II. TRADE AND INVESTMENT REGIMES

(1) GENERAL FRAMEWORK

1. Kuwait is a constitutional monarchy with a parliamentary system of government. Under its Constitution, which entered into force in 1963, the head of the State is the Emir. The Emir has, *inter alia*, the power to appoint the Prime Minister, dissolve parliament, initiate/sanction/promulgate laws, and refer bills to the parliament for consideration. The Council of Ministers (Cabinet) forms the executive level of government and advises and assists the Prime Minister. The Emir appoints Ministers and relieves them of office upon recommendation of the Prime Minister.

2. Kuwait has a civil law system; Islamic law is important in personal matters. In descending order of importance, the Constitution is followed by laws and their implementing documents such as regulations, then ministerial rulings. There are two ways to prepare laws in Kuwait: either through the Cabinet, or through members of parliament. Through the Cabinet, bills may be drafted by any Ministry, and then reviewed by the Legal Advice and Legislation Department (FATWA). The Cabinet decides whether it will approve the bill upon recommendations of the FATWA. If the bill is approved by the Cabinet, it will be submitted to the parliament (National Assembly), where it is reviewed by relevant committees. After the National Assembly approves the bill, the Emir takes the final decision to assent to it and issues the law (within 30 days of ratification).

3. Members of parliament may prepare and submit draft laws to the National Assembly for review by relevant committees. After the National Assembly approves the draft laws, they are submitted to the Emir for ratification.

4. According to the authorities, all laws must be published in Kuwait's Official Gazette the *Al-Kuwait Al-Yawm*. Kuwait has notified that all trade-related investment measures, including laws, decrees and regulatory measures are published in the Gazette[1].

5. Kuwait's judiciary system includes courts of first instance in each administrative district, courts of appeals, Cassation Court (Supreme Court), and the Constitutional Court. Kuwait is a member of the GCC Commercial Arbitration Centre. Courts generally do not exercise jurisdiction on cases with an expressed agreement to refer a dispute to arbitration. Foreign judgments are enforced in Kuwait on the basis of reciprocity, i.e., if the foreign court has enforced a judgment from a Kuwaiti court, or if any bilateral treaties have been signed. Kuwait has signed such bilateral treaties with Egypt and Tunisia.[2]

6. International agreements do not carry the force of law in Kuwait. They must be transposed into Kuwaiti laws to take into effect. In case of divergence, national laws prevail. However, in case of major divergence and upon complaints by other countries, national laws may be amended. Ratification of the WTO Agreement in Kuwait involved its submission to the Parliament, where it was reviewed by relevant committees. It was approved by the Parliament, ratified by the Emir, and published in the Official Gazette. Following ratification, domestic legislation was enacted to implement different WTO agreements.

7. As a Member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common laws on customs procedures (including customs valuation based on the WTO Agreement),

[1] WTO document G/TRIMS/N/2/Rev.16/Add.1, 31 October 2007; Gazette available at: http://www.ipd.gov.kw.

[2] Abdullah Kh. Al-Ayoub & Associates online information. Viewed at: http://www.al-ayoub.org/index.html [26/01/11].

contingency measures, and some quarantine requirements at the border. At the GCC level, the Ministerial Council, which consists of commerce and other ministries of each member state, is in charge of the law-drafting process. In case of divergence, domestic laws must be revised or amended to be consistent with the GCC common laws. For a GCC law to take into effect in Kuwait, Kuwait must issue national implementing legislation (often in the form of a 1-page decree).

8. Most trade policies are formulated and implemented by means of laws and their implementing regulations. Major trade laws are listed in Table AII.1. Responsibility for trade policy formulation and implementation lies with the Ministry of Commerce and Industry (MCI). When formulating and implementing trade policies, the MCI coordinates with the Council of Ministers (the Cabinet) and other ministries and trade-related bodies, such as the Ministry of Finance, the Kuwait Foreign Investment Bureau (KFIB), the Public Authority for Agriculture and Fish Resources (PAAF), the Public Authority for Industry (PAI), and the Central Bank of Kuwait (Table AII.2).

9. The private sector participates in trade policy formulation through the Kuwait Chamber of Commerce and Industry (KCCI); the authorities stated that the KCCI is the only channel for consultation with the private sector. The KCCI is a non-profit, self-financed private institution. In accordance with Emir Decree 1959, consulting with KCCI on economic laws and regulations is compulsory before drafting new legislation, or amending/revising existing legislation. The KCCI participates in, *inter alia*, ministerial committees, WTO meetings, and regional trade agreement negotiations.

10. The objective of Kuwait's trade policy is to help to diversify national income, increase exports of Kuwaiti origin, and develop transit trade (trade through Kuwait to countries mainly in the northern Gulf region), through opening new markets and market development in both Arab and non-Arab economies.[3] The authorities intend to achieve these aims by applying an open and liberal trade policy, and supporting open trade policies for its trading partners through, *inter alia*, participating in multilateral trade negotiations.

(2) TRADE AGREEMENTS AND ARRANGEMENTS

(i) World Trade Organization

11. Kuwait became a GATT signatory on 3 May 1963 and has been a WTO Member since 1 January 1995. In its schedule of commitments on goods, Kuwait bound all agricultural and industrial products at an MFN rate of 100%, with the exception of crude oil, petroleum, and petrol-chemical products, which are unbound. Kuwait scheduled commitments in eight services sectors (business, construction and related engineering services, distribution, environmental, health related and social services, tourism and travel related services, recreational and sporting services, and financial services). It maintains two MFN exemptions under Article II of the GATS, in the areas of air transport services, and the promotion and protection of investment.

12. So far, Kuwait has participated in one dispute settlement proceeding at the WTO, as a third party.[4] Kuwait's trade-related notifications to the WTO are presented in Table AII.3. Based on information from the WTO Central Registry of Notifications (CRN), as of 30 June 2011, Kuwait had 22 outstanding notifications.

[3] Ministry of Commerce and Industry (2010).

[4] Dispute DS379, United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

13. As a small and trade-dependent nation, Kuwait values highly its membership in the multilateral trading system. Liberal trade means greater access to world markets, a higher level of employment and a better living standard for Kuwait's population. The authorities considered that Kuwait must participate in international trade negotiations to pursue its commercial interests, enhance the negotiation leverage, and protect its existing rights. Furthermore, Kuwait considers it better to protect its rights through the WTO than through regional and bilateral arrangements. The authorities stated that for a small economy, absence from negotiations would mean Kuwait could not influence the content of the rules affecting its trade relations, nor ensure that its rights are fully respected.

14. In the Doha Round, Kuwait supports a UAE proposal that emphasizes tariff elimination for products of substantive interest to developing countries. In particular, Kuwait considers that the primary aluminium industry, which is one of the most important emerging industries in some GCC countries, would benefit from tariff eliminations as suggested in the UAE proposal.[5] In the area of intellectual property rights, Kuwait does not import or export any alcohol, for religious reasons, and considers that participation in the registration system for GIs should be voluntary and without any legal effect.[6]

15. In September 2010, Kuwait joined the WTO Information Technology Agreement. Kuwait is not a party, nor an observer, to the WTO plurilateral Agreement on Government Procurement.

(ii) Regional trade agreements

16. Kuwait's view is that regional trade agreements and arrangements should be complementary, and not compete with the multilateral trading system. They should be building blocks for liberalization of international trade and must be in conformity with the provisions of Article XXIV of the GATT 1994, the Enabling Clause, and Article V of GATS.

17. Kuwait participates actively in regional trade agreements through its membership in the Gulf Cooperation Council (GCC) and the Greater Arab Free Trade Area (GAFTA). As a group, the GCC has signed free-trade agreements with the EFTA states and Singapore (Table II.1), and is preparing to review the legal text of an FTA with New Zealand. It has ongoing negotiations with Australia, China, the EU, India, Japan, Korea, MERCOSUR, Pakistan, and Turkey. Further, the GCC has received requests for FTA negotiations from ASEAN, Azerbaijan, Cambodia, COMESA (Common Market for Eastern and Southern Africa), UEMOA (West African Economic and Monetary Union), Georgia, Hong Kong, China, Indonesia, Malaysia, Peru, Philippines, Thailand, Ukraine, and Viet Nam.

18. In the resolution of the first Arab Economic and Development Summit held in Kuwait in January 2009, Arab countries decided to create an Arab Customs Union, and accomplish all the necessary requirements by 2015, with the objective of establishing an Arab common market.

19. However, all current negotiations of free-trade agreements have been suspended. In September 2010, the GCC decided that negotiations need to be on hold pending completion of an internal study. According to the authories, this study is in its final stage, and is expected to be submitted to the GCC Ministerial Council for consideration before end 2011.

[5] WTO document TN/MA/M/13, 6 August 2004.
[6] WTO document TN/IP/M/19, 19 July 2008.

Table II.1
Overview of Kuwait's regional trade agreements, October 2011

GCC	**Agreement in force**
Title	Gulf Cooperation Council (GCC)
Parties	Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates
Coverage and type	Goods and services, customs union
Date of signature/entry into force	Free-trade agreement adopted in March 1983, Economic Agreement adopted on 31 December 2001, Customs Union effective 1 January 2003, and Common Market launched on 1 January 2008
Transition for full implementation (goods)	The transition period expires by 2015
Kuwait-specific exclusions	No
Services covered	Yes
Kuwait's merchandise trade (2009)	11% of Kuwait's imports were from other GCC member states, and 2% of its exports went to other GCC member states in 2009
WTO document series	WT/REG276, and WT/COMTD/N/25
GAFTA	**Agreement in force**
Title	Greater-Arab Free Trade Area Agreement
Parties	Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen, and later joined by the Palestinian Authority of the West Bank and the Gaza Strip, and Algeria
Coverage and type	Goods, free-trade agreement
Date of signature/entry into force	19 February 1997/1 January 1998
Transition for full implementation (goods)	10 years, but shortened to 8 years (full implementation realized in 2005 instead of 2007)
Main products excluded from liberalization (Kuwait)	Some products excluded for health, religious, or security reasons
Services covered	On-going negotiations among Kuwait, Egypt, and Jordan
Kuwait merchandise trade (2010)	13% of Kuwait's imports were from other GAFTA member states, and 3% of its exports went to other GAFTA member states
WTO document series	WT/REG223
GCC–EFTA	**Agreement signed but not in force**
Title	EFTA–GCC
Parties	GCC 6 members, and Iceland, Liechtenstein, Norway, Switzerland
Coverage and type	Goods and services, free-trade agreement
Date of signature	FTA signed on 22 June 2009
Date foreseen to enter into force	2011, pending completion of internal procedures by the parties. According to the authorities, Kuwait ratified in 2011
Transition for full implementation (goods)	10 years
Services covered	Yes
Main products excluded from liberalization (Kuwait)	Includes: mixtures of odoriferous substances, retreaded or used pneumatic tyres of rubber, hides and skins of swine; prohibited items include mainly cocaine and crocidolite, and materials containing asbestos
GCC merchandise trade (2010)	1.6% of GCC's imports were from the EFTA, and 0.0% of its exports went to the EFTA

Table II.1 (cont'd)

GCC–Singapore	**Agreement signed but not in force**
Title	Singapore–GCC
Parties	GCC 6 members, and Singapore
Coverage and type	Goods and services, free-trade agreement
Date of signature	15 December 2008
Date foreseen to enter into force	Not in force, although Kuwait ratified in 2011
Transition for full implementation (goods)	5 years
Main products excluded from liberalization (Kuwait)	Some products excluded for health, safety or religious reasons
Services covered	Yes
GCC merchandise trade (2010)	0.5% of GCC's imports came from Singapore, and 0.1% of its exports went to Singapore

Source: WTO Secretariat; WTO RTA Database; and information provided by the Kuwaiti authorities.

(a) Gulf Cooperation Council (GCC)

20. The GCC was created on 25 May 1981, by Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. The main objectives were regional cooperation and integration in all economic, social, and cultural affairs, including trade, industry, investment, finance, transport, communications, and energy. One of the GCC's first achievements was an agreement for free trade among member states in 1983, whereby originating goods have been exempt from customs tariffs.

21. An Economic Agreement between the GCC States, adopted on 31 December 2001, replaced the 1981 agreement. This Agreement aims at enhancing and strengthening economic ties among member states, and harmonizing their economic, financial, and monetary policies, their commercial and industrial laws, and their customs regulations. Based on the Economic Agreement, a GCC Customs Union was launched in 2003,[7] and includes: (1) a common external customs tariff; (2) common customs regulations and procedures; (3) a single-entry system where customs duties are collected; (4) elimination of all tariff and non-tariff barriers within the GCC, while taking into consideration domestic laws on agricultural and veterinarian quarantine, as well as rules regarding prohibited and restricted goods; and (5) national treatment for goods produced in any GCC member state. Practical implementation of the customs union lagged behind in certain areas, particularly non-tariff measures. The authorities stated that GCC member states are working to harmonize all customs procedures within the next three years, to have it fully operational by 2015.

22. Kuwait applies the GCC common external tariff of 0% and 5% for most products, and 100% and a specific duty for tobacco products (Chapter III(1)(ii)). As a result of implementing the GCC common tariff, Kuwait's simple average applied MFN tariff was reduced from 7.7% in 2002 to 4.8 % in 2011**.**

23. A GCC common market, launched on 1 January 2008, removed all barriers to cross-country investment and services trade. In particular, Ministerial Decree No. 272 of 2008 specifies that all GCC citizens are allowed to exercise all economic activities and occupations in Kuwait as Kuwaiti nationals, except: immigration and Umrah services; commercial agencies; opening printing presses and publishing houses; and issuance of newspapers and magazines. In most cases, the GCC negotiates bilateral FTAs as a group, although some GCC members (e.g. Bahrain and Oman) have agreed individual FTAs with the United States.

[7] WTO document WT/REG276/N/1/Rev.1, 17 November 2009.

24. On 15 December 2009, Bahrain, Kuwait, Qatar, and Saudi Arabia announced the creation of a Monetary Council. This aims to increase technical cooperation between the four states on monetary policy, although a single currency is not expected in the near future. The GCC Monetary Council Board had its first meeting in March 2010. The Council is working on completing its institutional and organizational structures. Member countries are working towards improving and coordinating monetary, banking, and financial statistics.

(b) GAFTA

25. The Greater-Arab Free Trade Agreement entered into force on 1 January 1998. Its members include the six GCC countries, as well as Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Sudan, Syria, Tunisia, and Yemen. In 2005, Algeria participated as the 18th member. GAFTA contains provisions relating to trade in goods. Duties and other restrictions on substantially all trade between the signatories were to be eliminated by 31 December 2007; in practice duties on all products were eliminated as of 1 January 2005.[8]

26. According to the authorities, all non-tariff border restrictions have been eliminated. The authorities stated that GAFTA aimed at achieving full liberalization of trade in products of national origin among Arab countries. To deepen and broaden economic integration, member countries are working on liberalizing trade in services, with an aim of establishing an Arab Customs Union and an Arab Common Market. Data provided by the authorities show that between 2004 and 2008, trade among Arab countries grew rapidly, although the share of inter-Arab trade to GDP declined, and the share of inter-GAFTA trade to total Arab-foreign trade was stable (Table II.2).

Table II.2
GAFTA trade, 2004-08
(US$ billion)

	2004	2005	2006	2007	2008
Value of inter-GAFTA trade	68	92	112	135	165
Ratio of inter-GAFTA trade to GDP (%)	39	35	22	21	22
Total Arab-foreign trade	691	909	1,082	1,323	1,752
Growth rate of Arab foreign trade (%)	33	32	19	22	32
Inter-GAFTA trade/ total Arab-foreign trade (%)	9.8	10.1	10.3	10.2	9.4

Source: Information provided by the Kuwaiti authorities.

(c) GCC–EFTA

27. Trade between the European Free Trade Association (EFTA) and GCC grew rapidly, on average 25% annually, between 2003 and 2008. A Free Trade Agreement was signed in June 2009, covering trade in goods and services, competition, government procurement, and intellectual property rights. GCC and each EFTA state concluded bilateral agreements on trade in agricultural products. These agreements form part of the instruments establishing the free-trade area. According to the authorities, the EFTA–GCC Agreement has not entered into force, although Kuwait ratified it in 2011.

28. Under the Agreement, EFTA states shall abolish all customs duties on imports originating from GCC, and GCC countries shall abolish all customs duties on imports originating from the EFTA states, except those listed in Annex VI.[9] In accordance with Annex VI, GCC would eliminate duties after a five-year transition period on 37 lines at HS 8-digit level (category B), and prohibit the

[8] WTO document WT/REG223/N/1, 20 November 2006.
[9] EFTA online information. Viewed at: http://www.efta.int/free-trade/free-trade-agreements/gcc/rou-annexes-letters.aspx [27/01/11].

importation of 7 lines (mainly cocaine and crocidolite, and materials containing asbestos). Another 11 lines are not covered by this agreement; these include mixtures of odoriferous substances, retreaded or used pneumatic tyres of rubber, and hides and skins of swine.

29. The agreement has a chapter on services, which closely follows the GATS approach: all four modes of supply of services are covered, and all services sectors are addressed. On the other hand, the agreement does not contain specific provisions on investment. The parties agreed to negotiate on business establishment in non-services sectors within two years after the entry into force of the agreement.

(d) GCC–Singapore[10]

30. The GCC–Singapore FTA, signed on 15 December 2008, covers trade in goods, rules of origin, customs procedures, trade in services, and government procurement. This agreement has not entered into force yet, although Kuwait ratified it in 2011. Under the Agreement, GCC countries abolish customs duties on 99% of Singaporean exports, with key benefiting sectors comprising telecommunications, electrical and electronic equipment, petrochemicals, jewellery, machinery, and iron and steel-related industry. Tariffs are either eliminated immediately, or after a five-year transition period. The remaining 1% of Singapore's exports are prohibited from entering the GCC market for health, safety, security and religious reasons.

31. GCC and Singapore agreed to liberalize various services sectors beyond their WTO commitments; in particular, Singaporean service suppliers enjoy preferential access in professional services such as legal, accounting, and engineering services, as well as business services, such as construction, distribution, and hospital services. Singaporean suppliers are also given the same price preference of 10% that is given to GCC domestic suppliers for government procurement (Chaper III(3)(iii)).

32. Kuwait and Singapore concluded an Agreement for the Encouragement and Reciprocal Protection of Investment in November 2009.

(e) Other bilateral or preferential trade agreement

33. Kuwait has signed a number of economic and commercial agreements with its trading partners, of which, 33 were trade cooperation agreements intended to promote and diversify bilateral trade in goods and services, such as by providing necessary facilities to participate in trade fairs and international markets (Table AII.4). The authorities stated that these agreements contain no discriminatory or preferential commitments.

34. Kuwait benefits from the Generalized System of Preferences (GSP) of the EU. It does not participate in the Global System of Trade Preferences (GSTP).

(3) FOREIGN INVESTMENT REGIME

35. Kuwait has relaxed its foreign capital equity restrictions since 2001 by allowing 100% foreign ownership in 13 sectors. The Government considers that foreign participation tends to encourage a more active private sector, which could help to diversify the economy. However, despite the tax incentives given to foreign companies and the relaxation of foreign equity restrictions, foreign investment in Kuwait remains low. Foreign companies are subject to a corporate income tax, which is

[10] Singapore Government online information. Viewed at: http://www.fta.gov.sg/fta_gsfta.asp?hl=32 [04/04/2011].

not levied on Kuwaiti (and GCC) companies. Also, foreign investors have to go through complicated procedures to obtain licences. The Government is evaluating a possible amendment to its foreign investment law.

(i) Legislative and regulatory framework

36. Major legislation relating to foreign investment in Kuwait includes the Commercial Code, and Law Regulating Direct Foreign Capital Investment (Law No. 8 of 2001) (Foreign Investment Law) (Table AII.1).

37. The basic principles for carrying out business in Kuwait are provided in Articles 23 and 24 of the Kuwaiti Commercial Code. Article 23 states that non-Kuwaiti citizens may not pursue any commercial activities in Kuwait unless they have a Kuwaiti partner. This partner's share must not be less than 51% of the company's capital. Article 24 provides that a foreign company may not establish a branch in Kuwait and may not pursue commercial activities in Kuwait, unless it has a Kuwaiti agent.[11]

38. The authorities do not consider Kuwait to have been very successful in attracting foreign direct investment. The Government decided that Kuwait needs to diversify its economy away from oil. It considers that future growth and diversification require an active private sector, and that foreign participation and involvement will encourage this. On 22 April 2001, the Parliament enacted the Foreign Investment Law, aiming to attract foreign investment by lifting or removing foreign ownership limits. This Law gives an exception to the basic principle in the Commercial Code, by allowing foreigners to own up to 100% of business entities in certain sectors, provided a licence is issued by the Minister of the Ministry of Commerce and Industry. These sectors are:

- industries other than oil and gas exploration and production;
- construction, operation and management of infrastructure enterprises in the fields of water, power, drainage, and communications;
- banks, investment corporations, and foreign exchange companies that the Central Bank of Kuwait agrees to consider incorporation thereof;
- insurance companies that Ministry of Commerce and Industry agrees to incorporate;
- information technology and software development;
- hospital and medicines manufacturing;
- land, sea, and air transport;
- tourism, hotels, and entertainment;
- culture, information, and marketing except for issuance of newspapers, magazines, and opening of publishing houses;
- integrated housing projects and zones development except for real estate speculation;

[11] Kuwait Foreign Investment Bureau online information: "Investors Guide". Viewed at: http://www.kfib.com.kw/kfibclient/clientpages/Index.aspx?id=64 [10.01.2011].

– real estate investment through foreign investor subscription to the Kuwaiti shareholding companies according to the provisions of law No. 20/2002;

– storage and logistic services;

– environmental activities.[12]

39. Foreign investors may establish companies in Kuwait, either as a limited liability company (WLL), or a Kuwait shareholding company (KSC) (closed or public) (Table II.3).

Table II.3
Requirements for establishing a foreign-invested company in Kuwait, 2010

	Limited liability company (WLL)	Kuwait shareholding company (KSC)	
		Closed	Public
Foreign ownership restrictions	Foreign entities may hold a maximum shareholding of 49%	Only Kuwaiti citizens may be shareholders of a joint-stock company, foreigners may own up to 49% of the share capital after approved by the MCI	Foreign shareholders do not need to obtain licence to acquire shares, and may be allowed more than 49% of ownership
Process to form a company	Simple, 3 months	3 months	3 months
Minimum capital requirement	KD 7,500	KD 37,500	KD 37,500; or KD 75 million for banks, KD 10 million for insurance companies
Restrictions	May not engage in banking and insurance activities; may not list on the KSE (Kuwait Stock Exchange)	May not engage in banking and insurance activities	May engage in banking and insurance activities
Corporate income tax	No	Tax levied on profits made by the foreign company as a shareholder in the KSC	Tax levied on profits made by the foreign company as a shareholder in the KSC
Zakat	No	1% of profit	1% of profit
KFAS (Kuwait Foundation for the Advancement of Science)	No	1% of profit	1% of profit
Kuwait National Labour Support Tax	No	No	2.5% of profit
Other requirements	At least 10% of profit must be transferred to a statutory reserve until it totals at least 50% of capital	At least 10% of profit must be transferred to a statutory reserve until it totals at least 50% of capital	At least 10% of profit must be transferred to a statutory reserve until it totals at least 50% of capital
Total number of foreign invested companies in Kuwait in 2010:	WLLs with foreign investment in 2003-10:	Closed KSCs with foreign investment in 2003-10:	Public KSCs with foreign investment in 2003-10:
12	0	9	0

Source: Information provided by the Kuwaiti authorities.

40. However, despite the relaxation of foreign ownership requirements, foreigners do not usually own more than 49% of a company in Kuwait. In accordance with Council of Ministers Resolution No. 1006/2 of 2003, a licence may be issued to a closed KSC in which the share of the foreign investor is 100% of its capital, subject to: (1) the company's capital must be sufficient to achieve its objectives and must be fully subscribed to by the founders; (2) the company must fulfil the procedures, rules, and regulations prescribed under the Kuwaiti Commercial Companies Law (No. 15 of 1960); (3) the company must engage in one of the sectors as listed above, and must pursue one or

[12] Council of Ministers' Resolutions No. 1006/1, 2003, No. 738/9, 2008, and No. 1067/8, 2009.

more of the following objectives: transfer of modern technology and administration of practical, technical, and marketing expertise; expansion and participation of the Kuwaiti private sector; creation of job opportunities for national labour and contribution to training; and support of national products exports.

41. Foreigners may enter and conduct business in Kuwait through joint-venture agreements, appointing a Kuwaiti commercial agent, or appointing a Kuwaiti commercial representative. Joint ventures are established by contractual agreements. They provide parties with more flexibility and are more common in relation to specific projects with a limited term. Joint-venture companies do not have legal personalities and cannot be registered with the MCI. A joint-venture may transact business with third parties only through one venturer, who is personally liable for the transactions he enters into with third parties. If the transacting venturer is a non-Kuwaiti, the Kuwaiti venturer in the company must guarantee him in that transaction.[13]

42. A very popular business vehicle in Kuwait is the commercial agent. Only Kuwaiti citizens may act as commercial agents in Kuwait (with the exception of financial services). A foreign entity that opens an office in Kuwait, and acts through a Kuwaiti agent, must carry out operations in the latter's name. Commercial agents are protected by various laws and regulations: they must be registered with the MCI; Kuwaiti law is the governing law; foreign principals may not terminate an agreement without proving breach of contract by the agent, unless the foreign principal pays compensation; foreign principals may not refuse to renew the agency agreement when it expires; the agent may sue both the foreign principal and any new agent that the former may appoint if the termination is proved to be the result of their concerted action.

43. Similar to the agent arrangement, a foreign entity may appoint a commercial representative who is a Kuwaiti individual or entity to represent its business interests in Kuwait. The representative may be engaged, compensated, and terminated as agreed by the parties of the commercial representation agreement.

44. Only Kuwaiti courts are competent to consider disputes arising between foreign invested enterprises and third parties. The parties may agree to refer a dispute to arbitration. Foreign enterprises may not be confiscated or nationalized; expropriation may only occur for public interest, with compensation equivalent to the enterprise's real economic value at that time.

45. The KFIB is evaluating a possible amendment to the Foreign Investment Law.[14] The Government realizes that, despite various tax incentives and the relaxation of foreign equity ownership, foreign companies still report delays in getting approvals to operate in Kuwait, and the Foreign Investment Law does not appear to have changed the investment climate in any significant way. The authorities have identified six major obstacles to FDI (Table II.4).

46. Amendment to the Foreign Investment Law would focus on removing the overlap in agency arrangement for license issuance, by establishing the KFIB as an autonomous institution. KFIB is working on setting up a "one-stop shop" for foreign investors, which will provide foreign investors a single point of contact with the Government. According to the authorities, the one-stop shop is to be established in the near future. Apparently, land is also an issue of concern to foreign investors. According to the authorities, land is a concern as most land zones lack infrastructure and thus are not

[13] Abdullah Kh. Al-Ayoub & Associates online information. Viewed at: http://www.al-ayoub.org/index.html [26/01/11].

[14] KFIB (2011).

available to investors. To address this issue, KFIB is now in charge of 3 zones to ensure land availability for foreign investors.[15]

Table II.4
FDI obstacles and proposed solutions, 2011

Obstacles	Proposed solutions
1. Failure of competent government authorities to express their views as quickly as required to investors	- Reduce overlap between government authorities, simplify procedures and complete them electronically - Oblige the competent government authorities to express their views during a specific period - Set up e-government - Provide a data base reflecting Kuwait's development plan
2. Currently, under Law No.8 of 2001, it takes 8 months to grant licences to a foreign-invested project	- Modify some articles of Law No. 8 of 2001, to minimize the decision period
3. Inadequacy of the current regulatory framework	- Establish a financial administrative association for FDI in Kuwait - Establish a one-stop shop to facilitate investment procedures - Establish external representations of the Foreign Investment Office, and visit foreign countries where investment originates
4. Lack of clarity and transparency in terms of economic activities and projects which may be practiced by foreign investors	- Clarify Ministerial decree No.1/1006 of 2003 concerning the activities allowed and determining the investment opportunities Kuwait needs
5. Difficult, out of date, and long procedures to apply and obtain licenses	- Minimize the data and documents required for investment licence
6. Difficulties with regard to the investors' entry into, residence in, and departure from Kuwait	- Coordinate with competent authorities to facilitate the entry and residence of company members and investors - Help foreign investors to obtain a visa to enter Kuwait through its embassies abroad - Establish an office to receive investors at Kuwait airport

Source: Kuwait Foreign Investment Bureau.

(ii) Direct taxation and incentives for foreign investment

47. Foreign companies are subject to a corporate income tax, which is not levied on Kuwaiti (or GCC) companies. Some other taxes and contributions are imposed, although foreign companies may benefit from various tax or non-tax incentives.

48. Individuals (Kuwaiti and foreign nationals), and Kuwaiti companies do not pay income tax. However, a corporate income tax is levied on profits made by foreign-invested companies according to their share in the KSC (Kuwait shareholding company). In 2007, Kuwait amended its Corporate Tax Decree, and the new tax decree entered into force in February 2008: for tax periods beginning after 2 February 2008, a 15% flat rate tax applies on earnings above KD 5,250 per year (previously, income tax ranged between 5% and 55%).

49. Gains from trading in securities on the KSE (Kuwait Stock Exchange) are exempt from tax. There is no withholding tax. However, investment funds, investment custodians, and companies managing portfolios for foreign entities are required to deduct 15% (or the appropriate percentage applicable under a double taxation avoidance treaty) of the foreign entity's share of profits and dividends. Also, all government departments, entities, and individuals making payments to parties with whom they have entered into contracts, agreements or transactions are required to withhold 5%

[15] According to the authorities, the KFIB is currently finalizing the terms of reference and structural plans to grant the project to a consulting firm to propose feasibility studies; the zones are expected to be set up in 2 years.

of such payments as tax retention. The parties may recover the retained amount, but only after submitting a tax retention release letter issued by the tax department.

50. Under the *Zakat* Law No. 46 for 2006 (Law Regarding Zakat and Contribution of Public and Closed Shareholding Companies in the State's Budget), *zakat* (tax according to the Islamic Sharia principles) is levied on all Kuwaiti shareholding companies at 1% of their net annual profit.

51. Currently 67% of the Kuwaiti labour force works in the Government sector. The National Labour Support Law (Law No. 19 of 2000) was enacted to support and encourage the national labour force to work in the non-government sector. The Law obliges the Government to share the cost of labour-force training. To cover the cost, Kuwaiti (public) shareholding companies listed in the KSE must pay the national labour support tax, amounting to 2.5% of their net annual profits.

52. In addition to taxation, each KSC company must pay 1% of its net profits to the Kuwait Foundation for Advancement of Science (KFAS), which was established to assist science students and researchers in their education and training for scientific research and development. According to the Government's online information, a KSC company is not strictly obliged to pay to KFAS; however, it has become general practice.[16]

(iii) Incentives and institutional framework

53. Foreign companies may be exempted from income tax or any other taxes for a maximum of ten years from starting actual operations of the enterprise. Also, they may be exempted from customs duties on imports of: machinery, equipment, and spare parts required for construction, expansion, and development; raw materials, semi-processed goods, wrapping and packaging materials, and such other materials required for production purposes.

54. Not all foreign companies may be exempted from tax for ten years: the period of exemption is determined by the Foreign Capital Investment Committee (FCIC). The Chairman of the Committee is the Minister of Commerce and Industry, and its members include experts representing the private sector as well as the Kuwait Chamber of Commerce.

55. The executive body of the FCIC is the Kuwait Foreign Investment Bureau (KFIB). KFIB receives applications from foreign investors, conducts studies on these applications and makes suggestions to the FCIC. Upon recommendations by the FCIC, the Minister of the MCI issues a commercial licence to the foreign investor, after which the KFIB issues an investment licence. According to the authorities, both licences must be issued within a maximum of four months from the date of application (which can be extended by another four months). In case of rejection, the decision must be justified in writing.

56. When deciding tax incentives, the FCIC follows a "proportional weight schedule"; depending on the different components, foreign companies may obtain different "weight values" (Table II.5). Enterprises with a "weight value" between 50% and 64% are exempted from tax for five years; between 65% and 79% the exemption is for eight years; and between 80% and 100% for ten years. Depending on the documents presented to the FCIC, tax exemptions might be granted for less than five years. All exemptions commence from the date of actual operation of the enterprise.

[16] Kuwait Government online information. Viewed at: http://www.e.gov.kw/sites/kgoenglish/portal/Pages/Visitors/DoingBusinessInKuwait/GoverningBody_OverView.aspx [25/01/11].

Table II.5
Proportional weight schedule for FDI, 2011

Basic components	Weight	Notes
1. Technology, modern management methods, practical, operational, technical and marketing experience (20%)	20%	
2. Job creation for national labour force: - Share of national labour force (35%) - Training of national labour force (10%)	45%	Senior management: General manager, assistant general manager, sector manager, etc. Middle management (supervisory): Department Head, supervisor, observational manager, etc. Administrative personnel: Dealer, seller, services provider, etc. - Internal training: (5%); - external and internal training (10%)
3. Enhance and strengthen the Kuwaiti private sector (15%) - Share of local equity (5%)	20%	The enterprise contributes in activating: - 5 sectors, 5%; - 6-9 sectors, 10%; - 10 sectors or more, 15%. Equity share of local partner should not be more than 35% of enterprise's capital
4. Support the economic development plans and targeted sectors - (10%)[a]	10%	Taking into consideration the nature of the enterprise and the Economic Development Plans
5. Location (undeveloped areas) (5%)	5%	
Overall weight of FDI enterprise	100%	

a Sectors identified in the Development Plan.

Source: Kuwait Foreign Investment Bureau.

(iv) Double taxation arrangements

57. The authorities consider that double taxation avoidance (DTA) agreements and investment promotion agreements promote investment through creating favourable conditions for economic cooperation, and removing fiscal obstacles and reducing uncertainties. In March 2011, Kuwait had signed 73 DTAs, of which, 46 had been ratified (Table AII.5). Kuwait has also initialled 14 bilateral DTA agreements, and is negotiating with another 17 trade partners. Kuwait has signed 74 bilateral investment agreements to protect and encourage investment, of which, 56 have been ratified. Kuwait has initialled agreements with 15 trade partners, and is negotiating with 6 others.