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REQUIRED DISCLOSURE OF COMMISSIONS

IN

KUWAITI GOVERNMENT CONTRACTING

by

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The Kuwaiti government recently enacted the so-called "Disclosure of Commissions Law", Kuwaiti Law No. 25 (1996). Law 25 was signed by the Amir on 11 August and published in the Kuwaiti Official Gazette on 18 August. (These dates are particularly important in determining the deadlines for compliance under Law 25, as discussed further below.)

Law No. 25 had been extensively debated in the National Assembly earlier this year. (Much of the debate surrounding the draft legislation related to Kuwaiti Ministry of Defense procurement and alleged irregularities, including excessive commission payments to brokers and middlemen.) Law 25 is drafted in broad and potentially ambiguous terms, meaning that administrative interpretations and practice will be important in determining the precise application of the Law. However, some rules seem relatively straightforward.

According to Article 1, Law 25 applies broadly to all Kuwaiti governmental entities, including ministries (such as the Ministry of Defense) and companies with at least 50% Kuwaiti government ownership (presumably including Kuwaiti Airways).

Article 2 of the Law states that any contract whose value is not less than Kuwaiti Dinars 100,000 and which is concluded by

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any such Kuwaiti government entity shall include a clear provision as to whether or not the other party has paid or will pay any commission or benefit of any kind to an intermediary. Law 25 explicitly applies to "armament and military material" procurement transactions of all types.

In those cases where the contractor has and intends to pay an intermediary, Article 2 seems to require that the intermediary be the authorized agent for the contractor, and resident in Kuwait. In addition, Article 2 requires that the above-mentioned contractual clause disclose the intermediary's full name, capacity, profession or position, residency and place of work and, in particular, describe the value of the commission or its rate, and the person to whom it was paid or will be paid, and the place of payment.

Article 3 contains an even broader requirement:

Anyone who pays or provides, and anyone who receives in any capacity, a commission, gift, present, grant or anything similar under any name, even if indirectly, in exchange for consultancy, administrative expenses or services of any kind that yield a material or moral benefit, or who promises or receives a promise for such, in connection with the conclusion of a contract (as stipulated in the preceding article) or during its performance, shall -- within thirty days following the payment, receipt or promise -- submit to the other contractual [government] party a detailed written declaration of the amount of commission, type of currency, place and means of payment. Such [government] party shall in turn notify the State Audit Bureau accordingly, immediately by passing along the declaration with a copy thereof.

The provisions of the preceding paragraph shall also apply to contracts concluded prior to the effective date of this Law, [provided such contract] is still in effect, whether or not performance thereunder has begun. The deadline for presenting the declaration relating to such contracts is thirty days from this date.

Article 4 of the Law states that any party failing to submit the declaration mentioned in Article 3 within the specified time shall be fined the equivalent of the relevant commission or benefit, in addition to being obliged to reimburse a similar amount to the Kuwaiti Government. Article 5 states that any

party submitting inaccurate information, or hiding a fact pertaining to the rules in the above-quoted Article 3, shall be jailed for not more than three years and fined the equivalent of the relevant commission or benefit, or either of these two punishments, in addition to being obliged to reimburse a similar amount to the Kuwaiti Government.

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This memorandum is intended to summarize some recent developments in Kuwaiti law, but not to provide legal advice on any specific question of law. Please let us know if you have any questions or comments regarding the background information in this summary, or if we might assist in connection with any other Middle Eastern commercial law matter(s).

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