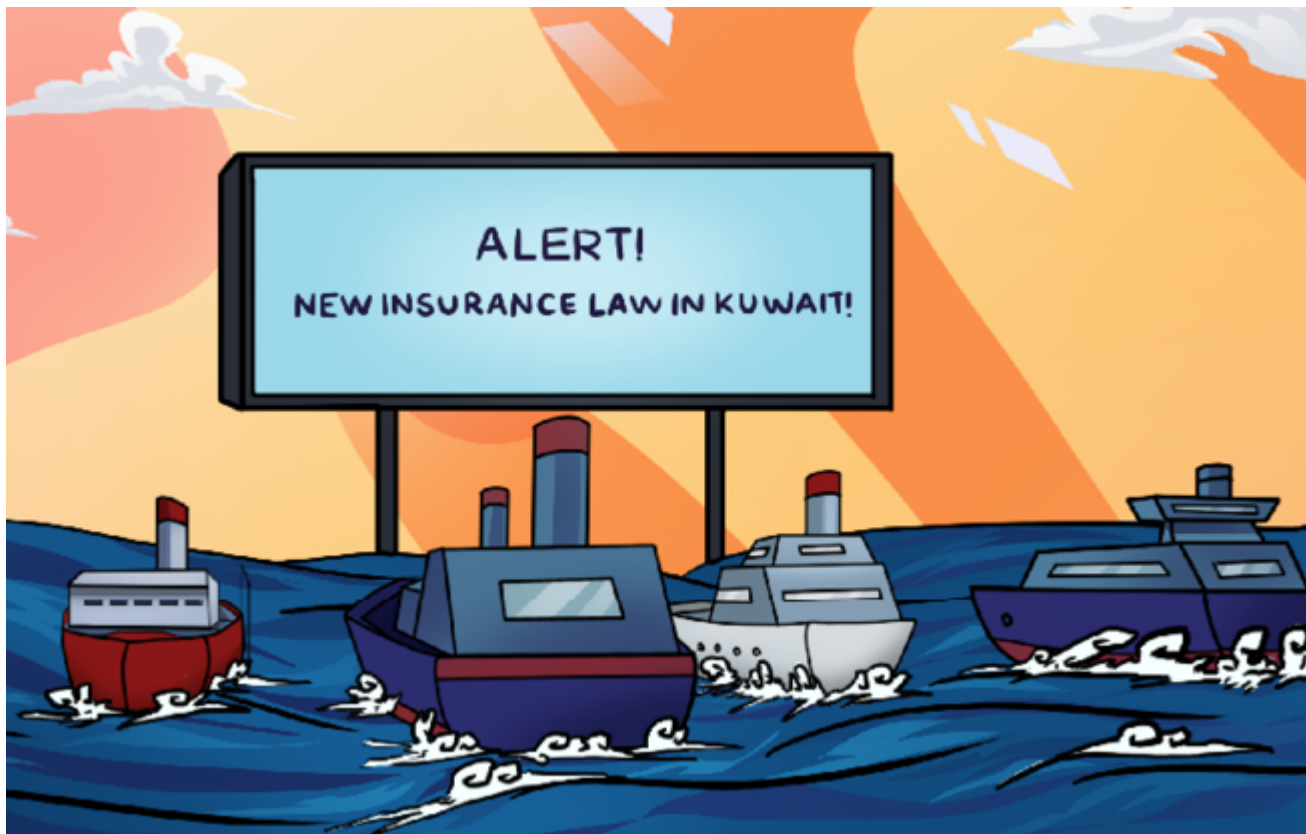


# The impact of the Reg. of New Insurance law in Kuwait

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The old insurance law of Kuwait was issued in 1961, although, it was considered as an old law due to the development of insurance industry in previous years, however it remained valid until 2019. Therefore, there was an urgent need for a completely new law to be issued to keep pace with this development in the insurance market.

Likewise the neighbouring countries, only updated some articles of their current insurance law from years ago until it came in line with the modern requirements without the need to issue a new law. As such, the author did not see the need or expect the issuance of a new insurance law in these countries, instead it is possible to keep developing some of their articles of their current laws. Such as Oman who improved the efficiency of the insurance sector to improve the quality of the insurance services and products offered to consumers by underwriting new risks, the Capital Market Authority ("**CMA**") in Oman has made some essential amendments to their current insurance law through the issuance of Sultani Decree number 39/2014 in relation to the legal form and the share capital requirement of companies that conduct insurance business in Oman. Another example is Qatar, where Qatar Central Bank has introduced a raft of new regulations that effectively overhauled the regulatory requirements for Qatar's insurance industry as well.

While in Kuwait, there was a need to introduce a complete and full new insurance law, and as we have discussed in our previous article that the Kuwait legislation has actually introduced this new Insurance Regulation Law No. 125 of 2019 (the "**New Insurance Law**") which repealed the old law No. 24 of 1961 and any other provision which is in contradiction to the provisions set in the New Insurance Law and its Executive Regulation.

All persons working in the insurance market have been waiting for several years for this new law to be tabled. From the time it was tabled in September 2019, it faced several challenges for it to enter into force; including the resignation of the government of Kuwait, the problems of appointing the members of the Insurance Unit, the lockdown imposed to curb the spread of the coronavirus, which led to a delay in the issuance of the Executive Regulations of the New Insurance Law ("**Executive Regulation** or **Reg.**"), to define and clarify certain procedures and requirements found in the New Insurance Law, and this led also to instability in the insurance market that lasted for about a year and a half, until the executive regulations were issued recently in March 2021.

Now the New Insurance Law is in force, along with its executive regulation which supposed to the restoration of stability in the insurance market in Kuwait.

Per the New Insurance Law beside the Executive Regulation, the Insurance Department has been abolished and in its place is a new insurance regulator known as the Insurance Regulatory Unit (the "**IRU**"). The IRU is an independent unit with a board consisting of a chairman, a deputy head and three part-time members appointed by a resolution of the Minister of Commerce and Industry (the "**MOCI**") for a once-renewable period of four years, and a representative from the Central Bank of Kuwait and a representative from the MOCI. The IRU board's goals are to develop the IRU for the benefit of insurance companies and policyholders, by organising, regulating, controlling and developing the insurance business in a fair, transparent and competitive manner and developing its instruments in line with international best practices and providing protection for those involved in insurance activity/business and applying policies that achieve justice, ensure fairness and transparency and prevent conflicts of interests and work to ensure the achievement and compliance with laws and regulations related to insurance activities in addition to educating the public about insurance activities, benefits, risks and the obligations associated thereto and encourage its development thereof.

Although the IRU operates under the direct supervision of the MOCI, it is financially and administratively independent, having an independent budget and an independent legal department. The IRU also has a special committee for complaints and grievances. This avails an insured the opportunity to ensure that the law is rightly applied in their circumstances.

The New Insurance Law also reduced the burden of insurance companies and policyholders. Insurance companies may now renew their licence every three years instead of annually. In addition, the New Insurance Law has given the policyholders the ability and the right to exercise a lien over the insurer's property and the funds retained from the allocations in favour of policyholders in order to facilitate the execution of the judgments issued in their favour against the insurance companies.

While, the Reg. is consisting of 340 articles which mainly covers the procedures and requirements found in the New Insurance Law in respect of insurance bodies to operate in Kuwait. However, the author believes that it is difficult to apply some requirements in practice, such as the requirement that a foreign insurance company requesting the opening of a branch in Kuwait provide advanced new products and services that the existing insurance companies do not provide, as it is an objective standard that may convince one person but not the other, which will open the way for many disputes that may arise in the future, just because the authorised person is not convinced of a product or service and whether this service is advanced or not

The New Insurance Law and its Reg. introduced some significant changes in its regulation, such changes effected the reinsurance activities, the establishment of branches of foreign insurance companies, the registration of the insurance professionals, along with their required obligations such as their Financial Obligations, Solvency Margin, Statements of the Company's Financial Position, Obligations Applicable to Life Insurance and Fund Accumulation Activities and Investment Policy. In addition to some other significant changes in transfer of policies, merges, acquisitions, in addition to other significant changes in establish and operate the Takaful Insurance, we will discuss below some of these significant changes as follows:

From the financial perspective, article 18 implemented some changes in the time of payment of the supervisory and control fees, previously it was paid annually. But now, the fees shall be paid to the Unit, on a quarterly basis, within a maximum period of (10) ten days from the expiry of the period and the insurance company that delays the payment of the fees, within the time limits, shall pay a fine of 0.25% (one quarter of one percent) out of the total amount payable to the Unit for each day of delay”.

As for the changes effected the reinsurance activities, the New Insurance Law prohibited to contract, in any form whatsoever, for any insurance and reinsurance activities and the Insurance Professions mentioned in the Law and the present Regulations except through licensed persons enrolled on the Unit’s roster according to their activities, subject of the contract, except for all types of reinsurance activities, as per the list approved by the Unit; and cases that require special technical expertise involving the engagement of unlisted experts for specific period, after obtaining the Unit’s consent.

As for the establishment of branches of foreign insurance companies, the New Insurance Law introduced more requirements to establish a branch for foreign insurance company such as the companies **must** provide advanced insurance products and services that the existing insurance companies do not provide, or existing coverage needed by the insurance market in Kuwait; the companies **must** engage in insurance and non-traditional insurance activities in the head-office country, as a basic activity in addition to other insurance activities; the company **must** be rated and classified by one of the international agencies of insurance company rating, that are listed in the Unit’s decision that identifies the rating required, In addition the documents which required to be submitted to take the approval.

Also the New Insurance Law placed more requirements to register an insurance professional (i.e. Loss Adjusters, Insurance Brokers and Insurance Consultants, Actuaries, Insurance Claims Managers, Insurance Agents) whereby these insurance professionals must be registered in IRU records, some required to be Kuwaitis and/or GCC national and others accepted to be foreigner holding a valid residency in Kuwait with some sorts of years of experience in such filed, this new requirements to register an insurance professional will be discussed separately in a followed articles.

Moreover, the New Insurance Law also heightened some penalties imposed on insurance companies and those who violate the law, which may include imprisonment and fines.

Whereas, The Reg. stated that the activity licenses issued by the IRU to entities governed by the provisions of Article (2) of Law No. (125) of 2019 concerning the Regulation of Insurance, and its Executive Regulations which have valid licence shall remain effective, but to expire on 31 of March 2022. Therefore, the current licensed insurance companies will remain active and can run their business until 31 of March 2022, but on other hand, it **must** be noted that there is a one-year grace period to comply with the New Insurance Law from the date that the Executive Regulations are published (i.e. 21<sup>st</sup> of March 2021). Accordingly, all insurance and reinsurance companies will have one year from the date of issuance of the Executive Regulations to make the necessary adjustments to be compliance with the New Insurance law and its Reg.

Finally, it is recommended to all the insurance, reinsurance companies, foreign branches and insurance professionals to read the law along with its Reg. very carefully and start from now to adjust their position as soon as possible because of the time expected to be taken to reconcile each status and legal position in accordance with the requirements of the New Law and its Executive Regulations, otherwise the company will be subject for penalties that lead to suspension or cancellation of its license in addition to some other legal violations, which lead to some penalties of which may include imprisonment and fine.

We will remain available if any assist is required to comply with the New Insurance Law along with its Executive Regulation.