As Saudi Arabia's great construction era begins to ebb, and as many large and long-term construction contracts are being completed, it is natural that attention is being focused on the inevitable claims between employer and contractor and the method of resolution of such claims.

The employer for most of the Kingdom's major projects is the government and, with rare exception, all government contracts stipulate that, failing an attempt by the parties to settle their differences amicably, the parties must resort to the Kingdom's Grievance Board which is a judicial tribunal established in 1955 by Royal Decree. A typical government contract provision for settlement of disputes might read as follows:

Any dispute or claim which the Parties are unable to resolve within a reasonable time shall be referred to the Grievance Board of the Kingdom for final determination, and the Contractor hereby consents to the exclusive jurisdiction of the Grievance Board for the purpose of final determination of any dispute or claim arising hereunder, binding both Parties finally.

Some contracts provide:

The losing Party shall bear all the resultant fees and costs, incurred in this respect, and, in the event that either Party is entitled to proportional right in such dispute, then each Party shall bear the proportional fees as decided by the Grievance Board.

The climate today is favourable for a fair and systematic judicial review process before the Board, due both to amendments to the Grievance Board regulations and changes in the authority of employers to solve contractual disputes.

Before discussing the actual adjudication of claims, some background must be provided on administrative contracts in Saudi Arabia.

The Grievance Board was originally established to have exclusive jurisdiction over administrative contracts. Administrative contracts generally are defined as contracts concluded by a legal person under public law during that person's term of management of any public utility, i.e., a government ministry or agency. Such contracts are characterised by provisions which are for the most part unknown in private sector contracts.

Article 8(1)(d) of the new Grievance Board regulations, which took effect 28 May 1983, gives the Board jurisdiction over all "suits presented by those concerned in disputes relating to contracts to which the government and a juridical person is a
party". Thus, we can say that, for Saudi judicial purposes, an administrative contract is any contract to which the government is a party.

Inasmuch as one of the parties to the administrative contract is the government, in principle the government has an advantage over the contractor—indeed this is the very nature of an administrative contract and is reflected in the conditions of contract. The government prevails for two major reasons: to realise the public interest and to insure the uninterrupted continuation of public works. However, it is also true that the Saudi Tenders Regulations (Royal Decree M/14) impose equilibrium for both parties. The contractor, for example, is entitled by Article 9 to extensions of time in respect of change orders and additional work ordered by the employer and restrictions are placed on the delay penalties which can be imposed on the contractor, especially if the government employer, despite delays, can utilise all or part of the project.

Moreover the Tenders Regulations and their implementing regulations establish procedures to tender and negotiate contracts and to select tenderers on the basis of prequalification, financial and other criteria. The government, with few exceptions, is bound by these procedures. Article 10 of the Tenders Regulations, while officially not yet implemented, provides for a standard form contract for all government projects—the contract to preserve the rights of both parties. Article 10 adds, however, that notwithstanding the lack of a standard form document, the rights of both parties are to be safeguarded in all contracts concluded with the government.

As to the actual role of the Grievance Board, this is best understood in the context of the history of grievance authorities in Islamic jurisdictions.

In Islamic jurisprudence, which is applicable in the Kingdom, the grievance authority is considered to be a judicial authority higher than that of the ordinary judge. A trial of grievance is not conditional upon a complaint being filed or proceedings being instituted by the plaintiff or aggrieved person; the grievance authority was able to institute a trial upon the mere cognisance of a grievance. The grievance court also had jurisdiction if the grievance judge came to know an injustice had been inflicted by a governor, for example, on another person, if a governor had imposed illegal taxes on the people in his territory or if an influential person wrongfully appropriated a person’s property. Generally, these were matters related to the trial of the representatives of the Sultan and their deputies.

Thus, the individual in the Islamic state found, besides the ordinary judge, a higher authority which had jurisdiction to consider grievances brought by individuals against rulers, princes and high officials of the state. This authority has been a substantial feature of the legal systems of Islamic jurisdictions in accordance with the historical development of the Muslim societies until culminating in modern times in the formation of the Grievance Board of Saudi Arabia.

With respect to submitting claims to the modern Grievance Board of Saudi Arabia, a common practice (based on Article 29 of the Tender Regulations, which provides that the contractor may not refuse to perform the contract on the grounds that the administrative authority had failed to fulfil its commitments), has been for the contractor to file a claim only after completion of the works, absorbing whatever losses occurred along the way.

Contractors, in line with the contract’s requirement that disputes be settled