

From California to Kuwait

INTERVIEW WITH



NAJMAH BROWN

Managing Director
of the International Department
Al-Adwani Law Firm, Kuwait



LexisNexis spoke with Najmah Brown, a California attorney who started out in entertainment law in Los Angeles and who now runs the International Department at Al-Adwani Law Firm in Kuwait. We talked about her practice, how her work in Kuwait compares to back home, and changes she foresees in Kuwait law in the near future.

LexisNexis s'est entretenu avec Najmah Brown, avocate californienne qui a débuté dans le droit du divertissement à Los Angeles et qui dirige maintenant le département international du cabinet juridique Al-Adwani au Koweït. Nous avons parlé de son expérience, de la comparaison de sa pratique professionnelle au Koweït avec celle de son pays d'origine et des changements qu'elle prévoit dans la législation koweïtienne dans un proche avenir.

What does your practice focus on?

Najmah Brown ▶ As head of the International Department. I manage international and local clientele. For the international clients, there is a dispute, litigation or a transaction involved. If it's a lawsuit, I refer the case to the litigation department within the firm. If it's transactional work, we are working in English or both Arabic and English, so this work would stay in the international department. We have bilingual attorneys.

For the local clientele, they either have business going on outside Kuwait—where they

have, for example, a contract in English, and they need a lawyer to look over it—or they are bringing a franchise to Kuwait, and they need us to review a contract. It could also just be two local companies that are working together in English, or a local company just looking for a lawyer with a certain type of experience. I have a background in media, technology and startups, so I also get this type of business.

Here in Kuwait, there is a lot of franchise work, licensing, distributorships, agencies, and similar work.

How does your practice in Kuwait compare to your previous work in Los Angeles, in terms of the kind of work you are doing now and the type of clients?

Najmah Brown ▶ When I was in the United States, my principal clients were media companies (private sector) such as CBS, the Oprah Winfrey Network, and Al Jazeera America. The last company I provided support for was a multi-digital channel network. All my work was transactional work.

With numerous years of business and legal affairs experience, I am providing the same transactional legal services to companies within the State of Kuwait. The types of contracts for most companies are very standard, such as non-disclosure, partnership,

vendor, employment, service level, sub-contract, and licensing agreements.

The advantage of me working in Kuwait is I have the opportunity to work with a wider range of clients, and not be limited to just the popular industries in Los Angeles (e.g., entertainment and real estate). Now, I work with more public sector clients, as well as expat communities, so the legal matters are unique to the country and region. This allows me to feel challenged in my profession and grow from these experiences.

California is a common law jurisdiction; Kuwait is civil law. Did you notice a lot of differences in the law or in drafting compared to California?

Najmah Brown ▶ I am definitely used to making legal assessments based on precedent; however, they do not follow that system in Kuwait. Lawyers do not rely on decisions from the court to predict how the judge will rule. Court decisions are used to help explain the laws but do not determine how a judge will rule in any specific case.

I have become a student of Kuwaiti law, focusing more on the laws that are relevant to my business; however, due to the laws being very simplified, some may lack necessary details for efficient implementation. In the United States, we modify the laws based

on court rulings, which helps the laws stay up to date, but since we have a different system in Kuwait, laws usually take longer to be updated.

To be honest, in Kuwait, in business transactions, your law is the contract that you draft, for the most part. I always emphasise to clients that we have to spend a lot of time in the drafting process of a transaction, because what's in that contract could protect you if drafted correctly, or hurt you if drafted incorrectly. If a dispute arises, you want to be able to rely on that contract to resolve the matter.

What practices do you see growing in the next 12 months?

Najmah Brown ▶ Since Kuwait is still implementing its Kuwait Vision 2035 plan, I believe infrastructure, technology, health and life sciences, and financial services will see growth over the next 12 months.

The Government of Kuwait has put an emphasis on cybersecurity. Construction and oil and gas will always be at the top, but anything to do with cybersecurity is a growing concern—so data privacy and protection, internet crimes, things like that.

With crypto-currency, there is continuing talk of drafting a law focused on regulating this area, but nothing has been drafted yet. The

banks are using blockchain technology for payment transactions. It's possible that draft legislation will finally be introduced this year.

I am seeing more interest in creating venture capital companies within the State of Kuwait, which requires special approval from the Capital Markets Authority, and I think this may be part of a bigger trend. With the continued focus on entrepreneurship (small and medium-sized businesses) and Kuwaitisation, the younger generations will take advantage of opening businesses that do not require large capital investment, such as technology companies. Lean startups bear the least amount of risk for entrepreneurs.

Foreign investment appears to be picking up in Kuwait. Are there continuing legal obstacles for foreign businesses interested in investing in Kuwait?

Najmah Brown ▶ With the inception of the Kuwait Direct Investment Promotion Authority (KDIPA), I would call Kuwait the gateway to the region. With KDIPA, foreign companies can open a business with 100% ownership, registered as a Kuwaiti company, and many foreign investors have already

taken the KDIPA route to take advantage of these 100% foreign ownership rules. Unofficially, a KDIPA employee has informed me that these companies can go to other countries and register as if they were a Kuwaiti company. This means that if I'm a foreigner, and I come to Kuwait, get my

licence with KDIPA, and register my company as a Kuwaiti company, my company can do business as a GCC national in Qatar, Saudi Arabia, the UAE or Bahrain. I haven't seen actual examples of this being done yet, but it's an interesting idea and KDIPA is saying that it can be done.

If you don't fall under one of the eligible categories listed on KDIPA's website, then you have to go the traditional route, which is to get a local partner as a sponsor. This could be viewed as an obstacle, but there are ways around this. If you want to invest in the market, you can. It's just less convenient. You can always enter into a "side agreement" with the sponsor, which a lot of foreign investors fail to do. This is a very important step if you're not going through KDIPA, as this side agreement gives the foreign shareholder more powers.

Also, there was a law enacted in 2018, which gives the public access to certain records of

companies or individuals licensed to do business in Kuwait. This allows the foreign investor to conduct further research into a potential local partner.

One big question investors have is how they will recover their money and how they can exercise their rights before the court. They have rights as foreigners to file lawsuits in the Kuwait courts against parties who owe them. In the contract, you want to make sure you specify whether in the event of a dispute you will go through arbitration or the courts. Kuwait enforces foreign arbitration awards and judgments.

In summary, there are no obstacles, just additional procedures, depending on which route you take.

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We have been witnessing some significant legislative reforms across the Gulf region, including recent legislation on VAT, bankruptcy, arbitration and foreign investment. What reforms remain the most pressing in Kuwait?

Najmah Brown ▶ This is a very subjective question because of course everyone feels that legal reform is pressing in their respective industry. Overall, I believe that Kuwait has all the basic laws on the books.

In my practice, I would like to see more work done in regards to implementation of laws. A law is only as good as its implementation. If I go to the Ministry and say "Can you handle this? Per the law?" and the government employee says it cannot, this is contradictory to the enacted law. There is a disconnect. The persons responsible for implementation and enforcement of laws must understand their

roles. If implementation and enforcement is efficient, then we will see consistency with certain procedures.

There is a new law imposing mandatory health insurance for all visitors to Kuwait. How is that going to be implemented? We don't know yet. We have to now wait. What if the Ministry doesn't issue any implementing regulations? Then it won't happen, and we have a law on the books that we cannot implement.

In Kuwait, there needs to be more focus on implementation of laws already on the books.

There is word of a draft bankruptcy law currently circulating within the assembly. Can you confirm this? What approach do you expect the draft law to take?

Najmah Brown ▶ Yes, I have also heard there is currently a draft law circulating within the assembly. I know a lot of time was spent and research conducted in the area of bankruptcy law, so I believe the final draft should be very thorough.

We're all waiting to see what it's going to look like, but I think one of the biggest areas that people are expecting the law to deal with is post-filing relief. We hope to have more insight by September.

The way it works now, when there's a default on payment, the bank can go in and try to get an interest in the debtor's business and

the business owner can give the assets as collateral. If there's a foreclosure, there's a process already in place for doing an auction. We expect the draft law to focus on which assets can be used as collateral and in what circumstances debtors will be able to obtain relief once a company sees that it's in the red and it can't survive. For example, is the company going to be able to get financing before the end of the bankruptcy process, and who has priority among creditors during the bankruptcy process? I'll be interested to see how much US bankruptcy law is used in this new law.

Could the bankruptcy draft law propose a process similar to the Chapter 11 of the US Bankruptcy Code, dealing with a plan of reorganisation to keep the business alive?

Najmah Brown ▶ I believe that's on the table. That will allow the debtors to propose a reorganisation plan. This will be helpful for companies that may only have enough money to cover operating expenses but cannot pay debts owed to creditors as they become due. The reorganisation plan will

allow them time to reduce operational expenses and renegotiate debts. The Government wants to see struggling businesses survive and ultimately thrive. It certainly helps the economy, so it would be something that they would favour.

وقد تحدثت LexisNexis مع نجمة براون، وهي محامية من مدينة كاليفورنيا بدأت عملها في مجال قانون نشاطات الترفيه وتدير حالياً القسم الدولي في مكتب محاماة العدواني في الكويت. تحدثنا عن خلفيتها، وكيف تمارس عملها مقارنةً بما كانت تقوم به في بلادها، والتغييرات التي تتوقعها في القانون الكويتي في المستقبل القريب.

BIOGRAPHY

NAJMAH BROWN is the Head of the International Department of Al Adwani Law Firm in Kuwait. Ms Brown's primary practice areas are international business transactions, agency and franchise, media and technology, and alternative dispute resolution.

At the age of 19, Ms Brown interned for Black Entertainment Television in Los Angeles, California, and ultimately began producing. She worked as a morning radio show producer for K-DAY (Los Angeles), as well as projects for Si-TV, FOX, and other networks and entertainment companies. Ms Brown then went on to run a full-house production company, The Company Pictures, where she oversaw business development and managed all productions.

Ms Brown later obtained her JD from Thomas Jefferson School of Law in San Diego, California. She has provided business and legal consultancy for media companies, having the pleasure of working with CBS, The Oprah Winfrey Network, Al Jazeera America, Zodiak Americas, and DanceOn Inc.

Ms Brown completed her Bachelor's Degree in Public Administration and a Master's Degree in Negotiation, Conflict Resolution and Peacebuilding at California State University. She is currently licensed to practice law by the State Bar of California.



Lawyer – Kuwait – Bankruptcy & Insolvency – Foreign Investment

Avocat – Koweït – Faillite et insolvabilité – Investissement étranger