

Kuwait

Law No.116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait (2013)

Unofficial translation

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Law No.116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait

Law No. 116 of 2013

Having reviewed the Constitution;

The National Assembly has approved the following law which we have ratified and issued:

Article 1. Definitions

The following terms and phrases shall bear the meanings corresponding to each of them:

Relevant Minister: Minister of Commerce and Industry.

Authority: Direct Investment Promotion Authority.

Board: Board of directors of the Authority.

Chairman of the Board: Relevant Minister.

Director General: Director General of the Authority.

Regulations: Executive Regulations to this Law.

Investor: Natural or legal person of any nationality.

License: Investment license issued in accordance with this Law.

Investment Entity: Is an economic enterprise or activity that is licensed in accordance with this Law by virtue of an investment license which grants such enterprise or activity legal existence in the State of Kuwait.

Capital: What is employed or used directly for purposes of Direct Investment through an Investment Entity that is subject to this law, including:

Direct Investment: An investment where the Investor, individually or with the participation of another investor, employs his capital directly through an Investment Entity in the State of Kuwait licensed in accordance with this Law.

Application: The application submitted by the Investor to obtain, as applicable, the License or incentives or to merge Investment Entities, in accordance with principles and rules relevant to each case.

Article 2. Establishment of the authority

A public authority with legal personality shall be established under the name "Direct Investment Promotion Authority" to be attached to the Relevant Minister.

The headquarters of the Authority shall be in the State of Kuwait, and it shall have the right to establish offices within the country and abroad.

Article 3. Aims of the authority

The Authority aims to attract and promote and encourage both foreign and local Direct Investment in the country, which shall include the following:

The Authority shall perform its activities in light of the public policy of the state, the approved economic development plans, the development of production sectors, the diversification of national revenue sources in the State of Kuwait, the creation of employment opportunities for the national workforce, and increasing its productivity and professional skills by implementing the latest technology in accordance with the best international standards adopted in this regard.

Article 4. Tasks of the authority

The Authority shall perform all tasks necessary to achieve its objectives, and the following in particular:

Article 5. Board of directors of the authority

The Authority shall have a board of directors chaired by the Relevant Minister and a membership of:

The term of the Board shall be four years, subject to renewal. The Board members' remuneration shall be determined by a resolution of the Council of Ministers.

The Chairman of the Board or his authorized signatory shall sign on behalf of the Authority and shall represent the Authority in its relations to third parties and before the courts.

Article 6. Meetings of the board

The Board shall convene at the invitation of the Chairman of the Board or vice-chairman and such meeting shall be valid if attended by the majority of its members including the Chairman of the Board or the vice-chairman.

The Board shall have a secretary appointed by the Chairman of the Board and selected from the Authority's staff. The secretary shall undertake the preparation of the meetings of the Board and record its minutes and follow up on the issued resolutions. The Board may invite to its meeting any individual to participate in the discussion of any particular matter without having the right to vote.

The resolutions of the Board shall be passed by the majority of the votes of its members. Where the votes are equal, the side favored by the Chairman shall prevail.

The Board shall issue the necessary resolutions regulating its affairs, defining the rules, procedures, and the scheduling of its meetings, the terms of implementation of its resolutions and the organization of the work of its sub-committees.

Article 7. Conflict of interest

Members of the Board, employees of the Authority including their respective spouses or relatives of the first degree are prohibited from having any direct or indirect interest in any project or services provided by the Authority and shall be bound to disclose their interests and abstain from participating in discussions about, or the decision making regarding any project. In the event of a violation of this provision, the relevant resolution shall be void including all its effects and shall be considered nonexistent.

Article 8. Powers of the board

The Board shall have all the powers necessary to achieve the objectives of the Authority and shall formulate its general policy and supervise the implementation of the same, including the following in particular:

The Board may delegate some of its powers to the Chairman of the Board or to the vice- chairman.

Article 9. Director general

The Authority shall have a Director General who shall hold at least the position of undersecretary, appointed, pursuant to a decree upon the proposal of the Relevant Minister for four years and subject to renewal.

The Director General shall implement the resolutions of the Board and shall supervise the technical, administrative and financial functions of the Authority. The Director General shall further prepare an annual statistical report, which is submitted to the Council of Ministers, regarding the activity of the Authority including the number of projects submitted, the projects approved and the projects rejected with the reasons for such rejection.

The Director General shall be assisted by one or more assistants holding at least the position of assistant undersecretary appointed by decree upon the proposal of the Relevant Minister for four years and is subject to renewal. The Director General may delegate some of his powers to any of his assistants.

Article 10. Financials of the authority

The Authority shall have an annexed budget. The financial year commences and ends with the financial year of the state. The first financial year shall commence on the date this law comes into force and shall end at the closing of the following financial year.

The Authority's resources shall consist of the following:

Article 11. Negative list

Within the limits of Articles 152 and 153 of the Constitution, the Council of Ministers shall prepare a list of Direct Investments that will be excluded from the scope of this Law and which shall be updated in light of the general policy of the state and its plans and the proposals of the Board in this regard.

The Council of Ministers shall set the principles and rules regarding the investments of foreign corporate entities in the State of Kuwait.

Article 12. Type of investment entity

The Application for the License shall be submitted in accordance with the provisions of this Law by an Investment Entity specified according to the following cases:

Article 13. Rules of application

The Executive Regulations shall establish the principles, rules and procedures for the submission and registration of Applications to obtain the appropriate License in the cases set forth in this Law. They

registration or Applications to obtain the appropriate License in the cases set forth in this Law. They shall further set out the information and statements that must be contained in, or attached to the Application and the conditions to be met by the applicant, the appropriate methods of notice and notification and the fees for the issuance of Licenses.

Article 14. Issuance of licenses

The License shall be issued pursuant to a decision of the Director General, if the Application fulfills the criteria, principles and assessment rules established by the Board regarding each of the cases set forth in this Law, and the Investor shall be notified of such requirements prior to the submission of the Application to the Authority.

This License shall not be subject, with regards to foreigners, to the provisions of paragraph 1 of Article 23 and the provisions of Article 24 of the aforementioned Commercial Code.

The License for the incorporation of foreign banks and their branches shall be subject to the provisions of this Law, without prejudice to the provisions of Law No. (32) of 1968, and to the decisions and instructions issued in implementation of its provisions.

In all events, the Authority shall coordinate with the Ministry of Commerce and Industry on the incorporation and issuance of Licenses and supervision of companies, branches and representative offices, which are subject to the provisions of this Law.

Article 15. Term for decision on application

A decision on the merits of the Application shall be rendered within thirty days from the date of submission of a complete Application with the data, documents and conditions set by the Authority.

Article 16. Rejection of application

In the event the Application is rejected, the rejection shall be reasoned and in writing. The applicant may appeal the rejection. In the event there is no response to the appeal thirty days following the date of receipt of the appeal, such lack of response shall be deemed a rejection of the appeal.

Article 17. One-stop shop

An administrative unit shall be established within the Authority called the "One-Stop Shop" which shall include employees designated by the relevant government authorities to proceed with resolving upon the licensing procedures and the establishment of the Investment Entity in order to ensure the completion of the procedures within the period set out in this Law.

The Board shall establish the principles and rules necessary to identify the mentioned government authorities and the method to be adopted for calling upon their employees and coordinating between them and the Authority.

The applicant may appoint specialized companies or qualified consulting firms that are approved by the Authority in accordance with the principles and rules set by the Authority.

Article 18. Accounts of the investment entity

Each Investment Entity, licensed in accordance with the provisions of this Law, shall maintain regular accounts supervised by an auditor or more among the legal auditors. Where the Investor is granted licenses for more than one Investment Entity, each Investment Entity shall be dealt with separately.

Article 19. Compensation for expropriation

No Investment Entity, licensed in accordance with the provisions of this Law, shall be confiscated pursuant to this Law nor be deprived of its property except in the public interest and only in accordance with the applicable laws and against compensation equivalent to the true economic value of the expropriated project at the time of expropriation, estimated in accordance with the economic situation prior to any threat of expropriation. The due compensation is to be paid as soon as the said decision is taken.

Article 20. Disposal of the investment entity

The Investor has the right to transfer or relinquish the ownership of the licensed Investment Entity, or dispose over it in whole or in part, for the benefit of a foreign or a Kuwaiti investor. The Board shall establish the principles and regulations in this regard.

In the event of transfer or relinquishment of ownership of the Investment Entity, in whole or in part, the new owner or assignee shall replace the original owner in rights and obligations.

Article 21. Merger of investment entities

The merger of two or more Investment Entities can be carried out with the consent of the Board, following a joint request submitted to the Authority in this regard, and the new entity resulting from the merger shall be a legal successor to the merged entities and shall replace such entities in their rights and obligations.

The new entity shall automatically enjoy the shortest periods remaining for exemptions and incentives granted to any of the merged Investment Entities.

Article 22. Transfer of monies abroad

The Investor shall have the right to transfer abroad his profits, capital or proceeds resulting from the disposal over his shares or participation in the Investment Entity or the compensation set forth in this Law. Moreover, employees in the Investment Entity shall have the right to transfer their savings and

entitlements abroad.

Article 23. Confidentiality of information

By virtue of this law, the Investor shall be entitled to the basic principles of confidentiality in respect of the technical, economic and financial information relevant to his investment and to safeguard initiatives in accordance with the provisions of the laws and regulations in force in the country.

Without prejudice to a more severe penalty provided for in any other law, a person shall be punished with imprisonment for a term not exceeding one year and a fine not less than one thousand dinars and not exceeding ten thousand dinars or either one of these two penalties, who divulges or benefits from any information that he might have gained knowledge of as a result of his employment or due to his participation in an activity initiated by the Authority or any of its divisions, relating to investment initiatives or the technical, economic or financial aspects of an investment that is subject to the provisions of this Law, except where permitted by law or pursuant to a judgment or an order issued by a judicial authority.

Article 24. Legislative framework of direct investments

Unless there is a special provision in this Law, the laws and regulations applicable in the country shall govern Direct Investments falling within the purview of this Law, and all international conventions in force in the country related to investments and the avoidance of double taxation shall be observed.

Article 25. Scope of the law's application

The provisions of this Law shall apply to existing Direct Investments and those investments that were licensed prior to this Law coming into force, without subjecting such Direct Investments to any damage, provided that the incentives, exemptions and guarantees granted under this Law shall be no less than what was granted before its implementation. Investors may apply for privileges provided for in this Law for the Authority's consideration.

The provisions of this Law shall apply to any expansion or modification of an existing Investment Entity if the expansion or modification occurs following the date on which this Law comes into force. The Board shall establish the regulations in relation to expansions and modifications and how to license the same.

Article 26. Competent courts

The Kuwaiti courts are the ones solely competent to consider any disputes arising between investment projects and third parties, whoever they may be. The parties may also agree to refer such disputes to arbitration.

Article 27. Incentives and exemptions

The Investor shall be entitled to some or all of the following incentives:

1. Exemption from income tax or any other taxes for a period not exceeding ten years from the date of the actual commencement of operations of the licensed investment entity.
2. Exemption of any expansion of an Investment Entity, licensed in accordance with the provisions of this Law, from the taxes set forth in the preceding paragraph, for a period of no less than the duration of the exemption granted to the original Investment Entity as of the date of commencement of production or actual operation of the expansion.
3. Without prejudice to the provisions of Law No. (10) of 2003 promulgating the Unified Customs Code for the Gulf Cooperation Council Countries, the following shall be wholly or partially exempted from taxes, customs duties or any other fees that may be payable on imports required for the purposes of Direct Investment:
 - a. Machinery, tools and equipment and means of transport and other technological devices.
 - b. Spare parts and necessary maintenance supplies for what has been described in the previous subsection.
 - c. Merchandise, raw materials, partially manufactured goods, wrapping materials and packaging.The Investor is prohibited, for a period of five years as of the date notifying him of exemptions from the duties described in this article, from disposing in any manner over the goods described in this clause, including by way of sale, swap or assignment. During the same period, the Investor may not utilize the goods in any other manner than for the purpose for which they were imported, except in accordance with the principles and rules decided by the Board in this regard, and shall pay the taxes and fees that would have been due for the importation at the time of disposal.
4. The use of land and real estate allocated to the Authority or that is subject to its supervision or management, in accordance with the principles and rules established by the Board in this regard.
5. The employment of foreign labor required for the investment, in accordance with the principles and restrictions established by decision of the Council of Ministers in respect of the minimum proportion of national employment that must be provided.
6. The Council of Ministers may decide to grant some cases and groups certain advantages and exemptions, which are not mentioned in this article.

Article 28. Applicability of incentives and exemptions to partnerships of the public and private sectors

The provisions of the previous article shall apply to all types of partnerships between the public and private sectors established for the purpose of Direct Investment, including companies and projects stipulated in Law No. (7) of 2008 and Law No. (37) of 2010 provided that the Board establishes the relevant rules and principles.

Article 29. Application and criteria for granting of incentives

The Investor shall apply to the Authority for all or part of the incentives provided for in this Law, simultaneously or following the application for the License, for consideration by the Authority with the goal of ensuring that it satisfies the principles, rules and procedures established by the Board in this regard in line with the approved general policy of the state and economic development plans. The value, type and duration of incentives and exemptions granted for investments, each according to its type and nature, shall be connected to all or some of the following criteria:

The Board may amend or add other criteria to the aforementioned criteria, in accordance with the public policy of the State and the approved economic development plans.

Article 30. Investment register

A special register called the "Investment Register" shall be prepared in which all Investment Entities licensed in accordance with the provisions of this Law are recorded, as well as all Applications, Licenses, incentives, exemptions and penalties connected thereto, and all documents and related data shall be attached to the register.

The Director General shall issue any decisions required for specifying the method of setting up the register and its content as well as the mechanism for registration and the required documentation and data.

Article 31. Annual report

The Relevant Minister shall submit to the National Assembly a copy of the annual report issued by the Authority and a copy of the statistics relevant to its activities and the projects, within 30 days from the date of submission to the Council of Ministers.

Article 32. Sanctions in case of violation of the law or the license

In case of a violation by the Investor of the provisions of this Law or the requirements of the License, the Board may impose one of the following sanctions:

The License shall be considered null and void by force of law in the event the Investment Entity ceases its activities and business for more than a year without acceptable justification, or in the case of a delay of more than one year from the date set for actual operations to begin according to the timetable provided by the Investor to the Authority at the time of the request of the License Application, without acceptable justification. The Executive Regulations shall set out the principles and rules necessary in this regard. In other cases, the License may not be revoked or the Investment terminated except according to an order issued by the President of the Court of First Instance based on a petition submitted by the Authority providing justification for the request.

The Investor may appeal against the sanctions set forth in subsections 2 and 3 of this article within thirty days from the date of notification of the sanction decision. The appeal shall be decided within thirty days and in case of refusal of the appeal, the decision shall be written and justified.

Sanctions imposed in accordance with this article and the date of notification to the Investor shall be recorded in the Investment Register stipulated in this Law in the section relevant to the Investment Entity associated therewith. The imposition of such sanctions does not prejudice any civil or criminal liability.

Article 33. Appointment and powers of judicial officers

Article 33. Appointment and powers of judicial officers

Specialist employees, who are designated by the Minister by virtue of a decision issued by him, shall be granted the capacity of judicial officers in order to monitor the implementation of this Law and its implementing regulations and decisions. The said employees shall perform their work with honesty, integrity and impartiality and shall have the obligation not to disclose the confidential information of Investment Entities received by them in the course of the performance of their duties. They shall also take the following oath before the Minister:

"I swear by Almighty God that I will perform my work with honesty, impartiality, integrity and truthfulness, and I will safeguard the confidentiality of the information made available to me in the course of my duties even after the end of my service."

The relevant employees of the Authority shall submit a detailed report on the results of their work immediately following its completion to the Director General, who shall refer it to the Board with his opinion in order to take a decision in this regard.

Article 34. Obligations of the investor

The Investor, who has been granted a License or whose investment was granted incentives or exemptions pursuant to the provisions of this Law, shall undertake the following:

Article 35. Funds, assets and employees of the authority

All funds, assets, obligations, rights and anything relevant to the Foreign Investment Bureau established pursuant to Law No. (8) of 2001 shall be transferred to the Authority.

Without prejudice to the provisions of Decree Law No. (15) of 1979 and the decree concerning the civil service system issued on 4 April 1979, the Authority shall have staff appointed according to the regulations set by the Board of Directors, which shall include the rules of appointment and the remuneration granted in kind and in cash to employees. The Relevant Minister shall issue, within six months from the date this Law comes into force, the decisions necessary for the transfer of the employees he deems appropriate from the aforementioned bureau to the Authority.

Article 36. Executive regulations

The Relevant Minister shall issue the Executive Regulations to this Law and take the decisions necessary for the implementation of its provisions within six months from the date of its publication in the Official Gazette.

Article 37. Repeal of law No. (8) of 2001

Law No. (8) of 2001 and any other article which is in breach of this Law is repealed.

Article 38. Implementation of the law

The Prime Minister and the Ministers, each in their respective capacity, shall implement this Law which shall come into force six months following the date of its publication in the Official Gazette.