Doing business in Kuwait

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Overview

Area	17,818 km^2
Population	2.74m
Language	Arabic
Currency	Kuwaiti dinar (KWD)
Weekend	Friday and Saturday
Stock Exchange	Kuwait Stock Exchange (KSE)

GOVERNMENT

Constitutional monarchy Constitutional monarchy with a unicameral parliament, the National Assembly

National Assembly – 50 members elected to serve four-year terms and 16 cabinet members appointed by the prime minister.

HEAD OF STATE

Emir H H Sheikh Nawaf Al-Ahmad Al-Jaber Al Sabah, head of state since 30 September 2020.

POLITICAL LEADER

Sheikh Sabah Al- Khalid Al–Sabah, Prime Minister since 19 November 2019.

ECONOMY HIGHLIGHTS

GDP	USD 141.7b (2018 est.)
GDP per capita	USD 33,763 (2018 est.)
Key industries	Petroleum, petrochemicals, cement, shipbuilding and repair, water desalination, food processing, construction materials
Labour force	2.7m (Non-Kuwaitis represent 60%)
Unemployment rate	2.09% (2018 est.)
Inflation rate	1.5% (2019 est.)
Exports	USD 54.08b (2017 est.)
Export commodities	Mainly oil and refined products, fertilizers
Major export partners	South Korea, China, India, Japan, US
Imports	USD 29.3b (2017 est.)
Import commodities	Food, construction material, vehicles and parts, clothing
Major import partners	China, US, Saudi Arabia, Japan, Germany

Types of Business Structure in Kuwait

How can a Foreign Company/ Individual start business in the State of Kuwait?

The Companies and establishments in the State of Kuwait is controlled and monitored by the Department of Companies of the Ministry of Commerce and Industry (MOCI). Foreign Companies or foreign individuals have the following options to start a business in the State of Kuwait:

- Through a Limited Liability Company / W.L.L Company
- Through entering in to a Joint Venture
- Through the sponsorship of a registered Kuwaiti merchant (Kuwaiti Agent).
- Through Share Holding Companies
- Through opening a Branch
- Through entering in to a Partnership agreement
- Through Foreign Direct Investment Law No. 116 of 2013.
- Through a Single Person Company

Limited Liability Company / W.L.L Company

Limited Liability Companies, usually referred to as 'With Limited Liability (W.L.L.)', are the most commonly used corporate form of entity in Kuwait. This is the easiest form to incorporate and manage, and the most common form adopted by foreign investors for doing business in Kuwait.

As per Article 191 of the Companies Law every Limited Liability Companies (W.L.L.) require a minimum of 51% of Kuwaiti shareholding unless the Company is incorporated under the provisions of FDI Law No.116 of 2013. A W.L.L. Company requires a minimum of two partners. The partners can either be individuals or legal entities but the number of members should not exceed a number of 50 members.

The actual capital costs for opening a W.L.L. Company will depend on the proposed objectives for such Company and the decision by the Ministry of Commerce and Industry (MOCI). The capital amount should be deposited with a local bank.

As per the provisions of Companies Law the W.L.L. Companies are not permitted to engage in banking, insurance or the investment of funds for the account of third parties.

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Types of Business Structure in Kuwait

➢ Joint Ventures

The Joint Venture is a Company agreed between two or more partners, who are jointly and severally liable. Its objectives, terms and conditions are usually set out in its Joint Venture agreement. This agreement shall not be subject to Registration in the commercial register. The Company Contract shall be concluded to specify the partners' rights and obligations and the manner in which the profits and losses are distributed among them as well as any other terms and conditions.

The Joint Venture Company shall have no legal personality. A legal relationship shall be established between a third party and the partner or partners with whom such third party has contracted and not with the Company.

➢ Sponsorship of a registered Kuwaiti merchant (Kuwaiti agent)

The Companies which do not wish to invest substantial capital amount may choose to work a commercial agent or a sponsor. Foreign Companies can do business in the State of Kuwait through a Kuwaiti commercial agent or a Kuwaiti service agent and is also known as the sponsor of the Company. The agents act as a representative for a Foreign Company to do business in Kuwait without participating their Kuwaiti business operations. The relationship between the Kuwaiti agent and the foreign principal must be direct. Article 2 of Law 36 provides that a commercial agencies are not enforceable unless registered in the Commercial Register.

In a contract agency, the local agent, by contract, undertakes to promote the principal's business in Kuwait on a continuous basis in the territory of Kuwait and to enter into transactions in the name of the principal in return for a sponsorship 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, etc. The term of the contract must be at least five years if the agent is required to set up showrooms, workshops, or warehouse facilities.

The key aspects of conducting business through an agent/sponsor are as follows:

- Agency or Sponsorship agreements must be registered with Ministry of Commerce and Industry, which then issues a registration certificate.
- The responsibilities of the principal and Kuwaiti agents listed in the agency agreement, may vary greatly from case to case. Accordingly, advice should be sought to determine the detailed obligations of an agent, extent of an agent's legal liability, etc.

Types of Business Structure in Kuwait

- Remuneration of the agent should be mutually agreed between the principal and the agent. Usually, it is determined and paid either as a fixed fee or as a commission.

➢ Share Holding Companies

A shareholding (joint stock) Company (KSC) must be of Kuwaiti nationality. An approval from the Ministry of Commerce and Industry must be obtained before initiating registration procedures for the KSC with foreign ownership. Shares of KSCs are freely transferable. The Capital Markets Authority (CMA) has been established in Kuwait to regulate the Kuwait Stock Exchange with respect to listing / delisting of KSCs in Kuwait.

➢ Branch

Kuwait Laws allows only GCC Companies that are fully owned by GCC nationals may register their branch in Kuwait. Foreign entities based in other countries can still set up a branch office, though, if they receive permission from the Kuwait Direct Investment Promotion Authority (KDIPA). A branch office allows a Company to operate in Kuwait without fulfilling the need of a local partner.

Apart from opening a new Limited liability Company, opening a branch of a GCC Company has the following benefits.

- Low procedural compliances
- Less time to get approval from the government
- No paid up capital is required

Types of Business Structure in Kuwait

➢ Partnership

The Companies Law provides for two types of partnerships in Kuwait:

- General partnership: The General Partnership Company is a Company established between two or more persons and that operates under a certain name. The partners of the Company are personally and jointly liable with all their assets for all obligations of the Company. Any agreement to the contrary shall be treated as null and void. Each partner in the General Partnership Company shall have the capacity of a merchant. Each partner shall be deemed carrying out merchant activities under the name of the partnership firm. The bankruptcy of the Company shall result in the bankruptcy of all its partners
- Limited partnership: Has two types of partner i.e. general partners with unlimited liability and limited partners with limited liability. Such partnerships take the form of a separate legal entity and may transact business in its own name.

➢ Foreign Direct Investment Law No. 116 of 2013.

The Foreign Direct Investment Law No. 116 of 2013 which is implemented 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 Kuwait's economic and social objectives. This Law allows the following forms of investment in Kuwait by a foreign entity:

- A Kuwaiti Company incorporated with foreign shareholding may be as high as 100% of the capital provided the MOCI issues a license.
- A branch of a Foreign Company.
- A representation office to carry out studies and surveys without engaging in a commercial activity or activity of commercial agent

Kuwait Direct Investment Promotion Authority (KDIPA) is formed to oversee the application and implementation of this law and its executive regulations. The license application is to be submitted to KDIPA and should be accompanied with the information and data required by the competent authorities and such information should be correct and legally valid.

Types of Business Structure in Kuwait

The following are the normal steps for incorporating a foreign Company/ opening a branch of foreign Company in the state of Kuwait under the provisions of Foreign Direct Investment Law No. 116 of 2013

- Submission of the project to the Authority's Investors Service Center,
- Once the project is approved, submit the application for the license
- Obtaining the commercial license
- Obtain the investment license and start business in Kuwait.

➢ Single - Person Company

A Single Person Company means, for the purposes of applying the provisions of the Companies Law, every activity where the capital is fully owned by one natural or legal person. The owner of the Company shall not be liable for the Company's obligation except to the extent of the Company's capital.

A Single Person Company can be started by a Kuwaiti and other GCC national, but he should obtain a valid residency in Kuwait and the Company shall have articles of association specifying its name, objectives, term, owner's particulars and manner of its management and liquidation as well as other provisions to be specified by the executive regulations.

Single Person Company nature is best suited for smaller form of business. If the expected size of the business is large it is advisable to register as a Limited Liability Company.

Registration Process of a Company

Process and Time for Establishment Registration Procedures

The process of incorporating a WLL Company includes the following steps and normally it takes a period of 3 months. The following steps may be different due to industry specifications.

- Register under the Department of Companies of the Ministry of Commerce and Industry (MOCI),
- Inspection of office promises by the Department,
- Reservation of name,
- Deposit of Paid up Capital,
- Inspection of the Company premises by the Municipality,
- Approval of the memorandum of association,
- Notarization of memorandum of association,
- Taking membership with KCCI (Kuwait Chambers of Commerce and Industry).

The Memorandum of Association of the Company should state the name of the Company, place of the Company's registered office, objects for which the Company is incorporated, privileges accorded to the founders and the reasons for those privileges. Assistance of recognized professionals should require for incorporating a Company in Kuwait.

Normally the time taking for registration of an establishment in the state of Kuwait is depends on the nature and objective of the proposed establishment and Company's registration process may be completed within a period of 3 to 6 months.

Registration Process of a Company

Number of Shareholders and Requirement of Share Capital

The number of Kuwaiti shareholders required for setting up a KSC / KSC(c) should be at least five, compared to two in the case of a WLL Company. The maximum number of shareholders in a WLL should not be more than fifty. It also should be noted that a husband and a wife are considered as a single member. The minimum share capital requirements to establishing a KSC, KSC(c) or WLL varies depending on the activities of the Company and are prescribed by the Ministry of Commerce. Shareholders are permitted to provide loans to the Company for additional funding. Non-Kuwaiti corporate shareholders are taxed on any interest received on such loans. There are no restrictions imposed with respect to repayment or repatriation of the loan amount by the Company.

Based on the provisions of the Companies Law the minimum capital for General Partnerships, Limited Partnerships, Single Person Companies, Limited Liability Companies and sole proprietorships is KD 1,000. The minimum capital for a Closed Shareholding Company is KD 10,000 and for a Public Shareholding Company KD 25,000. This requirement may be changed according to the objective of the proposed establishment and the decision of the MOCI.

Taxation

Taxation of Income in Kuwait

Overview

There are no personal taxes for Kuwaitis and for expats working in Kuwait and does not impose corporate income tax (CIT) on Companies wholly owned by the Kuwaitis or by the nationals of other Gulf Cooperation Council (GCC) (Ministerial decision no 3 of 1989) upon their practices of permitted economic activities in Kuwait. However, GCC Companies with foreign ownership of shares are subject to taxation to the extent of the foreign ownership. The taxable presence of a foreign entity is determined by whether it carries on a trade or business in Kuwait and not on whether it has a permanent establishment or place of business in Kuwait.

Tax is levied on the foreign Company's share of profit, adjusted for tax, irrespective of whether distributed or not, royalties and franchise, license, patent, trademark and copy right fees received by foreign Company are also taxable.

Corporate Income Tax

The Tax Decree of 1955 (Amiri Decree No 3 of 1955) as amended by Law No. 2 of 2008 and the Executive Byelaw governs taxation in Kuwait. These decrees are supplemented by Administrative orders, Executive Rules and Circulars issued by the Kuwait Tax Authority and various tax treaties with a number of foreign nations. Under the above, foreign Companies described in the decree as 'body corporate' which carry on business or trade in Kuwait are taxable. The term 'bodies corporate' refers to an association that is formed and registered under the laws of any country or state and is recognized as having a legal existence entirely separate from that of its individual members. Partnerships fall within this definition.

Foreign Companies can carry on business in Kuwait either through an agent or joint venture or as a minority shareholder in a locally registered shareholding Company. Tax is levied on the foreign Company's share of the profit plus any amounts receivable for interest, royalties, commissions, technical services, management fees etc. Beneficial interests held by such entities in a Kuwaiti Company through nominee arrangement also are taxable.

If a foreign Company has more than one activity in a similar line of business in Kuwait, either directly or indirectly through subsidiary Companies, income from all activities is to be aggregated for tax purposes. Business losses cannot be carried forward for more than 3 years.

Taxation

Tax Registration in Kuwait

Registration with the tax department is mandatory within 30 days from the date of signing the contract in the State of Kuwait or from the date of starting activities. The application for registration should be submitted along with the attachments prescribed by the Ministry of finance. The Company should submit the application for registration along with the application for tax card and application for first accounting year approval.

Tax Card

The tax cards are issued by the tax department, Ministry of Finance. In order to obtain a taxation card, the Company must file a completed and signed taxation card application form with the tax department along with certain documents.

Tax cards will be issued annually which is valid up to 31 December of each year and renewal application should be submitted to MoF for each years. Tax cards are not issued to Kuwaiti and other GCC Companies.

Tax Year

A taxpayer may follow one calendar year comprising consecutive 12 months as the taxable year. For the first and last accounting periods, it is possible to obtain approval for a period shorter or longer than 12 months up to a maximum period of 18 months.

Tax Declaration

All registered entities should submit their tax declaration within three and a half months from the end of each taxable period. The tax declaration should be submitted to the Department of Income Tax (DIT) in a specified format in Arabic language. It must be accompanied by an audit report from an auditor registered at the Ministry of Commerce and Industry and approved by the MOF.

Taxation

Tax penalties

In the event of delay in filing the tax declaration by the due dates, a delay penalty amounting to 1% of the tax due is payable for each 30 days or fraction thereof from the original due date of filing of the tax declaration until the actual date of filing of the tax declaration.

Also, failure to settle the tax due as per the tax declaration by the due dates will attract an additional penalty amounting to 1% of the tax that is due, but unpaid, for each 30 days or fraction thereof during which the failure continues.

Payment of Tax

The tax amount due and penalties if any needs to be paid and settled to MOF along with tax declaration by issuing a certified cheque to the name ' Ministry of Finance' through a Kuwaiti Local Bank or may transfer the amount in to MOF bank account.

The Company can settle the tax amount in four equal installments, which shall be due on 15th day of Fourth month (along with the tax declaration), sixth, ninth, twelfth months following the end of the taxable period.

Tax Inspection and Tax Assessment

After the filing of the tax declaration, the DIT will appoint the Inspector to carry out an inspection of the corporate body's accounting books and records to verify the income and expenses reported in the tax declaration to the supporting documents. The inspector will fix a schedule for the verification of books of accounts and he will prepare the notes based on his assessment. Based on the findings from the tax inspection, adjustments are normally made to taxable profit, e.g. if expenses are not supported with documentary evidences will be disallowed at the time of the tax inspection.

Objections and Appeals

If the taxpayer disagrees with the assessment order issued by the Department, an objection against the tax assessment order may be filed within 60 days from the date of issuance of the tax assessment order. The DIT is required to resolve the objection within 90 days from the date of filing the objection. A revised tax assessment order will be issued by the DIT following statement of the objection filed by the taxpayer. Tax payable per the revised assessment entails settlement within 30 days of its issuance. No formal response from the DIT beyond 90 days in respect of the objection denotes an implied rejection of the objection.

Taxation

The taxpayer has the right to appeal against the revised tax assessment or rejection of objection to the Tax Appeal Committee (TAC). The appeal should be filed with the TAC within 30 days of issuance of the revised assessment (or 30 days from the expiry of 90 days following the submission of an objection, if a revised assessment is not issued) and if the tax payer is failed to submit the appeal statements within the specified period above the tax assessment shall be considered as final and the tax due as per the assessment must be settled.

Withholding Tax and Retention

There is no WHT in Kuwait, but retention of 5% from payments till submission of Retention Release Certificate. All government bodies and private entities are required to retain 5% from each payment made to a contractor or supplier until presentation of a Retention Release Certificate (No Objection Certificate) from the Ministry of Finance (MOF) confirming that the respective Company has settled all of its tax liabilities.

The contractor is responsible for the tax due on the subcontractor if the contractor does not comply with the regulations. Regulations state that where tax payers have not complied with tax retention regulations, the entire related costs may be disallowed. Recent cases have shown a very aggressive attitude of the tax authorities in this respect where KTA has disallowed the full subcontract for non-compliance.

Retention Release Certificate

Retention Release Certificate will be issued to Companies; which 100% shares are held by Kuwaiti and other GCC nationals by making an application to MOF.

Normally NOC will be issued within 30 days from the submission of the application.

Taxation

Other Taxes and Duties in Kuwait

Zakat

According to Law no 46 of 2006, Zakat is payable by both KSC and KSCC entities at the rate of 1% of the net profit of the Company, arrived at after reducing the share of profit, representing non-GCC foreign corporate ownership. GCC entities are treated equally with Kuwaiti entities and accordingly GCC entities are required to pay Zakat in the same manner as Kuwaiti entities.

Kuwait entities that the Kuwait / GCC government partially owns are liable to pay Zakat on the entire income, including the share of profit attributable to the Kuwait government shareholding. Entities that are wholly and directly owned by Kuwait / GCC government are not subject to Zakat and exempted.

Zakat law is applicable only for Kuwaiti closed and listed Shareholding Companies excluding Governmental and Foreign entities and required to submit their return by 15th of the fourth month from the end of the fiscal year.

National Labour Support Tax (NLST)

According to Law no 19 of 2000, all public Kuwaiti shareholding Companies listed on the Kuwait Stock Exchange are liable to pay 2.5% of their annual net profit as NLST, excluding the share of profit attributable to a foreign corporate body and after certain allowable deductions.

Audited NLST declaration must be filed with Ministry of Finance on or before fifteenth of the fourth month following the end of fiscal year and settle NLST due as per declaration.

Contributions to Kuwait Foundation for Advancement of Sciences (KFAS)

The Kuwait Foundation for the Advancement of Sciences (KFAS), a private non-profit organization, continues to harness science, technology and innovation in Kuwait, as well as to promote modernization, a better quality of life and a sustainable future for the Kuwaiti people.

KFAS operations are funded by contributions from the shareholding Companies of Kuwait as part of their corporate social responsibility. The contributions currently amount to one percent (1%) of their annual net profit.

Taxation

Import Duty

Kuwait officially approved the Single Customs Tariff on April 1, 2003, thereby setting a 5% import duty (CIF) on most goods. Exempt from the Single Customs Tariff are certain basic foodstuffs and medicines or medical items, which are duty free. Kuwait allows entry of other GCC goods meeting the rule of origin criteria is duty free. To receive preferential duty status, 40% or more of the value added of each product must originate in a GCC member country, with 51% of the producing firm's capital owned by citizens of a GCC country.

VAT

Kuwait currently doesn't have VAT or similar indirect taxes. However, similar to other GCC countries, Kuwait is studying the potential implementation of VAT in Kuwait as part of a GCC wide project.

Our Range of Services

Auditing and assurance

- Audit of financial statements as per International Standards on Auditing (ISA) to express our opinion whether these financial statements are prepared accordance with International Financial Reporting Standards (IFRS)
- Due Diligence Reviews
- Forensic and Other Investigations
- Agreed-upon Procedures Reporting

Audit-related services

- Internal Audit & Risk Consulting
- Internal Control Reviews (ICR) and Quality Assurance Review (QAR) - compliance with the requirements of the Central Bank of Kuwait (CBK) and Capital Markets Authority (CMA)
- FATCA & CRS Compliance Reviews
- Anti-money Laundering and Terrorist Financing Regulatory Reviews

Business Advisory

- Feasibility Studies
- Impairment reviews
- Purchase Price Allocation (PPA)
- Fairness Opinion
- Financial Advisory Assistance
- Transaction support
- Accounting & Procedures Manual
- Business Plans & Financial Models
- Corporate Governance Consulting

Valuation

- Valuation of assets and liabilities within the framework of developing financial statements in accordance with IFRS
- Valuation of Companies of various types, both equity stakes and other securities
- Valuation of intellectual property (brands, know-how, innovations, licenses, client bases)
- Expert examination of financial projects and calculations, reviews of valuation reports
- Inventory Taking and Valuation

Tax and accounting services

- Tax Planning
- Income Tax, Zakat and NLST compliance assistance
- Accounting and tax consulting
- Representing interests before the tax authorities in tax disputes
- Tax Clearance Certificates & Retention Release

Business Solutions

- Company Formation
- Corporate Secretarial Services
- Business Restructuring Services
- Supply Chain Audits
- Client representation in arbitration courts and Experts Department
- Identifying companies for acquisition and assistance in acquisition

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