

The Privatization Law (No.37 of 2010)

Objectives

Privatization aims to maintain the equilibrium between the public and private sector under the framework of fair cooperation between them for the purpose of achieving economic development, increasing production, encouraging the role of Private sector in the national economy, raising living standard and achieving prosperity.

In order to the privatization process and programs to advance easily and conveniently, the law was developed to address all the major issues related to privatization, especially the processes of transferring public projects into joint stock companies, protecting the rights of national manpower, controlling prices and the controls which govern transacting with the revenues arising from the privatization process.

The first chapter addresses the general provisions in the privatization process. Article 2 imposes certain conditions which should be complied with upon transferring the ownership of public projects to the private sector. These conditions aim at establishing competition in activities where competition is feasible, protecting the interests of the consumer, ensuring the rights of national manpower in the public project desired to be privatized, protecting public funds through the assessment of the assets and properties of the public project according to financial and economic principles, expanding the base of contribution in the ownership and capital by giving citizens the opportunity to contribute in the ownership of the public project following its privatization.

Article four prohibits privatization of oil and natural gas production, oil refineries, health and education.

Supreme Council of Privatization

Chapter Two stipulates the structure and functions of Supreme Council of Privatization, which shall be chaired by the Prime Minister and consist of five ministers and three experts from different sectors of the society. Article 9 stipulated the incorporation of a technical support body to the council in performing the tasks entrusted to it.

Privatization processes

Chapter three of the law has manifested the privatization processes. Articles 11, 12, 13, 14 and 15 laid down the controls, form, and percentages of contributions of the companies incorporated for the management of privatized utilities.

Article eleven provides that the evaluation of the net assets of public projects intended to be privatized shall be done by the internationally experienced independent companies, selected by the council through procedures through publicity and transparency. The evaluation shall be approved by the higher council, after presentation to the Audit Bureau. Then the Cabinet shall mandate a government body to incorporate a joint stock company according to the law.

Article thirteen has determined the allocation of the company shares in the following manner:

- Not less than thirty five percent (35%) of the shares shall be offered for sale in a public auction in which joint stock companies listed in the local stock exchange and the other companies approved by the council.
- Not more than twenty percent (20%) for the government bodies determined by the council.
- Not more than five percent (5%) to be subscribed equally by Kuwaiti employees transferred from the public project to the incorporated company.
- Not less than forty percent (40%) shall be allocated to the citizens for public subscription.
- The overall amount shall be transferred to the revenue of the Government and 50% shall be reserved for the next generation fund.

Protection of the rights of Kuwaiti employees

Chapter Four reveals the provisions to guarantee the protection of the rights of Kuwaiti employees, who transferred from the public sector to the company. The benefits are as follows;

- His contract period shall not less than five years.
- The remuneration shall be equal to that of public sector.

- The remuneration shall not be affected if the company wishes to hire him after the lapse of the said period.
- All agreements with decrement in the remuneration shall be null and void.

Article (19) stated that a period of three years shall be added to the period of service provided; this period shall not be considered in calculating the retirement indemnity.

Article 20 guarantees the Kuwaiti employees who do not wish to transfer to the new company, the suitable jobs in the government sector after proper training and the remuneration shall not less than that of the public project. The employees with not less than thirty years of service shall be eligible for end of service indemnity equal to the basic salary for three years.

The state treasury shall be liable for the financial burdens resulting from the provisions of this clause.

Article twenty one authorized the council to determine the minimum limit of Kuwaiti manpower percentage and minimum wages.

Penalties

The Chapter 5 deals with the penalties for violations of the law. The Public Prosecutor shall be responsible for the investigation and prosecution. The penalties shall be Notice, Fines, Suspension from the Board of Directors and Dissolution of the Board according to the seriousness of the violation.

Closing Provisions

The Chapter 6 stipulated this law shall be in line with Islamic law and the financial provisions shall be included in the State budget.