INTERNATIONAL ARBITRATION

Multiparty Arbitration Under ICC Rules

by Christopher R. Seppala and Daniel Gogek, Esqs.

Traditional standard arbitration clauses—including the ICC's—presuppose a dispute between two parties and do not address the issues raised by multiparty disputes. Yet many firms entering multiparty joint ventures or consortiums continue to use the traditional form. Christopher R. Seppala and Daniel Gogek comment on just such a multiparty dispute, which involved ICC arbitration, and the Paris Court of Appeal's decision in the case.

Traditionally, standard arbitration clauses and rules of arbitration have been drafted upon the assumption that any arbitration of a dispute would be between a single claimant and a single defendant.

Thus the Rules of Arbitration of the International Chamber of Commerce (the ICC Rules) generally presuppose a dispute between a "claimant" and a "defendant" and, where the dispute is substantial (over $1 million), the ICC International Court of Arbitration (the ICC Court) will ordinarily, unless the parties otherwise agree, fix the number of arbitrators at three: the claimant will nominate one arbitrator, the defendant another, and, unless the parties otherwise agree, the Chairman will be designated by the ICC Court. To our knowledge, the ICC Court has rarely, if ever, constituted a tribunal with more than three arbitrators.

The reality of modern business life, however, is that many types of contracts are multiparty in nature—that is, between more than two parties. For instance, joint ventures or consortia of contractors for international construction projects often comprise three or more parties—such as the consortia of English and French contractors for the construction of the Channel Tunnel.

Moreover, a substantial number of multiparty contracts in turn provide for the settlement of disputes by arbitration, as is roughly indicated by the number of multiparty disputes submitted to arbitration. According to the ICC, approximately 21 percent of the Requests for Arbitration submitted to the ICC Court between 1984 and 1988 involved three or more parties.

Nevertheless, when entering into a multiparty contract, many parties tend to use an arbitration clause in the traditional form (such as the standard ICC arbitration clause), which does not expressly address how disputes are to be resolved in such a context. For example, in the case of a multiparty contract:

- If one party wishes to initiate arbitration against the other two, must it commence a single arbitration proceeding against both or a separate proceeding against each one?

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SAUDI ARABIA, UNITED STATES

Foreign Representatives: Saudi Law And The FCPA

Part I: The Triad-Northrup Dispute And Saudi Law

by Thomas W. Hill, Jr., Esq.

The Triad-Northrup dispute involved commissions Triad claimed Northrup owed it for securing Saudi contracts under the U.S. Foreign Military Sales program; Northrup said Saudi law prohibited paying such commissions. The dispute, which went first to arbitration, then to a U.S. District Court, and finally to the U.S. Ninth Circuit Court of Appeals, raised important issues of Saudi law on the permitted use of agents and other representatives in the Kingdom. Thomas W. Hill, Jr. begins a two-part series by examining these issues, including such questions as which types of representation are prohibited for certain transactions; what is meant by arms, armaments and related services; the source of the intermediary's compensation; and whether the relevant Saudi legislation is intended to confer extraterritorial jurisdiction.

The second article will explore how the U.S. Foreign Corrupt Practices Act and its recent amendment have affected American contractors' transactions and relationships of the kind involved in ***Triad*** in the light of applicable Saudi law.

No American company operating abroad and using foreign representatives is unaware of the strictures imposed by the U.S. Foreign Corrupt Practices Act (FCPA).[1] While the FCPA has significantly deterred American companies from exploiting business opportunities abroad, it is highly questionable whether the criminal portions of the Act have accomplished their intended purpose. At the same time, many foreign countries—both U.S. competitors and prospective customers—object strenuously when the United States seeks to export its laws by extending their reach not only to U.S. nationals doing business abroad, but also to foreign nationals as well.[2]

America's major business competitors rarely attempt to impose their domestic criminal laws regulating business conduct on the extraterritorial activities of their nationals. Generally, they take the position that their nationals ought to obey the laws of the foreign jurisdictions in which they are doing business,[3] and that it is unwise and unproductive to burden their nationals with the baggage of domestic law that may or may not be compatible with local circumstances.

The host countries, particularly the less-developed nations, are ambivalent toward the use of local representatives and having their nationals—whether directly or indirectly involved in government—participate in trans-

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[26]*Northrup Corporation* v. *Triad International Marketing, S.A.*, 881 F.2d 1265 (9th Cir. 1987).
[27]*Id.* at 1269.
[28]*Id.* at 1270.
[29]*Alghanim* v. *Boeing Company*, 477 F.2d 143 (9th Cir. 1973).
[30]*Northrup Corporation* v. *Triad International Marketing, S.A.*, 881 F.2d 1265, 1270 (9th Cir. 1987).
[31]Triad Record at 75.
[32]*Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 940 (C.D. Cal. 1984).
[33]Royal Decree No. M/2 of 1978 (Service Agents Regulations); Council of Ministers Decision No. 1275 of 1975; Royal Decree No. M/6, Art. 2 (1966) (Tender Regulations), *repealed by* Royal Decree M/14 of 1977. But see Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 476 n.8 (1979); Regulations for Combatting Bribery, Royal Decree No. 38, 22 Shawwal 1377 (May 11, 1958).
[34]Royal Decree M/11 of 1962, amended by Royal Decree M/5 of 1969; Royal Decree M/8 of 1973; Royal Decree 32 of 1986 and Ministry of Commerce Order 1897 of 1981.
[35]Commercial Agencies Implementing Rules, Minister of Commerce Resolution No. 1897, Art. 1 (1981).
[36]Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 415, 477 (1979).
[37]Royal Decree No. M/6, Art. 2 (1966).
[38]High Order No. 32, Art. 30
[39]*Id.* Art. 31.
[40]Lerrick & Mian, *Saudi Business and Labor Law*, 101 (Graham & Trotman, 1982). But see Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 476 n.8 (1979).
[41]Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law.* 475, 476 (1979).
[42]*Id.* at 475-6.
[43]See Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 485 (1979); Shamma & Morrison, "The Use of Local Representatives in Saudi Arabia," 11 *Int'l. Law*, 453, 461-3 (1977).
[44]*Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938-9 (C.D. Cal. 1984).
[45]Triad Record at 937-8, 939-40. S. Rep. No. 114, 95th Cong., 1st Sess. (1977); H.R. Rep. No. 640, 95th Cong., 1st Sess. (1977).
[46]Triad Record at 941-2; Witherspoon, "Multinational Corporations—Government Regulation of Business Ethics Under the Foreign Corrupt Practices Act of 1977: An Analysis," 87 *Dick L. Rev.* 531-533 (1983).
[47]Triad Record at 70.
[48]Regulations for Combatting Bribery, Royal Decree No. 38, 22 Shawwal 1377 (May 11, 1958).
[49]Royal Decree M/2 of 1978.
[50]Lerrick & Mian, *Saudi Business and Labor Law*, 125-6 (Graham & Trotman, 1982).
[51]Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 479 (1979).
[52]Royal Decree M/2 of 1978, Art. 10.
[53]Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 477 (1979).
[54]*Id.* at 475.
[55]*Id.* at 481.
[56]*Id.* at 484.
[57]*Id.* at 482.
[58]*Id.* at 482.
[59]*Triad Financial Establishment* v. *The Tumpane Company*, 611 F. Supp. 157, 163 (N.D.N.Y. 1985).
[60]*Id.* at 165.
[61]*Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938 n. 15 (C.D. Cal. 1984). See Triad Record at 596.
[62]Homsy, "Legal Aspects of Doing Business in Saudi Arabia," 16 *Int'l. Law* 51, 59 n. 64 (1982); Taylor, "Alternative Legal Structures for Doing Business in Saudi Arabia: Distributorship, Agency, Branch, Joint Venture and Professional Office," 12 *Case W. Res.* 77, 81 (Winter 1980); Triad Record at 574.
[63]See Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law* 475, 476 n. 7 (1979); Triad Record at 600-2.
[64]Al Anwar (Beirut, Lebanon, November 28, 1975); Triad Record at 594, 596.
[65]Triad Record at 931, 935, 937, 939, 950. See also *Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938-9 (C.D. Cal. 1984).
[66]Triad Record at 571, 610.
[67]Triad Record at 530-5. But see *Triad Financial Establishment* v. *The Tumpane Company*, 611 F. Supp. 157, 165 (N.D.N.Y. 1985).
[68]10 U.S.C. Sec. 2301, 32 C.F.R. 179 (7-1-86 Ed.).
[69]Ballantyne, *Commercial Law in The Arab Middle East: The Gulf States* 5 (1986); Ballantyne, *Legal Development in Arabia* 103-4 (1980).
[70]Triad Record at 444, 814-834. But see Lerrick & Mian, *Saudi Business & Labor Law*, 97-8 (Graham & Trotman, 1982).
[71]See Triad Record at 444-5.
[72]See Triad Record at 932-3, 935-6, 937-8; *Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938 n. 15 (C.D. Cal. 1984).
[73]See Triad Record at 66.
[74]Royal Decree No. M/2 of 1978.
[75]Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law.* 475, 477 (1979).
[76]*Id.* at 482.
[77]Lerrick & Mian, *Saudi Business & Labor Law*, 102 (Graham & Trotman, 1982).
[78]Triad Record at 931, 935, 937, 939.
[79]Communiqué of Council of Ministers, Official Gazette No. 2664 (February 25, 1977).
[80]But see Lerrick & Mian, *Saudi Business and Labor Law*, 138 (Graham & Trotman, 1982).
[81]Royal Decree No. M/2 of 1978.
[82]The Decision contains no sanctions other than a reduction in the contract price paid the foreign contractor by the Saudi government measured by the prohibited commissions.
[83]Royal Decree No. M/6 of 1966.
[84]Circular No. 9818/4/1 (7/8/1388), cited in Shamma & Morrison, "The Use of Local Representatives in Saudi Arabia," 11 *Int'l Law* 453, 461 n.28 (1979).
[85]Regulations for Combatting Bribery, Royal Decree No. 38, 22 Shawwal 1377 (May 11, 1958).
[86]Triad Record at 41, 931-53.
[87]*Id.* at 89.
[88]*Id.* at 931, 935, 939.
[89]*Id.* at 950.
[90]*Id.* at 931, 934.
[91]*Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938 n. 15 (C.D. Cal. 1984).
[92]*Id.* at 932, 938.
[93]*Triad Financial Establishment* v. *The Tumpane Company*, 611 F. Supp. 157, 165 (D.C.N.Y. 1985) (the court relied, in a summary judgment proceeding,on the District Court decision in *Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928 (C.D. Cal. 1984), without having before it the full record in that case).
[94]Triad Record at 948-9.
[95]See generally Lerrick & Mian, *Saudi Business and Labor Law* (Graham & Trotman, 1982); Shamma & Morrison, "The Use of Local Representatives in Saudi Arabia," 11 *Int'l. Law* 453 (1977); Cartwright & Hamza, "The Saudi Arabian Service Agents Regulation," 34 *Bus. Law.* 475 (1979); Cartwright & Hamza, "Service Agents Regulation and Related Laws Affecting Foreign Companies in Saudi Arabia," 17 *Int'l. Law* 203 (1983).
[96]*Northrup Corporation* v. *Triad Financial Establishment*, 593 F. Supp. 928, 938 (C.D. Cal. 1984).
[97]Triad Record at 18, 294.
[98]Triad Record at 630-1.
[99]Royal Decree M/11 of 1962, amended by Royal Decree M/5 of 1965; Royal Decree M/8 of 1973; Royal Decree 32 of 1986 and Ministry of Commerce Order 1897 of 1981.

INTERNATIONAL ARBITRATION

Multiparty Arbitration

(Continued from page 8)

- If it must commence a single proceeding against both, does each of the defendants have the right to nominate its own arbitrator or must the two of them make a joint nomination?
- If they must make a joint nomination and cannot agree on one, is the arbitral institution, or the appointing authority concerned, authorized to appoint one on their behalf?
- Does it make any difference whether the two defen-

dants have conflicting interests (for example, claims against each other)?

These issues, which are just some that may arise in a multiparty dispute, are not expressly addressed either in the standard ICC arbitration clause (which provides that "All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules") or in the ICC Rules to which it refers.

A recent decision of the Court of Appeal of Paris is of interest because it indicates how, in the case of a dispute among three parties to the same contract, the French courts will interpret an arbitration clause (similar to the standard ICC arbitration clause) that does not expressly provide for multiparty arbitration.

The decision is also significant in view of the influential role of the Paris Court of Appeal in the development of international arbitration law, both in France and abroad: the ICC headquarters is in Paris, and a large number of ICC awards are subject to review by the Paris Court of Appeal.

The Dutco Case—Background

In *BKMI Industrieanlagen GmbH et al v. Dutco Construction*, First Chamber, May 5, 1989 (Rev. Arb. 1989, 723), BKMI Industrieanlagen GmbH (West Germany), had entered into a contract in 1981 with Raysut Cement Corporation (Sultanate of Oman) pursuant to which BKMI agreed to construct a cement plant for Raysut in Oman on a turnkey basis.

Thereafter, BKMI entered into a consortium agreement with two other corporations, Siemens AG and Dutco Construction Company, Ltd., for the execution of the construction contract. Under the consortium agreement, Siemens and Dutco were BKMI's silent partners. BKMI was the leader of the consortium and was, alone, bound directly to Raysut. The consortium agreement contained a clause providing for the settlement of "all" disputes by ICC arbitration. The clause apparently was similar, though not identical, to the standard ICC arbitration clause.

In 1986, Dutco commenced an ICC arbitration against both BKMI and Siemens, pursuant to the consortium agreement, alleging that they had breached their obligations thereunder and asserting a separate financial claim against each of them. BKMI and Siemens challenged the validity of this proceeding, asserting that Dutco should have commenced two separate ICC arbitrations against BKMI and Siemens, respectively, instead of a single proceeding against both companies. A separate proceeding against each company would, among other things, have enabled each to nominate its own arbitrator.

Under the ICC Rules, when a party raises an objection to the ICC's jurisdiction, the ICC Court must decide *prima facie* whether an arbitration agreement exists. If it decides that one does exist, the ICC Court orders the arbitration to proceed, leaving it to the arbitrators to decide definitively the question of jurisdiction.

The ICC Court rejected *prima facie* the defendants' jurisdictional challenge and requested them to nominate jointly an arbitrator, failing which the ICC Court would normally appoint one on their behalf. Thereafter, an arbitral tribunal was constituted, consisting of an arbitrator nominated by the claimant, Dutco, an arbitrator nominated—under protest and without prejudice—by BKMI and Siemens jointly, and a Chairman appointed by the ICC Court in accordance with the ICC Rules.

Partial Award On Jurisdiction

On May 19, 1988, the arbitral tribunal rendered a partial award upholding the tribunal's jurisdiction and finding that

(1) the arbitration proceeding had been properly commenced and should continue in the form of a multiparty arbitration proceeding against the two defendants, and

(2) the arbitral tribunal had been properly constituted.

With respect to point (1), the arbitral tribunal stated that the central question was as follows (translation):

> whether the three parties to the "horizontal" consortium agreement (BKMI, DUTCO, SIEMENS) had, in agreeing to the [ICC] arbitral clause, the common intention of submitting any dispute among themselves to a multiparty arbitration in which the three corporations would be opposed within the framework of a single arbitration proceeding.

For purposes of interpreting the arbitration clause, the tribunal found that it was not bound to refer to any particular national law (the rules of contract interpretation being, according to the tribunal, similar under the national laws that could be applicable). It also observed that the ICC Rules do not contain any rule excluding multiparty arbitration. On this basis, the arbitral tribunal found that the parties had accepted the possibility of a single multiparty arbitration proceeding (against the two defendants) and had the common intention to submit disputes, if any, thereto because:

(i) the arbitral clause in question referred to the ICC Rules without specifically excluding the possibility of a multiparty arbitration, and

(ii) from the consortium agreement one could deduce various "close and multiple ties or bonds" which, according to the tribunal, invested the agreement with a true "spirit of consortium" that included "an implicit agreement on the possibility of a multiparty proceeding" among the members thereof.

The arbitral tribunal then examined point (2), namely whether it had been properly constituted, deciding that it had been, because:

- under Article 2(4) of the ICC Rules, which provides that

> [w]here the dispute is to be referred to three arbitrators, *each party* shall nominate in the Request for Arbitration and the Answer thereto respectively one arbitrator for confirmation by the Court (emphasis added)

"each party" must be interpreted in these circumstances as referring to one or more claimants, or one or more defendants, as the case may be, since the right of each party to choose "its arbitrator" is not an absolute one but admits certain exceptions such as an implicit waiver by the parties;

- the constitution of the arbitral tribunal in this case had not given rise to any manifest unfairness (*"déséquilibre manifeste"*);
- the principle of equal treatment of the parties had not been violated; and
- there had been no violation of French internal or international public policy.

The arbitral tribunal's partial award was by no means a foregone conclusion. In a parallel case involving some of the same parties, the same arbitration clause and the same construction project, a different ICC arbitral tribunal apparently found that no implied consent to multiparty arbitration had existed.

The Paris Court Of Appeal's Decision

BKMI and Siemens requested the Paris Court of Appeal to annul the arbitral tribunal's partial award on jurisdiction on the basis of two grounds for the annulment of awards rendered in international arbitration provided for by the French New Code of Civil Procedure, namely, (i) where French international public policy has been violated (Article 1502(5)), and (ii) where the arbitral tribunal has been improperly constituted (Article 1502(2)). BKMI and Siemens alleged, among other things, that:

(a) by the institution of a multiparty arbitration, the contractual basis for arbitration had been disregarded as Dutco's claims against BKMI and Siemens were distinct and unrelated, and the parties' agreement, of which the ICC Rules were a part, showed no intention to submit to a multiparty arbitration, and

(b) the principles of equal treatment of the parties and respect for their rights of defense had been violated because each defendant had been deprived of the right to nominate its own arbitrator and to organize freely its own defense in light of its own interests, which, the defendants alleged, differed from the other's.

The Court of Appeal upheld the award in favor of Dutco, rejecting both grounds for annulment, as follows:

Whether French International Public Policy Had Been Violated (Article 1502(5))

The Court of Appeal began by noting that (translation):

> the submission of a multilateral dispute to a single arbitration tribunal can result only from the common intention of the parties, whether express or tacit *but unequivocal on this issue*, and must assure respect for the principles of equal treatment of the parties and the free exercise of their rights of defense. (Emphasis added.)

The Court then noted that the arbitration clause concerned provided for the resolution of disputes by three arbitrators [not by "one or more arbitrators," as provided for in the standard ICC arbitration clause]. Then, with regard to the issue of the interpretation of the arbitration clause, the Court, proceeding more by way of assertion (in our view) than reasoned argument, stated as follows (translation):

> Considering that this [arbitration] agreement, integrated into the contract binding the three companies together in a consortium, expresses without ambiguity the common will of the parties to this same contract to submit to an arbitral tribunal of three arbitrators "all disputes" resulting from their contract, from which it must be inferred, from the multiparty character of the contract itself—with the foreseeable possibility of disputes among the three partners—that the parties have admitted the possibility of having a single arbitral tribunal composed of three arbitrators to decide a dispute among the three parties, along with the adjustments that such a situation would impose regarding the choice of arbitrators by the parties and the organization of the proceeding.

Thus in concluding that the parties had agreed implicitly to a multiparty arbitration, the Court found the following points important:

1. the arbitral clause provided expressly for three arbitrators, thereby necessarily implying under the ICC Rules that, in a dispute among all three parties, two of them would have to jointly nominate an arbitrator or have one appointed on their behalf,
2. the multiparty character of the contract itself, with the foreseeable possibility of disputes among all three parties, and
3. the specific requirement in the arbitration clause that "all disputes" be submitted to arbitration.

The Court interpreted Article 2(4) of the ICC Rules (quoted above) as meaning that the three parties accepted that, in an appropriate case, the two arbitrators to be nominated under the ICC Rules by each of the parties—"the claimant" and "the defendant"—be nominated one by the claimant or claimants and the other by the defendant or defendants.

The Court added that on the facts in this case involving three parties to the same contract, the Court's interpretation was the only one that could give full effect to the arbitral clause.

Whether The Arbitral Tribunal Had Been Improperly Constituted (Article 1502(2))

The Court stated that the constitution of the arbitral tribunal did not violate any principle of French international public policy as concerned (1) the equal treatment of the parties, or (2) their rights of defense.

Regarding the principle of the equal treatment of the parties, the Court stated that (translation):

> the arbitration clause, such as agreed to by the parties having common interests, authorized the existence among them of a single dispute procedure and could place two of them under the obligation to choose a single arbitrator having their mutual confidence—which the reality of arbitration practice permitted them to do—except that, in the case of disagreement, they could have recourse to the arbitral institution chosen by them in order to set in motion the subordinate means of appointing arbitrators provided for by its rules.

As to whether there had been a violation of the defendants' rights of defense, the Court stated that (translation):

> the choice of a single arbitrator by the two defendants resulted from their situation of obligated association ["*consorité obligée*"]—a reflection of their contractual partnership—and was not of such a character as to give rise to any restriction on their liberty to organize their defense, the arbitrator being, once nominated—and in this case confirmed by the arbitral institution in conformity with its rules—fully invested with the power to judge, [being] released thereby from the contractual domain to rise to the status of judge, necessarily exclusive of any dependence on the parties, the independence from which constitutes the guarantee of the strict equality of the parties in the conduct of the proceeding.

Here the Court notes correctly that the impact of the loss of the right to choose an arbitrator on a party's defense rights is limited since, under ICC and French practice, a

party-nominated arbitrator is expected to be and remain independent of the party who nominated him.

Arbitral Clauses In Multiparty Contracts Still Need To Be Carefully Drafted

If left standing, the Court of Appeal's decision will promote multiparty arbitrations under the ICC rules. By the decision, an arbitral clause providing for ICC arbitration was interpreted to allow for multiparty arbitration although it contained no express provision therefor. Similarly, the ICC's current practice of requiring multiple defendants to agree jointly on a single arbitrator, failing which the ICC Court will appoint one on their behalf, received a measure of sanction from the Court. On the other hand, the particular wording of the arbitral clause at issue (the requirement of three arbitrators and the reference to "all disputes") was clearly a factor in the Court's decision.

The Court of Appeal's decision has been appealed to the *Cour de Cassation*, France's highest court for such matters, and is vulnerable to attack on one ground. The claimant, Dutco, had been entirely free to nominate its own arbitrator whereas the defendants, as we have seen, had either to make a joint nomination or have an arbitrator appointed on their behalf by the ICC Court. Neither defendant had the freedom to nominate an arbitrator, a freedom that the claimant enjoyed.

Where defendants cannot agree on a joint nomination, or can only concur in one under protest, reserving their rights, as was the case here, it would be fairer, and certainly more "equal," for the ICC Court to appoint an arbitrator on behalf of the claimant, as well as one on behalf of the defendants.

Being first to the courthouse should not entitle a claimant to greater rights in the nomination of an arbitrator than each defendant. Possibly, the defendants' case might have been still stronger had they refused to make joint nomination at all. But they did so under protest reserving their position, and it should make no difference, in principle, whether parties refuse to make a joint nomination or make a joint nomination under protest reserving their position. In either case, they will have recorded their objection for appellate review. Accordingly, the *Cour de Cassation* could take a different position from the Court of Appeal, especially as it tends to be more cautious in promoting international arbitration than the Paris Court of Appeal.

Regardless of how this case is ultimately decided, until there are standard arbitration clauses and rules of arbitration that address satisfactorily the issues raised by multiparty disputes, there is no substitute for the careful drafting on a case-by-case basis of arbitral clauses in multiparty contracts.

Unless parties clearly express their intentions as to how such disputes are to be resolved, they will be inviting subsequent litigation of this issue.

UNITED ARAB EMIRATES

Federal Industries Law Enforcement

by Gary R. Feulner, Esq.

The Ministry of Finance and Industry stated in a press release late in January that it intends to monitor and ensure compliance with Federal Law No. 1 of 1979, the Federal Industries Law, and requested all industrial facilities and their owners to assist in this regard.

Among other things, the Federal Industries Law requires that all industrial projects be licensed by the Ministry and be at least 51 percent owned by U.A.E. nationals. The Ministry has asked noncomplying industrial facilities to regularize their status and has indicated that it is willing to cooperate with them in effecting any necessary adjustments. The Ministry's press statement specifically emphasized its authority under Article 36 of the Federal Industries Law to impose fines of Dh 10,000 to Dh 100,000 and also to shut down unlicensed industrial activities.

The Ministry has requested licensing authorities in the individual emirates to consult with it before issuing local licenses for industrial projects. To date, however, many industrial facilities have been licensed locally without federal approval. Nevertheless, federal licensing has been essential for industrial facilities that wish to take advantage of customs exemptions for exports to other member states of the Gulf Cooperation Council since the approval of the Ministry of Finance and Industry is necessary for issuance of the requisite certificate of origin (which is issued by the Ministry of Economy and Commerce). A federal license is also required for textile facilities that wish to participate in the visa system now in effect for exports of ready-made garments to the United States.

As for the licensing of new industrial projects, the Ministry has indicated that it intends to activate the Industrial Advisory Committee provided for under the Federal Industries Law. That committee is to be chaired by the Minister of Finance and Industry and include the Undersecretaries of the Ministries of Economy and Commerce, Finance and Industry, Planning, Labor and Social Affairs, Petroleum and Mineral Resources, and Electricity and Water, as well as two private businessmen to be nominated by the Federation of U.A.E. Chambers of Commerce and Industry. The Committee is charged with decisions on licensing applications, but like all decisions of the Committee, these must be approved by the Minister of Finance and Industry.

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