# LJY– YES WE CAN – FDI IN KUWAIT

**DOING BUSINESS IN KUWAIT**

Marmore Preparatory Briefs

## Disclaimer

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## Introducing Kuwait

It was turning out to be a long day in office.

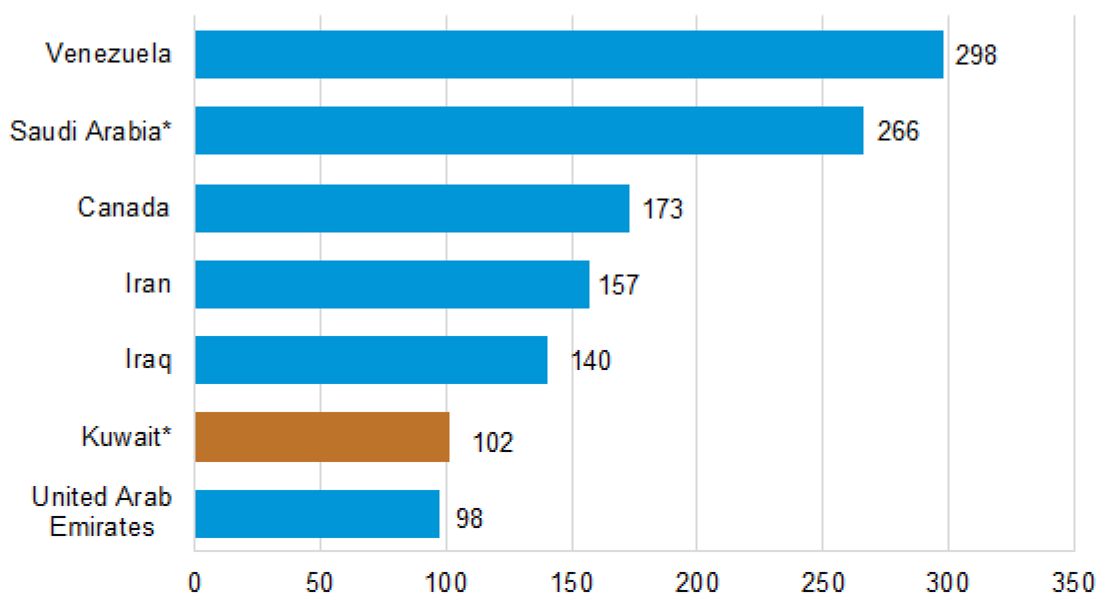
Masaaki Oshima, even as he adjusted his rimless glasses, typed “Kuwait” on his smartphone and waited for the webpage to launch. He had the reports with him, but was anxious to see it first-hand. The page loaded and it read, “Rank: 62.3.”Yes, the Index of Economic Freedom (2013), published jointly by the WSJ and the Heritage Foundation, had Kuwait slotted at the 76th position, that placed the country under the “Moderately Free” category. The single number summarised the various factors which could make or mar the ambitious plans that LJY Corporation had.

LJY, the consumer electronics giant, was expanding its horizons. Japan, its homeland, was reeling under an ageing population and its geographical position made it vulnerable to Nature's mood swings. It had once miraculously risen from the ashes of '1945', but after 1995 had entered into a prolonged spell of recession. LJY was riding a growing Japanese trend in looking overseas to set up plants. The wealthy GCC region, where its high-end laptop and smartphone models had many takers, was one choice. The 40-year old Oshima, LJY's M&A Head, was a veteran in overseas investments but the Middle East was untested waters. Only a few days ago he was asked to revisit a proposal, for long at the drawing board, to invest in Kuwait, even as the Kuwaiti government, in June 2013, passed a new law to promote foreign investment.

Munching prawn chips and eying a piping hot *ryokucha*, a k a Green Tea, Oshima began with the big picture.

Kuwait was home to about 6% of world crude oil reserves. Additional crude reserves are available for Kuwait from the Partitioned Neutral Zone (PNZ) with the Kingdom of Saudi Arabia, according to research reports.

**Figure 1: Top Proved World Oil Reserves, 2014**




Source: Oil & Gas Journal, U.S. Energy Information Administration

Oshima thought about the fact that Kuwait ranked sixth in terms of possession of oil reserves in the world. With that kind of priceless resource no economy could fail, he thought. As an aside, Oshima noted with interest that his country, Japan, depended on Kuwait for 7% of its total oil imports. However, there was also a flip side to the presence of huge reserves of oil in Kuwait. The Kuwaiti economy is heavily dependent on hydrocarbon export revenues, which account for about 60% the nation's gross domestic product and around 94% of export revenues. Thus, there is an underlying structural risk in terms of dependence on a single commodity. Could that scupper LJY's investments in Kuwait into the distant future? However, current conditions matter and Oshima thought hard about the fact that there was a large and profitable customer base to tap in Kuwait in terms of LJY's products.

Moving beyond his preoccupation with the structural character of the Kuwaiti economy, Oshima brought his focus on to the other factor for the success of an overseas investment, which was the regulatory scenario. Oshima wanted to focus on this to understand if Kuwait was worth a look-in. His first port of call was Foreign Direct Investment (FDI) flows. What met Oshima's eyes immediately disappointed him. He noted that Kuwait ranked 141 out of 144 nations in the World Economic Forum's Global Competitiveness Report 2014/2015 in terms of FDI and technology transfer. In fact, Kuwait has one of the lowest rates of FDI among MENA nations, with a lot of Kuwaiti investors too showing a high degree of preference to invest abroad.

However, with his vast experience with businesses and regulatory regimes across the world, Oshima had come to realize that strategic business decisions should not pivot around just scores given on major indices. He had heard from his professional colleagues and acquaintances that the methodologies of many of the global indices may not be foolproof and may in fact mask deficiencies or efficiencies (where present). In fact, in September 2014, India, one of the attractive emerging market destinations, had rebutted the much cited World Bank's 'Doing Business' report (2014) for placing the country in the 134$^{th}$ spot in the 'ease of doing business' list, out of 189 economies. Indian officials cited anomalies and unsubstantiated amplification of business costs as part of the reasons for the nation's 134th position. Thus, the key to good strategic investment decisions was to not just check ready-made and generic indices, but collection and analysis of data on a more granular level. And, Oshima decided to do just that with Kuwait's FDI potential.

## Kuwait as an FDI Destination

Oshima skimmed through the FDI inflows in the GCC countries over the past five years **(Exhibit 1)** and was stumped to notice the declining spiral: from USD 62bn in 2008 to USD 26bn in 2012. Saudi Arabia enjoying the lion's share of FDI inflows in the region saw its inflows shrink from USD 39bn in 2008 to USD 12bn in 2012. Qatar had experienced volatile inflows. But Kuwait had rising inflows in the last three years. Kuwait, despite being cash-rich, welcomed FDI as it was keen to diversify away from hydrocarbons. That seemed to be a good sign from an investment perspective. Okay, Kuwait may not need the money; but for Japan the foreign investment was good diversification.

**Exhibit 1: FDI Inflow in GCC (in USD millions), 2008-2013**

| Countries | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|---|---|
| Bahrain | 1,794 | 257 | 156 | 781 | 891 | 989 |
| Kuwait | (6) | 1,114 | 1,304 | 3,260 | 3,931 | 2,329 |
| Oman | 2,952 | 1,485 | 1,782 | 1,563 | 1,040 | 1,626 |
| Qatar | 3,779 | 8,125 | 4,670 | (87) | 327 | (840) |
| Saudi Arabia | 39,456 | 36,458 | 29,233 | 16,308 | 12,182 | 9,298 |
| UAE | 13,724 | 4,003 | 5,500 | 7,679 | 9,602 | 10, 488 |
| Total GCC | 61,699 | 51,442 | 42,645 | 29,504 | 27,973 | 13,402 |

Source – UNCTAD

Referring the data **(Exhibit 2)** with respect to sectorial distribution of FDI in Kuwait, Oshima noted that the prominent sectors were telecommunications, investment companies and insurance companies.

**Exhibit 2: The Sectorial Distribution of Foreign Direct Investment in Kuwait (Million Dinar), 2010-2012***

| Sector | 2010 | 2011 | 2012 |
|---|---|---|---|
| Telecommunications | 269.3 | 934.4 | 1,810.8 |
| Investment companies | 616.0 | 655.4 | 597.7 |
| Insurance | 255.2 | 283.2 | 281.3 |
| Banks | 165.4 | 200.2 | 229.7 |
| Investment funds | 36.0 | 29.0 | 23.5 |
| Exchange companies | 14.6 | 15.1 | 16.8 |
| Industrial | 9.0 | 11.8 | 12.0 |
| Services | 1.3 | 1.3 | 1.1 |
| Total | 1,366.8 | 2,130.4 | 2,972.9 |

*Note: Data for 2013 is not available; Source – State of Kuwait Central Statistical Bureau

In terms of percentages, in 2012, the telecommunication sector welcomed around 61% of the FDI inflow, followed by investment companies at 20.1% and insurance companies at 9.5%. However, Oshima mentally noted the caveat that 2012 saw a largely one-off mega transaction in the telecommunications sector in Kuwait, in terms of Qatar's Qtel completing the acquisition of 694 million shares of the Kuwaiti telecom company, Wataniya, at a value of KD 519.1 million.  Still, even by 2010 data, telecom stood second accounting for about 20% of FDI inflow, preceded by investment companies at around 45%. Next, Oshima wanted to check the range of countries from which FDI flowed into Kuwait. He was not utterly surprised by the statistics **(Exhibit 3).**

**Exhibit 3: The Geographical Distribution of Foreign Direct Investment in the State of Kuwait of the top 10 countries (Million Dinar), 2010-2012***

| Country | 2010 | 2011 | 2012 |
|---|---|---|---|
| Qatar | 413.0 | 1,083.5 | 1,949.8 |
| Kingdom of Bahrain | 256.4 | 251.7 | 210.0 |
| United Arab Emirates | 136.7 | 150.4 | 163.7 |
| Kingdom of Saudi Arabia | 128.8 | 143.6 | 144.4 |
| Lebanon | 143.4 | 139.8 | 137.3 |
| Oman | 114.5 | 128.0 | 124.5 |
| Jordan | 83.1 | 113.8 | 112.9 |
| Jersey | 0.0 | 32.8 | 38.3 |
| United States of America | 43.6 | 36.9 | 36.9 |
| France | 19.2 | 20.5 | 20.5 |
| The Rest | 28.1 | 29.4 | 34.5 |

*Note: Data for 2013 is not available; Source – State of Kuwait Central Statistical Bureau

The top 10 countries in **Exhibit 3** accounted for 98.8 % of the total FDI inflow in Kuwait in 2012. Of the top 10, the top 7 were from the Mena region, including the rest of the GCC countries. When they are considered together, the top 7 account for about 96%. In other words, almost all the FDI inflow into Kuwait stemmed from the MENA region. With Kuwait pursuing an ambitious economic diversification programme, may be things are about to change, thought Oshima.

## Current Challenges Impeding FDI Flow into Kuwait

Oshima, next peeked at the global and MENA ranking of GCC nations and wondered whether there was a correlation between the Index of Economic Freedom **(Exhibits 2&4)** and FDI inflows. He decided to probe deeper.

**Exhibit 4: Index of Economic Freedom Ranking of GCC Countries, 2014**

| Country | World Rank | Rank– GCC |
|---|---|---|
| Bahrain | 13 | 1 |
| Kuwait | 76 | 5 |
| Oman | 48 | 4 |
| Qatar | 30 | 3 |
| Saudi Arabia | 77 | 6 |
| UAE | 28 | 2 |

Source – Heritage Foundation


**Exhibit 5: Scores of Economic Freedom**

| Country | Bahrain | Kuwait | Oman | Qatar | Saudi Arabia | UAE |
|---|---|---|---|---|---|---|
| Overall Score | 75.1 | 62.3 | 67.4 | 71.2 | 62.2 | 71.4 |
| Property Rights | 60.0 | 50.0 | 50.0 | 70.0 | 40.0 | 55.0 |
| Freedom from Corruption | 49.4 | **43.7** | 48.2 | 72.4 | 43.7 | 66.4 |
| Fiscal Freedom | 99.9 | 97.7 | 98.5 | 99.9 | 99.7 | 99.6 |
| Government Spending | 71.4 | 55.6 | 56.0 | 72.1 | 63.1 | 83.1 |
| Business Freedom | 76.3 | **57.7** | 68.3 | 71.7 | 67.3 | 74.4 |
| Labour Freedom | 82.0 | **63.6** | 75.5 | 70.0 | 75.8 | 82.9 |
| Monetary Freedom | 78.4 | 73.2 | 73.6 | 81.2 | 68.7 | 84.6 |
| Trade Freedom | 78.6 | 76.7 | 78.7 | 79.8 | 74.0 | 82.5 |
| Investment Freedom | 75.0 | 55.0 | 65.0 | 45.0 | 40.0 | 35.0 |
| Financial Freedom | 80.0 | 50.0 | 60.0 | 50.0 | 50.0 | 50.0 |

Source – Heritage Foundation (www.heritage.org). For meaning of term see Appendix 1

Oshima was quick to note that the high score on fiscal freedom was possibly due to the absence of personal taxation and the fact that the only entities taxed in Kuwait were foreign entities or those in which foreign entities had an interest. Of course, even foreign entities were being offered fiscal incentives like 10-year tax holiday and a low tax rate of 15%. This certainly was a big plus for Kuwait. In comparison, the tax rates in other countries were high **(Exhibit 5)**.

**Exhibit 6: Maximum Marginal Rates in different countries**

| Country | India | China | UK | USA | Germany | Japan |
|---|---|---|---|---|---|---|
| Tax Rate | 33.99% | 25% | 23% | 40% | 29.55% | 38.01% |

Source: KPMG (www.kpmg.com)

Various reports showed that while Kuwait was increasingly flaunting its readiness to welcome FDI, bureaucracy was a big hurdle. Despite the 2001 law, there were inordinate delays in getting approvals to establish business in Kuwait and operating it. The Report on the "Ease of Doing Business" Index mentions that it takes about 32 days to start a business in Kuwait. The same Report specifies that the time taken in US is about 6 days, in Qatar it is about 9 days and in Saudi Arabia, it is about 21 days.

Stung by this, Kuwait keen to adopt international best practices pushed in Law No. 116 of 2013 in June 2013, the provisions of which would become effective six months later, repealing the old 2001 law. Primarily, the new law will help establish a new statutory body, Kuwait Direct Investment Promotion Authority (KDIPA), to deal with the licensing of direct investment. The establishment of KDIPA reassured Oshima that whatever the current challenges, Kuwait was intent upon reforming its business environment. That intent, in Oshima's mind, was important for companies looking to partner Kuwait in its pursuit for economic diversification.

## KDIPA – The Game Changer?

The notable offerings of the new law as part of the introduction of KDIPA, in comparison with the old FDI law, are three. One, negative-list approach of opening up sectors for FDI; two, decision on applications for licensing to be taken within 30 days from the date of receipt; and three, establishment of a "one-stop-shop department" to co-ordinate with other departments for issuance of all approvals to commence business. Also, there were no major foreign exchange controls, either on capital or current account, except that payments and receipts had to be routed through specified channels. The country was on full convertibility. This was another favorable factor. Though Kuwait has one of the lowest levels of FDI, it is promising that the country is showing strong intent to overhaul the state of affairs. The recently installed KDIPA holds great promise for making it easier for foreign companies to set up base in Kuwait, either through 100% ownership or through joint ventures. In fact, the KDIPA is mandated to permit 100% foreign ownership unless a particular sector falls under a 'negative list'.

Also, it was very reassuring for Oshima that the FDI regime under KDIPA is designed for utmost freedom from bureaucratic tangles. This is evidenced by the fact that KDIPA exists outside the oversight of individual ministries; reporting directly to the Council of Ministers, instead. In a further show of support for foreign investors in Kuwait, in September 2014, the country suspended its offset scheme, according to which foreign winners of large Kuwaiti government contracts had to invest in the local economy. The decision by Kuwait to temporarily halt and to later reintroduce a revised more contractors' friendly scheme is seen widely as a sign of the government's commitment to be perceived as foreign investors' friendly.

Encouragingly for Oshima, as part of diversifying FDI-partnership countries, Kuwait, through KDIPA, was seeking to broaden the scope of its investment and trade relations through bilateral agreements covering investment stimulation and protection, double taxation reduction agreements and creation of business, etc. KDIPA was willing to address investment concerns at a very granular level, as well. Oshima noticed with satisfaction that in October 2014, Director- General of the KDIPA took note of the drag on Kuwait's rankings in the 2015 World Bank's "ease of doing business index" due to the hiking of the minimum capital for investors and the rise in fees for availing commercial permits. Thus, KDIPA was not only involved in the overarching strategic direction, but showed an inclination towards getting involved in the nitty-gritties of easing the investment regime.

## Other Concerns that Kuwait has Started Addressing

It caught Oshima's attention that Kuwait had worrisome scores in 'Freedom from Corruption', 'Business Freedom' and 'Labour Freedom'. The reports from his team corroborated the fact that there were three major deterrents namely: (i) regulations barring direct involvement of foreign entities in key sectors, (ii) long bureaucratic delays in starting new enterprises, and (iii) a local business culture heavily based on family relationships. However, all that appears to be changing quickly in Kuwait. Though the company's law stipulates a 51-49 percent restriction in terms of foreign ownership, wherein a non-GCC individual cannot hold over 49%; a foreign investor can still own 100% under the new KDIPA regime if the investor is able to demonstrate value addition to the nation (new technologies, jobs creation, etc.).

The need to attract foreign investment saw the country enact Law No. 8, *Regulating Foreign Capital Direct Investment in Kuwait, 2001*. This allowed 100% foreign ownership of business entities in sectors like the three I's, infrastructure, insurance, and IT; and the three H's, hospitals, hospitality, and housing etc. Various other benefits were also offered to the foreign companies investing in Kuwait under the 2001 law, such as: land grants; duty-free imports; guarantees against expropriation without compensation; right to repatriate profits; recruitment of foreign labour; and protection of confidentiality of proprietary information. The price the foreign entities had to pay were: employing minimum number of Kuwaitis in the new venture, undertaking to protect the environment safety, and complying with public order, public hygiene and third party safety.

But in Oshima's mind, enforcement of rules and reliable governance of the markets remained a wildcard. International metrics with respect to the country's ease of doing business levels and transparency were not that encouraging, currently.

**Exhibit 7: Doing Business in Kuwait, 2014**

| Index | Rank | Countries Ranked |
|---|---|---|
| Transparency International's Corruption Perception Index (CPI) 2014 | 67 | 175 |
| World Bank Ease of Doing Business 2014 - (Ease of doing business) | 86 | 189 |
| World Bank Ease of Doing Business 2014 - (Ease of starting business) | 150 | 183 |

But, Kuwait appeared to be intent on making advances in the areas of accountability and transparency, as well. For instance, in November 2012, the Kuwaiti cabinet issued a decree No. 24 for the establishment of Kuwait's Public Anti-Corruption Authority. The Authority is expected to start official work by early 2015.

## The Current State of Policy and Regulatory Play in Kuwait vis-à-vis Economic Diversification

Recognising the need to follow international best practices, Gulf governments have initiated anti-corruption measures. The UAE has signed the UN Convention against Corruption (UNCAC). Saudi Arabia has revived the National Authority for Combating Corruption. Kuwait, too, is not sparing efforts towards creating a better environment for economic diversification. Kuwait has ratified the UNCAC in 2007. In January 2013, it passed a decree which provides for setting up of a National Anti-Corruption Authority. In June 2013, the first anti-graft chief was appointed. The penalties extend up to seven years in prison for offences like manipulating tenders, bribery, money laundering and their like. This showed the country's willingness to combat corruption.

Moreover, Oshima had heard from some quarters that with the refurbished commercial law in place in Kuwait, the legal regime was now more sophisticated than even that of Dubai (UAE). In comparison, the Kuwaiti commercial law regime is clearer, more investor friendly and is vested with relatively more regulatory authority. Oshima realized that despite the excellent regime in place, what could trip foreign companies in Kuwait was the actual enforcement of laws on the ground, which entailed massive delays even in terms of opening offices. However, Kuwait appeared to be gearing up its economic diversification programme, which is likely to reap benefits for foreign companies, as well.

Oshima knew that Kuwait has a National Development Plan that runs from 2010 through 2035, consisting of five successive five-year plans that target diversification of the economy beyond hydrocarbons and turning it into a trading and finance hub. Since the 2010-2014 Development Plan of Kuwait saw a disappointing implementation rate in terms of infrastructure projects, industry observers avow that the 2015-2020 plan places more focus on the economic reform process. As part of the economic reform process, Kuwait envisions giving a very prominent role for the private sector. In fact in July 2014, Kuwait enacted Law No 116 of 2014 with respect to Public Private Partnership (PPP) projects. The aim, Oshima could surmise, was to offer more incentives for private equity players to invest in strategically critical projects (e.g., Al-Zour Refinery), while simultaneously providing opportunities for citizens to participate in national capacity building and to enjoy additional sources of reliable income.

Oshima reasoned that a prominent role for the private sector will undoubtedly yield better outcomes for foreign investors, as well. In fact, in October 2014, Japan and Kuwait had signed two bilateral cooperation agreements on transportation and public work projects, including expertise exchange and human resource development. The agreements were seen as an invitation for Japanese private companies to invest more in Kuwait, particularly in the infrastructure space. Surely, Oshima thought, a nation with such a far reaching strategic vision and the ability to freely discourse with the rest of the world in order to drive internal economic development would be a place to bet upon.

Oshima moved on to understanding arbitration law and the general legal system. In these times when enterprises transact across borders, dispute resolution through arbitration is popular world over. Kuwait, being an Islamic nation, has had arbitration as a method of settlement of disputes even 1000 years ago. Sharia recognised arbitration (tahkim) to settle disputes. However, Oshima wanted to know how much today's Kuwait encouraged international arbitration.

Both, the 2001 Foreign Investment Law and the new 2013 Direct Investment Law stipulate that Kuwaiti courts alone can adjudicate disputes involving a foreign investor, although arbitration is permitted. The Kuwaiti judicial system recognizes foreign judgments only when reciprocal arrangements are in place i.e. only when the country in which the judgment was delivered also enforces the judgments given by the Kuwaiti judicial system. Fair enough. However, when it came to enforcement of foreign arbitral awards vis-à-vis judgments, Kuwait, being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, would recognise those awarded in fellow signatory countries; for other countries, reciprocity was a must. Oshima noted that it would be easier to enforce if the matters were arbitrated in accordance with Kuwaiti laws.

Also, the Court of Cassation, Kuwait's highest court, has ruled that an agreement containing an arbitration clause is not valid if it had not obtained shareholders' approval and that a mere Board resolution may not be sufficient. The ruling invalidates many arbitration awards; and for future contracts, could increase the time needed to draw an agreement. This could mean a point taken away from Kuwait's scoreboard.

He also noted that, in the normal course, dispute resolution could take years depending on the nature and the parties involved. World Bank's "Ease of Doing Business Index" Report states that enforcing of contracts could take about 566 days in Kuwait, 635 days in Saudi Arabia, 570 days in Qatar, whereas it is 370 days in the USA. However, Oshima also noted that Kuwait obtained full membership in the United Nations Commission on International Trade Law (UNCITRAL) in December 2013. This means that Kuwait would be able to accumulate the necessary knowledge and experiences over time in terms of stipulating optimum legislations in commercial law and trade regulations, which would undoubtedly move the country in the direction of more friendliness towards foreign investors. Kuwait was an integrated and respected player internationally in the global architecture of commerce, and the full membership in UNCITRAL affirmed that in Oshima's logical calculus.

## Evidence of Support for the Private Sector

As part of the new five-year Development Plan (2015-2020) that was announced in August 2014, Kuwait made it clear that the focus would be on continuing economic reforms and implementing mega strategic infrastructure projects. For encouraging the private sector in order to address the imbalance in the economy, it was revealed that private sector players would be given a greater role in the realization of several strategic mega projects. But, wondered Oshima, was there tangible evidence on the ground as to what sort of encouragement the private sector is getting in Kuwait? Oshima did not have to wonder for long. Tucked away among the pages of a report that he was holding about Kuwait, Oshima read that in 2008, Kuwait had set up the Kuwait Authority For Partnership Projects to implement the nation's public-private partnership (PPP) programme. As part of its programmes under the PTB, the Kuwaiti government has allowed private companies to build, operate and maintain parts of the infrastructure, including power and water.

The Al Zour North water and power plant is the first PPP project in Kuwait, with construction having begun in late 2013. Al Zour, as the first power plant in Kuwait to be built, operated and maintained by the private sector, sent the strong message to the rest of the world that the Kuwaiti government is intent on reducing its role as an operator and is looking forward to becoming more of a regulator. Oshima mused that cynics may point out that Kuwait is the last GCC country to adopt the PPP model in its power sector. However, Oshima was able to dismiss the intrusive thought with the fact that the Japanese Prime Minister, Mr. Shinzo Abe, had visited Kuwait in August 2013, which paved the way for the Japan Bank for International Cooperation (JBIC) alone offering financing of $645 million out of the total of $1.43 billion (80% of total project costs) that a consortium of international banks provided for Al Zour North project. If his government itself placed much value in developing multilayered economic ties with Kuwait, Oshima thought that Kuwait must definitely be doing something right in terms of economic planning and structural reforms, especially in relationship with support for the private sector.

Also, in January 2014, Kuwait set up the National Fund for Development of SMEs (small and medium-sized enterprises), with a capital of KD 2 billion. Among other things, the fund also carried the provision that young Kuwaitis who work in the state sector will have the opportunity to approach the Fund to start a small business. The option was not available to young Kuwaitis in the past; but now, they could hold on to their government employment while commencing a small business on the side, utilizing start-up financing from the SMEs Fund. For Oshima, the Fund was clear evidence that the Kuwaiti government seeks to gradually pull out from various sectors of the economy so that the private sector can increasingly fill the space. Suddenly, Kuwait, for Oshima, looked like a land of opportunities rather than that of challenges to doing business as a foreign company.

## The Issue of Skills

It was evident that Kuwait was working to tie up a relevant policy framework for various factors of production, including access to land, capital and private enterprise. But availability of skilled people resources is a key priority for any investor. Did Kuwait have the wherewithal to match up on that front? Oshima wanted to get a definitive answer. Since the oil boom started, Kuwait has seen a large inflow of expatriates over the years. Currently, expatriates account for about nearly 70% of the population. More tellingly, 93% of the expatriate workforce in Kuwait is concentrated in the private sector. Meanwhile, 82% of the nationals' workforce worked for the public sector.

Oshima knew that Kuwaiti government was making efforts to correct the labour force imbalance. Oshiima understood that the importance of developing skills and a reliable workforce for the private sector was not lost on the Kuwaiti policymakers. Pursuant to that, recent news emerging from Kuwait indicated that the country was in the process of upgrading its educational system in order to provide a talented pipeline to support the private sector into the future. In order to develop education in Kuwait on a scientific methodology, the National Center for Education Development (NCED) was set up through Amiri decree No.308/2006. The NCED is taking some noteworthy steps in order to deliver advances in education. For e.g., the body is working on the concept of giving professional licenses to teachers in public and private schools, as part of a quality assurance programme in terms of letting in only qualified and committed individuals as teachers.Also, Kuwait has pro-workforce regulations in place. Like: right to bargain collectively, prohibition of forced labour, minimum working conditions, prescription of minimum wages, minimum age requirements, etc.

In 2010, in a move to encourage Kuwaitis to take up private sector employment, a private sector labour law– *'Law No. 6 of 2010, Labour in the Private Sector'*, replaced the then existing *'Law No. 38 of 1964, Labour in the Private Sector'*, providing private sector workers with longer leave, protection to foreign employees from arbitrary dismissal and provision of due compensation, higher severance pay, maternity leave etc.

What caught the attention of Oshima was the informal two-tiered labour market, which has high wages for Kuwaiti employees, while foreign workers, particularly unskilled laborers, receive substantially lower wages. A report from his team showed that in the private sector, the minimum wage is KD 60 per month (pm); while in the public sector, the current minimum wage is KD 250 pm for Kuwaiti bachelors, KD 325 pm for married Kuwaitis, plus KD 50 for each child, compared to KD 90 for non-Kuwaitis. Oshima remembered about the requirement to employ a minimum number of Kuwaiti nationals. Will there be enough skilled labour? However, Oshima did not bother much about this as there was a large in-house talent that can come to the rescue.

## Kuwait – The Best Days Still Lie in the Future

Masaaki Oshima had to weigh the pros and cons of investing in Kuwait. Was Kuwait worth it all? He was also aware that he didn't have the luxury of time. Oshima, in his mind's eye, could see how various, seemingly unrelated, reform efforts in Kuwait were actually converging towards removing difficulties facing investors, cutting away bureaucratic impediments and rebalancing the skewed nature of public-private sectors' development. Suddenly, Oshima realized that Kuwait's best economic days lay in the future, as the economic structure is currently in the process of being assiduously rebuilt on the bedrock of private enterprise and skilled human resources. And it is being done with strategic and conscious political intent that is in partnership with various civil and government bodies!

Also, in the uncertain realm of strategic business decision-making, anecdotal information can count, as well. From many other Japanese expatriates who had lived and were living in Kuwait, Oshima had gathered that Kuwait once led the GCC region in terms of infrastructure, educational system and social reforms. Kuwaiti magazines were the most sought after publications in the Gulf area and the state-operated TV channel aired very imaginative programmes, having gained a reputation for quality coverage of global events. In other words, the country not only was cosmopolitan, but was fostering cosmopolitan and open trade values throughout the region. In fact, the Kuwaiti Capital was a major source of influence in the region and throughout the world.

However, the tragic impact of the Gulf War I in the early 1990s had applied a sudden brake on the country’s dynamic economic evolution, forcing a turn towards reconstruction and rehabilitation. Yet, Oshima noted, the Kuwaiti state and its people had moved ahead with resolve and resilience, using their network of global influence and goodwill to build a climate of security and economic stability. For Oshima, it was not a completely new script. He knew how Japan, his home country, rose from the debris of the devastating World War II to orchestrate a record period of economic growth, which saw Japan become the second largest global economy by the 1980s. Oshima realized that Kuwait’s best days were still yet into the future. Investing in future meant investing in a very promising potential. Oshima checked his watch. It was 2.00 a.m. And as he left his cabin, he was pleasantly surprised to see the Chairman waiting for him. The Chairman asked, “Oshima, do you have the answer?” Oshima nodded and the ambitious duo walked to the Exit in intense conversation.

## APPENDIX 1: MEANING OF SCORES*

| | |
|---|---|
| **Property Rights Score** | Measures the degree to which a country's laws protect private property rights and the degree to which its government enforces those laws. The more certain the legal protection of property, the higher a country's score. |
| **Freedom from Corruption Score** | Derived from Transparency International's Corruption Perceptions Index (CPI). The higher the level of corruption, the lower the level of overall economic freedom and the lower a country's score. |
| **Fiscal Freedom Score** | Measures the tax burden imposed by government. Considers direct and indirect taxation at all levels of government, as a percentage of GDP. Lower the tax burden, higher the score. |
| **Government Spending Score** | Considers the level of government expenditure as a percentage of GDP. The methodology treats zero government spending as the benchmark. Lower the spending, higher the score. |
| **Business Freedom Score** | An overall indicator of the efficiency of government regulation of business measured by difficulty of starting, operating, and closing a business. A score of 100 means the freest business environment. |
| **Labour Freedom Score** | Considers various aspects of the legal and regulatory framework of a country's labor market, including regulations concerning minimum wages. Lesser the restrictions, greater the score. |
| **Monetary Freedom Score** | It combines a measure of price stability with an assessment of price controls. Lesser the price controls, greater the score. |
| **Trade Freedom Score** | A composite measure of the absence of tariff and non-tariff barriers that affect imports and exports of goods and services. Greater the barriers, lower the score. |
| **Investment Freedom Score** | In an economically free country, there would be no constraints on the flow of investment capital, both internally and across the country's borders, without restriction. Lesser the restrictions, greater the score. |
| **Financial Freedom Score** | A measure of banking efficiency as well as a measure of independence from government control. Greater the independence, greater the score. |

* Terms used in Exhibit 4.

# DISCUSSION POINTS

1. Why did LJY want to set up its plant overseas, especially in the Middle East?
2. In your view are the Index of Economic Freedom and FDI inflows correlated?
3. Discussion on reasons for bureaucracy and how it impacts conduct of business.
4. Why would a country be interested in FDI, more so a cash rich one like Kuwait? What's the flip side? Is FDI about money only?
5. Do you think the new DIPA will translate into better environment for foreign entities to invest?
6. Discussion on corruption and its increasing awareness.
7. Labour-related issues in Kuwait and how it will impact foreign enterprises and their employees.
8. If Kuwait sets higher minimum wages for private sector employees, will LJY find it beneficial or would it find it rigid?
9. Importance of arbitration agreements and their enforceability for the success of investment.
10. SWOT analysis of investing in Kuwait.
11. PEST analysis of Kuwait
12. What measures can Kuwait take to enhance its image as a good investment destination?
13. What do you think was Oshima's answer to the Chairman? Was it a yes or a no? And why?
14. If it is a "Yes", do you think LJY should take the plunge immediately or should it wait and watch to see the impact of the newly enacted investment law?
15. If it is a "No", in what other ways can LJY reach out to Kuwait's market?

## USAGE OF THE POLICY SERIES

- This policy discussion is essentially aimed at provoking debate about the current state of the Kuwaiti FDI scene, especially from the perspective of foreign investors. In order to attract FDI, there is the need to engage with that set of stakeholders on their own terms and investment sentiments, including their fears, concerns, hopes and ambitions. Thus, this Policy series covers the gamut of thoughts that are likely to run through the minds of effective investors who are at the stage of collecting and analysing information for making final investment decisions with respect to Kuwait. This Preparatory Brief can be used with the following sets of professionals –
- Public sector executives
- Policy makers in government (including KDIPA)
- Academicians
- Potential foreign investors
- Members of Kuwait's commercial bodies abroad that are dedicated to attracting more FDI into Kuwait, etc.
- Non-governmental organizations
- Top management of Kuwaiti organizations

Ideally, the study can be very effective if all the above identified stakeholders and any other relevant people of interest or experts are brought together under one roof to study and debate on the key points raised by the report. The resulting flow of information and ideas can set the pace for a good policy framework in order to attract FDI into Kuwait. Also, it is likely to point to the direction of effective reform steps and the methodologies to implement complex policy or reform recommendations.