FOREIGN CAPITAL INVESTMENT IN MEMBER STATES OF THE GULF COOPERATION COUNCIL
Considerations, Issues and Concerns for Investors
Part I

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INTRODUCTION

Particularly in light of the Iraqi invasion of Kuwait and the subsequent damage and loss to the economies of both those countries, it is self-evident that the successful attraction of venture capital into any country, or investment area, requires, in this day and age, the existence of a range of conditions and satisfaction of criteria designed to provide comfort to potential investors.

The extent of investors' losses in those countries since August 1990 is still being quantified but the early estimates are staggering. It is unclear to what extent insurers will meet claims submitted under war risk coverage clauses and then, very much later, seek reimbursement from the proposed United Nations Compensation Commission (the Commission).

Any such recourse to the Commission either by insurers or investor principals will have to be submitted through their respective domiciliary governments and cannot be expected to be satisfactory or even minimally effective in providing fair and prompt compensation. Charles Brower, a judge of the Iran–United States Claims Tribunal at the Hague since 1984, writing in the Financial Times of 11 April 1991, stated his belief that any attempt to establish a similar tribunal to handle the hundreds of thousands of individual claims against Iraq would be wholly unworkable.

He wrote that nearly eight years after beginning to review claims the Iran–US Tribunal and its panel of nine judges were still at work on the last of the nearly 4,000 claims filed and that it would have been worse had the US and Iran not settled 2,500 small claims as a group.

Consequently, it is essential for each investor contemplating participation in any project, joint venture enterprise, or even lending activity in a Gulf Cooperation Council (GCC) state to prepare for the kind of nightmare scenario which occurred in Kuwait and Iraq between August 1990 and April 1991.

These concerns and this preparation are relevant to all investments but should now have special meaning to the hundreds of Western contractors, service organisations

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Editor's Note: This article is divided into three parts, to be completed in the next two issues.
and their bankers who avidly seek to become involved in the reconstruction of first
Kuwait and eventually, Iraq.

Two types of awareness must be developed: firstly, there is the basic knowledge of
the existing laws and regulations of the GCC states which have been established to
protect investment assets and secondly, there is the panoply of steps and measures
which investors themselves may take in order to safeguard their investments in the
event of such a catastrophe recurring.

On the other hand, the GCC states must now unequivocally acknowledge the
necessity of responding to heightened investor anxiety and undertake the necessary
steps to restore confidence. It is interesting to note that prior to August 1990 each of
the Gulf States discussed below as potential investment domiciles has travelled some
distance down the road in fulfilling various of these investment prerequisites.

Western and Islamic banks and investment companies looking for suitable venture
capital investment opportunities will inevitably be concerned with the feasibility and
profitability of specifically targeted projects, but they should also, as a matter of
course, be satisfied at the outset in respect of the existence in the investment domicile
of certain basic protections, benefits, rights and privileges which they as providers of
venture capital funds have a right to expect.

The first part of this piece will attempt to focus on what I believe are the essential,
commercial and domicilary elements which should be statutorily available to potential
venture capital investors.

The second part will look at the current post-war situation in the Gulf States and
analyse, in summary fashion, the climate for investors. Following this consideration of
the individual Gulf States, I will briefly look at the GCC itself as an umbrella
organisation of the group of six.

Finally, the third part of this piece will set out some possible steps which may be taken
by investors in preparation for financial involvement in the region. It may be that investor
groups already involved will now also wish to consider adopting some of the measures.

PART 1

The Legal Foundations and the Administrative Regulation of Foreign
Investment

Though often a topic to be ignored, investors and their professional advisers should
become fully aware of the system of laws and courts which underpin investment and
commercial activity in the investment domicile. This includes the political processes
by which legislation is initiated and passed and considerations of whether or not the
legislative function is separate from the executive/administrative and judicial.

These are particularly relevant concerns in the instance of the countries under dis-
cussion here, because of the diversity and blending in various degrees, of three quite
different legal systems—Islamic law and the Shari’a which is the basis of all law in all
of the countries; common law, being the remnant of the British presence in the region