

Notarization Of A Pledge Contract And Date Proofing / Stamping An Assignment Agreement Under Kuwait Law

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Notarization of a pledge contract: Kuwaiti law allows for the execution of a private agreement such as a pledge contract to be made between, a debtor/pledgor and creditor/pledgee.

Notarization of the pledge contract must be a condition to the payment of the debt to the Creditor.

It is recommended that the pledge contract is notarized by the Kuwaiti Notary Public. Notarization of the contract is not required for the validity of the pledge, but to have the Notary Public's stamp of the "writ of execution" in favor of the creditor on the contract. This writ of execution would enable the creditor to deposit the pledge contract with the Execution Department at the Ministry of Justice for enforcement of its rights under the contract directly without a prior judgment. This would be required for enforcement of any other rights. The notarization of the contract would also enable the pledgee to prove that the date of the contract of the same would be certified by the Notary Public.

In order to notarize the pledge contract, minimal governmental fees would be applicable (e.g. KD 2 stamp for the first page of the pledge contract and KD 1 stamp for each page thereafter) for the copy of the pledge contract stamped with the writ of execution.

The Notary Public can only notarize documents in Arabic. In order to have the pledge contract notarized, the same must be in Arabic. The Notary Public does not notarize documents made in dual languages (e.g. Arabic and English).

For notarization purposes, the pledge contract must be printed by the Notary Public in Arabic on the creditor's letterhead (if the creditor is a company) or on the Ministry of Justice green franked papers in the event the creditor is an individual. To accelerate issues, pledgees usually provide an electronic file to the Notary Public containing the draft pledge contract.

Moreover, the Notary Public, when reviewing the Pledge contract and prior notarizing the same, requires certain constitutional documents from the contracting parties (creditor and debtor) to verify the capacity and the standing of the both parties. Such documents shall be (i) copies of the Articles and Memorandum of Association, (ii) copy of valid trade license, (iii) copy of authorized signatory certificate and (iv) copy of the signatories' representing the creditor and debtor civil IDs.

B) Date proofing/stamping an assignment agreement

Kuwaiti law allows two contracting parties to assign rights. Generally, the date stamping of an assignment agreement is needed to indicate priority if the assignor had assigned his rights in the underlying contract to more than one party.

In the event that the creditor/assignee executes an assignment agreement; and the underlying agreement does not contain a non-assignment clause, the underlying debtor does not need to execute the assignment agreement. To alleviate this risk of priority and establish beyond a reasonable doubt the date of assignment and corresponding priority rights, the assignee will need to walk the original assignment agreement (drafted in Arabic) along with copy of the same into the

Department of Date Stamping – Ministry of Justice, which an authenticator from this Department stamps the official date on the assignment agreement. In order to date stamp the assignment agreement, minimal governmental fees would be applicable (e.g. KD 2 stamp). The date stamping is generally obtained in one day.

Moreover, prior to an assignment being effective, it must be properly served on the debtor under the underlying agreement. Please note that service is made by a special clerk from the Execution Department at the Ministry of Justice and not through private parties following the date-stamping of the assignment into the Execution Department of the Kuwait Courts. The Execution Department will then serve the assignment along with a notice to the debtor. Upon said service, the assignment becomes effective against the debtor.

In the event that two or more assignees are disputing their priority rights in the assignment, then the assignment which contains the earlier official date stamp issued by the Ministry of Justice will take priority.