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Kuwait's Conflict of Interests Executive Bylaws - An Overview

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ICB issued an earlier Client Alert relating to the issue on 22 January 2023 of a new Law No. 1 of 2023 Concerning Preventing Conflict of Interests ("**Conflict of Interests Law**").

On 10 September 2023 implementing bylaws were issued by Decree No. 181 of 2023 establishing the Executive Bylaws No. 1 of 2023 ("**Executive Bylaws**"). These Executive Bylaws were issued with immediate effect and this further alert gives a summary overview.

- **Key Provisions of the Executive Bylaws**

The law requires a 'conflict of interest' to be disclosed by concerned individuals subject to the law in accordance with its provisions.

A conflict of interest under the law in Kuwait is characterized by an individual's ownership of a significant interest in any company or financial venture engaged in transactions with his or her employer (i) where this has direct relevance to the individual's own job responsibilities and (ii) where the individual has full awareness of this connection.

A conflict of interest also applies to certain activities where the individual takes on the role of an intermediary, agent, guarantor, or consultant for private companies or establishments whose operations are connected with his or her employer and his or her own duties at the employer, where the individual has full awareness of this connection.

The Executive Bylaws also include certain key provisions with regard to the establishment of important compliance procedures and measures for management of the conflict of interests by concerned persons under the Conflicts of Interests Law, including:

- a) identification of those individuals who are mandated to disclose conflicts of interest and who they should make disclosures to;
- b) the processes and standard forms required for making the required disclosures;
- c) procedures for reporting instances of conflicts of interest to the Public Prosecution or the Anti-Corruption Authority ("**Nazaha**") where required, with emphasis on the need for comprehensive written documentation in support of such reports; and
- d) protections for whistleblowers or informants who report conflicts of interest in good faith.

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- *Application of the Conflict of Interests Law*

The concerned individuals who are affected and who are subject to the law with requirements to disclose conflict of interests are:

- those particular individuals who are subject to the provisions of Law No. 2 of 2016, which established the Public Authority for Anti-Corruption (“**Law No. 2 of 2016**”), including a number of high-ranking officials and dignitaries. These persons encompass the Speaker of the National Assembly, the Prime Minister, the Head of the Supreme Judicial Council, the Head of the Municipal Council, the President of Nazaha, Members of the Board of Trustees, Ministers, Members of the National Assembly, Members of the Supreme Judicial Council, and others as explicitly delineated in Article 2 of Law No. 2 of 2016;
- public officials who are employed in government entities, public authorities and institutions; civil servants; and
- employees working in corporate entities, public authorities, and institutions, where the State of Kuwait holds a substantial ownership stake, amounting to at least twenty-five percent (25%) of its capital - this percentage comprises the total shares owned by the State of Kuwait or its public authorities and institutions

(each of the above a “**Subject Person**” and collectively “**Subject Persons**”)

- *Circumstances Constituting a Conflict of Interest*

Circumstances giving rise to a conflict of interest for the Subject Person include the following:

- possessing a significant ownership interest in any company or financial enterprise that engages in transactions with his or her employer organization, where there is a direct connection to the Subject Person’s own job responsibilities and where he or she has full awareness of such connection;
- assuming a role such as intermediary, agent, guarantor, or consultant for any private entity with connections to the Subject Person’s employment and directly associated with his or her own particular job, with his or her knowledge and agreement;
- if an individual shares a close relationship, be it through blood, marriage, or in-law up to the second degree, with the Subject Person, or if the Subject Person holds a position such as a guardian, trustee, or executor for the individual, and that individual possesses a substantial interest in any company or financial enterprise engaging with the Subject Person’s employer and pertinent to his or her job responsibilities, with full awareness of this connection; and/or
- if an individual maintains a professional relationship with the Subject Person, or acts as an intermediary, agent, or representative – whether a natural person or a legal entity – with a significant interest in any company or financial enterprise engaging with the Subject Person’s employer and pertinent to his or her job responsibilities, with full awareness of this connection.

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- ***Conflicts of Interest Disclosure: Who should disclose and to whom?***

In a general context, the Executive Bylaws delineate the reporting structure of conflicts for prominent officials, which encompass government ministers and members of the judiciary, alongside employees of public entities and entities subject to public authority oversight.

High-ranking officials are obligated to directly submit their disclosures to Nazaha, while public officials should channel their disclosures through to the designated authority within their respective entities. This authority could be the entity's head, the board of directors (if it exists), or the supervising minister, depending on the prevailing circumstances and considerations.

The entity responsible for receiving the disclosure from the Subject Persons should meticulously examine the information in the disclosure and take the following required actions: (i) if the Subject Person discloses a conflict of interest as stipulated by the law and promptly resolves the conflict upon becoming aware of it, such action shall be deemed sufficient, and no further steps are required; whereas (ii) if the Subject Person fails to resolve the disclosed conflict of interest, it is the duty of the entity to promptly notify the Public Prosecution or Nazaha.

- ***Employer's Duties in Handling Employee Conflicts of Interest***

When an employer becomes aware of a conflict of interest involving one of its employees, they must promptly notify the employee in writing, requiring him or her to disclose and resolve the conflict. If the employee does not address the conflict upon notification, the employer is obligated to report the matter to the Public Prosecution or Nazaha. In all cases, the employer must take the necessary measures to prevent and mitigate conflicts of interest within the organization.

- ***Reporting Requirements for Whistleblowers***

The Conflict of Interests Law and its Executive Bylaws do not specify how informants or whistleblowers are obligated to report such a conflict of interest to the Public Prosecution or Nazaha. However, this obligation is derived from Law No. 2 of 2016, which mandates that individuals report corruption crimes, ensuring their freedom, security, and well-being under its provisions or any relevant legislation.¹

When submitting a report, the whistleblower must provide comprehensive information in support, with the reporting person's signature, identity, date of submission and contact details. The report must offer a detailed account of the relevant matters, encompassing the time, place, source, circumstances, individuals involved, and any supporting documents held by the whistleblower. Furthermore, the whistleblower is obliged to

¹ Article 37 of Law No. 2 of 2016 mandates that "*Reporting on corruption crimes is an obligation for every individual, and the freedom, security, and well-being of the informant are assured in accordance with the provisions of this law or any other legislation that introduces further safeguards in this regard. It is strictly prohibited to interfere with the informant in any way due to their reporting of these crimes.*"

disclose his or her relationship with the individual that is the subject of the report, any prior complaints, and actions previously taken against him or her.

- ***Substantiating Whistleblowing Claims***

Whistleblowers must provide substantial and compelling evidence to substantiate their claims, thereby ensuring the accuracy and credibility of their reports. Reports lacking supporting documents, references, or pertinent evidence will be considered invalid.

- ***Protections for Whistleblowers***

Once the whistleblower has made his or her report, he or she is entitled to certain important protections under the law, from the date of the initial report.

These protections remain in effect until the underlying reasons for it cease to exist. While the Executive Bylaws do not explicitly outline the circumstances in which protections may be terminated, the process for both initiation and ending of the protections require either a written request from the whistleblower or a decision from Nazaha.

The protections afforded to the reporting whistleblower cover the following:

- a) safeguarding their identity and location, as well as offering personal security or a new place of residence, if required;
- b) preventing administrative actions or claims being taken against them and ensuring the continuity of their employment salary, rights, and benefits during the period determined by Nazaha; and
- c) ensuring his or her legal protection from criminal, civil, or disciplinary actions or proceedings.

- ***ICB Assistance?***

ICB provides its clients with guidance and advice on all local law and practice and with regard to matters concerning compliance and regulatory obligations.

If and when required, ICB would be more than happy to assist in providing more detailed and further information regarding the subject matter of this client notice.

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