

COVID-19 Pandemic Effects on SMES in Kuwait

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Abstract:

Coronavirus disease (COVID-19) affected negatively on people lives. The governments from all over the world have announced precautionary measures to combat the spread of the virus. The measures included the lockdown of most businesses. The precautionary policies affected severely on the economies of countries. As a result, businesses, particularly, small and medium-sized enterprises (SMEs) have been on the edge of bankruptcy. The article discusses the effects of COVID-19 on SMEs in Kuwait. The article examines whether COVID-19 pandemic is a *force majeure* or emergency circumstance under the legal system of Kuwait. The discussion scrutinizes the economic stimulus packages addressed by the government of Kuwait and provides critical analysis. The article concludes that the government did not take real initiatives to support SMEs during this crisis. The policies adopted either postpone SMEs obligations or increase their liabilities through having concessional loans. Ultimately, the article proposes clear laws and economic measures that are designed to achieve a balance between safeguarding fiscal capacity and minimizing economic distortions that might result from proposed policies.

I. Introduction

The economy of the State of Kuwait is heavily dependent on crude oil as its primary source of income. The State's general budget for the fiscal year 2019/2020 specifies that oil revenues account for 87.68% of the

budget⁽¹⁾. This figure constitutes a large percentage even in comparison to neighboring oil-rich countries. For example, in Saudi Arabia, oil revenues accounted for 66%⁽²⁾, while non-oil revenues accounted for 34% of the Kingdom's public revenue in 2019⁽³⁾. In neighboring Oman during the same period, oil revenues accounted for 54%, while non-oil revenues accounted for 46% of the state budget⁽⁴⁾. The United Arab Emirates is a further example. According to the Minister of Economy Sultan Al Mansoori, the country "is on track to deliver the UAE Vision 2021, which aims to develop the country's non-oil sectors and reduce dependency on oil revenues"⁽⁵⁾. Al Mansoori added that "[t]he country's non-oil sector economy, climbed an annual 2.9 per cent last year to 1.13bn at current prices and 1.3 per cent at constant prices compared with 2017"⁽⁶⁾. According to the Federal Competitiveness and Statistics Authority, "the oil and gas sector contributed 25.9 per cent to GDP, while the retail and whole trade sector accounted for 11.2 per cent, the financial sector represented 9.2 per cent, manufacturing came in at 8.9 per cent and building and construction sectors [were] at 8.3 per cent"⁽⁷⁾.

Crude oil prices are unstable, affected by changes in supply and demand⁽⁸⁾. It is difficult to control these variables, as they are surrounded by many uncertainties, ranging from geopolitical machinations to the

- (1) The Ministry of Finance, The State Budget for the Fiscal Year 2019/2020, at 17, available at <https://www.mof.gov.kw/MofBudget/PDF/Budget20-19.pdf> (Kuwait) (last visited Sept. 2, 2020).
- (2) Ekramy Abdullah, Record Level of non-Oil Revenues in 2019 .. 148% Jump in 5 Years, ALEQT (Dec. 10, 2019), https://www.aleqt.com/2019/12/10/article_1727151.html (last visited Sept. 3, 2020).
- (3) *Id.*
- (4) PwC, 2019 Oman State Budget: "A Prudent Budgetary Approach", <https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2019/2019-oman-state-budget.html> (last visited Apr. 14, 2020).
- (5) Sarmad Khan, UAE Economy Grew 1.7% in 2018 on Non-oil Sector Growth and Higher Oil Prices, THE NAT'L, (Mar.31, 2019), <https://www.thenational.ae/business/economy/uae-economy-grew-1-7-in-2018-on-non-oil-sector-growth-and-higher-oil-prices-1.843335> (last visited Sept. 3, 2020).
- (6) *Id.* Note that the statistics are acquired from preliminary macro-economy indexes issued by the Federal Competitiveness and Statistics Authority (FCSA) for 2019.
- (7) *Id.*
- (8) Prableen Bajpai, *Top Factors That Affect the Price of Oil*, INVESTOPEDIA (Mar. 16, 2020), <https://www.investopedia.com/articles/investing/072515/top-factors-reports-affect-price-oil.asp> (last visited Sept. 4, 2020).

rate of global GDP growth. For example, in 2014, oil prices experienced a rapid decline, falling from \$115 a barrel in June to \$70 a barrel in December⁽⁹⁾. As a result, the world, including Kuwait, faced economic and financial challenges⁽¹⁰⁾. To confront such challenges, the government of Kuwait announced harsh measures that were previously unthinkable, such as the change in domestic energy pricing. In 2016, the government of Kuwait announced an increase in petrol prices of more than 80%⁽¹¹⁾. This action made it clear to the world, and especially to the states of the Gulf Cooperation Council (GCC), that economic diversification is necessary. The GCC governments consequently initiated strategic economic plans to diversify their income sources away from energy. Among them, the government of Kuwait established “The New Kuwait 2035 Vision.”⁽¹²⁾ The main objective of the plan is to diversify the economy of Kuwait and reduce its reliance on a single commodity (i.e., oil) as its main source of revenues⁽¹³⁾. The goals outlined in the 2035 vision also include transforming “Kuwait into a financial and trade hub, attractive to investors” and energizing the country’s private sector⁽¹⁴⁾.

The contribution of non-oil revenues to the economies of several GCC States demonstrates that these countries are successfully adopting policies to diversify their economies. Unfortunately, Kuwait is falling behind. In February and March of 2020, there was a sharp decline in

(9) Robert J. Samuelson, *Key facts about the great oil crash of 2014*, WASH. POST (Dec. 3, 2014), https://www.washingtonpost.com/opinions/robert-samuelson-key-facts-about-the-great-oil-crash-of-2014/2014/12/03/a1e2fd94-7b0f-11e4-b821-503cc7efed9e_story.html (last visited Sept. 4, 2020).

(10) The reasons behind the decline of oil prices and its effects on Kuwait are mentioned in my Thesis. See, Maha Albesharah, *How to Create an Attractive Legal System for Foreign Direct Investments? The Kuwait Case* (Dec. 2019) (unpublished Ph.D. dissertation, University of Virginia) (on file with author).

(11) See *KUWAIT RAISES PETROL PRICES BY OVER 80% - 'RATIONALIZATION'*, ARABTIMES (Aug. 2, 2016), <http://www.arabtimesonline.com/news/kuwait-raises-petrol-prices-80-rationalization/> (last visited Sept. 4, 2020). See also GLADA LAHN, *FUEL, FOOD, AND UTILITIES PRICE REFORMS IN THE GCC: A WAKE UP CALL FOR BUSINESS* 3-4 (The Royal Institute of International Affairs, 2016).

(12) See New Kuwait, <http://www.newkuwait.gov.kw/home.aspx> (last visited Apr. 19, 2020). See also New Kuwait, *Kuwait Mobilizes Development Efforts to Transform Kuwait into a Financial, Cultural, and Institutional Leader in the Region by 2035*, http://www.newkuwait.gov.kw/image/NewKuwait_CampaignLaunchEvent.pdf (last visited Apr. 19, 2020).

(13) *Id.*

(14) *Id.*

crude oil prices⁽¹⁵⁾. A number of causes contributed to this decline. For example, the failure of the Organization of the Petroleum Exporting Countries (OPEC) to reach an agreement to reduce oil production exacerbated the existing glut of crude oil in the global economy⁽¹⁶⁾. The principal cause was on the supply side: the deadly spread of COVID-19, and the resulting reduction of economic activity. According to oil expert Ahmad Hassan Karam, “the US self-sufficiency of shale oil is one of the reasons for the oil prices decline, along with the virus spread.”⁽¹⁷⁾ Dr. Ahmad Al-Kouh, a professor of petroleum engineering at Kuwait University, explained that the oil prices have recently hit the worst levels since the Great Recession of 2008, amid to a significant decline in the demand side, largely due to the stoppage of many key production facilities in China, the center of the coronavirus outbreak⁽¹⁸⁾. Dr. Abdulsamee Behbehani similarly emphasized that the main factor behind the sharp drop in oil prices is the effect of COVID-19 in China⁽¹⁹⁾. China has witnessed reduced demand for oil, which has negatively affected the petroleum industry, as China is the world’s largest crude oil consumer. China was responsible for about three-quarters of the global oil demand growth in 2019 (before the COVID-19 outbreak)⁽²⁰⁾.

Dr. Fatih Birol, Executive Director of the International Energy Agency argued, “The coronavirus crisis is affecting a wide range of energy markets - including coal, gas and renewables - but its impact on oil markets is particularly severe because it is stopping people and goods from moving around, dealing a heavy blow to demand for transport fuels.”⁽²¹⁾

(15) WTI Crude Oil declined from \$65.06 per barrel in 2018 to \$29.34 per barrel in 2020. Brent Crude Oil reached from \$71.19 per barrel in 2018 to \$33.04 per barrel in 2020. For more information, see U.S. Energy Information Administration, Short-Term Energy Outlook, <https://www.eia.gov/outlooks/steo/report/prices.php> (last visited Apr. 17, 2020).

(16) Bajpai, *supra* note 8.

(17) Khaled Al-Mutairi, Oil Prices to Lowest Level Since Year amid Coronavirus Mushrooming, KUNA, (Mar. 1, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2871480&language=en> (last visited Sept. 4, 2020).

(18) *Id.*

(19) *Id.*

(20) Because of Coronavirus (Covid-19) .. The First Decline in Global Demand for Oil Since the Financial Crisis, ALJAZEERA (Feb. 13, 2020), <https://www.aljazeera.net/news/ebusiness/2020/2/13/بسبب كورونا أول تراجع للطلب لعالمي على النفط منذ الأزمة المالية> (last visited Sept. 4, 2020).

(21) IEA, Global Oil Demand to Decline in 2020 as Coronavirus Weighs Heavily on Markets, <https://www.iea.org/news/global-oil-demand-to-decline-in-2020-as-coronavirus-weighs-heavily-on-markets> (last visited Apr. 14, 2020).

The International Energy Agency predicted two contrasting scenarios. The first is pessimistic, while the second is optimistic. “In a more pessimistic low case,” the agency wrote, “global measures fail to contain the virus, and global demand falls by 730,000 barrels a day in 2020. In a more optimistic high case, the virus is contained quickly around the world, and global demand grows by 480,000 barrels a day.”⁽²²⁾ Following these statements, Dr. Birol pointed out a critical fact:

[T]he impact of the coronavirus on oil markets may be temporary. But the longer-term challenges facing the world’s suppliers are not going to go away, especially those heavily dependent on oil and gas revenues. As the IEA has repeatedly said, these producer countries need more dynamic and diversified economies in order to navigate the multiple uncertainties that we see today⁽²³⁾.

Today, the economies of the world-particularly economies that rely primarily upon a single source of income-are in danger of collapsing. The spread of COVID-19 has sparked severe economic effects, specifically on the price of oil. The fundamental question is, how is the spread of COVID-19 affecting Kuwait’s economy? On April 9, 2020, the price of oil fell to 16.5 USD per barrel, while the cost of its production was 12.5 USD per barrel. The gross profit from selling a barrel of crude oil was therefore \$4, which is equivalent to 1 KWD⁽²⁴⁾.

Moreover, the impact of COVID-19 in Kuwait has extended far beyond crude oil prices. According to *ALQABAS*, a local newspaper, the initial statistics indicate that 40,000 micro-, small-, and medium-sized enterprises may be affected by the economic closure imposed by the measures to contain the spread of the virus in the country⁽²⁵⁾. The sources confirmed that many companies will enter bankruptcy if they are not covered by the stimulus package⁽²⁶⁾. A stimulus package is “a package of economic measures put together by a government to stimulate a

(22) *Id.*

(23) *Id.*

(24) Kuwait sold a barrel with a return of one Kuwaiti Dinar!, *ALQABAS*, Apr. 9, 2020, at 5.

(25) Khalid Al-Hattab, 40 Thousand Companies Are Subject to Default or Bankruptcy, *ALQABAS*, Apr. 6, 2020, at 8.

(26) *Id.*

floundering economy.”⁽²⁷⁾ According to Adam Hayes, a stimulus package aims to boost the economy against recession⁽²⁸⁾.

This first seeks to quantify the contribution of SMEs to Kuwait’s economy. Unfortunately, this question is difficult to answer. Few sources have reported in detail on the contribution of SMEs to Kuwait’s GDP. In 2016, The World Bank issued a report demonstrating that the number of SMEs is high in Kuwait;⁽²⁹⁾ however, according to the same report, their contribution to the economy is only 3% of the country’s GDP⁽³⁰⁾. In addition, the report highlights that SMEs in Kuwait employ roughly 23% of the total labor force⁽³¹⁾. (Note that this result does not indicate the percentage of Kuwaiti nationals employed by the SMEs). A separate study, entitled “*Taking Stock of SME Banking in Kuwait*,” evaluates the contribution of SMEs to Kuwait’s GDP. The study estimates that SMEs contribute less than 10% of the country’s GDP⁽³²⁾.

(27) Adam Hayes, Stimulus Package, INVESTOPEDIA (Mar. 26, 2020).

(28) *Id.*

(29) According to the data issued by the Central Statistical Bureau, SMEs constitute 90% of the businesses registered in Kuwait. In 2017, the Arab Monetary Fund issued its report on the business environment for SMEs in Arab countries, highlighting the number of these facilities in Kuwait. The report revealed that there are 33,000 SMEs in Kuwait, indicating that the country ranks tenth in the Arab World in the number of SMEs. See Kuwait Realizes Early the Importance of Small and Medium-sized Enterprises, SANEOUALHADATH (June 6, 2016), https://saneoualhadath.me/أعمال المشاريع الصغيرة والمتوسطة الكويت - خص /?_cf_chl_jschl_tk__=f1782d1283a6cb2da48ca996f82b97208a563b41-1587207531-0-AT-mPvNSb91Mx_gifDsWrQPd4z3OfOpa315YCPQY1Efa0SyG_Ie871d4xh8eanyF131eUH-LOab4E3yKX5VYLu461wv57sxjByXreMfhWML2mdSl8OxUJHku654DSeA3K5T286IHSh-7d7EVWeRCDslg6BTw13uHL5Z6Pd9ZmSr4bEbMlBmxAT7NfGxuAGNIHrkxfZZu-Zu4nDjLtyTzp95oSZ0cpX_9bYnfmclUarmuMG0txQ1vuhhtJUlcZ9lnZlzMhroc_y6v-PiMk2R8QGpvrYC6JRtDriO5C-NcnQAVMaDXJ4sdNL16K0yqkZvHMXOkT6_ARng-sIYrtcK8Fw-ag6X5pqfz0F1psr4KNsg0e_npr057wcZpMR8FQJG3ljnjtQFROcKVFcjn6Vmn-CAA2nvTgvh5rw1ympPCBQsG1oW4-CcTk17rTnu8mfTzb3_MYR2AD8lJb1PI-sA-z96UVw8CtmiESy_OwMqoUdqk49zyOGk2tgw9JTj_eVoEXHsHdprjfwjnjQB-FOVhqzJJSvgM9yyCGZN35UclP5ULExa9W-jXUKCiVvcjldJl8ksOakw#/slide-1 (last visited Sept. 4, 2020).

(30) The World Bank, Building Kuwait’s Future, One Small Enterprise at a Time (Mar. 1, 2016), available at <https://www.worldbank.org/en/news/feature/2016/03/01/building-kuwait-future-one-small-enterprise-at-a-time> (last visited Sept. 4, 2020). See also Oxford Business Group, Range of Measures to Support Growth of Kuwait’s SMEs, <https://oxfordbusinessgroup.com/analysis/taking-initiative-range-measures-support-growth-smes> (last visited Apr. 18, 2020).

(31) *Id.*

(32) Institute of Banking Studies Research, Taking Stock of SME Banking in Kuwait, at 3 (2016).

The relative weakness of SMEs in Kuwait is problematic, especially because Kuwait is classified as a high-income country. The magnitude of SMEs' contribution to the economy is significantly lower in Kuwait than in both of its peer groups: high-income countries and emerging economies. In emerging economies, according to the World Bank, SMEs generally contribute between 40% and 50% of GDP⁽³³⁾. An empirical study classifies countries by income and examines the economic effects of SMEs in each classification. The classifications were as follows: 1) low-income countries; 2) middle-income countries; and 3) high-income countries. In low-income countries, the study found that SMEs "account for over 60% of GDP and over 70% of total employment."⁽³⁴⁾ In middle-income countries, SMEs "contribute over 95% of total employment and about 70% of GDP."⁽³⁵⁾ Lastly, in high-income countries, SMEs "contribute to over 55% of GDP and over 65% of total employment."⁽³⁶⁾

It is particularly important to examine the contribution of SMEs to the economies of the states of the Gulf Cooperation Council, especially as those countries share similar economic, cultural, and social characteristics to Kuwait. In Saudi Arabia, SMEs contribute 33% of GDP⁽³⁷⁾. According to the Jeddah Chamber of Commerce and Industry's *Small-Medium Enterprises in Saudi Arabia Report* for April 2016, SMEs contribute to 25% of Saudi Arabia's labor force⁽³⁸⁾. The report emphasizes that "Saudi nationals account for not more than 10% of the total employed labor by SMEs."⁽³⁹⁾ Meanwhile, in the UAE, the Ministry of Economy reports that SMEs account for more than 94% of the total businesses in the country⁽⁴⁰⁾

(33) The World Bank, *supra* note 30.

(34) Hidayat Keskin et.al, The Importance of SMEs in Developing Economies, 2nd INT'L SYMP. on Sustainable DEV. 183, 183 (2010) (discussing the importance of SMEs for developing countries).

(35) *Id.* at 183.

(36) *Id.*

(37) Jeddah Chamber of Commerce and Industry, *Small-Medium Enterprises in Saudi Arabia Report* for April 2016, at 3 (2016).

(38) *Id.*

(39) *Id.*

(40) The United Arab Emirates Government Portal, The Impact of SMEs on the UAE 's Economy (Dec. 16, 2019), <https://u.ae/en/information-and-services/business/crowdfunding/the-impact-of-smes-on-the-uae-economy> (last visited Sept. 4, 2020).

and employ more than 86% of the private sector's labor force⁽⁴¹⁾. In Dubai, SMEs represent nearly 95% of all businesses in the city, provide jobs for 42% of the labor force, and contribute about 40% of the city's GDP⁽⁴²⁾. In Bahrain, SMEs contribute 30% of GDP⁽⁴³⁾.

There are many legal and practical issues that influence the business environment in Kuwait and suppress SMEs from growing. The present article examines the economic and legal effects of COVID-19 on SMEs in Kuwait. There are two categories of problems facing SMEs during the COVID-19 crisis. The first category includes problems that was existed prior to the crisis, and worsened post crisis. The second category includes problems that arose post crisis. All these problems caused tremendous economic pressure on most SMEs. There are two factors contribute to these problems, and they are: 1) legal uncertainty. 2) the lack of transparency.

Lon Fuller in the *Mortality of Law* concludes that the legal system should have legal certainty⁽⁴⁴⁾. According to Fuller, the guidelines are that laws and/or legal systems: 1) be of general application; 2) be publicized or at least made available to affected parties beforehand; 3) be prospective in application; 4) be understandable; 5) be coherent (i.e., not contradictory); 6) not require conduct beyond the powers of the affected party; 7) not be subject to frequent changes; and 8) reflect congruence between rules as announced and their actual administration⁽⁴⁵⁾.

The Law No. 98 for 2013 concerning the National Fund for Support and Development of Small and Medium-Sized Enterprises suffers from legal uncertainty. The Law for 2013 lacks a number of guidelines that are described by Fuller. The criteria that it lacks are: 1) the inability to understand the language of the provisions of the law itself. 2) there are

(41) *Id.*

(42) *Id.*

(43) Sumaya Almajdoub, Issue Brief: The Structural Constraints of Entrepreneurship in Bahrain, at 1, Baker Institute for Public Policy (2018).

(44) LON FULLER, THE MORTALITY OF LAW 39 (rev. ed. 1969).

(45) *Id.*

provisions of the law, though clear, are not (according to sources) implemented in practice by the Fund⁽⁴⁶⁾.

With respect to transparency, studies emphasized the role of transparency in economic growth. The Americas Business Dialogue in its report *Action for Growth: Policy Recommendations and 2018-2021 Action Plan for Growth in the Americas* states: “Empirical evidence has shown that a lack of transparency and integrity can affect’s country’s productivity and economic growth”⁽⁴⁷⁾. Another study shows that transparency fosters economic growth⁽⁴⁸⁾.

Transparency is defined as: “the clarity and effectiveness of activities with impact on public policy”⁽⁴⁹⁾. Francis Atsu and Samuel Adams in their paper *Transparency, Regulations and Economic Performance in Africa* define transparency as: “the unfettered access to timely and reliable information on decisions and performance of government or organizations”⁽⁵⁰⁾.

Carl Gershman, President of the National Endowment for Democracy argued that: “there can be no accountability without transparency, the lack of which will result in abuse by government, leading to bad loans, bankruptcies, unemployment, stagnant growth and consequently social turmoil”⁽⁵¹⁾. Scholars highlight that transparency enhances the performance of government, accountability, and legitimacy⁽⁵²⁾.

The lack of transparency → reduces accountability → inefficient government performance. The lack of transparency generates errors.

(46) Ali Al-Khaldi, Small projects stumbled .. and loans are not repaid, Alqabas (Apr. 16, 2019), <https://alqabas.com/article/657390-مشاريع صغيرة تتعثر والقروض لا تُسدد> (last visited Sep. 2, 2020). For example, according to the source, the National Fund for Support and Development of Small and Medium-Sized Enterprises did not provide lands for industrial entrepreneurs to set up their projects, according to Article 10 of the Law for 2013.

(47) INTER-AMERICAN DEVELOPMENT BANK, ACTION FOR GROWTH: POLICY RECOMMENDATIONS AND 2018-2021 ACTION PLAN FOR GROWTH IN AMERICAS 6 (2018).

(48) Atsu, F & Adams (2005), S 'Transparency Regulation and Economic Performance in Africa' Utrecht University, Utrecht, p. 2.

(49) *Id.* at 1.

(50) *Id.*

(51) *Id.* at 6.

(52) *Id.* at 8. See also Lars Oxelheim, Globalization, Transparency and Economic Growth: The vulnerability of Chinese firms to macroeconomic shocks, 21 J. Asian ECON. 66 (2008).

According to the State Audit Bureau of Kuwait and other official sources, the National Fund for Support and Development for Small and Medium-Sized Enterprises (Fund) committed several violations and errors concerning loans given to most SMEs. The article concludes that the actions of the Fund is lacking both transparency and good management. The situation creates negative legal and economic effects. It considers a significant problem, especially that today one of the economic measures declared by the Council of Minister to support SMEs is: the responsibility of the Fund to finance 80% of the concessional loans given to affected SMEs due to COVID-19. This considers a problem because over the years (according to sources) most of the debts funded by the Fund have become bad debts. High percentage of funded SMEs failed to continue exercising their business activities. As a result, they were not able to repay their installments to the Fund. The Law for 2013 does not clarify the procedures of which the Fund can recover these debts. Given this responsibility to the Fund further wastes the State funds. Also, the Fund's expenses are higher than its returns. Another economic decision made by the Fund is postponing the payment of installments for six months. The article demonstrates how this decision generates economic inefficiency.

I.I: The Problem Examined by the Research

Today, Covid-19 has negatively affected the economies of countries around the world. To avoid the spread of the virus and protect the health of community members, governments, including, the Government of Kuwait have taken harsh precautionary measures. Among these measures was the total lock-down of businesses. Businesses, particularly SMEs, were significantly harmed due to such decisions.

As a consequence, on April, the Government of Kuwait has revealed the stimulus package to deal with the economic effects of Covid-19 on businesses. The main problem highlighted by the research is that the Government of Kuwait did not take real initiatives to support SMEs during this crisis. The policies adopted either postpone SMEs obligations or increase their liabilities through having concessional loans. Most importantly, the economic measures adopted by the government lack certainty and clarity.

I.II: The Research Objective

The research aims to achieve economic efficiency during this critical time through proposing short and long-term solutions that protect the interests of SMEs owners without placing a burden on the state's budget.

I.III: The Contribution of the Article to the Academic Literature

I strongly believe that this work is valuable, and it will contribute to the academic literature in a positive way. The subject of the research is significantly important, as it is the topic of the hour. The study revolves around the impact of Covid-19 pandemic on SMEs. The research develops efficient proposals economically, which provide a benefit of a special kind. The benefit is providing the necessary support of SMEs owners in light of the Covid-19 pandemic without burdening the state treasury with any financial burdens.

I.IV: Research Method

I have summarized the theoretical basis in regard to the role of SMEs in economic growth. Due to the economic importance that SMEs give, states must support these enterprises and protect them from collapsing during this crisis. I have supported my arguments by sound and logical analysis justifying the interference of the governments of countries, including Kuwait, in supporting these projects.

Regarding the economic measures announced by the Government of Kuwait, I provided evidences that these measures will increase the state's budget, which contributes in achieving economic inefficiency.

I.V: Organization of the Research

The article is divided into four sections. Section I is the introduction. Section II provides logical justifications for supporting SMEs during this critical time. Subsection II.I offers a theoretical background through a brief discussion of the correlation between SMEs and economic development. Subsubsection II.II.I illustrates the difference between SMEs and large firms. The primary goal of Section II is shedding light on SMEs as the main drivers of economic diversification. It focuses on manifesting the economic importance of SMEs because there is a tendency among some to not provide support for SMEs during the COVID-19 crisis. Subsequently, Subsection II.II begins by highlighting

two opposing opinions concerning whether the government should intervene to rescue SMEs during this crisis. Subsubsection II.II.I examines whether COVID-19 is a *force majeure* or an emergency circumstance under the legal system of Kuwait.

Section III then provides a brief discussion of the National Fund for Support and Development of Small and Medium-Sized Enterprises in Kuwait and the issues that have arisen around the Fund's performance through the years.

Lastly, Section IV is divided into two subsections. Subsection IV.I. scrutinizes the economic decisions and the regulations governing concessional loans to face the current crisis. Basically, the subsection is analyzing the stimulus package announced by the Government of Kuwait. Subsection IV.II proposes clear laws and economic measures designed to achieve a balance between safeguarding Kuwait's fiscal capacity and minimizing economic distortions that might result from the proposed policies⁽⁵³⁾. This subsection fundamentally proposes short- and long-term solutions to guarantee achieving this balance. Hence, the Article is divided as following:

- Section I: Introduction
- Section II: Logical Justifications for Supporting SMEs. This section is divided as following:
 - II.I: The Theory: The Relationship between SMEs and Economic Growth
 - II.I.I: The Differences between SMEs and Large Firms.
 - II.II: Precautionary Measures to Combat the Spread of Virus in Kuwait.
 - II.II.I: COVID-19: *Force of Majeure* or an Emergency Circumstance?
 - A. The Conditions of Each Theory.
 - B. The Legal Effects of Each Theory on the Parties' Contractual Obligations.

(53) Most of the problems facing SMEs today are problems experienced by them prior to COVID-19 crisis. The existence of the crisis contributed to worsening the effect of these problems. Long-term solutions will help to minimize the severe effects of any potential economic crisis in the future.

- Section III: The National Fund for Support and Development of Small and Medium-Sized Enterprises in Kuwait.
- Section IV: Stimulus Package, Long and Short-term Proposals. This section is divided as following:
 - IV.I: Analyzing the Stimulus Package Announced by the Government of Kuwait.
 - IV.II: Short-and-Long-term Policy Proposals that Safeguard Fiscal Capacity and Minimize Economic Distortions. This subsection is divided into two subsubsections, and they are:
 - IV.II.I: Short-term Solutions.
 - IV.II.II: Long-term Solutions.
 - Suggestions and Recommendations.

II. Logical Justifications for Supporting SMEs

The primary goal of Section II is shedding light on SMEs as the main drivers of economic diversification. It focuses on manifesting the economic importance of SMEs because there is a tendency among some to not provide support for SMEs during the COVID-19 crisis.

II.I: The Theory: The Relationship between SMEs and Economic Growth

Many theoretical and empirical studies have addressed the strong correlation between SMEs and economic progress. Economic studies confirm that robust SMEs promote sustainable development⁽⁵⁴⁾. Scholars generally conclude that SMEs are vital for economic progress, because they contribute to the exploitation of local resources and reduce unemployment⁽⁵⁵⁾. In addition, a healthy SME sector is correlated with higher levels of innovation⁽⁵⁶⁾.

The Arab Planning Institute in Kuwait advocates that SMEs have a role in achieving the principles of human development by expanding alternatives through a variety of work, goods, and services⁽⁵⁷⁾. The

(54) SANEQUALHADATH, *supra* note 29.

(55) *Id.*

(56) Cibela Neagu, The Importance and Role of Small and Medium-sized Businesses, 23 THEORETICAL & APPLIED ECON. 332, 334 (2016) (discussing the importance of SMEs in economic development).

(57) *Id.*

remainder of this section briefly introduces the literature on the role of SMEs in economic growth.

The World Bank asserts the role of SMEs is significant in economic progress. According to a World Bank report, SMEs account for about 90% of enterprises and provide jobs opportunities for more than 50% worldwide⁽⁵⁸⁾. In emerging economies, SMEs provide 7 out of 10 jobs⁽⁵⁹⁾. Moreover, SMEs contribute up to 40% of GDP⁽⁶⁰⁾.

Cibela Neagu, in *The Importance and Role of Small and Medium-Sized Enterprises*, reports that SMEs account for over 99% of the total businesses in most economies⁽⁶¹⁾. She describes the experience of SMEs in her country, Romania⁽⁶²⁾. In Romania, SMEs account for 99.6% of all businesses and 68% of SMEs engage in commercial activity⁽⁶³⁾. Neagu further argues that SMEs create job opportunities at relatively low costs⁽⁶⁴⁾. In Romania, SMEs provide 65.8% of all employment⁽⁶⁵⁾.

Kemi Oduntan, in his paper *The Role of Small and Medium Enterprises in Economic Development: The Nigerian Experience*, similarly emphasizes the strong correlation between SMEs and economic development⁽⁶⁶⁾. Oduntan contends that SMEs promote economic growth through the utilization of locally sourced materials⁽⁶⁷⁾. The leveraging of local resources increases the value-added operations, which in turn boosts the economy⁽⁶⁸⁾. Meanwhile, Peter Drucker, in *Innovation and Entrepreneurship*, said that: “small enterprises represent the main

(58) The World Bank, Small and Medium Enterprises (SMES) Finance: Improving SMEs' Access to Finance and Finding Innovative Solutions to Unlock Sources of Capital, available at <https://www.worldbank.org/en/topic/sme/finance> (last visited Apr. 14, 2020).

(59) *Id.*

(60) *Id.*

(61) Neagu, *supra* note 56, at 333.

(62) *Id.*

(63) *Id.*

(64) *Id.*

(65) European Commission, 2018 SBA Fact Sheet - Romania (Nov. 19, 2018), <https://ec.europa.eu/docsroom/documents/32581/attachments/24/translations/en/renditions/pdf> (last visited Sept. 4, 2020).

(66) K. Oduntan, *The Role of Small and Medium Enterprises in Economic Development: The Nigerian Experience*, Int'l Conf. of Art. Dubai, UAE, 22-23 March (2014).

(67) *Id.*

(68) *Id.*

catalyst of economic development”⁽⁶⁹⁾. Drucker stresses that there is a strong correlation between small enterprises and economic growth⁽⁷⁰⁾.

The literature affirms the positive economic effects of SMEs in all economies. However, research also indicates that SMEs are an essential factor particularly for less developed economies⁽⁷¹⁾. For example, Albert Berry posits that SMEs are key players in developing countries⁽⁷²⁾. There are two rationales behind this theory. First, SMEs are associated with a reduction in poverty⁽⁷³⁾. Second, SMEs encourage innovation on the one hand and economic sustainability on the other⁽⁷⁴⁾. Andrew Warner, in his paper *Small and Medium Sized Enterprises and Economic Creativity*, explains that these two effects are connected, because if the first is achieved, the second effect will automatically occur⁽⁷⁵⁾. Thus, if SMEs develop the economy, then the level of poverty will fall⁽⁷⁶⁾.

Given the constructive economic effects of SMEs, many studies advocate for supporting these enterprises. John Adeoti, in his article *Small Enterprise Promotion and Sustainable Development: An Attempt at Integration*, calls for “integrating SMEs promotional measures into the framework of environmentally sustainable development”⁽⁷⁷⁾. Many studies also promote the establishment of policies that aim to lessen restrictions facing SMEs⁽⁷⁸⁾. Martin Carree and Roy Thurik, in their study entitled “*Small Firms and Economic Growth in Europe*,” argue that certain negative factors weaken the business environment and severely

(69) Neagu, *supra* note 56, at 332.

(70) *Id.*

(71) A. Berry, ‘The Importance of SMEs in the Economy’, ITD Global Conf. on Tax’n of Small and Medium Enterprises, Bueno Aires, Argentina, 17-19 (October 2017). *See also* Keskin, *supra* note 34, at 188.

(72) Keskin, *supra* note 34, at 188.

(73) *Id.*

(74) *Id.*

(75) A. Warner, *Small and Medium Sized Enterprises and Economic Creativity*, N.Y.C. & Geneva, UNCTAD, at 61 (2001).

(76) *Id.*

(77) Ahmed Abdel Rahman et., *Kuwait SMEs: Size, Obstacles and Suggested Remedies*, 3 INT’L J. MANAGERIAL STUD. & RES. 7, 7 (2015) (examines the current status of small and medium enterprises (SMEs) in the economy of Kuwait).

(78) *Id.* at 7.

impact investors' incentives⁽⁷⁹⁾. These negative elements are 1) the rise of uncertainty; 2) global competition; and 3) market fragmentation⁽⁸⁰⁾. Therefore, the authors propose adopting SMEs instead of large corporations to minimize negative effects on the business environment⁽⁸¹⁾.

As a summary, scholars favor SMEs over large corporations due to its positive economic effects. The following subsection provides the main difference between SMEs and large firms.

II.I.I: The Difference between SMEs and Large Firms

Many scholars have shed light on the differences between SMEs and large corporations. The following table outlines some of the differences between SMEs and large firms.

Table 1: Differences between SMEs and Large Firms⁽⁸²⁾.

Differences	SMEs	Large Firms
Seizure of business opportunities and acceptance of risks.	Higher.	
Exposure to bureaucracy.		Higher.
Provision of new job opportunities.	Higher.	
Stimulation of competition.	Higher.	
Innovation.	Higher.	
Efficiency levels.	Higher.	
Flexibility.	Higher.	
Access to finance.		Higher.

Having a strong SME sector is important because SMEs provide opportunities for entrepreneurship and promote innovation. As detailed in Table 1, SMEs are more likely to seize new business opportunities and accept risks than large firms,⁽⁸³⁾ in part because SMEs are less exposed to bureaucratic procedures than their larger counterparts⁽⁸⁴⁾. SMEs also

(79) *Id.* See also Martin Carree & Roy Thurik, Small Firms and Economic Growth in Europe, 26 ATL. ECON. J. 137, 138 (1998).

(80) *Id.*

(81) *Id.*

(82) Keskin, *supra* note 34, at 186.

(83) *Id.*

(84) *Id.*

help stimulate economic growth, providing more job opportunities than large enterprises⁽⁸⁵⁾. In addition, SMEs' contributions to innovation are superior to those of large firms,⁽⁸⁶⁾ as SMEs must engage in creating many new products and services, while large firms tend to focus their energies on improving existing products and services⁽⁸⁷⁾. Furthermore, SMEs are more likely than large companies to promote a competitive economy⁽⁸⁸⁾ and are more efficient than large firms. SMEs have a considerable capacity for developing production processes to meet economic and environmental needs more cheaply and quickly than large corporations⁽⁸⁹⁾. Most importantly, SMEs are better able to keep pace with rapidly changing market conditions than the large firms⁽⁹⁰⁾. Given their elasticity, SMEs enjoy the benefit of being less influenced by economic crises than large enterprises⁽⁹¹⁾. The primary reason for this greater flexibility is that SMEs direct their energies toward creating new products and services, which helps them "to adapt their production faster to the changing market requirements"⁽⁹²⁾. However, SMEs often face more difficulties accessing financing than large firms do⁽⁹³⁾.

In conclusion, the academic literature affirms that SMEs are vital for economic growth. Many studies have demonstrated that SMEs are mechanisms for economic diversification. SMEs reduce unemployment and promote innovation. In addition, they increase efficiency because they are leaner and more adaptive to changing economic conditions.

The following discussion evaluates whether COVID-19 pandemic is a *force of majeure* or emergency circumstance. However, first, the argument highlights briefly the precautionary measures adopted by the Government of Kuwait to combat the spread of the virus. Then, the discussion argues the negative economic effects of such measures on businesses, particularly,

(85) Neagu, *supra* note 56, at 334.

(86) *Id.*

(87) *Id.*

(88) *Id.*

(89) SANEUALHADATH, *supra* note 29.

(90) Keskin, *supra* note 34, at 186.

(91) *Id.*

(92) Neagu, *supra* note 56, at 334.

(93) The World Bank, *supra* note 58.

SMEs. Subsequently, the discussion will demonstrate two opposing opinions in regard to rescuing SMEs during this crisis.

II.II: Precautionary Measures to Combat the Spread of the Virus in Kuwait

COVID-19 is severely affecting the lives of many individuals. Things will not be the same, particularly for those who own a business. At the beginning of the outbreak of the COVID-19 crisis, SMEs' owners and employees were faced with new obstacles. SMEs faced a difficult choice: either continue to operate their business and risk the health of their staff and consumers or shut down their business without receiving government support. Each choice imposes its own challenges and risks.

On March 11, the World Health Organization (WHO) declared that COVID-19 was a pandemic⁽⁹⁴⁾. Tedros Adhanom Ghebreyesus, the director-general of WHO, emphasized that COVID-19 is a danger that not one country faces, but it is a common danger that many nations of the world face⁽⁹⁵⁾. Ghebreyesus stressed that countries must unite with each other to defeat this virus⁽⁹⁶⁾. Ghebreyesus also said that "the virus can still be stopped if nations are willing to take aggressive measures"⁽⁹⁷⁾.

As a consequence, on March 14 the government of Kuwait announced a series of precautionary measures to combat the spread of COVID-19. The measures included the complete closure of some commercial activities. For example: the closure of shopping malls, shopping centers, and public markets⁽⁹⁸⁾. In addition, the government mandated the closure of beauty salons, fitness centers, and entertainment centers⁽⁹⁹⁾. The various lockdown measures in response to COVID-19 have halted economic activity in certain sectors and harshly disrupted others. The measures affected approximately 12,000 restaurants and

(94) Donald McNeil, Coronavirus Has Become a Pandemic, W.H.O. Says, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/health/coronavirus-pandemic-who.html> (last visited Sept. 4, 2020).

(95) *Id.*

(96) *Id.*

(97) *Id.*

(98) Mahmoud Al-Kafrawy, The Closure of Commercial Activities in Kuwait Due to Coronavirus and Popular Initiatives to Reduce Losses, ALJAZEERA (Mar. 21, 2020), <https://www.aljazeera.net/news/ebusiness/2020/3/21/بسبب المبادرات الشعبية - الأنشطة - التجارة> (last visited Sept. 4, 2020).

(99) *Id.*

more than a thousand cafes located inside shopping malls⁽¹⁰⁰⁾. The number of laborers working in the cafes and restaurants is 200,000 workers⁽¹⁰¹⁾. It should be clarified that the previous source generally demonstrated the effect of precautionary measures on businesses in Kuwait. However, the difference between large companies and SMEs is not mentioned, and a later discussion specifies the effect of the precautionary measures on SMEs in Kuwait.

on March 22, the Deputy Premier and Interior Minister Anas Al-Saleh announced a partial curfew to contain the spread of the virus⁽¹⁰²⁾. The partial curfew hours starts from 5 P.M. to 4 A.M.⁽¹⁰³⁾. The government allowed restaurants, coffee shops, grocery stores, and pharmacies to continue working through providing home delivery service during 5 A.M. to 3 P.M.⁽¹⁰⁴⁾. Even though restaurants are allowed to continue providing meals through home delivery service, estimates indicate that the demand for restaurants has decreased 60-70%⁽¹⁰⁵⁾. The customers' demand for restaurants becomes significantly low compared to the situation prior to the crisis, and the reason is that people are afraid of infection transmission⁽¹⁰⁶⁾.

The government's decisions regarding the lockdown of commercial activities has had many dire economic effects. Presently, the government is facing a challenging fate and must choose between two interests in which a balance is difficult to achieve. On the one hand, the health of people should not be jeopardized, and on the other hand, the negative economic effects of the government's precautionary measures must be minimized. The government's response suggests that the health of individuals outweighs the economic interests. Although assuring safety for citizens and residents in Kuwait is essential, other measures must also be implemented to ensure sustainability for businesses, and particularly

(100) *Id.*

(101) *Id.*

(102) Kuwait Gov't Imposes Partial Curfew, Extends Holiday for Two Weeks, KUNA (Mar. 22, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2880568&language=en> (last visited Sept. 4, 2020).

(103) *Id.*

(104) *Id.*

(105) Al-Kafrawy, *supra* note 98.

(106) *Id.*

SMEs. As a result of the precautionary measures, hundreds of entrepreneurs have complained because their businesses are suffering intensely from these economic disasters. To eliminate the catastrophic economic effects and reduce their losses as much as possible, some of the commercial landlords - without the intervention from the government - have proposed several initiatives⁽¹⁰⁷⁾. For example, some real estate companies that own major commercial complexes (i.e., commercial landlords) enacted two measures in regard to collecting rent from the business tenants. In accordance with these measures, business tenants are divided into two groups. The first category includes restaurants and cafes, and the second group includes all other business tenants. The commercial landlords exempted members of the first group from paying rent for few months⁽¹⁰⁸⁾. Concerning the second category, the commercial landlords reduced the value of their rent by 25%⁽¹⁰⁹⁾. The exemption from paying rent does not include all types of business activities. Aside from the major commercial complexes that have implemented the initiatives of the commercial landlords in response to their tenants, many other business tenants rent spaces in private buildings. However, they have not enjoyed similar privileges⁽¹¹⁰⁾. The business tenants of private buildings must continue to pay their rent in full⁽¹¹¹⁾. The burden of businesses in private buildings is heavier than business tenants who have the option for rent assistance. Besides, the payment of full rent, they are obligated to pay workers' salaries and their suppliers⁽¹¹²⁾. The devastating economic circumstances has caused entrepreneurs, especially SMEs, to urge the government to intervene and become proactive in applying relief measures.

Reconnaissance Research recently reported on the results of a study it conducted to gauge public opinion on the government's support of SMEs⁽¹¹³⁾.

(107) *Id.*

(108) *Id.*

(109) *Id.*

(110) *Id.*

(111) *Id.*

(112) *Id.*

(113) Reconnaissance Research, KUWAIT NEEDS TO SUPPORT ITS SMALL BUSINESSES, 'Consequences of SMEs going out of business will be felt by everyone' ARAB TIMES (Mar. 24, 2020), <http://www.arabtimesonline.com/news/kuwait-needs-to-support-its-small-businesses/> (last visited Sept. 4, 2020).

The questionnaire has not been made public, and Reconnaissance Research's description of the study does not specify the following information: (1) the percentage of respondents who supported and opposed governmental support for SMEs; (2) the number of participants in the questionnaire; and (3) the participants' educational background, age, and gender. The Reconnaissance Research study only states that "some [participants] were in favor of doing so," while many individuals were opposed to the idea that the government should support SMEs during the COVID-19 crisis⁽¹¹⁴⁾. To justify their opposition, respondents raised two logical concerns. First, they commented that "This is business. Business is about risks and dealing with the effects of those risks. Just as many earn profits and succeed, others lose money and fail"⁽¹¹⁵⁾. They also provided an argument rooted in the concept of free markets. They asserted that SMEs "should be accountable to the free market like everything else"⁽¹¹⁶⁾. In their second claim, they contended that "SMEs profited in years past in the absence of state taxes. Since the government received no revenues from them previously, it has no obligation to help them now"⁽¹¹⁷⁾.

There are two concepts raised in the first concern made by opponents of government support for SMEs: business risk and free markets⁽¹¹⁸⁾. There are two categories of business risk: (1) internal risks and (2) external risks. The principal difference between them is that the company is unable to foresee external risks at the time of entering into

(114) *Id.*

(115) *Id.*

(116) *Id.*

(117) *Id.*

(118) The free market economy concept, it is a synonym for laissez-faire, "an economic theory from the 18th century that opposed any government intervention in business affairs." In English, the word translates to "leave alone"; in other words, non-interference by the government in the economy will have an optimistic effect on business, which will reflect positively on a society. The concept of free market economy is defined as "the process by which people exchange goods and services voluntary under rules of contract, meaning that one must honor any implicit or explicit contracts made." To elaborate further, in the late eighteenth century, some believed that a state must be responsible for regulating the country's economy. Alternatively, liberals believed that government intervention hurts the market. During the twentieth century, socialists discussed that a liberal economy generates social inequality. See Jim Chappelaw, Free Market, Investopedia (June 25, 2019), <https://www.investopedia.com/terms/f/freemarket.asp> (last visited Sept. 4, 2020). Norbert Agbeko, On the Characteristics of the free market in cooperative Society, Quantitative Fin. Econ. 1, 10 (2015). Ole Borre & Elinor Scarbrough, The Scope of Government 234 (Oxford University Press, 1995).

contracts. Once this external event occurs, controlling or minimizing subsequent risks is difficult for the company. This argument paves the way for a later discussion that assesses whether the COVID-19 pandemic is a *force majeure*, or an emergency circumstance that permits excusal of contractual obligations⁽¹¹⁹⁾. The effect of each theory is different on the affected firm's contractual obligations. Does COVID-19 give individuals and businesses engaged in contracts the right to not fulfill their obligations? Subsubsection II.II.I discusses this matter in depth.

Business risk is "an umbrella term for the factors and events that can impact a company's operational performance and income"⁽¹²⁰⁾. During the company's life, it is natural for the company to be exposed to events that carry many risks. Business risks are typically categorized as either internal or external risks⁽¹²¹⁾. For the purpose of the debate in this article, only examples of external risks are highlighted, because these risks resemble the current situation that is dominated by the COVID-19 crisis.

External risks are "economic events that arise from outside the corporate structure"⁽¹²²⁾. They cannot be foreseen at the time of forming the contract and cannot be expected in advance⁽¹²³⁾. Companies are unable to prevent external events from occurring;⁽¹²⁴⁾ such external risks are divided into three types: economic risk,⁽¹²⁵⁾ natural risk,⁽¹²⁶⁾ and political risk⁽¹²⁷⁾.

(119) See generally RESTATEMENT (SECOND) OF CONTRACTS §§ 265 & cmt. a (AM. LAW INST. 1981); RESTATEMENT (SECOND) OF CONTRACTS ch. 11, intro. note (AM. LAW INST. 1981).

(120) Brian Beers, How Companies Can Reduce Internal and External Business Risk?, INVESTOPEDIA (Feb. 3, 2020), <https://www.investopedia.com/ask/answers/050115/how-can-companies-reduce-internal-and-external-business-risk.asp> (last visited Sept. 4, 2020).

(121) Nitank Rastogi et., PESTLE TECHNIQUE - A TOOL TO IDENTIFY EXTERNAL RISKS IN CONSTRUCTION PROJECTS, 3 INT'L RES. J. Engineering & TECH. 384, 384 (2016) (discussing the types of business risks).

(122) Beers, *supra* note 120.

(123) Rastogi, *supra* note 121.

(124) *Id.*

(125) Economic risk "includes changes in market conditions."

(126) Natural Risks are "natural disasters that affect normal business operations. An earthquake, for example, may affect the ability of a retail business to remain open for a number of days or weeks, leading to a sharp decline in overall sales for the month. It could also cause damage to the building and merchandise being sold."

(127) Political Risk is "comprised of changes in the political environment or governmental policy that relates to financial affairs. Changes in import and export laws, tariffs, taxes, and other regulations all may affect a business negatively."

The concept of free markets is less valuable than the human costs of the state failing to intervene during a crisis. Markets are almost never wholly “free,” and state infrastructure undergirds some of the most nearly free markets in the world. If some measure of state involvement is an acceptable cost for the existence of markets, then the state’s intervention must also be acceptable for the preservation of markets. The consequences of not doing so are severe both economically and socially. The long-term costs of failing to act outweigh the price of state intervention. Most importantly, the governments of developed economies that support capitalism are announcing stimulus packages to provide support for entrepreneurs, especially SMEs. For example, in France, the Finance Minister, Bruno Le Maire, declared an economic stimulus plan to rescue France’s economy⁽¹²⁸⁾. The plan concludes EUR 45 billion to help entrepreneurs, especially SMEs⁽¹²⁹⁾.

Those in opposition to government support of businesses in times of crisis rationalize their opinion based on the definition of business risks and free market economy. The discussion refutes the claims of the opponents. The business environment is indeed surrounded with business uncertainties and risks. However, certain risks can be forecasted in advance, and other external general events are difficult to be expected at the time of signing a contract. The magnitude of the resulting risks from these external general events is large. External events can affect contractual obligations by making performance either impossible or exhausting for the obligated party. Without a doubt, the COVID-19 pandemic is an external event. However, the question of whether COVID-19 is a *force majeure* or emergency event is discussed in Subsubsection II.II.I.

To respond to opponents’ free-market objections to state support for SMEs, the complexity of Kuwait’s economy must be noted as it combines features of both social welfare economies and capitalism. Kuwait Government already plays an active role in economic planning

(128) Elisa Braun, France Injects Billions into Stimulus Plan amid Coronavirus Chaos, POLITICO (Mar. 17, 2020), <https://www.politico.eu/article/france-injects-billions-into-stimulus-plan-amid-coronavirus-chaos-bruno-le-maire-economic-catastrophe/> (last visited Sept. 4, 2020).

(129) *Id.*

and the establishment of regulations that relate to the business environment in the country.

At first glance, the opponents' concerns appear logical. However, Section II demonstrated several academic and empirical studies that emphasize the role of SMEs in economic development as SMEs are vital for economic diversification. The failure to provide support for SMEs during this crisis will result in severe economic and social effects at later stages. One such likely effect is an increase in the unemployment rate. Another consequence of a large-scale collapse of SMEs is that the large firms will gain market power⁽¹³⁰⁾. The combined effects of widespread unemployment and corporate consolidation is likely to disadvantage consumers and accentuate existing inequality. Heightened unemployment will decrease income tax revenues, increase the burden on the State to support its population, and reduce consumption. A deteriorating economic environment of this type could in turn cause heightened social tensions. The State cannot afford these effects, especially in a time of crisis like the current one.

Today, governments from all over the world, including the governments of the GCC States, are adopting the decision to support SMEs. For example, the Saudi Arabian Monetary Authority has assigned a stimulus plan of 50 billion Riyals (USD 13 billion) to save SMEs from the economic impact of COVID-19⁽¹³¹⁾. In the United Arab Emirates, the Governor of the Emirati Central Bank, Mubarak Rashed Al-Mansoori, announced a plan to provide aid in the short and medium term for SMEs and other financial institutions⁽¹³²⁾. The plan includes 100 billion Dirham (USD 34 billion)⁽¹³³⁾. The effect of COVID-19 on SMEs in Kuwait is dire. Unfortunately, the government of Kuwait does not adopt real initiatives to support SMEs during this crisis.

On April 6, 2020, *ALQABAS* newspaper published the headline: "The crisis threatens 40,000 companies"⁽¹³⁴⁾. *ALQABAS* also indicates

(130) Reconnaissance Research, *supra* note 113.

(131) *Id.*

(132) *Id.*

(133) *Id.*

(134) Al-Hattab, *supra* note 25.

that over 105,000 individuals engaged in the SMEs sector are facing bankruptcy⁽¹³⁵⁾. These enterprises are suffering from a lack of liquidity that resulted from the closure of commercial activities to counter the spread of COVID-19⁽¹³⁶⁾. As a consequence, the owners of SMEs are unable to pay for their obligations, including laborers' salaries⁽¹³⁷⁾. AL-QABAS provides the number of the registered employment in SMEs, they represent 85% (a total of 90,000 workers)⁽¹³⁸⁾. ALQABAS also reports that the total number of SMEs in Kuwait is approximately 40,000 companies⁽¹³⁹⁾. Ali Al-Anizi, a financial market expert and economics researcher, emphasizes that the fall of the SME sector will have a severe impact on the macroeconomy of the country⁽¹⁴⁰⁾. Al-Anizi elucidates that the most affected activities in the SME sector are those related to cafes and restaurants, and the losses have already reached 100% in some of them⁽¹⁴¹⁾. As previously mentioned, cafes and restaurants continue to work through providing home delivery service, which has minimized their losses ranging 50-90%, according to Al-Anizi⁽¹⁴²⁾. No definite answer can be determined regarding the loss percentage of such enterprises, and Al-Anizi explains that the loss differs depending on the enterprise's activity⁽¹⁴³⁾. For the restaurants and cafes that do not provide a home delivery service, Al-Anizi notes that they are highly reliant on customers' presence⁽¹⁴⁴⁾. The percentage of their present losses, reported by Al-Anizi, is 40%⁽¹⁴⁵⁾.

The negative economic effects of COVID-19 on SMEs made the Kuwait Government to announce economic stimulus packages to support SMEs. The measures confined on: 1) deferrals of installments; and 2) offering concessional loans for affected SMEs. On April 20, the

(135) *Id.*

(136) *Id.*

(137) *Id.*

(138) *Id.*

(139) *Id.*

(140) *Id.*

(141) *Id.*

(142) *Id.*

(143) *Id.*

(144) *Id.*

(145) *Id.*

Council of Ministers approved regulations regarding the concessional loans offered to affected SMEs due to COVID-19⁽¹⁴⁶⁾. Section IV scrutinizes these regulations and offers a critical analysis. In the following, Subsubsection II.II.I discusses whether the COVID-19 outbreak constitutes a *force majeure* or an emergency circumstance.

II.II.I COVID-19: *Force Majeure* or an Emergency Circumstance?

The outbreak of COVID-19 and its deadly effects felt around the world have made the governments of countries adopt aggressive precautionary measures to combat its spread. As the introduction of subsection II.II demonstrates, the measures have affected commercial activities, especially after the closure of borders and the suspension of international flights. The effects were directly reflected in the contractual obligations that may impact larger sectors more so than others. For example, in the tourism sector, travel restrictions will make the performance of certain transportation contracts impossible. The situation extends to other sectors as well and the measures have greatly affected other contracts, including supply agreements and commercial exchanges. The effects of COVID-19 have even extended to loan contracts for institutions, companies, and individuals. As a consequence, a legal controversy has arisen as to whether the COVID-19 pandemic is a *force majeure*, or emergency circumstance, which is discussed in this subsubsection. However, before determining a legal answer, analyzing the conditions of each theory is necessary to highlight the main differences between them and to understand their legal effects on contractual obligations. Three questions need to be considered: (1) What type of policy is adopted by the government to combat the virus? (2) Which commercial activities were affected by such policy? (3) Did the policy or measure make the fulfillment of the contractual obligations impossible or exhausting? Rental arrangements offer one example to elaborate on the possible consequences that the pandemic measures have had on commercial activities. While landlords and tenants agree to a rental contract, COVID-19 precautionary measures reduce or eliminate tenants' ability to pay rent since their businesses cannot operate at full

(146) Ali Al-Khaldi, Funding Regulations for Affected Companies, ALQABAS, April 21, 2020, at 8.

capacity. If the rent is not paid in full, the landlord may sue the tenant. Depending on the tenant's type of enterprise and the precautionary measure applied by the government, the affirmative defense by the tenant varies. For example, if the tenant's enterprise is a fitness center, the fulfillment of the tenant's obligation is impossible, because fitness centers are mandated to be closed. In this circumstance, the tenant will raise the affirmative defense of *force majeure*. If a tenant's enterprise is a café, the fulfillment of the tenant's obligation is exhausting as such businesses are operating at a much lower capacity, and the tenant will raise the affirmative defense of an emergency circumstance. Therefore, in the case of a breach of contract, the status of paying rent as either impossible or exhausting is an important distinction because it impacts the affirmative defenses for the defendant tenant, and in either scenario, the defendant bears the burden of proving the status⁽¹⁴⁷⁾.

A. The Conditions of Each Theory

Under Kuwaiti Civil Code, the contract is *pacta sunt servanda*, which means that is not permissible to revoke or amend the contract except by mutual agreement of the parties or in other circumstances determined by the law⁽¹⁴⁸⁾. However, there is an exception to this rule as stipulated in Article 198 of the Civil Code No. 67 for 1980, which states

[I]f, after the formation of a contract and before its full performance, exceptional general circumstances occur that could not be expected at the time of forming the contract, as a result, the performance of the obligation arising from it-and if it does not become impossible-, became exhausting for the debtor, so that it threatens him with a heavy loss, the judge may after the balance between the interests of the two parties, return the exhausted commitment to a reasonable extent by limiting its scope or increasing its counterpart, and any agreement to the contrary is void⁽¹⁴⁹⁾.

The same section of code discusses the emergency circumstance theory, and the elements are as follows:

(147) Decree Law No. 39 for 1980 related to the Issuance of the Law of Evidence in Civil and Commercial Matters art. 1 (Kuwait).

(148) Civil Code No. 67 for 1980 art. 196 (Kuwait).

(149) Civil Code No. 67 for 1980 art. 198 (Kuwait).

- An exceptional circumstance emerges⁽¹⁵⁰⁾. It is important to note that the law does not provide a definition of “exceptional general circumstances”⁽¹⁵¹⁾. Examples of such circumstances include natural disasters and the outbreak of war⁽¹⁵²⁾.
- Exceptional circumstance is common occurrence. Meaning that it should be *general*-i.e., it affects everyone⁽¹⁵³⁾. This means that the event is not specific to the debtor, such as when a debtor faces bankruptcy due to poor operational performance or the loss of a key customer.
- The exceptional circumstance is not expected at the time of contract formation⁽¹⁵⁴⁾.
- The exceptional circumstance cannot be avoided⁽¹⁵⁵⁾.
- The exceptional circumstance occurs after the contract formation and before its full performance⁽¹⁵⁶⁾.
- The emergency incident makes the fulfillment of the debtor’s obligation exhausting, and it threatens him with a heavy loss⁽¹⁵⁷⁾.

Article 215 of the Civil Code No. 67 for 1980 states that “In a binding contract for two parties, if the performance of one of the parties becomes impossible due to a foreign reason, this commitment lapsed, with the corresponding obligations of the other party and the contract has been dissolved by its own”⁽¹⁵⁸⁾. Article 233 of the Civil Code illustrates that a *force majeure* is one of the examples of the “foreign cause”⁽¹⁵⁹⁾. Although the statute does not define *force majeure*, jurists have indicated that the *force majeure* should be (1) an external incident that cannot be expected at the time of forming the contract,⁽¹⁶⁰⁾ (2)

(150) Civil Code No. 67 for 1980 art. 198 (Kuwait). See also ABDULRSOOL BAHBEHANI et al., SOURCES OF COMMITMENT AND EVIDENCE 168 (3d ed. 2010).

(151) Civil Code No. 67 for 1980 art. 198 (Kuwait).

(152) Civil Code No. 67 for 1980 art. 198 (Kuwait).

(153) Civil Code No. 67 for 1980 art. 198 (Kuwait).

(154) Civil Code No. 67 for 1980 art. 198 (Kuwait).

(155) BAHBEHANI, *supra* note 150, at 169.

(156) *Id.*

(157) Civil Code No. 67 for 1980 art. 198 (Kuwait).

(158) Civil Code No. 67 for 1980 art. 215 (Kuwait).

(159) Civil Code No. 67 for 1980 art. 233 (Kuwait).

(160) Anadel Al-Mutar, "Corona" Between Force Majeure or Emergency Circumstance, ALJARIDA (Mar. 22, 2020), <https://www.aljarida.com/articles/1584808158149681200/> (last visited Sept. 4, 2020).

unavoidable;⁽¹⁶¹⁾ and (3) not caused by the behavior of one of the parties to the contract⁽¹⁶²⁾. If this incident is caused due to negligence or the fault of one of the parties, then the contract will not be dissolved under a *force majeure* theory⁽¹⁶³⁾. Examples of *force majeure*s include natural disasters and the outbreak of war. The criteria for both *force majeure* and emergency circumstance are essentially the same as they are external and general incidents that cannot be expected at the time of forming the contract. Once they occur, controlling these events or eliminating their associated risks is difficult. However, the difference is in the influence of each theory on the contractual commitment. Therefore, highlighting the conditions of impossibility set forth by Article 215 that dissolve the contract is important. These conditions are the following:

- The impossibility of carrying out the obligation must be due to a foreign cause in which the nonperforming party has no foreknowledge of its occurrence⁽¹⁶⁴⁾.
- The impossibility arises after formation of the contract and before its full performance⁽¹⁶⁵⁾.
- The obligation of fulfilling the contract should become impossible⁽¹⁶⁶⁾.

Accordingly, the Kuwaiti Court of Cassation ruling in the judgement issued in the session of November 1, 1999 in the two appeals No. 343/345 for the year 85 Administrative Commercial, considered that the effects of the contract as a result of the economic crisis resulting from dealing in shares in regard to the *Souq Al-Manakh Stock Market crash* are considered emergency circumstances⁽¹⁶⁷⁾.

The Kuwaiti Court of Cassation in another ruling concluded that the foundation of the emergency circumstance theory depends on the conditions addressed by Article 198 of the Civil Code⁽¹⁶⁸⁾.

(161) *Id.*

(162) *Id.*

(163) *Id.*

(164) Civil Code No. 67 for 1980 art. 215 (Kuwait).

(165) *Id.*

(166) *Id.*

(167) Al-Mutar, *supra* note 160.

(168) Sultan Al-Qahtani, A Study on the Effect of Coronavirus (COVID-19) on Employment and Lease Contracts in the State of Kuwait, 3-4.

The Kuwaiti Court of Cassation emphasized that in order to apply the emergency circumstance theory that the fulfillment of the debtor's obligation becomes exhausted as a result of the external incident. The court concluded that the decrease in profit or the loss of earnings is not sufficient to apply the rule of this theory. In addition, the court concluded that the criterion for calculating the loss in this event is an objective criterion related to the subject matter of deal agreed in the contract, and is not subjective to the debtor and his personal circumstances⁽¹⁶⁹⁾.

The Kuwaiti Court of Cassation in another ruling concluded that the Iraqi Invasion does not considered a *force of majeure* of which results in the dissolution of the employment contract between the two parties due to the impossibility of its performance, but only to suspend the parties' obligations temporarily until the cessation of the aggression. According to the court, the employee is not obligated to perform the required work during that period nor the employer is obligated to fulfill any rights in respect to the employee⁽¹⁷⁰⁾.

It is worth noting that the previous decision concluded by the Court of Cassation was issued under the Labor Law No. 38 of 1964, and not under the law currently in force, namely Labor Law No. 6 for 2010. Article 61 of the Law No. 6 for 2010 specifies that the employee is entitled to a salary during the period of partial or complete suspension, as long as, the employer desires that the employee continues working for him.

In another ruling, the Court of Cassation concluded that the actions issued by the public authorities and likewise the decisions issued by the administration that result in depriving the tenant of the use or benefit of the leased property are considered a *force majeure*. Hence, the tenant may request the termination of the lease contract or the reduction of the rent, pursuant to Article 581 of the Civil Code⁽¹⁷¹⁾.

(169) The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 739 for the Year 2011, the Commercial Secular, December 27, 2011, Audition No. 3, at p. 212.

(170) The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 121 for the Year 2003, the Labor Secular, March 3, 2005, Audition No. 1, at p. 302.

(171) Al-Qahtani, *supra* note 168, at 32.

In another ruling, the Court of Cassation confirmed that in order to apply the theory of *force majeure* the conditions specified by Article 215 of the Civil Code should met⁽¹⁷²⁾.

Applying the previous discussion to the current crisis, COVID-19 is an external event that could not be expected at the time of forming the contract. It is a general incident that affects everyone, and it cannot be avoided. However, the difference is in the influence of each theory on the contractual commitment. The main difference between *force majeure* and emergency circumstance is that the former makes performance impossible, while the latter makes performance exhausting. The following discussion will discuss this matter in detail.

B.The Legal Effects of Each Theory on the Parties' Contractual Obligations

According to Article 215, the legal effect of a *force majeure* is the dissolution of the contract. Subsequently, the parties of the contract will return to the state they were in before establishing the contract. According to Article 198, the legal effect arises from the emergency circumstance is returning the exhausted commitment to a reasonable extent by limiting its scope or increasing its counterpart.

This article applies the foregoing analysis to the effects of COVID-19 on contracts. There are three categories of contracts resulting from the crisis. First, some contracts are completely unaffected by the measures announced by the governments to combat the spread of the virus. Second, the performance of some contracts has been rendered impossible by the precautionary measures. In this scenario, the COVID-19 crisis likely constitutes a *force majeure*. Finally, certain contracts were affected to some degree by the precautionary measures, making the fulfillment of the commitment exhausting; here, the theory of emergency circumstance governs.

As mentioned earlier, the government of Kuwait announced stimulus packages to support SMEs during this crisis. The stimulus packages include: 1) postponing the installments of the National Fund for Support and Development of Small and Medium-Sized Enterprises (Fund) for six months; and 2) offering concessional loans for affected

(172) The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 103 for the Year 2007, the Commercial Secular, October 9, 2008, Audition No. 3, at p. 48.

SMEs through a channel of joint financing between the local banks and the Fund. The Fund will bear 80% of the loan, while, the bank will bear 20% of the loan. Section I briefly discussed how these two economic measures will waste further the public funds. To support such claim, Section III presents a summary of the performance of the Fund prior to the crisis. The debate concludes that the Fund has suffered from the lack of transparency and mismanagement over the years. The discussion clarifies that the Fund, according to sources, has failed to recover previous debts from SMEs. How will the Fund avoid similar crisis occurring in the future? The discussion has an important impact, it assesses that the economic measures adopted by the Fund are not appropriate for the current situation and does not achieve economic efficiency. The discussion paves the way for Section IV to offer a critical analysis of the procedures and legal rules announced by the Council of Ministers regarding the concessional loans.

III: The National Fund for Support and Development of Small and Medium-Sized Enterprises in Kuwait

In 2013, the State of Kuwait issued Law No. 98 concerning the National Fund for Support and Development of Small and Medium-Sized Enterprises. In 2018, Law No. 14 was established that amended some provisions of Law No. 98. The Law for 2013 states in Article 2 that: “There shall be established a Fund under the name of (the National Fund for Support and Development of Small and Medium-Sized Enterprises) as a public institution with an independent legal personality, and reports to the Competent Minister,”⁽¹⁷³⁾ who the Minister of Commerce and Industry⁽¹⁷⁴⁾. Article 3 of the Law for 2013 presents the Fund’s goals:

[T]he purposes of the Fund are to support and develop small and medium-sized enterprises, enhance the potentials of their owners in terms of implementations, planning, coordination and promotion, and the following:

- 1 - Developing the national economy by implementation of policies for generation of job opportunities and diversification of income

(173) Law No. 98 for 2013 concerning the National Fund for Support and Development of Small and Medium-Sized Enterprises art. 2 (Kuwait).

(174) Law No. 98 for 2013 art. 1 (Kuwait).

sources in order to alleviate the financial burdens off the Government Budget.

- 2 - Raising awareness of the benefits of enterprises, and coordinating and promoting initiatives of small and medium-sized enterprises.
- 3 - Providing information and technical support.
- 4 - Providing and evaluating the economic and environmental feasibility studies for the enterprises, and creating the profitable and innovative opportunities by providing continuous access to information.
- 5 - Developing and training human resources through the Supporting Institutions.
- 6 - Funding enterprises as per this Law.
- 7 - Increasing enterprise competitiveness, while providing maximum support for the enterprise and minimum interference in the business thereof.
- 8 - Supporting the home-made products and encouraging innovation of Kuwaiti Intellectual Property Right⁽¹⁷⁵⁾.

Article 4 of the Law for 2013 states:

[C]apital of (two billion Kuwaiti Dinars) shall be allocated to the Fund in order to achieve the objectives of this Law. The funds necessary for this Fund shall be extracted from the State Public Reserve. The Minister of Finance shall be authorized to pay the same by installments as per the manner to be agreed upon by the Minister of Finance and the Competent Minister, subject to the invested financial surpluses. The Fund capital may be amended by a decree. The Board, in order to achieve the objectives of this Law, shall set the terms and conditions and the rules to manage the Fund and the rules of financing the enterprises in accordance with the instructions set by the Central Bank⁽¹⁷⁶⁾.

The 2013 legislation provided for the creation of a public entity called the National Fund for Support and Development of Small and Medium-Sized Enterprises (Fund). The aim of the Fund is to support SMEs in the State of Kuwait. Based on Article 3, the Fund assumes responsibility for everything related to SMEs' prosperity and improvement. Article 4

(175) Law No. 98 for 2013 art. 3 (Kuwait).

(176) Law No. 98 for 2013 art. 4 (Kuwait).

elucidates that 2 billion KWD (USD 6.6 billion) is allocated to the Fund and shall be extracted from the State Public Reserve⁽¹⁷⁷⁾. Since the funds are considered to be public money, they must be protected.

However, the provisions of the Law for 2013 are characterized by ambiguities that impose legal issues. Sources indicate that the Fund in practice does not achieve its goals mentioned by Article 4 of the Law for 2013⁽¹⁷⁸⁾. Rather than addressing these problems, this discussion focuses on the Fund and sheds light on one of its critical problems-the legal strategy followed by the Fund to finance SMEs. This argument helps to develop an analysis of whether the economic measure concerning the joint financing between the bank and the Fund to support SMEs during the COVID-19 crisis achieves efficiency.

First, Article 4 of the Law for 2013 needs to be analyzed as certain questions arise. Article 4 states that "The Board, in order to achieve the objectives of this Law, shall set the terms and conditions and the rules to manage the Fund and the rules of financing the enterprises with the instructions set by the Central Bank"⁽¹⁷⁹⁾. However, the terms, conditions, and rules are unclear. In 2016, the State Audit Bureau of Kuwait indicated that the Fund had not issued administrative and financial rules regarding the management and use of the 2 billion KWD, and that the Fund had already received the first payment of its capital, valued at 55.5 million KWD⁽¹⁸⁰⁾.

(177) Law No. 98 for 2013 art. 4 (Kuwait).

(178) See, CSRGULF, High Waste Risk in the National Fund for Support and Development of Small and Medium-Sized Enterprises in the State of Kuwait (Nov. 20, 2019), <https://www.csrgulf.com/2019/11/20/> – مخاطر هدر عالية في صندوق المشروعات (last visited Sept. 4, 2020). See also Al-Khalidi, *supra* note 46.

(179) Law No. 98 for 2013 art. 4 (Kuwait).

(180) Ibrahim Abduljawad et., Dismissing the Board of Directors of the National Fund for Support and Development of Small and Medium-Sized Enterprises, ALQABAS (Apr. 18, 2017), <https://alqabas.com/article/384311-إقالة مجلس إدارة صندوق المشروعات الصغيرة> (last visited Sept. 4, 2020). According to the State Audit Bureau of Kuwait, the National Fund committed several violations, including its financing of 59 projects with a uniform amount and without preparing economic feasibility studies for each approved project. This violates Article Fourteen of the Law No. 98 for 2013 regarding the study and evaluation of projects proposed by the owners of the projects. In addition, related sources told ALQABAS that the reason behind the dismissal of the National Fund's Board of Directors was "due to the lack of cooperation with the various oversight bodies, especially the State Audit Bureau of Kuwait, which announced its protest against the management of the Fund because the Fund objected to subject its budget to its control, which led to the withdrawal of the audit team."

Despite this access to funding, the Fund failed to issue any conditions that detailed a clear vision of how to use this money.

Another uncertainty stemming from Article 4 is the number of projects and the type of activities that the Fund has funded since its establishment as well as the number of both small- and medium-sized businesses that the Fund has supported. Various sources provide uncertain estimates of the number of businesses that the Fund financed⁽¹⁸¹⁾. Since the Fund was established, three annual reports have been issued by the Fund⁽¹⁸²⁾. The annual report for fiscal year 2014/2015 does not include information relating to the total number of SMEs and their activities that were financed by the Fund. The annual report for fiscal year 2015/2016 mentions that the first batch of approvals was given to 59 projects in different sectors, and it includes a chart representing the distribution of approved projects by sector: 41% in the commercial sector, 36% in the services sector, 20% in the light manufacturing sector, and 3% in the agriculture sector⁽¹⁸³⁾. Although some relevant information is presented, other critical information is missing from the report. For example, the total number of initiators (applicants) who applied for the Fund's support is not specified. Furthermore, in the event of a rejection to finance some of the applicants, the total number of rejected applicants is not presented and the reasons for the Fund's refusal are unclear. Most importantly, the report does not provide any information regarding the amount of funding for each approved project. The report also does not identify the size of the approved projects and the

(181) CSRGULF, *supra* note 178. See also Fawaz Karami, The National Fund: About 167 Million Kuwaiti Dinars Credits for Small and Medium-Sized Enterprises, KUNA (Dec. 10, 2018), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2763715> (last visited Sept. 4, 2020). According to Munaf Al-Munifi, the General Manager of the National Fund for Support and Development of Small and Medium-Sized Enterprises, the Fund's financing allocations for projects approved in various sectors amounted about 167 million Kuwaiti Dinars (about \$551 million) since its founding in 2013 and until the end of October 2017. *Id.*

(182) The National Fund for Small and Medium-Sized Enterprises Development, Annual Report, <https://www.nationalfund.gov.kw/ar/media-center/publications/> (last visited Apr. 27, 2020).

(183) The National Fund for Small and Medium-Sized Enterprises Development, Annual Report for the Fiscal Year 2015/2016, https://nationalfund-new.s3.amazonaws.com/media/160729_annual_report_final_arabic_1.pdf?AWSAccessKeyId=AKIAQZTLBSVASLOW2JPX&Signature=OX0kXnROLfePLWhOyF2OzuHTT80%3D&Expires=1588017078 (last visited Apr. 27, 2020).

proportion of small- and medium-sized enterprises. Lastly, the report does not specify whether the approved projects are startups or existing businesses.

The annual report for fiscal year 2016/2017 is more transparent than the previous reports. The report notes that the total number of applicants was 370, and the Fund approved 245⁽¹⁸⁴⁾. According to the report, the total amount of funding approved was 50,125,458 KWD⁽¹⁸⁵⁾. The report includes a table that provides financing amounts by sector and type and details the number of small- and medium-sized enterprises of the financed projects⁽¹⁸⁶⁾. The table also indicates the number of startups and existing businesses⁽¹⁸⁷⁾. This annual report is significantly different from the previous annual reports. Comparing the annual report for 2015/2016 and the one for 2016/2017, the former only provides a chart that presents the number of approved projects per sector as a percentage⁽¹⁸⁸⁾. The latter provides both the percentage and the actual number of businesses per sector⁽¹⁸⁹⁾. In addition, the report for 2016/2017 indicated similar activities in the related sector, and it mentioned the funding amount for each sector⁽¹⁹⁰⁾.

Despite its strengths, the report for 2016/2017 has some deficiencies. It does not specify the amount of financing provided for each approved project. For example, the report specifies that 107 projects received funding in the commercial sector, and the amount of financing approved for those projects was 22,653,360 KWD⁽¹⁹¹⁾. However, this information does not provide a clear understanding of the amount of financing for each project. The value of the loan given by the Fund to each enterprise should be specified. Moreover, the percentage incurred by both the Fund

(184) The National Fund for Small and Medium-Sized Enterprises Development, Annual Report for 2016/2017, <https://nationalfund-new.s3.amazonaws.com/media/Ar-opt.pdf?AWSAccessKeyId=AKIAQZTL5BVASLOW2JPX&Signature=Q9H3dF8yKwTbQDOHWGTUer-DO6Uc%3D&Expires=1588021317> (last visited Apr. 27, 2020).

(185) *Id.*

(186) *Id.*

(187) *Id.*

(188) The National Fund for Small and Medium-Sized Enterprises Development, *supra* note 183.

(189) The National Fund for Small and Medium-Sized Enterprises Development, *supra* note 184.

(190) *Id.*

(191) *Id.*

and the initiator for the project should be identified. In accordance with the Law for 2013, the initiator commits 20% of the project's value⁽¹⁹²⁾. This means that the Fund finances the approved project to a maximum of 80% of its cost⁽¹⁹³⁾. There is a general lack of financial information that is made public. Having an access to such information enhances transparency, which in return, increases accountability. As greater transparency is implemented, public money will be preserved from waste.

The National Fund website does not yet include an annual report for 2017/2018. In 2017, the State Audit Bureau of Kuwait provided observations on the Fund's performance and illustrated that the Fund failed to perform its strategic plan⁽¹⁹⁴⁾. According to the State Audit Bureau of Kuwait, a discrepancy was found in the number of projects listed in the strategic plan versus the number of projects listed in the capital budget⁽¹⁹⁵⁾. The number of projects included in the strategic plan was 54.3% lower than the number estimated in the capital budget⁽¹⁹⁶⁾. To elaborate, the capital budget of the Fund provided for 600 projects to be financed for fiscal year 2017/2018, with an average of 200,000 KWD per project⁽¹⁹⁷⁾. However, the actual number of projects that were financed by the Fund was 274 projects⁽¹⁹⁸⁾. The amount of funding that was used for these 274 projects in total is not available.

The State Audit Bureau of Kuwait also mentioned several violations committed by the Fund, including the repetition of contract numbers formed between the Fund and the initiators⁽¹⁹⁹⁾. To illustrate, suppose that A is a small business and B is a medium-sized enterprise. On January 1, 2016, A obtains a loan from the Fund. On January 1, 2017, B obtains a loan from the Fund for the purpose of expanding its business. The Fund

(192) Law No. 98 for 2013 art. 5 & art. 25 (Kuwait).

(193) *Id.*

(194) Nasser Al-Jarah, The State Audit Bureau of Kuwait: The National Fund for Support and Development of Small and Medium-Sized Enterprises is Not Doing Well with Its Strategic Plan, *ALJARIDA* (Oct. 21, 2019), <https://www.aljarida.com/articles/1571588419586692700/> (last visited Sept. 4, 2020).

(195) *Id.*

(196) *Id.*

(197) *Id.*

(198) *Id.*

(199) *Id.*

commits an error and includes A's contract number for B's contract. The same identification number that labels each contract is repeated. This is a threatening situation because the overlap leads to errors when referring to A's or B's contracts. Consequently, A or B will face legal disputes. In addition, A and B both must prove the value of the loan obtained from the Fund. If the loan's value obtained by B is more than the loan obtained by A, this will create a negative incentive for B if they have the same contract numbers. Under this circumstance, B might attempt to uphold this inaccurate contract to avoid repaying the full loan amount.

Another violation conducted by the Fund, according to the State Audit Bureau of Kuwait, is that it has not transferred the funding to some of the approved SMEs⁽²⁰⁰⁾. Therefore, the approved SMEs did not benefit from the loan established for them, yet the Fund's reported loan figures misleadingly include the loan amounts. Another violation mentioned by the State Audit Bureau of Kuwait is that the Fund re-contracted with the same initiators with new contracts, neglecting the fact that there were previous established contracts with them⁽²⁰¹⁾. These new contracts were a result of either issuing new licenses or because the initiators requested additional funding⁽²⁰²⁾. The Fund failed to cancel the previous contracts or to link the new contracts as an amendment to the original ones⁽²⁰³⁾. As a result, the Fund's funding amount exceeded the legally established percentage stipulated in the Law for 2013 (80%)⁽²⁰⁴⁾. The conduct of the Fund violates the provisions of Article 5 and Article 25 of Law No. 98 for 2013. The State Audit Bureau of Kuwait discovered 11 initiators that had obtained two contracts and stated that the total amount of financing for both contracts ranged between 130,000 and 604,000 KWD⁽²⁰⁵⁾. This amount exceeds the amount permitted by the law (i.e., 500,000 KWD)⁽²⁰⁶⁾.

(200) *Id.*

(201) *Id.*

(202) *Id.*

(203) *Id.*

(204) *Id.*

(205) *Id.*

(206) Law No. 14 for 2018 regarding Amending Some Provisions of the Law No. 98 for 2013 art. 5 (Kuwait).

Lastly, the State Audit Bureau of Kuwait discovered that 38 SMEs that were financed by the Fund failed to re-pay their monthly installments⁽²⁰⁷⁾. The total value of financing these 38 SMEs amounted more than one million Kuwaiti Dinars⁽²⁰⁸⁾. On April 2019, the *ALQABAS* newspaper also confirmed the finding and published the headline “Small Projects Stumbled... and Loans Are Not Repaid”⁽²⁰⁹⁾. Under the Law for 2013, the financed enterprise enjoys a grace period of 1-3 years⁽²¹⁰⁾. *ALQABAS* noted that for some of the financed SMEs, the grace period had ended, and their projects had not succeeded⁽²¹¹⁾. An unidentified source explained to *ALQABAS* that such financed SMEs will only be able to re-pay the installments for only a short period of time, because they will face a lack in liquidity⁽²¹²⁾. Another study estimates that the Fund financed more than 307 projects⁽²¹³⁾. However, the study estimates that 50% of these projects have failed to continue⁽²¹⁴⁾. The study also specifies that more than 150 projects cannot pay their obligations to the Fund⁽²¹⁵⁾.

In conclusion, the Fund lacks transparency and characterized with internal mismanagement. Particularly, there is no specific rules and conditions regarding financing. Basically, the Fund follows no specific strategy regarding financing or assessing financed projects. The lack of such a strategy contributes to the failure of many financed SMEs. The total amount of financing and the number of projects that were funded since 2013 cannot be accurately determined. Most importantly, the repayment of the loans is ambiguous. A considerable amount of information is unknown, particularly regarding the number of financed SMEs that have repaid their loans, the number of businesses that are still repaying their loans, the number of projects that have failed and cannot repay their loan, and the specific procedures that the Fund is following to

(207) Al-Jarah, *supra* note 194.

(208) *Id.*

(209) Al-Khaldi, *supra* note 46.

(210) Law No. 98 for 2013 art. 26 (Kuwait).

(211) Al-Khaldi, *supra* note 46.

(212) *Id.*

(213) CSRGULF, *supra* note 178.

(214) *Id.*

(215) *Id.*

collect the debt. Both Law for 2013 and Law for 2018 are vague regarding the procedures of which the Fund should follow to recover unpaid debts. Both laws lack a method to guarantee the loans given to SMEs. Finally, the same allegations regarding the payment of monthly installments and the collapse of SMEs when they pay such installments are repeated today in the case of the COVID-19 crisis. These allegations are similar to what is circulating during the COVID-19 crisis. All of this contribute in wasting the public funds.

The Fund's position on this crisis has been called into question, and *ALQABAS* provided an answer. A survey prepared by the newspaper revealed that 90% of the initiators, who obtained loans from the Fund believe that the Fund's behavior since the emergence of COVID-19 has been passive whereas 10% believe that the role of the Fund is positive⁽²¹⁶⁾. The majority of participants affirmed that since the outbreak of the COVID-19 crisis, the Fund officials did not contact them to check on the status of their commercial activities⁽²¹⁷⁾. *ALQABAS* also asked the initiators what problems they face due to the COVID-19 crisis: 34% answered paying their employees' salaries and paying rent, 20% answered cash flow, 16% said the high costs of raw materials in the country of origin and the unavailability of substitutes in local markets, and the remaining 30% face all of the mentioned problems⁽²¹⁸⁾.

Given the extensive needs of SMEs in Kuwait that have been exasperated by the COVID-19 crisis, further stimulus measures have been implemented. Subsection I. of Section IV provides an overview of the stimulus packages and regulations announced by the Council of Ministers concerning the concessional loans to support affected SMEs. The analysis of the stimulus packages and regulations governing concessional loans informs the recommendations that might be more efficient, which are presented in Subsection II. of Section IV.

(216) Ali Al-Khaldi, 90% of the Initiators Consider the Role of National Fund to Be "Negative", *ALQABAS*, Apr. 6, 2020, at 8. The survey included a random sample of 50 initiators from various sectors, but the primary sectors were the industrial and commercial sectors.

(217) *Id.*

(218) *Id.*

IV: Stimulus Package, Long and Short-term Proposals

The various lockdown measures in response to COVID-19 have halted economic activity in certain sectors and harshly disrupted others. Governments throughout the world implemented various fiscal measures to contain the economic fallout due to COVID-19. The economic measures are categorized as: 1) immediate fiscal impulse, for example compensation for businesses that were forced to shut down by government policy; 2) Deferrals of payments; 3) other liquidity sources, for example: offering loans.

It is important to note that there is no indication of the value of the stimulus packages announced by the government of Kuwait. The article demonstrates examples of several countries that specified the total value of their economic stimulus packages.

Also, the measures adopted by the government of Kuwait to support SMEs during this crisis are circulated around two categories. These measures include 1) deferrals of the payment of the National Fund's installments for a period of six months. 2) offering concessional loans. To clarify, the government of Kuwait has not taken the approach of some countries concerning providing a non-refundable compensation to businesses that were forced to shut down by government mandate to contain the spread of the virus. Example of such countries: Belgium, in March, the government allocated a C 1.5 billion for active independent workers that were forced to shut down their business to contain the spread of the virus⁽²¹⁹⁾. They were "eligible for 1291,69 euros per month if they do not have a dependent family and 1641,10 euros per month if they do"⁽²²⁰⁾. Another example is Brussels-region, the government allocated C 36 million to support businesses "through a one-time compensation of C 4000 to businesses that have fully shutdown due to government policy"⁽²²¹⁾. In France, on April 16, the government allocated "C 7 billion subsidies through the solidarity Fund, for small

(219) Julia Anderson, The fiscal response to the economic fallout from the coronavirus (May. 25, 2020), <https://www.bruegel.org/publications/datasets/covid-national-dataset/> (last visited Sept. 4, 2020).

(220) *Id.* at 4.

(221) *Id.* at 6.

companies with a revenue less than C 1 million, who have lost 50% or more of their revenue in March 2020, compared to March 2019”⁽²²²⁾.

The following discussion presents the stimulus package announced by the Government of Kuwait. Then, the argument proposes long and short-term solutions that are designed to achieve a balance between safeguarding fiscal capacity and minimizing economic distortions that might result from proposed policies.

IV.I: Analyzing the Stimulus Package Announced by the Government of Kuwait

On April 20, 2020 the Council of Ministers approved funding regulations for SMEs affected by the COVID-19 crisis⁽²²³⁾. The purposes of the Council of Ministers’ regulation are the following:

- To support vital sectors and activities with added value to the local economy that were operating efficiently before the crisis.
- To prevent further deterioration of the current economic circumstances and deterring the turn of the short-term liquidity crisis into a solvency crisis.
- To preserve and increase the national workforce in the private sector.
- To involve the participation of all parties in bearing the burdens.
- To not offer compensation for lost profit or realized losses⁽²²⁴⁾.

The regulation addresses the aspects of spending and use of the financing amounts:

- The funding covers the required periodic contractual expenses such as workers’ salaries and rent⁽²²⁵⁾.
- It is prohibited to use the financed amount to pay installments or credit burdens⁽²²⁶⁾.

The regulation sets forth boundaries and controls that must be observed:

(222) *Id.* at 10.

(223) Al-Khaldi, *supra* note 46, at 8.

(224) *Id.* at 8.

(225) It is important to note that the banking sector verifies that the customer’s use of financing in the specified aspects (i.e., salaries of employees and rents). *See Id.*

(226) *Id.*

- Preserving the national workforce and achieving the percentage of the national workforce designated for the sector/activity by December 31, 2021.
- The irregular paying customer will not benefit from the finance⁽²²⁷⁾.

These concessional loans are jointly financed by local banks and the National Fund⁽²²⁸⁾. The advantages of this method of financing are the following:

- The loans have concessional terms for three years, including a one-year grace period.
- The interest on the loans does not exceed 2.5% annually⁽²²⁹⁾.
- In the first year, the state's general budget bears the interest of financing⁽²³⁰⁾. In the second year, the affected customer shares the interest payments equally with the state⁽²³¹⁾. In the third year, the affected customer incurs the interest in full⁽²³²⁾.

To provide these loans, the Central Bank of Kuwait has directed local banks to create an online platform to communicate with affected clients who wish to obtain financing⁽²³³⁾. The Central Bank sets the necessary criteria for financing amounts to match the obligations of the customer, including laborers' salaries, rent, and payments due to suppliers⁽²³⁴⁾. The borrower will not receive the funding directly; rather, the bank will deposit the money into the beneficiaries' accounts⁽²³⁵⁾. The procedure to apply for a loan through the online platform is as follows:

- 1 - Check the conditions for those who are eligible for the financing.
- 2 - Answer a set of questions to ensure that the conditions apply.

(227) *Id.*

(228) *Id.*

(229) *Id.*

(230) Salem Abdulgafor, Procedures for Those Affected to Obtain Financing from the Banks, ALQABAS, Apr. 22, 2020, at 8. It should be noted that there is a penalty after the end of the grace period. In the event that the client does not commit to pay two consecutive payments, the financing provided is considered to be immediate and the customer must pay it in addition to the full interests. In addition, the state general budget ceases to bear any part of the financing cost. See *id.*

(231) *Id.*

(232) *Id.*

(233) *Id.*

(234) *Id.*

(235) *Id.*

- 3 - In the event that the conditions apply, the customer applies to obtain the required loan, accompanied by the required amount.
- 4 - Submit the documents confirming the requested amount.
- 5 - A reference number is issued to follow up on the request.
- 6 - The bank then estimates the value of the loan and informs the client of the approval.
- 7 - The bank initiates the procedures for paying the obligations of the client⁽²³⁶⁾.

On April 22, *ALQABAS* published information about the mechanism for granting financing to SMEs clients. Their requests are considered according to the following procedures:

- 1 - The affected client submits the financing request to the bank that maintains their primary account through an online portal designated by the bank. The bank coordinates with the National Fund to assess the request.
- 2 - The bank prepares the necessary credit assessment in an integrated and rapid manner by verifying that the client meets the conditions for financing, reviewing the previous cash flows, and evaluating the applicant through the credit information network company Ci-Net.
- 3 - In accordance with the results of the credit assessment, the bank determines the value of the financing.
- 4 - The Fund shall pay its share of the financing (i.e., 80%) to the granting bank within two days after the bank's decision.
- 5 - In the event that the affected client reaches the maximum amount permitted by the Fund to be provided to each client (500,000 Kuwaiti Dinars), the full amount of financing can be provided by the bank⁽²³⁷⁾.

There is no doubt that the government of Kuwait has evidently strived to find solutions to the economy's survival during the COVID-19 crisis. There are positive aspects regarding the process adopted to finance SMEs. To facilitate the process to obtain concessional loans, there were: 1) the creation of an online platform; and 2) the approval of concessional loans will be made faster electronically. To provide certainty and

(236) *Id.*

(237) *Id.*

assurance that the funds will be used effectively, the bank pays the loan to the beneficiaries (i.e., landlords, workers, and suppliers) and deposits it in their accounts directly.

However, there are several negative aspects regarding the economic approach adopted by the government of Kuwait to rescue SMEs during this crisis. The discussion highlights the cons of the regulations approved by the Council of Ministers regarding the concessional loans. The article shows that in practice there are obstacles that deviate the regulations from achieving its purposes, the aspects of spending of the financing amounts, and the boundaries mentioned by the regulations. The debate also focuses on providing critical analysis of the procedures announced by the Central Bank of Kuwait to obtain the concessional loans. Lastly, the argument sheds light on how the deferral of the Fund's installments for six months achieves economic inefficiency.

The regulations stipulate that one of its purposes is to maintain the national workforce and to increase its percentage in the private sector. One of the boundaries and controls that affected SMEs need to follow to obtain concessional loans is maintaining the national workforce and to reach the percentage of the national workforce set for the activity and sector by December 31, 2021. However, in practice, it is difficult to fulfill such goal, because the government employs 95% of the national workforce in its different institutions⁽²³⁸⁾. In 2019, the percentage of national workforce in the public sector was 75.37%, and the percentage of the national workforce in the private sector was 4%⁽²³⁹⁾. Prior to the COVID-19 crisis, a source indicates that SMEs effectively failed to reduce the unemployment rate of Kuwaitis⁽²⁴⁰⁾. The feasibility studies of the SMEs projects financed by the Fund did not comprehensively consider given priority to employ Kuwaitis⁽²⁴¹⁾. Unfortunately, SMEs

(238) The Explanatory Note for Law No. 98 for 2013.

(239) Abdullah Al-Abduljader, Labor force statistics and Kuwaiti employment opportunities, ALANBA (Feb. 22, 2019), <https://www.alanba.com.kw/kottab/abdullah-alabdeljader/886638/22-02-2019-إحصائيات القوى العاملة وفرص عمل للكويتيين> / (last visited Sept. 4, 2020). It is important to note that the total population in Kuwait is 4,714,137. The number of Kuwaitis is 1,407,468, who represent 29.86% of the total population, and the total number of non-Kuwaitis is 3,306,669, who represent 70.14% of the total population. *See id.*

(240) CSRGULF, *supra* note 178.

(241) *Id.*

only attracted a limited number of Kuwaitis as opposed to a greater number of foreign workers⁽²⁴²⁾.

According to a report, 25,000 Kuwaitis are unemployed⁽²⁴³⁾. Between 2016-2018, 5,000 Kuwaitis left the private sector and either had the chance to work in the public sector or to become unemployed⁽²⁴⁴⁾. In June 2018, the unemployment rate reached 6.1% among Kuwaitis⁽²⁴⁵⁾. In 2019, The Labor Statistics Report for the Gulf Cooperation Council States revealed that 6.4% of Kuwaitis suffer from unemployment-a total of 14,800 citizens-compared to the unemployment rate of 1.7% among non-Kuwaitis⁽²⁴⁶⁾. Another source indicates that Kuwaitis are among the individuals of the Gulf Cooperation Council States to work the least in the private sector. They are in the penultimate rank before the Qataris⁽²⁴⁷⁾. Given these dynamics, it is unclear how the goal of increasing the national workforce can be achieved, especially during this critical time, when businesses are forced to shut down by the government to combat spread of the virus.

Another goal mentioned by the regulations is to support vital sectors and activities that add value to the local economy, which were operating efficiently before the COVID-19 crisis. The measure that will be followed to examine such efficiency and the criteria of measuring whether or not the activity operated efficiently before the crisis is unclear.

Concerning the aspects of spending and use of the financing amounts, the regulations emphasized that the bank pays the loan amounts to beneficiaries and deposits it in their accounts directly. In practice, there is a problem relates to the existence of fake SMEs. There are two associated issues resulting from fake SMEs: 1) the actual

(242) *Id.*

(243) 25.5 thousand Kuwaitis are unemployed .. up to 6%, ALANBA (Sept. 2, 2018), <https://www.alanba.com.kw/ar/economy-news/853402/02-09-2018>– (last visited Sept. 4, 2020).

(244) *Id.*

(245) *Id.*

(246) Khaled Al-Hattab, A report: 6.4% of Kuwaitis suffer from unemployment, ALQABAS (Jul. 14, 2019), <https://alqabas.com/article/5689854-تقرير من الكويتيين يعانون البطالة> (last visited Sept. 4, 2020).

(247) CSRGULF, *supra* note 178.

percentage of national employees in SMEs is undetermined; and 2) the actual percentage of non-Kuwaitis employees in SMEs is unknown.

Regarding the first issue, a report notes that less than 7% of Kuwaitis work in the SME sector⁽²⁴⁸⁾. Scholars highlight that this percentage may be inflated due the “phantom employees,” which means that “nationals declared on payroll with the sole purpose of receiving government subsidies for working in the private sector”⁽²⁴⁹⁾.

Regarding the second issue, there are fake SMEs that do not exercise a business activity in practice. A number of individuals issued license for small or medium-sized enterprises. They have brought a large number of foreign workers to be in the name of these projects and work for them⁽²⁵⁰⁾.

Let’s suppose that A owns a commercial license, A has a ‘fake’ small business. A provides documents to the bank related to payroll of his employees working in his enterprise. A claims that his business was severely affected due to precautionary measures to combat the spread of the virus. A asserts that he lacks liquidity and needs the concessional loans to pay the salaries of his workers. The mechanism of how the bank will differentiate between real and fake SMEs is vague. There is no method for discovering this type of manipulation. There should be an auditing instrument to know exactly the actual numbers of employees (Kuwaitis and non-Kuwaitis) actually working in real SMEs to prevent the waste of public funds.

Regarding the procedures to obtain the concessional loan, there is no specification of the time period during which the bank grants the loan approval. The Central Bank of Kuwait stipulates that the approval of concessional loans requests will be faster than before the emergence of the COVID-19. However, “faster” is a flexible term and does not indicate a certain period. Specifying a certain period of time, for example 3-5 days, is a better strategy as this will help to prevent a long time from passing, which will have negative effects on business, and to provide the

(248) ANTONIO CARVALHO ET., POST OIL GULF: SMES TO THE RESCUE? 9 (Tri International Consulting Group, 2018).

(249) *Id.*

(250) Ali Qasim, Small-sized businesses mired in swamp "human trafficking", ALRAIMEDIA (Aug. 28, 2019), <https://www.alraimedia.com/Home/Details?id=913118ee-74f6-4a2f-bf5f-b2203c4a2686> (last visited Sept. 4, 2020).

applicant with a clear vision in advance. Also, the Central Bank of Kuwait mentions that an affected SMEs must submit its financing request to the local bank. While the Council of Ministers states that the regulation applies to SMEs that were affected by COVID-19 crisis, the extent of damage that defines an affected applicant is unspecified. Testing whether the enterprise was affected in accordance to a comparison of income earned by the enterprise in two specific time periods, for example March 2019 and March 2020, might be an option. However, at this time, the criteria concerning this matter is vague.

Furthermore, the Central Bank of Kuwait explains that the affected SMEs must submit a loan request to local banks that maintains SME's primary account. Then, the local bank coordinates with the Fund to assess the request. The adopted assessment criteria are not specified. This is a serious problem because the lack of stated criteria provides the Fund and the local bank greater flexibility to reject some requests.

Another issue is that the Central Bank of Kuwait announced that the value of financing will be equal to the obligations of the affected SMEs, including rent, salaries of workers, and payments due to suppliers. According to Central Bank of Kuwait, the affected SMEs should provide the necessary documents related to rent receipts, payroll, and supplier invoices. However, in the process for obtaining the loan, the Central Bank of Kuwait emphasizes that the local bank will conduct a necessary credit assessment. In accordance with the results of the credit study, the local bank will have the ultimate decision to decide the value of the financing. In this case, the value of the approved financing is not guaranteed to be equal to the loan request.

Another problem is that the loan will be given through joint financing from local bank and the Fund, with a weight of 80% from the Fund, and 20% from the local bank. There are two unresolved issues: First, how the Fund will be able to finance previous SMEs that reached the maximum funding limit is not stipulated. Articles 5 and 25 of the Law No. 98 for 2013 confirm that the Fund will finance enterprises by a maximum of 80% of the enterprise's cost. To illustrate this idea, suppose that A is an owner of a medium business. In 2017, A obtained a loan from the Fund. The Fund was responsible for 80% of the enterprise's cost. Today, because of the precautionary measures to combat the spread

of the virus, A's business was affected, A requests for a concessional loan. However, the Law for 2013 forbids this additional funding. How this issue is resolved? The answer is vague. Second, Section III expresses that a number of SMEs were unable to repay their installments prior to COVID-19 crisis. A high probability exists that this situation will be repeated by SMEs during the crisis. The unclarity of the method to prevent the repetition of a catastrophic scenario of those debts becoming bad debts will jeopardize the public money.

Lastly, the economic decision to postpone the installments of the Fund for six months increases inefficiency. There are three associated issues resulting from this decision. First, the deferral decision applies to all the SMEs projects that were financed by the Fund, and the decision does not distinguish between the projects. As previously mentioned, the policies announced by the government to combat the spread of the virus and the legal effects it imposed on contractual obligations differ from one contract to another. Some businesses were forced to shut down, while others were able to continue working through home delivery service. For the first case, an exemption from paying the premium should be made, and in the second case a reduction of the amount of the installments should be considered. To elaborate, in the first scenario, the fulfillment of the obligation is impossible while in the second situation it becomes exhausting. Most importantly, some enterprises were not affected by the precautionary measures set by the government, and therefore, the payments of installments for such businesses do not need to be postponed. Second, there are some SMEs that recently obtained a loan from the Fund, and already enjoy a grace period. Currently, the policy is unclear if the six months period can be added to the grace period enjoyed by those businesses. Third, the period of six months is a long period compared to strategy adopted by other countries. For example, in Dubai the installments of the beneficiaries from the Mohammed Bin Rashid Al-Maktoum Fund for SMEs were postponed for a period of three months⁽²⁵¹⁾. Since the end of the COVID-19 crisis is uncertain, setting a shorter period to postpone the installments instead of a longer period is

(251) The Mohammed Bin Rashid Al-Maktoum Fund announces that the payment of premiums to the beneficiaries of the fund will be postponed for a period of 3 months, EMARATALYOUM (Mar. 20, 2020), <https://www.emaratalyout.com/business/local/2020-03-20-1.1322649> (last visited Sept. 4, 2020).

considered a sound plan. Depending on the emerging economic conditions, the shorter plan also offers more flexibility to be amended if it needs to be extended.

In conclusion, the government of Kuwait did not adopt real initiatives to assist SMEs during the COVID-19 crisis. The economic measures and regulations lack legal certainty, clarity, and increases inefficiency. Basically, the measures announced by the government of Kuwait either postpone the current liabilities of SMEs or increase their liabilities. The measures do not provide concrete solution to contain the negative effects of the present economic crisis. Subsection IV.II proposes short and long-term economic and legal reforms that contribute to reducing the economic impact of the COVID-19 crisis on SMEs. The proposals aim to achieve economic efficiency from one hand and preserve public funds on the other hand.

IV.II: Short-and Long- term Policy Proposals that Safeguard Fiscal Capacity and Minimize Economic Distortions

Section III illuminated the negative economic effects resulting from the precautionary measures announced by the government to combat the spread of COVID-19. Particularly, the adverse effects of such measures on SMEs. Subsection IV.II introduces both short- and long-term policy proposals as most of the obstacles encountered by SMEs today are similar to the hardships prior to the COVID-19 crisis. The effects of the precautionary measures to combat the spread of the virus made these issues worse. Therefore, addressing long-term solutions is significantly important to eliminate the effects of any economic crisis that might arise in the future and to reduce some of the traditional economic burdens of SMEs. Moreover, long-term solutions help to create an attractive business environment to encourage the prosperity of SMEs. Eventually, such solutions will increase SMEs' contribution in the economy of Kuwait.

In the end, Subsection IV.II highlights some important lessons grasped from COVID-19 crisis.

IV.II.I: Short-Term Solutions

The previous discussion demonstrated that the loans will be given through joint financing from local banks and the Fund, with a weight of

80% from the Fund, and 20% from the local bank. Subsection IV.I addressed that one of the problems facing the Fund to fulfill the regulation is that both Law for 2013 forbids an additional funding exceeding 80% of the enterprise's cost. As a recommendation, an amendment to the Law for 2013 should be added to achieve a balance between the interests of SMEs and the protection of public money during this critical time. The amendment should state that:

[I]n the event of general crisis, which results to precautionary policies announced by the public authority to combat such crisis, a small or medium-sized enterprise economically affected by these precautionary measures may obtain an additional financing exceeding 80% of the enterprise's costs, after fulfilling the following conditions:

- 1 - Provide evidence that the project was working efficiently prior to the crisis and that it has achieved great results in production and sales.
- 2 - Provide proof that the project paid the monthly installments of the previous loan.
- 3 - Provide proof that the enterprise has been affected due to the lockdown by exhibiting proof of income between a previous period similar to the period of closure announced by the government.
- 4 - The loss needs to be half of what SMEs gain prior to the crisis.
- 5 - The additional financing will only cover the salaries of workers, rent, and payments to suppliers.

Another problem relates to the previous regulation is that the Fund will be responsible for 80% of the loan given to SMEs. Eighty percent is a large percentage for the Fund to bear, especially that Section III expressed that a number of SMEs were unable to repay their installments and their debts became bad debts. As a safe solution, the percentage of the loan which the Fund will be responsible for need to be decreased. For example: in Belgium, C 50 billion was allocated as other liquidity sources and guarantee measures⁽²⁵²⁾. The regulation stipulates that:

[T]he distribution of losses at portfolio level: (a) For losses up to 3% of the value of the guaranteed portfolio: 100% for the bank; (b) Losses between 3% and 5% of the value of the guaranteed portfolio: 50% for the bank and 50% for the government; (c) Losses above 5%

(252) Anderson, *supra* note 219.

of the value if the guaranteed portfolio: 80% for the government and 20% for the bank^{”(253)}.

The Government of Kuwait should follow more sound plan regarding the distribution of losses to ensure that the public funds are protected and not further wasted. A study needs to be put in place to distinguish between the effects of the precautionary measures on businesses. The study needs to evaluate each business and its losses, in result, the distribution of losses between the bank and the Fund should be in accordance to such results. This solution contributes in achieving economic efficiency.

Subsection IV.I mentioned that another economic decision announced by the government is the deferral of the Fund's installments for six months. The previous discussion mentioned how this decision generates economic inefficiency. As a proposal for reform, the Fund should study the effect of COVID-19 on SMEs' contracts on a case by case basis. The study should distinguish between enterprises that were not affected at all by the crisis and those that were affected as well as the extent of their damage. A relationship between the effect of the precautionary measures and the contractual obligations should be determined. Whether the effect of the crisis made the fulfillment of contractual obligations impossible or exhausting needs to be proved by the owners of the enterprises. Then, each contract should be evaluated separately to consider either postponing the payments of installments or reducing the installment amount. For those businesses that were not affected at all, they need to pay their installments in full. This solution will contribute in achieving economic efficiency and safeguarding the state's funds.

There are SMEs that were forced to shut down and were affected severely. As a solution, the government of Kuwait should consider offering them reasonable non-refundable compensation. The previous argument provided example of some countries that have already adopted such measure. This solution will provide cash flow for affected SMEs and prevent them from bankruptcy.

(253) *Id.*

Another problem relates to the full curfew that the Government of Kuwait announced on May 8⁽²⁵⁴⁾. Unfortunately, the government shut down all economic activities and prohibits businesses to provide home delivery service. Whether it is a partial curfew or full curfew, the government of Kuwait should allow businesses to continue working through providing home delivery service. To ensure the health of people, the government of Kuwait should impose strict precautionary measures that the businesses and its workers need to follow. In case of violation, the government might impose fines and shut down businesses. This will create incentives for businesses to comply with such measures to prevent the transmission and the spread of the virus. In addition, awareness must also be spread through the media channels about ways of how to protect people from being infected and sterilize goods taken from delivery services. An example of a country that allowed commercial and economic activities to continue working during the full curfew is Saudi Arabia⁽²⁵⁵⁾. This solution will minimize the losses of SMEs as much as possible.

IV.II.II.: Long-Term Solutions

One of the significant problems prior to the COVID-19 crisis is that a number of SMEs failed to continue doing their business. As a result, they were unable to repay their installments to the Fund. A high probability exists that this situation will be repeated by the SMEs during the crisis. Four factors contribute to this problem: 1) Article 28 of the Law for 2013 and Law for 2018 are vague in specifying the process followed by the Fund to recover the debts, and they do not specify the mechanisms to calculate bad debts. 2) A positive relationship exists between the absence of a guarantee for these loans and the failure to pay the loan by SMEs. Additionally, the Fund does not require collateral for loans⁽²⁵⁶⁾. 3) The provisions of the Law for 2013 allow the Fund to recover the payments through legal disputes, which require long and

(254) AL-MONITOR, Kuwait announces full curfew as other countries ease restrictions, <https://www.al-monitor.com/pulse/originals/2020/05/kuwait-total-curfew-coronavirus.html> (last visited May. 27, 2020).

(255) Saudi Arabia starts full curfew, AAWSAT (May. 23, 2020), <https://aawsat.com/home/article/2297931/السعودية تبدأ منع التجول الكلي> (last visited Sept. 4, 2020).

(256) CSRGULF, *supra* note 178.

complicated procedures⁽²⁵⁷⁾. 4) The Fund lacks experienced employees that ensure the prosperity and the success of SMEs after obtaining loans from the Fund⁽²⁵⁸⁾.

As recommendations, 1) the law should clarify and specify the process that the Fund should follow to recover these payments. 2) Kuwait needs to follow the examples of other countries in providing different ways to guarantee loans. For example, Saudi Arabia relies on financial guarantees provided by a public joint stock company to guarantee the loans⁽²⁵⁹⁾. Egypt, Morocco, and Tunisia have funds and companies that specializes in sector of loan guarantees⁽²⁶⁰⁾. 3) Kuwait needs to establish specialized commercial courts to review economic cases. An example of a country that established commercial courts is Saudi Arabia⁽²⁶¹⁾. Commercial courts will eliminate time and the complex procedures. 4) The Fund should cultivate experienced and skilled employees that could offer advice and consult with the SMEs to ensure their efficiency. The Fund should provide educational courses and training for its employees. Moreover, the Fund should motivate its employees to acquire such skills and to develop SMEs. One-way motivational tool is to give workers bonuses if efficiency and improvement for SMEs is achieved. For example, each employee of the Fund may be assigned to be responsible for three businesses to consult with them and offer advice on business management and marketing.

Another problem discussed in Section III is that the Fund lack transparency and mismanagement. Section I showed that the lack of transparency generates bad debts. One uncostly solution that enhances the transparency of the Fund is through making the Fund's spending data available online for the public to access and download. This will

(257) *Id.*

(258) *Id.*

(259) *Id.*

(260) *Id.*

(261) Amer Abdulaziz Al-Amr, Unprecedented Saudi Law Draft of the Commercial Courts and Procedures (May. 10, 2019), <https://www.dlapiper.com/en/dubai/insights/publications/2019/05/unprecedented-saudi-law-draft-of-the-commercial-courts-law-and-procedures/> (last visited Sept. 4, 2020).

achieve economic growth and increases accountability. In result, it reduces errors conducted by the Fund.

After shedding the light on short and long-term proposals. The following discussion addresses suggestions and recommendations as important lessons grasped from the COVID-19 crisis. It is important to learn from this crisis to prevent repeating the same catastrophic effects in the future.

Suggestion and Recommendation

- 1 - Kuwait needs to take real initiatives to diversify its economy to reduce the emphasis on energy sources.
- 2 - Providing an online service is an important asset, especially for SMEs. SMEs need to create an online platform for their businesses. They need to learn how to market their goods and services online, and they need to adopt techniques that service their old customers and attract new ones. This will help to minimize their losses as much as possible during an economic crisis.
- 3 - Providing training programs on how to create a website and how to market commodities and services through the internet at nominal prices is essential. This will help both SMEs and the State during times of economic crisis to minimize losses as much as possible.
- 4 - Some of the obstacles that SMEs face today are related to issues that were not solved prior to the crisis. The government of the State of Kuwait needs to solve these key issues to help minimize the effects of a future economic crisis.
- 5 - The world after COVID-19 crisis will not return as it was before. There must be drastic changes in the government structure and its size. The government currently follows long, complicated, and repetitive measures, and it needs to be more rapid, flexible, and efficient to sustainably manage the economy after the end of this crisis. One of the crucial changes is merging public bodies and relinquishing unimportant bodies that are a burden to the State.

List of References

- 25.5 thousand Kuwaitis are unemployed.. up to 6%, Alanba (Sept. 2, 2018), <https://www.alanba.com.kw/ar/economy-news/853402/02-09-2018>– (last visited Sept. 4, 2020).
- A. Berry, 'The Importance of SMEs in the Economy', ITD Global Conf. on Tax'n of Small and Medium Enterprises, Bueno Aires, Argentina, (October 2017).
- A. Warner, *Small and Medium Sized Enterprises and Economic Creativity*, N.Y.C. & Geneva, Unctad, (2001).
- Abdullah Al-Abduljader, *Labor force statistics and Kuwaiti employment opportunities*, Alanba (Feb. 22, 2019), <https://www.alanba.com.kw/kottab/abdullah-alabdeljader/886638/22-02-2019-إحصائيات القوى العاملة وفرص عمل للكويتيين> (last visited Sept. 4, 2020).
- Abdulsrool Bahbehani et al., *Sources of Commitment and Evidence* 168 (3d ed. 2010).
- Adam Hayes, *Stimulus Package*, Investopedia (Mar. 26, 2020).
- Ahmed Abdel Rahman et., *Kuwait SMEs: Size, Obstacles and Suggested Remedies*, 3 Int'l J. Managerial Stud. & Res. 7, (2015) (examines the current status of small and medium enterprises (SMEs) in the economy of Kuwait).
- AL-MONITOR, *Kuwait announces full curfew as other countries ease restrictions*, <https://www.al-monitor.com/pulse/originals/2020/05/kuwait-total-curfew-coronavirus.html> (last visited May. 27, 2020).
- Ali Al-Khaldi, *90% of the Initiators Consider the Role of National Fund to Be "Negative"*, Alqabas, Apr. 6, 2020.
- Ali Al-Khaldi, *Funding Regulations for Affected Companies*, Alqabas, April 21, 2020.
- Ali Al-Khaldi, *Small projects stumbled.. and loans are not repaid*, Alqabas (Apr. 16, 2019), <https://alqabas.com/article/657390-مشاريع صغيرة تتعثّر والقروض لا تُسدّد> (last visited Sep. 2, 2020).
- Ali Qasim, *Small-sized businesses mired in swamp "human trafficking"*, Alraimedia (Aug. 28, 2019), <https://www.alraimedia.com/Home/Details?id=913118ee-74f6-4a2f-bf5f-b2203c4a2686> (last visited Sept. 4, 2020).

- Amer Abdulaziz Al-Amr, *Unprecedented Saudi Law Draft of the Commercial Courts and Procedures* (May. 10, 2019), <https://www.dlapiper.com/en/dubai/insights/publications/2019/05/unprecedented-saudi-law-draft-of-the-commercial-courts-law-and-procedures/> (last visited Sept. 4, 2020).
- Anadel Al-Mutar, “Corona” *Between Force Majeure or Emergency Circumstance*, Aljarida (Mar. 22, 2020), <https://www.aljarida.com/articles/1584808158149681200/> (last visited Sept. 4, 2020).
- Antonio Carvalho et., *Post Oil Gulf: SMEs to The Rescue?* 9 (Tri International Consulting Group, 2018).
- Atsu, F & Adams (2005), *S 'Transparency Regulation and Economic Performance in Africa'* Utrecht University, Utrecht.
- *Because of Coronavirus (Covid-19).. The First Decline in Global Demand for Oil Since the Financial Crisis*, Aljazeera (Feb. 13, 2020), <https://www.aljazeera.net/news/ebusiness/2020/2/13/بسبب كورونا أول تراجع للطلب العالمي على النفط منذ الأزمة المالية> (last visited Sept. 4, 2020).
- Brian Beers, *How Companies Can Reduce Internal and External Business Risk?*, Investopedia (Feb. 3, 2020), <https://www.investopedia.com/ask/answers/050115/how-can-companies-reduce-internal-and-external-business-risk.asp> (last visited Sept. 4, 2020).
- Cibela Neagu, *The Importance and Role of Small and Medium-sized Businesses*, 23 *Theoretical & Applied Econ.* 332, (2016) (discussing the importance of SMEs in economic development).
- CSRGULF, *High Waste Risk in the National Fund for Support and Development of Small and Medium-Sized Enterprises in the State of Kuwait* (Nov. 20, 2019), <https://www.csrgulf.com/2019/11/20/مخاطر هدر عالية في صندوق المشروعات في> (last visited Sept. 4, 2020).
- Decree Law No. 39 for 1980 related to the Issuance of the Law of Evidence in Civil and Commercial Matters art. 1 (Kuwait).
- Donald McNeil, *Coronavirus Has Become a Pandemic*, *W.H.O. Says*, N.Y. Times (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/health/coronavirus-pandemic-who.html> (last visited Sept. 4, 2020).
- Ekramy Abdullah, *Record Level of non-Oil Revenues in 2019.. 148% Jump in 5 Years*, Aleqt (Dec. 10, 2019), https://www.aleqt.com/2019/12/10/article_1727151.html (last visited Sept. 3, 2020).

- Elisa Braun, *France Injects Billions into Stimulus Plan amid Coronavirus Chaos*, Politico (Mar. 17, 2020), <https://www.politico.eu/article/france-injects-billions-into-stimulus-plan-amid-coronavirus-chaos-bruno-le-maire-economic-catastrophe/> (last visited Sept. 4, 2020).
- European Commission, *2018 SBA Fact Sheet - Romania* (Nov. 19, 2018), <https://ec.europa.eu/docsroom/documents/32581/attachments/24/translations/en/renditions/pdf> (last visited Sept. 4, 2020).
- Fawaz Karami, *The National Fund: About 167 Million Kuwaiti Dinars Credits for Small and Medium-Sized Enterprises*, Kuna (Dec. 10, 2018), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2763715> (last visited Sept. 4, 2020).
- Glada Lahn, *Fuel, Food, And Utilities Price Reforms in the GCC: A Wake Up Call For Business* (The Royal Institute of International Affairs, 2016).
- Hidayat Keskin et.al, *The Importance of SMEs in Developing Economies*, 2nd int'l symp. on Sustainable dev. 183 (2010) (discussing the importance of SMEs for developing countries).
- Ibrahim Abduljawad et., *Dismissing the Board of Directors of the National Fund for Support and Development of Small and Medium-Sized Enterprises*, Alqabas (Apr. 18, 2017), <https://alqabas.com/article/384311-إقالة مجلس إدارة صندوق المشروعات الصغيرة> (last visited Sept. 4, 2020).
- IEA, *Global Oil Demand to Decline in 2020 as Coronavirus Weighs Heavily on Markets*, <https://www.iea.org/news/global-oil-demand-to-decline-in-2020-as-coronavirus-weighs-heavily-on-markets> (last visited Apr. 14, 2020).
- Institute of Banking Studies Research, *Taking Stock of SME Banking in Kuwait*, (2016).
- Inter-American Development Bank, *Action for Growth: Policy Recommendations and 2018-2021 Action Plan for Growth in Americas* 6 (2018).
- Jeddah Chamber of Commerce and Industry, *Small-Medium Enterprises in Saudi Arabia Report for April 2016*.

- Jim Chappelw, Free Market, Investopedia (June 25, 2019), <https://www.investopedia.com/terms/f/freemarket.asp> (last visited Sept. 4, 2020).
- Julia Anderson, *The fiscal response to the economic fallout from the coronavirus* (May. 25, 2020), <https://www.bruegel.org/publications/datasets/covid-national-dataset/> (last visited Sept. 4, 2020).
- K. Oduntan, *The Role of Small and Medium Enterprises in Economic Development: The Nigerian Experience*, Int'l Conf. of Art. Dubai, UAE, March (2014).
- Khaled Al-Hattab, *A report: 6.4% of Kuwaitis suffer from unemployment*, Alqabas (Jul. 14, 2019), <https://alqabas.com/article/5689854-من-الكويتيين-يعانون-البطالة-64-تقرير> (last visited Sept. 4, 2020).
- Khaled Al-Mutairi, *Oil Prices to Lowest Level Since Year amid Coronavirus Mushrooming*, Kuna, (Mar. 1, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2871480&language=en> (last visited Sept. 4, 2020).
- Khalid Al-Hattab, *40 Thousand Companies Are Subject to Default or Bankruptcy*, Alqabas, Apr. 6, 2020.
- *Kuwait Gov't Imposes Partial Curfew, Extends Holiday for Two Weeks*, Kuna (Mar. 22, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2880568&language=en> (last visited Sept. 4, 2020).
- *KUWAIT RAISES PETROL PRICES BY OVER 80% - 'RATIONALIZATION'*, Arabtimes (Aug. 2, 2016), <http://www.arabtimesonline.com/news/kuwait-raises-petrol-prices-80-rationalization/> (last visited Sept.4, 2020).
- Kuwait Realizes Early the Importance of Small and Medium-sized Enterprises, Saneoualhadath (June 6, 2016), https://saneoualhadath.me/أعمال-المشاريع-الصغيرة-والمتوسطة-الكويت-خصوصا/?cfchljschltk=f1782d1283a6cb2da48ca996f82-b97208a563b41-1587207531-0-AT-mPvNSb91Mx_gifDsWrQPd4-z3OfOpa315YCPQY1Efa0SyG_1E871d4xh8eanyF131eUHLOa-b4E3yKX5VYLu461wv57sxjByXreMfhWML2mdSl8OxUJH-ku654DSeA3K5T286IHSh-7d7EVWeRCDslg6BT-wI3uHL5Z6Pd9ZmSr4bEbMlbmxeAT7NfGxuAGNIHrkxfZZu-Zu4nDjLtyTzp95oSZ0cpX_9bYNfmclUarmuMG0txQIvuhht-JUlcZ9lnZlzMhroc_y6vPiMk2R8QGpvrYC6JRtDriO5C-

NcnQAVMaDXJ4sdNL16K0yqkZvHMXOkT6 ARng-sIYrtcK8Fw-ag6X5pqfz0F1psr4KNsg0e_n-pr057wcZpMR8FQJG3ljnjtQFROcKVFcjn6VmnCAA2nvTgvh5r-wlympPCBQsG1oW4-CcTk17rTNu8mfTzb3 MYR2AD8IJblPl-sAz96UVw8CtmiESy OwMqoUdqk49zyOGk2tgw9JTj_e-VoEXHsHdprjfwjnQBFOVhqzZJSVgM9yyCGZN35UclP5ULEx-a9W-jXUKCiVvcjldJl8ksOakw (last visited Sept. 4, 2020).

- *Kuwait sold a barrel with a return of one Kuwaiti Dinar!*, Alqabas, Apr. 9, 2020.
- Lars Oxelheim, *Globalization, Transparency and Economic Growth: The vulnerability of Chinese firms to macroeconomic shocks*, 21 J. Asian Econ. 66 (2008).
- Law No. 14 for 2018 regarding Amending Some Provisions of the Law No. 98 for 2013 (Kuwait).
- Law No. 98 for 2013 concerning the National Fund for Support and Development of Small and Medium-Sized Enterprises (Kuwait).
- Lon Fuller, *The Mortality of Law* 39 (rev. ed. 1969).
- Maha Albesharah, *How to Create an Attractive Legal System for Foreign Direct Investments? The Kuwait Case* (Dec. 2019) (unpublished Ph.D. dissertation, University of Virginia) (on file with author).
- Mahmoud Al-Kafrawy, *The Closure of Commercial Activities in Kuwait Due to Coronavirus and Popular Initiatives to Reduce Losses*, Aljazeera (Mar. 21, 2020), <https://www.aljazeera.net/news/ebusiness/2020/3/21/إغلاق الأنشطة التجارية في الكويت بسبب كورونا ومبادرات شعبية> (last visited Sept. 4, 2020).
- Martin Carree & Roy Thurik, *Small Firms and Economic Growth in Europe*, 26 Atl. Econ. J. 137, (1998).
- Nasser Al-Jarah, *The State Audit Bureau of Kuwait: The National Fund for Support and Development of Small and Medium-Sized Enterprises is Not Doing Well with Its Strategic Plan*, Aljarida (Oct. 21, 2019), <https://www.aljarida.com/articles/1571588419586692700/> (last visited Sept. 4, 2020).
- New Kuwait, <http://www.newkuwait.gov.kw/home.aspx> (last visited Apr. 19, 2020).

- New Kuwait, Kuwait Mobilizes Development Efforts to Transform Kuwait into a Financial, Cultural, and Institutional Leader in the Region by 2035, http://www.newkuwait.gov.kw/image/NewKuwait_CampaignLaunchEvent.pdf (last visited Apr. 19, 2020).
- Nitank Rastogi et., *Pestle Technique - A Tool To Identify External Risks in Construction Projects*, 3 Int'l Res. J. Engineering & Tech. 384, 384 (2016) (discussing the types of business risks).
- Norbert Agbeko, *On the Characteristics of the free market in cooperative Society*, Quantitative Fin. Econ. 1, (2015).
- Ole Borre & Elinor Scarbrough, *The Scope of Government* 234 (Oxford University Press, 1995).
- Oxford Business Group, *Range of Measures to Support Growth of Kuwait's SMEs*, <https://oxfordbusinessgroup.com/analysis/taking-initiative-range-measures-support-growth-smes> (last visited Apr. 18, 2020).
- Prableen Bajpai, *Top Factors That Affect the Price of Oil*, Investopedia (Mar. 16, 2020), <https://www.investopedia.com/articles/investing/072515/top-factors-reports-affect-price-oil.asp> (last visited Sept. 4, 2020).
- PwC, *2019 Oman State Budget: "A Prudent Budgetary Approach"*, <https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2019/2019-oman-state-budget.html> (last visited Apr. 14, 2020).
- Reconnaissance Research, *KUWAIT NEEDS TO SUPPORT ITS SMALL BUSINESSES*, 'Consequences of SMEs going out of business will be felt by everyone' Arab Times (Mar. 24, 2020), <http://www.arabtimesonline.com/news/kuwait-needs-to-support-its-small-businesses/> (last visited Sept. 4, 2020).
- Restatement (Second) of Contracts § 265 & cmt. a (Am. Law Inst. 1981); Restatement (Second) of Contracts ch. 11, intro. note (Am. Law Inst. 1981).
- Robert J. Samuelson, *Key facts about the great oil crash of 2014*, Wash. Post (Dec. 3, 2014), https://www.washingtonpost.com/opinions/robert-samuelson-key-facts-about-the-great-oil-crash-of-2014/2014/12/03/a1e2fd94-7b0f-11e4-b821-503cc7efed9e_story.html (last visited Sept. 4, 2020).

- Salem Abdulgafor, *Procedures for Those Affected to Obtain Financing from the Banks*, Alqabas, Apr. 22, 2020.
- Sarmad Khan, *UAE Economy Grew 1.7% in 2018 on Non-oil Sector Growth and Higher Oil Prices*, The Nat'l, (Mar.31, 2019), <https://www.thenational.ae/business/economy/uae-economy-grew-1-7-in-2018-on-non-oil-sector-growth-and-higher-oil-prices-1.843335> (last visited Sept. 3, 2020).
- *Saudi Arabia starts full curfew*, Aawsat (May. 23, 2020), <https://aawsat.com/home/article/2297931/السعودية تبدأ منع التجول الكلي> (last visited Sept. 4, 2020).
- Sultan Al-Qahtani, *A Study on the Effect of Coronavirus (COVID-19) on Employment and Lease Contracts in the State of Kuwait* (2020).
- Sumaya Almajdoub, *Issue Brief: The Structural Constraints of Entrepreneurship in Bahrain*, Baker Institute for Public Policy (2018).
- The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 739 for the Year 2011, the Commercial Secular, December 27, 2011, Audition No. 3.
- The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 121 for the Year 2003, the Labor Secular, March 3, 2005, Audition No. 1.
- The Court of Cassation, Civil and Commercial Judicial Decisions, Appeal No. 103 for the Year 2007, the Commercial Secular, October 9, 2008, Audition No. 3.
- The Explanatory Note for Law No. 98 for 2013.
- The Ministry of Finance, *The State Budget for the Fiscal Year 2019/2020*, at 17, available at <https://www.mof.gov.kw/MofBudget/PDF/Budget20-19.pdf> (Kuwait) (last visited Sept. 2, 2020).
- *The Mohammed Bin Rashid Al-Maktoum Fund announces that the payment of premiums to the beneficiaries of the fund will be postponed for a period of 3 months*, emaratalyoun (Mar. 20, 2020), <https://www.emaratalyoun.com/business/local/2020-03-20-1.1322649> (last visited Sept. 4, 2020).
- The National Fund for Small and Medium-Sized Enterprises Development, *Annual Report*, <https://www.nationalfund.gov.kw/ar/media-center/publications/> (last visited Apr. 27, 2020).

- The National Fund for Small and Medium-Sized Enterprises Development, *Annual Report for the Fiscal Year 2015/2016*, https://nationalfund-new.s3.amazonaws.com/media/160729_annual_report_final_arabic_1.pdf?AWSAccessKeyId=A-KIAQZTLSBVASLOW2JPX&Signature=OX0kXnROLfePL-WhOyF2OzuHTT80%3D&Expires=1588017078 (last visited Apr. 27, 2020).
- The National Fund for Small and Medium-Sized Enterprises Development, *Annual Report for 2016/2017*, <https://nationalfund-new.s3.amazonaws.com/media/Ar-opt.pdf?AWSAccessKeyId=A-KIAQZTLSBVASLOW2JPX&Signature=Q9H3dF8yKwTbQ-DOHWGTUerDO6Uc%3D&Expires=1588021317> (last visited Apr. 27, 2020).
- The United Arab Emirates Government Portal, *The Impact of SMEs on the UAE's Economy* (Dec. 16, 2019), <https://u.ae/en/information-and-services/business/crowdfunding/the-impact-of-smes-on-the-uae-economy> (last visited Sept. 4, 2020).
- The World Bank, *Building Kuwait's Future, One Small Enterprise at a Time* (Mar. 1, 2016), available at <https://www.worldbank.org/en/news/feature/2016/03/01/building-kuwait-future-one-small-enterprise-at-a-time> (last visited Sept. 4, 2020).
- The World Bank, *Small and Medium Enterprises (SMES) Finance: Improving SMEs' Access to Finance and Finding Innovative Solutions to Unlock Sources of Capital*, available at <https://www.worldbank.org/en/topic/smefinance> (last visited Apr. 14, 2020).
- U.S. Energy Information Administration, *Short-Term Energy Outlook*, <https://www.eia.gov/outlooks/steo/report/prices.php> (last visited Apr. 17, 2020).

الآثار القانونية والاقتصادية لوباء كوفيد-١٩ على الشركات الصغيرة والمتوسطة الحجم: حالة الكويت "باللغة الإنجليزية"

د. مها البشارة

ملخص:

مرض فيروس كورونا (كوفيد-١٩) أثر سلباً على حياة البشر في شتى المجالات. كنتيجة لذلك، أعلنت حكومات من جميع أنحاء العالم إجراءات احترازية لمكافحة انتشار الفيروس. الإجراءات الاحترازية التي تم اتخاذها تضمنت إغلاق معظم الأعمال التجارية. أثرت الإجراءات الاحترازية بشدة على اقتصاديات الدول، فمعظم الشركات، خصوصاً، المشروعات الصغيرة والمتوسطة كانت على حافة الإفلاس. البحث يناقش آثار كوفيد-١٩ على المشروعات الصغيرة والمتوسطة في دولة الكويت. البحث يتناول ما إذا كانت جائحة كوفيد-١٩ تكيف قوة القاهرة أم ظرف طارئ بموجب النظام القانوني في الكويت. يحلل البحث حزم التحفيز الاقتصادي التي أعلنت عنها حكومة الكويت أثناء فترة جائحة كوفيد-١٩ تحليلاً نقدياً. البحث يتوصل إلى نتيجة هامة ألا وهي أن حكومة الكويت لم تتخذ مبادرات حقيقية لدعم المشاريع الصغيرة والمتوسطة خلال هذه الأزمة. السياسات والحلول التي اعتمدتها الحكومة في حقيقة الأمر إما تؤجل التزامات المشاريع الصغيرة والمتوسطة، أو تزيد من التزاماتها وأعبائها المالية من خلال الحصول على قروض ميسرة. في النهاية، يقترح البحث قوانين واضحة تهدف لتحقيق التوازن بين حماية الموازنة المالية للدولة وتقليل التشوهات الاقتصادية التي قد تنجم عن السياسات المقترحة.