

25 January 2024

The New Amendment to Local Agent Requirement- An Overview

On Sunday 21 January 2024, a short yet significant legislation amending Article 24 of the Kuwait Commercial Law and Article 31 of the Public Tenders Law (the “**New Amendment**”) came into effect.

Historically, doing business in Kuwait has been subject to local component restrictions. These restrictions can be summarized in that they require business organizations by foreign parties to include a minimum local shareholding in the case of incorporation (here, local means ultimate ownership/shareholding by a GCC natural person) or doing business through a commercial agent. Outside of certain discretionary exceptions for foreign investors to set up branches, foreign entities have not been entitled to do business by setting up branches.

The New Amendment is a major shift from the aforementioned fact of life in respect of doing business in Kuwait. While it does not dispense completely with the local component restrictions, it allows foreign companies to establish branches “without the need for a local agent.” It remains to be seen whether this development marks a crucial shift in the legal and regulatory environment relating to business organization and public procurement in Kuwait. On its face, the New Amendment provides an opportunity for foreign companies to have direct access to the Kuwaiti market with one less restriction.

Wait and see?

It is anticipated that detailed implemented executive regulations will follow the New Amendment to address specific aspects, particularly those related to:

- (1) whether the New Amendment would be administered by KDIPA given the express reference to the Direct Investment Law No. 116 of 2013;
- (2) whether the foreign entity, represented by its Kuwaiti branch, act as immigration sponsor to its employees in Kuwait; and
- (3) whether such branch would be able to obtain other licensure typically reserved for local parties.

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What does it mean to foreign companies?

Foreign companies may be able to contract directly with government and state-owned companies without the need of a local agent. However, it is still not clear how the Ministry of Commerce and Industry will coordinate with other government entities, particularly the Ministry of Social Affairs and Labour in relation to visa sponsorship of employees which require local companies. Further, certain government entities or state-owned companies may still require a local agent as part of their own procurement requirements.

Can foreign companies establish branches or companies in Kuwait without a local partner or agent?

Yes, foreign companies can incorporate 100% foreign owned entities through the Kuwait Direct Investment Promotion Authority (“KDIPA”) if they meet the KDIPA criteria for securing an investment license, without the need to meet minimum shareholding environment in such entities. However, the granting of investment license is a privilege, not a right. Once the foreign investor incorporates a local entity through KDIPA, it will be able to sponsor employee visas, rent an office space and obtain certain benefits such as tax and customs exemptions, provided they meet certain criteria, and be subject to ongoing reporting requirements, as set out by KDIPA rules.

How can ICB help?

As a firm with deep local roots and an understanding of international standards, we have assisted, and continue to assist, a number of multinational entities with their business organization structures in Kuwait whether through KDIPA or otherwise. If you have any questions or require any assistance, please feel free to reach out directly to our corporate team below. For any other general queries, please email icb@icbkuwait.com.kw to schedule a meeting.

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