Doha – Capital of the State of Qatar was the venue where the Centre’s Board of Directors convened their 24th meeting. Chaired by Mr. Mohammed Eid Rashid Bukhammas, representative of the Bahrain Chamber of Commerce and Industry, the meeting was also well attended by representatives of the other GCC States. They were Mr. Jameel bin Ali Sultan Al Lawati, Vice Chairman and Representative of the Oman Chamber of Commerce and Industry, Mr. Khalifa Khamis Matar, Representative of the UAE Union of Chambers of Commerce and Industry, United Arab Emirates, Dr. Ibrahim Eissa Al Eissa, Representative of the Federation of Chambers of Commerce and Industry, Saudi Arabia, Mr. Bader Abdullah Al Darwish, Representative of the Qatar Chamber of Commerce and Industry, Mr. Waleed Khalid Al Daboos, Representative of the Kuwait Chamber of Commerce and Industry along with the Secretary General of the Centre, Mr. Yousif Zainal.

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The GCC Summit recently convened in Muscat, Sultanate of Oman, has approved the New Unified Economic Agreement which clearly exemplifies that the Centre has been given a key role in dispute resolution arising out of the implementation of this Agreement. This, in itself, is a positive development and a step which sets in motion one of the jurisdictions of the Centre which was stranded i.e. resolution of disputes arising out of the implementation of the Unified Economic Agreement and the resolutions issued thereunder. This was also a vision foreseen by the Leaders of the GCC States while establishing a regional Centre for the settlement of commercial disputes in the region.

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Doha hosted the seminar on Commercial Agencies in the New Millennium which took place between 14th & 15th January 2002 and a two day workshop prior to the seminar. The importance of this event comes directly after the successful ministerial meeting of WTO in Doha which commenced a new round of negotiation of services.

The importance is also derived from the subject itself "Commercial Agencies" which is one of the currently debated issues for the commercial sector in the GCC countries level. This reflected in a large presence of economic activities such as the chairman, managers of the chamber of commerce and their representatives as well as other high rank personnel from the Ministry of Finance and Economy from the GCC. Active participation by lawyers and legal advisors. The event came at a time when a lot of talk was in vogue on commercial agencies and the debate increases as the deadline for implementation of some requirements of the WTO on freedom of international trade and services especially after the adherence of all GCC countries to the WTO, which reflects the economic balances worldwide. In 2 days, the conference has witnessed positive debate which shows that the debated parties were very keen to crystallize a clear vision towards the themes and subject of the seminar. It is noteworthy that the media has positively participated in publishing the debates in their publications. Also the participation of eminent speakers from international offices and firms enhanced the fruitful discussion and successful outcome. After clarifying some important aspects with regard to agencies and licensing.

First day covered the economic and commercial themes from the current situation of the Commercial Agencies in the GCC countries throughout 50 years of practices and successful contribution. Also through the changing environment of the agencies as a consequence of the globalization and the prospective ness of agencies in the GCC countries. Some chambers of commerce presented good papers for e.g. Federation of Chambers of Commerce of Saudi Arabia, Riyadh chamber of Commerce, Jeddah, Eastern province, Bahrain and Dubai Chamber of Commerce their union and analysis for the current situation and future prospect of agencies. Also contribution by consumer protection society in Emirates together a paper by WIPO on licensing as a means for technology transfer and the negotiation scales.

Second day was devoted to the legal aspects as well as dispute resolution of the agencies.

In this regard some papers talked about the adjustment to the requirements of WTO and the need of economic sectors locally and regionally. Also some sessions were tackling the subject of unification of terminology and definitions in Commercial Agencies. Also the legal implications of the agent, dealer and distributorship and the best way to unify the legal rules regulating Commercial agencies in the GCC. On the other hand, some papers devoted to shed light on dispute resolution of the agencies either through courts, arbitration and ADR.

The contribution to this day was from speakers like HH Dr. Bander Bin Salman Al Saud, Head of Saudi arbitration team, Mr. Abdulla Khaled Al Ayoub, Lawyer, Kuwait, Mr. Said Al Shahry, Lawyer from Oman, Dr. Hussam El Din Ahwani, Dr. Mohammed Mohammed Badran and Dr. Hussam Lutfi from Egypt, Dr. Ebrahim Eissa Al Eissa Member of the Centre's Board of Directors, Saudi Arabia, Mr. Stewart Shackleton UK and Mr. Richard Kreindler from Frankfurt, Germany. All their papers reflected their experience in their respective countries and on the issues of importance to the legal and dispute resolution aspects.

Recommendations:

1. The participant agreed that commercial arbitration should be one of the important means which contributes to the economic growth and development of the GCC for more than half a century.
2. The Commercial agencies are not necessarily a monopoly. The monopolistic conduct always concerned with restricting and preventing competition among producers and distributors. So if the commercial agencies are not limitative or limitative but there are options for its products or services, in this case it is not monopolistic.
3. The WTO agreements have no direct relation with commercial agencies for the time being.
4. To review and amend and unify the rules and laws pertaining to commercial agencies on the GCC level.
5. Conduct more activities for more debate and dialogue on important issues in light of fast movement of today's world.
6. The dispute resolution of the commercial agencies should use the amicable means and if these efforts failed it should go to arbitration.

The participants expressed their thanks and gratitude to the organizers for its good organization and preparedness for this seminar in the hope that all concerned parties would support the Centre to activate its rules in dispute resolution and other activities conducted by the Centre.
This meeting falls in line with the consecutive meetings being convened by the Board Members of the Centre between time to time, venues, both being Bahrain and the other GCC States. Change of venues, in rotation, (to each GCC State) also contributed to strengthening ties with officials and public bodies as well as to various sectors of business and finance in these States, thus substantiating the need for the establishment of a regional organization to deal with commercial disputes arising in the region.

Further, this meeting was a result of a positive effort exerted by the State of Qatar to issue an Executive Decree in favor of the Centre’s Charter wherein the provisions stated therein were to be incorporated in the local law and enforced. Attributing the fact that the Charter of the Centre had been approved by the Leaders of the GCC States during the 14th Summit in Riyadh, December 1993, where Bahrain, Sultanate of Oman and the United Arab Emirates had issued a decree in favor of the Centre’s Charter, it is also hoped that the other States would follow suit.

The timing of this meeting was apt in the sense that it was convened at a time when serious measures were undertaken to consolidate and activate the role of the Centre especially among the concerned arbitral bodies in the State of Qatar towards promoting and extending more cooperation and integration in the fields of arbitration by merging the Centre’s rules with their existing judicial systems and also in the field of creating public awareness by actively conducting courses, seminars, workshops etc. either with governmental bodies or private sectors represented by the Qatar Chamber of Commerce and other professional associations.

The Board assessed, discussed and reviewed various administrative, financial and organizational issues along with the achievements of the previous meeting. It also viewed the official meetings held with Ministers and high officials whom they met: -

1. HE Mr. Hassan Abdullah Al Ghanem – Minister of Justice
2. HE Mr. Yousef Hussein Kamal, Minister of Finance, Economy and Trade
3. HE Abdulla Bin Hamed Al Atiyah – Minister of Energy, Industry, Electricity and Water
4. HE Mr. Abdulrahman Bin Hamad Al Atiyah, Undersecretary of Foreign Ministry
5. HE Dr. Ali Fetais Al Marri – Head of Legal Department attached to the Amiri Court

Discussions also extended to cover various phases of joint cooperation between the Centre and other arbitral institutions in order to enhance and strengthen ties. The Board of Directors also expressed their thanks and gratitude to the State of Qatar for having extended its continuous support to the Centre and its regional role in the field of commercial dispute resolution and disputes pertaining to the Unified Economic Agreement.

Concluding the 24th meeting, the Board issued the following recommendations: -

1. The Board Members expressed their thanks to the State of Qatar highly appreciating the move made by the Cabinet Ministers of Qatar, who, in their recent meeting, had approved to take appropriate action towards implementing the Charter of the Centre in the State of Qatar and to prepare a legal instrument to enforce this Charter in the said State.

2. The Board also recognized and appreciated the stand of the Ministers and high officials with whom the Board met which reflected the support extended to the Centre and its regional and international role in commercial dispute resolution.

3. The Board expressed its heartfelt gratitude to HE Mr. Yousef Hussein Kamal, Minister of Finance, Economy and Trade for having graciously accepted to patron a seminar on “Commercial Agencies in the New Millennium” to be held in Doha, State of Qatar on 14th & 15th January 2002.
4. Thanks and appreciation was also extended to the Qatar Chamber of Commerce and Industry for its continuous support towards the Centre and efforts taken in activating the role of the Centre in hope that both sides would continue to consolidate and enhance their relationship in a framework more conducive to both.

5. While the Board highly appreciated the issuance of legal instruments for implementation of its Charter by the State of Bahrain, Sultanate of Oman and the United Arab Emirates, the Board wished that the other members would follow suit, thus giving the Centre a stronger support in its sphere of work and more credibility to the award passed by the arbitral tribunal formed under the Arbitral Rules of Procedure of the Centre.

6. The Board admired the Manama Declaration which called for more emphasized role of the Centre in the field of dispute resolution pertaining to the Unified Economic Agreement and it is hoped that the oncoming Muscat Summit would ratify the new Unified Economic Agreement by which specific provision would be allocated to deal clearly demarcating the role of the Centre in this regard.

The Board held in high esteem the role of the General Secretariat of the GCC and of the General Secretariat of the Federation of Chambers of Commerce in the GCC States as well as all Chambers’ members, each in their own capacity, for their continuous support extended to the Centre since its inception, sincerely expressing the need for continued encouragement and support which would encourage its members to make use of the services being provided by the Centre.

7. In this respect, the Board expressed satisfaction for the efforts exerted to sign agreements of cooperation with the Abu Dhabi Centre for Conciliation and Arbitration, Chamber of Commerce, Industry and Agriculture of Fujairah and Ajman Chamber of Commerce and Industry. It is hoped that other Chambers of Commerce in the GCC would follow suit in signing such agreements in response to the invitation by the General Secretary of Federation of Chambers of Commerce at the beginning of this year.

8. Within its purview to create new machinery to resolve commercial dispute, the Board has approved the formation of a Working Group with its mandate to study the possibility and viability of creating new machinery to resolve disputes arising out of E-Commerce and Intellectual Property. Also to exert efforts to assist the banking and insurance sectors each on its own to create a new machinery to resolve disputes in these sectors.

9. The Board recommended the Secretariat of the Centre to prepare a promotional work plan for the next year in an aim to concentrate on certain sectors, which would help in convincing these sectors to resolve disputes through arbitration by emphasizing the importance of arbitration as a means to resolve disputes.

10. The Board has approved new applications of Experts at the Centre which now amount to 244 in number.

11. Board decided that the next meeting would be held in Muscat on 7th & 8th January 2002.

STANDARD ARBITRATION CLAUSE OF THE CENTRE

All disputes arising from or related to this contact shall be finally settled in accordance with the Charter of the Commercial Arbitration Centre for the States of the Cooperation Council for the Arab States of the Gulf.
The 25th Board meeting of the Centre was chaired by Mr. Mohammed Bin Ali Bin Nasser Al Kajoumi, representative of the Oman Chamber of Commerce and Industry. Among those present were Mr. Mohammed Eid Rashid Bukhammas, representative of the Bahrain Chamber of Commerce and Industry, Mr. Khalifa Khamsi Matar, Representative of the UAE Union of Chambers of Commerce and Industry, United Arab Emirates, Dr. Ibrahim Eissa Al Eissa, Representative of the Federation of Chambers of Commerce and Industry, Saudi Arabia, Mr. Bader Abdullah Al Darwish, Representative of the Qatar Chamber of Commerce and Industry, Mr. Waleed Khalid Al Daboos, Representative of the Kuwait Chamber of Commerce and Industry along with the Secretary General of the Centre, Mr. Yousif Zainal. This meeting was convened after the successful completion of the GCC Summit in Muscat and transfer of chairmanship of the Board of directors of the Centre from Kingdom of Bahrain to the Sultanate of Oman in accordance with the Centre's rules.

The meeting commenced with the election of Mr. Bader Al Darwish, representative of Qatar Chamber of Commerce and Industry as Vice Chairman of the Board of directors of the Centre. As a routine procedure followed at all Board meetings, various reports submitted by the Centre's Secretariat with regard to administrative, financial, organizational developments from the previous Board meetings and plans for the future were taken up for discussion.

In line with the recommendations arrived at by the Board members during their 24th meeting convened in Doha- State of Qatar, the Board studied the possibility of establishing a new machinery and the formation of a Working Group to study the possibility and viability of creating a new machinery to resolve disputes arising out of E-Commerce and Intellectual Property.

To this effect, the Board unanimously confirmed their belief on the importance of e-commerce as a developing sector which needed a closer study on all aspects related to this sector. The Board also instructed the Secretariat to come up with its vision and plan as to how the Centre could implement such machinery in case if it has been approved and accepted. The Board also approved the budget for 2002, new requests for accredited experts to the Centre's Panel, administrative and financial reports presented by the Secretariat as part of its portfolio.

This meeting is among other efforts exerted by the Board to activate the role of the Centre especially as this meeting was convened after the GCC Summit meeting which approved the Unified Economic Agreement laying emphasis on the Centre to resolve disputes arising out of the implementation of the said Agreement.

This occasion also created an opportunity for the BOD members to meet with Ministers and officials of high rank thanking the Sultanate of Oman for its continuous support and where discussions were held to strengthen mutual ties and interest to improve it for a prospective future for the Centre.

Meetings were held with HE Mr. Juma Bin Ali Al Juma, Minister of Labour, HE Mr. Malik Bin Sulaiman Al Maamari-Minister of Transport and Communications and Head of Tender Council, HE Sh. Abdulla Bin Mohammed Al Salimi Minister of Religious Endowments, HE Sh. Salim Bin Hilal Al Khaleeli-Minister of Agriculture and Fisheries and HE Mr. Abdullah Bin Salim Al Rawwas-Chairman of Oman Chamber of Commerce and Industry.

Also the Oman Chamber of Commerce and Industry hosted a reception on the eve of the Board of Directors' meeting where officials were cordially invited to attend.

The BOD members thanked the Chamber of Commerce for their hospitality and for hosting the meeting in the hope of improving relationship and activating the mutual agreement of cooperation signed between the Centre and the Oman Chamber of Commerce and Industry.
We, as the Centre's current Board of Directors stand on firm ground that the Secretariat of the GCC as well as the Finance, Commercial and Judicial committees will work to unanimously follow the instruction laid down by the Leaders of the GCC States with regard to supporting the Centre to reach a new prospective era. The Board members extend their cooperation to the Chambers of Commerce to work together in order to activate the purpose for which the Centre was established - our first move to educate various institutions of both the private and public sectors, thus urging them to recourse commercial disputes arising among GCC parties to the Centre which is again in conformity to the instruction set forth by our Leaders. We also do hope that the Chambers in the GCC countries will take into consideration the initiatives made by the Federation of the Chambers of Commerce of the GCC by entering into mutual agreement between the Centre and those Chambers which we believe would contribute to strengthen relations between both parties in practical and clear framework.

During our tenure as Board members of the Centre, we noticed that the overall performance of the Centre was encouraging.

The commencement of the year 2002 witnessed 5 cases being recourse to the Centre in addition to one case that was pending since last year. All these cases were a result of the incorporation of the standard arbitration clause of the Centre in the contracts being signed and executed by commercial entities during the last 4-5 years. (the Centre is in existence for 7 years) The strenuous effort exerted by the Centre is now slowly gaining ground both regionally and internationally.

In addition to the cases mentioned above, the court of the host country (Kingdom of Bahrain) has requested the Centre on a number of occasions to nominate arbitrators to deal with local cases. The Centre has also been referred to by parties in the GCC region who wished to be provided with the Centre's list of arbitrators registered on its panel.

Since nearly seven years of existence, the Centre has never deviated from its path although it had to face various challenges to gain the recognition it currently enjoys. The result of this being slow and steady growth for the Centre. This also increases the responsibility and duties of the Centre two-fold in a sense that it would have to exert additional efforts to maintain the recognition it has achieved as well as to further activate the role of the Centre in both the private and public sectors.

WORKSHOP & SEMINAR ON INTERNATIONAL CONTRACTS AND TRANSFER OF TECHNOLOGY
KINGDOM OF BAHRAIN

A second joint activity between the GCC Commercial Arbitration Centre and the Union Internationale des Avocats is scheduled from 28th – 30th September 2002. The first one being a workshop and seminar on Islamic Project Finance in Bahrain during May 2001. a workshop and seminar on International Contracts and Transfer of Technology would be convened in Bahrain on the above mentioned dates.

Prior to the seminar a workshop on Patent Law and Licensing would be directed by Mr. Christian W. Appelt, Patentanwalt, European Patent and Trademark Attorney from Boehmert and Boehmert, Germany on 28th September 2002.

Some of the subjects that would be discussed at the seminar would be the Politics and Economics of Technology Transfer, International contractual modes for transfer of technology, key contractual condition in technology transfer contracts, concepts of know how as a subject for technology transfer contracts, national legislation and the issue of transfer of technology, the role of arbitration in dispute resolution arising out of transfer of technology contracts and applicable law, the effect of e-commerce on transfer of technology and so on.

The seminar would be conducted in both Arabic and English with simultaneous translation, while English would be the official language of the workshop. Those who are interested to register for the above mentioned event are requested to get in touch with the Centre.
PREVALENCE OF ARBITRATION IN THE GCC STATES

An article provided by Mr. Yousif Zainal
Secretary General – GCC Commercial Arbitration Centre
Published in Journal of International Arbitration
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During the last decade, commercial arbitration in the Gulf Co-operation Council (GCC) countries received a significant boost by the existing judicial systems of these countries. Enactment of laws and regulatory systems relating to commercial arbitration can be seen to be a success in reforming those unattractive features of court rigid formalities. The move towards codification of arbitration laws in the GCC countries in the past few years is also a visible barometer of the success of the policy supporting arbitration. This can be seen as a move favoring arbitration, in general, and commercial arbitration, in particular, for it will help to ease the tension between judicial and arbitral systems in these countries in the long run. Meanwhile, accession to the relevant international and regional conventions by the majority of GCC countries has, increasingly, strengthened the attitude in these countries in the field of international and inter-regional commerce.

Coincidentally, by the beginning of the 90s, GCC countries witnessed the emergence of arbitration centers providing various arbitration services, including conduct of arbitral hearings, supervision of arbitral proceedings, organization of a variety of conferences, symposia, seminars and training courses relating to arbitration. Such activities were accompanied by research, bulletins and other publications addressing topics pertaining to arbitration. The intention underlying this article is to shed light on the developments that took place and to familiarize the reader with the achievements so far achieved by the GCC countries in the field of commercial arbitration.

Legislation of Commercial Arbitration in the GCC Countries – An Overview

The presence of legislation for commercial arbitration in GCC states considerably demonstrates the concern of the authorities of these states to find an alternative means of commercial dispute resolution whereby a private adjudication is made in relation to the ever-growing and complicated disputes arising in the commercial sector, whether internationally or inter-regionally. Recourse to arbitration reflects a confidence that this alternative means will actually achieve the speed, cost savings and privacy that arbitration should bring over litigation.

In order to keep pace with the developments taking place in the international arbitration field, each GCC country has started to enact its own commercial arbitration legislation.

As an initial step, GCC countries included in their codes of Civil Procedure a separate chapter devoted to arbitration following the Egyptian model which is originally derived from the French Code of Civil Procedure. Nowadays, all GCC countries have promulgated laws and legislation favoring arbitration in general. It is worthwhile mentioning the fact that enactment of such arbitration legislation was initially intended for codification of the national or domestic arbitration in the 70s, 80s, and the beginning of the 90s. Recourse to international arbitration has necessitated modernization of local legislation in the GCC countries to keep pace with the “Legislative Renaissance” in the field of international arbitration. Among the influences which are felt in the GCC countries are the examples of Bahrain and Oman who adopted the UNCITRAL Model Law of Arbitration by enacting the following Decrees:


2. Sultanate of Oman: Royal Decree No. 47/97 issuing the law of arbitration in civil and commercial disputes on 28th June 1997.
Both decrees closely follow the UNCITRAL Model Law. According to information available to us, the UAE also has its own draft law on commercial arbitration based on the UNCITRAL Model Law which is under study and consideration for the final text.

It is worth mentioning that Bahrain’s Legislator preferred to maintain the arbitration chapter in the Civil and Commercial Procedure Act promulgated by Amiri Decree-Law No. 12 of 1971 as amended in 1985 for the purpose of regulating the national arbitration, while the new arbitration law would regulate international arbitration. Whereas in Oman, its Legislator followed the Egyptian model with the new law regulating both national and international arbitration. It is my belief that the Emirates will follow the model used by Oman and Egypt.

In order to accomplish the legislative side of commercial arbitration in the GCC in its international dimension, 4 out of 6 countries have acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958). They are listed below in order of date of accession:

**Kuwait 28th April 1978**
**Bahrain 6th April 1988**
**Kingdom of Saudi Arabia 19th April 1994**
**Sultanate of Oman 10th June 1998**

All GCC countries have also adopted the Convention on Enforcement of Judgments, Delegations and Judicial Notices in the GCC States during the Muscat Summit held in December 1995 and all GCC countries have ratified it.

Pursuant to Article 12 of the said convention “Arbitral Awards rendered in any member state shall be enforced in the same manner as provided in the said Convention. In other words, decisions passed by the courts and arbitral awards rendered would be viewed on the same footing and would be enforced in the contracting states.

Both the New York Convention and the latter Convention have become binding on all the states that ratified them.

As alluded earlier, commercial arbitration received a significant boost by the judicial systems of the GCC countries. The courts left their mark on the development of arbitration, evidenced by the fact that there are many courts Judgements from various courts dealing with the various aspects of commercial arbitration.

Regrettably, these presidencies have not been consolidated despite various initiatives undertaken by the GCC Commercial Arbitration Centre in this regard. We would have to scrutinize the ways by which these presidencies could be consolidated in order to expand, consolidate and provide a prosperous future for arbitration in the region.

**Establishment of Arbitration Institutions in the GCC Countries.**

Multiplicity of Gulf arbitration centres and institutions has become a matter of concern to observers in the region. Most of the established arbitration centres and institutions are directly linked to the Chamber of Commerce and Industries in the GCC countries and this should be dealt with immediately. The bare fact is that there has been no rapid increase in the number of commercial disputes being referred to arbitration in the region. Thus, the need for these centers cannot be wholly justified especially as the Chambers of Commerce and Industry in each of the GCC States have jointly established a regional arbitration centre, the GCC Commercial Arbitration Centre to deal with the disputes being referred to arbitration. The growth of arbitration centres has increased during the 1990s as follows:

- Bahrain Centre for International Arbitration 1993
- Abu Dhabi Centre for Conciliation and Arbitration attached to the Abu Dhabi Chamber of Commerce and Industry – 1993
- Dubai Centre for Conciliation and Arbitration attached to the Dubai Chamber of Commerce and Industry – 1993
- GCC Commercial Arbitration Centre – 1995
Some attempts were also made to establish similar centres in Saudi Arabia and Qatar, which were not successful. On the other hand, multiple arbitration centres reflect the increased attention paid to institutional arbitration in the GCC countries and the decision by some chambers of commerce to provide arbitration services to their members. On the other hand, so many arbitration institutions in a limited geographical area creates overlapping, duplication of efforts and will be a burden on the budget of these chambers. Instead it could concentrate on a single centre to serve the whole area like the GCC Commercial Arbitration Centre which was established for this purpose. Also, the moderate volume of cases does not justify the existence of a large number of arbitration institutions which only receive a few cases annually, and for which most is local arbitration, whilst the larger portion of international arbitration cases are being registered with international / regional arbitration institutions such as the ICC, LCIA, AAA and the Cairo Centre which dominate the international arbitration where parties come from the GCC countries.

Regardless of the few cases being referred to arbitration in this limited geographical area in recent years, the most preferred mode of arbitration is institutional rather than ad hoc arbitration. In recent years, trends with respect to specific professions and individuals are more toward institutional arbitration with the conduct is governed by the rules of a particular institution in spite of the fact that some of the Chambers of Commerce especially in Saudi Arabia provide services and facilities to parties in dispute free of charges. Two main features that could explain this fact are the advantages of institutional arbitration and the increase of awareness of arbitration and the observance of the concept of arbitration, its advantages and limitations.

Also the GCC countries have noticed a surge in number of activities being conducted in the region by the way of seminars, conferences, symposia, workshops etc. Moreover, some activities being conducted in other Arab and Asian countries have attracted many people interested in arbitration from the GCC countries.

The GCC Commercial Arbitration Centre has conducted around 42 such various activities in all GCC countries within a short span of 5 years. It is also noticeable that a great move towards various publications, research and translation in the area of commercial arbitration and in related aspects has been activated in all GCC countries. A database and Internet website of arbitration institutions has been created. All these have contributed directly to the development of the legal intellect of the people concerned with regard to arbitration and in assessing their research more accurately.

Conclusion

From the above, one may infer that commercial arbitration in the GCC countries has a very bright future. Nevertheless, there are some shortages. With regard to a need for the unification of the legal rules of arbitration on the GCC level as a whole, I think that the adoption of the UNCITRAL Model Law on Arbitration by all GCC countries without any exception can be one solution.

Also I am of the belief that there is a necessity to review the rules and regulations that might hamper international arbitration and to suggest appropriate amendments in conformity with the contemporary international arbitration trends. Also the accession to the New York Convention by all countries are yet to ratify it is of utmost importance. The majority of states worldwide have accepted this fundamental convention that has already existed for more than 40 years, and we cannot imagine any successful international arbitration without it. It is also of vital importance that the court’s decisions and judgments should be collated to facilitate their review, analysis and study, which would be of use for the development of arbitration. Emphasis should also be made on more cooperation and coordination between all arbitration institutions in the GCC countries and Arab world and between them and other international institutions to enhance and improve on this cooperation with regard to unifying their views and standpoints relating to all issues pertaining to international arbitration. Joint activity regarding regional and international institutions is vital to spread the arbitration concept and make arbitration a common and successful means to resolve disputes in the GCC countries.

Increasing our efforts to publish, translate relevant information on arbitration and to find
ways and means of enhancing, gathering, retrieving and saving information by using modern technology will also have an impact on the future of arbitration in the region.

Finally, I believe that the enhancement of relations between arbitration institutions and judicial bodies in the GCC countries has utmost importance as we know that courts and arbitration are integrated entities and that arbitration alone cannot succeed without the support and assistance by Ministries and Judicial organs in the GCC countries. Although this cooperation is in existence, we hope that it will increase double fold thus paving the way to work hand in hand in favor of justice and fairness in the GCC countries.

WORKSHOP ON INTERNATIONAL ARBITRATION
6 -8 October 2002.
Kingdom of Bahrain

A workshop on International Arbitration is being jointly organized for the first time by the GCC Commercial Arbitration Centre, the ICC Institute of World Business Law and the ICC National Committee – Bahrain.

This workshop would be convened from 6 -8 October 2002 in Bahrain, the language being English. The instructors to this workshop are Mr. Sergei Lazareff, Mr. Jan Paulsson, HE Sheikha Haya Rashid Al Khalifa, Mr. Hassan Radhi, Mr. Nabil Antaki, Ms. Philippe Mireze and Ms. Laetitia de Montalivet.

This workshop has been designed to offer a unique in-depth study of the various stages of the arbitration process from commencement to Award in the international commercial field. Participants would also be grouped in order to be provided with a practical experience to monitor an arbitral proceeding (mock arbitration). Brochures are being prepared for circulation. In the meanwhile those interested in attending this workshop are requested to contact the GCC Commercial Arbitration Centre for more details.

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Resolving Information and Communication Technology Disputes under the GCC Centre's Arbitration Rules

Arif Hyder Ali

Recent reports confirm that the future growth of the Information and Communications Technology (ICT) sector in the GCC and other Arab States continues to show great promise.

- According to the Arab Advisors Group, available Internet bandwidth in the Middle East grew by 154 percent to 1.9 Gbps between August 2001 and January 2002.

- Based on a report from Frost & Sullivan, ICT spending (excluding telecoms spending) in the Gulf region was expected to each USD2.1 billion in 2001, focused mostly on hardware and networking products, with about 3 percent on e-business software. The report notes that the e-business solutions market in the Gulf has "excellent longer-term potential" as both government and corporate investment in Internet infrastructure increases. Furthermore, more and more firms in the region are going online and becoming aware of the benefits of e-business. The report also notes that the markets for both networking and Internet software solutions in the Gulf region are continuing to grow at over twice the rate of those in Europe and North America.

- In March 2001, a study carried out by Ajeeb.com (sponsored by Tejari.com and Visa International) reported that there are now 3.54 million Internet users in the Arab world, up 1.5 million from 2000. Ajeeb predicts that there will be over 10-12 million Internet users in Arab countries by the end of 2002. Internet penetration was highest and grew fastest in the United Arab Emirates (UAE), the number of Internet users in that country increasing between 2000 and 2001 by 57 percent to 660,000, or almost a quarter of the UAE population. Bahrain has the next highest level of Internet penetration with 16.67 percent, with Qatar next at 10.27 percent. Kuwait has 8.25 percent, Lebanon 6.56 percent. All other Arab countries have less than 5 percent of their respective populations online.

- The continued expansion of ICT-related activity in and in connection with Dubai Internet City is also likely to give rise to increased ICT activity region-wide.

1. ICT Dispute Models

Unfortunately, but inevitably, the increase in ICT activity in the region is likely to give rise to an increase in the number of ICT-related disputes. ICT disputes can involve a variety of issues, including software or hardware performance, quality or function, project management performance, copyright and proprietary rights infringement, service failures, service level breaches, security breaches, data ownership, loss of data or data integrity, and payment disputes. The list is a long one. Some of the salient characteristics of ICT disputes are summarized below.

- **Service Provider Multi-Dispute Model:** The critical distinguishing characteristic of disputes involving service providers (e.g. application service providers, Internet service providers) arises out of the "one-to-many" delivery model. In other words, a single technical problem affecting service delivery, regardless of the source of that problem (e.g. network service provider failure, hosting environment failure, software problem), can have widespread ramifications, giving rise to the possibility of multiple claims in chain reaction.

- **Multi-jurisdictional:** An ICT relationship may involve multiple partners, some or all of which may be located in different geographic areas. As such, an ICT dispute may implicate the laws of multiple jurisdictions. Where the relationship is an international one, the dispute may also involve parties from different business and legal cultures, as well as different technical infrastructures and standards. In addition, a party to an ICT relationship may be subject to suit in multiple jurisdictions, thus facing the prospect of being hailed into court in several different locations, possibly at the same time.
Problem-Sourcing complexities: Many types of ICT relationships involve multi-layered partnering and complex technical relationships. Therefore, it may be very difficult to identify, isolate and understand the source or multiple sources of a technical problem—whether software, hardware or connectivity-related-potentially giving rise to legal liability. It will often take considerable time and resources to determine the nature of the technical breach and to assign responsibility. In addition, although the commercial and legal issues to be resolved in a dispute may be relatively simple, the related technology and technical issues may involve significant complexity. For example, in a situation where a server-based application is hosted off-site by an application service provider (ASP), access to the application will require some form of network connectivity. The connection from the ASP to an end-user of an application contains several components and usually employs multiple providers. Thus, the ASP may be dependent upon its data center provider for long-range transport of the data to the local loop provider, the local loop provider for getting the data to the customer’s LAN, and the customer’s IT/LAN manager for upkeep of the connectivity to the desktops. If any one of these components is down, the end-user has no access to the applications. While the problem may ultimately lie somewhere in the network stack, the customer will look to the ASP for the damages suffered, while the ASP will, no doubt, seek to place responsibility elsewhere.

Cutting-Edge Legal and Business Issues: Many ICT business and delivery models are still in their infancy and the pricing, contracting and business models are still evolving. ICT disputes are thus likely to raise novel procedural and substantive issues (e.g., relating to jurisdiction, applicable law, electronic discovery, on-line contracting, adhesion contracts, valuation), which the existing legal framework in the various GCC states may not yet adequately address.

Symbiotic Relationships: Certain ICT delivery models involve multiple partnering relationships, where each of the partners is mutually interdependent. A dispute that arises could therefore involve parties that have a very important vested interest in a continued and harmonious relationship with the other. The time and financial resources required to establish a new partnering relationship to fulfill the role of a relationship ruptured as a result of a dispute may be prohibitively high.

Unique Characteristics of the Parties: Many technology companies, their partners and customers are young companies or newly formed divisions of established firms seeking to scale their operations. As such, they have a particularly strong interest in the expeditious resolution of any disputes, so that important and possibly scarce resources are not diverted away from other areas of activity. There will also be great interest in preserving the confidentiality of the dispute, in order to minimize bad publicity about their emerging businesses.

Wide Value Range: It is safe to say that ICT disputes will have a wide value range. For example, the losses suffered by a small e-tailer as a result of a two-hour downtime of its Website may amount to only a few thousand dollars, whereas the same downtime may result in a loss of several hundreds of thousands of dollars for a large enterprise involved in business-to-business e-commerce.

II. Features of the GCC Centre’s Rules Applicable to ICT Dispute Resolution

The Charter of the GCC Commercial Arbitration Centre (adopted by the GCC Supreme Council during the 14th Summit in December 1993) (the "Charter") and the Arbitral Rules of Procedure of the GCC Centre (adopted by the GCC Commercial Cooperation Committee in November 1994) (the "Rules"), contain several features that are particularly relevant for the resolution of ICT disputes.

Procedural Flexibility: Article 4 of the Rules provides that "The parties may select further procedural rules of arbitration before the Centre, provided that such rules shall not affect the powers of the Centre or Arbitral Tribunal provided for in these Rules". Parties to ICT and e-commerce contracts thus have the flexibility to supplement the rules that will apply to the resolution of disputes arising out of their relationship, thereby increasing the likelihood
that the applicable procedural scheme will be as relevant as possible to the likely issues in dispute.

- **Flexibility in Choice of Law:** The Charter (Article 12) and Rules (Article 29), provide for considerable flexibility with respect to the law applicable to the substance of the parties' dispute. The parties, of course, may agree on the law to be applied by the arbitrators. Absent party agreement, the arbitrators are authorized to decide the dispute in accordance with the "rules of the conflict of laws which they deem appropriate whether it is the law of the place where the contract was made, the law of the place where it is to be performed, the law of the place where it must be implemented or any other law subject always to complying with the terms of the contract and rules and practices of international law". (Charter, Article 12). The degree of flexibility granted to an arbitral tribunal is significant for e-commerce transactions and ICT-related activities, if only because the arbitrators are specifically authorized to look beyond the laws of the various "local" jurisdictions that may be implicated by the transaction, which are not likely to address adequately many of the issues raised in e-commerce and ICT disputes, to the growing body of "international" principles to fill the gaps left by local legal regimes.

- **Minimization of Court Interference:** Article 14 of the Charter specifically provides that the parties' agreement to refer their dispute to arbitration before a competent tribunal "shall preclude the reference of the dispute or any action pursued upon hearing it before any other judicial authority in any state." (See also, Rules, Article 2 (1)). Thus, an agreement to arbitrate in an e-commerce agreement or other ICT contract will maximize the likelihood that complicated legal and technical issues will be decided by decision makers who are "relative experts" in the issues at hand; problems, however, could arise at the enforcement stage, where court orders are required for such purposes. In this connection, the granting of the necessary order may be questionable in certain jurisdictions that have yet to address the validity of "e-contracts". (See Rules 36, specifically allowing for the filing of a set aside application by a party on the grounds that the arbitration award was issued "in the absence of an Arbitration Agreement or in pursuance of a null Agreement....").

- **Speed:** The Rules contain specific deadlines, which, in principle, must be observed in the conduct of the arbitration. Thus, the Centre's Secretary General is required to notify an arbitration application within 7 days of receipt thereof (Rules, Article 10). A respondent-party is directed to submit its response and counterclaims within 20 days of being notified of the application (Rules, Article 11). A two-week period is set in the Rules for the appointment of a sole arbitrator by party-agreement, or for the Centre's Secretary General to make any default sole arbitrator, party-appointed or presiding arbitrator appointments (Rules, articles 11, 12). The Secretary General is required to forward the case file to the arbitral tribunal within 7 days of its appointment (Rules, Article 15). The tribunal must "proceed with carrying out its mandate within fifteen days from the date of notification thereof." And "In all cases, an award shall be passed within a maximum period of one hundred days from the date of referring the case file to the Tribunal unless the parties agree on another period for passing the award." (Rules, Article 32). Article 32 also states that "The parties covenant with each other to enforce the award with immediate effect."

- **Multiple parties:** As noted above, ICT disputes often involve multiple parties. Thus it is relevant that Article 13 of the Rules contains provisions specifically dealing with arbitrator appointments in multi-party disputes.

- **Interim Measures:** Article 28 of the Rules provides that an Arbitral Tribunal "may take, at the request of either party, interim measures in respect of the subject matter of the dispute..."

### III. Future Considerations

The following suggestions are offered for further debate and discussion.

- The GCC Centre's Rules were developed and adopted at a time when ICT dispute resolution was not as immediately relevant as it is today. As discussed above briefly, the Rules have many features that are applicable for ICT
dispute resolution. Their relevance could perhaps be enhanced through the introduction of, for example, more detailed provisions on confidentiality, expedited procedures (e.g. shortened timelines, sole arbitrator in all cases), and supplementary rules specifically addressing on-line dispute resolution procedures.

- Article 25 of the Rules provides that "The parties to the dispute may authorize the Tribunal to settle the dispute between them by means of reconciliation. They may also request the Tribunal at any stage to confirm what has been agreed upon between them by way of reconciliation or settlement, and it shall pass a ruling to that effect." While this provision certainly leaves open the possibility of mediation or conciliation, it is suggested that the Centre consider introducing separate mediation or other "alternative dispute resolution" procedures; a step which has been taken by several other dispute resolution providers, most notably the July 2001 introduction by the International Chamber of Commerce of its Amicable Dispute Resolution Rules. The myriad benefits of mediation, which makes it a particularly appropriate dispute resolution procedure for ICT-related disputes, include privacy, confidentiality, neutrality, party autonomy, procedural flexibility, the possibility of expert decision-makers, the circumvention of jurisdictional barriers, speed, cost-savings, preservation of business relationships, creative business-driven solutions and minimization of business disruption.

- In order to ensure that the Centre's dispute resolution system is as relevant as possible to the dispute resolution needs of the e-commerce and ICT sectors, it is suggested that the Centre seeks to work with relevant actors and stakeholders in order to better understand their dispute resolution needs and seek to involve them more directly in any future rulemaking processes.

1 Arif Hyder Ali (aali@fulbright.com) is a Counsel in the Arbitration and ADR Practice Group of the international law firm of Fulbright & Jaworski LLP. Prior to joining the firm he was Senior Counsel at the WIPO Arbitration and Mediation Centre, a Section Chief at the United Nations Compensation Commission and practiced international commercial arbitration in Paris and Washington, D.C. This article is based on a paper delivered by Mr. Ali at the IBA Business Law Section meetings in Cancun, Mexico.

YOUR ATTENTION PLEASE

Despite the fact that the Centre operates from its new premises for nearly more than one year (since January 2001) and that the new contact details have been circulated to all Ministries, Chambers of Commerce, members enlisted on the Centre's panel of arbitrators and experts, private establishments etc. we are still receiving mail at our previous post box.

Therefore, we would like to take this opportunity to request the respective organizations / institutions to instruct their mailing department / secretaries to make note of the change in address and contact details. Please note, all correspondence that would be addressed to the Centre at the old post box would be re-diverted to the sender from May 2002.

OUR NEW CONTACT DETAILS:

GCC Commercial Arbitration Centre
P.O. Box 16100
Flat Nos. 11 & 12
Building 667, Road 3626, Block 336
Al Adhiya
Kingdom of Bahrain
Tel: 825540
Fax: 825580
E-mail: arbit395@batelco.com.bh
Web site: www.gccarbitration.com
In a claim for ratification of a foreign arbitration award, the party who remains to the provisions of a foreign law must present the provisions of such law translated into Arabic as material evidence to support his claim.

SUMMARY

In an action filed before Dubai Court of Cassation, the Petitioner requested the Court to ratify the arbitration award issued abroad and ratified in the United Kingdom, and which obliged the Respondent company to pay the Petitioner an amount of US$512,031/- equivalent to AED1,868,914/- plus interest at the rate of 7.5% from the date of issuing the judgment until the full repayment, plus the arbitration fees amounting to AED23,532/-. The Court of Cassation stated that all of the provisions of conventions signed between the UAE and other foreign countries or the international agreements ratified by the state are applicable in respect to execution of judgments issued by foreign courts as well as the awards, even if they are not in compliance with the conditions stated in Article (235) of the UAE Law of Civil Procedures, and contrary to that if the UAE never ratified an agreement with a foreign country in respect to execution of arbitrations awards, so the courts of the state must assert the availability of the conditions stated in the aforementioned Article of the UAE Law of Civil Procedures, that the law of such foreign country in which the judgment was issued should be presented before the trial Court so as to be able to assert the similarity of conditions of execution of the country where arbitration was conducted with the conditions for execution in the UAE.

CLAIM

The Petitioner hired a vessel to the Respondent for one trip from India to Sri Lanka. A dispute arose between the two parties related to some delay, maintenance and bunkering while the vessel was under the Respondent's possession. The two parties resorted to arbitration according to Article (25) of the charter party agreement. The arbitrators delivered the above-mentioned award, but the Respondent refused to execute the same, so the Petitioner filed this case.

COURT OF FIRST INSTANCE

The Court of First Instance rejected the case. The Petitioner appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of appeal upheld the judgment issued by the Lower Court. The Petitioner appealed to the Dubai Court of Cassation.

COURT OF CASSATION

The Petitioner challenged the issued judgment which it argued was issued in contravention to the law when it found its decision to reject the Petitioner's request on the grounds that the UAE did neither sign the Geneva Convention of 1927 nor the New York Convention of 1958, concerning the recognition of foreign awards, and there is no convention between the UAE and the UK in this respect, although the UAE Legislator in Articles (235) and (236) of the Civil Procedures Law never require the same, but only confirm the competency of the foreign arbitration authority which delivered the award according to the arbitration award. The award in question was issued by two foreign arbitrators who were appointed by the concerned parties and pursuant to the Arbitration Act of 1950, 1979 and 1996. Also the award has acquired res judicata after ratification by the British Courts, and it is not against the public order or morals. Also the British law permits the execution of arbitrators award issues in the UAE after fulfilling the conditions of reciprocal treatment.

The Court of Cassation found the Petitioner's argument incorrect because according to Article (235) of the UAE Law of Civil Procedures, which reads as follows:

1. "Judgments and orders issued in a foreign country may be executed in the UAE under the same conditions prescribed in the law of that
country to execute judgments and orders issued in the state.

2. The Execution order shall be submitted to the Courts of First Instance in whose precinct the execution is required in the usual circumstances for lodging a case. No order for execution may be implemented except after ascertaining the following:

a. That the state courts are not competent for the dispute in which judgment or order was issued and that the foreign courts which issued the same are competent therefore according to the rules of international Judicial Jurisdiction prescribed in its law.

b. That the judgment or order issued by a competent court according to the law of the country in which it was issued.

c. That the litigants in the case in which the foreign judgment was rendered have been summoned to appear and were represented.

d. That the judgment or order acquired res judicata according to the law of the court that delivered it.

e. That it is not inconsistent with a judgment or order already issued by a court in the state and does not include anything contrary to morals or the public order therein.

Also Article (236) of the same Law reads as follows:

"The provision of the previous article shall apply to arbitration awards delivered in a foreign country. Such arbitration awards shall be delivered on a matter which may be decided on by arbitration according to the law of the country and must be enforceable in the country it was passed in".

Also Article (238) of the same Law, which reads as follows:

"The Rules provided for in the previous articles shall be without prejudice to the provisions of conventions between the state and other countries in this respect".

All the above-mentioned indicate that the provisions of the conventions ratified between the UAE and other foreign countries or the ratified international treaties are applicable in respect to execution of judgments delivered by foreign courts, and to arbitration awards as well, in spite of the non-existence of the conditions stated in Article (235) above. Consequently, if the UAE never joined an international treaty or ratified a convention with a foreign country in respect to execution of arbitration awards, so the UAE court must ascertain the conditions stated in the above-mentioned article before ordering for an execution of such foreign judgments in the UAE. Also, Paragraph (2) of Article (235) above confirms the reciprocal treatment between the UAE and the foreign country in which the award was issued, as long as the conditions for execution of judgments are the same as those in the UAE.

Therefore the Court held that the party who remains to the provisions of a foreign law must present the provisions of such law translated into Arabic as material evidence to support his claim. Since the Petitioner did not present the British Law to the court and never requested to be given a grace to present the same, consequently the Petitioner's appeal is baseless.
SECOND CONFERENCE ON ENGINEERING ARBITRATION

5 – 7 MAY 2002.

RIYADH – SAUDI ARABIA

In continuation of the First Conference on Engineering Arbitration organized by the GCC Commercial Arbitration Centre in Bahrain during May 2000 in a joint collaboration with the Society of Engineers – Bahrain, the Second Conference is being convened by the Centre and the Saudi Engineering Committee in collaboration with the Saudi Arbitration Team in Saudi Arabia on the above mentioned dates.

These conferences fall in line with the Centre's education mission which caters to specific sectors of the society. Giant sectors such as Engineering and Construction, Banking and Finance, Insurance, E-commerce etc. fall within this scope of training thus enabling those registered on the Centre's panel as well as to those who are interested in commercial arbitration to benefit from the wide experience of speakers who cover a variety of topics of vital importance in these important sectors.

Prior to this conference an intensive two day workshop would be convened in both Arabic and English side by side. It would be a workshop on "Principles of Domestic and International Arbitration" run by Dr. Nael G. Bunni, Mr. Moustafa Nagi Osman, Mr. Saad S. Al Amri and Mr. Khalid Samman. For details on instructors to the Arabic workshop, kindly refer to the Arabic issue of the bulletin.

The Conference would be held at the King Faisal Conference Hall, Intercontinental Hotel, Riyadh, Saudi Arabia in both Arabic and English with simultaneous translation. Topics such as Introduction to International Arbitration, Various Arbitration Centre, Different Arbitration Procedures, Award Writing Procedures and Award Enforcement would be presented by some of the most eminent speakers who are as follows:

Mr. Mohammed Aboul Encin – Egypt, Mr. Sergei Lazarev – Paris, Dr. Fathi Wali-Egypt, Dr. Nael G. Bunni – Ireland, Dr. Mohammed Salim Al Awwa-Egypt, Mr. Richard Kreindler-Frankfurt, Eng. Mohammed Majed Khouloussi-Egypt, Dr. Fahad Al Hagbani-Saudi Arabia, Mr. Charles Brown-UK, Mr. Geoffrey Hawker UK, and many others from the region.

I would like to take this opportunity to encourage our members to kindly participate and benefit from this Conference which I firmly believe would provide and cover a wide range of subjects and which would also improve and inculcate in our members a very sound and effective foundation of how to deal with engineering arbitration cases. A wide range of around 22 speakers both from around the world and from within the region would impart their wide experiences and would guide you from the initial stages of how to go about an engineering arbitration right to the finish of drafting and enforcing an award.

I look forward to seeing most of you in Saudi Arabia to benefit from this event and solicit your kind cooperation and support. For more details kindly get in touch with the GCC Commercial Arbitration Centre or the Saudi Engineering Committee at the following address:

Conference Secretariat
Second International Conference on Engineering Arbitration
P.O. Box 85041, Riyadh 11691
Saudi Arabia
Tel: (9661) 403 1414 Fax: (9661) 403 2070
E-mail: info@saudieng.org
INVITATION TO ATTEND

SECOND CONFERENCE ON ENGINEERING ARBITRATION

CONFERENCE 23-25 Safar 1423H (5 - 7 May 2002G)
TWO WORKSHOPS 21, 22/2/1423H (3 - 4/5/2002G)

The King Faisal Conference Hall
Riyadh

Organized by:
The Saudi Engineering Committee

In Association With:
- The Saudi Arbitration Team
- G.C.C. Commercial Arbitration Center Bahrain
IFCAI – as the name sounds familiar to most of you, refers to the International Federation of Commercial Arbitration Institutions founded in 1985 in New York, to facilitate permanent relations between commercial arbitration institutions. Comprising of more than 80 members from close to 50 countries, IFCAI resorts to make known their services, and disseminate information on law, rules, awards and court decisions in the sphere of international arbitration and conciliation.

The Centre has become a member of this reputed institution during March 1996 and its Secretary General, Mr. Yousif Zainal has been re-elected as one of its Councilors. It would be our privilege to host the oncoming IFCAI Conference in Bahrain during March 2003. This is in continuation of conferences being conducted by IFCAI once in every two years, the previous one being held in Prague on 22nd June 2001. The other conferences were held in Cairo, Milan, Hong Kong, Geneva and New York respectively.

We would appreciate your valuable input on subjects that could be both important to the region and addressed at this conference to be held in Bahrain next year. Conference topics on commercial arbitration are warmly welcomed. We therefore urge our members to actively participate by contributing to this great conference from its initial stages in order to enable us to offer you and the community at large with one of the best conferences ever been conducted in the region.

We highly solicit your active contribution.