WEBINAR

DOING BUSINESS IN KUWAIT IN 2021 – OPPORTUNITIES, CHALLENGES AND POTENTIAL DISPUTES

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ATTORNEYS & LEGAL CONSULTANTS

The LEGAL 500

Brief Background: Commercial Law 68 1980

Article 23

- Non Kuwaiti may not carry out business in Kuwait unless he has a Kuwait partner or partners, provided that the capital of the Kuwaiti shall not be less **than 51%**

Article 24

- **A foreign company** may **NOT** incorporate a subsidiary in Kuwait nor carry out commercial business in Kuwait **EXCEPT** through a Kuwaiti agent

- In late 2006, BOT projects in Kuwait were suspended amid concerns raised by the government's Audit Bureau over transparency and fairness of award processes, and "irregularities" in implementation.
    - Sharq and Marina Mall retail/marina developments,
    - Salmiya Market
    - and the Sulaibiya Waste Water Treatment and Reclamation Plant - at the time the world's largest plant of its type.

- Law No. 7 of 2008 passed regarding the Regulation of Build, Operate and Transfer (BOT) Operations

Limitations:

- Law limits BOT projects to a **lifespan of 30 years**, after which time they must be handed back to the State **"without any consideration and compensation“**
- **Financing related issues**: law was seen as too restrictive and uncertain because it prohibited the mortgage of project land as well as the buildings and possibly even the equipment situated on the land. Lenders were effectively prevented from being able to take adequate security over the material assets of the project which diminished lenders’ willingness to provide the necessary financing for carrying out the projects

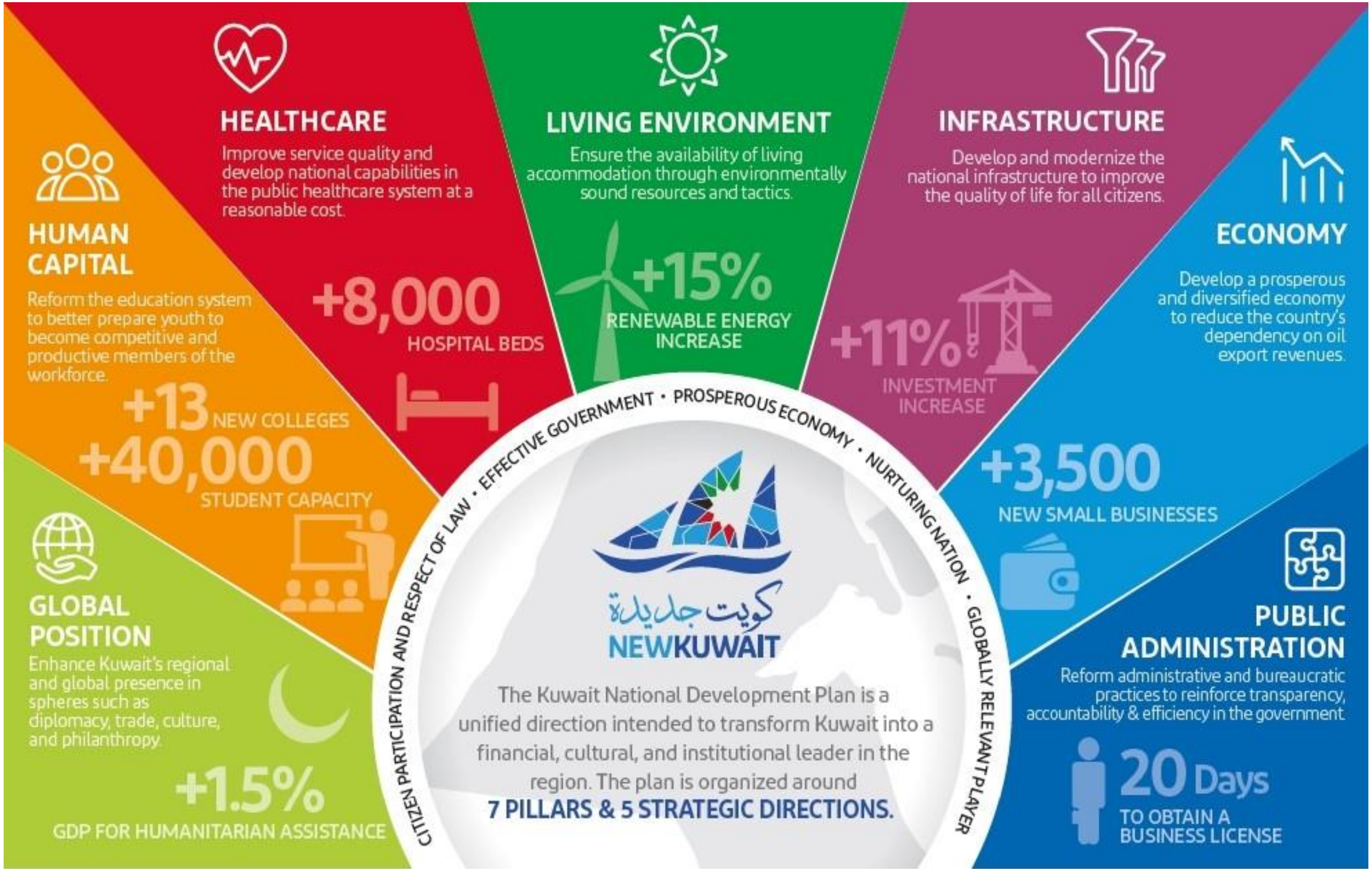
Kuwait introduced new PPP Law No. 116 of 2014

Main objective: to provide a clear regulatory framework and business environment for the implementation of PPP projects to Attract foreign investors

Az-Zour North Independent Water and Power Project (Phase 1) confronted challenges, under the old law, which is a joint venture between Kuwaiti Government entities (60%) and a private consortium comprising ENGIE (formerly GDF Suez, 17.5%) , Sumimoto (17.5%) and A.H. Al Sagar & Brothers (5%). Contract awarded 2009 and signed financial closing in 2013/14

Kuwait National Development Plan

- mobilizes development efforts across seven pillars with the aim of transforming Kuwait into a financial and commercial hub
- New Kuwait 2035


HEALTHCARE
Improve service quality and develop national capabilities in the public healthcare system at a reasonable cost.
+8,000
HOSPITAL BEDS
LIVING ENVIRONMENT
Ensure the availability of living accommodation through environmentally sound resources and tactics.
+15%
RENEWABLE ENERGY INCREASE
INFRASTRUCTURE
Develop and modernize the national infrastructure to improve the quality of life for all citizens.
+11%
INVESTMENT INCREASE
HUMAN CAPITAL
Reform the education system to better prepare youth to become competitive and productive members of the workforce.
+13 NEW COLLEGES
+40,000
STUDENT CAPACITY
ECONOMY
Develop a prosperous and diversified economy to reduce the country's dependency on oil export revenues.
+3,500
NEW SMALL BUSINESSES
GLOBAL POSITION
Enhance Kuwait's regional and global presence in spheres such as diplomacy, trade, culture, and philanthropy.
+1.5%
GDP FOR HUMANITARIAN ASSISTANCE
PUBLIC ADMINISTRATION
Reform administrative and bureaucratic practices to reinforce transparency, accountability & efficiency in the government
20 Days
TO OBTAIN A BUSINESS LICENSE
CITIZEN PARTICIPATION AND RESPECT OF LAW • EFFECTIVE GOVERNMENT • PROSPEROUS ECONOMY • NURTURING NATION • GLOBALLY RELEVANT PLAYER
كويت جديدة
NEWKUWAIT
The Kuwait National Development Plan is a unified direction intended to transform Kuwait into a financial, cultural, and institutional leader in the region. The plan is organized around
7 PILLARS & 5 STRATEGIC DIRECTIONS.

Development in Seven Pillars, particularly in economy

GLOBAL POSITION

HEALTH CARE

INFRASTRUCTRE

LIVING ENVOIRMENT

HUMAN CAPITAL

PUBLIC ADMINSTRATION

ECONEMY

Develop a prosperous and diversified economy to reduce the country's dependence on oil export revenues.

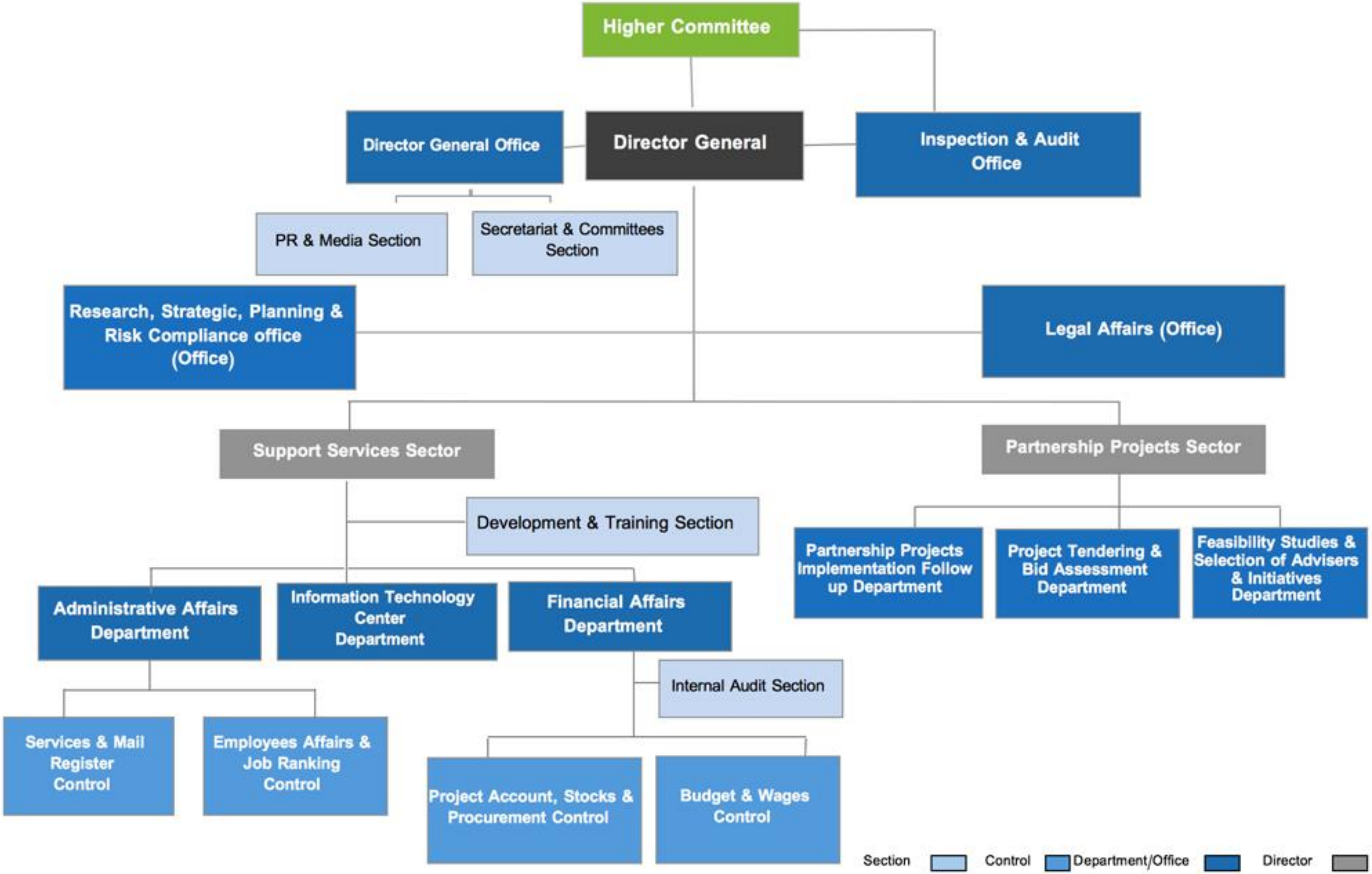
Create a Business Environment for Private sector growth

Public Private Partnership PPP Law

Relevant Authority: Kuwait Authority for Partnership Projects (KAPP)

Overseeing PPP projects in Kuwait, its governing board the “Higher Committee” general broad authorities to execute and implement of PPP projects

- Selection of the relevant public entities that will participate in the tendering process
- approving project concepts and proposals at early stage prior to advertising and tendering
- developing general policies for projects; level of strategic importance to Kuwait economy
- developing general policies and documents for projects and initiatives providing final approval to public entities to enter into PPP contracts


Higher Committee
Director General Office
Director General
Inspection & Audit Office
PR & Media Section
Secretariat & Committees Section
Research, Strategic, Planning & Risk Compliance office (Office)
Legal Affairs (Office)
Support Services Sector
Partnership Projects Sector
Development & Training Section
Partnership Projects Implementation Follow up Department
Project Tendering & Bid Assessment Department
Feasibility Studies & Selection of Advisers & Initiatives Department
Administrative Affairs Department
Information Technology Center Department
Financial Affairs Department
Internal Audit Section
Services & Mail Register Control
Employees Affairs & Job Ranking Control
Project Account, Stocks & Procurement Control
Budget & Wages Control
Section
Control
Department/Office
Director

The Higher Committee

Chaired by the Minister of Finance and shall consist of the following members:

1. Ministers holding the following ministerial portfolios:
    a. Public works;
    b. Commerce and industry;
    c. Electricity and water;
    d. Municipality;
2. The Director General of the Environment Public Authority.
3. The Director General of the Authority,
4. Three experienced specialists appointed by the Council of Ministers from among State’s employees.

Passing of PPP Law 7/2008 and its Executive Regulations

- set the governance for Kuwait's PPP program
- It defines the roles of the:
  - Council of Ministers
  - Higher Committee
  - Partnerships Technical Bureau (PTB)
  - Relevant Public Entities
- It clearly stipulates private investors' rights and obligations

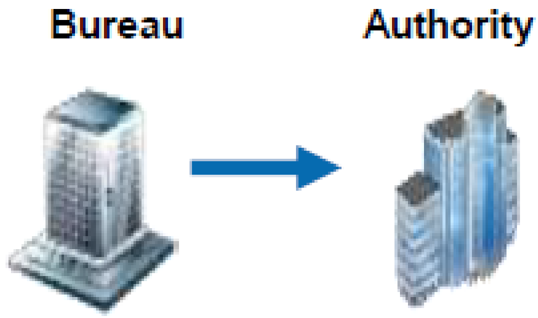
Set-up of the Partnerships Technical Bureau

- PTB was set-up in 2008, under Article 12 of Law 7/2008
- Responsible for PPP projects' implementation
- Aims to utilize private sector expertise to:
  - Increase Kuwait's GDP and diversify its sources
  - Improve public sector service quality
  - Create job opportunities for Kuwaiti nationals

Passing of New PPP Law 116/2014

- In 2014, a new PPP Law was passed, aiming to:
  - Strengthen and enable Kuwait's institutional framework for PPPs
  - Resolve shortfalls of PPP Law 7 of 2008 and Law 40 of 2010
  - Broaden the benefits of PPP projects in Kuwait

Transition from Bureau to Authority



- The new PPP Law 116/2014 changes the structure and role of PTB
- Under the new Law, PTB is to become an Authority, referred to as the "Kuwait Authority for Partnership Projects" (KAPP),

DEFINITIONS Article 1

2. **"Public Private Partnership Model"** or **"PPP Model"**: a model whereby a private **Investor** invests in State-owned real property – if required– in one of the projects procured by the Authority in collaboration with one of the Public Entities after signing an agreement with the **Investor** to implement or build or develop or operate or rehabilitate a service or an infrastructure project, and to provide financing thereto and operate or manage and develop the project, for a specified term, after which the project shall be transferred to the State; the foregoing shall be carried out in one of two forms: **1)** the implementation of the project in consideration for fees – for services or works performed - to be paid to the **Investor** by the beneficiaries or by the Public Entities who have entered into an agreement with the **Investor**, and whose objectives are in compliance with the project or by both the beneficiaries and the Public Entities; and **2)** the purpose of the project is for the **Investor** to implement a project with strategic importance to the national economy and to exploit it for a specified term. **In both cases, the Investor shall pay a fee for the use of any State-owned real property allocated for the project.**

DEFINITIONS Article 1: Continued

9. **"Investor":** a private local or foreign legal person, or several private legal persons forming a Consortium, whose qualification was approved by the Higher Committee, to submit a proposal for a PPP Project.

10. **"Preferred Investor":** the Investor with whom it was decided to negotiate, in accordance with this Law, as the submitter of the best proposal in accordance with the Terms of Reference on the basis of which the project was procured for investment.

11. **"Successful Investor"**: the Preferred Investor with whom the negotiations successfully lead to a final agreement for the implementation of the PPP Project.

12. **"Contracting Investor":** the Successful Investor with whom the Partnership Agreement(s) are executed, either directly or by acquiring shares in the Project Company.

INCENTIVES AND EXEMPTIONS - Article 28

The Terms of Reference issued to the Investors for the submission of their proposals shall include the incentives provided to the Successful Investor including exemption from:

- income tax, any other taxes, custom duties or
- any other fees based on the decision of the Higher Committee
- as well as any other benefits provided for under Law No 116 of 2013.

The executive regulations sets out the mechanism for granting such exemptions.

INCENTIVES AND EXEMPTIONS

- *Right to invest/use Stateowned property* - Article 1 provides investors the usufruct right to invest and use State-owned property to implement, build, develop, operate or rehabilitate a service or an infrastructure project.
- *Extension of the contract term* - Article 18 now provides the contract term on an investment project could be drawn up to a maximum of **50 years**;
- *Choice of finance* - Article 23 of the Law permits the investor or the Project Company to mortgage/use as security any assets owned by the investor or the Project Company in order to finance the project. In addition to this, the investor is also permitted to pledge its share of the Project Company or the consortium company for the purpose of financing the implementation of the Project with the prior approval of the Higher Committee.
- Risk allocation and asset ownership

Limitations:

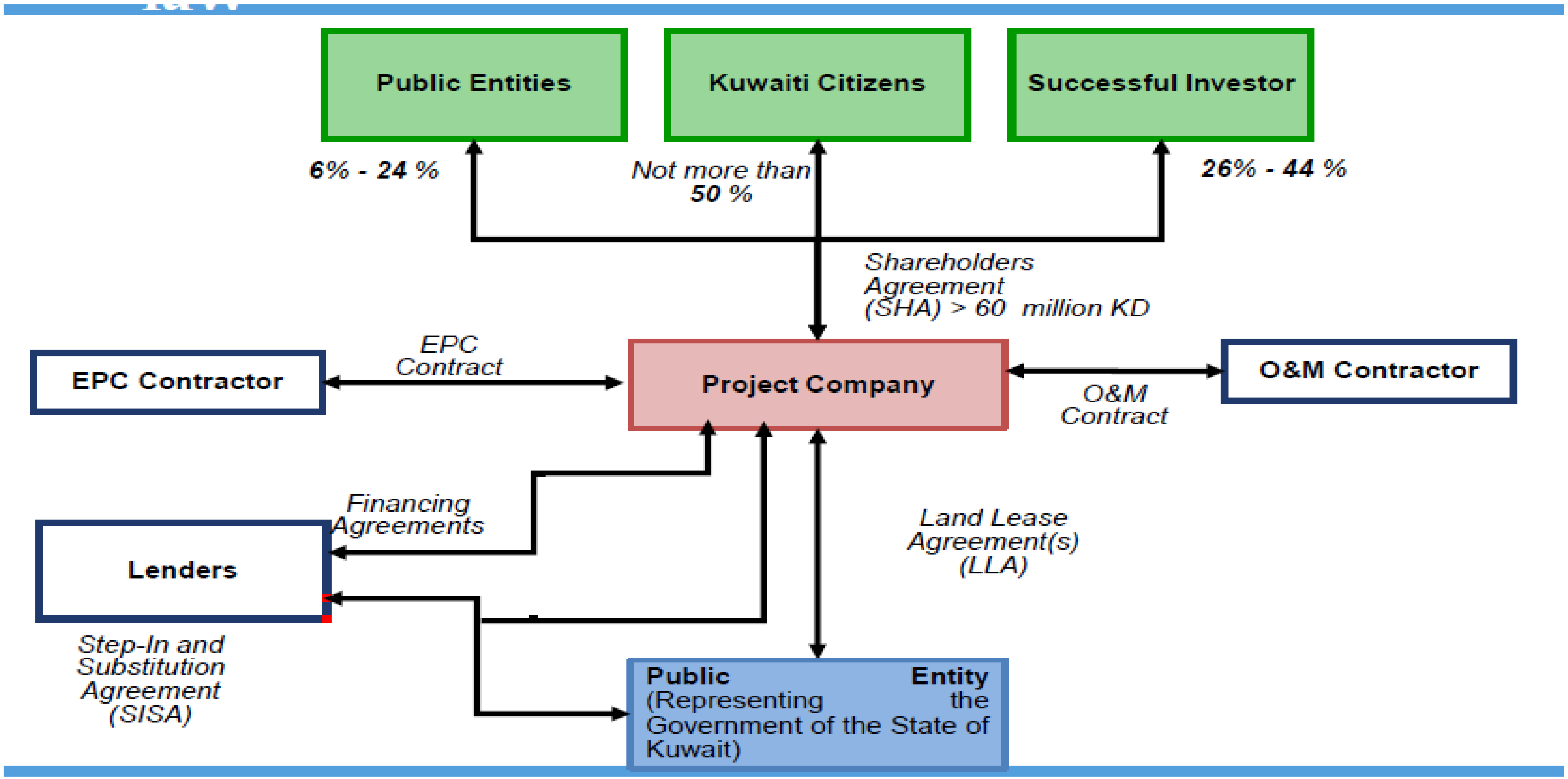
Necessity to have a Consortium / bidding Company: The Law specifically provides that where the project is awarded to any Consortium, such Consortium shall establish one or more consortium company(ies) in Kuwait and the Partnership Agreement **may not be** entered into until such Consortium Company(ies) has been established.

Limitations:

- ***Capital holding limitations*** The Law provides that if the total cost (capital expenditure) of a PPP project is expected not-to exceed KWD 60 mn, a successful investor can establish a project company, where the investor may hold the entire share capital of the project company.
- However, where the total cost of the project exceeds KWD 60 mn, the KAPP is required to establish a public joint stock company
- Time consume and over bureacreacy

	Share Allocation under the Old Law (%)	Share Allocation under the PPP Law (%)
Project Sponsors (i.e. the successful bidders)	10% [Art. 5(b)]	26%–44% [Art. 13(2)]
Kuwaiti Citizens, acquiring shares through a transfer offered to them	50% [Art. 5(c)]	50% [Art. 13(3)]
Joint stock companies listed on the Kuwait Stock Market	40% [Art. 5(a)]	—
Kuwaiti Public Entities (i.e. Government entities)	May be allocated up to 20%, equally deducted from Kuwaitis and joint stock companies listed on the Kuwait Stock Market [Art. 5]	6%–24% [Art. 13(1)]

Legal Framework



Why Invest / Do Business in Kuwait:

Ease of Doing Business in

Kuwait

Region	Middle East & North Africa
Income Category	High income
Population	4,137,309
City Covered	Kuwait City

IRAQ
Ṣafwān
Khosrowābād
Abdalī
Umm Qaşr
Warbah
Khawr 'Abd Allāh
Al Fāw
Nahr-e Qaşr
Ar Rawḍatayn
agreed-upon maritime boundary
Būbiyān
City of Silk
مدينة الحرير
AL JAHRAH
Qaşr as Sabīyah
Maskān
Kuwait Bay
Az Zawr
Faylakah
Persian
Gulf
Ad Dawhah (Doha)
Kuwait
Al Jahrah
Al Abraq
As Sālimīyah
'Awhah
Ḥawallī
Al Farwānīyah
AL FARWĀNĪYAH
ḤAWALLĪ
Al Maqwa'
Al Aḥmadī
Al Fuḥayḥīl
Mīnā' al Aḥmadī
Ash Shu'aybah
Mīnā' 'Abd Allāh
Kubbar
Salemy
AL AḤMADĪ
Qārūh

ONE ROAD, ONE BELT
TURKEY
Urumql
Beijing
CHINA
Xl'an
IRAQ
IRAN
Basra
Quanzhou
Khambhat
BANGLADESH
Guangzhou
OMAN
INDIA
Bay of Bengal
Kollam
THAILAND
South China sea
Arabian sea
Andaman sea
SRILANKA
Banda Aceh
Belttung
Indian Ocean
INDONESIA
ECONOMIC BELT
MARITIME ROAD

- Kuwait made starting a business easier by eliminating the paid-in minimum capital requirement.
- Kuwait strengthened minority investor protections by requiring an independent review of related-party transactions and clarifying ownership and control structures.
- Kuwait is moving away from an oil-based economy (Kuwait’s non–oil growth expected to be 3 to 5%
- Kuwait is reducing subsidies, encouraging PPPs (public private partnerships) to finance infrastructure projects

- Legal and regulatory framework is well established and developed
- Contracts are enforced within international standards
- Flexible mechanism for dispute resolution, whether litigation, arbitration or any other ADR forms.

THANK YOU

Q&A