
THE DISPUTE RESOLUTION REVIEW

EIGHTH EDITION

EDITOR
JONATHAN COTTON

LAW BUSINESS RESEARCH

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THE DISPUTE RESOLUTION REVIEW

Eighth Edition

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EDITOR'S PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 45 jurisdictions. In a world where commercial disputes frequently cross international boundaries, it is inevitable that clients and practitioners across the globe will need to look for guidance beyond their home jurisdictions. *The Dispute Resolution Review* offers the first helping hand in navigating what can sometimes, at first sight, be an unknown and confusing landscape, but which on closer inspection often deals with familiar problems and adopts similar solutions to the courts closer to home.

This eighth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward looking and the contributors offer their views on the likely future developments in each jurisdiction.

Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments. For instance, over the past year the EU has adopted a new regulation on jurisdiction which fortifies the freedom of parties of any nationality to choose to litigate in their preferred forum and grants Member State courts discretion to stay proceedings in favour of proceedings already on foot in non-Member State courts. At the other end of the spectrum, 2015 saw the Supreme Court in the United Kingdom clarify the law on penalty clauses 101 years after the seminal House of Lords' case on this issue (see the review of *ParkingEye Ltd v. Beavis* and *Cavendish Square Holding BV v. El Makdessi* [2015] UKSC 67 at page 181). But even seemingly local decisions such as this have a broad audience and can have far-reaching consequences in global commerce. It is always a pleasure – and instructive for my own practice – to observe the different ways in which jurisdictions across the globe tackle common problems – sometimes through concerted action under an umbrella international organisation and sometimes individually by adopting very different, but often equally effective, local solutions.

Over the lifetime of this review the world has plunged into deep recession and seen green shoots of recovery emerge as some economies begin to prosper again, albeit

uncertainly. One notable development over the course of 2015 has been the sharp and sustained fall in the oil price (along with commodities more generally). This has had, and will continue to have, far-reaching economic and geo-political effects which may take some time to manifest themselves fully. As many practitioners will recognise from previous global shocks, these pressures typically manifest themselves in an increased number of disputes; whether that is joint venture partners choosing to fight over the diminishing pot of profits, customers seeking to exit what have become hugely expensive long-term contracts, struggling states renegotiating or exiting their contracts (or simply expropriating commercial assets) or insolvency-related disputes as once-rich parties struggle to meet their obligations. The current economic climate and short to medium term outlook suggests that dispute resolution lawyers operating in at least the energy and commodities sectors will continue to be busy and tasked with resolving challenging multi-jurisdictional disputes for years to come.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 747 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Jonathan Cotton
Slaughter and May
London
February 2016

Chapter 25

KUWAIT

*Haifa Khunji and Diego Carmona*¹

I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

i Overview of dispute resolution in Kuwait

There is a common misconception that the laws of Kuwait are derived entirely from shariah law. Kuwaiti law is in fact relatively new, with the Court of Appeal having been formed as recently as 1959. The legal system is based on a combination of shariah law and the Kuwaiti Civil Code, which in itself is the result of carefully selected elements of the Egyptian and French models.² This modern approach, in theory at least, gives Kuwaiti law a distinct advantage over that of other jurisdictions.

Since being granted independence in 1961, Kuwait has endeavoured to develop a modern legal system and in doing so it has evolved, rather dramatically in some areas, into the system found today.

Kuwait is part of the Gulf Cooperation Council (GCC), a political and economic union of six Arab countries, which is also comprised of Oman, Qatar, Saudi Arabia, Bahrain and the United Arab Emirates.³ Despite this union and the resulting common policies, the legal systems of the Member States remain entirely independent and in many cases may have very little similarities.

Kuwait is a civil rather than common law jurisdiction. The laws and regulations are set in statutes, codes and directives with precedents playing a minor role in the system. However, it would be wrong to assume that precedents play no role at all as in practice the lower courts do take the decisions of the Court of Cassation into account despite the fact that they are not bound to do so.

1 Haifa Khunji is a partner and Diego Carmona is an associate at KBH Kaanuun Ltd.

2 *Doing Business in Kuwait*, Practical Law Company.

3 GCC Charter: www.gcc-sg.org/eng/index895b.html?action=Sec-Show&ID=3.

ii The structure of the courts

Kuwait operates a three-tier system of courts for all cases, irrespective of the value or nature of the dispute: these are the courts of first instance, the courts of appeal and the Court of Cassation. Appeals made to a court of appeal from a court of first instance may be brought on the basis of either errors of fact or law. In contrast, appeals to the Court of Cassation may only be made on a point of law.

Disputes in Kuwait may be litigated publicly in the courts or privately using alternative dispute resolution (ADR) procedures such as arbitration. Despite the arguable benefits of using ADR procedures such methods of dispute resolution remain unpopular in comparison to litigation. This may be because of the court remains the only form in which a claim may be determined without the agreement of the other party to the dispute and while the process can be slow, there are enforcement benefits associated with bringing claims to court rather than ADR.

The judicial system in Kuwait adopts the inquisitorial nature of the French system, with judges taking a central role in questioning witnesses and asking for any evidence they believe may assist in the matter. This is curious given that the rules on disclosure of documents align more neatly with an adversarial court system.

iii ADR overview

The most common form of ADR in Kuwait is arbitration, which is regulated by Law No. 11 of 1995 Concerning Judicial Arbitration in Civil and Commercial Matters and Law No. 38 of 1980 Promulgating the Civil and Commercial Procedures Law (the Procedures Law), which substituted Article 177 of the Procedures Law and has been replaced with the Arbitration Law. Together they address the validity of each aspect of arbitration, including the enforcement of foreign awards.

The above laws, in particular the Arbitration Law, are made up of a series of unfortunate provisions that neglect to differentiate between international and domestic arbitration. The outcome is that the arbitral mechanism is undermined by local judicial concepts, which in effect grants the courts an unacceptable level of influence in relation to substantive matters.

II THE YEAR IN REVIEW

The most talked about legal breakthrough in Kuwait this year has been the adoption of Ministerial Decree No. 68 of 2015 regarding domestic workers. Decree 68 grants domestic workers the right to one day's rest per week, 30 days of paid annual leave, and an end-of-service benefit of one month a year at the end of the contract. While the introduction of Decree 68 is undoubtedly a step in the right direction it is not without its problems.

There appears to be little or no scope for enforcing the rights as there is no government body or otherwise where potential abuse could be reported. There are also a number of provisions that are ambiguous and not very clearly defined. The implications of Decree 68 could be far-reaching and, if fully implemented, it could lead to an escalation in the number of legal cases brought against sponsors of domestic workers.

III COURT PROCEDURE

i Overview of court procedure

The court procedure in Kuwait is an unusually unified system that operates in accordance with Amiri Decree No. 19/1959, later modified by several laws. The procedure and principles contained in Decree 19 govern the separation of powers between the executive, legislative authority and the judiciary, and the process under which dispute resolution ought to be handled. Documents presented to the court must be filed in Arabic.

ii Procedures and time frames

For claims brought before the civil courts, the claimant must file a statement of claim with the clerk's department together with the relevant fee.⁴ The statement of claim should set out the grounds of the claim and relief requested⁵ together with other information, for example the location of the defendant for service of documents.

The claim form must then be served on the defendant by a process server. Once service has been effected successfully the court will set down a hearing date and the defendant shall submit his or her defence and supporting documents. The court will also set a timetable for managing the case, although this is not particularly rigid.

Once a judgment has been handed down, the matter may proceed to the court of appeal and then to the Court of Cassation, which is the final stage. The Court of Cassation is essentially looked upon as a Supreme Court, which undertakes a supervisory role over the entire system and, in doing so, reviews the decisions of the lower courts without necessarily hearing new evidence in the matter.

While the Constitution allows for a separate administrative court system, Kuwait has retained a unified system within which sections of existing courts have been established to deal with administrative disputes. This is in direct contrast to the vast majority of other judicial systems in which, for example, entirely separate systems exist for chancery or other matters.

This lack of segregation goes some way towards explaining the reason why litigation in Kuwait is a notoriously drawn-out process. Claims have been known to last for periods of four to five years and the parties have very limited control over the court timetable once documents are submitted. The courts, as noted above, have exclusive control over case management schedules but seem to allow parties' conduct to adversely affect the progress of a case by failing to impose punitive measures on parties who refuse to abide by case procedural requirements.

iii Class actions and group litigation orders

It is possible to bring class actions, however this procedure is not commonly used. However, it appears that such actions are not favoured by claimants because of the

4 Law No. 17 of 1973.

5 Civil and Commercial Proceedings Law No. 38 of 1980.

potential for conflict between the members of the group and the likelihood of a change in their respective positions as the litigation progresses. Litigation involving groups or classes is also perceived to be difficult to manage in practice.

iv Representation in proceedings

Parties in Kuwait may act in person in certain proceedings. Individuals appointed to act must be duly authorised to do so on behalf of the individual or entity either by virtue of a power of attorney or the entity's documentation (e.g., company memorandum or board resolution).

In the case of individuals, persons may represent themselves or a blood relative with an affinity to the fourth degree without holding an attested power of attorney. In situations where an individual in proceedings elects to be represented by an agent other than one with a blood affinity, the court will require a power of attorney duly signed by the individual and attested. This allows the agent to act on behalf of the appointer, including making decisions on his or her behalf.

Notwithstanding the above, in certain courts, only those with certain rights of audience will be permitted to speak in court, and consequently a lawyer with the correct qualifications must be instructed.⁶ The above does not apply to certain courts where only counsel with the correct qualifications and with rights of audience will be permitted to address the judge and present pleadings.

v Service out of the jurisdiction

The jurisdiction of the Kuwaiti courts is very limited. The Kuwaiti courts will accept jurisdiction where a property dispute arises in Kuwait and the property is located within Kuwait. In addition, where a dispute arises between two parties, one of whom resides in Kuwait, the Kuwaiti courts will accept jurisdiction. In cases like this, of course, it is possible for one party to be based in Kuwait and for the other to be outside the Kuwaiti jurisdiction.

Where the above scenario occurs, the statement of claim will be lodged by the claimant and sent to the Public Prosecutor. The Public Prosecutor will then issue the claim at the Ministry of Foreign Affairs who will, via diplomatic channels, arrange for service of the claim form. If the defendant's country of residence is unknown at the time the statement of claim is filed, the statement of claim may be filed either on the legal representatives of the defendant or any of its shareholders, should this be applicable. In addition, service at a branch of a company as opposed to its headquarters allows for deemed service to take place.

vi Enforcement of foreign judgments

Enforcement of orders is taken very seriously in Kuwait and there are various methods of enforcement such as fines for non-payment, sale of assets by auction and, in serious cases, imprisonment.

6 Law No. 42 of 1964 on Regulating the Legal Profession.

Notwithstanding the seriousness of enforcement, or possibly as a result of it, in order for foreign judgments to be enforced in Kuwait, a recognition and enforcement order must be obtained from the Kuwaiti court. Such an order will be granted only where reciprocity exists⁷ (i.e., the court that issued the judgment recognises Kuwaiti decisions and would similarly enforce them). A number of further conditions must be fulfilled in order for a foreign judgment to be enforced in Kuwait including (among others), that the judgment must have been issued by a court of competent jurisdiction, and that the judgment must not contradict any prior judgment made by the Kuwaiti courts or general morals in Kuwait.

vii Assistance to foreign courts

In general, Kuwaiti courts do not enforce foreign judgments.⁸ Legislation is largely dormant and is quite often disregarded when issues of enforcement are presented before Kuwaiti courts.

This is despite the fact that Kuwait is a signatory to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters concluded on 1 February 1971 and incorporated it via Law No. 6 of 2002. Kuwait has also entered into bilateral treaties with Egypt, Tunisia and the GCC countries.⁹

In the absence of any bilateral or multilateral treaty between Kuwait and another country, a judgment may be enforced in Kuwait by commencing new proceedings before the court of first instance in Kuwait. The party seeking enforcement must file a petition before the court in Kuwait in accordance with the rules as prescribed under the Civil and Commercial Procedures Law for initiation of suits. The foreign judgment may be used as documentary evidence in such case before the Kuwaiti courts.

All procedures required for initiating a suit in Kuwait including legal notice, services of summons, filing memoranda of defence, submission of evidence, etc. must be taken by the party seeking enforcement of the foreign judgment. The court will examine the pleadings and the documents filed by the parties and render its judgment.¹⁰

viii Access to court files

Where a case has been filed in Kuwait, the parties have access to all relevant documents filed in respect of their matter. However, the documents are not publicly available where proceedings are ongoing.

When a dispute is resolved by the court, the court may publish the outcome in the local gazette or otherwise; however, this will be a very brief summary and will not include details in respect of the parties. Details of the matter, once resolved, will generally be made public unless there is a reason for not doing so.

7 Article 199, Law No. 38 of 1990 or the Civil and Commercial Procedures Law.

8 Convention of League of Arab States on the Enforcement of Judgments (1952) and Law No. 44 of 1998 Ratifying the Agreement for the Enforcement of Judgments and Judicial Notices in the Member States of the GCC.

9 Paul Hopkins, *International Enforcement of Foreign Judgments*.

10 Paul Hopkins, *International Enforcement of Foreign Judgments*.

ix Litigation funding

Third parties in Kuwait are currently free to provide funds in respect of litigation, irrespective of whether they are doing so for profit or altruism. This is true whether the funding is provided by way of contingency or conditional fee or any other fee arrangement.

Contingency fees, conditional fees and other fee arrangements that depend on the outcome of litigation or arbitration are allowed under Kuwaiti law.

Despite the lack of regulation in this area, third-party funding in Kuwait is not a common occurrence. This may be attributable to the fact that, upon request from the Legal Aid Commission or the court, the Association of Lawyers and Jurists may appoint a commercial lawyer for the defence of those who cannot afford court fees or representation free of charge.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

The management of conflicts of interest, both ethically and practically, will remain as they are in other jurisdictions and they are largely a matter for individual firms. This is because, while the obligation is there to avoid conflict of interest, in practice there is very little supervision.

ii Money laundering and proceeds of crime

In Kuwait, the profession of lawyers is regulated by the Kuwait Lawyers Association (KLA). Like the Solicitors Regulation Authority in the UK, the KLA is a self-regulating body and is a representative body for lawyers and those providing legal advice. Interestingly, though, the KLA is not involved at all in enforcing compliance with anti-money laundering (AML) regulations, which possibly indicates the view of the profession in respect of AML.

For the past 10 years, Kuwait has had legislation in force dealing directly with the issue of money laundering, which relates directly to lawyers and others in the legal profession.¹¹ The legislation is broad but is arguably not very far-reaching in practice. This is despite the existence of additional tranches of legislation dealing directly with money laundering.¹²

A Report commissioned by the Middle East & North Africa Financial Action Task Force (MENAFATF) has stressed that the current AML framework has many shortcomings, as it does not provide for effective, dissuasive or proportionate measures and there is a lack of effective supervision of lawyers. Legal professionals, primarily

11 Law Regarding Combating Money Laundering Operations, Law No. 35 of 2002 implemented by Ministerial Order No. 9 of 2005.

12 Law No. 5 of 2006 Ratifying the United Nations Convention Against Transnational Organized Crime and Its Protocols and Ministerial Order No. 9 of 2005 Regarding the Procedures and Controls of the Execution of Provisions of Law No. 35 of 2002.

covered by Resolution No. 9 of 2005, remain unsupervised with respect to AML, as the KLA appears unaware of the fact that lawyers are subject to any provisions regarding AML. The Report also notes that lawyers on an individual basis are unaware that AML laws apply to their profession. This is not surprising, given the KLA's lack of knowledge in this area.

The Report recommends that lawyers should be subject to effective systems for monitoring and ensuring compliance with AML requirements and that guidelines should be established to assist lawyers to comply with their AML obligations. The Report further recommends that legislation be passed to strengthen Kuwait's AML procedures, which are currently very weak both in scope and enforcement.

While the definition of 'money laundering' under the legislation is loosely drafted, the wording of the legislation requires actual knowledge of money laundering or the fact that monies being utilised are monies derived from the proceeds of crime, in order for the act or omission in question to come under the scope of the legislation. This provides for an easy defence that the lawyer did not know about any money laundering that may have taken place.

In summary, the legislation provides that lawyers and others within the legal profession should always carry out identity verification on their clients, in common with most other developed legal systems. However, the legislation does not provide for enhanced due diligence at all in respect of clients, irrespective of their background or how risky the work to be undertaken may be.

Lawyers in Kuwait must not open or keep any unidentified accounts, rent safes or keep bonds, financial or commercial bills, notes, precious jewels or metals in anonymous code or fake names. Prior to verifying the identity of a client, lawyers must not open any account or perform any transaction that amounts to more than 3,000 dinar except after verifying the identity and capacity of the client.

In common with most other AML legislation, the legislation provides that lawyers in Kuwait must report any suspicious financial transaction that may come to their knowledge and staff must be trained on a regular basis about new developments in the field of fighting money laundering transactions. Hand in hand with this comes the requirement to establish and consolidate internal control regulations to ensure that checks are in place to prevent money laundering.

Further, any person who in good faith reports information according to the provisions of the law is protected from any criminal, civil or administrative liability, whether or not the reported activities were lawful. Tipping off is a criminal offence in Kuwait much like in most other jurisdictions.¹³

Under Law 35 of 2002 the court may, at its own discretion, relieve any person from penalties prescribed by the law who, on his or her own initiative, informs the authorities of a crime and those committing it before the authorities have discovered it.

Lawyers in common with other jurisdictions are under the obligation to report suspicious transactions as soon as they become aware of them. The penalty on conviction is imprisonment not exceeding three years or heavy fines, or both. Additionally, there

13 Article 11, Law 35 of 2002.

is a risk of dismissal from his or her employment. Despite this, there are no records of any lawyer in Kuwait having been jailed or prosecuted for money laundering activities. Whether this is an indication of the complete lack of money laundering activity aided by lawyers or the inefficiency of the legislation is debatable.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

There is no requirement in Kuwait for pretrial disclosure, or indeed any disclosure. Evidence is ordinarily only presented at trial or attached to the statements of claim or defence. Witness evidence documents that are produced need only assist the party relying on it. There is no express or implied requirement to provide information that may assist the opposing party.

The lack of a disclosure requirement results in a lack of necessity for privilege in respect of documents, as essentially all documents are classified as confidential or privileged (hence the reason there is no obligation to disclose the same). It also means that the onerous obligations faced by parties in civil cases in other jurisdictions are not felt in Kuwait, because the requirement for electronic (or any other type of) disclosure does not exist.

There is no indication that any changes are to be expected in this area, so for now at least, parties to litigation in Kuwait do not have to concern themselves with issues arising out of disclosure or privilege.

VI ALTERNATIVES TO LITIGATION

As in most other jurisdictions, ADR has increased in Kuwait over recent years as a result of commercial relations becoming more complex; arbitration especially has become a necessity in the global commercial climate and it is the most common form of ADR in Kuwait.

The contribution of Islamic law to arbitration is negligible, notwithstanding Article 2 of the Kuwaiti Constitution, which provides that shariah is a primary source of law. Arbitration in Kuwait is also in part regulated by the Civil and Commercial Procedure Code,¹⁴ which came into effect in 1980. Prior to this, practically every case ended up in the courts after the arbitral decision at the insistence of the dissatisfied party. Consequently, arbitrations took as long to settle as litigated disputes.

The Code provides for two types of arbitration: commercial arbitration at law and commercial arbitration *ex aequo et bono*. It addresses the validity of arbitration agreements, the eligibility of the chosen arbitrator, the powers of the arbitrator, the liability of the arbitrator and the enforcement and annulment of awards.

The statutory regime is not based upon the UNCITRAL Model. Arbitration in Kuwait is governed by traditional provisions, although this does not necessarily result

14 Articles 173–188.

in a traditional (and perhaps synonymously rigid) system. By and large, the arbitration process in Kuwait is similar, and in many cases identical, to the arbitration process in other Arab and foreign jurisdictions.

There are no restrictions on who may represent a party in arbitration; a party is entitled to represent itself or be represented by any other person of its choosing, whether legally qualified or not. Practically, however, parties are more often keen to instruct lawyers to speak on their behalf in arbitration proceedings, despite the fact that it is cheaper for each of the parties to act on their own behalf.

The laws governing arbitration do not discriminate between international and domestic arbitration.¹⁵ Contracting parties are free to accept provisions in respect of arbitration and to negotiate and include their own rules, and consequently to include in their agreement such arbitration terms as they deem appropriate in the circumstances.

The court will appoint the arbitrator or arbitrators if a clause is silent on this point. The parties may grant the powers of 'amiable composition' to the arbitrator; this allows the arbitrator to decide the case in equity and fairness without complying with the strict rules of law. In such case, the arbitrator is termed '*Mohakam Bil Solh*' (an 'amiable compositeur').

The rules relating to evidence and disclosure in arbitration hearings are as per the rules of the Kuwaiti courts. Kuwait has adopted legislation regarding judicial arbitration with respect to civil and commercial matters; such legislation states that one or more arbitration panels consisting of three judges and two arbitrators shall be formed at the Court of Appeal headquarters. The party (or parties) to the dispute shall select one of the arbitrators listed on the respective rolls of the arbitration department of the Court of Appeal or elsewhere.

Judicial arbitration applies in cases where the state is trading in a commercial capacity. The Law of Judicial Arbitration in Civil and Commercial Matters delineates the terms on which arbitration tribunals are constituted from two arbitrators appointed by the parties, and three judges appointed by the Supreme Judiciary Council. Pursuant to this Law, a permanent arbitral tribunal is formed by the High Council of Judiciary. Article 3 of this Law provides that among the jurisdiction of this permanent tribunal is:

(2) Exclusively to settle disputes which arise between the ministries, governmental bodies, public persons and the companies owned by the government. (3) To settle the disputes which are reverted to it by individual or corporate private persons against ministries, governmental authorities or public corporate persons...

In order to bring some clearer regulation to ADR, the Commercial Arbitration Centre of the Kuwait Chamber of Commerce and Industry was set up in 2000.¹⁶ Thereafter, specialised bodies with particular expertise have also been set up in certain areas; for example, the Kuwait Society of Engineers has established its own rules and procedures.

15 As governed by the Kuwaiti Law of Judicial Arbitration No. 11 of 1995.

16 Articles 6 and 11, Chamber of Commerce Law 1959.

Despite the Kuwaiti Chamber of Commerce essentially taking on the role of arbitration centre, it has in practice focused on achieving settlements by way of conciliation rather than arbitration.

Despite the reticence shown in respect of enforcing foreign judgments, Kuwaiti courts actively enforce foreign arbitral awards. This is notwithstanding that the legislation utilised to enforce arbitral awards is the same as that used in respect of enforcement of foreign court judgments. Kuwait has signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

The enforcement of a foreign arbitral award in Kuwait is started by commencing a claim in the Kuwaiti courts. The award from the foreign court must at this stage be in Arabic or have been translated into Arabic by a Kuwaiti translator, which should be authenticated by the Kuwaiti Ministry of Justice. The award must then be consularised by the Kuwaiti consulate in the relevant country and legalised by the Ministry of Foreign Affairs in Kuwait. Any award filed with the court must be accompanied by a copy of the arbitration agreement.

The likely costs of arbitration depend on which centre is used, and costs can vary greatly from case to case. Arbitration brought before the Commercial Arbitration Centre will cost between 1,000 and 10,000 dinar. There are no specific rules dealing with recovery of costs, but in practice the successful party will often recover the costs of the arbitration (but not fees for lawyers or other expenses).

Arbitral awards cannot be appealed to the Kuwaiti courts unless there is express agreement between the parties to do so. However, domestic arbitral awards may be set aside in certain circumstances (e.g., if there is fraud or dishonesty that affects the award, or one or more parties were not correctly represented in the arbitration).

There is a perceived tendency in Kuwait for the chair of three-member arbitration tribunals to be from a developed country, even if the law underlying the contract is that of a developing country. This has led to commentators concluding that the interests of parties from developing countries may not be served in arbitration.

In respect of arbitration proceedings, the Arbitration Law prohibits the publication of an arbitral award, or part thereof, unless the parties agree.

Only recently the Court of Cassation in Kuwait has decided that for agreements with an arbitration clause to which a Kuwaiti company is a party and where any arbitral award may need to be enforced in Kuwait, a special approval from the shareholders or a power of attorney that refers specifically to the arbitration must be sought. The effect of this ruling is to invalidate any agreement entered into by a Kuwaiti company where a special approval for submission to arbitration was not sought. The Court of Cassation has stated that this rule is a matter of public policy and, therefore, if an international arbitral award is made that needs to be enforced in Kuwait, the Kuwaiti execution courts may reject the enforcement (using an exception to the New York Convention to which Kuwait is a signatory) on public policy grounds.

VII OUTLOOK AND CONCLUSIONS

At the time of writing, it appears unlikely that there will be any significant reforms in the area of Kuwaiti dispute resolution in the near future. However, it would seem likely that in the long run Kuwait will follow in the footsteps of Bahrain and the UAE and make efforts to overhaul some of its outdated practices and procedures. If greater foreign investment is to be attracted especially in the current economic climate then Kuwait must implement a full range of reforms aimed at improving the perceived shortcomings.

Kuwait has historically adopted a progressive approach to reforming and developing its legislation and procedures. However, despite the major trend across the Gulf being towards greatly increased codification of law it seems that Kuwait is lagging behind its GCC counterparts at a more leisurely pace. Furthermore, despite this codification and the introduction of some defined procedures, in many areas the old discretion is still favoured, and in many cases what is written in the law and what actually happens are two very distinct matters.

Appendix 1

ABOUT THE AUTHORS

HAIFA KHUNJI

KBH Kaanuun

Haifa Khunji has more than 14 years' experience in transactional work and litigation. She trained and subsequently worked with leading international law firms in Dubai, Doha and Kuwait prior to joining KBH Kaanuun at its inception, and she now manages the Bahrain operation. She advises on a range of contentious and non-contentious matters with an emphasis on corporate finance and banking. Haifa acts for major local and international banks as well as leading international and regional companies both in arbitration and court proceedings taking place in Bahrain and Kuwait. In non-contentious matters she advises on corporate structures, corporate finance and activities such as acquisitions, mergers, demergers and joint ventures, as well as both conventional and Islamic banking and finance.

DIEGO CARMONA

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Diego is a solicitor qualified in England and Wales and is based in the KBH Dubai Office. Diego specialises in banking, real estate and employment disputes before the DIFC Courts, Dubai courts and arbitral tribunals. Owing to his strong background in finance and economics Diego has also assisted in financial mis-selling disputes in acting for high net worth individuals and corporate investors.

Prior to moving to KBH, Diego accumulated substantial experience at a magic circle law firm in London, where he worked with attorneys in the corporate law department advising on a transatlantic merger, in particular analysing legal and financial documents in both English and German as part of a large disclosure exercise. He later moved to another major city law firm, to assist their commercial litigation practice in London.

Prior to commencing his career in law, Diego was employed as the University of London Union Vice-President having been elected by his peers to the role in a University of London-wide ballot. He was later awarded an Honorary Life Membership for his outstanding service and featured in a number of publications during his time in office.

Diego has assisted since 2012 in the drafting of several articles in the *International Arbitration Review* including the UAE chapters on arbitration and dispute resolution.

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