

# Bahrain Adopts New Measures For Businesses, Encouraging Enterprise and Investment

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## **Business Licensing Integrated System ('BLIS')**

A few years ago, the Ministry of Industry and Commerce ('MOIC') embarked on implementing BLIS. The aims of BLIS are to simplify the process of business registration, streamline licensing requirements, and ensure full transparency of procedures and coordination between relevant organisations. The BLIS project is now fully operational and accessible through an online portal in coordination with the e-government. As a result, all applications for commercial registrations and licences are required to be submitted online through an automated process.

When looking to incorporate an entity in Bahrain with the MOIC, relevant commercial activities need to be selected. Depending on the types of activities chosen, certain conditions may apply or approvals may be required. In conjunction with implementing BLIS, Bahrain has recently streamlined the list of commercial activities from over 600 to approximately 400 by consolidating various activities. The changes are a result of Bahrain adopting the International Standard Industrial Classification of All Economic Activities ('ISIC') Rev. 4. These standards have been developed by the Department of Economic and Social Affairs of the United Nations Secretariat. On the face of it, various foreign ownership restrictions have now been lifted allowing for greater investment and competition.

## **The Commercial Register Law, Decree No.27 of 2015 ('CR Law')**

The CR Law generally applies to all businesses carrying out commercial activities in Bahrain including those branches of foreign companies and most businesses governed by the Commercial Companies Law. The definition of commercial activities relates to the definition contained in the Law of Commerce (Decree no. 7 of 1987) which is generally very broad and all encompassing. All such businesses are required to be registered with the MOIC and appropriately licensed by the relevant regulated body in relation to carrying out particular activities. The CR Law states that relevant details of a business will be kept on the Commercial Register which is available online.

Of particular note in relation to the CR Law is that the practice of carrying out any commercial activity in Bahrain without obtaining a license and being registered is now a criminal offence. Without prejudice to any severer penalty set out in any other law, an offender can expect to face imprisonment of up to five years and or a fine of between BHD 1,000 to 5,000. Careful consideration therefore now needs to be given when carrying out business in Bahrain.

Under Article 13 of the CR Law, the 'Competent Department', being the MOIC, can cancel the registration of a business from the Commercial Register if the registration is not renewed or if the business suspends its commercial activity for more than a year. Like the registration process for registering a business, the renewal process is also provided through BLIS. We have recently witnessed many examples of companies

being removed from the register for being inactive or dormant. The authorities appear to be attempting to 'clean up' the register of companies in order to allow for an efficient and transparent system.

In addition, the CR Law also gives powers to the MOIC to conduct administrative investigations of any violation of the CR Law upon any serious complaint or notification. The CR Law provides wide reaching powers to the MOIC to deal with violations of the CR Law and provides for cooperation between the MOIC, the courts and law enforcement.

The CR Law sets out a mechanism for dealing with violators and grants powers to competent authorities to impose fines or close down businesses upon a court order. The CR Law therefore gives powers to the authorities to deal with violations of the CR Law but appropriate safeguards requiring due process are also included. The authorities may allow businesses to rectify any violations before taking more serious steps. We have not seen how the authorities are dealing with violations of the CR Law in practice but we expect that the authorities will start to use their powers in relation to illegal traders, especially if they pose a risk to the public.

### **Amendments to the Commercial Companies Law**

As part of the recent corporate reforms, the Commercial Companies Law was amended by Law No. 50 of 2014 and Law No. 28 of 2015 ('Revised Law').

In effect, the Commercial Companies Law has been amended to bring it into line with modern day principles and to also clarify areas which were previously a source of confusion and debate. A few key considerations are discussed below.

#### *Liability of Shareholders and Directors*

Article 18 (as Amended by Law No. 50 of 2014) of the Revised Law introduces a new provision whereby founders, partners, shareholders and directors of all forms of companies will be held liable for the full capital of a company for any damages affecting the company, its partners, shareholders or third parties in any of the following cases:

- Submission of incorrect data or information about the company's capital in its articles or memorandum of association, transactions with third parties, or in any documents that are likely to influence the financial confidence of those documents.
- If they use the company for fraudulent purposes or illegal acts.
- If they use the company's funds as their own personal money.
- If they do not separate between their personal interests and the interests of the company.
- If they encumber the company with further obligations despite knowing that the company cannot perform the same as they fall due or if the company fails to fulfil those obligations as a result of gross negligence or wrongdoing.
- If they cause the company to fall short in meeting their tax or fee payment obligations to government departments or if the company fails to pay those taxes due to gross negligence or wrongdoing.
- If they violate the provisions of the company's articles or memorandum of association.

Article 18(b) states that the liability will not be eliminated if the violation occurs as a result of a resolution taken at a meeting of the Board or at a shareholders meeting, unless an objection is raised to the resolution resulting in such liability and that objection is minuted.

The Revised Law also potentially extends the application of the Corporate Governance Code to all types of companies where previously it related to only listed companies or closed joint stock companies. Article 358(a) of the Revised Law (as amended) states that the Minister of Commerce shall promulgate a corporate governance charter in accordance with best international practices of management and governance, applicable to all companies. There is currently a corporate governance code issued by the

MOIC which relates to public and closed joint stock companies however, further guidance has not been forthcoming in relation to its applicability to other types of companies. Companies that are regulated by the Central Bank of Bahrain (“CBB”) however, fall under the jurisdiction of the CBB in terms of corporate governance. In fact, the Revised Law provides increased authority to the CBB in relation to administering and regulating financial institutions licensed by it and activities relating to financial services generally.

It is clear that attempts are being taken to hold those key individuals who are responsible for running a company to be more accountable and bring Bahrain laws in line with international practices.

### *Minimum Capital Requirements*

The Revised Law combined with the issuance of various resolutions has also resulted in reducing the minimum capital requirements for companies in accordance with the following, depending upon the form of corporate vehicle:

<b>Corporate Forms</b>	<b>Structure of Partners/Shareholders</b>	<b>Minimum Issued Share Capital</b>
Single Person Company (“SPC”)	A single shareholding company where the liability of the shareholder is limited to the extent of the capital of the company.	BHD 50
General Partnership	2 or more partners who assume joint responsibility in the partnership to the extent of their entire personal assets for the partnership’s debts and liabilities.	Nil
Bahrain Shareholding Company (“BSC”)	A public listed company comprising of 2 or more shareholders where their respective liabilities for the company’s debts and obligations are limited to the extent of the value of their respective shareholding.	BHD 1 Million
Closed Joint Stock Company (“BSC(c)”)	Comprising of 2 or more shareholders where their respective liabilities for the company’s debts and obligations are limited to the extent of the value of their respective shareholding.	A BSC(c) company undertaking financial related activities must have a minimum issued share capital of BHD 1,000 although the Central Bank of Bahrain may require a higher amount depending on the financial activities being carried out. A BSC (c) undertaking non-financial related activities has a minimum issued share capital of BHD 250,000.
Holding Company	May take the form of a BSC/ BSC (c), a WLL or an SPC. Please see relevant forms for shareholder structure.	BHD 50
With Limited Liability Company (“WLL”)	Comprising of 2 to 50 shareholders where their respective liabilities for the company’s debts and obligations are limited to the extent of the value of their respective shareholding.	BHD 100
Foreign Company Branch	The parent company must guarantee the liability of its branch in Bahrain.	Nil
Shelf Companies	A shelf company may take any corporate form. The validity of a shelf company is 1 year during which all approvals and licenses must to obtained. A shelf company is not considered active unless all approvals are obtained.	Depends on the form of company selected.

### *Public Companies*

The Revised Law has made some changes relating specifically to public companies listed on the Bahrain Bourse. Article 64 which previously stated that all shareholders in a public company must be Bahraini has

been deleted and Article 65 has been amended (Law No. 50 of 2014) to state that public companies may be incorporated with participation of foreign capital or expertise. This has clarified the practice that was previously being adopted.

The Revised Law also amends Article 234 (Law No. 50 of 2014) which previously contained a three year restriction on closed joint stock companies from being able to convert and publicly trade its shares. The revision now states that the shares of closed joint stock companies shall not become traded before the payment of the full value of the shares. There is therefore scope for a closed joint stock company to convert to a public company within three years of being founded. The Revised Law has also repealed Article 245 which contained certain conditions that a closed joint stock company had to fulfil before it could convert to a public company.

### *Shelf Companies*

The Revised Law has also introduced and approved the setting up of a new form of company, named as a shelf company (amended by Decree Law No.28 of 2015), which is touched on above. A shelf company may be created and registered in Bahrain with no activity listed under its function. This company may then be sold, however the activity of such company must be approved by the competent authority.

A shelf company may take any corporate form. The validity of a shelf company is one year during which all approvals and licenses must be obtained. A shelf company is not considered active unless all approvals are obtained.

### *Foreign Ownership Restrictions*

Generally, Bahrain has been liberal in terms of foreign ownership requirements and allows for corporate vehicles carrying out certain activities to be fully owned by foreign companies or nationals.

Article 345 of the Revised Law (as amended by Decree Law No.28 of 2015) goes a little further and states that it is permissible to license companies which are owned, in whole or in part, by non Bahraini partners, in order to practice activities that are licensed exclusively for Bahraini nationals or that are not allowed to be practised without a majority Bahraini partner. The Article goes on to say that the Council of Ministers shall determine those activities that can be carried out by companies with foreign ownership by way of a resolution. Further, Article 345 gives special powers to the Minister concerned with Commerce Affairs, upon approval of the Council of Ministers, to issue a decision to license the establishment of a company with foreign capital to practice certain activities if they deem that the establishment of that company may have strategic economic significance or reward for the Bahrain economy. There has previously been discretion vested in the Minister of Industry and Commerce to provide special exemptions from foreign ownership restrictions but Article 345 has now clarified the position.

In relation to the above, the Bahrain government has very recently announced that it will be allowing 100 percent ownership in residency, real estate, administrative services, health and social work, information and communications, manufacturing and other technical activities. It is anticipated that these changes will be implemented in the near future.

### **Conclusion**

The changes to the corporate laws and procedures in Bahrain are welcomed as they potentially allow for easier company incorporations, streamlining the company administration process and easing restrictions on foreign ownership. As a consequence, it appears that the authorities are sending a message that because it is easier to now set up and carry out business in Bahrain, there should be no excuse in failing to be properly licensed and registered to effectively do business in Bahrain.

It is likely that we will see a series of further changes introduced over the years by the authorities as there appears to be real momentum in Bahrain to make it a well regulated, business friendly destination of

choice.