



الاتحاد الكويتي للسباحة

عضو الاتحاد الدولي

KUWAIT SWIMMING ASSOCIATION

Fina Member

Federation Internationale de Natacion

For the attention of: Mr Cornel Marculescu

FINA Executive Director

Chemin de Bellevue 24a/24b

CH - 1005 Lausanne

SWITZERLAND

By email: sportsdep@fina.org

Copy to: FINA Bureau; FINA Executive; and The Asia Swimming Federation (AASF)

Date: 03 July 2017

Subject: Complaint to FINA

Dear Mr Marculescu

Mr Husain Al Musallam

Introduction

I, Mr. Homoud Obaid Al-Hajiri (Current Chairman of the KSA Board Interim Committee), write to you on behalf of, and with the authority of, the Kuwait Swimming Association (KSA) regarding the candidacy of Mr Husain Al Musallam for FINA Bureau membership, and his nomination to the position of FINA Vice President on behalf of the FINA Continental Organisation of Asia. The candidacy for FINA Bureau membership will be subject to vote at the FINA General Congress on 22 July 2017 and we understand that Mr Al Musallam's ratification as FINA First Vice President on behalf of Asia will also be confirmed at the General Congress.

On 3 October 2016 the KSA formally notified the AASF and FINA that it withdrew the nomination of Mr Al Musallam as a delegate of the KSA, therefore formally revoking his standing as a legitimate, FINA Member Federation supported, candidate and nominee for positions within the AASF and FINA. The AASF and FINA have ignored the KSA.





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It is apparent that Mr Al Musallam, a national citizen of Kuwait, (**a Federation Member currently suspended by FINA**), as an unrecognised and unsupported individual of the

KSA, is receiving unfair and groundless preferential treatment by the AASF and FINA. The KSA is concerned and disappointed that both the AASF and FINA are willing to show such a blatant level of discrimination and disrespect towards the KSA, its members and most importantly its hard working athletes in the context of Mr Al Musallam's continued participation within the AASF and FINA.

The KSA is working collaboratively with the State of Kuwait Public Authority for Sport with a view to addressing the issues which led to the International Olympic Committee suspending the Kuwait Olympic Committee, which in turn led to FINA suspending the KSA on 28 October 2015. However, whilst the KSA acknowledges its suspension by FINA, it wishes to exercise its constitutional rights as a Member Federation of FINA to take a firm stance against discrimination, particularly when the livelihoods of its athletes are at stake.

No doubt the sporting world at large will also be interested to learn about the full extent of FINA's preferential treatment towards a senior official, which is in direct discrimination to the status of normal hard working individual member athletes.

Please accept and acknowledge this letter as formal notice of the KSA's complaint concerning the conduct of the AASF and FINA with regard to the invalid acceptance of Mr Al Musallam's candidacy for FINA Bureau membership and his nomination to the position of FINA Vice President on behalf of the FINA Continental Organisation of Asia.

It is imperative that, in the context of what is set out below, FINA addresses this complaint urgently. In the interests of good governance, and to avoid future constitutional uncertainty, FINA is requested to openly clarify its position concerning Mr Al Musallam, and respond to the KSA, ahead of the General Congress.



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In the absence of a response from FINA, or if an unsatisfactory response is received, then the KSA reserves its position to raise a motion of urgency, pursuant to the FINA Constitution Rule C 15.13, that requests the General Congress to address the issues raised in this Complaint at the FINA General Congress on 22 July 2017.

Background

On 28 October 2015 FINA imposed a suspension on the KSA and notified it via a letter dated 28 October 2015 (**Attachment 1**) (**Suspension**). The Suspension would carry the following consequences:

1. Participation of the Kuwaiti athletes to FINA competitions/event and/or other international competitions/events recognized by FINA under FINA flag, FINA code for accreditation and FINA hymn (in the event of any Kuwaiti athlete wins a competition);
2. No voting right to the FINA General Assembly (Ordinary and Extraordinary);
3. The current Board of Directors of the KSA will be recognized by FINA **once the suspension will be lifted** (I have added underlining and bold text by way of further emphasis throughout this Complaint)

KSA Board of Directors

President	H.E. Sheik Khaled Al Bader M Al Sabah
Vice President	Hameed Al Garib
Secretary general	Husain Al Musallam
Assistant Sec. Gen.	Faiz Al Tawheed
Treasurer	Houmod Al Hajeri
Assistant Treasurer	Salem Al Hasawi



4. The suspension shall be respected by **all** FINA members



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The consequences of the Suspension for the KSA, its Board of Directors, its member clubs and its athletes were clearly stated. The Suspension did not suspend any fundamental constitutional rights nor did it terminate Kuwait's membership with FINA. Rule C 8 RIGHTS AND DUTIES OF MEMBERS states:

"All Members are entitled to

C 8.1.1 to use the services of FINA,

C 8.1.2 ...,

C 8.1.3 to be recognized as the only Aquatics' governing body of its country or Sport Country, by everybody, including its National Olympic Committee."

A Member's fundamental and constitutional duties and rights are not affected by a temporary suspension.

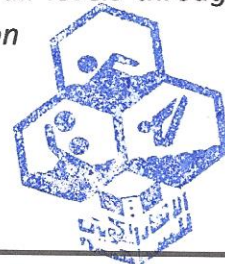
The FINA Constitution is underpinned by its core Objectives (Rule C5), its ethical values (defined within the FINA Code of Ethics) and, in addition to those wider core principles, Rule C4 DISCRIMINATION states expressly:

"FINA shall not allow any discrimination against national federations or individuals (competitors, officials, judges, delegates, etc.) on the grounds of race, gender, religion or political affiliations."

Rule C5 OBJECTIVES states:

"The objectives of FINA are:

- a) to promote and encourage the development of Aquatics in all possible regards throughout the world,*
- b) to provide fair and drug free sport,*
- c) to promote and encourage the development of international relations,*
- d) to encourage participation in Aquatic disciplines at all levels throughout the world regardless of age, gender or race, FINA Constitution*
- e) ...,*





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f)...

g)..., and

h) to carry out such other activities as may be desirable to promote the sport."

The above constitutional principles are applicable to all Members of FINA and should be kept in mind when considering this Complaint. The KSA would also like FINA to have reference to the English version of the KSA Constitution, which is included at **Attachment 2**.

Article 4 (10) of the KSA Constitution states:

"The KSA is the only authority to nominate the KSA Representatives to become members of Kuwait NOC, AASF and FINA and choosing those who represent the State of Kuwait to attend the regional, continental and international meetings."

In accordance with Article 4 (10), on 13 March 2016 the KSA wrote a letter to the AASF nominating its delegates to the AASF and FINA (**Attachment 3**). The nominations were:

H.E. Sheikh Khalid B. Al-Sabah	-	President of AASF
Mr Husain Al Musallam	-	First Vice President of FINA
Mr Bashar Al Saffar	-	TDC Member in AASF and FINA
Mr Salem Al Hasawi	-	TSC Member in AASF
Mr Ahamed Farman	-	TWPC Member in AASF

Despite the Suspension, the KSA did not receive any communication from the AASF and/or FINA rejecting these nominations. This created a peculiar situation where, despite the wording of the Suspension which confirmed that the KSA Board of Directors would not be recognised during the Suspension, it appeared that the AASF and FINA were prepared to allow officials of Kuwait to participate in the AASF and FINA in their capacity as a Member Federation official. This is in direct contravention of the wording of the Suspension and in stark contrast to the unfortunate position of the Kuwaiti athletes.





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Shortly after the KSA had nominated its delegates to AASF and FINA, a number of individuals on the KSA Board of Directors resigned from their positions. The KSA Board received signed letters of resignation from the following Board members:

- Sheikh/Khalid Al-Bader Al-Sabah - Chairman - resigned on 23 August 2016
- Mr Homoud Obaid Al-Hajeri – Treasurer – resigned on 3 September 2016
- Mr Faeiz Abdullah Al-Tawhid - Assistant General Secretary – resigned on 3 September 2016
- Mr Salem Kheder Al-Hasawi - Assistant Treasurer – resigned on 3 September 2016

As a consequence of the resignations, the KSA Board was inquorate and incapable of coordinating and managing the affairs of the KSA. For the avoidance of doubt, the KSA is solely responsible for the organisation of aquatics sports in Kuwait. The KSA is also responsible for the management and administration of the financial and technical affairs of aquatics sports in Kuwait. This responsibility is enshrined in the KSA Constitution at Article 2 (See Attachment 2). FINA has acknowledged the membership of the KSA, and respected its autonomy since 1968.

Strangely, on 3 September 2016, the KSA received a letter from FINA which was addressed to H.E. Sheikh Khalid B Al-Sabah (who had resigned from the KSA Board of Directors 10 days prior to the date of that letter). A copy of the letter is enclosed at **Attachment 4**. It appeared from the content of the letter that FINA was confusingly linking State of Kuwait legislation affairs, which are linked to the Suspension, with internal administrative affairs of the KSA. FINA stated, in a surprisingly imperative tone, that it would not recognise any resignation of any KSA Board members, nor any decision taken by a KSA General Assembly.

Despite the peculiar content of the letter from FINA (and its lack of impact on the autonomy of a Member Federation's administrative activities in light of FINA Constitution Rule C 8.1.3 and C 8.2.6), the KSA notified its Members, the State of Kuwait Public Authority for Sport and the Kuwait Olympic Committee of the resignations and the inquorate state of the KSA Board. Given the severity of the implications of the KSA having an inquorate Board, particularly in light of the ongoing discussions with the State





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of Kuwait Public Authority for Sport, the International Olympic Committee and various international sports governing bodies (including FINA), the appropriate number of KSA Member Clubs moved to hold an Extraordinary General Assembly Meeting (EGAM).

Article 17 of the KSA Constitution states that an EGAM will have only one agenda item and can be called for, amongst other reasons:

- A) *The important and urgent matters which cannot be dealt with in the ordinary general assembly; and*
- B) **In case of the absolute majority of the KSA Board members resigning.**

The EGAM took place on 22 September 2016. A certified translation of a copy of the minutes of the EGAM can be found at **Attachment 5**. The minutes of the EGAM set out in detail the constitutional procedural steps to be followed to validly call and hold an EGAM. There is no doubt that the majority vote, of a quorate EGAM, confirms that the EGAM was constituted and concluded properly and in accordance with the KSA Constitution.

The result of the vote taken at the EGAM was that a temporary committee was installed to carry out the duties of the KSA Board in accordance with Article 18 of the KSA Constitution (Attachment 2). The temporary committee members where confirmed as:

Mr Homoud Obaid Al-Hajiri	-	Committee Chairman
Mr Salem Al-Hasawi	-	Committee Secretary
Mr Faiez Abdullah Al-Tawhid	-	Committee Treasurer

In light of the absence of any procedural or constitutional irregularity as far as the calling and holding of the EGAM, and the establishment of the interim committee, is concerned, the KSA would like to draw FINA's attention to the following Articles of the KSA Constitution:

Article 4 (10) of the KSA Constitution states:





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"The KSA is the only authority to nominate the KSA Representatives to become members of Kuwait NOC, AASF and FINA and choosing those who represent the State of Kuwait to attend the regional, continental and international meetings."

Article 31 (3) states that it is the right and duty of the **KSA Board** to nominate the KSA Representatives to become members of Kuwait NOC, AASF and FINA.

Article 4 (12) states:

"The KSA has full responsibility to maintain its independency and autonomy in accordance with FINA Rules."

The KSA is also keen to highlight the following Rules contained within the FINA Constitution:

"C 8.2 All Members are obliged:

...

C 8.2.6 to manage its affairs independently and not be influenced by third parties."

In the spirit of full transparency, good governance, and in accordance with the KSA and FINA Constitutions, the KSA Board (via the hand of its interim committee, which was the only body with authority to do so) wrote to FINA on 27 September 2016 to notify FINA of the EGAM, the grounds for calling it and the outcome. The KSA respectfully requested that FINA ratify and recognize the EGAM and its outcome. A copy of the KSA's letter to FINA of 27 September 2016 is at **Attachment 6**.

The KSA received no response from FINA

On 3 October 2016, in exercising its constitutional rights (specifically with regard to Article 4(10) and (12) and Article 31(3) above, which had already been approved by FINA), the KSA wrote to both the AASF and FINA to withdraw the KSA's nomination of Husain Al Musallam to AASF and FINA to the capacities of Vice President on behalf of





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ASIA and FINA Bureau membership respectively. A copy of that letter is at **Attachment 7**.

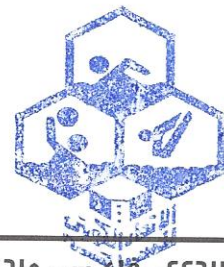
The KSA had formally withdrawn its nomination of Mr Al Musallam prior to the AASF General Congress being held on 9 October 2016 in Doha, Qatar. In light of these circumstances, the KSA cannot understand how Mr Al Musallam has retained his nomination as FINA Vice President for Asia, nor can the KSA understand how Mr Al Musallam can be actively pursuing re-election to the FINA Bureau, particularly in light of the following FINA Rule (or the current Suspension):

"C 17.5 The FINA Bureau shall consist of twenty three (23) voting members.

C 17.5.1 Sixteen (16) members shall be elected by the General Congress in accordance with the elections of their respective Continental Organizations...The Continental Organizations shall inform the FINA Executive Director in writing of the names of their candidates at least three (3) months in advance. Only candidates proposed by the respective Continental Organizations can be presented for vote in the General Congress provided that they have been previously approved by the Member Federation of which those candidates are citizens."

In light of the above, it is extremely concerning to consider that FINA and the AASF have acted in complete disregard to the independent wishes and rights of the KSA (notwithstanding the KSA's current Suspension), however, it is outrageous to consider that FINA and the AASF have applied preferential treatment to one individual person, Mr Al Musallam, in a manner which appears to involve numerous flagrant breaches of the FINA Constitution.

In the wider context of this scandal, which ultimately highlights the worrying and saddening culture of discrimination towards the KSA and its athletes to the benefit of one individual (who happens to be a senior official within FINA), I, on behalf of the KSA, wrote to FINA President Julio Maglione on 2 December 2016 to raise the KSA's concerns. A copy of the KSA's email is attached at **Attachment 8**.





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On 16 December 2016 FINA replied, in brief terms, by confirming that the KSA is temporarily suspended and that Kuwaiti athletes can compete in FINA competitions under the FINA flag. FINA's response email is attached at **Attachment 8**. Whilst FINA was keen to underline the consequences of the Suspension, as far as the Kuwaiti athletes were concerned, FINA failed to address the fundamental constitutional flaw connected to Mr Al Musallam's participation in AASF and FINA activities.

FINA's explanation of its position concerning Mr Al Musallam has been and remains incomplete, unsatisfactory, unconstitutional and disrespectful to the KSA, its athletes and the FINA members. It is the view of the KSA that the conduct of FINA, the AASF and Mr Al-Musallam is in blatant breach of the FINA Constitution.

Summary of Complaint and alleged breaches of FINA Constitution

In light of the clear wording of the Suspension, which confirmed that FINA would not recognise the Board members of the KSA, (**which included express reference to Mr Al Musallam**), by continuing to acknowledge Mr Al Musallam as an officer of Kuwait, and allowing him to openly participate in AASF and FINA activities, from the date of the Suspension until the date of this Complaint (and up to the conclusion of his current tenure at the General Congress), there have been direct breaches of the FINA Constitution for the following reasons:

- The AASF and FINA have directly discriminated against the KSA, its member clubs and its athletes by allowing Mr Al Musallam to participate in FINA activities. By reference to FINA's letter of 3 September 2016, this discrimination appears to be based on political affiliations (see Attachment 4) and therefore engages **Rule C 4**.
- FINA's discrimination of Kuwait contravenes **Rule C 5(c)** which obliges FINA to promote and encourage the development of international relations.
- FINA's preferential treatment of an individual officer, in direct opposition to its discriminatory treatment of the KSA, its clubs and athletes, is not conducive to promoting the sport of aquatics. This conduct contravenes **Rule C 5 (h)**.





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- As the Suspension is currently in place, by ignoring the express wording of the Suspension, the AASF and Mr Al Musallam are in breach of **Rule C 12.4** which obliges **all members** to recognise and enforce sanctions.
- The above conduct infringes the FINA Code of Ethics with regard to the principles of **Equality (Ethics Code V.A.1), Fair Play (Ethics Code V.C.3)**.

By the AASF and FINA firstly accepting the delegate nominations put forward by the KSA on 13 March 2016 (despite the Suspension), but then attempting to interfere with the internal administration of a Member Federation, when it was exercising its constitutional rights to do so, and refusing to acknowledge the KSA Board and its wishes to withdraw its delegate nomination of Mr Al Musallam, there have been the following breaches of the Constitution:

- **Rules C 4 and C 5 (c)** (as above).
- FINA Code of Ethics principles of **Equality (Ethics Code V.A.1), Fair Play (Ethics Code V.C.3)** (as above).
- By attempting to aggressively interfere with the delegate nomination exercise, and then refusing to recognize the KSA Board (in its interim committee capacity) FINA has encroached on the autonomy of a Member Federation and its right to be recognised as the only national governing body for aquatics in that country. This is in breach of **Rule C 7.2** (and is incompatible with Articles 4 (10), 4 (12) and 31 (3) of the KSA Constitution).
- FINA's conduct further infringes the KSA's right to manage its affairs independently, and not be influenced by third parties (which is ultimately an issue concerning the current Suspension). This is a breach of the right prescribed by **Rule C 8.2.6**.

By the AASF and FINA accepting Mr Al Musallam as a candidate for FINA Bureau membership for the term 2017-2021, whilst the Suspension remains in place and





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without the formal nomination and support of a Member Federation, the following provisions of the Constitution have and will be infringed:

- **Rules C 4, C 5 (c), C 5 (h), C7.2, C 8.2.6, C 12.4** and principles of **Equality (Ethics Code V.A.1) and Fair Play (Ethics Code V.C.3)** (as above).
- Mr Al Musallam has no nomination or support from the KSA. By the AASF nominating Mr Al Musallam as a FINA Vice President, and FINA accepting that nomination, **Rule C 14.6.7** has been infringed (which requires a Continental Organisation to elect its bureau members with nominations **emanating from the respective member federations**).
- Mr Al Musallam's participation, and potential voting capacity, in the General Congress, whilst a national of a suspended Member Federation engages **Rule C 15.3.3**. Kuwait is suspended and therefore cannot nominate delegates to attend the General Congress. Which makes these circumstances even more astonishing if Mr Al Musallam is capable of voting and being elected to a position of significant seniority within FINA.
- By Mr Al Musallam being capable of election to the FINA Bureau membership, and nomination to the position of FINA Vice President (**or even First Vice President**), without Member Federation approval (and subject to the election routes listed at C 17.5), **Rule C 17.5.1 or C 17.5.2** is engaged and infringed.
- The AASF was in possession of the notice from the KSA withdrawing Mr Al Musallam's nomination as a delegate prior to its General Congress Elections on 9 October 2016. By the AASF presenting Mr Al Musallam as a candidate for Vice President on behalf of Asia, without a valid nomination from the KSA, the provisions of **Rule C 17.6.2** are contravened. The Continental Organisation has not validly presented a Vice President candidate.

The circumstances detailed in this Complaint present a host of concerning questions about the governance framework of FINA. At the very least, the conduct of FINA, AASF and Mr Al Musallam has created great constitutional uncertainty for the future. At





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worst, the conduct highlights a culture of collusion, inequality, discrimination, exclusivity and selfishness which is endemic at the senior levels of FINA.

Not only does this Complaint present a very serious case for FINA to answer but it also presents an opportunity for FINA to clearly and openly clarify its position concerning Mr Al Musallam and to restore confidence amongst its members in its ability to govern the world of aquatics sports properly and fairly.

In light of the numerous and very serious breaches of the FINA Constitution, including breaches of the FINA Code of Ethics, the KSA presents this Complaint to all appropriate decision making and arbitral bodies within FINA for consideration and response. Should FINA fail to respond in substantive terms before the FINA General Congress then the KSA will apply for a motion of urgency (even in the absence of KSA representatives at the General Congress) to be subject to a vote, in accordance with Constitution Rule C 15.13, to incorporate the Complaint onto the General Congress agenda and for its content to be addressed accordingly at the General Congress.

Please note, to the extent it is required, if FINA fails to accept a motion of urgency at the General Congress (as described), then the KSA will not hesitate to escalate this dispute to the Court of Arbitration for Sport in accordance with FINA Constitution Rule C 26. We trust that this action will not be necessary and look forward to FINA's full and substantive response within **14 days**, failing which an application for a motion of urgency to be heard at the General Congress will be lodged with the FINA Honorary Secretary and FINA Executive Director.

Yours sincerely

Mr. Homoud Obaid Al-Hajiri

Interim Committee Chairman

For and on behalf of Kuwait Swimming Association