

Bahrain's Changing Legal Landscape

Natalia Kumar - Senior Counsel - Banking and Finance
n.kumar@tamimi.com - Manama

March 2017

Amendments to the Companies Law

One significant change has been the removal of minimal capital requirements when setting up a company in Bahrain. For instance, previously the minimum share capital requirement for limited liability companies was Bahraini Dinars 20,000 (approximately USD 53,250). This requirement has been removed. Instead the requirement is that the capital of a company must be sufficient to meet its business objectives. This change reinforces the requirement for strict correlation between a company's activity and its share capital. This amendment provides flexibility and enables the Minister of Industry, Commerce and Tourism ("Minister") to use his discretion in the incorporation of companies in Bahrain.

Changes to the Companies Law have also aimed to encourage foreign direct investment in Bahrain. Amendments include removing the requirement for all shareholders in a Bahraini public joint stock company to be Bahraini nationals. The Companies Law now allows the incorporation of public joint stock companies with foreign capital and expertise, whilst giving the Minister the discretion to impose foreign ownership restrictions within certain economic sectors or in relation to specific economic activity. Branches of foreign entities no longer require a Bahraini sponsor to set up a branch in Bahrain.

A new article 3 reduces all references to sixty days (60) in the Companies Law to fifteen days (15). This change aims to ensure that procedures are completed within a quarter of the time and thereby improves efficiency. The effect of this is yet to be seen.

Rent Law

The Rent Law brought in much needed reform in the real estate sector in Bahrain. Formerly, there was no single consolidated legislation in this area. For over seventy years, various property lease laws in Bahrain only applied to certain municipalities or certain types of purposes and premises in relation to renewal of leases only. As a result, there was significant confusion over which law to apply resulting in inconsistency issues. The introduction of the Rent Law which applies to all types of leases in Bahrain, achieves the aim of providing clarity and consistency.

The Rent Law introduced the requirement for all new leases to be registered by the landlord within one (1) month of being executed, at the Lease Registration Office, for which a prescribed fee is payable.

Previously, the landlord could increase the rent of both commercial and residential properties by no more than ten percent (10%) only once during the term of the lease agreement. If the landlord and tenant did not mutually agree to a rent increase before the lease expired then the landlord would lose his right to increase the rent. However, under the Rent Law unless the parties have agreed otherwise in writing, the Rent Law restricts a landlord from increasing the rent until the earlier of two (2) years from date of the lease. The Rent Law prescribes the level of the increase as five percent (5%) for residential leases and seven percent (7%) for all other leases. The rent cannot be increased more than five (5) times during the term of the lease. A landlord must provide a tenant with written notice of the rent increase not less than three (3) months from the expiry of the two (2) year period mentioned above.

The Rent Law also established the 'Rents Dispute Committee' ("Committee") as the local courts were

inundated with cases relating to disputes between landlords and tenants. With the establishment of the Committee, any dispute relating to and/or arising out of any lease agreement now have to be brought before the Committee. However, once a judgement is issued by the Committee in a case, the losing party may lodge an appeal with the court of appeal. Despite this, the establishment of the Committee means that there will still be an overall reduction in the burden on the civil courts.

The Rent Law is a welcome and long-awaited development in the regulation of the real estate sector of Bahrain.

Proposals for reform to the civil procedure rules

Bahrain's civil procedure rules are in much need of reform in relation to pre-action protocols, case management procedures and legal fees and costs.

Under the Civil Commercial Procedures Law (the "CCPA") there are no pre-action protocols that have to be followed by parties contemplating litigation. Although there are basic case management procedures that set out the procedures that must be followed until the first hearing in case (which is when legal proceedings officially commence in Bahrain), once the first hearing takes place, there is no established procedure for the management of a case, including no established rules for disclosure and inspection of documents. Introducing pre-action protocols would help encourage settlements and where settlement is not achieved it would narrow down the legal issues in a dispute to facilitate a more efficient and cost effective trial process.

The timeline and management of a case depends on the particular circumstances of the case and the judge's discretion. There is also no established system of checks and balances to ensure that the parties abide by case procedural requirements. A defendant can potentially stall legal proceedings by abusing the process, for example, by failing to submit documents that may be required of him. There is much need for cases to be tried within specific time frames established at the beginning of a case.

The Bahraini courts have broad discretion in determining how to apportion the costs of a case. However, in practice lawyers' fees are borne by each party and the winning party's legal fees will not be ordered to be paid by the losing party. This is because the courts tend to see the client-lawyer relationship as a personal one. This makes litigation a less cost-effective method of dispute resolution as defendants can drag a case on to the point of financial harassment for the claimant. By introducing a system whereby the losing party pays the winning party's legal fees and costs, it would discourage parties to bring frivolous claims and would encourage parties to be mindful of their conduct during the litigation process.

The amendments to the Companies Law and the introduction of the Lease Law have brought about much needed change to the legal landscape of Bahrain.

A version of this article has been previously published on The Oath website in February 2016.