

Bahrain: 25 Years in the Making

Dana Al Ghareeb

d.alghareeb@tamimi.com

April 2016

Sustainability, fairness and competitiveness. These are the pillars which lie at the heart of the Bahrain Economic vision 2030 ("Bahrain Vision") – a vision that has sparked a subsequent stream of on-going economic and institutional reforms since its launch in 2008. Bahrain's economy has enjoyed significant prosperity over the last few decades: real GDP growth at 4.5% (2014), direct foreign investment and a thriving financial sector are just a few of several contributing factors linked to its economic success. However, a key area of focus within the national strategy is diversification. Bahrain's status as a 'regional pioneer' has spanned almost a century. As the first GCC State to start an economic diversification strategy that favoured non-oil industries in the 60's, the Kingdom was also, historically, the first to establish a Chamber of Commerce and a banking sector, to introduce democratic reforms and, most recently, allow Parliament to amend the state budget- to name but a few. Bahrian continues to shift to a productive and globally competitive economy, inherently shaped by the government and facilitated through a booming private sector.

Since gaining independence in 1971, Bahrain has continued to steadily develop into a modern state with organised political, administrative and legal institutions. In a world that is increasingly interconnected, it cannot be denied that there is a constant spill-over effect that comes into play when assessing economic, legislative and social policies. The Bahrain Vision is simply another means by which the Kingdom will continue its growth and expansion into the future.

Bahrain's on-going ascendancy into becoming an essential international player can be evidenced by observing its willingness to ensure that legislation is constantly being altered and transformed so that it is in line with its global counterparts. This is an important component promulgated by the Bahrain Vision, which sets ambitious targets to secure the Kingdom's future.

This article will explore some key legislative changes that were implemented with this comprehensive vision in mind.

Electronic Transactions Law - Gateway into the Esoteric

Given that the majority of business and administrative tasks (and increasingly, even social interactions) are conducted online, the introduction of Legislative Decree No. 28 of 2002 with respect to Electronic Transactions (the "E-Transactions Law"), placed Bahrain on an international platform that is in keeping with the constantly evolving zeitgeist of the time.

The E-Transactions Law governs the vast obscure abyss that is the web; debates surrounding the notorious difficulties in regulating this area remain highly relevant to this day. However, the technological revolution has undoubtedly played a key role in speeding up arduous procedural transactions that are now largely conducted online, thereby significantly cutting both time and costs. The E-Transactions Law extensively covers all areas, from the legal recognition of electronic records to the formalities surrounding the formation and receipt of contracts online. Article 24 also creates a severe penalty for cyber crime or fraudulent behaviour, to act as a powerful deterrent for such acts: for instance, a person who intentionally creates, publishes, alters or otherwise uses a certificate or an electronic signature for a fraudulent or other unlawful purpose, is liable to imprisonment for a term of up to 10 years, and a maximum fine of

BD100,000 (or either penalty).

The Labour Law - Empowering Women and Workers with a Voice

The Labour Law for the Private Sector Legislative (Decree No.36 of 2012) (the “New Labour Law”) came into effect in September 2012, and repeals and replaces the old Labour Law for the Private Sector (No.23 of 1976 (the “Old Law”).

The negligible increase in the real income of the average Bahraini has, over the last decade, progressively become a cause for concern, and an undesirable trend that has hindered the evolution of Bahrain’s Vision. As a result, the New Labour Law heralded the introduction of much sought-after legislative amendments. Particularly worthy of praise is the recognition of the rights of domestic staff (including gardeners, cooks and drivers) in Bahrain. Such employees are now hired on a contractual basis, and in many respects receive the same legal status as their private-sector employed counterparts. This amendment is aimed at addressing the issue of human trafficking, and has laid the foundations for future reform – given that the New Labour Law does not include basic protections such as weekly rest days, a minimum wage and limits on working hours, legislation exclusively protecting the rights of domestic staff (such as in Kuwait), which we understand is currently being considered.

However, despite its overall commendable reformative precept, the New Labour Law has also been met with a healthy amount of scepticism – from employers and employees alike. With regards to the latter, perhaps one of the greatest shortcomings of this piece of legislation is its near silence on minimum wage requirements. Instead, under Part 6, wages are defined as “the total remuneration payable in cash or in kind to an employee under an employment contract”, and includes additional increments, gratuity payments and allowances, if any. Article 16 alludes to the acceptance of minimum wage, yet the topic is one that remains shrouded by ambiguity and ought to be included in future reforms).

The New Labour Law has also introduced further recognition of women’s rights, resulting in the increase in the period of maternity leave to 60 days. Female employees have also been given the right to take up to six months without pay, up to three times throughout her period of service with the employer for the purposes of caring for her child if the child is under six years of age. The right of women to undertake more manual forms of labour has also been extended.

Provisions in relation to non-discriminatory practices are also covered. For instance, Article 39 strictly prohibits wage discrimination whether based on sex, ethnicity, language, religion or belief.

An expedited resolution for labour disputes has also been introduced (set out in Part Thirteen of the New Labour Law) which under the 1976 legislation took up to four or five years to resolve through the courts. Compensation calculations for unfair dismissal cases, based on the form of employment contract in question, have also been implemented.

Additionally, and in line with the Bahrainisation strategy whereby employers are required to give priority to Bahraini nationals when looking to hire, the New Labour Law states that companies may not terminate a Bahraini employment contract in favour of keeping a foreign employee if both have the same qualifications.

By attempting to create an environment of greater transparency, accountability and establishing anti-discriminatory safeguards, the New Labour Law is an additional component that will create a large impact in bolstering the Bahrain Vision guiding principles.

Consumer Protection - Promoting an Ethos of Fairness and Honesty

In keeping with the aim to honour sustainability, fairness and competitiveness, consumer protection laws were recently stepped up in late 2012 with Law No 35 of 2012. Bahrain’s Ministry of Industry and Commerce (“MOIC”) now has the right to assign inspectors to scrutinise documents provided by merchants

on new products that are to be introduced in the market.

The law also allows for inspection of shops and businesses on a regular basis to check existing products.

Inspectors with judicial authority will also have the right to take action on violations committed by businesses after substantial evidence has been provided or through random inspections.

The protection of consumers promotes an atmosphere of fairness within an effective legislative framework. Such an environment will play a prominent role in consumer transactions and have a trickle-down effect in accordance with the Bahrain Vision.

The Commercial Companies Law - Transforming Bahrain One Investment at a Time

One of the main principles which Bahrain's Vision is guided by is the principle of competitiveness. Bahrain aims to attain a high level of competitiveness in a global economy. A competitive market is one which combines high quality with increased productivity. In line with this concept, the government of Bahrain aims to attract both local and foreign companies to invest in the Kingdom by offering several attractive incentives to high value-add industries that want to do business in the region as a whole, and in Bahrain specifically. Attractive aspects of doing business in Bahrain include the quality of public services, a well developed infrastructure, and an appealing living environment.

Legislative Decree No. 50 of 2014 amending the Commercial Companies Law (the "New Companies Law") introduced a number of significant changes that are more aligned with the principle of competitiveness. For instance Article 3 of the New Companies Law crucially replaces all references to '60 days' in the old law with '15 days', super charging a previously slow procedural practice. For example, when converting a company's form, a resolution must be passed to amend the company's Memorandum and Articles of Association to reflect the same. The Commercial Companies Law No 21 of 2001 (the "Old Companies Law") provided that such resolution shall not be effective before the lapse of 60 days from the date of its publication in the Official Gazette and in at least one of the local daily newspapers. Under the New Law, this period is now reduced to 15 days, a clear attempt to expedite process of conversion of a company's form.

In order to facilitate and incentivise foreign investment in the Kingdom, Article 64 of the Old Companies Law, which required 100% of shareholders in a joint public stock company to be of Bahraini nationality, has been repealed. This has opened up the Bahrain Bourse to foreign investment. However, it is noteworthy that MOIC still applies certain (albeit limited) policies favouring Bahraini (and GCC) investors over foreign investors. For example, as in other GCC States, there remain specific restrictions on foreigners in relation to certain commercial activities which they may undertake (e.g. export and import). Trading stock and share restrictions under Article 65 of the previous law, which limited dealings of existing shares with any potential new shareholders in closed joint-stock companies for a three year period, have also been repealed. These changes are, again, in harmony with the key tenets underpinning the Bahrain Vision.

The New Companies Law further amends Article 347 of the Old Companies Law. Branches of foreign entities no longer require a Bahraini sponsor to set up in Bahrain. Previously, branches of foreign companies had to be guaranteed either by a Bahraini sponsor, or by the parent company (head office), or by way of bank guarantee (Article 348 of the Old Companies Law). The New Companies Law has relaxed this requirement, and now foreign branches may provide a guarantee by way of a letter from the foreign company's head office, coupled with a copy of the parent's constitutional documents and audited financial statements.

Furthermore, a new amendment which became effective in 2016 provides that the incorporation of a company with a limited liability ('WLL') no longer requires the minimum capital of BHD 20,000 (USD 53,000). Instead, the shareholders can now jointly agree on the sum of the capital provided that it is sufficient to achieve the objectives of the company. Additionally, the capital must be divided proportionately pro-rata amongst the shareholders. The shares' value must not be less than BHD 50 (USD

130). Moreover, amendments to the required start-up capital have also been made in relation to the minimum required share capital of a Single Person Company (“SPC”). Previously an SPC’s minimum capital requirement was BHD 50,000 (USD 130,000). Under the new provisions, the minimum capital requirement for an SPC is BHD 50 only.

Another significant amendment to the Old Companies Law is the introduction of “shelf companies” (amendment No 28 of 2015 of the Companies Law), being companies created but then ‘left on the shelf’ until sold later to a person who wishes to create a company but does not wish to go through the creation process. This is the first time such corporate forms have been made available in any GCC country. It is noteworthy that the amendment provided above has been issued, but is now pending ratification by the parliament since it was passed when the parliament was not in session.

Recently, Bahrain has been the first in the GCC to adopt the International Standard Industrial Classification of All Economic Activities (“ISIC”) Rev. 4. The standards are developed by the Department of Economic and Social Affairs of the United Nations Secretariat. This has resulted in key changes to the organization and structure of the available commercial business activities (as set out by the Ministry of Industry and Commerce) within the Kingdom. As of April 2016, not only have the activities become simplified, but restrictive practices have also been relaxed or in some cases entirely removed. For instance, certain activities once exclusively reserved for Bahrainis and GCC citizens, have now opened up for foreign ownership – a welcomed change that can only be seen as progressive for the region.

Bahrain’s Property Law - Building Prosperity From The Ground Up

Bahrain has recently introduced a string of measures designed to regulate its property development industry and to ultimately restore investor confidence in the real estate sector – an objective critical to the development of a country. Law No. 28 of 2014 on Real Estate Development (the “Real Estate Law”) sets out the overall framework of this new regulatory regime. The Real Estate Law includes provisions for establishment of a real estate regulatory body. An Executive Regulation (the “Regulation”) issued under the Law in May this year sets out the functions of the new regulator. The Regulation operates at two levels: it regulates both the developer, and the individual projects undertaken by the same developer.

In alliance with Bahrain’s Vision, it is important to note that this new suite of legislative changes, of which both the Real Estate Law and the Regulation are important elements, is a clear demonstration of the Bahrain government’s long-term commitment to making Bahrain’s real estate sector both attractive and transparent for developers and purchasers.

Private Health Institutions- The True Measure Of Economic And Social Success

The New Private Health Institutions Law (No.21 of 2015) (the “New Health Law”) offers a wider scope of application than the previous law in this area, as it introduces a change in terminology. Under the New Health Law, it is not only private hospitals that are regulated (as was the case previously) but rather all private health institutions of any size, shape or form, including hospitals, clinics, and medical complexes. The government’s drive to develop transparent policies is in line with the Bahrain Vision.

The New Health Law introduces the National Health Regulatory Authority (“NHRA”). The categorisation of private health institutions and licensing requirements and procedures will all be determined by a resolution of the NHRA’s board of directors. The NHRA has the duty to monitor medical services provided by health institutions and to ensure that said services are in compliance with the quality standards and key performance indicators issued by NHRA’s board of directors’ decisions. Said standards are usually in line with international medical standards. Additionally, NHRA has the duty to perform general and thorough revisions and assessments on the performance and quality of the services provided by private health institutions and to ensure that all activities are in accordance with the action plan set out by NHRA’s board of directors.

The New Health Law widens the authority of NHRA inspectors by granting them certain quasi-judicial

powers. Inspectors are allowed to inspect files, medical records, documents, charts and all other required information available at the private health institution and may obtain copies of the relevant information. The inspectors are now appointed by the Minister of Justice and are exercising their roles in relation to criminal acts (as specified in Article 25 of the New Health Law).

Anti-Bribery- Holding Private Individuals Accountable

February 2013 saw a new addition to the anti-bribery laws contained within the Bahrain Penal Code ("Penal Code") which had previously covered the public sector alone. Law No. 1 of 2013 with Respect to Amending Certain Provisions of the Penal Code, promulgated by Legislative Decree No. 15 of 1976 (the "Amendment"), criminalises bribery in the private sector. In an unprecedented move toward corporate transparency and individual liability, the class of persons subject to the sanctions has been widened to include, but is not limited to, private corporate persons, boards of directors, boards of trustees, chairmen, deputy chairmen and all members of the board irrespective of designation or formation. The sanctions themselves are in several cases more severe than those proscribed for the public sector. Furthermore, a new agency, The Anti-Corruption Authority, is in the process of being formed. Its responsibilities will include the investigation and prosecution of offences related to corruption and bribery. Moreover, as a part of the Ministry of Interior's strategy to combat corruption, the National Anti- Corruption Campaign (launched in June 2014) was an undertaking aimed at enhancing awareness on the effect of unscrupulous practices on society,

Arbitration Law - Ensuring fairness and Transparency in Dispute Resolution

The Arbitration Law No.9 of 2015 (the "New Arbitration Law") is considered a leap in Bahrain's arbitration history. The New Arbitration Law provides that the UNCITRAL Model law on International Commercial Arbitration (the "UNCITRAL Law") applies to all arbitration cases regardless of their legal status, whether or not the arbitration is being held inside or outside of Bahrain, whether one of the parties is subject to the laws of Bahrain, and regardless of the legal relationship between the parties.

A new addition has been introduced in Article 6 of the New Arbitration Law which provides that non-Bahraini lawyers may represent any party to a dispute in any international commercial arbitration that is conducted in Bahrain. This is significant and in line with the principles of fairness and the right of parties to choose their own legal representatives.

In Conclusion

The last 12 months have been critical for Bahrain's future and development. The significant drop in global oil prices (and their subsequent rise locally) has highlighted the Kingdom's continued reliance on its oil revenue, and the increasing importance of shifting its main source of national income elsewhere. Continuing to issue and amend legislation that can work hand-in-hand with an over-arching economic vision is perhaps the key to Bahrain's success. By placing focus on the strengthening of trust and confidence in our free market economy, the ripple effect of foreign investment, an increased local workforce and continued emphasis on the rights of workers, may be felt in all areas of Bahraini life.