

Kuwait: Adapting to Change

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As the Kuwaiti economy continues to modernise, there has been a growing acknowledgment that the legal system must expand, as well as become more sophisticated, to handle the requirements of modern businesses. Seizing the aspirations of the Vision, the government has passed a series of laws governing a range of sectors, including laws relating to the protection of competition, taxation, foreign investment, public-private partnerships (PPP's), anti-money laundering, regulation of companies, and protection of labour and capital markets.

Shaping Policies in Light of the Vision

In 2007, Kuwait passed the Competition Law which aims to ensure fair competition in Kuwait and affects a wide variety of areas, from mergers and acquisitions to the fixing of prices for goods. As with so many other laws passed in recent years, the Competition Law also creates an authority for greater oversight of the protection of competition in Kuwait.

Since the global financial crisis of 2007-08, Kuwait has continued to strengthen its commercial, legal and regulatory framework. As a direct response to the crisis, Kuwait passed the Financial Stability Law of 2009 and established the Capital Markets Authority (CMA) in 2010. The CMA was established pursuant to the CMA Law in 2010, and is currently the authority responsible for regulating the marketing, offer and sale of securities activities in Kuwait. The CMA law provides a much stronger regulatory framework for securities activities in Kuwait than under the former legal regime that had existed before it. The CMA has also played a crucial role by issuing guidance under the law from time to time.

Moreover, Kuwait has made great strides in the area of public-private partnerships (PPP's) with the passage of an initial PPP law in 2008 and its subsequent amendment in 2014. The passage of these laws has facilitated and will continue to facilitate PPP projects throughout Kuwait. Al Tamimi led the local financing of the first PPP project in Kuwait, the Al Zour North Independent Water and Power Project. The amended PPP law has also established the Kuwait Authority for Partnership Projects, to be the chief regulatory body for PPP projects in Kuwait.

Other efforts have included a modernisation of Kuwait's corporate income taxations scheme through the passage of Law No. 8 of 2008, and the laws governing companies with the passage of the New Companies Law in 2012 and recently amended under Law No. 1 of 2016. This law is more comprehensive than the previous companies law and provides for more types of companies that can be established in Kuwait. The country has also acknowledged and met international demands for fighting against money laundering and terrorist financing by passing Law No. 106 of 2013 Regarding Combating Money Laundering and Terrorist Financing.

One of the most exciting pieces of legislation concerns foreign investment – Law No. 116 of 2013 regarding the Promotion of Direct Investment in the State of Kuwait, known as the “Direct Investment Law”. Pursuant to the Direct Investment Law, which also established an authority for direct investment in Kuwait, foreign companies may be issued investment licenses through which they will have full ownership over a Kuwaiti company.

The net effect of establishing these new regulatory bodies is manifold. As with all regulatory bodies, the investment authority is justified by the complexity of certain regulatory and supervisory tasks requiring

expertise, the need for rapid implementation of public guidance in certain sectors and the drawbacks of political interference.

Conclusion

In Kuwait there is a great hope that the country will continue to strengthen its commercial legal framework and realise its full potential in the global economy. While there is still much more to do, such as ensuring the implementation of laws, developing expertise in Kuwait's court systems and ensuring professionalism in government ministries, Kuwait has made great strides in the development of its commercial legal system and such progress will continue to take place over the years ahead.