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Enforcement of Foreign Judgments



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Under the Civil and Commercial Procedure Law No. 38 of year 1980 (the “Law”), judgments and orders enforceable in the State of Kuwait are those issued by the Kuwaiti competent courts. However pursuant to an exception stipulated in the Law, a decision rendered by courts of foreign jurisdiction (the “Foreign Judgment”) can be recognized and enforced in the State of Kuwait if granted an exequatur by the Court of First Instance (the “Kuwait Court”) under limited conditions stated in article 199 of the Law.

Article 199 of the Law provides that:

“It shall be permissible to order the execution of judgments and orders issued in a foreign country inside Kuwait according to the conditions stipulated in that country for the execution of judgments and orders issued in Kuwait. It shall be excepted from these conditions, judgments and orders obtained for the benefit of a Kuwaiti individual or entity that are required to be executed on assets owned by a Kuwaiti individual or entity.

Order of execution shall be submitted to the Court of First Instance in accordance with the usual conditions of filing an action, and the execution may not be ordered except after the ascertainment of the following:

- a- The judgment or order is given by a competent court in conformity with the law of the country wherein it is given.*
- b- The litigants of the action in respect of which the foreign judgment is given, were summoned to appear and were duly represented.*
- c- The judgment or order has had the force of the adjudicated order, in accordance with the law of the court which pronounced it.*
- d- It is not contradictory to a preceding judgment or order given by a court in Kuwait; and is not against the ethics or the public order in Kuwait.”*

The first paragraph of article 199 above stipulates that the main prerequisite to enforce a Foreign Judgment in the State of Kuwait is reciprocity. This reciprocity can be proved by a bi-lateral/multi-lateral treaty providing for the reciprocal enforcement of judgments in the member states or by precedents where sufficient evidence determines that Kuwaiti judgments have been formerly recognized and enforced in such foreign country.

It is necessary to highlight that the State of Kuwait has ratified two multi-lateral treaties in this regard, the “Convention of League of Arab States on the enforcement of judgments (1952)” and the “Law No. 44 of 1998 ratifying the agreement for the enforcement of judgments and judicial notices in the member states of the GCC”. Regrettably no treaty has been ratified with Non-Arab States. As for precedents, they are practically inexistent especially with regard to western countries.

When an application for an exequatur is submitted before the Kuwait Court, the court will examine if reciprocity exists, and other conditions as specified in article 199 must be met as follows: that the foreign judgment was rendered by a competent court of the foreign jurisdiction; that litigants were served proper legal notice and duly represented in the proceedings; that the foreign judgment is final and conclusive pursuant to the law of the foreign jurisdiction; and that the foreign judgment is not in conflict with a previous judgment or order rendered by courts in Kuwait, or is contrary to Kuwait’s public order or ethics.

Although the Kuwait Court does not re-examine the facts and substance of the case reviewed by the foreign court, however the Kuwait Court inspects the attainability of the conditions as stated in article 199 of the Law in the Foreign Judgment.

In the event that any of the conditions above was not satisfied, the Kuwait Court will reject the application for an exequatur; subsequently in order to recognize the said Foreign Judgment it is necessary to initiate a fresh case before the Kuwaiti competent courts where the Foreign Judgment

will be recognized as supportive evidence and the facts and substance will be re-examined by the court.

Furthermore, pursuant to articles 23 to 26 of the Law, the courts of the State of Kuwait retain a large scale of competence over matters related to Kuwaiti nationals residing within or outside Kuwait and over matters related to foreigners in Kuwait, such wide competence has been considered an issue of state sovereignty which highlights the dominance of the jurisdiction of the State of Kuwait.

Article 23 of the Law provides that:

“The Kuwaiti courts have the competent jurisdiction to cases brought against the Kuwaiti, and cases brought against the foreigner who has domicile or place of residence in Kuwait, except for actions related to real estate abroad.”

Article 24 of the Law provides that:

“The Kuwaiti Courts have the competent jurisdiction to cases brought against a foreigner who has no domicile or place of residence in Kuwait, in the following cases:

- a- If he has a selected abode in Kuwait.*
- b- If the case is relating to immovable or movable property existing in Kuwait, or relevant to an obligation originated, executed or required to be executed therein or related to bankruptcy adjudicated in Kuwait.*
- c- If the case is opposition to marriage contract, which is required to be concluded before a Kuwaiti authenticating officer.*
- d- If the case is relevant to a claim for dissolution of marriage, divorce or separation brought by the wife who lost the Kuwaiti nationality by marriage as long as she has a domicile in Kuwait; or the case brought by a wife having domicile in Kuwait with her husband who had domicile therein if the husband deserted his wife and made his domicile abroad after the initiation of reason of dissolution, divorce or separation or if he had been deported from Kuwait.*
- e- If the case is related to a claim for alimony to the mother or the wife if they have domicile in Kuwait, or to the little child residing therein. If the case is related to a claim for alimony to the mother or the wife if they have domicile in Kuwait, or to the little child residing therein.*
- f- If the case is relevant to the kinship of a little child resident in Kuwait, or to the abstraction, restriction, termination or recovery of guardianship.*
- g- If the case is related to any of the family matters, and the claimant was a Kuwaiti citizen or a foreigner who has a domicile in Kuwait, if the defendant has not a known domicile abroad or if the Kuwait Law must be applied in such case.*
- h- If the case is relevant to any of the guardianship matters on property and the minor or the interdict has domicile or place of residence in Kuwait or if the last domicile or place of residence of the absentee is in Kuwait.*
- i- If any of his litigants is a Kuwaiti citizen, or foreigner who has domicile or place of residence or selected abode Kuwait.”*

As a result, in cases of concurrent jurisdiction with a foreign court, the Competent Court also rejects the application for exequatur and such as mentioned above it is necessary to initiate a fresh case before the Kuwaiti competent courts where the Foreign Judgment will be recognized as supportive evidence and the facts and substance will be re-examined by the court.

Conclusion

In general, judgments cannot be enforced within the jurisdiction of the State of Kuwait unless issued by a Kuwaiti competent court. Foreign Judgments comprise no judicial power and are not enforceable within the jurisdiction of the State of Kuwait unless granted an exequatur under specific conditions stated in article 199 of Civil and Commercial Procedure Law. The requirement of Reciprocity is the prerequisite for granting an exequatur. However, concurrent jurisdiction with a foreign court is also a factor, regulated under articles 23 to 26 of the same Law, that is observed by court while reviewing an application for an exequatur. In the absence of any condition stated in article 199 or should the subject of the case reviewed by the foreign court be also under the competence of the courts of the State of Kuwait, in such instances it will be necessary to initiate a fresh case before the Kuwaiti competent courts where the Foreign Judgment will be recognized as supportive evidence and the facts and substance will be re-examined by the court.



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