THE KUWAITI FOREIGN INVESTMENT LAW: COMMENTS AND SUGGESTIONS

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INTRODUCTION

This article is going to look at the Kuwaiti Foreign Investment Law 2001 (FIL) and make some comments and suggestions on it. It will begin by looking at the need for such a law and consider whether Kuwait has the legal jurisdiction and infrastructure needed to attract foreign investors.

It will look at important Laws which preceded the adoption of FIL and have either a direct or indirect effect on it.

Possible negative aspects of FIL will be looked at under the following headings:

(1) Nationalisation;
(2) Expropriation;
(3) Confiscation;
(4) Compulsory seizure;
(5) Imposing custodianship;
(6) The danger of delay in paying back debts; and
(7) Restricting currency transfer.

The next part of the article will be an overview of FIL regulating direct foreign investment, followed by a study of the administrative process.

The following part will consider the obligations of foreign investors, considering their major obligations and punitive measures.

Finally, dispute resolution will be looked at.

REQUIREMENT FOR A FOREIGN INVESTMENT LAW

All the countries of the world use all possible means to initiate and promote their economies. Attraction of foreign capital for direct investment is one of these means.

With regard to the State of Kuwait, the issue of foreign investment was not

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given any consideration in the past because of its large returns from oil production. The Kuwait economy depended solely on oil returns as a source of income, which were used to reinvigorate the activities of the public sector only. This system led to government domination of all the state economic and financial activities, which resulted in an increasing government expenditure, a national workforce concentrated in governmental institutions (more than 90 per cent), inflation and the existence of only one industry, petrol. The whole State economy depends on the market oil price, and any unexpected market turbulence could have a serious effect on the Kuwaiti economy.

It was imperative therefore, for Kuwaiti decision-makers to find alternative incomes for the economy by encouraging the private sector and calling for international foreign investors. Kuwait disposes of a wealth cumulated through years that could be a stimulus for its economy, but nevertheless it needs to build its economy on sectors other than the petrol industry. Seven billion KD were deposited in Kuwaiti banks for possible joint-venture projects.

Foreign investors would be a solution to the problem if they could find favourable legal grounds to protect the prosperity of their businesses. Indeed, through foreign investors the State of Kuwait would be able to build the structure of a strong economy in different sectors.

The main question that needs to be asked is whether the State of Kuwait has the legal jurisdiction, infrastructure, and what is needed to attract foreign investors? Kuwait has an advanced infrastructure based on an excellent network of roads and outstanding maritime and air transport services. It has no restrictions on the movement of capital and has a stock exchange considered as the largest of its kind in the Middle East. Kuwait has well-known political stability, respect for the law and respect for individual property.

As a result of this, the Foreign Investment Law for the year 2001 (FIL) was issued to attract foreign investors to provide a new dynamic to the Kuwaiti economy.

LAWS RELEVANT TO THE FOREIGN INVESTMENT LAW

Several important Kuwaiti Laws preceded the adoption of the Kuwaiti Foreign Investment Law. The Kuwaiti Laws mentioned below have, to some extent, a direct or indirect effect on FIL.

1. THE LAW NO. 15/1960, REGARDING KUWAITI COMMERCIAL COMPANIES. This Law contains some provisions regarding foreign participation and the percentage of its contribution. Indeed, Article 47 states that the capital of partnership companies in Kuwait established after the enactment of the Law 15/1960 should be based on a Kuwaiti participation of no less than 51 per cent.

2. THE TRADE LAW NO. 68/1980. The interesting Article 23 of this Law states that non-Kuwaitis are not permitted to trade in Kuwait unless they have a Kuwaiti