Entering the healthcare sector in Kuwait

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The most notable are in the areas of foreign direct investment in Kuwait and the reduction of minimum capital requirements for companies based on their respective legal forms. The forward-looking and strategic changes in the newly enacted legislation complement His Highness the Amir of Kuwait, Sheikh Sabah Al Ahmad's Vision 2035. The Vision aims at transforming Kuwait into a financial and economic hub both in the region and globally. Not only will the new policies contribute in diversifying and invigorating the economy in Kuwait, but the overall human development as well. This is particularly important when it comes to access to a well-functioning healthcare system. This article will examine the structuring mechanisms and then the compliance/regulatory requirements for entering the healthcare sector in Kuwait.

Structuring

In order to conduct business on-shore, Law No. 68 of 1980 of Kuwait (the "Commercial Law") stipulates that a foreign entity must either appoint a Kuwaiti agent or participate in the ownership of a separate Kuwaiti legal entity. Pursuant to Law No. 25 of 2012 (the "Companies Law") a legal entity may be in the form of a joint stock or shareholding company, a with limited liability company, a holding company or a sole proprietorship. Further Article 23 of the Commercial Law stipulates that a Kuwaiti entity must be established together with Kuwaiti partners who are required to own at least 51% percent of the capital of certain entities.

In an effort to promote establishing an entity in Kuwait, Ministerial Decision No. 234 of 2015 was instituted to reduce the minimum capital requirements to KD 1,000, subject to certain exceptions, for companies that fall in the category of general partnerships, limited partnerships, companies limited by shares, sole person companies and companies with limited liabilities; whereas the minimum capital for closed shareholding companies was reduced to KD 10,000; and for public shareholding companies to KD 25,000.

FDI

In 2001 Kuwait passed the Foreign Direct Investment Law No. 8 of 2001 (the "FDI Law") to encourage and secure direct foreign investment into the Kuwait market. The FDI Law was established as part of the Vision which seeks to transform Kuwait into a financial and commercial regional hub by diversifying the economy, reducing its dependence upon the oil industry and inviting the private sector to drive economic activities.

The FDI Law created an exception to the Commercial Law by allowing foreigners to own up to 100% of its equity capital in a commercial entity in Kuwait where the entity operates in select industrial sectors such as infrastructure, insurance, hospitals, housing, tourism and entertainment.

Under the FDI Law, foreign investors are incentivized to invest in Kuwait, including property incentives in the form of a land grant and a tax holiday for up to 10 years. These incentives are linked to the proportion of Kuwaiti nationals that are employed.

In line with the recent modernization of legislation in Kuwait, the Kuwait Foreign Investment Bureau ("KFIB") and government officials sought to revise the FDI Law after discussing the various concerns with investors. Due to the critical need for change, the FDI Law was repealed and replaced by Foreign Direct

Investment Law No. 116 of 2013 (the "New FDI Law") in June 2013. The intent of the New FDI Law is to address flaws in the repealed FDI Law, encourage more direct investment in Kuwait and make it much easier for investors to obtain a licence.

As a starting point, the KFIB is replaced with the Kuwait Direct Investment Promotion Authority ("KDIPA"), which is essentially created with the same mandate as the KFIB. KDIPA will assume all assets and liabilities attributed to KFIB, which will be subsequently dissolved.

It should be noted that the New FDI Law is accompanied by executive regulations (the "Regulations") which were introduced in December 2014. The New FDI Law became effective upon the issuance of the Regulations. The Regulations shed light on and provide further detail as to the implementation of the New FDI Law. To that end, there are a several improvements, which can already be seen in the New FDI Law.

Compliance/Regulatory Requirements

In addition to the entity establishment rules under the relevant laws already referenced, and based on the Ministry of Commerce and Industry ("MOCI") guidelines, the objectives of a company may require special licensing and regulatory approvals from the relevant ministries. Specifically, for healthcare services a licence is required from the Ministry of Health (the "MOH"). Further, unless authorized by the MOCI, the MOCI does not allow for the combining of certain activities, even if the activities were stated in the companies memorandum of association. For example the sale and storage of medical equipment cannot be combined with certain specialized medical services. Notwithstanding the above, the practice of the MOH may change and certain exceptions may apply on a case by case basis. To that end, the MOH sets out specific guidelines which generally include submitting the relevant application to the MOH Medical Licence Department, obtaining approval from the Kuwait Municipality, Kuwait Fire Service Directorate Environment Public Authority, the Ministry of Interior, and final inspections from the MOH.

An important aspect to consider once all licensing and regulatory approvals are obtained, is employing manpower. The Law of Labour in the Private Sector No. 6 of 2010 (the "Labour Law") stipulates that the Ministry of Social Affairs and Labour ("MOSAL") shall be informed by the company regarding its need for manpower and MOSAL shall issue the relevant work permits for foreign manpower accordingly. For Kuwaiti nationals a work permit is not required. Kuwaiti nationals are encouraged to work in the private sector by receiving certain allowances and companies in each sector are required to hire a certain percentage of Kuwaiti nationals.

By way of example, consider the position of a local clinic in Kuwait which participates in a three month exchange program with foreign clinicians. The local clinic trains and certifies the participating residents in Kuwait in exchange for their knowledge and skill from their home countries. In order to implement this program, however, work permits and residence visas must be obtained for the foreign clinicians. Pursuant to the Labour Law, the local clinic would act as the sponsor for these foreign clinicians in order to provide them with the necessary work permits and residence visas from MOSAL in order for them to legally work in Kuwait.

Conclusion

The population of the State of Kuwait is just under 3.5 million, with expatriates making up over half of the population. In line with Vision 2035, healthcare is regarded as a compelling factor in the performance of the country. The new policies and laws described above have created greater opportunities for healthcare professionals, service planners, decision makers and medical researchers to enter the health care sector in Kuwait.