

Is 2015 The Year of Foreign Investment in Kuwait?

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This was a highly anticipated and long awaited event as the regulations were expected to clarify certain issues necessary for the effective implementation of Law No. 116 of 2013 regarding the Promotion of Direct Investment (the “**Direct Investment Law**”). During the past year, we have received regular inquiries from numerous foreign clients seeking more information about the Direct Investment Law and whether Kuwait Direct Investment Promotion Authority (“**KDIPA**”), the relevant authority whose main function is to attract and encourage foreign and local direct investment within the State of Kuwait, was accepting investment license applications (the “**Applications**”).

The Executive Regulations are composed of 45 articles divided into nine chapters. What follows is a summary of its main provisions:

One-Stop Shop

One of the most exciting aspects of the Direct Investment Law is the “One-Stop Shop”. The Direct Investment Law provides that KDIPA will have a “One-Stop Shop” which is a specialized unit comprising of all relevant officials from the various relevant government departments in coordination with KDIPA which will assist with the establishment and licensing for such entities. The Executive Regulations expand on this to specify that in addition to the One Stop Shop unit being responsible for transactions relating to an investor’s establishment of an investment entity, the One Stop Shop unit will also be responsible for preparing introductory guidelines setting out relevant requirements and responding to any inquiries raised in connection with such guides. These guides will likely prove to be useful for investors and specialized companies who are currently unfamiliar with the new Applications.

In addition to the above, the Executive Regulations state that KDIPA will prepare a list of specialized companies, firms and offices that are prequalified and approved to submit and follow-up on Applications in the name and on behalf of an investor. Such measures appear to be taken in order to encourage more foreign investment by easing the process for foreign investors to submit investment license applications and establishment of investment entities. This should hopefully reduce ‘red tape’ for foreign investors and assist investors to navigate the procedures and requirements of the Direct Investment Law and its Executive Regulations.

Investment Entity

Pursuant to Article 12 of the Direct Investment Law, an investment license may be sought for (i) all company forms, as outlined under Law No. 25 of 2012 (the “**Companies Law**”), (ii) branch offices of a foreign company licensed to operate within Kuwait, and/or (iii) a representative office whose main purpose is limited to the study of markets and production. Similarly, Article 8 of the Executive Regulations confirms Article 12 of the Direct Investment Law but clarifies that a foreign investor may obtain an investment license to own 100% of the capital of a company with limited liability, a joint stock company or single-person company.

In addition to the Executive Regulations, Director General Decision No. 35 of 2014 on Principles, Rules and

Procedures for Licensing Branches and Representative Offices of Foreign Companies in the State of Kuwait was also issued to identify the requirements for obtaining an investment license from KDIPA to open a branch of a foreign company or a representative office in Kuwait.

General Submissions to KDIPA

When the Direct Investment Law was issued, we noted that Article 13 indicated that its executive regulations would establish the principles, rules and procedures for the submission and registration of Applications to obtain an investment license as permitted by the Direct Investment Law.

Chapter IV of the Executive Regulations state that KDIPA will prepare application forms for various types of requests including (i) licensing of an investment entity; (ii) granting of incentives and exemptions; (iii) amendments to the name, address, purpose, capital or domicile of an investment entity; or (iv) amendments to the percentage of shareholders' equity in an investment entity. Further, Article 10 of the Executive Regulations states that submission of Applications, papers and documents to KDIPA by an investor or his representative may be made by any means specified by KDIPA including in person, by registered mail or e-mail. Upon submission of an Application, KDIPA will provide a receipt evidencing acceptance of such Application and will record the Application in its internal application register.

Ministerial Decision No. 503 of 2014 (Regarding the Issuance of Stated Fees Schedule for Services Rendered by KDIPA), which was issued at the same time as the Executive Regulations, specifies KDIPA service fees ranging from KD 10 for a certificate of record in the investment register, KD 50 for issuance of an investment license, and KD 100 for submission of an Application.

License Applications

Chapter V of the Executive Regulations further sets 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 the investment license as undertaken in Article 13 of the Direct Investment Law.

Pursuant to Article 14 of the Executive Regulations, the Application for establishment of a Kuwaiti company must be accompanied by an initial study which is to include certain information including but not limited to the type of proposed activity or project, the size of the investment and the economic and environmental impact of such investment.

In addition to the above, the Executive Regulations also identify the requirements for the licensing of a branch of a foreign company as well as a representative office.

The Direct Investment Law states that KDIPA must respond to an Application within 30 days of receipt of a complete Application. The Executive Regulations reiterate this in Article 17, which provides that KDIPA "shall decide on the merits of the Application within 30 days as of the fulfillment of all conditions, data, papers and documents required by KDIPA and the competent authorities." Therefore, foreign investors with strict timelines should be able to obtain a response on whether or not establishment through the Direct Investment Law is possible within a relatively short amount of time subject to when required documents are submitted to KDIPA.

The Executive Regulations provide that the investor will be notified of KDIPA's acceptance (in which case the establishment of the investment entity and issuance of the commercial license will proceed) or rejection of the Application. In the event an Application is rejected, KDIPA will provide written notice of such rejection including reasons for the same.

The investment entity must obtain the necessary approvals to commence preliminary procedures and activities (prior to full operation by the investment entity) within one year from the date of issuance of the license, unless KDIPA provides for a longer period. Furthermore, the investor is required to notify KDIPA of

the actual date of commencement of operations within thirty days from such date.

Incentives and Exemptions

Chapter VI of the Executive Regulations discusses the procedures for obtaining incentives and exemptions including, but not limited to, tax exemptions, customs exemptions and allotment of land and real estate. In addition, Chapter VI also details the procedures for conversion of an investment entity.

Grievance Procedures

The Executive Regulations also include an important feature in Chapter VII – a grievance procedure which permits stakeholders to submit grievances relating to decisions issued by KDIPA. This grievance procedure provides investors with an opportunity to attend a hearing before a committee formed by the Board of Directors of KDIPA to discuss such grievance. The grievance committee's deliberations shall be confidential, passed by majority and issued within thirty days from the date of its registration.

Supervisory Officers

Chapter VIII of the Executive Regulations reveals that the Minister of Commerce and Industry will appoint certain employees to act as judicial officers in order to monitor whether investment entities are complying with the Direct Investment Law, the Executive Regulations, any implementing decisions or instructions issued by KDIPA. The role of these judicial officers is important as it will allow KDIPA to ensure that any licenses, incentives or exemptions issued are not being misused.

Negative List

The first question that is commonly raised by potential foreign investors is the list of sectors which are excluded from direct investment within the scope of the Direct Investment Law (the “**Negative List**”). Ministerial Resolution No. 75 of 2015 (Specifying a List of the Direct Investments which are not subject to the Provisions of Law 116 of 2013) was issued on 26 January 2015 and published in the Official Gazette – Issue No.1211 dated 01 February 2015. Prior to the issuance of Resolution 75, KDIPA accepted Applications for investment licenses and the determination of whether a company was eligible to obtain an investment license was made by KDIPA on a case by case basis upon submission of an Application.

Article 1 of Resolution 75 now sets out the Negative List which includes ten different sectors which are not eligible for an investment license including any companies in the crude oil or natural gas extraction sector.

Conclusion

The Executive Regulations greatly improves how the Direct Investment Law works. We are hopeful that the Direct Investment Law will prove effective in attracting direct investment, whether foreign or local, to the Kuwaiti market in order to meet the objectives of Kuwait's 2035 Plan “to transform Kuwait into a world class financial and commercial centre, with the private sector leading economic activities, fostering competitiveness, increasing productivity, supported by viable public institutions, while maintaining the deep rooted values and national identity, towards achieving balanced economic and human development, supported by adequate infrastructure, legal framework, and enabling business environment.”^[1] Although the Executive Regulations were recently issued, we are aware that several applications have already been submitted to KDIPA and we anticipate numerous more applications will be submitted based on the number of inquiries we receive from our clients on a daily basis. If you have any further questions about the Direct Investment Law, please feel free to contact our Kuwait office.

[1] KDIPA: Why Kuwait (<http://www.kfib.com.kw/LivingInKuwait.aspx>); 2035 Vision of His Highness the Amir of Kuwait, Sheikh Sabah Al Ahmad (http://www.da.gov.kw/eng/festival/vision_his_highness.php).