

BCDR ANNUAL REPORT

2022





Painting by Bahraini artist Abbas Almosawi

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I. MESSAGE FROM THE CHIEF EXECUTIVE

IN A MAJOR DEVELOPMENT, 2022 SAW THE PUBLICATION OF AMENDED BCDR COMMERCIAL ARBITRATION RULES AND OF DEDICATED BCDR SPORTS ARBITRATION RULES.



CHIEF EXECUTIVE OFFICER
Professor Nassib G. Ziadé

There were times when it seemed that the world would never be free of the stifling grip of COVID-19 and the myriad social and economic challenges that came with it. But finally, in 2022, the pandemic shrank, then retreated, and daily lives resumed their normality.

But what had changed forever in the world of dispute resolution was in the universal adoption of innovative technical solutions at all levels and at every stage of the process, and the enhancement of pre-existing technology.

Virtual and hybrid hearings that were a necessary response to the health crisis are now preferred to in-person hearings where appropriate for straightforward time and cost efficiencies and also environmental imperatives. Full online dispute resolution platforms are being developed at a pace, and artificial intelligence tools are more and more frequently in use in such areas as the review of the often-vast volume of electronic documents and data in play in modern commercial disputes.

BCDR has, through its rules and guidelines, encouraged and facilitated the use of electronic means in the conduct of arbitral proceedings and in proceedings before the BCDR Court, to the greatest extent possible. An issue of the *BCDR International Arbitration Review* has been dedicated to online dispute resolution, with a second part to follow.

As discussed in detail later in this Report, there have been significant developments at the BCDR Court, where new rules of procedure have been introduced, the use of English in BCDR Court proceedings has been expanded, and new judges have been appointed to hear BCDR Court cases in English.

IN MAY 2022, I WAS DESIGNATED BY THE SECRETARY-GENERAL OF THE PERMANENT COURT OF ARBITRATION, IN MY CAPACITY AS THE CEO OF BCDR, AS THE APPOINTING AUTHORITY PURSUANT TO THE 2013 UNCITRAL ARBITRATION RULES IN AN ARBITRATION.

THE GAR GUIDE TO REGIONAL ARBITRATION HAS ADDED BCDR AS ONE OF ONLY TWO ARBITRATION INSTITUTIONS IN AFRICA AND THE MIDDLE EAST ON ITS “WHITE LIST.”

Along with all of the changes in the conduct of business and of the resolution of disputes, BCDR has seen another very successful year in all our key activities of casework, publications, and participation in the work of UNCITRAL; with our program of conferences and other educational events now recovering from the constraints imposed by the pandemic.

The steady flow of cases referred to the BCDR Court and to BCDR's arbitration wing continues, as do the enquiries that preface the adoption of BCDR dispute resolution provisions.

In a major development, 2022 saw the publication of amended BCDR commercial arbitration rules and of dedicated BCDR sports arbitration rules, a full account of which appears later in this Report. Work continues on new rules for the administration of *ad hoc* arbitrations by BCDR and on dedicated rules for the arbitration of disputes in the field of Islamic finance.

As reported more fully below, BCDR may act as appointing authority in *ad hoc* arbitrations to appoint arbitrators, to decide challenges, to fix, review and disburse fees.

In May 2022, I was designated by the Secretary-General of the Permanent Court of Arbitration (PCA), in my capacity as the CEO of BCDR, as the appointing authority pursuant to the 2013 UNCITRAL Arbitration Rules in an arbitration arising out of a consultancy and oilfield project management services agreement in North Africa. In this capacity, I appointed an arbitrator in default of an appointment by the respondent party and subsequently appointed the tribunal president, following the list procedure set out in the UNCITRAL rules when the two co-arbitrators failed to agree on the president.

In a separate, BCDR-rules arbitration, I acted on behalf of the BCDR for the purposes of determining a challenge, brought in September 2022, of the arbitrator nominated by one party. This was the first ever challenge decision to be rendered under the BCDR rules. The twenty-eight-page reasoned decision was delivered in January 2023.

I have previously reported the recognition of BCDR, in 2021, by *Global Arbitration Review* (GAR), in an award for “*the regional arbitration institution that impressed.*” Since receiving this award, the GAR Guide to Regional Arbitration has added BCDR as one of only two arbitration institutions in Africa and the Middle East on its “*White List,*” denoting an arbitral institution that is “*a safe pair of hands 99 per cent of the time.*”

This recognition is testimony to the progress that BCDR has made since its foundation in 2010, guided always by the highest standards in all its fields of endeavor and service.

As further detailed below, three volumes of the *BCDR International Arbitration Review* were published in 2022 – the second part of the issue on conflicts of interest in international arbitration; the first part of an issue on online dispute resolution; and an issue dedicated to screening arbitration requests and the early dismissal of claims. Work has also commenced on the second part of the issue on online dispute resolution, and on an issue dedicated to sports arbitration, with these two issues to be published in 2023.

BCDR continues its important work with UNCITRAL, heading up the Bahraini delegation at the meetings of UNCITRAL's Working Group II on dispute resolution and Working Group III on reforms in investor-state dispute settlement.

As ever, we owe a debt of gratitude to all those who continue to support BCDR; to our devoted staff, to the Members of the Board of Trustees, to our partners for the Vis Pre-Moot and other events, to our advisors who work with us to ensure the high standards of our services, and to the many eminent contributors to the *BCDR International Arbitration Review*. I also acknowledge with thanks the confidence placed in BCDR by those who adopt BCDR rules to resolve their disputes.

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
Salman Ahmed
Fatema Al Zayed Al Jalahma
Tara-Chloé Harb

GENERAL ADMINISTRATION STAFF

HEAD OF ICT
Yousif Al Saif

SENIOR ACCOUNTANT
Bassam Ghassan Beidas

SENIOR FINANCE OFFICER
Aisha Ishaq

SENIOR ICT SPECIALIST
Husain Helal

HR OFFICER
Fatema AlWardi

CHIEF REGISTRAR ASSISTANT
Amal Fareed

CLIENT RELATIONS SPECIALISTS
Dana Isa

TRANSPORT OFFICER
Hussain Al Hujairi



Members of BCDR General Administration Staff



BCDR BOARD OF TRUSTEES*



CHAIRPERSON

Shaikha Haya bint Rashed Al Khalifa



BOARD MEMBER

Yousif bin Abdulhusain Khalaf

Shaikha Haya bint Rashed Al Khalifa – Chair

Shaikha Haya is the senior and founding partner of the Haya Rashed Al Khalifa Law Office in Bahrain and has been the Chair of the BCDR Board since 2010.

Yousif bin Abdulhusain Khalaf

Yousif Khalaf is an accredited arbitrator with the Bahraini Courts and with a number of regional and international arbitration centers, and currently the Bahraini Minister of Legal Affairs.



BOARD MEMBER

Jan Paulsson



BOARD MEMBER

India Johnson

Jan Paulsson

After a long career in practice, Professor Paulsson is now an independent arbitrator and senior consultant to Three Crowns LLP, of which he was a co-founder.

India Johnson

India Johnson is the President and Chief Executive Officer of the American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR).

Rashed Abdul Rahman Ibrahim

Rashed Ibrahim, founder of the Rashed Abdul Rahman Ibrahim law firm in Bahrain, is an arbitrator and licensed lawyer before the Bahraini Court of Cassation and the Constitutional Court.



BOARD MEMBER

Rashed Abdul Rahman Ibrahim



BOARD MEMBER

Stephen Jagusch KC

Stephen Jagusch KC

Stephen Jagusch is Global Chair of Quinn Emanuel’s International Arbitration Practice, specializing in international commercial and investment treaty arbitration.

Elie Kleiman

Elie Kleiman is a Paris-based partner in the global law firm Jones Day, with 30 years of experience in dispute resolution, with a significant focus on international arbitration.



BOARD MEMBER

Elie Kleiman



BOARD MEMBER

Reza Mohtashami KC

Reza Mohtashami KC

Reza Mohtashami has extensive experience as advocate and arbitrator in many jurisdictions, concentrating on complex and high-value disputes with a focus on the energy, telecoms and infrastructure sectors.

* For more complete résumés of the Board Members, please refer to the BCDR Biennial Report 2020/21 or to the BCDR website www.bcdr.org.

WILLIAM K. SLATE II

1943-2022



William K. ("Bill") Slate II joined the BCDR Board of Trustees on the foundation of BCDR in 2010 and was a loyal, active and valued participant in BCDR's affairs up to his retirement from the Board in 2021.

Bill passed away peacefully with his family at his side, on 10 June 2022. Bill is survived by his wife, Debora, his children and his grandchildren.

Following a brief career in the Federal Bureau of Investigation, Bill joined the Federal Courts, becoming the Chief Executive of the 3rd Circuit. Having completed his MBA, he was selected by the Chief Justice of the U.S. Supreme Court to be the Director of a congressionally-mandated study of problems facing the Federal Courts in America.

Bill went on to become the President and CEO of the American Arbitration Association and International Centre for Dispute Resolution (AAA/ICDR), a position he held for 19 years. He was widely published in his field.

On his retirement from AAA/ICDR, he co-founded, with his wife Debora, Dispute Resolution Data (DRD), the first-ever global commercial arbitration data entity.

BCDR has extended its deepest condolences to Bill's family and its expression of great appreciation for his contribution to the success of the Chamber.

III. ARBITRATION CASEWORK

BCDR continues to fulfill its primary mission of providing a comprehensive, accessible, independent, reliable, and time-and-cost-effective dispute resolution service for the global business and legal communities. To this end, it has revised its arbitration rules, promulgated specialist rules, and made BCDR Court proceedings more accessible, as further explained below.



Types of casework

BCDR's casework comprises disputes brought before the BCDR Court and disputes referred to BCDR's international arbitration wing.

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 expressly contracted for arbitration or mediation under the BCDR arbitration or mediation rules, or under *ad hoc* procedures in which the parties have provided for an administrative role for BCDR.

In addition to acting as appointing authority as a matter of course in all disputes administered under the BCDR arbitration rules, the Chamber may also act as appointing authority in *ad hoc* arbitration or mediation proceedings. As appointing authority, depending on the agreement of the parties or the applicable *ad hoc* rules, the Chamber may appoint arbitrators and mediators, take decisions on challenges or other grounds for the replacement of the neutrals, fix their fees, hold deposits, and review costs and fees incurred.

BCDR Court cases are referred to as Section 1 cases; regular arbitration and mediation cases are referred to as Section 2 cases.

BCDR's case managers, who are proficient in Arabic, English, and French, offer a comprehensive administrative service to parties and tribunals, overseeing all cases from filing to conclusion, whether by award, dismissal, withdrawal, or settlement.





A view of one of BCDR meeting rooms

CASE STATISTICS

Casework referrals remain buoyant, with 45 new cases registered in 2022, with a combined value of approximately USD 450 million. Of these 45 cases, 36 were Section 1 cases; 9 were Section 2 cases.

These bring the total number of cases referred to BCDR since its establishment in 2010 until the end of 2022 to 421, with a total monetary value of approximately USD 7 billion.

Between 2019 and 2022, BCDR registered a total of 31 Section 2 cases at its commercial arbitration wing, representing around 75% of the total number of Section 2 cases registered with BCDR since its inception, and reflecting an accelerating growth in its caseload over the past few years.



BCDR Chief Registrar Ahmed Husain

421 Total number of cases registered

36 Section 1 cases registered in 2022

45 New cases registered in 2022

9 Section 2 cases registered in 2022

USD 7 billion
Total value of claims

USD 450 million
Value of claims in 2022

Duration of proceedings

Of the 36 Section 1 cases filed in 2022:

- 9 were concluded within less than 6 months;
- 14 were concluded between 6 months and 12 months; and
- 13 are pending.

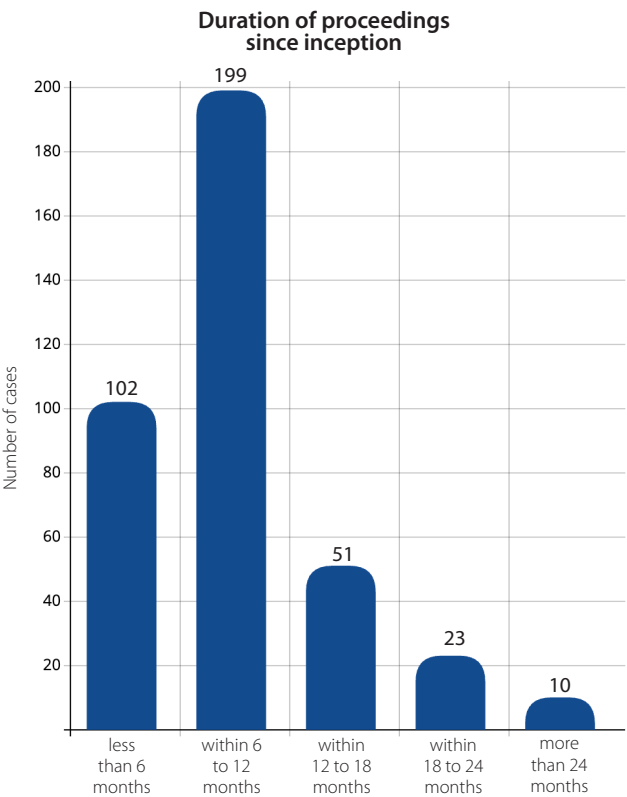
Of the 9 Section 2 cases filed with BCDR in 2022:

- 3 were concluded between 6 months and 12 months; and
- 5 are pending.

In the ninth Section 2 case, BCDR acts as appointing authority.

385 of the total 421 cases filed since BCDR’s inception have been concluded. Of these:

- 102 were concluded in less than 6 months;
- 199 within 6 to 12 months;
- 51 within 12 to 18 months;
- 23 within 18 to 24 months; and
- 10 within more than 24 months.



Nationalities and gender

In a statistic unchanged since the previous Annual Report, around 64% of BCDR cases to date have involved at least one non-Bahraini party; around 5% have involved exclusively non-Bahraini parties.

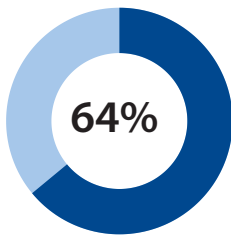
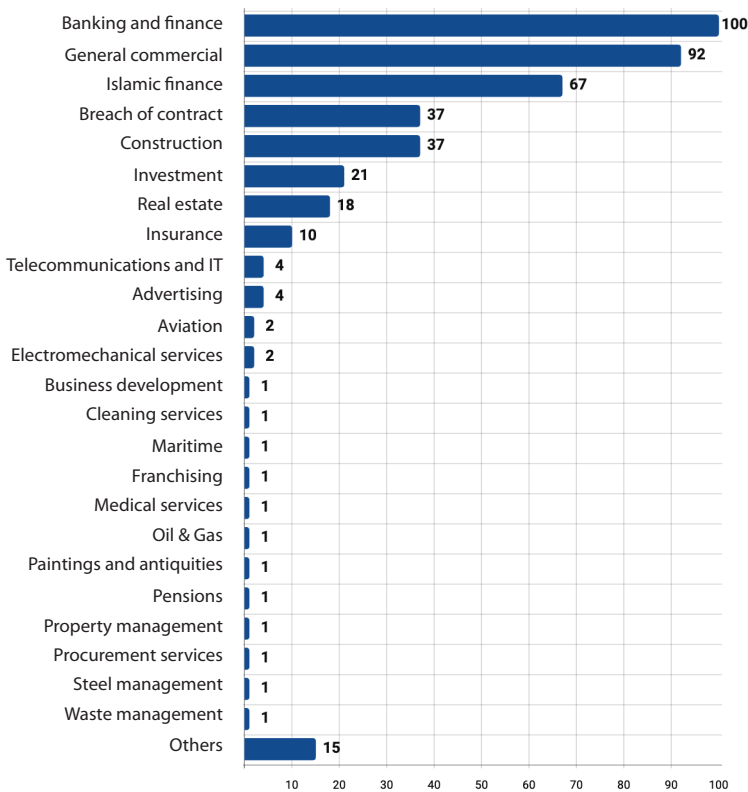
The nationalities of parties include American, Argentinian, Australian, Bahraini, Belgian, Bermudan, British, Canadian, Cayman Islands, Chinese, Cypriot, Dutch, Egyptian, Emirati, French, German, Indian, Iranian, Iraqi, Irish, Italian, Jordanian, Kuwaiti, Lebanese, Liberian, Libyan, Malaysian, Mauritian, New Zealand, Omani, Pakistani, Qatari, Saudi Arabian, Singaporean, South Korean, Spanish, Sri Lankan, Sudanese, Swiss, Syrian, Trinidadian, Turkish, and Yemeni.

Tribunal members appointed in BCDR cases have included arbitrators from Armenia, Australia, Bahrain, Canada, Egypt, France, Italy, Jordan, Lebanon, Singapore, Sudan, Switzerland, Syria, Tunisia, the United Arab Emirates, the United Kingdom, and the United States of America.

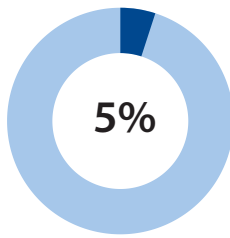
More than half of the arbitrators appointed by BCDR in Section 2 cases were different individual women.

Economic sectors

The total 421 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

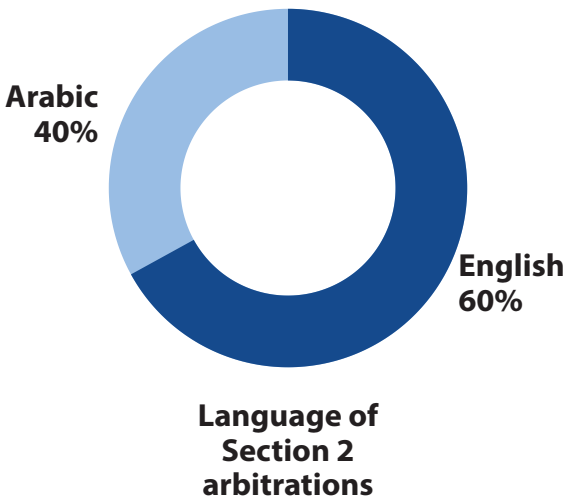
More than 50%

Women appointed to tribunals in Section 2 cases

Language of proceedings

Information on the languages in which Section 1 cases may be conducted appears in the next section of this report.

Of the Section 2 arbitrations filed to date, 60% have been conducted in English; 40% in Arabic.



IV. BCDR COURT DEVELOPMENTS

The jurisdiction of the BCDR Court, which derives from Section 1 of Legislative Decree No. 30 of 2009 (by which BCDR was established) and its amendments, and which was extended by Legislative Decree No. 26 of 2021, covers claims with a value exceeding 500,000 Bahraini Dinar (approx. USD 1.3 million) in which at least one party is a financial institution licensed by the Central Bank of Bahrain, or the disputing parties are licensed companies under the Commercial Companies Law enacted by Legislative Decree No. 21 of 2001, or the dispute is of an international commercial nature.

The BCDR Court also has jurisdiction, by virtue of the Real Estate Regulation Law No. 27 of 2017, over real estate disputes where the claim exceeds 500,000 Bahraini Dinar (approx. USD 1.3 million) and the dispute arises out of an off-plan sale, usufruct rights, utilization and development (*Musataha*) rights or long-term lease rights, or

lease to own or lease rights, or the dispute is related to the owners' union or arises out of real estate works or projects or real estate rights specified by a resolution of the Board of Directors of the Real Estate Regulatory Authority.

The BCDR Court also has jurisdiction over disputes relating to trusts that are governed by Legislative Decree No. 23 of 2016.

Judgments of the BCDR Court are deemed final judgments of the courts of Bahrain and are not appealable, but may be annulled before the Bahraini Court of Cassation on limited grounds or challenged for violation of the applicable laws, or for improperly applying or interpreting the applicable law. If the Court of Cassation rules that a BCDR Court judgment was based on a violation or improper application or interpretation of applicable law, it must determine and rule on the subject matter of the dispute *de novo*.

New BCDR Court Rules of Procedure

On 13 December 2021, the Minister of Justice, Islamic Affairs and Waqf issued Resolution No. 134 of 2021, published in the Official Gazette on 23 December 2021 and effective as of 24 December 2021, promulgating a new set of procedural rules to govern disputes falling under the jurisdiction of the BCDR Court, revoking and replacing the previous procedural rules issued by Resolution No. 65 of 2009.

The new rules introduce a number of provisions governing issues not previously addressed, along with amendments to a number of existing provisions. Emphasis has been placed on the use of electronic means for filing submissions, claims, and documents, and for carrying out notifications in disputes before the Chamber. For these purposes, the Chamber has developed and made available for users the appropriate platforms for electronic submissions.

The new rules also grant the parties the right to appoint an expert on their own initiative, either jointly with, or independently from other parties. If necessary, the parties may request leave from the Tribunal to enable the expert to commence his or her assignment, by requiring the parties and relevant third parties to facilitate the work of the expert.

Amendments have also been made to several provisions governing the management of cases by the Chamber and the consideration of the dispute by the Tribunal, to align practice with newly introduced features under the new rules.

Among the amendments to the provisions governing case management is a shorter case management phase, reduced from four months renewable once, to sixty days renewable once.

Use of English in BCDR Court Proceedings

Significantly, the new procedural rules also entitle parties to agree on the use of English as the language in Section 1 cases (Article 5) if:

- the contract underlying the dispute is drafted in a language other than Arabic;
- the agreement on the choice of English as the language of the proceedings is recorded either in the underlying contract, or in correspondence between the parties to the contract, or in a separate agreement; and
- the agreement on the choice of English is submitted during the case management phase and within the time frame specified for such a submission in the timetable for the case.

In March 2023, the Minister of Justice, Islamic Affairs, and Waqf issued Resolution No. 28 of 2023 extending the circumstances in

which English may be used by making it the default language in certain cases, without the need for a prior agreement of the parties before the filing of the case or during the case management phase (as was previously required under Article 5). Pursuant to Resolution No. 28, English will be the default language of the proceedings if the language of the contract underlying the dispute is English and:

- the disputing parties are financial institutions licensed in accordance with the provisions of the Central Bank of Bahrain and Financial Institutions Law, or the dispute is between such an institution and another commercial company licensed in accordance with the provisions of the Commercial Companies Law; or
- the disputing parties are commercial companies licensed in accordance with the provisions of the Commercial Companies Law, and the dispute relates to obligations arising from their commercial relationship; or

the dispute relates to international trade and the dispute is between financial institutions, or companies, or a financial institution and a company.

The basis for the use of English in the proceedings is the parties' agreement to use English in the underlying contract. Accordingly, if the underlying contract is drafted in more than one language, including English, then English will not be the default language for

the proceedings unless the contract explicitly stipulates the adoption of the English language in case of discrepancy between the contractual texts.

The Resolution also allows the disputing parties to retract their choice of English as the language of the proceedings, provided that the retraction is done in writing before filing the case.

Appointment of Judges to Hear BCDR Court Cases in English

In January 2022, Bahrain Royal Order No. 3 of 2022 was issued, appointing judges specifically to hear BCDR Court cases in English.

For these purposes, Professor Jan Paulsson, Mr. Neil Kaplan KC and Dr. Michael Hwang SC were appointed Deputies of the Court of

Cassation, and Mr. Adrian Cole, Mr. Michael Grose, Ms. Nadine Debbas Achkar, Mr. Simon Greenberg, Dr. Karim Hafez and Ms. Amani Khalifa were appointed Judges of the Court of Cassation.

Roster of Tribunal Members

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.

The provisions governing the selection of the third member of Section 1 tribunals from the roster of neutrals have been amended. The new rules adopted by Resolution 134 of 2021 established a selection committee for this purpose comprising the CEO of BCDR as Chair, two members nominated by the Supreme Judicial Council, two members nominated by BCDR's Board of Trustees, one member nominated by the Minister of Justice, one member nominated by the Central Bank of Bahrain, one member nominated by the Bahrain Economic Development Board, and one member nominated by the Bahrain Chamber of Commerce and Industry.

Thus, the selection committee comprised Prof. Nassib G. Ziadé as Chair; Judges Hajer Fakhro and Mahmoud Sahwan on behalf of the Supreme Judicial Council; Mr. Ahmed Hussain and Mr. Khaled Al Khayat on behalf of BCDR; Mr. Wael Anis Ahmed on behalf of the Minister of Justice and Islamic Affairs; Ms. Manar Moustafa Al Sayed on behalf of the Central Bank; Ms. Ameena Al Onaïsi on behalf of the Economic Development Board, and Mr. Sami Zainal on behalf of the Bahrain Chamber for Commerce and Industry. Mr. Salim S. Sleiman, BCDR Senior Case Manager, served as the executive secretary of the selection committee.

This committee was charged with selecting individuals to be included on the roster with the requisite expertise to hear a given dispute based on the fields of expertise set out in the roster. Thus, applicants for inclusion on the roster were required to be professionals practicing in the fields of commercial disputes (including telecommunication disputes); conventional banking,

finance, investment, and insurance disputes; Islamic banking and finance disputes; and construction and real estate disputes.

By this process, the following individuals have been added to the roster: Counselor Eman Al Aradi; Ms. Rasha Al Balbis; Ms. Nayla Al Dokhi; Dr. Yousif Al Ekiaby; Dr. AbdulAziz Al Kuthairy; Mr. Mirza Al Marzouk; Mr. Majid Al Ras Romani; Dr. Manaf Hamza; Counselor Ali Janahi; Mr. David Lutran; Mr. Hamza Noor; Dr. Abdulkader Sultan; Dr. Abdulla Taleb; and Dr. Aseel Zimmo.

The following neutrals remained on the previously established roster: Dr. Mohamed Abdel Raouf; Dr. Mohamed S. Abdel Wahab; Dr. Mohammed Redha Abu Hussain; Dr. Georges Affaki; Dr. Zakariya Sultan Al Abbasi; Dr. Jameel Al Alawi; Ms. Elham Ali Hasan; Mr. Husain Mahdy Al Kaidoum; Mr. Salah Al Madfaa; Ms. Ameena Al Onaisi; Mr. Saad Al Shamlan; Mr. Abdullah Al Shamlawi; Mr. Ahmed Al Thukair; Dr. Adnan Amkhan; Dr. Maan Bou Saber; Judge Fady Elias; Mr. Alec Emmerson; Mr. Salman Issa Flayfel; Mr. John Gaffney; Mr. Farid Ghazi; Dr. Fathi Kemicha; Judge Mouhib Maamari; Mr. Reza Mohtashami KC; Mr. Karim Nassif; Mr. Ahmed Ourfali; Mr. Abbas Abdulmohsen Radhi; Mr. Jonathan Sutcliffe; and Dr. Karim A. Youssef.

In addition, as envisaged by the new rules adopted with Resolution 134 of 2021, the Supreme Judicial Council provided the selection committee with the following list of judges approved as third members on Section 1 tribunals: Judge Fatema Faisal Hubail Mansour (President at the High Civil Court); Judge May Sami Husain Matar (President at the High Civil Court); Judge Hamad Ahmed Mohammed Al Souaidy (President at the High Civil Court); Judge Jawaher Adel Abdulrahman (President at the High Civil Court), and Judge Riyadh Mohamed Ibrahim Siyadi (Vice-President at the High Civil Court).

V. THE 2022 BCDR RULES OF ARBITRATION

Since their publication, the 2017 BCDR Arbitration Rules generated a great deal of positive feedback from users and won praise from many leading international arbitration specialists. However, as with all international arbitration institutions, BCDR keeps its rules constantly under review to ensure that they remain in line with prevailing best practices. Accordingly, on 1 October 2022, it published an amended edition of its 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.

Article 21-bis on Third-Party Funding

In common with a number of other leading institutions, including the International Court of Arbitration of the International Chamber of Commerce (ICC) and the Hong Kong International Arbitration Centre (HKIAC), BCDR has introduced a new rule requiring the disclosure by the relevant party of the existence of any third-party funding arrangement entered into at any time before or during the arbitration, and of the identity of the third-party funder.

The purpose of this provision is to ensure that arbitrators (or prospective arbitrators) can fully assess the existence of any conflict of interest that may arise from the involvement of a third-party funder in support of one or more of the disputing parties, and that the tribunal may take account of the impact (if any) of a funding arrangement on the costs of the arbitration.

In addition to these new stand-alone provisions, a number of amendments have been made for greater clarity and/or procedural efficiency, including:

Article 5.4 of the Rules and Paragraph 10 of the Fee Schedule

The redrafting of these provisions codifies BCDR’s practice of allowing a non-defaulting party to cover a defaulting party’s portion of the case management fee before BCDR resorts to the suspension or termination of the proceedings for failure to pay these fees.

The new rules are available in Arabic, English and French, all three versions being equally authoritative. As prescribed by Article 1.1 of the 2017 BCDR Rules of Arbitration, these new rules will automatically be applied in any arbitration commenced with BCDR on or after their effective date of 1 October 2022.

The 2022 Rules, which may be said to represent an evolution, not a revolution, nonetheless include two important entirely new provisions reflecting developing practices and procedures.

Article 26-bis on Security for Costs

Whilst it is generally accepted that an arbitral tribunal has the inherent authority to order a party to provide security for costs, including as part of its powers to order interim or conservatory measures, there is a movement towards regulating security for costs in stand-alone provisions, such as those which can be found in the rules of a number of institutions, including those of the Singapore International Arbitration Centre (SIAC), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the London Court of International Arbitration (LCIA).

BCDR’s new Article 26-bis provides expressly that the tribunal shall have the power to order security for costs on the written application of a party, and that all parties will have a reasonable opportunity to respond to the application. This Article also provides that the tribunal may stay or dismiss a party’s claim in the event of failure by that party to comply promptly and in full with an order to provide the security as directed.

Article 9.4

The amended text of Article 9.4 makes it unequivocal that BCDR has the power, in the case of a three-member tribunal, to select an arbitrator in default of a nomination by a party entitled to nominate, or where the parties have not reached an agreement on party nomination. BCDR has the same power in the case of a sole or presiding arbitrator.

Articles 14.10, 16.3, 22.1 and 35.6

In line with BCDR’s published guidelines encouraging parties and tribunals to make greater use of electronic communications, Articles 14.10 and 35.6 provide expressly for the prompt communication of electronic versions of orders and awards.

Article 16.3 mandates the tribunal and the parties, at the preliminary procedural conference, to consider how technology may best be used to improve efficiency and economy.

Article 22.1 states unequivocally that hearings and meetings may be conducted in person or by any electronic means directed by the tribunal that allow all those who should attend to do so.

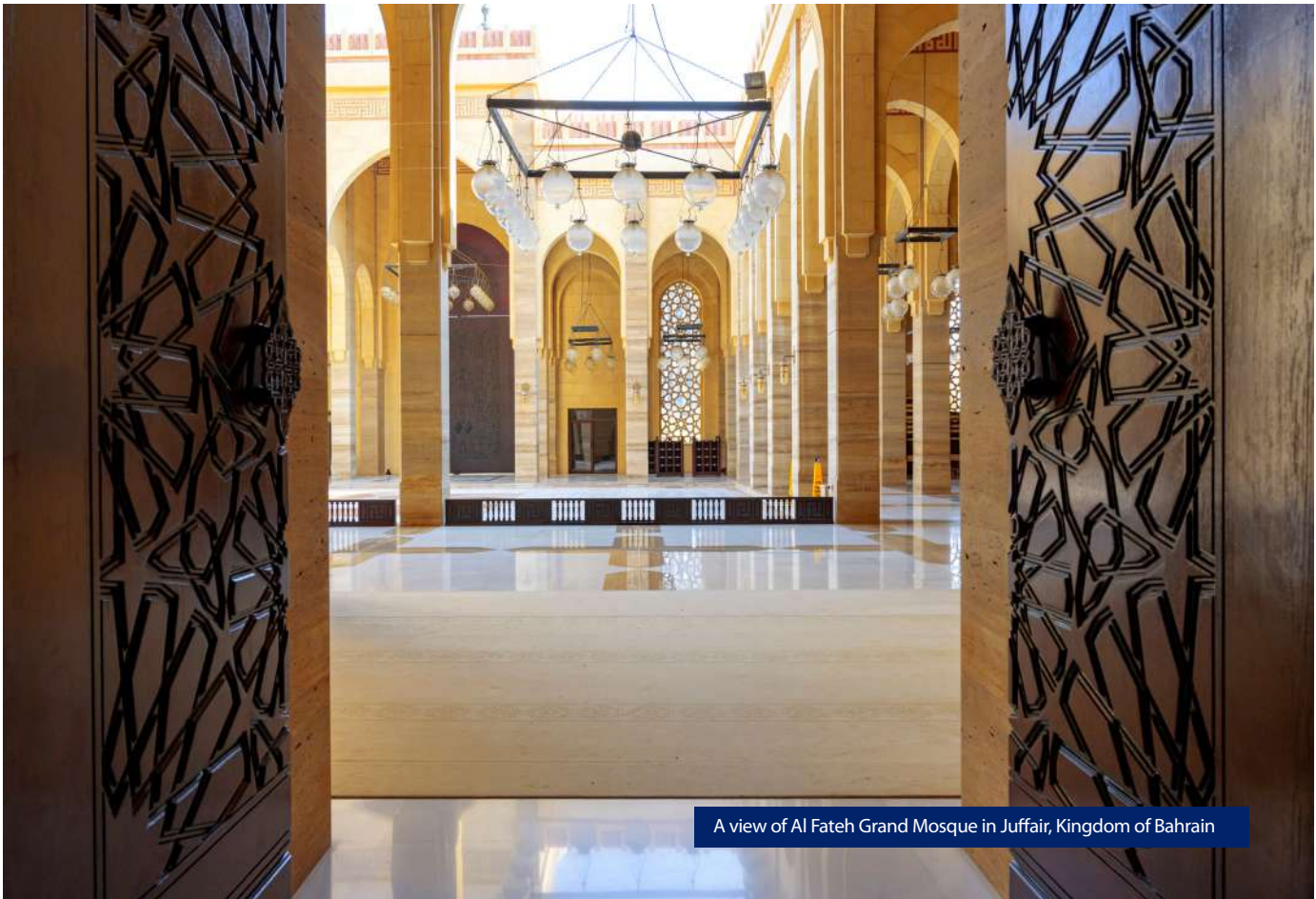
Article 25.1

This new Article codifies BCDR’s established practice requiring a tribunal-appointed expert, before accepting appointment, to sign a statement of impartiality and independence and disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence, in line with the parallel requirement for arbitrators and tribunal secretaries.

Article 38.2

A re-worked Article 38.2 allows the arbitral tribunal, or BCDR if the tribunal is not yet appointed, to issue an order terminating the arbitration if no steps have been taken in the arbitration for at least six months and no justifiable objections to termination are raised by the parties.

This brief review of the 2022 Rules is not an exhaustive exposition of all the changes to the previous version of the rules. Contracting or disputing parties should carefully consider the 2022 Rules as a whole.



A view of Al Fateh Grand Mosque in Juffair, Kingdom of Bahrain

VI. THE 2022 BCDR SPORTS ARBITRATION RULES



The Gulf region hosts many major international sporting events, one notable recent example being the 2022 FIFA World Cup, held in Qatar. It also hosts Formula 1 races in Bahrain, Abu Dhabi, and Saudi Arabia, and many top-level tennis, equestrian, and other tournaments in the region, 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 feedback 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 the region, 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 S. Sleiman, and former BCDR Case Manager and current judge at the High Court of Bahrain, Hasan Albuainain. The Arabic version was prepared by a committee comprising Jordanian attorney, Faris K. Nesheiwat; BCDR Chief Registrar and Chief Operating Officer, Ahmed Husain; and Mr. Sleiman. The French version was prepared by Lebanese attorney, Fady Béchara and Mr. Sleiman. The work on the sports 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 BCDR Board of Trustees for final approval.

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 commercial arbitration rules, from which identical, or closely parallel language has been adopted or adapted as appropriate.

They 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.

The Rules

Given that they are dedicated to the resolution of sports-related disputes, the rules differ from the commercial rules in a number of respects:

Outline

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 commercial arbitration rules.

Sports Arbitration Agreement

The arbitration agreement under the sports rules may be either contractual or contained in the statutes or regulations of sporting bodies (Article 1.2).

Appeals Jurisdiction

An arbitration under the BCDR sports rules may be the first instance resolution of a dispute. In common with most domestic and international sports federations, which provide for a right to appeal the decisions made by internal sporting bodies, the BCDR sports rules may also be applied to an appeal of a decision issued by a sporting body or of an award rendered by an arbitral tribunal under the rules. However, the right to appeal under the sports rules is subject to an express written agreement that an appeal is allowed (Article 1.1).

Expeditious Resolution of Disputes

The entire arbitration process under the sports rules is focused on expeditious procedures at every stage, which obviates the need for specific provisions aimed at expedited arbitration or summary determination.

The Roster of Sports Arbitrators

Under Article 12.1 of the BCDR sports arbitration rules, and in line with the rules of other leading institutions administering the resolution of sports disputes, only arbitrators listed in a BCDR pre-approved roster may be appointed to adjudicate sports disputes or to hear appeals. This is to ensure that only arbitrators with knowledge of and competence in sports arbitration are appointed, so also minimizing delay in the process of selection and appointment.

The BCDR roster of sports arbitrators, which is available on the BCDR website www.bcdr.org, comprises leading practitioners in

Representation

As it is not uncommon for parties in sports disputes to be represented by their agents or other trusted individuals, the sports rules allow parties to be represented by “authorized” representatives who need not be lawyers (Articles 2.2(a) and (3.2(a))).

Waiver of the Right to Request Interim Measures from State Authorities

By agreeing to recourse to arbitration under the sports rules, the parties waive the right to request any emergency measure of protection or other interim measures from any state authority or court (Article 27.1). This is in line with the requirement in the statutes and regulations of most international sporting bodies. This is also a direct departure from Article 14.12 of the 2017 and 2022 BCDR Rules, which are omitted altogether in the sports rules.

Costs

The sports rules fee schedule takes into account the needs of the local and regional sports market, and facilitates access to BCDR sports arbitration for all claims, small or large.

the field, with an emphasis on practitioners with a nexus with the MENA region, including Mohamed Abdel Raouf, Bandar Al Hamidani, Rashid Al-Anezi, Sultan Al-Sowaidi, Laurence Boisson de Chazournes, Stavros Brekoulakis, Dominique Brown-Berset, Leila El Shentenawi, Francisco González de Cossío, Mohamed Muqbel, Aysha Mutaywea, Jan Paulsson, Georgios Petrochilos, Noor Radhi, Dalal Sangoor, Ismail Selim, Gaëtan Verhoosel, Georg von Segesser, Todd Wetmore, and Karim Youssef.

BCDR will update this roster on a regular basis to broaden the choice of arbitrators available to disputing parties and to the Chamber.

VII. CONFERENCES AND OTHER EVENTS

12th Annual Middle East Willem C. Vis Pre-Moot

For a week in March 2022, BCDR co-hosted the 12th Annual Middle East Vis Pre-Moot with 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.

The program included three days of training, attended in person by ten teams and around 70 students, coaches, faculty members, and advisors, with others accessing the course remotely.

The training 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 hearing sessions were conducted in a hybrid format, but a number of hearings were held in person, marking the post-pandemic return of in-person mooting.

A total of 72 general-round and 11 elimination-round hearings were conducted, with Lloyd Law College of India defeating the Université de Carthage of Tunisia in the final round. The final panel

comprised the United Nations Convention on Contracts for the International Sale of Goods (CISG) household names Professor Harry Flechtner and Professor Petra Butler, and was chaired by Mr. Mazen Ghosn, Partner at Alem & Associates.

Through the Middle East Vis Pre-Moot, BCDR aims to increase awareness of international commercial arbitration, to raise standards of advocacy, and, more widely, to consolidate the study and practice of international commercial law and arbitration in the Middle East. The Vis Pre-Moot will, therefore, always be an integral part of BCDR's mission, to help students to gain academic and practical knowledge of arbitration while building and sustaining a valuable network for their careers. More than 850 students have so far benefited from this unique formative experience.

BCDR is grateful to those who have supported the program in previous years and to those who continue to support it, locally, regionally, and internationally, whether by offering internships and cash prizes to distinguished students or volunteering their time to participate in the program.

BCDR Promotional Breakfast Meeting in Dubai

In May 2022, BCDR organized a breakfast meeting in Dubai as part of its regional tour to promote its wide-ranging services in the field of alternative dispute resolution and to provide an update on recent developments at the Chamber.

There were more than fifty attendees, including local and international lawyers, arbitrators, experts, in-house counsel, representatives of multinational companies, and governmental and private institutions.

Presentations were made by BCDR's CEO Professor Nassib G. Ziadé; BCDR Board members, Professor Jan Paulsson and Mr. Reza Mohtashami KC; independent arbitrators, Mr. Adrian Cole and Ms. Nadine Debbas Achkar; BCDR's Senior Case Manager, Mr. Salim S. Sleiman, and Case Manager, Ms. Fatima Al Zayed Al Jalahma.

In his opening remarks, Professor Ziadé described BCDR's structure and operations, including the different roles of the BCDR Court and BCDR's international arbitration and mediation wing, as set out earlier in this Report. He reported on the current volume of casework and on the adoption of the amended commercial arbitration rules and of the new dedicated sports arbitration rules, adding that new rules for the administration of *ad hoc* arbitrations and new rules to govern disputes in the field of Islamic finance were likely to be published by BCDR in the future.

He went on to report the importance attached by BCDR to its training and educational programs, with regular training sessions and workshops on arbitration and mediation and other world-class events on international arbitration. He recommended the Chamber's biannual law journal, the *BCDR International Arbitration Review*, which, he said, had become internationally accepted as a leading scholarly publication, with regular contributions from

highly regarded members of the international arbitration community.

Professor Ziadé also briefed attendees on BCDR's representation of the Kingdom of Bahrain at the United Nations Commission on International Trade Law (UNCITRAL) Working Group II meetings on Dispute Resolution on issues related to expedited arbitration, and Working Group III on Investor-State Dispute Settlement (ISDS) Reform, details of which appear later in this Report.

In closing, Professor Ziadé said that many factors contribute to the success of BCDR, including continued cooperation with other entities and institutions, saying that "success is achievable without having to vie with other arbitration institutions" and that "institutions can and do lend each other resources and expertise without damaging their respective business models."

Drawing on his experience as sole arbitrator in a BCDR arbitration of a dispute relating to a major infrastructure project in Bahrain, Mr. Cole explained how Article 6 of the BCDR rules had enabled the parties and the tribunal to agree on a fast-track and economical arbitration. The final award had been issued within 6 months of the claim being filed, despite diverse and complex issues having to be resolved.

Drawing on her experience as presiding arbitrator in a BCDR arbitration, Ms. Nadine Debbas Achkar discussed Articles 10 and 40 of the BCDR Rules, relating, respectively, to impartiality and confidentiality.

She noted the unusual detail of Article 10.2 with respect to prospective arbitrator interviews, in which matters that it is permitted to discuss during an interview are clearly stated, namely

(i) the general nature of the dispute (ii) the candidate's availability (iii) any conflicts of interest and (iv) with the written agreement of all parties, the suitability of candidates for nomination as presiding arbitrator. Ms. Debbas Achkar noted that this provision codified such soft law instruments as the Chartered Institute of Arbitrators' Guideline on Interviews for Prospective Arbitrators.

On confidentiality, Ms. Debbas Achkar noted surveys that have shown consistently that confidentiality in international commercial arbitration is of particular importance to parties, with a majority of respondents believing that confidentiality should be an opt-out, rather than an opt-in, provision. In this context, she noted that Article 40 of the BCDR Rules takes the scope of confidentiality obligations beyond parallel provisions in some other rules, to include confidential information disclosed during the arbitration by the parties or by witnesses.

Mr. Reza Mohtashami KC addressed Article 21 of the BCDR Rules on party representation, by which the addition of any new member of a party's team of counsel is subject to the approval of the tribunal, who may decline to approve if a conflict of interest would be created so as to jeopardize the composition of the tribunal or the integrity of the proceedings. Mr. Mohtashami considered this an important safeguard against the strategic appointment of counsel to delay or derail the proceedings. He went on to propose that the five standards of conduct expected by Article 21 of the parties' legal representatives play an important role in setting out the ground rules for the arbitration, managing the parties' expectations, and ensuring that there is a level playing field; particularly important when party representatives are from different jurisdictions with potentially divergent ethical obligations.

Mr. Mohtashami also addressed the summary procedure provisions of Article 18, in which BCDR has followed other arbitral institutions in adopting a mechanism for the speedy disposal of manifestly unmeritorious claims and defences. However, in contrast with some other institutions (notably ICSID and SIAC) which have confined their early dismissal procedures to

addressing claims or defences that are "manifestly without legal merit," the BCDR rules empower the tribunal to determine on a summary basis "any legal or factual issue" that may be material to the outcome of the arbitration.

Mr. Mohtashami said that tribunals should exercise caution in adopting summary procedures to determine contested issues of fact which may require the review of witness and documentary evidence, as this may raise due process concerns at the enforcement stage. This may be especially relevant in civil law jurisdictions that are unfamiliar with summary judgment and strike-out procedures that are a feature of procedure in common law jurisdictions. He noted that Article 16 of the BCDR Rules offers an alternative means of disposing of an issue at a preliminary stage of the proceedings by empowering the tribunal to make decisions on preliminary issues and to bifurcate the proceedings as part of the general duty to conduct the proceedings "with a view to expediting the resolution of the dispute, avoiding unnecessary delay and expense."

Ms. Fatema Al Zayed Al Jalahma addressed the use of electronic means in BCDR's arbitration proceedings, noting that BCDR's 2017 arbitration rules permitted the use of electronic means of communication to increase the efficiency and economy of the proceedings. Further, BCDR had issued recommendations and guidelines to arbitral tribunals and parties in the wake of the COVID-19 pandemic to encourage using electronic means whenever possible. Ms. Al Jalahma said that the 2022 BCDR Rules, in development at the time, would contain further express provisions on the use of electronic means in the interests of greater time and cost efficiency in the conduct of BCDR arbitrations.

Mr. Salim S. Sleiman presented an overview of BCDR's recently launched 2022 sports arbitration rules, explaining that these rules are largely based on the provisions of the BCDR 2017 arbitration rules, with the necessary adjustments to cater for the specific needs of efficiently resolving sports disputes. Details of the BCDR Sports Arbitration Rules appear earlier in this Report.

Professor Jan Paulsson delivered the closing remarks.



BCDR's CEO, Nassib G. Ziadé, speaking during the BCDR Promotional Breakfast Meeting in Dubai. Sitting from left to right are: Salim S. Sleiman, Reza Mohtashami, Jan Paulsson, Nassib G. Ziadé, Nadine Debbas Achkar, Adrian Cole and Fatema Al Zayed Al Jalahma

Roundtable Discussion on Bahrain as a Seat for Arbitration

In November 2022, BCDR hosted a roundtable discussion on the topic of “Bahrain – A Seat for International Commercial Arbitration.”

Attended by more than 30 representatives of both the public and private sectors, including the Head of the Supreme Judicial Council, in-house, transactional and arbitration lawyers, the discussions highlighted the positives of Bahrain as a seat of arbitration.

In his opening remarks, the Chief Justice of Bahrain, Shaikh Khalid bin Ali Al Khalifa, presented a brief overview of the steps taken by Bahrain over the past years to bring its legal framework in line with leading pro-arbitration jurisdictions.

As recently as early 2021, Bahrain had committed to a number of “access-to-justice” initiatives, at the heart of which lies a dispute resolution ecosystem focused on alternative dispute resolution, including arbitration and mediation. The Chief Justice then highlighted the pro-arbitration approach of the Bahraini judiciary and stressed the desire of the judiciary to be open and responsive in the dialogue around bolstering arbitration in Bahrain and Bahrain as a seat.

BCDR’s CEO, Nassib G. Ziadé, followed with some general remarks about the importance of the choice of the seat of arbitration, reminding the audience that the choice of a seat should be among the first decisions to be made by the disputing parties, the tribunal, or the administering institution, as the case may be. An arbitration-friendly seat is, he said, one that is equipped with a pro-arbitration legal framework with a modern international arbitration law providing the necessary framework for facilitating the fair resolution of disputes, and limiting court intervention in disputes that parties have agreed to resolve by arbitration.

Echoing the remarks of the Chief Justice, Professor Ziadé observed that an arbitration-friendly seat is one that also benefits from a judiciary supportive of arbitration, “where the relationship between private arbitration tribunals and public national courts would be a true partnership in which the courts support the arbitration process and respect its boundaries, while reserving for themselves the right to reasonably control its excesses.”

A pro-arbitration seat should also grant parties the option to be represented in an arbitration by representatives of their choice, whether from within or outside the seat. The seat should grant immunity for arbitrators and tribunal secretaries from liability for

acts carried out or omitted in good faith. Further, the country of the seat of arbitration should adhere to international treaties and agreements governing the recognition and enforcement of foreign arbitration agreements, orders and awards.

Apart from these legal considerations, Professor Ziadé stated that a seat of arbitration should be easily accessible and safe for parties, witnesses, counsel, and arbitrators, as well as free from unreasonable constraints. It should offer adequate facilities for the provision of support services, including transcription services, hearing rooms, management services and translation services.

He went on to say that the choice of a seat will entail legal consequences that are significant for the arbitral process, which will most likely be governed by the law of the seat. The choice of a seat will also entail consequences as to the finality of the award, including any right to challenge it in the courts of the place of arbitration. Any mandatory provisions of the seat of arbitration, as well as the rules governing the setting aside and the annulment, should, he said, be in conformity with international standards and international instruments, such as the widely adopted UNCITRAL Model Law on International Commercial Arbitration and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, currently ratified by more than 170 States.

Professor Ziadé then distinguished between the seat of arbitration and the venue of arbitration, noting that a pro-arbitration seat will not impose on parties or arbitrators the need to hold hearings or deliberate at the seat of arbitration.

He then considered all of this in the context of the existing legal framework in Bahrain, observing that Bahrain is party to numerous international instruments bolstering arbitration, not least the New York Convention, which Bahrain ratified in 1988. In 2015, Bahrain had passed Law No. 9 of 2015, adopting the UNCITRAL Model Law on International Commercial Arbitration as the law governing both domestic and international arbitration. Law No. 9 also grants immunity to arbitrators in relation to acts or omissions in the performance of their duties (except where these result from bad faith or gross mistake) and authorizes non-Bahraini lawyers to take part in international arbitrations seated in Bahrain. Law No. 9 further requires judges to have regard to the UNCITRAL Model Law’s international origin when interpreting its provisions and to the need to promote uniformity in its application and the observance of good faith.



A view of the attendees at the roundtable discussion

“GAR Live” Abu Dhabi

In January 2023, Global Arbitration Review (GAR) held its “GAR Live” conference in Abu Dhabi on the theme “Forecasting future disputes.” The conference was co-chaired by Alec Emmerson, independent arbitrator, and Lara Hammoud, Senior Legal Counsel, Abu Dhabi National Oil Company and independent arbitrator.

The introductory keynote address was given by Alexis Mourre, former President of the ICC International Court of Arbitration and founding partner of MGC Arbitration, on the topic of regular reforms of arbitration laws and regulations.

BCDR CEO, Professor Nassib G. Ziadé, was part of the opening panel on the topic “Where is arbitration in the Middle East heading?”. Chaired by Alec Emmerson, his co-panelists were Christian Alberti, Head of ADR, General Counsel, Saudi Centre for Commercial Arbitration (SCCA); Ali Al Hashimi, Managing Partner, Global Advocacy and Legal Counsel; Graham Lovett, member, Board of Directors and Arbitration Court of the Dubai International Arbitration Centre (DIAC).

The topics addressed by this panel were: the effects of changes to the SCCA rules and Saudi Court reforms; what has been/is likely to be the effect of the new DIAC rules and what lies in Dubai’s future; will ADGM become the Maxwell Chambers of the Middle East; is the Omani Centre gaining traction, and (Professor Ziadé’s topic) whither BCDR without AAA?

Addressing his topic, reflecting BCDR’s status as a well-established, well-respected and fully independent institution, Professor Ziadé remarked that when the decision had been taken to establish BCDR, the founders looked to a well-functioning, internationally recognized and “friendly” arbitral institution for tutorial support in its establishment.

A Memorandum of Understanding was concluded at the end of 2008 between the Bahraini Ministry of Justice and AAA by which AAA was to provide BCDR technical advice, administrative know-how, and training for staff, arbitrators and mediators. BCDR-AAA launched its operations in 2010, and there was extensive cooperation between AAA and BCDR in the early years.

By 2013, the BCDR had grown and matured, and from that time it maintained a high degree of independence from AAA in its day-to-day work. All case management decisions were taken by BCDR

alone and BCDR operated its budget fully independently. BCDR launched its arbitration journal in 2014 as the *BCDR International Arbitration Review*, recognizing that this publication was entirely independent of AAA. Since 2011, all BCDR training programs and Vis Pre-Moots have been organized by BCDR alone. And, looking outward, BCDR signed a cooperation agreement with the Permanent Court of Arbitration in 2013.

When BCDR reviewed its arbitration rules in 2015, the AAA’s then-new rules of 2014 were but one of many sources that were consulted by the BCDR drafting committee. The drafting committee also referred to the latest rules of leading international and regional arbitration institutions, as well as to the 2010 UNCITRAL Arbitration Rules. As a result, the rules embodied the best standards in international arbitration, while being suitably tailored to local and regional needs.

AAA in turn developed activities with other arbitration institutions in the region, while remaining a partner with BCDR. There was a mutual understanding that BCDR and AAA could each explore different avenues independently.

Throughout the years of partnership, the main involvement of AAA in the work of BCDR was through senior AAA representation on the BCDR Board of Trustees.

In 2021, BCDR was granted full administrative and financial autonomy by the Bahraini government. Reflecting this administrative autonomy and financial independence, the formal relationship between BCDR and AAA, on which the institution was founded, was brought to a most amicable close as of December 31, 2021, with the mutual agreement of both sides.

Nonetheless, BCDR and AAA agreed to maintain cooperative relations and BCDR acknowledged with warm thanks the important contributions of this relationship to the recognition of BCDR’s international standing, which is now fully established. The ongoing cordial and supportive relationship between the BCDR and the AAA is illustrated by the continued presence of the AAA-ICDR President as a valued member of the BCDR’s Board of Trustees.

ICCA Congress Edinburgh

BCDR participated in the twenty-fifth ICCA Congress hosted in Edinburgh in September 2022, after having been postponed for two years due to the Covid-19 pandemic. The opportunity to connect and reconnect in person was appreciated by all. BCDR was represented by its Chief Operating Officer and Chief Registrar, Mr. Ahmed Hussain, and Case Manager, Fatema Al Jalahma, who were pleased to welcome visitors to the BCDR booth.

Inspired by Scotland’s “age of enlightenment” of the 18th and early 19th centuries, the Congress adopted the theme ‘Arbitration’s Age of Enlightenment?’ and aimed to draw lessons from the past in seeking to counter the challenges that lie ahead for arbitration.

IBA Annual Conference Miami

As in previous years, BCDR was also present as an exhibitor and delegate at the IBA Annual Conference in Miami in October/November 2022. As with the ICCA Congress, the 2022 IBA Annual Conference marked a return to in-person meetings and was attended by more than 5,000 practitioners in law and related fields. In addition to promoting its complete range of ADR services and its scholarly law journal and other publications, BCDR was an active participant in the various sessions on international arbitration.

Judicial and Legal Studies Institute Training Programs

As part of its mission to engage with stakeholders, spread awareness and increase knowledge of international arbitration, BCDR regularly collaborates with the Bahraini Judicial and Legal Studies Institute to deliver conferences and training workshops to current and future judges and lawyers. In January 2022, BCDR's Chief Operating Officer and Chief Registrar, Ahmed Hussain, delivered a training workshop in Arabic to future judges on BCDR's jurisdiction, mission, and services. In October 2022, he lectured recently admitted lawyers on negotiation skills and the management of legal disputes, while BCDR Case Manager Fatema Al Jalahma lectured on managing and preserving clients' files.

Legislation and Legal Opinion Commission Lectures

BCDR's interaction with local stakeholders also extends to the Bahraini Legislation and Legal Opinion Commission. In February 2022, and as part of the Commission's "Legal Spotlights" series, Mr. Ahmed Hussain delivered a live online lecture to in-house counsel, lawyers and legal practitioners on "Dualities in Arbitration – Theory and Practice."

University of Bahrain Arbitration Day

BCDR is also an active supporter of local events aimed at promoting arbitration and alternative dispute settlement in Bahrain and the region. In January 2023, BCDR sponsored and participated in the University of Bahrain Arbitration Day, with Mr. Ahmed Hussain delivering a lecture to students and young lawyers comparing *ad hoc* to institutional arbitration in Bahrain and discussing some of the issues to be addressed when enforcing arbitral awards in Bahrain.

Sharm El Sheikh VIII Conference

BCDR was a Media Partner at the eighth edition of the Sharm El Sheikh series of Conferences on "The Role of State Courts in International Arbitration." These conferences have been organized biannually since 2005 in cooperation with the United Nations Commission on International Trade Law (UNCITRAL), the International Federation of Commercial Arbitration Institutions (IFCAI) and the Arab Union for International Arbitration (AUIA). This eighth edition was also co-organized with the Asian African Legal Consultative Organization (AALCO).

Professor Nassib G. Ziadé moderated the session on The Role of State Courts in Enforcing Arbitration Agreements with Judge Mohamed Abdel Meguid Ismail, Professor Nagla Nassar and Dr. Reinmar Wolff as panelists.





Shaikh Isa Bin Ali Al Khalifa house in Muharraq, Kingdom of Bahrain

VIII. THE BCDR INTERNATIONAL ARBITRATION REVIEW

Generally published biannually, and featuring content in both Arabic and English, the *BCDR International Arbitration 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.

Three volumes of the *Review* were published in 2022 – the second part of the issue on Conflicts of Interest in International Arbitration; the first part of the issue on Online Dispute Resolution; and an issue dedicated to Screening Arbitration Requests, and Early Dismissal of Claims. Work is under way on the second part of the online dispute resolution issue, and on issues dedicated, respectively, to sports arbitration and investor-state arbitration.

BCDR's CEO, Nassib G. Ziadé, is the founder of the *Review* and has been its general editor since the *Review's* inception. Judith Freedberg was the deputy general editor for the issues on conflicts of interest in international arbitration, online dispute resolution, and screening arbitration requests and dismissal of claims, with



Adrian Winstanley serving as consulting editor for the first two issues and Antonio R. Parra for the third one. Salim S. Sleiman served as deputy consulting editor for the issue on online dispute resolution.

The contributors to the three issues published in 2022, and the topics of their contributions, are as follows:

Conflicts of Interest in International Arbitration Part II (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 KC and Ruth Keating (*Different approaches to counsel conflicts of interest: moving towards a common duty*); Christopher Hancock KC 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*).

Online Dispute Resolution – Part I

Michael McIlwrath and Filippo Zuti Giachetti (*Changing the world, one procedural threat at a time: de-carbonising arbitration through procedural efficiency*); Ethan Katsh and Daniel Rainey (*The “cans,” “shoulds,” and “musts” in the new virtual arbitration environment*); Lorraine Medcraft, Sebastian Jenks and Damian Hickman (*Online dispute resolution: navigating the practicalities whilst maintaining security – and protecting the environment*); Morenike Obi-Farinde and Mirèze Philippe (*ODR – a solution for consumer disputes and cross-border e-commerce disputes*); Michael Arada Greenop, Abigail Thompson and Shadia Ajam (*The future for online dispute resolution: lessons from electronic platforms, national court systems and arbitral institutions*); Ronald A. Brand (*UNCITRAL, access to justice, and the future of online dispute resolution*); James Hosking and Marcel Engholm (*The central importance of the seat in online dispute resolution*); Sarah Chojeci and Sophie Nappert (*Evidence in international arbitration through the looking-glass of the digital economy*); Niuscha Bassiri and Pratyush Panjwani (*Cross-border enforcement of arbitral awards rendered in ODR*); and Federico Antich and Zachary Calo (*Professional ethics in online mediation*).

Screening Arbitration Requests, and Early Dismissal of Claims

Tara-Chloé Harb and Salim S. Sleiman (*Summary disposition in BCDR arbitrations*); Lisa M. Richman, Maria Cristina Rosales del Prado and Hilary Udow (*Early dismissal of claims under the 2020 LCIA arbitration rules*); Joe Liu (*A commentary to the HKIAC early determination procedure*); Johan Sidklev and Philip Mellberg (*Summary procedure under the SCC arbitration rules*); Dalia Hussein (*The Cairo Regional Centre for International Commercial Arbitration assessment of its prima facie jurisdiction: recent decisions*); Lindsay Gastrell (*Early dismissal at ICSID: the push for protection and the promise of efficiency*); Antonio R. Parra (*Some thoughts on the screening power of the ICSID secretary-general*); Ana Lombardía Villalba (*Early disposition mechanisms in the ICDR and AAA commercial arbitration rules*); Andrea Carlevaris and Rocío Digón (*Decisions by the ICC Court allowing arbitrations to proceed*); Christoffer Coello Hedberg, Peter Barna & Antonin Sobek (*Prima facie jurisdiction under the DIAC arbitration rules 2022*); Brooks Daly and Anhad S. Miglani (*Prima facie decisions on jurisdiction under the UNCITRAL arbitration rules: the experience of the Permanent Court of Arbitration*).

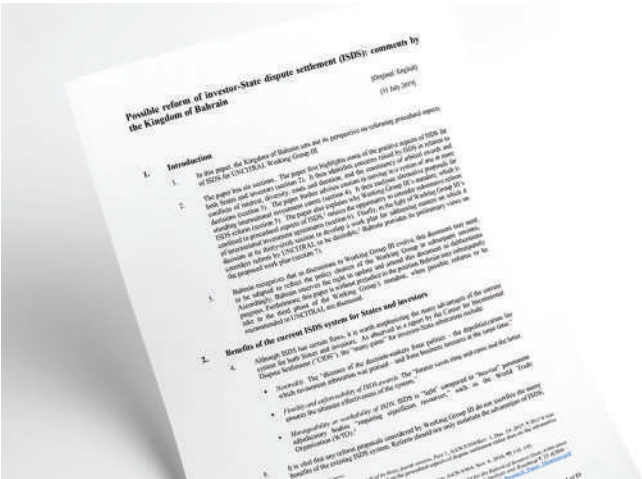
IX. UNCITRAL

UNCITRAL Working Group II on Dispute Settlement

UNCITRAL Working Group II, on which Bahrain continues to play an active and prominent role, 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.

UNCITRAL Working Group III on Investor-State Dispute Settlement (ISDS) Reform



Since 2018, BCDR has headed Bahrain’s delegation to the UNCITRAL Working Group III on Investor-State Dispute Settlement (ISDS) Reform. This Working Group is mandated to identify procedural concerns in current ISDS practice and procedure and to consider whether and if so, what reforms would be desirable in the light of any identified shortcomings.

In this capacity, BCDR has recently offered comments on the initial draft prepared by the UNCITRAL Secretariat of Note on mediation and other forms of alternative dispute resolution and draft guidelines for parties in investor-State mediation. The draft note outlines the potential involvement of the UNCITRAL Secretariat in improved mediation rules, model clauses on mediation for investment treaties, and guidelines for the effective use of mediation in settling investor-State disputes.

In its official comments filed on 6 January 2022, Bahrain observed that, as there already exist sets of investment

mediation rules, the focus of the Working Group should be on the development of model clauses and guidelines. Three options for model treaty clauses on mediation were put forward in the draft note: option 1 simply referring to mediation as an available means for settling disputes; option 2 embodying an undertaking at least to attempt mediation, and option 3 providing for mandatory mediation. Bahrain noted that while option 3 departs from the voluntary nature of mediation, it may be the most conducive for the use of mediation in ISDS proceedings.

Bahrain cautioned, however, that where one of the disputing parties is reluctant to engage meaningfully with the mediation process, any mandatory mediation period under option 3 could be misused to prevent the more diligent party from referring the dispute to another ISDS method prior to the expiry of the prescribed period. The mandatory mediation period would then effectively be operating as another cooling-off period. To avoid such a scenario, BCDR recommended on behalf of Bahrain that future versions of option 3 allow a party to refer the dispute to another ISDS method if (i) a party fails to participate meaningfully in the mediation process during the prescribed period, or (ii) following a written declaration of the mediator that further efforts at mediation would not, in his or her opinion, contribute to the settlement of the dispute.

Bahrain encouraged the UNCITRAL Secretariat to provide, in future drafts and to the extent possible, estimates of the current number of investor-State mediations, and proposed that the Secretariat not to limit itself to the study of mediation but also consider the use of conciliation in the ISDS context.



A view of Manama skyline, Kingdom of Bahrain

X. WHITELISTING OF BCDR IN GAR GUIDE TO REGIONAL ARBITRATION 2022

As previously reported in the BCDR Biennial Report for the years 2020 and 2021, on 1 July 2021, the achievements and standing of BCDR were recognized at a virtual Awards Ceremony by the influential and widely read arbitration journal, *Global Arbitration Review* (GAR), in an award for the 2021 regional arbitration institution that impressed.

Since receiving this award, the GAR Guide to Regional Arbitration for 2022 has added BCDR as one of only two arbitration institutions in Africa and the Middle East to its “White List.”

BCDR is honored to have received this distinction in recognition of the progress that it has made since its foundation 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.

XI. CONCLUDING REMARKS

The wheels of the commercial world continued to turn throughout the COVID-19 pandemic and dispute resolution providers that lubricate the cogs of industry – BCDR among them – rose to the challenge of maintaining and even enhancing their services. Necessity has, indeed, proved to be the mother of invention in this field.

Whilst physical hearings will always have an important place in commercial arbitration, domestic and international, and in treaty arbitration, virtual and hybrid hearings have become commonplace along with the almost universal adoption of electronic means of communications. And this is the moment when established and reputable regional arbitration centres like BCDR can and should be coming into their own for their cost and efficiency advantages combined with lean, agile and responsive administration provided by experienced and expert secretariats.

BCDR is proud to have been at the forefront of innovation during this period, with its amended and enhanced commercial arbitration rules, its entirely new sports arbitration rules, the further modernizing and internationalizing of the BCDR Court, its active and effective participation in the important mission of the UNCITRAL Working Groups, and its steady flow of information, scholarly publications and guidelines for all those involved in the field, whether academically or in practice.

BCDR continues, therefore, to place itself at the service of the business and legal communities by providing always current, relevant, accessible and cost-effective services. And BCDR continues not only to listen to users and potential users of its services, but to hear and act upon what these have to say. BCDR will also continue to provide excellence in the field of education and to work to this end with academics, practitioners, and other institutions. By these means, BCDR remains committed to validating its position as a leading Middle East arbitral institution.





A view inside Riffa fort, Riffa, Kingdom of Bahrain

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