AMERICAN UNIVERSITY OF ARMENIA

40 Marshal Baghramyan Avenue

0019, Yerevan, Armenia

Tel: (37410) 51 27 55

law@aua.am

Tel: (37410) 51 27 55

LL.M. Program

ԻՐԱՎԱԳԻՏՈՒԹՅԱՆ ՄԱԳԻՍՏՐՈՍԻ ԾՐԱԳԻՐ

TITLE

Could any Aspects of Kuwaiti FDI legislation be applied in Armenia?

STUDENT'S NAME

VARDAN YESAYAN

SUPERVISOR'S NAME

PROF. AIDA AVANESSIAN

NUMBER OF WORDS

11153

Contents

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

Acknowledgments

Before turning to the main research I would like to express my gratitude to my dean, Ms. Adelaida Baghdasaryan, for trusting me and approving my research topic. I realize how big of a risk she took and I hope I will prove the rightness of her decision by providing a comprehensive and valuable research.

I would also like to express my gratitude to my research supervisor, Ms. Aida Avanessian, who had all the patience and enthusiasm to give directions and put me on the right track, providing me with the necessary skills and knowledge regarding a good structure as well as on the content of this research paper.

Abbreviations

AMD – Armenian Dram

40 Marshal Baghramyan Avenue **Tel: (37410) 51 27 55**

Tel: (37410) 51 27 55

0019, Yerevan, Armenia **law@aua.am**

CJSC – Close Joint Stock Company
FDI – Foreign Direct Investment(s)
FP – Full Partnership
GCC – Gulf Cooperation Council
IMF – International Monetary Fund
JSC – Joint Stock Company
JVC – Joint Venture Company
KD – Kuwaiti Dinar
KDIPA – Kuwaiti Direct Investment Promotion Authority
Kuwait – State of Kuwait
KPMG – Klynveld Peat Marwick Goerdeler
LLC – Limited Liability Company
LP – Limited partnership
Majallat – Majallat Al-Ahkam Al-Adliah
MOCI – Ministry of Commerce and Industry
OECD – Organization for Economic Cooperation and Development
OJSC – Open Joint Stock Company
RA, Armenia – Republic of Armenia
SLC – Company with Supplementary Liability
SPC – Single Person Company
US – The United State of America
USD – United States Dollar
VAT – Value Added Tax

Abstract

Because of the scarcity of academic writings about Kuwaiti FDI legislation as well as the unavailability of official translations of most of the Kuwaiti laws and regulations, this essay will heavily rely on other available sources. Among those are mainly reports and summaries by

internationally recognized organizations and authorities. This paper tried to selectively pick the data and facts from those sources in order to minimize their effect on its objectivity. The translations of a number of the Kuwaiti laws used are non-official. However, this paper tried to use the most reliable translations, prepared by authoritative law firms. The Armenian laws, regulations and policies referred to in this paper are the official translations, taken from the official database /parliament.am/ and the government website /gov.am/.

All of the financial data referred to in this paper is picked either from primary or secondary sources. The data is outlined in local currency (Kuwaiti Dinar or Armenian Dram) and in United States Dollar. The data in USD is an estimate using average currency exchange rates of 2016. This information is aimed at helping the reader's understanding of the data.

Introduction

Foreign direct investment (hereinafter FDI or foreign investment) has a number of definitions. For example, Encyclopedia of Public International Law describes the concept as "a transfer of funds or materials from one country (called capital exporting country) to another country (called the host country) in return for a direct or indirect participation in the earnings of that enterprise."[1] International Monetary Fund (IMF), on the other hand, does not put too much emphasis on the control part of FDI. However, states willing to exercise political influence through FDI consider the latter an important component of it.[2]

Foreign investments constitute an integral part of globalized world economy. The states try to achieve a number of economic and non-economic goals by attracting foreign investments. The most visible type of foreign investment is direct foreign investment. States see FDI as a mean of enhancing economic development and diversification, importing new technology and know-how, increasing state security and achieving a number of other goals. For smaller states, FDI is essential for keeping up with technological developments. For bigger states, FDI is a tool of raising political influence.

Being a small country with a number of geopolitical challenges, the Republic of Armenia (RA) has a strong need to attract FDI for the aforementioned reasons. The first and most important step in attracting FDI is the creation of a healthy investment climate in the state. In order to achieve this goal, the country should firstly draft appropriate FDI legislation. Law itself is only one of the means to achieve stability and provide for investment security. Although the investment climate is too sensitive to be dependent on the legislation only, this step is essential as law is subject to fluctuations to a lesser degree than other factors.

The best and safest way of improving FDI legislation in the country is to look at the existing practice of other countries. However, this is a very complicated task, as each country adopts policies and legislation to develop the investment climate to fit its own geopolitical situation. Considering the unique history, culture, economy and international status of each country, this seems to be an impossible task. Therefore, this paper is going to exclude most of these factors and try to conduct purely legal analysis. This means that the analysis and conclusions of this paper are based on the concept of all other equal conditions. In this case, it

[1] Mona Mohammed Abdulah Al-Yagout, The regulation of foreign investment in Kuwait: the role of law, politics and economic policy in the development process, University of Warwick, England, 1997, Pp. 2-3 http://wrap.warwick.ac.uk/2953/1/WRAP_THESIS_AlYagout_1997.pdf

[2] Ibid

would be more rational to look at the practice of a country, which has developed its foreign investment laws slowly, in order to carefully examine the impact of each development.

Kuwait, together with other Gulf Cooperation Council[3] (GCC) countries, has been developing its legislation for improving the investment climate for decades. Today, Kuwait is a very profitable destination for investment, for which enough credit should be given to its legislation. Although the laws and regulations governing foreign investments in Kuwait have changed slowly due to a conservative approach, they seem to be attractive enough to bring very large foreign investments into different economic fields of Kuwait.

This paper is going to look at the foreign investments laws and regulations of Kuwait with the aim of trying to understand which ones could be applied in the RA to benefit its investment climate. The FDI regulations, within the terms of this paper, consist of four parts. Part one is going to look at how legal status can be obtained in the state and what are the limitations for foreign investors. Part two is going to look at the specific rules and regulations made to enhance foreign investments, analyzing the non-financial incentives provided by law. Part three is going to look at the tax obligations and incentives, analyzing their impact on the investment climate. Finally, part four is going to look at the labor law of the state, assessing its influence on the attractiveness of foreign investments. There are clearly a number of other factors shaping the investment climate in a state. However, these four were picked to be analyzed in this research paper, as they represent the core of FDI laws and regulations, meaning that legal changes in any of those could significantly affect the investment environment.

The scope of this research is limited to the impact of the aforementioned factors from the perspective of a foreign investor only. This paper emphasizes the importance of FDI regulations in providing economic protection of its own nationals by the state. However, because of the scale of it, this paper is not going to look at the issue from that perspective.

The first chapter of this paper is going to introduce Kuwaiti recent history in order to show why exactly Kuwait has been chosen as a role model for the purpose of this paper. In the next four chapters this paper is going to analyze Kuwait's FDI policy, laws and regulations in order to assess their strengths and weaknesses. In the following four chapters, this essay will look at the FDI regulation in the RA, using the aforementioned format. The latter chapters, however, will focus on the differences of RA legislation from that of Kuwait, in order to define

[3] Gulf Cooperation Council is a regional intergovernmental union with 6 member states. Those are Kuwait, Oman, Bahrain, Qatar, Saudi Arabia and United Arab Emirates

Tel: (37410) 51 27 55

its possible areas that can be amended. Based on this analysis, the paper is going to suggest such amendments, if they are found to exist.

Considering the earlier mentioned factors, other than the legal, influencing the foreign investment climate in a country, there is a possibility that the research will show the absence of need to make legal amendments in the RA in order to attract FDI. However, the value added of the research will still be very high for a few reasons. Being a small economy with no energy resources to secure stable economic development, while in an unfavorable geopolitical situation at the edge of war with a neighboring country, Armenia is obliged to take the necessary steps to solve a number of its issues through attracting FDI. As mentioned earlier, an absolutely necessary step for doing this, before anything else, shall be development of the relevant legislation.

Historical background of Kuwait's approach to foreign direct investments

The legislation regulating the complex economic relationships between the State of Kuwait, its nationals and the British crown was not very developed before the Second World War. The sources of law were mainly the long existing Islamic traditions, which often did not fit into these economic relationships. Kuwait's first legislative council, as a solution, issued a decree, urging to apply Majallat Al-Ahkam Al-Adliah[4] in situations of conflict. The problem with this was that Majallat was based on Hanifi School of thought of Sharia law,[5] hence it did not upgrade the existing legislation.[6]

The period after the Second World War is marked with a negative attitude of newly independent states towards foreign investments. The states that recently acquired political sovereignty viewed the presence of foreign companies as an indirect control over their states.[7] The above-mentioned states began pushing foreign companies out by means of expropriations and other hostile policies with the purpose of gaining economic freedom. The government of Kuwait introduced a number of laws as a part of the policy. The target of such policies in the

[4] Majallat Al-Ahkam Al-Adliah is the old Ottoman Civil Code
[5] Sharia Law is a legal system existing in a number of Islamic states, which is based on Quran and Hadith
[6] Mona Mohammed Abdulah Al-Yagout, *supra* Pp. 100
[7] Ibid, Pp. 6

Gulf region were mainly, but not limited to, the foreign oil companies operating within the states.[8]

One of the above-mentioned laws was Decree No. 3 of 1955. It established fixed income taxes on all of the corporations operating in Kuwait on their own or via an agent. Those corporations were mainly foreign owned. Despite being a step forward in terms of moving away from Sharia law, similar laws pursued the goal of "liberalizing" the country from foreign companies.[9]

However, the government also presented other legislation, somehow contradicting the policy of "liberalization." One of those laws was Law No. 6 of 1965, which allowed the Ministry of Finance to grant tax holidays of up to ten years to foreign investors, offer industrial sites with nominal rent, free the investing firms from customs duties and offer a number of other incentives to attract foreign investment.[10] The law, however, also put a requirement of government approval for licensing of a number of operations.[11] Although introduction of this law was, in theory, meant to encourage foreign investments, as it put those under legal regulation, the incentives are not known to have been widely implemented before 1990's.

The Kuwaiti attitude towards foreign investment changed after 1980. The state began to recognize the necessity for not only foreign funds to enhance economic development, but also the need to import foreign technology.[12] In 1986, the GCC countries held a conference in Vienna, where they agreed to make foreign investment climate in the region more attractive. Those countries, including Kuwait, decided to harmonize their financial, legal and banking systems and to make those more favorable for foreign investors. In 1989, as a part of this policy, Kuwait agreed to the Unified GCC Foreign Capital Investment Regulation.[13]

Despite the aforementioned agreement and the gradual change of the perception of foreign investments to positive, it was only after Iraqi invasion of 1990 that Kuwaiti government felt the financial pressure for the need to attract FDI. Moreover, the government realized that FDI was a good option to import not only capital, but also technology and managerial know-how.[14]

---

[8] Ibid, Pp. 98
[9] Mona Mohammed Abdulah Al-Yagout, *supra*, Pp. 100
[10] Ibid, Pp. 10
[11] Ibid, Pp. 74
[12] Ibid, Pp. 7
[13] Ibid, Pp. 102-103
[14] Ibid, Pp. 101

Kuwaiti government made a number of legal reforms in order to carry out the above-mentioned policy, diverging the legislation from Sharia law. The latter continued to be strongly influential in personal affairs only.[15] However, the government also took some practical steps towards attracting foreign investment. Among those were directing KD 2.42 billion from government revenues as loans to private sector in Kuwait.[16]

Government and non-government officials, in line with the new policy towards FDI, began arguing why Kuwait needed foreign investments. The General Director of Kuwait Fund for Arab Economic Development, Al-Hamad, argued, that new technologies, efficient management, know-how and other benefits that foreign investments bring to the country are not less important than the capital that they bring.[17] Other officials argued that foreign investments reduce government borrowing, give it the opportunity to relief its citizens from taxes. FDI also simplified the process of privatization, which itself was a part of Kuwaiti economic policy.[18]

Although the Kuwaiti attitude towards foreign investments has shown a significant shift from mid to late 20th century, the opening up of the economy to foreign investors did not come fast, but rather very carefully. Kuwaiti Government, similar to that of other developing countries, realizes the possible adverse effects of having large foreign investments. This is the reason why they are tightly regulated by Kuwaiti legislation, in order to create positive climate for foreign investor by recognizing his/her interest, while protecting Kuwaiti citizens and not discouraging them from participation in the private sector.[19]

There are different theories explaining the economic impact of foreign investments. Chapters Four and Five of the analysis made by the United Nations Centre on Transnational Corporations regarding Kuwaiti approach towards FDI concluded that the latter follows the structuralist theory. It believes that in case foreign investments are properly managed, they can benefit the host state and their adverse effects can be prevented.[20]

A good example of how the Kuwaiti government has been trying to manipulate FDI regulation to squeeze maximum benefit from foreign investments is the Offset Program. The program started in 1992, offering foreign firms large government or military contracts. This was a good opportunity for foreign investors to explore the feasible projects in Kuwait. One of the

[15] Ibid, Pp. 100
[16] Mona Mohammed Abdulah Al-Yagout, *supra*, Pp. 101-102
[17] Ibid, Pp. 72
[18] Ibid, Pp. 9
[19] Ibid, Pp. 6-7
[20] Ibid, Pp. 19

Tel: (37410) 51 27 55

requirements of the program put on the foreign investor was the creation of high skill jobs for Kuwaiti nationals, import of technology to the country or education and training of Kuwaiti labor.[21]

Before the early 2000's, there were a few core regulations applying to foreign investments in Kuwait. These were the ban on foreign shareholders to freely trade shares in Kuwaiti shareholding companies, the limit of 49 percent on foreign shareholding, the inclusion of royalties, interests, and management fees in the net profits and taxation of portions of net profits of Kuwaiti partners by income tax rate. When compared with other potential countries for investment, these regulations still seem not very attractive from the perspective of foreign investor. However, after the year 2000 the Kuwaiti government began taking bigger steps in making the foreign investment climate more attractive to investors.

Incorporation in the State of Kuwait

The first factor affecting the decision of a potential investor of whether to invest in the State of Kuwait is the complexity of obtaining a legal status. This chapter has separated two aspects of the aforementioned issue, which are (i) the procedural requirements and (ii) the shareholding. Each of these aspects will be examined in detail to assess the investment climate in Kuwait from the perspective of a foreign investor.

In Kuwait Vision 2035 outline, two of the government's goals were elimination/reduction of administrative and regulatory obstacles and facilitation and simplification of investment procedures.[22] Adoption of Companies Law No. 25 in 2012 and Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait and Executive Regulations Implementing Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait is a breakthrough in Kuwait's long road towards making investment climate attractive to foreign investors. The laws replaced their predecessors adopted in 1960 and 2001 respectively and fell in line with the adopted policy much better. The new legislation, according to the US State Department, has definitely improved the older one in terms of timing, easiness of incorporation as well as relaxation of a number of restrictions previously put on foreign investors.[23] The World

[21] Mona Mohammed Abdulah Al-Yagout, *supra*, Pp. 8-9
[22] World Trade Organization, *Trade Policy Review*, the State of Kuwait, 4, January, 2012, pp. 7-8
[23] U. S. Department of State, *Diplomacy in Action*, June 2014, pp. 2-3
http://www.state.gov/documents/organization/231064.pdf

Bank report confirms this by stating that the number of procedures and the waiting time have significantly decreased between 2010 and 2015.[24]

As outlined in Article 3 of Law No. 116, the Kuwaiti Direct Investment Promotion Authority was established for the following goals:

- "Developing and improving the investment environment, the facilitating of procedures and the removal of hurdles encountered by investors as well as the provision of various means of assistance and support to encourage Direct Investment in the country;
- Raising awareness regarding the importance of Direct Investment, especially foreign investment, and the promotion of the Kuwaiti investment environment and the available Direct Investment opportunities by all means of marketing, orientation and promotion;
- Encouraging investors to transfer, settle and use modern and sophisticated technologies, means of production and operations, management methods, and technical and marketing expertise and to encourage partnerships between Kuwaiti and foreign investors that foster the objectives of development."[25]

Shareholding

Article 4 of the Companies Law No. 25 of 2012 provides for seven forms of incorporation, which are General Partnership Company, Limited Partnership Company, Partnership Limited by Shares, Joint Venture Company (JVC), Shareholding Company, Limited Liability Company (LLC) and Single Person Company (SPC). The law provides for a mandatory participation of a Kuwaiti partner in all the forms except for the SPC and LLC. For the latter one, however, Article 95 states that "[t]he executive regulations shall specify minimum capital of the company and the percentage of the participation of Kuwaiti nationals in the capital of the company." This leaves the possibility of implementing such limitation open; subject to the discretion of the executive body. Moreover, Article 91 regulating the provisions applying to SPCs states that "[s]ubject to the provisions of this section, the provisions governing the Limited Liability Company shall apply to the Single Person Company to the extent they do not conflict with its nature." Article 87, governing the capital of the SPCs, does not make any reference to

[24] Oxford Business Group, *Legal changes in Kuwait make direct investment easier and more attractive*, 2016 http://www.oxfordbusinessgroup.com/overview/down-business-legal-changes-make-direct-investment-easier-and-more-attractive

[25] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, Government of Kuwait Website, http://kdipa.gov.kw/en/home-2

Tel: (37410) 51 27 55

mandatory participation of Kuwaiti nationals. This means that in case if the executive body, at any point decides to adopt regulations providing for a mandatory capital participation of Kuwaiti nationals in LLCs, those regulations could be easily applied to SPCs. Therefore, Law No. 25 does not guarantee 100% foreign ownership in any form of incorporation.[26]

Article 18 of the same law, however, provides for the opportunity for foreign investors to set proportion of capital participation different from that of sharing profits and losses. Paragraph 1 of Article 18 states that "[i]f the Company Contract does not specify the portion of a partner's participation in the profits and losses, each partner shall participate in the profits and losses in proportions equal to their respective share in the capital." Paragraph 2 of the same Article, on the other hand, forbids shareholders from entering into an agreement which completely excludes one of the shareholders from sharing profits and losses.[27] The foreigner should be able to share up to 75% of the profits and losses being limited to 49% of capital participation.[28]

The control and capital rights of the shareholders, however, are not regulated by the above mentioned Article. This means that the decision making still rests with the Kuwaiti partner, who also has a right to the bigger proportion of the capital in case of insolvency. Although this approach is not very popular in countries practicing neither continental nor common law, it can still be successful in providing incentives for foreign investment.

Law No. 116, on the other hand, was specifically adopted to amend the existing regulation for making it more attractive for foreign investors. Paragraph 1 of Article 12 of the law states that "[a] Kuwaiti company having one of the legal entity forms of companies set forth in the Companies Law promulgated by the […] Decree Law No. (25) of 2012, which will be incorporated for the purpose of Direct Investment. Foreign participation in such company may amount to 100% of the capital of the company in accordance with the principles and rules set forth under the Companies Law." Article 8 of the Executive Regulations clarifies that the forms of companies to which the Direct Investment license can apply are LLC, JSC and SPC.[29]

The Law Regarding the Promotion of Direct Investment in the State of Kuwait and its Executive Regulations seem to overcome the long existing hurdle in Kuwaiti legislation by relaxing the mandatory Kuwaiti partner participation. Those, together with the Companies Law

---

[26] Companies Law No. 25 of 2012 of Kuwait, translation by DLA Piper Middle East LLP, dated 8 April 2013
[27] Ibid
[28] U. S. Department of State, *supra,* Pp. 2
[29] Executive Regulations Implementing Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, Government of Kuwait Website, http://kdipa.gov.kw/wp-content/uploads/law1162013reg.pdf

of 2012, were adopted after long debates. Being carefully designed, the new legislation still leaves the regulatory control of foreign investments in the hands of the executive body. However, the mentioned laws and regulations put the foreign investments in very specific legal framework, which itself is a significant factor in improving the investment climate.

Procedure

The procedure of incorporation is also important in shaping the investment environment. In case this procedure is too complicated and the fees are too high, the investor might try to avoid it by looking for alternatives to conduct business in the country, such as through agents and representatives. This is the reason why this paper includes the procedural requirements and fees in the research.

According to Klynveld Peat Marwick Goerdeler[30] (hereinafter KPMG) report, a foreign investor should begin operation in Kuwait by first arranging a meeting with Kuwaiti Direct Investment Promotion Authority (KDIPA) to learn more about the investment opportunities, or submitting a "concept paper" to the aforementioned body. The paper should be a detailed summary of the project. KDIPA assesses the "concept paper", using the following criteria: national labor job creation, national labor training and education, technology transfer, possible increase in national exports, diversification of national income sources, support for small and medium-sized enterprises, increased utilization of national products and services. KDIPA makes either positive or negative conclusion regarding continuing with the process and informs the applicant about it. The justification, together with the decision, should be submitted to the applicant within three working days after the submission of the application. The first step is supposed to filter manifestly ill-founded applications. [31]

The second step is the "initial study" carried out by KDIPA based on the application and other documents requested by the competent authorities. Article 15 of Law No. 116 and Article 17 of the Executive Regulations to it state that the examination of the application on the merits should be 30 days after the applicant has submitted all the necessary documents.[32] After examination, KDIPA should submit a response to the applicant in writing. According to Article

[30] Klynveld Peat Marwick Goerdeler or KPMG is an internationally recognized accounting firm
[31] KPMG, *Kuwait- Details on the new Foreign Direct Investment Law*, 24, March, 2015, pp 2-3
https://home.kpmg.com/xx/en/home/insights/2015/02/kuwait-details-new-foreign-direct-investment.html
[32] Executive Regulations Implementing Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, *supra*

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia law@aua.am

16 of Law No. 116, in case of rejection of the application, KDIPA should also submit the justification for it. The applicant is allowed to appeal the rejection within 30 days after receiving it.[33]

KDIPA, in case of approving the application, provides the investor with the details regarding incentives and exemptions. After receiving those, the investor should undertake the incorporation process with the Ministry of Commerce and Industry (MOCI). According to Article 18 of the Executive Regulations, the investor, by the default rule, has to obtain all necessary approvals from the MOCI within a year after KDIPA's approval of the application. The investor also should inform KDIPA regarding the commencement of operations 30 days in advance. After the investor obtains a commercial license, KDIPA shall issue him an investment license.[34]

Article 34 of Law No. 116 states that the role of the Direct Investment Promotion Authority shall continue regarding the investment. The authority should act as a supervisor to ensure compliance of the investor's commercial activity with the law and other Kuwaiti legislation.[35]

Article 17 of Law No. 116 also establishes a One-Stop Shop, "which shall include employees designated by the relevant government authorities to proceed with resolving upon the licensing procedures and the establishment of the Investment Entity in order to ensure the completion of the procedures within the period set out in this Law." This concept already exists in a number of countries and is probably familiar to a number of potential investors. The establishment of One-Stop Shop was another important step forward by eliminating long bureaucratic delays and corruption. Besides being responsible for issuance and renewal of licenses, helping the investors to incorporate, the One-Stop Shop is also responsible for providing the investors with guidelines, requirements for making an investment and generally responding to the issues raised by the investors.[36]

The same Article also provides for the creation of specialized qualified companies to share some of KDIPA's workload. Neither One-Stop Shop, nor other qualified companies have been physically formed yet. However, they are expected to improve the investment climate for foreign investors significantly in future.

---

[33] Executive Regulations Implementing Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, *supra*
[34] Ibid
[35] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*
[36] Ibid

As the Kuwaiti authorities are still in the process of establishing the bodies outlined under Article 17 of Law No. 116, they have given a temporary solution to the issue. The KDIPA individually assigns Investor Services representatives to potential investors to facilitate and accelerate the investment process.

As previously mentioned, Direct Investment License can be obtained for all forms of incorporation outlined in Law No. 25. However, paragraphs 2 and 3 of Article 12 of Law No. 116 state that the license can be obtained for "[a] branch of foreign company licensed to operate within the state of Kuwait for the purpose of Direct Investment" and "[r]epresentative offices having the sole purpose of preparing market studies and production possibilities, without engaging in a commercial activity or activity of commercial agents."[37] General Director of KDIPA issued Decision No. 35 in 2014, on Principles, Rules and Procedures for Licensing Branches and representative Offices of Foreign Companies in the State of Kuwait. The decision gave further clarifications regarding the requirements for obtaining Direct Investment License for entities outlined in paragraphs 2 and 3 of Article 12 of the above-mentioned law.[38]

From the perspective of fees that apply for the procedure of incorporation, Kuwaiti government has made it harder to start up a company between 2010 and 2015. Both, the license fees and minimum capital requirements have increased. Commercial license fees have increased from KD 30 (USD 100) to KD 150 (USD 520). As set by Ministerial Decision No. 234 of 2015, the minimum capital requirement for general partnerships, limited partnerships, companies limited by shares, sole person companies and limited liability companies is KD 1000 (USD 3450), for closed shareholding companies it is KD 10,000 (USD 34,500) and for public shareholding companies it is KD 25,000 (USD 86,100).[39] The policy behind increasing the fees and minimum capital requirements is the prevention of creation of intermediary companies. According to the Ministerial Decision No. 503 of 2014, KDIPA fees can vary from KD 10 (USD 35) to KD 100 (USD 345), depending on the service provided.[40]

[37] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*
[38] Director General Decision No. (35) of 2014 on Principles, Rules and Procedures for Licensing Branches and Representative Offices of Foreign Companies in the State of Kuwait, unofficial translation, Government of Kuwait Website, http://kdipa.gov.kw/en/home-2
[39] Ministerial Decision No. 234 of 2015, official translation, Government of Kuwait, KDIPA news, Year 2015, 05/05/2015 http://kdipa.gov.kw/en/archives/8544
[40] Oxford Business Group, *supra*

One of the crucial factors influencing the investment climate is the investment security. Among other components of investment security are the legal regulations governing expropriations, changes in law with adverse effect on the investment, the freedom of expatriation of profits and other capital and finally the protection of the investor's rights in the court. Considering the immense scale of the research needed to assess the Kuwaiti court protection of an investment, this chapter is going to exclude it from the research. However, the examination of the aforementioned two other factors will be valuable in understanding to what extent are the foreign investments protected in the State of Kuwait.

Article 19 of the Law No. 116 states that foreign investors with FDI license cannot be deprived from their property "except in the public interest and only in accordance with the applicable laws and against compensation equivalent to the true economic value of the expropriated project at the time of expropriation." This part of the law leaves an open window of opportunity for Kuwaiti authorities to expropriate the investment. However, this shall not significantly harm the investment environment, as such an opportunity is provided by legislations of a number of countries. In this situation, the key in winning the foreign investor's trust is providing him/her with appropriate compensation. The aforementioned Article states the way of defining the amount of compensation, stating that it is "estimated in accordance with the economic situation prior to any threat of expropriation. The due compensation is to be paid as soon as the said decision is taken."[41] The question of how exactly the economic situation is defined and by whom is left open in the law. Moreover, it is also very difficult to define when exactly a threat of expropriation arises. Although the Article does make a reference to protection of the investment from expropriation, the regulation is very vague and does not fully win the trust of an investor.

Article 24 and the subsequent Articles of the aforementioned law define the governing legislation for foreign investments. According to those, the existing laws and regulations shall apply to all new and existing investments, except if the latter could be adversely affected by application of the new law in which case Law No. 8 of 2001 and other relevant legislation shall continue to apply. The shortcoming of the law is that it does not provide for any security for the investor from any future changes in the legislation that may have adverse effect on the investment.

[41] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*

The final area of interest of an investor in this regard is the freedom of expatriation of capital. Law No. 116 addresses this issue in Article 22, stating that "[t]he Investor shall have the right to transfer abroad his profits, capital or proceeds resulting from the disposal [over] his shares or participation in the Investment Entity or the compensation set forth in this Law. Moreover, employees in the Investment Entity shall have the right to transfer their savings and entitlements abroad."[42] This Article covers all the important issues of interest to the investor. The coverage of this issue by law is essential in raising the attractiveness of the foreign investment climate in the state.

Tax in the State of Kuwait

A major factor influencing the investment climate in a country from the perspective of a foreign investor is tax obligations. Some countries use tax incentives to attract foreign investments, setting nominal rates. However, those countries are usually branded as offshore or tax havens, with whom Organization for Economic Cooperation and Development (OECD)[43] and a number of other countries refuse to cooperate. Kuwait uses some techniques not approved by OECD standards, such as free zones. However, Kuwaiti authorities use some counter balancing techniques for the country not to qualify as an offshore. Among those are anti-avoidance rules, which refrain companies operating in Kuwait artificially depriving themselves from profits in favor of their affiliated companies abroad. In other words, anti-avoidance rules make sure the transactions between Kuwaiti and non-Kuwaiti companies are arms-length. This chapter is going to investigate and assess the tax system in Kuwait from the perspective of a foreign investor.

Obligations

There are several types of taxes influencing the investment climate from the perspective of foreign investor. First of these is the corporate taxation. Unlike in OECD standards, Kuwait considers carrying out trade or other business activity as taxable presence, ignoring the concept of permanent establishment as a tool to determine.

[42] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*

[43] OECD is an international convention regulating economic standards and is signed by 34 states. Most of them are developed states

Kuwaiti tax authorities consider any activity generating income in Kuwait or thorough a Kuwaiti source subject to corporate taxation. In practice, however, Kuwaiti or GCC nationals are not taxed. The latter gain tax obligations on their shares of net profit, generated in a partnership with foreign nationals. This practice can discourage investment by the foreigner, who in fact may enter into market competition with nationals on unfair terms.

The tax rate applying to the aforementioned business activity is 15%. This also applies to payment of royalties and other fees received by foreign entities. The same rate applies on capital gains, which derive from sales of assets. Kuwaiti authorities do not impose withholding tax in most cases. However, fund managers distributing dividends are subject to 15% withholding tax. Said 15% rate, however, begins to apply for income above KD 5,250.[44] Moreover, all business entities in Kuwait are obliged to withhold 5% of the contract value with their contractors before the latter fulfill their tax obligations with Kuwaiti tax authorities.[45]

Another tax obligation within the interest of a foreign investor is the social security tax. The latter is paid by both the employer and the employee, constituting 11.5% and 8% of the salary, respectively. However, neither of the parties can be charged more than KD 2,750 per month.[46]

Among other taxes is the 1% tax charged on shareholding companies, paid to the Kuwait Foundation for the Advancement of Science. Those companies, according to sources like the United States State Department and Deloitte, are also obliged to pay 1% of their total income as Zakat[47] or state budget contribution. However, this contradicts the whole purpose of Zakat. Zakat is a tax contribution to the religious sector of the state and is supposed to apply not only to shareholding companies, but also to all of the other legal entities and physical persons. On top of this, the public shareholding companies listed in Kuwaiti Stock Exchange are charged 2.5% tax in support of employment in nongovernment agencies. Kuwaiti government uses transfer pricing anti-avoidance rules.[48] Tax authorities have also limited head office overhead expenses to 1.5%.[49]

---

[44] World Trade Organization, *supra,* Pp. 12
[45] Deloitte, *International tax, Kuwait Highlights 2016*
http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-kuwaithighlights-2016.pdf
[46] Ibid
[47] Zakat is a religious tax paid by all legal and natural persons having an amount of income exceeding certain threshold, which is different from state to state
[48] Deloitte, *supra*
[49] U. S. Department of State, *supra,* Pp. 8
http://www.state.gov/documents/organization/231064.pdf

Despite the government expressed willingness to harmonize Kuwait's value added tax regulations with the GCC VAT Law by 2015, the project has not been implemented yet and there is no VAT in the country at the moment.

Incentives

Kuwaiti tax system offers a number of incentives to foreign investors, regulated by Law No. 26 on Free Zones, Law No. 116 and other relative legislation. This part of the paper is going to summarize those to understand if they could significantly affect Kuwaiti investment climate.

The country offers and encourages foreign investors to incorporate in Kuwaiti Free Trade Zone, where they are freed from all corporate and income taxes and charges imposed on capital transfer.[50] Article 5 of the Law No. 26 states that profits earned from business activity within the free zone, goods imported to and exported from there and tools imported are exempt from tax obligations. However, the law does not specify whether or not the income earned by the branches of these companies is exempt from tax as well, implying that the latter fall under general tax rules.[51] One of the KFTZs is located in the port of Shuwaikh, which is strategically attractive for investment. Property in the Free Trade Zones, however, are costly to rent, are subject to specific regulations and are mostly occupied by Kuwaiti companies.[52]

A large number of incentives are offered by Article 27 of Law No. 116. Paragraph 1 of the Article states that investor may be granted "[e]xemption from income tax or any other taxes for a period not exceeding ten years from the date of the actual commencement of operations of the licensed investment entity."[53] This is one of the most significant incentives that can attract foreign investments, by providing the investors a competitive advantage for the period of their entrance into the Kuwaiti market.

Paragraph 3 of the aforementioned Article lists the goods, which "shall be wholly or partially exempted from taxes, customs duties or any other fees that may be payable on imports required for the purposes of Direct Investment."[54] Those are machinery, tools and equipment and means of transport and other technological devices, spare parts and necessary maintenance

[50] World Trade Organization, *supra,* Pp. 13
[51] Law No. 26 of 1999 on Free Zones, unofficial translation, International Labor Organization website, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83362/91985/F244336417/KWT83362.pdf
[52] U. S. Department of State, *supra,* Pp. 19
[53] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*
[54] Ibid

supplies for what has been described in the previous subsection, merchandise, raw materials, partially manufactured goods, wrapping materials and packaging. This is another significant incentive, especially for industrial companies, who would, otherwise, have to spend large amount of money on their customs duties. The law, however states that the aforementioned imports cannot be resold by the investor for a period of 5 years, refraining the investor from misapplication of this privilege.

Among other incentives provided by the law are the use of KDIPA land and real estate, use of foreign labor and other discretionary incentives, which can be provided by the Council of Ministers. Details regarding the use of KDIPA land and real estate by the investor are outlined in the Executive Regulations of Law No. 116. The use of foreign labor will be discussed in the following chapter.

Labor laws in the State of Kuwait

The role of labor law too is significant in the formation of investment climate in the country. Kuwait has been undergoing a series of reforms in trying to cope with its delicate situation. This chapter is going to analyze the laws and policies regarding the regulation of employment relationship in Kuwait. However, the research will be limited to the regulations within the scope of interest of a foreign investor. As mentioned earlier, the scarcity of sources forces this chapter to rely on reports by a few internationally recognized sources and the non-official translations of the laws.

Kuwaitization

In order to understand the labor regulations in Kuwait, it is necessary to look at the composition of Kuwaiti population and the challenges faced by the government. The country, similarly to other Gulf States, has extremely high dependency on foreign workforce. According to the 1980 census, Kuwaitis constituted 42% of the country's population, while being only a quarter of the labor. Compared to the previous census, these indicators had decreased, which is why the State of Kuwait began implementing the policy of Kuwaitization. The policy suggests increasing Kuwaiti labor participation, particularly in the private sector.[55]

The policy of Kuwaitization developed into the Manpower and Government Restructuring Program in 1997. The program pursued the goal of a more balanced distribution of Kuwaiti labor. It introduced quota systems in a number of industries to limit the use of foreign labor by the employers. According to the 2014 system, the mandatory Kuwaiti employment required by the government from the employers in banking sector is 64%, in hotel industry management it is 17%, in clerical jobs it is 20 percent and in Kuwaiti and international schools it is 10% and 5% respectively. The lowest quota is on manufacturing sector, where the mandatory employment of nationals is 3%.[56] The Ministry can revise the quotas in accordance with the growing patterns in the market.

The most recent statistics show that out of the population of 4.2 million 69% are foreigners who, at the same time, comprise 84% of the total labor. These figures show that despite the number of policies aimed at enhancing both national growth and involvement in labor, the immigration rate has been higher.[57] The ineffectiveness of the quota system forced the government to take more radical steps in controlling the inflow of immigrant workers, which came with the adoption of Law of Labor in Private Sector No. 6 of 2010.

One of the biggest changes brought by the above-mentioned law was the abolition of the kafala or sponsorship system. The system required a sponsor to provide the foreigner with a sponsorship for obtaining either of a visit, work, student or dependent visa.[58] Ideally, the aforementioned sponsorship and visas should be issued after the person has obtained a job offer. However, in practice, the system began illegal trade of visas, while the immigration numbers kept increasing. As a result, a number of foreign workers ended up in Kuwait with no jobs. Because of the excessive labor supply the wages decreased, making private sector unattractive for Kuwaiti nationals.

---

[55] Kasim Randeree, *Workforce Nationalization in the Gulf Cooperation Council States*, Georgetown University, 2012 https://repository.library.georgetown.edu/bitstream/handle/10822/558218/CIRSOccasionalPaper9KasimRanderee2012.pdf?sequence=5

[56] International Monetary Fund, *Selected Issues*, Washington D. C., December 2015, p. 55 https://www.imf.org/external/pubs/ft/scr/2015/cr15328.pdf

[57] Oxford Business Group, *Kuwait's parliament plans for the economic growth with increased private sector development*, 2016 http://www.oxfordbusinessgroup.com/overview/strength-depth-government-plans-economic-development-increased-private-sector-involvement

[58] Nsrah M. Shah, *Kuwait's Revised Labor Laws: Implication for National and Foreign Workers*, Kuwait University, p. 353 http://www.smc.org.ph/administrator/uploads/apmj_pdf/APMJ2011N3-4ART4.pdf

Tel: (37410) 51 27 55

The law replaces the kafala system with a Public Authority for Manpower (PAM), a centralized public body designed to hire expatriate labor. Article 10 of Law No. 6 of 2010 outlines the process of hiring foreign labor as follows:

"The employer shall be prohibited from employing foreign manpower unless the competent authority has granted them a permit to work for him. The Minister shall issue a resolution setting forth the procedures, documents and fees that shall be paid by the employer. In the event of refusal, such refusal shall be justified by stating the reason thereof, and the reason for such refusal shall not be related to the amount of the capital, otherwise the decision shall be null and void.

Employers shall not bring workers from outside the country or hire workers from inside the country then fail to provide them with employment, or subsequently be found not to have an actual need for them. The employer shall bear the expenses of the worker's return to his country. In the event where the worker stops working for his employer and joins the service of another employer, the latter shall bear the cost of the worker's return to his country after the original sponsor has reported that the worker has been absent from work."[59]

Paragraph 5 of Article 27 of Law No. 116 of 2013 can be referred to as one of the incentives provided. According to the said Article:

"The employment of foreign labor required for the investment, in accordance with the principles and restrictions established by decision of the Council of Ministers in respect of the minimum proportion of national employment that must be provided."[60] This Article classifies the use of foreign labor as an incentive. A new component within the process of hiring foreign workers is the obligation of the employer to prove their necessity for the purpose of the investment.

The new regulation raises the cost of hiring foreign labor, creating more incentives to hire locals. As the employer takes the responsibility to provide the foreign employee with work or to take care of the latter's return travel expenses, he becomes discouraged in selling sponsorships. With the increased cost and the requirement to process the work permit through the regulating authority, the immigration pace connected with the inflow of jobless immigrants should slow down. Moreover, one of the goals of this policy is to reduce the number of expatriate workers by

---

[59] The Law of Labor In the Private Sector, No. 6 of 2010, official translation, Al-Kuwait Al-Yawm Kuwait Official Gazette, Sunday, 7 Rabie Al-Awwal 1431 AH February 21, 2010, http://www.kuwaitlaborlaw.com/private-sector-kuwait-labor-law-detailed/

[60] Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, *supra*

a hundred thousand per year between 2013 and 2023.[61] With the absence of excessive labor supply, the wages are expected to rise, which is not in the interest of foreign investors. However, the latter still have some leverage over the low-skilled workers. In practice, the workers still have to get a permission from the employer to change their workplace, making them vulnerable and less likely to bargain for higher wages.[62]

Foreign workers can obtain three types of visas to work in Kuwait, which are number 17, 18 and 20. The first two are for public and private sector respectively, while the third is for domestic workers (house workers). Kuwaiti labor laws govern the workers holding the first two types of visas and aims at protecting the latter's rights.[63] The fact that labor laws cover the employment relationship in the private sector is beneficial for the foreign investor. The reason for this is that the high skilled foreign employees, who might be of a key importance for the employer, will be more willing to accept a job offer in the State of Kuwait if they get legal protection by law.

Employment conditions

According to the Minister of Social Affairs and Labor Mohammad Al-Afasi's 2010 decision the minimum wage in set for Kuwaiti private sector employees is KD 60 (USD 204). The minimum wage is subject to review every five years and shall depend on the inflation as well as other changed circumstances.[64] The rate is low compared to OECD countries. This factor can encourage multinationals to incorporate in Kuwait for cutting the costs.

According to Article 64 of the Law of Labor in the Private Sector No. 6 of 2010, "[…] it is forbidden to allow workers to work for more than 48 hours per week or 8 hours a day, except in such events as are specified in this Law. Working hours during the month of Ramadan shall be equal to 36 hours per week."[65] The workers, according to Article 69 of the same law, are entitled to 12 days of public holidays.[66] These rates, put together with the minimum wage rates, set rather attractive conditions to attract foreign direct investments.

---

[61] Oxford Business Group, *supra*
[62] Nsrah M. Shah, *supra,* Pp. 359
[63] Ibid, Pp. 354
[64] Nsrah M. Shah, *supra*, Pp. 356
[65] The Law of Labor In the Private Sector, *supra*
[66] Ibid

On top of being attractive, the aforementioned regulations are not always implemented in practice. A number of employers violate the restriction on working hours, setting daily shifts of 12 hours. The employees are also not paid double during overtime and holidays.[67] All of the aforementioned, although illegal and, therefore, not to be encouraged, has positive impact on the investment climate, solely from the perspective of an employer. However, the adverse side of the existence of such regulations means that the risk rests with the employers, and the benefits of the existing market practice are floating. In case if the regulations are implemented, business costs will rise at the expense of the employer's profits.

The regulation of a worker's freedom of association in Kuwaiti labor laws is very controversial. The legislation allows formation of one trade union per occupation and the formation of only one federation, which is Kuwait Trade Union Federation. The most controversial part is that this regulation governs private sector only, where the vast majority of employees are foreigners, while the latter are allowed to join the unions, on non-voting bases, only after five years of employment in the field.[68] This means that the majority of employees do not have representation in unions, hence they do not have any leverage on the employer. Meanwhile, the Kuwaitis do not have any significant leverage too, as they comprise only a very small part of the private sector labor.[69] Despite being strongly criticized by the International Labor Organization, these regulations clearly benefit the investment climate in the country by strengthening the bargaining positions of the investor.

The legislation in the Republic of Armenia

A modern legislation regulating foreign investments has been developed in the Republic of Armenia (RA) after its independence in 1991. The main regulations governing this field are outlined in the Civil Code, which includes a compound regulation of commercial relationships in the state. From the perspective of a foreign investor, this form of legislation is more recognizable when compared to that in the State of Kuwait for a few reasons. First of all, the Code, aside from outlining the governing principles in commercial relationships, makes clear references to the other laws that provide for more specific regulations to certain relationships. Secondly, the Code and the Law on Legal Acts outline a specific hierarchy of the existing laws and regulations,

[67] Nsrah M. Shah, *supra,* Pp. 357
[68] U. S. Department of State, *supra,* Pp. 18
[69] Nsrah M. Shah, *supra,* Pp. 359

40 Marshal Baghramyan Avenue **Tel: (37410) 51 27 55**

Tel: (37410) 51 27 55

0019, Yerevan, Armenia **law@aua.am**

making the browsing through the legislation simpler for the investor.[70] Finally, the legislation is far more advance in terms of coverage, being based on the model of continental law. The labor relations are mainly regulated by the RA Labor Code, which again, eases the job of the foreign investor by collecting most of the regulations in one document. This chapter is going to analyze the core foreign investment regulations in Armenia, focusing on the part that is different from the regulations in Kuwait. Although this paper has already examined Kuwaiti laws and regulations regarding FDI and this part of the paper is going to be of a comparative nature, the comparison can be subjective because of lack of official translations of Kuwaiti laws and regulations as well as limited access to those during the research.

Incorporation in the Republic of Armenia

Armenian Civil Code outlines the incorporation forms for conducting commercial activities under paragraphs 2 and 3 of Article 72. The forms of Incorporation are Full Partnership (FP), Limited Partnership (LP), Limited Liability Company (LLC), Company with Supplementary Liability (SLC) and Joint Stock Company (JSC), regulated by Articles 77-116 of the Code. The latter form of incorporation is available in two types, which are the Open and Close Joint Stock companies (OJSC and CJSC).[71] Besides the Civil Code, the legislation governing incorporations is provided by RA Law on Limited Liability Companies and RA Law on Joint Stock Companies.

Shareholding

Contrary to the regulations outlined in the Companies Law No. 25 of 2012 of Kuwait, neither the RA Civil Code, nor the laws on LLCs and JSCs provide for any limitation on foreign participation in any form of incorporation. The provisions of the Civil Code governing this are Articles 77, 90, 95, 105 and 106, which do not make any reference to the nationality of the participants. As outlined in paragraph 2 of Article 1 of the Civil Code, "The rules established by Civil Code and other legal acts shall be applied to relations with the participation of foreign

[70] Law on Legal Acts of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation
[71] Civil Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

40 Marshal Baghramyan Avenue **Tel: (37410) 51 27 55**
Tel: (37410) 51 27 55
0019, Yerevan, Armenia **law@aua.am**

citizens, persons without citizenship and foreign legal persons, unless otherwise provided by a statute."[72] The absence of limitation on foreign participation in Armenia is one of the main differences between the latter's and Kuwait's regulations of foreign investments. Although Kuwait's Law No. 116 provides for the opportunity for foreigners to have a 100% participation in Kuwaiti companies, providing a permission to do so still rests at the discretion of the KDIPA. In Armenia, on the other hand, such a right is unconditional, which certainly is in the foreign investor's interest.

As mentioned earlier in this paper, Kuwaiti legislation allows company shareholders to share profits and losses in a proportion different from their capital participation. The Armenian legislation, in contrast, does not allow such relationship for any type of legal person except for the JSC. Articles 82 and 93 of the RA Civil Code, as well as Article 24 of the Law on Limited Liability Companies make the equality of proportions of capital participation and the share of profits and losses imperative.[73] However, this restriction does not adversely affect Armenian foreign investment climate, as the possibility of a 100% foreign ownership vanishes the requirement for the aforementioned flexibility.

In case of the JSCs, the legislation provides more flexible terms regarding the proportion of shareholders' capital participation and share of profits and losses. Articles 14 and 49 of RA Law on Joint Stock Companies provides for the opportunity for the shareholders to issue different types of shares, which could vary in a number of characteristics including the proportion of profits assigned to them.[74]

The control of the companies in RA varies depending on their type. In case of full partnerships, as stipulated by Article 79 of the Civil Code, the decision-making depends on the initial agreement by the partners. In case of limited partnership, Article 92 of the Code restricts the limited partners' participation in the decision-making.[75] The regulation on Joint Stock Companies, as stipulated in the Article 68 of the correspondent law, provides for flexibility in control issues by letting the company issue various types of shares, including some with little or

---

[72] Civil Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

[73] Civil Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation,
Law on Limited Liability Companies of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

[74] Law on Joint Stock Companies of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

[75] Civil Code of the Republic of Armenia, *supra*

no voting right.[76] The only type of incorporation in Armenia, which does not provide for flexibility regarding control of the company, is the LLC. According to Article 35 of the Law on Limited Liability Companies, each participant has the right to vote in accordance with the proportion of his/her capital participation.[77] Overall, the part of the legislation regarding the control of the companies certainly improves the investment climate from the perspective of a foreign investor, as it provides flexibility through the variety of incorporation forms.

Procedure

The investor should begin the incorporation procedure by firstly registering the company name. The basic procedure of registration of a company in the RA is outlined in Articles 32-36 of the RA Law on State Registration of Legal Entities, Independent Branches, Foundations and Sole Proprietors. Paragraph 6 of Article 32 provides the list of grounds for rejection of registration of the company name. If the registrar finds grounds for rejection, it is obliged to give the applicant an opportunity to apply for another company name. In case none of the rejection grounds are found in the application, the registrar should proceed with confirming the registration of the company name.[78]

After successfully registering the company name, the investor should apply for the state registration of the company. Article 34 provides the list for the documents required for the state registration, which are the application to register, the decision of the founder(s) to register, the company charter, necessary data regarding the company director and the registration fee payment receipt.[79]

Articles 35 and 36 of the law outline the obligations of the registrar after the applicant submits the above-mentioned documents. Paragraph 2 of Article 35 sets 2 days as the maximum period for registration, while it can be reduced to just 1 day in case if registrar templates are used by the applicant. Article 36 outlines the list of grounds for the refusal of the registration application by the state registrar.[80]

---

[76] Law on Joint Stock Companies of the Republic of Armenia, *supra*
[77] Law on Limited Liability Companies of the Republic of Armenia, *supra*
[78] Law on State Registration of Legal Entities, Independent Branches, Foundations and Sole Proprietors of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation
[79] Law on State Registration of Legal Entities, Independent Branches, Foundations and Sole Proprietors of the Republic of Armenia, *supra*
[80] Ibid

Tel: (37410) 51 27 55

The aforementioned law protects the rights of the incorporators in a few ways. Firstly, the lists of grounds for rejection of registration of the company name and the company are exhaustive. Secondly, the grounds for rejection should be signed and provided to the applicant in writing if required. Thirdly, the registrar is obliged to follow specific deadlines. These factors significantly cut the possibility of bureaucratic abuse of power, delays and corruption, which certainly helps to improve the investment climate.

The main fees that apply during the process, according to the law, are for the registration of the company name and the company. However, other fees may apply too. Some of these, such as the one for providing a written decline for the registration of the company name, as provided by paragraph 8 of Article 32, seem to be irrational.[81] Although the law provides that a number of fees may apply, most of them, including the main fees mentioned above, do not apply at the moment. This is probably part of the government policy of simplifying the process and encouraging investment, which certainly positively contributes to the investment climate.

Foreign Investments policy and law in the Republic of Armenia

The RA government has outlined the policy regarding foreign investments through the Ministry of Foreign Affairs and the Ministry of Economy. In an official announcement the latter summarize the government goals as follows: "The investment policy is targeted at the development of favorable investment and business climate, advancement of the transparency of regulating environment, revelation of competitive advantages of the country, increase of the volume of investments in Armenia, development of market infrastructure, and as a result the insurance of economic development based on all the mentioned factors." [82] Such a government policy regarding foreign investments is essential for the creation of positive investment climate for a few reasons. Firstly, and most importantly, the policy can be referred to and should be considered when interpreting the relevant law. Secondly, the foreign investor is more confident in making an investment when the government officially expresses willingness to cooperate. In the case of Armenia, the government is specifically carrying out the policy through the

[81] Law on State Registration of Legal Entities, Independent Branches, Foundations and Sole Proprietors of the Republic of Armenia, *supra*

[82] Website of the Ministry of Economy of the Republic of Armenia http://mineconomy.am/eng/index.html , Projects for Public Discussion, Investment Policy, Investment Policy

aforementioned two Ministries in order to send both external message to potential investors and internal message to the relevant public bodies in order to coordinate their activity.

The aforementioned policy is named "Open Doors" and is mainly carried out under the 1994 RA Law on Foreign Investments. The opening paragraph of the law underlines its goals, and among those are "the insurance of protection of the rights, legal interests and the property of foreign investors." [83] This once again confirms the government position and is a step further to win the trust of a foreign investor.

Article 6 of the law provides for the requirement to establish legal framework regulating foreign investments not less favorable than that of local investments. Moreover, the Article states that foreign investments can be given extra privileges, considering their social and economic importance. This provision is very important in securing the competitiveness of the foreign investor.[84]

Article 3 of the above-mentioned law outlines the forms of investment available to foreign investors. When compared to the Kuwaiti regulations, an important difference in Armenia is the possibility to make the investment in "[…] foreign currency, other currency values." Article 5 of the same law allows the appraisal of the investment in foreign currency.[85] The existence of such an option can seriously encourage investment as it cuts the possible damages from the national currency fluctuations.

Article 4 of the law outlines the various methods of implementing foreign investments. Among those is incorporation in the RA, acquisition of stock, property rights, the right to use land, foundation of joint-ventures with participation of foreign legal persons and other means not prohibited by law. The law treats all the methods of implementation equally by not limiting the available benefits to the incorporated legal entities and joint-ventures, which is the case in Kuwait.[86]

The procedure of founding and registering of an enterprise with foreign investment is stipulated by Article 12 of the law, which states that the aforementioned enterprises "shall be founded and registered in a manner established by the Law of The Republic of Armenia on Enterprises and Commercial Activities…."[87] However, the mentioned law has lost its force by

---

[83] Law on Foreign Investments of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation
[84] Ibid
[85] Ibid
[86] Ibid
[87] Law on Foreign Investments of the Republic of Armenia, official translation, *supra*

the Law of 1998 on Activation of the RA Civil Code. This means that the main law regulating foreign investments, in defining the procedure of incorporation of foreign investments in Armenia, makes a reference to an inactive law. Although the Civil Code and other relevant legislation fully cover the aforementioned procedure, this legal conflict harms the investment climate by underlining the lack of attention paid to the legal regulations by the legislator.

In contrast with the existence of procedure of qualification as a foreign investment company in Kuwait, Armenian legislation does not require such a separate procedure. Kuwaiti authorities have the discretionary power, although very limited, to disallow one from obtaining foreign investment license. Armenian legislation, in contrast, has specific threshold of minimum ownership percentage of foreign ownership, in order for the entity to qualify as foreign investment. The threshold is 30% as stipulated by Article 18 of the Law on Foreign Investments.[88] This means that any legal entity with 30% foreign ownership receives full benefits outlined in the aforementioned law.

Investment Security in the Republic of Armenia

Security of the investment, as mentioned earlier, plays a crucial role in shaping the investment climate in the country. The RA Law on Foreign Investments does well in this, as it includes state guarantees for the investor in the relevant law.

Article 7 of the law outlines, that "[i]n the event of amendments to the foreign investment legislation of the Republic of Armenia, the legislation that was effective at the moment of implementation of investments shall be applied, upon the request of a foreign investor, during a five years period from that moment."[89] This Article provides for some legal stability for the investor, as he/she gets a safe period of 5 years in case the law is amended in a deteriorating way for the foreign investment.

Article 8 of the law provides for the government guarantee against nationalization and confiscation of foreign investments. The Article imperatively prohibits nationalization of foreign investment, while leaves the opportunity for the latter's confiscation in case of emergency and

[88] Ibid
[89] Ibid

implemented only through court order. However, Article 8 also states that confiscation can be applied only with full compensation.[90]

The detailed terms and conditions regarding compensation are outlined in the subsequent Article. Article 9 states that the investor is entitled to compensation for "material and moral damages, including lost profits." The amount of the compensation, according to this Article should be "at current market prices or prices determined by independent auditors. This compensation shall be paid either in the currency invested, or in any other currency mutually agreed upon by the parties."[91] Although there is a chance that market price might not completely accurately reflect the real price of the investment, it can be challenged in the court. The currency of compensation too is advantageous for the investor.

Finally, Articles 10 and 11 of the law protect the profit gained through the investment. The legal protection against expropriation of capital is vital for a foreign investor and the issue is well addressed in those Articles. According to Article 10, the net profits gained by the investor cannot be retained from him/her. It also provides for the right of the investor to freely convert the profit to a foreign currency. Article 11 states that "[f]oreign investors and foreign employees shall be entitled to and shall have the benefit of guarantees to freely export their property, profits, and other means legally gained as a result of investments or as a payment for labor or as a compensation under Article 9 of this Law."[92] The protection provided by these Articles is one of the key factors shaping the investment climate.

Government guarantees in general can and do play a decisive role for a foreign investor, because independently from the attractiveness of the market, big investment will not be rational if there is a chance of losing the invested capital as a result of nationalization, or not having a chance to freely move it when necessary.

Tax in the Republic of Armenia

The next area of interest for a foreign investor in Armenia is the tax obligations and incentives. In this regard, the RA tax legislation provides for a number of tax obligations. The relevant ones are profit tax, value added tax and income tax. The above mentioned obligations

[90] Law on Foreign Investments of the Republic of Armenia, official translation, *supra*
[91] Ibid
[92] Ibid

arise for Armenian resident companies[93] and non-residents conducting commercial activity through a permanent establishment. The legislation uses the OECD standards to identify a permanent establishment.

The general approach is that the legal entities pay only profit tax, while physical persons pay income tax, which is why this chapter will make a reference to the income tax to the extent it is relevant to foreign investments.

Obligations

According to the RA Law on Profit Tax, the profit tax rate in Armenia is 20%, which applies to residents and non-resident permanent establishments.[94] Such a tax policy is supposed to encourage investment by creating equal conditions for competition.

The RA Law on Income Tax lacks necessary clear and comprehensive rules regarding the double taxation issues affecting resident legal entities. According to part 1 of paragraph 1 of Article 7 of the law, the total income should be deducted "by the amount of dividends received." Furthermore, paragraph 1 of Article 9 of the same law states that "the income defined by Articles 6-8 of the law shall be deducted from the total income, when defining the taxable object of the non-resident."[95] This means that the dividends paid by a resident legal entity to the non-resident investor are not subject to income tax in the Armenia.

In contrast with Kuwait, value added tax does exist in Armenia. The VAT rate is 20% and it should be paid monthly.[96] Although VAT is an indirect tax[97] and its burden falls on the final consumer, it still harms the business climate in the country, as products and services are more expensive compared to VAT free countries.

[93] According to Part 1 of Paragraph 2 of Article 4 of RA Law on Profit Tax, resident companies are the companies registered in the RA.
[94] Law on Profit Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation
[95] Law on Income Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng, legislation
[96] Law on Value Added Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation
[97] Companies include the 20% of the value added tax into the price of products and services sold, resulting in consumer paying higher price than what would have been the "real" price of the product or service

Incentives

The RA Law on Foreign Investments also provides incentives to attract foreign investment. Article 15 of the law states that, the investor's customs duties should be relaxed for the products included in the list provided by a government decree.[98] This manner of providing incentive is less attractive when compared to the Kuwaiti way of defining the customs-free products, as government decrees provide less stability as opposed to laws. On the other hand, the RA legislation provides more flexibility to accommodate such a list to a specific investor or economic change. Moreover, in case if those products are sold within 3 years after using this privilege, the latter shall be reversed. This again, makes the RA foreign investment climate disadvantageous to that of Kuwait.

Labor laws in the Republic of Armenia

In terms of labor, the Republic of Armenia is very different from the State of Kuwait. Firstly, it does not have any significant dependence on foreign labor. Secondly, the RA economy is not based on a single product and is far more diversified when compared to the Kuwaiti economy. The national labor of the RA has active participation in various spheres of both private and public sector. As a result, the RA is more self-sufficient by having diversified labor; there is no artificial employment in the public sector to decrease unemployment rates and the labor relations are built on competitive market bases. With the absence of large number of expatriate workers, quota systems similar to those in the State of Kuwait do not exist in the RA. This chapter is going to analyze the parts of Armenian Labor legislation, which are different from those in Kuwait, while being relevant to foreign investment climate. The areas of interest for a foreign investor should be the cost of labor in Armenia and other differences between Armenian and Kuwaiti labor laws and regulations.

According to the Article 1 of the RA Law on the Minimum Monthly Wage the minimum wage in Armenia is 55 000 AMD (114 USD), which applies to both public and private sectors.[99] This is nearly half the amount set for Kuwaiti private sector, which is clearly advantageous in the context of foreign investment climate. However, in contrast with Kuwait, the RA authorities

---

[98] Law on Foreign Investments of the Republic of Armenia, *supra*
[99] Law on the Minimum Monthly Wage of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

closely supervise the employers in keeping in line with the law in this respect. At the first glance this can seem to harm the employer, who would certainly prefer less strict supervision. However, in a long term this creates healthier working environment, which improves business stability.

Article 184 of the RA Labor Code provides standard regulations of overtime and night shifts. The rate for the latter should be minimum 1.5 and 1.3 times the normal rate, respectively.[100] The overtime rate is low compared to Kuwait's double. However, in contrast with Kuwait, these regulations too are strictly implemented by the state authorities.

In terms of working hours and holidays the RA legislation provides for similar conditions to those of Kuwait. However, the two legislations vary in terms of their regulation of trade unions. The limitation mentioned earlier in the paper regarding Kuwaiti trade unions are not outlined in the RA Labor Code.[101] Although this is meant to increase bargaining powers of the employees and protect their rights, which makes the employment relationship healthier, this also harms the investment climate for a foreign investor by increasing the cost of employment. However, trade unions are not deeply integrated into the Armenian employment culture and very few of those are known to exist at the moment.

Conclusion

The research paper has led to a few conclusions. The general picture is that the Armenian legislation is more advanced and is easier to interpret. The laws and regulations are also more reachable, as most of them are available online in English language. The legislation also seems more investment friendly for a few reasons.

Firstly, in terms of obtaining legal status, the RA legislation provides for more flexible options and has less limitations. Secondly, the procedure is less complex and time consuming when compared to Kuwait. The policy in Armenia, on top of that, creates less financial obstacles for foreign investors trying to obtain legal status in the RA.

In terms of investment security and other non-financial incentives there is no significant difference between the two legislations. The RA legislation provides for stronger investment security in terms of providing grace period of five years for cases of legal amendments with

[100] Labor Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng, legislation
[101] Ibid

adverse effect on the investment. However, the existence of a separate authority promoting foreign investments in Kuwait and a one-stop shop certainly simplifies the investment procedure for the foreign investor in terms of giving him a contact person for all issues. Moreover, the authority also possesses property and other capital, which can be granted to the investor for use. This concept is one of the suggested improvements that can be implemented in Armenia.

The main difference between the states comes with the tax obligations and incentives for foreign investors. Both countries have tax free zones that create incentives for the investors. However, those are heavily regulated in both states, and in case business is not conducted in a free zone, less incentivizing conditions apply in the RA in terms of taxes. On top of the higher tax rate, the RA legislation does not provide any tax exemptions. The only incentive is the delay of VAT payment, which is insignificant when compared to Kuwaiti incentives. Although this paper emphasizes the importance of taxes as a source of government revenue, it strongly recommends the RA Government reconsidering the tax obligations and incentives for foreign investors.

In terms of labor laws and existing situation, the RA looks much more advantageous compared to Kuwait. The laws are much more modern and advanced in terms of coverage of employment relationships. The minimum wage in Armenia is considerably lower, while the available labor force is much more diverse in terms of know-how. The absence of quotas is also important in providing freedom to the investors to employ expatriate employees.

The research also showed to what extent factors, other than legislation, are important in attracting FDI. Despite the competitive advantage of the Republic of Armenia over Kuwait in terms of legislation, the foreign investments in Kuwait are disproportionally larger than in Armenia. This confirms the point made earlier, regarding the significance of non-legislative factors in attracting FDI. This essay has tried to define the possible improvements that could develop the RA legislation on FDI even further. This will in no way guarantee an increase of foreign direct investments in Armenia and there are a number of other factors arguably more effective in achieving this goal, such as political and international stability and economic growth. However, the legal improvements suggested in this essay are still important, because the legal system is deeply interconnected with the other factors affecting FDI attractiveness and is absolutely necessary for stimulating their development.

Bibliography

Reports

1. World Trade Organization, *Trade Policy Review*, the State of Kuwait, 4, January, 2012

https://webcache.googleusercontent.com/search?q=cache:ed1q646aySoJ:https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/93418/Q/WT/TPR/G258.pdf+&cd=3&hl=hy&ct=clnk&gl=am

2. U. S. Department of State, *Diplomacy in Action*, June 2014

http://www.state.gov/documents/organization/231064.pdf

3. International Monetary Fund, *Selected Issues*, Washington D. C., December 2015

https://www.imf.org/external/pubs/ft/scr/2015/cr15328.pdf

4. KPMD, *Kuwait- Details on the new Foreign Direct Investment Law*, 24, March, 2015

https://home.kpmg.com/xx/en/home/insights/2015/02/kuwait-details-new-foreign-direct-investment.html

5. Deloitte, *International tax, Kuwait Highlights 2016*

http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-kuwaithighlights-2016.pdf

Research papers

6. Mona Mohammed Abdulah Al-Yagout, The regulation of foreign investment in Kuwait: the role of law, politics and economic policy in the development process, University of Warwick, England, 1997

http://wrap.warwick.ac.uk/2953/1/WRAP_THESIS_AlYagout_1997.pdf

7. Nsrah M. Shah, *Kuwait's Revised Labor Laws: Implication for National and Foreign Workers*, Kuwait University

http://www.smc.org.ph/administrator/uploads/apmj_pdf/APMJ2011N3-4ART4.pdf

8. Kasim Randeree, Workforce Nationalization in the Gulf Cooperation Council States, Georgetown University, 2012

https://repository.library.georgetown.edu/bitstream/handle/10822/558218/CIRSOccasionalPaper9KasimRanderee2012.pdf?sequence=5

Articles

9. Oxford Business Group, *Kuwait's parliament plans for the economic growth with increased private sector development*, 2016

http://www.oxfordbusinessgroup.com/overview/strength-depth-government-plans-economic-development-increased-private-sector-involvement

10. Oxford Business Group, *Legal changes in Kuwait make direct investment easier and more attractive*, 2016

http://www.oxfordbusinessgroup.com/overview/down-business-legal-changes-make-direct-investment-easier-and-more-attractive

Web sources

11. Website of the Ministry of Economy of the Republic of Armenia http://mineconomy.am/eng/index.html , Projects for Public Discussion, Investment Policy, Investment Policy

Laws

12. Companies Law No. 25 of 2012 of Kuwait, translation by DLA Piper Middle East LLP, dated 8 April 2013

13. Law No. 116 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, Government of Kuwait Website, http://kdipa.gov.kw/en/home-2

14. Executive Regulations Implementing Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait, official translation, Government of Kuwait Website, http://kdipa.gov.kw/wp-content/uploads/law1162013reg.pdf

15. Law No. 26 of 1999 on Free Zones, unofficial translation, International Labor Organization website, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83362/91985/F244336417/KWT83362.pdf

16. Director General Decision No. (35) of 2014 on Principles, Rules and Procedures for Licensing Branches and Representative Offices of Foreign Companies in the State of Kuwait, unofficial translation, Government of Kuwait Website, http://kdipa.gov.kw/en/home-2

17. Ministerial Decision No. 234 of 2015, official translation, Government of Kuwait, KDIPA news, Year 2015, 05/05/2015 http://kdipa.gov.kw/en/archives/8544

18. The Law of Labor In the Private Sector, No. 6 of 2010, official translation, Al-Kuwait Al-Yawm Kuwait Official Gazette, Sunday, 7 Rabie Al-Awwal 1431 AH February 21, 2010, http://www.kuwaitlaborlaw.com/private-sector-kuwait-labor-law-detailed/

19. Civil Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

20. Law on Legal Acts of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

21. Labor Code of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

22. Law on Limited Liability Companies of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

23. Law on Joint Stock Companies of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

24. Law on State Registration of Legal Entities, Independent Branches, Foundations and Sole Proprietors of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

25. Law on Foreign Investments of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

26. Law on Profit Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

27. Law on Income Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng, legislation

28. Law on Value Added Tax of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation

29. Law on the Minimum Monthly Wage of the Republic of Armenia, official translation, Parliament website, http://parliament.am/?lang=eng , legislation