

Council of Ministers

Resolution Number (1096) of the Year 1993 Issuing the Third, Fourth and Fifth Chapters of the Executive Bylaws for Law Number 41 of the Year 1993 with regard to the State Purchase of Some Debts and collection procedures.

The Council of Ministers

- Following perusal of Law Number 41 of the year 1993 with regard to the State purchase of some debts and collection procedures,
- and based on the proposal of the Prime Minister's Second Deputy, the Minister of Finance and the Minister of Justice and Administrative Affairs

It has been resolved

Article One

The provisions of the Third, Fourth and Fifth Chapters of these executive by-laws for Law Number 41 of year 1993, with regard to the State purchase of some debts and collection procedures whose text is enclosed with this resolution, shall apply.

Article Two

The Ministers – each in his competence – shall enforce this resolution which shall become effective from the date of its publication in the official gazette.

The Prime Minister

Saad Al-Abdulla Al-Salem Al-Sabah

Issued on: 16 Rajab 1414 H
Corresponding to: 29 December 1993 A.D.

Third Chapter

Rules and Procedures Pertaining to Debt Scheduling

First: The debts, to which the provisions of Law Number 41 of year 1993 and the executive by-laws apply, shall mean the following in detail:

- 1) The existing balances on 1/8/1990 of the cash credit facilities offered to Kuwaiti clients and purchased on 31/12/1991 for the account of the State from local banks, investment companies subject to the surveillance of the Central Bank of Kuwait and from Kuwait Finance House, this while observing the content of Clause Two of the Article Two of the law.
- 2) The non-cash facilities existent on 1/8/1990 vis-à-vis Kuwaiti clients since they are converted into cash facilities, this with regard to the banking operations referred to in Clause “Third” of the First Chapter of the executive by-laws of the law.

As to documentary credits at sight and of deferred payment, it is required that the conditions for the establishment thereof do not comprise receipt of the merchandise subject of the credit abroad.

With regard to the banking operations covered by other corresponding processes, the indebtedness upon enforcement of the provisions of Law Number 41 of year 1993 shall be restricted to only the uncovered process.

- 3) The total cash facilities that are purchased by local banks, investment companies subject to the surveillance of the

Central Bank of Kuwait and by Kuwait Finance House and offered prior to 2/8/1990 to natural persons among the citizens of the Gulf Cooperation Council countries to the extent they are existent with their interest on 7/9/1993, this after excluding any sums which the client had used from these facilities after 1/8/1990.

- 4) The clearing debt balance resulting from the loans offered by Kuwait Investment Company and Kuwait Foreign Trading, Contracting & Investment Co., or through them, to finance the needs of the debtors in order to fulfill their obligations entailed by the deferred cheques from the sale of shares on credit and registered at Kuwait Clearing Company in enforcing the provisions of the Decree by Law Number 57 of the year 1982 with regard to transactions pertinent to company shares made on credit, this as they are on 1/8/1990.

Second: The debts able to be scheduled according to the client's wish shall be the debts indicated in Clause First after excluding what is paid in cash thereof and immediately in accordance with the provisions stated in the Second Chapter of these by-laws.

Third: All the debts able to be scheduled and pertaining to one debtor shall be consolidated at the managing bank. The managing bank and the selling authorities shall exchange all the data and information relating to those debts and their guarantees while observing that the balances and guarantees match the records at the managing bank and the selling authorities.

Fourth: The managing banks shall prepare and conclude the official scheduling and pledge contracts with those clients upon whom the provisions of Law Number 41 of year 1993 apply. These contracts shall be unified in their formulation through coordination among them and they shall comprise all the provisions and controls stipulated in the said law whereby they warrant safeguarding the rights of the State vis-à-vis those clients and its availing of those rights. The scheduling contracts shall include the scheduling period and the value and due dates of the installments, also the guarantees actually submitted upon the conclusion of these contracts and the client undertaking to pledge all the other assets he possesses in accordance with the provisions of the aforementioned law while observing taking all the required procedures in order to file compensation claims for the damages suffered by his monies as a result of the Iraqi aggression on the State of Kuwait, whether with regard to himself or his minor children. The client shall bear the expenses and fees entailed by this.

Fifth: The managing bank shall conduct a valuation of the pledged assets. In the event the value of these assets does not cover the claimed debt balance, the managing bank shall notify the client in order to compensate for the deficit in these assets, this during a maximum period of three months from the signature date of the scheduling contract. The client shall commit within one month from the date of notifying him to submit a statement of the other assets he

owns that will be pledged against the claimed debt balance according to a recent valuation of these assets. The client shall bear the expenses and fees entailed by this and he shall, within a period of ten months maximum from the scheduling contract date, pledge these assets.

Sixth: The managing bank shall reevaluate the pledged assets annually. The client shall commit to compensate the deficit in guarantees upon their revaluation annually within three months from the date of notifying him by registered letter with acknowledgment of receipt and he shall bear the expenses and fees entailed by this.

Seventh: The managing bank shall open an account for the client to be used for scheduling purposes where it shall clarify the claimed debt balance, the paid installments and the expenses related to the scheduling and which the client shall bear such as the expenses for insuring the pledged assets and the valuation expenses and fees. The managing bank shall set up the system that allows it to follow up the due installments on their due dates and to take the necessary actions for the delay in payment in accordance with the provisions of Law Number 41 of year 1993.

Eighth: The debt scheduling shall be in equal annual installments whereby the scheduling commences effective from 1/4/1994 and its

duration does not exceed twelve years ending on 31/3/2006. With regard to non-cash facilities existent on 1/8/1990 vis-à-vis Kuwaiti clients, the date of their conversion to cash debts shall be observed as the basis for the calculation of the scheduling period so as not to extend beyond 31/3/2006.

The installments shall be paid on the deadlines determined by the Central Bank for various debtor categories in accordance with Article Six of Law Number 41 of the year 1993.

Ninth: The managing bank auditor shall, upon auditing the financial data for the fiscal years of those banks, verify the correctness of the balances and the guarantees and the fulfillment of the conditions of debt scheduling contracts, this in light of the requirements of the recognised auditing standards. The auditor shall prepare an annual report on the same and submit it the Chairman of the managing bank.

Tenth: The compensations due to the client or to any of his minor children shall be used for damages entailed upon his monies as a result of the Iraqi invasion of the State of Kuwait, also the price estimation resulting from the State expropriation of one of the properties owned by the client or by any of his minor children in paying the debt of this client while observing the following:

- a. The price estimation or compensation sums, which are actually collected up to 6/9/1995, shall be considered as an immediate cash payment of the debt according to the rates and segments indicated in the table enclosed with the Second Chapter of the executive by-laws.
- b. The price estimation or compensation sums, which are collected during the scheduling period, shall be considered as a prompt payment of the installments to which the discount coefficient of 8% shall apply annually.

The aforementioned shall apply regardless of whether the expropriation incident occurred prior to or after the enforcement of the provisions of Law Number 41 of the year 1993 while observing the exception stipulated in Article Seven of the aforementioned law.

Eleventh: The client, from whom the debt is judicially claimed or who is disputing the origin and extent of the debt, may request to benefit from the provisions of Law Number 41 of the year 1993 even if a final judicial judgment is issued with regard to the dispute in his favor provided that this client commits to the book balance in the records of the selling authority and expresses his wish to the managing bank prior to 31/3/1994, this after fulfilling the procedures stipulated in Article Nine of the aforementioned law.

Twelfth: The managing bank may – based upon the client’s request – make the required arrangements for the client to dispose of some the pledged assets within the limits of the sums that are used in paying any of the due installments and the managing bank shall be liable for taking all the required procedures that safeguard the rights of the State in this regard.

Thirteenth: The client may expedite the payment of all or some of the installments prior to the due date and the discount coefficient amounting to 8% annually shall apply to the installments that are

paid prior to their due dates while referring in this, as a guide, to the enclosed tables with regard to the calculation of the current value of the installments whose payment is anticipated.

Fourteenth: The managing banks shall deposit the sums collected from the debts that have been scheduled in the open account in accordance with Clause First of the First Chapter of the executive by-laws.

Fifteenth: The managing banks shall submit to the Central Bank the data it requests about the status of the debts that are subject to scheduling, this according to the forms and deadlines determined thereby for this purpose.

Sixteenth: To the client, whose debt is scheduled according to the provisions of Law Number 41 of year 1993, shall inure all the cash flows entailed by the pledged assets or the assets that will be pledged against this debt. This shall also apply to the sums accrued from claim assignments issued against debts purchased in favor of any of the buying authorities unless the client is requested to arrange for guarantees or to compensate for the deficit therein in accordance with the provisions of Clause (4) of Article (8) of the said law.

Fourth Chapter

Special Provisions Pertinent to Joint Account and Guarantee

First – The Joint Account

- 1) If one of the joint account holders is subjected to the provisions of Law Number (41) of year 1993, the financial liabilities of the account holders shall be separated and the account balance shall be divided among them equally unless an agreement to the contrary exists for the authority selling the debt prior to the debt purchase date. None of them shall be deemed a guarantor for the other or liable for the debt in implementing the provisions of the aforementioned law.

- 2) The distribution of the joint account balance among the account holders shall entail each of them becoming an independent debtor for his share. The share of those among them who are subject to the provisions of Law Number 41 of the year 1993 shall be consolidated with his remaining debts and they shall all be processed as one unit when implementing the provisions of the said law and the executive by-laws. The Central Bank of Kuwait shall notify the managing banks about the share of every debtor among the joint account holders and of the collateral submitted against that share, this based on the data which the managing banks have to submit to it in this regard.

- 3) If any of the joint account holders is among the clients who are not included in Law Number 41 of year 1993, the rules of debt collection stipulated in the said law shall not apply to him and the debt shall be collected from him in accordance with the banking rules applicable in this regard.
- 4) The guarantees submitted against the joint account balance shall be processed in accordance with the following:
 - a) If the guarantee is submitted by one of the joint account parties and the balance of this account has been distributed in accordance with the provisions of Article 33 of Law Number 41 for year 1993, this guarantee shall remain in place against the share of the party who has submitted it from the account balance only.
 - b) A real guarantee that is submitted by others, who are not joint account parties, shall be in place within the limits of the balance of the debt that has offered this guarantee as its collateral.
 - c) If a guarantee that is submitted by others who are not joint account holders is manifested in a personal guarantee, the guarantor's personal commitment shall be in place to the extent of the guaranteed debt balance.

Second – Provisions Pertinent to the Guarantee

- 1) The guarantor shall, in accordance with the provisions of Article Five of Law Number 41 of year 1993, express his wish prior to 31/3/1994 toward selecting the method of payment of the debt guaranteed by him provided that if the guarantor wishes an immediate cash settlement prior to this date, this payment shall be accepted from him while preserving his rights vis-à-vis the debtor.
- 2) The guarantor's wish shall be taken into account if the debtor does not express his wish toward selecting the debt payment method in accordance with the provisions of Article Five of Law Number 41 of year 1993.
- 3) In the event the debtor wishes an immediate cash payment and the guarantor wishes to schedule, the debtor's wish shall be taken into account and the guarantor's obligation shall be pursuant to the debtor's obligation to the same. The guarantor may, during the period granted for the immediate cash payment and ending on 6/9/1995, pay the existent balance of the debt guaranteed by him if he wishes so while preserving his rights vis-à-vis the debtor.
- 4) In the event the debtor expresses his wish to schedule and the guarantor wishes an immediate cash payment, the debtor shall not be bound by the guarantor's wish. The guarantor may effect an immediate cash payment prior to 7/9/1995 while preserving his rights vis-à-vis the debtor.

- 5) In the event the debtor refrains from signing the acknowledgment required to be authenticated before the notary public no later than 31/3/1994 in line with the provisions of Article Eight of Law Number 41 of year 1993, any action taken against the debtor shall not affect the obligations of the guarantor who has not violated his obligations according to the provisions of this law.
- 6) In the event both the debtor and the guarantor refrain from signing the acknowledgment required to be authenticated before the notary public no later than 31/3/1994 or they violate any of the obligations stipulated in Law Number 41 of year 1993 and the executive by-laws, thereof the managing bank shall transfer them to the Public Prosecution.
- 7) In the event the guarantor refrains from signing the acknowledgment required to be authenticated before the notary public no later than 31/3/1994 and the debtor has this acknowledgment authenticated the managing bank shall enforce the wish of the committed debtor provided that in case the debtor violates his obligations as stipulated by Law Number 41 of year 1993 and the executive by-laws thereof the managing bank shall take the actions required to have recourse against the debtor and the guarantor by virtue of the provisions of this law.
- 8) In the event each of the debtor and the guarantor opt for the scheduling and the debtor does not pay the due installment on its due date, the guarantor shall be notified of the debtor's non-

payment of the installment within five days from the due date. If the installment is paid within a period not exceeding thirty days from the due date, no legal actions shall be taken against the debtor. However, if the installment is not paid within the indicated period, the maturity of the debt shall become payable and the managing bank shall refer them to the Public Prosecution.

- 9) Upon pledging the guarantor's assets, priority shall be given to cover his direct debt. In the event there is an excess in these assets, it shall be pledged against his indirect debt within the limits of the uncovered part by the guarantees of these debts.
- 10) If the guarantors of one debt are numerous, the value to be paid of this debt shall be looked into as one unit, whether through immediate cash payment or through scheduling.
- 11) A deficit in debt with regard to the guarantor shall mean those sums that are not covered by guarantees from the debtor and are not paid from it. In determining the deficit and notifying the guarantor, the required procedures shall be followed in this regard.

Fifth Chapter
Basic of Management of the Real Estate Portfolio Purchased
from Kuwait Finance House and Recovery Thereof.

First - Management rules of the real estate portfolio purchased from Kuwait Finance House

- 1) Kuwait Finance House shall, on behalf of the State and against no remuneration, manage the local real estate portfolio purchased from it for the account of the State on 31/12/1991 A.D. in accordance with the provisions of Article Three of Law Number (41) of year 1993.

- 2) Kuwait Finance House shall have the right to take all legal actions pertinent to the management of such a portfolio according to the controls specified in this chapter of the by-laws and to take all the required proceedings in this regard so as to guarantee securing the rights of the State and to safeguard them. The management period shall not exceed ten years effective from 31/12/1991 A.D.

- 3) To the real estate portfolio purchased from Kuwait Finance House shall inure all the revenues entailed from its exploitation. These revenues shall be used in strengthening the portfolio after deducting all the expenses related to this exploitation. This shall comprise the revenues entailed from action through the sale of some of the portfolio components.

- 4) Kuwait Finance House may, within the framework of strengthening the managed real estate portfolio, invest the net revenues resulting from the exploitation of the real estate portfolio in purchasing local real estate assets.
- 5) The value of the bonds issued against the purchase of the real estate portfolio shall be reduced by the appraisal sums obtained as a result of the State expropriation of any of the assets comprised in the purchased real estate portfolio.
- 6) To the State shall inure the compensations for damages incurred upon the components of the purchased real estate portfolio as a result of the Iraqi aggression on the State of Kuwait. These compensations shall be used in reducing the bonds issued against the purchase of the real estate portfolio. Kuwait Finance House shall commit to filing the claims and taking all the necessary actions for collecting the compensations.
- 7) Kuwait Finance House shall be liable for the correctness of the components of the real estate portfolio purchased from it and it shall bear any damages incurred due to third parties' allegations concerning any rights in one of the assets of such a real estate portfolio.
- 8) Kuwait Finance House shall commit to work on the development and improvement of the real estate portfolio through the establishment of policies that contribute to developing the methods and quality of the operations it

conducts on the components of the real estate portfolio. It shall also follow up on the maintenance work and the supervision it necessitates on janitorial and cleaning work and contract specialized companies and corporations to carry out such a work.

- 9) Kuwait Finance House shall, in order to improve and develop the real estate portfolio, undertake the setting apart and dividing procedures, the demolition of old buildings after obtaining the required licenses, the erection of investment and commercial buildings, the construction of residential houses for the purpose of sale or lease and the deduction of the disbursements and expenses it bears from the portfolio revenues.
- 10) Kuwait Finance House may, in order to improve and develop the real estate portfolio purchased from it, sell or replace all or part of some of the components of this portfolio for the purpose of acquiring local properties that are better than the sold or replaced elements and with the aim of improving the revenue collected from the portfolio or optimizing its value. The contracts must comprise a statement to the effect that Kuwait Finance House is acting on behalf of the State.
- 11) While observing what is stated in the preceding clause, Kuwait Finance House may sell on credit some components of the managed portfolio and, in doing so, it may select the appropriate investment version that is consistent with its

articles of association. The period of sale on credit shall not extend beyond 31/12/2001 A.D.

- 12) When Kuwait Finance House, during the term of its managing the portfolio, sells to self or to others some of the portfolio components with the purpose of improving its conditions, the sale price shall be no less than the market prices and at a minimum of the market price of these components on 31/12/1991 A.D.. In the event Kuwait Finance House wishes to sell to itself, the market prices of these components shall be determined with the knowledge of Kuwait Real Estate Bank in which case Kuwait Finance House shall pay the price as a discount on the value of the bonds issued to it against the purchase of the real estate portfolio.
- 13) Kuwait Finance House shall, throughout the period of its managing the portfolio, commit to undertake the appropriate required insurance on the portfolio components and the insurance expenses shall be deducted from the portfolio revenues.
- 14) Kuwait Finance House shall, in order to manage the portfolio, lease the properties, wholly or partially whether for investment or housing purposes, and collect the rent due from the leasing operations whether this is associated with leasing administrative spaces, residential apartments, offices, warehouses or shops and the like.

- 15) Kuwait Finance House shall commit to follow up with those who default on their payments, be they tenants or those dealing with it within the frame of the real estate portfolio purchased from it, and take all the necessary actions to collect the delayed payments. The claim expenses borne by Kuwait Finance House shall be deducted in order to be collected from the portfolio revenues.
- 16) Kuwait Finance House may not arrange any rights for others to any of the real estate components managed with its knowledge. In case of necessity, it shall obtain the prior approval of the Ministry of Finance of the same.
- 17) Kuwait Finance House shall submit a quarterly report to the Central Bank clarifying therein all the components of the real estate portfolio, the assets with which the portfolio was strengthened and the results of managing this portfolio inclusive of the revenues, expenditures and any developments therein.
- 18) The assets of the real estate portfolio, inclusive of the elements with which the portfolio was strengthened during the year, shall be evaluated annually. This valuation shall be conducted with the knowledge of each of Kuwait Real Estate Bank and Kuwait Finance House and the results of the valuation shall be listed in the quarterly report for the period ending end of December of each year, this during the portfolio management period.

- 19) Kuwait Finance House shall keep independent records of the real estate portfolio it manages so as to enable the access through them to any data requested from the concerned authorities. These records shall show all the actions taken in the portfolio and the associated expenses, also the revenues entailed from it.

- 20) Kuwait Finance House shall undertake the required internal procedures for determining the employees affiliated to it responsible for managing the real estate portfolio and indicating their specializations.

- 21) When auditing the financial statements at the end of the fiscal years and during the management by Kuwait Finance House of the real estate portfolio purchased from it, the account auditor of Kuwait Finance House shall verify the observance of the content of this chapter of the executive by-laws of Law Number 41 of year 1993, all this in light of the requirements of the prevalent auditing standards and he shall submit a report on the same to the Chairman of the Board of Kuwait Finance House.

- 22) Kuwait Finance House may opt for sign on behalf of the State all the contracts and agreements required by carrying out the previously mentioned work.

- 23) The Board of Directors of Kuwait Finance House shall set the policies, rules and systems required for the execution of the provisions mentioned in the previous clauses.

Second – Arrangements for recovery of the real estate portfolio to Kuwait Finance House

- 1) Kuwait Finance House shall commit to repurchase the real estate portfolio within a maximum period of ten years from the purchase date which was concluded on 31/12/1991.
- 2) The repurchase operation of the remaining real estate portfolio components shall take place without actions up to the end of the portfolio management period based on their determined purchase value according to the real estate portfolio purchase and repurchase agreement signed with Kuwait Finance House or the market value at the time of repurchase, whichever is less, at a minimum of the market value of these components on 31/12/1991.
- 3) The Central Bank shall, on behalf of the State, make all the required arrangements for Kuwait Finance House to repurchase the components of the real estate portfolio purchased from it and to settle all the matters pertaining thereto.