

A LEGAL GUIDE FOR

# Doing Business in Kuwait



**PREPARED AND PRESENTED BY**

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# Welcome To The Guide



Kuwait, with over 6% of the world's oil reserves has for many years attracted significant levels of foreign investment in this and related industries.

The last budget has prioritized the infrastructure spend with focus on public / private partnerships for development.

Clients wishing to enter Kuwait market are likely to find it helpful and can avail our services in Kuwait.

This guide is intended to provide an introduction to the taxation and legal aspects of doing business in Kuwait.

We hope you find the guide useful.

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## Overview

- Kuwait, officially the State of Kuwait, shares its borders
- with Iraq and Saudi Arabia and has a population of some 3.5 million.
- Kuwait is a constitutional Emirate with an elected parliamentary system.
- Kuwait has a petroleum-based economy, with petroleum accounting for approximately half of the country's GDP and the majority of revenues for the Government.
- Kuwait continues to undertake efforts to diversify its earnings away from petroleum.
- The Kuwait Stock Exchange is one of the larger stock exchanges in the Arab world.
- Arabic is the first language, with English widely spoken and used in business

# Legal & Regulatory Framework

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The basic premise for carrying out business in Kuwait is identified in the Articles (23) and (24) of the Kuwaiti Commercial Code. Article (23) of the Code states that non-Kuwaiti citizens may not pursue any commercial activities in Kuwait, unless having a Kuwaiti partner. This partner's share must not be less than (51%). Article (24) sets forth that any foreign company may not establish a branch in Kuwait and cannot pursue its commercial activities in Kuwait unless having a Kuwaiti agent.

*"The law draws an exception to the general rules governing doing business in Kuwait by foreign investors"*

On April 22, 2001, Kuwait's Parliament enacted Law No. (8) on Regulating Foreign Capital Direct Investment in Kuwait, in an attempt to lure foreign investments. By allowing foreign ownership up to (100%) of business entities in certain sectors, this Law draws an exception to the general rules governing doing business in Kuwait by foreign investors. The implementing regulations that establish the guidelines for investment under the Law will be issued soon.



The following ways define how a foreign individual or entity may enter the market and carry out business in Kuwait:

- Establishing a company
- Concluding a joint venture agreement
- Appointing a Kuwaiti commercial agent
- Appointing a commercial representative

# Establishment of a Company in Kuwait

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## Introduction

As per the Kuwaiti Law, foreign individuals or entities may establish permanent presence in Kuwait through forming and investing in the following Kuwaiti companies:

- Limited Liability Company (WLL)
- Closed Joint Stock Company (KSC Closed)
- Joint Stock Company

## Limited Liability Company

Foreign individuals and corporates may establish a Limited Liability Company (WLL) in Kuwait. However, as per Article (191) of the Companies Law, the share of the Kuwaiti citizen in the WLL company must be at least (51%). The process of forming a WLL is simple, and it takes approximately three months. This type of companies provides a limited liability shield. Since Kuwaiti citizens do not pay individual income tax, and only non-Kuwaiti corporate bodies pay corporate tax, WLL companies do not pay taxes.

## Joint Stock Company

In June 1999, Kuwait enacted a law permitting non-Kuwaitis to hold shares, for the first time, in publicly traded shareholding companies. Pursuant to this new law, the restrictions and conditions of this right are to be defined by the Minister of Commerce and Industry in the Implementing Regulations of the Law. Among these regulations is the maximum amount of shares which non-Kuwaitis may hold and their corresponding rights.

## Closed Joint Stock Company

The other type of companies that can be established by non-Kuwaiti entities is Closed Kuwaiti Joint Stock company (KSC Closed). Pursuant to the Kuwaiti Companies Law, Articles (68) and Article (94) state that KSC Closed companies are exceptional type of Joint Stock Companies. As a rule, only Kuwaiti citizens may be shareholders of a joint stock company. However, foreigners may own up to (49%) of the share capital of a Closed Joint Stock company (KSC Closed) after attaining approval of the concerned authorities. Activities of KSC Closed company may not include banking or insurance. The process of forming a KSC Closed company takes up to six months. In addition to the taxes levied on profits made by the foreign company as a shareholder in a KSC Closed Company, the KSC Closed Company must contribute with 5% in Kuwait Foundation for the Advancement of Science.

## Time Required

If a license is granted, incorporation of KSC or KSC(c) typically can take six months to complete. A WLL may be set up more quickly. During the period before incorporation, a company may operate under an authorised shareholders agreement obtained from a recognised professional assisting in incorporation of the company

# Establishing A Joint Venture

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**Pursuant to Article (57)** of the Kuwaiti Companies Law, joint ventures are formed under simple contracts. No formal procedure for their establishment is involved.

Article (56) of the Law refers to joint ventures as joint venture companies.

As stated in Article (59), joint venture companies do not have legal personalities. These companies may not conduct business in their own name. Only through a venturers that a joint venture company may conduct business with third parties. This venturer is personally responsible for the transactions he enters into with the third parties.

The liability of the transacting venturer to the third parties is unlimited. Meanwhile, the liability of the non-transacting venturer is confined to his share in the joint venture. The Kuwaiti venturer in the company must guarantee the transacting venturer, if the latter is a non-Kuwaiti citizen.

The joint venturers are to be exposed to unlimited joint and several liability, if the joint venture company deals with third parties in its own name. It makes no difference whether the joint venturers were personally involved in the transaction or not.

## Introduction

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**"Provisions of the code define the general rules governing commercial agencies and their types".**

## 1. Contract Agency

First Type The first type of commercial agencies is a contracts agency as per Article (271) of the Kuwaiti Commercial Code. In this type of agencies, the local agent undertakes to do the following by the contract: a) promoting the principal's business on a continuous basis in the territory, b) entering into transactions in the name of the principal in return for a fee. The agency contract must be written. Items of contract must define: the territory covered, the agent's fees, the agency term, the product or service that is the subject of the agency, and any relevant trademarks. If the agent should establish showrooms, workshops, or warehouse facilities, the contract must be valid for a period not less than five years.

## 2. Distributor Agency

The second type of commercial agencies is a distributorship agency. Under this agency, the local agent may act as the distributor of the principal's product in a defined territory and in return for a percentage of the profit as per Article (286) of the Kuwaiti Commercial Code. If the distributor is the only distributor in the whole country, distributorships are governed by the same general rules as contracts agencies. As per the following protective procedures, these rules protect both types of agents:

- Registration of Commercial agencies is required to be enforceable.
- Kuwaiti law is the governing law in all public policy matters.
- The principal may not terminate the agreement without proving violation of the contract by the agent. If contract violation is not proved, the principal should compensate the agent.
- The principal may not decline to renew the agency agreement upon its expiration without paying the agent equitable compensation for the non-renewal, provided that the agent provides evidence that he is not at fault and that his activities successfully promoted the principal's products.
- The agent may file a suit against both the principal and the new agent appointed in Kuwait, if the principal colludes with another agent, and, for this reason, the agency contract is terminated

## 3. Commission Agency

Third Type As stated in Articles (287) to (296) of the Kuwaiti Commercial Code, the third type of commercial agencies is the commission agency. In this type of agency, the agent concludes contracts in his/its own name. The principal's name may not be revealed without his consent.

# Commercial Representatives

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Pursuant to a “Commercial Representation Agreement”, a commercial representative is a Kuwaiti individual or entity engaged by a foreign company to represent its business interests in Kuwait.

Usually, the authority scope of a commercial representative is more limited than that granted to an agent.

Fees of a commercial representative may be paid as either a fixed regular amount, a commission, or percentage of profits. Articles (297) to (305) of the Kuwaiti Commercial Code regulate the duties and obligations of commercial representatives.

The commercial representative must sign his name as well as the name of the foreign company, whenever executing documents on behalf of the foreign company. Within the signature, he must indicate that he is a commercial representative.

A foreign company accepted full liability for all of the actions of its commercial representative, provided that all the actions are they are carried out or incurred within the scope of representation. Contrary to the agency agreement, a commercial representation agreement cannot be registered with the Ministry of Commerce and Industry.



## Taxation

Generally, individuals (Kuwaiti and foreign nationals) and Kuwaiti companies do not pay taxes on income. However, an income tax is levied on a foreign corporate body conducting commercial activities in Kuwait. The tax rates, ranging from (5%) to 55%, are applied progressively to income brackets.

## Contribution to the Kuwait Foundation for Advancement of Science

The Kuwait Foundation for Advancement of Science (KFAS) was established to assist to science students and researchers in their education and training and for scientific research and development in general. Article (6) of the Memorandum of Association of KFAS states that a source of KFAS's funding shall be paid by all Kuwait Shareholding Companies (KSC). Each KSC Company shall pay (1%) of such its net profits to KFAS. A KSC company is not strictly obligated to pay (1%) of its net profits to KFAS. According to Article (48) of the Kuwaiti Constitution, taxes may be levied only by a duly promulgated law. However, it has become the general and accepted practice in Kuwait for KSC companies to incur such payments.

## Public Sector Procurement

Law No. (37) of (1964) regulates the procurement by the Kuwaiti Government and its agencies. The Law is modified by Laws No. (13) of (1970) and Low No. (31) of (1977) on Public Tenders. That is the "Public Tenders Law". The Public Tenders Law states that any procurement made by the Kuwaiti Government exceeding (5.000) KD, approximately \$16.500, must be carried out through the Central Tenders Committee and in accordance with its procedures in order to ensure competitive pricing.

## Article (5) of the Tenders Law defines the following conditions for a tenderer in any government contracts:

- The tenderer must be a Kuwaiti merchant, individual or company. He must be registered in the Register of Commerce in the Chamber of Commerce and Industry of Kuwait. The foreign tenderer may apply for tender, if a Kuwaiti merchant is acting as his partner or agent, according to a deed duly executed by a notary. However, it must meet the specific regulations set down by the Central Trading Committee for the participation of the foreign company in the tenders of large works.
- The tenderer must be registered in the Classification List of Contractors and Suppliers in conformity with the following Articles: Only through a Kuwaiti entity in which it has an ownership interest or by acting directly but with the assistance and support of a Kuwaiti agent or commercial representative, that a foreign entity may act as a government contractor. Two important exceptions are drawn to the application of the Public Tenders Law:
  - Procurement of Ministry of Defense: The Public Tenders Law does not apply to the procurement of military items for the Ministry of Defense and Security Forces. Kuwait law broadly defines "military materials" to include land, sea and air weapons, spare parts, military communications, detection equipment and related systems ("strategic military procurement"). No comprehensive laws or regulations govern strategic military procurement by the Ministry of Defense (MOD). Instead, the MOD has developed internal policies and procedures for such procurements that are not available to the public. Such policies are generally more flexible than those of the Public Tenders Law. This comes in an effort to accommodate MOD's specialized needs with respect to strategic military procurement.
  - Other Specialized Procurement: Kuwait government agencies may request permission of the Central Tenders Committee to conduct particular tenders outside the Public Tenders Law. Meanwhile, such cases are relatively rare.

# Kuwait Offset Program

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**Establishment of the offset program:** As per the Decision No. (694), issued by the Council of Ministers dated July 26, 1992, Kuwait Offset Program was established.

**Management of the Kuwait Offset Program:** The National Offset Company is responsible for the management of the Kuwait Offset Program. The company was established by the Council Of Ministers' Decision No. (863/2005) adopted on the August 7, 2005. It was formed as a government owned closed shareholding corporation, adopting private sector practices in conducting its business. On April 19, 2006, the National Offset Company was founded under commercial registry No. (114257). On July 5, 2006, it signed a Management Contract with Ministry of Finance, to run Kuwait Offset Program on its behalf. On September 2, 2006, the company started operations.

**What is Offset:** An obligation imposed on Defense Contracts that are signed by government entities, in addition to Civil Contracts. The value of the defense contracts must be (3.000.000) KD or more, and that of the civil contract must be (10.000.000) KD or more.

**Value Offset Obligation:** The value of the offset obligation is estimated at (35%) of the net monetary value of the supply contract. However, there is a possibility of deducting the monetary value of any of the following from the supply contract, if existent:

- Subcontracts signed with local Kuwaiti companies
- Purchases of goods and services of national origin that are obtained within the context of the supply contract
- The monetary value of the Kuwaiti share in a joint venture that is subject to offset
- The balance of offset credits achieved as a result of: charges incurred to secure a bank guarantee, and/or procurement of goods and services of national origin outside the scope of the initial contract, and/or previously achieved offset credits (future credits) that are carried forward, and/or other offset credits.

## Offset Multiplier

Financial incentive system undertaken to lure offset obligated foreign companies into investing in projects that achieve the objectives of the Offset Program. This system enhances a reduction in the value of the initial offset obligation by a ratio equivalent to the multiplier value that is defined for the offset project.

# Disclosure Law

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This law effectively requires full transparency and accountability in all government contracts



The Kuwaiti Government passed Law No. (25) of (1996) on the disclosure of commissions in connection with government contracts, in August 1996. This law effectively requires full transparency and accountability in all government contracts, which value exceeds (100.000) KD, approximately (\$300,000). This Law applies to all transactions conducted by the Kuwaiti Government or its agencies or instrumentalities. It requires a stipulation by the contracting party as to whether it has paid or will pay a commission of any kind to a disclosed or concealed intermediary.

In addition, the Law imposes an obligation on both the payer and the payee to disclose them.

In a separate declaration, the amount of the commission, the type of currency, and the place and manner of the commission. Any actions of non-disclosure or misinformation result in sanctions. These sanctions range from civil and criminal penalties that are equal to the payment to imprisonment. However, if the payment in question constitutes a violation of a Kuwaiti Law, even full compliance of the parties does not necessarily exonerate

# Intellectual Property

Intellectual properties and patents in Kuwait are governed by Law No. (4) of (1962). In order to obtain patent protection in Kuwait, the following must be done. First, the inventor must first register the patent with the Patents Office at the Trademark Control Department of the Ministry of Commerce & Industry, as per Article (4) of the Law. As stated in Article (5), non-Kuwaiti citizens, companies and other juristic personalities, are allowed to register patents in Kuwait, provided that they are nationals or habitants of countries that give Kuwait reciprocity. As soon as the inventor registers his patent, it is stated in Articles (10) and (12) that he gains the protection of the right to use that patent by any means. This right is valid for (15) years, starting from the date of the application. The patent may be renewed for extra five-year term, as per Article (12).

As for the industrial designs, Articles (36) and (37) of the Law defines the required process for their registration. The industrial designs must be, also, registered in the Industrial Designs and Models Register. Then, an application for registration must be submitted to the Trademark Control Department. The period of registration for the industrial designs, as defined in Article (42), is valid for five years. It can be renewed for two additional consecutive terms.

The Kuwaiti Commercial Code, which is Law No. (68) of (1980), governs trademark registration and the penalties for infringement. According to Article (64), any person may apply for the registration of his trademark at the Register of Trademarks.

The trademark will be protected for (10) years, as soon as the application is approved. It may be renewed for another ten years according Article (77) of the Law.

## Inclusions

**As defined in Article (43) of Law No. (64) of (1999), when applying to non-Kuwaiti citizens, it is limited to:**

- Works of non-Kuwaiti that are published for the first time in Kuwait
- Works of Arab authors citizens of the countries of the Arab Agreement for the Protection of Author's Rights, provided that their works are published in any of those countries
- Works of authors citizens of states of the World Intellectual Property Organization, provided that their works are published for the first time in one of those states.

## Validity

**The period of copyright protection is as follows:**

- 50 years from the death of the author, and if it is a joint work, from the last surviving author
- 50 years from the end of the calendar year of publication for the following: (a) Works published under a pseudonym or anonymously, (b) Works in which the owner of the copyright is a legal personality, (c) cinematic and photographic works; and (d) works published for the first time after the author's death.
- 50 years from the end of the calendar year in which the performance or recording took place, where applicable
- 20 years from the end of the calendar year in which the broadcast of a program occurred, where applicable.

**These periods are defined in Article (17) of Law No. (64) of (1999).**

Kuwait is a member of the World Trade Organization and a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights. Hence, it is under an obligation to pass intellectual property laws meeting the minimum standards for the protection and enforcement of intellectual property rights set forth in this agreement. Kuwait is also a member of the World Intellectual Property Organization.

# About ADAM Global Services

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We are the World's first, largest & most effective professional Network of Networks providing global professional services with a click of a button. We facilitate the connection of trusted professional service providers & clients around the globe.

ADAM Global is registered in London(UK) since 1998 and our aim is to connect business to their future while making access information, advise, resources and professional solutions easy and convenient for clients to find trusted professionals around the globe with a click of a button!

We enhance the visibility & business potential via cross border transactions for established SME firms in multidisciplinary areas including through an exclusive membership program. It is a platform that connects businesses, promotes & facilitates productive regular interactions and creates a huge profitable impact on a global scale.

## Our Disciplines include

- Law
- Accounting
- Corporate Services, Advisory
- Taxation
- Immigration
- Financial Services
- HR
- IT
- Education

## Tax, Accounting & Advisory Services in Kuwait

AlSanea Economic Consulting, A Kuwait based member firm of ADAM Global in the field of Accounting, was operating as a division of Kuwait Auditing and Accounting since 1997. Our Internal audit Professional help assess how a company's Internal audit functions compare with leading practices and how these functions align with the current and future objectives of your audit committee, Executive management and operating unit. We are Advisory Professionals works with our clients to help them achieve Compliance, advising on how they organize their financial reporting processes and helping ensure that Accounting operations match the objectives of the business. Our tax advisors have experience in all types of businesses including banks, investment houses, family businesses, governments, and individuals. We combine both international and regional tax knowledge in order to provide the most sound advice for your business.

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5  
Continents

3000 +  
Professionals

40000 +  
Clients

9 Core  
Disciplines

400 Mn \$  
Network  
Revenue

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