

21 January 2024

# KUWAIT SCRAPS LOCAL AGENT REQUIREMENT

On 21 January 2024, Law No.1 of 2024 (“the Law”) was published in the official gazette Kuwait Alyoum allowing foreign companies to operate in Kuwait without a local agent. As per the Law, foreign companies are now entitled to set up a branch in Kuwait, bid and execute projects without a local agent.

## Effective Date

The Law is effective from the date of its publication i.e. from 21 January 2024.

## Background

Broadly, prior to the issuance of the Law, foreign companies desirous of conducting business operations in Kuwait were required to either appoint a Kuwaiti agent or participate in a Kuwaiti company (with maximum foreign ownership of up to 49%). The only exception to the above restriction was obtaining an approval from Kuwait Direct Investment Promotion Authority (“KDIPA”) to establish up to 100% foreign owned company or a branch.

## Detailed Discussion

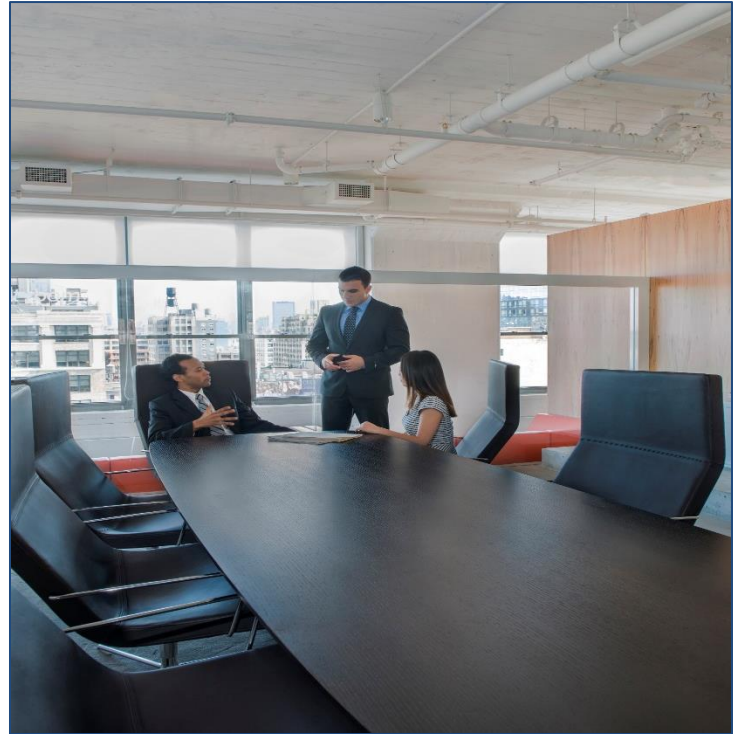
In an unprecedented step, Kuwait enacted Law No. 1 of 2024 which scraps the requirement of appointing a local agent in Kuwait by a foreign company wishing to carry out activities locally. This move comes as part of Kuwait’s initiatives to attract foreign investments and to enhance the local market competitiveness. The Law essentially provides for the following:

1. Under Article 23 of the existing Commerce Law No.68 of 1980, a foreign company cannot carry out business activities in Kuwait unless through establishment of a Kuwaiti company, where a minimum of 51% of the share capital must be owned by Kuwaiti partner(s). Further, Article 24 of the Commerce Law imposed a clear restriction prohibiting foreign companies from carrying out commercial activities in Kuwait without a local agent. Article 1 of the Law replaces article 24 of the Commerce Law by removing the local agent condition for carrying out works in Kuwait, as an exception to Article 23 of the Commerce Law.
2. Article 2 of the Law introduced amendments to Article 31 of Law No. 49 of 2016 regarding Public Tenders. The new amendments provide the following:
  - 2.1 The bidder can be an individual or a company, registered in the Kuwait commercial register. This puts local and foreign bidders on equal footing. The Law exempts foreign bidders from commercial registration requirement in Kuwait.
  - 2.2 Eliminating the option of restricting certain contracts to local companies only (or to foreign companies only). The objective is to open the market to all qualified bidders, irrespective of their nationalities.

## BDO Comments

Lifting the local agent requirement is a significant step towards attracting foreign investors to Kuwait and encouraging the ease of doing business in the country. It remains to be seen how the Law will be implemented in practice, and whether a “negative list of activities” will be published and restricted to Kuwait companies.

Currently, the Law permits a foreign company to establish a branch in Kuwait, but it does not address the option of establishing a 100% foreign owned subsidiary. It will be interesting to monitor how the role of KDIPA will evolve given that it has been the government authority in charge of approving foreign investors’ license applications to set-up a branch, up to 100% foreign owned company and a representative office.



## HAVE QUESTIONS OR WANT TO LEARN MORE? CONTACT US!

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# Appendix – Summary of Changes

IMPACTED LAWS	BEFORE	NOW
<p>Kuwait Commerce Law No. 68 of 1980 (“the Commerce Law”)</p>	<p>Part 1 of Article 23 of Commerce Law states that non-Kuwaitis citizens may not pursue any commercial activities in Kuwait, unless having a Kuwaiti partner. The Kuwaiti partner’s share must not be less than 51% of the capital.</p> <p>Article 24 states that a foreign company may not establish a branch in Kuwait and cannot pursue its commercial activities in Kuwait except through a Kuwaiti agent.</p>	<p>Law No.1 of 2024 replaces Article 24 of the Commerce Law with the following Article:</p> <p>As an exception to Part 1 of Article 23, a foreign company may establish a branch in Kuwait and pursue operations without the need for a local agent.</p>
<p>Public Tender Law No. 49 of 2016 (“Public Tender Law”)</p>	<p>Article 31 of the Public Tender Law states the following:</p> <p>“..... The following conditions are required to be fulfilled by the party submitting a bid for a public or limited tender or in the events of enquiries and direct contracting:</p> <p><b>First:</b> To be a <b>Kuwaiti</b> - individual or company - registered in the commercial register.</p> <p><b>Second:</b> To be registered in the register of suppliers or contractors or as per the nature of the tender or practice or direct contracting.</p> <p>The bidder may be a foreign bidder, and in this case, the bidder shall not subject to the provisions of Clause 1 of Article 23 and Article 24 of the Commerce Law No. 68 of 1980.</p> <p>The tender may be limited to national companies in typical business conditions or where sufficient expertise is available in the local market. Also, the tender may be restricted to foreign companies as requested by the relevant authority where there is a need to execute works requiring technical specialties not sufficiently available in the local market and difficult to have good competition”.</p>	<p>Law No. 1 of 2024 replaces Article 31 of the Public Tender Law with the following:</p> <p>“..... The following conditions are required to be fulfilled by the party submitting a bid for a public or limited tender or in the events of enquiries and direct contracting:</p> <p><b>First:</b> To be an individual or company - registered in the commercial register.</p> <p><b>Second:</b> To be registered in the register of suppliers or contractors or as per the nature of the tender or inquiry or direct contracting.</p> <p>Where the bidder is foreign, <b>the bidder shall not be subject to the provisions of the First Clause of this Article</b> and Article 23 of the Commerce Law No. 68 of 1980”. <i>This implies that a foreign company will not be required to be registered in the Kuwait commercial register to participate in a public tender.</i></p>