Bridging the Gulf

CLIENT INSIGHT

An investigation of the GCC and Middle East legal market

From the publishers of The Legal 500 series, Legal Business, gc, The In-House Lawyer

Chairman
John Pritchard (Solicitor)

Managing director
David Goulthorpe
+44 (0)20 7396 5628
david.goulthorpe@legal500.com

Publishing director: The Legal 500 Series
David Burgess
+44 (0)20 7396 5665
david.burgess@legal500.com

Editor-in-chief, GC magazine
Catherine McGregor
+44(0)20 7071 0166
catherine.mcgregor@gcmagazine.com

Editor-in-chief, Legal Business
Alex Novarese
+44(0)20 7396 9321
alex.novarese@legalease.co.uk

Head of sales: research & consulting
Paul Birk
+44 (0)20 7396 5632
paul.birk@legal500.com

Head of business development, Middle East
Gurpartap Basra
+44(0)20 7396 5626
gurpartap.basra@legal500.com

CLIENT INTELLIGENCE UNIT

Head of research
Dominic Williams
+44 (0)20 7071 3788
dominic.williams@legal500.com

Research editor
James Wood
+44 (0)20 7396 5659
james.wood@legalease.co.uk

Senior research analysts
Athina Tzemprin
+44 (0)20 7071 3789
athina.tzemprin@legal500.com

Boris Dechev
+44 (0)20 7071 3782
boris.dechev@legal500.com

Creative director
Stephen Jones

Content development/design
Guy Reder

Legalease Ltd
188-190 Fleet Street
London EC4A 2AG
United Kingom

Tel: +44 (0) 20 7396 9292
Fax: +44 (0) 20 7396 9301

Printed and bound by Park Communications Ltd
www.parkcom.co.uk

www.legal500.com
www.legalbusiness.co.uk
www.gcmagazine.com
www.inhouselawyer.co.uk

BRIDGING THE GULF

An investigation of the GCC and Middle East legal market

CONTENTS

KUWAIT

EMPLOYING CHANGE

Although Kuwait has the healthiest budget of any GCC state, it is nonetheless expected to post a deficit in the coming year. Kuwait Vision 2035 outlined a development plan to turn the state into a world-class financial and commercial centre, while new laws have been drafted in the hope of breathing life back into capital markets that have remained low since the financial crisis. Can Kuwait live up to its promise as one of the most investor-friendly economies in the region?

LEGAL CHALLENGES

(Ranked by importance to survey respondents in Kuwait)

1. Compliance

2. Employment issues/disputes

3= Finance/ funding

3= Falling commodity prices

With the world's sixth largest reserve of oil, the lowest break-even prices for oil extraction in the GCC, and a small population of nationals to support, Kuwait is in a more comfortable position than many of its neighbours. The country also has one of the largest sovereign wealth funds in the world, estimated to contain over $500bn worth of assets, to protect it in the short term. Yet with more than half of the country's GDP and over 95% of export earnings coming from oil, Kuwait's leadership knows the country must pursue its own diversification strategy.

ECONOMIC OVERVIEW

Falling oil prices mean that Kuwait is facing a budget deficit of around £17bn for 2015. While this deficit is decoupled from Kuwait's investment fund wealth, which would be able to cover expenses for several years, its balance of trade is becoming uncomfortably lopsided. Data from the Central Statistics Bureau of Kuwait shows that for the first half of 2015 total exports were down by an average of 42% compared to the same period in 2014, while total imports rose by 10.4%.

In order to address the situation, the Kuwaiti government announced in 2015 an infrastructure spending plan to help move the country away from oil dependence. The five-year plan, which will come to an end in March 2020, will see the country commit $116bn to new airports, roads and rail networks.

Among the more ambitious projects are new city developments in Subiya, Khairan, Jaber Al Ahmed city and Arifjan, developments on the islands of Failaka and Bubiyan, a significant expansion of Kuwait Airport, expansion and development of the country's sewerage network, and a new metro rail system.

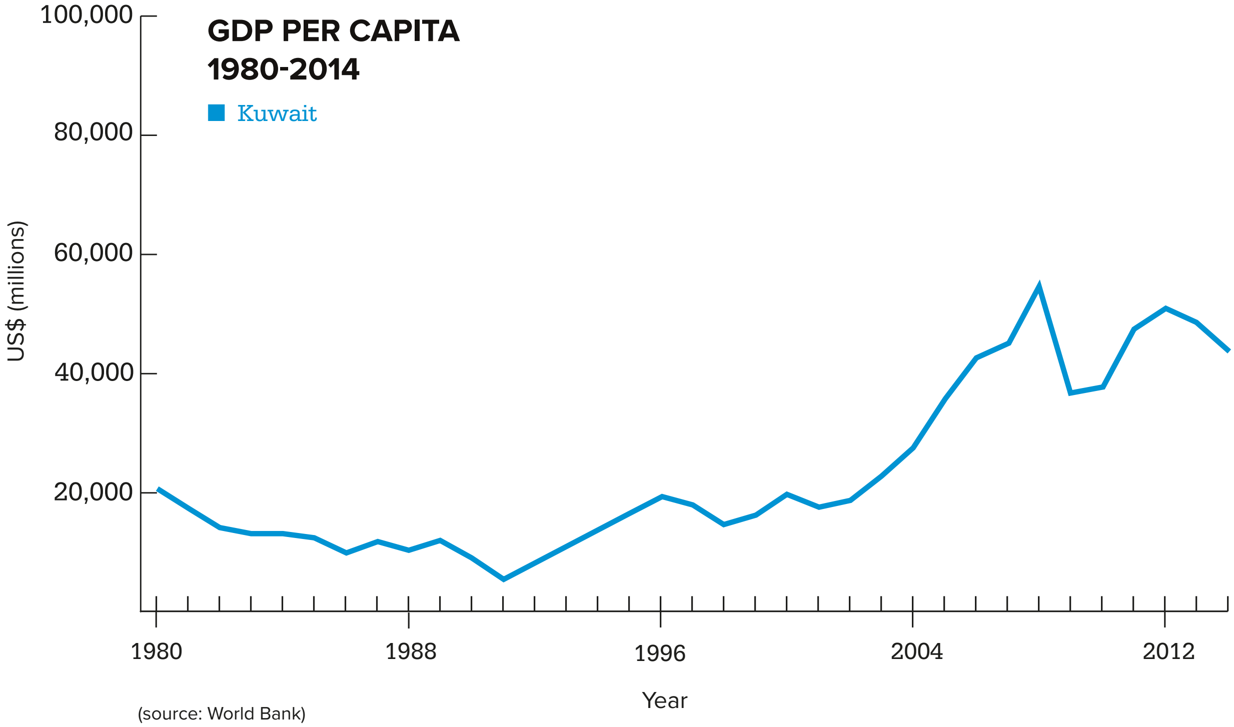
The Kuwaiti government has also set a target of generating 15% of its energy from renewable sources by 2030 and recently signed a $385m agreement with Spanish company TSK Group to help develop solar power facilities in the Shagaya desert region. The Partnerships Technical Bureau, responsible for the implementation of Public Private Partnerships (PPP), has identified eight key strategic areas in which the economy needs to diversify.

With Kuwaiti companies tending to have high levels of owning-family representation on their boards there has also been recognition that corporate governance

PROVEN CRUDE OIL RESERVES

104,000m
barrells

(source: CIA World Factbook)



(source: World Bank)

structures in the country need to be reformed to allow businesses to respond to changing economic conditions more rapidly.

Since 2001 direct ownership of Kuwaiti businesses has been permitted in selected sectors, including insurance, tourism and entertainment. However, the financial crisis of 2008 led many foreign investors to reconsider their plans. Kuwait's market index, which lost more than 50% of its value following the events of 2008-2009, has been slow to recover when compared with other GCC markets.

The country is now looking at new initiatives that will attract FDI and help broaden its revenue base, including the introduction of US chapter 7 and 11 style bankruptcy provisions.

Further attempts at diversification can be seen in the recently announced $7bn Kuwait National Fund for SME Development, a World Bank backed initiative to stimulate small businesses and assist local entrepreneurs.

These diversification strategies do not mean the country is turning its back on oil. Kuwait Petroleum Corporation is betting on a recovery in oil prices and plans to increase production to a level of around 3.5-4 million barrels a day by 2020.

In line with many GCC states, Kuwait has also begun to consider introducing taxes. While foreign firms are currently subject to a 15% tax on profits, there are no corporate or income taxes in Kuwait, a situation the country plans to address in the near future.

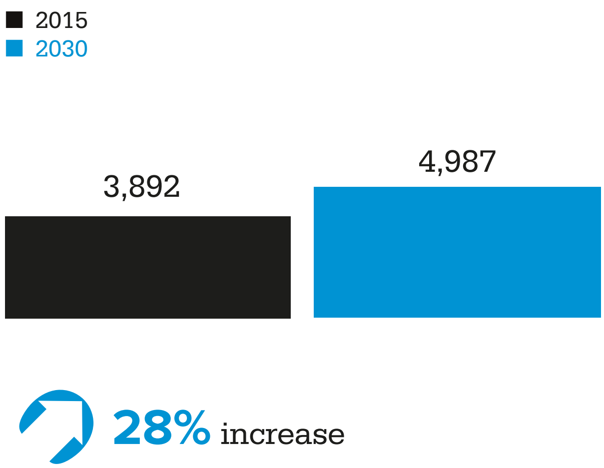
However, these reforms will not be easy to push through. Earlier this year the Kuwaiti parliament vetoed a proposal, initially made by the IMF, to impose a 10% tax on corporations on the grounds that it would drive both national and foreign investors elsewhere.

LEGAL CHALLENGES

The Kuwaiti authorities have been discussing a range of new measures aimed at attracting new investment to the country in recent months. Responses from our survey give some clear indications of the steps the business community believe the country must take to achieve this goal. When asked how legal procedures and institutions in Kuwait could be improved to facilitate trade and investment, respondents focused on the need to simplify procedures and improve the commercial courts.

Those we spoke to said there was still too much ambiguity in Kuwaiti processes and that a lack of clarity on legal provisions made planning difficult, even for businesses with longstanding operations in the country. Excessively lengthy and uncertain timeframes for licensing and starting companies were seen as a barrier to new business, as was the limited legal protection offered to foreign investors.

PROJECTED POPULATION
(thousands)



(source: United Nations)

New laws on foreign investment were welcomed but the general consensus was that the process of legal reform needs to be pushed through much more quickly.

> ‘The authorities need to simplify the legal procedures for new investments and significantly reduce the level of ambiguity investors face. It can be very difficult to build trust with foreign investors because they are offered no certainty.’
> Head of legal, banking.

Others said the country’s bureaucracy was too complicated and marked by excessive red tape and inconsistent regulations. While a number of GCC states are exploring e-governance platforms to speed up their bureaucracies, the relative lack of automation in Kuwait led to complaints over the time taken to complete paperwork.

Even more tellingly, when asked how they would rate efficiency of the Ministry of Commerce and Industry in regulating the activities of companies, only 9% of respondents said it was very efficient, while 36% said it was very inefficient.

There was an accompanying focus on the need to improve the efficiency of the country’s commercial courts. While 9% of respondents said the commercial courts in Kuwait handle cases very well, twice as many (18%) said cases were typically handled very poorly.

New laws on foreign investment were welcomed but the general consensus was that the process of legal reform needs to be pushed through much more quickly.

For expatriate in-house counsel the difficulty of learning about, let alone fully understanding local regulatory requirements was increased by the fact that laws are often published only in Arabic. In a country where less than a third of the population is composed of Kuwaiti nationals and where many private sector jobs are held by Anglophone expatriates this presents an unnecessary burden to compliance.

CLIENT SURVEY ANALYSIS

The GCC & Middle East Insight survey shows that Kuwaiti businesses are struggling with employment matters more than their counterparts elsewhere in the region. Half of respondents listed employment law among the most serious matters their companies faced, while 55% said their businesses had been significantly affected by the government's focus on Kuwaitisation. As one respondent commented, financial penalties for failing to meet Kuwaitisation quotas are meaningless in a market where generous state salaries make attracting skilled nationals to the private sector all but impossible. Several respondents said that sponsorship and immigration rules should in fact be relaxed to help businesses become more competitive internationally.

It was notable that, in spite of current economic concerns, Kuwaiti businesses are experiencing less difficulties in securing funding than their counterparts in the GCC as a whole. Only 38% of respondents identified funding as a major concern, significantly lower that the regional average of 73%.

Kuwaiti respondents to the GCC Insight survey were distinguished by their belief that legal expenditure would grow in spite of the downturn: 67% said their legal spend would increase in the coming year, making Kuwait one of only two GCC states to forecast higher spending on legal services. More than half (55%) of businesses surveyed also expect to do more trade with MENA in the coming year.

Respondents from Kuwait were marked by their preference for developing stable relationships with their outside counsel; 75% said they preferred to work with the same firms on a regular basis. This focus on stability seems to have influenced relationships between firms and clients. Fixed fee relationships were significantly more popular in Kuwait than anywhere else in the GCC: 73% of businesses saying they preferred to work with their firms on this basis compared to an average of just over 50% for the region as a whole.

KUWAIT COMMENTARY INTERNATIONAL COUNSEL BUREAU

The Middle East as a region is interesting to say the least. Two conflicting factors – turmoil and reform – are simultaneously shaping the region. More than anything, these two dynamics are greatly affecting the economic landscape and the business culture of the region, which is invariably changing the corporate legal climate and influencing the way corporate entities require and subsequently procure legal services.

The political turmoil, which has unfortunately become synonymous with the Middle East, has a clear and direct impact on how business is conducted in the region – especially when it comes to foreign direct investment, the energy sector, and M&A activity. The plunging oil prices coupled with ongoing conflict in the region (namely in Yemen and Syria), have negatively impacted public spending. This is especially important in the GCC where business activity is heavily influenced by the state and actions of government; most notably in terms of the structure of the government, and the state's budgetary planning and development plans for the coming years. A good example: Kuwait recently announced public spending cuts in the form of reducing (and in part eliminating) the subsidies afforded to both its citizens and residents – something which will definitely have lasting impact on the private sector services in the country.

In recent years, Kuwait has been increasing its efforts to promulgate new laws and regulations, in an effort to modernise its legal framework. With new regulatory bodies and legal frameworks firmly in place for capital markets, PPPs, and foreign direct investment, the country is witnessing significant traction in proposed large infrastructural projects and M&A activity.

On the megaproject forefront, the Kuwait Authority for Public Private Partnerships (KAPP) is leading the charge with high-profile landmark projects being introduced such as Az-Zour North IWPP (Phase 2), Al Abdaliyah Integrated Solar Combined Cycle project, the Umm Al Hayman (UAH) Waste Water Project, and the New Kuwait International Airport, to name a few.

Kuwait has also been relatively active in the areas of debt, equity offering and M&A, with the announcement of exciting and long awaited IPOs, as well as some of the largest acquisition deals the country has ever seen. EQUATE Petrochemical Company, the country's leading petrochemical company, completed the acquisition of MEGlobal Inc., the largest private acquisition in Kuwait's recent history aided by EQUATE raising a $6 billion acquisition facility (the largest acquisition financing in the region in 2015) from local, regional, and international financial institutions. This year Kuwait also saw the largest acquisition in the region in the tech sector through the acquisition of Talabat.com by Rocket Internet.

The introduction of new modern legislations and the venturing of Kuwaiti entities outside the country are two themes expected to majorly impact the legal field in the State of Kuwait and even the region at large; especially in the context of the scope, level, sophistication and form of delivery of legal services required.

As things stand currently, the majority of local law firms in Kuwait are still focused on the provision of litigation services. Therefore, there is a definite scarcity in the presence of high-level corporate and transactional counsel who understand the spirit of the law and its localised practice. On the other hand, compared to its counterparts within the region, Kuwait has proven to be a very tough market to crack for large global law firms, with many finding it especially difficult to adapt to the local client culture and also have the local know-how to assist international players.

Overall, the challenging business environment in the region presents legal practitioners with the task of mitigating the difficulties and risks facing their clients, whilst making the most of the opportunities available across these ever-growing markets. ■

Quality, Tradition, Elite

As one of the leading law firms in the State of Kuwait, our goal at the International Counsel Bureau (ICB) is to deliver highly specialized legal counsel, based on a creative approach, sophisticated analysis and innovative solutions.

Our primary aim is to understand our clients' business needs and objectives, in order to offer them the bespoke legal guidance necessary for them to achieve their goals. We strive to offer counsel based on local practical knowhow and expertise with international standards of practice.

INTERNATIONAL COUNSEL BUREAU

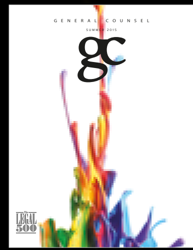
مكتب المستشار الدولي

Lawyers & Legal Consultants محامون ومستشارون قانونيون


THE GLOBAL GC
Join our audience of 180,000
in-house counsel worldwide
gc


gc

gc

gc

gc

gc