

TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/8313 Kuwait Shooting Federation v Fahaid Mohammed Al-Deehani
CAS 2021/A/8316 General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait v Fahaid Mohammed Al-Deehani
CAS 2021/A/8397 Fahaid Mohammed Al-Deehani v Kuwait Shooting Federation and General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Anthony Lo Surdo SC, Barrister in Sydney, Australia
Arbitrators: Mr Patrick Lafranchi, Attorney-at-law in Bern, Switzerland
Professor Petros C. Mavroidis, Professor, Switzerland

in the arbitration between

Kuwait Shooting Federation

Represented by Mr Alessandro Oliverio, Attorney-at-Law in Rome, Italy, by Mr Nicola Noth, Attorney-at-Law in Lausanne, Switzerland, and by Mr Antoine Bechara, Attorney-at-Law in Sulaibiya, Kuwait

Appellant in CAS 2021/A/8313
Respondent in CAS 2021/A/8397

General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait

Represented by Mr Luc Pittet, Attorney-at-Law in Lausanne, Switzerland

Appellant in CAS 2021/A/8316
Respondent in CAS 2021/A/8397

Fahaid Mohammed Al-Deehani

Represented by Mr Gabriel Nigon and Mr Andri Obrist, Attorneys-at-Law in Basel, Switzerland and by Mr Jaser Aljade and Mr Mutlaq al Jedae, Attorneys-at-Law in Kuwait City, Kuwait

Appellant in CAS 2021/A/8397
Respondent in CAS 2021/A/8313 &
CAS 2021/A/8316

I. INTRODUCTION

1. This procedure concerns a final arbitral award made by the National Sports Arbitration Tribunal of Kuwait (**NSAT**) on 29 August 2021 in a claim brought by Mr Fahaid Mohammed Al-Deehani (**Mr Al-Deehani**) against the Kuwait Shooting Sport Club (**KSC**), the Kuwait Shooting Federation (**KSF**), the General Director of Public Authority for Sports Kuwait (**PAS**) and the Under Secretary of the Ministry of Finance Kuwait (**MFK**) for outstanding salary and for performance bonuses arising from Mr Al-Deehani securing a bronze medal at the Olympic Games in London, 2012 and a gold medal at the Olympic Games in Rio de Janeiro, 2016.
2. In the proceedings before the NSAT, Mr Al-Deehani claimed 776,855.538 Kuwait Dinar (**KD**). Those claims were denied by KSC, KSF, PAS and MFK. The NSAT partially upheld Mr Al-Deehani's claims determining that KSC, KSF, PAS and MFK were required to pay him amounts exceeding 411,000 KD (**Award**).
3. KSF (and through it, KSC), PAS and MFK each appeal the Award contending that it should be nullified or alternatively, that the determination of the NSAT be set aside.
4. Mr Al-Deehani also appeals the Award claiming that he is entitled to salary and bonus payments totalling 486,451.63 KD and that each of KSC and PAS pay moral damages of at least 100,000 KD together with the cost of the NSAT and CAS proceedings.

II. THE PARTIES

5. Mr Al-Deehani is a former Kuwaiti world-class athlete in shooting sports (trap and double trap). He competed in many national and international shooting sporting competitions and won a bronze medal at the Olympic Games in Sydney, 2000, a bronze medal at the Olympic Games in London, 2012 and a gold medal at the Olympic Games in Rio de Janeiro, 2016.
6. KSF is the sole federation and governing body of shooting sports in Kuwait and a member of the International Shooting Sports Federation (**ISSF**). It is also an affiliated member of the Kuwait Olympic Committee (**KOC**). KSF is registered with the PAS and is one of the most successful and active shooting federations in the World. The KSF and KSC are one and the same entity.
7. PAS is the government instrumentality responsible for authorising salaries and performance bonuses paid to athletes pursuant to Kuwaiti laws and regulations enacted for the purpose of supporting sportspersons.
8. MFK is a government authority. Its role and responsibilities are not clear but it would appear to extend to funding the payment of salaries and performance bonuses authorised by PAS to be paid by sports federations to athletes pursuant to Kuwaiti laws and regulations enacted for the purpose of supporting sportspersons.

III. FACTUAL BACKGROUND

9. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.
10. In 2007, PAS (formerly known as Public Authority for Youth and Sport) issued regulations pursuant to Law No. (49) of 2005 (**Law 49**) concerning professionalism in the sports field, headed "Executive Regulations to Support Professional Players" (**Executive Regulations**). The Executive Regulations were adopted to regulate governmental financial support for athletes by the State of Kuwait. They included a standard form "Professional Player Reward Contract Template" to be implemented between Kuwaiti sports clubs/federations and athletes with the object of providing financial support to athletes.
11. On 23 September 2007, PAS issued Circular 547 of 2007 (**Circular 547**) which established controls for sporting clubs, such as the KSC, to facilitate the regulation by the PAS of the process and mechanism for the payment of amounts in support of athletes under Law 49.
12. Circular 547 required sports clubs to provide the PAS with the names of professional players for first teams at the beginning of each fiscal year and for the PAS to periodically transfer amounts allocated for professional players to sports clubs. The sports clubs were to remit salaries to the athletes monthly. Circular 547 prescribed that the maximum amount allocated as a monthly salary to a professional player was 500 KD. Of that amount, a maximum of 400 KD per month was to be paid to the professional player with the balance to be allocated to an account opened by the club and styled "incentive bonuses and players incentive account" (the "Player's Incentive Fund").
13. In 2009, Mr Al-Deehani entered into a "Professional Player Reward Contract" which was for an initial term of three months from 1 April 2009 to 30 June 2009 and renewable for a period not exceeding five years (**Contract 1**).
14. On 1 January 2010, the International Olympic Committee (**IOC**) suspended the KOC in response to the failure by Kuwait to meet the IOC's 31 December 2009 deadline for amending legislation that permitted government interference in the elections of sporting organisations in the Gulf State. Consequently, Kuwait was barred from receiving IOC funding and its athletes and officials were banned from Olympic Games and Olympic meetings.
15. On 14 July 2012, the IOC suspension of the KOC was lifted and Kuwaiti athletes were permitted to participate in the Olympic Games in London, 2012 under their own flag.

16. On 5 and 6 August 2012, Mr Al-Deehani represented Kuwait at the Olympic Games in London at which he won the bronze medal in the men's trap competition.
17. On 9 December 2014, PAS issued Resolution (713) of 2014 (**Resolution 713**) headed, "Decision Concerning the Issuance of Executive Regulations to Regulate the Partial Professional in Sports Field." Like Circular 547, which preceded it, Regulation 713 prescribed a mechanism for the provision by the PAS of financial support to clubs, which was then to be disbursed to qualifying athletes from the funds allocated to this purpose in its budget. To qualify for a monthly salary, athletes were required to conclude a pro-forma contract in accordance with the requirements of Law 49. The value of the financial support was prescribed as being not more than 600 KD and not less than 300 KD per month and payable by a club or federation for a period of only 10 months in any given year. Further, an athlete who received an Olympic medal was to be paid a monthly reward beginning on the date of their receipt of a medal until the next Olympic Games as follows: gold medal, 5000 KD; silver medal, 4000 KD; and bronze medal 3000 KD.
18. On or before 1 September 2015, KSF and Mr Al-Deehani entered into a "Professional Player Contract." It was for a term of 9 months, from 1 September 2015 to 31 May 2016 (**Contract 2**). This agreement provided for the payment by KSF to Mr Al-Deehani of a "monthly reward" of 500 KD subject to Mr Al-Deehani complying with his obligations under the agreement, and noting that KSF may deduct from that award amounts in respect of certain specified penalties.
19. On 27 October 2015, the IOC again suspended the KOC to protect the Olympic Movement in Kuwait from undue government interference.
20. On 5 November 2015, the ISSF suspended the KSF.
21. In 2016, PAS issued Circular (34) of 2016 (**Circular 34**) in which it deemed that the "Players Incentive Fund" into which deductions of 100 KD per month were paid from athletes' salaries was in violation of Law 49, that the Player's Incentive Fund was to be cancelled and that the full reward was to be paid to the athlete. Circular 34 required all sports clubs to pay the full amount of partial professional rewards to the players and not deduct any such amounts for the three-month period from April-June 2015.
22. On 2 June 2016, the IOC resolved that athletes from Kuwait were eligible to compete at the Olympic Games in Rio de Janeiro, 2016 as independent athletes under the Olympic flag.
23. On 10 August 2016, Mr Al-Deehani won the Olympic gold medal in the men's double trap shooting event competing as an independent athlete.
24. On or before 1 September 2016, KSF and Mr Al-Deehani entered into a "Professional Player Contract." It was for a term of 9 months, from 1 September 2016 to 31 May 2017 (**Contract 3**). This agreement provided for the payment by KSF to Mr Al-Deehani of a "monthly reward" of 500 KD subject to Mr Al-Deehani complying with his obligations under the agreement.

25. On 6 March 2018, Mr Al-Deehani retired from shooting.
26. On 16 August 2018, the IOC provisionally lifted the suspension of the KOC thus permitting Kuwaiti athletes to participate in the Asian Games in Jakarta, 2018 and the Youth Olympic Games in Buenos Aires, 2018 under their own flag.
27. On 5 July 2019, the IOC lifted the suspension of the KOC.
28. On 2 February 2021, Mr Al-Deehani filed a request for arbitration with the NSAT.
29. On 12 April 2021, at the request of Mr Al-Deehani, the NSAT appointed a financial expert, Ms Rana Farid Ojeill, to calculate and report on the value of the sums deducted from Mr Al-Deehani's of 100 KD per month, the total value of "delayed salaries" for the months of January, February, March and June of each year since 2017 and the total amount of rewards earned by Mr Al-Deehani from having won Olympic medals.
30. On 27 June 2021, Ms Ojeill delivered a report in which she calculated: total amounts that had been deducted from Mr Al-Deehani's salary of 100 KD per month since 2007 (4,700 KD); the total value of "delayed salaries" for the months of January, February, March and June of each year since 2017 (18,144 KD); and the total amount of rewards earned by Mr Al-Deehani from having won Olympic medals (293,653.846 KD plus 5,000 KD per month from 1 July 2021 until the next Olympic Games).
31. On 29 August 2021, the NSAT issued a draft, unsigned award and, by letter dated, 30 August 2021, circulated a copy of that draft to the parties. The letter contained a request that the parties "...review the arbitral award and provide us with your response (if any) in accordance with the rules of procedure, in particular Articles (42), (43) and (44), bearing in mind that the arbitral award is considered final and binding on the parties as soon as it is signed by the Chairman of the Board of Directors of the National Sports Arbitration Commission in accordance with Article (45)."
32. On 21 September 2021, a signed copy of the Award but dated 29 August 2021 was made and notified by the NSAT to the parties, with the following operative part (*verbatim* transcription of the translation provided by the parties):

"First: Accept Request for Arbitration in Sports Dispute in form.

Second: Jurisdiction of the Chamber to hear the dispute against the [PAS and MKF].

Third: On the subject of the judgement, obliging the [Kuwait Shooting Sport Club, KSF, PAS and MKF] jointly to pay [Mr Al-Deehani] an amount of 347,161.537 K.DK (Kuwaiti Dinars Three Hundred Forty Seven Thousand One Hundred Sixty One and Fils Five Hundred Thirty Seven Only) for the total amounts deducted from the salaries of [Mr Al-Deehani], for the total value of salaries delayed and not paid, for the total amount of the bronze medal and for the total amount of the gold medal.

Fourth: Obliging [Kuwait Shooting Sport Club] to pay [Mr Al-Deehani] an amount of KD 20,000 (twenty thousand Kuwaiti Dinars) as moral compensation for the moral damages he suffered and rejecting more than that amount.

Fifth: Obliging [PAS] to pay the [Mr Al-Deehani] an amount of KD 20.000 (twenty thousand Kuwaiti Dinars) as moral compensation for the moral damages he suffered and rejecting more than that amount.

Sixth: Obliging [Kuwait Shooting Sport Club, KSF, PAS and MKF] jointly with the arbitration expenses amounting of 2,714.844 K.D. (Two Thousand Seven Hundred Fourteen Kuwaiti Dinars and Eight Hundred Forty Four Fils), and the third arbitrator's fees of 20,000 KD. (Twenty Thousand Kuwaiti Dinars), and the fees of the arbitrator chosen by the respondents with the amount of 20,000 KD. (Twenty Thousand Kuwaiti Dinars), and with a registration fee of Request for arbitration of 500 K.D. (Five Hundred Kuwaiti Dinars), and for actual attorneys' fees of 1,000 KD (one thousand Kuwaiti Dinars).

Seventh: Other requests were denied”.

33. The grounds supporting the NSAT Award are referred to elsewhere in this Award to the extent that may be necessary for the Panel to explain its reasoning.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

CAS 2021/A/8313

34. On 21 September 2021, KSF filed its Statement of Appeal, in accordance with Articles R47 and R48 of the Code.
35. On 5 November 2021, KSF filed its Appeal Brief, in accordance with Article R51 of the Code.
36. On 7 February 2022, Mr Al-Deehani filed his Answer, in accordance with Article R55 of the Code.
37. An Order of Procedure dated 19 May 2022 was confirmed by the signature of both parties.

CAS 2021/A/8316

38. On 21 September 2021, PAS and MFK filed their Statement of Appeal, in accordance with Articles R47 and R48 of the Code.
39. On 5 November 2021, PAS and MFK filed their Appeal Brief, in accordance with Article R51 of the Code.
40. On 27 December 2021, Mr Al-Deehani filed his Answer, in accordance with Article R55 of the Code.

41. An Order of Procedure dated 19 May 2022 was confirmed by the signature of all parties.

CAS 2021/A/8397

42. On 10 October 2021, Mr Al-Deehani filed his Statement of Appeal, in accordance with Articles R47 and R48 of the Code.

43. On 1 December 2021, Mr Al-Deehani filed his Appeal Brief, in accordance with Article R51 of the Code.

44. On 24 December 2021, KSF filed its Answer, in accordance with Article R55 of the Code.

45. On 24 December 2021, PAS and MFK filed their Answer, in accordance with Article R55 of the Code.

46. An Order of Procedure dated 19 May 2022 was confirmed by the signature of all parties.

CAS 2022/A/8313, CAS 2022/A/8316 & CAS 2022/A/8397

47. In accordance with Article R52(4) of the Code and upon agreement of all parties, all three appeals were consolidated.

48. On 15 March 2022, the Parties were informed, on behalf of the Deputy President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the Code that the Panel appointed to decide the present disputes was constituted as follows:

President: Mr Anthony Lo Surdo SC, Barrister in Sydney, Australia

Arbitrators: Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland (jointly nominated by KSF, PAS and MFK)

Mr Petros C. Mavroidis, Professor residing in Commugny, Switzerland (nominated by Mr Al-Deehani).

49. By letter dated 3 June 2022, the PAS and MFK requested the suspension of the proceedings in CAS 2021/A/8316 and for the partial suspension of the proceedings in CAS 2021/A/8397 on the grounds articulated in that letter.

50. By letter dated 4 June 2022, the CAS Court Office notified the parties that the request for suspension and partial suspension of the respective proceedings would be heard and determined by the Panel at the hearing.

51. In accordance with Article R57 of the Code and after consultation with the Parties, there was a hearing on Thursday, 9 June 2022 at the CAS Court Office.

52. At the hearing, Mr Al-Deehani, who attended in person, was represented by Mr Gabriel Nigon, Mr Andri Obrist, Mr Jaser Aljade and Mr Mutlaq al Jedae.

53. KSF was represented at the hearing by Mr Alessandro Oliverio, Mr Nicola Noth and Mr Antoine Bechara.
54. PAS and MFK were represented at the hearing by Mr Luc Pittet.
55. The Panel was assisted throughout the hearing by Mr Giovanni Maria Fares, Counsel to CAS.
56. At the hearing, the Panel heard and dismissed the application by PAS and MFK for the suspension and partial suspension of the respective proceedings. The Panel indicated that it would provide its reasons for that dismissal in the Award.
57. In short, the application by PAS and MFK was to enable an appeal filed on 19 April 2022 against the decision of the Commercial Court of First Instance, which refused to nullify the NSAT award, to be heard and determined. The hearing of that appeal was scheduled to take place in Kuwait on 3 July 2022. The application was premised upon the desirability of avoiding parallel proceedings with potentially conflicting determinations in both the CAS and Kuwait and on the basis of *res judicata*. The Panel dismissed the application because it determined that each of the concerns raised by the PAS and MFK to be without substance. First, there could be no possibility of conflicting determinations as the CAS proceedings are a hearing *de novo* whilst the proceedings in Kuwait concern the validity of the NSAT Award. Secondly, as there was no determination at the time of the application for suspension of the proceedings, no issue of *res judicata* arises.
58. Following the hearing, the representatives for each of the parties confirmed that their respective rights to be heard had been fully respected by the Panel and that they had no issue with respect to the way the CAS procedure or hearing was conducted. They also confirmed that they each had no objection to the composition of the Panel.

V. THE PARTIES' POSITIONS

59. What follows is a summary of the parties' submissions. To the extent that it omits any contentions, the Panel notes that it has considered all of the evidence and arguments submitted by the parties.
60. Given the nature of the appealed decision and the present dispute, in which Mr Al-Deehani is the party claiming payment from the KSF, the PAS and MKF, and it is the latter parties who oppose Mr Al-Deehani claims, the Panel deems it appropriate to first present Mr Al-Deehani's submissions.

A. Mr Al-Deehani's Submissions in CAS 2021/A/8397

- i) Salary*

61. From 1 April 2007 until 1 April 2015, professional and semi-professional sports players in Kuwait were entitled to salaries pursuant to Circular 547 (which was based on Law 49). The Circular required sports clubs, such as KSC/KSF, to provide to the PAS a list of players entitled to monthly salaries. Based on this list, the PAS was to periodically transfer to the sports clubs amounts allocated to professional players by the MFK for that purpose. Those amounts would then be paid by the sports club on a monthly basis to the athletes concerned.
62. The maximum monthly salary payable pursuant to Circular 547 was 500 KD but subject to a deduction of 100 KD per month to be paid into the Players' Incentive Fund. Those deductions were, by Circular 34 deemed to be in violation of the provisions of Law 49 with the consequence that the Players' Incentive Fund was cancelled and sports clubs were directed by the PAS to pay the full amount of partial professional awards to the professional player without deduction for the three-month period of April-June 2015.
63. Resolution 713, which came into effect on 1 September 2015, provided that a world-class athlete, such as Mr Al-Deehani, was entitled to a salary of 600 KD per month payable for 10 months of the year. Ministerial Resolution No. (2) of 2016 (**Ministerial Resolution 2**) reduced that amount to 500 KD per month with effect from 16 February 2016.
64. On 1 April 2009, KSF and Mr Al-Deehani entered into Contract 1. Whilst a written contract was not a prerequisite for payment under Circular 547, Contract 1 is evidence of Mr Al-Deehani's (partially) professional status as and from April 2009. Whilst Contract 1 was for an initial period of three months, it provided that the parties may extend the duration for up to 5 years without the execution of a new contract. The KSF continued making payments to Mr Al-Deehani after the expiration of the three-month period with the NSAT determining that such conduct had the consequence of extending the term of the contract for a further five years until 31 March 2014.
65. Pursuant to Resolution 713, KSF and Mr Al-Deehani entered into Contract 2 and Contract 3. The term of Contract 2 was 1 September 2015 to 31 May 2016. The term of Contract 3 was 1 September 2016 to 31 May 2017. Each of these contracts were prerequisites for monthly payments based on Resolution 713.
66. Mr Al-Deehani accordingly, claims:
 - (a) 500 KD per month from April 2009 to August 2015 pursuant to Circular 547 (as Mr Al-Deehani was paid 400 KD per month during this period, the claim is for 100 KD per month which he claims was deducted without cause); and
 - (b) 600 KD per month from September 2015 to January 2016, and then reduced to 500 KD per month from February 2016 to May 2016 (Contract 2) and from September 2016 to May 2017 (Contract 3), pursuant to Resolution 713 totalling 19,000 KD.
67. The NSAT determined that there was an amount of 16,200 KD owing to Mr Al-Deehani in relation to salary. In arriving at this conclusion, the NSAT found that Mr Al-Deehani

was not entitled to payments under Circular 547 absent a written contract. Mr Al-Deehani however, contends that payments made under Circular 547 were not contingent on a written contract and that the NSAT accordingly erred in its calculation of outstanding salary due to him.

ii) *Performance Bonus Payments - Ministerial Resolution 153*

68. Ministerial Resolution 153, which came into effect on 15 July 2007 (**Ministerial Resolution 153**), provides financial rewards for athletes placed 1st to 4th in nominated competitions including the Olympic Games. An athlete placed first in the Olympics (gold medal) is entitled to a lump sum payment of 25,000 KD, second (silver medal) 15,000 KD, third (bronze medal) 10,000 KD and fourth 5,000 KD.
69. Mr Al-Deehani has not been paid a lump sum of 25,000 KD based on his gold medal performance at the Olympic Games in Rio de Janeiro, 2016 because Mr Al-Deehani did not compete as a member of Kuwait's national team but as an Independent Olympic Athlete (**IOA**) under the Olympic flag. On the same reasoning process, the NSAT found that Mr Al-Deehani was not entitled to payment of a lump sum under Ministerial Resolution 153.
70. Mr Al-Deehani contends that the NSAT erred in its interpretation of Ministerial Resolution 153. He submits that upon its proper construction, Ministerial Resolution 153 does not preclude the payment of a lump sum. The object and purpose of the Resolution is to "*honor Kuwaiti players, if they are winning in the Olympics*" (and other sports events) (see Article 1). No wording can be found in the Resolution that the purpose and aim is to also promote the Emirate of Kuwait as a State. Further, and in any event, Kuwait is promoted by an athlete competing as an IOA under the Olympic flag and Mr Al-Deehani should not be deprived of a lump sum payment arising from circumstances over which he had no control. He accordingly claims to be entitled to a lump sum award of 25,000 KD pursuant to Ministerial Resolution 153.

iii) *Performance Bonus Payments – Resolution 713 (2014)*

71. Resolution 713 came into effect on 1 September 2015. Art. (21) of Resolution 713 provides that a player who receives an Olympic medal is to be paid a monthly bonus "*from the date of receiving it until the next Olympic Games*". The monthly bonus for a gold medal is 5,000 KD, for silver, 4,000 KD and for bronze, 3,000 KD.
72. The NSAT found, erroneously according to Mr Al-Deehani, that Resolution 713 does not apply to the bronze medal won by Mr Al-Deehani at the Olympic Games in London, 2012 because, upon its proper construction, Resolution 713 does not operate retrospectively. The bonus payments under Resolution 713 are structured as monthly payments covering the period from one Olympic Games to the next.
73. Resolution 713 dates from 2014 which is exactly in the middle of the time period between the Olympic Games in London 2012 and the Olympic Games in Rio de Janeiro in 2016. It does not stipulate that it applies only for wins after the next Olympic Games, or that

winners are only entitled to monthly payments after the coming into effect of the Resolution. Therefore, it is contended that Mr Al-Deehani is entitled to payments from the date of him winning the bronze medal in the Olympic Games in London 2012 up to the commencement of the Olympic Games in Rio de Janeiro in 2016, totalling 145,354.84 KD.

74. On 10 August 2016, Mr Al-Deehani won a gold medal at the Rio de Janeiro Olympic Games in respect of which he claims to be entitled to monthly bonus payments totalling 297,096.79 KD.

iv) *Moral Damages*

75. Whilst the NSAT awarded Mr Al-Deehani moral damages in the amount of 20,000 KD against each of the KSF and PAS, it is insufficient to compensate him for the ordeal and “psychological and sensory harm” suffered by him being deprived of his “financial rights” since 2009. They have consistently denied Mr Al-Deehani’s claims both in civil court and before the NSAT. As the most successful athlete in Kuwait’s history, Mr Al-Deehani is burdened with debt rather than being the beneficiary of the rightful, hard-won financial security that Kuwait law and the various resolutions guaranteed to its athletes. He accordingly requests moral damages from each of KSF and PAS of 100,000 KD.

v) *Relief sought*

76. Mr Al-Deehani seeks the following relief:

“First: Respondents 1-3 shall pay to the Appellant under solidary obligation the amount of 576,855.538 KD (five hundred seventy-six thousand eight hundred fifty-five Kuwaiti Dinars and 538 Fils).

Second: Respondent 1 shall pay the Appellant, the amount of 100,000 KD (one hundred thousand Kuwaiti Dinars) as moral compensation.

Third: Respondent 2 shall pay the Appellant, the amount of 100,000 KD (one hundred thousand Kuwaiti Dinars) as moral compensation.

Fourth: Respondents 1-3 shall pay to appellant under solidary obligation the amount of 67,214 KD (sixty-seven thousand and two hundred and fourteen Kuwaiti Dinars) as reimbursement of Kuwaiti sports arbitration fees.

Fifth: Respondents 1-3 shall bear the costs of the arbitration in front of CAS.

Sixth: Respondents 1-3 shall pay the Appellant under solidary obligation the legal fees and expenses incurred in connection with the proceedings before the NSAT and CAS in the amount based on the time sheet provided by the Appellant’s counsels, but not less than CHF 50,000.00 (fifty-thousand Swiss Francs).”

B. KSF's Submissions in answer to Mr Al-Deehani's Submissions in CAS 2021/A/8397 and in support of CAS 2021/A/8313

i) Jurisdiction of the NSAT

77. KSF claims that the NSAT had no jurisdiction to hear the proceedings culminating in the Award because:

- (a) Art. 8.3 of the List of fees, expenses and charges of the NSAT (**Fees Regulation**) provides that if the arbitration chamber consists of three arbitrators, each party shall pay the fees of its chosen arbitrator;
- (b) Art. 8.4 of the Fees Regulation provides that the dispute shall not be referred to the competent arbitration chamber until after the arbitrators' fees have been paid;
- (c) on 26 July 2021, the NSAT rejected an application by the KSF to be exempted from the payment of the fees of its chosen arbitrator;
- (d) KSF had not paid the arbitrators' fee at the time that the proceeding was referred to the competent arbitration panel; and
- (e) accordingly, the NSAT acted against its own regulations which renders the Award a nullity.

ii) Admissibility

78. KSF submits that the appeal in CAS 2021/A/8397 is inadmissible because:

- (a) pursuant to Article 47 of the CAS Code, an appeal can only be deemed admissible if, relevantly, an appellant has exhausted the legal remedies available to it prior to the appeal. Mr Al-Deehani is not appealing against the Award but rather making additional claims which are beyond the scope of the proceeding before the NSAT. KSF submits that this is apparent from the fact that Mr Al-Deehani does not seek to set aside or to annul the Award or to otherwise challenge that decision; and
- (b) Mr Al-Deehani's claims in respect of alleged outstanding monthly deductions of salary in the period 1 April 2007 until 1 April 2015 occurred more than six years ago and are accordingly statute barred by virtue of Arts. 439 and 440 of the Kuwait Civil Code.

iii) Salary

79. The monthly deductions of salary were undertaken by the KSF in accordance with the provisions of Circular 547, which was not terminated until 2015. Accordingly, the deductions were legitimately withheld by the KSF and the 4,700 KD awarded by the NSAT to Mr Al-Deehani in respect of those deductions are not owed by the KSF to Mr Al-Deehani. Further, for the reasons already advanced, the claim is statute-barred.

80. As regards the claims in respect of Contracts 1, 2 and 3, KSF submits, in summary, that:

- (a) whilst payments under Circular 547 may not be contingent upon the existence of a written contract as Mr Al-Deehani maintains, an athlete can only receive such payments if funds have been allocated by the PAS for that purpose and it has accounted to Mr Al-Deehani for all amounts that the PAS has allocated to the KSF for Mr Al-Deehani;
- (b) KSF has paid to Mr Al-Deehani all amounts allocated to it by the PAS in relation to Contracts 1, 2 and 3; and
- (c) the claim is statute-barred.

iv) Performance Bonus Payments - Ministerial Resolution 153

81. KSF contends that it is not liable to pay Mr Al-Deehani a performance bonus payment of 25,000 KD based on his gold medal performance at the Olympic Games in Rio de Janeiro, 2016 because:

- (a) Mr Al-Deehani did not compete as a member of Kuwait's national team but as an IOA under the Olympic flag due to the IOC's suspension of the KOC;
- (b) KSF had no contractual or other legal obligation to make that performance bonus.

v) Performance Bonus Payments – Resolution 713 (2014)

82. KSF submits that Mr Al-Deehani is not entitled to a performance bonus pursuant to Resolution 713 following his receipt of the bronze medal in the Olympic Games in London 2012 because:

- (a) Resolution 713, which entered into force on 1 September 2015, does not, especially having regard to the language of Art. (21), operate retrospectively. Art. (21) is expressed in the present tense, that is, “*an athlete who receives an Olympic Medal shall be paid a monthly reward...*” It thus applied from the date of the Olympics in Rio de Janeiro and not prior; and
- (b) even if Mr Al-Deehani had an entitlement to a performance bonus, KSF had no contractual or other legal obligation to make that payment.

83. KSF also contends that Mr Al-Deehani is not entitled to a monthly reward pursuant to Resolution 713 Art. (21) for winning the gold medal in the men's double trap event at the Olympic Games in Rio de Janeiro, 2016 because Mr Al-Deehani did not compete as a member of Kuwait's national team but as an IOA under the Olympic flag due to the IOC's suspension of the KOC. Further, Art. (2) of Ministerial Resolution 153 expressly stipulated that an athlete could only be rewarded if he/she was a member of the National Team. Due to the IOC's suspension of the KOC, Mr Al-Deehani could not compete for

Kuwait at the Rio Olympics. That Ministerial Resolution remained in force until 1 April 2018.

84. If, contrary to the preceding submission, Mr Al-Deehani was eligible to claim the monthly reward for the Rio Olympics, the objective of that reward is to provide monthly financial support for the athlete until the next Olympics. As Mr Al-Deehani retired on 6 March 2018, his eligibility to claim the monthly reward ended on the date of his retirement. Therefore, the reward, if any, is to be calculated from 10 August 2016 until the date of his retirement on 6 March 2018.

vi) KSF's position as an intermediary

85. As the KSF was only an intermediary for the disbursement of funding authorised by the PAS, and it has fully performed its duties and obligations to distribute funds received from the PAS (and MFK) to Mr Al-Deehani, it has neither standing to be sued for the alleged unpaid salaries and/or bonuses nor can it be liable jointly with the PAS for any of the claims made against it.

86. Pursuant to Art. 1 of the Kuwait Sports Law 87 of 2017 (**Law 87**), sports bodies, such as the KSF, are non-profit entities established with the purpose of regulating and promoting sports activities. The KSF, which is both a sports club as well as a national sport federation, is a non-government entity responsible for the regulation and organisation of shooting sport throughout Kuwait. It is partly self-funded (Art. 4) and is provided with governmental support and subsidies which can only be used for allocated purposes (Art. 23).

87. KSF did not issue Resolution 713, nor has it entered into an agreement with Mr Al-Deehani relating to Olympic bonuses or received any funds or subsidies from the PAS to pay those bonuses to Mr Al-Deehani. This, it claims, is sufficient to establish that the KSF cannot be liable, either solely or jointly with the PAS or the MFK, for the payment of Olympic bonuses to Mr Al-Deehani.

88. Only the PAS either pursuant to Circular 547 or Resolution 713 has financial responsibility of the regulatory framework designed by those regulations. The PAS budgeted the funds together with the Minister of Finance. The funds were provided to the clubs or federations, on a quarterly basis, which then transfer them to the athletes. It is the PAS, and only the PAS, which allocates the resources to pay Kuwaiti athletes. KSF has always transferred all monies received from the PAS and allocated to Mr Al-Deehani.

89. Further, in so far as joint liability is concerned, KSF contends that, in contract law, when two or more parties are alleged to be liable to another for breach of contract, it means that each party is liable to the other for the entire claim, those parties having assumed an identical obligation to the other. This principle is enshrined in Art. 341 of the Kuwait Civil Code which stipulates that a joint liability cannot be presumed but must be expressly established by a contract or a provision of the law. KSF submits that none of these conditions are presently met and the NSAT erred when it found that KSF was jointly liable with PAS and MFK to Mr Al-Deehani for unpaid salaries and/or bonuses.

vii) *Moral Damages*

90. Mr Al-Deehani is not entitled to an award of moral damages because:

- (a) “Moral damages” has been recognised in CAS jurisprudence as “*damages sustained by an individual who has suffered personal harm as a result of conduct, acts or omissions which severely damage the personality or reputation of the injured party, causing physical, mental or psychological suffering*” (CAS 2013/A/3260) and “*which goes beyond what can be considered as bearable for a normal person in a similar situation*” (CAS 2015/A/4266);
- (b) the awarding of moral damages has been consistently considered an exception rather than the rule under CAS case law (CAS 2015/A/4350) and a person claiming moral damages bears the onus of proof (CAS 2015/A/4266; CAS 2015/A/4350 and Kuwait Court of Cassation, judgment 430/2001);
- (c) there is no evidence that Mr Al-Deehani has either suffered any relevant non-material harm so as to engage an award of moral damages or of a nexus or causal relationship between conduct attributed to KSF and that harm;
- (d) having regard to the relevant regulatory framework within which KSF operates, its conduct did not, nor could it have caused any moral damage to Mr Al-Deehani. KSF had no power, discretion, authority or right in relation to the payment of salaries, deductions and bonuses, all being matters determined by the PAS. KSF’s only obligation was to transfer money from the PAS to the athlete whenever resources are allocated by the PAS for that purpose. KSF has duly performed its obligations in this regard; and
- (e) to the extent that Mr Al-Deehani may be entitled to an award of moral damages, the quantum should be mitigated because the KSF has, over the many years of its association with Mr Al-Deehani treated him in a caring and supportive manner.

viii) *Relief sought by KSF*

91. In CAS 2021/A/8397, KSF requests the following relief:

“Principally

I. to find the appeal brief 8397 inadmissible;

In the alternative

II. to dismiss the appeal brief 8397 in its entirety;

In any event

III. *ordering the Third Appellant to bear all the administrative costs and legal fees incurred by the KSF in this consolidated arbitration on a full indemnity basis.*

92. In CAS 2021/A/8313, KSF requests the following relief:

“Principally

I. to annul the challenged Award;

In the alternative

II. to set aside cyphers 3, 4 and 6 of the operative part/decision of the challenged Award;

In the more alternative

III. to set aside cyphers 3, 4 and 6 of the operative part/decision of the challenged Award vis à vis the Appellant.

In any event

IV. to order the Respondent to pay in full, or, in the alternative, a contribution, towards the cost and legal fees of the present proceeding;

V. to order the Respondent to pay in full, or, in the alternative, a contribution, towards legal fees paid by the KSF in the NSAT proceeding.

C. Mr Al-Deehani’s Submissions in Answer to CAS 2021/A/8313

i) Jurisdiction of the NSAT

93. As the KSF did not pay the advance of fees for its arbitrator, those fees were, in fact, paid by Mr Al-Deehani to enable the arbitration to proceed. KSF’s claim that the NSAT lacked jurisdiction should be dismissed.

ii) KSF’s position as an intermediary

94. KSF’s contention that it acted simply as an intermediary and thus lacks the necessary capacity to be sued, is an incorrect assessment of the KSF’s role and should be denied:

(a) it was the direct contracting party in relation to Contracts 1-3;

(b) all payments to Mr Al-Deehani came directly from KSF;

(c) KSF is able to be sued as the indirect proxy for the PAS;

- (d) all payments made to Mr Al-Deehani, whether in the nature of salaries or bonuses, were made directly by KSF;
- (e) KSF unlawfully deducted funds from the salary owed to Mr Al-Deehani; and
- (f) it is irrelevant as to whether the KSF had the capacity to meet its financial obligations to Mr Al-Deehani; the KSF is entitled to take recourse (or seek a contribution or indemnity) from the PAS in this regard.

iii) Performance Bonus Payments – Resolution 713 (2014)

95. Resolution 713 provides explicitly for a retroactive application by stating that medal winning athletes are granted monthly payments during an interval from one Olympic Games to the next Olympic Games. If it had been the intention of the PAS that Resolution 713 applied only to wins after the next Olympic Games or that winners were only entitled to monthly payments after the coming into effect of the Resolution, it could have easily provided for it. It did not do so.
96. Being a member of a national team (Ministerial Resolution 153) is not a condition for the monthly bonus payments pursuant to Resolution 713.
97. Further, Ministerial Resolution 153 is of no relevant application because:
- (a) it came into effect in 2007, three years prior to the IOC first banning the KOC from competing. Thus, it was not at that time foreseen that Kuwaiti athletes would be competing at Olympic Games as IOAs under the Olympic flag; and
 - (b) there is no wording stipulating that competing under the Kuwaiti Flag or that the nationality of the Kuwaiti athlete are conditions for the award;
98. Mr Al-Deehani was a member of the national teams during the Olympic Games in Rio de Janeiro, 2016. The national team was not “disbanded” nor was Mr Al-Deehani excluded from the national team. He was simply not permitted to display his membership of the national team, nor his citizenship during his participation at the Games.
99. Mr Al-Deehani is thus entitled to both the lump sum award of 25,000 KD pursuant to Ministerial Resolution 153 and the monthly bonus for receiving the gold medal at Olympic Games in Rio de Janeiro in 2016 from the date of receipt (10 August 2016) until the date of the next Olympic Games in Tokyo (23 July 2021) in the amount of 297,096.79 KD.

iv) Moral Damages

100. Article 227 of Kuwaiti Law No. 67 of 1980 provides that, “[a]nyone who, by his wrongful act, causes harm to another shall be obligated to compensate him, whether the harm was caused directly or causally.”

101. Article 227 of Kuwaiti Law No. 67 of 1980 provides that, “(c)ompensation for an unlawful act deals with harm, even if it is moral, physical or psychological harm as a result of prejudice to his life, body, freedom, honor, reputation, social, moral or financial position.”

102. The minor amounts awarded by the NSAT to Mr Al-Deehani for moral damages is insufficient to compensate Mr Al-Deehani for the ordeal that he has gone through since 2009.

v) *Relief sought*

103. Mr Al-Deehani makes the following requests for relief:

“First: The Appeal of the Appellant shall be dismissed in its entirety.

Second: Appellant shall bear the costs of the arbitration in front of CAS.

Third: Appellant shall pay the Respondent the legal fees and expenses incurred in connection with the proceedings before the CAS in an amount based on the time sheet as provided by the Respondent’s counsels, but not less than CHF 50,000.00 (fifty-thousand Swiss Francs).”

D. PAS and MFK’s Submissions in answer to Mr Al-Deehani’s Submissions in CAS 2021/A/8397 and in support of CAS 2021/A/8316

i) *Admissibility of Mr Al-Deehani’s appeal*

104. PAS and MKF submit that the Appeal of Mr Al-Deehani was filed late, since it was lodged with the CAS on 10 October 2021, while the Appealed Decision was provided to the parties on 30 August 2021.

105. PAS and MKF contest that the Appealed Decision was served on 21 September 2021 to Mr Al-Deehani, as stated by the latter.

106. Accordingly, PAS and MKF submit that the Appeal filed by Mr Al-Deehani shall be declared not admissible as filed late.

i) *Jurisdiction*

107. PAS and MFK contend that the NSAT lacked jurisdiction because:

(a) Art. 44 of Law 87, provides that the NSAT has jurisdiction “to settle Sports disputes in the State, one of which shall be any of the sports authorities, their members or affiliates, through mediation, conciliation or arbitration”;

(b) Art. 1 of Law 87, defines Sports disputes as “disputes related to all the works of Sports authorities related to sports activities under the institutional matters,

including the election of Sports authorities and the decisions of the General assemblies.” “Sports authorities” are defined as “the authorities established in accordance with the provisions of this law, whether from natural or legal persons, for an unlimited period, for the purpose of providing sports and other related services, and which are not primarily for profit”. Law 87 contains a list of the entities included under the definition “Sports authorities”;

- (c) the PAS is not a “Sports authority” for the purposes of Law 87;
 - (d) the role of the PAS is to manage and control the financial contributions provided by the Government to support the development of sport in Kuwait. This is not a “Sports activity” for the purposes of Law 87; and
 - (e) accordingly, the PAS is not submitted to the jurisdiction of the NSAT.
- ii) *The Award of the NSAT is procedurally flawed*

108. The NSAT panel was not duly constituted because Resolution No. 5 of 2021, which came into effect on 8 April 2021 provides that where a dispute is referred to an arbitration chamber composed of three arbitrators, the “umpire arbitrator” or President of the arbitral panel is to be selected by the Board of Directors of the National Authority from a list of arbitrators approved by the NSAT and registered as an arbitrator before the CAS. This condition was not met as the President of the panel was not registered as an arbitrator before the CAS.

iii) *Salary*

109. Mr Al-Deehani has been paid wages on the basis of different contracts and that his entitlement, if any, to be paid wages including in relation to any “delayed salaries” is to be found exclusively in the contracts and not pursuant to the statutes, laws, regulations or decisions of the State of Kuwait. No salary is payable pursuant to Law 49 because shooting is not one of the sports designated by the PAS pursuant to Art. 4 of this law. Lastly, the claims for outstanding salary are statute-barred having regard to the provisions of Art. 440 of the Civil Code of Kuwait which provides for a five-year limitation period within which to bring relevant claims.

iv) *Performance Bonus Payments – Resolution 713 (2014)*

110. PAS and MFK contend that Mr Al-Deehani is not entitled to a performance bonus pursuant to Resolution 713 following his receipt of the bronze medal in the Olympic Games in London 2012 because Resolution 713:

- (a) only applies to a partial professional in the sports field and Mr Al-Deehani does not qualify because he was a professional athlete;

- (b) which entered into force on 1 September 2015, does not operate retrospectively and accordingly does not apply to the bronze medal awarded to Mr Al-Deehani at the Olympic Games in London, 2012; and
- (c) only applies to the games and sports referred to in a table attached to the Resolution, which table does not refer to shooting as a game within the scope of the Resolution.

111. PAS and MFK also contend that Mr Al-Deehani is not eligible to a monthly reward pursuant to Resolution 713 for winning the gold medal at the Olympic Games in Rio de Janeiro, 2016 because Mr Al-Deehani did not compete as a member of Kuwait's national team and that competing in that capacity was a pre-requisite to eligibility for the reward.

v) *Moral Compensation*

112. AS and MFK further contend that the facts do not support the awarding of moral compensation. Even if it be shown that Mr Al-Deehani was refused a justified claim, that fact alone would not support a claim for moral damages in general and in particular under the Law of Kuwait.

vi) *Standing*

113. PAS and MFK note that Mr Al-Deehani has named the Director General of the PAS and the Under-Secretary of MFK as parties to the proceedings. They contend that, ordinarily, the members of the legal entity or the natural persons representing that entity are not liable for any claims that may be brought against the entity concerned. It is submitted that the Director General of the PAS and the Under-Secretary of MFK therefore lack standing to be sued.

vii) *Relief sought*

114. PAS and MFK seek the following relief:

"I. The Appeal filed 17 September 2021 is upheld.

II. The Decision issued on 29 August 2021 by the National Sports Arbitration Tribunal of Kuwait is reformed in the sense that the National Sports Arbitration Tribunal has no jurisdiction to hear the dispute between Fhaid Mohammed Al-Dehani (sic) on the one side and the General Director of Public Authority for Sports (in his capacity) and the Under-Secretary of the Ministry of Finance (in his capacity) on the other side, so that the request filed by Mr Fhaid Mohammed Al-Dehani (sic) is rejected.

Subsidiarily:

II. The Decision issued on 29 August 2021 by the National Sports Arbitration Tribunal of Kuwait is reformed in the sense that the claims filed by Mr Fhaid Mohammed Al-Dehani (sic) the General Director of Public Authority for Sports (in his capacity) and the Under-Secretary of the Ministry of Finance (in his capacity) are fully rejected.

III. The decision issued on 29 August 2021 by the National Sports Arbitration Tribunal is reformed in the sense that the General Director of Public Authority for Sports (in his capacity) and the Under-Secretary of the Ministry of Finance (in his capacity) shall not bear any costs of the arbitration in front of the National Sports Arbitration Tribunal, and that Fhaid Mohammed Al-Dehani (sic) is ordered to pay an amount of 10,000 Kuwaiti Dinar jointly to the General Director of Public Authority for Sports (in his capacity) and the Under-Secretary of the Ministry of Finance (in his capacity) as a contribution to their legal fees.

IV. The costs of the arbitration in front of CAS shall be born (sic) by Mr Fhaid Mohammed Al-Dehani (sic).

V. As a contribution to the legal fees and other expenses incurred by the General Director of Public Authority for Sports (in his capacity) and the Under-Secretary of the Ministry of Finance (in his capacity) in connection with these proceedings, Mr Fhaid Mohammed Al-Dehani (sic) shall pay an amount of CHF 50,000,00 two, the Appelants (sic)."

E. Mr Al-Deehani's Submissions in Answer to CAS 2021/A/8316

ii) Jurisdiction

115. It is sufficient to engage the jurisdiction of the NSAT if one of the parties is a sport body, or a member or affiliate of it (Art. 44, Law 87). The KSC/KSF, clearly falls under the definition of "sport bodies" with the dispute arising during Mr Al-Deehani's membership of that club.

116. "Sport disputes" is defined in Art. 1 of Law 87 as "*disputes related to all the work of sports bodies related to sports activities and their institutional matters, including the elections of sports bodies and the decisions of the general assemblies.*" It is therefore sufficient to engage the jurisdiction of the NSAT if the dispute is related to a sports activity, or in other words, has a connection to a sports activity. The claims made by Mr Al-Deehani each relate to sports activities or have a connection to a sports activity.

iii) The Award of the NSAT is procedurally flawed

117. Resolution No. (5) of 2021 was issued on 8 April 2021 and came into effect on 18 April 2021. It has no retrospective operation. At the time of its coming into force, the NSAT proceeding had been advanced to the stage where, not only had all three arbitrators been appointed, but two arbitration hearings had already been conducted before the NSAT panel. The NSAT panel was accordingly correctly constituted. Furthermore, no party filed any objection to the constitution of the NSAT panel.

iv) Salary

118. As to the claims of PAS and MFK that no salary is payable pursuant to Law 49 because shooting is not one of the sports designated by PAS pursuant to Art. 4 of this law, Mr Al-

Deehani contends first, that he is entitled to the delayed payments pursuant to Contracts 1, 2 & 3. Contracts 2 & 3 were entered into pursuant to Resolution 173. Secondly, the version of Table No. (1) to Resolution 713 relied upon by PAS and MFK contains a wrong translation where “Archery” is used instead of “Shooting”. Mr Al-Deehani otherwise relies upon his submissions in CAS 2021/A/8397.

119. The statute of limitations contained in Art. 440 of the Kuwait Civil Code only applies to claims concerning the “free professions”, that is, “*doctors, lawyers, engineers, experts, bankruptcy administrators, brokers, teachers and others who are free professions.*” A “free profession” extends to scientific, artistic, literary, teaching or educational profession that are subject to specific professional standards. Athletes do not comprise a “free profession.”

120. Mr Al-Deehani’s claims are based on money owed by the State to him, therefore, public funds. Article 23 of Law 87 provides that “*funds for support and government subsidies provided to sports bodies are considered public funds.*” Claims in relation to public funds have no relevant limitation period.

v) *Performance Bonus Payments – Resolution 713 (2014)*

121. In response to the contention that he is not entitled to a performance bonus pursuant to Resolution 713 following his receipt of the bronze medal in the Olympic Games in London 2012, Mr Al-Deehani submits that:

- a) he was a “partially professional player” for the purposes of Art. (1) and Art. (13) of Resolution 713, Contracts 2 & 3 recite that Mr Al-Deehani was a “partial professional player” and he was paid for several years on that basis; and
- b) the reference to “Archery” in Table No. (1) to Resolution 713 is an incorrect translation and should read “Shooting”.

122. Mr Al-Deehani otherwise relies upon his submissions in CAS 2021/A/8397 (*see supra*).

123. Apropos the claim that that Resolution 713 does not operate retrospectively and accordingly does not apply to the bronze medal awarded to Mr Al-Deehani at the Olympic Games in London, 2012, Mr Al-Deehani:

- (a) submits that the reference to “Archery” in Table No. (1) to Resolution 713 is an incorrect translation and should read “Shooting”; and
- (b) otherwise relies upon his submissions in CAS 2021/A/8397.

vi) *Moral Compensation*

124. Mr Al-Deehani repeats and relies upon his submissions in CAS 2021/A/8397 (*see supra*).

vii) *Standing*

125. Mr Al-Deehani contends that under Kuwaiti law, it is not possible to sue the PAS or the MFK and that any claim properly lies against the legal representative of those organisations and they have been named in that capacity only.

viii) *Relief sought*

126. Mr Al-Deehani makes the following requests for relief:

“First: The Appeal of the Appellants shall be dismissed in its entirety.

Second: Appellants 1 and 2 shall bear the costs of the arbitration in front of CAS.

Third: Appellants 1 and 2 shall pay the Respondent under solidary obligation the legal fees and expenses incurred in connection with the proceedings before the CAS in an amount based on the time sheet as provided by the Respondent’s counsels, but not less than CHF 50,000.00 (fifty-thousand Swiss Francs).”

VI. JURISDICTION

127. The jurisdiction of the CAS derives from Art. R47 of the CAS Code and Art. 49 of Law 87.

128. Art. R47 of the CAS Code provides that, “[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.”

129. Art. 49 of Law 87 provides that, “[t]he Arbitral rulings are binding to the dispute parties once they are signed by the chairman of the Arbitral Tribunal’s Board of Directors and the parties are notified. The implementation is subject to the legal rules on arbitration stipulated by the Decree-Law No. 38 of 1980 referred to, without prejudice to the right to resort to the International Court of Arbitration for Sports (CAS) in any degree of litigation in sports disputes, in accordance with the regulations and rules, related to the jurisdiction of CAS, as well as the rules of jurisdiction related to International Sports.”

130. None of the parties has contested the jurisdiction of the CAS. Indeed, by signing the Order of Procedure and by their active participation throughout the proceedings, each has confirmed that the CAS has jurisdiction.

131. The Panel accordingly holds that the CAS has jurisdiction to hear the appeal.

VII. ADMISSIBILITY

132. Art. R47 of the CAS Code provides that, “[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific

arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”

133. According to Art. R49 of the CAS Code, “[i]n the absence of a time limit set in the statute or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against...”.
134. Art. 49 of Law 87 reads as follows: “*The Arbitration provisions shall be binding on the Parties to the dispute as soon as they are signed by the President of the Board of Directors of the Arbitration Tribunal and notified to the Parties, and their implementation shall be subject to the legal rules established in regard to arbitration contained in the aforementioned Decree Law No. (38) of 1980, without prejudice to the rights to resort to the International Sports Arbitration Court (CAS) in any degree of litigation in sports disputes, in accordance with the regulations and rules related to the competence of CAS, as well as the rules of competence related to international sports federations*”.
135. Neither Art. 49 of Law 87 nor any other provision of that law prescribes a time limit for an appeal to the CAS. Therefore, to be admissible, the respective appeals must, in accordance with Art. R49 of the CAS Code have been made “*within twenty-one days from receipt of the decision appealed against.*”
136. The Appealed Decision was passed by the NSAT on 29 August 2021.
137. On 30 August 2021, the NSAT circulated to the parties a draft and unsigned version of its determination for their review and comment.
138. On 21 September 2021, the NSAT notified the parties with the signed Award.
139. Statements of appeal were filed with the CAS as follows:
 - a) CAS 2021/A/8313 on 17 September 2021;
 - b) CAS 2021/A/8316 on 17 September 2021; and
 - c) CAS 2021/A/8397 on 10 October 2021.
140. From the above timeline, it appears clear that the Parties have interpreted Article 49 of the Law No. 87 of 2017 in different ways: KSF, PAS and MKF which have filed their appeals within a 21-day deadline from receipt of the draft Award; Mr Al-Deehani who filed his appeal within 21-days from receipt of the signed copy of the Award.
141. In this regard, the Panel notes that PAS and MFK contend that the appeal by Mr Al-Deehani is inadmissible because it was lodged on 10 October 2021 in circumstances where the NSAT Award was made and delivered on 30 August 2021. Thus, they submit,

that the appeal was filed out of time and is inadmissible. The Panel, however, rejects that submission.

142. In fact, as mentioned, it is noted that on 30 August 2021, the NSAT circulated to the parties a draft, unsigned copy of the Award. It was not until 21 September 2021, that the NSAT issued and circulated to the parties a signed copy of the Award dated 29 August 2021, pursuant to Article 49 of the Law No. 87 of 2017.
143. The Panel also notes the cover letter by which the NSAT served to the parties the draft of the Award: *“Please review the arbitral award and provide us with your response (if any) in accordance with the rules of procedure, in particular Articles (42), (43) and (44), bearing in mind that the arbitral award is considered final and binding on the parties as soon as it is signed by the Chairman of the Board of Directors of the National Sports Arbitration Commission in accordance with Article (45).”*
144. The Panel finds the wording of Article 49 of the Law No. 87 of 2017 and of the mentioned accompanying letter is clear in establishing a two-stage procedure for the notification of decisions of the NSAT: a first step consisting in the notification to the parties of a draft of the decision, unsigned, which the parties have the opportunity to comment; a second step consisting in the proper notification of the signed decision, which acquires a final and binding character for the parties. In the Panel’s view, it is against the signed version of the Award that parties to a NSAT arbitration have the possibility to lodge an appeal with the CAS (*“The Arbitration provisions shall be binding on the Parties (...) as soon as they are signed (...) and notified to the Parties (...) without prejudice to the rights to resort to the International Sports Arbitration Court (CAS)”*).
145. Accordingly, any appeal from the Award was required to be made within 21 days of receipt of the Award on 21 September 2021, that is, by no later than 12 October 2021. Mr Al-Deehani’s appeal was filed on 10 October 2021 and was accordingly filed in time.
146. The Panel therefore finds that the specificity (or oddity) of such provision has been correctly interpreted by Mr Al-Deehani, as he filed his appeal within the relevant deadline (21 days) from receipt of the final and binding, signed, Award. In this regard, it is arguable that the Appeals filed by the other parties may have been premature. However, in the absence of any specific objection in this respect, and also having regard to the odd and potentially confusing system put in place by Article 49 of the Law No. 87 of 2017, the Panel accepts that all appeals are admissible.
147. Furthermore, the Panel notes that KSF submits that Mr Al-Deehani’s appeal is inadmissible because he seeks to agitate claims that were not the subject of the proceedings before the NSAT and has therefore not exhausted his legal remedies as required by Art. 47 before bringing his appeal in the CAS. Also, KSF claims that Al-Deehani is not concretely appealing the NSAT decision, as he does not challenge any specific finding of the NSAT decision. The Panel does not accept this characterisation of Mr Al-Deehani’s claims. Even if the wording chosen by Mr Al-Deehani to submit his appeal may not seem totally straightforward, it is tolerably clear that Mr Al-Deehani’s claims in the proceedings arise from and concern the subject matter of the NSAT Award

and each of his prayers for relief has a close correlation with the findings of the NSAT Award. The Panel, in deciding to reject KSF's objection, is also comforted by the fact that it has full power to review, *de novo*, the matter at hand, so that Mr Al-Deehani's claims are perfectly compatible with an appeal procedure, even in the absence of specific language directly challenging parts of the NSAT decision.

148. In conclusion, the Panel accepts that all three Appeals are admissible.

VIII. APPLICABLE LAW

149. Pursuant to Art. R58 of the CAS Code, “[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

150. In compliance with Art. R58 of the CAS Code and in the absence of any applicable regulations to the contrary or specific choice of law by the parties, the Panel determines that it must decide the merits of the appeal in accordance with the substantive law (*lex causae*) of Kuwait, it being the law of the country in which the NSAT, a sports-related body for the purposes of Art. R58 of the CAS Code is domiciled and issued the Award the subject of the appeals to the CAS.

151. As the seat of these arbitral procedures is Lausanne, Switzerland (CAS Code, Art. R28), the arbitral procedural law (*lex loci arbitri*) of Switzerland applies.

IX. MERITS

A. Overview – Issues for Determination

152. Having regard to the *de novo* nature of the appeal, the arguments advanced by the parties and the evidence upon which each of the parties rely, these proceedings give rise to the following issues:

- 1) whether the NSAT had jurisdiction to hear and determine the procedure the subject of the appeal;
- 2) whether the NSAT Award is procedurally flawed;
- 3) whether the Director-General of the PAS and the Under-Secretary of MFK as the parties joined to the proceedings lack standing to be sued;
- 4) whether Mr Al-Deehani is entitled to amounts deducted from payments made to him pursuant to Circular 547 which, by Circular 34, was deemed to be in violation of Law 49 including whether that claim is statute-barred. If the claim is not statute-

barred, the quantum of Mr Al-Deehani's claim and whether it is recoverable as against the KSF, PAS and MFK or any of them;

- 5) whether Mr Al-Deehani is entitled to payments pursuant to Resolution 713 and Contracts 1, 2 and 3 including whether those claims are statute-barred. If the claims are not statute-barred, the quantum of Mr Al-Deehani's claim and whether it is recoverable as against the KSF, PAS and MFK or any of them;
- 6) whether Mr Al-Deehani is entitled to performance bonus payments pursuant to Resolution 713 based upon his bronze medal at the Olympic Games in London, 2012 and, if so, the quantum of the performance bonus payments and whether they are recoverable as against KSF, PAS and MFK or any of them;
- 7) whether Mr Al-Deehani is entitled to a performance bonus payment of 25,000 KD pursuant to Ministerial Resolution 153 based on his gold medal at the Olympic Games in Rio de Janeiro, 2016 and, if so, whether it is recoverable as against KSF, PAS and MFK or any of them;
- 8) whether Mr Al-Deehani is entitled to monthly performance bonus payments pursuant to Resolution 713 based upon his gold medal at the Olympic Games in Rio de Janeiro, 2016 and, if so, the quantum of those bonus payments and whether those payments are recoverable as against KSF, PAS or MFK or any of them; and
- 9) whether Mr Al-Deehani is entitled to recover moral damages as against KSF and PAS and, if so, the quantum of those damages.

153. The Panel addresses each of these issues below to the extent that may be necessary to determine the appeal. In doing so, it has had regard to all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings. However, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. Before embarking upon a consideration of the merits of the appeal, it is necessary to address, briefly, the burden and standard of proof to be applied.

B. Burden and Standard of Proof

154. The Panel has considered the issues by reference to the well understood principle that a party who seeks to substantiate claims bears the onus of affirmatively establishing the facts pertinent to and which support that claim (see, for example, CAS 2003/A/506; CAS 2007/A/1380; CAS 2009/A/1810 & 1811; CAS 2013/A/3207).

155. The evidence submitted by the parties comprises, in large measure, English language translations of Kuwaiti laws and other documents. Some, but not all, of the translations have been provided by certified translators. Where there is a conflict between a document that appears to be a certified translation and the same document that is not so certified, the Panel has given primacy to the documents that comprise a certified translation. This is of particular relevance to the discussion concerning Resolution 713 that follows.

156. Further, and in the absence of a party stipulated standard of proof and as the procedure is not concerned with issues of a disciplinary nature, the standard which applies to this procedure and to which the Panel has had regard, is the balance of probabilities. The balance of probabilities standard has historically been considered to require that the CAS be satisfied that there is a 51% chance of a relevant scenario having had occurred or, put another way, that a matter is more likely to have occurred than not to have occurred (CAS 2009/A/1926 & 1930; CAS 2012/A/2972).

C. The Panel's analysis

1. Jurisdiction of the NSAT

157. Jurisdiction of the NSAT is challenged by the KSF, PAS and MFK but on different grounds. The respective submissions by the KSF, PAS and MFK are outlined in paragraphs 76, 103 and 104 of this Award and the submissions in response by Mr Al-Deehani are outlined in paragraphs 92, 114 and 115.

Relevant provisions of Law 87

158. The NSAT derives its jurisdiction from Law 87, the following provisions of which are of particular relevance:

Article (1)

By implementing the provisions of this law, the following terms and phrases have the meanings defined herein, unless the context requires otherwise:

Sports Bodies: Non-profit bodies that include natural and legal persons, established in accordance with the provisions of this law for an unlimited period, to provide sports services and other services related to it.

Sports Club: Every non-profit entity established, for an unlimited purpose, for the purpose of regulating or practicing sports activities.

Sports Clubs do not include National Sports Federations, Kuwaiti Olympic Committee, Kuwaiti Paralympic Committee, or any other sport entities stipulated in this law, other than sports clubs.

National Sports Federations: non-governmental entities responsible for the regulation and organization of sports in general or a specific sport on the local level. They depend on the relevant International Sports Federations.

National Sports Federations include Olympic Sports Federations whose sports are listed in the Olympic program, non-Olympic Sports Federations whose sports are not listed in the Olympic program, and Paralympic Sports Federations whose sports are listed in the Paralympic program.

The Authority: Public Sports Authority.

The Board: The Board of Directors of the Public Authority.

Arbitral Tribunal: National Tribunal for Sports Arbitration.

Sports Disputes: Relevant disputes related to the work undertaken by Sports Bodies and related to their activities and institutional matters, including the Sports bodies elections and decisions of their general assemblies.

**Chapter Two
Establishment of Sports Bodies and Procedures of Declaration**

Article (2)

Sports Bodies shall be established in accordance with relevant international standards, by registering with the Authority and declaring its establishment in accordance with the provisions of this law.

**Chapter Nine
Settlement and Adjudication Sports Disputes**

Article (44)

The Sports Arbitral Tribunal is an independent entity, with legal status called the (National Sports Arbitral Tribunal). It is responsible for settling sports disputes in the country, in which one of the disputing parties is a Sports Bodies, or a member or affiliate in a Sports Body, through mediation, conciliation or arbitration.

Article (49)

The Arbitral rulings are binding to the dispute parties once they are signed by the chairman of the Arbitral Tribunal's Board of Directors and the parties are notified. Their implementation is subject to the legal rules on arbitration stipulated by Decree-Law No.38 of 1980 referred to, without prejudice to the right to resort to the International Court of Arbitration for Sports (CAS) in any degree of litigation in sports disputes, in accordance with the regulations and rules, related to the jurisdiction of CAS, as well as the rules of jurisdiction related to International Sports.

159. Also, of relevance to part of the discussion that follows, are the following provisions of regulations issued by the NSAT:

**A list of fees, expenses and charges for the
National Sports Arbitration Tribunal
Article (1)**

General Provisions

- 1/1 The National Sports Arbitration Tribunal shall charge fees and expenses for the arbitration and mediation services it provides, and these fees and expenses are not refundable.
- 1/4 In the event that all parties initially agree to refer the dispute to arbitration or mediation, all parties shall be obligated to pay the arbitration or mediation fees and expenses, the fees of the arbitrator or arbitrators, and the fees of the mediator or mediators equally between them before initiating the request. The dispute shall not be referred to the competent arbitration or mediation chamber, unless all fees, expenses and charges have been paid.
- 1/7 The arbitration decision or mediation agreement shall not be delivered to the parties in the final form and signed by the Chairman of the Board of Directors until after payment of all fees, expenses and charges of arbitrators, mediators and experts due, and other fees and additional expenses due.

Article (8)

Arbitrators' Fees

- 8/1 No arbitration request shall be accepted unless it is accompanied by proof of payment of the arbitrator's fees chosen by the applicant.
- (...)
- 8/3 If the arbitration chamber is composed of three arbitrators, each shall pay the fees of its chosen arbitrator, and the loser of the arbitration proceeding in this case, bears the fees of the third arbitrator.
- (...)
- 8/4 The dispute shall not be referred to the competent arbitration chamber until after the arbitrators' fees have been paid.

KSF's challenge to NSAT jurisdiction

160. KSF claims that the NSAT lacked jurisdiction because KSF had not paid the fees of its chosen arbitrator before the proceeding was referred to arbitration in breach of Art. 8/4. Mr Al-Deehani asserts that he paid the fees of KSF's chosen arbitrator to enable the arbitration to proceed.
161. At a hearing before the NSAT on 8 July 2021, the procedure was adjourned to 27 July 2021 to enable "*remaining amounts of the arbitration expenses and fees and the fees of the arbitrator and expert...*" to be paid.
162. On 25 July 2021, KSF made application to the NSAT for exemption from the payment of its chosen arbitrator. That request was denied by letter dated 26 July 2021.
163. The hearing resumed on 27 July 2021. KSF was represented at the hearing by an attorney. Neither that attorney nor any party objected to the jurisdiction of the NSAT based upon an assertion that there were any outstanding arbitrator's fees. The proceedings were adjourned to 2 August 2021 to enable the parties to consider documents provided by the parties that day. When the proceedings resumed on 2 August 2021, the NSAT proceeded to determine the procedure on its merits.
164. In circumstances where the procedure was adjourned on 8 July 2021 for the specific purpose of enabling outstanding arbitrator's and other fees to be paid and no objection was raised by any party including KSF on resumption of the hearing either on 27 July 2021 or 2 August 2021 to the matter proceeding due to any outstanding arbitrator's or other fees, the Panel infers that all outstanding arbitrator's fees had been paid by Mr Al-Deehani as he claims. This finding is also consistent with the fact that in its reasons, the NSAT ordered KSF (and each of the respondents to that proceeding) to pay Mr Al-Deehani "*...the fees of the arbitrator chosen by the respondents with the amount of 20,000 KD.*"
165. The Panel accordingly rejects KSF's challenge to NSAT jurisdiction on the ground that KSF had not paid its share of the fees of its chosen arbitrator.

PAS's challenge to NSAT jurisdiction

166. PAS submits that the NSAT lacked jurisdiction because it is not a “Sports authority” for the purposes of Law 87, that Art. 44 of that law provides that the NSAT has jurisdiction to settle “Sports disputes” involving “Sports authorities” and that PAS’s function of managing and controlling the financial contributions provided by the Government to support the development of sport in Kuwait is not a “Sports activity” for the purposes of Law 87.
167. In response, Mr Al-Deehani contends that: it is sufficient to engage the jurisdiction of the NSAT if one of the parties is a sport body, or a member or affiliate of it; KSF clearly falls under the definition of “sport bodies” and having regard to the definition of “sport disputes”, it is sufficient to engage the jurisdiction of the NSAT if, as in the present circumstances, the dispute is related to a sports activity, or has a connection to a sports activity.
168. Art. (44) of Law 87 clothes the NSAT with jurisdiction to settle “*Sports Disputes*” in Kuwait in which “*one of the disputing parties is a Sports Bodies, or a member of affiliate of a Sports Body*” by mediation, conciliation or arbitration.
169. “Sports disputes” is defined in Art. (1) of Law 87 to include, “*disputes related to the work undertaken by Sports Bodies and related to their activities.*”
170. Mr Al-Deehani was a member of KSF and the KSF, as the sole federation and governing body of shooting sports in Kuwait, was a “Sports Body” for the purposes of Art. (44) of Law 87 at the time of the dispute which gave rise to the NSAT proceedings.
171. “Sports disputes” is described in broad and unfettered language so that it can encompass any action, conduct or deed touching upon or concerning the work undertaken by Sports Bodies or otherwise related to their activities. Mr Al-Deehani’s claims, quintessentially, concern rights and entitlements alleged to arise from his engagement as an athlete in the sport of shooting. Those claims are said to arise from the operation of Circular 547, contracts entered into by Mr Al-Deehani with KSF pursuant to Resolution 713, performance bonus payments pursuant to Ministerial Resolution 153 and performance bonus payments under Resolution 713.
172. The Panel is accordingly satisfied that there is relevantly a “sports dispute” between Mr Al-Deehani and at least KSF for the purposes of engaging the NSAT’s jurisdiction. However, what is the jurisdiction of the NSAT in respect of the PAS which is not a “Sports body” as defined in Art. (1) of Law 87?
173. Art. (44) of Law 87 established “*an independent entity with legal status called the (National Sports Arbitral Tribunal) ...responsible for settling sports disputes in the country, in which one (emphasis added) of the disputing parties is a Sports Bodies, or a member or affiliate in a Sports Body...*” (Law 87, Art. (44)). The NSAT was clearly

intended to be a specialist independent sporting tribunal to determine all sports disputes in an open and transparent fashion.

174. The use of the word “one” clearly contemplates that there may be other parties to a “Sports dispute” which may not be a “Sports body” or a member or affiliate of a Sports body. The jurisdiction of the NSAT is accordingly engaged if only one of the parties to the dispute is either a Sports body or a member or affiliate of a Sports body. Such a construction would also ensure that sports disputes of the type contemplated are determined efficiently and effectively in the one set of proceedings and, in doing so, avoid a myriad of potential jurisdictional complexities and a multiplicity of proceedings which could otherwise arise.
175. The Panel is accordingly satisfied that upon the proper construction of Art. (44) of Law 87, the NSAT’s jurisdiction extended to the PAS.

2. Was the NSAT Award procedurally flawed?

176. PAS and MFK claim that the NSAT Award was procedurally flawed because the President of the NSAT panel was not registered as an arbitrator before the CAS as required by Resolution No. (5) of 2021.
177. Mr Al-Deehani appears to accept that the President of the NSAT panel was not a registered CAS arbitrator but contends that as Resolution No. (5) was issued on 8 April 2021 and came into effect on 18 April 2021, being the date that it was gazetted, it has no retrospective operation and, accordingly the NSAT panel was correctly constituted.
178. Resolution No. (5) of 2021 was issued on 8 April 2021. Clause (4-27) of the Resolution provides that where a dispute is referred to an arbitration chamber composed of three arbitrators, the Board of Directors of the National Authority is to select the umpire arbitrator (or president) from a list of arbitrators approved by the NSAT who is registered as an arbitrator before the CAS.
179. Ordinarily, a rule or law will not be construed as retrospective, unless it expresses a clear or manifest intention to the contrary. The language used in Resolution No. (5) does not support a retrospective operation. The Panel therefore concludes that Resolution No. (5) operated prospectively only as and from 18 April 2021.
180. According to the NSAT Award, the NSAT Panel was constituted on 18 March 2021 including Mr Dr Bader Ahmed Al-Jasser Al-Rajhi as Chairman of the Panel. The parties were notified of the constitution of the Panel on 23 March 2021. At a preliminary hearing on 7 April 2021, no party objected to the constitution of the Panel. By the time that Resolution No. (5) had come into effect, the NSAT proceedings had been advanced to the stage where two arbitration hearings had been conducted.
181. In these circumstances, the Panel determines that the NSAT Panel was properly constituted at the time that it was formed noting that no party challenged its constitution at any stage of the proceeding before the NSAT. Resolution No. (5) having no evident

retrospective operation did not affect the proper or valid constitution of the NSAT Panel and the NSAT Award was accordingly not procedurally flawed as PAS and MFK contend.

3. Do the Director-General of the PAS and the Under-Secretary of MFK as the parties joined to the proceedings lack standing to be sued?

182. The issue as to whether the Director-General of the PAS and the Under-Secretary of the MFK lack standing to be sued turns upon the capacity in which they are joined to the proceedings. Mr Al-Deehani claims that they have been joined in a representative capacity as required by Kuwaiti law and not in a personal capacity. The PAS and the MFK assert that ordinarily, the members of the legal entity or the natural persons representing that entity are not liable for any claims that may be brought against the entity concerned.

183. None of the parties has adduced any evidence of Kuwaiti civil law or procedure to substantiate their competing submissions. Mr Al-Deehani, however, points to the fact that neither the PAS nor the MFK raised such questions of capacity in the proceedings before the NSAT and that each brought proceedings for the annulment of the arbitral award in their respective representative capacities, hence they must have implicitly accepted that they were properly joined as parties in a representative capacity.

184. In the absence of any direct evidence of Kuwaiti law and procedure, the Panel infers from the fact that neither the Director-General of the PAS nor the Undersecretary of the MFK objected in proceedings before the NSAT to the capacity in which they were joined that each accepted that they had been properly joined to the proceedings under Kuwaiti law and, it is in that same capacity that they are both parties to each of the CAS procedures.

185. Further, it is abundantly clear from the manner in which the claims were advanced in the NSAT that the claims were brought against the Director-General of the PAS and the Undersecretary of the MFK in a representative and not a personal capacity and that having regard to their respective roles (see paragraphs 7 and 8 of this Award), both the PAS and the MFK were properly parties to the proceedings.

186. The Panel accordingly determines, based on the available evidence, that the Director-General of the PAS and the Undersecretary of the MFK have been properly joined to the proceedings in a representative capacity and, as such, have standing to be sued.

4. Is Mr Al-Deehani entitled to amounts deducted pursuant to Circular 547; if so, the quantum and does recoverability lie as against KSF, PAS and MFK or any of them?

187. Circular 547 provided a mechanism to facilitate the payment of salaries to professional players by the PAS and sports clubs, such as the KSF, in furtherance of the objectives of Law No. (49) of 2005. In summary, at the commencement of the fiscal year, sports club were required to provide the PAS with list of the names of professional players to whom a salary would be paid. The PAS would transfer to the sports club amounts to be allocated to professional players. The sports clubs would then be responsible for disbursing such

amounts to the professional players concerned. The maximum amount allocated as a monthly salary to a professional athlete (player) was 500 KD of which 400 KD would be paid to the player and the balance allocated to the Players' Incentive Fund.

188. By Circular 34, the PSA determined that the Players' Incentive Fund was in violation of Law No. (49) of 2005, that the fund was to be "...*cancelled and the full reward shall be paid to the player.*" The PSA called upon all sports clubs to pay the full amount to the relevant players without deduction.

189. Mr Al-Deehani was a player nominated by the KSF pursuant to Circular 547 to receive the maximum monthly salary of 500KD. According to the financial report of Ms Ojeil, dated 27 June 2021 ("**Financial Report**"), in fiscal years 2009 to 2015 there were 47 months in which Mr Al-Deehani's salary was subject to a 100 KD deduction. Those deductions were rendered unlawful by Circular 34. They are amounts which either were paid by the PSA to the KSF on behalf of Mr Al-Deehani which the KSF has failed to account to Mr Al-Deehani or, in the alternative, amounts which the PSA has not paid to KSF as required by Circular 547. In either case, the Panel determines that the KSF and the PSA are required to pay to Mr Al-Deehani the amount of 4,700 KD in respect of amounts which Circular 34 deemed to be in violation of the provisions of Law No. (49). They are amounts which, in the circumstances, the KSF and the PSA had a joint obligation to Mr Al-Deehani.

190. Whilst the Panel has no reason to doubt that the MFK is, at least in part, responsible for providing funding to the PSA, there is nothing in the language of Circular 547 which provides a relevant legal nexus between Mr Al-Deehani and the MFK. Accordingly, the Panel concludes that the MFK is not liable to Mr Al-Deehani in this regard.

5. Is Mr Al-Deehani entitled to salary pursuant to Circular 547, Resolution 713 and Contracts 1, 2 and 3; if so, the quantum and whether it is recoverable as against the KSF, PAS and MFK or any of them?

191. Resolution 713, like Circular 547 which preceded it, provides a mechanism whereby the PAS sought to incentivise partially professional players by providing them with financial stability through the payment of a salary and monthly bonuses for those who receive an Olympic medal.

192. Resolution 713 required a player to enter into a contract subject to the provisions of Law 49. The value of the financial support for a player is expressed as being not more than 600 KD and not less than 300 KD per month and is payable for no more than 10 months of the year.

193. Pursuant to Resolution 713, KSF and Mr Al-Deehani entered into:

- (a) Contract 2, which was for a term of nine months commencing on 1 September 2015 and ending on 31 May 2016. It required KSF to pay to Mr Al-Deehani 500 KD per month; and

- (b) Contract 3, which was for a term of nine months commencing on 1 September 2016 and ending on 31 May 2017. It required KSF to pay to Mr Al-Deehani 500 KD per month.
194. Mr Al-Deehani claims to be entitled to the amount of 600 KD per month from September 2015 to January 2016 (pursuant to Circular 547) and then reduced to 500 KD per month from February 2016 of May 2016 and from September 2016 to May 2017 (pursuant to Resolution 713, Law 49 and Contracts 2 and 3).
195. KSF maintains that it has paid to Mr Al-Deehani all amounts allocated to it by the PAS and that it only acted as an intermediary and, accordingly has no obligation to Mr Al-Deehani for any outstanding amounts. It also contends that Mr Al-Deehani's claims are statute barred.
196. PAS and MFK contend that whilst Contracts 2 and 3 were entered into pursuant to Resolution 173, no salary is payable to Mr Al-Deehani because first, he was a professional athlete and the payments only apply to semi-professional athletes and, secondly, that it only applies to the games and sports referred to in a table attached to Resolution 713, which table does not refer to shooting.
197. PAS and MFK also submit that Mr Al-Deehani's claims generally are statute-barred in reliance upon Articles 439 and 440 of the Kuwait Civil Code.
198. Each of Contract 1, 2 and 3 recite in the preamble that Mr Al-Deehani is a "*partially professional player in the (Shooting) game, according to the classification (Group A) stipulated in the professional regulation...*"
199. The table to Resolution 713 (certified translation by Al-Hadeel Translation Co) stipulates "Shooting club" as one of the sports to which financial support is to be offered by the PSA.
200. As to the issue of the statute of limitations, KSF, PSA and MFK rely upon Articles 439 and 440 of the Kuwait Civil Code. The Panel finds that each of those provisions is of no current application because:
- (a) Article 439 is concerned with recurring periodical rights such as rents of buildings and of agricultural lands, salaries, wages, periodical payments and pensions save in case of provision otherwise. Mr Al-Deehani was not in a relationship of employer/employee with the KSF for which a salary *per se* was payable. Whilst referred to as "salary" in the submissions, they were, in fact, incentive payments to provide financial support to a player for a limited period; and
- (b) Article 440 is concerned with claims pertaining to physicians, chemists, advocates, engineers, experts, receivers in bankruptcy, brokers, teachers and "*... others who carry on liberal professions, provided that such a right is due to them for professional services rendered or expenses incurred.*" Mr Al-Deehani was, at the

time the relevant contracts were entered into, a semi-professional athlete. He was not engaged in the “liberal professions” for the purposes of Article 440.

201. Whilst not critical to its determination, it appears to the Panel that the applicable provision of the Kuwait Civil Code is Article 438 which provides a 15-year limitation period in respect of rights *in personam*.
 202. The Panel is accordingly satisfied that Mr Al-Deehani qualifies for payments pursuant to Circular 547, Resolution 173 and Contracts 2 and 3. In assessing the amount due, the Panel has relied upon the Expert Report which calculates these claims collectively at 14,300 KD.
 203. The Panel determines, for the reasons discussed in paragraph 188 of this Award, that the liability of the KSF and the PAS is joint. The Panel does not accept that the KSF acted only as an intermediary especially in relation to the claims pursuant to Contracts 2 and 3 in respect of which KSF is a named counter-party. The Panel is further of the view that there is a direct legal nexus between Mr Al-Deehani’s claim and PAS because Circular 547, Resolution 173 and each of the Contracts sought to give effect to a policy promoted by the PAS to encourage the development of sport in Kuwait by incentivising players and in respect of which it provided all necessary funding.
 204. Whilst the Panel has no reason to doubt that the MFK is, at least in part, responsible for providing funding to the PSA, there is nothing in the language of Circular 547 nor in either of Contract 1 or Contract 2 which provides a relevant legal nexus or other reason to hold MFK jointly liable with KSF and PAS. Accordingly, the Panel concludes that the MFK is not liable to Mr Al-Deehani in this regard.
- 6. Is Mr Al-Deehani entitled to performance bonus payments pursuant to Resolution 713 based upon his bronze medal at the Olympic Games in London, 2012; if so, the quantum and whether it is recoverable as against KSF, PAS and MKF or any of them?**
205. For the reasons referred to earlier, the Panel has determined that Mr Al-Deehani was a semi-professional athlete and that shooting is a sport to which the bonus scheme set out in Resolution 713 applies.
 206. The issue that then arises for consideration is whether Mr Al-Deehani is entitled to a performance bonus pursuant to Art. (21) of Resolution 713 following his receipt of the bronze medal in the Olympic Games in London 2012. This issue turns upon whether, properly construed, Resolution 713, which came into effect on 1 September 2015 operates retrospectively as Mr Al-Deehani contends, or whether it operates prospectively.
 207. Article (21) provides that “[a] player who receives an Olympic medal shall be given a monthly bonus starting from the date of obtaining it until the next Olympic session, as follows:...”

208. A provision may have retrospective operation where it expressly so provides (see, for example, CAS 2011/A/2584). Mr Al-Deehani submits that Resolution 713 expressly provides for a retroactive application by stating that medal winning athletes are granted monthly payments during an interval from one Olympic Games to the next Olympic Games and, if it had been the intention of the PAS that applied only to wins after the next Olympic Games or that winners were only entitled to monthly payments after the coming into effect of the Resolution, it could have easily provided for it.
209. The Panel is of the opinion that there is nothing in the language of Resolution 713 that expressly provides for its retrospective application as Mr Al-Deehani contends. Resolution 713 came into effect on 1 September 2015, that is, after the Olympic Games in London 2012 and prior to Rio de Janeiro in 2016. In the absence of express language to the contrary, Resolution 713 was intended to apply from the next iteration of the Olympic Games in 2016. The objective function of Resolution 713 supports this construction. The rationale for its enactment was to incentivize athletes to perform better. In other words, the rationale of Resolution 713 is not to compensate for past performance, but to incentivize for future victories.
210. The Panel accordingly concludes that Mr Al-Deehani is not entitled to receive the monthly bonus prescribed by Article (21) of Resolution 713 arising from him winning a bronze medal at the Olympic Games in London 2012.
- 7. Is Mr Al-Deehani entitled to a performance bonus payment of 25,000 KD pursuant to Ministerial Resolution 153 based on his gold medal at the Olympic Games in Rio de Janeiro, 2016; if so, whether it is recoverable as against KSF, PAS and MFK or any of them?**
211. Ministerial Resolution 153 provides financial rewards for athletes placed 1st to 4th in nominated competitions including the Olympic Games. An athlete placed first in the Olympics (gold medal), is entitled to a lump sum payment of 25,000 KD. Mr Al-Deehani received a gold medal at the Olympic Games in Rio de Janeiro, but has not been paid 25,000 KD to which he asserts an entitlement.
212. KSF contends that Mr Al-Deehani is not entitled to the payment he seeks because he did not compete as a member of Kuwait's national team but as an IOA under the Olympic flag due to the IOC's suspension of the KOC. The KSF further claims that it has no contractual or other legal obligation to make that payment.
213. Article 1 of Ministerial Resolution 153 is in the following terms:
- “Financial honor is granted to athletes in the following cases:*
- 1. winning in the Olympic, Continental, Arab and Regional Championships...*
 - 2. winning one of the International, Continental, Arab and regional Championships...*

214. Properly construed, the intent of Article 1 of Ministerial Resolution 153 is to “honour” or reward Kuwaiti athletes who win a relevant medal in the Olympics. It is not, in terms, expressed to be limited to Kuwaiti athletes competing under the Kuwaiti Flag or as part of the Kuwaiti National Team. Such an interpretation is also consistent with the stated object of the Resolution to “*honor...players – For the public good.*”
215. Mr Al-Deehani was a Kuwaiti athlete who competed at the Olympic Games in Rio de Janeiro and won a gold medal. The fact that he did not compete as a member of Kuwait’s national team but as an IOA under the Olympic flag due to the IOC’s suspension of the KOC is of no consequence having regard to the language employed by Article 1.
216. Article 2 of Ministerial Regulation 153 is of no relevance to the current circumstances as it is concerned with rewarding individual members of National teams in individual games, that is, in team sports. Mr Al-Deehani did not compete in a team sport. His medal was for an individual pursuit.
217. Ministerial Resolution 153 appears, by its terms, to have been promoted by the Ministry of Social Affairs and Labor to give effect to the laws, policies and objectives of the PAS referred to in the preambulatory comments of the Resolution. It does not, in terms, prescribe who will be responsible for payment of amounts referred to in the Resolution. In circumstances where the Resolution was intended to give effect to the laws, policies and objectives of the PAS, the Panel finds that the PAS bears the legal obligation to honour the obligation to which it has adjudged Mr Al-Deehani entitled.
218. The evidence does not support any legal nexus between the obligations under Ministerial Resolution 153 and either the KSA or the MFK. Therefore, the Panel determines that the legal obligation to pay to Mr Al-Deehani 25,000 KD pursuant to Ministerial Regulation 153 rests solely with the PAS.
- 8. Is Mr Al-Deehani entitled to monthly performance bonus payments pursuant to Resolution 713 based upon his gold medal at the Olympic Games in Rio de Janeiro, 2016; if so, the quantum and whether they are recoverable as against KSF, PAS or MFK or any of them?**
219. Mr Al-Deehani claims that he is entitled to performance bonuses pursuant to Resolution 713 from 10 August 2016, being the date that he won a gold medal at the Rio de Janeiro Olympic Games, until the date of the commencement of the Olympic Games in Tokyo in 2020 in the amount of 145,354.84 KD.
220. KSF, PAS and MFK submit that Mr Al-Deehani is not entitled to any payment pursuant to Resolution 713 because he did not compete as a member of Kuwait’s national team but as an IOA under the Olympic flag due to the IOC’s suspension of the KOC.
221. KSF further submits that Art. (2) of Ministerial Resolution 153 expressly stipulates that an athlete could only be rewarded if he/she was a member of the National Team. In the alternative, KSF contends that the objective of the monthly performance bonus payments

was to provide financial support for an athlete until the next Olympics. As Mr Al-Deehani retired on 6 March 2018, his eligibility to claim the monthly reward ceased on the date of his retirement. Therefore, the reward, if any, is to be calculated from 10 August 2016 until the date of his retirement on 6 March 2018.

222. Article (21) of Resolution 713 provides that “[a] player who receives an Olympic medal shall be given a monthly bonus starting from the date of obtaining it until the next Olympic session, as follows: - A gold medal (5000) KWD – Bronze medal (3000) KWD – A silver medal (4000) KWD.”
223. Resolution 713 was promulgated to give effect to, amongst other things, Law 49, the latter of which has, as one of its objectives, to regulate and support the development of sports in Kuwait. Therefore, Article (21) of Resolution 713 must be read subject to the objectives of Law 49.
224. Properly construed, the intent of Article (21) of Resolution 713 when read with Law No. 49 is to support Kuwaiti athletes by paying them a monthly bonus to support them until the next Olympic Games. Like Ministerial Resolution 153 it is not, in terms, expressed to be limited to Kuwaiti athletes competing under the Kuwaiti Flag or as part of the Kuwaiti National Team. Such an interpretation is also consistent with the object of Law 49 to regulate and support the development of sports in Kuwait. In other words, the rationale of Resolution 713 is not to compensate for past performance, but to incentivize for future victories.
225. As referred to earlier, Article 2 of Ministerial Regulation 153 is of no relevance to the current circumstances as it is concerned with rewarding individual members of National teams in individual games, that is, in team sports. Mr Al-Deehani did not compete in a team sport. His medal was for an individual pursuit.
226. Given that the objective of Article (21) of Resolution 713 when read with Law No. 49 is to support Kuwaiti athletes until the next Olympic Games, the Panel finds that whilst Mr Al-Deehani is entitled to the payment of a monthly bonus, that entitlement ceased upon his retirement as an athlete on 6 March 2018. Therefore, Mr Al-Deehani’s entitlements to a monthly bonus of 5,000 KD is to be calculated from 10 August 2016 until 6 March 2018, being 94,110 KD.
227. Resolution 713 contemplates that any payments due to a player under the Resolution are funded by the PAS and paid to the “club” which, in the present case, is the KSF and then disbursed by the Club to the player. Accordingly, the Panel determines that the KSF and the PAS are jointly obliged to pay Mr Al-Deehani the amount of 94,110 KD.
- 9. Is Mr Al-Deehani entitled to moral damages as against KSF and PAS and, if so, the quantum of those damages?**
228. Mr Al-Deehani claims moral damages in the amount of 100,000 KD from each of KSF and PAS for alleged psychological and sensory harm suffered by him being deprived of his financial rights since 2009.

229. Article 227 of Kuwaiti Law No. 67 of 1980 provides that:

“[a]nyone who, by his wrongful act, causes harm to another shall be obligated to compensate him, whether the harm was caused directly or causally.”

230. Article 231 of Kuwaiti Law No. 67 of 1980 provides that:

“(c)ompensation for an unlawful act deals with harm, even if it is moral, physical or psychological harm as a result of prejudice to his life, body, freedom, honor, reputation, social, moral or financial position.”

231. The parties were unable to assist the Panel either in their written submissions or during the course of the hearing as to the manner and circumstances in which a court or other tribunal in Kuwait would award moral damages and, if so, how it would be calculated apart from a submission that it is a matter which is wholly in the discretion of the relevant court or tribunal and that the person claiming moral damages bears the onus of proof (Kuwait Court of Cassation, judgment 430/2001).

232. It would appear from the terms Articles 227 and 231 of Kuwaiti Law No. 67 of 1980, that a threshold issue to be satisfied before moral damages can be considered is that the person against whom moral damages is sought has engaged in a “*wrongful act*” or an “*unlawful act*”. Mr Al-Deehani does not identify either in his submissions or in his evidence the “*wrongful act*” or “*unlawful act*” which provides a foundation for his claim to moral damages.

233. It appears that Mr Al-Deehani’s claim for moral damages is premised upon a contention that the KSF and PAS denied him his “*rightful claims*” since 2009. However, whether or not Mr Al-Deehani has an entitlement to the amounts which he claims has at all times been the subject of debate and, as the reasons in this Award make plain, is a matter upon which reasonable minds may differ. In the absence of any evidence as to how a court or tribunal in Kuwait would approach such a matter, in the view of the Panel a party who resists a claim on reasonable grounds has not by that fact alone engaged in any “*wrongful act*” or “*unlawful act*”. Even if the denial of sums claimed qualifies as a wrongful act, the Panel felt that the commission of this act *per se* does not also provide the athlete with an entitlement for moral damage beyond the payment of amounts due. If this were the case, any delayed damage would qualify as a legal basis for a payment of moral damages as well. Something further is necessary for the latter to be the case. Mr Al-Deehani did not point to any fact which would justify an award of moral damages. As he did not discharge his burden of proof in this respect, the Panel determined that no award of moral damages is justified.

234. Mr Al-Deehani has failed to establish that grounds exist to enliven a claim for moral damages and that claim is accordingly dismissed.

X. COSTS

235. The parties to each of the appeals has sought costs.

236. Article R64.4 CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

237. Article R64.5 CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

238. As each party to the respective appeals has succeeded in part and failed in part, and considering that, however, only a part of Mr Al-Deehani’s claims in the procedure he had initiated (CAS 2021/A/8397) was upheld, the Panel is of the view that the costs for CAS 2021/A/8313 and CAS 2021/A/8316 shall be borne equally by the Parties, while in CAS 2021/A/8397 50% shall be borne by Mr Al-Deehani, and 25% shall be borne by each Respondent.

239. Furthermore, the Panel considers it appropriate that each party shall bear its own costs incurred in connection with these appeal arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Kuwait Shooting Federation on 17 September 2021 against the decision of the National Sports Arbitration Tribunal of Kuwait of 29 August 2021 is partially upheld.
2. The appeal filed by the General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait on 17 September 2021 against the decision of the National Sports Arbitration Tribunal of Kuwait of 29 August 2021 is partially upheld.
3. The appeal filed by the Fahaid Mohammed Al-Deehani on 10 October 2021 against the decision of the National Sports Arbitration Tribunal of Kuwait of 29 August 2021 is partially upheld.
4. The decision of the National Sports Arbitration Tribunal of Kuwait of 29 August 2021 is varied.
5. Kuwait Shooting Federation and the General Director of Public Authority for Sports Kuwait are to pay Fahaid Mohammed Al-Deehani the amount of 113,110 KD.
6. The General Director of Public Authority for Sports Kuwait is to pay Fahaid Mohammed Al-Deehani an additional amount of 25,000 KD.
7. The arbitration costs in the proceedings CAS 2021/A/8313 shall be borne equally by Kuwait Shooting Federation and Fahaid Mohammed Al-Deehani.
8. The arbitration costs in the proceedings CAS 2021/A/8316 shall be borne equally by General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait and Fahaid Mohammed Al-Deehani.
9. The arbitration costs in the proceedings CAS 2021/A/8397 shall be borne as to 50% by Fahaid Mohammed Al-Deehani and as to 25% each by Kuwait Shooting Federation and General Director of Public Authority for Sports Kuwait and Under Secretary of the Ministry of Finance Kuwait.

10. Each party shall bear its own costs and expenses incurred in connection with these arbitration proceedings.
11. All other motions or prayers for relief are dismissed.

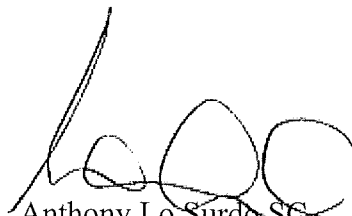
Seat of arbitration: Lausanne, Switzerland

Date: 26 September 2023

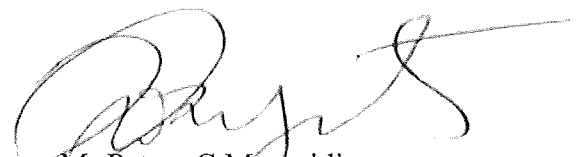
THE COURT OF ARBITRATION FOR SPORT



Mr Patrick Lafranchi
Arbitrator



Anthony Lo Surdo ~~SC~~
President



Mr Petros C Mayroidis
Arbitrator