Institute of International Finance, Inc.

The Global Association of Financial Institutions

HAWKAMAH
THE INSTITUTE FOR CORPORATE GOVERNANCE

IIF Equity Advisory Group

Corporate Governance in Kuwait
– An Investor Perspective

Task Force Report
February 2007

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An Investor Perspective

CONTENTS

PREFACE

In view of the importance of portfolio equity flows to emerging markets, the Institute of International Finance (IIF) established in January 2001 the IIF Equity Advisory Group (EAG), consisting of senior executives from leading asset management firms throughout the world. The EAG, chaired by Edward Baker, Chief Investment Officer of Global Emerging Markets, AllianceBernstein L.P., is seeking implementation of its Code of Corporate Governance (the "IIF Code") in key emerging market countries that are of particular interest to the Institute's membership base. The IIF Code, which was first released in February 2002 and revised in May 2003,[1] endeavors to improve the investment climate in emerging markets by establishing practical guidelines for the treatment of minority shareholders, the structure and responsibilities of the board of directors, and the transparency of ownership and control of companies.

The strategy for promoting the implementation of the IIF Code, as the standard by which the company/ shareholder relationship is measured, is country and regional focused. Country Task Forces have been set up for Brazil, China, India, Lebanon, Mexico, Poland, Russia, South Africa, South Korea, and Turkey. Reports on all these countries have been published, including second reports on several countries.

In June 2006, the IIF entered into a partnership with Hawkamah, the Institute for Corporate Governance,[2] to jointly conduct a two phase corporate governance survey of countries in the MENA region. Phase 1 of the survey covers countries in the Gulf Cooperation Council (GCC) – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). The motivation for such a survey was prompted by the extraordinary growth in GCC equity markets over the past few years, growing international interest in the region and the importance of helping officials in the GCC identify areas of weakness and potential improvements in current corporate governance frameworks. For Phase 1 of the project Hawkamah provided IIF with financial support to defray most of the cost of the work. In phase 2, the survey will be extended to other countries of the MENA region.

In July 2006, the GCC Task Force held meetings in Abu Dhabi, Manama, Doha, Dubai, Kuwait, Muscat and Riyadh to assess the corporate governance practices in GCC countries. Meetings were held with senior officials from the capital market authorities, central banks and stock exchanges, local fund managers, lawyers, experts, accountants and management consultants involved in corporate governance in GCC countries. Keith Savard, Director Global Economic Analysis, IIF and Dr. Nasser Saidi, Executive Director, Hawkamah, co-chaired the GCC Task Force. Other Task Force members include Nicolai Nadal and Rashid Bin Shabib of the Hawkamah staff and Rakhi Kumar of the IIF staff.

[1]Investors' poor experience in a generally weak corporate governance environment in many emerging markets led to relatively strict and comprehensive original IIF guidelines. Nevertheless, more detailed standards were considered desirable in a few areas in light of far-reaching new legislation such as the Sarbanes-Oxley Act passed by the U.S. Congress in the summer of 2002. The revised standards offer guidance to emerging market officials as they decide what rules and regulations must be put in place to satisfy investors.

[2]The Hawkamah Institute for Corporate Governance is an autonomous, international association, hosted by the Dubai International Financial Center (DIFC), and serving the MENA and Central Asia countries. Hawkamah was launched in partnership with the Organisation for Economic Cooperation and Development (OECD), the International Finance Corporation (IFC), the Dubai International Financial Centre (DIFC), the World Bank Global Corporate Governance Forum, the Center of International Private Enterprise (CIPE), the Union of Arab Banks (UAB), Young Arab Leaders (YAL) and the countries participating in the OECD-MENA Investment Programme. Its mission is to assist the countries and companies of the region to develop sound and globally well-integrated corporate governance frameworks. It provides technical assistance and cooperates with decision makers to coordinate and sequence the designing, planning and implementation of corporate governance reforms and monitoring the outcome of corporate governance policies at the private sector level. See www.Hawkamah.org

The aim of this report is to offer an assessment as to where countries in the GCC stand relative to the investment environment that members of the IIF Equity Advisory Group would like to see develop in key emerging market countries. Since this is a first-time survey of corporate governance frameworks in the region, the report does not treat all relevant corporate governance matters in depth. Instead, it focuses on the important initial steps that need to be taken to improve the investment environment in GCC countries. We will review at a future date the corporate governance regimes in more detail to assess progress. This report focuses on corporate governance standards and practices only in GCC countries. It is not meant to provide an exhaustive survey of corporate governance in the GCC and, as with other Task Force Reports, neither the Task Force nor the IIF or Hawkamah can in any way attest to or guarantee the accuracy or completeness of the information in the report despite the best effort that has been made. To the extent guidance is given, or advice is inferred, the reader is urged to fully apprise him/herself of the relevance of such content to current or contemplated operations.

TENETS OF THE IIF CODE AND BASIC DIFFERENCE WITH THE OECD PRINCIPLES OF CORPORATE GOVERNANCE

Through its Equity Advisory Group (EAG), the IIF published a code of corporate governance in February 2002 which was revised in May 2003. IIF's analysis of a country's corporate governance framework focuses on five broad areas – (i) minority shareholder rights, (ii) structure and responsibilities of the Board of Directors, (iii) accounting and auditing, (iv) transparency of ownership and control, and (v) the regulatory environment. A detailed explanation of these areas can be found in the "Comparative Analysis of Corporate Governance Frameworks in the GCC" section. These key ideas appear in the OECD Principles of Corporate Governance and the OECD Corporate Governance Guidelines that accompany it. However, the IIF Code has constructed a more detailed set of guiding principles in order to enhance their practical usefulness.

For example, with regards to minority shareholder rights, the IIF Code clearly endorses the one-share one-vote principle and proxy voting. In addition, the IIF Code supports cumulative voting for director elections. However, while the OECD Principles emphasize the importance of giving equal voting rights to all shareholders and allowing votes to be cast by nominees when agreed upon with the share owner, cumulative voting is not addressed. Furthermore, the IIF Code clearly defines independent directors and requires that at least one-third of the board be independent. The OECD Principles require that board members disclose whether they are regarded as independent by the company, but do not specifically identify how many members should be independent, nor what characteristics classify them as independent.

The IIF Code also requires that conflicts of interest for board members and key executives be disclosed publicly and that the head of the audit committee never have a conflict of interest. The OECD Principles agree that this information must be disclosed, however, they limit the scope of disclosure to the board of directors. Because it views accurate accounting and auditing as the core of transparency and good corporate governance, the IIF Code requires that semi-annual reports be filed in addition to the annual audited financial report. The OECD Principles, in contrast, only require an annual audited financial report.

Both the IIF Code and the OECD Principles encourage the implementation of good corporate governance practices, however; the IIF Code was created to promote specific actions and criteria, which, if followed, will help promote the health and stability of emerging market economies.

This report forms part of a country-by-country analysis of corporate governance practices in each of the six member states of the Gulf Cooperation Council (Kuwait, Bahrain, Oman, Qatar, Saudi Arabia and the UAE), based on country missions by staff members of the IIF and Hawkamah. This report should be read in conjunction with a regional overview report—Comparative Survey of Corporate Governance in the GCC—published in September 2006.

EXECUTIVE SUMMARY

Although Kuwait has strong laws protecting minority shareholder rights and an effective court system, the overall corporate regulatory environment in the country needs to be further strenthened. Improvements to Kuwait's Commercial Companies Law were made following the financial scandal in the 1980s. However, since then laws have not been updated. Efforts are under way by regulators to amend the existing Commercial Companies Law and to include corporate governance-related requirements in the new Capital Markets Law. In the meantime, it is necessary that the authorities begin making non-legislative reforms to advance the corporate governance framework of Kuwait.

Established in 1944, the Kuwait Stock Exchange (KSE) is the oldest stock exchange in the GCC. Kuwait's corporate governance framework could be further developed. It complies with only 50 percent of the IIF's corporate governance guidelines. Government authorities improved minority shareholder rights after the *Souk Al-Manakh* stock market crash in 1982, but successive governments have not revised or introduced new corporate governance requirements since then. Changes are now under way, although at a less rapid pace than seen in other countries in the region. The new Capital Markets Law currently being drafted will incorporate some corporate governance-related requirements for companies. Nevertheless, a timeframe for drafting and adopting the new law, which requires legislative approval, is unclear.

Kuwait's capital market regulatory structure is also in need of modernization and reform. At present the KSE is governed by a market committee containing representatives from the Ministries of Commerce and Finance, the chamber of commerce and private sector brokers. The authorities have started to address deficiencies in the regulatory structure, and plans have been approved by the cabinet for the creation of a capital market authority. Listed

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companies are currently supervised by the relevant ministry; for example, real estate companies are supervised by the commerce ministry and banks are supervised by the central bank. The new authority would allow the ministries to separate their supervisory role from their operational role. This process may take some time to complete because enabling legislation will be required.

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Nonetheless, while the corporate governance framework and enforcement of corporate governance laws needs strengthening, corporate governance practices in large Kuwaiti companies have improved moderately, particularly in the banking sector. Large privately-held companies in Kuwait voluntarily improved corporate governance by introducing structure to the board of directors and increasing financial transparency. These changes can be attributed, in part, to the revised Central Bank of Kuwait guidelines for banks and financial institutions that incorporate Basel II, IIF, and OECD corporate governance-related requirements, and to the higher degree of globalization of Kuwaiti companies. Exposure to international companies that assisted in rebuilding Kuwait after the 1990 Gulf War, has also contributed to influencing corporate culture by more transparent business practices.

"The government can further strengthen Kuwait's equity infrastructure by institutionalizing corporate governance best practices, including establishing training institutions for directors and creating associations of accountants."

Compared to the rest of the region, Kuwait has developed a strong equity culture. Kuwaiti investors are known to be more cautious than other investors in the GCC, possibly due to previous stock market crashes. During the GCC equity market bull-run of 2005, stock valuations of Kuwaiti companies were relatively less stretched than other countries in the region. Moreover, the stock market correction was much smaller compared to some regional markets. However, the government can further strengthen Kuwait's equity infrastructure by institutionalizing corporate governance best practices, including establishing training institutions for directors and creating associations of accountants.

"Court procedures and infrastructure in Kuwait are generally well regarded and efficient. Judges are well paid and independent, and instances of corruption are rare. In addition, respect for and compliance with the law is high."

Kuwait has also succeeded in establishing an effective legal system. The country follows a civil law system in which Islamic law plays a significant role in personal matters. In general, laws and institutions underpinning Kuwait's financial and commercial sectors are strong. Court procedures and infrastructure in Kuwait are generally well regarded and efficient. Judges are well paid and independent, and instances of corruption are rare. In addition, respect for and compliance with the law is high. However, many of the laws were put in place decades ago and need to be updated to reflect current business practices.

As mentioned previously, improvements in corporate governance practices in Kuwait companies have been achieved in spite of government inaction. However, stronger government support is needed if substantial improvements are to be made in corporate governance. The authorities need to devise a clear strategy and set specific timelines by which they will bring Kuwait's corporate governance framework in line with international best practices. Failure to address these issues will hinder the development of Kuwait's capital markets.

"Court procedures and infrastructure in Kuwait are generally well regarded and efficient. Judges are well paid and independent, and instances of corruption are rare. In addition, respect for and compliance with the law is high."

The GCC Task Force recommends that the authorities introduce as soon as possible non-legislative based reforms such as a code of corporate governance that will address several of the deficiencies identified in this report. This would help regulators carry out change and keep pace with improvements that are underway in other GCC countries. Targeted reforms should be implemented, which are aimed at improving the corporate governance of family-owned and state-owned companies. Most companies in Kuwait are owned by controlling families or the state, which possess a particular set of corporate governance issues that could be addressed without legislation.

"Authorities need to devise a clear strategy and set specific timelines by which they will bring Kuwait's corporate governance framework in line with international best practices. Failure to address these issues will hinder the development of Kuwait's capital markets."

Based on its findings, the GCC Task Force recommends that the following actions be taken to help strengthen the framework for corporate governance in Kuwait:

- Adopt and implement, on a mandatory basis, laws/ rules/codes designed to strengthen board practices

- Improve surveillance and enforcement by creating a capital market regulator independent of the government

- Build up a professional and skilled staff at the regulatory level to strengthen enforcement and surveillance

- Increase disclosure requirements in financial reports and establish an association of accountants

"Targeted reforms should be implemented, which are aimed at improving the corporate governance of family-owned and state-owned companies."

KEY CORPORATE GOVERNANCE ISSUES

Kuwaiti companies improve corporate governance practices in spite of limited government backing

Despite a general weak corporate governance framework for listed companies, the banking sector and some private Kuwaiti firms have adopted good corporate governance practices. Corporate governance improvements in the banking sector are attributed to Central Bank directives, which require banks to comply with Basel II requirements. Audit committees exist only in banks and financial institutions under the supervision of the Central Bank of Kuwait. Legislators have yet to incorporate this best practice into the Commercial Companies Law.

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On balance, Kuwait still lags behind other GCC countries in introducing corporate governance improvements. The authorities are considering amending the Commercial Companies Law and introducing a new Capital Market Law that will incorporate corporate governance requirements for companies. However, it is unclear when these improvements will come into effect as they require legislative approval. Moreover, there does not seem to be a sense of urgency among government authorities to expedite this matter.

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Areas that need improvement include board practices, in particular, weakness in accounting and financial oversight at the board level, unequal treatment of foreign shareholders, and poor financial disclosure and reporting. Specific improvements to Kuwait's corporate governance framework are presented in the Outlook and Recommendation section of this report.

Regulatory structure needs to be strengthened

An essential element of credibility in the regulatory environment is that it must not be perceived to be under the control or influence of any particular interest group. The IIF's analysis of a country's regulatory environment assesses whether regulators are independent from industry and, as a best practice, from the executive branch of government.

Kuwait has an underdeveloped regulatory structure, which impacts the quality of enforcement. At present, the KSE is governed by a market committee comprised of representatives from the ministries of commerce and finance, the chamber of commerce and private sector brokers. Listed companies are currently supervised by the relevant ministry; for example, real estate companies are supervised by the commerce ministry and banks are supervised by the central bank.

"Inspection, investigation and surveillance powers of KSE are weak and lack a clearly defined process."

From a statutory perspective, the market committee is an independent agency. However, in practice the government appoints the director-general and the majority of the board of directors. The committee has only limited powers to fulfill its mandate as most licensing, supervision, and sanction powers lie elsewhere. Inspection, investigation and surveillance powers of KSE are inadequate and lack a clearly defined process.

The authorities have started to address this issue, and plans have been approved by the cabinet for the creation of a capital market authority. The new CMA would allow the authorities to separate their supervisory role from their operational role. The process may take some time to be completed because enabling legislation will be required. The authorities will need to provide greater training to regulatory staff if enforcement and surveillance is to be strengthened.

"The system has adopted a westernized structure with trial, appellate and supreme courts. Most foreign investors are comfortable with the legal system, although verdicts can take time."

Robust court system

In general, the judicial system in Kuwait is well regarded. Judges are independent and well versed in laws and the court infrastructure is good. The system has adopted a westernized structure with trial, appellate and supreme courts. Most foreign investors are comfortable with the legal system, although verdicts can take time. Despite having a good court system, Kuwait's corporate governance laws and regulations are deficient and thus of limited value to investors.

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Need to enhance corporate governance infrastructure

It is imperative that Kuwaiti authorities consider corporate governance reforms as an important agenda item. In addition to strengthening its regulatory and legal framework, Kuwait needs to build a corporate governance-related infrastructure that will further enable development of corporate governance practices and also help regulators monitor compliance with new requirements.

This corporate governance-related infrastructure should include:

- Associations of accountants that can regulate the industry
- Directors training institutes
- Business schools to provide management training and promote business ethics
- Investor education programs that will help foster an equity culture
- Media institutes to train journalists in financial and investigative reporting
- Upgraded KSE website that provides financial data, annual reports and other up-to-date company specific information
- Registrars of companies at the government level to increase supervision of companies

Need to target corporate governance issues in family-controlled and state-controlled companies

Most of Kuwait's companies are owned by a family or the state. Although the authorities are working to pass laws that will contribute to better overall corporate governance, non-legislative reforms need to be implemented, targeting family-controlled companies (FCCs) and state-controlled companies (SCCs). These targeted reforms would significantly improve corporate governance practices at the company level.

The government owns significant stakes in businesses ranging from banks to oil and gas companies. To bring about real effective change in corporate governance practices, it is necessary that the government reduces its role and influence in state-controlled companies. This will help attract investment and reduce operational and administrative inefficiencies in SCCs. Corporate governance-related reforms that need to be implemented in the public sector include:

- Increased autonomy for management
- Independent board-level nomination committees to appoint directors
- Reduced interference from sector ministers
- Linking senior management compensation to company performance

In the private sector, most KSE listed companies are family-owned businesses. Despite some improvements in disclosure, the broader corporate governance structure in family-controlled companies generally remains poor. It is important that corporate governance reforms for family-controlled companies focus on:

- Voluntarily adopting mechanisms for governance of a family's ownership stake; for example, creating family councils that deal with family disputes
- Reforming company boards by increasing overall board independence and reducing the number of family-member directors
- Limiting the role of family members in senior management
- Increasing transparency of ownership structure and related-party transactions

Growing Economic Impact of Kuwait's Equity Market

Established in 1962, Kuwait has the oldest equity market in the region. Moreover, its stock market appears to have stabilized after a correction in February and March of this year ended a period of exceptional gains (Chart 1). The KSE general index peaked at 12,106 on February 6, up 600 percent from the level at the end of 2001. Confidence engendered by the toppling of the Iraqi regime triggered the run-up in share prices, which was supported by rising oil prices, higher domestic liquidity and strengthened corporate performance (listed company profits nearly doubled in 2005). Local companies rushed to exploit this financing boom, with 33 new listings during 2005 (the highest number in one year since 1992), although this was insufficient to absorb the funds directed to the market.

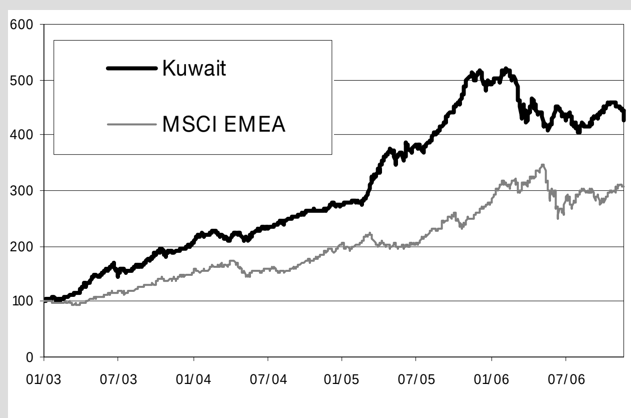
The recent correction was sparked by a sharp fall in the Saudi stock market. Unlike some other regional bourses, valuations in Kuwait did not look particularly stretched. As the robust growth of the last few years followed several years of declining share prices, the price-to-earnings ratio was less than 20. However, first-quarter 2006 results of listed companies provided further downward momentum for the KSE general index by raising questions over the quality of corporate profits.

Research by the National Bank of Kuwait concluded that 26 percent of total listed company profits in 2005 were derived from unrealized gains on equity holdings. These were concentrated in the investment sector. Investment companies tend to have large holdings of shares of other listed companies, including other investment companies. By valuing their assets at prevailing prices, they have reported large profits as share prices have gone up, which has encouraged a boom in the sector in recent years (there have been 12 new investment companies listed since the start of 2005, bringing the total to 42). It is also notable that unrealized investment gains accounted for 40 percent of profits in the industry and construction sectors, although the figure was only 1 percent for the banking sector.

Falling share prices caused listed company profits to decline by 35 percent in the first quarter of 2006 compared to the same period of last year. Only the banking and services sectors experienced a pickup in profits growth in the first quarter, while earnings of investment companies fell by more than 85 percent.

The stock market boom encouraged widespread participation in the equity market by Kuwaiti nationals. Therefore, the recent correction put pressure on the government to intervene in order to stem the decline in the market. However, the authorities have confirmed that they did not directly step into the market.

Chart 1
Comparison of the Kuwait stock market index with the MSCI EMEA index from January 1, 2003 to November 15, 2006



Kuwait's Banking Sector

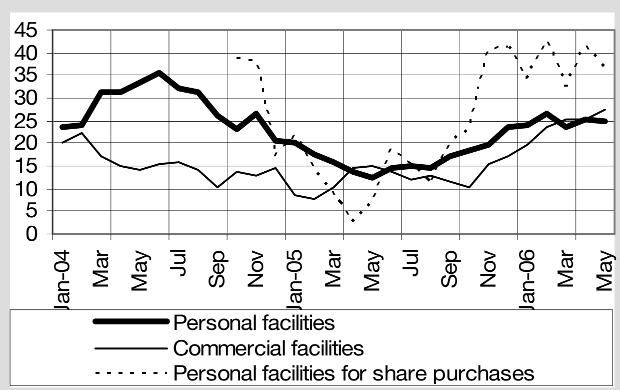
Kuwait was the first country in the world to implement the Basel II capital adequacy framework. By the end of December 2005, all local banks adopted the simplified standardized approach for calculating credit risk. Some local banks had called for the process to be postponed because the Basel II accords had not been finalized. Furthermore, there remain lingering concerns about risk management practices, particularly in the country's smaller banks. Nonetheless, the process appears to have been conducted smoothly.

The banking sector recorded another year of strong performance in 2005. Profit growth was driven by income from fees and services, largely generated from stock market activity, and higher net interest income owing to growth in loans of around 20 percent and widening margins stemming from higher interest rates. Nonperforming loans fell to just 2 percent of total loans last year from 5.3 percent in 2004 and 10.3 percent in 2001. Of this total, 55 percent relate to loans issued prior to the Iraqi invasion of 1990. These are fully provisioned and not written off for legal reasons. The sharp decline in the NPL ratio last year was largely the result of rapid loan growth. The average commercial bank capital adequacy ratio stood at 21.3 percent at the end of 2005.

Nonetheless, concerns have been raised about the recent weakening of the Kuwaiti stock market and its possible implications for the banking system, particularly if share prices should fall further. Commercial banks do not hold significant direct stakes in the equity market, although they are exposed to the risk of potential customer defaults. Commercial bank lending for share purchases rose by 41 percent last year and accounted for 10.6 percent of total commercial bank lending to residents, up from just 5.8 percent at the end of 2002 (Chart 2). In addition, it is believed that other personal facilities (which accounted for 32.8 percent of total commercial bank lending to residents at end-2005) and some business loans were ultimately placed in the equity market.

The central bank has been aware of the risks stemming from an increasing exposure to the stock market for sometime and a number of measures were introduced to clamp down on lending in mid-2004. The most significant of these was the "80:20 rule" under which an 80 percent ceiling was placed on commercial banks' customer loan-to-deposit ratio. This was achieved by July 2005 in accordance with the central bank directive and by the end of the year the loan-to-deposit ratio was 75.3 percent. However, growth in personal facilities and in particular, lending for share purchases picked up sharply during the final quarter and has subsequently remained at elevated levels. While there is some uncertainty over the full extent of indirect commercial bank exposure to the stock market, we believe that unless there is a further sharp fall in share prices the impact on the banking sector should be slight. Compared to other GCC markets the fall in share prices has been relatively modest.

Chart 2
Private Sector Credit
(percent change, year-on-year)



OUTLOOK AND RECOMMENDATIONS

Changes in Kuwait's corporate governance practices have not kept pace with the growth of its equity markets. As the oldest stock market in the GCC, the Kuwait Stock Exchange (KSE) had a distinct advantage over other newly established stock exchanges in the region. With a total of 161 listed companies and about 50 percent concentration of total market capitalization of the 10 largest listed companies, Kuwait's equity market has the greatest depth compared to other equity markets in the GCC. Although these numbers do not necessarily compare favorably with other emerging market stock exchanges, they nevertheless reflect the relative maturity of Kuwait's equity market in the region. However, Kuwait is beginning to loose this advantage as other GCC countries begin reforming their capital markets.

During its 44 year history, the KSE has survived many shocks, the worst being a financial scandal in the 1980s that led to the strengthening of minority shareholder rights in Kuwait. This helped Kuwait develop an equity culture that is lacking in most of its neighboring countries. However, in recent years, the government has done little to raise Kuwait's corporate governance framework to the threshold sought by international investors.

Kuwait's corporate governance framework as it pertains to listed companies complies with only about one-half of IIF's corporate governance guidelines. Significant weaknesses stem from a poor regulatory structure that affects the quality of enforcement and from a lack of structure and transparency in practices of the board of directors. Two big initiatives currently underway involve establishing an independent capital market authority and legislating corporate governance-related requirements, both of which address concerns identified in this report. These initiatives so far have proceeded slowly to the detriment of investors in Kuwait.

In contrast, regulators in other GCC countries are strengthening the corporate governance practices in their countries by amending listing requirements to include a code of corporate governance. This does not require legislative approval, thereby speeding up implementation of new corporate governance requirements. The GCC Task Force recommends that Kuwaiti authorities consider introducing corporate governance requirements by amending listing rules while awaiting legislative approval of new laws. This would help prevent Kuwait from falling behind other GCC nations in improving its corporate governance environment.

Irrespective of the method adopted, implementing change in the country's corporate governance regime will need the strong backing of the government, which at present seems to be lacking. The government should invest in broad-based initiatives that will strengthen Kuwait's equity culture. These include:

- Providing educational training to regulatory staff
- Requiring board members to participate in director training programs to develop a pool of trained independent directors
- Establishing an association of accountants who can spearhead development of accounting practices and regulations in the region
- Promoting shareholder activism in the country through those who can take up corporate governance-related causes as significant shareholders
- Introducing ethics and corporate governance in business school curriculums to create awareness and educate future business leaders on best practices

Further changes that would improve the existing corporate governance framework and strengthen compliance with the IIF's corporate governance guidelines have been identified below. Recommended improvements to Kuwait's existing corporate governance framework include:

- Introducing cumulative voting in director elections
- Treating foreign shareholders equally including allowing them to directly invest in stocks listed on the KSE

- Establishing an ownership trigger that will allow minority shareholders the right to formally present a view to the board
- Establishing a trigger that will instigate a public offer when ownership exceeds 35 percent
- Strengthening enforcement and supervision by establishing an independent capital market regulator
- Defining “independent” and “non-executive” director
- Requiring that at least one-third of directors be non-executive and a majority of non-executive directors be independent
- Requiring independent and non-executive directors to be present to form a quorum for board meetings
- Requiring the establishment of audit, nomination, and compensation committees
- Assigning the audit committee the duty to monitor and report risk factors
- Establishing procedures for companies to disclose information through the local exchange or company website
- Requiring companies to establish investor relations programs and make a statement on policy concerning environmental issues and social responsibility
- Requiring full disclosure of off-balance sheet transactions
- Implementing targeted reforms in family and state controlled companies

APPENDIX

KUWAIT CORPORATE GOVERNANCE FRAMEWORK

Kuwait's legal framework for corporate governance is found primarily in Kuwait's Commercial Companies Law and the KSE Listing Requirements. Taken together these currently comply with just over half of the IIF Code's guidelines. Despite the long history of the Kuwait Stock Exchange (KSE), Kuwait's corporate governance policies need strengthening. Both the regulatory environment and the legislative rules pertaining to accounting and auditing are ineffectual. The board structure also lacks many necessary provisions. However, Kuwait does have strong minority shareholder protection and transparency of ownership.

Minority Shareholder Protection

The Kuwaiti corporate governance framework complies with three-fourths of the minority shareholder protection guidelines contained in the IIF Code. Scope for further improvement exists in strengthening rules regarding shareholder meetings and voting rights.

Voting Rights

The IIF Code strongly encourages companies to adopt three essential elements to ensure fair voting rights for minority shareholders. These include proxy voting, the one-share, one-vote principle and cumulative voting.

Kuwait's Commercial Companies Law embraces proxy voting and states that, "a shareholder may appoint another person to attend a general meeting as a proxy." In addition, the Commercial Companies Law also endorses the one-share, one-vote principle by clearly stipulating, "Every shareholder has a number of votes equal to the number of shares he holds." Cumulative voting, however, is not addressed in the Commercial Companies Law or listing rules of the KSE. The adoption of cumulative voting for director elections would further improve the rights of minority shareholders by allowing them to use their votes more strategically during director elections.

Company Capital Structure

Concerning takeover and merger procedures, the IIF Code recommends that companies require shareholder or board approval to change their capital structure through takeovers, mergers, capital increases, dilution of voting, and significant share buybacks. Kuwait's Commercial Companies Law complies with most of these recommendations and states, "Mergers, acquisitions and major asset transaction decisions should be passed only by the general assembly in extraordinary meetings and require approval from shareholders representing three-fourths of the shares of the company."

Kuwait's legal framework also requires shareholder approval for any capital increase. In addition, during capital increases, existing shareholders get priority over other applicants to obtain new shares in proportion to the amount of shares they already hold.

The IIF Code encourages the details of share buybacks to be disclosed to shareholders. In Kuwait, companies may buyback their shares at the available price, provided that the buyback does not exceed 10 percent of the outstanding capital. The Commercial Companies Law goes further to require all listed companies to inform the market within one day of general assembly approval, and obtain market approval before any sale or purchase transaction. The listed company must also provide a detailed schedule showing the movement of all sales and purchase transactions of shares every three months.

The IIF Code also recommends that a public offer be made for acquisition of all shares when ownership exceeds the 35 percent trigger level. Kuwait's legal framework lacks this provision, which if implemented would reinforce minority shareholder rights.

Shareholder Meetings/Other Rights

According to the Commercial Companies Law, a general shareholder meeting must be held annually, however, other meetings of the assembly may be called at the board of directors' discretion. In addition, the listing requirements of Kuwait require the company to hold its general assembly meeting within 45 days of the approval of its audited financial statements by the stock exchange. All proposed dividends must also be sent to all shareholders within 45 days of the general assembly meeting.

In order to protect minority rights, the IIF Code also states that special meetings should be called when shareholders representing a specific amount of outstanding shares request one. The Commercial Companies Law states that the board of directors must call a special meeting at the request of shareholders holding at least one-tenth of the company's capital. An extraordinary meeting may also be called by the board when an application in writing is made by shareholders holding at least one-fourth of the company's shares.

The IIF Code warns that a quorum should not be set too high or too low, preferably around 30 percent and should include independent, minority shareholders. Kuwait's framework asserts that a quorum for the general assembly meeting is reached when 50 percent of the company's capital is represented. If an initial quorum is not present, a notice must be sent out for a second meeting. The members present at the second meeting, however many, shall constitute a quorum. The Commercial Companies Law also requires that the quorum of an extraordinary meeting be three-fourths of the shares of the company. If this quorum is not present, notice shall be given of a second meeting. The quorum at the second meeting shall be formed only if shareholders representing more than half of the shares are present.

The IIF Code also states that it is essential for foreign and domestic shareholders to be treated equally. In Kuwait, foreign investors can buy stock only through mutual funds. Foreign shareholders are thus not given the same rights as domestic investors.

Although Kuwait's legal framework allows shareholders to bring issues of prejudice and legality to the courts, it lacks any provision allowing minority shareholders who represent a predefined minimum threshold of outstanding shares to formally present a view to the board of directors.

Structure and Responsibilities of the Board of Directors

The Kuwait corporate governance framework complies with roughly one-third of the guidelines pertaining to the board of directors in the IIF Code. This is an area of weakness within Kuwait's corporate governance framework as major aspects of the structure of the board of directors remain unaddressed. Strong progress could be made by requiring independent directors to sit on the board, establishing board committees, such as nomination, compensation, and audit committees, and developing a formal procedure for the release of information.

Board Structure

The Commercial Companies Law regulates the board of directors but has no provisions for the appointment of independent directors. The IIF Code states that at least one-third of the board should be non-executive and of them a majority should be independent.

Board Meetings

The Commercial Companies Law does state that the board must meet at least four times every fiscal year, unless the articles of the company provide for more. This complies with the frequency suggested in the IIF Code. Under listing requirements, a copy of the minutes of these meetings authenticated by the official authority should be provided to the stock exchange within two weeks of the meeting. The stock exchange must then disclose to the public all significant decisions made at the meeting.

The Commercial Companies Law only requires that the quorum of the board of directors to be half the directors of the board, or three members, whichever is greater, unless the company's articles provide for a greater number or percentage. In comparison, the IIF Code encourages a quorum to consist of executive, non-executive, and independent directors.

Nomination and Election of Directors

The Commercial Companies Law includes no provisions for a nomination committee. The IIF Code suggests that a committee, chaired by an independent non-executive director, should nominate new board members. In Kuwait, the articles of a company specify the term limits of the board of directors which generally cannot exceed three years, which complies with requirements of the IIF Code.

Board Committees

The IIF Code recommends the establishment of audit, nomination, and compensation committees to enhance the board's efficiency and the effectiveness of its involvement in the company. The IIF Code also suggests that an independent director chair each of these committees. Kuwait's Commercial Companies Law does not address for the creation of these committees, with the exception of companies under the supervision of the Central Bank which are required to establish audit committees.

Disclosure

Both the IIF Code and Kuwait's Commercial Companies Law state that information disclosure is critical. Consequently, Kuwait's legal framework insists that each company be legally responsible for the immediate disclosure of all material information to the market and the public through newspapers or other media. The company is also responsible for the accuracy of any news published that may affect share prices.

Additionally, KSE listing requirements call for the disclosure of certain matters, including the acquisition or disposal of a subsidiary or an associate by the company or any of its unlisted subsidiaries; any changes in accounting policies, provided that the stock exchange has approved them; related-party transactions, and changes in ownership.

The Commercial Companies Law also provides for disclosure of the remuneration of directors in the board of directors' report and the audited financial statements, and requires shareholder approval in the annual general assembly meeting. Maximum and minimum limits on directors' remuneration is set by the Commercial Companies Law.

The issuance of stock options requires the prior approval of the Ministry of Commerce and Industry as well as shareholder approval in the general assembly meeting. Full details regarding the stock option program should be disclosed to the shareholders in annual general assembly meeting.

Other Responsibilities

The IIF Code requires that all conflicts of interest on the part of directors be fully disclosed. The Commercial Companies Law falls short of providing a clear definition of conflicts of interest, but states that the Chairman or directors of the board may not directly or indirectly benefit from the contracts or transactions of the company, unless authorized by the general assembly, nor can directors participate in the management of a similar company.

Integrity of internal control and risk management should be a function of the audit committee, according to the IIF Code. However, audit committee requirements do not exist in Kuwait's legal framework. Instead, the Commercial Companies Law stipulates that a company's management is responsible for maintaining an adequate internal control system and evaluating and improving the risk management system. In addition, it is the external joint auditor's responsibility to ensure that a proper internal control system is adopted as well as to evaluate the risk management system.

The IIF guidelines state that companies should have an investor relations program and make statements on policy concerning environmental issues and social responsibilities. Kuwait's legal framework lacks both of these provisions.

Accounting/Auditing

Kuwaiti law continues to remain inadequate with regard to accounting practices and auditing of financial information. Current laws comply with about half of the guidelines set out in the IIF Code. Significant improvements could be made by requiring companies to create a board-level audit committee.

Standards

Kuwaiti companies are required to adopt International Financial Reporting Standards (IFRS) in preparing their financial statements. Company audits must also be performed in accordance with the International Standard on Auditing (ISA). In addition, the Kuwait Stock Exchange (KSE) may also require the disclosure of additional information in order to improve transparency, and to protect shareholders and dealers.

KSE listing requirements comply with IIF Code provisions regarding the frequency of financial reports by requiring each company to submit quarterly reviewed financial statements within 45 days of the reporting date, and a jointly audited financial statement within three months of the end of each fiscal year. In addition, IFRS disclosure requirements demand that full details of off-balance sheet transactions be disclosed in the interim and annual financial statements.

Audit Committee

Kuwait's corporate governance framework does not include provisions for the creation and maintenance of audit committees. Audit committees exist only in banks and financial institutions under the supervision of the Central Bank of Kuwait (CBK). The IIF Code encourages audit committees to approve external auditors, disclose their remunerations in the financial report, and require that audit and non-audit services from the same entity be prohibited. Although there are no provisions in Kuwait's legal framework for defining the relationship and communication with and between internal and external auditors, statutes do exist which explicitly state that audit and non-audit services from the same entity are prohibited.

Transparency of Ownership and Control

Kuwait's corporate governance framework addresses nearly three-fourths of the IIF guidelines in regards to transparency of ownership and control. Improvement could be realized by adopting the IIF Code's suggestion that ownership exceeding 35 percent should trigger a buyout offer in which all shareholders are treated equally.

Regulations governing related-party transactions are in place in Kuwait. Companies are liable for the full disclosure of this information based on the requirement of the International Accounting Standard. In addition, Kuwaiti law requires that related-party transactions be approved by shareholders in the general assembly meeting. Both KSE listing requirements and the Commercial Companies Law, require companies to establish rules prohibiting directors and senior executives from benefiting from insider information.

In addition, Kuwait's laws and regulations require the disclosure of interest of 5 percent or more ownership of company shares, and of the sale procedures for any deal that exceeds 5 percent of outstanding shares.

Regulatory Environment and Enforcement

In Kuwait, the enforcement of legal requirements needs improvement. Kuwait's regulatory environment and its enforcement comply with just over one-third of IIF corporate governance guidelines. The KSE currently assumes the oversight and regulatory responsibilities for the market. However, plans are underway to create an independent capital market regulator. The adoption of an independent regulator is crucial to the improvement of the regulatory environment in the country.

Comparison of IIF Code and
Kuwait Commercial Companies Law (CL) & KSE Listing Requirements

	IIF	Kuwait Commercial Companies Law (CL) & KSE Listing Requirements
Minority Shareholder Protection		
Voting rights		
Proxy voting	Firms are encouraged to allow proxy voting.	A shareholder may appoint another person to attend the meeting as proxy. (CL Article 155)
One share, one vote principle	"One share, one vote" should be a threshold requirement for new issues.	Every shareholder has a number of votes equal to the number of shares he/she holds. (CL Article 156)
Cumulative voting	Cumulative voting should be permitted.	No provision.
Capital structure		
Takeover/buyout/merger - Procedures on major corporate changes	Shareholder approval of mergers and major asset transactions should be required. If an offer is made above a reasonable minimum threshold of outstanding stock, a significant portion of that purchase must be through a public offer. Ownership exceeding 35% triggers a public offer in which all shareholders are treated equally. Under a merger or takeover, minority shareholders should have a legal right to sell shares at appraised value.	Mergers, acquisitions and major asset transaction decisions should be passed only by the general assembly in extraordinary meetings and require approval from shareholders representing three-fourths of the shares of the company. (CL Articles 222 to 225)
Capital increases (pre-emptive rights)	Shareholder approval is required. Any capital increase over a period of one year and above a minimum threshold must first be offered to all existing shareholders.	Shareholder approval is required on any capital increase. In addition, every shareholder has the right to subscribe for a number of the new shares proportionate to the number of shares he/she already holds, in priority to all other applicants. (CL Articles 111, 158)

Share buybacks	Details of share buybacks should be fully disclosed to shareholders.	The company can buyback its shares (Treasury stock) at the available price, provided it does not exceed 10% of outstanding capital. (CL Article 115) In accordance with the Director General resolution No. (22) of 1987, all listed companies should inform the market immediately (next day) about the general assembly approval, and obtain market approval before any sale or purchase transaction, as well as provide a detailed schedule showing the movement of all sales and purchase transactions every three months. Also see the Ministerial resolution no. (10) of 1988 which regulates treasury stock transactions.
Shareholder meeting		
Meeting notice and agenda	Meeting notice and agenda should be sent to shareholders within a reasonable amount of time prior to meetings.	The shareholders shall hold a general assembly meeting at least once a year. The board of directors however, may call a meeting of the assembly whenever it sees fit. Notice of the meeting shall be sent to all shareholders either by registered mail or by advertising in two daily newspapers. The advertisement shall contain a accurate summary of the meeting agenda. The advertisement should be repeated twice. The second advertisement should be published at least one week after the first advertisement, and at least one week prior to the company's general assembly meeting. (CL Article 154). In addition, and as part of the listing requirements, the company must hold its general assembly meeting within 45 days from the approval of its audited financial statements by the stock exchange. The distribution of proposed dividends to all shareholders registered at the general assembly date should be made within 45 days following the general assembly meeting.

Special meetings	Minority shareholders should be able to call special meetings with some minimum threshold of the outstanding shares.	The board of directors should call for a general assembly meeting whenever requested by a number of shareholders holding not less than one-tenth of the capital. (CL Article 154) An extraordinary meeting may be called by the board when an application in writing is made by shareholders holding not less than one-fourth of the shares of the company. (CL Article 159)
Treatment of foreign shareholders	Foreign shareholders should be treated equally with domestic shareholders.	The holders of the company's shares shall be deemed members of that company. They shall have the same rights and obligations, subject to law. (CL Article 130)
Conflicts between shareholders	Should have mechanisms whereby a majority of minority shareholders can trigger an arbitration procedure to resolve conflicts between minority and controlling shareholders.	Every shareholder has votes equal to the number of shares he holds and resolutions shall be passed by the absolute majority of the shares represented. Prejudiced parties can refer to the courts. (CL Article 156)
Quorum	Should not be set too high or too low. Suggested level would be about 30% and should include some independent non-majority-owning shareholders.	The quorum of the general assembly meeting shall be a number of shareholders holding more than half the total number of shares. If this quorum is not present, notice shall be given of a second meeting. The member present at the second meeting, whatever their number may be, shall be a quorum. (CL Article 155) The quorum of an extraordinary meeting of the general assembly shall be shareholders representing three-fourths of the shares of the company. If this quorum is not present, notice shall be given of a second meeting. The quorum of the second meeting shall be shareholders representing more than half of the shares. (CL Article 160)
Petition rules/objection to majority shareholder actions	Minority shareholders should have the right to formally present a view to the board if they own some predefined minimum threshold of outstanding shares.	It is a member's right, to apply to the court for nullifying any resolution of the general assembly or the board of directors which infringes the law, public policy or the articles of the company or its memorandum of association. (CL item 5 of article 131)

Structure and Responsibilities of the Board of Directors		
Board structure		
Definition of independence	Cannot have a business or personal relationship with the management or company, and cannot be a controlling shareholder such that independence, or appearance of independence, is jeopardized.	CL regulates the board of directors. (CL Articles no. 138 to 153)
Share of independent directors	At least one-third of the board should be non-executive, a majority of whom should be independent.	No provision.
Frequency and record of meetings	For large companies, board meetings every quarter, audit committee meetings every 6 months. Minutes of meetings should become part of public record.	The board shall meet at least four times every fiscal year, unless the articles of the company provide for more. (CL Article 144) A copy of the general assembly minutes of meetings signed by the official authority should be provided to the Stock Exchange within two weeks. The Stock Exchange must immediately disclose to the public all of the significant decisions made. (Listing Requirements)
Quorum	Should consist of executive, non-executive, and independent non-executive members.	Unless the articles provide for a greater number or percentage, the quorum of the board of directors shall be half the members of the board, or three members, whichever is greater. (CL Article 144)
Nomination and election of directors	Should be done by nomination committee chaired by an independent director. Minority shareholders should have mechanism for putting forward directors at Annual General Meeting (AGM) and Extraordinary General Meeting (EGM).	No provision for a nomination committee. The members of the board of directors shall be elected by ballot; but the memorandum of association of the company may provide that a number of the members of the company's first board of directors, not exceeding half of them, shall be elected from among the founders. (CL Article 141)
Term limits for independent directors	For large companies, re-election should be every 3 years with specified term limits.	The period of membership shall be specified in the articles of the company. The board of directors shall consist of not less than three members and the period of membership shall not exceed three years. This period may be renewed. (CL Article 138)

Board committees	The board should set up 3 essential committees: nomination, compensation and audit.	Except for audit committees in all companies under the Central Bank's supervision, such committees are not required.
Formal evaluation of board members	For large companies, nomination committee must review directors ahead of formal re-election at AGM.	No provision.
Disclosure		
Immediate disclosure of information that affects share prices, including major asset sales or pledges	Any material information that could affect share prices should be disclosed through stock exchange. Material information includes acquisition/disposal of assets, board changes, related-party deals, ownership changes, directors' shareholdings, etc.	Each company is liable to inform the market directly and immediately about all material information before disclosing the same to the public through newspapers or other media. The company is liable to confirm or deny any news published through media when it may affect share prices. Also under listing requirements, certain major matters require disclosure: • The acquisition or disposal of a subsidiary or an associate by the company or any of its unlisted subsidiaries; • The acquisition or disposal of an asset by an amount equivalent to 5% or more of its total assets; • Any contract by an amount of 5% or more of the company's paid up capital, and any subsequent amendments; • Any amendments to the company's articles of association; • Any changes in accounting policies, provided that approval from the stock exchange is received; • Any outstanding court cases in which the company is plaintiff or defendant, as well as any court decision taken; • Any changes in the collateral or mortgages of long-term loans, or any loans settled before the due date, or rescheduled. This disclosure is required for any loan equivalent to 5% or more of the company's total liabilities; • Any changes in board members or executive managers; • Related–party transactions; • Changes in ownership.

Procedures for information release	Through local exchanges, and as best practice, through company website.	No provision.
Remuneration of directors	Should be disclosed in annual report. All major compensation schemes, including stock options, should be fully disclosed and subject to shareholder approval.	Directors' remuneration should be disclosed in the board of directors' report and the audited financial statements, and it is subject to shareholders approval in the annual general assembly meeting. In addition, and in the absence of a compensation committee, the CL determines the maximum and the minimum amount of such remuneration. (CL Article 150) Regarding stock options, both the Ministerial decision no. 337 of 2004, and the Market Director decision no. 2 of 2005 require the prior approval of the Ministry of Commerce and Industry as well as shareholder approval in the general assembly meeting. Also, full details about the stock option program, including the board members share, exercise date, number. of shares assigned, the expected cost upon the exercise of the option, and all other major terms should be disclosed to shareholders in the annual general assembly meeting.
Other responsibilities		
Conflict of interest	Any potential or actual conflicts of interest on the part of directors should be disclosed. Board members should abstain from voting if they have a conflict of interest pertaining to that matter.	The Chairman or other members of the board may not have direct or indirect benefit in the contracts and transactions of the company, unless so authorized by the general assembly. Neither can they participate in the management of a similar company. (CL Article 151)
Integrity of internal control and risk management system	Should be a function of the audit committee.	As indicated earlier, except for banks and financial institutions audit committee requirements do not exist - however, it is the responsibility of the company's management to maintain an adequate internal control system, and to evaluate and improve the risk management system. In addition, it is the external auditors' responsibility to ensure that a proper internal control system is adopted as well as to evaluate the risk management system.

Investor relations	Should have an investor relations program.	No provision.
Social responsibility and ethics	Make a statement on policy concerning environmental issues and social responsibility.	No provision.

Accounting/Auditing		
Standards		
National/International GAAP	Identify accounting standard used. Comply with local practices and use consolidated accounting (annually) for all subsidiaries in which sizable ownership exists.	As per Ministerial decision no. 18 of 1990, all Kuwaiti companies must adopt the International Financial Reporting Standards (IFRS) in preparing financial statements. Audits should be performed in accordance with the International Standard on Auditing (ISA). In addition, and provided that the disclosure requirement under (IFRS) covers all significant issues in the financial statement, the stock exchange may require additional disclosure (if necessary) in order to improve transparency and to protect shareholders and dealers.
Frequency	Semi-annually audited report at end-FY.	Each company should submit a quarterly condensed reviewed financial statement within 45 days from the reporting date and a jointly audited financial statement at the end of each fiscal year, which should be submitted within three months from the year end date. (Listing Requirements)
Audit quality	Independent public accountant. As a best practice, auditors should adhere to the global standards devised by the International Forum on Accountancy Development (IFAD).	Under stock exchange requirements, each company should have at least two independent auditors (joint audit), and as indicated above audit should be performed in accordance with the International Standard on Auditing (ISA). (CL Article 161)

Off-balance sheet transactions	Listing requirements should specify disclosure of off-balance-sheet transactions in the annual report with materiality level for disclosure.	Full details of off-balance sheet transactions should be disclosed in the interim and annual financial statements. (IFRS Disclosure Requirements) The stock exchange has the right to check and investigate the company's books and records, as well as any supporting documents in case any doubt exists or any further information is required. Also, it should be taken into consideration that all banks and financial institutions which represent a major portion of market activities are subject to detailed review by the Central Bank of Kuwait. (Listing Requirements)
Risk factors/monitoring procedures	Should be statement from audit committee in reports and accounts addressing business risks. Need a mechanism for review by auditors.	No provision.
Audit committee		
Audit committee	For large firms, must be chaired by qualified independent director with a financial background.	Audit committees exist only in banks and financial institutions under the supervision of Central Bank of Kuwait (C.B.K).
Relationship/communication with internal and external auditors	Committee should approve services provided by external auditor. Breakdown of proportion of fees paid for each service should be made available in annual report. As a best practice, communication with auditors should be without executives present. Contemporaneous provision of audit and non-audit services from the same entity should be prohibited.	Please see the above item. Contemporaneous provision of audit and non-audit services from the same entity is prohibited.
Transparency of Ownership and Control		
Majority ownership	Significant ownership (20-50% including cross-holdings) is deemed to be control.	Law no. (2) of 1999 regulates the disclosure of interest of 5% and above. Director General resolution no. (2) of 2006 was issued to regulate the sale procedures for deals that exceeds 5% of the company's share capital.

Buyout offer to minority shareholders	Ownership exceeding 35% triggers a buyout offer in which all shareholders are treated equally.	No provision.
Related-party ownership	Companies should disclose directors' and senior executives' shareholdings, and all insider dealings by directors and senior executives should be disclosed.	The company undertakes that the board of directors or any other independent committee (such as an audit committee) will review and approve all material related-party transactions and ensure that they are performed on an arms' length basis. Also, the company is liable to present a full disclosure based on the requirement of IAS (24). In addition, related-party transactions should be approved by shareholders in the general assembly meeting. The company should establish rules in order to prohibit directors and senior executives from benefiting from any information before it is announced to the public or other parties. (Listing Requirements and CL Article 140)
Minimally significant shareholders	Shareholders with minimally significant ownership (greater than 3-10%) of outstanding shares must disclose their holdings.	Please refer to the above item "Majority ownership" under Transparency of Ownership and Control.
Regulatory Environment		
Enforcement powers	The supervisory authority and the exchange must have adequate enforcement powers. Exchanges should have the power to grant, review, suspend, or terminate the listing of securities. Enforcement authorities should have adequate training and an understanding of the judicial process.	Under article (14) of the Amiri Decree's & By-Law organizing Kuwait Stock Exchange, it is clearly indicated that the violation committee has such enforcement powers.
Independence of supervisory body and of exchange	The supervisory body and the exchange should be independent from government and industry.	Article (1) of the Amiri Decree's & By-Law organizing Kuwait Stock Exchange states that "the Kuwait Stock Exchange enjoys an independent judicial entity with competence and capacity to dispose of its property and funds besides managing the same and shall have the right of litigation.

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