

Development of Kuwait law

Arriving to Kuwait in 1994, I found the Kuwait legal system very archaic as we only really had three major laws: the Civil Code; the Commercial Law; and the old Companies Law. While providing advice was easy in the sense that we did not have a lot of legal authority to refer to, it clearly left substantial gaps in our ability to give clear and concise answers to various legal queries. The paucity of these laws were insufficient for the requirements of modern commerce and did not provide comfort for investors, whether foreign or local.

Fast forward to 2020 and the Kuwait legal landscape has gone through meteoric type changes. We have seen the rise of regulatory authorities where laws have been issued by Amiri decree or by parliament, which in turn established regulatory bodies that issued detailed executive regulations. The majority of the new legislation and the creation of these authorities to regulate the relevant laws have largely occurred in the decade between 2010 and 2020.

On the corporate side, our old companies law was antiquated and unable to deal with today's corporate vehicles. In 2012, and later amended in 2016, we witnessed the establishment of our new Companies Law. Instead of creating a separate authority, however, the Ministry of Commerce & Industry ('MOCI') issued the executive regulations and continues to regulate all corporate bodies in Kuwait. The new Companies Law has worked hand in hand with two other major corporate pieces of legalisation, the Capital Markets Authority ('CMA') Law, which was issued in 2010 and Kuwait Direct Investment Promotion Authority Law ('KDIPA'), which was issued in 2013. With the establishment of the CMA, we now had a regulatory body to supervise the promotion and sale of securities as well as licensing the various corporate bodies that were involved in the securities industry. In addition, given that Kuwait, like many of the GCC jurisdictions, has 51- 49 per cent foreign ownership restrictions, the establishment of KDIPA, which provides licenses to foreign companies to be 100 per cent foreign owned, has given us the ability to bring in multi- national entities without the need for a local partner. A third major piece of legislation that is not corporate per se, but affects all mergers and acquisitions, was the Competition Protection Law, originally issued in 2007, but amended in 2012. With the establishment of Competition Protection Authority (the 'CPA'), we now had an ability to review and seek guidance from the CPA on any acquisitions that would affect competition in Kuwait.

On the project side, starting in 2008, but later completely amended in 2014, we saw the creation of the Public Private Partnership ('PPP') law and its regulatory body, the Kuwait Authority for Partnership Projects ('KAPP').

KAPP, which is responsible for our mega- projects, administers all PPP projects on behalf of all the relevant Kuwait ministries. New PPPs remain a top priority for the state, with the KAPP announcing several large-scale projects in different sectors, such as water generation, desalination and energy. Having represented major parties on various sides of PPP projects, including the government, sponsors, consortia and project finance lenders, we have had some slight challenges in the past; however, significant progress of PPP projects seems to be afoot. With respect to government bids conducted on the standard engineering, construction and procurement basis, Kuwait issued the Public Tenders Law in 2016, which also created the Central Agency for Public Tenders ('CAPT'). This new regulatory body regulates and administers all non- PPP projects.

Two industries that are traditionally heavily regulated in most jurisdictions, telecoms on the one hand and insurance on the other, have also been regulated in the State of Kuwait in the past few years. The Communications and Information Technology Regulatory Authority ('CITRA') was established in 2014 and is responsible for overseeing the telecommunications sector, monitoring and protecting the interests of users and service providers and regulating the services of telecommunications networks in Kuwait. On the

insurance side, after a long delay, the new Insurance Regulation Law was issued in 2019 with the objective of establishing the Insurance Regulation Unit ('IRU') to regulate all types of insurance policies and insurance agencies.

Other notable laws and regulatory bodies established in the past decade include the Anti-Corruption Authority ('ACA') known locally as NAZAHA, which was established by law in 2016. NAZAHA was set up in response to the requirements of the United Nations Convention against Corruption ('UNCAC') which, in Article 6, stipulates that "each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption."

The Consumer Protection Law which was established in 2014 creating the National Committee for Consumer Protection ('NCCP') to protect the interests of the Kuwait consumers and the Private Sector Labour Law of 2010 and the law establishing the Public Authority for Manpower ('PAM'), which was created to protect labourers employed in the State of Kuwait are also noteworthy.

The final big piece of legislation for this decade has just recently been issued,: the new Bankruptcy and Insolvency Law ('B&IL'), which is subject to its own article in this month's Law Update. We have waited years for bankruptcy reform as the current legal regime contained within the Commercial Law simply did not work. In addition to liquidation, we now have the ability to have preventive settlement and financial restructuring. More importantly,

the B&IL will create specialised bankruptcy courts to oversee these types of cases. Two important agencies will also be created to streamline these cases. First, a Bankruptcy Commission will be established under the MOCI for certain companies, namely those regulated by the CMA, the Central Bank of Kuwait and State-owned entities. The Kuwait Judiciary will also establish a Bankruptcy Department for purposes of supervision of the insolvency proceedings. This past decade has seen incredible growth in the development of Kuwait's legal system giving certainty to both local and foreign companies as they transact business within the state. The establishment of these authority bodies and the issuance of regulations strengthens business as it has: (i) enabled us to provide more certainty to clients with respect to their operations in Kuwait; (ii) with respect to new technologies, helps to create a market in Kuwait; and (iii) provided protection to the individual whether he or she is purchasing securities, consumer goods and/or his or her employment issues. We owe a debt of gratitude to the late Emir Sabah Al- Ahmad Al-Sabah, who oversaw this wonderful development of the Kuwait legal system. We are sure that these developments will pay dividends for future generations of Kuwait citizens and the country as a whole.

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