

30th August 2024

KDIPA issues new regulation for foreign investors on incentives and exemptions

On August 7, 2024, the Kuwait Direct Investment Promotion Authority (**KDIPA**) issued Decision No.388/2024 governing the criteria and procedures for the obtaining certain incentives and exemptions by investors (the **New Regulation**).

The New Regulation is applicable to both already established and licensed KDIPA entities and those seeking to establish and obtain a KDIPA license (**KDIPA Entities**). It comprises of five (5) key provisions designed to clarify the processes and standards by which KDIPA Entities can qualify for incentives and/or exemptions provided under KDIPA Law No. 116/2023 (the **KDIPA Law**).

This development marks a step in streamlining and enhancing the transparency of the incentives and exemptions framework, ensuring that eligible investors are better informed about the opportunities available to them. It also reinforces KDIPA's commitment to fostering a positive investment environment in Kuwait.

The nature of relevant incentives and exemptions:

The option for KDIPA Entities to apply for incentives and exemptions is already well-established within the framework of the KDIPA Law. The KDIPA Law offers two incentives for investment entities: (i) income tax exemptions for up to 10 years from the start of business operations; and/or (ii) full or partial exemptions from customs duties and other fees on imports essential for the operation of the investor, such as machinery, tools, equipment, transportation, spare parts, raw materials, and packaging supplies.

However, these incentives are not automatically granted. They are contingent on the applicant demonstrating its capabilities to meet specific criteria relating to benefits that the investor is bringing to the Kuwaiti market, including technology transfer, human capital development, sustainable development, market expansion, and economic diversification.

KDIPA evaluates these criteria by way of a scoring system whereby the investors need to achieve scores of over 60% to qualify for one incentive and over 85% to qualify for both incentives. Once the KDIPA Entity obtains its investment license from KDIPA, it must also demonstrate ongoing compliance with its business plan for the incentives to remain available.

What changes apply under the New Regulation?

The New Regulation is helpful in adding another layer of specificity to the conditions under which these incentives and exemptions may be granted. For instance, Article 2 specifies that if a KDIPA Entity has not initially received incentives or exemptions due to insufficient scoring on the required criteria, it can reapply following receipt of the KDIPA investment license. However, this reapplication is permitted only after one (1) year of actual

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operations (by way of submitting Application D). Meeting the specific criteria is essential for the application to be successful, and if granted, the incentives will be effective from the date Application D was submitted.

Furthermore, Article 3 outlines particular conditions for KDIPA Entities seeking incentives or exemptions either during or after the investment licensing process in connection with ongoing Kuwaiti projects where bids have been submitted before applications for a KDIPA investment license. The New Regulation is particularly valuable for KDIPA Entities operating in the construction sector. Whereby according to KDIPA's annual report for the year 2022/2023, construction activities currently contribute a total investment value amounting to KWD 218,847,742 (14.93% of the total investment value).

Such projects referred to in Article 3 may pertain to either the private or public sector. The conditions for the applicant require that: (i) there must be adherence to KDIPA's standards, regardless of other contractual obligations related to the project(s) themselves; and (ii) the exclusion of incentives for projects where bids have been submitted before the applicable KDIPA Entities applied for benefits. Additionally, any assignment or transfer of project contracts will not affect the eligibility for such incentives in respect of such projects. Further conditions require that (iii) independent financial accounts must be prepared for the KDIPA Entity, separate from any other financial accounts which exist due to contracts already having been signed; and (iv) contracts already excluded from certain taxes/fees will not be subject to the benefits of KDIPA incentives and/or exemptions, meaning that no additional benefits are received for such contracts.

Lastly, Article 4 of the New Regulation provides that incentives and exemptions are not available to be granted for KDIPA Entities participating in any ongoing offset programs. For information, the offset program is a policy initiative that mandates foreign entities engaged in substantial supply contracts with the government to invest in the local economy. Applicable to defense contracts worth KWD 3 million or more and civil contracts valued at KWD 10 million or more, the program ensures that a portion of the contract's value is reinvested in Kuwait through offset projects that support the country's economic and social goals.

In summary, KDIPA's regulatory framework ensures that incentives and exemptions are thoughtfully granted to investors that contribute to Kuwait's economic objectives. By upholding the above-mentioned criteria and oversight, KDIPA fosters sustainable investments while ensuring a fair and balanced approach to granting benefits.

When will it be enforceable?

The New Regulation has been in force since its publication in the Official Gazette on August 18, 2024.

How can ICB help?

Foreign investors seeking full ownership of their operations in Kuwait can establish their businesses through KDIPA with the support of ICB. Our Corporate team is experienced in supporting clients in KDIPA applications and is able to guide you through every phase of the process, ensuring an efficient setup. If you require any assistance

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or have specific questions, don't hesitate to contact our Corporate team directly using the contact information provided below. For general inquiries or to schedule a meeting, please email us at icb@icbkuwait.com.kw.

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