

## **Law Decree Number (2) of the Year 2009 with Regard to Reinforcing the Financial Stability in the State**

- Following perusal of the Constitution,
- the Commercial Companies Law promulgated by Law Number 15 of the year 1960 and its amending laws,
- the Penal code promulgated by Law Number 16 of year 1960 and its amending laws,
- the Penal Procedures and Trials Law promulgated by Law Number 17 of year 1960 and its amending laws,
- Law Number 30 of the year 1964 with regard to establishing the Audit Bureau and its amending laws,
- Law Number 38 of the year 1964 with regard to private sector labor and its amending laws
- Law Number 32 of the year 1968 with regard to cash, the Central Bank of Kuwait and regulating the banking profession and its amending laws,
- the decree by Law Number 31 of the year 1978 on the rules of public budget preparation surveillance over their execution and the closing account and its amending laws,
  
- Civil and Commercial Procedure Code, promulgated in decree by Law Number 38 of year 1980 and its amending laws,
- the Civil Law promulgated in decree by Law Number 67 of year 1980 and its amending laws,
- the Commercial Law promulgated in decree by Law Number 68 of year 1980 and its amending laws,
- Law Number 47 of year 1982 establishing Kuwait Investment Authority and its amending laws,

- the decree by Law Number 23 of year 1990 with regard to the judiciary regulation law and its amending laws,
  - the decree by Law Number 31 of year 1990 regulating trading of financial securities and establishing investment funds,
  - Law Number 1 of year 1993 with regard to the protection of public funds and its amending laws,
  - Law Number 19 of year 2000 with regard to supporting and encouraging national manpower to work at non-government institutions and its amending laws,
  - and Law Number 30 of year 2008 with regard to guaranteeing deposits with local banks in the State of Kuwait,
- and based on presentation of Minister of Finance  
and approval of the Council of Ministers,

**we promulgate this decree by law with the following text:**

**Preamble Section**

**Definitions**

**Article (1)**

In applying the provisions of this decree by law, the following words and phrases shall have the meanings indicated against each of them:

- 1) Banks: The Kuwaiti banks registered with Central Bank of Kuwait.
- 2) Local Banks: The Kuwaiti banks and branches of foreign banks registered with the Central Bank of Kuwait.
- 3) Companies: The investment companies registered with the Central Bank of Kuwait.
- 4) Deficit in Specific Financial Provisions/Reserves: The amount of difference between the sums charged to the business results of any bank to meet the risk of not collecting debts, as specific

financial provisions/reserves made for this purpose, and the financial provisions/reserves required in accordance with instructions of the Central Bank of Kuwait.

- 5) The Authority: Kuwait Investment Authority.
- 6) Guarantee Document: A document issued by the Central Bank of Kuwait on behalf of the State to guarantee each of the deficit in the financial provisions/reserves to be made against the credit facilities and finance portfolio and the decrease in the elements of each of the financial investments portfolio and the real estate portfolio at any of the banks.
- 7) Bonds Bound for Conversion into Shares: Bonds issued by banks and investment companies for the purpose of borrowing and on which proceeds are paid. The issuing authority is committed to convert these bonds into shares, if the bearer so wishes at a certain time and against specific price, for the purpose of admittance of the Authority as a strategic partner in order to reinforce the company's performance and to provide a financial instrument with a high degree of safety.
- 8) Convertible Bonds into Shares: Bonds issued by the banks and the investment companies whose issuance conditions may include their convertibility into shares past the lapse of a specific period with the approval of the bond bearer.
- 9) Preferred Shares: Shares issued by banks and investment companies at a price agreed upon between the issuers and the Authority, giving priority to obtain a certain proportion of profit for appropriation, or priority to share the company's assets, in the event of liquidation, or providing a preferred benefit upon voting, or other privileges. These shares are having the characteristic as convertible into ordinary shares in compliance with the issuance conditions.
- 10) Productive Local Economic Activity Sectors: They are the productive economic activity sectors among the oil and gas

sector, the agriculture and fisheries sector, the industrial sector, the construction (building and contracting) sector, the commercial and trading sector, the services sector inclusive of telecommunications, transportation, crafts and other services, this according to the instructions issued by the Central Bank with regard to the definitions of the economic sectors.

- 11) Sukuk: A financial instrument issued by the Ministry of Finance on behalf of the State according to the ordinances of Islamic Sharia.
- 12) Specific Purpose Companies: Companies with a specific purpose owning and securitizing assets by issuing sukuk or debt bonds. These companies are exempted from the minimum prescribed in the Commercial Companies Law with respect to the number of founding partners.
- 13) Company's Solvency: The solvency is measured by the adequacy of the company's assets to meet its short or long run obligations, including the future cash flows.
- 14) The Managing Bank: The Kuwaiti bank holding the largest portion of the company's indebtedness to banks or any other bank specified by the Central Bank of Kuwait.
- 15) Specialized Authorities: Consulting firms, investment banks and companies that provide financial consulting services and studies and suggest the appropriate recommendations with respect to the rectification and remedying of the problems facing the companies.
- 16) Restructuring: The measures adopted by the company for the rectification of its situation and the treatment of its financial problems inclusive of the rescheduling of its liabilities and the restructuring of its capital.

- 17) Beneficiaries: The Kuwaiti banks, for whose favor the guarantee document is issued pursuant to the provisions of the First Section of the decree bylaw, as well as the investment companies that are solvent and to which the provisions of the First Chapter of the Third Section decree apply.

**First Section**  
**Banks**

**Article (2)**

The State may guarantee, for a period not exceeding fifteen years from the date of issuance of the guarantee, the deficit in the specific allowances that must be made against the credit facilities portfolio and outstanding funding with those banks on 31/12/2008.

This guarantee shall be within the limits of the deficit with the bank based on the instructions of the Central Bank of Kuwait regarding the rules and regulations of classification of credit facilities, funding transactions and the calculation of their financial provisions/reserves to the extent not covered on the part of the bank, as decided by the Central Bank of Kuwait in this respect provided that the following is observed:

- 1) During the years 2009, 2010, and 2011, the amount that may arise from a State guaranteed deficit shall be periodically adjusted based on the changes in the amount of deficit during this period, provided that the guarantee amount is not increased effective from 1/1/2012 up to the end of the guarantee period.

- 2) The banks shall adhere by taking all the measures necessary for monitoring the collection of the credit facilities and the funding and the fulfillment of their guarantees which the State guarantees the deficit amount in their financial provisions/reserves, also to build up the financial provisions/reserves required to reduce the volume of the deficit. The value of the issued guarantee shall be reduced by the improvement in the volume of the deficit during the remaining guarantee period.
  
- 3) The banks shall comply with the instructions issued by the Central Bank of Kuwait in this regard.

### **Article (3)**

The State may guarantee, for a period not exceeding fifteen years, the decline that may occur in the value of each of the financial investments portfolio and the real estate portfolio existent with banks on 31/12/2008. This guarantee shall be made to the extent determined by the Central Bank of Kuwait as to the decrease that may occur in both portfolios over the years 2009, 2010, and 2011. In light of the assessment of these two portfolios and in accordance with the international standards and the instructions issued by the Central Bank of Kuwait in this respect, the guarantee shall be reduced by the extent of the improvement in both portfolios during the remaining guarantee period or to the extent determined by the Central Bank of Kuwait. The banks shall comply with the controls and conditions prescribed by the Central Bank of Kuwait regarding the disposal of the components of both the financial and real estate portfolios that are covered by this guarantee.

#### **Article (4)**

On behalf of the State, the Central Bank of Kuwait shall issue the guarantee document of every bank. Every bank shall take all the actions necessary to treat its deficit, thus entailing the reduction of the guarantee value annually at the rate that is determined by the Central Bank of Kuwait, by at least 8% annually with effect from 31/12/2011.

The banks shall pay to the Authority, against administrative costs, an annual guarantee issuance commission not exceeding 1% annually of the balance of the guarantee issued at the end of each year and the yield of this rate shall inure to the State public reserve.

#### **Article (5)**

The guarantee issued to any bank may be cancelled during the period of its validity, if no longer required as determined by the Central Bank of Kuwait.

#### **Article (6)**

In the event that any bank is unable to increase the capital to face the requirements of its financial situation, the Authority may, during the validity period of this decree by law, carry out the following:

- 1) Purchase bonds, issued by banks, bound to be converted into shares or convertible bonds into shares and which are not subscribed to by the shareholders.
- 2) Subscribe to preferred shares issued by banks and which are not subscribed to by the shareholders.

- 3) Subscribe to any other financial sukuk compliant with the ordinances of Islamic Sharia in order to support the rights of the shareholders of the issuing bank.

### **Article (7)**

In applying the provisions of this section, every bank shall obtain the prior approval by the concerned general assembly of its adherence by the following:

- a) To implement the procedures and conditions prescribed by the Central Bank of Kuwait with regard to guaranteeing the deficit in the assets mentioned in Articles (2 and 3).
- b) To reduce the expenses, including the allocations for top management, the bonuses, the rewards and the like, as determined by the Central Bank of Kuwait.
- c) To enter into a merger, in principle, if the bank's situation so requires.
- d) Any other conditions required for the execution of the provisions of this law or as specified by the executive by-laws.

## **Second Section**

### **Productive Local Economic Activity Sectors**

#### **Article (8)**

The State shall guarantee 50% of the new funding provided by local banks to their clients from all productive local economic activity sectors, to be used locally, up to a maximum of KD 4 billion of the total new funding offered during years 2009 and 2010. The guarantee shall be valid throughout the funding period. In the event of defaulting on the payment of this funding, the amount of the guarantee shall be calculated in accordance with the provisions of Article (9).



The local banks, upon granting the new funding, shall abide by the following:

- 1- The instructions issued by the Central Bank of Kuwait with regard to the rationalization and regulation of the credit and finance policy at banks.
- 2- To obtain sufficient and proper collaterals that shall be determined in light of the situation of every client.
- 3- The new funding shall not be used for the purpose of speculation or trading in real estate and financial securities or for the settlement of client debts that are outstanding at the time of the issuance of this law. All actions shall be taken to ensure following up the client's utilization of this funding for the purpose for which it was granted according to the contract concluded with the client.
- 4- The maximum funding period shall be five years according to client needs.
- 5- The original funding balance and the return shall be paid in installments during the funding period.
- 6- The granted funding shall be distributed to all productive local economic activity sectors.

### **Article (9)**

Subject to the provisions of Article (29), if it becomes evident to the Central Bank of Kuwait that a debtor is defaulting on the payment of the new funding obtained in accordance with the preceding Article, the State guarantee amount shall be specified - as a maximum - at the rate of 50% of the amount not covered from the remaining balance of the doubtful funding less the value of collaterals submitted by the client. The Ministry of Finance may, on behalf of

the State, issue bonds and sukuk for the value of this guarantee with maturity periods not exceeding five years. Those bonds and sukuk shall be depreciated by the State's share in any amounts collected from such funding.

Proceeds to be specified by the Central Bank of Kuwait, may be paid for the bonds and sukuk.

### **Third Section Investment Companies**

#### **First Chapter Companies Classification, Remedial Methods and Controls**

##### **Article (10)**

The companies shall be classified according to their financial situations in order to identify the solvent companies that are able to persist in their activity but face financial problems and thus need to remedy their situations so as to continue fulfilling their obligations.

##### **Article (11)**

The Central Bank of Kuwait may assign one or more specialized authorities or any specialized authority assigned by the concerned company and conditionally approved by the Central Bank of Kuwait, this in order to study and to assess the company's situation in accordance with the provisions of Article (10) of this decree by law and to prepare a report comprising the recommendations and the proposed remedy in this respect. This assessment shall reflect the company's real financial situation provided that the companies bear the expenses of those studies.

## **Article (12)**

As a precondition to benefit from the provisions of this Chapter, the company shall be solvent in accordance with Article (10).

The Central Bank of Kuwait shall prescribe the appropriate actions to be taken with regard to remedying the situations of these companies through one or more methods in the following manner:

- 1- The State guarantee of 50% of the new funding extended by local banks to companies during the years 2009 and 2010 in order to be utilized for the purpose of:
  - a- Settling the company's outstanding liabilities toward all local authorities, other than local banks, on 31/12/2008.
  - b- Scheduling their debts to foreign banks and financial institutions provided that the cash settlement does not exceed 25% of the debt and scheduling the remainder for a suitable period based on the technical study submitted in this respect.

The company shall abide by setting down a portfolio including assets sufficient to cover the existent debts to local and foreign banks prior to the issuance of this decree by law as well as the new funding granted in this regard.

The provisions of Article (9) of this decree by law shall apply in determining the amount of State guarantee for the new funding if it becomes evident to the Central Bank of Kuwait that the debtor is defaulting on the payment.

As an exception from the provisions of Article (2) of this decree by law, the State shall guarantee the deficit in the financial provisions/reserves to be made against the outstanding credit facilities and funding at the time of the promulgation of this decree by law, of the company to any

Kuwaiti bank participating in extending the new funding, this in the event of defaulting on the payment of such existent credit facilities and funding.

- 2- The provision of appropriate support to the company by its shareholders or through the Authority, the governmental authorities and the public authorities and institutions, whose incorporation laws permit the same, this by extending subordinated loans or funding or by the company's issuance of bonds bound to be converted into shares or convertible bonds into shares, or through the issuance of preferred shares or other financial sukuk that comply with the ordinances of Islamic Sharia.

### **Article (13)**

The Central Bank of Kuwait shall entrust the managing bank with managing the scheduling of the debts of companies whose situation remedial method requires scheduling their debts to the creditor authorities.

The managing bank shall coordinate with the creditor banks in order to determine the size of the funding required from local banks for the company and the collaterals it shall submit.

The managing bank shall also take part in the negotiations conducted with the creditor foreign banks and financial institutions and the other creditors in order to schedule the company's debts. The prior approval by the Central Bank of Kuwait of the proposed scheduling shall be obtained.

## **Article (14)**

The company, whose situation is determined to be remedied, shall obtain the prior approval by the concerned general assembly of its compliance with the following:

- a- The implementation of the procedures and conditions prescribed by the Central Bank of Kuwait for remedying its situation.
- b- Adherence to the provisions of the indicated decree by Law Number 19 of the year 2000 and the resolutions issued for its execution provided that the ratio of national manpower is not less than 50% of its total manpower.
- c- Reduction of expenses inclusive of the allocations for top management, the bonuses, the rewards and the like as determined by the Central Bank of Kuwait.
- d- Introduction of positive changes in their technical and administrative structures as required by the remedial procedures endorsed by the Central Bank of Kuwait.
- e- In principle, the company's entry into a merger with another company or other companies, if the remedial procedures so require.
- f- To comply with the instructions issued by the Central Bank of Kuwait as to the execution of this decree by law.
- g- Any other conditions required for the enforcement of the provisions of this decree by law or specified by the executive by-laws.

## **Second Chapter Judicial Actions**

### **Article (15)**

At the Court of Appeal, a special department shall be established with an exclusive jurisdiction to look into, on an expedited basis, the restructuring requests stipulated in this decree by law.

### **Article (16)**

Both of the Central Bank of Kuwait and the company, in the event of facing difficulties that may impair the fulfillment of its obligations or the persistence of its business, may request the Chief Judge of the department referred to in the preceding article, to permit the company to undertake restructuring procedures in order to remedy its situation.

The company shall - in all cases – abide by providing all the documents substantiating the request inclusive of the financial standing, the list of debts, their maturity dates, the outline framework of the restructuring plan and all the relevant requirements as well as the auditor's report thereon.

### **Article (17)**

The submission of the foregoing request, upon the fulfillment of all the documents specified in the preceding Article, the signature by the Chief Judge of the department to the effect of accepting such documents and attaching them to this request, shall entail the stay of all litigation and civil and commercial execution actions pertinent to the company's liabilities until the subject of the request is resolved by the competent department.

The company shall notify the Central Bank of Kuwait and all its creditors through a copy of the request, signed by the Chief Judge of

the department and the resulting stay of actions, by registered letter with an acknowledgment of receipt.

### **Article (18)**

Every interested party may submit a grievance against the stay of actions to the competent department within fifteen days from receiving the notice, in a report to the Clerks Department whereby he notifies the Central Bank of Kuwait and the company by registered letter with an acknowledgment of receipt provided that a copy thereof is deposited at the Execution Department. The grievance must be causative, otherwise it shall be deemed void. The department shall render its judgment in the grievance by either canceling or continuing the cessation of actions. This judgment shall be final and uncontestable.

### **Article (19)**

Immediately upon the signature by the Chief Judge of the competent department accepting the request in accordance with Article (17), the Central Bank of Kuwait shall examine the financial situation of the company and the extent of the need for restructuring and it may assign one or more specialized authorities to conduct this examination.

The Central Bank of Kuwait shall submit its report to the Chief Judge of the competent department within four months from the date of signature accepting the request. This period may only be extended for another similar period.

The Chief Judge of the department shall specify a session to hear the merits of the request. The Clerks Department shall notify the applicant and the Central Bank of Kuwait accordingly by registered letter with an acknowledgment of receipt.

### **Article (20)**

The judgment in the merits of the request approving the restructuring plan shall entail the stay of all judicial and executive actions or the continuance of such a stay, as the case may be, pending the completion of the plan according to its time schedule. If the competent department dismisses the request, the stay of judicial and executive actions shall be deemed as expired and the procedures shall resume their course while the judgment therein shall be uncontestable. The company shall notify all its creditors of the judgment rendered in the request in a registered letter with an acknowledgment of receipt.

### **Article (21)**

The Central Bank of Kuwait shall supervise and monitor the company's execution of the restructuring plan and the extent of its compliance with the time schedule specified for this plan.

If the company fails to comply with the restructuring plan, the Central Bank of Kuwait shall refer the company's matter to the competent department so as to render a judgment considering the plan as null and void, thus entailing the cancellation of the stay of all judicial and executive actions issued in accordance with the preceding articles.

And every interested party may take the necessary actions, accordingly.



## **Fourth Section**

### **Penalties**

#### **Article (22)**

Without prejudice to any stricter penalty stipulated by another law, whoever hides an existing incident, makes up a debt or document or acts with the purpose of benefiting for himself or for others from the provisions of this decree by law in a manner contrary to the truth shall be punished by imprisonment for a term not exceeding five years and by a penalty not exceeding Kuwaiti Dinar five thousand.

#### **Article (23)**

The same penalty stipulated in the preceding article shall apply to whoever gives or states to a judiciary or official authority any false data or information or commits cheating or fraud in the submitted data or information for the purpose of benefiting from the provisions of this decree by law.

#### **Article (24)**

Without prejudice to any stricter penalty stipulated by another law, whoever discloses or exploits, for himself or for others, any information or data that comes to his knowledge regarding the implementation of the provisions of this decree by law shall be punished by imprisonment for a term not exceeding one year, a fine not exceeding three thousand Dinars or either of these two penalties.

The convict may be adjudicated for dismissal if he is a public employee.

#### **Article (25)**

The court may reduce the minimum penalty of imprisonment adjudicated in the crimes stipulated in this decree by law without observing the provision of the second paragraph of Article (83) of the Penal code.

It may also order a stay of execution of the judgment in the cases stipulated in Article (82) of the Penal code regardless of the adjudicated punishment.

#### **Article (26)**

The Public Prosecution shall take over the authority of investigation, disposal and prosecution in the crimes stipulated in this decree by law.

#### **Article (27)**

Any bank or company violating the provisions of this decree by law or its executive by-laws, and the resolutions or instructions issued by the Central Bank of Kuwait in execution hereof, shall be subject to the penalties of the Central Bank of Kuwait as stipulated in the aforementioned Law Number 32 of the year 1968.

### **Fifth Section**

#### **General and Final Provisions**

#### **Article (28)**

For the purpose of issuing the sukuk stipulated in the provisions of this decree by law, specific purpose companies shall be established and the executive by-laws shall state the provisions pertinent to such companies.

#### **Article (29)**

The maximum of the total amounts to be used for the purpose of applying the provisions of this decree by law, including the amounts used against the State guarantee in cases of default in accordance with the provisions of the Second Section and the First Chapter of the Third Section of this decree by law, shall be 1.5 billion Dinars.

The financial credits inclusive of all the necessary expenses shall be provided from the State public reserve.

### **Article (30)**

The benefitting authorities shall, within three months from the date of submitting the application to benefit from the provisions of this decree by law, submit a declaration to the Ministry of Commerce and Industry comprising sufficient data on all the actions, the financial transactions and the like that were made between them and the members of the boards of directors and major shareholders therein, in addition to all the members of their main executive boards, their spouses and first kin relatives and which were made since 1/1/2008. The Ministry shall verify the data stated in this declaration. If a suspected crime, punishable under the laws enforceable at the time it is committed, becomes evident, the competent authorities must be notified accordingly.

The declaration shall be submitted periodically (every six months) from the expiry of the period specified in the preceding paragraph for the submission of the first declaration.

Failure to submit this declaration at the specified time shall be punishable with the penalty prescribed in Article (24) of this decree by law.

### **Article (31)**

The government shall submit to the National Assembly and the State Audit Bureau a half yearly report and another annual report indicating the value of the bonds and the sukuk issued by the State

and all the governmental support, in line with the provisions of this decree by law and comprising the names of beneficiary banks and investment companies.

### **Article (32)**

The Council of Ministers shall issue the executive by-laws of this decree by law within three weeks from the date of its publication in the Official Gazette.

### **Article (33)**

The Ministers – each in his competence – shall execute this law which shall come into force from the date of its publication in the Official Gazette. This decree by law shall be presented to the National Assembly.

**The Amir of Kuwait**

**Sabah Al-Ahmad Al-Jaber Al-Sabah**

**Acting Prime Minister**

**Jaber Mubarak Al-Hamad Al-Sabah**

**The Minister of Finance**

**Mostafa Jassim Al-Shamali**

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**The Explanatory Note to the  
Law Decree Number (2) of Year 2009 with Regard  
to Enhancing the State Financial Stability**

The global financial crisis cast its repercussions on most financial markets in the world and transformed during the last quarter of 2008 from a financial crisis to a financial and economic one with the impact reflecting on the economies of nations. We can currently observe that most economies of the major countries have entered into stages of economic recession accompanied with an increase in unemployment rates. In an effort to confront the repercussions of this crisis, most governments and monetary and monitoring authorities in various countries have intervened by implementing salvage plans for the banking institutions. These plans, in their entirety, aim to protect the banking systems and to achieve the financial and economic stability in these countries. This crisis cast its shadows on Kuwait where the impact is still increasing thus requiring tackling it with expedited procedures that cannot withstand any delay.

The Central Bank of Kuwait took several actions to tackle the consequences of the global financial crisis on the situation of the banking system and the financial market in the country in general. Moreover, within the frame of the State keenness to protect the banking system and not to subject it to any regulatory crises, also in order to maintain the financial stability in the country, Law Number (30) of year 2008 was issued on 3/11/2008 with regard to guaranteeing the deposits at local banks in the State of Kuwait.

In view of the financial obligations entailed by the deposit guarantee law in the event any problems may arise in the banking system units,

it was imperative to shut any outlets where the signs of the probabilities of such problems may appear.

Based on this principle and within the frame of the aforementioned, the enhancement of the financial stability in the country requires the affirmation of the stability of the banking sector and the support of the economic activity in the country in addition to stimulating the banking sector to finance these sectors.

Within this framework, the said draft decree by law took place and comprised the provisions that realize these goals and a preamble section in addition to five sections. The Preamble Section is allocated for formulating the specific definitions of some words and phrases that are mentioned in the texts of the decree by law, namely Article (1).

**The First Section** regulates the provisions pertinent to banks whereas Article (2) allows the State to guarantee, for a period not exceeding fifteen years from the guarantee issuance date, the possible deficit

during the years 2009, 2010 and 2011 in the sum of the allocations to be set up by the banks against the credit facilities and funding portfolio existent at these banks on 31/12/2008, also the decline that may occur during the years 2009, 2010 and 2011 in the value of each of the financial investment and the real estate portfolios existent with the banks on 31/12/2008.

**Article (2)** indicates how to determine the deficit amount in the allocations of the credit facilities and funding and it compels the banks to take all the necessary actions for following up the collection of the funding, where the deficit in the allocations is guaranteed by the State, and to strive to build up the required allocations in order to reduce the volume of the deficit and to subsequently decrease the value of the guarantee, this according to the instructions issued by the Central Bank of Kuwait in this regard.

**Article (3)** highlights manner of computing the decline that may occur in the value of each of the financial investment and real estate portfolios existent with banks throughout the guarantee period. It binds the banks to the controls and conditions prescribed by the Central Bank of Kuwait with regard to disposing of the components of the financial and real estate portfolios covered by this guarantee, namely shares and properties.

**Article (4)** stipulates that the Central Bank of Kuwait issues, on behalf of the State, the guarantee document for every bank and that every bank commits to take the necessary actions with regard to remedying the deficit therein so as to entail reducing the value of the guarantee by a rate that is determined by the Central Bank of Kuwait annually so as not to be less than 8% annually from its value effective from 31/12/2011 provided that the banks pay annually a guarantee issuance commission against the administrative costs at a rate not exceeding 1% annually of the balance of the value of the guarantee issued at the end of every year. The yield of the collected commission shall inure to the State public reserve.

**Article (5)** allows the cancellation of the guarantee issued for any bank during its validity period if it is no longer required as decided by the Central Bank of Kuwait.

**Article (6)** permits to the Authority, during the validity period of this decree by law and in the event none of the banks are able to increase the capital in order to face the requirements of their financial situations, to purchase bonds issued by banks bound for conversion to shares or convertible to shares, also to subscribe into preferred shares that are issued by banks provided that the subscription is first open to the shareholders, also any other financial sukuk compliant with the ordinances of Islamic Sharia in order to support the rights of the shareholders of the issuing bank.

**Article (7)** comprises the conditions and requirements which the banks must fulfill in this regard after obtaining the prior approval of the relevant general assembly.

The Second Section organizes in Articles (8) and (9) the provisions of the productive local economic activity sectors whereby Article (8) stipulates that the State guarantees 50% of the new funding offered by local banks to their clients in all productive local economic activity sectors and which is used locally provided that the maximum limit of the new funding is Kuwaiti Dinar four billion for the years 2009 and 2010 and the guarantee is valid during the period specified for the funding. To be taken into consideration is the fact that the liability of granting the credit and the funding falls upon the



granting party and the norms, the appropriate banking practices and rules and regulations prescribed in this regard shall be observed. This article compels the local banks, upon granting this funding, to comply with the instructions issued by the Central Bank of Kuwait with respect to the rationalization and regulation of the credit and funding policy at banks, obtaining sufficient and appropriate guarantees that are determined in light of the situation of every client and not using this new funding for the settlement of the client's outstanding debts at the time of the issuance of the decree by law provided that the client's use of the new funding for the purpose for which it was granted is monitored, also that the maximum limit for the funding period is (5 years) according to client needs and that the original funding and the return are paid in installments during the funding period. The distribution of the new funding to all productive local economic activity sectors shall be observed.

**Article (9)** covers how to determine the value of the State guarantee in the event of defaulting on the payment of this new funding while observing the provision of Article (29) at the rate of 50% of the amount that is not covered by the remaining balance of the doubtful funding less the value of the guarantees submitted by the client. It allows the Ministry of Finance to issue – on behalf of the State – bonds and sukuk for the value of this guarantee with a maturity date not exceeding five years. It also permits the payment of a return on these bonds and sukuk according to what is prescribed by the Central Bank of Kuwait.

The Third Section is divided into two chapters that comprise the provisions pertinent to investment companies while the First Chapter covers the provisions relating to the classification of companies and the remedy methods and controls. Article (10) stipulates that the companies shall be classified based on their financial situations in order to determine the companies that have solvency and the ability to persist in their activity but face financial problems and thus need to remedy their situations so as to continue to carry out their activity and fulfill their obligations. It is known that a company's solvency depends on its assets sufficing to fulfill its obligations, whether short or long term, while taking into consideration the future cash flows of the company.

**Article (11)** permits to the Central Bank of Kuwait to assign one or more specialized authorities or any specialized authority assigned by the concerned company and approved by the Central Bank of Kuwait, this in order to study and to assess the situation of the solvent company in accordance with the provisions of Article (10) and to prepare a report comprising the recommendations and the proposed remedy in this respect. This assessment shall reflect the company's real financial situation provided that the companies bear the expenses of those studies.

**Article (12)** requires the company to be solvent in accordance with **Article (10)** so that the provisions of the First Chapter of the Third Section apply thereto.

This article also comprises the actions which the Central Bank of Kuwait can take with regard to remedying the situations of these companies and which shall be according to one of two methods or both of them. The first method is represented in the State guaranteeing 50% of the new funding offered by local banks during 2009 and 2010 to solvent companies to be used for the purpose of settling the outstanding obligations of the company toward the local authorities other than the local banks and for scheduling the company's debts to foreign banks and financial institutions provided that the cash payment does not exceed 25% of the debt and the remainder is scheduled for an appropriate period.

The company shall commit to placing sufficient assets against the outstanding debts to foreign banks and financial institutions prior to the issuance of this decree by law and the new funding granted in this respect.

As an exception from the provisions of Article (2), the State shall guarantee the deficit in the allowances, to be made against the outstanding credit facilities and funding at the time of the promulgation of this decree by law, of the company to any Kuwaiti bank participating in granting the new funding, this in the event the debtor defaults on the payment.

The provisions of Article (9) with regard to determining the State guarantee shall apply if the default on payment becomes evident to the Central Bank.

The second method is represented in offering the appropriate support to the company by its shareholders or through the contribution of the Authority, governmental authorities and public authorities and institutions by extending subordinated funding or by the company's issuance of bonds bound to be converted to shares or convertible to shares, or through the issuance of preferred shares allocated to the Authority or other financial sukuk that comply with Islamic Sharia.

**Article (13)** stipulates that the Central Bank of Kuwait entrusts the managing bank with managing the scheduling of the debts of investment companies whose financial situations shall be remedied by scheduling their debts to creditor authorities. The managing bank shall also participate in the negotiations conducted with the foreign creditor banks and financial institutions and the other creditors for the scheduling of company debts, determining the part to be guaranteed by the State out of the total obligations and obtaining the prior approval by the Central Bank of Kuwait of the proposed scheduling.

**Article (14)** comprises the conditions and requirements which the company, whose situation is decided to be remedied, shall fulfill.

The Second Chapter titled judicial actions covers the provisions that enable the Central Bank of Kuwait or the company having financial difficulties to request the restructuring through special actions aiming to simplify the procedures and to expedite their completion while enabling the monitoring authority, the Central Bank of Kuwait, to direct the procedures appropriately so as to assist the judiciary in reaching the fair and proper decision in an expedited manner, this because the provisions of this decree by law are imposed by the necessity manifested in the repercussions and impact of the global financial crisis on the economies of nations. In order to tackle these exceptional circumstances, it was imperative to facilitate the litigation procedures and to avoid those that may allow the opportunity to lengthen the litigation period. Hence, this chapter includes provisions pertinent to judicial procedures. **Article (15)** stipulates the establishment of a special department at the Court of Appeal to look into the restructuring applications provided that this is accomplished in an expedited manner.

**Article (16)** covers the priority of each of the Central Bank of Kuwait and the company in requesting the permission to undertake the restructuring procedures by applying at the department referred to in the preceding article provided that the company – in all cases – complies with submitting all the documents substantiating the restructuring application whether the applicant is the Central Bank of Kuwait or the company. In the event the application is submitted by the company, it shall notify the Central Bank of the same.

**Article (17)** stipulates that the submission of the said application shall, following the fulfillment of all the documents specified in the previous article and the signature of the department Chief Judge, entail a stay of all litigation, civil and commercial actions pertinent to the obligations prior to the restructuring request submission, this in order to protect the company from creditors. It is noteworthy to indicate that this stay is valid for a temporary period until the issuance of the judgment from the competent court approving the restructuring plan or its automatic dismissal if the restructuring application is denied.

This entails a mandatory commitment by the company to notify the Central Bank of Kuwait and all its creditors through a copy of the application signed by the department Chief Judge and the entailed stay of actions, this by registered letter with acknowledgment of receipt.

**Article (18)** details how to file a grievance for the stay of litigation and execution actions within fifteen days in a report to the Clerks Department while observing to notify the Central Bank and the company of the grievance by registered letter with acknowledgment of receipt provided that a copy thereof is deposited at the Execution Department and that the report is causative otherwise it shall be void. The article stipulates that the judgment issued in the grievance shall be uncontestable through any means aiming to settle the litigation in order not to lengthen the conflict period.

According to **Article (19)** and immediately upon the signature of the department Chief Judge accepting the request, the Central Bank shall examine the financial situation of the company and submit its final report within a period of four months which may be extended only for another period according to the company's situation and the examination requirements. The Central Bank may resort to any or more specialized authorities in this domain to conduct the required examination.

The Chief Judge of the department shall specify a session to hear the merits of the request. The Clerks Department shall notify the applicant and the Central Bank accordingly by registered letter with an acknowledgment of receipt.

**Article (20)** stipulates that the judgment rendered by the competent court referred to in Article (15) approving the restructuring plan shall automatically entail the continuance of the stay of all judicial and executive actions until the end of the period specified for implementing the rescheduling plan. However, if the court rejects the request, the stay of the judicial and executive actions shall be deemed as expired and the procedures shall resume their normal course. The company shall notify all its creditors of the rendered judgment by registered letter with an acknowledgment of receipt.

It is decided to make the judgment final and uncontestable with the aim of settling the conflict in one degree in an effort not to lengthen the conflict in light of the exceptional circumstances tackled by the provisions.

**Article (21)** indicates that the Central Bank shall supervise and monitor the company's implementation of the elements of the restructuring plan approved by the competent court in order to ascertain the extent of its compliance with the plan within the frame

of its time schedule. If it is established to the Central Bank that the company is not complying with the plan, the Central Bank shall present the matter to the competent court to render a judgment deeming the restructuring plan as if null and void including the stay of judicial and executive actions. The interested party may take the actions he deems appropriate for the fulfillment of his rights. The Fourth Section regulates the penalties relating to a set of penal crimes so as to warrant the observance of the provisions of the law while taking into consideration that the crimes stipulated in this law all aim to protect public funds.

**Article (22)** provides for the punishment of whoever hides the truth, makes up a debt or document or acts with the purpose of benefiting for himself or for others from the provisions of this decree by law in a manner contrary to the truth. The punishment in this article is harsh as it imposes imprisonment for a term not exceeding five years and a penalty not exceeding five thousand Dinars with the purpose of deterring whoever manipulates, in any form whatsoever, in order to benefit from this decree by law.

**Article (23)** punishes whoever gives or states any false data or information or commits cheating or fraud for the purpose of benefiting from the provisions of this decree by law, this in the event of submitting data and information to a judicial or official authority.

**Article (24)** also imposes a penalty on whoever announces or states for himself or for others any confidential information, pertinent to data and information that came to his knowledge with regard to the implementation of the provisions of this decree by law, to the effect

of imprisonment for a period not exceeding one year, a fine not exceeding three thousand Dinars or one of these two penalties. A convict may be adjudicated for dismissal if he is a public employee.

**Article (25)** allows the court to impose the minimum penalty of imprisonment adjudicated in the crimes stipulated in this decree by law without observing the provision of the second paragraph of Article (83) of the Penal code, also to order a stay of execution of the judgment in the cases stipulated in Article (82) of the Penal code.

**Article (26)** stipulates that the Public Prosecution takes over the authority of investigation, disposal and prosecution in the crimes stipulated in this decree by law.

**Article (27)** imposes the enforcement of the administrative penalties stipulated in Article (85) of Law (32) of the year 1968 with regard to cash, the Central Bank of Kuwait and regulating the banking profession on banks and companies in the event they violate any of the provisions of this decree by law or its executive by-laws and the resolutions and instructions issued by the Central Bank of Kuwait for their execution.

The Fifth Section comprises final general provisions. **Article (28)** stipulates the establishment of a specific purpose company for the purposes of issuing the sukuk stipulated in the decree by law provided that the executive by-laws state the provisions pertinent to these companies.

**Article (29)** specifies the maximum limit for the total sums to be used for the purposes of enforcing the provisions of this decree by law among which the sums that are used against the State guarantee in cases of default in accordance with the provisions of the Second Section and the First Chapter of the Third Section of the decree by law, namely 1.5 billion Dinars, and that the cost of the decree by law is provided from the State public reserve.



**Article (30)** stipulates that the beneficiary authorities shall, within three months from the date of submitting the application to benefit from the provisions of this decree by law, submit a declaration to the Ministry of Commerce and Industry comprising sufficient data on all the actions, the financial transactions and the like that were made between the beneficiary authority and the members of its boards of directors or its major owners, in addition to all the members of the executive board therein, the spouse of each of them and the first kin relatives, namely the actions and transactions that were made effective from the first of January 2008. It also compels the Ministry to verify the data stated in this declaration. If a suspected crime transpires to it in these actions and transactions and is punishable under the laws enforceable at the time it is committed, it shall notify the competent authorities accordingly. The second paragraph also mandates to submit the declaration periodically thereafter every six months. The third paragraph comprises imposing the penalty stipulated in Article (24) on whoever fails to submit this declaration on time.

**Article (31)** stipulates that the government shall submit to the National Assembly and the Audit Bureau a bi-annual report (covering the first half of the year) and another annual report indicating the value of the issued bonds and the sukuk and all the means of governmental support provided in order to execute the provisions of this decree by law and comprising the names of beneficiary banks and investment companies.

**Articles (32) and (33)** stipulate that the Council of Ministers shall issue the executive by-laws of this decree by law within a period of three weeks from the date of its publication in the Official Gazette. The executive by-laws shall include all the matters necessitated by the execution of this decree by law provided that it comes into force from the date of its publication.

In view of the necessity of the provisions of this draft necessitating taking the measures it stipulates in an expedited manner because they cannot withstand any delay while observing the situations entailed by the global financial crisis that is still ongoing and may aggravate, this draft has been prepared for issuance in a law decree in accordance with Article (71) of the Constitution.