

## **KUWAIT ARBITRATION LAWS**

**The relevant by virtue of Law No. 11 of 1995,  
organizing Ministerial Resolutions and the Civil & Commercial Procedure,  
Code No. 38 of 1980**

### **INTRODUCTION**

Arbitration is a word most of the populace i.e. the commoners or prominent people of expertise think that it is a new expression in this modern age, it is a word, term and system known by Islam almost 1400 years ago.

it is mentioned in the Holy Qura'n thus it was known by Arabs Pre- Islamic era. Moreover, the ancient Muslims had practiced arbitration in a large scale as a successful means of settling all types of dispute questions.

Most of the world countries have today realized the importance of this system for certain types of disputes, which are characterized by the nature of this era.

The development of international and domestic business operations in the current century relates to the increasing requirement of Arbitration as a way of dispute settlement. Consequently, it has become a prominent feature of both domestic and international business transactions.

The desire of dealers to be liberated as far as possible, from the restrictions imposed by laws, rules and regulations to an extent urging a prompt settlement of disputes in general, specially those of a commercial nature which are to be settled within a minimum possible time for the stability of the legal positions among the dispute parties with the least possible process service, publicity and a simplified procedure, all of which properly engulf the dispute tightly within a stream framework, has considerably participated in diffusion and spread out of arbitration, in addition to the availability of professional experts highly specialized who shall be entrusted with settling those critical disputes of complicated features, and characteristics generally comprising civil and commercial dealings, particularly the international transactions and operations which are related to technical affairs, customs, usage's and terms, have necessitated the existence of highly technical specialization and professional experts to realize the relevant purport and reveal the size of dispute connection with the extent of pertinent effect on the right of the litigant parties. Such experts shall be nominated by the dispute parties concerned, who shall also accept the verdicts arbitrations and awards rendered in respect of the dispute under settlement.

However the State of Kuwait has realized these facts a long time ago. Thus it has been keenly desirous to reflect the significant importance of this system in order to be included in Kuwait legislations and laws, so that the awards rendered by arbitrators shall be confirmed and recognized by the judiciary in accordance with certain rules and procedure. Consequently the legislations governing voluntary arbitration and judicial (compulsory) arbitration were promulgated.

The first judicial arbitration duly provided for in Kuwait legislations comprise the stipulation of Article 39 of the Amiri Decree No. 19 of 1959. Thenceforth it was followed by the legislations concerned with covering the said system.

In view of the considerable importance of that the said system and its growing role in Kuwait legislations, the law No. 11 of 1995, governing the Judicial Arbitration on Civil and Commercial Articles was promulgated. The Ministry of Justice has constantly described and shed light on the provisions of this law, reflecting its true image to all parties and individuals concerned with that system together with others that are governed by its provisions. Moreover, the Ministry hereof hopes that these legislations shall be developed constantly and appropriately enhanced in order to cover the international field and keep pace with the requirements of this era for the purpose of business booming, specially the foreign trade and international relations, so as to realize its expected objectives and targets.

*May Almighty Allah grant us success.*

**JUDICIAL ARBITRATION DEPARTMENT.**

**CIVIL AND COMMERCIAL PROCEDURE CODE  
NO. 38 OF 1980**

**CHAPTER TWELVE  
ARBITRATION**

**ARTICLE (173)**

Agreement may be made on arbitration in a specific dispute and on arbitration in all disputes arising from the implementation of a certain contract.

Arbitration may not be established, save in writing.

Arbitration may not be held in the matters where a compromising conciliation may not be reached. Arbitration is deemed to be valid only when made by a competent person who shall have the capacity to dispose of the right under dispute.

The subject matter of the dispute shall be specified in the agreement on arbitration or during the pleading, even when the arbitrator is authorized to compromise and hold conciliation, otherwise the arbitration shall be deemed null and void.

Courts shall have no jurisdiction over hearing the disputes agreed to be arbitrated. Waiver to plea for non-jurisdiction may be made explicitly or implicitly.

Arbitration shall not include the summary matters, unless otherwise is explicitly agreed upon.

**ARTICLE (174)**

The arbitrator may not be a minor, under attachment or deprived of his civil rights by the

reason of any criminal punishment or he is declared bankrupt, unless he has been rehabilitated.

In the event of several arbitrators, their number must be odd in all cases. The arbitrator shall be specified in the agreement on arbitration or in a separate agreement.

#### **ARTICLE (175)**

If the dispute occurs without the litigant parties having agreed on the arbitrators or in case one or more arbitrators abstain/s from working, withdraws or is/are dismissed or an obstacle against his/their work is established, without having an agreement reached between /among the litigant parties in this respect, the court of jurisdiction originally competent to hear the dispute shall appoint the necessary number of arbitrators upon the request of one litigant party, under the ordinary procedure of case filing. The number of arbitrators appointed by the court shall be equal to the number agreed upon between the litigant parties or complementary thereto. The award rendered may not be objected by any means of objection.

#### **ARTICLE (176)**

Arbitrators may not be authorized to compromise, conciliate or render award as compromising arbitrators unless they are mentioned namely in the agreement on arbitration.

#### **ARTICLE (177)**

The Ministry of Justice may form one or more Arbitration Panels to be held in the seat of the Court of First Instance or in any other location to be specified by the Chief of the Panel. Presidency over the panel shall be taken over by the counsel or a Justice judge to be selected by the General Assembly of the competent court, and its membership, duly comprising two merchants or experts of other specialized areas all of whom shall act as members and be selected from the rolls prepared for this, the said purpose in accordance with the procedures and rules to be issued under a resolution made by the Minister of Justice. One of the staff of the Court of First Instance shall act as secretary of the panel.

The disputes agreed by the concerned parties in writing to be brought before it shall be brought free of fees. Consequently the rules prescribed in this chapter shall be applicable to the same. Nevertheless, it may render the awards, arbitraments, verdicts and orders referred to under paragraphs A, B and C of Article (180) thereof.

#### **ARTICLE (178)**

Without prejudice to the provisions of the preceding article or any other law, it is conditional that the arbitrator accepts handing his task, and such acceptance shall be confirmed in writing.

If the arbitrator withdraws-without a serious reason-from performing his work after

accepting the arbitration, he may be adjudged to pay compensation. Dismissal of the arbitrator may not be made, save upon agreement by all litigant parties. Recusation of the arbitrator for award purposes may not take place, save for reasons occur or appear after being appointed in person. Recusation may be requested for the same reasons of recusation of the judge or by which he shall submit to the court originally competent to hear the action, within five days from notifying the litigant party of appointing the arbitrator, or from the date of occurrence of the reason for recusation or that he was aware of, if it is consequent to his notification of appointing the arbitrator. In all cases, the application for recusation shall not be accepted if the arbitrators' award is rendered or the pleading in the action is closed. Applicant for recusation may appeal the judgment rendered in his application, no matter what the value of dispute under determination is.

#### **ARTICLE (179)**

The arbitrator shall within thirty days at most from accepting the arbitration - notify the litigant parties of the date and venue of the first session set for hearing the dispute, without compliance with the rules prescribed in this law for notice serving. An appointment shall be fixed for them to submit their documents, their pleadings and defenses. Award may be rendered pursuant to the submissions of one party if the other party fails to appear on the fixed date.

In the event of several arbitrators, they shall jointly handle the investigations proceedings and each one of them shall sign the minutes and verbal process, unless they unanimously agree on delegating one of them for a certain procedure, and confirm his delegation in the minutes of the session, or in case the agreement on arbitration authorizes one of them to do so.

#### **ARTICLE (180)**

Litigation before the arbitrator shall be discontinued if any of the reasons for discontinuing the litigation as prescribed under this law arises. The discontinuation shall result in its legally prescribed effects.

If within the arbitration process a primary matter out of the jurisdiction of the arbitrator is presented or an objection is made for forgery of a paper or criminal proceedings were already taken for such forgery, or in case of any other criminal occurrence, the arbitrator shall suspend his work until a final judgment is rendered in that respect.

Consequently, the arbitrator shall suspend his work and refer the case to the Chief Judge of the court originally competent to hear the dispute so as to effect the following:

- a. Adjudicating the legally prescribed penalty upon the witnesses who fails to appear or abstain from answering.
- b. Having third parties adjudged to submit any document in their possession, which is deemed necessary for rendition of the relevant award.
- c. Writ of Legal Assistance.

### **ARTICLE (181)**

If in the agreement on arbitration the litigant parties do not stipulate a time for award the arbitrator shall arbitrate within six months from the date where the litigant parties were notified of the arbitration session. Otherwise, any litigant party who is desirous to do so may bring the dispute before the competent court or proceed on if it was already filed.

In case the dates of notifying the litigant parties vary, such date shall commence to run as from the date of last notification. Litigant parties may agree explicitly or implicitly-upon extending the date specified in the agreement or under legal procedure. They may authorize the arbitrator to extend it to a certain time. The date shall be suspended when the litigation is suspended or discontinued before the arbitrator and shall be resumed as from the date the arbitrator has been aware of the fact that the reason for suspension or discontinuity is no longer valid. If less than two months remain from the said date, it shall be extended to two months accordingly.

### **ARTICLE (182)**

The arbitrator shall render his award without compliance with the pleading procedures save the proceedings provided for in this Chapter. Nevertheless, the litigant parties may agree upon certain proceedings, to be followed by the arbitrator in that respect.

The award rendered by the arbitrator shall be based on the law provisions, unless he is authorized to compromise and conciliate, where he shall not comply with such provisions, save those relating to the public order.

The rules governing urgent self-executing judgments shall be applicable to the arbitrators' awards.

Arbitrator's award shall be rendered in Kuwait, otherwise the prescribed rules applicable to the arbitrators' awards in a foreign country shall be applied in that respect.

### **ARTICLE (183)**

The arbitrators' award shall be rendered by a majority opinion in writing, and shall in particular comprise a copy of the agreement on arbitration with a summary of the litigant parties statements, documents, grounds of award its text, the date rendered, the venue and signatures of arbitrators. If one or more arbitrators refuse to sign the award this fact shall be stated therein. The award is deemed appropriately valid if signed by the majority of arbitrators.

Award shall be drawn up in Arabic unless otherwise is agreed upon by the litigant parties. Consequently an official translation thereof shall be attached thereto at the time of its depositing. The award shall be deemed to have been rendered as from the date it was signed by the arbitrators after it had been typed.

#### **ARTICLE (184)**

The original award shall be deposited, even if rendered under any of the investigation procedures together with the original agreement on arbitration, with the Clerical department of the competent court originally hearing the dispute within ten days following the award terminating the litigation.

The clerk of the competent court shall draw up a record in respect of the said depositing.

#### **ARTICLE (185)**

The award rendered by the arbitrator shall not be enforceable, save under an order issued by the Chief Judge of the court where the award was deposited with its Clerical Department upon the request of one of the concerned parties, after having perused the award rendered, the agreement on arbitration and meanwhile verifying the nonexistence of the impediments of its implementation and the basis of appeal limitation, if the award is appealable and not urgently self-executing. The writ of execution shall be impressed at the foot of the original award document.

#### **ARTICLE (186)**

The arbitrator's award may not be appealed, save when otherwise is agreed upon by litigant parties prior to its rendering. The appeal shall then be filed before the Court of First Instance with an appeal panel. It shall be subject to the rules prescribed for appeal of the judgments rendered by the effect from the date of depositing of the original award with the Clerical Department pursuant to article (184).

Nevertheless, the award shall not be appealable, unless the arbitrator is authorized to compromise and conciliate, or if he is an arbitrator of Appeal, or the value of the relevant action does not exceed KD 500 or the award is rendered by the panel provided for under Article (177).

Any concerned party may request nullification of the final arbitrator's award in the event of the following cases, even when otherwise is agreed upon prior to its rendering.

- A. If it is rendered without an arbitration agreement or under a null and void arbitration agreement, the lapse of limitation date was Lapsed or the award is out of the agreement on arbitration.
- B. If any of the reasons under which a plea for re-hearing is established.
- C. If a nullification of award or the proceedings which may prejudice the award occurs.

#### **ARTICLE (187)**

Action for nullification shall be brought before the competent court of jurisdiction originally hearing the dispute through the normal process and formalities of filing cases, within thirty days from the award notice. Such a limitation period shall commence to run in conformity with the provisions of Article 149 in the cases where a cause for re-hearing

application is established.

The relevant declaration shall contain the ground of nullification, otherwise it shall be null and void.

The person filing the action shall deposit KD 20 at the time of depositing the relevant declaration, as bail. Depositing of one single bail shall be sufficient in the event of several plaintiffs, if they have filed their action by means of one declaration, even if the grounds of nullity are variant. The government shall be exempted from depositing such bail (surety) and those who are exempted from paying legal fees shall also be exempted therefrom.

The bail shall be confiscated by force of law once it is adjudged to reject the action, or its filing is deemed impermissible, elapsed, invalid, nullified or reject.

If the court has rendered a judgement nullifying the arbitrators' award, it shall then re-hear the dispute issue and determine on its merits accordingly.

#### **ARTICLE (188)**

Filing of the nullification shall not cause the stay of execution of the arbitrator's award.

Nevertheless, the court hearing the action may order - upon the request of a plaintiff - the stay of execution of the award rendered if it is feared that a gross damage may occur due to its execution and once the ground of nullification gives preference to the nullity of the award rendered.

Upon ordering the stay of execution, the court may necessitate presentation of a bail surety or order what it deems to protect the right of the necessary respondent. The writ of award execution shall be applicable to the proceedings taken by the judgement beneficiary, with effect from the date of application for stay of execution.

## **MINISTERIAL ORDERS IMPLEMENTING ARBITRATION LAWS**

### **MINISTERIAL RESOLUTION NO. (43) OF 1995 ON JUDICIAL ARBITRATION - CIVIL & COMMERCIAL ARTICLES**

The Minister of Justice & Administrative Affairs, having perused Article (72) of the Constitution; and Article No. (13) of Law No. (11) of 1995 on Judicial Arbitration, Civil & Commercial Articles; and The Resolution of the Minister of Justice No. (133) of 1993 on nomination of Assistant Undersecretaries with specification of their jurisdiction; and

Pursuant to the proposal made by the Undersecretary, hereby decide the following:

#### **ARTICLE 1**

One or more Arbitration Panels shall be formed at the court of Appeal, each of which consisting of three judiciary-men selected by the Supreme Judiciary Council and two from the Arbitrators Registered in the Rolls deposited with the Arbitration Department or of other individuals. Each Arbitration Party, even if numerous, shall select one of them. The panel shall be presided over by the most senior member of the Judiciary-men, provided he holds the office of Justice (counselor). The Panel Secretariat function shall be performed by one of the Arbitration Department employees.

The Panel shall hold its sittings at the Court of Appeal or at any other venue specified by the Chief of the Panel.

#### **ARTICLE 2**

Whoever is registered in the Arbitrators' Roll shall as a condition satisfy the following:

- To be a Kuwaiti national
- To have good conduct and reputation
- He should not have been dismissed from service under a disciplinary decision, unless at least three years have elapsed from the date such a disciplinary decision was issued.
- He should not have been sentenced to a detentive penalty in an offence involving moral turpitude or integrity unless he has been rehabilitated.
- To be a holder of appropriate academic qualifications and experience as duly approved by the Committee specified in the following Article.

#### **ARTICLE 3**

A Committee comprising the following members shall be set up for selecting the arbitrators accepted to be registered in the Roll:

1. The Chief Justice of the Court of Appeal Court, as Chairman
2. Assistant Undersecretary for Expertise and Arbitration Affairs, Member.



3. Assistant Undersecretary for Financial and Minor Affairs, Palace of Justice, Member.

The Committee shall have Competence to select the Arbitrators accepted for registration in the Arbitrators' Roll who meet the requirements stipulated in the preceding article from among the registration applicants of those Rolls or from the lists submitted by the Competent Authorities. Moreover, it is empowered to amend the said Rolls. The Secretarial Affairs of the Committee shall be entrusted to the Arbitration Department Director.

#### **ARTICLE 4**

The arbitration application, comprising one original and a number of copies equivalent to the number of litigants, shall be submitted to the Arbitration Department with the following documents attached thereto:

A copy of the Arbitration-stipulation, i. e. fixed conditions of the contract including the arbitration clause, duly stating in the application the date it was drawn up, the names and surnames of litigants, their capacities, representatives and their original or elected domicile in addition to the issue of the dispute submitted to the Arbitration Panel with a summary of each litigant's pleas defense, and pleading properly invoked with the name of the selected arbitrator, if any, and an indication on whether his fees have been settled or not.

The application shall be entered in the appropriate Register the day submitted.

#### **ARTICLE 5**

Each of the arbitration parties shall select his arbitrator from among the arbitrators registered in the Rolls appropriately prepared and available at the Arbitration Department or from elsewhere within ten days following the date where the Arbitration Department has requested him to do so. In case of a party's failure to appoint an arbitrator, then the said Department shall appoint an arbitrator, whose turn has come in conformity with the Roll of the Professional Arbitrators duly specialized in the issue of disputes, for the Panel's membership.

#### **ARTICLE 6**

The Arbitration application shall be presented to the Chief of the Arbitration Panel within three days following the selection of arbitrators, in order to assess the amount each Arbitration party shall deposit on the account of his arbitrator's fees, in case there is no prior notification from the arbitrator to the effect confirming that fees have already been settled. The Arbitration Department shall then request the two arbitration parties to deposit the amount they are required to pay with the Arbitration Department Treasury within the following ten days. In case a party fails to deposit such amount, the Arbitration Department shall notify the other party thereof within the following five days who shall have the right, if desirous to proceed on the Arbitration Proceedings, to deposit the required amount within the following ten days.

If such a period expires without the required amount being deposited by either party of the litigants, then the Arbitration Department shall present the Arbitration application to the Chief

of the Panel to give his order for the case to be left on the file with refunding of the amount deposited on the account of Arbitration Fees by either party to the same litigant party concerned.

The Arbitration Department shall present the Arbitration application to the Chief of Arbitration Panel within three days following the depositing of the fees of the selected arbitrators to specify a date and venue for a sitting to be convened. The Arbitration Department shall then notify the two litigant parties of the Panel's full formation (a setting in banc within the following five days and shall specify a date for them to submit their documents defense and/or pleadings. The relevant notice shall be served in conformity with Article 179 of the Civil and Commercial Procedure Code or by any other means of summons service duly agreed upon by the litigant parties such as fax, post or telephone.

#### **ARTICLE 7**

Each member of the selected Arbitration Panel shall take an oath before the Chief of the Panel prior to commencement of the task entrusted with, stating that he shall carry out his duties with trust and confidence.

#### **ARTICLE 8**

In the event of any arbitrator adjudged to be recused, withdrawn or removed for any reason whatsoever, his replacement shall be appointed in conformity with the same procedure duly applied at the time of his appointment.

#### **ARTICLE 9**

The Arbitration Panel shall determine on the dispute brought before it and render the relevant arbitrament without abiding by a certain period of time, in exception to the provision of Article 181 of the Civil and Commercial Procedure Code.

The Panel shall apply the provisions and proceedings provided for in the Arbitration Law No. (11) of 1995 and those articles prescribed in the Civil and Commercial Procedure Code provided that they are not contradictory to the provisions of this Resolution.

#### **ARTICLE 10**

The Undersecretary shall implement this Resolution and that any Resolution contradictory to its provisions shall be repealed. This resolution shall be operative the date published in the Official Gazette.

**REGIONAL AND INTERNATIONAL  
CONVENTIONS RELATED TO ARBITRATION**

**LAW NO. 44 OF 1998 CONCERNING AGREEMENT ON THE CONVENTION ON  
JUDICIAL JUDGEMENTS, DELEGATIONS AND SUMMONS IN THE GCC  
STATES**

Having reviewed the Constitution and

Law No. 44 of 1981 concerning Agreement on the Statute of the GCC States

The National Assembly has agreed on the following law which we hereby sanction and promulgate:

**Article (1)**

The Convention on Enforcement of Judicial Judgements, Delegations and Summons in the GCC States approved by the Supreme Council of the GCC States at its sixteenth session held in Muscat during the period falling between 12 and 14 Rajab 1416 Hijri corresponding to the 4th to 6th December 1995, and attached herein, is hereby ratified.

**Article (2)**

The Ministers, each in his respective capacity, shall implement this Law and it shall come into effect from the date of publication thereof in the Official Gazette.

**AMIR OF KUWAIT  
JABER AL AHMAD AL-SABAH**

Issued at Bayan Palace on 8th Rabi Al- Akhar, 1419H  
Corresponding to 1st August 1998.