

BCDR BIENNIAL REPORT

2020/2021





Painting by the late Bahraini artist Rashid Al Orafi

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I. MESSAGE FROM THE CHIEF EXECUTIVE



CHIEF EXECUTIVE OFFICER
Professor Nassib G. Ziadé

Every aspect of the social and economic lives of the entire global population has been thrown into turmoil by the COVID-19 pandemic, making 2020 and 2021 extremely challenging years on many levels. The human cost – in lives lost, sickness, unemployment, and quality of life in general – has been incalculable.

The commercial and legal communities have, however, rapidly adapted to innovative tech-driven means of working under COVID constraints. Though many businesses have suffered, some beyond recovery, other commercial sectors have thrived, notably the tech companies themselves, which have provided the platforms on which “virtual” business is conducted, pharmaceuticals and medical supplies, and the online suppliers of goods and services. The “green” agenda has been significantly advanced under lock-down and other COVID-related restrictions, with every indication that remote working will become commonplace even after the world is free of COVID, whilst the drive to reduce dependency on fossil fuels continues. With this in mind, the use of electronic means for the conduct of BCDR proceedings has been facilitated and encouraged.

In the midst of all of this disruption, deals are still being made and are still being breached, with the demand for arbitration and ADR services undiminished. In response, the world’s arbitration institutions have themselves quickly adapted to provide efficient COVID-safe online services. The details of the steps that have been taken by BCDR in this respect are set out later in this Report.

Despite all these unprecedented circumstances, I am pleased to report two very successful years for BCDR in our key activities of casework, publications, and participation in the work of UNCITRAL, although, inevitably, our usually full program of conferences and other educational events, with the exception of the Vis Pre-Moot, has been severely curtailed.

Cases continue to be referred to BCDR at a steady pace, with an increased level of enquiries indicating a growing take-up of BCDR dispute resolution provisions.

CASES CONTINUE TO BE REFERRED TO BCDR AT A STEADY PACE, WITH AN INCREASED LEVEL OF ENQUIRIES INDICATING A GROWING TAKE-UP OF BCDR DISPUTE RESOLUTION PROVISIONS.

In July 2021, the great progress that BCDR has recently made was recognized by the prestigious Global Arbitration Review award for "Regional Arbitration Institution that Impressed."

Enhancements have been made to our highly-regarded 2017 arbitration rules, the new edition of which will come into effect in the summer of 2022, reflecting BCDR's commitment to responding to developments in practice in the field. Entirely new dedicated rules for sports arbitration were introduced in March 2022, and we expect shortly to complete our work on new rules for the administration of ad hoc arbitrations by BCDR. Work is also under way on dedicated rules for the arbitration of disputes in the field of Islamic finance.

Five issues of the scholarly *BCDR International Arbitration Review* were published in 2020 and 2021, covering third-party funding in international arbitration, conflicts of interest, mediation, and oil and gas arbitration.

BCDR's important work with UNCITRAL continues, as it leads the Bahraini delegation at the meetings of UNCITRAL's Working Group II (dispute settlement) on expedited arbitration provisions, and Working Group III on investor-state dispute settlement (ISDS) reform.

Parties to BCDR-administered proceedings continue to benefit from the pro-arbitration legal environment in which BCDR operates, including the favorable stance on arbitration of Bahrain's judiciary. Since 1988, Bahrain has been a Contracting State of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), and, in 2015, it adopted the UNCITRAL Model Law on International Commercial Arbitration with its 2006 amendments. In September 2021, Bahrain enacted Legislative Decree No. 22 of 2021, issuing the Enforcement Law in Civil and Commercial Matters, which came into force on 17 March 2022. This Decree simplifies the procedure for enforcing arbitral awards, with petitioners merely submitting a request for enforcement to the Clerks' section of the High Court, without the need to initiate formal enforcement proceedings.

The attitude of the Bahraini judiciary towards arbitration continues to be in line with current global trends in the interpretation and application of relevant treaties and legislation. In Appeals Nos. 14 of 2021 and 252 of 2021, decided on 15 December 2021, the Bahraini Court of Cassation confirmed the duty of each Contracting State of the New York Convention to recognize the validity of foreign arbitral awards and to enforce them, subject to the five exceptions envisaged under Article V(1) of the New York Convention. It further emphasized that arbitral awards, like court decisions, have *res judicata* effect so long as the award is valid and not set aside. It also held that any decision of the lower courts that departs from the *res judicata* effect of arbitral awards is legally flawed and should be quashed.

Reflecting the full administrative autonomy, and financial independence and self-sufficiency that BCDR now enjoys, the formal relationship between BCDR and AAA, on which the institution was founded, has been brought to a most amicable close, with the mutual agreement of both sides. BCDR acknowledges with warm thanks the important contribution of this relationship to the recognition of BCDR's international standing, which is now fully established.

The international credentials and independence of BCDR are also reflected in the changes to the membership of the BCDR Board of Trustees that are set out later in this Report.

BCDR is again indebted to all those who have supported the institution over these two years, and who continue to give their support: our dedicated staff, the Members of the Board of Trustees, our partners for the online Vis Pre-Moot, our friends and advisors who continue to work with us to ensure the high standards of our services, and who have graced our journal with their scholarly contributions. To all of these and to the parties who select BCDR in their contracts, I extend my personal thanks and best wishes.

Professor Nassib G. Ziadé
Chief Executive Officer

II. BCDR SECRETARIAT AND BOARD OF TRUSTEES

SECRETARIAT

CHIEF EXECUTIVE OFFICER
Nassib G. Ziadé

LEGAL STAFF

CHIEF REGISTRAR & COO
Ahmed Husain

SENIOR CASE MANAGERS
Khaled Al Khayat
Salim Sleiman

CASE MANAGERS
Hasan Albuainain
Hanin Alkhan
Fatema Al Zayed Al Jalahma

GENERAL ADMINISTRATION STAFF

SENIOR ACCOUNTANT
Bassam Ghassan Beidas

SENIOR FINANCE OFFICER
Aisha Ishaq

HEAD OF ICT
Yousif Al Saif

SENIOR ICT SPECIALIST
Hussain Ebrahim

HR OFFICER
Fatema AlWardi

**BUSINESS DEVELOPMENT
COORDINATOR**
Khaled Chilwan

COO ASSISTANT
Mahnaz Kadhemi

CHIEF REGISTRAR ASSISTANT
Amal Fareed

CLIENT RELATIONS SPECIALISTS
Essra Ahmed
Dana Isa

TRANSPORT OFFICER
Hussain Al Hujairi



Members of BCDR General Administration Staff



An alleyway at the Bahrain Fort in Manama, Kingdom of Bahrain

BCDR BOARD OF TRUSTEES



CHAIRPERSON

Shaikha Haya bint Rashed Al Khalifa



BOARD MEMBER

Yousif Abdulhusain Khalaf



BOARD MEMBER

Jan Paulsson



BOARD MEMBER

India Johnson



BOARD MEMBER

Rashed Abdul Rahman Ibrahim



BOARD MEMBER

Stephen Jagusch QC



BOARD MEMBER

Elie Kleiman



BOARD MEMBER

Reza Mohtashami QC

CHANGES TO THE MEMBERSHIP OF THE BCDR BOARD OF TRUSTEES

Retirements

William K. Slate and Richard Naimark

In 2021, William K. ("Bill") Slate and Richard Naimark stepped down from the BCDR Board of Trustees after eleven years of valuable service to the institution, particularly in respect of its then-partnership with the American Arbitration Association. We are most grateful to Mr. Slate and Mr. Naimark for their contributions.

Appointments

Stephen Jagusch QC, Elie Kleiman and Reza Mohtashami QC

We have been delighted to welcome to the Board of Trustees, Stephen Jagusch QC, Elie Kleiman and Reza Mohtashami QC.

Stephen Jagusch QC

Mr. Jagusch is Global Chair of Quinn Emanuel's International Arbitration Practice. He specializes in international commercial and investment treaty arbitration, and has acted as advisor and advocate in a large number of ad hoc and institutional arbitrations, conducted in many jurisdictions, and subject to many different substantive and procedural laws. He has been lead counsel in many noteworthy investment treaty cases, and many of his cases have been for or against sovereign states or substantial multinational organizations.

Mr. Jagusch has sat as a chair, sole or co-arbitrator in dozens of cases around the world, in both commercial and investor-state arbitrations. He regularly speaks at arbitration conferences and seminars, and is widely published on the subject. He has received numerous awards in recognition of his contributions in the field.

Elie Kleiman

Mr. Kleiman is a Paris-based partner in the global law firm Jones Day. He has 30 years' experience in dispute resolution, with a significant focus on international arbitration. As counsel, arbitrator and mediator, he has been involved in many high-profile disputes involving complex and commercially-sensitive issues arising from diverse areas of the law, extending over a wide range of industries (energy and natural resources, chemicals, life sciences, healthcare, infrastructure, transportation and logistics, aerospace, telecommunications, banking and financial services, media, technology, retail).

Mr. Kleiman is also active in the promotion of international arbitration through various think tanks and non-profit organizations. He teaches international dispute resolution at several Paris universities. He is a member of the Paris Bar and is fluent in English and French.

Reza Mohtashami QC

Mr. Mohtashami has extensive experience as advocate and arbitrator in numerous international arbitrations conducted under different arbitration rules in many jurisdictions. His practice focuses on complex and high-value disputes arising in emerging markets, with a focus on the energy, telecoms and infrastructure sectors.

Currently a London-based partner of Three Crowns law firm, Mr.

Mohtashami has previously practiced in Paris, New York and Dubai, where he established the Middle East dispute resolution practice of a leading international firm. He is frequently engaged in disputes across the Middle East, both as counsel and arbitrator. He holds positions of responsibility at various international bodies, including as a past vice-chair of the IBA Arbitration Committee. He is fluent in English, French and Persian.

Continuing Board Members

Shaikha Haya bint Rashed Al Khalifa – Chair

Shaikha Haya bint Rashed Al Khalifa has been the Chair of BCDR since 2010. She is the senior and founding partner of the Haya Rashed Al Khalifa Law Office in Bahrain and a former vice president of the Bahraini Bar Association. She is licensed before the Court of Cassation and the Constitutional Court in Bahrain, with expertise in diverse laws and international commercial arbitration. She has participated, as attorney and arbitrator, in many local and international arbitration cases.

Shaikha Haya Al Khalifa is a member of the board of trustees of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and of the international consultative committee of the International Center for Dispute Resolution (ICDR/AAA).

As a member of the Bahraini Diplomatic Corps, she served as the Ambassador to France and as non-resident Ambassador to Belgium, Switzerland, and Spain from 2000 to 2004. Her diplomatic career culminated in her election as President of the General Assembly of the United Nations at its sixty-first session from 2006 to 2007.

Yousif Abdulhusain Khalaf

A Member of the Board of BCDR since 2010, Mr. Khalaf practiced law in Bahrain from 1990 to 2002. His practice covered civil law, commercial law, companies' law, and arbitration. He has contributed to the drafting of a number of Bahraini laws relating to economics, finance and investment. He is an accredited arbitrator with the Bahraini Courts and with a number of regional and international arbitration centers. Since 2005, he has been the Chief Legal Advisor to the Bahrain Economic Development Board.

Mr. Khalaf has served on a number of committees and boards, including the committee on the study of the privatization of the electricity and water sectors, the boards of directors of the National Oil and Gas Authority and the Bahrain Petroleum Company (Bapco), the Bahraini Bar Association, and the board of trustees for the MENA Centre for Investment. In 2014, he was awarded the Bahraini Order of First-Class Merit.

Jan Paulsson

Professor Paulsson has been a Member of the Board of BCDR since 2012. He is a co-founder of Three Crowns law firm, based latterly at the firm's Bahrain office, from which he retired as a partner in 2021 to practice independently, but where he remains as a senior consultant. He was previously based for more than 25 years in Paris, where he headed the global arbitration and public international law groups at Freshfields Bruckhaus Deringer. He

has acted as advocate or arbitrator in hundreds of arbitrations worldwide, and is widely published on the subject.

He is a past president of the London Court of International Arbitration (LCIA) and of the International Council for Commercial Arbitration (ICCA) and has served as a vice-president of the ICC International Court of Arbitration.

A graduate of Harvard College, Yale Law School and the University of Paris (Sorbonne), Mr. Paulsson held the Michael Klein Distinguished Scholar Chair as professor of law at the University of Miami from 2010 to 2019.

India Johnson

A Board Member of BCDR since 2013, Ms. Johnson is the first woman to serve as the President and Chief Executive Officer of the American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR), a role she has held since 2013, with responsibility for the day-to-day operations of the organization as well as strategic initiatives.

Prior to taking up her roles at AAA-ICDR, Ms. Johnson had acted as mediator and settlement facilitator in a number of disputes. She has also participated in numerous projects in support of alternative dispute resolution, and has assisted various state legislatures, courts and other organizations in developing and implementing dispute resolution programs.

She is a member of the Council of the International Federation of Commercial Arbitration Institutions (IFCAI), of Arbitral Women, and of the Foundation for International Arbitration Advocacy.

Rashed Abdul Rahman Ibrahim

Mr. Ibrahim, founder of the Rashed Abdul Rahman Ibrahim law firm in Bahrain, has been a Member of the Board of BCDR since 2013. He is an arbitrator and licensed lawyer before the Court of Cassation and the Constitutional Court in Bahrain.

Mr. Ibrahim advises corporations and individuals on matters of banking, insurance, construction, commercial and corporate law, Islamic finance and international commercial arbitration.

Mr. Ibrahim is currently the chairman of the National Committee of the International Chamber of Commerce (ICC) in Bahrain. He is a former member of the ICC International Arbitration Court, and previously served as the director of courts at the Bahraini Ministry of Justice, and as a member of the board of directors of the Bahraini Bar Association.

He is a frequent speaker at conferences and legal workshops at both the local and regional levels, and is a lecturer at the Institute of Judicial and Legal Studies in Bahrain.

III. ARBITRATION CASEWORK

As for all international arbitration institutions, the primary purpose of BCDR is to provide a comprehensive, accessible, independent, reliable, and time-and-cost-effective dispute resolution service for the global business and legal communities. This objective is at the heart of BCDR's constant striving for excellence in its rules, procedures and administrative services.

Bahrain is a Contracting State of the New York Convention and has adopted the UNCITRAL Model Law for both international and domestic arbitration, thus offering a pro-arbitration legal environment, which is supported by the Bahraini judiciary.



BCDR Case Managers. From left to right: Fatema Al Zayed Al Jalahma, Hanin Al Khan, Khaled Al Khayat and Salim Sleiman

Types of casework

BCDR's casework is made up of disputes brought before the BCDR Court and disputes referred to BCDR's international arbitration wing.

Under Section 1 of Legislative Decree No. 30 of 2009, by which BCDR was established, the criteria for the submission of a case to the BCDR Court (known as Section 1 cases) required that the value of the claim must exceed 500,000 Bahraini Dinar (approx. USD 1.3 million) and that at least one party must be a financial institution licensed by the Central Bank of Bahrain, or the dispute must be of an international commercial nature.

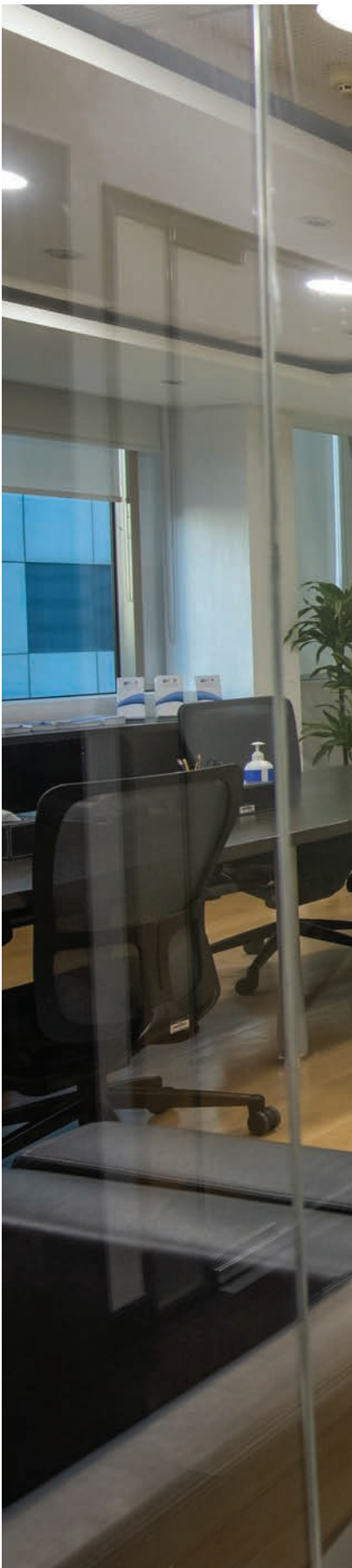
Legislative Decree No. 26 of 2021 introduced, as a new ground for the jurisdiction of the BCDR Court, under Section 1, that the value of a claim is in excess of 500,000 Bahraini Dinar (as before) and the disputing parties are licensed companies under the Commercial Companies Law enacted by Legislative Decree No. 21 of 2001.

Tribunals appointed in Section 1 cases comprise two judges of the highest Bahraini jurisdictions and a third member chosen from the BCDR Court's roster of neutrals.

Judgments of the BCDR Court are deemed final judgments of the courts of Bahrain and are not appealable, the only recourse being annulment on limited grounds by the Bahraini Court of Cassation. If the Court of Cassation rules that the BCDR Court judgment was based on a violation or an improper application or interpretation of applicable law, it must determine and rule on the subject matter of the dispute *de novo*.

The mandate of the BCDR Court is separate and distinct from the arbitration and mediation mandate, under which BCDR administers cases in disputes in which the parties have actively contracted for arbitration under the BCDR arbitration rules or for mediation under the BCDR mediation rules (known as Section 2 cases); operating in the same way as any other international dispute resolution center.

BCDR's experienced case managers, who are proficient in Arabic, English, and French, oversee all cases from the initial filing to their conclusion, whether by award, dismissal, withdrawal, or settlement.





A view of BCDR offices

CASE STATISTICS

The pace of casework referrals is increasing, with 34 new cases registered in 2020 and 60 registered in 2021, with a combined value of approximately USD 820 million. Of these 94 cases, 73 were Section 1 cases; 21 were Section 2 cases.

These bring the total number of cases referred to BCDR since its establishment in 2010 to 376, with a total monetary value of approximately USD 6.5 billion.



BCDR Chief Registrar Ahmed Husain

376 Total number of cases registered

73 Section 1 cases registered in 2020 and 2021

94 New cases registered in 2020 and 2021

21 Section 2 cases registered in 2020 and 2021

USD 6.5 billion
Total value of claims

USD 820 million
Value of claims in 2020 and 2021

Duration of proceedings

Of the 73 Section 1 cases filed in 2020 and 2021:

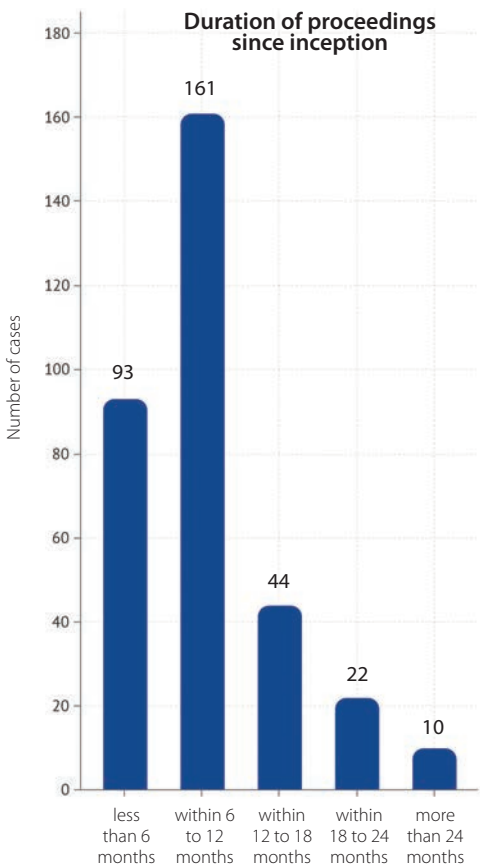
- 19 were concluded within less than 6 months;
- 23 were concluded between 6 months and 12 months;
- 1 was concluded between 12 and 18 months;
- 27 are pending; and
- 3 have been suspended.

Of the 21 Section 2 cases filed with BCDR in 2020 and 2021:

- 1 was concluded within less than 6 months;
- 6 were concluded between 6 months and 12 months;
- 11 are pending; and
- 3 have been suspended.

330 of the total 376 cases filed since BCDR's inception have been concluded. Of these:

- 93 were concluded in less than 6 months;
- 161 within 6 to 12 months;
- 44 within 12 to 18 months;
- 22 within 18 to 24 months; and
- 10 within more than 24 months.



Nationalities and gender

Approximately 64% of BCDR cases to date have involved at least one non-Bahraini party; around 5% have involved exclusively non-Bahraini parties.

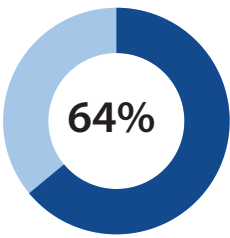
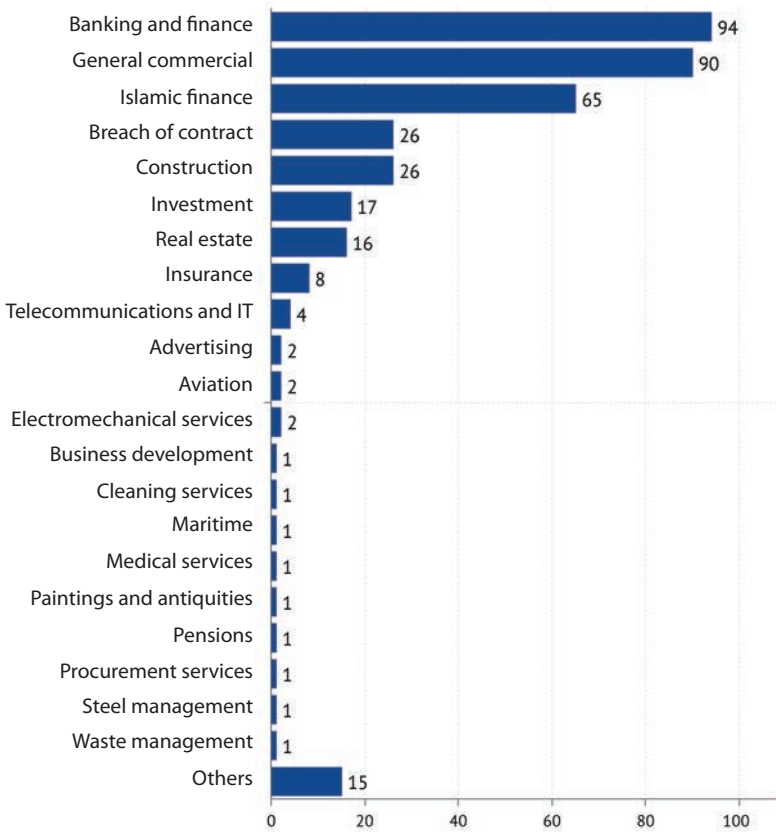
BCDR cases have, since its inception, included parties from Argentina, Australia, Bahrain, Belgium, Bermuda, Canada, Cayman Islands, China, Cyprus, Egypt, France, Germany, India, Iran, Iraq, Ireland, Italy, Jordan, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritius, Netherlands, New Zealand, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Korea, Spain, Sri Lanka, Switzerland, Syria, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, United States of America, and Yemen.

Tribunal members appointed by BCDR have included arbitrators from Armenia, Australia, Bahrain, Egypt, France, Jordan, Lebanon, Singapore, Syria, Tunisia, United Kingdom, and the United States of America.

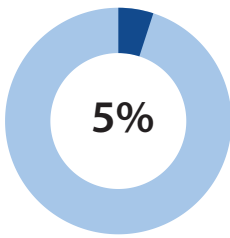
Since the inception of BCDR, different individual women have accounted for 60% of the arbitrators selected by BCDR for appointment to tribunals in Section 2 cases.

Economic sectors

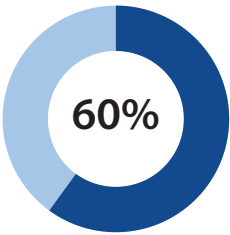
The total 376 cases administered by BCDR to date have related to disputes in the following economic sectors:



Cases involving at least one non-Bahraini party



Cases exclusively involving non-Bahraini parties

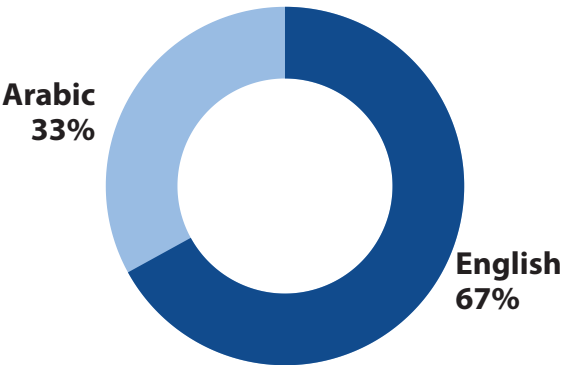


Women appointed to tribunals in Section 2 cases

Language of proceedings

Although there are no restrictions on the languages in which Section 1 cases may be conducted, all Section 1 cases have so far been conducted in Arabic. However, this may change soon, with the creation, in January of 2022, of a roster of part-time judges to hear Section 1 cases in English. The roster includes Adrian Cole, Nadine Debbas Achkar, Simon Greenberg, Michael Grose, Karim Hafez, Michael Hwang, Neil Kaplan, Amani Khalifa and Jan Paulsson.

Of the Section 2 arbitrations filed to date, 67% have been conducted in English; 33% in Arabic.



Language of Section 2 arbitrations

IV. FULL INTEGRATION OF ELECTRONIC MEANS IN BCDR PROCEEDINGS

The enhancement of the use of electronic means in BCDR Section 2 arbitrations following the spread of the COVID-19 pandemic did not necessitate any modification to the BCDR arbitration rules, since the existing provisions in BCDR's 2017 arbitration rules allowed for such use.

The same was not true, however, for Section 1 cases, the administration of which was then governed by rules of procedure enacted by Resolution No. 65 of 2009 of the Bahraini Minister of Justice, which did not easily accommodate electronic filings and online hearings. However, BCDR worked in cooperation with the Ministry of Justice and with the Supreme Judicial Council to remedy this.

Section 1 cases

Thus, in April 2021, the Bahraini Minister of Justice formally adopted a number of Resolutions to permit the electronic conduct of Section 1 cases:

- Resolution No. 39 of 2021 allowing the use of electronic communications, including for filing submissions and exhibits, holding case management meetings and hearings, and for providing notifications;
- Resolution No. 40 of 2021 allowing the publication of judicial notifications in Section 1 cases on the website of the Official Gazette of the Information and e-Government Authority; and
- Resolution No. 41 of 2021 allowing the notification of judicial papers in Section 1 cases by e-mail and text message.

Further, in December 2021, the Bahraini Minister of Justice adopted Resolution No. 134 of 2021, enacting new rules of procedure for Section 1 cases. The new rules of procedure replaced those of Resolution No. 65 of 2009 and envisage the use of electronic means in all key steps of the proceedings. This includes the filing of submissions and exhibits, the holding of case management meetings and hearings, and notifications.



A view of one of BCDR meeting rooms

Section 2 cases

There are many provisions on the use of electronic means of communication in the 2017 BCDR Arbitration Rules, from the filing of key submissions to the notification of awards.

Nonetheless, recognizing the ever-greater need to minimize delays and interruptions to arbitral proceedings caused by the restrictions on working, movement and contacts imposed during the Covid-19 pandemic, BCDR has issued directives and guidelines for parties and tribunals for the routine adoption of electronic means of communication envisaged by the rules and the remote conduct of hearings, whenever possible in BCDR-administered arbitrations.

BCDR's directives for the use of electronic means of communication in Section 2 cases cover:

- online filing of requests for arbitration (including for expedited proceedings), responses to requests, applications for the appointment of emergency arbitrators, and requests for joinder and responses to these requests, using BCDR's online filing forms;
- the preliminary conference required in all arbitrations to be conducted exclusively by video or telephone conference, and, when establishing procedures for the case, the tribunal and the parties to agree how electronic communications will be used to improve the efficiency of the proceedings;
- all written submissions and any supporting documentation, including witness statements and expert reports, to be submitted exclusively by electronic means;
- whenever possible, oral hearings and the examination of witnesses to be conducted by video or telephone conference;
- procedural orders, decisions, and rulings to be notified to the parties electronically;
- in addition to the issue of original copies of awards, the tribunal to transmit to BCDR an electronic copy of the signed award for immediate onward transmission to the parties.

The guidelines issued by BCDR in support of these directives cover every practical aspect of the conduct of online ("virtual") hearings, including:

- timely preparation for the virtual proceedings, having in mind any time zone differences and the need to set up and test audio and video connections;

- the designation of named contacts who will be the points of contact for any technical issues;
- security measures, including encryption of digitalized documents;
- ensuring that all participants have reliable high-speed connectivity; and
- steps to minimize distractions and disruptions during the proceedings.

Although these directives and guidelines have been motivated by the exceptional circumstances of the COVID-19 pandemic, it is expected that the measures recommended will routinely be adopted in the future, in the general interests of greater time and cost efficiency in the conduct of arbitration.

The Arabic, English and French versions of the directives and guidelines are available on the BCDR website www.bcdr.org



V. AMENDMENTS TO ARBITRATION RULES

In the four and a half years since their publication, the 2017 BCDR Arbitration Rules have generated much positive feedback from users, and have won praise from leading international arbitration specialists, including those who have contributed to the issues of the *BCDR International Arbitration Review* that are devoted to commentaries on the rules.

The contributors to Volume 4, Issue 2 and Volume 5, Issue 1 of the *Review* devoted to the new rules are: Nathalie Allen Prince, Alexander Bedrosyan, Pierre Bienvenu, Gary Born, James E. Castello, Mark W. Friedman, the late Emmanuel Gaillard, Remy Gerbay, Georges Ghali, Alex Harris, Eckhard Hellbeck, Andrea J. Menaker, Sophie Nappert, Antonio R. Parra, Dharshini Prasad, Ismail Selim, Maxi Scherer, John M. Townsend, Melanie Willems, Adrian Winstanley, and Nassib G. Ziadé.

Nonetheless, BCDR keeps its rules constantly under review to ensure that they remain in line with prevailing best practices. It has, therefore, published an amended edition of its 2017 rules, as recommended by its Rules Review Committee of Antonio R. Parra, former ICSID Deputy Secretary-General, Adrian Winstanley, former LCIA Director-General, and Nassib G. Ziadé, BCDR's CEO, in consultation with the wider arbitration community.

The following are among the most noteworthy changes:

- an entirely new Article setting out the disclosure requirements relating to any third-party funding arrangements and their possible impact on circumstances to be considered by arbitrators in the context of their statements of independence;

- a general power for tribunals, at the request of a party, to order any claiming or counter-claiming party to provide security for the costs of the arbitration; supplementing the current specific power to order such security in emergency proceedings and in respect of interim measures;
- a provision reflecting BCDR's practice of allowing a non-defaulting party to cover a defaulting party's share of the case management fee before, in the absence of this payment, BCDR proceeds with the suspension or termination of the proceedings;
- clarification of the default procedure for the appointment of co-arbitrators by BCDR in the event the parties do not agree a nomination procedure;
- encouraging and enhancing the use of electronic means of communication and of virtual meetings and hearings, in line with BCDR's directives and guidelines referred to above;
- the requirement that, before accepting appointment, a tribunal-appointed expert signs a statement of impartiality and independence and discloses any circumstances that may give rise to justifiable doubts as to the expert's impartiality or independence, in line with the parallel requirement for arbitrators and tribunal secretaries; and
- allowing the tribunal, or BCDR if the tribunal is not yet appointed, to issue an order terminating an arbitration if the parties have taken no steps in the arbitration for an extended period.





Relief of Gilgamesh and Enki, the Sumerian god of water, on display at the Bahrain National Museum

VI. NEW RULES

Sports arbitration rules

The Gulf region now hosts many major international sporting events, including, for example, the FIFA World Cup to be held in Qatar in 2022; Formula 1 races in Bahrain, Abu Dhabi, and Saudi Arabia; and many top-level tennis tournaments in the UAE, with the potential for disputes among athletes and other sporting participants, and governing bodies and agencies, as well as events organizers, all requiring particularly agile and expert adjudication.

Accordingly, in March 2022, following the feedback it had invited from sporting bodies, practitioners and other interested parties, and with the authority of the BCDR Board of Trustees, BCDR published its new sports arbitration rules, in Arabic, English and French, with all three versions being equally authoritative.

BCDR's aim in adopting a set of arbitration rules dedicated to resolving disputes arising in the sporting world is to contribute to the development of sports law and arbitration in Bahrain and, over time, to attract a wide range of sports arbitration cases, locally and internationally.

The English version of the rules was prepared by a committee comprising former LCIA Director-General, Adrian Winstanley;

BCDR Senior Case Manager, Salim Sleiman; and BCDR Case Manager, Hasan Albuainain.

The Arabic version was prepared by a committee comprising Jordanian attorney, Faris K. Nesheiwat; BCDR's COO, Ahmed Husain; and Salim Sleiman.

The French version was prepared by Lebanese attorney, Fady Béchara, and Salim Sleiman.

The work on the rules in all three languages was overseen by BCDR's CEO, Nassib G. Ziadé, who reviewed and approved the final draft in each language before its submission to the Board.

The rules cater for the specific needs of sports arbitration, drawing inspiration from the specialized rules of global leaders in the field, while also being substantially based on the BCDR arbitration rules, from which identical, or closely parallel language has been adopted as appropriate.

The rules also take careful account of the local and regional sports arbitration environment, as to accessibility and time efficiency, and in particular the moderation of costs.



Given their emphasis on the resolution of sports-related disputes, the rules differ from the commercial rules in several respects:

- the articles in the sports rules are grouped into distinct sections devoted to the key elements of the proceedings, rather than following the broadly chronological pattern of the arbitration rules;
- the arbitration agreement under the sports rules may be either contractual, or contained in the statutes or regulations of sporting bodies (Article 1.2);
- arbitrations under the sports rules may be either a first instance resolution of a dispute, or an appeal of a decision issued by a sporting body or of an award rendered by an arbitral tribunal, subject to an express written agreement that an appeal is allowed (Articles 1.1 and 35.5);
- only arbitrators listed in a BCDR-approved roster may be appointed to adjudicate disputes or hear an appeal under the sports rules (Article 12.1); and
- the entire arbitration process under the sports rules is focused on expeditious procedures at every stage, so as to obviate the need for any specific provisions aimed at expedited arbitration or summary determination.

Ad hoc arbitration

In addition to the arbitrations administered by BCDR under its own rules of arbitration, BCDR may, with the agreement of the parties in dispute, also administer arbitrations conducted under ad hoc (or non-institutional) arbitration rules or procedures, notably the UNCITRAL Arbitration Rules, but including any other ad hoc procedures.

In 2022, therefore, we expect to publish new rules for the administration of ad hoc arbitrations by BCDR. These rules are currently in advanced draft.

Islamic finance

As indicated in the case statistics, above, more than 17% of BCDR's cases concern Islamic finance, which, like sporting disputes, is a highly specialized field that may be best served by dedicated rules and procedures.

With a view to completing a comprehensive suite of dispute resolution options, therefore, BCDR is expecting, over the coming year, and in consultation with its user base and other stakeholders, to draft a specialized set of rules to govern disputes in the field of Islamic finance.



A view of BCDR offices

VII. CONFERENCES AND OTHER EVENTS

An important part of BCDR’s mission is to provide legal education through its program of conferences on arbitration and other dispute-settlement mechanisms and on international law generally, and through its participation in seminars and conferences organized by other leaders in the field.

The COVID-19 pandemic put BCDR’s planned in-person events on hold. However, BCDR was able to participate either personally or virtually in a number of conferences.

Fifth Annual EFILA Conference

BCDR participated in the Fifth Annual Conference of the European Federation for Investment Law and Arbitration (EFILA), held in London in January 2020.

Under the title *Investment Protection in the EU: Alternatives to Intra-EU BITs*, the event took the form of four panel discussions on investment and investor protection under EU law, alternative tools for effective investment/investor protection, alternative dispute resolution in investment, and the future of dispute resolution under the Energy Charter Treaty.

The moderators and panelists were notable international jurists, academics and practitioners, including Judge Christopher Vajda of the Court of Justice of the European Union; Lord Peter Goldsmith, partner at Debevoise & Plimpton’s London office and former Attorney-General for England and Wales; and Loukas Mistelis of Queen Mary University of London and Chair of the Executive Board of EFILA.

BCDR’s CEO, Nassib G. Ziadé, moderated a panel entitled *Alternative Tools for Effective Investment/Investor Protection*, where he was joined by Mark Appel, member of ArbDB Chambers and former senior vice-president of the International Centre for Dispute Resolution (ICDR); Mélida N. Hodgson, then partner at Jenner & Block LLP; Eloïse M. Obadia, investment legal consultant at the World Bank; and Gerard Meijer, partner at Linklaters.

In a lively exchange, the panel explored a wide range of questions relating to alternative tools for investor-state dispute settlement (ISDS). These included whether and to what extent ISDS mediation is different from commercial and other kinds of mediation; whether the confidential nature of mediation can be reconciled with transparency in ISDS disputes; and whether mediation is equally accessible and appropriate for private parties and for states, or whether states face more difficulties that put them at a disadvantage. The panelists also reflected on the reasons for the underuse of mediation in ISDS and the measures that could be adopted to remedy this.

The panel also discussed whether the recent United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Convention on



Mediation) could realistically be regarded as the mediation equivalent of the 1958 New York Convention.

The panel further covered the desirability and efficacy of conflict prevention options for tackling disputes before they arise, such as the World Bank’s Systemic Investment Response Mechanism (SIRM), also called Investor Grievance Mechanism (IGM), and the Energy Charter Conference’s Model Instrument on Management of Investment Disputes.

Finally, while noting the European Commission’s eagerness to introduce an international permanent investment court system, the panel considered whether domestic courts in EU member states could be an adequate alternative to intra-EU investment arbitration. It was felt that parties would seek to maintain the option of resorting to arbitration through contractual mechanisms, typically by incorporating arbitration clauses into their contracts.

The conference included a keynote address by Meg Kinnear, secretary-general of the International Centre for Settlement of Investment Disputes (ICSID), entitled *Alternative Dispute Resolution in investment: The Role of Complementary Mechanisms and Approaches*. Ms. Kinnear reported on the new ICSID mediation rules, then at the drafting and consultation stage.

The conference closed with remarks from the secretary-general of EFILA, Nikos Lavranos.

A report on the panel discussions is available on the BCDR website www.bcdr.org and in Volume 6, Issue 2 of the *BCDR International Arbitration Review* on international mediation published in 2020.

33rd Annual ITA Workshop

The 33rd Annual Workshop of the Institute for Transnational Arbitration (ITA) was held in June 2021 as a virtual event, with an excellent attendance by delegates joining remotely from around the globe.

The theme of the 2021 Workshop was ethical issues facing arbitrators in international arbitration and how they and other stakeholders in the process should address them.

There were panel discussions on: *Emerging codes of conduct for arbitrators in Investor State Dispute Settlement (ISDS)* with Catherine Rogers of Penn State Law and Queen Mary University, London, Laurent Lévy of Lévy Kaufmann Kohler, Geneva, and BCDR's CEO, Nassib G. Ziadé; on *Arbitrator conflicts of interest and disclosures*, with Julie Bédard of Skadden, Arps, Slate, Meagher & Flom LLP, New York, Miannaya Aja Essien of Principles Law Partnership, Lagos, Nigeria, Lord Mance of 7 King's Bench Walk, London, and Vladimir Khvalei of Baker & McKenzie, Moscow; and on *Arbitrator*

challenges for tactical reasons, with Chiara Giorgetti, of Richmond School of Law, Virginia, Melanie van Leeuwen, of Derains & Gharavi, Paris, and James Hosking of Chaffetz Lindsey LLP, New York.

A Young ITA Roundtable included a review of best practices in document production and a debate on arbitrator "double-hatting" (serving simultaneously as counsel and arbitrator in different investment arbitration cases).

The keynote address was given by Constantine Partasides QC of Three Crowns' London office.

Professor Ziadé spoke, in particular, on the objectives and pitfalls of the draft Code of Conduct for Adjudicators in ISDS prepared by ICSID and UNCITRAL; the arbitrator's duty of independence and impartiality; "issue conflict" (conflicts said to arise when an arbitrator has previously spoken or written on issues under consideration by the tribunal); the balance of the obligations of disclosure and confidentiality; and "double-hatting."

GAR Connect: Eastern Mediterranean 2021

Also in June 2021, Global Arbitration Review held a virtual event in the series "GAR Connect" on the theme "The Eastern Mediterranean – The Future of ISDS and the Shifting Landscape of International Commercial Disputes across the Region."

The co-chairs were Yas Banifatemi, of Gaillard Banifatemi Shelbaya Disputes, Paris; Reza Mohtashami QC of Three Crowns, London; and Can Yeginsu of 4 New Square Chambers, London. BCDR's CEO, Nassib G. Ziadé spoke at this event on the topic of the ICSID/ UNCITRAL Code of Conduct for Adjudicators; the salient points from his presentation included:

is such a code necessary, at all, to which he answered a resounding yes, on the basis that the code, in setting out clear rules that everyone must follow, would be a source of greater predictability, strengthening the legitimacy of the system, increasing confidence in it, and obviating the need for more radical reforms;

that the code would complement other existing instruments that also establish principles governing the conduct of arbitrators and counsel, notably the various IBA guidelines, which he characterized as more enabling than restricting; advocating also that conciliators, factfinders, mediators, adjudicators' assistants and the staff of administering institutions should be subject to separate regulations as to their conduct; and

that the reach of the code should not be limited, as currently envisaged, to disputes arising from investment promotion and protection provisions in international treaties, thus excluding disputes arising from investment contracts and foreign investment legislation.

Professor Ziadé also argued that the continuing obligation for adjudicators to enhance their knowledge and skills, and the obligation to treat participants in the proceeding with "civility," whilst commendable, are out of place in a code of conduct, and do not, as currently contemplated, fit within the framework of the general provisions on disqualification and challenges in arbitration rules.

He also expressed the view that concerns that have been expressed that the detailed provisions on disclosure obligations for adjudicators in the draft code may jeopardize the confidentiality of some arbitration proceedings are overstated.

His last point related to the provision in the draft code regarding the limitation on "double-hatting," which, he noted, has generated an animated debate among investment arbitration specialists, and in respect of which he proposed four possible options:

first, to disregard the issue altogether and consider it a *faux problème*, an option he rejected as unrealistic, given the serious concerns around the issue for states and other stakeholders;

second, a blanket non-waivable prohibition on double-hatting, which he considered excessive, as the wishes of parties not objecting to double-hatting should be respected;

third, to permit the same individual to undertake both roles of counsel and arbitrator in investment arbitrations, subject to a requirement that the proposed arrangement be disclosed and accepted by both parties; and

fourth, drawing on the third option, the requirement on an arbitrator to make a disclosure to the parties only if the two cases in which the individual appears as counsel and arbitrator involve the same factual background.



Virtual workshop for the judiciary

In July 2021, BCDR, in collaboration with the Supreme Judicial Council of the Kingdom of Bahrain (the Council), held a remote English-language workshop for Bahrain’s commercial court judges.

The workshop was prepared and presented by Professor Ziadé, BCDR’s CEO, with the objective of highlighting the complementary relationship between the remits of ad hoc and institutional commercial arbitration on the one hand, and of national courts on the other.

The workshop included an in-depth dialogue with the participating judges on the legal and procedural concepts common to both arbitration and court proceedings. These were illustrated by the presentation and analysis of leading international arbitration cases and court judgments that have influenced and enriched the practice and procedure of international arbitration at the national and international levels. The workshop examined how national courts have viewed those cases, and the international commercial arbitration precedents and legal concepts and rules raised by them.

This workshop was part of the continuing cooperation between BCDR and the Council, as the Council works to develop judicial skills in the adjudication of English-language arbitration cases in order to promote commercial arbitration as an alternative means of dispute resolution, and to strengthen its role in attracting investments in light of the requirements of the Economic Vision 2030 of Bahrain.



Professor Ziadé stressed the importance of the cooperation of BCDR with the Council and the judiciary in the area of commercial arbitration in the Kingdom of Bahrain. The Vice-President of the Council and President of the Court of Cassation, Judge Abdullah bin Hasan Albuainain, confirmed the Council’s continued interest in such specialized training programs with the aim of enhancing the efficiency of the judicial system in Bahrain.

BCDR had previously collaborated with the Council on [the International Council for Commercial Arbitration \(ICCA\) Dialogue on the New York Convention](#), which was attended by fifty-one judges from Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Saudi Arabia and Yemen, and which concluded with recommendations of those judges on the recognition and enforcement of foreign arbitral awards.

Middle East Vis Pre-Moot

The Middle East Vis Pre-Moot is a preparatory competition for the Willem C. Vis International Commercial Arbitration Moot held annually in Vienna and Hong Kong and attracting more than 400 law schools from around the world.

Through its support of the Vis Pre-Moot, BCDR aims to increase awareness of arbitration among students of the region and to increase inclusiveness and diversity in arbitration.

The Vis Pre-Moot is a unique formative experience that also raises standards of advocacy, and, more widely, consolidates the study and practice of international commercial law and arbitration in the Middle East.

It has, since its inception in 2011, benefited more than 850 students, with the support of more than 400 practitioners. As these high numbers testify, the Vis Pre-Moot has become a seedbed for practitioners and future leaders in dispute resolution in the region.

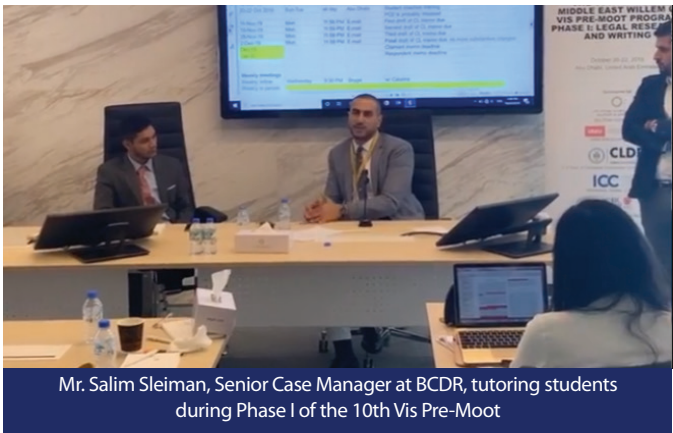
BCDR will continue to support the Vis Pre-Moot program, whether in such challenging times as we are now experiencing, or on the eventual return to greater normality, to help students to gain academic and practical knowledge of arbitration while building and sustaining a valuable network for their careers.

BCDR is grateful to all those who have supported the program in this and in previous years, and to those who continue to support it, locally, regionally, and internationally, whether by offering

internships or cash prizes to distinguished students, or volunteering their time to participate in the program.

10th Vis Pre-Moot

In-person participation in the 10th Vis Pre-Moot competition in March 2020 was rendered impossible by the spread of the COVID-19 pandemic. BCDR and its partners at the Commercial Law Development Program (CLDP) of the US Department of Commerce, and the Center for International Legal Education (CILE) of the University of Pittsburgh were, however, determined that teams who had worked so hard in preparation for the Moot should still benefit from the full Vis Pre-Moot program. The co-organizers therefore enthusiastically took on the many challenges of switching the competition to an online platform.



The virtual competition was put together in just 15 days. There was a series of live online sessions and recorded lectures with leading Vis Moot names, such as Ingeborg Schwenzer, Stefan Kröll, Ronald A. Brand, and Harry M. Flechtner. There were also interactive virtual breakout sessions with Vis Pre-Moot advisors to cover key aspects of successful oral presentation, and virtual hearing rooms for teams to practice their oral arguments.

The week-long online program also featured two days of competitive rounds: general rounds on the first day, elimination rounds on the second. The final round was arbitrated by a top-tier panel chaired by Ingeborg Schwenzer, with LCIA's former Director-General Adrian Winstanley, and Vis Moot director Stefan Kröll as co-arbitrators. The finalists were the Royal Institute of Colombo, Sri Lanka, and the University of Pittsburgh, USA, with Sri Lanka's Royal Institute of Colombo being the winner.

The smooth running of the competition was made possible by the use of customized virtual tools for automatic scoring and electronic grade submissions, developed by BCDR's Senior Case Manager, Salim Sleiman, and Senior ICT Specialist, Hussain Ebrahim. The value of these tools in improving online mootting did not go unnoticed by the organizers of the official Vienna Vis Moot, who adopted parallel systems for the global Vis Moots that had also to be held on virtual platforms.

The online competition was a resounding success. Students from 28 teams and 17 countries, and more than 150 advisors, faculty, and practitioners seamlessly connected from around the world to take part.

11th Vis Pre-Moot

In February 2021, BCDR co-hosted, online, the 11th Vis Pre-Moot with its partners at CLDP and CILE, and with the support of the Royal University for Women in Bahrain, MENA Chambers, and Jones Day.

The opening ceremony featured a roundtable moderated by Ronald Brand of CILE with Michael Patchett-Joyce of The 36 Group in the UK, John-Paul Putney of Jones Day in Pittsburgh, and Maria Casoria of the Royal University for Women in Bahrain as speakers.

There was a significant increase over the 10th Vis Pre-Moot in the number of participants, with students from a record number of 40 teams from 24 countries, and more than 200 advisors joining from around the globe. There were 80 general rounds in total, with 16 teams advancing to the quarter finals.

The final 4 teams were the National Law University of Jodhpur, the University of Pittsburgh, the Royal Institute of Colombo, and Brickfields Asia College, Malaysia, with the National Law University of Jodhpur edging out the University of Pittsburgh in the final round.

Crina Baltag, Senior Lecturer in international arbitration at the Stockholm University and long-time supporter of the Vis Moot, chaired the final tribunal, alongside co-arbitrators John McGowan of Global Advocacy and Legal Counsel, and Ziad Salloum of Salloum & Partners in the United Arab Emirates.

Many renowned practitioners featured in the program included Adrian Winstanley, former LCIA Director-General; Charles T. Kotuby

Jr., Partner at Jones Day; Noor Davies, Partner at White & Case; Joseph Heyd, Vice President and Chief Litigation Counsel at Procter & Gamble; Gene Litvinoff, Senior Counsel Litigation at Chevron; Anni Goldberg, General Counsel at TriSalus Life Sciences; and Peter K. Rosen, neutral at JAMS.



12th Vis Pre-Moot

From 7 to 12 March 2022, BCDR co-hosted the 12th Vis Pre-Moot, again with its partners at CLDP and CILE.

The week-long program included a three-day preparatory workshop for the teams, conducted in a hybrid format from BCDR's Manama offices. Ten teams and some 70 students, coaches, faculty members, and advisors attended in person and the sessions were streamed online and were accessible remotely to those unable to be there.

This workshop was followed by a three-day hybrid moot competition, hosted at the campus of the Pre-Moot's academic partner, the Royal University for Women (RUW). With 35 teams from 24 countries participating in the competition, most hearings were conducted in hybrid format. Some were, however, conducted in person, in what is hoped to mark the beginnings of a return to face-to-face mootting.

There were a total of 72 general rounds and 11 elimination rounds, with Lloyd Law College of India defeating the Université de Carthage of Tunisia in the final round. The tribunal for the final round comprised household names Harry M. Flechtner and Petra Butler, and was chaired by Alem & Associates senior associate, Mazen Ghosn.

The program also included the 29th McLean Lecture on World Law, organized by CILE and delivered this year by Jan Paulsson on the broad theme "*Examining Arbitration*." (Professor Paulsson is a Member of the Board of Trustees of BCDR and his brief biography will be found on page 7 of this Report.)



VIII. GAR AWARD

At a virtual Awards Ceremony on 1 July 2021, the achievements and standing of BCDR were recognized by the influential and widely-read arbitration journal, *Global Arbitration Review (GAR)*, in an award for the 2021 “Regional Arbitration Institution that Impressed.”

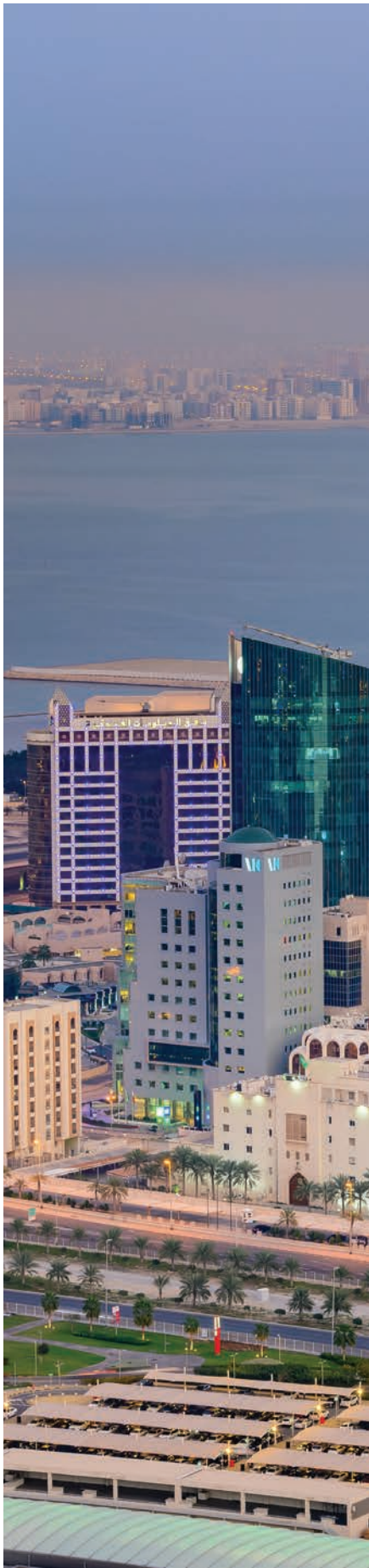
In his acceptance speech, BCDR’s CEO, Nassib G. Ziadé, stated:

BCDR is delighted and honored to have received this award in recognition of the progress that it has made since its founding in 2010, guided always by the highest standards, whether in the quality of its rules, the professionalism of its administrative services, its responsiveness to its user base, its conferences and publications, or its active participation in the work of UNCITRAL.

Today, BCDR stands as a well-respected, vibrant, administratively and financially independent institution, with a steadily growing regional and international caseload.

BCDR’s dedicated staff include a team of case managers who are proficient in Arabic, English, and French. Its Board of Trustees includes renowned members of the international arbitration community. It strives for diversity in gender and nationality in all its activities.

BCDR has also built a reputation as a center of learning and education, producing scholarly publications that are unmatched in the region, and training local and regional practitioners and judges on many forms of ADR.



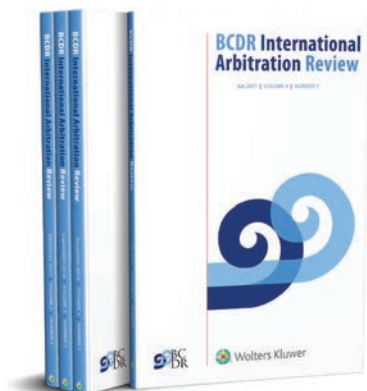


View of the Diplomatic Area in Manama, Kingdom of Bahrain, showing the office building of BCDR and the Courts of Bahrain

IX. PUBLICATIONS

BCDR produces an international law journal and other scholarly publications which are unmatched in the region. These initiatives enhance the reputation of BCDR as a center for learning and education.

The BCDR International Arbitration Review



Generally published biannually, and featuring content in both Arabic and English, the *BCDR International Arbitration Review* (the *Review*) comprises articles, case summaries and other significant reports, each issue focusing on a current theme or topic that is particularly, but by no means exclusively, relevant to the Arab region.

Since its first issue on the recognition and enforcement of foreign arbitral awards in the Arab States of the Gulf, the *Review* has covered the topics of women's voices in international arbitration, arbitration in Egypt, international investment arbitration in the Middle East, construction arbitration in the Middle East, and the BCDR 2017 arbitration rules.

In an exceptional period of challenges due to the COVID pandemic, 2020 and 2021 saw the publication of five issues of the *Review*; one dedicated to the topic of third-party funding in international arbitration; two issues on conflicts of interest in international arbitration; one on international mediation; and one on oil and gas arbitration in the Middle East.

BCDR's CEO, Nassib G. Ziadé, is the founder of the *Review* and has been its general editor since the *Review's* inception. Reza Mohtashami QC and Farouk El-Hosseny served as consulting editors for the issue on third-party funding in international arbitration. Judith Freedberg was the deputy general editor for the issues on conflicts of interest in international arbitration, international mediation, and oil and gas arbitration in the Middle East, with Adrian Winstanley, Richard W. Naimark and Antonio R. Parra serving as consulting editors, respectively.

The contributors to these five issues are as follows:

Third-Party Funding in International Arbitration

Carolyn B. Lamm and Eckhard R. Hellbeck (*Recent developments in third-party funding in Investor-State arbitration*); Mahmoud M. Elkharashy (*Third-party funding in investment treaty arbitration: revisiting the findings of the ICCA-Queen Mary task force*); Ruth Teitelbaum (*The third-party funding debate: a misguided focus on definitions at the expense of policy considerations*); Mick Smith and Antonio Wesolowski (*Mechanics of third-party funding*

agreements: a funder's perspective); James Blick (*Third-party funding pricing and deal structures*); Jeffery Commission (*The rise of portfolio financing in international arbitration*); Antonio Crivellaro and Lorenzo Melchionda (*Disclosure and conflicts of interest in relation to third-party funding*); Philippe Pinsolle (*Cost allocation and third-party funding in international arbitration*); Jalal El Ahdab (*The French approach to third-party funding: a balance between liberalism and cautiousness*); Douglas Jones (*Third-party funding in international arbitration: useful experience from Australia*); Michael Hwang SC and Yin Wai Chan (*Leading the way: third-party funding in international arbitration in Singapore*); Kim M. Rooney (*Third-party funding of arbitration and alternative dispute resolution in Hong Kong*); Alain Farhad (*Does third-party funding have a future in the MENA Region?*); and an afterword by Reza Mohtashami QC and Farouk El-Hosseny.

Conflicts of Interest in International Arbitration Part One (in memory of Francisco Orrego Vicuña)

Nassib G. Ziadé's tribute to Francisco Orrego Vicuña – *A life of service to international law and diplomacy*; Bernardo M. Cremades Sanz-Pastor (*Adapting disclosure obligations to the realities of modern third-party funding*); Antonio R. Parra (*Three approaches to challenges of ICSID arbitrators for manifest lack of reliability for independent judgment*); Andrea Carlevaris (*The communication and publication of reasons for decisions on arbitrator challenges: increasing the transparency of standards and the predictability of decisions*); David Arias and Sofía Jalles (*Conflicts of interest in the Code of Best Practices in Arbitration published by the Spanish Arbitration Club*); Stefano Azzali (*Neutrality, independence and impartiality of arbitrators: uniformity of definitions, dissimilarity of applications*); Francisco González de Cossío (*Issue conflicts: a net cast too wide?*); Lord Goldsmith QC, PC, Natalie Reid and Maxim Osadchiy (*State Courts' attitude to arbitrator challenge applications: rich tapestry of arbitrator bias standards*); Doak Bishop, Lauren Friedman, Ed Bruera and Sara McBrearty (*Time after time: using data to inform the decision to disqualify an arbitrator*); Annette Magnusson and Christoffer Coello Hedberg (*SCC decisions on challenges*); Jacomijn van Haersolte-van Hof, Francis Greenway and Anna Cho (*LCIA approach to challenges to arbitrators*); and The Hon. L. Yves Fortier, QC and Laurence Marquis (*Dealing with corruption in international arbitration: the interactions of conflicts of interest and corruption*).

Conflicts of Interest in International Arbitration Part Two (in memory of Francisco Orrego Vicuña)

Eduardo Zuleta and María Marulanda (*The map is not the territory – but we do need maps: how helpful are guidelines on what constitutes a conflict of interest, and on the circumstances under which disclosure is required?*); Adrian Winstanley (*Who should rule on challenges of arbitrators?*); Alexis Mourre (*The parties' right to*

nominate arbitrators and the institution's discretion in deciding whether to confirm); Alejandro A. Escobar (*The worldly arbitrator: conflicts of interest due to close personal friendship and enmity in a cross-cultural context*); David Brynmor Thomas QC and Ruth Keating (*Different approaches to counsel conflicts of interest: moving towards a common duty*); Christopher Hancock QC and Daniel Bovensiepen (*The restrictions on multiple arbitral appointments under English law*); Crina Baltag (*Conflicts or opportunities? arbitrators' previous cases and their future appointments*); Eduardo Silva Romero (*The curious phenomenon of the proactive co-arbitrator*); Ismail Selim and Malak Lotfi (*Challenges against arbitrators under CRCICA Rules: the effect of disclosure*); John Beechey and Niccolò Landi (*The question of systematic appointments of given individuals by investors or respondent state parties in investment arbitration*); Colin M. Brown and Niki Koumadoraki (*Ethical concerns in investor-state dispute settlement: seeking a permanent solution*); and Nassib G. Ziadé (*Keeping an eye on potential conflicts of interest of personnel of arbitral institutions and tribunal secretaries*).

International Mediation

Judith Knieper (*The making of the UNCITRAL mediation framework*); Natalie Y. Morris-Sharma (*The Singapore Convention: a milestone for mediation*); Adrian Winstanley (*The BCDR-AAA mediation rules 2019*); Hanna Tümpel and Amelia Redmond (*The role of mediation in our "new normal"*); Mark E. Appel (*A helpful guest at table: the*

use of mediation by family-owned businesses); Rhéa Jabbour (*Successful mediation strategies*); Richard W. Naimark (*Cross-cultural considerations in mediation*); Fatma Ibrahim (*Amicable dispute resolution in Egypt: booming statutory coverage with unclear vision on mediation*); Frauke Nitschke (*Amicable investor-state dispute settlement at ICSID: modernizing conciliation and introducing mediation*); Barton Legum (*The multiple-ministry paradigm in investor-state dispute settlement*); and Eloïse M. Obadia (*Investor-state disputes: what works beyond arbitration?*).

Oil and Gas Arbitration in the Middle East

A. Timothy Martin (*Aramco: the story of the world's most valuable oil concession and its landmark arbitration*); Essam Al Tamimi (*Oil and gas disputes in the Middle East: a COVID-19 era perspective*); Mohamed S. Abdel Wahab (*Petroleum concessions in Egypt: a recipe for disputes?*); Peter D. Cameron (*Stabilization clauses: do they have a future?*); Jonathan Sutcliffe and Jonathan Blaney (*Arbitration of LNG price review disputes*); Thomas Williams and Ahmed Durrani (*Oil and gas arbitration: a perspective from Qatar*); Michael Polkinghorne and Yasmine El Achkar (*COVID-19 and the exceptions to contractual liability in Arab contract law*); Graham Coop and Roberto Lupini (*Caught between a rock and COVID-19: sharing the pain of onerous oil and gas contracts in the Middle East*); Roland Ziadé and Andrew Plump (*Changed circumstances and oil and gas contracts*); and Antonio R. Parra (*ICSID and investor-state petroleum disputes in the MENA region*).

Other publications

The ICCA Guide on the New York Convention

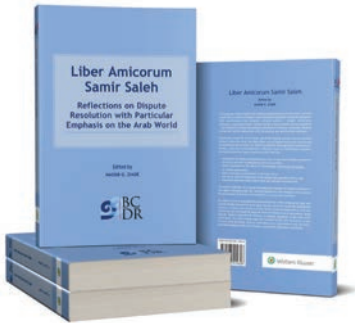
In 2014, BCDR published an Arabic translation of the ICCA Guide to the interpretation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Arabic version of the Guide is principally aimed at Arab judges determining applications under the New York Convention, and seeks to achieve a unified judicial approach to the recognition and enforcement of awards.

Commemorating the life and work of Ahmed El-Kosheri

In 2015, in the absence in the Arab world of a forum to honor distinguished Arab scholars and practitioners in the fields of international law and arbitration, BCDR sought to establish such a forum with the publication of the "*Festschrift Ahmed Sadek El-Kosheri: From the Arab World to the Globalization of International Law and Arbitration*." This volume, which included articles by 46 academics and practitioners, commemorates the life and legacy of Dr. El-Kosheri, an eminent jurist and a prominent figure in Egypt and worldwide.

In honor of Samir Saleh

Liber Amicorum Samir Saleh: Reflections on Dispute Resolution with Particular Emphasis on the Arab World, published in 2020, was the second of this planned series of publications. It comprises an anthology of nineteen articles in English and in French focused on law and dispute resolution in areas in which the distinguished Arab jurist, Mr. Saleh, worked.



BCDR Rules

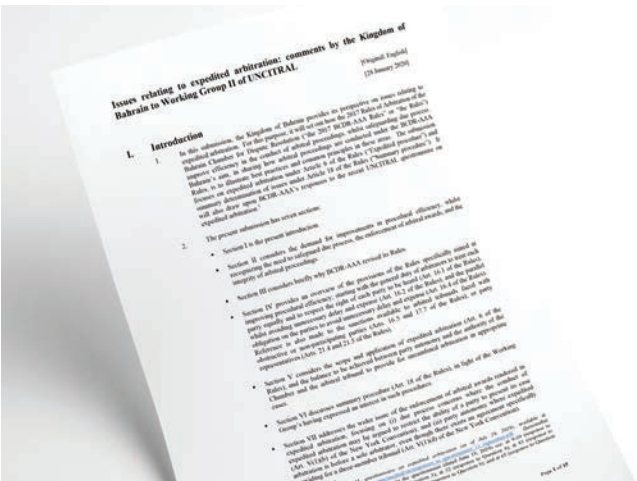
BCDR also makes available in separate booklets its Rules of Arbitration, Rules of Sports Arbitration, and Rules of Mediation in Arabic, English and French.



X. UNCITRAL

BCDR is mandated to lead the Bahraini delegation to all UNCITRAL Working Groups and to draft Bahrain’s official submissions to these Groups. In 2020 and 2021, BCDR’s CEO, Nassib G. Ziadé, led the Bahraini delegation.

UNCITRAL Working Group II (dispute settlement) on expedited arbitration provisions



UNCITRAL Working Group II has a wide-ranging mandate to provide guidance to arbitral institutions on best practice and common principles aimed at achieving a balance between the expeditious resolution of commercial disputes and respect for due process, and on best practice in the early dismissal of claims through summary procedure.

The 71st, 72nd, 73rd and 74th sessions of Working Group II were held, respectively, in New York in February 2020, in Vienna in September 2020, in New York in March 2021, and in Vienna in October 2021, with the great majority of delegates and observers attending remotely.

While recognizing the increasing demand from users for improvement in procedural efficiency, the Bahraini submissions, which, as mentioned above, were prepared by BCDR, strongly support the view that any efforts to promote efficiency must not compromise due process, the effective enforcement of arbitral awards, or the integrity of arbitral proceedings—all mainstays of international arbitration.

Bahrain’s submissions explain how improving efficiency at all stages of the conduct of arbitral proceedings, while safeguarding the fundamental right of the parties to be heard, is at the core of the 2017 Rules of Arbitration of BCDR (the

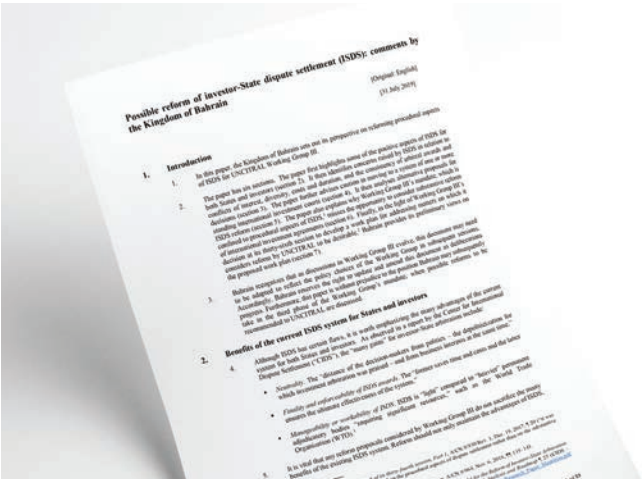
“Rules”), under which, arbitral tribunals have been given wide powers aimed at facilitating efficient arbitration.

The submissions focus on expedited arbitration under Art. 6 of the Rules, which provides the framework for accelerated arbitration in cases in which the combined amount of any monetary claims does not exceed USD 1 million, or in which the parties have agreed in writing that the expedited procedure will be adopted irrespective of the sums at issue. Key characteristics of expedited arbitration under the Rules include: (i) the mandatory appointment of a sole arbitrator, even where there is a pre-existing agreement that there should be three; (ii) case-frontloading, which provides that a claimant’s request for arbitration and a respondent’s response must take the form of a statement of claim and a statement of defense and any counterclaim, respectively; and (iii) a 30-day time limit from the close of proceedings for the issuance of the final award. It is anticipated that this expedited procedure will widen access to justice for parties (especially small and medium-sized businesses) with relatively modest claims who may otherwise be deterred from commencing an arbitration out of a concern for lengthy and costly proceedings.

Another innovation addressed in the submissions is the summary procedure set out in Art. 18 of the Rules, which empowers the tribunal, in broad and flexible terms, to determine on a summary basis any legal or factual issue considered by the applicant party (and agreed by the tribunal) to be material to the outcome of the arbitration. As a further safeguard of due process, all other parties are given the opportunity to respond to the application for summary procedure, and if the application is allowed, the tribunal must promptly notify the parties of the subsequent procedural steps to be taken.

The submissions conclude that provisions relating to expedited proceedings and summary procedure are welcome developments in the evolution of international arbitration and should become the norm.

UNCITRAL Working Group III on investor-state dispute settlement (ISDS) reform



UNCITRAL Working Group III is mandated to identify procedural concerns in current ISDS practice and procedure and to consider whether and if so, what reform would be desirable in the light of any identified shortcomings.

The resumed 38th session of this Working Group, and its 39th session were both held in Vienna, in January and October 2020, respectively. The 40th, resumed 40th, and 41st sessions of the Working Group were also held in Vienna, in February, May and November 2021, respectively. As with the Working Group II sessions, attendance was primarily remote.

The following were among Professor Ziadé’s interventions on behalf of Bahrain at these sessions:

that the safest and most effective way to address the flaws of the existing investment arbitration system is to reform rather than to replace, without dismantling the impressive framework painstakingly created over the past several decades;

that the establishment of a permanent investment court risks the politicization of appointments of the members of the court if they were to be selected exclusively by states, excessive costs for establishing and maintaining a two-tiered court, and potential problems for the enforceability of the awards of the court;

that there should be no ISDS appeal mechanism, which would, he argued, add to the duration and cost of resolving disputes, without necessarily addressing the objective of some of those espousing such a mechanism that it may overcome the problem of inconsistent ISDS awards and decisions; favoring the alternative of joint interpretive bodies coexisting alongside arbitration tribunals;

that in the event an appeal mechanism were, nonetheless, to be established, the appellate body should be confined to reviewing only serious errors of law, with no authority to review findings of fact, and should have jurisdiction only in final awards that mark the conclusion of the proceedings, not in any interim measures or awards;

that any standing body to be established for any review should be funded by fees payable by the parties seeking recourse to such body, not by the contribution of all contracting parties weighted in accordance with their respective level of development, with the potential to impart greater influence to some states than to others in the operation of the review mechanism;

that the procedure prescribed by BCDR in relation to frivolous claims at Article 18 of the 2017 BCDR arbitration rules might serve as a useful model for parallel provisions in ISDS cases, as the language of Article 18 is broad enough to allow not only the early dismissal of frivolous claims on both jurisdiction and the merits, but also the summary determination of important legal or factual issues; and

that a tribunal should continue to have discretion in deciding whether to award security for costs when requested by either party; that it should be available to investors as well as states; and that it should not be automatically granted in the event of a third-party funder unless there are other circumstances requiring the tribunal to do so.

XI. CONCLUDING REMARKS

The world has been turned upside down by COVID-19 and its persistent mutations, causing the wholesale reassessment of priorities in our personal lives and in society as a whole, and a surge in technological creativity and innovation in the conduct of business globally.

The pandemic will eventually be over, by burn-out or vaccine or effective treatment or herd immunity, but will likely be in the background of our lives for many years to come.

In the field of arbitration, it is likely that virtual hearings (with all participants connected remotely) and hybrid hearings (with some meeting in person and some remotely) will continue to be the preferred option in many cases, particularly in smaller/lower value arbitrations. Parties will also surely be looking increasingly to established and reputable regional arbitration centers to administer their arbitrations, and other forms of ADR, not only for the cost and efficiency advantages that these can offer, but also to reduce the need for travel to those in-person hearings that will undoubtedly resume in due course.

The aftermath of wholesale business disruption caused by the pandemic promises a busy time ahead for all those engaged in ADR, for whom many of the innovations generated by COVID will prove valuable, perhaps even invaluable. And, as is the way in all commercial enterprises, some of the contractual relationships arising from the pandemic-driven technological innovations will inevitably themselves give rise to disputes. Consequently, an upcoming issue of the *BCDR International Arbitration Review* will be devoted to online dispute resolution.

BCDR looks forward, therefore, to continuing to serve the business and legal communities with its comprehensive dispute resolution services, from state-of-the-art rules, to expert management, to fully equipped modern hearing facilities. BCDR will also strive to maintain and enhance its reputation in the field of education and will build on its partnerships with academics, practitioners, and other institutions.





A view from a traditional courtyard in Muharraq, Kingdom of Bahrain

غرفة البحرين لتسوية المنازعات



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