

Kuwait

Legal Provisions

Compiled by: Ziad Tarakji

Embassy of Switzerland

Kuwait, September 2011

N.B. this paper is intended to give broad guidelines about business-related rules and legislations in Kuwait but must not be taken as a legal reference. For specific and more in-depth information, Swiss firms will be well-advised to seek legal counsel from a law firm or an audit bureau in Kuwait.

Overview

Kuwait's judiciary is a civil law system based on the French and Egyptian models. The Ministry of Commerce & Industry is the authority for enforcement of commercial laws.

Kuwait is in the process of amending its commercial laws to make them compatible with WTO regulations and to set the stage for the country to become a trade and financial center, which is the proclaimed target that had been set by the head of State, the Amir, when he took office in Jan 2006.

Until the turn of the century, many laws governing economic and commercial activities in the country were the ones promulgated in the 1950s and 60s. Recent significant changes were as follows:

-**Privatization law** (2010) which was introduced down-size the public sector's share in the economy to encourage the private sector to take larger role in GDP.

-New **private sector labour law** (2010). The new legislation has replaced the one that was more than 50 years old and improved working conditions for foreign workers being more protective of their rights.

-**Amendments (2010) to the Tax law** of 2008. The amendments were meant to streamline implementation and add clarifications.

-**Investment Law (2003)**, offering foreign investors a range of incentives that include 100% ownership of a Kuwaiti company and a 10-year tax holiday.

-**Corporate Tax Law (2008)**, an amendment on the 1955 law, bringing down the tax on the profit of foreign companies from a maximum of 55% to 15%. (please see taxes)

-**Build-Operate-Transfer (BOT) Law (2008)**, to streamline this kind of activity that is being encouraged by the government in line with schemes of privatization and attraction of foreign investors.

Laws regulating foreign banks' operation, trade mark registration and intellectual property protection rights are already in place. Yet the battle against the influx of pirated computer software programs, video tapes, generic drugs and counterfeit Swiss watches is far from won. Kuwait is still on the US 300 Watch list of countries with poor control on intellectual property violations.

A new public tender law is in the pipelines together with other legislations related to the implementation of the multi-billion-dollar Development Plan (2010-2014).

Customs

Kuwait depends very heavily on imports from foodstuffs and a wide range of consumer products to equipment and machinery. Therefore, customs duties are soft by international standards.

- All foodstuffs and components used in production of food enter Kuwait duty-free.
- Tobacco products are taxed 100%
- For everything else, a levy of 5 % on CIF value is imposed.

Kuwait has one free-trade zone, located just a 10-minute drive from the city center but is now virtually suspended over a legal dispute between the authorities and the operator

The Harmonized System of coding has been in force since 1994.

Kuwait is member of the Gulf Cooperation Council (GCC) which also groups Saudi Arabia, Qatar, Bahrain, the United Arab Emirates and Oman. The six neighbors unified their customs tariffs under a GCC customs union which went into effect in 2004.

For clearing the goods at the customs, the Swiss exporting company needs to provide the customer with the following documents:

- An official delivery order issued by the shipping agent.
- Officially certified invoices specifying the type of goods, their unit value, total value, name and address of the manufacturer, the means of transportation.
- A certificate of origin authenticated by a chamber of commerce in the exporter's country. The certificate must clearly indicate that the exported goods are not of an Israeli origin, nor do they contain any raw-material made in, or imported from, Israel.

The certificate must be certified by the Kuwaiti Consulate General in Geneva.

(For such technicalities and other related matters the Swiss exporters are advised to consult the following:

Arab-Swiss Chamber of Commerce
70, route de Florissant
CH-1211 Geneva 12
Tel.: 0041-(0)22 - 347 32 02
Fax: 0041-(0)22 - 347 38 70
E-mail: arabswisscham@casci.ch

Import and export regulations

Licenses for import & export are restricted to Kuwaiti companies duly registered with the Ministry of Commerce & Industry. The few exceptions include the import of goods for personal use, or imports in accordance with an oil sector concession.

Kuwait is an open market and there are only few restrictions on imports. Among the key prohibited items are alcohol, pork, certain types of ammunition, pornography items and any material or product infringing on religious beliefs.

Kuwait also maintains the so-called "direct" boycott of Israel, meaning that products made in Israel are banned. The ban does not apply to products of foreign companies wholly or partially owned by Israelis.

Local industries, modest in size outside the oil and gas sector, are offered some kind of protectionism in public tenders. Such locally manufactured products as cables, plastic pipes, switchgears and industrial chemicals,

would be given a 10% price advantage plus the priority in a public tender against foreign imports, but on condition that they meet the required specifications.

Currency regulations

There are no restrictions on currency exchange or movement. Foreign exporters are general required to quote prices in the USD dollar.

The Kuwaiti Dinar was officially pegged to the US Dollar in 2003 at a rate of KD1=USD3.3, but on 20th May 2007, the monetary authorities annulled the peg, announcing that the Dinar will be weighted against a basket of currencies with immediate effect. The move was mainly intended to ward off inflationary pressures caused by the weakening dollar.

Registration procedure for products

The need for registration is limited to a list of products which mainly includes electronic and electrical appliances, health and food products, cosmetics and industrial products. The importers of these goods will have to apply for a Certificate of Conformity issued by the Public Authority for Standards and Measurements.

Standards, technical rules, labelling regulations

Product specification:

Kuwait has no product liability law. Instead, there is a set of specifications that must be met by imports and locally manufactured products. Such specifications are obligatory for the following categories:

- Electrical and household appliances
- Foodstuffs
- Cars and vehicles
- Tires
- Construction materials

Specifications for anything else are optional and can be agreed between the importer and supplier. It is important for Swiss exporters to get enough feedback on required specifications from their Kuwaiti customers to avoid such an eventuality that a shipment has to be destroyed (in case of perishable items) or shipped back to the supplier. The regulations are particularly strict about foodstuffs.

Each product must carry a label indicating its origin. English is the only foreign language acceptable for labels, while labels of foodstuffs must be in Arabic as well, indicating ingredients.

Taxes

As part of economic reform, the government enacted in 2008 a law bringing down the foreign corporate tax from a maximum of 55% to 15%.

Personal income tax does not exist, though strongly recommended by the IMF. The government knows quite well that such an imposition would meet formidable resistance at the parliament.

There are no corporate taxes on the Kuwaiti share of a company. The net profit earned by a foreign company from the business it is conducting in Kuwait is taxed according to a graduated schedule ranging from 5% for income in excess of about USD 18,000 to 15% for income in excess of the equivalent of USD 1.3 million.

A foreign firm executing a project in Kuwait will not get the last 10% of the due payment unless the firm has received a tax clearance from the authorities.

Commercial law

Several laws governing commercial activities (impex, foreign shareholding, exclusive agency, tendering employment etc) are in the process of being revised and several regulations have already been amended in order to liberalize the economy and make it more attractive to foreign partners.

Setting up companies

A law allowing 100% foreign ownership of companies gained force early in 2003. However, for a foreigner to acquire a stake in excess of 5% in a local bank, the approval of the Central Bank of Kuwait is a pre-requisite. In 2004, Kuwait ended a long standing ban on the operation of foreign banks on its territory. HSBC, PNB Paribas, Citigroup and two other Arab banks have since acquired license to open branches in Kuwait.

The “private shareholding company” is generally the only form of Kuwaiti company in which a foreign corporate entity may hold shares (not exceeding 49 %) in its own name. Establishment of such company requires at least five founders (individual or institutional) and a board of directors of at least three members, who are elected by the shareholders. Income attributable to such foreign shareholding is subject to corporate income tax. Moreover, 1% of profit is deducted to finance The Kuwait Foundation for the Advancement of Science. In general, foreign shareholding in Kuwaiti companies remains limited in number.

Joint venture opportunities

The government strongly encourages joint ventures and offers a package of incentives to foreign companies to come along. JV opportunities are more readily available in the construction and service sectors than in industries. JVs in the oil & gas sector are often in the multi-billion-dollar range and usually involve international oil companies. Foreign partnership in JVs remains generally modest in Kuwait due to some longstanding restrictive regulations.

Promotion of investment

The authorities have been trying in the past few years to open the Kuwaiti economy to the outside world and to lure foreign participation in joint ventures and other forms of direct investments. The Ministry of Commerce & Industry in 2002 established a “Foreign Capital Investment Office (FCIO) to provide technical assistance to potential foreign partners.

Among the incentives offered to foreigners are a 10-year tax holiday, 100% ownership, reduced taxes on profit and favorable treatment for the entry of equipment and manpower.

English and French versions of the foreign investment law can be provided by the Swiss Embassy in Kuwait at request.

For more information of investment opportunities, please contact:

Foreign Capital Investment Office

Mr. Ali Al-Baghli, Director General (also Assistant Undersecretary of the Ministry of Commerce and Industry)
P.O. Box 3690 Safat 13037
Kuwait
Tel.: 00965 – 22 24 07 00
Fax: 00965 – 22 24 06 94

A Swiss party to a potential joint venture needs to have prior knowledge of the legal aspects with respect to the status of the assets of both parties, especially with regard to credit liabilities of the Kuwaiti party from other businesses not related to the joint venture. Professional legal advice is strongly recommended.

Entry conditions, work permits, residence permits, labour law

In general, any foreigner aged between 18 and 60, needs an employment contract to work lawfully in Kuwait. The authorities have set a minimum wage rule for an expat worker to bring in his/her family dependants. This bottom varies from time to time, ranging from the equivalent of USD 750 to USD 1'000.

A foreign worker must be sponsored by a Kuwaiti "guarantor" who is his/her employer, be it a government agency, a private company or an individual. As indicated earlier, the authorities announced in August 2009 that the sponsor system is being abolished but Kuwaiti employers were quick to criticize the move.

The Kuwaiti guarantor, on basis of his/her business license, gets a work permit for the foreigner worker from the Ministry of Social Affairs and Labor. The work permit, together with the employment contract, would entitle the foreign worker to have a residence permit, issued by the Ministry of Interior for at least one year, renewable. The International Labor Organization (ILO) urged Kuwait in 2005 to scrap the sponsorship system and offered Kuwait three alternative proposals to choose one.

No decision was made yet.

Employment contracts for foreigners in the private sector are based on the Kuwaiti Labour Law. But an employment contract can be tailored in agreement between employer and employee.

Procedures for collecting payment

Foreign companies executing projects in Kuwait are paid on installments in parallel with stages of work done. The last 10% of the total payment is usually made against presentation of a tax clearance certificate and a performance bond. When the direct customer is a public sector institution, the payment schedule is always honored, though some occasional delays may occur due to paper work formalities. Payment delays are more frequent, though still few, when the project is executed with a local partner who would be responsible for financial matters.

Salaries and wages in the private sector are generally paid monthly in cash, or are deposited in the employee's bank account. Recently, there have been cases where private companies failed to pay their workers for few months. Such incidents in the past three years brought onto Kuwait criticism from International agencies and prompted the Ministry of Labor and Social affairs to take immediate action for strict implementation of regulations safeguarding the rights of foreign workers.

Sources of information and links

Kuwait Chamber of Commerce & Industry: www.kcci.org.kw

Ministry of Commerce & Industry: www.moci.gov.kw

Ernst & Young: www.ey.com/me

Date: 29th September 2011
Author: Ziad Tarakji
Author's address: Embassy of Switzerland
Kuwait, Bahrain, Qatar