

Council of Ministers

Council of Ministers Resolution Number 804 of the Year 1995 Amending Some Provisions of the Executive Bylaws of Law Number (41) of the Year 1993 with Regard to the State purchase of some debts and collection procedures and the Issuance of the Seventh and Eighth Sections of these Bylaws

The Council of Ministers,

following perusal of Law Number (41) of the year 1993 with regard State purchase of some debts and collection procedures the same amended by Law Number (102) of the year 1994 and Law Number (80) of the year 1995

and based on the presentation 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 amendments mentioned for some provisions of the executive bylaws of Law Number (41) of the year 1993 and its amendments, with regard to the State purchase of some debts and collection procedures and whose text is enclosed with this resolution, shall apply.

Article Two

The provisions of the Seventh and Eighth Sections of the executive bylaws of Law Number (41) of the year 1993 and its amendments

with regard to the State purchase of some debts and collection procedures and whose text is enclosed with this resolution, shall apply.

Article Three

All that conflicts with the provisions of this resolution shall be cancelled.

Article Four

The Ministers – each in his competence – shall execute 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: 1 Jumada Al-Oula 1416 H
Corresponding to: 26 September 1995 A.D.

First Section

The following two texts shall replace the texts of Clause First / 1 and Clause Fourth:

Clause First / 1:

“The natural persons among the citizens of the Gulf Cooperation Council States (GCC), this to the current extent on 1/8/1990 and their interest up to 31/12/1991. The cash payments made by these clients after 1/8/1990 up to 6/9/1993 shall be considered an immediate cash payment according to the rates and segments mentioned in the schedule enclosed with Law Number (41) of the year 1993 and using the debt division schedule as a guide according to the segments, the extent of each segment, the payment rates and the discount rates in order to expedite the payment enclosed with these by-laws and to refund the surplus payment while observing the following:

- a- The selling authorities shall commit to account for the sums paid and to calculate the surplus payments and refund them to the clients, also to enter the net amount in the special account established at the managing bank in order to substantiate the collected sums of the debts included in Law Number (41) of the year 1993. The Central Bank of Kuwait shall issue instructions pertaining to directing the funds deposited in this account.

- b- The purchase value of the purchased debts shall be determined while observing the content of Article Two of Law Number (41) of the year 1993 and the Central Bank of Kuwait shall issue against them State bonds or bonds guaranteed by it and due within a period not extending beyond the end of 2011 A.D. and it shall pay to the selling authorities the return due on these bonds effective from 6/9/1993”.

Clause Fourth:

“In enforcing the provisions of Law Number (41) of the year 1993 and its amendments, the following shall not fall within the purchased debts:

- 1) The balances resulting from the use of credit cards.
- 2) The credit facilities granted for the purpose of funding cash market and foreign securities operations.
- 3) The documentary credits at sight whose payment is deferred and whose conditions to establish them comprise receiving the merchandise subject of the credit abroad, also the banking operations covered by other corresponding processes with regard to non-cash credit facilities.

Second Section

First: The following text shall replace the text of Clause First / 4:

“The current balances on 1/8/1990 shall be considered the basis for calculating the indebtedness. With regard to the non-cash facilities that convert to cash facilities, it is to be observed that the debt that is

subject to cash payment shall be the balances of these facilities on the date of their conversion to cash debt, all this while taking into consideration the periods specified for the methods of payment mentioned in Law Number (41) of the year 1993 and its amendments”.

Second: The following texts shall be added:

Clause Fourth: General rules for cash payment of the debt in five equal annual installments effective from 6/9/1995:

If the client wishes to pay the debt in cash in five equal annual installments in accordance with Article (5) Clause (1) bis of Law Number (41) of the year 1993 and its amendments, the following shall be observed:

- 1) The cash payment amount corresponding to the unpaid debt shall be calculated up to 6/9/1995 in accordance with the rates and segments mentioned in the eighth period of the debt division schedule according to segments, the extent of each segment, the payment rates and the discount rates in order to expedite the payment enclosed with these by-laws, while observing that the client does not benefit from the payment rate determined for each segment more than once.
- 2) The cash payment amount corresponding to the unpaid debt up to 6/9/1995 shall be divided into five equal annual payments. Upon the client payment of any sums exceeding the value of the due payment, it is to be observed that the

managing bank shall redistribute the remaining balance of the cash payment sum on the number of remaining annual payments and notify the client of the same.

3) While observing the content of Article Number (13) of Law Number (41) of the year 1993 and its amendments, the cash payment sums shall due according to the following:

- First payment: no later than 6/12/1995
- Second payment: no later than 6/9/1996
- Third payment: no later than 6/9/1997
- Fourth payment: no later than 6/9/1998
- Fifth payment: no later than 6/9/1999

4) In the event of paying off the total cash payment amount no later than 6/12/1995, no debt service rate or indebtedness services rate shall be calculated on this sum.

5) The debt service rate and the indebtedness services rate shall be calculated on the unpaid balance of the cash payment amount after excluding the first payment effective from 7/9/1995 while observing the following:

a- The debt service shall be calculated on the declining balance of the cash payment amount of the indebtedness on

the basis of the average of the last two rates that have been announced for the return paid on debt bonds.

- b- The Central Bank of Kuwait shall determine a percentage against the indebtedness services.
- 6) The client may make a cash payment for his indebtedness prior to the due date of the payments, in which case the debt service rate and the indebtedness services rate valid at the time of payment shall be calculated on the reducing balance of the cash payment sum.
- 7) While observing the due date of every payment, the client may divide the payment amount more than once provided that these sums are deducted on priority basis as soon as they are paid from the current balance of the cash payment amount, also that the debt service rate and the indebtedness services rate are calculated according to the valid rates at the time of payment.
- 8) The date of conversion of the non-cash facilities to a cash debt shall be taken as the basis for determining the number of annual payments whereby the due date of the last payment does not extend in all cases beyond 6/9/1999.

Clause Fifth:

“To the client, who selects the cash payment method for his debt, shall inure all the cash flows entailed by the assets pledged against this debt”.

Third: The text of Clause First / 5 shall be cancelled.

Third Section

First: The following texts shall replace the texts of Clauses First / 3, Eighth, Tenth, Eleventh and Thirteenth:

Clause First / 3:

“The total cash facilities that are purchased from local banks, investment companies subject to the surveillance of the Central Bank of Kuwait and from Kuwait Finance House and are offered prior to 2/8/1990 to natural persons among Gulf Cooperation Council States (GCC), this to the extent of that is current thereof on 1/8/1990 and their interest until 31/12/1991. The cash payments made by these clients after 1/8/1990 until 6/9/1993 shall be dealt with as an immediate cash payment according to the rates and segments indicated in the schedule enclosed with Law Number (41) of the year 1993 and the paid surplus shall be refunded”.

Clause Eighth:

“The scheduling of the debt shall be in equal annual installments whereby the scheduling commences effective from 1/4/1994 and does not exceed a period of twelve years ending on 31/3/2006. The date the non-cash facilities existent on 1/8/1990 are converted into a cash indebtedness, or 27/11/1995 with regard to the clients who opt for the scheduling method in accordance with the provisions of Article (8) bis (a) of Law Number (41) of the year 1993 and its amendments, shall be taken as the basis for computing the number of

equal annual installments according to the remaining scheduling period whereby it does not extend in all cases beyond 31/3/2006. The installments shall be paid on the deadlines determined by the Central Bank of Kuwait for various debtor categories in accordance with Article Six of the said law”.

Clause Tenth:

With the exception of the clearing provisions mentioned in the Civil Law, the compensations that are due to the client or to any of his minor children for the damages incurred upon his funds as a result of the Iraqi invasion of the State of Kuwait, also the appraisal sums entailed by the expropriation of one of the properties owned by the client or by any of his minor children even if the expropriation incident took place prior to enforcing Law Number (41) of the year 1993, shall be used for paying the client's debt while observing the following:

- 1) The appraisal or compensation sums, which are collected during the validity of the cash payment period with regard to the clients who have opted for the cash payment method, shall be considered as a cash payment of the debt according to the rates and segments indicated in the schedule enclosed with Law Number (41) of the year 1993.

- 2) The appraisal or compensation sums, which are collected during the scheduling period with regard to clients who have opted for scheduling their debts, shall be considered as an expedite payment to which the discount coefficient of 8% shall apply annually.

From the provisions of this article shall be excluded the funds inuring to minors by way of inheritance, will or donation from a person who is not subject to the provisions of this law.

Clause Eleventh:

“The client, whose debt is judicially demanded or who is disputing the origin and value of the debt, may request to benefit from the provisions of Law Number (41) of the year 1993 and its amendments if he commits to the book balance in the records of the selling authority. The client, who has a final judicial judgment issued with regard to his debt prior to 6/9/1993, may also request to benefit from the enforcement of the provisions of this law. The debt shall be purchased according to the ruling of the judgment issued in this regard.

In all cases, the client shall express his wish to the managing bank no later than 26/11/1995”.

Clause Thirteenth:

“The client may expedite the payment of all or some of the installments prior to the due date and a discount coefficient

amounting to 8% annually shall apply to the installments that are paid prior to their due dates”.

Second: The following texts shall be added to the Third Section:

- Last paragraph to Clause First:

“The credit facilities, that are granted with the aim of financing cash market and foreign securities operations, shall not be included within the purchased debts”.

- Clause Seventeenth:

- With regard to clients wishing to schedule their debts, whether they have not previously authenticated the acknowledgments of their debts or they have previously opted for the cash payment method and wish to change it in accordance with the provisions of Law Number (41) of the year 1993 and its amendments, the rules mentioned in this section shall apply. The number of annual installments shall be determined according to the remaining scheduling period whereby in all cases it does not extend beyond 31/3/2006”.

- Clause Eighteenth:

“While observing the content of Article (8) bis (a) of Law Number (41) of the year 1993 and its amendments, the client, who has previously selected the scheduling method and has not committed to the payment of the installments on the due dates, may benefit from the enforcement of the provisions of Law Number (41) of the year

1993 and its amendments whether by keeping the payment method he had chosen or changing it to cash payment, this within the limits of the existent balance of the debt provided that the client expresses his wish to benefit from the provisions of this law no later than 26/11/1995”.

Fourth Section

First: The following texts shall replace the texts of Clauses Second / 3, Second / 4 and Second / 8:

Clause Second / 3:

“In the event the debtor wishes the cash payment and the guarantor wishes the scheduling, the client’s wish shall be considered and the guarantor’s obligation shall be pursuant to the client’s obligation in this respect. The client may fulfill the cash settlement payments that end on 6/9/1999 if he wishes so while maintaining his rights in dealing with the debtor”.

Clause Second / 4:

“In the event the debtor expresses his wish for scheduling and the guarantor wishes the cash payment, the debtor shall not be bound by the guarantor’s wish. The guarantor may fulfill the cash settlement payments that end on 6/9/1999 while maintaining his rights in dealing with the debtor”.

Clause Second / 8:

“If the debtor does not make the payment or installment on the due date, the guarantor shall be notified within five days from the due date of the non-payment by the debtor. The client shall submit a letter to the managing bank within fifteen days from the due date whereby he explains in detail the justifications for the delay in the payment. The delay in making the payment or the installment shall not exceed than four months from the due date and a delay penalty at the rate of 15% annually shall be calculated for the delay period.

In the event this is not observed, the maturity of the debt shall then become due and the debtor and the guarantor shall be bound to pay it with its add-ons and whatever is dropped from it up to the payment date.

In the event the delay in payment reaches two times with respect to cash settlement payments or three times with respect to scheduling installments, the managing bank shall notify the debtor and the guarantor of the due payment or installment thirty days prior to the due date while alerting them of the consequence for defaulting on the payment. If the payment is not made by the due date, the maturity of the debt shall be cancelled and the debtor and the guarantor shall be bound to pay it with its add-ons and whatever is deducted from it up to the payment date”.

Second: The following text of Clause Second / 12 shall be added:

“The deadlines for expressing the wish to select a payment method or to change and authenticate the payment method already chosen shall be extended so as not to exceed than 26/11/1995, this in observance of the provision of Article (8) bis (a) of Law Number (41) of the year 1993 and its amendments”.

Seventh Section

Rules Pertinent to the Debts of Some Clients Included by the Provisions of Law Number (41) of the Year 1993

and Its Amendments

Part One

Debts of Martyrs and Prisoners of War

First: The Central Bank of Kuwait shall provide the managing banks with the names of the people who are subject to the provisions of Law Number 41 of the year 1993 and its amendments, be they martyrs whose names are registered at the Martyrs Bureau or the prisoners of war whose names are registered at the National Committee for the Affairs of the Missing and the Martyrs as established on 27/8/1995.

Second: The direct debts and to which the provisions of Law Number (41) of the year 1993 and its amendments apply pertinent to the martyrs and the prisoners of war whose names are registered at the authorities mentioned in the preceding clause shall be written off.

Third: The managing banks shall release the assets, pledged against the direct debts of the martyrs and the prisoners of war,

which have been written off and the obligation of the guarantors for these debts shall lapse.

Fourth: The guarantees, submitted by the martyrs and the prisoners of war for the debts included in the provisions of Law Number (41) of the year 1993 and its amendments, shall cease. The obligation of the original debtor and all other guarantors, other than the martyrs and the prisoners of war, shall remain valid. The managing banks shall release the assets pledged for the martyrs and the prisoners of war against these debts.

Fifth: The managing banks shall refund any sums collected after 1/8/1990 for the direct debts pertinent to these martyrs and prisoners of war.

Sixth: Any legal actions, taken by the managing banks vis-à-vis the martyrs and the prisoners of war demanding their direct and indirect debts which have been written off by virtue of the provisions of Law Number (41) of the year 1993 and its amendments, shall be dropped.

Part Two
Instant Settlements of the Debts of Clients of the
Difficult Credit Facilities Settlement Program
Not Exceeding Kuwaiti Dinars 250 Thousand

First: The following terms and conditions are required with respect to the indebtedness that is subject to the provisions mentioned in this part:

- 1) That it pertains to the client who is subject to the provisions of the Difficult Credit Facilities Settlement Program issued in 1986.
- 2) That the provisions of Law Number 41 of the year 1993 and its amendments are applying to it.
- 3) That a settlement contract for this debt is authenticated according to the instructions issued with respect to the basis and controls of the settlement of the debts that are subject to the program and do not exceed Kuwaiti Dinars 250 thousand, this prior to 2/8/1990.
- 4) That it fulfills the conditions and controls mentioned in the settlement contract referred to in Clause First / 3.
- 5) That the client expresses his wish to continue settling his debt according to the conditions mentioned in the authenticated settlement contract, this no later than 26/11/1995.

Second: The same rules and provisions mentioned in Law Number 41 of the year 1993, its amendments and the executive by-laws shall apply with respect to the debt of the client who does not express his wish to continue the settlement of his debt according to the conditions mentioned in the settlement contract referred to in **Clause First / 3** no later than 26/11/1995.

Third: The managing banks shall conduct a valuation of the assets stipulated in the settlement contract against the debt that is subject to the provisions of this part according to the bases mentioned in Clause Seventh of the instructions issued with regard to the bases and controls of settling the debts that are subject to the program and do not exceed Kuwaiti Dinars 250 thousand provided that the date of 30/11/1995 is taken as the basis for the valuation.

Fourth: The selling entities, in whose favor the assets stipulated in the settlement contract referred to in Clause First / 3 have been pledged, shall be authorised with taking all the required actions to purchase these assets or to collect their corresponding sums from the client, this while observing the content of the instructions issued with respect to the basis and controls for settling the debts that are subject to the program.

Fifth: The bonds issued in favor of the selling entities against the purchased debts shall be reduced by the value of the assets which these entities have purchased or have collected their corresponding sums.

Sixth: The balance remaining from the debt, that is subject of the settlement contract referred to in Clause First / 3, shall be written off following the managing bank's verification of the client's fulfillment of the obligations stipulated in this contract.

Eighth Section

Rules and Procedures Pertinent to the Role of Kuwait Investment Authority in the Execution of the Provisions of Law Number 41 of the Year 1993 with Regard to the State Purchase of some debts and collection procedures

First: Kuwait Investment Authority shall handle, without remuneration, the following tasks:

- 1- The bankruptcy manager, its controller and the Creditors Association Manager in all the bankruptcies that are announced in accordance with the provisions of Law Number 41 of year 1993 and have the capacity of Conciliation Supervisor in any reconciliation made according to the provisions of this law. The Authority shall perform these tasks in accordance with the provisions of Book Four of the Commerce Law issued by decree in Law Number 68 of the year 1980, this with regard to what is not provided in particular for in Bylaw Number 41 of year 1993 and its amendments.
- 2- To manage the funds with regard to which the resolution of the Public Prosecutor or his Deputy among the public lawyers was issued prohibiting the disposal based on Article 24 of Law Number 1 of year 1993 with respect to protecting public funds in

observance of Article 29 of Law Number 41 of the year 1993 and its amendments. The Authority shall manage these funds and, in their regard, it shall have the powers determined for the receiver and provided for in the Fourth Chapter of the Third Section of Book Two of Part One of the Civil Law issued by decree Bylaw Number 67 of year 1980.

Second: The Authority's Managing Director, or whoever he authorises, shall act on behalf of Kuwait Investment Authority in performing the tasks specified in Article One.

Third: The Public Debt Protection Body at the Public Prosecution shall notify the Authority of the Public Prosecutor's, or whoever acts on his behalf among the public lawyers, resolutions issued with the aim of prohibiting the disposal and management in addition to his orders for taking precautionary measures with regard to the funds of the accused client, his spouse, his minor and adult children and others by virtue of Article 24 of Law Number 1 of year 1993 with respect to protecting public funds based on the text of Article 29 of Law Number 41 of year 1993 and its amendments.

Kuwait Investment Authority may obtain a copy of the Financial Position report for every client for whom the Public Prosecution requests the announcement of his bankruptcy in observance of the provisions of Law Number 41 of year 1993 and its amendments. When

necessary, it may also refer to the Public Debt Protection Body in the affairs of these clients and what is required for in order to receive and to manage the withheld funds.

Fourth: Every creditor of persons, whose funds are subject to the receivership of Kuwait Investment Authority in accordance with the provisions of Article 29 of Law Number 41 of year 1993 and its amendments, shall notify the Authority of the volume of his debt and the reason it arose and he shall submit the documents substantiating the same within thirty days from the publication date of the resolution prohibiting the disposal of funds in the official gazette and one of the daily newspapers, otherwise his right to request the receivership shall be dropped.

Fifth: Kuwait Investment Authority – based upon the client’s request – and in light of its examination of the report that is prepared with the knowledge of the Public Prosecution on the financial position of the client who is requested to announce his bankruptcy, may present to the court looking into the bankruptcy announcement request its suggestions with regard to the conciliation preventing the bankruptcy.

Kuwait Investment Authority shall then express its opinion on the suggestions of conciliation preventing the bankruptcy that are filed by the client directly to the court.

Sixth: Kuwait Investment Authority, in its capacity as General Manager of the bankruptcy, shall make stocktaking of the funds of the client who has to announce his bankruptcy by using the Public Prosecution's report on his financial position as a guide. The Authority shall receive and manage these funds and call upon the creditors whose names are registered in the client's Financial Position by means of publication in the official gazette and at least two daily newspapers to submit their documents within ten days from the publication date. Upon the completion of the debt verification, the Authority shall submit to the court looking into the bankruptcy a report on the actions it took, its opinion with regard to accepting or rejecting all or some of these debts, and a list of the names of the creditors who hold special collateral determined for their debts over the funds of the bankrupt whereby it indicates the volume of these debts and the kind of collateral held provided that the submission of the mentioned report and list takes place within a period of sixty days maximum from the judgment date of the bankruptcy announcement unless the court looking into the bankruptcy approves extending this deadline.

The Authority shall publish a copy of that report in the official gazette and at least two daily newspapers within seven days from the date it is submitted to the court.

Seventh: The court looking into the bankruptcy shall make a list of the sums it deems accepted from the debt of every creditor separately. The court judgment accepting or rejecting the debt may be contested if its value exceeds the definitive quota of the Court of First Instance according to the provisions of Article 663 of the Commerce Law provided that the objection is filed within fifteen days from the date the judgment has been announced to the creditor through the action stipulated in Article 22 of Law Number (41) of year 1993 and its amendments.

Eighth: With the exception of the provisions of Article 724 of the Commerce Law, Kuwait Investment Authority, in its capacity as Manager of the Creditors Association and following the approval of the bankruptcy court, may sell the bankruptcy assets in the manner it deems appropriate.

The sale proceeds shall be deposited at the treasury of the managing bank in order for it to distribute them among the creditors in accordance with Article 21 of Law Number 41 of year 1993 and its amendments, this after deducting the sums the court allocates for expenditures.