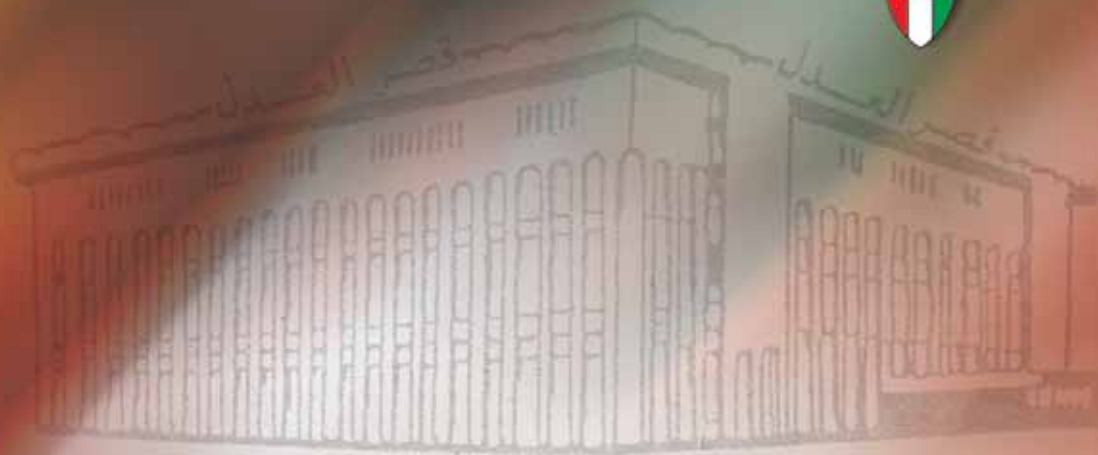




MINISTRY OF JUSTICE



**What is Judicial Arbitration according to
Law No. 11/1995**

What is Judicial Arbitration according to Law No. 11/1995 and what Advantages does it have?

FIRST: Introductory Definitions:

- “Arbitration” means a type of special justice regulated by law and is permitted thereunder to take certain disputes away from the jurisdiction of ordinary courts of law in specific cases, so that such disputes would be dissolved by ordinary people to be selected by parties to dispute as a rule and entrusted to carry out the function of courts of law as to disputes.
- From the above definition, it becomes evident that arbitration is a legal system in replacement of State of Kuwait Courts of Law to determine disputes, and is comprised of two elements; namely: arbitration agreement and arbitrator’s award, which ends dispute.
- Arbitration may be conducted internationally, domestically, commercially, civilly or administratively, depending on the type of dispute and subject matter thereof.

Definition of Judicial Arbitration:

It is the choice by parties to dispute, even if they are more than two, of judicial arbitration boards, co-formed of two ordinary arbitrators; one to be selected by each party to dispute, and three judges to be selected by the Supreme Judicial Council for two renewable years, to bring their disputes to these boards and not to the court of jurisdiction for determining the said disputes by an non-appealable and unchallengeable award for cassation.

SECOND: Advantages of Judicial Arbitration:

There are several advantages of judicial arbitration. This kind of arbitration attracted many individuals who do not find these advantages available in state courts of law or in any other arbitration system. Speed, secrecy and experience are among the most significant advantages of this arbitration.

1. Speed: Normal procedures for access to justice are not followed;
2. Access to justice is of a single grade without appeal.
3. Secrecy: sessions are usually held in private and not in public, in agreement with the desire of parties to dispute who find the arbitrator a judge close to them, understands and solves their problems.
4. Experience: Arbitrators are usually from amongst traders or technocrats who are aware of technical matters.
5. Unbiased judicial element becomes available and is aware of judicial antecedents and legal experience.
6. Free-of-charge judicial arbitration: it is a charge-free arbitration.

THIRD: Formation of Arbitration Boards:

Judicial arbitration boards are formed, according to article one of Judicial Arbitration Law No. 11/95 Fifth, of three judges, including one justice, to be selected by the Supreme Judicial Council for two years and two arbitrators to be selected from inside or outside Kuwait by parties to arbitration. The board shall be chaired by a senior member of men of justice ranking as justice. As to arbitrators, each party to dispute shall choose his own arbitrator, but if neither party uses this choice, the Judicial Arbitration Department shall make that choice. Judicial Arbitration Department shall choose from amongst Kuwaiti citizens enrolled at lists set for this purpose. The arbitrator chosen by the department shall be specialized in the subject matter of dispute brought before the Judicial Arbitration Board (technical aspect of arbitrator).

Any person to be enrolled at the arbitrators' list of Judicial Arbitration Department must meet several conditions stated in article (3) of the Resolution of Minister of Justice No. 43 of 1995, where this article states:

Any person to be enrolled at the arbitrators' list must:

1. Be a Kuwaiti citizen.
2. Be good-mannered and reputable.
3. Not be previously dismissed from service, pursuant to a disciplinary decision, unless at least three years are completed from the issue date of decision.
4. Not be previously convicted of a detentive penalty on account of felony or misdemeanor involving moral turpitude

or dishonesty, unless such person is rehabilitated.

5. Have got appropriate academic and practical experience adopted by the Arbitration Affairs Council.
 - The selected arbitrator shall take oath before the chairperson of the board to perform his functions faithfully and honestly, before he commences his commission.
 - The arbitrator judge shall not give oath, as he did it before commencing his job.
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 - Request for recusal of any member of arbitration board shall not result in staying arbitration proceedings. If recusal is awarded, the accomplished arbitration proceedings, including the award of arbitration board, shall be deemed as null and void. An award given in refusal of the request for recusal may not be challenged in any way. In the event that any arbitrator is recused; resigns or is removed for any reason whatsoever, this arbitrator shall be replaced by another under the same procedures applied at the time of his appointment.

THIRD: Authorities of Chairperson of Arbitration Board:

The chairperson of arbitration board shall:

- Have the authority to assess the fees of the selected arbitrator, temporarily upon commencing proceedings and finally upon completing them.
- Order to keep the request, if fees are not deposited by the parties to arbitration during the specified legal term.
- Fix a date for submission of documents and specify tenure and venue of session.
- Make the orders relating to procedures for proof.
- Make the orders relating to letters rogatory.
- Administer and control sessions.
- Make the orders relating to assessment of arbitration expenses.
- Sign original award.
- Assume the authority to correct the award, if it is materially erroneous.

An employee from the Court of Appeal shall carry out the duties of board Secretariat.



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