SWITZERLAND GLOBAL ENTERPRISE

Kuwait
Legal Provisions

Compiled by:

Embassy of Switzerland in Kuwait

Kuwait, 1st July 2018

GENERAL REMARKS

This paper is intended to give broad guidelines about business-related rules and legislation 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.

Kuwait's judiciary is a civil law system based on the French, British and Egyptian models. The Ministry of Commerce and 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 centre, which is the proclaimed target that had been set by the Head of State, the Amir H.H. Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, when he took office in 2006.

Until the turn of the current century, many laws governing economic and commercial activities in the country were the ones promulgated in the 1950s and 60s. Recent significant changes included the introduction of the following legislations:

- **Kuwait signs the Multilateral Treaty for Mutual Administrative Assistance in Tax Matters**

  On 7 June 2017, amongst 68 jurisdictions, Kuwait signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI) during a signing ceremony hosted by the Organization for Economic Co-operation and Development (OECD) in Paris.

  At the time of signature, signatories submitted a list of their tax treaties in force that they would like to designate as Covered Tax Agreements (CTAs), i.e., to be amended through the MLI.

  Pursuant to Article 2(1)(a)(ii) of the Convention, the state of Kuwait listed 45 treaties to be covered by the Convention. The provisional list of expected reservations and notifications to be made by the State of Kuwait is published in its entirety on the OECD official webpage.

- **Foreign Direct Investment into Kuwait**

Kuwait Direct Promotion Director General has issued decision No 35/2014 on principles rules and procedures for licencing branches and representative offices of foreign companies in Kuwait. Further ministerial decisions 502 and 503 of 2014 have been issued with respect to the promotion of direct investment in Kuwait and fees schedule for the services rendered by KDIPA.

- ➢ Law 116/2013 for foreign direct investment was issued; this tax exemption law addresses both foreign and local investors and replaced law 8/2001.

- **Commercial Companies Law**

- ➢ Law 25/2012 governing Kuwaiti local companies, was amended by law. 97 of 2013 and Executive Regulations decision 425 of 2013. Law 1 of 2016 for commercial companies was promulgated.

- **Anti-corruption Authority**

Law 24/2012 establishing the Anti-Corruption Authority. The new law was enacted in response to public outcry against evident signs of abuse of public funds and irregularities perpetrated by public figures, politicians and corporate executives. The legislation also stipulates that individuals holding certain public positions need to disclose their financial standings before and after occupying their function. The rule was nullified in 2015 due to its unconstitutionality.

- ➢ Kuwait introduced Law 2/2016 concerning the establishment of a Public Authority for combatting corruption “Public Anti-Corruption Authority” (PACA). The primary function of this authority is to establish the principles of transparency and integrity in the application of UN convention for combatting corruption. The authority seeks to regulate and manage domestic strategy in this field; the authority is also empowered to enforce Financial and asset disclosures.

- ➢ Law 104/2013 on combating money laundering and financing terrorism.

- **Others**

- ➢ The parliament and the government have introduced amendments to the Privatization Law 37/2010 and on the Build-Operate-Transfer Law of 7/2008, as both pieces of legislation are viewed as vital for achieving the goal of increasing the private sector’s share in the economy.

- **Value Added Tax (VAT)**

  In the recent media reports, it has been reported that Kuwait will postpone the implementation of VAT till 2021. Based on the discussions with the other professional firms/government agencies, VAT is likely to be implemented in Kuwait in later part of 2019 or beginning of 2020. The momentum to implement VAT in Kuwait will increase once the other countries in the GCC also announce their date of implementation.

- **Excise Tax**

  As per the local media reports, the Kuwait Ministry of Finance would expedite the measures to levy excise tax on selected products such as tobacco, energy drinks and carbonated drinks. Further, it is expected that the excise tax legislation would be approved by the National Assembly at the start of the next term in October 2018, which would help in implementing the excise tax from end of 2018 or beginning of 2019.

- **Kuwait Tax Authorities transition to Electronic Filing**

  As a drive to improve the taxpayers' database of the Kuwait Tax Authority (KTA), and in order to transition to electronic filing, the KTA has introduced the following matters in the recent months:

  The KTA started issuing unique Tax Registration Numbers (TRNs) to all taxpayers in Kuwait, whereby the KTA will require that all correspondence to include the TRN; and

  An amended Tax Card request form and a new tax card form have been issued pursuant to the Administrative Decision, amending the Executive Rule of the Corporate Income Tax Law. The tax cards are expected to be renewed on annual basis.

- **Business profit tax**

  The Kuwait Ministry of Finance (MOF) is working closely with the International Monetary Fund (IMF) on implementing a new business profits tax law in Kuwait, which may apply to both foreign companies and GCC entities. A draft business profits tax law with a proposed 10% business profits tax is currently with the Kuwait Parliament for review.

Earlier legislative upgrading included:

- New Private Sector Labour Law 6/2010, which replaced the one that was more than 50 years old and improved working conditions for foreign workers and granted more protection to their rights.

- Under Law No. 2 of 2008, for fiscal years beginning after 3 February 2008, the tax rate is a flat 15%. Before the approval of this new law, Amiri Decree No. 3 of 1955 had provided that the maximum tax rate was 55% (see taxes).

Foreign companies carrying on a trade or business in the islands of Kubr, Qaru and Umm Al Maradim are subject to tax in Kuwait under Law No. 23 of 1961. The maximum rate under Law No. 23 of 1961, which applies to profits derived from the operations in the Divided Neutral Zone, is 57%.

- On 3 January 2016, the Kuwait Ministry of Finance (MoF) issued Administrative Resolution No. 2028 of 2015 amending certain Executive Regulations (ERs) relating to Law No. 2 of 2008 (Corporate Tax Law) and Law No. 46 of 2006 (Zakat Law). The amended ERs for the corporate tax law shall be effective from the fiscal year ended 31 December 2015 and the amended ER for Zakat law shall be effective from 1 January 2016.

- Foreign Direct Investment Law 116/2013 for attracting foreign direct investments to Kuwait, and Law 116/ 2014, these laws are offering a wider range of incentives to foreign investors.

- Under Decision No. 890 of the Council of Ministers, which was taken in their session No. 2014/2-30 on 7 July 2014, the offset program was officially suspended in Kuwait. The offset program has now been cancelled with respect to all tenders issued after Decision No. 890 on 7 July 2014 and all other tenders that were issued earlier but had not closed as of the date of the decision.

- Laws regulating foreign banks' operation, trade mark registration and intellectual property protection rights are already in place. As tougher controls have been introduced, improvement is noticeable but the battle against the influx of pirated computer software programs, video tapes, counterfeit watches and brand-name garments is far from won.

CUSTOMS

Kuwait depends very heavily on imports ranging 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 (with certain exceptions).
- The excise tax has been approved on cigarettes and energy and soft drinks among others; the application is expected to be by end of 2018.

Kuwait has one free-trade zone, located just a 10-minute drive from the city centre but it 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 neighbours unified their customs tariffs under a GCC Customs Union, which went into effect in 2004.

The Public Authority for Food and Nutrition (PAFN), established in 2015, will be in charge for the control of food producers, importers and sellers in the country. (Law 112/2013)

For clearing goods at the customs, a Swiss exporting company needs to provide its 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, full 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.

EXCISE TAX

Kuwait Ministry of Finance has published the draft law on Excise Tax on 23 April 2017. The draft Law is subject to change. The implementation of this tax is expected by the end of 2018.

FREE TRADE AGREEMENT (FTA)

The European EFTA Group, of which Switzerland is a member and the Gulf Cooperation Council GCC are now bound by a free trade agreement, basically providing for customs duty exemptions. The accord entered into force on 1st July 2015 on the GCC side, and exactly one year earlier on the European side. The implementation procedures were made by all GCC countries. Swiss firms dealing with Kuwait may obtain a copy of the agreement together with an explanatory factsheet by contacting the Swiss Embassy in Kuwait: kow.vertretung@eda.admin.ch

For certification technicalities and other related matters, Swiss exporters are advised to consult the following:

Arab-Swiss Chamber of Commerce
70, route de Florissant
CH-1211 Geneva 12
Tel.: +41-22 – 347 3202
Fax: +41-22 – 347 3870
Email: arabswisscham@casci.ch
Website: www.casci.ch

IMPORT AND EXPORT REGULATIONS

Licenses for import and export are restricted to Kuwaiti companies duly registered with the Ministry of Commerce and 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, the electric cigarette, pornography items and any material or product infringing 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 a degree 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 generally required to quote prices in US Dollar.

The Kuwaiti Dinar was pegged to the US Dollar in 2003 at a rate of KWD 1=USD 3.3, but on 20th May 2007, the monetary authorities annulled the peg, announcing that the Dinar will be weighed 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 (The latest update for unified GCC guide for Control on Imported Food was in 2017)
- 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 as, indicating ingredients.

TAXES

- **Corporate Tax**: As part of economic reform, the government enacted in 2008 a law (2/2008) bringing down the foreign corporate tax from a maximum of 55% to 15%.

  There are no corporate taxes on the Kuwaiti share of a company incorporated in Kuwait. Kuwait currently applies corporate Income tax of 15% on foreign companies. In case the foreign entity is a shareholder in a Kuwaiti entity, 15% tax is applied only on the share of foreign partner. No tax is payable if the annual income is less than approximate USD 17,500 (i.e., KD 5,250). If the income is in excess of the mentioned amount, a flat tax of 15% is applied on the entire income.

- **Taxation on entities operating through distributors/agents**: There have been recent cases decided in the Kuwaiti courts, where the Kuwait Tax Authorities subjected the foreign principals and suppliers of products to tax in Kuwait, based on agency/distributorship agreements/arrangement.

- **Proposed Business profit tax:** Kuwait's cabinet recently approved a 10% tax on corporate profits to be applied on foreign and local companies to narrow the budget deficit due to low oil prices; however, this tax has not yet been implemented.

- **Sales** and **personal income taxes** do not exist, though strongly recommended by the IMF.

The government knows quite well that the imposition of personal income tax would meet formidable resistance at the parliament. Nevertheless, the local press indicated that the application of this tax will not take place before 2021.

- **Tax retention regulations**

All government bodies and private entities are required to retain:

- 5% from each payment made to a contractor; and
- The final payment due until presentation of a tax clearance certificate from the Ministry of Finance (MOF) confirming that the respective company has settled all of its tax liabilities. The final payment should not be less than 5% of the total contract value.

The MOF may demand the payment of 5% retained amount, referred above, from the entities holding the amount if the concerned contractors or sub-contractors fail to settle their taxes in Kuwait. The contractor is responsible for the tax due on the subcontractor, if the contractor does not comply with the regulations.

FATCA/CRS

Kuwait has signed the Inter-Governmental Agreements with the United States (US) for implementation of US FATCA. The financial institutions are required to do an annual FATCA reporting to the Ministry of Finance (MoF) and audit report prepared by a certified auditor is required to be submitted by the FIs on an annual basis. The deadline for the year ended 31 December 2017 is 30 September 2018.

In addition, Kuwait is a signatory to CRS Multilateral Competent Authority Agreement ('MCAA). The MoF has recently issued additional guidelines for CRS, which among other things include appointment of an auditor for CRS reporting purposes (similar to the requirements for FATCA reporting). All the financial institutions are required to submit CRS report with the Kuwait Ministry of Finance by 15 August 2018, for the year ended 31 December 2017.

INVESTMENT INCENTIVES

Kuwait offers the investment incentives described below.

- **Industry Law.** To encourage investments in local industrial undertakings, Industry Law No. 56 of 1996 offers the following incentives:
  Reduced import duties on equipment and raw materials;
  Protective tariffs against competing imported goods;
  Low-interest loans from local banks;
  Export assistance; and Preferential treatment on government supply contracts.

- **Law for the Promotion of Direct Investment in the State of Kuwait.** The Law for the Promotion of Direct Investment in the State of Kuwait (PDISK; Law No. 116 of 2013) was published in the Kuwait Official Gazette on 16 June 2013 and took effect six months from the date of issuance (that is, in December 2013). PDISK replaced the Direct Foreign Capital Investment Law (DFCIL; Law No. 8 of 2011). Under PDISK, the Kuwait Direct Investment Promotion Authority (KDIPA) is established. The KDIPA took over from its predecessor, the Kuwait Foreign Investment Bureau. The new authority is a part of the Ministry of Commerce and Industry.

  The Executive Regulations to PDISK were issued on 14 December 2014 through Ministerial Decision No. 502 of 2014.

  PDISK adopts a negative-list approach to determine the applicability of the law. Under this approach, PDISK provides a list of business activities and sectors that are not eligible for benefits under it. All business sectors and activities not on the negative list are entitled to the benefits of PDISK. PDISK maintains the current incentives for investors including, but not limited to, the following:

  - Tax incentives for a maximum period of 10 years from the date of commencement of the licensed entity
  - Customs duty exemptions for the importation of materials and equipment if the material and equipment is held for a period of five years from the date of obtaining the incentive
  - Protection from Kuwaitization requirements
  - Allocation of land and real estate to investors

  In addition, PDISK provides that all foreign investors may take advantage of double tax treaties and other bilateral treaty benefits.

  In addition to a 100% foreign-owned Kuwaiti company, PDISK introduced two new types of investment entities, which are a licensed branch of a foreign entity and a representative office. The representative office may only prepare marketing studies and may not engage in any commercial activity.

The KDIPA issued Decision No 313 of 2016, which provides the Point Scoring Mechanism for deciding on an investment application. The decision is based on the total points gained in fulfilment of the criteria stipulated in the Law. The applications below 59% are rejected. Applications with points 60% to 69% are granted the investment license without any tax incentives. Applications with points 70% to 79% are granted investment license with either tax or customs incentive. Applications with score 80% or higher are granted the investment license with all tax and customs incentive.

The tax incentives, if granted, are not blanket incentives but are linked with actual performance of the investment entity. The incentive is calculated based on the criteria set out under Ministerial Order 16 of 2016, as amended by the Decision No 76 of 2018.

Kuwait Free Trade Zone. To encourage exporting and re-exporting, the government has established the Kuwait Free Trade Zone (KFTZ) in the vicinity of the Shuwaikh port. The KFTZ offers the following benefits:

- Up to 100% foreign ownership is allowed and encouraged.
- All corporate and personal income is exempt from tax.
- All imports into and exports from the KFTZ are exempt from tax.

Capital and profits are freely transferable outside the KFTZ and are not subject to any foreign-exchange controls.

Public Private Partnership Law. The Public Private Partnership Law (Law No. 116 of 2014), which was published in the Official Gazette on 17 August 2014, provides incentives for investors in private public partnership projects including exemptions from income tax and other taxes, customs duties and other fees.

The new law also improves corporate governance and investment security by providing protection for the intellectual property rights of a concept or idea originator. The Executive Regulations to the Public Private Partnership Law were issued on 29 March 2015.

Offset program: The MOF had issued Ministerial Order 13 of 2005 to reactivate the offset program. In 2006, the National Offset Company (NOC) was formed to manage and administer the implementation of the offset program on behalf of the Kuwait government and the MOF.

Under Decision No. 890 of the Council of Ministers, which was taken in their session No. 2014/2-30 on 7 July 2014, the offset program was officially suspended in Kuwait. The offset program has now been cancelled with respect to all tenders issued after Decision No. 890 on 7 July 2014 and all other tenders that were issued earlier but had not closed as of the date of the decision.

COMMERCIAL LAW

Several laws governing commercial activities (import-export, 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 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, BNP Paribas, Citigroup and two other Arab banks are now operating 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 a 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 (KFAS).

In general, foreign shareholding in Kuwaiti companies remains limited in number. Professional advice is strongly recommended prior to setting-up an entity in Kuwait.

JOINT VENTURE OPPORTUNITIES

The government strongly encourages joint ventures and offers a package of incentives to foreign companies to come along. Joint venture opportunities are more readily available in the construction and service sectors than in industries. Joint ventures in the oil and gas sector are often in the multi-billion-dollar range and usually involve international oil companies. Foreign partnership in joint ventures remains generally modest in Kuwait due to some long-standing 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. In 2013 the existing "Foreign Direct Investment Bureau", which was affiliated to the Ministry of Commerce, was elevated to the rank of " Public Authority for Direct Investment" and was given more autonomy to eventually operate as a one-stop shop for foreign investors.

Among the incentives offered to foreigners are a 10-year tax holiday, 100% ownership, reduced taxes on profit and favourable treatment for the entry of equipment and manpower (as detailed in section Taxes).

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 tax and 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 dependents. This bottom is subject to change and is usually not less than the equivalent of 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. Kuwait, like some other Gulf neighbours, is coming under international pressure to abolish the "sponsor" system, but there are no signs that this would happen in the near future.

The Kuwaiti sponsor, on basis of his/her business license, gets a work permit for the foreign worker from the Ministry of Social Affairs and Labour. 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 Labour Organization (ILO) urged Kuwait in 2005 to scrap the sponsorship system and offered Kuwait three alternative proposals to choose one, no decision has not been 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 instalments in parallel with stages of work done. The last 5% of the total payment is usually made against presentation of a tax clearance certificate and a performance bond (kindly refer section taxes on tax retention regulations).

When the direct customer is a public sector institution, the payment schedule is always honoured, 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.

SOURCES OF INFORMATION AND LINKS

Revised and checked by: Ernst & Young Kuwait http://www.ey.com
The Official Gazette "Kuwaitalyawm"
Kuwait Chamber of Commerce and Industry: www.kcci.org.kw
Ministry of Commerce & Industry: www.moci.gov.kw
Kuwait Direct Investment Promotion KDIPA kdipa.gov.kw
RSM Al Bazie & Co. www.rsm.global/kuwait

Date:	1st July 2018
Updated by:	Nada Haddad
Author's address:	Embassy of Switzerland in Kuwait P.O. Box 23954 Safat 13100 Kuwait Tel.: +965 – 2534 0172 ext. 18 Tel.: +41 58 – 480 0811 Email: nada.haddad@eda.admin.ch Website: www.eda.admin.ch/kuwait