

التميمي و شركاه
ALTAMIMI & CO.

DOING BUSINESS IN BAHRAIN

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AL TAMIMI & COMPANY

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ABOUT US

Al Tamimi & Company is the largest law firm in the Middle East with 17 offices across 9 countries. The firm has unrivalled experience, having operated in the region since 1989. Our lawyers combine international experience and qualifications with expert regional knowledge and understanding.

We are a full-service firm, specialising in advising and supporting major international corporations, banks and financial institutions, government organisations and local, regional and international companies. Our main areas of expertise include arbitration & litigation, banking & finance, corporate & commercial, intellectual property, real estate, construction & infrastructure, and technology, media & telecommunications. Our lawyers provide quality legal advice and support to clients across all of our practice areas.

Doing Business in the Middle East?
So are we.

Our regional footprint means that wherever our clients are doing business in the region, we are there to support them. Our expansion has been strategic and client driven. Our values define who we are and what is important to us. As a firm, we have grown based on a set of core values, which are integral to all that we do.

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FOREWORD

Our Guide to 'Doing Business in Bahrain' aims to answer some of the most important questions that investors may need to know when assessing their business operations in the Kingdom of Bahrain, depending on the commercial activities which they wish to undertake.

As a regional business and financial hub, Bahrain has experienced exponential growth in recent years, and consistently strives to reinforce its position as a commercial, cultural and economic leader in the GCC and beyond. Our "Doing Business" series of books have become increasingly popular in helping not only to set up new businesses, but also in keeping businesses up to date on legal policies and changes in legislation.

We trust you will find the information presented of value and that it provides you with a greater understanding of both the business and legal aspects of operating in Bahrain. We look forward to the opportunity to work with you to ensure your success when doing business here.



ESSAM AL TAMIMI

Senior Partner & Founder
Al Tamimi & Company



HUSAM HOURANI

Managing Partner
Al Tamimi & Company



FOUTOUN HAJJAR

Partner &
Head of Office - Bahrain
Al Tamimi & Company

Seeing the bigger picture

Al Tamimi & Company knows more than just the law. We focus on the here and now and also understand that our advice may affect the future. We therefore ensure our lawyers think about the situation at hand, current and future challenges and potential opportunities.

In a region where the legal landscape is never black and white, we have the knowledge, expertise and cultural awareness to make sure our clients are at the forefront of doing business in the Middle East.

17 Offices | 9 Countries | 350 Lawyers

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ABOUT BAHRAIN



ABOUT BAHRAIN

Why Bahrain?

Throughout its history, Bahrain's economic progress has been built on a tradition of openness – a tradition that continues into the modern day. This openness is at the heart of what helped to make Bahrain a great environment for businesses to thrive and a welcoming home to people from around the world.

Bahrain was a regional pioneer in a number of areas ranging from trading through oil exploration to finance and education. This culture of innovation continues today with the rapid growth of industries such as ICT, high quality aluminium manufacturing and Islamic finance. This innovation comes from our openness to people and ideas from around the world but it also comes from Bahrainis themselves. Bahrain has a long track record of investment in education and training and was the first country in the region to establish public education for boys and girls nearly 100 years ago. This has enabled Bahraini nationals to account for the majority of the workforce in a number of key sectors, working at all levels and playing a central role in the development of the businesses based here.

Bahrain is a member of the Gulf Cooperation Council ("**GCC**"), together with Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

Why invest in Bahrain?

Bahrain offers a unique opportunity for business in the region. The Kingdom is recognised as one of the most liberal business environments in the Middle East, with some of the lowest regional operating costs as well as a highly skilled, bilingual local workforce. With excellent transport infrastructure and a strategic geographical location at the heart of the GCC, Bahrain is positioned as the natural gateway to access this USD \$1.6 trillion market, and the government is committed to sustaining and strengthening the country's core business fundamentals to underpin future growth.

Bahrain was the first GCC country to sign a Free Trade Agreement with the United States of America, which came into effect in 2006 ("**FTA**"). The FTA between the Kingdom and the US is an international agreement

that seeks to promote increased trade between both countries. The FTA provides for the immediate or staged elimination of duties and barriers to bilateral trade, in goods and services originating in either Bahrain or the US.

The FTA also allows a duty-free access to the US market, consequently making Bahraini goods and services more cost competitive.

The FTA contains reciprocal commitments, cooperative agreements and rules and processes applying to customs. The goods traded must fit the definition of originating goods to be exempted from customs duty.

Under the FTA, nationals of the United States are given GCC recognition for investment purposes in Bahrain, allowing them to invest in business activities that might otherwise be restricted for non GCC nationals.

Bahrain has bilateral trade and economic agreements with over 40 countries, including: China, Singapore, Germany, France, India and the United Kingdom.

Bahrain has been recognised as a desirable business location by a number of international rankings:

- Ranked 2nd in the Middle East and North Africa in the World Bank's Ease of Doing Business index 2018.
- Ranked 5th globally for paying taxes in the World Bank's Ease of Doing Business index 2018.
- 3rd best Public and Private Institutions in the Middle East according to the Global Competitiveness Index 2017-2018.
- Ranked 2nd in Technological Readiness in the Middle East and North Africa according to the Global Competitiveness Index 2017-2018.
- Voted number 1 destination for expatriates by the InterNations Expat Insider Survey 2017.
- Ranked 2nd globally for Islamic finance according to the 2017 Thomson Reuters Islamic Finance Development Report.
- Ranked 7th globally for Market Connectedness according to the 2017 Agility Emerging Markets Index.
- Ranked 1st in the Middle East and North Africa for ICT Development according to the 2017 ICT Development Index.

The process for registering a business and launching operations in Bahrain is simple. Over the years, government organisations and private institutions have put in place a dedicated support infrastructure for businesses setting up.

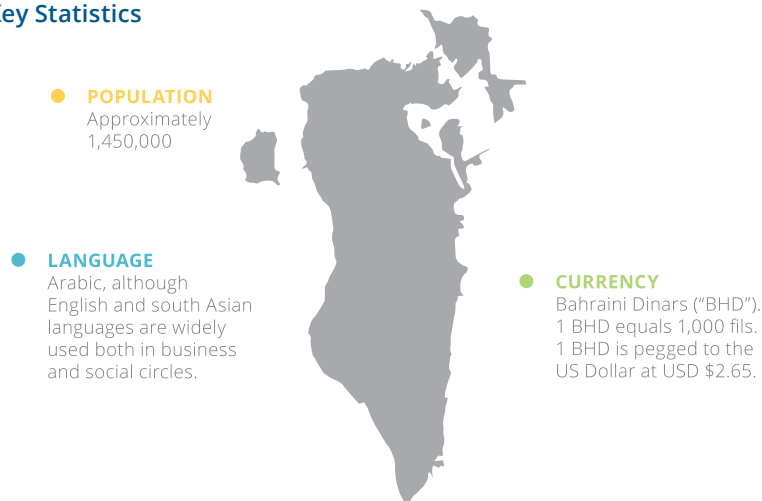
Al Tamimi & Company can assist with legal and regulatory procedures and follow up on registration, by using the Bahrain Investors Centre, which is an efficient one-stop-shop for setting up a business. Businesses are assigned a relationship manager who may liaise with the relevant government ministries on your behalf. The Bahrain Ministry of Industry, Commerce and Tourism, is responsible for registering and licensing all foreign businesses in the Kingdom of Bahrain, and your relationship manager can assist with this process.

Almost 100 years ago, Bahrain was the first among the current member states of the GCC to introduce formal education. The adult literacy rate is among the highest in the region and the Government continues to prioritise education and vocational training in its reforms.

As a result, Bahrain has a highly-skilled and motivated bilingual workforce, 60% of whom are employed in the private sector. In areas such as the financial sector, almost two thirds of employees are Bahrainis, of whom nearly 40% are women. More than 70% of the workforce in telecommunications are Bahraini.

Bahrain's business-friendly approach has helped persuade international businesses to work out of Bahrain where they have access to a talent pool of educated and trained nationals.

Key Statistics



Region's Gateway

Bahrain's proximity to Saudi Arabia provides access to the region's single largest market and economy. At the same time, the proximity to the eastern province of Saudi Arabia provides companies with the option to establish an operational base in Bahrain, which is considered to be one of the most open and liberal places to live in the Middle East. Residents of Bahrain already enjoy direct motorway access to Saudi Arabia via the 25 kilometre Saudi-Bahrain King Fahd Causeway. A rail transport causeway is also planned between Bahrain and Saudi Arabia which will enhance transport links between the two countries and will connect Bahrain to the planned GCC wide railway network.

Legal Framework

The legal system of Bahrain is a hybrid system deriving from a number of jurisprudential traditions including Islamic Sharia, Egyptian civil, criminal and commercial law (the Egyptian system itself is derived from the French Napoleonic code, local tradition and custom).

Bahrain has a well-developed legal framework as compared to some of its neighbours. Bahrain's court system comprises of Civil Courts and Sharia Courts. The Court of Cassation is the highest court. As a civil law jurisdiction, the decisions of higher courts are not binding on the decisions of the lower courts although decisions of the Court of Cassation are authoritative but not binding on the lower courts. The Sharia Courts are generally responsible for Family Law and inheritance matters.

The Bahrain Chamber of Dispute Resolution ("**BCDR**"), which comes within the jurisdiction of the courts of Bahrain, enjoys mandatory jurisdiction over any claim exceeding BHD 500,000 (approximately USD \$1.3 million) and involves either an international commercial dispute or a party licensed by the Central Bank of Bahrain ("**CBB**"). Disputes will also fall within the scope of the BCDR if parties have agreed in writing to refer the dispute to resolution by arbitration or mediation under the BCDR Rules, which conform to the American Arbitration Association ("**AAA**") to ensure that international investors are provided with swift, effective and definitive dispute resolution.

The BCDR came out with new rules in 2017 to reflect global best practices. Some of the significant changes include provisions that simplify and improve filing requirements, appointment of arbitrators and arbitrator fees. To prevent unnecessary expenses and wastage of time due to

claimants with no jurisdiction, a new provision was introduced to deal with prima facie jurisdiction and allows the BCDR to reject a request for arbitration filed pursuant to a clause with no effective reference to the BCDR. The 2017 Rules also require the party intending to challenge an arbitrator to send the written notice of challenge to the BCDR, to the arbitral tribunal and to all other parties involved in the dispute to ensure transparency.

In the interest of reducing time and costs associated with arbitrations, the BCDR may now determine applications for summary disposal of all or part of claims and defences without legal merit or outside the tribunal's jurisdiction.

An arbitration award in an international dispute heard at the BCDR-AAA will not be subject to challenge in Bahrain if the parties have agreed beforehand to be bound by such an award.

The BCDR Rules also provide a mechanism for an emergency arbitrator to issue interim awards on urgent applications prior to the constitution of the tribunal but they also permit parties to apply to a judicial authority for these purposes. Once the tribunal has been constituted, it may grant such interim measures as it deems necessary, including attachment orders and travel ban orders, at the request of any party.

Bahrain is a signatory to the New York Convention on the Enforcement of Foreign Arbitration Awards. Therefore, all relevant arbitral awards from a signatory seat would be recognised and enforced by the Bahraini courts subject to satisfying certain requirements. Bahrain is also a signatory to the Riyadh Convention for the Execution of Judgments, Delegations and Judicial Notification which authorises the execution of judgments issued by courts of the GCC member countries.

Think you know Bahrain? Think again.

The Economic Development Board of Bahrain (EDB) works with the government and both current and prospective investors to support initiatives that enhance the economic climate of Bahrain. The EDB's dedicated team has the deep expertise and resources to help new businesses take advantage of the Kingdom's key strengths and establish long-lasting, successful roots.

Find out more about Business Friendly Bahrain, a 100% free zone that allows 100% foreign ownership in most business sectors and has recently been voted the best country to invest in within MENA.

Visit bahrainedb.com

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SETTING UP IN BAHRAIN

SETTING UP IN BAHRAIN

The Bahrain International Investment Park (“BIIP”)

BIIP is a 247 hectare business park strategically located beside the Shaikh Khalifa bin Salman Port, Muharraq and is only 5 kilometres from the Bahrain International Airport. BIIP is designed to attract high value-added projects which will help create local employment and wealth in a world-class physical environment. Investment in BIIP is primarily open to those in internationally-traded manufacturing and specific service sectors.

The BIIP offers unique incentives including 100% foreign ownership of companies; 0% tax with a 10 year guarantee; special customs services; no recruitment restrictions and dedicated assistance with all corporate and human resource formalities. Quality facilities, offices and factory units are offered with long leases and competitive land rentals in an environment that is professionally zoned, landscaped and managed.

As compared to products manufactured in GCC Free Zones which are subject to 5% customs duties when sold into the GCC and other Arab markets, products manufactured in the BIIP are free of import duties in other GCC countries, because the BIIP is not considered a Free Zone but rather an integral part of the GCC, thus, providing a 5% margin against Free Zone locations elsewhere in the GCC region.

The BIIP has set up a ‘one-stop-shop’ to facilitate investors by assisting them through the application process, providing guidance on all of the legal requirements, and to interface with the authorities on the investors’ behalf.

Projects from a wide range of sectors are approved for the BIIP including those relating to food products, medical technology, household products, electronic devices, packaging materials, and electrical switchgear manufacturing.

The BIIP has attracted some major multinational companies like Siemens, BASF and Mondelez International.

How to Establish Operations in Bahrain

A commercial company established in accordance with the Commercial Companies Law No. 21 of 2001 (as amended) is the most common form of business vehicle used in the Kingdom.

It is possible for foreign investors to own 100% legal interest in certain Bahraini business vehicles, but there are sector-related restrictions which may apply.

Some sectors and activities are only allowed to be carried out by Bahrainis or entities fully owned by Bahrainis or GCC or US nationals. Further, some business activities may require a minimum Bahraini or GCC investment, such as 51%.

The sectors in which a business vehicle cannot be 100% foreign owned generally include construction (more details about construction companies under The Council of Regulating the Practice of Engineering Professions (“CRPEP”), press, publishing and distribution, car and motorbike rental, fishing, foreign manpower supply, land transportation of goods and passengers, trading, foreign manpower, commercial agencies, certain real estate services, gas bottling and distribution and gas cylinder distribution.

Foreign ownership restrictions will apply in relation to companies that are engaged in trading activities (i.e. export, import and sale), the restrictions differ depending on whether or not there is a GCC or US shareholding element in the corporate vehicle. The restrictions are as follows:

- Companies that include a GCC or US shareholder(s), excluding a Bahraini national, may be owned 100% by the GCC or US shareholder(s); and
- Companies that include a foreign non-GCC or US shareholder(s), must also include a Bahraini (or national of any other GCC state) shareholder holding a minimum of 51%.

Please note that where the intention is to satisfy the 51% GCC requirement by utilising a corporate shareholder which is GCC owned, then (i) the corporate shareholder must itself be 100% owned by GCC nationals; and (ii) the corporate shareholder must itself be established in a GCC jurisdiction.

Despite these restrictions, it is possible for the Minister in charge of Trade Affairs, (subject to the Minister obtaining the approval of the Council of Ministers), to grant exemptions in order to allow foreign investment into restricted sectors if the Minister considers that such investment will benefit the country and development of the economy as a whole. Notwithstanding the above, there are many industry sectors which allow for 100% foreign investment such as but not limited to, consultancies, technology, and manufacturing, which might however require further consideration and may be subject to other restrictions.

The business vehicles that are commonly used in Bahrain are considered below. However, businesses looking to engage in banking and insurance activities in Bahrain can generally only do so through Public and Closed Joint Stock Companies and Foreign Branch or representative offices. Such business vehicles are also subject to approvals and regulations of the Central Bank of Bahrain, which has developed comprehensive regulations in order to ensure confidence in the financial services sector.

The key features of Bahrain's business friendly approach:

- No restrictions on the repatriation or remittance of profits or capital.
- No restrictions on the import/export of local and foreign currencies.
- No tax on income, capital gains, sales¹, estate interest, dividends or royalties.
- Permits 100% foreign ownership of businesses in many types of business activities.
- Easy access to the rest of the region - it takes less than one hour to get to Saudi Arabia and the UAE.
- Most educated and skilled workforce in the Gulf.
- Most flexible visa policies in the region.
- Availability of a wide variety of state funded incentives from Tamkeen, which include training, consulting, financing, entrepreneurship support and others.

Setting Up In Bahrain

Bahrain has actively sought to promote itself as a business friendly environment, specifically targeting foreign direct investments. In recent years the Government has taken steps to amend the Commercial Companies Law in Bahrain.

The Commercial Companies Law has also introduced and approved the setting up of new forms of companies, named as Protected Cell Companies and Investment Limited Partnerships.

The Ministry of Industry and Commerce

The Ministry of Industry Commerce & Tourism in Bahrain ("**MOICT**") is the main organ of Government responsible for the registration and supervision of businesses in Bahrain and is responsible for a diverse range of activities which make up the commercial environment in Bahrain, including inter alia the registration of all forms of commercial business, commercial agencies, industrial property, standards and metrology, foreign trade as well as a number of other related activities. The MOICT's aim is to ensure the maintenance of an open, transparent and market driven commercial environment so as develop Bahrain's economic competitiveness and to encourage inward investment, at the same time promoting employment for the local population.

When looking to incorporate an entity in Bahrain with the MOICT, relevant commercial activities need to be selected. Depending on the types of activities selected, certain conditions may apply or approvals required. Bahrain has recently reduced the available list of activities to approximately 400 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. More information in relation to the activities can be found on MOICT's online database.

Legal Structures

Businesses are generally carried out in Bahrain through an agency or distributorship arrangement with a local partner in Bahrain or through establishing a Bahraini corporate vehicle. Restrictions on foreign ownership depend on the type of licensed commercial activities which the entity will engage in, rather than the form of legal structure utilised.

¹Whilst Bahrain is with reference to the GCC Unified Agreement for the Introduction of Value Added Tax anticipated to introduce VAT in 20018, at the time of publishing of this guide, the Ministry of Finance in Bahrain are yet to publish the relevant legislation and regulations relating to the same.

The following table provides an overview of some of the corporate vehicles available in Bahrain:

Corporate Forms	Structure of Partners/ Shareholders	Minimum Issued Share Capital
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.	None
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.	The minimum capital requirements of a BSC(c) company undertaking financial related activities will depend on the requirements of the Central Bank of Bahrain, and will vary depending on the type of regulated activity the entity will engage in. A BSC (c) undertaking non-financial related activities has a minimum issued share capital of BHD 250,000.

Corporate Forms	Structure of Partners/ Shareholders	Minimum Issued Share Capital
Holding Company	May take the form of a BSC/ BSC (c), a WLL or an SPC. Please see relevant forms for shareholder structure.	Depends on the form of company selected.
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.	None
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 be obtained. A shelf company is not considered active unless all approvals are obtained.	Depends on the form of company selected.
Protected Cell Companies ("PCC")	A PCC is a single legal entity made up of a core and one or more parts called 'cells'. Once incorporated a PCC can have unlimited cells.	To be determined by the Central Bank of Bahrain on a case by case basis.
Investment Limited Partnerships ("ILP")	The limited partnership is the vehicle of choice worldwide for closed-ended investment funds.	To be determined by the Central Bank of Bahrain on a case by case basis.

Individual Establishment

An individual establishment is a simple business method whereby an individual trades on their own account pursuant to a trade license issued in their own name. This form of business entity is referred to as an 'establishment' rather than a company and the individual is personally liable for the business to the full extent of their assets for the liabilities. The establishment does not have an independent legal entity from that of the owner.

Single Person Company

A Single Person Company ("**SPC**") has an independent legal personality from its owner and the minimum share capital required is BHD 50. An SPC must be at least one director or general manager. A foreign or non-GCC/US national can set up an SPC provided there are no restrictions on the business activity. Most importantly, the SPC owner's liability shall be limited to the capital of the company.

Required documents for incorporating an SPC generally includes but is not limited to, articles of association, capital deposit certificate, new company's lease agreement and a financial auditor's report (where the shareholder is a corporate entity and it has been established for at least one year).

Further documents may be required where the party looking to set-up a SPC is a corporate body. Such documents may include, but are not limited to, the copy of the registration certificate of the corporate body, constitutional documents of the corporate body and a resolution from the corporate body's board of directors/general assembly permitting the incorporation of a SPC in Bahrain.

With Limited Liability Company

A With Limited Liability Company ("**WLL**") is comparable to a Limited Liability Company in other countries of the GCC and is the most common form of business vehicle. WLL's must consist of a minimum of two and a maximum of 50 shareholders who can be natural persons or corporate legal entities. The shareholders are responsible for the company's debts and obligations only to the extent of their respective shares in the capital. The minimum share capital required is BHD 100 and WLL's are required to appoint at least one general manager who has the same obligations, duties and responsibilities as a director in a Joint Stock

Company (see below). The company cannot issue shares to the public shares and can be 100% foreign-owned, again depending on the business activity.

Various documents are required to incorporate a WLL company which includes but is not limited to a memorandum of association, capital deposit certificate, new company's lease agreement and a financial auditor's report.

Further documents may be required where the party looking to incorporate a WLL is a corporate body. Such documents may include, but are not limited to, a copy of the registration certificate of the corporate body, constitutional documents of the corporate body and a resolution from the corporate body's board of directors/general assembly approving the incorporation of a WLL in Bahrain.

General Partnership

A general partnership is formed between two or more natural or corporate persons. All partners assume joint responsibility to the extent of their entire personal assets for the partnership's debts and liabilities. There is no requirement of a minimum share capital, there must be at least one manager and again, depending on the relevant business activity, they can be 100% foreign-owned.

Bahrain Shareholding Company

A Bahrain Shareholding Company ("**BSC**") also referred to as a Public Joint-Stock Company is typically listed on the Bahrain Bourse. The company consists of a minimum of two shareholders and the shareholders are liable for the company's debts and obligations only to the extent of the value of their shares. The minimum share capital required is BHD 1 million and there must be a minimum of five directors. The board of directors must comprise a number of independent and non-executive directors. The shares can be offered to the public and any offering of shares to the public must be subject to approval from the Central Bank of Bahrain and in compliance with the CBB's Offering of Securities Module (Volume 6 of the CBB Rulebook) and subject to approval of the Ministry of Industry and Commerce.

The recent amendments to the Commercial Companies Law 2001 have provided for the incorporation of public joint stock companies with the participation of foreign capital and expertise by removing the previous requirement for all shareholders in a public joint stock company to be of Bahraini nationality.

All restrictions relating to trading in stocks and shares representing foreign capital in a public joint-stock company have been removed, thus indicating the efforts by Bahrain's government to encourage direct foreign investment in the Kingdom.

Public Joint Stock Companies must adhere to the Corporate Governance Code issued by the MOICT. There are further regulatory requirements on companies licensed or regulated by the Central Bank of Bahrain which may, amongst other things, increase the minimum share capital requirement and board composition.

Closed Joint Stock Company

Commonly known as a Closed Joint Stock Company ("**BSC(c)**") and consisting of a minimum of two shareholders. Shares in such companies cannot be offered for sale to the public. As is the case with public shareholding companies, shareholders are liable for the company's debts and obligations only to the extent of the value of their shares. The minimum share capital required is BHD 250,000 and there must be a minimum of three directors. The board of directors must comprise a number of independent and non-executive directors. A BSC(c) company can be 100% foreign owned but this is dependent on the business activity of the company.

BSC(c) companies must adhere to the Corporate Governance Code issued by the MOICT. There are further regulatory requirements on companies licensed or regulated by the Central Bank of Bahrain which may, amongst other things, increase the minimum share capital requirement and board composition.

The minimum capital requirements of a BSC(c) company undertaking financial related activities will depend on the requirements of the Central Bank of Bahrain, and will vary depending on the type of regulated activity the entity will engage in. A BSC(c) undertaking non-financial related activities has a minimum issued share capital of BHD 250,000.

Branch of a Foreign Company

Foreign companies may establish branches in Bahrain, without the need for a local partner, if the activities that will be undertaken are open to foreign ownership. In order for a foreign company to carry out business in Bahrain it may establish a branch either by way of an operational office or a representative office.

Branches of foreign companies with an operational office may be subject to obtaining further approvals in Bahrain depending on their activities. For example, companies looking to engage in banking and insurance activities must obtain a licence from the Central Bank of Bahrain.

Please note that where a branch is set up to engage in activities in Bahrain which necessitate 51% Bahraini or GCC ownership, then the following requirements are imposed with respect to the foreign parent company:

1. The foreign parent company must have been in existence for at least three (3) full years;
2. The foreign parent company must be 100% by GCC nationals; and
3. The foreign parent company itself must be established in a GCC jurisdiction.

In relation to representative offices, these are unable to carry out any business operations in Bahrain and are restricted to undertaking marketing and promotional activities in Bahrain.

The liabilities of the branch are guaranteed by the parent company, and it is a requirement under the Commercial Companies Law that the parent company provides a guarantee in relation to its' branch, and appoints a branch manager.

Shelf Companies

A shelf company may take any corporate form. The validity of a shelf company is 1 year during which time all approvals and licenses must be obtained. A shelf company is not considered active unless all approvals are obtained.

Protected Cell Companies ("**PCC**")

A PCC is a single legal entity made up of a core and one or more parts called 'cells'. Once incorporated a PCC can have unlimited cells. The cells do not have their own legal personality but do offer ring-fencing of assets and liabilities. A PCC has one board of directors that manages the affairs of the PCC as a whole. PCCs are regulated by the Central Bank of Bahrain.

A PCC may either be a newly incorporated entity, or alternatively, an existing company may be converted to a PCC subject to the Central Bank of Bahrain's approval. There is no minimum capital requirement for the core or any cell; however, the Central Bank of Bahrain will determine the minimum capital requirement in each case.

The purpose of a PCC is to provide a vehicle which may create cells to separate parts within which assets and liabilities may be segregated. This concept of 'ring-fencing' is fundamental to PCCs. The key principle is that the assets of a cell are only available to the creditors and shareholders of that particular cell.

Investment Limited Partnerships ("ILP")

On an international level, Investment Limited Partnerships are generally used to structure closed ended funds; and the ILP structure is understood by international fund investors. ILPs allow clear legislative backing to popular fund structure choice internationally. They also provides an additional option to fund promoters. The introduction of ILPs in Bahrain catches up with neighbouring GCC jurisdictions namely Dubai, Abu Dhabi and Qatar. Another advantage of ILPs is that they provide investors with options vis-à-vis their respective rights and liabilities.

An ILP clearly designates a responsible entity for fund management and control. It allows flexibility for division of profits from a fund, and avoids corporate requirements for capital maintenance. Further, it places clear fiduciary responsibilities on the general partner.

Directors Responsibilities

Public listed companies and closed joint stock companies and those generally licensed by the Central Bank of Bahrain are subject to Corporate Governance principles, which sets out minimum standards for corporate governance. These principles adopt a "comply or explain" approach which means that companies are expected to comply with the code or provide reasons for non-compliance. The Commercial Companies Law also contemplates the promulgation of a charter relating to Corporate Management and Governance which will apply to all companies except for public companies and any CBB licensed companies which are subject to corporate governance principles issues by the Central Bank of Bahrain.

In relation to responsibilities of directors of a company, generally:

- Directors owe fiduciary duties to their companies to act bona fide in what they consider to be the best interests of the company, to exercise their powers for the purposes for which they are conferred and not to place themselves in a position where there is a conflict between their personal interests and their duty to the company.

- A director must exercise his powers independently, without subordinating those powers to the will of others, except to the extent that they have properly delegated their powers. The nature and scope of this duty can only be determined by reference to the actual circumstances of each case.
- Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them to properly discharge their duties as directors.
- Whilst directors are entitled (subject to the constitutional documents of the company) to delegate particular functions to those below them in the management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.
- No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharge, must depend on the facts of each particular case, including the director's role in the management of the company.
- The directors' duty to exercise reasonable care, prudence, skill and diligence comprises both an objective and subjective element:
 - Objective:* they must exercise the care, skill and diligence that would be exercised by a reasonably diligent person having the general knowledge, skill and experience reasonably expected of a person acting as a director of such a company (guidance may be sought from the 'code of corporate governance'). They are expected to perform a high level supervisory role i.e. They need to satisfy themselves, on a continuing basis, that the various professional service providers are performing their functions in accordance with the terms of their respective contracts and that no managerial and/or administrative functions which ought to be performed are being left undone. They are expected to act in a professional, business manner.
 - Subjective:* directors are required to exercise the knowledge, skill and experience which they actually possess.
- Directors have a duty to exercise an independent judgment. Each director owes duties to the company to inform himself/herself

about its affairs and to join his/her co-directors in supervising and controlling them. A proper degree of delegation and division of responsibility is permissible, and often necessary, but, total abrogation of responsibility is not. A board of directors must not permit one individual to dominate them and use them.

- Directors must apply their minds and exercise an independent judgment, in the ordinary course of business, in respect of all the matters falling within the scope of their supervisory responsibilities. They are not entitled to simply rely on others and sign off on matters put before them without making enquiry or applying their minds to the matter in issue.
- If a director (or partner or founder or board member as the case may be) does not comply with the duties listed above, and if the provisions of the company's constitutional documents are violated, whether in a bsc (public or closed), wll or spc, the director will be personally liable for any damages the company, partners, shareholders or any third party affected.

Specialised Licenses

Depending on the proposed commercial activities to be undertaken in Bahrain, licenses or approvals may be required from the relevant competent regulator. These include the regulators detailed below.

Central Bank of Bahrain: The Central Bank of Bahrain is the primary regulator for the financial services industry and also has oversight in relation to listed companies on the Bahrain Bourse. Any business looking to carry out financial activities in Bahrain needs to be licensed by the Central Bank of Bahrain.

CRPEP: All project management and engineering activities require an engineering license and are regulated by the CRPEP. CRPEP imposes stringent residency, qualification, and experience requirements on individuals and firms wishing to undertake such activities in Bahrain. A local engineering licence is issued to a qualified Engineer in his personal capacity. That means that the owner of the Local Engineering Office, must be a Bahraini, GCC or US national and must be an accredited Engineer by training and profession. The appointment of a manager or a director recognised and categorised by CRPEP to undertake engineering related activities on behalf of an owner who does not have the required engineering qualifications is insufficient. The owner must apply for a personal Bahrain licence and a local engineering office. A foreign branch

may carry out engineering activities so long as the foreign branch meets the following conditions:

- the foreign branch has been established for a period of 15 years;
- the foreign branch has the required experience, and technical calibre that is not found in Bahrain; and
- the foreign branch has obtained professional liability insurance.

Ministry of Health: Certain activities require the approval of the Ministry of Health. Such activities include and are not limited to the import/export of cosmetics, manufacturing food products, the sale of foods and beverages.

National Health Regulatory Authority ("NHRA"): NHRA is the regulatory body responsible for regulating healthcare services and licensing of healthcare professionals, facilities and equipment, medicines and drugs in the Kingdom of Bahrain. The NHRA law has been amended to replace the NHRA Board with the Supreme Health Council which is established by Decree No. 5 of 2013. The Supreme Health Council undertakes all of the powers previously performed by the NHRA Board under the NHRA Law including issuing the relevant NHRA decisions.

Ministry of Education: The Ministry of Education is the body responsible for the regulation of all education related activities in Bahrain. It achieves this through drawing up development plans, overseeing their implementation and finally, carrying out an evaluation to ensure that the quality and effectiveness of the Kingdom's education system falls in line with international standards.

There are various education related activities that may be undertaken in Bahrain. For instance, within the private education sphere, founders may choose to incorporate as a National Private School (which teaches up to secondary school) or a National Educational institute. There are certain requirements to be met in order to set up a private institution. In addition to set building specifications, there is a minimum capital requirement for at least BHD 50,000.

Other Considerations

Real Estate

Bahrain nationals (which includes companies wholly owned by Bahrain nationals) and GCC nationals (which includes companies wholly owned by

GCC nationals) do not encounter any restrictions to owning property in Bahrain.

Legislative Decree No 2 of 2001 permits foreign nationals, which includes foreign companies (being non-Bahrain nationals or non-GCC nationals) to own property in Bahrain. However, restrictions to the areas where foreign nationals can own property exists and areas where foreign ownership is permitted include Juffair, Al Seef, Amwaj and Durrat.

Ownership of property is held on a freehold basis interest which is capable of registration at the Survey and Land Registration Bureau (“**SLRB**”). Under Law 27 of 2017 other property interests, including some leases may be capable of registration, however a leasehold interest will not obtain a separate title. Once a property is registered at the SLRB the owner will be given a title deed (also known as the “red book”), and the owner will hold its property in perpetuity and to the exclusion of all others.

Property may be held by a single owner or by several owners in common. Where several parties own the property in common, a party may sell its interest in the property to a third party subject to a right of pre-emption in favour of the other owner to purchase the seller’s interest.

The ownership of storeys and flats in a building is subject to strata titling, which is a form of freehold ownership. Every owner of a strata unit in a property shall be an owner of a share in the common parts of the building in which the property forms part.

Title to property is registered at the SLRB. The SLRB maintains a land register in which each property, its description and legal status is recorded. Once land has been registered at the SLRB, it cannot be acquired through adverse possession or prescription and the land register is guaranteed by the King of Bahrain. Title is indefeasible and ownership is proved conclusively by the information recorded in the land register.

Third party rights which encumber the property (such as easements) must also be registered at the SLRB against the relevant freehold title in order to be valid.

Security can be granted over property. A mortgage is capable of registration against a freehold title at the SLRB. A mortgage creates a right against the property which allows the foreclosure of that property and receipt of its revenue in repayment of the debt and any related

expenses. The registration of a mortgage gives the lender priority over other creditors in relation to recovering any monies owing to them. Where a property has more than one mortgage granted over it, priority is given to the mortgage agreement which was notarized first.

Currently, there is no direct taxation in Bahrain although VAT at 5% is expected to be introduced in 2018 and may be applicable to some real estate classes. Property transactions do however attract a registration fee which is payable to the SLRB of 2% of the property value which reduces to 1.7% of the property value if payment is made within 60 days of notarizing of transfer agreement.

The Real Estate Regulatory Agency (“**RERA**”) was established in 2017 and became operational in March 2018. RERA’s role is to act as regulator for the real estate sector in Bahrain.

Tenders in Bahrain

The Tender law and its Implementing Regulations² apply to all ministries, organisations, public institutions, municipalities and government authorities that have an independent or supplementary budget and the companies that are fully owned by the government, Consultative Council and House of Representatives. The laws do not apply to the Bahrain Defence Force, Public Security forces and the National Guard with respect to the purchase of goods, services of a military, security or confidential nature. Any procurement of goods or services above BHD 25,000 shall be carried through the Tender Board.

A public tender may take the following forms:

- *Local tender*: limited to companies and organisations registered in the bahrain; or
- *An international tender*: allows the participation of local and international companies and firms that are registered or unregistered in the kingdom of bahrain, provided that the unregistered international companies and firms shall register according to the applicable regulations in the kingdom within 30 days from the date said company is awarded the tender.

Appointment of Agents in Bahrain

Where a foreign investor wants to enter the Bahrain market by introducing its products into the market without setting up an entity, it can appoint an

²Law No. 36 of 2002 with respect to Regulating Government Tender and Law No.37 Of 2002 with respect to the Implementing Regulations Of Government Tender and Law applies.

agent, who must be a Bahraini individual or a Bahraini corporate entity. The parties' relationship may be governed by the Bahrain Commercial Agencies Law (promulgated by Legislative Decree No. 10 of 1992 as amended by Legislative Decree No. 8 of 1998 and Legislative Decree No. 49 of 2002), which allows the agent to register a sole agency for the product.

Joint Ventures

Bahrain's laws allow for contractual joint ventures to be established between parties, which are usually governed by a joint venture agreement. Such agreements typically set out the parties' rights and obligations, provide for how a company is to be operated and deal with the division of profits and losses of the company.

The business vehicle for such a company will most likely take the form of one of the vehicles discussed above, or may be carried out on the basis of an unincorporated contractual joint venture between distinct corporate entities. Typically, the parties' relationship is governed by the constitutional documents of the company and a joint venture agreement. Agreements such as the joint venture agreement are generally recognised in Bahrain so long as they are not contrary to the laws of Bahrain.

Financial Trusts

In its efforts to make business easier, Bahrain introduced a new trusts law in 2016 to replace the Bahrain Financial Trusts Law 2006, which was also the first attempt by any country in the GCC region to introduce a law to govern trust formation and related activities. A financial trust is created by way of a trust instrument. Generally, any form of property or any financial right relating to an intangible asset can be included in a trust. The object and purpose of the trust must be defined, be feasible and must not violate the law, public policy.

The new trust law formally recognises foreign governing law for trusts, thereby allowing parties to choose a foreign law to govern the manner in which trustees may be appointed, resigned and removed. The law also allows parties to choose different governing laws in respect to severable aspects of the trust. It covers all forms of trust structures and is designed to facilitate a range of transactions across a number of sectors, including estate planning, charitable activities and financial activities.

The new trusts law also follows the footprint of Article 7 of the Hague Trust Convention and sets out a fall-back conflicts rule applicable in the cases where the applicable law is not explicitly or implicitly expressed in the terms of the trust instrument. In such a scenario, the governing law will be that with which the Trust is most closely connected.

Trusts must be registered in the Register of Financial Trusts maintained by the Central Bank of Bahrain and such trusts must fulfil certain characteristics in order to be valid.

Financial Trusts must:

- Adequately identify the trust property;
- Clearly set out the duties and powers of the trustee(s);
- Clearly identify the settler and beneficiary;
- Identify the trust property clearly; and
- Define the object of the trust.

Documents Issued By Foreign Entities

All documents prepared or assembled outside Bahrain and which are used for incorporating an entity in Bahrain or seeking a license to carry out business must be:

- Notarised by a notary public in their country of origin;
- Stamped by the ministry of foreign affairs and the embassy of bahrain (or designated bahraini consulate in the region) at the country of origin; and
- Further be stamped at the embassy of the concerned country in bahrain and the bahrain ministry of foreign affairs.

Bahrain is a signatory to the Hague Apostille Convention. Therefore, if the documents were issued from another signatory country, there is no need to go through the legalisation process under paragraphs (ii) and (iii) above after obtaining the Apostille stamp.

Upon their receipt in Bahrain, if the documents are not in Arabic, they will need to be translated into Arabic by a recognised translation firm in Bahrain.



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Anti-Money Laundering

Bahrain's implementation of the Anti-Money Laundering Law in 2001 and its membership in the Financial Action Task Force ("FATF") puts it in a strong position to counter the financing of terrorism and prevention of money laundering. A person who commits any of the following acts shall have committed an offence related to money laundering:

- Failure to disclose to the enforcement unit any information or suspicion acquired in the course of that person's trade, business, profession, employment or otherwise regarding the offence of money laundering;
- Failure or refusal to follow or obstruction or hindering of any order issued by the enforcement unit or issued at its request by the investigation magistrate pursuant to investigation of the offence of money laundering; and
- Disclosure of any information or suspicion acquired in the course of that person's trade, business, profession, employment or otherwise regarding the issue of an investigation order or attachment order in a money laundering offence, where such disclosure is likely to prejudice the investigation.

CBB Regulatory Sandbox

In June 2017 the CBB introduced a regulatory sandbox aimed at enabling firms to test and develop their products in a virtual space. The introduction of the regime positions Bahrain as only the second state within the Gulf Cooperation Council to implement such a framework.

The regulatory sandbox is a framework and process that facilitates and encourages the development of the financial technology (FinTech) sector in a safe, measured and pragmatic manner, consisting of a virtual space and safe area in which FinTech businesses (both established and start-ups) can test and refine their technology based innovative products, services and platforms without being immediately burdened by the usual regulatory and financial requirements which would otherwise apply to their activities. The effect is that FinTech firms are able to experiment with their products and services for a specified timeframe within a partially deregulated environment where the firms are able to offer their products and services to customers, but where risks to customers (and to the wider financial system as a whole) are mitigated none the less.

The CBB has also established a dedicated FinTech Unit within the CBB with the mandate of ensuring the provision of the best services to individual and corporate licensees in the financial sector. The FinTech Unit is responsible for the approval process to participate in the regulatory sandbox, as well as supervision of licensed companies' activities and operations, including cloud computing, payment and settlement systems, and monitoring technical and regulatory developments in the FinTech field.

The introduction of the new framework and the creation of a dedicated FinTech Unit within the CBB is consistent with Bahrain's continued focus on further developing the Kingdom as the emerging FinTech and financial services hub of the Middle East region, promoting increased competitiveness and the encouraging the embracing of new technologies. At the same time, the safeguards built into the scheme will assist to maintain the required level of consumer protection and regulatory oversight which have long established Bahrain as one of key financial sector hubs in the region.

Intellectual Property Law

Bahrain has addressed the need to protect investors, their products and services from imitation and infringement. Numerous laws have been promulgated in order to ensure the protection trademarks (Law No. 6 of 2014 approving the Trademarks Law of the Gulf Cooperation Council States), patents and designs (Law No. 1 of 2004 on Patents and Utility Models and Law No. 6 of 2006 on Industrial Designs and Models respectively), copyright (Law No. 22 of 2006 relating to the Protection of Copyright and Neighbouring Rights) and trade secrets (Law No. 7 of 2003 on Trade Secrets).

Additionally, Bahrain is a member state to the majority of important treaties concerning the protection of trademarks, patents and copyrights including the TRIPS Convention, the Nice Agreement regarding the International Classification of Goods and Services, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Protocol relating to the Madrid Agreement Concerning the International Registration of Trademarks.

Registration

A legally protected trademark or patent (utility patent or industrial design) is filed and registered at the Industrial Property Directorate,

Ministry of Industry, and Commerce & Tourism. Copyrights are registered at the Ministry of Information Affairs. As soon as such rights are registered or still under examination, the applicant enjoys exclusive rights over them and can pursue legal infringements. Since 2017, Bahrain has adopted a user friendly online application system for filing trademarks and patents.

Enforcement of IP Rights

There is more than one route to pursue legal action against infringer's of IP rights including administratively opposing a trademark application during a 60 day opposition window, submitting a complaint against to the Customs Authority to cease counterfeit products arriving through the various ports of entry. Legal action in front of the competent court will also be a resort to seek a court determination to resolve contentious matters.

IP Investigations

Our IP department includes an investigation team which conducts thorough market investigations against rogue traders and traces the chain of traders to locate the importers and discover their warehouses and stores. Moreover, our team works proactively to discover infringements committed against brand owners and reports such actions to concerned parties while providing advice on how to proceed.

Trademark Prosecution

Our trademark prosecution team handles trademark portfolio management across the region. We work closely with trademark registries throughout the Middle East, ensuring that we keep our clients well informed and well represented, guaranteeing an efficient and first class service. We pride ourselves on our ability to read trends and TMO practices and advice clients accordingly to avoid office actions, thereby saving our clients' time and costs. Our lawyers work closely with our specialist trademark paralegals to help insure the highest level of service in the most cost-effective manner.

Patents & Designs

Our Patents & Designs practice is one of the leading practices in the Middle East, providing a wide range of legal services to R&D hubs and innovators including protection, enforcement and commercialisation of developed innovative products and technologies, as well as enforcing intellectual property rights pertaining to these against infringers. Our expertise extends to a wide range of sectors in the engineering and life sciences. Our team is comprised

of specialised patent attorneys with local and western qualifications and experience in various technical backgrounds.

Copyright & Media

We continue to work with major publishing houses and media and entertainment companies, providing advice in respect of the protection, enforcement and commercialisation of IP assets, content ownership, content regulation and claims related to defamation. We also maintain an excellent level of cooperation with various copyright offices throughout the region to ensure that we record our clients' copyrights and maximise the scope of protection.

IP Audit

Our IP Auditing service systematically reviews the IP assets owned, used or acquired by businesses for the purpose of identifying any threats to a company's bottom line. This audit assists in future forecasting and strategic planning of a business, in addition to locating its market position.



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LABOUR LAW

LABOUR LAW

Employment relations in the Kingdom of Bahrain are principally governed by Labour Law No. 36 of 2012 (the **“Labour Law”**) which repealed and replaced the old labour law (No.23 of 1976). The Labour Law reflects Bahrain’s efforts to come in line with international standards, and it has aligned Bahrain’s domestic law with various Arab and international labour treaties and conventions to which it is a signatory and which have come into effect over the last thirty six years since the enactment of the previous labour law. The Labour Law broadly seeks to protect the employee as the weaker party in an employment relationship and sets out the minimum rights of employees. For example, Article 4 states:

“Save where it is more favourable to the employee, any condition or agreement which does not conform with the provisions of this Law, even if entered into before the commencement of the application of this Law, shall be deemed to be null and void.”

Contract

The Bahraini Labour Law provides that contracts of employment may be for an unlimited or fixed period. A fixed term contract must specify a start and an end date. It may be terminable on notice, or upon the execution of a specific project or can be renewed following the expiry of the agreed fixed term period. The employment terms and conditions must be in writing. Any term or condition that does not conform to the Labour Law will be deemed null and void except to the extent that it is more favourable to the employee. Unlike some other GCC countries, there is no specific template for employment contracts to be followed by employers in Bahrain. However, the law provides for certain information to be included in all employment contracts, such as the name, position, length of contract, monthly salary, etc.

Probation

A probationary period is permitted for a maximum of three months. During the probationary period, either the employer or the employee can terminate the contract by giving at least one day’s notice to the other party. On completion, the probationary period is counted towards an employee’s overall period of service.

Wages / Salary

Wages are paid in accordance with the terms of the employment contract or a collective labour agreement or work regulation. Wages should be paid in the Bahraini currency but can be paid in a different currency by agreement of the parties. There is no requirement to provide itemised pay slips.

These matters are governed by individual employment contracts. Employees are typically paid on monthly basis.

Public / National Holidays and Annual Leave

Employees are entitled to leave with full pay on the following public holidays (declared for the private sector):

Public Holiday	Number of Days
New Year's Day	1 Day
Labour Day	1 Day
Eid Al Fitr	3 Days
Eid Al Adha	3 Days
Al Hijra New Year	1 Day
Ashoora	2 Days
Prophet's Birthday	1 Day
National Day	1 Day
Accession Day	1 Day

Certain holidays (e.g. Eid Al Fitr) are based on local sighting of the moon. Accordingly, the authorities provide a predictive date for the holiday and this is then confirmed closer to the time.

Private sector companies can, decide whether or not to grant time off during public holidays. If employees work, they have the choice of having another day off in lieu or receiving a payment of 150% of salary in addition to their normal wage. If a public holiday happens to fall on a weekend (i.e. Friday or Saturday) an employer is obliged to provide employees with a day off in lieu.

In addition to the public holidays listed above, employees are entitled to annual leave. Under Labour Law, an employee who has spent at least one

year of service is entitled to 30 days annual leave, which accrues at a rate of 2.5 days per month. Where the employee has less than one year's service, he/she is entitled to leave corresponding to the period of work.

Under the Labour Law an employee cannot lose his/her annual leave entitlement as this is a statutory benefit which vests in the employee. As such, accrued but untaken leave must either be carried forward to the next leave year or paid out every two years or upon termination of employment.

Working Hours / Overtime / Sick Leave and Healthcare

Sickness absence entitlement under the Bahrain law is 55 calendar days as follows: full pay for the first 15 days, half pay for the next 20 days, and no pay for the remaining 20 days. An employee on probation is not entitled to any sick leave.

Where an employer requires an employee to work overtime, the employee is entitled to his wage for this day and an overtime wage equivalent to a certain percentage of the employee's wage. This depends on whether overtime falls on a weekend or a weekday.

Overtime on a weekend and / or public holiday

An employee shall have the choice of being paid his normal wage and an overtime payment equivalent to 150% of the employee's wage or be given another day off in lieu. An employee cannot be required to work on his/her weekly day of rest on more than two consecutive occasions without the employee's written consent.

Overtime on a weekday

An employee is entitled to payment for overtime at the rate of the employee's normal wage plus a minimum of 25% for hours worked during the day and the normal wage plus a minimum of 50% for hours worked during the night; which occur from 7pm in the evening until 7am in the morning.

There is currently no statutory requirement in Bahrain to provide medical health insurance to employees in the private sector. However, the basic healthcare should be provided to employees.

Maternity Leave

Female employees are entitled to 60 days maternity leave on full pay and an additional 15 days unpaid. Furthermore, female employees are entitled to take unpaid leave for a maximum period of six months to take care of their child aged up to six years old. This leave may be taken on three separate occasions during the course of their employment.

Hajj (Pilgrimage) Leave

A Muslim employee who has spent five consecutive years in employment is entitled to a leave of 14 working days with full pay to perform Hajj once during his/her period of service; provided that the employee has not availed of this leave in previous employment.

Termination

Summary Dismissal

An employer may terminate the contract of employment without notice or compensation in any of the following instances:

- If an employee assumes a false identity or has provided fake certificates, qualifications or recommendations.
- If an employee commits a major error resulting in serious material loss to the employer provided that the employer reports the incident to the related authorities within two (2) work days from the date of his knowledge of such loss.
- In case of non-compliance by the employee with the safety instructions related to employees or the organisation and after receiving a written warning, provided that such instructions are clearly written and posted in the workplace.
- The employee is absent without a legitimate reason for a period exceeding twenty (20) intermittent days or ten (10) consecutive days in one (1) year, provided that termination shall be preceded by a written notice from the employer to the employee ten (10) days from the employee's absence in the first case and five (5) days in the second.
- If an employee fails to perform their essential obligations under the employment contract.
- If an employee – without a written permission from the employer – discloses confidential information related to the employer.

- If a final ruling is issued against the employee for a crime or misdemeanour involving dishonour, dishonesty or public morals.
- If an employee is found to be under the influence of alcohol or drugs during the working hours or commits an immoral act at the workplace.
- If an employee assaults the employer, the direct manager, another employee or a client during or as a result of their employment.
- If an employee does not comply with legal rules concerning authorised strike action.
- If an employee becomes unqualified for employment during their contract for a personal reason such as a cancellation of the employee's license or permit to perform work.

Unlimited Term Contract

If the contract of employment is for an unlimited term, both the employer and the employee may terminate it by providing thirty days' prior notice in writing.

If the employer or the employee fails to give the required period of notice (other than instances of summary dismissal) the party in breach will be liable to pay the other compensation in lieu of notice. This holds true even where such failure has caused no loss to the other party. Compensation in lieu of notice is calculated as the amount equal to the employee's basic wage for the notice period in full (or in proportion to the diminished part some notice has been provided).

Termination of an employee's service may be considered arbitrary if the reason for dismissal given by the employer does not relate to the employee's performance, but is based on any of the following reasons:

- Gender, colour, religion, ideology, marital status, family responsibilities and, in the case of a female employee her pregnancy, birth of breastfeeding.
- Membership of a trade union or legitimate participation in its activities in accordance with the law.
- If the employee is representing, or has or seeks to represent employees in a trade union.
- If the employee files a complaint, report or lawsuit against the employer unless the report or the lawsuit is malicious.

- If the employee exercises his right to take leave under the Labour Law.
- The placement of an attachment on the employee's entitlements held by the employer.

Fixed Term Contract

In the event that an employer terminates a fixed term contract prior to the expiry of the fixed term, it is liable to pay the employee early termination compensation equivalent to the remainder of the contract period, unless the parties agree to a lesser compensation sum; which must not be less than the lower of three months' wages or the remaining period of the contract.

If notice of termination of the contract is given by the employer, an employee shall be entitled to absent himself from work for a whole day in every week or for 8 hours during the week to look for another job. If the absence has taken place at an appropriate time for the conditions of business and the employee shall be entitled to receive his wage for the days or hours of absence.

Frequent Sick Leave

An employer is not entitled to terminate the employment contract due to the employee's illness unless the employee has exhausted their entitlement to sick leave and annual leave allowances.

Weak Performance

The employer may not terminate the employment contract due to the employee's inefficiency or weak performance unless it has notified the employee of these matters and has granted the employee an appropriate opportunity (no less than 60 days) to make improvements to the required standards. If the employee fails to achieve such standards, the employer may terminate the contract.

An employee shall be entitled to compensation for the employer's termination of the contract of employment unless the contract has been terminated for a legitimate reason.

Redundancy

The employer may terminate the employment contract because of the total or partial closure of its establishment, the downsizing of its activities or the replacement of its production system in a way that affects the size of the workforce provided that it gives notice to the Ministry of Labour of the

reason for terminating employment 30 days before it issues notice of termination to the employee. In all cases other than the total closure of the establishment, the employer must retain a Bahraini national employee in preference to a foreign national employee where they have the same level of competency and experience. Dismissal of the Bahraini national employee in these circumstances will be unlawful.

Social Insurance

Employers are obligated to register all employees with the Social Insurance Organisation and to collect social insurance contributions from employees and make contributions for itself. Contributions are calculated on a percentage of an employee's basic salary and fixed recurring allowances. Contributions differ for Bahraini nationals and foreign national employees with contributions for the former being greater due to the requirement for the employer and employee to make contributions to the pensions fund.

Residency Visas

In order to live and work in Bahrain, all expatriates must have an employment residency visa issued by the immigration authorities. In addition, all expatriates are required to have a work permit from the Labour Market Regulatory Authority ("**LMRA**").

GCC nationals do not require residency visas but must be registered with the LMRA for work permit purposes.

Immigration Considerations

Anyone wishing to enter Bahrain requires a visa except for GCC citizens. There are various visas that may be obtained in Bahrain including:

- *Visa on arrival:* certain country nationals may obtain visas on arrival this includes U.K nationals, U.S nationals, Japanese nationals, Hong Kong nationals, Russian nationals and Malaysian nationals. This visa is valid for a period of 3 months and must be renewed every 2 weeks. Renewal may take place whilst the individual is in Bahrain.
- *Business visas:* issued to individuals visiting Bahrain for business purposes and representing a company. Visa lengths vary based on the nationality of the passport holder and are subject to change. Individuals in possession of a business visa are only

permitted to carry out official company business during their stay. The individuals are not entitled to look for alternative employment or take up any form of employment with another company in Bahrain.

- *Tourist visas for Bahrain:* Foreigners visiting Bahrain for holiday or those on a short fact-finding trip prior to accepting an expat contract will need to apply for a tourist visa. Some travellers, depending on their nationality will be entitled to a visa upon arrival at the airport in Bahrain, provided that they are in possession of a valid passport and an onward or return ticket. This arrangement is only applicable to citizens of Australia, Canada, Hong Kong, Japan, the USA and all countries within the EU/EEA. A tourist visa does not permit the holder to carry out any form of economic activity during their stay.
- *72-Hour visa:* Obtained on arrival at the Bahrain International Airport or at the King Fahad Causeway. 72-hour visa on arrival may be granted to certain nationalities including foreign nationals who have lived for 6 months in a GCC country. This visa is mainly intended for business visits, trade delegations, attending exhibitions and seminars. Apart from the passport, the individual must possess a confirmed return or onward journey ticket for his/her visa application to be processed.
- *Work visas:* Applied for by the sponsor on behalf of the foreign employee. If the employee is in Bahrain at the time of application (on an arrival or business visa), the employment contract must be signed by both parties and stamped by the sponsor. In cases where the employee is outside of Bahrain, there is a requirement for a medical report to be sent over from an LMRA approved health centre in the employee's home country in addition to the employment contract.

Note that passport holders of some countries are prohibited from entering the Kingdom of Bahrain.



SIGNIFICANT NEW LAWS

SIGNIFICANT NEW LAWS

Law No. 48 of 2018 concerning Value Added Tax (VAT)

In accordance with the unified GCC VAT agreement, VAT will be effective in Bahrain with effect from 1 January 2019. VAT will be imposed on the supply of goods of goods and services in Bahrain as well as imports of goods and services at the standard rate of 5%.

The supply of margin based financial services and the supply of bare land and “buildings” by way of sale or lease are exempt from VAT. The import of certain goods that are exempt from customs duty are also exempt from VAT. In addition, the import of goods is exempt from VAT in if the supply of the goods is exempt or subject to VAT at the zero rate in the final destination state.

The supply of the following goods or services will be zero rated for VAT purposes:

- exports of goods from Bahrain to outside the GCC;
- services provided to non-GCC residents;
- international transportation of goods or passengers including services related to international transportation and the supply of a means of transport;
- local transport sector;
- certain medicines and medical equipment;
- supply and import of pearls and precious stones;
- first supply after extraction of gold, silver and platinum for commercial purposes;
- supply of goods to customs duty suspension regime;
- construction of new buildings;
- educational services and goods and services related to the education sector;
- oil, oil derivatives and the gas sector;
- certain investment grade precious metals; and
- supply and import of food items in accordance with the Unified GCC VAT Agreement.

A business is required to register for VAT if the value of annual taxable supplies exceeds the mandatory registration threshold of BD 37,500. A business may register for VAT if the value of annual taxable supplies exceeds the voluntary registration threshold of BD 18,750. Non-residents that are liable to account for VAT must register for VAT irrespective of the value of the supplies. However, under transitional measures, VAT will be introduced in phases in 2019. Businesses with annual taxable supplies that exceed BD 5 million will be required to register by 20 December 2018 for 1 January 2019. Businesses with annual taxable supplies of more than BD 500,000 but less than BD 5 million will be required to register for 1 July 2019 and businesses with annual taxable supplies in excess of BD 37,500 will be required to register by 20 December 2019 for 1 January 2020.

Law No. 30 of 2018 concerning Data Protection

Bahrain's new Law on the Protection of Personal Data was published on 19 July 2018, and will come into effect on 1 August 2019. The Law will require a variety of changes to the way businesses process personal data in Bahrain or about residents of Bahrain. Historically, data protection has not been a high priority topic for most businesses in Bahrain, with the limited exception of international entities subject to data protection requirements in other jurisdictions in which they operate. While the publication of the new Law provides a considerable lead-in period within which entities subject to the Law will need to comply, the fact that the Law creates criminal offences means that compliance is all the more important and should be treated as a high priority.

Application

Bahrain's Data Protection Law describes the legal protection of personal privacy as among the main constitutional rights of the person, and notes that it should be protected, particularly in the context of the increasing use of electronic/digital means for processing information. The Law applies to:

- Every individual residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) having a place of business in the Kingdom of Bahrain; and
- Every individual not residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) not having a place of business in the Kingdom of Bahrain, where such persons are processing data using means available in Bahrain, except where such processing means are solely for the purpose of passing data through Bahrain.

Criminal provisions

The Law criminalises a variety of acts that would, at most, be the subject of administrative penalties in data protection laws elsewhere. Penalties generally comprise up to one year in prison and/or a fine of between BHD 1,000 and BHD 20,000 (between about USD 2,600 to about USD 53,000) (or a fine only in the case of corporate entities). The following are examples of activities that attract criminal penalties under the Law:

- Processing sensitive personal data in violation of the provision specifying requirements for processing sensitive personal data;
- Transferring personal data outside Bahrain contrary to the provisions specifying requirements for transfers to jurisdictions that provide an adequate level of data protection, and associated exceptions;
- Processing personal data without notifying the new Data Protection Authority in accordance with the provision that sets out the obligation to notify the Authority before commencing any data processing activities (except where certain exceptions apply), or failing to update such notification to the Authority;
- Processing personal data contrary to the provision that requires prior authorization from the Authority before processing personal data in certain circumstances;
- Providing false or misleading information to the Authority or to a data subject, or withholding relevant information from the Authority, or otherwise hindering the Authority's work; and
- Disclosing any data or information accessed due to work, or using the same for own benefit or for the benefit of others unreasonably and in violation of the provisions of this law.

Security considerations

Generally, the security of processing provisions, and the confidentiality provisions, appear to be fairly standard. Data controllers are required to apply technical and organizational measures capable of protecting personal data against unintentional or unauthorized destruction, accidental loss, unauthorized alteration, disclosure or access, or any other form of processing. The measures adopted need to be appropriate, bearing in mind the nature of the data in question and the risks associated with processing it.

Data controllers are required to engage only data processors who provide sufficient guarantees regarding the application of technical and organisational measures. Importantly, there is an obligation on data controllers to take steps to verify compliance with such measures, and to enter into a written contract with the data processor requiring that the data processor shall only process data in accordance with the instructions of the data controller, and in accordance with the data controller's requirements with regard to security and confidentiality.

There does not appear to be any specific obligation to notify the Authority in the event of a data breach incident. It is possible that this level of detail might be addressed in the regulations, or that the Authority is expected to address breaches only in the event that they become aware of them, and when the circumstances indicate a breach of the obligation to use suitable technical and organizational security measures.

Data Protection Supervisor

The Law contemplates a role of 'Data Protection Supervisor' (not a data protection officer type role) intended to act as an independent and impartial intermediary between the data controller and the Authority. The data protection supervisor will help the data controller fulfil its rights and obligations, and coordinate between the data controller and the Authority. It will also be required to verify the data controller's processing in compliance with the law, alert the data controller to any apparent non-compliance to enable the issue to be addressed, and alert the Authority where such non-compliance has not been addressed within a specified timeframe.

The concept of a data protection supervisor has the potential to result in a whole new industry in the Bahrain market. The regulations setting out the requirements for the registration of data protection supervisors may shed greater light on what is anticipated, in terms of who might be able to fulfil such roles. The most natural development may be for the role to be filled by consulting/audit firms with expertise in data protection related issues.

Law No. 23 of 2018 concerning Health Insurance

The Government of the Kingdom of Bahrain has issued a new law (Bahrain Law No. 23 of 2018) that will make it compulsory for health insurance coverage to be provided to all citizens, residents and visitors to the country as of January 2019.

Proof of insurance is expected to be made mandatory for the renewal of employment permits as well as residence permits.

How will the mandatory health insurance plan be funded?

The mandatory health insurance will be funded through the payment of an insurance subscription that will cover the benefits, which are set out in a package relevant to each category of an insured person e.g. a Citizens' Package for a Citizen; a Residents' Package for a Resident; and a Visitors' Package for a Visitor.

The Government of the Kingdom of Bahrain will pay subscriptions for Bahraini citizens.

How will the expatriate workforce and visitors be enrolled onto the new mandatory health insurance scheme?

- Employers will need to enrol foreign national employees for insurance.
- Enrolment for visitors will be covered by the visitors themselves.
- A list of approved health insurance providers is yet to be published.

Are there any new ways to be able to store your healthcare information within the law?

Article 23 and Article 24 of the law establishes a 'Unified Electronic Medical Record' for each person enrolled onto the new insurance scheme and a 'National Health Data Dictionary'.

The Unified Electronic Medical Record

Each Beneficiary shall have an electronic medical record containing all his health-related data, particularly the data related to his medical condition and data that may be used as a basis for claiming financial benefits for providing health benefits.

National Health Data Dictionary

The Supreme Council of Health shall establish a national Health Data Dictionary that includes a national system of health-related terms, medical coding and an explanation of its vocabulary in a manner in which these terms are classified into categories and arranged in a special order to be a reference for Health Service Providers and insurance coverage providers by using a standardized language that allows technical systems to receive, send, store, display, retrieve or process the dictionary contents.

The new law establishes a Health Information and Knowledge Management Centre

- Article 20 of the Bahrain Law No. 23 of 2018 mandates the establishment of a Health Information and Knowledge Management Centre by the Supreme Council of Health.
- Under Article 22 (a) (7) of the same law stipulates that one of the main duties of the Health Information and Knowledge Management Centre is to develop the necessary proposals to enhance the protection of the personal data of those who are enrolled onto the new Insurance Scheme.

Law No. 22 of 2018 concerning the Restructuring and Insolvency Law

Bahrain introduced a new insolvency regime in Bahrain to promote efficiency in the insolvency process. The new legislation applies to:

1. Commercial companies established in Bahrain (including those established by virtue of law or decree);
2. Natural person traders who either do business or have their headquarters in Bahrain.

The new legislation will not govern insolvency of entities regulated by the Central Bank of Bahrain.

Commencing Insolvency Proceedings

Both debtor and creditor(s) may institute an action to commence insolvency proceedings upon the satisfaction of the insolvency test. A debtor is deemed to have satisfied the insolvency test if:

- If a debtor is unable to pay its debts on the maturity dates or fails to pay such debts within thirty (30) days of their maturity or from date of creditors' notice to pay; or
- If the value of the debtor's financial obligations exceed the value of its assets.

The High Civil Court, before accepting an action by either party to commence insolvency proceedings, will verify whether the conditions stipulated above are satisfied and will provide the debtor (where a creditor institutes an action) or a creditor (where a debtor institutes an action) the opportunity to object to such action.

The Insolvency Trustee (alternatively referred to as a Restructuring Trustee or Liquidator where relevant) is appointed by the High Civil Court to perform the duties and tasks in liquidation or restructuring proceedings.

Insolvency assets

Assets that are subject to the insolvency proceedings include:

- Debtor's movable and immovable properties located in Bahrain and/or abroad;
- Properties acquired after commencement;
- Debtor's rights in properties owned by third parties;
- Funds and proceeds generated by the continuation of the debtor's business operations;
- Proceeds from the insolvency assets of all kind and nature; and
- Funds recovered through avoidance proceedings.

Stay of Proceedings and Moratoria

The commencement of insolvency proceedings automatically causes stay of any other judicial proceedings or execution procedures on the insolvency assets such as any debt enforcement procedures against the debtor's insolvency assets, any attachment or enforcement on encumbered properties of debtor or any acquisition over any insolvency asset.

Doing Business

Commencement of proceedings does not prevent the debtor from continuation of business and utilisation of properties for necessary transactions if carried out in the ordinary course of business.

In case of a restructuring, the insolvency trustee may, with due authorisation manage the debtor's business & execute unperformed contracts concluded by the debtor in the ordinary course of business. Whereas on a liquidator's request, the High Civil Court may approve the operation of the debtor's business for a limited period if doing so maximizes the value of assets.

Cross-border insolvency

A feature of the new legislation that stands out is the provision of a mechanism for cooperation between courts and competent authorities in foreign countries and Bahrain involved in cross-border proceedings.

The cross-border insolvency provisions apply to:

- Assistance applications submitted by a foreign court or representative in connection with any foreign proceedings;
- Assistance applications submitted in a foreign country in connection with insolvency proceedings;
- Any foreign proceedings initiated against a debtor at the same time as proceedings initiated with respect to the same debtor; and
- Applications submitted by a creditor or any foreign stakeholder for initiation of or participation in insolvency proceedings against a debtor.

Foreign creditors are accorded equal rights and treatment with creditors in Bahrain with respect to the commencement and participation in insolvency proceedings. The provisions governing cross-border insolvency will be interpreted in accordance with the guidelines of the UNCITRAL Model Law on Cross-Border Insolvency.

Law No. 31 of 2018 concerning Competition Promotion and Protection

Another important piece of legislation was introduced to govern competition in Bahrain. The new legislation provides for the establishment of a Competition Promotion and Protection Authority. The law governs all entities engaging in any economic activities in any form within Bahrain. The law also extends to activities taking place outside Bahrain that affect competition within the country.

Any economical arrangement that are intended to result in the following is prohibited:

- Causing an effect on the prices of domestic as well as imported goods and services by increasing, reducing or fixing the price or through the fictitious or imaginary transactions or in any other form;
- Limiting or controlling the production, marketing, technical development or investment;

- Sharing the markets or sources of supply;
- Disseminating, with knowledge, incorrect information about goods and services and their prices;
- Colluding in bids or proposals submitted in the auctions, tenders or practices, and causing an effect on the price of offers for sale and purchase of goods and services;
- Fabricating sudden abundance of goods and services leading to exchanging these goods and services at a false price that does not affect the other competitors; and
- Doing a collusive practice by refusing to buy, sell or supply from a particular facility in order to prevent or impede the exercise of its activities.

There are however grounds for exceptions where it can be proven that such exception is in public interest or if it satisfies specified conditions set out in the new legislation.

The concept of “dominant position” has been introduced and an entity is considered to be in one if it has the economic power to prevent an effective competition in the market and enjoys significant independence than any of its competitors. An entity is in a dominant position if its share in the relevant market exceeds 40% (and in cases where a group of entities are involved the threshold is 60%). The law identifies instances which constitute abuse of dominant position which include (but are not limited to):

- The direct or indirect imposition of sale or purchase prices or other trading terms;
- Reduction of production, markets or technological development, to the detriment of consumers;
- Discrimination in agreements or contracts, whatever their kind, concluded with the suppliers or the customers if their contractual positions are similar, whether it is a discrimination in terms of price, product quality or other dealing conditions.

An “economic concentration”, which can be carried out only with the approval of the Competition Promotion and Protection Authority arises if there is a change in the control of an entity as a result of any of the following:

- The merger of two or more entities, in whole or in part, if those facilities are independent of each other before the merger.

- Direct or indirect control over an entity, or a part thereof, by any of the following:
 - One or more natural persons having the control over one or more entities; or
 - One or more other entities.
- Establishment of a joint venture whose all functions are carried out by an autonomous entity.

The new legislation also imposes a significant financial liability (in the form of fines) as well as criminal liability (in the form imprisonment) for violations of its provisions.

NOTES

The leading **FinTech Hub** in the **Middle East & Africa.**

Bahrain FinTech Bay is the gateway to the Middle East, dedicated to enabling, fostering and ultimately building the complete FinTech ecosystem in the region, driving innovation and future-proofing Bahrain's financial services industry

What We Do

Venture Acceleration Platform

We accelerate growth and maximise opportunities for FinTech ventures focused on strategic expansion across the region, exposing truly innovative solutions to our growing number of influential partners in the Gulf.

Physical Hub

Our collaborative platform is dedicated to FinTech entrepreneurship, supported by world class infrastructure including a unique contemporary co-working space

Conferences and Events

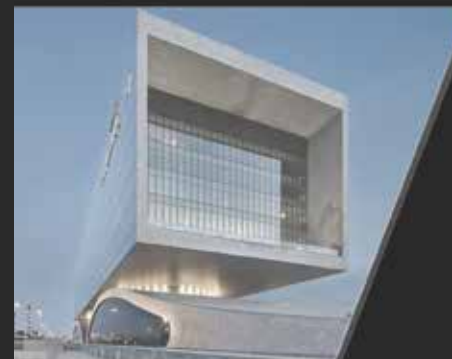
We bridge our community of like-minded individuals with a global network of FinTech innovators and enablers, mentors and thought leaders through conferences, workshops and events

Thought Leadership

Our publication series will provide in-depth research on the rapidly changing dynamics of the domestic and regional FinTech ecosystem.

FinTech Talent Program

The National FinTech Talent Program (FTP), has been developed in partnership with global experts in finance and technology, including Georgetown University's McDonough School of Business and international blockchain, and artificial intelligence academies. The FTP addresses the future skill requirements of Bahrain's financial services industry as well as that of FinTech startups. It uniquely positions the country as a center of excellence for FinTech talent and prepares Bahraini graduates for careers in FinTech innovation and strategy.



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Partners

10,000
sq.ft.

25+
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