

Law No. 8/2001
Regulating Direct Foreign Capital Investment
In the State of Kuwait

Having reviewed :

- The Constitution,
- Decree No. 3/1955, concerning Kuwait Income Tax, and the Laws amending thereto,
- Kuwait Chamber of Commerce Law issued in 1959,
- Law No. 15/1960 issuing the Commercial Companies Act and the laws amending thereto,
- Law No. 16/1960 promulgating the Penal Code and the laws amending thereto,
- Law No. 4/1962 concerning Patents, Industrial Drawings and mock-ups as amended by law No. 3/2001,
- Law No. 33/1964 on Expropriation and Temporary Possession for Public Interest,
- Law No. 36/1964 Regulating Commercial Agencies and laws amending thereto,
- Law No. 32/1968 concerning Currency, Central Bank of Kuwait and Regulating of the Banking Profession and laws amending thereto,
- Law No. 32/1969 Regulating Commercial Enterprises Licensing and laws amending thereto,
- Law Decree No. 68/1980 promulgating the Commercial Law and laws amending thereto
- Law No. 58/1982 ratifying the GCC Unified Economic Agreement,
- Law No. 56/1996 promulgating the Industry Act,
- Law No. 19/2000 on the support of National Labor and Encouraging their employment in Non-Governmental Sector.
- The National Assembly approved the law of the following provisions, and we have sanctioned and promulgated it.

Definitions

(Article 1)

The following terms shall have the meanings assigned against each :

Minister:

Minister of Commerce and Industry

Invested Foreign Capital:

- 1) Foreign money, securities and commercial papers transferred to Kuwait.
- 2) Machinery, equipment, transportation means, raw materials and commodities imported from abroad for investment purposes.

- 3) In Corporeal moral rights such as patents, trade marks, licenses and registered trade names, engineering and technical designs.
- 4) Profits and earnings of the invested foreign capital if increased to foreign capital or employed in new investment projects.

Foreign Investor:

- A natural or moral person who holds a nationality other than Kuwaiti

Foreign Investment:

- Investment of foreign capital in an activity licensed in accordance with the provisions hereof.

Enterprise:

- Any economic activity or project subject to the provisions of this law.

Investment Committee:

- The Foreign Capital Investment Committee established under the provisions of Article (5) hereof.

Chapter One

On Foreign Capital Investment

(Article 2)

Without prejudice to the provisions of Article (3) hereof, the Council of Ministers shall determine the economic activities and projects that the foreign investor is allowed to undertake within the State of Kuwait whether independently or in participation with the National capital in conformity with the State's general policy and approved economic development plans.

(Article 3)

A license is issued to the Foreign investor for undertaking any economic activity or project vide an order by the Minister pursuant to the Investment Committee's recommendation, and following the approval of the competent authorities.

License application must be decided within a maximum period of eight months from the date of submission. In case of rejection, the decision must be justified in writing.

Provisions of Clause 1 of Article 23 and Provisions of Article 24 of Law Decree No. 68/1980 referred to hereinabove shall not apply to such license.

Any commitment to invest one of natural resources or public utilities shall be made only pursuant to a law and shall be for a limited period. Preliminary procedures shall guarantee the facilitation of searches, inspection, detection and the achievement of openness and competition.

Such agreements, contracts or obligations granted prior to the promulgation of the Constitution or this Law may only be renewed or amended pursuant to law.

(Article 4)

In exclusion of the provisions of Article 68 of Law No. 15 of 1960 referred to a license may be given by order of the Minister upon the recommendation of Investment Committee to incorporate Kuwaiti companies where the share of foreigners therein shall be 100% of their capital in accordance with the conditions and circumstances placed by the Council of Ministers.

Chapter Two

The Foreign Capital Investment Committee

(Article 5)

A Committee called the Foreign Capital Investment Committee shall be formed under the Chairmanship of the Minister, the formation of which shall be promulgated pursuant to an order by the Council of Ministers. Committee members shall include experts representing the private sector as well as representatives of Kuwait Chamber of Commerce and Industry.

The head of the Foreign Capital Investment Office indicated in Article 7 hereof, shall act as General Secretary of the Committee.

The Committee's business shall be regulated pursuant to an order to be issued by the Minister, while the remuneration of its members shall be determined vide the order of Council of Ministers.

(Article 6)

The Investment Committee shall be engaged in the following :-

1. Study applications for Investment and submit recommendations thereof.
2. Promote for investment opportunities available in the country and take the initiative to solicit foreign investments.

3. Grant privileges to encourage the foreign investor and Kuwaiti private sector to make investments in accordance with Article (13) hereof in coordination with the competent authorities with special emphasis on encouraging the Kuwaiti private sector.
4. Facilitate the enterprise's license and registration procedures and eliminate obstacles that may encounter its erection.
5. Impose a method for monitoring, follow-up and assessing the performance of foreign investments in the country, with a view to identify any hurdles facing such investments and to surmount the same.
6. Investigate the complaints raised by foreign investors and other concerned parties as a result of implementing the provisions of this law, and submit its reports thereon to competent authorities.
7. Impose the penalties stipulated in Article (15) hereof.
8. Prepare draft regulations required for the implementation of the stipulations of this law.
9. Consider matters referred to it by the Minister in respect to the implementation of the provisions hereof.
10. Prepare periodic statistical reports on foreign investment activities as well as an annual report on licensed investment projects together with indicating obstacles facing the entry of foreign investments into the country and ways to remedy the same. Such report shall be submitted to the Council of Ministers within a period not exceeding the end of March of every year.

(Article 7)

An office called Foreign Investment Capital Office – (FICO) shall be set up to act as the executive staff of the Foreign Capital Investment Committee, to be formed pursuant to an order issued by the Minister which order shall also specify the working rules thereof. The head of this office shall be appointed vide a Decree to be issued pursuant to the Minister's nomination.

The (FICO) shall receive license applications, complete the same in conjunction with concerned authorities, conduct the required studies and submit suggestions thereon, to be placed before the Investment Committee for deciding thereon within a grace period not exceeding four months from the application date. Such period may be extended to a similar period vide an order of the Minister to be justified in writing.

The (FICO) shall act on all matters related to foreign capital investment, particularly :

1. Inform international markets about the enterprises placed for investment and highlight the benefits enjoyed by the foreign capital investment in the country.
2. Provide all necessary information, clarifications and statistics requested by foreign investors.
3. Follow up execution of licensed enterprises and eliminate the obstacles and difficulties which may confront such enterprises.
4. Coordinate with the concerned authorities in order to facilitate the foreign investor's entry and residence in the country as well as foreign dealers having business connections with him.

Chapter Three

Secured Guarantees for Foreign Investment

(Article 8)

Foreign enterprises licensed under the provisions of this law may not be confiscated or nationalized.

Expropriation may only be made for public interest in accordance with the laws applicable and against a compensation equivalent to the enterprise's real economic value at the time of expropriation. Such value shall be assessed according to the economic situation prior to any threat of expropriation. Further the due compensation shall be paid without delay.

(Article 9)

Without prejudice to the provisions of Article (3) hereof, this law shall apply to existing investments belonging to a foreign capital in conformity with the stipulations of this law, provided that the privileges, exemptions and guarantees accorded to such investments under the provisions hereof shall be not less than those previously granted to the said existing investments. Applications with regard to benefiting from the privileges stipulated herein should be submitted by the foreign investor to the Investment Committee for due consideration.

(Article 10)

Foreign investor licensed under the provisions of this law shall not be subject to any amendment stipulated herein prejudicing his interests. However,

expansions of existing investment made following the enforcement of such amendment shall be exempted.

(Article 11)

1. The foreign investor has the right to transfer his investment in full or in part or to another foreign investor, or to a national investor, or relinquish the same to his national partner in case of partnership, in accordance with the law and license stipulations.

2. In case of transferring a foreign investment in part or entirely to another foreign investor, this latter investor shall substitute the former to the extent of the ownership transferred him by the former. Further the investment shall continue to be treated according to the provisions of this law.

(Article 12)

The foreign investor has the right to transfer abroad his profits, capital, and compensation stipulated in Article (8) hereof.

Further, non-Kuwaiti workers in the enterprise, and dealers therewith existing outside Kuwait may also transfer their savings and dues abroad.

Chapter Four

Privileges and Obligations of Foreign Investment

(Article 13)

The Investment Committee may grant foreign investments all or part of the following privileges :

1. Exemption from income tax or any other taxes for a period not exceeding ten years from starting the actual operation of the enterprise as well as exempting every new investment in the same enterprise from such taxes for a period equivalent to that granted to the original investment when the enterprise was established.
2. Benefit from the privileges supplied under double taxation avoidance agreements as well as investment encouragement and protection agreements.
3. Total or partial exemption from customs duties on the following imports :
 - I. Machinery, equipment, and spare parts required for construction, expansion and development.

II. Raw materials, semi-processed goods, wrapping and packaging materials and such other materials required for production purposes.

4. Allotment of lands and real estates required for investment purpose in accordance with the laws and regulations applicable in the State of Kuwait.
5. Recruitment of required foreign labour in accordance with the laws and regulations applicable in the country.

The Council of Ministers shall issue a decision determining the ratio of national labour in respect of the projects subject to the provisions of this law.

Granting of the privileges indicated in this Article shall be in line with the economic development plans as well as the number of Kuwaiti workers in the enterprise and with due observance of the provisions of the said Law No. 19/2000 concerning Recruitment of the National labour.

(Article 14)

The foreign investor undertakes to protect the environment safety, comply with the public order and morality as well as the instructions relating to the security, public hygiene and third party safety.

Chapter Five

Penalties

(Article 15)

In case the foreign investor breaches the provisions hereof, license conditions, the laws or rules enforced in the country; the Investment Committee may apply one of the following penalties against him :-

1. Notice
2. Warning
3. Deprivation from benefits granted wholly or partially to him. However, the foreign investor remedying the respective breach may request reconsideration of the deprivation decision.
4. Administrative suspension of the enterprise for a certain period.

Further, the court may, upon the request of the Investment Committee, rule on cancelling the license and liquidating the investment.

Without prejudice to the foreign investor's right to resort to courts, the foreign investor may complain to the Council of Ministers against the penalties

provided for in Clauses 3, 4 within thirty days from the date he is notified of the penalty decision. In case of rejecting the complaint, the decision must be justified in writing.

The complaint not officially replied within sixty days from the filing date shall be deemed as rejected.

Enforcement of the penalty shall not relieve the foreign investor from the civil and penal liability, whenever applicable.

Chapter Six

Concluding Provisions

(Article 16)

The Kuwaiti Courts alone shall be competent to consider whatever disputes arising between foreign investment enterprises and third parties. However, the parties may agree to refer such dispute to arbitration.

(Article 17)

Under the provisions hereof the foreign investor shall enjoy the coverage of the principles of equality and confidentiality of technical, economic and financial information connected with the enterprise, as well as preservation of investment initiatives in accordance with the provisions of the relevant applicable laws.

Without prejudice to any more severe penalty stipulated by any other law, any person divulging any information he become aware of due to the functions of his job and relating to the investment initiative, technical, economic or financial aspects of foreign investment, made under the provisions hereof, shall be punished by imprisonment for a period not exceeding one year and a maximum fine of Kuwaiti Dinar Ten Thousand, or by either penalty, except in such cases wherein the said disclosure is permitted by law.

(Article 18)

The Minister shall submit to the National Assembly a copy of the annual report stipulated by Clause (10) of Article 6 hereof within thirty days from presentation date to the Council of Ministers.

Further, the Minister shall submit to the National Assembly every six months a periodic statement comprising all the applications submitted in accordance with Articles (3, 4, 9) hereof and the orders issued in this regard.

(Article 19)

In the context of foreign investment, all issues not particularly provided for herein shall be subject to the provisions of the laws and regulations applicable in the State of Kuwait, provided that there would not be conflict with the provisions hereof.

(Article 20)

The provisions of this law shall be applied to the economic activities and enterprises engaged by the national investor having no foreign partner whenever they fall within the activities and enterprises determined by the Council of Ministers pursuant to Articles (2) hereof.

(Article 21)

The Minister shall issue the Executive By-Laws and orders required for the implementation of the provisions hereof within six months of promulgation.

(Article 22)

The Prime Minister and Ministers, each within his own competence, shall implement this Law.

AMIR OF KUWAIT

JABER AL-AHMED AL-SABAH

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