



Translation of Law Decree No. 2 of 2009 On Enhancing the State Economic Stability

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Law Decree No. 2 of 2009
On Enhancing the State Economic Stability

- Having reviewed the Constitution, and
- Commercial Companies Law, promulgated by Law No. 15 of 1960, and the amending laws thereof, and
- Penal Code, promulgated by Law No. 16 of 1960, and the amending laws thereof, and
- Procedure and Penal Trials Law, promulgated by Law No. 17 of 1960, and the amending laws thereof, and
- Law No. 30 of 1964, establishing the State Audit Bureau, and the amending laws thereof, and
- Law No. 38 of 1964 on Private Sector Labor, and the amending laws thereof, and
- Law No. 32 of 1968 concerning Currency, the Central Bank of Kuwait, and the Organization of the Banking Business, and the amending laws thereof, and
- Law Decree No. 31 of 1978, establishing Rules and Regulations for Preparation of the Public Budget, Control over its Execution, and the Financial Statements, and the amending laws thereof, and
- Civil and Commercial Procedure Code, promulgated by Law Decree No. 38 of 1980, and the amending laws thereof, and
- Civil Law, promulgated by Law Decree No. 67 of 1980, and the amending laws thereof, and
- Commercial Law, promulgated by Law Decree No. 68 of 1980, and the amending laws thereof, and
- Law No. 47 of 1982, establishing Kuwait Investment Authority, and the amending laws thereof, and

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- Law Decree No. 32 of 1990, concerning the Judiciary organization law, and the amending laws thereof, and
- Law Decree no. 31 of 1990, organizing the trading of securities and establishing mutual funds, and
- Law No. 1 of 1993, on the Protection of Public Funds, and the amending laws thereof, and
- Law No. 19 of 2000 on supporting and Encouraging National Manpower to work at Non-Government Institutions, and the amending laws thereof, and
- Law No. 30 of 2008, on Guaranteeing Deposits with Local Banks in the State of Kuwait, and

Upon the presentation of the Minister of Finance, and
The approval of the Cabinet,

We hereby promulgate this Law Decree with the following text:

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Preamble Part

Definitions

Article 1

In applying the provisions of this Law Decree, the following words and phrases shall have the meanings provided against each:

1. **Banks:** The Kuwaiti banks registered with the Central Bank of Kuwait.
2. **Local Banks:** The Kuwaiti banks and branches of foreign banks registered with the Central Bank of Kuwait.
3. **Companies:** Investment Companies registered with the Central Bank of Kuwait.
4. **Deficit in Specific Provisions:** The amount of difference between the amounts charged to the business results of any bank to meet the risk of non-collection of debts, as specific provisions made for this purpose, and the provisions required in accordance with the instructions issued by the Central Bank of Kuwait.
5. **The Authority:** Kuwait Investment Authority (KIA).
6. **Guarantee Document:** A document issued by CBK on behalf of the State to guarantee the deficit in the provisions to be made against the credit facilities and finance portfolio and the impairment in the elements of the financial investments portfolio and the real estate portfolio with any bank.
7. **Bonds Bound for Conversion into Shares:** Bonds issued by banks and investment companies for the purpose of borrowing, on which a return is paid. The issuer is committed to convert these bonds into shares, if the bearer so wishes at a specific time and rate, for the purpose of inserting the Authority as

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a strategic partner to enhance the company's performance and provide a financial instrument that enjoys a high degree of safety.

8. **Convertible Bonds:** Bonds issued by the banks and investment companies, which the issuance terms may include their convertibility into shares upon the elapse of a specific period, with the consent of the bond bearer.
9. **Preferred Shares:** Shares issued by banks and investment companies at a rate to be 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 benefits. Such rights and benefits may only be reduced with the Authority's consent. These shares are convertible into ordinary shares, according to the issuance terms and conditions.
10. **Productive Local Business Sectors:** The productive local private sector business activities, representing: oil and gas, agriculture and fisheries, industrial, construction (construction and contracting), commercial and trading, services (including telecommunications, transportation, crafts, etc.), as classified under CBK's instructions.
11. **Sukuk:** An Islamic Shari'a-compliant financial instrument issued by the Ministry of Finance on behalf of the government.
12. **Specific Purpose Companies:** Companies with specific purpose, which own and securitize assets by issuing sukuk or debt bonds. These companies are exempted from the minimum prescribed in the Commercial Companies Law of the number of founding partners.
13. **Company's Net Worth:** The company's net worth is measured by the adequacy of the company's assets to meet its short or long term obligations, including the future cash flow.

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14. **The Manager Bank:** The Kuwaiti bank with the largest portion of the company's debt to banks, or any other bank to be specified by CBK.
 15. **Specialist Entities:** Consulting firms, investment banks and companies that provide financial consulting services and studies, and draw proper recommendations on the rectification and treatment of the problems facing companies.
 16. **Restructuring:** The measures adopted by the company to rectify its situation and treat its financial problems, including rescheduling its liabilities, and restructuring its capital.
 17. **Beneficiaries:** The Kuwaiti banks to whom the guarantee document is issued in accordance with the provisions of Part I, and the investment companies that enjoy net worth, and to whom the provisions of Chapter 1 of Part I apply.

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Part 1

Banks

Article 2

The State may guarantee, for a maximum of fifteen years from the date of issuance of the guarantee, the deficit in the specific provisions that must be made against the credit facilities portfolio and outstanding finance with those banks, as of 31/12/2008.

Such guarantee shall be within the limits of the deficit with the bank, pursuant to CBK's instructions regarding the rules and regulations of classification of credit facilities, financing transactions, and computation of the provisions thereof, to the extent not covered by the bank, as decided by CBK in this respect. The following shall be considered:

1. During 2009, 2010, and 2011, the amount that may arise out of a state-guaranteed deficit shall be periodically adjusted in accordance with the changes in the amount of deficit over the said period, provided that the guarantee amount shall not be increased with effect from 1/1/2012, up to the expiry of the guarantee period.
2. Banks shall adopt all measures necessary to monitor collection of the credit facilities and finance, and fulfillment of the relevant guarantees, which the provisions deficit shall be guaranteed by the state. Banks shall build the provisions necessary to reduce the size of deficit. Value of issued guarantee shall be reduced as much as the reduction in the size of deficit over the remaining period of guarantee.

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3. Banks shall comply with the instructions issued by CBK in this regard.

Article 3

The state may guarantee, for a maximum of fifteen years, the possible impairment of the financial investments portfolio and real estate portfolio, outstanding with banks as of 31/12/2008. Such guarantee shall be made to the extent to be prescribed by CBK of the decline that may occur in both portfolios over the years 2009, 2010, and 2011. In light of the assessment of both portfolios, in accordance with international standards and CBK's instructions in this respect, the guarantee shall be reduced to the extent of improvement in both portfolios over the remaining period of guarantee, or to the extent to be specified by CBK. Banks shall comply with the terms and controls prescribed by CBK regarding the disposal of the components of the financial and real estate portfolios, covered by such guarantee.

Article 4

CBK, on behalf of the state, shall issue the guarantee document of each bank. Each bank shall take all actions necessary to treat their deficit, thus reducing the value of guarantee annually at the rate to be specified by CBK, by at least 8% p.a., with effect from 31/12/2011.

Banks shall pay to the Authority, against administrative costs, an annual guarantee issuance commission not exceeding 1.0% p.a. of the balance of guarantee issued at the end of each year. Yield of this rate shall inure to the State public reserve.

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Article 5

The guarantee issued to any bank may be canceled during its validity, if no longer required, as decided by CBK.

Article 6

In the event that any bank is unable to increase capital to face the requirements of its financial situation, KIA, during the validity of this law, may:

1. Purchase bonds bound to be converted into shares or convertible bonds, issued by banks, which are not subscribed to by the shareholders.
2. Subscribe to preferred shares issued by banks, which are not subscribed to by the shareholders..
3. Subscribe to any other Islamic Shari'a-compliant financial instruments for the purpose of supporting the rights of shareholders of the issuing bank.

Article 7

In applying the provisions of this Part, each bank shall obtain prior approval of the concerned general assembly of compliance with the following:

- A. Fulfilling the actions and terms prescribed by CBK with regard to guaranteeing the deficit in assets, as stated in Articles 2 and 3.
- B. Reducing the expenses, including the allocations for top management, remuneration, bonuses, etc., as prescribed by CBK.
- C. Entering into merger, in principle, if the bank's situation so requires.

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- D. Meeting any other terms required for the execution of the provisions of this law, or as specified by the executive procedures.

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Part 2

Productive Local Business Sectors

Article 8

The state shall guarantee 50% of the new finance provided by local banks to their customers from all productive local business sectors, to be used locally, to a maximum of KD 4 billion, of total new finance for both 2009 and 2010. The guarantee shall be valid throughout the finance period. In the event of default in the repayment of this finance, the amount of guarantee shall be calculated in accordance with the provisions of Article 9.

Local banks, upon granting the new finance, shall abide by the following:

1. CBK's instructions regarding rationalization and organization of credit and finance policy at banks.
2. Obtain sufficient and proper collaterals, which shall be specified in light of the situation of each customer.
3. New finance shall not be used for the purpose of speculation or trading in real estate and securities, or for the settlement of customer's debts outstanding at the time of the issuance of this law. All actions shall be taken to follow up the customer's utilization of such finance for the purpose for which it is granted, as per the agreement made with the customer.
4. Finance maturity shall be for a maximum of 5 years, according to the customer's needs.
5. Repayment of finance principal balance, and the return, shall be made with installments throughout the finance period.

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6. The granted finance should be allocated to all productive local business sectors.

Article 9

Subject to the provisions of Article 29, if CBK notices that a debtor defaults repayment of the new finance obtained in accordance with the preceding Article, the state guarantee amount shall be specified, as a maximum, at 50% of the amount not covered from the remaining balance of problematic finance, less the value of collaterals submitted by the customer. The Ministry of Finance may, on behalf of the state, issue bonds and sukuk covering the value of such guarantee, with maturities not exceeding five years. Those bonds and sukuk shall be depreciated by the state's share in any amounts to be collected from such finance.

A return, to be specified by CBK, may be paid for the bonds and sukuk.

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Part 3

Investment Companies

Chapter 1

Companies Classification, Treatment Approaches and Controls

Article 10

Companies are classified according to their financial situations, in order to identify the companies that enjoy good credit worthiness and are able to continue activity, but facing financial problems, thus need to treat their situation to continue fulfilling their obligations.

Article 11

CBK may assign one or more specialist parties, or any specialist party assigned by the concerned company and conditionally approved by CBK, to study and assess the company's situation, in accordance with the provisions of Article 10 hereof, and to prepare a report covering the recommendations and proposed treatment in this respect. Such assessment shall reflect the company's real financial situation, provided that the companies shall bear the expenses of such studies.

Article 12

As a precondition to benefit from the provisions of this Chapter, the company shall enjoy a net worth according the Article 10.

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CBK shall prescribe the proper actions to be taken with regard to treating the situations of those companies, with the treatment of their situations taking place through one or more of the following approaches:

1. State guarantee of 50% of the new finance extended by local banks to companies, within 2009 and 2010, to be utilized for the purpose of:
 - A. Settlement of the company's outstanding liabilities as of 31/12/2008 to all local parties other than local banks.
 - B. Rescheduling its debts to foreign banks and financial institutions, provided that the cash settlement shall not exceed 25% of the debt, and the remainder to be rescheduled for a suitable period upon the technical study submitted in this respect.

The company shall include in a portfolio assets sufficient to cover debts to local and foreign banks, outstanding prior to the issuance of this Law Decree, as well as the new finance to be granted in this respect.

Provisions of Article 9 hereof shall apply to identify the amount of state guarantee of the new finance, if CBK notices that the debtor is defaulting payment.

As an exception from the provisions of Article 2 of this Law Decree, the state shall guarantee the deficit in the provisions that should be made against the outstanding credit facilities and finance at the time of promulgation of this Law

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Decree, from the company to any Kuwaiti bank participating in granting the new finance, in the event of default in the repayment of such outstanding credit facilities and finance.

2. Providing proper support to the company by its shareholders or through KIA, government and public authorities and institutions, whose incorporation laws so allow, by extending subordinated loans or finance or the issuance by the company of bonds bound to be converted into shares, or convertible bonds, or through the issuance of preferred shares or other Islamic Shari'a-compliant financial instruments.

Article 13

CBK shall assign the manager bank to manage the rescheduling of the debts of companies, whose situation treatment approach requires rescheduling their debts to the creditor parties.

The manager bank shall coordinate with the creditor banks to specify the size of finance required for the company from local banks, and the collaterals it shall submit.

The manager bank shall also take part in the negotiations to be made with the creditor foreign banks and financial institutions, and other creditors, in order to reschedule the company's debts. CBK's prior approval of the proposed rescheduling shall be obtained.

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Article 14

The company, of which the situation is scheduled for treatment, shall obtain prior approval of the concerned general assembly of the compliance with the following:

- A. Execute the actions and terms prescribed by CBK on the treatment of its situation.
- B. Comply with the provisions of the aforementioned Law Decree No. 19 of 2000, and the relevant executive resolutions, provided that the ratio of national manpower to its total manpower shall not be less than 50%.
- C. Reduce the expenses, including the allocations for top management, remuneration, bonuses, etc., as prescribed by CBK.
- D. Make changes in their technical and administrative structures as required by the procedures of its CBK-approved treatment.
- E. In principle, the company's entry into merger with other company/companies, if the treatment procedures so require.
- F. Comply with CBK's instructions issued within the framework of the application of this Law Decree.
- G. Any other terms required for the enforcement of the provisions of this Law Decree, or specified by the executive procedures.

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Chapter 2
Judicial Actions

Article 15

At the Court of Appeal, a special circuit shall be established, with the exclusive jurisdiction to hear, on a summary basis, the restructuring requests stated in this Law Decree.

Article 16

CBK, or the company, in the event of facing difficulties that may impair continuance of business or fulfillment of obligations, may request the Chief Judge of the circuit referred to in the preceding Article, to permit adoption of company restructuring procedures to treat its situation.

In all cases, the company shall provide all documents supporting the request, including the financial position, list of debts, maturity dates, general framework of the restructuring plan and all relevant requirements, as well as the auditor's report thereon.

Article 17

Submission of the foregoing request, upon the fulfillment of all documents specified in the preceding Article, the signature of the Chief Judge of the circuit accepting such documents, and upon attachment of the documents to this request, entails staying of all civil and commercial litigation and execution measures relating to the company's liabilities, until its merits are resolved by the circuit of competent jurisdiction.

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The company shall provide CBK and all its creditors with copy of the request, as signed by the Chief Judge of the circuit, and the resulting stay of actions, with acknowledged receipt registered letter.

Article 18

Each party having interest may submit grievance against the staying of the actions, before the circuit of competent jurisdiction, within fifteen days from receiving the notice of report before the Clerks Circuit, with copy to CBK and the company, by acknowledged receipt letter, with copy of the grievance to be deposited with the Execution Department. Grievance must be causative, otherwise it shall be deemed as null and void.

The circuit shall render its judgment in the grievance, canceling or continuing the stay of action. Such judgment shall be final and unchallengeable.

Article 19

CBK, upon the signature by the Chief Judge of the circuit of competent jurisdiction accepting the request in accordance with Article 17, shall study the financial situation of the company, and how far it needs restructuring. CBK may assign one or more specialist parties to conduct such study.

CBK shall submit its report to the Chief Judge of the circuit of competent jurisdiction within 4 months from the date of signature accepting the request. This period may only be extended to another similar period.

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The Chief Judge of the circuit shall specify a session to hear the merits of the request. Clerks Department shall notify the applicant and CBK accordingly by acknowledged receipt registered letter.

Article 20

Judgment rendered, in the merits of the request, ratifying the restructuring plan, shall result in the staying of all judicial and executive actions, or continuance of such stay, as the case may be, pending completion of the plan according to its timeframe.

If the Circuit of competent jurisdiction dismisses the request, the staying of judicial and executive actions shall be deemed as expired, and all the above actions shall be brought back to course. Its judgment shall be unchallengeable. The company shall notify all its creditors of the judgment rendered in the request, with an acknowledged receipt registered letter.

Article 21

CBK shall supervise and monitor the company's execution of the restructuring plan, and how far it is compliant with the specified timeframe.

If the company fails to comply with the restructuring plan, CBK shall refer the company's subject to the circuit of competent jurisdiction, so as to render a judgment considering the plan as null and void, thus canceling the staying of all judicial and executive actions issued under the preceding Articles.

Each party having interest may take the necessary actions.

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Part 4

Penalties

Article 22

Without prejudice to any stricter penalty stipulated by another law, each one hiding an existing incident, making up a debt or document, or disposal, for the purpose of benefiting from the provisions of this Law Decree, untruly, for himself or for others, shall be punished by imprisonment for a term not exceeding five years, and a fine not exceeding KD 5,000.

Article 23

Anyone giving, or stating to a judiciary party or competent authority, with any false data or information, commits cheating or fraud in the data and information submitted for the purpose of benefiting from the provisions of this Law Decree, shall be punished by the same penalty as provided for in the preceding Article.

Article 24

Without prejudice to any stricter penalty stipulated by another law, each person disclosing, or exploiting, for himself or for others, any information or data that come to his knowledge regarding the application of the provisions of this Law Decree, shall be punished by imprisonment for a term not exceeding one year, and a fine not exceeding KD 3,000, or either penalty.

The convict may be adjudicated for dismissed, if a public employee.

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Article 25

The court may reduce the minimum penalty of imprisonment, adjudicated in the crimes stipulated in this Law Decree, without complying with the provisions of Paragraph 2 of Article 83 of the Penal Code.

It may also order the staying of the execution of the judgment in the cases stated under Article 82 of the Penal Code, no matter the adjudicated punishment.

Article 26

The Public Prosecution shall take over the authority of investigation, disposal, and prosecution in the crimes stated under this Law Decree.

Article 27

Any bank or company violating the provisions of this Law Decree, or its executive procedures, and the resolutions or instructions issued by CBK in execution hereof, shall be subject to CBK's penalties stated in the aforementioned Law No. 32 of 1968.

Part 5

General and Final Provisions

Article 28

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For the purpose of issuing the sukuk stated under the provisions of this Law Decree, specific purpose companies shall be established, and the executive procedures that detail the provisions regarding such companies.

Article 29

The maximum of the total amounts to be used for the purpose of applying the provisions of this Law Decree, including the amounts used against the state guarantee in the cases of default in accordance with the provisions of Part II and Chapter 1 of Part III of this Law Decree, shall be KD 1.5 billion. Financial resources, including all necessary expenses, shall be provided from the state public reserve.

Article 30

Beneficiary parties shall, within three months from the date of submission of application to benefit from the provision of this Law Decree, submit a declaration to the Ministry of Commerce and Industry, covering sufficient data on all acts, financial transactions, etc, which were made between them and the members of the boards of directors and major shareholders thereof, in addition to all members of their executive boards, their spouses, and first kin relatives, which were made since 1/1/2008. The Ministry shall verify the data stated in such declaration. If a suspected crime, punishable under the laws enforceable at the time it is committed, is noticed, the competent authorities must be notified accordingly.

The declaration shall be submitted periodically (half yearly) from the expiry of the period specified in the preceding Paragraph, to submit the first declaration.

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Failure to submit this declaration at the specified time shall be punishable with the penalty prescribed under Article 24 of this Law Decree.

Article 31

The government shall submit to the National Assembly and the State Audit Bureau a half yearly report, and an annual report, stating the value of bonds and sukuk issued by the state, and all means of government support, in line with the provisions of this Law Decree, covering names of banks and beneficiary investment companies.

Article 32

The Cabinet shall issue Executive Procedures for this Law Decree within three weeks from the date of its publication in the Official Gazette.

Article 33

The Ministers, each in their area of jurisdiction, shall execute this law, which shall come into force from the date of its publication in the Official Gazette. This Law Decree shall be referred to the National Assembly.

Sabah Al-Ahmad Al-Jaber Al-Sabah
Amir of Kuwait

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Jaber Mubarak Al-Hamad Al-Sabah
Acting Prime Minister

Mostafa Jassim Al-Shamali
Minister of Finance

Promulgated at Seif Palace on: 26 March 2009