

The new Kuwaiti Companies Law

Jade Al Araoui

j.alaraoui@tamimi.com

provided the Kuwaiti economy with new commercial vehicles allowing local, Gulf Cooperation Council (GCC) and foreign investors to “customize” the legal structure of the commercial vehicle for the purposes of the intended commercial activities to be conducted thereto. This new positive step has been recently taken by the Parliament of Kuwait to reflect the changes which have occurred over the past years concerning commerce and industry in the GCC region and in various economies throughout the globe.

In such respect, a variety of new forms of companies have been made available to the investors under the Companies Law, such as sole person companies and the professional companies as mentioned below:

Sole Proprietorship Companies

The Companies Law introduced a new type of companies referred to as “Sole Proprietorship Companies” which was non-existent under the previous companies law. The Companies Law provides that these types of companies may have a capital fully owned by one person, whether natural or legal. The relevant provisions specified that such person shall be a Kuwaiti person. However, pursuant to several previous ministerial resolutions, GCC natural or legal persons are to be treated as Kuwaiti persons for the purposes of applying several commercial regulations. Nonetheless, and given that the new Companies Law is still untested with regards to the Ministry of Commerce and Industry’s position and practice in applying the new provisions there under, it is unclear at present whether the GCC nationals will be able to establish a Sole Proprietorship Company under the new Companies Law.

With respect to the structuring of the Sole Proprietorship Company, the Companies Law provides that the objects of the company, the minimum capital and numbers of parts, the term of the company, its management and other necessary details, shall be specified within the Executive Bylaws (still not released to date). The Companies Law further provides that the company shall be managed by its owner (by default). However, the owner is entitled to appoint a Manager, subject to registering this Manager’s name and authorities within the company’s file at the MOCI.

The owner of the Sole Proprietorship Company is entitled to dispose of his parts in the capital by any means, including pledging the parts. However, a transfer of ownership of any number of parts in the capital of the company will entail, by force of law, changing the legal status of the company from a Sole Proprietorship to the form of a limited liability company.

Professional Companies

The Companies Law introduced a new type of companies referred to as “Professional Companies” which was non-existent under the previous companies law. The Companies Law provides that the Professional Company may be established under the legal status of any of the following: Shareholding companies, With Limited Liability, Simple Commandite and Joint Liability Company. However, under any of the aforementioned legal status form, none of the shareholders of the Professional Company shall be deemed as merchants under the definition of the Commercial Law.

The incorporation of the Professional Company must be by two or more natural persons in the same “liberal” profession (i.e. doctors, lawyers, architects...) and the objects of the company must be consistent with the profession of the incorporators. Nonetheless, establishing such company is subject to the MOCI’s approval based on its discussion with the relevant supervisory body of the relevant profession and having oversight on the professional conduct of the contemplated incorporators.

The partners in the Professional Company are entitled to dispose of their parts/shares by any means, including pledging such parts/shares. However, any disposal of these parts/shares (even by means of a judicial procedure) shall be restricted to natural persons belonging to the same profession under which the company has been established.

Holding Companies

Although Holding companies existed under the previous companies law, the newly promulgated Companies Law is certainly a departure from the previous regulations governing the legal form and requirements (from a legal and business perspective as well) to establish a holding company. Under the Companies Law, the commercial and licensed objects of the holding company are still the exact objects specified in the previous law. However, the new Companies Law provides that a holding company can be established under any of the following legal forms: Shareholding Companies, With Limited Liability Companies and Sole Proprietorship Companies.

Further, the Companies Law introduced a new liability on the shareholders/partners/owner of the holding company which was inexistent under the previous law. The Companies Law provides that the holding company shall be deemed as a joint guarantor of the liabilities of any of its subsidiaries towards such subsidiary creditors, if such subsidiary and the holding company are conducting their respective activities as “one commercial unit” (subject to further clarification upon issuance of the Executive Regulations). Also in this respect, the holding company shall be deemed as a joint guarantor of the following companies: (i) a subsidiary of the holding acting as a “screen” for the holding (as described under the Companies Law); and (ii) a subsidiary conducting the activities of a commercial agent of the holding company.

Notwithstanding the positive effect of introducing new forms of companies under the recently promulgated Companies Law, it appears that whether dealing with the incorporation procedures or monitoring the activities of the aforementioned new types of companies, it will be practical at this point of time to wait for the issuance of the Executive Bylaws as intended for providing specific regulations affecting the applicability of certain provisions within the Companies Law.