

THE HISTORIC SET UP OF THE NEW BAHRAIN CHAMBER FOR DISPUTE RESOLUTION

25 January 2010

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INTRODUCTION

On 11 January 2010, the Kingdom of Bahrain inaugurated the Bahrain Chamber of Dispute Resolution (BCDR) pursuant to Legislative Decree No. (30) of 2009 with respect to the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution issued on 29 June 2009 (the 'Law').

This new joint venture between Bahrain's Ministry of Justice and the American Arbitration Association (AAA) is indeed a significant development for the region's businesses in the way in which certain commercial disputes will be dealt with and resolved in Bahrain. The main features of the Law are summarized below.

THE LAW ESTABLISHES BAHRAIN AS AN ARBITRATION "FREE ZONE"

The BCDR can determine disputes under any system of law depending on the agreement of the parties in dispute. The parties will have the flexibility to agree to a choice of law that is, in their view, neutral and relevant to the subject matter of the dispute. In the absence of such agreement, the Bahraini law will apply in a statutory arbitration (described below) and, in a consensual arbitration, the BCDR tribunal will determine the law most applicable to the dispute.

The award of the BCDR will be deemed final and binding as if made by the courts of Bahrain, and the award can only be challenged at the Cassation Court of Bahrain on limited and specific grounds.

If parties were dissatisfied with an aspect of arbitration, the laws' of the countries in which the parties are based will determine whether their domestic courts will have jurisdiction to settle an international dispute filed before them where there is an arbitration and foreign jurisdiction agreement between the parties.

This, and the successful party's ability to enforce the arbitration award in the other party's country, will depend on whether their respective countries where they are based are party to the UN Convention on the Recognition of Foreign Arbitral Awards (known as the "New York Convention") or other agreements, and recognize and enforce arbitration awards between them.

THE LAW GIVES BCDR STATUTORY JURISDICTION

Cases of commercial nature involving an international party (i.e. non-Bahraini) or involving a financial party licensed by the Central Bank of Bahrain (CBB), in which the value of the claim exceeds BD 0.5 million (approximately US\$ 1.3 million), shall now be automatically referred to the BCDR whose award will be final and binding.

An additional feature of the Law is that it grants non-Bahraini lawyers the right to appear on behalf of their clients in arbitration proceedings in the Kingdom of Bahrain. In a statutory arbitration (described above), any non-Bahraini lawyers must be accompanied by a Bahraini lawyer before the BCDR tribunal.

CONCLUSION

The BCDR rules will be based on the AAA's International Center for Dispute Resolution (ICDR) and will underpin how the arbitration is administered. The ICDR Rules are well-known, tested and are of

international standard, but the BCDR is still a work in progress and its impact on Bahrain's legal and business environment is to be seen.

The Law aims to enable Bahrain to set itself up as a truly international arbitration centre where parties anywhere in the world can bring their disputes and be confident they will be dealt with in a way that is recognized in the rest of the world and is at the highest level.