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Guide to Doing Business

Kuwait

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DOING BUSINESS GUIDE FOR KUWAIT 2014

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KUWAIT – SNAPSHOT

Kuwait, in the cradle of one of the most ancient and most contested corners of the world, is best described as a city state. It is located in the Middle East on the northeast Arabian Peninsula and borders the Persian Gulf, Iraq, and Saudi Arabia. Kuwait stands in contrast to the entire middle-east region where it enjoys democracy alongside a monarchy. The government system is a constitutional emirate. The chief of state is the Emir, or Sheikh, and the head of government is the Prime Minister. Arabic is the official language and English is widely spoken. Kuwait's currency, which is the Kuwaiti Dinar, is the highest valued currency in the world (as of June 9, 2013).

Kuwait is a member of the United Nations and some of its specialized and related agencies, including the World Bank (IBRD), International Monetary Fund (IMF), World Trade Organization (WTO), African Development Bank (AFDB), Arab Fund for Economic and Social Development (AFESD), Arab League, Arab Monetary Fund (AMF), Council of Arab Economic Unity (CAEU), Economic and Social Commission for Western Asia (ESCWA), Group of 77 (G-77), Gulf Cooperation Council (GCC), etc.

The State of Kuwait, though having a small land mass of 20,000 square kilometers, is a viable destination for foreign direct investment being a major producer of oil in the world and having a GDP US$176.6 billion (in the year 2011) and a per capita income of US$44,730 (in 2010) . Its foreign reserves stood at US$29,260 million in December 2012.

REGULATORY CLIMATE

Kuwait's regulatory climate is largely influenced by two principle factors. The first is the government sector's strong control of the economy, the government sector being the largest potential source of business in the country. The second factor is the government's policy to ensure the involvement of local population in the commercial and economic development of the country. As a result, many regulations require or encourage the involvement of Kuwaitis in any business venture.

The Kuwaiti market permits limited investment of foreign capital, although the introduction of new laws in recent years has seen improvement with regard to the same. Articles 23 and 24 of the Kuwaiti Commercial Code (number 68/1980) ("**KCC**") state the basic premise for doing business in Kuwait. Article 23 provides that non-Kuwaitis cannot engage in commerce in Kuwait without having a Kuwaiti partner whose equity holding is at least 51%. Article 24 provides that a foreign company cannot establish a branch in Kuwait and it may not engage in commercial activities in Kuwait except through a Kuwaiti agent. These two provisions pertain to public policy, and as such are mandatory. Non-compliance, therefore, inter alia, renders the transaction null and void.

However, in late 2003 the Foreign Direct Investment law (number 8/2001) (the "**Old FDI**") came into force, which was recently replaced by Promotion of Foreign Direct Investment law (number 116/2013) ("**FDI**"). The FDI allows for 100% foreign ownership in a number of sectors and also makes available a number of benefits that authorities can offer in order to attract foreign investors.

Since 2000, foreign investors have been permitted to trade on the Kuwait Stock Exchange ("**KSE**"). Previously, non Kuwaiti investors (other than GCC nationals) had been limited to investing in mutual funds. Though foreign investors have all the rights enjoyed by Kuwaiti investors, they cannot, as a group, own more than 49% of the shares of a listed company.

Further, foreign and Kuwaiti investors must obtain an approval from the Central Bank of Kuwait if they intend to own more than 5% shares of a Kuwaiti bank.

Foreign corporate bodies engaged in commercial activities in Kuwait are subject to income tax. Exemptions from various taxes and duties, including the income tax and import duties on equipment and raw materials, can be obtained for industrial enterprises by approval of the Council of Ministers. These exemptions, which are granted under Law number 6/1965, are valid for a period of up to ten (10) years.

The three most important laws governing business activity in Kuwait are the Commercial Companies Law (number 25/2012, as amended by Law number 97/2013) ("**Companies law**"), the Civil Code (number 67/1980) ("**Civil Code**"), and the KCC, all strongly influenced by France's Napoleonic code. These three codes form the backbone of the law governing areas such as civil relations, general contract law, commercial instruments, commercial agencies, carriage and storage of goods, bankruptcy, construction and contracting. In addition, there are a number of laws dealing with specific topics such as banking sector, taxation, foreign direct investment, lease contracts, and civil and commercial procedures. There is also a maritime code, which covers matters such as maritime claims, ship registration, charter parties, marine insurance, and bills of lading.

ENTERING THE KUWAIT MARKET

A person or entity may enter the Kuwaiti market and do business in various ways. These are:

1. **Sole Proprietorship Company**

   The Companies Law recognizes a sole proprietorship company in Article 3. The expression “sole proprietorship” means any activity whose share capital is held in full by a single Kuwaiti natural person or body corporate.

   Chapter 7 (Articles 85 to 91) of the Companies law outlines the basic framework that governs the functioning of such company. Its nature is similar to that of a limited liability company. The main advantage of a sole proprietorship company is the owner of the company is not liable for its obligations other than to the extent of the share capital of the company.

2. **Professional company**

   A professional company may be incorporated by two or more natural persons who are self-employed professionals practicing the same profession, to whom the terms and conditions to practice such profession apply. The purpose of such company is to practice the activities of the profession by way of collective cooperation among them, and shall operate under a name derived from its purposes and the names of the partners or any of them, in addition to the expression “and partner(s)” as the case may be.

   Articles 80 to 84 of the Companies Law outline the basic framework of the professional partnership entity including the procedures of its establishment.

3. **Non-Profit Corporations**

   The Companies Law acknowledges the establishment of non-profit corporations in Article 3. Article 3 has referred the matters of establishing and regulating the provisions of non-profit corporations to the accompanying executive regulations of the Companies Law. However, pursuant to the said provision, a non-profit entity could be structured in any form stated in Article 4 provided the structure is suitable to the nature of the concerned non-profit corporation.

4. Limited Liability Company ("WLL")

A WLL is an entity where the liability of its members is limited to the extent of their share capital contribution. This is the most common corporate entity in Kuwait and the main route adopted by foreign companies or investors to enter the market. The Companies law provides for the establishment and nature of a WLL in Chapter 8 (Articles 92 to118).

A WLL is formed by a number of persons not exceeding 50 who shall be liable to the extent of their share in the capital of the company. No share certificates are issued to certify ownership. The minimum required capital in a WLL is KD 10,000, although this amount may vary from industry to industry, and the whole of a company's capital must be paid up at the date of incorporation.

A WLL can be formed very comfortably; the approximate time needed for its incorporation is two to three months. A WLL provides its shareholders with the limited liability shield. Typically, the shareholders of a WLL are referred to as "partners" (enjoying limited liability) and the shares owned by them in the capital of the WLL are referred to as "portions". A WLL may not conduct insurance or banking business, or invest funds for the account of third parties.

5. Joint Venture Company

The Companies Law provides for aspects of a joint venture company in Chapter 5 (Articles 76 to79).

Joint venture companies are commonly used in Kuwait by foreign entities. The main reason for the popularity of this type of legal relationship is the ease with which it is formed. Joint ventures are simple contracts that require no formal establishment procedures. However, they can be the most confusing forms for doing business in

Kuwait. Often foreign entities do not understand the nature of joint ventures under Kuwaiti law.

The Companies Law refers to joint ventures as joint venture companies. A joint venture company does not have a legal personality and may not transact business in its own name. It may transact business with third parties only through its Kuwaiti venturers, who would be personally liable for the transactions they enter into with third parties. The transacting venturer's liability to third parties is unlimited.

6. Public Joint Stock Company

A Public Joint Stock company is a company whose share capital consists of equal shares, negotiable as set forth in the Companies Law. The Companies Law provides for a Public Joint Stock company under Chapter 9 (Articles 119 to 264). The liability of a shareholder in this type of company is limited to payment of the value of such shares held by him, and he is not liable for the obligations of the company other than to the extent of the nominal value of the shares held thereby.

The founders of a Public Joint Stock company are required by law to subscribe to at least 10% of the capital. These companies qualify to be listed on the KSE and foreign investors can own shares in some listed shareholding companies. In the case of banks, any investor seeking to own more than 5% of a bank's share capital must obtain the approval of the Central Bank of Kuwait. Public Joint Stock companies are allowed to raise capital by way of public subscription in accordance with the provisions of the law.

7. Closed Joint Stock Companies (KSCC)

The Companies law provides for a Closed Joint Stock company under Chapter 10 (Articles 265 to 273).

Closed Joint Stock companies can't offer their shares by a public subscription and are incorporated by an official deed issued by the incorporators. The incorporators must have subscribed to all the shares and the shares must be fully paid up.

The provisions related to Public Joint Stock companies generally apply to Closed Joint Stock companies, unless it is specifically provided otherwise.

8. Agency

a) Commercial Agencies

Commercial agencies are regulated by Law number 36/1964 on the Regulation of Commercial Agencies ("**Agency Law**"), and Chapter 5 (Articles 260 to 296) of the KCC.

Only Kuwaitis may act as commercial agents in Kuwait. Any entity outside Kuwait is not allowed to carry out commercial activities or trading in Kuwait otherwise than through a Kuwaiti agent. Since majority of the commodities in Kuwait are imported from outside, agencies play an extremely vital role in the Kuwaiti economy. Further, in most of the cases, the foreign entity contracting with a Kuwaiti agent is in a formidable position than the Kuwaiti agent. Thus, the various protections granted to the local agent under the law forms a part of the public policy of Kuwait, such as entitlement to equitable compensation in case of termination of the agency relationship. Therefore, taking legal assistance while entering into, or exiting from an agency relationship is essential.

The KCC's provisions set out the general rules governing commercial agencies and the types of commercial agencies. The first type is a contracts agency. In a contracts agency, the local agent, by contract, undertakes to promote the principal's business on a continuous basis in the territory and to enter into transactions in the name of the principal in return for a fee. The contract must be in writing and must include the territory covered, the agent's fee, the term, the product or service that is the subject of the agency, and any relevant trademarks. The term of the contract must be at least five (5) years if the agent is required to set up showrooms, workshops or warehouse facilities.

The second type of agency is a distributorship, under which the local agent is the distributor of the principal's product in a defined territory in return for a percentage of the profit. Distributorships are governed by the same general rules as contracts agencies if the distributor is the sole distributor for the products. These rules provide protection to both types of agents.

The third type of commercial agency is the commission agency, which is provided for in Articles 287 through 296 of the KCC. In this type of agency, the agent enters into contracts in his/its own name. The principal's name may not be disclosed without his permission, but this rule is difficult to adhere to in practice since most manufactured products bear the principal's name.

b) Commercial Representatives

A commercial representative is a Kuwaiti individual or entity engaged by a foreign company to represent its business interests in Kuwait. The scope of authority of a commercial representative is usually more limited than the authority granted to an agent. A commercial representative may be paid a set fee on a regular basis or a commission or percentage of profits. The duties and obligations of commercial representatives are governed by Articles 297 - 305 of the KCC.

In executing documents on behalf of the foreign company, the commercial representative must sign his name as well as the name of the foreign company and indicate that he is a commercial representative. A foreign company is liable for all of the commercial representative's actions and liabilities, so long as they are conducted or incurred within the scope of representation.

9. License under the Promotion of Foreign Direct Investment law

In 2003, the Old FDI came into force which proposed to regulate foreign investments in Kuwait. The law intended to allow foreign investors to own up to 100% equity in Kuwaiti companies or ventures for certain special projects.

The Old FDI sought to encourage foreign investments and create new opportunities for local employment. The purpose of such legislation is to derive benefits from foreign technology and management and marketing experiences of foreign companies worldwide.

The Ministry of Commerce & Industry ("**MOCI**") was empowered under the Old FDI to issue licenses to foreign investors, permitting up to 100% foreign equity participation in any economic project in Kuwait. Such projects were exempt from the provisions of Articles 23 and 24 of the KCC as well as from the provisions of the Companies Law, which require at least 51% local participation. Thus, the Old FDI proposed to overcome what was regarded by many foreign companies as a pitfall in doing business in Kuwait. Significant steps were taken to implement this law. These steps include the setting up of the Kuwait Foreign Investment Bureau ("**KFIB**") and the Foreign Capital Investment Committee, headed by the Minister of Commerce & Industry.

Resolution number 1006/1 for the year 2003 issued a list of business activities for which a Foreign Investment License may be granted. These business activities included the following:

a) Industries except for enterprises related to Oil or Gas exploration or production.
b) Construction, operation and management of Infrastructure enterprises in the fields of water, power, drainage and communications.
c) Banks, Investment Corporations and Foreign Exchange Companies which the Central Bank of Kuwait may agree to incorporate.
d) Insurance companies which the MOCI agrees to incorporate.
e) Information Technologies and Software Development.
f) Hospital and Medicines manufacturing.
g) Land, sea and air transport.
h) Tourism, hotels and entertainment.
i) Culture, information and marketing except for issuance of newspapers and magazines and opening of publishing houses.
j) Integrated housing projects and zone development except for real estate speculation.
k) Real estate investment.

On 16th June 2013, FDI was published in the Official Gazette (Kuwait Al-Youm, issue number 1136) which shall be implemented from December 2013. This new law repealed its predecessor. The FDI is a welcome addition to a host of new economic laws and regulations that have been recently approved for the purpose of improving the overall investment climate, fostering competitiveness, encouraging more engagement in value added investment opportunities by both local and foreign investors, and contributing to achieve the country's economic and social objectives. Following are the highlights of the FDI (as published by the Kuwait Direct Investment Authority):

a) An authority is to be established under the FDI, supervised by the Board of Directors which shall be headed by the Minister of Commerce and Industry. It shall promote direct investment by both local and foreign investors, streamline the investment environment, license direct investments in accordance with set criteria, promoting investments into Kuwait, and raising awareness.

b) In contrast to the Old FDI, the Council of Ministers shall have to determine a negative list of direct investments excluded from the scope of the FDI in light of its developmental and economic plans and the state's general policy, and the proposals of the authority's Board of Directors in this regard.

c) Entities can be of three types:

   i. a Kuwaiti company in accordance with the Companies Law with up to 100% foreign equity;

   ii. a licensed branch of a foreign company; or

   iii. a representative office to exclusively conduct marketing studies without engaging in a commercial activity or activity of commercial agents.

d) A decision on the merit of an application for incorporation under the FDI shall be rendered within a maximum duration of 30 days from the date of submission of the completed application supported with all the data, documents and conditions requested by the authority.

e) Investors will continue to benefit from income tax and other tax exemptions for a maximum period of 10 years and tax and customs exemptions for the importation of machinery and equipment and their spare parts, raw materials, etc. However FDI maintains restrictions on the manner of use and disposal of such importations for a period of 5 years as of the date of granting those incentives; the employment of foreign labor in accordance with the principles and restrictions established by decision of the Council of Ministers; the allocations of land and real estate for the investors; and benefiting from all international conventions in force in the country related to investments and the avoidance of double taxation.

f) Investors will continue to benefit from protection against nationalization, or expropriation unless for public interest and against fair and timely compensation; freedom to transfer capital and earnings abroad; right to transfer or relinquish ownership of licensed project; right to merge with one or more entities; and entitlement to the basic principles of confidentiality in respect of the technical, economic and financial information relevant to the project, and to safeguard initiatives.

g) In order to support public private partnerships, and to encourage investments in the developmental projects, the FDI expands the scope of applicability of the incentives to partnerships between the public and private sectors established under Law number 7/2008 on the Regulation of the Operations of Build, Operate and Transfer and Similar Systems, and the Privatization Law number 37/2010 regarding the Regulation of Privatization Programs and Operations.

CAPITAL MARKETS LAW

In light of the development witnessed by capital markets globally, the elimination of restrictions on movement of capital among countries, the emergence of a new world order laying emphasis on competition and free trade and the global success of privatization of state owned enterprises, the government of the State of Kuwait realized the need to enact the Capital Markets Law (number 7/2010) (the "**CML**").

The CML was promulgated for introducing substantial capital market reforms like establishment of the Capital Markets Authority (the "**CMA**"), and deployment of sound regulatory and supervisory framework. The CMA was established as an independent public authority to regulate transactions concerned with securities and to provide protection to those involved in trading and investments.

In March 2011, the executive regulations were issued by the CMA to implement the CML, which contain rules for:

1. setting up of the CMA;
2. stock exchanges and clearing agencies;
3. organization of securities activities and licensed persons;
4. investment funds;
5. disclosure of interest;
6. mergers and acquisitions;
7. minority protection;
8. placement of securities; and
9. disciplinary actions and penalties.

The CMA is an independent public authority administered by a five member Board of Commissioners nominated by Amiri Decree 338/2010.

The CMA's main objectives are:

1. regulation of securities activities;
2. providing protection to persons trading in securities and mitigating the risks involved in the same;
3. enforcing full disclosure requirement and transparency in the market, and preventing conflict of interest; and
4. spreading public awareness of the capital markets regime.

Licensing and administrative powers of the CMA include issuing:

1. licenses for stock exchanges and clearing agencies;
2. licenses for businesses engaged in securities activities and relevant employees;
3. licenses for establishment and marketing of investment funds;

Powers of investigation and enforcement include:

1. inspection and supervision of licensed activities and persons, imposition of fines and penalties through disciplinary board;
2. investigation of complaints, criminal offenses and referring the same to public prosecution; and
3. institution of law suits.

TAX

1. **Income Tax Law**

   The general rule is that individuals (Kuwaiti or foreign nationals) and Kuwaiti companies are not subject to taxes on income. However, a flat rate of 15% is applicable as income tax on the net taxable income on foreign corporate bodies engaged in commercial activities in Kuwait. Nevertheless, while cash dividends received by any foreign entity as a result of trading on the KSE are subject to the 15% tax, capital gains derived by a foreign company from trading in shares listed on the KSE are exempt from tax.

2. **Zakat Law**

   Zakat Law (number 46/2006) levies Zakat (tax according to Islamic Sharia principles) on all Kuwaiti shareholding companies.

   According to the Zakat Law, 1% of the profits of a company are required to be paid to the government as Zakat. The company may select the entity or project to which the payment is to be applied by the government from the list provided under the law.

3. **National Labour Support Law**

   The National Labour Support law (number 19/2000) was enacted in respect of supporting and encouraging national manpower to work in the non-governmental sector. In addition to granting a social and children allowance to nationals and a cash allowance for every unemployed Kuwaiti who is unable to find a job, the law also obligates the government to share the costs of training the national manpower in the non-governmental sector. Article 9 of that law obligates individual entities to adhere to the minimum percentage of national manpower required to be recruited, as determined by the cabinet. Kuwaiti shareholding companies listed on the

KSE are also required to pay a tax amounting to 2.5% of their net annual profits. Non-observance or evasion of the same may attract various penalties.

4. Contribution to the Kuwait Foundation for Advancement of Science (KFAS)

KFAS was established for the purposes of providing aid and assistance to science students and researches for their education and training and for scientific research and development in general. Under Article 6 of the Memorandum of Association of KFAS, it is provided that a source of KFAS's financing shall be from the payment by all Kuwait Shareholding Companies (a "KSC") of a 5% of such companies' net profits to KFAS. While, as a legal matter, a KSC is not, strictly speaking, obligated to pay 5% of its net profits to KFAS (under Article 48 of the Kuwait Constitution, taxes may be levied only by a duly promulgated law), it has become the general and accepted practice in Kuwait for KSC's to make contributions of 1% of the net profits.

PUBLIC SECTOR PROCUREMENT

Procurement by the Kuwait Government and its agencies is governed by the Public Tenders Law (number 37/1964, modified by law numbers 13/1970 and 31/1977) (the "**Tenders Law**"). The Tenders Law provides that any procurement made by the Kuwait Government with a value in excess of KD 5,000 (approximately $17,600) must be conducted through the Central Tenders Committee procedures in order to ensure competitive pricing.

Article 5 of the Tenders Law provides that tenderers for government contracts must:

"(1) be a Kuwaiti merchant, individual or company, registered in the Register of Commerce in the Chamber of Commerce and Industry of Kuwait;

the tenderer may be a foreigner if he has a Kuwaiti merchant acting as a partner or agent pursuant to a deed duly executed before a notary, provided the Central Trading Committee shall set down a specific regulation for the participation of the foreign company in the tenders of large works.

(2) be registered in the Classification List of Contractors and Suppliers in conformity with the following Articles."

As a result, a foreign entity may act as a government contractor only through a Kuwaiti entity in which it has an ownership interest or by acting directly but with the assistance and support of a Kuwaiti agent.

There are two important exceptions to the application of the Tenders Law:

1. **Ministry of Defence Procurement.**

   The Tenders Law does not apply to the procurement of military items for the Ministry of Defense ("**MOD**") and security forces. The MOD has developed internal policies and procedures for such procurements, and such policies and procedures are not available to the public. In general, such policies are more flexible than the Tenders Law in an effort to accommodate MOD's specialized needs with respect to strategic military procurement.

Ministry Circular number 4A/88, dated June 8, 1972 provides that, contracts for arms, ammunition and spare parts should be concluded between the MOD and its suppliers directly without the intervention of any agent or intermediary.

2. Other Specialized Procurement.

In addition to strategic military procurement, it is possible for Kuwait government agencies to request permission of the Central Tenders Committee to conduct particular tenders outside the Tenders Law. Because the Tenders Law is intended to ensure competitive pricing for all procurements made by the State of Kuwait, procurements made outside the Tenders Law are relatively rare.

OFFSET PROGRAM

The Government of the State of Kuwait purchases large amounts of goods and services from foreign contractors. This results in economic benefits accruing in foreign countries where the goods and services are manufactured, mainly through job creation and capital accumulation. The Kuwait Counter-Trade Offset Program seeks to achieve equitable distribution of these benefits between Kuwait and the foreign countries. Foreign contractors could also benefit from this program since it would bolster their business activities in Kuwait. Therefore on July 26, 1992, the Council of Ministers of the State of Kuwait established the Counter-Trade Offset Program (Offset Program) through Decision number 694 which requires all foreign contractors, having a contract with a government entity and who meet certain criteria, to participate in the Offset Program.

The guidelines issued by the Ministry of Finance for the Counter-Trade Offset Program have been amended from time to time. On March 28, 2006, the National Offset Company was incorporated, which is a State-owned company registered with the MOCI whose primary function is to manage and administer the implementation of the offset program on behalf of the government of Kuwait – Ministry of Finance and in the process facilitate suitable alliances and partnerships between local entities and foreign contractors. The latest guidelines are for Offset Program number 9/2007. According to these guidelines, the offset program seeks to realize sound and sustainable economic benefits for the State of Kuwait through the promotion of long term links and ventures with foreign corporations with special emphasis on projects implemented in collaboration with the private sector and which contribute to the achievement of the three primary objectives of the offset program, namely:

1. promote projects that lead to the transfer of appropriate advance technologies to Kuwait and facilitate their integration and adaptation into the local economy;
2. promote projects that contribute to the advancement of professional education and job training; and

3. encourage and support projects that contribute to the creation and development of high skilled professional jobs for Kuwaiti nationals.

The guidelines also define terms such as “foreign contractor”, “offset obligor” and “offset obligation”. As per the recent guidelines the offset obligation value is equal to 35% of the total monetary value of the supply contract, subject to deductions described therein.

JUDICIAL STRUCTURE

The Civil and Commercial Pleadings Law (number 38/1980) ("**CCPL**") and its amendments govern, inter-alia, the method and conditions of initiating legal proceedings.

Kuwait has a three-fold litigation system. The courts of the first two litigation stages, i.e., Court of First Instance and the Court of Appeal, are considered to be courts of substantial nature, i.e., parties may present defenses of formal as well as substantial nature, hence merits of the dispute, facts and evidence may be presented, argued and discussed by the litigant parties before such courts. The Court of Cassation, which is considered as the highest court, is the final stage of litigation. This court acts as a supervisory body, reviews judgments of the lower courts and ensures proper application of laws. It is not permissible to present new evidence, discuss or argue the merits and substance of the litigated dispute. However, discussion of the merits and evidence may be presented to the Cassation court, by way of including them indirectly through formal legal defenses.

There is a one main General Court in Kuwait city and another three Courts in the providences of Kuwait. The "main" court reviews disputes of all types and claimed amounts. However, the other three noted courts do not review disputes where the claimed value exceeds KD 5000. The main General Court consists of many chambers, i.e., internal court panels, each of which preside for a specific legal field, e.g., civil, commercial, lease, criminal, administrative, labor, family matters etc.

A judgment issued pertaining to a dispute where claimed amount does not exceed KD 1,000, is final and non-appealable. Where the claimed amount ranges between KD1,001 and KD 5,000, a judgment issued by the court is appealable at the partial appeal Court instead of the Court of Appeal. A judgment issued with regard to a dispute where the value exceeds KD 5,000, is appealable at the Court of Appeal and thereafter at the Court of Cassation.

The Court fees are regulated and governed by the Law number 17/1973. In brief, an amount equivalent to 2.5% is payable for any amount claimed less than KD. 10,000/-. An additional fee equivalent to 1% of any claimed amount exceeding the noted level of KD. 10,000/- shall also be payable on depositing the Statement of Claim ("**SOC**"). Claims of undetermined value shall be charged a fee of KD. 5/- for each of the requests stated in the SOC. Other official fees may become payable during the legal proceedings, i.e., official engineers or accounting experts' fee as determined, forensic fee etc.

The courts depend extensively on the Experts Dept., which is an ancillary body of the court. The experts are employees of the Ministry of Justice and are either engineers or accountants. Their role is to look in to technical issues of a case, and report their findings to the court. However, the Expert Department also carries out investigations and evaluates many aspects pertaining to evidence, facts and merits of the dispute.

INTELLECTUAL PROPERTY

The State of Kuwait signed the WTO Treaty on April 15, 1994. Kuwait also signed the final document containing the conclusions of the Uruguay Round of Talks (8th Tour of GATT) eventually resulting in the TRIPS Agreement. Law number 81/1995 was issued to confirm the WTO Treaty.

1. Copyright

The law regulating Copyrights is contained in Law number 64/1999 ("**Copyright law**"). This law protects works of literature, arts, and science irrespective of its value, kind, purpose or the method used to express the same.

In order to register a copyright in Kuwait the work is required to be deposited at the Kuwait National Library. The following steps are required to be taken for registration:

a) An application in the prescribed form is required to be completed and submitted along with the work to the Kuwait National Library.
b) The committee reviews the application and prepares a report accepting or rejecting the work.
c) The General Manager of the Kuwait National Library passes a decision to accept or reject the application, giving reasons for the decision.
d) If the application is accepted the work is given a local and international number.
e) In case the application is rejected it may be resubmitted after rectifications to the work have been carried out in line with the reasons for rejection.

The period of protection for works compiled by authors is 50 years from the year of death of the author, while the period of protection for compilations published by artificial persons or under an artificial name or cinematic compilations, works of photography, applied arts, software or compilations published for the first time after the death of the author is 50 years. For material prepared for broadcasting or television, the period of protection is 50 years from the date of the end of the year in which the recording was made. In respect of works owned by broadcasting entities, the period of protection is 20 years from the end of the year in which it was first broadcast.

In case of infringement or potential infringement of copyright a temporary injunction can be issued by the court to suspend the publication production or presentation, of such work. Article 42 of the Copyright Law empowers the courts to order destruction of illegally published materials. Alternatively, the court may award compensation for the use of such work.

The penalty for infringement of a copyright is detention for a period of one year or a fine of KD 500 or both.

2. Trademark

The definition of a trademark in Article 61 of the KCC includes pictorial elements, color combinations, any signs perceivable by sight, audio signs, and signs related to sense of smell. Kuwait follows the international classification of goods and services for registration of trademarks.

Articles 61 to 85 of the KCC regulate trademarks and their registration in Kuwait. The following documents are required for registration:

a) A Power of Attorney from the trademark owner duly executed and legalized before a Notary Public, the Foreign Ministry, and the Embassy of Kuwait. This is in case trademark is being filed through an attorney;

b) A copy of certificate of Foreign Registration of the trademark duly legalized before the foreign ministry and the Embassy of Kuwait;

c) Twelve (12) copies of the trademark sought to be registered, including the size, dimension, color as required; and

d) A statement from the trademark owner indicating the class and the goods or services for which registration is required.

Once the documents listed above are submitted to the Trademarks and Patents department at the MOCI a number is allotted to the said application. The next step is the publication of the mark in three consecutive issues of the official gazette. If no objection is raised a certificate of registration is granted to the applicant. The approximate time required to obtain a registration certificate is six months to one year assuming there are no objections raised.

The period of protection is ten (10) years. The applicant may renew the said registration during the last year. In cases of infringement, if it can be shown that the infringing party has placed, in bad faith, a mark owned by another on his products, the said party may be imprisoned for a maximum period of three (3) years or be liable to pay a fine not exceeding KD 600.

3. Patent and Industrial Design

Patents are governed by Law number 4/1962 ("**Patent law**"). In order to obtain patent protection in Kuwait, the inventor must first register the patent with the Patents Office at the Trademark Control Department of the MOCI.

Foreign entities are allowed to register patents in Kuwait, provided that they are nationals or habitants of countries that give Kuwait reciprocity. As soon as the inventor registers his patent, he is gains the protection of the right to use that patent by any means. This right is valid for fifteen (15) years, starting from the date of the application. The patent may be renewed for extra five-year term.

As regards industrial designs, Articles 36 and 37 of the Patent Law provide for the process of registration. The industrial designs must be also registered in the Industrial Designs and Models Register. Then, an application for registration must be submitted to the Trademark Control Department. The period of registration for the industrial designs, as defined in Article 42, is valid for five (5) years. It can be renewed for two (2) additional consecutive terms.

PUBLIC PRIVATE PARTNERSHIPS

Public-Private Partnerships ("**PPP**") are means for the government of Kuwait to permit private-sector capital and expertise into areas conventionally under public control (such as the provision of public services) without losing its supervision over quality and tariffs, and also ensuring the protection of public interests. The pipeline of PPP projects in Kuwait is the most significant in the Middle East with over $25 billion worth of projects recently announced or started. The PPP program in Kuwait has projects across various business sectors including real estate, waste water treatment, transportation, health, telecom and power.

Law number 7/2008 ("**PPP Law**") provides for the implementation and regulation of infrastructure PPP Projects in Kuwait. The regulations under the PPP Law have been issued under Decree number 256/2008. The PPP Law attracts participation from private-sector based on competitive and transparent rules ensuring that the economic benefits of private investment are shared with Kuwaiti citizens. The PPP Law applies to both infrastructure projects for public service delivery and commercial land development Projects.

The Partnerships Technical Bureau ("**PTB**") has been established under the PPP Law as the nodal agency of the PPP program, and is in charge of the financial and technical evaluation of PPP Projects. The PTB is involved in all phases of the PPP projects, from inception to financial close.

PPPs can be undertaken by any public entity that enters into an agreement with a private-sector company established under the laws of Kuwait for implementation of a project, through the execution by such a private company on land owned by the government of Kuwait, for a certain period of time. All companies listed on the KSE are considered pre-qualified to bid for PPP projects. Unlisted local and foreign entities will need to apply for pre-qualification as and when projects are tendered, and must be approved by the Higher Committee, which is a ministerial committee established under the PPP Law for studying and approving projects on state-owned property and tendering them in accordance with the provisions of the PPP Law. However, no public body can enter into a PPP agreement without the consent of the Higher Committee for PPPs. PTB provides technical support to the Higher Committee in its decision making.

Further, a PPP project which is exceeding KD 60 million shall be carried out by a PPP project company that will be a special-purpose vehicle formed as a Kuwaiti Joint Stock Company, in which up to 40% shares would be offered to the private investor. The majority of the remainder of the shares will be offered to Kuwaiti citizens.

The term of a PPP Project is a maximum of 30 years. In certain cases the committee may approve a lifespan of 40 years. If a project's bid documents do not contain a term, its lifespan is deemed to be 25 years.

LABOR LAWS (PRIVATE SECTOR)

Law number 6/2010 (“**Labor Law**”) regulates the employer and employee relationship in the private sector. Its provisions apply to all employees working in the private sector and those in the oil and marine sector only to the extent that its provisions are more beneficial to them.

The Ministry of Social and Labor Affairs (“**MSAL**”) is the competent authority for overlooking the implementation of the Labor Law. Employers may only employ foreign workers after such persons receive a work permit from the competent authority under the MSAL.

Employers are required to contribute towards a health insurance scheme for all its expatriates resident in Kuwait. The annual premium is payable at the time of initial application or renewal of the expatriates residency. Health coverage can also be provided through a private health service provider. The employers are also required to make payments to the Public Institution for Social Security on behalf of all its Kuwaiti employees.

The Labor Law also deals with form and terms of an employment contract, termination and indemnity rights, system and conditions of work, collective labor relations and penalties for violations.

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