



# ME Factsheet

KUWAIT

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# KUWAIT

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## Business structure. What types of business structures are there?

- **Limited Liability Company:** This is the most common corporate entity in Kuwait
- **Shareholding Company:** Shareholding companies are either public or closed. They must be composed by at least five shareholders. The Kuwait shareholding company (SAK or KSC) is similar to a common law limited liability company, with a board of directors and share certificates.
- **Partnership:** The Commercial Companies Law governs the formation of partnerships, both general and limited. A general partnership is an association of two or more persons formed under a specific name to carry on commercial business. It has a separate legal personality, but its members are jointly and separately liable for its obligations to the extent of their entire personal property.

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## Data sources. Where can I find information about a company?

- Corporate information can be found at the Kuwait Chamber of Commerce and Industry\*: [www.kuwaitchamber.org.kw](http://www.kuwaitchamber.org.kw)

\*In Arabic

## Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at the Kuwait Chamber of Commerce and Industry. There are also numerous private reporting agencies offering credit checks.

## Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.

## Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- As a minimum you should be able to provide:
  - Original signed agreement or contract between your client and the debtor.
  - Original invoices.

## Retention of title

- Under a retention of title clause, the trade creditor keeps title to the supplied goods until the debtor has paid for them. For a retention of title to be effective, the instrument reserving title must be date-stamped by a Kuwait Notary Public, as required by Article 137 (2) of the Law of Commerce.

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## PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Before going to court a warning notice to the debtor is mandatory.
- The warning notice should contain:
  - The name of the creditor and the basis of the claim
  - The total amount of the claim, including any penalty interests
  - Prescription on how to transfer the payment, i.e. bank account etc.
  - A warning that the claim will be enforced through the enforcement authority in case the claim is not settled within from the date of the notice
  - Information on how the object to the claim if not acknowledged be the debtor.
- If this measure has been taken and the payment still has not been made after a notice period, the creditor may file for enforcement.

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Can you claim interest and collection costs from customers if their payment is late?

- The courts do not acknowledge any interest rate stated in your contract, in most cases it adds a flat 9.0% interest rate per annum.

## LITIGATION

Limitation period. How much time do you have before you must start legal proceedings?

- Generally, the limitation period is five years.

ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- Mediation is a method of resolving deadlocks and disputes which may arise during the normal course of business in a joint venture company. It



is typically the first step in dispute resolution and is normally followed by arbitration as a final step in the event mediation was not productive.

- Kuwait does not have a specialist arbitration court. The local courts are civil law courts and are generally less familiar with international arbitration.

## Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- Kuwait has adopted the French-based civil law system for the legislature and the courts. Civil law legislation is passed through the Parliament, and disputes are heard at domestic courts in accordance with codified laws. Kuwait acknowledges Islamic law as one of the primary sources, together with positive law. However, legislators can adopt positive laws that violate sharia law because the constitution allows regulation by other sources (Article 2, Constitution of Kuwait 1962).
- The Kuwait Civil Code states that all property belonging to a debtor can be used to pay his or her debts. It also states that all creditors must be treated equally, except those that have priority by law.

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## Time frame. How long does it take before you can get a judgment against a debtor?

- If the debtor is financially capable of settling his debts, you can get the court judgement in between 6 - 12 months in Kuwait.
- If the debtor proved to the court that he is unable to fulfil his debt, the court may demand the debtor to pay in easy instalments. So, it's important to make sure that the debtor's financial position is strong before proceeding to the court.

## How much does it cost to go to Court?

- The costs will depend on the claim amount and the complexity of the case, but it can cost between USD 3,000.00 to USD 4,000.00 including lawyer fees and court fees.

## Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- As per the "Riyad Convention" 1983 and "GCC Convention" 1996 an application can be filed in the domestic court to enforce the court judgement which is proved to be swift and effective.
- If the debtor exists in one of the following countries: the UAE, Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen an execution letter will be needed from the domestic court in order to file an enforcement application. The process may take approx. 3 months before execution.

## Insolvency

- **Bankruptcy:** The objective of bankruptcy proceedings is to relieve the debtor from creditor actions, but bankruptcy proceedings can also lead to the dissolution and liquidation of a company.
- The debtor, a creditor, or the public prosecutor can initiate bankruptcy proceedings.
- Generally, a trader whose financial business is disrupted and who suspends payment of his commercial debts can be adjudged bankrupt.
- A company that intends to petition for its own bankruptcy requires the approval of its shareholders at an extraordinary general meeting.
- Once a company has been adjudicated as bankrupt, a court appointed bankruptcy manager supervises the process. During bankruptcy proceedings, a company can apply for a "composition". A composition is a bankruptcy plan, similar to a scheme of arrangement, which may grant a debtor a certain period to settle debts or discharge part of its debt.
- Once approved by a court, the composition is binding on all unsecured creditors and on all secured creditors that participated in the composition proceedings. If a debtor fails to comply with the terms of a composition, it can be revoked on application to the court, and bankruptcy proceedings will resume.
- The process generally takes about five to six years.
- **Liquidation:** The objective of a liquidation is to realise the value of the company's assets including the receivables that were due to the company before its dissolution.
- Once a company has been dissolved, it must be liquidated. The grounds for dissolution of a company are set out in Article 266 of the Companies Law and include a declaration of the company's bankruptcy.
- The liquidation process is controlled by a liquidator who reports to the shareholders of the company once the process is complete.

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- Unless the company is already subject to a stay of proceedings, there is no stay of proceedings granted for actions against the debtor. The debtor must continue to comply with its contractual commitments.
- The process generally takes about one year depending on the company's assets and liabilities, the number of creditors, and the number of third-party challenges to the liquidation process.

The information in this document is accurate to our knowledge as of July 2019.

The know-how in this fact sheet is not intended to constitute a definitive or complete statement of the law, nor is it intended to constitute legal advice for any specific situation. We do not accept any responsibility for action taken as a result of information provided by us. It is your responsibility to take specific advice when dealing with specific situations. The fact sheet is intended as educational in nature and may not reflect all recent legal developments and may not apply to the facts and circumstances of individual transactions and cases.

Nothing in this fact sheet shall be construed or relied on as providing any legal representation, advice or opinion whatsoever on behalf of us or our staff.

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