The Al-Kharafi award brings to light a previously unexploited investment treaty, the Unified Agreement for the Investment of Arab Capital in the Arab States (UAIACAS) (entered into force on 7 September 1981). All 22 members of the League of Arab States are parties to the UAIACAS, and have ratified it with the exception of Algeria and the Comoros. Article 25 UAIACAS provides that ‘[d]isputes arising from the application of this Agreement shall be settled by way of conciliation or arbitration or by recourse to the Arab Investment Court, (AIC).’ If an attempt at conciliation fails, the parties may agree to settle the dispute through arbitration, and if the parties fail to agree on the resolution of the dispute through arbitration, the dispute can be taken to the AIC.1 The AIC, although established as an organ of the UAIACAS,2 has its own Statute, which entered into force in 1985 and is operational since 2003 when the AIC first entertained a Saudi Arabian investor’s claim against Tunisia.3 The procedure for arbitration is provided in the Annex to UAIACAS.4

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1 Arts 25–27 UAIACAS.
2 Arts 28–36 UAIACAS.
3 Tanmiah v Tunisia, Arab Investment Court 1/1 Q (Investment Claims IIC 238 (2006).
4 Art 26 UAIACAS.
In the present case, the Claimant initiated arbitration proceedings under Article 2 of the Annex. The dispute related to a Kuwaiti investor’s lease over a piece of land granted by the Libyan Tourism Development Authority (LTDA) for the purpose of establishing a tourism investment project (p. 4, para. 2). Another matter in dispute related to the licence and approval granted to the Claimant by the Libyan Ministry of Tourism (LMT) for the establishment of touristic development project in Tripoli area. The Libyan authorities subsequently terminated both the license and the lease contract allegedly because the Claimant did not transfer 10 per cent of the investment value to its bank accounts in Libya to demonstrate the Claimant’s financial strength to carry out the project, and failed meet the agreed deadline for completion of parts of the project. The lease contract contained an arbitration clause allowing disputes ‘arising from the interpretation or performance’ of the contract to be settled through arbitration under the UAIACAS. There was no dispute settlement clause in the license.

The parties had agreed that both Libyan law and UAIACAS were applicable to the dispute (p. 3; p. 171, para. 15-1-4), which raised questions regarding the relationship between the UAIACAS, the lease contract, and the Libyan domestic law. In principle, the Tribunal found that the lease contract was a protected investment under both the UAIACAS and Libyan law, and the Respondents were liable for the breach of the lease contract for failing to hand over the plot of land to the Claimant free of occupancies (pp. 387 and 388). More precisely, the Tribunal found that: 1) it was competent to decide on its own competence and on the scope of the arbitration clause in the lease contract as well as on the claim for compensation for several heads of damages arising from the breach of lease contract; 2) the LTDA’s and other Libyan government entities’ acts were attributable to the State of Libya; 3) the UAIACAS was an integral part of Libyan law and overrode any contradictory provisions of domestic law; and 4) Libya was liable to compensate the Claimant for direct damages, moral damages, lost profits resulting from real and certain lost opportunities and interest (pp. 387 to 392). The Tribunal’s views on different provisions of the UAIACAS and their interaction with the arbitration agreement between the disputing parties and with the domestic laws of the host State will have implications for future disputes brought under the UAIACAS, in particular the award of damages for estimated lost profits for the period of 83 years for an investment project which never crossed its planning phase.

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In 2006, the Claimant acquired the approval and a license from the LMT and concluded a contract with LTDA for the lease of a plot of land for a period of