



# الاتحاد الكويتي للسباحة

## عضو الاتحاد الدولي

### KUWAIT SWIMMING ASSOCIATION

Fina Member

For the attention of: Mr Cornel Marculescu  
FINA Executive Director  
Chemin de Bellevue 24a/24b  
CH - 1005 Lausanne  
SWITZERLAND

By email: [sportsdep@fina.org](mailto:sportsdep@fina.org)

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

Date: 12 July 2017

Dear Mr Marculescu

**Subject: The KSA's Complaint dated 3 July 2017 / Mr Husain Al Musallam**

I write further to our letter dated 3 July 2017 which was addressed to you as FINA Executive Director. The content of my letter set out the KSA's formal complaint to FINA regarding the candidacy of Mr Al Musallam for FINA Bureau membership and his nomination to the position of FINA Vice President on behalf of the AASF (the "KSA's Complaint").

The KSA's Complaint made it clear that the KSA legitimately withdrew its nomination of Mr Al Musallam to positions within the AASF and FINA and that the KSA does not support Mr Al Musallam's continued or future participation in the AASF and FINA as a representative of the KSA. The KSA's Complaint, amongst other things, highlights the KSA's significant concerns that the AASF and FINA are unilaterally imposing a representative upon an independent FINA National Federation Member against its will.

A copy of the KSA's Complaint was sent to a number of interested parties, including the AASF, but it was FINA who was the addressee of the KSA's Complaint. We patiently await FINA's response.

However, as we await FINA's response, the KSA has received a copy of a letter from the AASF dated 6 July 2017. A copy of the letter has been circulated to all AASF Member Federations. It is apparent that the AASF's letter is attempting to make an indirect response to the KSA's Complaint. Whilst the arguments and points raised in the AASF's letter are not entirely clear, the KSA attempts to summarize the AASF's position as follows:

1. The KSA is subject to a suspension from FINA, which follows the Kuwait Olympic Committee's (KOC) suspension by the International Olympic Committee (IOC);



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2. There is dissatisfaction with current Kuwait national legislation which conflicts with the FINA and AASF constitutions;
3. The Court of Arbitration for Sport (CAS) has upheld the validity of the KOC's suspension by the IOC and the related suspensions imposed on Kuwait national sporting federations by international sports governing bodies;
4. The CAS has (allegedly) recognized the elected committees of the KOC and KSA as at 2013, particularly the election to those committees of Sheikh Khalid Al Bader Al Sabah and Mr Husain Al Musallam;
5. The current committee exercising the power of the KSA is 'non-existent' and 'unrecognized' and has (allegedly) been established as a result of Kuwait state intervention;
6. The KSA's Complaint has been raised in light of the forthcoming FINA Congress and FINA elections set to take place on 22 July 2017;
7. The FINA Ethics Panel has confirmed the eligibility of Mr Al Musallam to be a candidate for FINA Bureau membership and be nominated to the position of FINA First Vice President on behalf of Asia;
8. The AASF accepted the nomination of Mr Al Musallam as representative of the KSA pursuant to the KSA's letter to the AASF on 1 July 2016 (the reference to a letter from the KSA to the AASF on 1 July 2016 appears to be an error. Presumably, the AASF is referring to the KSA's letter of 13 March 2016 which was included in the KSA's Complaint at Attachment 3). Mr Al Musallam was subsequently voted in as Asia's representative for FINA First Vice President. Mr Al Musallam's success was based on his dedication and hard work in the world of aquatics sports;
9. The FINA Bureau made a decision on 13 September 2016 to authorize Mr Al Musallam's current position within FINA and any future candidacy for election;
10. The AASF supports Mr Al Musallam.

Whilst the KSA is not obliged to respond directly to the AASF, we feel it is important to address the issues above and to clarify the factual inaccuracies contained within the AASF's letter. The KSA refers FINA also to the KSA's Complaint which fully and clearly explains the KSA's position and includes due reference to the relevant parts of the FINA and KSA constitutions.

The KSA will respond to the issues raised in the AASF's letter in the order they are listed above.

**The KSA is subject to a suspension from FINA, which follows the Kuwait Olympic Committee's (KOC) suspension by the International Olympic Committee (IOC)**

The KSA accepts that it is subject to a suspension from FINA. This is acknowledged and referred to in the KSA's Complaint as the "Suspension".



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The Suspension was implemented on 28 October 2015. Mr Al Musallam's capacity as KSA Board member, and / or any capacity he held as a result of his affiliation to the KSA, was also suspended. This was expressly stated in the Suspension document issued by FINA. The Suspension had been in place for over **4 months** prior to the KSA's attempted nomination, on 13 March 2016, of Mr Al Musallam as a representative of the KSA within the AASF and FINA.

If the Suspension was (and is) to be validly upheld by FINA and all of its members, including the AASF, then the AASF and FINA should have rejected the KSA's nominated representatives. Instead, the AASF and FINA were silent on the issue and the AASF proceeded to accept Mr Al Musallam (and other KSA representatives) into positions of office at the AASF. This should have prompted FINA to review the Suspension and take one of two actions:

1. Review the Suspension in light of the KSA's apparent continued participation within FINA and the AASF and clarify the Suspension's interpretation and application to the various entities of the KSA including; KSA Board Members; KSA Executives; KSA Officers; KSA Officials; KSA Non-athlete members; and KSA athlete members (which may have included a partial or complete lifting of the Suspension). This would then lead to a fair and consistent interpretation and application of the Suspension to all involved in FINA. This action would have been in line with the FINA Constitution, particularly **Rule C4 DISCRIMINATION**; or
2. Reiterate the wording of the Suspension to all members of FINA, including the AASF and Mr Al Musallam, and uphold its strict interpretation and application, which would preclude the KSA and its officers from participating in the AASF and FINA.

FINA did neither of the above and its failure and inability to act in a clear, consistent and fair manner is the basis of the KSA's Complaint (we again refer you to our letter of 3 July 2017 for full details of the KSA's Complaint).

#### **There is dissatisfaction with current Kuwait national legislation which conflicts with the FINA and AASF constitutions**

This position is noted. 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.

#### **The Court of Arbitration for Sport (CAS) has upheld the validity of the KOC's suspension by the IOC and the related suspensions imposed on Kuwait national sporting federations by international sports governing bodies**



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The KSA does not understand the relevance of The AASF's references to CAS/2015/A/4241 or CAS/2015/A/4289.

The KSA notes that the decision in CAS/2015/A/4241 suggests that an international sporting federation's suspension of a Kuwait national sporting federation, and its member clubs, was valid and justified in those circumstances. To the extent the AASF has referenced this case to highlight the validity and currency of the Suspension then the KSA has and does acknowledge the Suspension.

However, the KSA will highlight paragraphs 8.55 – 8.58 of the decision in which the CAS Panel acknowledges the **Swiss Law principle of equal treatment** and states (at paragraph 8.55):

**"...an administrative authority cannot treat differently two situations which are so similar that they require an identical treatment"**.

There could not be a more appropriate set of circumstances than the ones presented to FINA within the KSA's Complaint to acknowledge and apply the Swiss Law principle of equal treatment. As stated above, FINA has two options: 1) Apply the Suspension consistently and fairly to all (in line with the FINA Constitution); or 2) Apply the Suspension and the FINA Constitution in an inconsistent and unfair manner which affords groundless and preferential treatment to one individual, who is a senior official of FINA, in direct discrimination to all other members of the KSA (including its athletes). I attach the written decision of CAS/2015/A/4241 for all to see (**Attachment 1**).

The KSA notes the decision in CAS/2015/A/4289 but will not attempt to speculate as to what the AASF is implying by way of its reference in its letter.

**The CAS has (allegedly) recognized the elected committees of the KOC and KSA as at 2013, particularly the election to those committees of Sheikh Khalid Al Bader Al Sabah and Mr Husain Al Musallam**

The KSA cannot see any part of the written decisions of CAS/2015/A/4241 or CAS/2015/A/4289 which support the misguided and erroneous statement by the AASF which implies that the CAS has acted in this manner.

In fact, CAS/2015/A/4241 (in light of the above), supports an interpretation which would suggest that the CAS would be in direct polar opposition to FINA's current conduct in which Mr Al Musallam is receiving preferential treatment in direct discrimination of KSA members and athletes.



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The confusion evidenced here, between the AASF and the KSA's respective interpretations of the CAS case law, the FINA Constitution and the Swiss Law (which applies to the FINA Constitution) demands an open and clear explanation of FINA's position on this matter and the KSA's Complaint.

**The current committee exercising the power of the KSA is 'non-existent' and 'unrecognized' and has (allegedly) been established as a result of Kuwait state intervention**

This is a harmful, malicious and potentially defamatory statement. The AASF has provided no justification or evidence to support this statement. As clearly detailed in the KSA's Complaint, the KSA Board engaged in a fully transparent and constitutionally proper process which established the current KSA Board.

The current KSA Board is not a "...product of the law conflicting with the FINA/AASF Constitution...". In fact, it is a product of a FINA National Member Federation acting independently (and within the autonomy granted to it by the FINA, AASF and KSA Constitutions) and conducting its own administrative affairs in a fair, transparent and constitutionally proper manner. The KSA Complaint attaches (At Attachment 5) a certified translation of the KSA EGAM minutes which established the newly constituted KSA Board and its interim committee (the "EGAM Minutes").

It should be noted from the EGAM Minutes that a quorate KSA EGAM took place with the appropriate member club representatives present. It is clear from the content of the EGAM Minutes, and supporting documentation which was reviewed at the EGAM, that the following motions were ratified at the KSA EGAM:

1. The EGAM was convened in accordance with the KSA Constitution and upon the request of the appropriate number of KSA members;
2. The EGAM was attended by 5 out of the 6 KSA member club representatives;
3. The EGAM proceeded in accordance with the KSA Constitution;
4. The EGAM presented and formally accepted the resignation letters of the KSA Board members (as detailed in the KSA Complaint);
5. The EGAM received and acknowledged a submission from The Al-Arabi Sporting Club to appoint a new committee to manage the KSA Board;
6. The EGAM voted upon the proposal and it was accepted by way of majority vote; and
7. The current KSA Board was established and its KSA Constitutional power was ratified in accordance with the KSA Constitution.

Mr Husain Al Musallam did not attend the EGAM and did not engage in the process of establishing a new KSA Board. As a result, Mr Al Musallam was not appointed as a member of the current KSA Board.



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Importantly, Mr A Musallam did not object or complain to the KSA Board about any alleged grievance that he may have had with the EGAM and / or the outcome. Consequently, the KSA Board was free to withdraw the nomination of Mr Al Musallam to the AASF (as it was its constitutional prerogative to do so) and did so on the basis that Mr Al Musallam was no longer a KSA Board member and he no longer had the support of the KSA.

Whilst the KSA wishes its FINA and AASF constitutionally vested autonomy to be respected, the KSA is willing (if it is called upon to do so by FINA) to produce all records and documentation relevant to the KSA EGAM.

The KSA is confident that the EGAM was called, held and ratified in the constitutionally correct manner and has seen no evidence whatsoever from the AASF to suggest otherwise.

The KSA strongly urges the AASF to withdraw its comments about the current KSA Board and its interim committee and apologize to the KSA and all other FINA Members for making careless, unsubstantiated, harmful and potentially defamatory statements about the KSA. **The KSA does expect a response from the AASF on this point in particular.**

**The KSA's complaint has been raised in light of the forthcoming FINA Congress and FINA elections set to take place on 22 July 2017**

Aside from the obvious motives for the KSA's Complaint, which are based upon the apparent and very serious breaches of the FINA Constitution (including the FINA Code of Ethics), the AASF is correct, in that the KSA is raising this complaint in light of the forthcoming FINA Congress and FINA elections.

There are very serious and fundamental problems with Mr Al Musallam's candidacy for FINA Bureau membership and his nomination for FINA First Vice President on behalf of Asia. The FINA Congress is exactly the correct forum for such serious issues to be addressed.

**The FINA Ethics Panel has confirmed the eligibility of Mr Al Musallam to be a candidate for FINA Bureau membership and be nominated to the position of FINA First Vice President on behalf of Asia**

The KSA does not understand the relevance of this point. The legitimacy of Mr Al Musallam's candidacy and nomination for positions within the AASF and FINA is not a matter of ethics (in the context of the FINA, AASF and KSA Constitutions). The KSA understands that there have been reports in the press detailing allegations of Mr Al Musallam's implication in potentially unethical activities and presumably this is why the FINA Ethics Panel has assessed the legitimacy of Mr Al Musallam's candidacy and nomination in this context.



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However, the KSA's Complaint submits to FINA that both it and the AASF have breached the FINA and AASF Constitutions by allowing Mr Al Musallam to participate in FINA and AASF activities in clear contravention of the Suspension and in direct discrimination to the KSA and its members and athletes. This is not a matter of ethics as far as Mr Al Musallam's conduct is concerned. What the FINA Ethics Panel thinks of Mr Al Musallam's alleged unethical activities in the context of his candidacy and nomination is of no concern to the KSA in the context of the KSA's Complaint.

The KSA's Complaint highlights serious procedural irregularity, which presents numerous breaches of the FINA and AASF constitutions, and impacts to the direct detriment and discrimination of other KSA members and athletes in the context of the Suspension. The KSA's Complaint highlights serious constitutional flaws which must be addressed at the highest level of FINA.

**The AASF accepted the nomination of Mr Al Musallam as representative of the KSA pursuant to the KSA's letter to the AASF on 1 July 2016 (erroneously dated). Mr Al Musallam was subsequently voted in as Asia's representative for FINA First Vice President. Mr Al Musallam's success was based on his dedication and hard work in the world of aquatics sports**

The AASF has admitted that it accepted the nomination of Mr Al Musallam "...as a candidate representing the recognized Kuwait Swimming Federation in its letter 76/16 dated 1 July 2016..." in direct contravention of the Suspension which was put in place over **4 months** earlier and in direct contravention of the FINA Constitution.

The AASF has **no authority** to decide which KSA Board it recognizes and which KSA representative nominations it accepts (regardless of whether or not it was constitutionally proper for the AASF to accept KSA representative nominations in light of the Suspension). The KSA has clearly set out, in the KSA Complaint, details of the FINA, AASF and KSA constitutional authority it has to manage its affairs independently and to be recognized as the only authority to nominate KSA representatives to become members of Kuwait NOC, AASF and FINA.

As FINA did (and does), the AASF has two options when interpreting the Suspension fairly and consistently and applying the FINA and AASF constitutions correctly:

1. Refuse to accept any nominations for AASF and / or FINA office from representatives of the KSA;  
or
2. Accept the KSA's nominations accordingly and accept the independent and autonomous decision of the KSA as to the identities of those representatives.



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If the AASF elects to act in accordance with option 1 then Mr Al Musallam cannot be accepted into office with the AASF and / or nominated for the role of FINA First Vice President (nor can any other representatives of the KSA whilst the Suspension is current).

If the AASF elects to act in accordance with option 2 then Mr Al Musallam's nomination is capable of acceptance by the AASF but, equally, it is capable of being withdrawn by the only entity with the power and constitutional authority to do so. For the avoidance of doubt, the KSA withdrew the nomination of Mr Al Musallam to positions of office in the AASF and FINA on 3 October 2016 (See Attachment 7 of the KSA's Complaint).

Both options represent a fair and consistent application of the FINA and AASF Constitutions. Each option has a consequence of precluding Mr Al Musallam's candidacy for FINA Bureau membership and nomination for the role of FINA First Vice President at the FINA General Congress.

Mr Al Musallam's historic or ongoing hard work and dedication to aquatics sports is of no consequence. There is simply no FINA, AASF or KSA constitutional authority to allow Mr Al Musallam to participate in the AASF and / or FINA in light of the Suspension, and certainly not when the KSA members and athletes are precluded from similar participation.

#### **The FINA Bureau made a decision on 13 September 2016 to authorize Mr Al Musallam's current position within FINA and any future candidacy for election**

The KSA is not aware of any decision made by FINA, taken on 13 September 2016 (or otherwise), which authorizes Mr Al Musallam's current position within FINA and / or any future candidacy for election. The KSA's Complaint seeks open clarification of FINA's position in this regard.

The KSA expects full and open disclosure from FINA concerning FINA's decision, and its decision making process, in relation to this alleged 'authority' provided to Mr Al Musallam on 13 September 2016. The KSA, its members and its athletes (and no doubt other FINA members and participants around the world) will be extremely interested in this decision and decision making process.

There are clearly significant public interest and wider good governance motives for FINA to substantively address this issues and all other issues raised in the KSA' Complaint.





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#### The AASF supports Mr Al Musallam

The AASF's desire to support Mr Al Musallam is interesting and noted but is of no consequence or value when Mr Al Musallam has no FINA, AASF or KSA constitutional legitimacy to participate in the AASF or FINA in light of the Suspension.

The KSA hopes that this letter clarifies any confusion created by the AASF's letter in the context of the KSA's Complaint. For the avoidance of doubt, the KSA has provided no FINA National Federation Member representative nomination for Mr Al Musallam to validly be nominated or elected to any positions within the AASF or FINA. The KSA does not recognize Mr Al Musallam as a KSA representative.

The KSA also hopes that the KSA Complaint will provide FINA with an opportunity to take the constitutionally and morally appropriate course of action.

**Further, the KSA held a General Assembly Meeting on 3 July 2017 at which all member club representatives were present. The Board, via the hand of the interim committee, presented to the members all governance, sporting, financial and administrative reports concerning the KSA's activities since the interim committee was established to manage the KSA Board on 22 September 2016. The reports were unanimously accepted and approved by the members of the KSA. The members also took the opportunity to express sincere gratitude to the members of the KSA Board for their efforts in bringing stability to the KSA and providing valuable support to KSA members and athletes during such difficult times.**

The KSA looks forward to receiving FINA's response to this letter (and the KSA's Complaint) by the deadline set of **17 July 2017**.

Yours sincerely

Mr. Salem K. Al-Hasawi  
Secretary General Of The Interim Committee  
For and on behalf of Kuwait Swimming Association

