CAC 066

GCC Commercial Arbitration Centre

BULLETIN

Issue 19 June 2001

Events highlighted in this issue include

Meeting with the ICC

Seminar on the Settlement of Disputes in the Era of Telecommunications, Information Technology and E-Business

Workshops held in Dubai

Seminar on Islamic Project Finance

For more details....turn over

Under the patronage of HE Sh. Ahmed Bin Mohammed Al Khalifa
Governor - Bahrain Monetary Agency

Workshop & Seminar on Islamic Project Finance

4 - 6 June 2001.
Bahrain

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7. Yousif Zain Alabedeen Zainal – Secretary General – GCC Commercial Arbitration Centre.

NOTE

The views expressed and information provided in this bulletin are neither necessarily those of the GCC Commercial Arbitration Centre nor those of its Board of directors. The GCCCAC has no liability whatsoever that may be placed upon it.

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A REPORT FROM THE BOARD AT ITS 23rd MEETING
12 - 13TH MAY 2001.
MUSCAT - SULTANATE OF OMAN

The Chamber of Commerce and Industry in Oman hosted the ordinary 23rd meeting of the Centre's Board of Directors, which was held in Muscat from 12 - 13 May 2001. The meeting was chaired by the representative of the Bahrain's Chamber of Commerce and Industry and attended by:

1. Mohammed Eid Rashid Bokkhammas - Chairman - Bahrain
2. Jameel bin Ali Sultan Al Lawati - Vice Chairman - Oman
3. Khalifa Khamis Matar - member of the Board - United Arab Emirates
4. Dr. Ibrahim Isa Al Isa - member of the Board - Saudi Arabia
5. Bader Abdullah Al Darwish - member of the Board - Qatar
6. Waleed Khalid Al Daboos - member of the Board - Kuwait
7. Yousuf Zain Alabedeen Zainal - Secretary General - GCC Commercial Arbitration Centre.

On the first day of the meeting the delegation met with some Omani concerned ministers and officials.

1. H.E. Mohammed bin Ali Al Alawi - Minister of Legal Affairs
2. H.E. Maqbool bin Ali Sultan - Minister of Commerce and Industry
3. H.E. Mohammed bin Abdullah Al Hanaei - Minister of Justice
4. H.E. Shaikh Salem bin Hilal Al Khalili - chairman of the Chamber of Commerce and Industry in Oman.

The meetings discussed the bilateral relations and fields of joint cooperation, which serve the common interests. The delegation conveyed thanks and appreciation to the Sultanate of Oman for its support and assistance to the Centre, in particular its issuance recently to a ministerial order allowing resorting to the Arbitration Centre for resolving commercial disputes. The delegation also expressed satisfaction to the Chairman of the Chamber of Commerce and Industry in Oman over the level of relations existing between the Centre and the Chamber and appreciated the great support extended by the Chamber and its various contributions in making this joint Gulf project successful.

On the second day the Board of Directors met at the Chamber headquarters to discuss the agenda which included reviewing some of the administrative, organizational and financial reports for approval.

In addition, the new applications of the Centre's accredited experts were also approved. At the end of the meeting, the following resolutions and recommendations were issued:

1. Extending deep thanks and appreciation to the Sultanate of Oman for supporting the Centre, mainly its recent issuance to the ministerial order allowing agreement among parties of the commercial dispute to resort to the GCC Commercial Arbitration Centre for resolving their disputes.

2. Highly appreciating the role played by the chamber of Commerce and Industry in Oman in supporting the Centre's endeavors to activate its role. Expressing utter satisfaction over the level of relationships crowned by signing the joint cooperation agreement between the Chamber and the Centre, as well as expressing thanks and gratitude to the chamber for hosting the BOD meeting and for the warm and generous hospitality.

3. Highly estimating the issuance of Bahrain, Oman and United Arab Emirates to executive decisions in favor of the Charter of the Centre. At the same time expressing desire that the other GCC countries will follow suit to give a strong push for the Centre giving more credibility for the arbitration decisions issued by the arbitration panels which were formed under the Charter and Arbitral Rules of Procedure of the Centre.

4. Hailing once again the announcement of the Manama Summit issued recently calling for a great role of the Centre in resolving disputes related to the Unified Economic Agreement and its executive decisions. Hoping that all concerned authorities at the GCC Secretariat General and member countries to implement this decision including the recommendation made by the GCC Consultative Committee which stipulates a clear mechanism for resolving disputes related to the Unified Economic Agreement and its executive decisions.

5. Highly appreciating the role of the GCC Chambers Federation the member chambers in supporting the Centre since its establishment, wishing that these chambers would consider the proposal presented by the Secretariat of the GCC Chambers Federation to put a cooperation framework with the Centre by signing a cooperation agreement between the Centre and each chamber.

6. The BOD expressed its gratitude and thanks to all Chambers of Commerce in the GCC for nominating the "Liaison Officers" to be a link between the Centre and member chambers and other economic sectors. Hoping that the chambers will further support and activate the role of those officers through agreements between the Centre and each member chamber.

HAVE YOUR SAY

The Centre invites contribution of articles and materials for publication in future issues.

Please feel free to submit articles, reports, etc., on international events/developments in our Bulletin. All materials should be sent in text format and on disk (MS Word format) to:

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Message from the Chairman of the Centre's Board of Directors

We have held many discussions with concerned parties on the most successful methods to activate the role of the Centre. As it is well known that the Centre has two jurisdictions, a general one, which is looking into commercial disputes that arise among individuals or institutions in and outside the GCC countries, and another exclusive jurisdiction that distinguishes the Centre from other arbitration institutions and bodies, which is looking into disputes related to the Unified Economic Agreement.

Therefore the endeavor to activate the role of the Centre must be launched by activating these two jurisdictions. If we started with the general jurisdiction, the parties who benefit from arbitration are usually from the private sector including businessmen, companies and establishments in addition to institutions partially owned by the government. These authorities must be made aware of the importance and advantages of arbitration in liberating them from the burdens of these disputes and their long period of proceedings according to the traditional resolving ways. In addition, ordinary courts have become loaded with cases. Legal advisors and lawyers must convince their clients of the importance of entering a standard arbitration clause of the Centre into their contracts prior to the dispute.

It is also useful that the parties are convinced to refer the dispute to the Centre even with contracts, which do not have an arbitration clause.

The matter depends on the parties believe in the first place in the importance of arbitration and in the institutional arbitration under the Centre's umbrella. Second that the GCC member chambers are also concerned with the matter. The chambers can urge their members to resort to arbitration whether accrediting the arbitration clause of the Centre prior to the dispute or by referring the case at a later stage to the Centre.

We hope to put a practical mechanism for referring disputes to the Centre by the Chambers. In this regard I would like to refer to the cooperation agreement proposed by the Federation of the Chambers of Commerce and Industry of the GCC, between the Centre and member chambers. This agreement sets a suitable mechanism for referring disputes to the Centre by the chambers, in addition to the other provisions related to cooperation in the media and training fields. I would like to underline the initiative made by the Chamber of Commerce and Industry in Oman in approving this agreement and activating its provisions. I hope that other Chambers in the GCC would follow the same. We also call upon companies and institutions to benefit from the Centre's arbitral services.

The Centre's Secretariat is ready to visit these institutions whether in the host country or in the other GCC countries with an aim to explain the role and system of the Centre and answer any questions that are in mind of the officials at these institutions or establishments.

As regards the exclusive jurisdiction, the Manama Declaration which was issued recently urging for giving a greater role to the Centre in resolving disputes related to the Unified Economic Agreement, is considered as the basic principles of the Centre. The proposals presented by the GCC Consultative Committee on the mechanism of resolving disputes of the Unified Economic Agreement and its executive decisions which are hoped to be approved during the Muscat Summit due to be held at the end of the year. These proposals are forming a new mechanism to activate the Centre's role in resolving disputes of this agreement.

Within the same framework, the executive authorities in the member states and the Commercial, Economic and Financial Cooperation Committees are invited to implement the Manama Declaration and encourage the concerned authorities in their countries to refer disputes regarding this agreement to the Centre.

The member countries are also invited to issue executive decisions, putting into consideration that Bahrain, Oman and Emirates have issued the legal instrument to execute the Centre's Charter in their countries, a matter which would give the Centre a strong push and more credibility towards a more effective role.

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MEETING WITH THE INTERNATIONAL COURT OF ARBITRATION - ICC
29TH APRIL 2001.
BAHRAIN.

Officially invited by the Centre's Secretary General Mr. Yousif Zainal, the Supreme Counsel of the International Court of Arbitration of the ICC Mrs. Mireze Philippe and Mr. Hassan Radhi, a member of the International Court of Commercial Arbitration of the ICC and member on the Centre's panel met at the Centre's premises

As stated earlier, the prime intent of this meeting was to discuss the possibility of stronger ties between the ICC and the GCC and also the possibility of conducting joint activities in the region which would help both to create and develop arbitral awareness in the region and would also contribute to promoting the cause of international commercial arbitration.

The discussion also chalked out the facilities being offered by the Centre with regard to the conduct of an arbitral proceeding and its Secretary General offered to provide any support that may be required by the ICC in connection with cases being conducted in the region. He further stated that the Centre was well equipped with both the latest infrastructures as well as with secretarial assistance and would very much appreciate if the ICC could put the Centre's resources to constructive use.

The possibility of conducting a workshop as well as a seminar during the next academic year was also discussed by both institutions. Mrs. Philippe explained that training programmes being conducted in Paris by the ICC mainly dealt with the study of arbitral procedures and which was said to have lasted for around a week's time. The two institutions agreed to adopt the same programme down here in Bahrain. ICC would delegate tutors to this workshop and provide the Centre with a programme schedule that would be worked on by the instructors to this workshop. The Secretary General further advised the delegation that he preferred to have more of practical work rather than theoretical, which, in his opinion, was said to have encouraged more active participation from the attendees.

Another area of discussion was linking the website of both the Centre and that of the ICC to be of more use and interest to the user. Ideas were shared enthusiastically by the representatives of both institutions and groundwork for initiating this point of discussion is under way.

This meeting therefore paved the way for stronger ties between both institutions and emphasized the need to working hand in hand in order to contribute to the development of international commercial arbitration in the region.

MUTUAL COOPERATION PROGRAMME CONVENED JOINTLY BETWEEN THE GCC COMMERCIAL ARBITRATION CENTRE & THE OMAN CHAMBER OF COMMERCE AND INDUSTRY

14TH MAY 2001.
SULTANATE OF OMAN

In pursuance of improving relations between its member chambers and the Centre, and, in order to promote the cause of commercial arbitration in the region, the GCC Commercial Arbitration Centre, represented by Mr. Mohammed Eid Bokkhammas, Chairman of the Centre's Board of Directors, entered into a Mutual Cooperation Programme with the Oman Chamber of Commerce and Industry on 14th May 2001. Falling in line with the initiatives taken by the GCC Federation's Chambers of Commerce to establish a profound influence with each member chamber, this was a positive step in the said direction enabling reciprocity between both organizations, not only in the field of commercial arbitration but also in other areas of mutual interest.

Through this cooperation programme a joint mission of creating arbitral awareness in the region was foreseen as one of the most vital areas of joint ventureship. Conduct of joint activities like workshops, symposia, conferences and seminars was one of the ways of achieving this goal.

Another area of prime interest was the support extended by the Oman Chamber of Commerce and Industry to the Centre's rules and jurisdiction with regard to commercial arbitration. By this, the Chamber would encourage and urge its members to benefit from the Centre's services by not restricting its support only to commercial arbitration but by widening the scope of this agreement to further encourage parties to incorporate the Standard Arbitration Clause of the Centre into all commercial contracts entered into by them and by also availing of the Centre's services with regard to usage of its premises and facilities such as hearing rooms, secretarial assistance, administrative matters etc. during the conduct of an arbitral proceeding. Should a dispute arise without a clause for arbitration stipulated in the contract agreement, the Chamber would urge the parties to recourse the dispute for arbitration to the Centre.

This agreement also paved the way for more attention and cooperation to be given to Pan-Gulf arbitration sparing no efforts to further develop and maintain the cooperation in existence.

As mentioned earlier, other areas of cooperation were the conduct of joint activities and a workplan for the academic year with regard to training in the field of arbitration and related aspects which would include the promotion of joint activities in Oman. Publicity was another area that was discussed at this juncture. The Oman Chamber of Commerce and Industry would support all the efforts of the Centre to enhance and develop its activities by providing it with the required publicity in the media and by also advertising of the same in all its publications. The Centre, in its turn will propagate publications related to law and commercial arbitration, issued by the Chamber.

Both the Oman Chamber and the Centre upheld the vital role played by the Liaison Officers.

AGREEMENT OF COOPERATION BETWEEN THE GCC COMMERCIAL ARBITRATION CENTRE AND THE INTERNATIONAL CENTRE FOR CONCILIATION AND ARBITRATION IN RABAT - MOROCCO

25th May 2001.
MOROCCO

The Centre's Secretary General, Mr. Yousif Zainal was officially invited to participate at an International Conference on Commercial Arbitration – The Current Situation and Future Prospective held in Rabat on 24th & 25th of May 2001. He was also called upon to chair a session on the Current Situation of Arbitration in Morocco during the conference.

On 25th May 2001, an agreement of cooperation was signed by the Centre represented by the Secretary General with the President of the Rabat – Sala Chamber of Commerce, Industry and Services Mr. Omar Al Daraji which called for more cooperation between both organizations.

According to the provision of this agreement, both parties would exchange documentation, information, share experiences with regard to international commercial arbitration including maritime international arbitration. Appropriate measures were to be undertaken by both parties using all available and possible means to develop commercial arbitration in the region which provided a base for the conduct of a joint activity, exchange of experts, nomination of arbitrators and an attempt to assist in enforcing arbitral awards to the extent possible. It was also agreed that either party could utilize the facilities being provided by the other party during the conduct of an arbitral proceeding. Hearing rooms, secretarial assistance etc. could be made use of on specified cost terms in accordance with each party's rules and regulations. Both parties would review this agreement from time to time in order to develop it further to establish stronger ties and for better future arbitration in the region.

Under the patronage of HH Shaikh Ali Bin Khalifa Al Khalifa, Bahrain Minister of Information

Seminar on the Settlement of Disputes in the Era of Telecommunications, Information Technology & E-Business

9th & 10th May 2001.
Bahrain

A very intriguing seminar on the Settlement of Commercial Disputes in the Era of Telecommunications, Information Technology and E-Business was jointly organized by the GCC Commercial Arbitration Centre and the Yemen Centre for Conciliation and Arbitration in Bahrain on the 9th & 10th of May 2001 at the Diplomat Hotel.

Under the patronage of HH Shaikh Ali Bin Khalifa Al Khalifa, Bahrain Minister of Information, this seminar focussed on the problems arising out of the advanced technological developments of which Communication, Information and E-Commerce are correlated entities. This event also reflected on the traditional trade relation paving the path for more interrogating questions and jurisprudent arguments and the courts' attempt to find an answer for these new queries raised in light of lack of appropriate legislation which could cover the shortages in the legal and judicial systems. The event, being addressed by reputed specialists in the above mentioned fields both from the region and from around the world was well attended by participants from Yemen, the GCC and other Arab countries.

The seminar was preceded by a workshop, conducted in Arabic by Mr. Hussam Lutfi, who also presented a paper at the seminar. The workshop was held on the 7th and 8th of May 2001 entitled "Drafting of Contracts and Domain Names".

Another important feature of this seminar was that this was the first joint activity being organized between the GCC Commercial Arbitration Centre and the Yemen Centre for Conciliation and Arbitration. These institutions had entered into an agreement of cooperation whereby one of the provisions contained therein related to the conduct of a joint activity, which was to be mutually supported.

International organizations delegated speakers to this seminar. Mr. Arif Ali represented WIPO while Mr. Jean Francois Bourque represented the International Trade Centre.

Papers presented at this seminar is available and those interested are requested to get in touch with the Centre for more details.

CONFERENCE ON THE ORGANIZATION
AND MANAGEMENT OF LAW FIRMS

8TH & 9TH OCTOBER 2001.
MUSCAT - SULTANATE OF OMAN.

Arab Regional Forum
of
International
Bar Association

On the 8th & 9th of October 2001, a Conference on the Organization and Management of Law Firms is expected to attract participation from around 20 speakers from the region who would represent some of the leading regional firms as well as affiliated foreign firms based in the region.

A first joint activity between the GCC Commercial Arbitration Centre and the International Bar Association, generously sponsored by both the Oman Chamber of Commerce and Industry as well as the Arab Regional Forum of the IBA, this conference would discuss a wide range of topics which include: Global Law Firms: Does size really matter? Networks and cooperation arrangements, organization of law firms, marketing and advertising for lawyers, regional practice, computers, internet and the law office and so on.

The increasing international character of business along with the need for strategic management of the same has necessitated the need for this conference, which would discuss keys to survival, growth and sustained profitability of law firms.

This conference would also provide a forum where management strategies and their implementation as well as updated and valuable information on the latest trends in the legal market would be discussed. It is also envisaged that this event would create awareness with which changes are taking place in the arena of legal services.

Constant reassessment of the depth and expertise of a lawyer, the need for keeping up with technological developments to provide cost efficient services and an identifiable and special role to facilitate and protect the firm's business interests and reputation are some of the other subjects that would be discussed.

The conference will provide an opportunity for participants to discuss these issues with experienced attorneys from different legal backgrounds, and to assess the various options for the development and expansion of their practices in an increasingly competitive environment, which would enable them to adapt themselves to the irresistible changes brought about by globalization.

The conference would be conducted in both Arabic and English with simultaneous translation. The event would be housed at the Oman Chamber of Commerce and Industry's premises and discounted rates have been arranged through Gulf Air, the Centre's official carrier and with Sheraton Oman which provides discounted room tariffs for attendees of this conference.

Workshop on Project Finance
4th June 2001.
Seminar on Islamic Project Finance
5th & 6th June 2001.
Bahrain

A two-day seminar on Islamic Project Finance was convened on the 5th & 6th of June under the kind auspices of HE Shaikh Ahmed Bin Mohammed Al Khalifa, Governor of the Bahrain Monetary Agency. The event, held at the Bahrain Conference Centre, Holiday Inn, was preceded by a workshop on Project Finance in general on 4th of June, both being jointly organized by the GCC Commercial Arbitration Centre – based in Bahrain and the International Association of Lawyers (UIA) France.

The workshop aimed at providing an insight into the concept of project financing, identification and allocation of transnational risks and an understanding of various project finance agreements and techniques. It was conducted by Dubai based Busit, Al Roken and Associates' Legal Consultant Mr. Shahid Khan and by an Egyptian expert in Islamic Banking and a member of the Centre's panel of arbitrators and experts Dr. Mohi Eldin Alam Eldin.

On behalf of the patron HE Shaikh Ahmed Bin Mohammed Al Khalifa the seminar was inaugurated by the executive director, management services, Dr. Nasser Al Belooshi, Bahrain Monetary Agency, who in his opening speech drew to the attention of the audience the fact that although Islamic banking had opened up exciting opportunities for profitable business, Islamic banks had to grow in size to avoid the dangers of marginalization and loss of competitiveness. Dr. Belooshi further stated that Bahrain has not only built a world wide reputation as the Gulf region's pre-eminent international financial Centre, it is also leading exponent in the development of Islamic banking and finance and enjoys the advantage of being in the geographical Centre of the Islamic world that stretches from the west coast of Africa to the Pacific region.

The Secretary General of the Centre, in his opening address said that it was part of the initiative of the Centre to highlight the importance of major issues facing the technical experts in the member states with regard to Islamic Project Finance. New attempts are underway to make Islamic finance a reasonable alternate to conventional project finance, he further added.

The two-day seminar provided an excellent opportunity to improve knowledge of Islamic Project Finance and enlightened the participants on complex elements to the Islamic Financing Structure. Expert speakers in the field addressed a host of topics which included the role of Islamic Finance in project finance, Islamic Finance Techniques, Multi-Sourced project funds, enforcement of judgements and alternative dispute resolution.

The seminar documentation is made available at the Centre and those who had missed out on this event can still benefit from the papers presented by speakers at this seminar.

UNCITRAL AGAINST UNCITRAL – *CONCLUDED*

A PAPER BY DR. MOHIELDIN ALAMELDIN

Article 25 (Application to territorial units): [such as the case of the United Arab Emirates if it adhered to this Convention]:

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the place of business of the guarantor/issuer or of the beneficiary is located in a territorial unit to which the Convention does not extend, this place of business is considered not to be in a Contracting State.

4. If a State makes no declaration under paragraph 1 of this Article, the Convention is to extend to all territorial units of that State".

ARTICLE 26 (Effect of Declaration):

1. Declarations made under Article 25 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State which makes a declaration under Article 25 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification of the depositary".

ARTICLE 27 (Reservations):

No reservations may be made to this convention.

ARTICLE 28 (Entry into force):

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance,

approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to undertaking issued on or after the date when the Convention enters into force in respect of the Contracting State referred to in subparagraph (b) of paragraph 1 of Article 1.

ARTICLE 29 (Denunciation)

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

CONCLUSION

The commentary on the draft convention upon independent guarantees and standby letters of credit, was intended to show the UNCITRAL Organization that there is a contradiction between the Convention of international sale of goods of 1980 and the draft convention we are commenting. The problem is raised by article 8 of the draft convention (inspired by article 9/d/3 of the UCP of documentary credits No. 500 of the ICC). As we stated on this contradiction the two sets of rules (the ICC and the UNCITRAL) give in the above articles to the beneficiary of the independent guarantee or the standby, in case of amendment of the amount of such document by increasing it, the option to accept, refuse or keep silent towards the amendment. The principal may not know the position of the beneficiary except from the presentation of documents at the time of shipping. At this time the practice proved that the beneficiary lose the utmost of losses. This occurs from the beneficiary at the time of shipment by studying the prices in the international markets; if the principal requested ten thousand tons and raised it to one hundred thousand tons upon the same price, the beneficiary gives the principal the biggest amount if the prices in the international markets went down because otherwise he will sell them at the low prices. The beneficiary will give the principal the smallest amount if the prices in the international markets went up more than the contract price, because he will sell the difference of quantities at higher levels. This is the fraud in international trade, which the Convention of the international sale of goods fights against.

We hope that the UNCITRAL may not follow this way of bad faith relations between those involved in international trade, and to introduce the appropriate amendment of article 8 to exclude the choice of silence which gives beneficiaries the chance to realize in all cases the highest profits to themselves and the highest losses to their clients.

Contact the Centre at its new premises

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ENFORCEMENT OF FOREIGN JUDGEMENTS RELATIVE TO PROJECT FINANCE IN ISLAMIC COUNTRIES

A PAPER PRESENTED BY MR. DANNY KABBANI AT A SEMINAR ON ISLAMIC PROJECT FINANCE
5TH & 6TH JUNE 2001.
BAHRAIN

INTRODUCTION

The theory of enforcement of foreign judgements relative to project finance in Islamic countries is not simply a legal theory but a factor of political and economical stability. With the increasing interest of foreign investors, banks, construction companies and suppliers, mainly due to oil and gas projects, hotel and infrastructure constructions, such institutions are more and more interested to know before they agree on providing advances or participating in such projects, whether or not the country's judicial system will allow them to recover their rights in case anything goes wrong, mainly as a result of the default of the project owners.

Such concern of the Lenders has transformed into an equal concern of the borrower's who wish to promote their country's judicial system as stable, equitable and predictable in order to attract financiers, investors and lenders.

The structuring and finance of large infrastructure projects is extremely complex, not only economically but also legally. Consequently no sponsor will invest in international projects unless it has access to an independent jurisdiction or court of arbitration in the event of dispute. Conventional arbitration Centres such as ICC or London Court of International Arbitration are used. We are now seeing more and more regional arbitration institutes in the Middle East, for example the Bahrain-based GCC Commercial Arbitration Centre, the Cairo Regional Centre for International Commercial Arbitration, the new Kuwait Chamber of Commerce Arbitration Centre and the Beirut Arbitration Centre.

Special care must be taken here. In the Middle East where most constitutions refer to Islamic law as the or at least a major source of legislation, there has always been a question over international arbitration under Shari'a law and it is important that at least the civil law of the country gives effect to international arbitration decision or foreign courts sentences.

Enforcement of foreign judgements is generally regulated by two sets of rules: local laws that determine the conditions upon which the foreign judgement or arbitral award can obtain the exequatur whereby for example a foreign judgement should not violate the public policy of the country where an application for its execution is submitted; and international treaties providing for reciprocal and enforcement of judgements and arbitral awards in civil and commercial matters.

Such conditions will consequently set the rules determining whether foreign judgements or arbitral awards will be enforced immediately without re-examination of the merits of the case or whether the local court will reconsider the case initiated under a new procedure as if it was submitted before its jurisdiction for the first time.

Finally some specific difficulties may arise when judgements are rendered in a foreign currency or relative to the charging and payment of interest whereby some jurisdictions may not enforce such provisions.

(I) Consequences of Project Finance development:

In the last few years, project financing has attained considerable significance, notably in the infrastructure area. Large-scale infrastructure projects such as new roads, rail connections, power stations or waste disposal plants are being planned and put into reality by governments and private operators.

International financial operators, in particular banks, are known for their aversion to risk.

Although it is generally recognized that their earnings compensate for the risks they run in each transaction, such operators show great ingenuity in seeking to limit, if not exclude, these risks, through the creation of increasingly sophisticated financial instruments, and through increasing intricacy in the structuring of their transaction, as illustrated by recent technical developments in project financing and asset securitisation.

International financial transactions may be affected by various types of externally generated risks, these being chiefly associated with developments in the economic situation and with changes in the statutory, regulatory, or even political context in which the transaction is set.

These concerns frequently cause foreign companies to look for other ways to protect their interest in the event of contractual disagreement, such as requiring the other party to provide security for the performance of its obligations located outside the Gulf countries.

Various agreements and treaties, including the Amman Convention of 1987, or the New York Convention of 1958 and the Riyadh Convention of 1983, to which several jurisdictions have adhered, have tried to circumvent the problem on paper. Invariably, these signed agreements are undermined by public policy considerations which the courts are all too prone to implement, and which the party which is dissatisfied with the award can put forward.

The Arab countries that ratified the New York Convention are Jordan, Bahrain, Tunisia, Algeria, Syria, Kuwait, Egypt, Morocco, Saudi Arabia, Lebanon and recently Oman in 1999. Consequently, enforcement of international awards and means of recourse in these countries are subject to the provision of this convention.

(II) Requirements for the enforcement of foreign judgements or arbitration awards:

Once an international arbitral award or foreign judgement is made, there are two possible situations: the losing party willingly carries out the award and the case is definitely settled, or on the other hand, that party may refuse to perform the award. In this case, the successful party will resort to the courts to obtain leave to enforce and thus force the party to perform.

At this stage the parties enter into a new phase where they cannot intervene with the choice of law. Indeed, before this stage, the parties were free to choose and implement any law they wished. Now, however, the enforcing courts apply their own law (i.e. that of the place of enforcement) and the parties no longer have any choice in that matter.

Most conditions for the enforcement of a foreign judgement in Islamic countries are identical. In principle, the procedure should be straightforward in the case of countries that ratified the New York Convention. The situation is not as clear in the case of the countries that did not sign the New York Convention.

Generally, the following conditions must be fulfilled in order for a foreign award to be enforced:

1. In the case of an arbitration the party wishing to enforce a foreign award must provide the local court where enforcement is sought evidence of the agreement to refer the matter to arbitration along with the terms of reference.
2. Some jurisdictions such as Abu Dhabi, request evidence of hearing records and the documents filed, to be submitted together with the foreign arbitration award or judgement.
3. The award or judgement must be duly signed and an Arabic translation thereof must be filed with the court.
4. The court of the country where the judgement originated must have had jurisdiction over the matter.
5. The parties must have been duly summoned and represented. A foreign judgement give "in absentia" will have very little chance of being enforced.
6. The judgement must have been issued according to the law of the country where the award was passed or the law agreed

upon by the parties. Arbitrators are normally required to deliver their awards within six months. In practice, arbitration frequently takes longer than originally planned. In such circumstances an extension must be obtained by consent of both parties or through the courts. However in absence of evidence of extension, the award may be held to be null and void.

7. The award must not contradict or violate the morals or public policy of the country where it is to be enforced. This tends to become a difficult condition to fulfil, since there is no clear definition to the words "local morals" or "public policy".

8. The judgement must be final and binding.

9. Finally the judgement must be notarized, legalised and duly authenticated.

Provided all the above conditions are satisfied enforcement of foreign judgements is done by way of a petition filed through the local courts. The defendants to the proceeding will be summoned to respond and, following the exchange of pleadings, the court will either decide to allow enforcement of the judgement or will dismiss the petition.

The court is also empowered to refer the matter back to the arbitrator to deal with certain issues which have either been missed or were not referred to in the original arbitration award. In general, the court will not review the merits of the case, as these have been dealt with.

The arbitration award itself is not subject to appeal, nevertheless the decision of the court allowing or refusing enforcement of the award is subject to an appeal.

Needless to say that the process involved in making an application to enforce a foreign judgement often takes months if not years to proceed through the Courts of First Instance, Appeal and Cassation, in addition to having to pay court fees in all three instances.

Other difficulties arise when enforcing a foreign judgement against a government authority, because some of the countries will declare that the foreign arbitration award is null and void, unless there has been prior permission given to refer the matter to arbitration. This is impractical especially when the government enters into international contracts where the foreign party is not aware of the local laws.

(III) Enforcement in selected Islamic jurisdictions:

A. ***Enforcement of foreign judgements in Qatar:***

A judgement obtained in a court of a foreign jurisdiction will be enforced by the Court without re-examination of the merits of the case, subject to the provision of Article 379 and 380 of the Law of the Civil and Commercial Procedure.

Article 379 states:

"Judgements and order pronounced in a foreign country may be ordered to be executed in Qatar upon the conditions determined in that country for the execution of Qatari judgements and order".

Article 380 states:

"An order for execution of a foreign judgement or order will not be made unless and until the following have been ascertained that (a) the judgement is rendered by a court of competent jurisdiction; and (b) that the parties to the action were duly served with notice and represented at the hearings; and (c) the judgement is capable of enforcement in conformity with the laws of the jurisdiction in which it was rendered; and (d) the judgement or order is not contrary to public policy or morality in the State".

In principle, the provision of Article 379 and 380 of the Law of Civil and Commercial Procedure also apply to the enforcement of an arbitration award issued outside the State or in respect of an International Arbitration (wherever held, including Qatar). However, the present practice of the Court is to enforce an arbitration award issued pursuant to an International Arbitration without a re-examination of the merits of the case provided only that the requirements of Article 380 have been satisfied.

B. Enforcement of foreign judgements in the UAE:

Article 235 of Federal Law No. 11 of 1992 provides for the recognition and enforcement in the UAE of foreign judgements on the basis of reciprocity. However, before enforcing a foreign judgement of the UAE court has to satisfy itself as to a number of requirements, including that:

1. the subject matter of the foreign proceedings was not within the jurisdiction of the UAE court. In a recent decision, the Dubai court of Cassation interpreted this provision widely, to the extent that it decided that if the Dubai Court had jurisdiction over the subject matter the court would refuse to enforce the foreign judgement. In these circumstances the Dubai court would not regard a matter previously adjudicated upon by another courts as "res judicata" and would re-hear the case on its merits.
2. the parties in relation to which the judgement or arbitral award was issued had been given due notice of the proceedings and were represented,
3. the foreign judgement or arbitral award is final,
4. the judgement or arbitral award does not conflict with any judgement issued by UAE court and contains nothing that would be in breach of public policy, order or morals.

In principle, the courts of Dubai and the UAE will recognize a choice of foreign law if they are satisfied that there exists an appropriate nexus between the relevant contract and the foreign law chosen. The courts will not, however, honour any provision of any foreign law, which is contrary to public policy in Dubai or the UAE or to any mandatory law of, or applicable in the UAE. For this purpose "public policy" would be interpreted in broad sense.

C. Enforcement of foreign judgements in Iran:

Iran to date has not joined the New York Convention of 1958. There are conditional possibilities for enforcement of a foreign award in the framework of the Iranian Civil Code. However, in many cases, litigation based on the award as documented evidence, should be brought before the Iranian courts which tend to examine the merits of the case according to national law. The judgement of the court confirming the foreign award can be enforced by a writ of execution.

(IV) Interest: is it a matter of public policy?

In most enforcement of foreign judgements and arbitration awards with Arab countries, the issue of interest raises two questions: is interest forbidden or not according to Islamic Shari'a; and when judges and arbitrators have decided to include interest in their award, will the award be contrary to public policy?

Moslem academic writing has put a broad construction on the texts governing international arbitration and has not hesitated to make advances in a very difficult area, because of basic concern for justice and in consideration of the fact that, today, being deprived of interest has become an injustice. Such concerns have been adopted by some of the Arab countries and were reflected in their legislation. However, each country states its position differently. I will summarize in the following the status of the law in each of these countries.

Kuwait:

This country authorizes interest in its Commercial Code but forbids it in its Civil Code.

The Kingdom of Saudi Arabia:

This country entirely forbids interest but alternative solution exists. Agreements for the payment of interest or amounts in the nature of interest (regardless of the name by which the interest may be referred to and regardless of whether the interest amount contains therein a penalty element), as well as guarantees of any such payment by third parties, are unenforceable under the law and regulations of Saudi Arabia. The unenforceability of an obligation to pay interest would not however cause other obligations not constituting, or in the nature

of, interest to become likewise unenforceable. Also in legal proceedings to enforce payments under loan agreements, a court in the Kingdom of Saudi Arabia may order a deduction from the amounts claimed under such loan agreements in an amount equal to all amounts previously paid to the claimant as or in the nature of interest.

Monetary judgements are based on the terms of the contract, i.e. if the contract is in dollars, the judgement would be in dollars; if unspecified, the judgement is denominated in Saudi Riyals.

Algeria:

This country has not touched upon the question of interest in its legislation but interest is charged in practice and courts will include interest in their judgements. The rate of interest is fixed by the Central Bank.

Libya:

Libyan law allows interest, but restricts it to legal entities.

Yemen:

Yemeni law forbids interest but allows a compensation for loss of profit resulting from later payment.

Dubai:

The courts may not accept the calculation of interest due from the Borrower, if interest is compounded. It should also be mentioned that Civil Courts in Dubai would not award interest exceeding nine per cent simple in respect of any period after the date on which proceedings are issued.

Abu Dhabi:

The courts of Abu Dhabi may not accept the calculation of interest due, where interest is compounded or is calculated at a rate exceeding twelve per cent per annum.

The courts of Abu Dhabi will award a judgement in relation to agreements relative to project financing expressed in terms of United States Dollars in respect of any amount due and owing to any party under a project finance agreement. Nevertheless, although a judgement in foreign currency may be awarded by Abu Dhabi courts, enforcement of a judgement in the UAE cannot be carried out in a currency other than UAE Dirhams.

The courts will not in addition enforce any arbitral award or foreign judgement requiring the payment of attorney's fees, except to the extent that a court determines such fees to be reasonable.

Bahrain:

Like Kuwait, Bahrain allows interest in the Commercial Code but not in the Civil Code. It is thus restricted to commercial debts only. The rate of interest is not determined in the Codes and one may refer to that fixed by the Central Bank.

Lebanon:

Only Lebanese law authorizes compound interest provided that interest relates to a period of time longer than six months. It is also the only Arab law which does not impose a limit on contractual interest, but in the absence of any agreement, legal rate applies.

Jordan:

Jordanian law permits interest in commercial and civil matters; the rate is determined by the Central Bank.

Qatar:

Qatari law contains no provision on interest but the practices of national and international commerce are applicable. While contractual provisions for the charging of commercial interest are permissible and have been routinely enforced, the Court may not enforce any such provision in circumstances where accrued but unpaid interest exceeds the principal amount outstanding.

Egypt, Syria, Iraq, Tunisia and Morocco: these countries have adopted the following rules:

1. Compound interest is forbidden. This interdiction is common to all Arab laws

except for Lebanon, see above).

2. They determine a maximal contractual interest rate, normally varying between 9 and 10 per cent.
3. If there is no specific agreement regarding the payment of interest, no interest is due.
4. Interest only starts as of the date the lawsuit is filed in court.
5. Interest to be paid may not exceed in any case the principal amount of the debt.
6. Interest may be reduced or even superseded if the creditor uses delaying tactics during the proceedings.

General considerations:

While talking about foreign direct investments (FDI) in particular through project financing, two apparently contradictory elements must be obtained. On one hand the maintenance of adequate guarantees for the country where the investment takes place; on the other hand, the creation of all conditions of legal certainty and business fairness which are needed in order to attract investors.

A necessary prerequisite, ranking highest in terms of priority, is to be traced to the adequacy of the remedies offered to investors in case of differences, claims or disputes which may arise with the local subjects, private or public, and even with the national government of the country where investment takes place.

Accession to international conventions is of crucial importance. Not only does it simplify the recognition and enforcement of foreign judgements and arbitral awards, but it enriches the legal system of the member states by moulding its rules to the needs of arbitration at large. It is common knowledge that enforcement can precind from the legal provision of the country of enforcement only if the arbitral award or judgement is voluntarily complied with.

In conclusion, the overall impact of the international conventions is to spread the principle that in dealing with foreign trade and investments the award transcends the narrow legal boundaries of national states to be placed in the international circuit under generally accepted rules.

MINISTERIAL DECISION No. 44/2/2001

Issued by the Minister of State for Cabinet Affairs
General Secretariat
United Arab Emirates

Pursuant to the State of Bahrain and the Sultanate of Oman, the Cabinet of Affairs Minister of the United Arab Emirates issued a Ministerial Decree stating that the U.A.E. would adopt, in the future an appropriate instrument in favor of the Centre's Charter to this effect. This decision was issued on 21st January 2001.

Earlier, both the State of Bahrain and the Sultanate of Oman had issued similar decisions by which parties to an agreement in commercial disputes may refer to the GCC Commercial Arbitration Centre based in Bahrain in accordance with the aforementioned Centre's Charter and Arbitral Rules of Procedure.

The dates of these decisions are 25th April 2000 and 11th July 2000 respectively.

WORKSHOPS ON HOW TO WRITE LETTERS DURING A CONSTRUCTION CONTRACT & THE ROLE OF THE ENGINEER AS AN EXPERT AND WITNESS

19th - 21st MAY 2001.
DUBAI - U.A.E.

These workshops were intended for Engineers, Senior Managers, Construction Professionals and Lawyers who are actively engaged in the administration of construction projects or the resolution of construction disputes, particularly for those who may be involved with the preparation or presentation of expert evidence for arbitration or litigation.

The workshops being jointly organized by the GCC Commercial Arbitration Centre and the Society of Engineers, UAE was held at the Rotana Towers hotel from 19th - 21st May 2001. The first day discussed "How to Write letters during a Construction Contract" while 20th and the first half of 21st was dedicated to discussing the Role of an Engineer as an Expert and Witness.

The instructors to these workshops were Mr. Brian Totterdill, Mr. Guy Cottam and Mr. Geoffrey Hawker. Mr. Ali Al Aidarous, a lawyer from the region actively participated in the discussion, which added more flavour to the event on the whole.

The workshop on How to write letters during a construction contract reviewed the contract requirements and practical aspects of the preparation of letters, notices and certificates by the Employers, Engineer and Contractor. The subjects covered were the procedures at the start and completion of the construction, requirements for submission and response to claim and the procedures for the resolution of disputes. The workshop was based on the requirements of the 1999 FIDIC conditions of contract.

The workshop on the Role of the Engineer as an Expert and Witness highlighted on the duties and obligations of an Engineer also reviewing side by side the procedures involved when he acts as an expert or gives evidence as a witness, either as an independent specialist who is appointed for a particular dispute or as a member of staff of one of the parties. Subjects covered in this regard were advising the clients, writing an expert report and appearing as a witness. On the practical side a role play exercise was included which helped in demonstrating the problems that might be encountered by an expert witness during a cross examination.

Organized jointly by the GCC Commercial Arbitration Centre & The Society of Engineers – U.A.E.

Workshops on "How To Write Letters During a Construction Contract

&

The Role of an Engineer as an Expert & Witness

19 –21 May 2001.

Dubai – U.A.E.

Under the patronage of HH Shaikh Ali Bin Khalifa Al Khalifa, Bahrain Minister of Information

Seminar on the Settlement of Disputes in the Era of Telecommunications, Information Technology & E-Business

9th & 10th May 2001.
Bahrain