March 21st marked the beginning of a fourth successful year for the GCC Commercial Arbitration Centre. It was three years ago when me and my colleagues, the members of the Board of Directors met in the premises of the Bahrain Chamber of Commerce and Industry to announce the formation of a new arbitration institution: a regional institution dedicated to commercial arbitration affairs in the GCC States. We felt a kind of happiness mingled with veneration of the responsibility being shouldered by us. It was the first formation of the Board of Directors of the GCC Commercial Arbitration Centre.

Each of us had taken strenuous efforts to undertake this responsibility during the last three years. The Centre has now started to advance in great strides towards a wide and expanded world and our efforts have been crowned with success. The Centre has progressed to a very great extent to acquaint itself, its regulations and activities with the appropriate relevant bodies. Being an independent entity with good reputation and high esteem, it has gained recognition from all major arbitral institutions around the world.

**THE 12TH MEETING OF “BOD” OF THE CENTRE STATE OF KUWAIT – 28 DECEMBER 1997**

The BOD of the Centre successfully concluded its twelfth meeting in the State of Kuwait. The meeting was hosted by Kuwait Chamber of Commerce & Industry on 28.12.1997. It was presided by His Excellency Mr. Salah Khalifa Al-Jary, Representative of Kuwait Chamber of Commerce and Industry and Chairman of the present session of the Board of Directors. The meeting was also attended by representatives of Chambers of Commerce from all G.C.C. States. They were as follows: -

**CONGRATULATIONS TO OUR CHAIRMAN AND DOCTOR SALAH AL-JARY**

The editorial committee of this Bulletin join the Secretary General in congratulating Dr. Salah Khalifa Al-Jary for having successfully completed his Ph.D. on International Law – Somerset University, UK. We would like to take this opportunity to wish him all success in his future endeavors thus enabling him to be of more service to the nation and to the G.C.C. Commercial Arbitration Centre in particular.

**SEMINAR ON INTERNATIONAL FINANCE & TRADE LAWS MAY 12 & 13, 1998 – BAHRAIN**

The G.C.C. Commercial Arbitration Centre and the UNCITRAL have jointly organized for a seminar on International Finance and Trade Laws, at the Regency Hotel, under the patronage of His Excellency, Mr. Ali Saleh Al-Saleh, the Minister of Commerce – Bahrain. This seminar responds to the increasing demand and importance in today’s business environment for unification of international trade-related laws.

**FOR FURTHER DETAILS CONTACT 214800 / 211827 OR FAX: (973) 214500**
LAW FIRM DIRECTORY OF THE GCC STATES

The G.C.C. Commercial Arbitration Centre will be publishing an index of Law Firms, Lawyers, Jurists, Arbitrators and Mediators practicing in the GCC States for Global distribution. This Directory will be circulated in two media – print and on the CD-ROM.

The committee is preparing the groundwork of collecting data and assessing details in this regard. Applications for enlistment in this directory will be distributed shortly. The directory would be available in two languages – Arabic and English. Advertisements in this directory are open to all Law Firms around the world.

The directory is expected to be released by the end of this year.
1. Mr. Hassan Essa Al-Mulla, Representative of the Board of the Chamber of Commerce and Industry in Saudi Arabia.

2. Mr. Hassan Bin Mohammed Al Shaik, Representative of the Chamber of Commerce and Industry in the United Arab Emirates.

3. Mr. Khalil Ebrahim Radhwani, Representative of Qatar Chamber of Commerce and Industry.

4. Mr. Ebrahim Moh’d Ali Zainal, Representative of Bahrain Chamber of Commerce and Industry.

5. Mr. Ali Bin Khamis Al-Alawi, Representative of Oman Chamber of Commerce and Industry.

At the beginning of the meeting, His Excellency Mr. Ebrahim Zainal was elected as Vice-Chairman of the present session.

The BOD appreciated the achievements attained so far to activate the Centre’s role and introducing its activities, especially with respect to the following areas:-

1. Finalizing the administrative and organizational framework of the Centre.

2. Preparation of Regulations and procedural Rules and translations thereof into English and French.

3. Formation of Arbitrators and Experts Panels and the increasing applications for registration therein.

4. Mass Media Campaign through the Centre’s bulletin (which is issued regularly and periodically), local and Gulf press and arrangements for courses and seminars.

5. Participation in local, Gulf Arab and International occasions and important events and joining the relevant International Organizations.

6. Circulation of the recommended Arbitration Clause to law and engineering offices and the Ministries and the concerned departments and consequently notable increase of contracts containing the Centre’s standard Arbitration clause.

7. Establishment of good relationship with the members Chambers, the General Secretariat of the Gulf Chambers and the General Secretariat of the GCC and also with professional societies in the GCC states.

8. Commencement in rendering arbitration service by extending assistance to ad-hoc arbitrations, appointment of arbitrators and provision of lists of its arbitrators to certain parties.

The BOD considered the obstacles and hindrances hampering the Centre’s development and growth and derogating from its role as regional and international mechanism for Commercial dispute resolution in the G.C.C. States. In this respect, the BOD recommended the following:-

1) To persuade the members of the Chambers of Commerce and Industry to insert the Centre’s standard Arbitration clause in their contracts made with third parties with a view to increase the number of contracts containing the Centre’s Standard Arbitration clause as a first step to refer cases to the Centre. The BOD urges the members Chambers to encourage referral of disputes arising between Gulf Parties to the Centre whenever such referral is possible and acceptable by the parties.

2) To uphold convening a meeting to be attended by all arbitral centres, institutions, committees and expertise of the members Chambers to discuss the manner of coordination between them and the Centre for further support to the Centre and to avert duality so that this might enhance development of arbitration in the G.C.C. States.

3) To exert extensive efforts in coordination with the executive bodies in the GCC States to take up the Centre as a competent authority, to urge and encourage establishments and institutions affiliated with the members states in the GCC which are shareholders in such establishments and Institutions to insert the Centre’s Standard Arbitration Clause in their contracts, and to refer their commercial disputes to the Centre whenever possible and acceptable by the other parties.

4) To activate the Centre’s role in adjudicating disputes relating to the Unified Economic Agreement and its implementing resolutions through further coordination with the committee of Economic Cooperation, the General Secretariat of the GCC and the General Secretariat of the Union of the Gulf Chambers and to emphasize the Importance of reconsidering the existing Commercial dispute resolution mechanisms adopted by the General Secretariat of the GCC.

5) The BOD attaches importance to the attraction of various economic sectors in the GCC States with a view to persuade them to resort to arbitration, in general, under the umbrella of the Centre in particular including Islamic Banks and Insurance Companies.

6) To expand bilateral relationships with regional and international arbitration institutions, to conclude further co-operation agreements with the developed arbitral institutions and to activate such agreements and protocols.

7) To adopt a work plan for courses and seminars with a view to spread arbitral awareness and to emphasize the importance of arbitration in commercial dispute resolution provided that such activities be carried on in all GCC States whenever practicable.

Upon assessment of the official meetings held in Kuwait with their Excellency the Ministers of Justice and Commerce, the President of Fatiwa and Legislation and the Director of Kuwait Institute for Law and Judicial Studies and other, the BOD expressed its contentment for the Ministers assurance as to extend continuous support to the Centre and to consider it as a competent authority in Commercial dispute area and to persuade the concerned bodies and authorities to insert the Centre’s Standard Arbitration Clause.
The BOD further seconded the proposal as to conclude bilateral protocol between the Centre and Kuwait Institute for Law & Judicial Studies.

In conclusion, the meeting addressed its thanks to Bahrain Chamber of Commerce & Industry for its financial support extended to the Centre during the first three years.

The meeting further thanked Kuwait Chamber of Commerce & Industry for hosting the meeting and also thanked the member’s chambers for their decision to finance the Centre’s budget equally between them henceforward.

Yousif Z.A. Zainal
Secretary General

AGREEMENT OF CO-OPERATION BETWEEN THE G.C.C. COMMERCIAL ARBITRATION CENTRE AND THE BAHRAIN SOCIETY OF ENGINEERS.

MEMORANDUM OF UNDERSTANDING

This memorandum of Understanding (MOU) is made on 28/3/1998 between the Bahrain Society of Engineers (BSE) on one hand and the G.C.C. Commercial Arbitration Centre on the other hand.

Whereby the two organizations agreed on the following:-

1. To cooperate in the areas of mutual interest.

2. Both organizations will encourage their members to participate actively in the functions and activities of each other respectively.

3. To co-operate in organizing professional and educational activities such as seminars, lectures and conferences. The two organizations will assist each other, whenever required, in making such events successful. The details of the co-operation and any financial obligations shall be agreed between the two organizations for each agreed function on a case-by-case basis.

4. To exchange newsletters, journals, literature and any other publications issued by the two respective organizations.

5. BSE shall provide its headquarters facilities when required, subject to prior request for each specific function. Normal administrative fees will be charged by BSE.

6. Nothing in this (MOU) shall be construed as granted or biased either to the GCC Commercial Arbitration Centre or to the Bahrain Society of Engineers any patent or like rights.

DHEYA ABDULAZIZ TOWFIQI
PRESIDENT
BAHRAIN SOCIETY OF ENGINEERS
ARBITRATION

YOUSIF ZAINAL
SECRETARY GENERAL
G.C.C. COMMERCIAL CENTRE.
It is my great pleasure and honor to take over the Chairmanship of the Board for this session and I am proud to hold the banner after my colleague, Mr. Khalil Ebrahim Al-Radhwani, the representative of the Qatar Chamber of Commerce and Industry, who has made all efforts with the support of his colleagues – the other Board members, during his period of tenure as Chairman of the Centre and to urge it forward towards achievement of its objectives.

The policy makers of the GCC Countries have recommended during the Summit held in Riyadh in December 1993 that the private sector represented by the members of Chambers of Commerce and Industry in the GCC Countries should shoulder the responsibility of directing and supervising the Centre.

This decision has the advantage of wisdom and discernment. As it is known, commercial arbitration historically existed before the existence of the judiciary. Now it plays an increasing role in the world of money and business in solving commercial disputes.

The development of its mechanism, methods and rules has been brought out to cater to the needs of a world characterized by fast rhythm and specialized features moving far away from the routine measures of the government sector and the ordinary judiciary which is burdened with innumerable cases and which is a very slow process. The private sector in the GCC Countries plays a vital and active role in the financial life and economy of these countries. This role has rapidly expanded while entering the world into the era of computers, telecommunication and globalization. Hence, the private sector is considered to be more capable to meet the current and future needs of the world of money, business and services.

In the Centre, we are looking forward to play a leading and dominant role in the field of commercial arbitration in the GCC Countries. We have been formed for this purpose and we will work without fatigue to achieve the high and noble objectives to attain justice and fairness for those parties engaged in commercial disputes.

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### G.C.C. Commercial Arbitration Centre

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#### EXPERT’S LIST

#### CENTRE’S ACTIVITY

### WELCOME TO OUR NET

The G.C.C. Commercial Arbitration Centre, in agreement with al-nadeem Information Technology has now opened registration to members to enlist themselves on the Centre’s Web Site. The registration is open and facility provided for a nominal fee of BD 10/- payable annually to al-nadeem Information Technology. This additional access provided to members adds yet another dimension to their range of potential clients.
The Gulf International Convention Centre was the scene of this very successful, important seminar, which focused mainly on the particular problems, confronted by the insurance and reinsurance industry both in law and in arbitration regionally as well as in the United Kingdom and the United States. More than 60 senior practitioners in the field, from insurance and reinsurance companies, government ministries and agencies, law firms, chambers of commerce, universities, banks and other companies gathered in Manama, Bahrain from as far away as Bucharest, Romania to hear and actively discuss the issues in and proposed solutions to these problems. The seminar was conducted in Arabic and English through the use of simultaneous translation.

The seminar was opened by speeches from the Minister of Commerce, His Excellency Ali Saleh Al Saleh, from the Vice-Chairman of the Board of Directors of the G.C.C. Commercial Arbitration Centre, Mr. Ebrahim Zainal, and from the Chairman of the Bahrain Insurance Association, Mr. Abdulla Nooruddin Nooruddin. Commerce Under-Secretary Dr. Abdulla Mansoor, Assistant Under-Secretary for Foreign Trade and Promotion Sheikh Dujj bin Sulman Al Khalifa, Assistant Under-Secretary for Supply and Consumer Protection Ahmed Buhsaiti, Bahrain Chamber of Commerce and Industry President Ali bin Yousuf Fakheri, Board Member of the Centre Dr. Hasan Al Mulla and Federation of G.C.C. Chambers of Commerce and Industry Secretary General Mr. Mohammed Al Mulla were present at the opening ceremony as well as many other prominent figures.

The Minister of Commerce highlighted the government's desire and the steps it has taken for Bahrain to be ready for and successfully compete in the international commercial arena in the twenty-first century. With particular reference to the insurance and reinsurance industry, he stated that Bahrain aimed to become the regional centre for reinsurance and that the proposed law on insurance, presently being finalized for its submission to the Cabinet, should help to achieve this. The draft law could become effective by year-end and may require insurance companies to raise their capital bases, perhaps to BD 5 million immediately and BD 10 million by 2001. Mr. Al Saleh pointed to Bahrain's commercial openness, its preparation for the implementation of WTO requirements, its legal system allowing for the expedient settlement of disputes outside litigation and of being chosen by the G.C.C. States for its commercial arbitration centre. Mr. Al Saleh then urged the audience to use the Centre in arbitration and to support the Centre in its specialized training. Mr. Zainal thanked the Minister for his patronage and elaborated on the Centre's functions, achievements and reasons for holding a specialized seminar on insurance and reinsurance. Mr. Nooruddin explained to the audience the importance of the seminar in terms of the activities and the protection of moneys deposited. He stated that indemnification and compensation are tangible dimensions for the insurance industry and that a good carrier is signaled by its speedy compensation to the full extent bargained for by the parties. Yet inevitably differences of opinion arise at times between the parties over indemnification issues. Mr. Nooruddin wished the seminar well, hoping that its recommendations would prove of benefit for study in balancing competing party interests.

The seminar lasted two full days. Each day held two sessions with each session having two speakers. Each speaker had 45 minutes.

Mr. Mowaffaq Ridha, a member of the B.I.A.'s board (legal affairs) and Director of the Middle East and Africa for Arab Insurance Group, was the chairman of the first session. His speakers were Mr. Cary Depel, who is Chief Legal Officer for the London market operation of Commercial Union Assurance Company, plc, and General Editor to Sweet and Maxwell's International Insurance Law Review and Mr. Larry S. Domingo, who is the Legal and Strategic Affairs Assistant to the Chief Executive of the Arab Insurance Group, BSC. Mr. Depel's speech, "The Arbitration Clause in the Contract of Insurance", gave a historical Anglo-American perspective leading to grey areas in the current legal status of enforceable arbitration contracts in both countries. In the U.S. the word is watch out for Kansas and Louisiana which have enacted specific legislation against arbitration as an exclusive dispute resolution mechanism. In Europe the cloud comes in form of the 1993 EEC Directive on Unfair Terms in Consumer Contracts which does not expressly exempt insurance contracts like the UK's Terms Act 1977.

Mr. Domingo's speech, "Arbitration Clause in the Contract of Reinsurance", was a very thoughtful, succinct, practical presentation of major areas to consider or reconsider, such as jurisdiction, when drafting or reviewing an arbitration clause in reinsurance. Mr. Domingo called upon clauses and practices well known in the field to illustrate his concerns and offer solutions. He cautioned that the "nature of the wording has very serious repercussions for the resolution of the dispute" and so it is particularly important to draft the clause/s with care bearing in mind the parties' full intentions. One such clause would be to allow the arbitrator/s the right to fix the agreement to save the contract from falling for vagueness. Mr. Domingo urged practitioners to avoid the industry-wide practice of very long delays in producing the policy after its agreement, which often is after actual disputes have arisen, to co-operate with the legal drafters so that the policy can be timely produced and to ensure that the other party understands the terms.

Mr. Abdul Latif Janahi, Chairman of the Bahrain Islamic
Insurance Company, BSC © as well as Managing Director and General Manager of the Bahrain Islamic Bank, BSC, chaired the second session. His speakers were Mr. David Bennet, from the international legal firm, Clyde & Co., and Sheikh Issa Bin Mohammed Al Khalifa, the former Ministers of Justice and Labour, a member of the Bahrain’s Court of Cassation, the International Bar Association, and Arab Group for the Protection of Intellectual Property, who has a law firm under his own name. Mr. Bennet’s speech, “Drafting of the Arbitration Clause”, complimented Mr. Domingo’s in that it primarily discussed general drafting considerations in the context of recovery claims and reflected Mr. Bennet’s expertise in litigation. Mr. Bennet concentrated on three main topics: (1) ensuring the validity and international enforceability of an arbitration award, (2) ensuring the effectiveness of the arbitration clause against the uncooperative defendant and (3) what points should be covered by the terms of the arbitration agreement with reference to the UNICITRAL Model Law which Bahrain adopted in Amiri Decree No.9 of 1994 as its international commercial arbitration law. Of particular concern in the insurance and reinsurer industry is the enforceability of the agreement when the policy is unsigned or signed by only one party. Sheikh Issa Bin Mohammed Al Khalifa’s speech, “Arbitration in the Islamic Sharia’a”, was a scholarly presentation on the acceptance, purpose and procedures of arbitration, which included the character and qualifications of the arbitrators, starting from its reference in the Koran and the Hadiths to its development in the juristic schools and concluded with his own application of these Sharia’a principles to insurance contracts. Not surprisingly, the basic tenets of arbitration in Sharia’a are consistent with those universal to all systems – a fair dispute resolution mechanism conducted by respected, knowledgeable members of the community who are unrelated or not commercially close to the parties and whose ruling will be accepted and executed by them. Witnesses are not mandatory but preferable to have in case of denial. Evidence must be taken from all sources in the search for truth to reach a fair and impartial finding. Arbitrators must be of good character, religious but not necessarily Moslem, non-blasphemous, apply the law and act like a judge for to act otherwise would render him unfair. An arbitrator cannot appoint another arbitrator. Punishment is not proper for an award. Coupling the basic tenet in Islam that Allah permits all things except that which is expressly forbidden with the avoidance of negative rules concerning risky sales, gambling, usury and debt for debt swaps, Sheikh Isa concluded that the Sharia’a does allow insurance contracts because of their good social value in relieving the financial hardship following a catastrophe and the beneficial effects this security gives the individual, his family and society in general. Islam promotes this kind of co-operation, said Sheikh Isa, for it states, ‘whoever helps another Allah helps in therefor’. It is a natural conclusion then that arbitration of insurance contracts is permissible.

The third session started the second day and was chaired by Mr. Yousif Zainal, the Centre’s Secretary General. His speakers were Dr. Hasan Al Mulla, a board member of the Centre, the Saudi Advanced Industries Company, the Saudi Automotive Services Company. The Executive Council of the ICC, the Commercial Committee of the Riyadh Chamber of Commerce and Industry and VP of the Advisors and Laws Committee of the Riyadh Chamber of Commerce and Industry and VP of the Saudi National Committee of the ICC as well as founder of the law firm bearing his name and Mr. Abdulla Al Ayoub, the founder and managing partner of the Kuwait law firm bearing his name, who is a member of the Martyr’s Committee, a member of various legislative committees of the Arab Association for International Arbitration, an Associate member of the American Arbitration Association, and on the Centre’s panel of arbitrators. Dr. Al Mulla’s speech, “Rules Governing Arbitration with respect to Insurance Disputes in Saudi Arabia”, built on the foundation laid by Sheikh Isa. It started with eye-opening paradox insurance is a huge, established industry in the Kingdom but the Council of Scholars has not yet ruled on whether or not an insurance contract is legal. This Council has issued a decree that states the co-operative insurance is legal. Co-operative insurance means that the net profit from these transactions is not paid to the shareholders but reimbursed to the assured at the same proportionate rate his premium bore to the total premiums received. Only co-operative insurance companies are licensed in the Kingdom. Unlike Sheikh Isa and Dr. Mulla who view insurance contracts within Islamic jurisprudence and morality because of its concordance with Islam’s teachings on economic harmony, clerics consider the contract to be a form of gambling in which only the insurer wins with slight surety. Therefore the contract is arguably vile and prohibited. The contrary view is that the contract is not a bet against any calamity befalling the community but an economic measure to alleviate the financial burden in society, which has suffered a loss. It is co-operative because the cost of this economic device is shared by many that pay a smaller amount than if this financial burden were shouldered by one or a few. With this standstill position, the courts and the Council refusing to acknowledge insurance contracts, arbitration is the only means of settling a dispute in the Kingdom pursuant to Royal Decree Number 32 of 1350 A.H. The proper regulator of insurance arbitrations is the Ministry of Commerce, a function recently confirmed by a thorough government review. The Minister has a very influential role from the appointment of arbitrators to returning an award for reconsideration if the award is found lacking to reopening a case for hearings, if deemed necessary. Dr. Al Mulla then highlighted a common problem shared globally. The limitation comes in the form of arbitrators’ actual knowledge, understanding and experience of industry practice especially when equitable considerations rather than legal principles are applied. This is a problem inherent in the industry’s standard “honorable engagement” clause. Dr. Al Mulla suggested that if arbitrators do not understand these special relationships their awards might only be partially just. In this situation “justice bleeds without a law to organize the relationship” and he called for such a law for the benefit of all. Mr. Al Ayoub’s speech, “Arbitration in Contracts of Special and Technical Character”, developed the industry’s concern voiced by Dr. Al Mulla for such specialized arbitrators and offered solutions for all segments of society involved with insurance to consider. He suggested the setting up of a specialized academy for training in both the arbitral process and the specialized fields and called for active, solid and continuous support by the industry, governments and institutions of higher learning or training.

Mr. Jamil Hajar, General Manager of Al Ahlia Insurance, chaired the fourth session of the seminar. His two renowned speakers were Mr. Christopher A. Gooding, a partner of the international law firm, LeBoeuf, Lamb, Green & McRae, and Mr. Hassan Ali Radhi, the founder and managing partner of a law firm bearing his own name. Mr. Gooding’s speech, “Legal Precedents in Insurance and Reinsurance Arbitration” may at first blush, appear to voice a contrary position to
Mr. Domingo’s in the choice of arbitration to litigation in resolving insurance or reinsurance disputes. However, what Mr. Gooding explored was the serious ramifications resulting from the arbitral process which can cut all legal principles in coming to its resolutions, can in many cases successfully avoid any review unlike litigation and concluded so that illogical, hardship situations are minimized. "But how can an arbitrator with no legal skills apply the law properly? Proceedent is an extremely important legal concept and useful tool resulting in predictability, certainty and market confidence. Many insurance and reinsurance companies do not litigate in jurisdictions without precedent because of lack of trust; therefore, they are unlikely to arbitrate in such jurisdictions. They suspect systems without precedent may fail to recognize the significance and enforce the legal background in which the contractual terms were negotiated and by implication incorporated into the agreement. Two other important legal tools are collateral estoppel and discovery for the timely disclosure of relevant, if not vital, evidence. These weaknesses discussed by Mr. Gooding, as an experienced litigator, are prevalent regional concerns of the industry against arbitration, which is suspected even further by the lack of a reviewing process. For these reasons Mr. Gooding’s points should be very carefully evaluated and addressed if the industry is to be successfully wooed by the region to resolve disputes here.

In a purist sense, the problem of lack of understanding the substantive scope of the agreement should never arise in arbitration since only experienced, knowledgeable people both in the specialized substantive area and in dispute resolution, should decide the case. Mr. Hassan Radhi is well known for prompting lively discussions with his ideas and despite being the seminar’s last speaker and talking after a bounteous lunch, there was a full audience who were not disappointed in Mr. Radhi’s speech, “Some Practical Issues Relating to Insurance Cases before the Judiciary and Arbitration in Bahrain”. Mr. Radhi’s speech had three issues: (1) the enforcement of the arbitration clause incorporated into the insurance policy, which was subdivided into two parts, (i) the conclusion of the insurance contract and the validity of its terms and conditions in general and (ii) enforcement of the arbitration clause in the standard general terms and conditions of insurance policies, (2) arbitration clauses incorporated in some insurance policies which are likely to be interpreted as expertise knowledge clauses and (3) recourse of insurance companies against each other or against the party liable for the damages to claim the amount of damages they have paid to their insured. Mr. Radhi then presented a fourth topic concerning compensation claims for damages resulting from riots and terrorist acts. Of particular interest were the topics of the arbitration clause falling as a clause appointing expert witnesses thereby unexpectedly subjecting the parties to litigation, of subrogation and of the law on riots and terrorism. The issue of subrogation is particularly thorny.

Mr. Radhi reviewed not only the Bahrain court’s dilemma and unsettled position on subrogation but that of the five schools of jurisprudence in Islamic Shari’aa. He concentrated on the two most prominent schools of jurisprudence in Bahrain, the Malikis and Ja’afaris schools. These schools hold that subrogation is sound and excluded from the debt for debt prohibition. For both schools, the subrogee’s consent is generally not required, thus, the ground is there to support subrogation and it is hoped that

This seminar allowing the industry to clearly voice its concerns and solutions is a great credit to its patrons, organizers, the industry and the government, especially considering the legislative environment and propitious timing in which it was held. We all have high aspirations for the proposed law's to resolve some long standing, crucial issues that have plagued the community with doubt and hesitancy to arbitrate regionally or to use resident arbitrators. It is to the great credit of the Centre's board that it is so approachable at seminars and willing to seriously reconsider its rules for the benefit of potential users, such as, the financial burden of translation imposed by the language mandate of Article 7. Article 7 is a serious drawback for companies whose business is mainly documented in English.

The GCC Commercial Arbitration Centre needs much greater support if it is to compete successfully next century with the major league, international arbitration institutions. The academy, replete with all reference and research sources voiced by Messrs. Al Ayoub and Gooding and recognized by the insurance community as vital to assist arbitrators in reaching respected findings and ensuring awards are consistent with precedent, could well be housed in the Centre itself. But this would require amendments to the Centre’s charter and rules as well as significant additional funding. An academy within the Centre is a logical choice for many reasons. Education has been one of the Centre’s most active engagements. The dynamic exchange between practitioners and academics under one roof would be beneficial for the parties. The role of the tribunal secretary could be developed creatively for fulfilling identified needs of a tribunal devoid of a specific skill, such as an experienced, perhaps specialized, attorney for a tribunal comprised of non-legal professionals. If the position is available for temporary appointments on a case-by-case basis, the position could be used for apprenticeship, not dissimilar in intent to the pupillage mandated by the Chartered Institute of Arbitrators for its members desiring panel registration. But three advantages the apprenticeship through the position of tribunal secretary has over the Chartered Institute’s system are certainty, guaranteed progression of the case from start to finish and efficiency.

A serious drawback to arbitration for many potential users is lack of review equivalent to the appeals process in litigation. This concern, too, can be resolved. Within the Centre’s panel there could be a review board of experts to insure consistency not only within legal principles and precedent but also with other holdings in awards on the same contested issue. External indicia of qualification respected by the community and renewed periodically should be required. Looking further ahead, there should be edited disclosure of awards. Transparency of reasoning and findings in awards would help ensure consistent, well-supported and legally enforceable awards, which in turn should make arbitration more time and cost efficient and visibly trustworthy. Such disclosure should also help potential parties or their representatives, first, to decide who should sit on their tribunal, second, to respect awards and third, to predict the likely outcome of actions. One major criticism of the party appointed arbitrator frequently heard is that he becomes a party representative. Under Bahrain’s international arbitration law, this is ground for removing the arbitrator. The review panel and edited disclosure of awards should stop this occurrence, especially for arbitrators who want reappointment. As previously mentioned these developments will require the serious reconsideration and further support of the Centre in all respects by the G.C.C. States but that commitment should be well rewarded if the resolutions are fully executed.

Copies of the written materials and video of the seminar can be purchased from the Centre.
SEMINAR ON ARBITRATION IN INSURANCE AND REINSURANCE

The G.C.C. Commercial Arbitration Centre jointly with the Bahrain Insurance Association organized a seminar at the Gulf Convention Centre on the 3rd and 4th of March. This seminar, under the patronage of His Excellency Mr. Ali Saleh Al Saleh, the Minister of Commerce, was a very successful event.

First of all, the Centre would like to thank His Excellency Mr. Ali Saleh Al Saleh, the Minister of Commerce, for extending his kind patronage.

Secondly, the Centre would like to thank the Charpersons who though extremely busy with their other activities, willingly agreed to give us some of their time and share with us their experiences.

The Centre would also like to thank the speakers and their respective firms represented in this seminar:

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Finally, the Centre would like to thank all those who participated in this seminar, hearing the speakers carefully and putting forth some searching and challenging questions at the end of each session, thus making this seminar a memorable one.

Yousif Zainal
Secretary General
A Report on “Legal Changes and Challenges in the Middle East”
an International Bar Association Conference

On February 15 – 17, 1998, the International Bar Association’s Section on Business Law’s Arab Regional Forum in association with the Dubai World Trade Centre and the Dubai Chamber of Commerce held a conference on the “Legal Changes and Challenges in the Middle East” in the Dubai World Trade Centre. Mr. Essam Al Tamimi of Al Tamimi & Co., Dubai and Ms. Nancy B. Truk of Fulbright & Jaworski LLP, London, were the co-chairpersons.

The conference was divided into eight sessions entitled, “The Gulf Co-operation Council (GCC)”, “Workshop on Enforcement of Judgements and Awards” (Sessions 2 and 3), “The Future of the Legal Profession in the Arab World”, “Maritime Law in the Arab Region”, “Privatization and the Stock Markets”, “Developments affecting Energy in the Middle East” and “Intellectual Property in the GCC Countries”. The eight sessions were equally divided between the 16th and 17th.

The first session on the GCC was chaired by Mr. Essam Al Tamimi and his two speakers were Mr. Youssef Z.A.M. Zainal, Secretary General of the GCC Commercial Arbitration Centre, and Dr. Nageeb Al Nauzmi, the former Qatari Minister of Justice and founder of the law firm under his own name. Mr. Zainal discussed the attempt made by the GCC to unify legislation, regulation and procedures in the GCC States that would support the socio-economical and political integrity in the region. He further stated that with the political willingness and clear sight of these countries, the attempt to unify the process in the different fields had positive reactions and would reflect the common tendency required for the unification of the GCC States. Dr. Al Nauzmi then discussed whether the future development of the GCC would result in it being a trading entity or trading block and focused on the status of customs and tariffs co-operation.

The second and third sessions were combined for a workshop on enforcement of judgements and awards entitled, “A Global Judgements Convention: Pre-Conditions, Prospects and Practicalities”. It was organized by the international litigation and arbitration and ADR committees of the Section of Business Law of I.B.A., Committees O and D respectively. The moderator was William G. Horton of McMillan Ball Casgrain, Toronto, Ontario, Canada and the panelists were Professor Catherine Kessedjian, Deputy Secretary-General of the Hague Conference. The Hague, and Avocat a la Cour, Paris; Habib Al Mulla of Mulla Law Office, Dubai; Peter Rees of Norton Rose, London; Jalila Sayed Ahmed of Hassan Radhi & Associates, Bahrain and Hans van Houtte of Screbe Simont Monahan Duhot, Brussels. The discussion was on the work of the Special Commission of the Hague Conference on a global judgement convention. Included were the following topics: (1) scope of the proposed convention (2) limits on accession, (3) special grounds for enforcement and non-enforcement, (4) multi-party and multi-jurisdictional disputes and discretionary grounds for accepting or declining jurisdiction, (5) the widespread use of international arbitration and its impact on the need for a global judgements convention, (6) the effect of embargoes and sanctions on the enforcement of judgements and awards (7) current practice of enforcement and non-enforcement of foreign judgements in the Arab world and (8) the practical application and use of the Arab League and GCC treaties in enforcing foreign judgements and awards integration.

The fourth session was entitled, “The Future of the Legal Profession in the Arab World” and was chaired by Hassan Ali Radhi of Hassan Radhi & Associates, Bahrain. The panelist was Hamid Mamdouh, Counselor and Legal Advisor of the W.T.O., Geneva. The following topic was discussed: the GATT: Opportunity? Threat? Or Irrelevant to the Legal Profession?

Nancy Turk was the moderator of the fifth session entitled, “Maritime Law in the Arab Region”, which was the first session of the final day of the conference. Her panelists were Richard Price of Clifford Chance, Dubai, who spoke on environmental law with particular regards to oil slicks and referred to adherence by Arab Countries to international conventions, local laws and regional co-operation; David Wilson of Trowers & Hamlin, Muscat, Oman who spoke on the effect of maritime law on the Mira Bayuat container terminal project in Salalah, Oman and Andreas A. Haberbeck of Abbas F. Ghazzawi Law Firm, Jeddah, Saudi Arabia, who spoke on current issues and developments under Saudi law.

The sixth session, “Privatization and the Stock Markets”, was moderated by Jerry Walter of Simmons & Simmons, London. He spoke on issues arising in the context of listings of Middle East regional privatization stocks on international markets. The other two speakers were Fadi Moghaezel of the Moghaiez Law Firm, Beirut, Lebanon, who discussed the use of BOTs and franchises to privatize and Sharif Ali Zu’bi of Ali Sharif Zu’bi Law Firm, Amman, Jordan, who spoke on a case study of the Jordanian telecommunications privatization.

Gavin H. Daniel, Senior Legal Officer of the Kuwait Foreign Petroleum Exploration Co. Ksc, was the moderator of the seventh session, “Developments Affecting Energy in the Middle East”. His three panelists were Dr. Atef Salemeen, Senior Legal Advisor of the Abu Dhabi National Oil Company, who discussed the evolving relationships between the oil companies and host governments with reference to certain recent development in the UAE; Brent Kinney of Clyde & Co., Dubai, who spoke on recent developments in gas sales contracts and Sheikh Tariq Abdullah, Advocate and Legal Advisor, Aden, who addressed the financing, exploration and production of oil and minerals in Yemen.

The last session of the conference, “Intellectual Property in the GCC Countries”, examined the adherence by Arab Countries to international conventions with reference to actual experience in enforcement of intellectual property rights under these international conventions and local law. The moderator was Majed Basheer, Legal Advisor to the Dubai Chamber of Commerce, and his panelists were Habib al Redha, the Under-Secretary of the Ministry of Information and Culture, UAE; Majed Garoub of the law firm of Majed Garoub, Jeddah, Saudi Arabia and Dr. Hassan Lutfi of the Shalakany Law Office, Cairo.

From the response of the attendees, the seminar was not only topical but also highly appreciated. Of primary interest pursued by the audience were the areas of enforcement, maritime law and marine pollution and the profession’s future. The organizers, speakers and sponsors are to be congratulated on the success of their hard efforts and we all look forward to the continuing discussions on these relevant and important issues.
SPECIALIST TRAINING OF ARBITRATIONS IN AUSTRALIA

A report by: Mr. A. A. de Fina, President
Court of International Arbitration, Australia

Training and qualification of arbitrators in Australia has until very recently followed a rigorous and extended programme of lectures and examination conducted by the only organization relating to domestic arbitration, the Institute of Arbitrators Australia (now the Institute of Arbitrators and Mediators Australia).

Additionally, the Institute applied an ongoing system of quality control where recognized arbitrators were required to establish competence and experience in arbitration to remain recognized.

To a significant extent those requirements previously applied and put into effect by the Institute itself have been recently redirected to formal education organizations. Whether these changes will be beneficial to the practice of arbitration in Australia remains to be seen.

Within Australia appointment as an arbitrator is not the sole province of lawyers and many persons practicing as arbitrators are not lawyers.

But, as anywhere in the world with a formal legal system, arbitration is essentially and fundamentally governed by law both in its procedure and in its determinations. Thus a detailed knowledge of relevant law is essential.

But this knowledge of itself is not sufficient to ensure proper conduct and appropriate outcome of an arbitration.

The arbitral process is as much practical as it is theoretical and a detailed academic knowledge does not itself ensure that an arbitration will be properly conducted, that the award will be appropriate, or that the disputing parties will have confidence in the process or the arbitrator.

For some 10 years A A de Fina, a past President of the Institute of Arbitrators Australia and the Australian Centre for International Commercial Arbitration, and now President of the Court of International Arbitration Australia, has conducted what is loosely described as a Pupillage Programme.

This involves a grouping of some ten persons who are or would otherwise qualify as recognized arbitrators, have experience in arbitration at a high level, and who meet together monthly over a one year period.

As far as possible the group is made up of an equal number of lawyers and non-lawyers. This is done so that each can benefit from the thinking and experience of the other.

As a whole the group is challenged by contemporary problems or issues in arbitration, and required to give individual or collective responses or debate, often with prerequisite of written response or discussion papers.

Because the matters raised are ordinarily live issues currently before courts, the subject of legal or other debate, or perhaps arising from legislation or proposed legislation, the group is appraised and educated in matters of importance to arbitration as they happen.

The level of competence, experience and knowledge required of participants ensures vigorous debate and analysis.

The Pupillage Programme is the only one of its type conducted in Australia. It is widely recognized and has as some of its past participants persons who are now judges in superior courts in Australia.

Similar programmes may be used to advantage the use and standing of arbitration in other parts of the world.

FIRST ANNOUNCEMENT

SYMPOSIUM ON THE INITIAL AND CONTINUING TRAINING AND QUALIFICATION OF INTERNATIONAL ARBITRATORS.


The G.C.C. Commercial Arbitration Centre has organized a seminar which has a highly specialized purpose, attracting international arbitration centres from around the world. This seminar will be centered on two main concepts: to identify and set minimal standards of qualification for professional to be eligible for panel membership and secondly to provide training for arbitrators to tackle problems experienced by the Centres and their members and to find solutions to these problems.

If this symposium is of interest to you, please contact: Mr. Yousef Zainal, Secretary General
G.C.C. Commercial Arbitration Centre Tel: 214800/211827
Fax: 214500 E-mail arbit395@batelco.com.bh
Our Web site address: www.alnadoem.net/arbit
# FUTURE ACTIVITIES OF THE CENTRE

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**DUBAI SEMINAR – MAY 27TH 1998.**

The G.C.C. Commercial Arbitration Centre jointly with the Dubai Chamber of Commerce and Industry has organized for a seminar on “The Use of Arbitration in Banking and Insurance”. The seminar would be divided into 2 sessions whereby one half of the day would be devoted to the Use of Arbitration in Insurance and the other to the Use of Arbitration in Banking and finance Institutions.

The Centre has organized for 2 speakers to present a paper each, covering the subjects from various angles. The speakers for the Use of Arbitration in Insurance would be Mr. Larry S. Domingo of the Arab Insurance Group- Bahrain and Mr. John Duff of Holman, Fenwick & Willian – U.K.

One of the speakers for the Use of Arbitration in Banking would be Mr. David Reynolds from Clyde & Co. while the speaker is yet to be nominated.

The seminar is open to all those interested in participating, grants generously contributed by the Dubai Chamber of Commerce and Industry with its primary motive of supporting the Centre in its activities.

For further information or assistance, kindly contact G.C.C. Commercial Arbitration Centre on 214800 / 211827 or the Dubai Chamber of Commerce and Industry on 221181.
Insurance dispute resolution through arbitration in Saudi Arabia uniquely differs from that arbitration existing in other parts of the world. In order to dispel any astonishment or confusion that may arise in connection therewith, I would like to emphasize that arbitration, in Saudi Arabia, is deemed to be the sole means of insurance dispute resolution.

Before judging any incorrect notion envisaged by the protagonist of arbitration, the tendency in Saudi Arabia towards the use of arbitration in insurance dispute resolution is not a matter of favoring of arbitration to judicial proceedings, but arbitration is sought whenever court proceedings are not accessible.

1. Insurance Contracts under Jurisprudence and Judicial Experience in Saudi Arabia.

   i) Insurance Contracts under Jurisprudence

Notwithstanding the assertions of Islamic canonists that all Islamic legislations relating to the organization of socio-economic life seek to establish a community based on absolute co-operation and solidarity with respect to the rights and obligations and that an insurance contract does not contravene this supreme Islamic goal, the predominant view in Saudi Arabia tends to prohibit “insurance” for it is deemed to be a kind of gaming and wagering mixed with usury whereby the insurance company acts as a gambler who receives a fixed profit.

However, supporters of the legality of an insurance contract are in view that the essence of insurance is to make good the effects of risks that the “insured” may encounter during the course of his business activity by a co-operative way of spreading risks and elimination thereof.

As opposed to an insurance contract, gambling contracts are, indeed, against human morale and social order. Moreover, gambling paralyzes man’s productivity. “Insurance” provides relief and creates a sense of security to the insured whilst a gambler is always deprived of security.

Supporters of the legality of insurance contract conclude that an insurance contract is a contract of indemnity, which is beneficial to both parties thereto. It generates profit to the insurer and security to the insured before the occurrence of the risk and the insured shall be indemnified after the occurrence of the risk whilst no benefit shall inure to the loosing party in case of gambling.

Unlike insurance, wagering is irrelevant to making good the risks that might occur in the course of human productive activity and does not provide any security or relief to any party to a wagering contract.

According to their point of view, supporters of the legality of an insurance contract argue that insurance does not imply any challenge of Divine Order. Insurance does not provide guarantee for non-occurrence of the risk, but it is a guarantee for making good the effects of risks on the happening of a certain event and this is an intrinsic Islamic demand.

   ii) Insurance Contract Under Judicial Practice

Saudi Courts are used to uphold opinions adopted by the predominant of jurisprudence opinion in Saudi Arabia and totally refuse adjudicating in “insurance” disputes whether before Sharia’ Courts or before the Commercial Departments at the Grievances Board which are deemed as the competent bodies to consider commercial disputes.

2. Insurance Contract Under Saudi Laws and Practice Thereunder

Insurance contract has been introduced in Saudi Arabia since the emergence of commercial dealings and particularly, shipping risks. Insurance contract was expressly codified and a number of provisions were dedicated for it under “The Regulations of the Commercial Court” promulgated under Royal Decree No. (32) of 15.1.1350 Hejri corresponding to the 31st May 1931.

These rules are still in effect, yet the provisions relating to insurance are suspended except in certain cases where the Ministry of Commerce seeks to rely on such provisions to justify its jurisdiction over insurance disputes. This issue will be dealt with later.

In practice, the Ministry of Commerce has granted a permission only to the Co-operative Insurance Company under a respective Commercial Registry, whilst, to the best of my knowledge, all insurance companies operating in the Kingdom have no special commercial registries, but they are branches of companies registered outside the Kingdom and are operating in accordance with commercial agencies agreements under the sponsorship of a Saudi agent (whether an individual or a company) having a commercial registry licensed to carry on commercial agency activities.

In view of the differences as to the admissibility of insurance, on the one hand and its being an existing fact on the other hand, where the total volume of subscriptions in Saudi market reaches an approximate amount of Saudi Riyals three milliards, it has been resolved that insurance disputes be settled by way of arbitration. It is worthwhile mentioning also that most insurance policies signed in Saudi Arabia contain arbitration clauses.


When the Saudi Rules of Arbitration No. M/46 dated 12.7.1403 H corresponding to the 23rd of April 1983, were promulgated, the practice pertinent to insurance contracts and other disputes falling within the jurisdiction of the Courts was taken into account. The phrase “the competent courts” was replaced by “the authority initially competent to decide on the dispute”, namely when reference is made to the authority that it is competent to render a decision on the enforcement of the arbitral award, including the appointment of arbitrators on behalf of the parties to the dispute.

Being conversant with the real practical need and his prior knowledge that any arbitral award will require a judicial authority that might decide on pleas raised in connection therewith and thereafter might order enforcement thereof, the learned legislator formulated the above phrase as aforesaid so
That any authority empowered by the Government shall be in a position to decide on any given dispute and might replace the court in respect of all matters relating to the arbitral proceedings as contained in the Saudi Regulations of Arbitration.

4. The Saudi Ministry of Commerce is the Competent Authority to decide on Insurance Disputes

As we have already pointed out, the Saudi Courts refrain from considering insurance disputes for the reasons set out hereinbefore. Meanwhile, by the development and expansion of commercial activity in the area of export and import and the forging of trade links between Saudi Arabia and other countries both regionally and internationally, the need of insurance has become a necessity for it is difficult to fancy that, under the existence of active economy, investment and commercial exchange, the parties involved in such activities are lacking for a means of spreading risks upon their happening. Therefore, insurance is an essential device by which loss of money might be avoided. It stimulates citizens to invest their monies and be indemnified in the case of loss.

Thus, the practical need has necessitated admissibility of insurance and hence, the Ministry of Commerce was authorized to decide on insurance disputes. Such power may be inferred from the tenor of a letter Ref: 965/11 dated 17.04.1417 corresponding to 31st August 1996. This letter was addressed, as a reply, by the undersecretary of the Ministry of Commerce to an arbitrator appointed in an insurance dispute in connection with an inquiry raised by the arbitrator with respect to the grounds on which the Ministry exercises the power which is assigned to "the authority initially competent to decide on the dispute". The Ministry's reply contained a number of grounds which can be summed up as follows:-

1. The provisions of articles 324 (and the following) of the Regulations of the Commercial Court promulgated under Royal Decree No. (32) dated 15.1.1350H.

2. Regulations regulating the competence of the Ministry of Commerce issued by a Resolution of the Council of Ministers No.66 dated 6.4.1374H.

3. Subsequent confirmations followed by transmission by the Ministry of Interior of insurance disputes to the Ministry of Commerce.

4. The Ministerial Committee formed under Order No. (8151) dated 9.4.1398 H. confirmed that insurance disputes shall be conducted under the supervision of the Ministry of Commerce.

Regardless of our contentment as to the grounds on which the Ministry bases its power to decide on insurance dispute and whether it is the appropriate authority to consider such disputes or not, I am of the opinion that the role assigned to the Ministry in this connection meets the requirements of this stage.

5. Arbitral Proceedings in Insurance Cases

The claimant shall file his complaint with the Ministry of Commerce. It shall contain his respective claims. The claims shall be considered in the following manner:-

i) If the claimed amount is less than one hundred thousand Saudi Riyals, a Committee of the competent directorate at the Ministry of Commerce shall prepare a study in connection therewith and shall make a recommendation to be submitted to His Excellency the Minister of Commerce for approval or for further reconsideration. The decision taken by the Ministry in respect thereof shall be final and may not be contested or challenged.

ii) If the claimed amount is more than one Hundred Thousand Saudi Riyals, the Respondent shall be summoned and if he refrains from responding to the claimant's claims, both parties shall be requested to solicit their own arbitrators and an arbitration document shall be prepared and be forwarded to the Ministry of Commerce for approval.

The Ministry of Commerce will require the disputing parties to pay the arbitrator's fees prior to the approval of the arbitration document with a view to avoid non-payment by the parties or any one of them of the arbitrator's fees within the prescribed period of 5 days from the date of the approval of the arbitration document as stipulated in the Saudi Arbitration Rules and to enable the arbitrators to adjudicate in the dispute within the prescribed time-limit provided for in the arbitration document.

iii) Upon approval by the Ministry of the arbitration document, the Ministry will transmit it together with the relevant file to the Chamber of Commerce. The arbitration sessions shall be held at the Chamber, which shall be considered as the only venue of the arbitration due to the availability of services such as place and qualified and trained secretariat at the Legal Directorate in the Chamber. The Secretariat shall conduct and control the hearings and will address all relevant notices provided for in the Saudi Arbitration Regulations.

iv) After rendering the award by the arbitral tribunal and, unless any litigant to the dispute has any objection to the award, the Chamber of Commerce shall transmit the award along with the dispute file to the Ministry. The Ministry shall scrutinize the award and approve it.

v) The parties may object to the award within (15) days from the date of notifying them of the award in accordance with the Saudi Arbitration Rules, otherwise, the arbitral award shall be final.

vi) Any objection to an arbitral award shall be submitted to the Ministry within the prescribed 15 days to decide on the said objection. The Ministry shall have the right to consider the objection and to amend the award, cancel it or reverse it and at the same time decide on the merits or it may remand the award to the arbitral tribunal that rendered the award by a letter specifying the Ministry's comments.

The arbitral tribunal may reply to the Ministry's letter or otherwise insist on its decision and it may request the Ministry either to approve the award as it is or decide on the merits in its capacity as a competent authority. The Ministry will usually uphold the arbitral award and will not amend it.

As demonstrated hereinbefore, the Ministry is empowered to remand the award to the arbitral tribunal for reconsideration thereof or adjudicate in the dispute anew and open the case for deliberation.
Moreover, it may amend the award or reverse it and render a new award.

The power assigned to the Ministry as mentioned above represents a departure from the well-established practice of the international arbitration whereby the function of the Court (i.e., the authority which is originally competent to consider the dispute) is restricted to laying down modifications merely as to the formal and procedural breaches without affecting the arbitral tribunal's decision relating to the merits.

The Centre is pleased to announce the acquisition of Mr. Abdul Hamid El-Ahdab's scholarly reviews and analyses of the new arbitration act of the Sultanate of Oman in three different publications, the Journal of International Arbitration, MEALEY'S International Arbitration Report, and REVUE DE L'ARBITRAGE. The new act regulating domestic and international arbitration was issued in July 1997 and is applicable to civil and commercial matters. Mr. El-Ahdab discusses the differences between Oman's new and repealed acts and draws comparisons with the Egyptian arbitration act issued in 1994 and the UNCITRAL Model Law, upon which the new act was based. His comments on areas left unclear by the new act are important to advisors of clients subject to the act's jurisdiction.

LEX CONSTRUCTIONIS?

For those who want to take a constructive step into the future to build a new flexibility into the construction law environment, we suggest the article, "Moving Toward a Construction Lex Mercatoria – A Lex Constructionis", by Charles Molineaux, published in the March 1997 issue of the Journal of International Arbitration and found in the Centre's library. Mr. Molineaux takes issue with the view espoused by Lord Mustill and Mr. Boyd in the second edition of their book, The Law and Practice of Commercial Arbitration in England, that it is debatable that a lex mercatoria exists or that, if it does, that it facilitates commercial dispute resolution. Starting with the 20 core, legal principles identified by Lord Mustill as comprising the rules of a lex mercatoria, Mr. Molineaux distills 10 core lex constructionis principles after reviewing the significant changes to the clauses of the FIDIC construction contracts, which embody the standard understanding between the relevant parties in construction, the role and purpose of the World Bank's "Standard Bidding Documents", the historical role of the British engineer as agent and quasi-arbitrator and selected commentary on recent cases. If you are involved in the construction industry here, especially in resolving disputes either formally or informally to a greater or lesser extent, and have not yet read Mr. Molineaux's views, treat yourself to his exposition. As a bonus, you come away replete with all the necessary Latin phraseology of impressionable value.