

1st February 2023

CONFLICT OF INTEREST LAWS

Background of conflict of interest in the State of Kuwait:

Settling upon an appropriate law and regulations to address conflicts of interest in Kuwait has been a continuing area of challenge. Consistent with many other jurisdictions, Kuwait already advocates the use of conflicts of interest policies and compliance in the financial and regulated sectors as well as placing obligations on companies to address conflicts of directors under the Kuwait Companies Law No. 1 of 2016.

In terms of more general application of law regarding conflicts to Kuwaiti society in general, a specific conflict of interest law in the State of Kuwait was published as a law in March 2018 (Law No. 13 of 2018) (the “**Former Conflict of Interest Law**”). The Anti-Corruption Authority (“**Nazaha**”) in Kuwait also published its own executive bylaws No. 296 of 2018 (“**Executive Bylaws**”) in October 2018 with intention to further expand and address the implementation of the said Former Conflict of Interest Law.

However, on 1 May 2019, Kuwait’s Constitutional Court ruled that the Former Conflict of Interest Law and the Executive Bylaws represented direct violations of Kuwait’s constitution. In particular, the Constitutional Court found that the abovementioned Executive Bylaws failed to provide a sufficiently clear description of where conflict of interest would apply and therefore there was an absence of justification for the prohibitions against activities and actions by affected persons in relation to the referred to conflicts of interests under the Executive Bylaw. As such, the Court determined the applicable law and regulations of the Former Conflict of Interest Law as unconstitutional¹.

On 22 January 2023, a new conflict of interests law, Law No.1 of 2023 concerning the Prevention of Conflicts of Interest, was published in Kuwait Al Yawm (the “**Conflict of Interests Law**”) and it will come into force three (3) months from its publication².

¹ Constitutional Court, Appeal No. 7/2018, hearing dated 1st May 2019.

² Article 21 states “*The Prime Minister and Ministers - each within his own competencies - shall implement this Law. The attached Law shall be published in the Official Gazette and shall come into force three months after the date of publishing in the Official Gazette*”.

1. How does the Conflict of Interests Law define conflict of interest?

Article 1 of the Conflict of Interests Law defines a conflict of interest as follows: “*Each case in which the Subject Person (those defined below) has a benefit or a Material or Moral Interest that absolutely or relatively conflicts with the requirements and responsibilities of his title or position in terms of integrity, independence and preservation of public funds.*”

2. Who does the Conflict of Interests Law apply to?

Article 2 of the Conflict of Interests Law applies to the persons mentioned in Article 2 of Kuwait’s Law No. 2 of 2016 (*On the Establishment of the Public Authority for Anti-Corruption and the Provisions Related to Financial Disclosure*) comprising the following:

- public officials, public authorities and institutions;
- civil servants (“**Employees**”); and
- employees that work in corporate, public authorities and institutions in which the State of Kuwait owns at least twenty-five percent (25%) of its capital. This percentage shall be attributable to the total shares owned by the State of Kuwait or public authorities and institutions (each a “**Subject Person**” and collectively the “**Subject Persons**”).

3. When does a conflict of interest occur?

A conflict of interest would occur when the benefit of the particular material or moral benefit to the Subject Persons (a “**Conflict of Interest**”) to the following related persons:

- those related by marriage to the Subject Person or kinship up to the second degree;
- the persons under his or her guardianship or custody;
- any physical or moral person related by a business relationship, mediation, agency, or representation; or
- any economic entity and any company in which the Subject Person and any of the aforementioned persons participate in an influencing ratio³ to its decision.

³ Article 1 defines influencing ratio as the number of shares or assets whose value is not less than 5% of the company or economic entity’s capital.

4. What is the procedure when a Subject Person is in a Conflict of Interest?

In the event there is a Conflict of Interest, the Subject Person shall disclose the interest to and on the form prepared by Nazaha, within a period not exceeding fifteen (15) days from the date of becoming aware of the Conflict of Interest. Additionally, the Subject Person should eliminate such Conflict of Interests by not engaging in any action, partaking in any decision, participating in any action or decision, and/or taking all necessary measures to prevent the occurrence of damage to the public's interest.

Any implementing executive regulations in relation to the Conflict of Interests Law are yet to be issued, such as regulations concerning which authority are to receive the submitted form.

5. What is the procedure when a Subject Person has a Conflict of Interest?

In the case of sufficient evidence of a Conflict of Interest, the Subject Persons' employers have the duty and obligation to send a written notice to the Employees (i) disclosing the conflict of interest; and (ii) seeking elimination of the conflict of interest. In the event that the Employees have not eliminated the conflict of interest, the relevant employer must report the Conflict of Interest to the Public Prosecution, or the applicable authority confirmed in the executive regulations.

6. Can the companies in the private sector be in violation of provisions according to the Conflict of Interests Law?

It is intention of the Conflict of Interests Law that it can apply to the private sector with penalties for violations. Article 10 of the Conflict of Interests Law states: "*Any person other than the Subject Persons who obtained serious benefit from the case of Conflict of Interest while being aware of the same shall be punished with imprisonment for a period not exceeding one (1) year, in addition to a fine not exceeding five thousand (KWD5,000) Kuwaiti Dinars, with the returnor confiscation of the availed amount*".

7. Who has jurisdiction in relation to the investigation of crimes stipulated in the Conflict of Interests Law?

The Public Prosecution shall alone have the competency and jurisdiction to investigate and prosecute the crimes set forth in the Conflict of Interests Law. Moreover, any criminal proceedings concerning the crimes stipulated in the Conflict of Interests Law shall be left open, and the crime and punishment shall not expire over a passage of time.

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