



MINISTRY OF JUSTICE



**Advantages of  
Judicial Arbitration,  
as per Law 11/1995**

# Advantages of Judicial Arbitration, as per Law 11/1995

The Judicial Arbitration Law No. 11 of 1995 has been enacted to avoid the shortcomings of Judicial Arbitration, according to article 177 of the Law of Procedures on the one hand, and to combine between the advantages of ordinary arbitration and court adjudication in the other hand.

## **FIRST: Characteristics and Features of Judicial Arbitration Law:**

Judicial Arbitration is characterized as follows:

### **1) Mixed Composition of Judicial Arbitration Board:**

According to article one of Judicial Arbitration Law No. 11 of 1995, the judicial arbitration board shall be composed of three judges including one justice and all three are to be selected for two years by the Supreme Judicial Council, plus two arbitrators chosen from within or without Kuwait by both parties to arbitration or through Arbitration Department, if the parties to arbitration does not choose so. The Arbitration Department shall choose the two arbitrators from Kuwaiti citizens enrolled at the lists set for this purpose. A chosen arbitrator shall be specialized in the subject of dispute brought to



the Judicial Arbitration Board (i.e. the technical characteristics of the arbitrator).

## **2) Three Methods for Resorting to Judicial Arbitration (Jurisdiction of Judicial Arbitration Board):**

There are three methods for referral to Judicial Arbitration as follows:

### **a) All-Optional Jurisdiction:**

Any natural or juridical, private or public person shall have the right to refer to Judicial Arbitration through making a judicial arbitration agreement in form of a condition before dispute commences or an arbitration clause when dispute exists. Therefore, contracts to be made after Judicial Arbitration Law takes effect and contain the word “arbitration” in general must mean judicial arbitration, unless otherwise required under the will of parties to contract by choosing one arbitrator or providing for exclusion of implementation of Judicial Arbitration Law (A1/2 Judicial Arbitration Law).

### **b) All-Mandatory Jurisdiction:**

Judicial Arbitration Board shall alone have the jurisdiction over determination of disputes arising out between a governmental authority and a state wholly owned capital company or among these companies (A2/2 Judicial Arbitration Law).

### **c) Optional – Mandatory Jurisdiction:**

Judicial Arbitration Board shall have jurisdiction over determination of disputes brought by private individuals or juridical persons against ministries or governmental agencies, the same arise between them. These agencies shall be bound by arbitration, unless the



dispute has been already brought to courts of law (A2/3 Judicial Arbitration Law).

### **1) Respect of the Role of Personal Will:**

Judicial arbitration system shall respect the role of personal will in referral to that arbitration, selection of arbitrator, fixing fees of arbitrator, determining certain powers and procedures of Judicial Arbitration Board, unless the judicial arbitration system prevents personal will in authorizing judicial arbitration the commission of reconciliation.

### **2) State Role in Judicial Arbitration System:**

Judicial Arbitration System shall not only make the state through its courts of law play an associate or supervisory, but a principal role as well, as the composition of the board shall be prevailed by judicial nature, and certain powers shall be assigned to this board and it will enjoy broad authorities (A5 Judicial Arbitration Law). The chairperson of the board shall have authorities to assess the fees and fix the session. Further, a governmental department i.e. Judicial Arbitration Department at the Ministry of Justice has been established to assist the board and parties to dispute in process of proceedings.

Moreover, Court of Appeal Clerks Department plays a role in deposition of award with itself. The Court of Cassation receives recusal and may correct or interpret the award upon challenging it by cassation for the reasons set forth in Judicial Arbitration Law.

### **3) Subject of Judicial Arbitration Falls is Reconcilable:**

The subject of Judicial Arbitration falls within reconcilable issues.



These issues relate to private rights and interests. Consequently, issues relating to public order, including status of a person, eligibility or issues relating to personal status or to declaration of bankruptcy of traders shall be excluded out. However, reconciliation may be made in respect of financial rights resulting from issues relating to public order, including matrimony amount, compensation ensuing from crime, indemnity for repealing administrative order, revocation or negation of administrative contract.

#### **4) Fast:**

Judicial Arbitration shall be characterized by fast nature. It does not restrict itself by ordinary proceedings (A1/7 Judicial Arbitration Law). In the event that the parties to arbitration fail to select the ordinary arbitrator, the department shall carry out such selection to



avoid obstruction of the progress of proceedings. If either party to arbitration does not pay the fees, the other party to arbitration shall pay them to enable progress of proceedings. The board shall convene within or without the premises of Court of Appeal, as per its chairperson's resolution (A2/2 Judicial Arbitration Law). Recusal shall not result in staying determination of original proceedings by force of law. However, if an arbitrator is recused or removed, his substitute shall be appointed under the same procedures applied upon appointment of the former (A6/2, 3 Judicial Arbitration Law). The award shall be passed unlimited by a certain period of time (A2/7 Judicial Arbitration Law). No reliance shall be made on any arbitrator who fails to attend after commencing deliberation, as long as majority is available. The board may review its unchallenged award for correction, interpretation or completion of shortcomings thereof (A2/3 Judicial Arbitration Law). The award shall be res judicata and take effect after the writ of execution is affixed thereon by Court of Appeal Clerks Department (A9, Judicial Arbitration Law). This award shall be challenged only by cassation and for the reasons stated in article ten of Judicial Arbitration Law.

## **5) Simplicity of Procedures:**

Disputes shall be heard before the Judicial Arbitration Board without fees. Hearings may be convened within or without the premises of Court of Appeal, as per the decision of the chairperson of the board without restriction of time, along with the attendance of the secretary of hearing. Parties to dispute are not required to attend, as long as they are enabled to present their means of defense. Seeking the assistance of a lawyer is not mandatory. The dispute of Judicial Arbitration shall not take a certain form in terms of data, dates and places. There is no certain form for service upon parties



to dispute and the board shall not bound by a certain period of time in determining the case.

### **6) Secrecy:**

Hearings of Judicial Arbitration Board shall be distinguished with secrecy, except for the hearing of the text of award, which shall be open, because the composition of this board is dominated by judicial nature (A2/7 Judicial Arbitration Law). All or part of award shall be published only upon the consent of the two parties (A4/7 Judicial Arbitration Law).

### **7) Unbiased Arbitrator:**

A judicial arbitrator must be unbiased not being a party to or having an interest in dispute or being related to either party to dispute. Otherwise, such arbitrator shall be required to announce so when first chosen, or he will be recused before the Court of Cassation (A6 Judicial Arbitration Law). The arbitrator shall be bound by the motions of parties to dispute in terms of basis and grounds. He may not determine anything not moved for by the parties to dispute or determine anything more than that they moved for, otherwise, his award shall be subject to cassation (A6/10 Judicial Arbitration Law). The judicial arbitrator shall respect the fundamental principles and assurances for litigation, which are compliant with the nature and targets of judicial arbitration in order to achieve equality between parties to dispute (A7, 29, 34, 166 of the Constitution) and respect the rights of defense and confrontation between parties to dispute.



## **8) Decisions of Judicial Arbitration Board are Judicial Awards:**

Decisions of Judicial Arbitration Board are considered Judicial Awards. Consequently, if they are objective, they will have conclusiveness of res judicata and exhaust the jurisdiction of the board.

Further, the board may review its award for correction by itself or by a petition from either party to dispute, or for interpretation by ordinary procedures or for completion of disregarded objective motions in original action in application of article eight of Judicial Arbitration Law.

## **9) Judicial Arbitration is a Single Graded Litigation and Given Award Enjoys Strength of Execution:**

Judicial arbitration awards are final, res judicata and enforceable in accordance with the procedures prescribed in Law of Procedures after the Writ of Execution is affixed by Court of Appeal Clerks Department (A9 Judicial Arbitration Law).

These awards may be challenged only by cassation and for the reasons specified by law (A10 Judicial Arbitration Law) within thirty days from the issue date as a rule (A11 Judicial Arbitration Law). They may not be challenged by any other way of challenge (A10 Last Paragraph of Judicial Arbitration Law).

Moreover, the Judicial Arbitration Board shall have no jurisdiction over issues relating to enforcement of its awards or to disputes ensuing there from.





## **10) Liability Of Judicial Arbitrator**

If any judge at the board commits a gross professional error, he shall be held accountable under Civil Liability Rules. Thus, his liability shall be omissive and the state shall be held accountable for him under the rule: the master is accountable for the acts of his servant.

However, if the selected arbitrator commits a professional error, the party who selected him may recourse against him under the Rules of Contractual Civil Liability, but if the committed error is towards third parties, the liability of the selected arbitrator shall be omissive liability vis-à-vis third parties. Nevertheless, the liability of arbitrator shall be determined consistently, depending on the capacity of the arbitrator (juridical or non-juridical person) and as per the state courts of law, upon abstention from passing the award.



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