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NEW LAW ISSUED IN KUWAIT ALLOWING FOREIGN COMPANIES TO OPEN BRANCH OFFICES IN KUWAIT WITHOUT A LOCAL AGENT

New Law issued in Kuwait allowing foreign companies to open branch offices in Kuwait without a local agent

Long awaited legislation allowing foreign companies to open branch offices in Kuwait without a local agent was published in the Official Gazette (*Kuwait Al-Yowm*) on 21st January 2024.

Law (1) of 2024 Amending Article 24 of Commercial Law No. 68/1980 and Article 31 of Public Tenders Law No. 49/2016, came into effect on 21 January 2024, which is the date of its publication in the Official Gazette. Law (1) of 2024 was first approved in December 2023 by the National Assembly and was issued by H.H the Amir of Kuwait on January 14, 2024.

Summary of the Law No (1) 2024

Law (1) of 2024 amends Article 24 of the Commercial Law and Article 31 of the Public Tenders Law.

Article 24 of the Commercial Law

Article (1) of Law (1) 2024 provides as follows

Quote

The text of article (24) of the aforesaid Decree law No.68 of 1980 shall be replaced by the following text:

Article (24)

“As an exemption from the provisions of article (23) clause (1), a foreign company may establish its branch in Kuwait and commence business therein without the need for a local agent.”

Unquote

Article 24, previously stated that a foreign company may not establish a branch or engage in business activities in Kuwait unless through a Kuwaiti agent.

As amended Article 24 now permits **a foreign company to establish a branch in Kuwait and engage in business activities in Kuwait without the need for a local agent**, as an exception to Article 23 of the same Commercial Law- which states that a non-Kuwaiti may not practice trade in Kuwait unless he has established a company with a Kuwaiti partner- who must hold not less than 51% of the company's total capital.

Thus, whilst the amendment to Article 24 does not alter or remove the requirement for non - Kuwaitis to open a company with a Kuwaiti partner subject to the provisions of Article 23 – the amendment means that a foreign company may now establish a direct branch of its own parent company and engage in the business activities of its parent in Kuwait as an exception to Article 23 and without the longstanding restriction of engaging in business activities only through a Kuwaiti agent as stipulated in the original text of Article 24.

Article 31 of the Public Tenders Law

Article (2) of Law (1) of 2024 also amends Article 31 of the Public Tenders law, which sets out the conditions for entering bids for public tenders in Kuwait.

Quote

The text of article (31) of the said law No.49 of 2016 shall be replaced by the following text:

“Contractor general conditions:

“Taking into consideration the aforesaid law No.1 of 2016 and Law No.116 of 2013, as well as the provisions of the relevant international agreements, a bidder to public or limited tenders or in the events of momarsa (auction) and direct contract, the following is conditional:

First: He should be an individual or company registered in the Commercial Register.

Second: he should be registered in the register of suppliers or contractors or according to the nature of the tender, auction or direct contract. If the bidder is a foreigner, the provisions of clause (first) of this article and the provisions of article 23 of the aforesaid decree law No.68 of 1980 shall not apply on him.

Unquote

Article 31 of the Public Tenders law as amended removes the mandatory requirement that the party submitting a bid for a public tender must be a Kuwaiti individual or company registered in the commercial register. As such a bidder may be either Kuwaiti or foreign. Although Article 31 of the Public Tenders law previously provided an exemption permitting foreign entities to submit bids for public tenders (if the concerned government authority requested the same for specific projects requiring technical knowhow that was not available locally) the foreign bidder was still in need of a Kuwaiti agent or partner for the execution phase of the project for operational matters such as sponsoring employees.

What is the impact of Law (1) of 2024?

Allowing foreign companies to operate and open branches in Kuwait without a local agent is a significant and long awaited development the aim of which is to increase and stimulate foreign investment and foreign investor participation in Kuwait.

Foreign companies now have the ability to establish a presence and operate in Kuwait through opening a wholly owned branch in addition to the existing options of establishing a company with a majority Kuwaiti stakeholder, or appointment of a local agent.

Furthermore foreign companies may now participate in government tenders directly and thereafter if successful may implement /execute the contract through their own branch in Kuwait.

Next steps

Further clarification is awaited as to how the implementation of **Law (1) of 2024** will take effect across different government sectors and how the provisions shall work in a practical context.

HFW will follow closely the developments and details on the implementation of **Law (1) of 2024**, and any implementing regulations which follow.

There are many commercial practice points to be considered such as for example whether there will be any restrictions on the types of activities foreign branches may engage in or whether any Kuwaiti representative will still have to be appointed by the foreign branch, to represent the branch before government authorities in immigration and labour matters.

HFW will welcome guiding our clients through this new change in order to meet their business needs in Kuwait. We are optimistic that **Law (1) of 2024** will significantly contribute to changing the landscape of foreign investment in Kuwait.

Should you have any questions regarding the new law, please do not hesitate to reach out to us.

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