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Law

Business

Research

Introduction Gerhard Wegen and Stephan Wilske <i>Gleiss Lutz</i>	4
The new Bahrain Arbitration Law and the Bahrain 'Free Arbitration Zone' John Townsend <i>Bahrain Chamber for Dispute Resolution</i>	6
CAS Bernd Ehle and Guillaume Tattevin <i>Lalive</i>	10
CEAC Eckart Brödermann and Justus Jansen <i>Brödermann & Jahn Rechtsanwalts-gesellschaft mbH</i>	14
DIS Renate Dendorfer <i>Heussen Rechtsanwalts-gesellschaft mbH</i>	18
ICC José Rosell and María Beatriz Burghetto <i>Hughes Hubbard & Reed LLP</i>	22
ICDR Richard C Lorenzo <i>Hogan & Hartson LLP</i>	26
LCIA Colin Y C Ong <i>Dr Colin Ong Legal Services, Advocates & Solicitors</i>	30
The Swiss Chambers of Commerce Matthias Scherer and Domitille Baizeau <i>Lalive</i>	33
Argentina Pablo Manili <i>Martelli Abogados</i>	36
Austria Christian Hausmaninger and Michael Herzer <i>Hausmaninger Kletter Attorneys at Law</i>	43
Belarus Maryia Yahorava <i>Arzinger & Partner</i>	50
Bermuda Kiernan Bell <i>Appleby</i>	56
Brazil Maurício de Almeida Prado, Adriana Braghetta, Silvia Julio Bueno de Miranda and Cristina Saiz Jabardo <i>L O Baptista Advogados Associados</i>	62
Bulgaria Lazar Tomov and Sylvia Steeva <i>Tomov & Tomov</i>	68
Cayman Islands Jeremy Walton and Chris Easdon <i>Appleby</i>	74
China Brenda Horrigan, Felix Hess and Jeff Xu <i>Salans LLP</i>	81
Colombia Germán Marín <i>Cavelier Abogados</i>	88
Czech Republic Alexander J Bělohávek <i>Law Offices Bělohávek</i>	95
Denmark Niels Schiersing <i>Nordia Advokatfirma</i>	101
Dominican Republic Marcos Peña Rodríguez and Laura Medina Acosta <i>Jiménez Cruz Peña</i>	108
Egypt Tarek F Riad <i>Kosheri, Rashed & Riad</i>	115
England & Wales George Burn and Smeetesh Kakkad <i>Salans LLP</i>	120
Finland Petteri Uoti and Eva Storskrubb <i>Dittmar & Indrenius</i>	129
France Tim Portwood <i>Bredin Prat</i>	135
Germany Stephan Wilske and Claudia Krapfl <i>Gleiss Lutz</i>	144
Greece Stelios H Gregoriou <i>Gregoriou & Associates Law Offices</i>	151
India Shreyas Jayasimha <i>AZB & Partners</i>	158
Israel Eric S Sherby <i>Sherby & Co, AdvS</i>	167
Japan Shinji Kusakabe <i>Anderson Mōri & Tomotsune</i>	174
Kazakhstan Yuliya Mitrofanskaya and Bakhyt Tukulov <i>Salans LLP</i>	181
Kenya Esther Kinyenje and Cosima Wetende <i>Kaplan & Stratton Advocates</i>	188
Korea Byung-Chol Yoon, Jun Hee Kim and Kyo-Hwa (Liz) Chung <i>Kim & Chang</i>	194
Latvia Aivis Dzenis <i>Skrastiņš & Dzenis</i>	201
Lebanon Abdel Hamid El Ahdab <i>Ahdab Law Firm</i>	208
Lithuania Ramūnas Audzevičius, Tomas Samulevičius and Mantas Juozaitis <i>Motieka & Audzevičius</i>	216
Malaysia Ooi Huey Miin <i>HM Ooi Associates</i>	223
Mauritius Gilbert Noel <i>Appleby</i>	<i>Please see www.gettingthedealthrough.com</i>
Mexico Darío U Oscós <i>Oscós Abogados</i>	231
Morocco Azzedine Kettani <i>Kettani Law Firm</i>	239
Netherlands Nathan O'Malley and Thabiso van den Bosch <i>Conway & Partners, Advocaten & Attorneys-at-law</i>	246
Nigeria George Etomi, Efeomo Olotu and Ivie Omorhirhi <i>George Etomi & Partners</i>	253
Poland Justyna Szpara and Paweł Chojecki <i>Łaszczuk & Partners</i>	261
Portugal Carlos Aguiar and Vanessa dos Santos <i>Carlos Aguiar, Ferreira de Lima & Associados, RL</i>	268
Qatar Chadia El Meouchi, Karen Malek and Grace Alam <i>Badri and Salim El Meouchi Law Firm LLP</i>	274
Romania Adrian Roseti and Claudia Hutina <i>Drakopoulos Law Firm</i>	283
Russia Dmitry Kurochkin <i>Herbert Smith CIS LLP / Marcel Barth Gleiss Lutz</i>	289
South Africa Tania Siciliano <i>Bell Dewar</i>	297
Spain Calvin A Hamilton, Luis Capiel, Gabriela M Torres, Alina Bondarenko and Guillermo Cano Guerrero <i>Hamilton Abogados</i>	304
Sudan Mohamed Ibrahim M Adam <i>Dr Adam & Associates</i>	310
Sweden Eric M Runesson and Simon Arvmyren <i>Sandart & Partners</i>	317
Switzerland Thomas Rohner and Nadja Kubat Erk <i>Pestalozzi</i>	323
Tanzania Karel Daele <i>Mkono & Co Advocates</i>	330
Thailand Sally Veronica Mouhim and Kornkieat Chunhakasikarn <i>Tilleke & Gibbins International Ltd</i>	335
Turkey Ismail G Esin <i>Esin Law Firm</i>	343
Ukraine Tatyana Slipachuk <i>Vasil Kisil & Partners, Attorneys & Counsellors at Law</i>	350
United Arab Emirates Habib Al Mulla, Karim Nassif and Gordon Blanke <i>Habib Al Mulla & Co</i>	359
United States Daniel E González and Richard C Lorenzo <i>Hogan & Hartson LLP</i>	367
Venezuela Ramón J Alvins Santi and Pedro Saghy <i>Despacho de Abogados miembros de Macleod Dixon SC</i>	376

ICDR

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What is the International Centre for Dispute Resolution?

The International Centre for Dispute Resolution (ICDR) is the international division of the American Arbitration Association (AAA), and as such, is in charge of the exclusive administration of all international matters of the AAA. It was established in 1996 in furtherance of the AAA's vision of becoming 'the global leader in conflict management built on integrity, committed to innovation and embracing the highest standards of client service achievable in every undertaking'. The ICDR's aim was, and continues to be, to provide the same high-quality alternative dispute resolution services available in the United States to individuals and organisations around the globe.

The headquarters of the ICDR are located in New York City; however, the increase in multinational cases and the emergence of the ICDR as one of the most important forums for the resolution of international business disputes has led the ICDR to accept invitations from local host governments and business communities to establish additional offices outside the United States. In May 2001, the ICDR opened a European office in Dublin to better serve the growing number of parties from Europe, the Middle East and Africa; in February 2006, the ICDR opened an office in Mexico City through a joint venture with the Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce to handle dispute resolution services in Latin America; and in 2007, the ICDR opened its Singapore office through a joint venture with the Singapore International Arbitration Centre to enhance Singapore's standing as a premier centre for international commercial arbitration. The International Centre for Dispute Resolution has closed its Dublin office after nine years, saying that Mark Appel's peripatetic existence means it can do without a 'bricks and mortar' office to handle cases from Europe, the Middle East and Africa.

In addition, the ICDR has carried out its commitment to promote arbitration and alternative dispute resolution mechanisms throughout the world through the execution of other cooperative agreements with more than 60 arbitral institutions in 43 countries (see General information on the American Arbitration Association and the International Centre for Dispute Resolution, available at www.adr.org/about; www.adr.org/about_icdr).

The relevance, in practical terms, of these inter-association cooperation agreements and the establishment of offices around the globe, is the ability of ICDR parties to file and hear arbitration matters almost anywhere. These factors reinforce the ICDR's reach as a premier global conflict management provider.

In April 2003, a cooperative agreement was executed with the Inter-American Bar Association (IABA), the first cooperative agreement with an organisation that is not an arbitral institution. Both institutions agreed to promote international commercial arbitration within their shared geographic territory. In addition, the IABA assists the ICDR in the development and maintenance of its well-regarded international arbitrators and panel of mediators.

Dispute resolution proceedings are administered by the ICDR under a specific set of rules, better known as the International

Arbitration Rules of the AAA (see International Arbitration Rules of the AAA, available at www.adr.org/sp.asp?id=33994). Although the AAA has developed its own sets of rules for such matters as commercial arbitration, when parties to an international dispute have agreed to submit their controversies to the AAA without designating a particular set of rules, the ICDR will apply the International Arbitration Rules. While an exhaustive description of the ICDR arbitration system cannot be provided here, this overview highlights particular distinctive procedural aspects of arbitration under the International Arbitration Rules of the AAA.

The multilingual professionals that comprise the ICDR and administer ICDR disputes account for a major part of its success, as they are prepared to administer cases under the International Arbitration Rules and Commercial Arbitration Rules of the AAA, the UNCITRAL Arbitration Rules, the Inter-American Commercial Arbitration Commission Rules, and the Commercial Arbitration and Mediation Centre.

The expertise of the ICDR in the administration of international arbitrations has been well recognised throughout the years for its ability to move matters forward, facilitate communications, control costs, ensure the appointment of qualified arbitrators, understand cultural sensitivities, resolve procedural impasses, and properly interpret and apply its International Arbitration Rules.

What is the International Centre for Dispute Resolution of the American Arbitration Association?

The ICDR is not an independent entity, but rather the international arm of the AAA. The AAA is a not-for-profit organisation founded in 1926, following the enactment of the United States Federal Arbitration Act, with the specific goal of helping to implement arbitration as an out-of-court solution for the resolution of disputes (see AAA Mission and Principles, available at www.adr.org/aaa_mission).

Almost immediately after its formation, the AAA worked to establish the first true national arbitration system. It institutionalised arbitration by providing a central administrative organisation, facilities for research and education, and a national system of tribunals within a non-profit, non-aligned and non-political framework.

The AAA's official mission and vision statements are based on three core values: integrity, conflict management and service. It has a core dedication to service and education, and to the development and widespread use of prompt, effective and economical methods of dispute resolution. Since 1926, the AAA has served parties seeking alternative dispute resolution (ADR) outside the path of litigation. The bylaws of the AAA provide, as follows:

The objectives of the Association are, for the benefit and education of the general public and interested parties, to study, research, promote, establish, and administer procedures for the resolution of disputes of all kinds through the use of arbitration, mediation, conciliation, negotiation, democratic elections, and other voluntary procedures [...]

(See Public Service at the American Arbitration Association, available at www.adr.org/si.asp?id=3448.)

Since its inception, the AAA has grown into one of the leading organisations of its kind. It has distinguished itself for its commitment to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training and innovative process knowledge in order to meet the conflict management and dispute resolution needs of the public now and in the future.

Moreover, with the establishment of the ICDR in 1996, the AAA consolidated its position as one of the central links between the United States and the international ADR community.

Specific characteristics of ICDR arbitration

Despite sharing common procedural characteristics with other arbitral institutions, there are certain aspects of an arbitration pursuant to the International Arbitration Rules of the ICDR that set it apart from the others.

Once a case is filed under the International Arbitration Rules of the ICDR, case managers fluent in the relevant languages and experienced in the complexities of arbitration matters are assigned to keep parties updated on the progress of their cases and to assist in resolving these cases expeditiously. Similar to other arbitral institutions, the ICDR and its case managers only administer the arbitration process; they do not determine the merits of the case. The ICDR maintains a worldwide panel of over 600 independent arbitrators and mediators to hear and resolve cases.

Case administrators assist in selecting arbitrators after consultation with the parties in cases where the parties have not been able to agree on a procedure for the appointment of arbitrators or have not directly designated arbitrators. These arbitrators are selected from a Roster of Neutrals provided by the ICDR. The International Arbitration Rules also provide for an expedited procedure in which a sole arbitrator is appointed within a short time and is empowered to grant provisional measures.

ICDR case administrators set the arbitrators' fees in agreement with the parties and the arbitrators, based on the arbitrators' typical rate of compensation and the size and complexity of the case. The ICDR's administrative fees are based on the amount in dispute.

The current International Arbitration Rules of the AAA have been in force since 1 June 2009 and are available at www.adr.org.

Roster of Neutrals

The Roster of Neutrals distinguishes the AAA and the ICDR from other arbitration organisations. Arbitrators on the Roster of Neutrals are independent, impartial decision-makers that have been selected for their knowledge, case experience, neutrality, integrity, and dispute resolution skills, through a very detailed screening process. The Roster of Neutrals provided by the AAA includes approximately 8,500 arbitrators and is divided into various panels. These include, for example, the Labor Panel, the No-Fault Insurance Panel and the International Panel (see India Johnson, senior vice president of the AAA, *Reality vs. Myth: The Truth About Management of the AAA Commercial Roster*, available at www.adr.org/si.asp?id=3523).

The International Panel, which serves the ICDR, maintains a roster of over 600 independent arbitrators and mediators who hear and resolve cases worldwide. It is composed of highly regarded business and legal professionals who specialise in international dispute resolution. The ICDR staff and external review committees screen candidates for their case management skills, substantive expertise, commitment, ethics, training and suitability for the caseload. International Panel members must have at least 15 years of senior-level business or professional experience and must have achieved academic and professional honours that mark them as leaders in their respective fields (see Qualification Criteria for Admittance to the ICDR International Roster of Neutrals, available at www.adr.org/si.asp?id=4495).

Once a case is brought before the ICDR, the case management staff prepares a specific arbitrator list based on criteria provided by the parties and their counsels. The ICDR staff is very familiar with the Roster members. These neutrals are analysed according to geographic area, subject-matter expertise, and caseload type. A computerised database helps the staff further refine its search for potential arbitrators. Once the list is prepared, the parties can numerically rank the proposed arbitrators and a final panel is then selected.

To maintain a dynamic and diverse panel, some arbitrators are rotated off the Roster and others are recruited for specific needs on a periodic basis. Openings on the International Panel are based primarily on caseload needs, national diversity and party preferences.

The arbitrators who serve on the International Panel are held to the highest ethical standards and are bound by the Code of Ethics for Arbitrators in Commercial Disputes, a set of rules that was prepared by a joint committee of the AAA and the American Bar Association (in addition to any additional local standards that may apply). When an arbitrator is selected from a list of potential neutrals, the arbitrator is required to disclose the existence of any interests or relationships that are likely to affect impartiality or that might reasonably create an appearance of bias in favour or against one party. Where the ICDR appoints an arbitrator, a party can make factual objections to that arbitrator. An arbitrator appointed by the parties has the same disclosure obligations as a listed arbitrator. The ICDR also provides mandatory training to ensure competency, quality case management, and knowledge of the rules and due process standards.

Appointment of emergency arbitrators

The ultimate success of an arbitration and usefulness of an arbitral award may depend to a great extent on whether a party can obtain interim relief at an early stage of the arbitration. Historically, problems have arisen when interim relief was sought when a case was filed, or at any time prior to the appointment of the arbitrators. In those circumstances, typically the only option available to the parties was recourse to the local courts within the relevant jurisdiction. This could have adverse consequences, such as unavailability of the relief sought and lengthy court proceedings.

To address these concerns, in 1999 the AAA created the Optional Rules for Emergency Measures of Protection, which provides for the appointment of a special arbitrator for the specific purpose of deciding a request for interim relief prior to the constitution of the arbitral tribunal. These optional rules, however, have to be affirmatively agreed upon by the parties in their arbitration agreement and, therefore, they were not frequently used. Thus, in May 2006, the ICDR added article 37 to the International Arbitration Rules, incorporating an emergency arbitrator procedure as an integral part of the rules, applicable unless the parties expressly agree otherwise. Article 37 is designed to function as an effective alternative to seeking pre-arbitration emergency relief in court (see Guillaume Lemenez and Paul Quigley, *The ICDR's emergency arbitrator procedure in action. Part II: Enforcing Emergency Arbitrator Decisions*, available at www.adr.org/si.asp?id=5598).

A party must ensure that two preconditions are satisfied before submitting a request for emergency relief under article 37. First, a request may not be made until a demand for arbitration has been filed pursuant to article 2 of the ICDR Rules (emergency applications filed after the appointment of the tribunal are addressed by the tribunal itself under Article 23 of the International Arbitration Rules). Second, the request must indicate 'the nature of the relief sought and the reasons why such relief is required on an emergency basis', and 'the reasons why the party is entitled to such relief.'

The emergency arbitrator is appointed from a list of qualified emergency arbitrators, based on expertise and immediate availability, within one business day of the receipt of an application for emergency relief. For the avoidance of any conflicts of interest, the ICDR provides the emergency arbitrator with a list of persons involved in the arbitration so that the arbitrator can determine whether he or she

has any conflicts that require disclosure. The emergency arbitrator is subject to the same obligations of impartiality and independence as arbitrators appointed to resolve the merits of the case.

The scope of the emergency arbitrator's powers is broad, as he or she can grant 'any interim or conservancy measure the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property'. The power of the emergency arbitrator ends when the arbitral tribunal is appointed. Once the arbitral tribunal is appointed, the tribunal may reconsider, modify or vacate the emergency arbitrator's interim award or order.

There is no filing fee specifically associated with an application for emergency relief with the ICDR. The arbitrator's fee is fixed at an hourly rate agreed upon by the emergency arbitrator, the ICDR, and the parties. The fee and expenses of the emergency arbitrator must be paid by the parties.

Since the inclusion of the provision in the International Arbitration Rules of the AAA in May 2006, until February 2010, 13 pre-arbitration applications for emergency relief were filed with the ICDR under article 37 (see Guillaume Lemenez and Paul Quigley, *The ICDR's emergency arbitrator procedure in action. Part I: A look at the empirical data*, available at www.adr.org/si.asp?id=5597). These applications resulted in effective and efficient interim relief procedures.

Confidentiality

Both ICDR arbitrators and administrators are under an ethical obligation to keep information about their cases confidential. This obligation is contained in article 34 of the rules. The ICDR takes no position, however, on whether parties to an arbitration should keep the proceeding and award confidential. The parties are free to disclose details of the proceeding, unless they have a separate confidentiality agreement. Where public governmental entities are involved in the resolution of disputes and enforcement of awards, these public agencies routinely make the award public.

Control of costs

Parties who opt for international arbitration are often concerned with the time and costs required to pursue cases to conclusion. As such, the ICDR has taken systematic steps to address the issue of costs, and to ensure a simpler, less expensive and more expeditious form of dispute resolution. In 2008, the ICDR issued the ICDR Guidelines for Arbitrators Concerning Exchanges of Information, which place an affirmative obligation on arbitrators serving under its rules to manage proceedings to a speedy and economic conclusion (see ICDR guidelines for arbitrators concerning exchanges of information, available at www.adr.org/si.asp?id=5288). These guidelines also grant authority to direct the presentation of evidence, limit or deny cumulative or repetitive evidence, and otherwise manage the proceedings as efficiently as possible, while affording parties an adequate opportunity to be heard.

The ICDR carefully monitors all expenses and offers mediation where possible (see American Arbitration Association, President's Letter and Financial Statements 2008, available at www.adr.org/si.asp?id=5849). The ICDR offers a refund schedule should the parties settle their matter in mediation. The ICDR also provides a streamlined arbitral process that can be filed online, based on documentary evidence, before a sole arbitrator.

The ICDR conducts continuous staff training programmes, and requires status reports and timeline compliance from ICDR case managers to ensure efficient case administration. Parties to ICDR proceedings can typically expect an initiation letter within two days of filing their demand for arbitration. Arbitrators are generally appointed within 60 days, and the first procedural hearing is held within 120 days. In 2007, the average time from filing to award in ICDR-administered international arbitrations was 353 days.

Other rules and procedures administered by the ICDR

Commercial Arbitration and Mediation Center for the Americas (CAMCA)

The AAA, the British Columbia International Commercial Arbitration Centre, the Mexico City National Chamber of Commerce and the Quebec National and International Commercial Arbitration Centre joined together in 1995 to announce the formation of the Commercial Arbitration and Mediation Center for the Americas (CAMCA), the first international dispute resolution centre founded to resolve private, cross-border commercial disputes relating to the North American Free Trade Agreement (NAFTA). The four organisations signed a cooperative agreement to operate CAMCA as an impartial educational and administrative international forum. A 12-member CAMCA Governing Council, comprising four representatives from each of the three NAFTA countries, was created to oversee the rules, fees and procedures for CAMCA (see CAMCA Mediation and Arbitration Rules, available at www.adr.org/sp.asp?id=22092). The Governing Council also supervises the multinational roster of neutrals, and education and training programmes for neutrals and members of the business and legal communities regarding the various dispute resolution procedures and facilities provided by CAMCA.

Cases under these rules may be filed with any of their offices, and as the international arm of the AAA, the ICDR handles these disputes.

Inter-American Commercial Arbitration Commission (IACAC)

In 2003, an alliance was formed between the Inter-American Commercial Arbitration Commission (IACAC) and the ICDR to work together to promote the use of alternative dispute resolution in the Western Hemisphere (see Luis M Martinez, 'Are We There Yet?', *The Arbitration Review Of The Americas 2009*, available at www.globalarbitrationreview.com/reviews/13/sections/49/chapters/494/are-yet). This agreement calls for the ICDR, in conjunction with IACAC's Office of the Director General, to administer all of IACAC's cases at the ICDR's international administrative facilities in New York (see Inter-American Commercial Arbitration Commission Rules, available at www.adr.org/sp.asp?id=22093). This was a major step forward, since the ICDR had previously administered only those IACAC arbitrations filed in the United States.

UNCITRAL Arbitration Rules

The ICDR, as the international division of the AAA, also acts as the appointing authority and provides administrative services to parties in international cases under the UNCITRAL Arbitration Rules (see Procedures for Cases under the UNCITRAL Arbitration Rules, available at www.adr.org/sp.asp?id=22091). An important advantage to having global offices, is that these administrative services can be provided by the ICDR both within and outside the United States.

For purposes of handling these arbitration cases, the AAA issued the booklet 'Procedures for Cases under the UNCITRAL Arbitration Rules', effective as of August 1996.

Case statistics from the ICDR show a significant rise in international cases from 2006 to the present: 586 cases in 2006 to 621 cases in 2007; for European, Middle Eastern and African parties the case numbers were 207 in 2006 and 244 in 2007 (see Public Service at the American Arbitration Association, available at www.adr.org/si.asp?id=3448). More recently, there was a 49 per cent increase in international cases filed with the ICDR up to August 2009 compared with the same period in 2008. This is a clear demonstration of the perceived value that arbitral institutions like the ICDR offer to international business development.

To stay relevant, arbitral institutions must safeguard the traditional commercial arbitration values of fair and affordable justice.

At the same time, these institutions must develop and implement innovative processes that address real business needs. This has been a focus of the ICDR throughout the years. The ICDR has been keeping step with developing economies through its offices in Mexico and Singapore (see Public Service at the American Arbitration Association, available at www.adr.org/si.asp?id=3448). As a result, the ICDR is now closer to markets in key development regions and is positioned as a truly global resource and the leader in the field of international arbitration.

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