The Centre’s Rules are derived from a source higher than the national laws.

- The Centre’s awards are not subject to annulment review or reexamination by the law courts of any Country.

In this special issue:

- The GCC Commercial Arbitration Centre Award
- The Forth High Civil Court Verdict
- The Third High Civil Court of Appeal Verdict
- The First Court of Cassation Verdict

Legal Opinion & Comments By Adviser Dr. Magdy Ibrahim Kassim
Our Vision

The Centre should enjoy a prominent status in the settlement of the region’s commercial disputes.

Our Mission

To engage in and enhance arbitration as an alternative means for the settlement of commercial disputes.

Our Values

Total neutrality, integrity in oversight of the arbitration process and ensuring absolute justice in our awards.

Our Strategy

- The Centre should become the first choice for GCC nationals in the settlement of their commercial disputes amongst them and between them and other nationals through its competitive advantage in terms of specific time frame, conclusive nature of its awards and their enforceability in the GCC States.

- The Centre should become the only choice for GCC nationals for hearing disputes arising from implementation of the provisions of the GCC Economic Agreement and resolutions issued for its implementation by urging them to have recourse to arbitration within the Centre’s framework and according to its rules.

- Furthering the Centre’s reputation among regional and international centres and chambers for settlement of disputes through positive and professional communication and participation in scheduled conferences and meetings.

- Adopting modern management methods in the operation of the Secretariats of arbitration boards through building up a modern and technologically advanced dispute filing system.

- Taking pride in the arbitrators and experts on the Centre’s Rolls through nominating them as members of arbitration boards.

- Qualifying and developing a generation of GCC arbitrators through the launch of high quality training programmes.
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Board of Directors

Mr. Yaseen Khalid Khayyat
Chairman
Kingdom of Saudi Arabia

Mr. Khaled Ali Rashid Al Amin
Vice Chairman
Kingdom of Bahrain

Mr. Saeed Ali Khammas
Member
United Arab Emirates

Mr. Khaled A.Rahman Al Modahka
Member
State of Kuwait

Mr. A.Rahman A.Jalil AL- A.Ghani
Member
State of Qatar

Reza bin Juma bin Ali Al Saleh
Member
Sultanate Oman
In the regional and international world of business, trade and investment, it is not fair for rights to be recovered after a long period of time. Such delay inevitably causes substantial losses to litigants owing to the fall in the purchasing power of money, rise in the rate of inflation, loss of investment opportunities and inability to have financial ability to repay loans and interest. Obviously this has a direct impact on the competitiveness and financial position of corporations. Arbitration has the distinct advantage of being a speedy and confidential way of settlement of disputes. The core principle here is that awards should be conclusive and final in the settlement of disputes and should have legal force to be complied with by parties to the disputes. Moreover, the rulings reached by arbitrators have a special nature as, unlike court judges who derive their jurisdiction from provisions of the law, they derive their jurisdiction from the litigants’ mutual agreement to refer their dispute to arbitration.

Based on the above, the lawmaker makes it clear in the GCC Commercial Arbitration Centre’s Regulation that an arbitration award shall not be appealed in any manner before a judicial authority belonging to any of the member states. In addition, the courts of member states have no competence to hear challenges of the Centre’s awards handed down according to its Regulation. These provisions are consistent with the comparative international legislation such as Model UNCITRAL Law 1985.

It is clear that by their very nature the Centre’s awards are final and binding upon parties to arbitration, hence an arbitration award shall not be challenged in any manner since it has the force of res judicata. The only avenue for contesting an arbitration award is commencing an action of invalidity before the judicial authority in the state which is required to enforce the award without examining the subject-matter of the case.

The GCC Gross Domestic Product is around Trillion Dollar in current prices while the total volume of trade among the member states is more than $80 billion (Initial approximate figures for 2011). Growth of GCC inter-trade is continuous thanks to the launch and application of the fundamental principles of the Gulf Customs Union and creation of the Gulf common market by completing the implementing rules for the application of the principle of the treatment of GCC nationals, both natural and corporate persons, on an equal basis without discrimination in all economic spheres. This initiative calls for expanding the engagement in economic, investment and service business activities, ownership of property, trading in shares and bonds, setting up of companies and the movement of capital. Such wide ranging activities have prompted the leaders of the GCC states to launch an arbitration centre with a special nature ensuring the speedy settlement of disputes among GCC nationals and between them and overseas citizens as well as the disputes arising from implementing the provisions of the GCC Economic Agreement.
Upon having reviewed the documents of the Case and heard the defence pleadings;

Whereas the facts of the current dispute have already been detailed in the Award handed down by the Arbitral Tribunal at the hearing of 8.4.2007 to which the Arbitral Tribunal refers to for the avoidance of repetition and sums up the same to the extent necessary to hand down this Award and indicate that the Claimant filed an Arbitration Petition dated 26.10.2006 with the GCC Commercial Arbitration Centre against the Respondent seeking to compel it as follows:

1. To submit all the balance sheets from 2002 until the date of issuing the verdict for settlement of the dispute.

2. To pay thereto a sum of SR2,500,000 (Saudi Riyals two million and five hundred thousand) in addition to the profits arising from the Company’s business activities.

3. To compel him to hand over the agencies and Company’s contracts accompanied by a report for all the activities which were conducted during the contract period.

4. To indemnify it for all the damages caused and rendering it fully liable for violating the terms and conditions of the Company’s Memorandum of Association and consequences arising therefrom.

5. To oblige him to pay all the fees and charges arising from the dispute.

In explaining its claim, the Claimant said since the Respondent wished to enhance the business operations of the Respondent Establishment, he merged it into a joint venture company in the name of the Respondent and the Claimant on 26.10.2000. The Claimant owns in this joint venture an equity representing 83.33% and the Respondent owns 16.67%, provided that the name of the Respondent would be displayed in doing business with third parties. Since its principal business was to undertake the business of detergents, spare parts of plant and equipment and spare parts of electrical equipment, it provided the Respondent with all contracts, agencies and gave him the full power to manage the Company in Saudi Arabia. However, he abused such trust and without complying with the terms and conditions of the Contract and its equity in this joint venture company and refrained from submitting the balance sheets and distribution of the resulting profits which he embezzled for his own benefit since 2002 until the date hereof causing significant damages thereto. It wrote to him repeatedly and on several occasions but he did not take any action.

Whereas the case was heard at the sittings in the manner indicated in the minutes thereof. At the hearing of 8.4.2007, the Arbitral Tribunal ruled for dismissal of the plea submitted by the Respondent for non-admission of the case, invalidity of filing it and admitting the said case, rejection of the plea for placement of a precautionary attachment upon the business, accounts, businesses and projects of the Respondent and keeping the decision with respect to the legal costs pending until the resolution of the subject-matter of the dispute owing to the reasons set forth in the aforesaid judgement.

Whereas the Arbitral Tribunal passed at the hearing of 19.4.2007 a verdict pending the resolution of the subject-matter and different pleas for the appointment of Mr. Mahmood Mourad, accounting expert as an expert in the case to review its papers and documents and submissions of the litigants to confirm the following:

1. Properties and assets owned by the Claimant including its capital indicated in its Memorandum of Association, as amended, the remaining intangible components at the time of concluding the joint venture agreement on 26.2.2000, whether such properties and assets were kept at the disposal of the Respondent in his capacity as the proprietor of the Respondent Establishment within the objects of the joint venture company established between the two parties to the litigation on 26.2.2000 and to determine and the business activities undertaken by the Claimant that still remain under its direct management, provided that such information shall be derived from the financial statements, books and records and enclosing...
the supporting financial statements.

2. Statement of the nature and amount of the equity referred to in the Sixth Clause of the joint venture’s Memorandum of Association that is owned by the Respondent in the Claimant Company.

3. Statement of the profits made by the Respondent’s Establishment to the extent of the business activities and objects indicated in the joint venture agreement and in the commercial registration of the Respondent’s Establishment and the Claimant from the date of the joint venture’s Memorandum of Association drawn up on 26.2.2000 until the date of preparing the report.

4. Statement of the commercial agencies mentioned in the Fifteenth Clause of the joint venture agreement, its status and date of concluding it with the principals and the activities undertaken in compliance with the objects of the joint venture agreement and the Claimant Company.

5. Statement as to whether the Claimant or the Respondent Establishment conducted any competitive business in breach of the Thirteenth Clause of the joint venture agreement.

6. Statement as to whether the Claimant has participated in managing the joint venture according to the Ninth Clause of the joint venture agreement and his role in this regard, method of adopting resolutions by the joint venture and role of the Claimant in adopting it.

7. Liquidation of the accounts within this framework between the parties to the litigation.

For the purpose of carrying out his duties, the Expert shall be empowered to have access to the documents and papers of the Case, any submissions by the litigants and hearing its parties and witnesses without having the oath taken, calling at the premises of the Respondent in Saudi Arabia, the Claimant and any authority which the Expert deems necessary to visit in order to examine the document that it may have in connection with the dispute, provided that the Expert shall submit its report at the GCC Commercial Arbitration Centre before 5.6.2007 provided that he shall deliver a copy thereof to each party and the Parties shall deposit memoranda concerning their comments on the report before 20.6.2007. A BD2,000 deposit shall be paid on account of the Expert’s fees to be referred to the Secretary General from the advance amount for collection from the Parties according to Article 23 of the Centre’s Regulation.

Whereas according to the provision of Article (33) of the GCC Commercial Arbitration Centre’s Procedure Regulation on 2.7.2007 the Secretary general decided to extend the arbitration period for nine months as from 1.8.2007.

Whereas the Expert appointed in the Case deposited his report and the Arbitral Tribunal gave the opportunity to the parties to the dispute to comment on it and at the request of the Respondent it extended the period of commenting on the Expert’s report to 16.1.2008 and whereas the attorney of the Claimant submitted on 6.1.2008 a memorandum in which he claimed the following:

First: Obliging the Respondent to pay his client’s dues until 2006 in a sum of SR17,746,462 (Saudi Riyals seventeen million seven hundred forty six thousand four hundred sixty two) as indicated in the report and confirming our right in the following years until the Company’s liquidation.

Second: Passing a ruling against the Respondent to pay a compensation according to the Statement of Claim subject to complying with the following:

(1). Refusal of the Respondent to keep the Company informed about the actual state of affairs and the truth concerning the financial conditions of the joint venture company represented by his business establishments, his control or its funds, properties, taking all its earnings and profits while ignoring the parent company although it owns the majority of capital but it is kept detached from the management of the Company and following up its business activities in Saudi Arabia until the date hereof according to the first paragraph in Page (69) and the first paragraph of Page (80) of the Expert’s report resulting in serious damages to the Company leading to paralyzing it and rendering it unable to submit its audited financial reports as required by the law of the Kingdom of Bahrain including the loss of business opportunities. The Respondent transferred .................

Company which is a part of the Company’s properties according to the Partnership Agreement entered into with the Canadian Company in August 2001 which was established in Saudi Arabia with the Respondent’s Establishment on behalf of the Company between him and the Company’s Chairman by way of connivance between them as noted in the Expert’s report, Pages (78) and (79), contrary to the Expert’s statement that the Respondent established this Company jointly with the Board Chairman of the Claimant Company, which is considered in both cases as a breach of the competition clause in the joint venture agreement subject to the case.

(2). The Respondent’s sole control and exploitation of the commercial agencies which are the full property of the Company as mentioned in the Expert’s report, Page (74) to (76). It should be noted that the value of compensation for each agency assigned or whose contract is revoked by the Respondent without the Company’s written approval shall be a payment of Saudi Riyals 10,000,000 (Saudi Riyals ten million).

Whereas the Respondent’s attorney submitted on 16.1.2008 a memorandum in which he insisted upon his reservation and objection to extending the arbitration period for six months owing to the illegality of such extension and invalidity of all the procedures based thereupon and invoked, on a precautionary basis, the following defence pleas:

1. The Partner in the Claimant Mr. (A) has contested this arbitration case and hence the case focuses on the total domination of the Company and its rights that serve the best interest of the Claimant only and damages the interest of
the other Partner and the other Sleeping Partners.

2. The Expert committed a fundamental fault when he dealt with the Respondent as a single party in the joint venture company while the joint venture agreement was concluded between two parties namely the Claimant and the Respondent in his capacity as the proprietor of the Respondent’s Establishment and its branch No.001, which was registered on 21.9.1418 Hijra and any other branches to be established in future in the territory of Saudi Arabia. In other words, the branches affiliated to the joint venture company are the branches of the Establishment mentioned in the joint venture agreement not any other branches owned or may be owned by the Respondent as a person or businessman, hence the Expert’s dealing with the issue on the basis that all the business activities registered in the name of the Respondent is incorporated in the joint venture agreement is a serious error that has affected the accounts and results concluded by the Expert.

3. There are court disputes since the year 2002 resulting in paralyzing the Company between the two parties and there is no business between them rendering the partnership non-existent and cannot be considered as such.

4. The Expert’s report does not contain any mention about the effect of the joint venture agreements concluded between the parties to the dispute, cause of concluding them and their effect upon the partnership.

5. The report does not have any mention of the Claimant Company’s financial statements for the years similar to the years recognized by the Respondent and does not show the mutual rights that may have accrued to the Respondent in the Claimant Company.

6. The Expert tried to draw a parallel between the violations committed by the Claimant against what he called as violations committed by the Respondent and the Partner Mr. (A) and the Expert was not fair or just in this respect.

7. The Expert did not reply candidly and clearly to the Arbitrator’s request to give an account of the business activities still under the direct management of the Claimant and the latter failed to provide a complete statement of such business activities or its financial statements for all the years.

8. In stating the profits made by the Respondent Company relied upon the financial reports that reflected the total profits made for all its activities which are beyond the limits of the joint venture company, partnership and the rights that could be recognized according to the case.

9. The joint venture company was actually and practically wound up with the escalation of the dispute between the Partners since 2001/2002 and its continuation until now.

Concluding his aforesaid Memorandum, the Respondent pleaded on a precautionary basis to give him more time to submit the objections whilst invoking the plea for dismissal of all the claims submitted by the Petitioner.

Whereas the Expert appointed in respect of the case submitted his report in which he concluded as follows:

1. All the properties and assets of the Claimant were actually deposited under the full disposal of the Respondent in his capacity as the Proprietor of the Respondent Establishment as part of the objects of the joint venture company established between the two parties to the litigation and actually existing between them since 27.5.1998 and before their entering into the joint venture agreement attested on 26.2.2000. The most recent report on the audited financial statements of the Claimant was for the financial year which ended on 31st December, 2001. As for the year 2002, the draft of the audited financial statements was prepared but was not approved owing to the occurrence of deep differences between the joint partners in the Claimant Company. In addition, no audited financial statements were prepared for the Claimant after that owing to the refusal of the Respondent to inform the Claimant about the state of affairs and the true financial position of the existing Saudi-based joint venture company in which the Claimant holds an 83.33% stake and control by the Respondent of the joint venture’s properties and assets and his seizure of its revenues and profits while totally ignoring and showing no concern towards the parent company (Petitioner).

The appointed expert enclosed a copy of the audited annual financial statements of the Claimant until 2001, draft statements for the year 2002 and the statements of the Respondent’s establishment until the Year 2006.

2. The Respondent as a joint partner owns a shareholding of 16.66% in the Bahrain registered company. Such equity is against the Petitioner’s ownership and participation as a joint partner with an 83.33% equity in all the capital and assets of the Respondent’s establishment registered in Saudi Arabia through which the Claimant carries on business in Saudi Arabia.

3. The total equity of the Claimant against its 83.33% shareholding in the designated joint venture company, the Respondent, and its branch for industrial services from the date of the joint venture agreement drawn up on 26.2.2000 until 31.12.2006 (date of the most recent audited financial statements amounted to SR17,746,462 in addition to the value of its equity in the capital amounting to SR1,742,958.

4. - For the commercial agencies, according to the statements issued by the Ministry of Commerce and Industry, in the city of Dammam, the Respondent’s Establishment for industrial services is one of the Respondent’s branches that has two commercial agency contracts. The is for the business of the sales and services of production tests, related dredging cables and related products, production tests services and consumables and related dredging cables. The second is for the business of selling and distributing the Company’s products of materials and equipment for oilfields and prospecting operations.

5. The Claimant Company, which
6. Since the end of 2001 and with the escalation of the differences between the Partners, loss of confidence between them and the Respondent’s withholding of information and management reports from the Managing Director, the Claimant in his capacity as the Managing Directors could not assume his responsibilities and hence the Claimant could not manage the joint venture or be aware of the actual state of its affairs, truth of its financial position, adopting decisions or approving its financial statements.

7. The net amount due to the Claimant against its 83.33% shareholding in the joint venture company is SR17,746,462 in addition to the value of its equity in the capital.

Whereas the Petitioner’s attorney limited his claims according to his letter to HE Secretary General dated 13.2.2008 to the amount confirmed in the Expert’s report being SR17,746,462 (Saudi Riyals seventeen million seven hundred forty six thousand four hundred sixty two).

Whereas the Arbitral Tribunal closed the door for submission of defence pleadings and decided to hand down an award in respect of the case and to lodge it in the Arbitration Centre today.

Whereas for the defence submitted by the Respondent that the Partner in the Claimant Mr. (A) challenged this arbitration case, hence the case deals with the total individual control of the Company and its assets to serve the best interest of the Claimant Partner to the detriment of the interests of the other Partner and other joint Partners, which is in fact the same defence plea for non-admission of the case that was earlier rejected by the Arbitral Tribunal by means of its judgement handed down on 8.4.2007, which it cannot re-examine nor review.

Whereas for the defence submitted by the Respondent concerning the invalidity of the Secretary General’s decision for extending the arbitration for a period of 9 months and invalidity of all the subsequent actions, such defence is refuted by the provision of Article (32) of the GCC Commercial Arbitration Centre’s Arbitration Procedures Regulation that states as follows: “….. In all cases, a judgement shall be handed down within a maximum of 100 days from the date of referring the case file to the Arbitral Tribunal unless the parties agree on another period for handing down the judgement.” Whereas Article (33) of the said Regulation states: “The period referred to in the preceding Article may be extended by a resolution of the Secretary General upon a substantiated request from the Arbitral Tribunal. If the Secretary General is not satisfied with the reasons presented by the Arbitral Tribunal for the extension request, the Secretary General shall fix a time limit for consulting with the parties to the dispute and the Arbitral Tribunal shall hand down its judgement during such time limit and its duty shall be completed upon the expiry of such period.”

It is understood from the provisions of the aforesaid two Articles that an arbitration award shall be handed down within a maximum period of 100 days unless the parties agree on another time limit or unless it is extended by the Secretary General upon his own decision based upon a substantiated request from the Arbitral Tribunal. Although the said extension was given by the Secretary General was conditional upon making a request by the Arbitral Tribunal, it was unlimited as the period was according to each individual case depending upon the circumstances of the case.

Whereas it is established pursuant to the request of the Expert nominated in the case concerning his need to review the files and accounts with official and banking organizations in Saudi Arabia which would require a long time, on 28.6.2007 the Arbitral Tribunal wrote to the Secretary General requesting an extension to the arbitration period for at least nine months as from 1st August, 2007 and the Secretary General acceded to this request by virtue of his letter dated 2nd July, 2007 and issued a decision for extending the arbitration period for nine months as from 1.8.2007 whereby the expiry of the arbitration period would be on 1.5.2008, hence the defence submitted by the Respondent’s attorney shall be baseless and worthy of being dismissed.

Whereas for the defence submitted by the Respondent that the Expert dealt with the matter on the basis that all the business activities registered in the name of the Respondent would be included in the joint venture company, which was a serious error in the accounts and the conclusions reached by the Expert. This defence is refuted by the fact that it is proven by the joint venture company’s Memorandum of Association concluded between the parties on 26th February, 2000 and notarized with the Office of Notarisation, in the Kingdom of Bahrain, and attached to the file of the case that the First Party is the Claimant and the Second Party is the Respondent, the Saudi national in his capacity as the Proprietor of the Respondent Establishment which is registered in the Dammam Commerce Registry, its Branch No.001 and any other branches that may be established in the future in the geographical territory of Saudi Arabia. In addition, it states as follows: “The aforesaid Parties being in their full legal capacity agreed to form a joint venture company between them.” It also states as follows: “Whereas the Second Party owns a business established duly registered in the Dammam Commerce Registry and carries on the business of
trading in foodstuffs, building materials, industrial, agricultural and electrical equipment and their spare parts, trading in valve maintenance equipment, hydraulic equipment, their spare parts and lubrication materials; and being desirous to enhance his business in keeping with the development witnessed by the Kingdom in the areas of the aforesaid objectives, he and the Claimant With Limited Liability agreed to form a joint venture company between them, provided that the Respondent’s Establishment shall be the one that carries on business with third parties after having evaluated the said Establishment and its assets upon the mutual agreement of the parties as stated in the Sixth Clause of this Agreement and this Preamble shall be deemed as an integral part of this Agreement.”

The Second Clause of the said Agreement states as follows: “The objects of the Company shall be limited to these provided for in the commercial registration of the Respondent Establishment, its Dammam branch and any other future branches as indicated in the Preamble to this Agreement...”

Whereas it is established by the report of the Expert appointed in respect of the case, which report is satisfactory to the Arbitral Tribunal owing to its reliance upon convincing bases which are supported by the documents of the case, that the audited financial statements of the joint venture company since 1998 show that the capital of the Respondent’s Establishment and its branch called the Respondent’s Establishment for Industrial Services was SR600,000 and then it was increase in 1999 to become SR2,091,633 which equals a sum of BD210,000, which is approximately the same capital of the Respondent Company that entered as a joint partner in the Respondent’s Establishment and owns an 83.33% equity which the Respondent’s equity equals 16.67% which in fact is owned in the Claimant- Section 3.10, Page 42 and the following pages of the Expert’s report: “All the Claimant Company’s properties and assets including its material and intangible elements were actually kept at the full disposal of the Respondent (Page 68 of the Expert’s report) which conclusively confirms that the premises of the joint venture company are the Respondent’s Establishment called in the name of the Respondent’s Trading Establishment and its branch called the Respondent’s Establishment for Industrial Services. Since the Expert recognized the dues of the Claimant from the profits of the joint venture company that are primarily the Respondent’s Trading Establishment and its branch, hence it has not gone beyond the joint venture company as stated in the Agreement and the terms agreed upon between the parties on the basis of the Respondent’s balance sheet as mentioned above, hence challenging his action as wrong without any basis should be ignored and dismissed.

Whereas for the defence submitted by the Respondent that there have been court disputes since 2002 resulting in paralyzing the Company between the two parties and there is no business between them leading to its winding up and actual termination of the joint venture, this is refuted by the fact that the Eighth Clause of the Joint Venture Agreement dated 26th February, 2000 states as follows: “The term of the Company shall be five (5) years which shall commence from the date of enforcement of this Agreement, which term is renewable for a similar term or terms unless one of the parties gives notice to the other concerning his desire not to renew it by a registered letter at their address in the Company at least six months before the expiry of the original or extended term.”

Whereas there is no evidence that any of the Partners has given such notice, the term of the Company shall be deemed to have been extended and not wound up. A company cannot be wound up except upon the expiry of its term according to the provision of Article 15 of the Saudi Companies Regulation (See also Brief Summary of the Saudi Commercial System, by Dr. Saeed Yehia, 6th Edition, Page 194).

Given the above and since the escalation of the dispute, assuming it has occurred, is fit as a ground for demanding the dissolution of the Company by a court action brought by one of the Partners, but it is not fit on its own without handing down a judgement for the winding up thereof. Since the indisputable fact confirms that the Respondent has had the intention to become a partner and this is a substantive requirement for the Company upon its establishment and there is no evidence that a court judgement has been passed for dissolution of the Company during the initial term thereof. Further, it has not been proved that the Respondent gave notice before the expiry of the Claimant Company’s term by a registered letter of his desire not to renew the said term. Hence the claim that the joint venture has been wound up and actually terminated has no valid basis. Meanwhile, the Board would like to note that the Respondent has not produced any evidence supporting his claim concerning the occurrence of such court disputes or the outcome thereof.

Whereas for the defence submitted by the Respondent that the Expert has not noted the effect of the joint venture agreements set up between the two parties to the dispute, reason for concluding them and their effect upon the Company is refuted by the fact that the mandate given to this Arbitral Tribunal is limited to hearing the dispute referred thereto and between parties to this case. Moreover, the Respondent has not indicated the effect of these agreements upon this dispute. Added to the above, there are the points mentioned by the Expert in Clause 3.2.1, Page 24 and the following pages, by reviewing the joint venture agreement dated 27.5.1998 between the two parties to the case and others as well as the Rights Declaration and Assignment Deed dated 13.7.1998 in which the Respondent confirms in his capacity as the Proprietor of the Respondent’s Trading Establishment and its branch, ‘Respondent’s Establishment for Industrial Services that all the activities undertaken in Saudi Arabia are in fact carried out by the Claimant Company. All the assets in his Establishment and its branch are in fact owned thereby and all the commercial agencies
have been acquired thereby and are owned thereby. The same is true of the joint venture agreement dated 1.1.1999. We sum up from the above that what the Expert has said in his report is true as regards the fact that the joint venture company has actually existed between the parties to the case since a long time until things developed with regard to the capital and shareholders’ equity according to the agreement dated 26.2.2000 whereby the Claimant came to own 83.33% of the Respondent’s Establishment and its branch and he came to own 16.6% of the Claimant Company.

As for the defence submitted by the Respondent that the Expert’s report does not show the financial statements of the Claimant for the years similar to the years recognized towards the Respondent and does not show the mutual rights that may belong thereto towards the Petitioner, it is established from the report of the Expert appointed in respect of the case that the most recent audited financial statements for the Claimant were for the financial year ended on 31st December, 2002. As for the year 2002, the draft audited financial statements were prepared but were not approved because there were differences between the joint partners in the Claimant and no audited financial statements were available therefore afterwards due to the refusal of the Respondent to keep it informed about the state of affairs and the truth about the financial position of the joint venture company under its control. On the other hand, the issue of the case and its scope is the Petitioner’s right to its share of the profits of the joint venture company set up with the Respondent, his Establishment and his aforesaid branch. Consequently, it is not a case for liquidation of the joint venture company. Moreover, the Respondent did not file any counter claims against the Claimant and thus the Arbitral Tribunal cannot be in a position to deliver a ruling unless there is a claim duly filed therewith in which case the Respondent may, if he so wishes, claim against the Claimant any dues that belong thereto if the necessary conditions are fulfilled.

Whereas for the defence submitted by the Respondent that the Expert attempted to draw a parallel between the violations committed by the Claimant against the violations committed by the Respondent, Mr. (A), and was neither just nor fair in that regard, this defence is designed to show the competition and the acts that are detrimental to the joint venture company claimed by the Respondent to have been done by the Petitioner. The Arbitral Tribunal feels that this defence like the earlier one does not have any effect upon the current case. If he wishes to put the competition clause contained in Clause 13 of the joint venture agreement, the Respondent could do that by virtue of a judicial petition to be filed if the conditions thereof are fulfilled, but this is beyond the scope of the current case.

Whereas for the defence submitted by the Respondent with regard to the Expert’s reliance in confirming the profits made by the Respondent’s Establishment upon the financial reports that reflected all the profits gained from all his business activities, which are beyond the scope of the joint venture company and the partnership, the Arbitral Tribunal has already dealt with this defence by stating that it has been established by the report of the Expert appointed in respect of the case, Page 40 and the following pages, that he recognized the audited financial statements of the Respondent’s Trading Establishment and branch for industrial services for the years since 2000 until 2006 and he did not recognize any other activities that may have been undertaken by the Respondent personally.

Whereas it is established by the judiciary and arbitration rulings that the Arbitral Tribunal shall be empowered to admit the report of the Expert appointed in respect of the case where it is convinced of the validity of his investigation and considering the Expert’s report is one of the elements of evidence that are subject to its discretion; and whereas the Expert appointed in respect of the case has concluded in his report, which is satisfactory to the Arbitral Tribunal for the soundness of its investigations and the justifications upon which it is based, that the accounting prepared has shown that there is a net amount of SR17,746,462 being payable to the Claimant against the Respondent in consideration of the 83.33% share of the Claimant from the consolidated net profits due from the joint venture company called the Respondent’s Trading Establishment and its branch for industrial services as at 31st December, 2006.

Whereas the Claimant limited its final claims to this amount shown by the report of the Expert appointed in respect of the case, the Arbitral Tribunal feels that it is entitled thereto and has a valid claim thereto, hence it decides that the Respondent shall be compelled to pay it thereto as indicated in this ruling.

Whereas for the legal costs, the Arbitral Tribunal decides to oblige the Respondent to pay them considering that he has lost the case.

Therefore the Arbitral Tribunal passes its award as follows:

First: To compel the Respondent to pay to the Claimant a sum of SR17,746,462 (Saudi Riyals seventeen million seven hundred forty six thousand four hundred sixty two).

Second: To oblige the Respondent to pay the legal costs including the Expert’s fees.

Hassan Ali Radhi
Single Arbitrator
Manama, Kingdom of Bahrain on 15.4.2008
At the Hearing held in Public at the Fourth High Civil Court on 10.2.2010

The following Judgement was delivered in Case No.02/2009/9679/9

The Court

Upon having reviewed the documents of the Case, heard the defence pleadings and after the legal deliberations;

Whereas the facts of the case as they are gathered from all the documents and papers of the Case indicate that the Plaintiff filed it against the Defendants by virtue of a Statement of Claim which was registered with the Case Registration Section on 30.9.2009 for which the legally prescribed fees were paid seeking to pass a judgement rendering invalid the Arbitration Award No.19/S/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre and obliging the Defendants to pay the legal costs and attorneys’ fees.

In explaining its case, it said that it and the Defendant set up a joint venture company between them and a dispute arose between them which was referred on 26.10.2006 by the First Defendant’s Managing Director....... to arbitration according to the rules and provisions of arbitration applicable at the GCC Commercial Arbitration Centre according to the provision of Article 20 of the Company’s Memorandum of Association in spite of the objections of the Second Defendant, Board Chairman of the First Defendant and legal representative thereof to purpose the arbitration case and demanded the cessation of its procedures and not to go ahead with it considering that he, in his capacity, had revoked the power of attorney given to the advocate who filed the arbitration petition. The Arbitrator nominated an expert and after having submitted his report, he passed an award for compelling the Plaintiff to pay to the First Defendant a sum of SR 17.746.462 , and since the aforesaid award was not acceptable to the Plaintiff, it filed this case seeking to be awarded the aforesaid claims based upon the following grounds:

First: Invalidity of the Arbitration Award owing to the occurrence of invalidity in the arbitration procedures owing to the elapse of more than 100 days from the date of filing the arbitration petition on 26.10.2006 until the date of handing down the final award for settlement of the dispute on 15.4.2008 without expending the arbitration period by the Parties or by the Centre’s Secretary General pursuant to Articles 32 and 33 of the GCC Arbitration Centre’s Regulation.

Second: Invalidity of the Arbitration Award owing to the occurrence of invalidity in the arbitration procedures due to the failure to deposit the original award handed down on 8.4.2008 by the Arbitrator and by rejecting the plea for non-admission of the arbitration case and invalidity of its procedures , its admission and the Verdict issued by the Arbitrator for the nomination of an expert in the case and the Arbitration document with the competent court within 3 days from the date of their issue according to the provision of Article 240 of the Civil Procedures Act.

Third: Invalidity of the Arbitration Award due to its irrelevance to the dispute owing to the objection thereto by the Second Defendant, legal representative of the First Defendant and his request to discontinue its procedures owing to his revocation of the power of attorney to the lawyer who had filed the arbitration petition.

Fourth: Invalidity of the Arbitration Award due to the lack of the agreed basis for the Arbitrator’s competence with the absence of arbitration document according to the provision of article 233 of the civil procedures Act.

Fifth: Invalidity of the Arbitration Award owing to the occurrence of the law and presenting papers ,when it rule for the law and presenting the Respondent, First Defendant, based upon the Memorandum of Association of the joint venture company which ceased to exist and its termination following the expiry of its term and the report of the Expert which is contrary to the technical rules and accounting standards. In support of its claims, it submitted a docket of documents that contained Photostat copies of the relevant documents which were examined by the Court.

Whereas the Case was heard at the sittings in this Court in the manner indicated in the minutes
of such sittings during which each of the parties to the dispute was represented by an attorney. The attorney acting for the Defendant submitted Photostat copies of the Assignment Deed for the Arbitration Award subject to the case issued by the Second Defendant, Chairman of the First Defendant’s Board of Directors and acknowledged the Plaintiff’s claims. At the hearing of 29.12.2009 the attorney...... appeared on behalf of the First Defendant’s Mr...... and submitted a defence memorandum in which he pleaded for dismissal of the case. He attached Photostat copies of the documents mentioned therein which were reviewed by the Court at the same sitting. Then, the Court decided to adjourn the case for delivering a judgement at the sitting of 27.1.2010 and then it extended the date to hand down the judgement at today’s hearing.

Whereas the facts of the case were as mentioned above and since the contested Award was passed according to the arbitration rules and provisions applicable in the GCC Arbitration Centre and since Article 35 (2) of Legislative Decree No.6 for the Year 2000 with respect to approving the GCC Commercial Arbitration Centre Regulation states that the competent judicial authority shall order the enforcement of the Arbitration Award unless one of the litigants files an application for invalidation of the Award in the

following events: (a) If it has been passed without the availability of an arbitration agreement or on the basis of an illegal agreement, its lapse for the expiry of the time limit or where the arbitrator goes beyond the limits of the agreement.

Whereas it is established under the rulings of the Court of Cassation that arbitration is an extraordinary method of litigation and even though it is directly based upon the agreement of the litigants, it is primarily based upon the provisions of the law which permits reference thereto and confers upon the arbitrators their competence to settle the dispute, it has limited such proceedings by a specific period of time which expires upon the elapse of such time period after which no award shall be handed down and in such case the award shall be deemed null and void. Given the above and since Article 31 of the aforesaid Law requires the arbitrators to deliver their judgement within a maximum period of 100 days from the date of reference of the case file to the Arbitral Tribunal unless the parties agree on another period for delivering the award. Since fixing the start of the period of the arbitrators’ award from the date of their acceptance of the arbitration is not subject to any interpretation or relaxation until the submission of claims by the litigants to the arbitrators, hence these are subject to the

arbitration proceedings that start with acceptance of the arbitrators and must be completed so that the award should be handed down before the expiry of the fixed term. Given the above and since it is established by the documents that the arbitrator accepted the arbitration on 17.1.2007 and handed down the award that terminated the litigation on 15.4.2008 after the expiry of the aforesaid period without agreement between the parties to renew such period, hence his mandate expired following the elapse of 100 days without settlement of the dispute (Cassation Court hearing of 9th May, 2005, 16th Year, Volume I Page 400). The above shall not be remedied by the issue of a resolution by the Centre’s Secretary General on 2.7.2007 for extending the said period at the request of the arbitrator following the elapse of the 100-day period, hence the Court feels that the Arbitration Award No.19XS/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre is null and void for which it shall rule as outlined in the text of this judgement.

Whereas for the legal costs inclusive of the attorneys’ fees, the Court obliges the First Defendant to pay them owing to its loss of the litigation according to Article 192 of the Civil Procedures Act.

For These Reasons:

The Court rules that the Arbitration Award No.19XS/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre is null and void and the First Defendant shall be liable to pay the legal costs and BD30 as attorneys’ fees.

The Court
Under the Presiding Judge Salah Ahmed Al Qattan
With the Membership of Counsellor-in-Law Ala’auddin Kamal Al Beyalli
With the Membership of Judge Khalifa Albinali
In the presence of the Court Secretary Khalid Al Dosari
At the Hearing held in Public at the Third High Civil Court of Appeal on 24.11.2010

The following Judgement was delivered in Case No.02/2009/9679/9 and Appeal No.03/2010/540/9

The Court

Upon having reviewed the documents of the Case, heard the defence pleadings and after the legal deliberations;

Whereas the facts of the case and its documents have already been dealt with by the appealed judgement to which the Court refers and sums up the facts so as to support this judgement that the First Respondent filed Case No.9679 for the Year 2009 by virtue of a Statement of Claim with the Court of First Instance to render null and void the Arbitration Award No.19XS/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre.

In explaining its case, it said that a joint venture company was formed between itself and the First Defendant in respect of which a dispute arose and was referred by the First Defendant to arbitration according to the rules of arbitration applicable in the GCC Commercial Arbitration Centre according to the provision of Article 20 of the Company’s Memorandum of Association and in spite of the Second Defendant’s objection to pursue the first arbitration case, the arbitration proceedings were pursued and an award was delivered for compelling the Plaintiff in this case to pay to the First Defendant a sum of SR17,746,462. Since the Plaintiff was not satisfied with this judgement, it filed this case for invalidation of the arbitration award owing to the occurrence of invalidity in the arbitration proceedings due to the lapse of more than 100 days from the date of filing the arbitration petition until the date of the arbitration award for termination of the litigation without determination of the arbitration period, non-jurisdiction of the Arbitral Tribunal to hear the dispute and the lack of the agreed basis for jurisdiction of the single Arbitrator.

The Court of First Instance heard the case in the manner indicated in the minutes of its hearings. Upon hearing the litigants’ defence, it passed a judgement at the hearing of 10.2.2010 rendering null and void the Arbitration Award No.19XS/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre.

Whereas the First Defendant was not satisfied with this judgement, it appealed it by virtue of a petition that was registered with the Case Registration Section at the Court on 25.2.2010 seeking a judgement for non-admission of the appeal in terms of procedure, to revoke the appealed judgement, to rule for the forfeiture of the case by prescription or to dismiss the case and to compel the Respondent to pay the legal costs for the two degrees of the litigation. The latter cited reasons which indicate that the appealed judgement wrongly applied the law by considering the commencement of the 100-day time limit from the date of the Arbitrator’s acceptance of the case file not from the date of referral of the case file to the Board. It also ignored the approval of the parties to the arbitration to fixing the period according to the provision of Article 31 of Law No.6/2000 for non-admission of the case owing to the filing thereof after the sixty-day period according to the provision of Article 38 (2) of the said Law.

Whereas the Case heard the appeal as detailed in the minutes of its hearings which were attended by an attorney acting on behalf of each of the Appellant and the Respondents. At the hearing of 5.5.2010 the First Respondent’s attorney submitted a memorandum in which he pleaded for dismissal of the appeal and upholding the appealed judgement. In addition, the Appellant’s attorney submitted a memorandum to the hearing of 2.6.2010 in which he pleaded that the Court had no jurisdiction to hear the case according to Article 38 of the Arbitration Centre’s Regulation. He concluded by pleading for a judgement awarding him the claims set forth in the Statement of Claim. Then, the Second Respondent’s attorney submitted a memorandum in which he pleaded for a judgement for rejection of the appeal in terms of procedure owing to its filing by a party that does not have the right
to represent the Company and invalidity of the arbitration case procedures and the judgement handed down therein. At the final pleadings hearing, the First Respondent’s attorney submitted a memorandum that contained the same claims mentioned in the first memorandum. The Court decided to adjourn the appeal for delivering a judgement at today’s hearing and authorizing the submission of memoranda within two weeks. This started with the Appellant which submitted a memorandum received on 19.10.2010 that was reviewed by the Court. This was followed by the First Respondent which submitted a memorandum on 26.10.2010 of which a copy was refused to be received by the Appellant’s attorney.

Whereas the Appeal fulfilled its procedural requirements in law, it is admitted in terms of procedures.

Whereas for the subject-matter thereof, it is established according to the provision of Article 38 of Law No.6/2000 with respect to approving the GCC Commercial Arbitration Centre’s Regulation that either party may upon an application in writing addressed to the Secretary General to plead for invalidating the award if any of the following reasons are fulfilled: (a) ............ (b) .......... (c ) ................. The Secretary General shall nominate a committee consisting of a Chairman and two members from the list to undertake studying the application and to decide upon it as soon as possible. The provision of Article 35 (2) of the said Law states that the competent judicial authority shall order the enforcement of the arbitrators’ award unless one of the litigants applies for invalidating the award in the following events: (a) If it is handed down without having an arbitration agreement or based upon an invalid agreement or if it lapses for the lapse of the time limit or if the arbitrator acts beyond the scope of the agreement.

The implication of the aforesaid two Articles is that the GCC Commercial Arbitration Centre is the competent authority to hear the case of invalidation with respect to the arbitration awards handed down by the Centre. Since it is clear from the case that the challenged arbitration award was handed down by the Centre upon a mutual agreement between its parties, hence the law courts have no jurisdiction to hear a case of invalidation and thus a ruling must be delivered in respect of the subject-matter of the appeal to revoke the appealed judgement and to confirm that the Court has no jurisdiction to hear the case which ruling is hereby awarded by this Court.

Whereas for the legal costs for the two degrees of the litigation, the Court compels the First Respondent to pay them.

For These Reasons:

The Court rules for the admission of the appeal in terms of procedures and with respect to the subject-matter to revoke the appealed judgement and to confirm that the Court has no jurisdiction to hear the case. The First Respondent shall be obliged to pay the legal costs for the two degrees of the litigation and BD30 as attorneys’ fees.

The Panel of Judges that heard the pleadings, adjourned the case for delivering the judgement and signed its draft comprises the following members:

Shaikh Salman bin Khalifa Al Khalifa (President), Judge
Dr. Yousuf Al Ikyabi (Court Member)
Judge Tharwat Taha (Court Member)

The judgement was announced by the current panel of judges.
Under the Presiding Judge Shaikh Salman bin Khalifa Al Khalifa, Court President
With the Membership of Counsellor-in-Law Dr. Yousuf Al Ikyabi, Puisne Justice
With the Membership of Counsellor-in-Law Nabil Shukri, Court Judge
In the presence of the Court Secretary Mohamed Yousuf Al Mahmeed
At the Hearing held in Public at the First Court of Cassation on 12.3.2012

The following Judgement was delivered in respect of
Cassation No.746 for the Year 2010

The Court

Upon having reviewed the documents of the Case, heard the Report read out by the Rapporteur Judge and whereas the Cassation has fulfilled its procedural requirements;

Whereas the facts of the case as gathered from the documents of the Case indicate that the Petitioners, being the Proprietors of the Establishment ..................

Filed Case No.9769/2009 against the Respondents by virtue of a Statement of Claim which was filed with the High Civil Court on 30.9.2009 seeking a judgement for invalidating the Arbitration Award No.19/S/26/10/2006 handed down on 15.4.2008 by the GCC Commercial Arbitration Centre saying that the First Respondent filed the Arbitration Case No. 19XS/26/10/2006 with the aforesaid Centre seeking to oblige the Established owned by them to pay a sum of SR2,500,000 and in spite of the procedural and defence pleas submitted, the Arbitration Board handed down on 15.4.2008 an arbitration award for compelling the aforesaid Establishment to pay to the First Respondent a sum of SR17.746.462. However, since this judgement was invalid owing to the lapse of more than 100 days without extending the arbitration period or handing down an award for settlement of the dispute according to the provisions of Articles 32 and 33 of the GCC Commercial Arbitration Centre’s Regulation as well as failing to deposit the original of the Award with the Court during the legally prescribed time limit according to the provision of Article 240 of the Civil Procedures Act, owing to the lack of the Arbitral Tribunal’s jurisdiction in addition to the lack of an arbitration document, hence they filed the said case. The Court awarded the Petitioners their claim by virtue of a judgement, which was appealed by the First Respondent before the High Civil Court of Appeal, which passed a judgement for the revocation thereof and non-jurisdiction of the civil law courts to hear the case. Then, the Petitioners challenged this judgement by way of cassation and the Technical Office deposited a memorandum on its opinion in respect of the challenge.

Whereas the challenge is based upon three grounds in which the Petitioners contest the challenged judgement for its violation of the law, the wrong application, interpretation of the law, improper justification, failure to make a proper deduction and breach of the right to defence by ruling that the civil courts have no jurisdiction to hear the case based upon the argument that Article 38 of the Procedural Regulation of the GCC Commercial Arbitration Centre entrusts the Centre’s Secretary General the duty to hear the invalidation claim although they filed the case in pursuance of Article 36 of the Regulation owing to the defects suffered by the Arbitration Award constituted by the lapse of more than 100 days from reference of the dispute to the Arbitrator without adjudging it, without agreement to extend the arbitration period, failure to deposit the original Award with the Court within the prescribed time limit, the lack of the Arbitral Tribunal’s jurisdiction to hear the dispute and the lack of an arbitration document, which are the events whereby the aforesaid Article authorizes invalidation of the judgement in accordance therewith. They also supported their claim by the provision of Article 243 of the Civil Procedures Act which permits the filing of a petition for invalidation with the court originally given jurisdiction to examine the dispute, which is a mandatory provision related to the public order which is not barred by the litigant’s waiver of his right to file a challenge prior to the issue of the Arbitration Award. As for the mention of Article 38 of the Procedural Regulation, which is used by the judgement as a basis for its ruling, it is no more than regulatory events that do not apply to the dispute. The judgement also committed another error when it ruled for the admission of the first Respondent’s appeal although the litigation before the Court of First Instance is limited to the Second Respondent in his capacity as the legal representative thereof while the aforesaid Company has no existence; hence its appeal of the judgement shall be inadmissible. Since the judgement ruled for the admission thereof and non-jurisdiction of the rule of First Instance to hear the case and competence of the Commercial Arbitration Centre’s Secretary General to hear it shall be wrong and worthy of being rescinded.

Whereas this challenge is unacceptable since the provision of Article 14 of the GCC Commercial Arbitration Centre’s Regulation, which was approved by Legislative Decree No.6 of 2000 states as follows: “The parties’ mutual agreement to refer their dispute to the Centre’s Arbitration Board and the ruling of
such Arbitral Tribunal that it has jurisdiction to hear the dispute shall bar the reference of such dispute or any action taken the hearing thereof before any other judicial authority in any country.” Article 15 of the Regulation states: “An The award passed by the Arbitral Tribunal Pursuant to these proceedings shall be binding and final and shall be enforceable in the member countries following the issue of an order for its enforcement by the concerned judicial authority,” Article 2 (1) of the Arbitration Procedures Regulation amending these rules on 5.10.1999 states: “An arbitration agreement before the Centre made according to the provisions of this Regulation shall bar the reference of the dispute to any other authority or challenge therewith by a ruling of the Arbitral Tribunal.” Article 36 thereof states as follows: “1. An award passed by the Tribunal pursuant to these Rules shall be binding and final. It shall be enforceable in the GCC member States once and order is issued for the enforcement thereof by relevant judicial authority. 2. The relevant judicial authority shall order the enforcement of the arbitration award unless one of the litigants files an application for the annulment of the award in the following specific events: (a) if it is passed in the absence of an Arbitration Agreement of in pursuance of a null Agreement, of if it is prescribed by the passage of time or if the arbitrator goes beyond the scope of the agreement. (b) If the award is passed by arbitrators who have not been appointed in accordance with the law, or if it is passed by some or them without being authorized to hand down a ruling in the absence of others, or if it is passed pursuant to an Arbitration Agreement in which the issue of the dispute is not specified, or if it is passed by a person who is not legally qualified to issue such award. The implication of the above is the desire of the lawmaker to speed up the resolution of the dispute to be referred to the GCC Commercial Arbitration Centre and not to subject it to the normal litigation procedures. Therefore, it is prohibited to contest the award passed by the Arbitration Board according to the Centre’s Regulation and on the basis of its procedural rules before any other judicial authority. This restriction includes the reference of the dispute in respect of which an award has been delivered to any other authority in the form of a law-suit seeking the invalidation thereof in breach of the provision of Article 243 of the Civil Procedures Act. Therefore, the lawmaker defines the role of the concerned judicial authority according to the law of the country in which the enforcement of the award is sought to the mere enforcement of the arbitrators’ award by marking it with the Enforcement Format. So if one of the litigants approaches such authority seeking to reject such order on the basis of the invalidity of the award for one of the reasons specifically outlined in the aforesaid Article 36, its duty is limited to ascertaining the validity of such reason. If it finds out that it is valid, it shall only reject to place an Enforcement Format on it and rule for the non-enforcement thereof. In such case, the arbitration award becomes null and void. In support of this viewpoint, the Trade Co-operation Committee revoked Article 38 of the Regulation that used to allow the litigants in certain events to specifically file a written application with the Centre’s Secretary General seeking the invalidation of the Arbitration Award. The said Article is no longer there and in such case a litigant only has the right to dispute the issue of an order by the concerned judicial authority for enforcement thereof as mentioned earlier without having the right to file a separate court case seeking the issue of a judgement for invalidation thereof, otherwise the fate of such case will be rejection by the Court. Since the contested judgement concluded by confirming that the civil law courts have no jurisdiction to hear the case, which ruling is tantamount to the dismissal of the case, hence its legal conclusion is valid and the challenge against it has no valid basis. Whereas in view of the above, the challenge should be dismissed and the Petitioners shall be obliged to pay the legal costs with the seizure of the guarantee.

For These Reasons:
The Court rules for the admission of the Cassation in terms of procedures and with respect to the subject-matter to dismiss it. The Petitioners shall be obliged to pay the legal costs and BD100 as attorneys’ fees. The guarantee shall be seized.

Shaikh Khalifa bin Rashid bin Abdulla Al Khalifa, Court President
With membership of Counsellors-in-Law
Ali Yousuf Mansoor, Puisne Justice
Dr. Taha Abdulmawla Taha, Court Judge
Yehia Fathi Yamama, Court Judge
In the presence of the Court Secretary Khalid Ali Sanad Al Hammad
More than a year ago; in the course of executing an arbitration award passed by the Centre in the Kingdom of Saudi Arabia; and on the occasion of some legal problems raised in this respect, I was asked by His Excellency the Centre’s Secretary-General Mr. Ahmed Najem to express the relevant legal opinion. Having examined the matter, I wondered at observing that the Centre lodged to and deposited its verdict with the Court of First Instance in the Kingdom of Bahrain in its capacity as a court that is mainly competent to consider the case in application of Article 240 of the Bahraini Civil and Commercial Procedure Code As Amended, as well as that litigants shall based upon such lodging and in accordance with Article 243 of the same Code bring legal action to nullify the arbitration award promulgated by the Centre.

Wondering, I asked the Centre’s Secretary-General on that day about justifications for committing the award issued by the Centre to the law-courts of Bahrain, for it seemed to me that Bahraini courts do not have competent jurisdiction to consider the petition of revoking the award given by the Centre. I came in my opinion to the conclusion that such a petition is unlawful and that it is legally groundless for the Centre’s Secretary-General to demand that an arbitration award issued by the Centre in the KSA be lodged.

Facts on which the aforesaid verdict of the Cassation Court had been given came to the conclusion that the Arbitration Award No. 19 of 2006 was issued by the Gulf Arbitration Centre on 15/4/2008 and the respondent brought legal action to nullify it before the Civil Court of First Instance in the Kingdom of Bahrain.
This Court wound up with a verdict repealing the arbitration award on the grounds of the first reason in its prime aspect; namely, the Arbitration Board had exceeded the 100-day term during which the judgement ought to be passed in accordance with what is established by Article 32 of the Centre’s Procedural Rules.

Upon appealing against this verdict, the Court of Appeal said that: “The gist of the content of the provisions of Articles 38 and 35 of Law No. 6 of 2000 approving the GCC States’ Gulf Arbitration Centre’ articles of association, is that the Centre is the competent entity to take cognizance of the annulment case in relation to arbitration awards issued within the framework of the Centre ... Accordingly, law-courts’ jurisdiction shall recede and stand short of hearing the nullity case, making it a must that deciding the appellate subject-matter to the effect of overturning the appealed verdict and the court’s non-competence to take cognizance of the case”.

Upon objection for cassation against this verdict, the Court of Cassation relied upon Articles 14 and 15 of the Centre’s articles of association, as well as upon Articles 2/1 and 36 of the Centre’s Rules of Procedure, in saying that the legislator (i.e. the Bahraini domestic legislator in this connection) prohibited that an arbitration board’s award issued in conformity with the Centre’s articles of association and based upon its Rules of Procedure be challenged before a judicial entity. Such prohibition shall include presenting the dispute on which this award was issued to any other entity in the form of a proceeding starting with a petition to nullify such award since it deviates from and violates the provision of Article 243 of the Procedure Code. Therefore, the legislator has confined the role of the competent judicial body according to the law of the country where the award is required to be executed to merely ordering the implementation of the arbitral award by means of applying the executive formula to it. If an adversary applies to that entity for repudiating this injunction based upon the annulment of the award due to one of the reasons ensnired exclusively in the aforesaid Article 36, its function shall be limited to ascertaining the validity of such reason. In the event that it turns out for the competent judicial body that the award is proved to be valid, it shall not but both overrule applying the executive form to it and judge it as ineffective and its role will not go beyond that. In this case, the arbitration award shall be non-existent. This viewpoint is upheld by the cancellation by the Commercial Cooperation Committee of Article 38 of the Procedural Rules; an article which used to make it permissible for litigants under certain conditions; precisely speaking, to apply to the Centre’s Secretary-General in writing for nullifying the Arbitration Board’s award. Thus, the article is no longer in existence and the adversary’s right in a dispute shall exist merely upon getting an order issued by the competent judicial body to carry it into effect as mentioned hereinabove, but he shall not be entitled to bring separate legal action requesting that the award be nullified, otherwise such proceeding shall be doomed to be turned down. Whereas the ruling that is the subject-matter of the challenge was rounded up with the civil courts’ lack of competent jurisdiction to take cognizance of the case; a judgement which is equal in its result to overruling the case, it has come to a valid legal conclusion and; in consequence, appealing against the same has become baseless. In view of the content stated hereinabove, the objection must be overruled. The verdict given in the text of judgement was to the effect of refusing the subject-matter of the objection.

Upon enforcing the verdict in the Kingdom of Saudi Arabia, the Court of First Instance (the Administrative Circuit at the Grievances Office) whose judgement was upheld by way of appeal had relied upon the Agreement on the Enforcement of Judicial Rulings in the GCC Countries and made reference to Article 12 thereof providing for that without prejudice to the provisions of Articles 2 and 4, arbitrators awards shall be executed by any of the Member-States in the same way stipulated in this Agreement, taking into consideration the applicable rules in the country where enforcement is required.

The Court also affirmed that the verdict did have all conditions and prerequisites necessary for relevant enforcement in the KSA pursuant to the Agreement on the Enforcement of Judicial Rulings in the GCC Countries, adding that the verdict came conforming to the terms and conditions of carrying into effect the provisions stipulated in the Agreement to the extent that does not contradict the arbitrators’ awards. Consequently, it came out with the text of judgement as follows:

"For these reasons, the Circuit has ruled that the foreign award No. 19 of 2006 issued by the GCCCAC Centre be enforced owing to the reasons explained hereinabove".

In order to accomplish this mission, I have envisaged that is necessary to both order a competent body to address some arbitration matters that are critical and delicate in nature and try answering some self-posed complex questions such as the legal nature of the award issued by the Centre and the consequential question about the judicial jurisdiction over and review of the same, taking into account that posterior to the issuance of the arbitration award, proposals raised for nullifying it are as much as those made for enforcing it. Speaking of annulment, a question usually takes shape about the role of the law-courts in the country where an arbitration award was issued or under the procedural code of which such award was passed (both often belong to one and the same country), while upon dealing with enforcement the question of agreements, be they bilateral or regional, and even international ones represented in the 1958 UN covenant known as the New York Pact on Recognition and Enforcement of Foreign Arbitration Awards.

I am going to look at the legal hierarchy and the legal standpoint of the principles of the Centre’s rules of procedure, something which would help explain the legal status of the award issued by the Centre and its correlation with the judicial bodies in both Bahrain and the rest of GCC and other countries in a manner that makes it imperative to address tow issues; firstly, how permissible it is for law-courts to hear an annulment case concerning the arbitration award promulgated by the Centre and; secondly, the way to execute the arbitral award issued by the Centre in GCC as well as in other States within the purview of both the New York Pact and the Agreement on the Enforcement of Judicial Rulings in the GCC Countries.

Delineating a dividing line between the concept of foreign arbitration award and that of the international one and to which of them the award issued by the Centre would belong, will have a decisive impact upon accepting the seemingly strange conclusions which would be drawn by me, taking into consideration that both jurisprudence and similarly judicature have been satisfied in one division of arbitration with dividing it into international and internal or domestic arbitration. This is according to the distinction between the two types of arbitration in most cases by developing a definition for international arbitration only and being content with giving internal arbitration a passive definition; that is, viewing arbitration that is not international to be internal. It is also by way of observing at the same time that both of them (jurisprudence and judicature) would, upon speaking of an arbitration award, use the terminology of international, foreign and domestic arbitration without any sufficiently clear identification regarding whether the international arbitration award is the
same as the foreign arbitration one or they are two different things.

Concepts of the International Commercial Arbitration Award, the Foreign Arbitration Award and the Domestic Arbitration Award:

The award issued by the Centre must be identified and whether it is an international, foreign or national internal award for the Kingdom of Bahrain.

If we want to set a demarcation, and not a definition, for the international commercial arbitration award, the foreign arbitration award and the national arbitration award, I do not envisage dividing arbitration in terms of its internationality into international arbitration and national or domestic arbitration, but I would divide it into international and non-international arbitration; the latter is that in which a national arbitration award would be issued and which shall be a foreign arbitration award at the same time. The national and foreign epithets are concomitant altogether and at the very same moment. They are two sides of the same thing, for the foreign award is a national one at the same time; and the national award is a foreign one at the same time. To explain this, I would say that the non-international arbitration award is necessarily national for a given country and is concurrently foreign for the rest of other countries.

Foreignism, like nationalism, is a relative epithet in an award which may be alien to a certain country or a number of countries. It is not a foreign award at all, but it is foreign for either a given country or a number of specific countries, while internationality is seemingly an absolute epithet in an award which if it is international, it is also absolute and addressed to all countries. This is the core of my concept, which is my springboard for such identification.

Thus, the foreign epithet differs, and such being the case, from the international one.

A national award, that is foreign on its other face, was subject to, or issued within, the framework of a specific legal system of a given country; it was connected with the legal system of that country. It is unlike an international arbitration award as this award is neither domestic in any of the countries nor deemed to be national for any of such countries. In other words, it does not belong to the legal system of any country and its being merely issued in a certain country will not make it belong to the legal regime of that country.

Result of this Delineation According to the Hypotheses, Obligations and Inevitabilities of the International Arbitration’s Logic:

This demarcation shall be conducive to the application of the legal outcomes resultant from such description to an arbitral award issued in international arbitration. Such outcomes are:

Firstly, it does not belong to the legal system of any nation and, consequently, it cannot be governed in terms of its validity or soundness to the law of any country. Thereby, it shall be inconceivable for such award to be appealed against for annulment before the national judicature of any country.

This was addressed elaborately by the French Court of Cassation with regard to numerous well-known cases of arbitration the most important of which are those of “Norsolor” and “Chromalloy”.

In these cases, that court stressed that an international arbitration award shall not be incorporated into the internal legal system of the country where it was issued. Therefore, the existence and validity of such award is not associated at all with the ruling for its annulment in the headquarters’ country and it shall remain in existence despite its annulment. By the same token, recognizing and enforcing the award in another country shall not contradict the international general system in spite of such annulment.

This has given rise to what is known as the phenomenon of executing null international arbitration awards.

Secondly, the award’s enforcement shall not raise the question of applying the rules of reciprocity usually adopted by procedural or civil procedure codes as it is not a foreign, but an international, award. Even if the two epithets co-exist in the award; namely, of its being foreign (e.g., in view of the law of one country) and of its being international, the latter shall absorb and prevail over the former and the award must be looked at and dealt with on the basis of this international epithet per se. For reciprocity of treatment naturally supposes the national epithet of the award being enforced in a country other than that in which it is required to be carried into enforcement, something inconceivable in the international arbitration award.

Impact of this Demarcation upon the Legal Status of the Award Issued by the Centre:

Upon consideration of the legal status and standpoint of the award issued by the Centre, the profile of the Centre itself, its articles of association and its rules of procedure must be taken into account in accordance with the following:

1. It is well established that the GCCCAC Centre’s articles of association was promulgated by a decree form the GCC Supreme Council at its 14th Session held in Riyadh on the 22nd December 1993, which delegated the Commercial Cooperation Committee to prepare the arbitration rules of procedure, then to approve both the articles of association and the rules of procedure vide the sovereign legislative instruments in the six States;

2. The Gulf Cooperation Council (GCC) of Arab Gulf Countries is a regional organization and the Supreme Council is the higher authority of the GCC, which is composed of the Heads of Member-States and its chairmanship is periodic as per the alphabetical order of the countries’ names;

3. Article 27/2 of the Economic Agreement amongst the GCC countries signed on the 31st December 2001 and superseding the one signed in November 1981, sanctions resort by public organizations and institutions in the GCC States to arbitration via the GCCCAC Centre, for the Centre, unlike other ones, deals with private and public persons;

4. The Centre’s Rules (Articles of Association and Rules of Procedures) are derived from a source that is higher than the national laws of the six GCC States; and such rules do not give any attention to what is called the spatial centralization, for the award issued by the Centre is not viewed as issued on the soils of the Kingdom of Bahrain’s territory, which is not the headquarters’ country in relation to the arbitration taking place at the Centre since it is not associated with the country’s national internal legal system; and

5. In this respect, the GCCCAC Centre is similar to the International Centre for the Settlement of Investment Disputes (ICSID), which was established by the Washington Convention of 1965. The Centre’s rules are different in this connection from those of other arbitration centres that are concerned with the concept of spatial centralization and thus link the international award to a domestic legal system, including the International Chamber of Commerce (ICC), which associates it with the French legal system as well as with that of the countries where the national committees of the ICC are based.

Thereby, the Centre is a regional arbitral judicial apparatus independent of the six GCC States, including the headquarters’ one in which it is deemed a dear guest. This leads to necessarily look at the legal status of the award issued by the Centre within the following context:

1. Read with Article 2/1, Article 14 of the Centre’s articles of association elevates
the will of parties so as to make their consent to refer the dispute to arbitration within the ambit of the Centre a barrier preventing the possibility of referring this dispute or of appealing against the arbitration award before any legal entity in any of the GCC States;  
2. Article 14 of the Centre’s articles of association talks in the end of its paragraph about prohibiting the dispute to be put forward to or appealed against for an arbitration award or any procedure before any other judicial body. This denotes that the arbitration centre is one of the judicial entities;  
3. Read with Article 20 of its rules of procedure, Article 14 of the Centre’s articles of association adopts the principle of ad hoc competent jurisdiction and does not stop at this limit but goes beyond it; that is, whenever a conflict of jurisdictions exists between judicature and arbitration, priority shall be given to the judgement of the arbitration board and not to that of law-courts; a status that has not been reached by the French law but recently;  
4. Read with Article 36 of its rules of procedures, Article 15 of the Centre’s articles of association makes the arbitration award binding, final and self-executing in GCC States, following the order given by the competent judicial body to carry it into effect;  
5. Article 16 of the Centre’s rules of arbitration procedure lays down a special arrangement for the annulment petition of the arbitration award issued by the Centre to the effect that this shall only be accomplished upon requesting it be executed and before the judicial body per se as required to issue its executive order, relying upon the reasons exclusively determined solely by it. If that judicial body ascertains the validity of the annulment petition, it must be ruled for the arbitrator’s award not to be enforced; and  
6. Given that some texts speak of the self-execution of both the Centre’s award and its enforcement order in the GCC States, it is well established; however, that the enforcement of verdicts in general (law-courts’ rulings or arbitration awards) may reach out to all countries of the world pursuant to the existence or non-existence of funds possessed by the one against whom the judgement is executed. Before coming out with an opinion on the legal status of the award issued by the Centre, it would be useful to express one’s viewpoint and comment on the four judicial rulings mentioned hereinabove; namely, the three ones passed by the Kingdom of Bahrain’s judicature in its various branches, in addition to the verdict given by the KSA’s judicature.  
As for the judgement passed by the Court of First Instance in Bahrain, it shall be criticized for the following: It considered that Article 35/2 as one of the articles of Law No. 6 of 2000 promulgate by the Kingdom of Bahrain, while what is true that it is not a law but a decree-law, and that such decree-law had include two articles only involving an approval of the Centre’s articles of association, the issuance of its writ of enforcement and fixing a date for turning it effective. Consequently, the verdict means Article 35/2 of the Centre’s rules of procedure. Even in this case, the ruling was oblivious to the fact that the number of this article has become 36, which is on the occasion of amendments made on the Centre’s rules of arbitration procedure. Relevant ratification was accomplished in the city of Al Ain, the United Arab Emirates, on the 5th October 1999, and repealed Article 38 of the Centre’s rules of procedure; and  
It envisaged that the Court of First Instance is the body concerned with considering the annulment petition, neglecting that such annulment petition according to the article upon which it relied shall not be introduced but on the occasion of implementing the arbitration award and will have to be submitted before the competent judicial body in the country where it is required to be enforced. The verdict did not pay attention to the fact that what is put forward to is not a petition for carrying the arbitration award into practice but it is a preliminary legal action for the award to be nullified. Likewise, the verdict overlooked that it is impermissible to initiate course of instituting a preliminary proceeding for the annulment of the arbitration award issued by the Centre since the right to such proceeding is inexisten.  
Regarding the ruling passed by the Court of Appeal, it shall be criticized for the following: The very same remark which surveyed the first instance verdict concerning the decree-law and the number of the article, along with considering Article 38 as one of the articles of the aforesaid decree-law;  
It was oblivious to the fact that Article 38 itself was cancelled in conformity with what has been already explained and; therefore, the Centre is no longer the appropriate entity to take cognizance of the annulment petition for the arbitration award issued by it according to what is mentioned therein; and  
The danger of the content enshrined in the verdict consists in that if it had taken heed of the cancellation of Article 38 from the Centre’s rules of procedure, it could have come to the conclusion that it is being concerned with considering the annulment proceeding of the arbitration award issued by the Centre, for the source of its lack of jurisdiction as per what was included in its wrong reasons is the existence of this article, while it is legally true that it is not a question of competence because no preliminary annulment legal action may be instituted against the arbitration award issued by the Centre. The very right to initiate the proceeding did not exist before the law-courts neither prior or posterior to the cancellation of Article 38 as will be mentioned hereunder in detail.  
As regards the decision passed by the Court of Cassation: Notwithstanding it full absorption of shortcomings and criticisms surveyed regarding the two previous verdicts; and despite its reliance upon the true texts that should be operative within the Centre’s articles of association and rules of procedure coupled with its conclusion of the right legal order to the sequential thereto; namely, an adversary shall not be entitled to institute a separate legal action for nullifying the award issued by the Centre, such ruling was beside the point when it referred to the duly executory provisions as digression by the legislator from the test of Article 243 of Bahrain’s Civil Procedure Code to the effect that the legislator views the arbitration award issued by the Centre as a national award in the Kingdom of Bahrain and one that is connected with the country’s legal system. Similarly, it missed the point when it added to the reasons “otherwise such proceedings shall be doomed to be turned down,” and contradicted the appellate verdict rounded up with the lack of jurisdiction and not with turning the legal proceedings down. The fact is that although these two verdicts concurrent in the realistic goal, something which made the Court of Cassation reject the objection on its merits, yet each of them stood short of establishing the sound legal origin which was lost between claiming the lack of jurisdiction for taking cognizance of the case and alleging its refusal. The fact of such establishment of origin is that we are in the realm of bringing the rules of objective non-acceptance to bear upon the idea of the unavailability of prerequisites necessary for hearing the law-suit. This is detailed as follows:  
Defining the Lack of Jurisdiction over the Legal Action, the Egyptian Court of Cassation said: “A verdict given to the effect of want of jurisdiction is a judgement passed by a law-court with no decisive competence in terms of the subject-matter, value, as well
as of venue. In such verdict, the law-court does not address the merits of the legal action”. (Civil Cassation, Session on 15th June 1967; Cassation Body 18-1284-195)

While, defining the rejection of a law-suit, the very same court said:

“A judgement passed to the effect of turning the law-suit down is one that is categorically decisive as to the subject-matter, issued by a competent judge in an acceptable legal action and in which the court rounds it up with that the claimant has no right in his legal proceedings. The same description shall apply to a verdict given to the effect of rejecting the objection”. (Civil Cassation, Session on 4th April 1975; Cassation Body 26, page 860) and (Objection No. 9579 of the 65th Judicial Year, 27th May 2003 Session)

If the Court of Cassation came out in a proper sound result – in which we support the Court – with eliminating the right to bring the legal action itself, we would be in the process of talking about non-acceptance of the law-suit but not about rejecting it as envisaged by the Court of Cassation and no mention is made of the lack of jurisdiction in the eyes of the Court as envisaged by the Court of Appeal. The non-acceptance meant by me is not the procedural but the objective non-acceptance of the type mentioned in Article 115 of the current Egyptian Civil Procedure Code, which is equivalent to Article 142 of the preceding law.

Add to this, the Bahraini Civil and Commercial Procedure Law As Amended and the Decree-Law No. 12 of 1971 As Amended in Article 31 Thereof which states that:

“The defendant may plea for non-acceptance of the legal action at any topical case it takes owing to the claimant’s lack of status, capacity or interest or for any other reason. This plea shall be judged independently unless it is ordered by the court for the same to be incorporated into the subject-matter, and then the court shall determine the verdict given in both the plea and the subject-matter”.

The Shari’a Procedural Regulations in the KSA

Article Seventy-two:

“The plea for a court’s specific jurisdiction or for non-acceptance of the law-suit owing to the lack of status, capacity or interest or for any other reason and similarly the plea for non-hearing of the legal action shall be automatically judged by the court and may be pleaded at any stage witnessed by the legal proceedings”.

The State of Qatar: the Civil and Commercial Procedure Law as Amended (13/1990)

Article 71

The plea for non-acceptance of the law-suit owing to the lack of capacity, eligibility or interest or for any other reason may be expressed at any stage witnessed by the legal proceedings. If the Court of First Instance envisages that the plea for non-acceptance of the legal action due to the negation of the claimant’s capacity, eligibility or interest is well-founded, the legal proceedings shall be adjourned so as to serve a notice to the one with capacity.

The Decree-Law No. 38 of 1980 Promulgating the Kuwaiti Civil and Commercial Procedure Code

Article 81/1

The plea for non-acceptance of the law-suit may be expressed at any stage witnessed by the legal proceedings.

The Emirati Civil Procedure Law (11/1992)

Article 91

The plea for non-acceptance of the law-suit may be expressed at any stage witnessed by the legal proceedings.

The non-acceptance mentioned in the aforesaid provisions means that the terms and conditions of the legal action; that is to say, of the legal action for nullifying the arbitration award issued by the Centre, are unavailable or incomplete. It is the legal action itself regardless of how far the annulment reasons exist or not. Here, we are within the purview of the right to bring the legal action which protects the right to initiate annulment. It is a purview which shall intuitively precede and differ from that of the right to annulment.

Thus, if the right to bring legal action is inexistent, no mention can be made of jurisdiction and, it shall be with greater reason that no mention can be made of rejecting the legal action.

This was explained by the Egyptian Court of Cassation when it said:

“The non-acceptance meant by Article 142 of the previous Civil Procedure Code which is equivalent to Article 115 of the existing law denotes – as expressly put by the explanatory note – the plea aiming at objecting for the unavailability of terms and conditions necessary for the law-suit to be heard. These are capacity for, interest in and the right to bring legal action on the grounds that it is a right independent of that for the establishment of which the legal proceedings is instituted. It is like the absence of the right to bring a legal action or its abatement owing to relevant previous reconciliation or to the elapse of the period fixed by law for the legal action to be brought. It is also similar to that which is not confused with the plea related to the form of procedures on the one hand or with the plea pertinent to the source of the right at issue on the other hand. Thus, what is meant is substantive non-acceptance”.

(Cassation No. 23/5/1972, 23rd Judicial Year, page 981)

“To plea for non-acceptance of a legal action, the crucial factor shall be getting it characterized by and adapted to the reality of its gist and goal and not to what is added to it by litigants. The plea for non-acceptance of the legal action by means of which the Court of First Instance shall carry its jurisdiction into force – Article 115 of the Civil Procedure Code – is based upon the lack of prerequisites for the legal action to be heard; namely, the capacity to, interest in and the right to bring such legal action. Thus, it differs as such from the plea related to the form of procedures.”

(15/5/1984 Cassation; Objection No. 1863 of the 50th Judicial Year)

“The plea for non-acceptance of the legal action shall be in application of Article 115 of the Civil Procedure Code and may be expressed at any case witnessed by the law-suit even if it is to be considered before the Court of Appeal. Evidence should be duly shown in respect of such plea.”

(25/3/1985 Cassation; Objection No. 1123 of the 50th Judicial Year)

If the court decides upon the law-suit even if by turning it down, it shall be intuitively supposed that this court shall judge according to its competence to take cognizant of it. It shall also be supposed for the court to judge that prerequisites exist to the full so as for the legal action to be heard. These prerequisites are the capacity for, interest in and the right to bring the legal procedures, considering that this last prerequisite to be a right independent of that the law-suit is brought demanding to get it acknowledged;

And if the right thing agreed upon by us with the Court of Cassation is that no annulment legal action may be brought against the arbitration award issued by the Centre, given that the provisions of the Centre’s articles of association and rules of procedure in their clear wording and express denotations have categorically stated that it shall be impermissible for a legal action to be brought or for any of its steering procedures to be exercised before litigation bodies – something the sound obtainment and recording of which have been concluded by the Court of Cassation,

Accordingly, the Court should not have come out with saying that the specified
and appointed verdict is to reject the legal action because of inconsistency of this opinion with the logic of its premises. Additionally, rejecting the legal action supposes intuitively the availability of the right for such law-suit to be brought, the permissibility of hearing it and; subsequently, examining its legal and realistic evidence thoroughly, as well as of the court’s conclusion drawn to the effect of substantiating no legal right for the one who instituted it. The Court would rather say that the due ruling is non-acceptance of the legal proceedings owing to the non-existence and absence of the right to bring it.

Finally, shortcomings and criticisms of the Saudi Judicature:

It is blamed and criticized for dealing with the award issued by the Centre as a foreign, and not an international, judgement for which the Saudi judicature may be partly excused in view of the fact that the arbitral legislative framework that used to prevail was dedicated to internal arbitration only and entrusted the Administrative Circuit of the Grievances Office with the task of ordering the enforcement foreign arbitration awards. Running short of time has not allowed me to explore the matter within the new legislative context.

However, I do not find a sufficient excuse for this judicature in enforcing the Centre’s Award within the purview of the Agreement on the Gulf Awards, which is earmarked for the execution of the Gulf national and simultaneously foreign arbitration awards in accordance with the foregoing identification and without observing the international arbitration award. It is a limited, short-sighted viewpoint, given that it is supposed for the for the award issued by the Centre to be carried into force based only upon its own provisions and upon keeping such provisions (of the articles of association and rules of procedure) independent because they have been issued in conformity with the regional collective will represented in the decision made by the GCC Supreme Council in a manner that would confer the international status on both the Centre and its governing rules.

Thereby, the absence of both the concept and epiteth of internationality from the arbitration award issued by the Centre would gather together these four rulings, which are also incorporated by viewing such award as a national one in Bahrain and simultaneously as a foreign one in Saudi Arabia. This supports the identification being advocated by stating that a foreign award is a national one at the same time.

Drawing from above, I recapitulate in general terms the comment on the judicature in both the Kingdom of Bahrain and the Kingdom of Saudi Arabia as follows:

Bahrain’s judicature dealt with the Centre’s award as a national judgement and its various degrees were oblivious to view it as an international award, taking into consideration that the GCC is a regional entity or organization, something which gives it the international nature. This is confirmed by Chapters 6 and 7 of the Centre’s articles of association; viz., Articles 24, 25 and 26 of these articles of association which recite the well-established immunities for the Centre, its board of directors, its secretary-general, along with members and the arbitration board and secretariat against any judicial or administrative procedures. They speak as well about immunities peculiar to them and similar to those types granted to members of the diplomatic corps.

It is also criticized for looking at the Internal Law No. 6 of 2000 prior to looking at both the decision made by the GCC Supreme Council and the Centre’s articles of association and rules of procedure promulgated by the Centre.

The Saudi judicature dealt with the Centre’s award as a foreign judgement because it had been issued outside the KSA in lieu of dealing with it vide its de facto status as an international verdict and not merely a foreign one.

In other words, the award issued by the Centre is treated in the Gulf countries according to two concepts: it is dealt with by the Kingdom of Bahrain’s law-courts as a national verdict and in the remaining Gulf States outside Bahrain as a foreign one. Between its national status in Bahrain and its foreign status in other countries, the award’s international status was lost or absent, while the true thing is that it is an international commercial arbitration award that is neither domestic for the Kingdom of Bahrain even though it was issued in it nor foreign in other countries in which it was not issued.

The useful gist from the overall content above is that the GCCAC Centre’s awards or any of its procedures are not subject to review or reexamination neither by way of objection nor by way of bringing legal proceedings demanding its annulment by any judicial body in any of the GCC or other countries, given that the award issued by the Centre is not associated at all with any national legal system of any GCC or other countries.

In this connection, it is compared by analogy in two aspects to the award issued by the International Centre for the Settlement of Investment Disputes (ICSID): firstly, it is permissible for one party to arbitration to be the State or the public juridical person, and; secondly, the Centre’s awards are not subject to annulment review or reexamination by the law-courts of any country.

Moreover, upon the execution of the arbitration award issued by the Centre according to the New York Convention, there will not be any examination of whether it had been nullified in the headquarters’ country or not according to Article 5/1/E of this pact, for – as already conclude by us – it is an international ruling concerning which it shall be impermissible to bring the headquarters’ concept to bear. It is also an award the preliminary legal action demanding its annulment shall not be accepted. Similarly, the Centre’s award goes beyond the problems of the dual jurisdiction over the annulment law-suit; that is, the jurisdiction of the arbitration headquarters’ country vis-à-vis that of the country according to the procedural law of which the arbitration award was issued.

This would expedite the execution of the Centre’s awards in any part of the world compared to any other centre for arbitration.

In conclusion, it is a final arbitration award and one that is not open to objection or challenge by any ordinary or extraordinary way, nor is it permissible to institute a preliminary legal action for relevant annulment in any country of the world. It is also an award with a perpetual legal authority that is inalterable anywhere, something which gives this award such an international effect that would enable it to have a full and permanent legal certainty coupled with an endless forecasting pursuant to the parties’ will, which is the highest legal reference for the arbitration. Furthermore, it was issued in an international arbitration – by virtue at least of resorting to the Centre – and, therefore, it is not deemed a foreign award even if the New York Pact viewed it as such because this convention had not drawn a distinction between the international award and the foreign one, along with its reliance all the time upon the concept of geo-spatial centralization of the arbitration award.

Due to the short time and the period fixed for publishing this special issue, I have to confine myself to this far, hoping -God willing- to go back to this interesting subject to replenish the remaining part which is too much varied.
Curriculum Vitae

Adviser Dr. Magdy Ibrahim Kassim

Previous experience and academic qualification:

- MA and Ph.D. degrees in Law from Sorbonne University in Paris.
- Ph.D.: Subject of dissertation "Annulment of Arbitral Awards" ("With Honors")
- Masters degree in Business and Economic Laws - Sorbonne University, Paris.
- Languages: Arabic, French and English

Practical and Academic Experience

- Held several posts in the office of the Prosecutor General and the judiciary in Egypt, beginning 1981 as follows:
  - District Attorney and Chief Attorney.
  - Judge at the Courts of First Instance.
  - President of Southern Cairo Court of First Instance (class B) then President of Court (class A).
  - Counselor at the Courts of High Appeal, then Vice-President and then President of the Court of Appeal.
  - Teaching law as a professor at the Faculty of Law, Helwan University, for several years.
  - Seconded from the Egyptian government to work as a judge in the Federal Courts in the United Arab Emirates since 2003.
  - Chairman of the legal committee assigned to review and modify all of the UAE Federal Laws and International Treaties.
  - Head of the Scientific Body to the Federal Training and Judicial Studies Institute.
  - Lecturer of Arbitration at the Federal Institute of Judicial Training and Studies, for nine years.
  - Assigned to write a memorandum commenting on the draft law of the Federal Arbitration Law at instructions from HE the Minister of Justice.
  - Member of the current Committee undertaking enacting the draft Federal Arbitration Law of the UAE.
  - Member of the ministerial committee undertaking studying alternative litigation systems and means and ways of promoting and amending them according to the best international practices.
  - Certified arbitrator in a number of arbitration centers.
  - Appointed as head of arbitration panels in several important arbitration disputes.
  - Appointed as a sole arbitrator in several important arbitration disputes.
  - Former Legal Advisor to HE the Minister of Economy of the UAE.
  - Senior Advisor of Arbitration and Legislations of the Stock Exchange and Commodities in the UAE.
  - Senior Advisor of the Center for Commercial Arbitration of the Gulf Cooperation Council member states.
  - Chairman of the Scientific Board of the Federal Institute of Judicial Training and Studies.
  - Chairman of the organizing committee of the draft Federal Arbitration Law, according to the Minister of Economy’s decree No. 85 for the year 2010.
  - Providing legal advice on several draft laws and their amendments, most prominently the draft Federal Arbitration Law, draft cabinet resolutions and cabinet resolutions.
  - Representing the Ministry of Economy in the General Secretariat of the Gulf Cooperation Council to prepare and review several draft Gulf unifying systems and laws.
  - Certified arbitrator in a number of arbitration centers.
  - Appointed as head of arbitration panels in several important arbitration disputes.
  - Appointed as a sole arbitrator in several important arbitration disputes.
  - Former Legal Advisor to HE the Minister of Economy of the UAE.
  - Senior Advisor of Arbitration and Legislations of the Stock Exchange and Commodities in the UAE.
  - Senior Advisor of the Center for Commercial Arbitration of the Gulf Cooperation Council member states.
  - Chairman of the Scientific Board of the Federal Institute of Judicial Training and Studies.
  - Chairman of the organizing committee of the draft Federal Arbitration Law, according to the Minister of Economy’s decree No. 85 for the year 2010.
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