiparty arbitration.

The Place of Arbitration. In view of the singular, albeit frequently overlooked, importance of the situs in international arbitration proceedings, Article 6 of the Arbitral Rules is noteworthy. There is an express presumption here that any GCC Centre arbitration shall and must take place in Bahrain, although in fact some GCC Centre arbitrations may involve parties none of whom bear any relation to Bahrain. Furthermore, Article 6 begins by granting the parties the customary and unquestioned autonomy to fix any other place of arbitration which they desire. However, it then circumscribes that autonomy by subjecting such party choice to a requirement of approval by the arbitral tribunal in consultation with the Secretary General of the GCC.

One of the goals behind the GCC Centre is to cater to contractual parties having a nexus in the GCC region. At the same time, there is no question that unfettered party autonomy regarding the situs should not be perceived as inconsistent with that goal. Query, therefore, whether the requirement of obtaining "approval" from the tribunal and the Secretariat is a wise one, let alone in harmony with international arbitral jurisprudence.

With respect to exceptional circumstances which make arbitration impossible at the seat, the GCC provision, like the current corresponding ICC rule, provides no solution. Moreover, there seems little ques-

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THE GCC COMMERCIAL ARBITRATION CENTRE RULES
IN THE CONTEXT OF BANKING AND FINANCE DISPUTES

By: Richard H. Kreindler*

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With respect to exceptional circumstances which make arbitration impossible at the seat, the GCC provision, like the current corresponding ICC rule, provides no solution. Moreover, there seems little question that the parties should be given an absolute opportunity to take a position on a possible change of situs, normally in writing and with a tight deadline, apart from exceptional circumstances.

Selection of the Tribunal. The ambitious and rigorous time schedule rightly espoused by the Arbitral Rules is contained in Article 12, which concerns the selection of the members of the arbitral tribunal. Under Article 12(1), in the case of a sole arbitrator if the parties cannot agree on his identity by the time of the Article 11 answer, the Secretary General shall appoint him “from among the Centre’s Arbitrator’s Panel within one week from the expiry of such period.” Likewise, in the case of a three-person tribunal, if the claimant fails to nominate his party arbitrator in his Article 9 request, the Secretary General shall appoint the arbitrator within one week from the date of receiving the application.

This may appear to be fairly draconian provision, which presumable should apply solely where the parties unambiguously agreed to a three-person tribunal. It is less harsh than it might seem, since ambiguity over the number of arbitrators should not arise: under Article 8 of the Arbitral Rules, if there is no agreement, the tribunal shall be formed by three arbitrators.

Kompetenz-Kompetenz. Article 19 affirms the principle of Kompetenz-Kompetenz, i.e., that the tribunal has jurisdiction to rule on whether it is competent to adjudicate the dispute. Article 19 also provides that any objections to the tribunal’s jurisdiction “shall be presented at the first hearing prior to examining the merits.”

The provision in Article 19 that any objections to the tribunal’s jurisdiction “shall be presented at the first hearing prior to examining the merits” is also praiseworthy, but does not absolve the practitioner of his obligation to understand the “vacuum” of authority after constitution of the tribunal. It is important because it also involves the question of the involvement of the municipal courts in the arbitration, at the request of the parties or, less likely, of the tribunal.

Applicable substantive Law. Article 28 of the Arbitral Rules addresses the issue of the applicable substantive law. Normally, if the parties have made an express and valid choice of a municipal law, then issues of conflicts of law, renvoi to a second or third body of substantive law, to a convention respecting applicable law, to lex mercatoria or to trade usage do
not necessarily arise.

Article 28 appears to impose just such a priority list although one is not necessarily always needed or appropriate. The purpose and application of such a priority list are not clear. Where the parties have a written contract, the provisions of the contract along with any agreed upon law will apply. A conflicts analysis as well as a referral to business practices will not necessarily be appropriate in such case.

In cases where the parties do not have a written contract, then they will invariably not have an agreement on law; in such case, a conflicts analysis and business practices may be relevant and appropriate. In short, Article 28 is not entirely clear in its scope or application.

**Binding Nature of the Award.** The issue of the final and binding nature of a GCC Centre award arises in Articles 35 and 38 of the Arbitral Rules. Article 35 provides in its first paragraph that awards “pursuant to these Rules shall be binding and final” and “shall be enforceable in the GCC member States once an order is issued for the enforcement thereof by the relevant judicial authority.” Article 38 permits either party to request of the Secretary General “annulment of the award” for any one of three specified reasons.

Articles 35 and 38 are unusual in that they apparently seek to incorporate into the Arbitral Rules criteria for both the challenge and the enforcement of arbitral awards rendered under the GCC Centre rules. In the case of challenge, such an ambition seems curious even where the place of arbitration was a GCC state. The grounds for challenge in some or all such states are generally stipulated in local arbitration legislation. In the case of challenge where the place of arbitration is outside the GCC, such an ambition would presumably be doomed to failure.

In sum, the GCC Centre’s Charter and Arbitral Rules are an admirable and commendable effort. In some respects, they offer solutions to thorny problems of arbitration not to be found in some other, longstanding sets of rules. In other areas, they attempt to solve certain problems without perhaps going as far as they could. And in other areas, the Charter and the Arbitral Rules display lacunae which the practitioner should bear in mind before and during an arbitration under the GCC Rules. It is hoped that the foregoing open and well-intentioned observations by a friend of the GCC Centre prove helpful to its “users.”

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