

**Non-Official Translation of Selected Articles of  
Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement**

**The Judge Rule & Authority**

Article (8)

The judge shall adhere to the laws in force and he/she must apply their provisions.

Article (10)

The judge may not adjudicate according to his/her knowledge except for what is brought to his attention through his/her judicial council. The judge must adjudicate on that basis.

Article (12)

The judge may not reopen a dispute that was already judged upon by a sentence from a judicial authority or an arbitrator unless the law states otherwise.

**Governing Principles of Adjudication & Litigation**

Article (16)

Litigants are equal in practicing the right of litigation and the judge shall be obliged to apply the principle of equality between litigants in this right following Sharia (Islamic Law) and the laws in force.

Article (17)

The rights of litigation and defense are protected in the court according to the provisions of the law.

Article (18)

The practice of litigation right is based on good will.

Article (22)

The basis of litigation is to be on two levels (first instance court, appeal court) except for what has been excluded by a text of law.

Article (23)

- a. The court sessions are held in public except for what has been excluded by a provision of law.
- b. Pleading shall basically be oral, and it may be in writing.

Article (25)

A foreigner enjoys judicial protection in front of Yemeni courts according to Sharia and law.

## **Domicile & Place of Residence**

### Article (33)

Domicile is the place where a person usually lives and practices his/her normal life, collects his/her money and settles financial dues. The place where a person practices a trade, craft, profession, or job is his/her domicile to run such businesses.

### Article (34)

A person may have more than one domicile at the same time and he/she may have no domicile either.

### Article (36)

The place of residence for companies, societies, and existing institutions or those under liquidation shall be their main administration residence, and the base of its branch shall be its residence in matters related thereto.

### Article (37)

A domicile or a chosen place may be taken to carry out a specific legal action with the agreement of the other party in writing or by the other party announcing it officially. The place chosen shall be considered the residence of all that relates to this action including the agreement implementation procedures unless it was put forward as a condition that the place is excluded for doing certain actions but not others.

### Article (38)

Place of residence is the place where a person lives temporarily for a contingent work or special circumstance.

## **Notifications**

### Article (39)

Each notification for litigants or witnesses should be through the summoner or the person concerned if necessary unless stated otherwise by law.

### Article (44)

Notifications shall be submitted to the bodies as follows:

1. To ministers, to heads of departments or authorities, to governors or their representatives according to their competence and rank concerning the state.
2. To the legal representative of the legal person or his/her legally authorized representative.
3. To one of the general partners, or to the chairperson, or to the manager or to their legal representative, in a company's headquarter. If the company does not have headquarter, then to the domicile of the above mentioned persons or to the company's legal representative.
4. To the branch or the agent of the foreign company.
5. As for prisoners, to the prison director.

6. As for sailors or ship workers, to the captain.
7. To the department concerned at the Ministry of Foreign Affairs to convey it through diplomatic ways to the person of known residence abroad if he/she does not have authorized representative to receive a copy of the notification in the Republic of Yemen. The court may use the means it deems suitable.

#### Article (45)

If the person to be notified has left his/her domicile and his/her domicile becomes unknown within or outside Yemen, they must be notified through advertisement in one of the daily official newspapers three consecutive times at the expense of the party requesting the notification.

### **Claim & Acceptance Conditions**

#### Article (73)

A foreigner shall be entitled to litigate in a court of law once all eligibility conditions are met according to the Yemeni law even if he/she is not eligible in their country's law. The court may impose any guarantees it sees to accept requests from the foreigner in the cases which the court is convinced that he/she has to make available.

#### Article (74)

No one should represent a litigant in his/her capacity as a representative in the claims without a power of attorney, guardianship or wardship.

#### Article (75)

A claim, request or plea shall not be accepted if its owner does not have a vested interest endorsed by law. However, the potential interest is enough if the purpose of the claim is precautionary measure to avoid an imminent danger or to document a right whose proof is feared to be lost during dispute.

#### Article (76)

The court shall reject a claim, request or plea, if it finds out (even by itself) that there is no interest or relevance to the requesting person at any stage of the litigation.

### **International Competence**

#### Article (78)

Yemeni courts are the competent courts for claims raised against a Yemeni even if he/she does not have a residence or domicile in Yemen except for claims concerning real estate abroad.

#### Article (79)

Yemeni courts are the competent courts for claims raised against a foreigner who has a residence or domicile in Yemen except for claims concerning real estate abroad.

#### Article (80)

Yemeni courts are the competent courts for claims raised against a foreigner who does not have a domicile in Yemen in the following cases:

1. If he/she has a selected domicile in Yemen.
2. If the claim concerns money in Yemen or if it concerns a commitment taken in Yemen or to be compulsorily implemented in Yemen or if it concerns bankruptcy declared in Yemen.
3. If one of the respondents has a domicile or residence in Yemen.

#### Article (81)

Yemeni courts are the competent courts for judging a claim even if the claim is not in its jurisdiction as per previous articles if the respondent accepted the court illicitly or explicitly.

#### Article (82)

Yemeni courts are the competent courts for judging primary claims and accidental requests if they have relationship with the original claims.

#### Article (83)

Yemeni courts are the competent courts for giving order temporary and precautionary measures to be executed in Yemen even if they are not related to the original claim.

#### Article (84)

If a claim is raised at Yemeni courts and the claim is not the specialty of Yemeni courts, Yemeni courts shall decide disengagement from the claim automatically.

### **Competence according to Type of Claim**

#### Article (87)

The Supreme Court is the competent court for taking an objection for cassation or ratification of judgments coming from appeal courts and courts of first instance in cases decided by law.

#### Article (88)

Appeal courts are the competent courts for judging appeal cases raised on judgments issued by courts of first instance.

#### Article (89)

1. Courts of first instance are the competent courts for giving initial judgment on all claims raised to it regardless of their value or type.
2. Establishing a court of first instance competent for looking into a special type of claims makes its authority exclusive on that type and so it may not look into other claims unless they are inseparably related to an original claim raised in front of this court.

## **Competence according to Location**

### **Article (92)**

Competence shall be according to the location of the court and its coverage area for the respondent's domicile or his/her temporary residence unless stated otherwise by law. If there are more than one respondent, the court concerned shall be chosen by the claimant if one of the respondents' domicile locates in its jurisdiction and other respondents are summoned to it.

### **Article (95)**

In commercial cases, the concerned court shall be the one where the respondent locates, or the court in whose jurisdiction the agreement was made or executed fully or partially or the court the agreement states execution in its jurisdiction.

### **Article (98)**

In claims of taking temporary measure, competence shall be for the court in whose jurisdiction the respondent resides or the court in whose jurisdiction the temporary measure has been taken. Courts shall look into all claims related to building rentals expediently.

### **Article (100)**

If the respondent does not have a domicile or residence in the Republic of Yemen and designation of court was not easy according to the previous articles, competence shall be given to the court in whose jurisdiction the domicile or residence of the claimant locates. If he/she does not have a domicile or residence in the Republic of Yemen, competence shall be given to the Capital's courts (Sana'a courts).

### **Article (101)**

The two parties may agree in advance on the competence of a certain court. The two parties may also agree, while looking into their claim, to transfer their case to another court. The former court shall decide the transfer to the latter one with consideration of qualitative competence of courts. The court, to which the case was transferred, must decide on the claim.

## **Attendance, Absence & Appointments**

### **Article (108)**

The respondent, his/her attorney or both of them should come to court on the specified date for looking into the claim at eight in the morning. Litigants shall observe calling their names and attend the session once they hear their names.

### **Article (109)**

Taking into consideration the appointments mentioned in articles (110, 111) of this law, the attendance time is as follows:

1. At the court of first instance, 10 days that may be reduced to 3 days.

2. At the court of appeal, 15 days that may be reduced to 10 days.
3. At the supreme court, 20 days that may be reduced to 10 days
4. In urgent cases, 24 hours that may be reduced to from one hour to another by an order from the head of the court provided interest is achieved and the litigant is notified.

#### Article (110)

A distance time is added to the time of the appointment as follows:

1. A day for every distance of (25km), and another day for the remaining 15 km or more.
2. 15 days for those who live in the border areas and mountainous areas which do not have access to modern transport means.
3. 60 days for those who live abroad.

#### Article (111)

Official and judicial holidays stop the appointments.

### **Representation in Litigation**

#### Article (118)

The domicile of the attorney shall be considered the one mentioned in official papers necessary to move the claim as per the litigation level the attorney is at. The respondent that does not have a domicile or an attorney in the city of where the court locates shall select a residence for reference.

#### Article (119)

Attorney of litigation entitles the attorney to take all actions and procedures necessary to raise a claim, follow it up, defend it, and take the necessary precautionary measures until the verdict is issued in the litigation level of the attorney. The attorney shall inform the client about the verdict once it is issued without violation of what law necessitates in special representation.

#### Article (120)

A person other than attorney with special authorization may not admit the right claimed by the respondent, give up the right, accept reconciliation or arbitration, accept or direct or refuse an oath, give up the litigation or the verdict or its challenge, give up insurances while keeping the debts, claim forgery, stop the judge from looking into the claim, litigate or refuse the expert or witness, perform the claimed right or offer it to the litigant, accept performance or presentation of the litigant or any other action stated in the law and requires a special presentation.

#### Article (225)

1. After finishing deliberation and before uttering the judgment, the court must prepare the judgment draft including the grounds of the judgment then the uttered

judgment. All joint judges shall sign on the draft; otherwise, the judgment shall be null and void.

2. The judgment draft issued by a panel of several judges must be written by one of them. In all cases, the judgment draft must be filed in the case file, otherwise the violator of this shall be subject to punitive impeachment. A copy of the judgment draft shall be kept in a special file of drafts after identifying it with the original with the knowledge of the head of the court.

### **Urgent Adjudication**

#### Article (238)

Summary judgment is a provisional order of temporary or precautionary measure issued in urgent cases whose time is feared to pass by without making a decision.

#### Article (239)

Urgent adjudication shall be in issues of civil, trade, and personal status.

#### Article (243)

A verdict of urgent cases shall be issued from the specialized court or from its representative judges within 24 hours from the date of attending the confrontation with the respondent or his/her attorney. The verdict shall be effective immediately once issued from its draft without following the premises of the compulsory execution. To execute the judgment, the court may stipulate a warranty estimated as per the situation. If the court does not state the warranty in its judgment, the judgment shall be effective without the warranty.

#### Article (244)

If a verdict in urgent cases is issued from a court of first instance or from the judge concerned, whether the verdict is attached to a case or separate, an appeal to the verdict shall be valid within 8 days from the date of uttering the verdict. The appeal court shall judge the appeal within 8 days at most and the appeal shall not have a stopping effect over the verdict.

#### Article (245)

A verdict issued in urgent cases shall have a temporary power which shall disappear once the reasons for the urgent verdict come to an end or by a new verdict in a new urgent claim or by the issuance of the verdict for the issue.

### **Orders on Petitions**

#### Article (246)

Orders on petitions shall be temporary or precautionary orders issued without dispute and in the absence of the one whom the order is against according to the judicial authority of the head of the court or the specialized judge. These orders should not harm the right in

question although they may relate to it or to its execution and they include a permission, an authorization, an approval for the same or its execution or regulation.

Article (252)

An order on a petition shall be rejected if it is not submitted for execution within 20 days from its issuance date except for what has been excluded by a special provision. The rejection of an order does not prevent from issuing a new order.

Article (272)

The right of appeal on judgments shall be through an appeal, cassation, and reconsideration petition.

## **Civil Enforcement**

### Article (314)

#### Compulsory Execution:

The procedures a court takes to force the debtor or the convict to pay what is stipulated in a writ of execution confirming the right of the owner to execute according to Sharia and law.

### Article (315)

Enforcement premise is notifying the person(s) meant by the writ of execution and assigning them compulsory execution during the time specified by law.

### Article (316)

- a. There shall be a judge for enforcement within each court of first instance. If there is not, the execution shall be done by the head of the court.
- b. A number of assistants to the enforcement judge, who are legitimately and legally qualified, shall help the judge and do their work under his authority.

### Article (317)

- a. Enforcement involves court of first instance in whose jurisdiction the residence of the party(s) whom the right is against or their money or some of it on which the execution will be carried out. If the execution is related to an estate, the specialized court shall be the one in whose jurisdiction the court locates. If the party(s) whom the right is against do not have visible properties or specified residence, the specialized court shall be the one that looked into the dispute first.
- b. Seizure is within the competence of the court of first instance in whose jurisdiction the seized properties locate.
- c. If the executive courts are several, competence shall be given to the court to which the enforcement request was submitted first. The designated court shall have to represent other courts in the execution procedures and the orders or decisions it shall issue for that purpose.

### Article (318)

The enforcement court shall specialize in deciding upon all disputes related to enforcement no matter how valuable they are and whether they are objective or temporary and whether they were raised by the parties or by others.

### Article (319)

The enforcement assistant under the executive judge shall prepare a special record to record execution requests. A file is required for each request in which the original executive order and all related documents are kept. All procedures and orders issued by the executive judge shall be recorded in the file and it should be presented after each procedure to the executive judge and the assistant for their signatures.

#### Article (320)

The executive judge assistants shall undertake execution and they are obliged to implement it based on the orders of the executive judge. If the assistant refrains or falls behind from doing any of the execution procedures, the party concerned may raise a complaint against him/her to the executive judge.

#### Article (321)

The executive judge assistant shall collect the sums paid for debt release as well as the sums collected from the sales of seized properties and deposit them all in the court safe or an acceptable bank as per the order from the executive judge. The assistant shall also secure under seal all the properties and he/she may, when necessary, resort to public authority through the executive judge for help.

#### Article (322)

An enforcement procedure may not take place before 6 in the morning or after 6 in the evening nor in public holidays except in necessary case and after permission from the executive judge.

#### Article (323)

If enforcement was delegated to another court through representation, the competent court should send the following to the designated court:

1. copy of the executive order with the execution order on it.
2. a statement of the dues for which the execution is needed to take exactly.
3. all documents necessary for execution.

#### Article (324)

The representative court to which execution was assigned shall have to send the specialized court all information regarding what happened in the execution or the circumstances that prevented execution.

#### Article (325)

The representative court is competent in deciding upon redemption claims, action in debt or in kind property claims raised from others concerning the property in execution in the court's jurisdiction. It shall also specialize in temporary execution problems related to the case assigned to the court.

### **Executive Order & Related Matters Thereof**

#### Article (328)

Executive orders are specified as:

1. Verdicts issued by Yemeni courts.
2. Orders of execution and orders on petition issued from the concerned judge according to this law.
3. Executable judgments of arbitrators.
4. Reconciliation agreements ratified by courts.

5. Final decisions by administrative committees which are assigned dispute settlement in the cases stated by law.
6. Documents of old endowed lands and properties written by a well-known writer.

#### Article (330)

Prior to execution, a notification of the executive order must reach the convict or the debtor in question; otherwise, execution shall be deemed null. The notification must include a statement of what is requested from him/her and an order of settlement.

#### Article (331)

Compulsory execution procedures may not be initiated without the passage of one week at least from the date of notification of the executive order and three days for urgent execution.

#### Article (333)

If a appeal is judged by cancellation, amendment or revocation of a judgment that has been executed, the court which initiated execution shall return the state of affairs to its previous conditions before execution without the need to a new judgment.

### **Urgent Enforcement**

#### Article (334)

Urgent execution is: the enforcement of a judgment or an order with the exception from the general rule which says (an executive order may not be executed as long as it is subject to challenge).

#### Article (335)

The following judgments and orders must be urgently executed by the force of law once they are issued:

1. Judgments or writ of executions concerning commercial issues provided that warranty is given.
2. judgments of alimony, housing of judgment beneficiary, fostering or feeding cost, submission of the child to his/her mother or guardian or child-seeing by either.

#### Article (336)

The court may order the execution of the judgments of the following issues urgently provided warranty is given.

1. if the convict has admitted commitment to the judgment or part thereof.
2. if judgment is issued on the basis of an official document that has not been challenged in terms of forgery or customary document that has no dispute therein.
3. If the judgment is issued concerning a salary, subsistence allowance, wage or compensation.
4. If delaying the judgment may result in serious damage.

#### Article (337)

An appeal court may judge the stay of urgent execution based on a request from the convict if it is feared to result in serious damage that can not be prevented after executing the verdict. The court must look into the request of stay of execution using urgent judicial procedures and the court, when deciding the stay of execution, may order the submission of a bail or what it deems suitable for ensuring the right of judgment beneficiary or to whom the judgment was issued for.

#### Article (338)

If the appeal court judges the stay of execution, it should order the return of the bail if it exists.

#### Article (339)

The bail forms of urgent execution or stay of execution as follows:

1. Guarantee by a solvent person.
2. Depositing a sum of money or acceptable cheque payable to the court's safe or an accredited bank.
3. Depositing what is collected from execution to the court's safe.
4. Submitting the subject matter ordered for submission in the judgment or order to an honest solvent guard.

### **Subject of Enforcement**

#### Article (348)

The subject of execution is what the execution debtor has committed to in the executive order whether it is a commitment of performance or doing a work or refraining from it.

#### Article (349)

All property of the debtor, against whom execution is taking place, which can be disposed independently, and his/her financial rights are liable to execution.

### **General Provisions on Ways of Execution Procedures**

#### Article (353)

- a. Execution takes place based on a petition submitted by the execution requester to the competent court.

#### Article (356)

The executive judge must carry out the compulsory execution procedures and initiate it in the suitable way established by this law.

## **Execution Means**

### Article (360)

Subject to the provisions of Civil and Commercial Law, imprisonment shall not be used as a means to force the execution debtor on direct execution except in the following cases:

1. If the execution subject is doing an action by the execution debtor and the action was unfeasible at the expense of the debtor, or the debtor was meant by doing the action.
2. If the execution subject is refraining from an action and the removal of the violating action was unfeasible at the expense of the execution debtor or he/she insisted on so doing.
3. If the execution subject is submitting a certain thing (or its value) and its submission was possible but the execution debtor refuses the submission.
4. If the execution subject is satisfying a debt of the execution debtor and he/she did not have apparent properties that can be reserved and he/she looked able but his/her insolvency or bankruptcy was not established by a judicial judgment.

### Article (366)

The executive judge must use power when other execution means become unfeasible.

### Article (367)

Execution by using force may not take place unless it is possible and the necessary or the most necessary means.

### Article (370)

Properties of the execution debtor must be kept safe when using force except its damage is a necessity for the execution procedures where consequences then are on the execution debtor.

## **General Provisions of Seizure**

### Article (377)

Seizure is putting property under the authority of law to prevent its owner (distrainee) from doing any physical or legal action that result in getting the property or its fruits out of the liability of the distraining creditor. Levying a distress upon a property shall result in seizing its fruits. Distraining shall not be stopped unless this law states otherwise.

### Article (381)

Seizure shall not affect rules of the agreement (bond) according to law provided that it is done with the knowledge of the competent court or executive judge.

#### Article (383)

If seizure has taken place in the absence of the distrainee, the distrainee must be notified in the seizure summons and its writ of execution within 5 days from seizure. Otherwise the procedures following seizure shall be null and void.

### **Precautionary Means**

#### **Precautionary Seizure**

#### Article (385)

Seizure orders are the specialty of the head of the court of first instance if seizure is claimed at first instance or the specialty of the competent judge if the claim was submitted within an original claim seen by the judge. Seizure shall not take place without the presence of two competent witnesses along with their signature on the seizure summons. The debtor must be notified by the seizure order within three days from the date of issuance. Otherwise seizure is invalid.

#### Article (389)

Whoever has the seizure request in any case without a judgment or writ of execution must raise a claim for her/his right and the validity of seizure litigating the debtor and the third party who is keeping the property in seizure if seizure takes place within 8 days from the date of notifying the debtor of the seizure. Otherwise seizure shall be invalid and shall be considered as if it did not take place. If the seizure requester has a judgment or a writ of execution in hand and seizure took place accordingly, he/she shall have to raise a claim of validity of seizure within the aforementioned period. Otherwise, seizure shall be invalid.

#### Article (390)

If the initial judgment on which seizure is based becomes an executive order or the right and validity of seizure was judged and the judgment becomes an executive order, seizure shall be executive and sales of property in seizure shall be valid to settle the dues of the distrainers from the sales price.

### **Seizure**

#### Article (406)

The creditor of due existing debt may levy a distress upon what the debtor owns with the third party of movables, credits or other rights even if they are postponed or conditioned. Attachment starts precautionary and ends executive. Attachment involves every credit for the debtor from the third party until the time of admitting the amount of the credit if he/she did not sign a specific debt. The third party is prohibited from paying back to the

debtor and seizure requester shall be asked to pay a deposit for the expenses which shall be collected thereafter from the debtor.

Article (408)

If the debtor is living outside Yemen, he/she must be notified in person or via the means complying with the local legal procedures of the country he/she lives in.

Article (409)

After notifying the third party with the attachment order, the debtor must be notified by the same order within five days from the date of notifying the order to distrainee; otherwise, consecutive actions shall be deemed invalid.

### **Executive Attachment**

Article (418)

An executive attachment shall not be valid without a writ of execution allowing compulsory execution procedures. The writ shall not be executed without preliminary procedures unless law states otherwise.

Article (420)

Executive attachment may take place in the absence of the attachment requester if the executive judge sees so, when the debtor refuses to attend or he/she is not available in the place of execution.

Article (424)

Without violation to the stipulations of the Crimes & Penalties Law, the judge may imprison any of the occupier, debtor, third party (the person keeping the attachment) or the judicial guard if any of them takes an action that results in hindering execution. Imprisonment shall not exceed 6 months.

Article (425)

If the debtor refuses to submit the property under garnishment and takes an action against garnishment or hides the attached property and the value of the seized property does not suffice to settle the debt, the judge may imprison him/her according to this law.

Article (431)

Stocks and cheques may be seized if they are for their holder and are endorsable but in the possession of the debtor according to the conditions stated for levying distress.

Article (491)

Subject to article (494) executing a foreign executive order may not take place if the order is considered one of the executive orders stated in this law.

Article (492)

Executing foreign orders in Yemen shall be subject to the provisions of this law according to a request raised to the court in charge of execution.

Article (493)

A foreign executive order shall be considered effective if it is final.

Article (494)

To execute a foreign order the following conditions must be met:

1. The executive order does not violate the provisions of Sharia, public morals and public order in Yemen.
2. The Yemeni court are not in charge of the dispute that resulted in this foreign executive order and the foreign court that issued the order is in charge according to the international judicial jurisdiction rules stated in its law.
3. Execution with the same conditions decided in that country for executing Yemeni executive orders based on the principle of reciprocity.
4. The executive order must be issued from a competent court or specialized judicial authority and is effective according to the law of its country.
5. The litigants in the claim that resulted in the order must have been summoned by the foreign court and attended the trial.
6. The executive bond should not contradict with a previous judgment issued by a Yemeni court.

Article (495)

Official executable orders issued in a foreign country may be executed with the same conditions decided in the foreign country's law for executing official executable orders issued in Yemen. Execution shall be requested in a memorandum submitted to the judge of the court of first instance in whose jurisdiction the execution shall take place. Execution of the order may not take place until making sure it meets the officially required conditions according to the law of the foreign country of the order and making sure there are no violations as regards public morals and public order in Yemen.

Article (496)

The court shall decide upon the request of executing the order as soon as possible.

Article (497)

Applying the previous provisions shall not violate the provisions of treaties concluded between Yemen and other countries in this regard.