

Establishing a business in Bahrain

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

Bahrain has a dual court system made up of:

- Islamic Sharia courts. The Sharia courts deal primarily with the personal legal matters of Muslims, such as:
 - marriage;
 - divorce;
 - inheritance.
- Civil courts (derived from the Egyptian system, which itself is based on the French legal system). The civil courts deal with all commercial, civil and criminal cases, as well as disputes relating to the personal legal matters of non-Muslims. The civil courts are comprised of the:
 - High Civil Court. The High Civil Court deals with all civil matters in Bahrain, including commercial matters and disputes where the amount claimed is over BHD5,000 (claims under BHD5,000 are heard by the small claims court);
 - Higher Court of Appeal;
 - Court of Cassation. The Court of Cassation is the highest court in Bahrain and hears appeals on points of law from the Higher Court of Appeal. Its decisions are binding on the lower courts.

In addition to the above, the court system also includes the:

- Court of Urgent Matters, which hears matters on a summary basis.
- Execution Court, which deals with enforcing judgments from all courts and recognised arbitration bodies.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

The main business vehicle used in Bahrain is the company. The Commercial Companies Law of 2001 provides eight types of companies which can be formed depending, among other things, on the:

- Number of investors.
- Activity of the intended business.

These companies can be up to 100% foreign owned, however, there are sector-specific restrictions which can apply (*see Question 19*).

The only business vehicles in Bahrain that can engage in activities relating to the banking and insurance sectors are:

- Public and Closed Joint Stock Companies.
- Foreign Branch Companies.

In all cases, the activities require additional approvals from the Central Bank of Bahrain before the company is formed and operational (*see box, The regulatory authorities*).

The types of companies that can be incorporated are as follows.

Bahrain Shareholding Company (BSC) (Public)

A Bahrain Shareholding Company (BSC) (Public), commonly known as a Public Joint Stock Company, consists of a minimum of seven shareholders who subscribe to it by way of negotiable shares. Subscribers 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 BHD1 million. There must be a minimum of five directors. Shares can be offered to the public.

All shareholders of a Public Joint Stock Company must be Bahraini nationals or nationals of the Gulf Co-operation Council (GCC). However, foreign investment is permitted in a Public Joint Stock Company with special approval from the Minister of Industry and Commerce, who will also determine the percentage of the investment.

Bahrain Shareholding Company (BSC) (Closed)

A Bahrain Shareholding Company (BSC) (Closed), commonly known as a Closed Joint Stock Company, consists of a minimum of two shareholders who subscribe to it by way of negotiable shares that are not offered to the public for subscription. 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 BHD250,000. There must be a minimum of three directors. A Closed Joint Stock Company can be 100% foreign owned. There is no requirement of local sponsorship, however, depending on the business activity, there may be a requirement of minimum Bahraini ownership.

Closed Joint Stock Companies must adhere to strict regulations provided by the Ministry of Industry and Commerce and they must invite and obtain no objection clearance from the ministry for holding their annual general meetings. If a company's activity is also regulated by the Central Bank of Bahrain, it must also invite them to all such meetings.

Single Person Company

A Single Person Company (SPC) is a company the capital of which is fully owned by a single natural or corporate person. The owner is liable for the company's debts and obligations only to the extent of the value of his capital investment in the company. The minimum share capital required is BHD50,000. There must be at least one director. Foreign and non-GCC nationals can set up an SPC if there are no restrictions on the business activity. There is no requirement of local sponsorship.

One of the advantages of an SPC is that there is no requirement to hold annual or extraordinary general meetings of the company; the company must simply file its audited financials with the ministry.

With Limited Liability Company

A With Limited Liability Company (WLL) is most analogous to the private limited company in the UK. It must consist of a minimum of two and a maximum of 50 partners who are natural or legal persons. The partners are responsible for the company's debts and obligations only to the extent of their respective share in the capital. The minimum share capital required is BHD20,000. There must be at least one manager who has the same obligations, duties and responsibilities as a director in a Joint Stock Company. The company cannot issue public shares. A WLL can be 100% foreign-owned. There is no requirement of local sponsorship, however, depending on the business activity, there may be a requirement of minimum Bahraini ownership. WLLs have less stringent requirements to pass resolutions and there is no requirement to invite and obtain the approval of the Ministry of Industry and Commerce to hold annual meetings.

Partnership Company (General Partnership)

A Partnership Company is a company formed without limited liability between two or more natural or corporate persons, in which 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. A Partnership Company can be 100% foreign-owned. There is no requirement of local sponsorship, however, depending on the business activity, there may be a requirement of minimum Bahraini ownership.

Simple Commandite Company (Limited Partnership)

A Simple Commandite Company is established by two categories of partners:

- Silent partners, who have no involvement in the management of the company and have limited liability to the extent of their investment.
- Managing partners, who are jointly liable to the extent of their entire personal wealth for the company's debts and obligations.

There is no requirement of a minimum share capital, however, the business activity may dictate a minimum share capital. There must be at least one limited partner and one unlimited partner. There must also be a minimum of two managers or directors who must be of Bahraini nationality. The company's authorised signatories must also be of Bahraini nationality. Foreign nationals can invest a maximum of 49% of the capital of the company as sleeping partners only. The unlimited partner must be Bahraini with a minimum share of 51% in the capital of the company.

The sleeping partner or non-managing partner does not have to be named or identified in the company's public records. Consequently, the sleeping partner's name must not appear in the company name, as this would void their limited partnership status.

Commandite by Shares Company (Limited Partnership By Shares)

In a Commandite by Shares Company there must be a minimum of four partners. The company must be established between two categories of partners:

- Joint partners, who are jointly responsible to the extent of their entire personal wealth for the company's obligations.
- Limited partners (shareholders), who are not liable for the company's obligations except to the extent of the value of their shares.

The shares of the limited partners are negotiable, while the shares of the unlimited partners are not.

There must be a minimum share capital of BHD20,000. There is also a requirement of a minimum of three members on the company control board from among the limited partners if the number of such partners exceeds ten. There must be at least one manager.

A Commandite by Shares Company can be foreign-owned. There is no requirement of local sponsorship, however, depending on the business activity, there may be a requirement of minimum Bahraini ownership.

Foreign Company Branch

A foreign company that is incorporated and registered outside Bahrain can be established as a Foreign Company Branch in Bahrain with:

- An operational office. A Foreign Company Branch with an operational office can engage in banking and insurance activities subject to approvals from the Central Bank of Bahrain. There must be local sponsorship from a Bahraini trader.
- A representative or regional office. Representative and regional offices cannot carry out any operations, are purely for the purpose of setting up a presence in Bahrain and can only undertake marketing and promotional activities.

The liability of the company must be in accordance with its parent company. The parent company setting up the Foreign Branch Company must provide a guarantee and appoint a branch manager. The Foreign Branch Company must adhere to the laws of its parent company in all decisions such as its liquidation.

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

Company

As set out in *Question 2*, foreign nationals can set up any type of company in Bahrain depending on the intended business activity, with the exception of a Public Joint Stock Company, which requires special approval from the Minister of Industry and Commerce. The restrictions applicable are in relation to the business activity of the company, which dictate whether foreign investment and involvement is permitted and the foreign investor's percentage of ownership.

Agent

Where a foreign company wishes to simply introduce its product to the market without setting up a company in Bahrain, it can appoint an agent. In this case, the parties' relationship is 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. The law defines an agency as an individual or corporation representing the principal in the distribution of goods and products or displaying them for sale or trading purposes in consideration of profit, commission or providing similar facilities. The principal must not appoint more than one agent in a specific area of activity for the same commercial business covered by a registered commercial agency. There is no specified form for an agency agreement and the parties are free to agree the terms, however, for the agency agreement to be recognised, it must be registered in the Commercial Agencies Register at the Ministry of Commerce and Industry. An agent must be either a Bahraini individual or a Bahraini corporate entity in which a minimum of 51% of the capital is owned by Bahrainis.

4. How can an overseas company trade directly in your jurisdiction?

Foreign nationals, including natural persons and corporate bodies, cannot operate any business or trade in Bahrain without first setting up a company. Depending on the business activity of the overseas company, it can trade in Bahrain by setting up one of the business vehicles referred to in *Question 2*.

The most direct form of trading in Bahrain for foreign companies is to set up a Foreign Company Branch (*see Question 2, Foreign Company Branch*.) However, as with all business vehicles set up in Bahrain, the intended business activity dictates whether the foreign company can undertake the activity in Bahrain. The alternative is to appoint an agent in Bahrain (*see Question 3, Agent*).

5. What are the formalities for setting up a partnership?

In general, the process of setting up a Partnership Company is the same as for all the other types of companies permitted under the Commercial Companies Law, including the requirement of articles and memorandums of association (*see Question 2, Partnership Company (General Partnership)*).

6. What are the formalities for setting up a joint venture?

The Commercial Companies Law permits joint ventures between parties. The joint venture agreement must:

- Specify the parties' rights and obligations.
- Determine the division of profits and losses.

There are no other specific formalities for parties to enter into a joint venture such as registration. The joint venture vehicle has no corporate identity. However, since all business activity in Bahrain must be through a company or an individual establishment (for Bahraini nationals only) third parties have recourse against the company or individual establishment, not directly against the joint venture.

In practice, when a foreign company and a local business want to engage in a joint venture, they are likely to set up a new company. Depending on the business activity of the company, a With Limited Liability Company is the most popular business vehicle for this purpose. The parties' relationship is governed by the constitutional documents of the new company, in particular the Memorandum of Association. Although, some parties also draw up additional agreements between them to govern their relationship, these would be enforceable only as far as they are not contrary to the laws of Bahrain.

7. Are trusts available in your jurisdiction?

Trusts are governed by the Bahrain Financial Trusts Law No. (23) of 2006. A financial trust is created by a trust instrument transferring ownership of the trust property from the settlor to the trustee to exercise the duties and powers specified in the trust instrument with a view to achieving the purpose of the trust in the interests of the beneficiary.

Any form of property (transferable or non-transferable) or any financial right relating to an intangible asset can be transferred to a trust for the benefit of the beneficiary.

Trusts must be registered on the Register of Financial Trusts with the Bahrain Monetary Agency, regulated by the Central Bank of Bahrain. The Bahrain Monetary Agency monitors and supervises all financial trusts and the actions of the trustees.

For a trust to be valid, the trust instrument must:

- Provide the identity of the settlor, the trustee and the beneficiary (it is possible for the beneficiary to be a person in the future).
- Provide a clear description of the purpose of the trust.
- Identify the trust property.
- Provide clear duties and powers of the trustees.
- Adequately define the object of the trust (the object must be feasible).

The object and purpose of the trust must not violate the law, public policy or public morality. The duration of a trust must not exceed 100 years. Unless the trust instrument provides otherwise, on the expiry of the trust, the trust property reverts back to the settlor.

The answers to the following questions relate to private limited liability companies (or their equivalent).

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory framework

The Commercial Companies Law of 2001 regulates all matters relating to the formation and administration of companies in Bahrain. In addition, the Ministry of Industry and Commerce regulates, provides practice codes and can demand additional requirements based on the circumstances of the company and its investors.

For more information on the regulatory authorities, see box: *The regulatory authorities*.

Tailor-made or shelf company

The concept of shelf companies does not exist in Bahrain. All companies must be tailor-made based on the particulars of the investors and the intended business activity, which will dictate the additional approvals required from various ministries. All companies are regulated by the Ministry of Industry and Commerce and, depending on their activity, are also regulated by various other ministries. For example, a business activity relating to:

- The oil and gas industry requires the approval of, and regulation by, the Bahrain National Oil and Gas Authority.
- Insurance and other financial services requires the approval of, and regulation by, the Central Bank of Bahrain.

Formation process

The form of company an investor sets up is primarily determined by the business activity of the company and the number of investors (*see Question 2*). To undertake banking and insurance activities the investors must establish a Public or Closed Joint Stock Company subject to stringent Central Bank of Bahrain approvals (*see box, The regulatory authorities*).

The initial step is to identify whether the investor is permitted to engage in the intended business activity and to what extent. The activity will also indicate the minimum capital required to form the company.

After this initial step, the following general steps may apply:

- Submission of the relevant application forms to the Ministry of Industry and Commerce for its pre-approval.
- Following pre-approval, submission of the draft constitutional documents such as the articles and memorandums of association.
- The Ministry will then issue letters to the relevant authorities whose approvals are required, such as the Ministry of Health or the Ministry of the Environment, depending on the business activity. Each authority has its own requirements that must be satisfied.
- After clearance from the relevant authorities, the Ministry of Industry and Commerce issues a letter to the Notary Public requesting that it facilitate the notarisation and incorporation of the company constitutional documents.
- Following this, a company bank account must be opened in a local bank into which the capital requirement of the company must be deposited. The bank issues a certificate of deposit.
- The notarised documents must be submitted to the Ministry of Industry and Commerce with the relevant fees to obtain a commercial registration number for the company along with the extract for the company containing the information for its public records.
- The Ministry of Information publishes the public records in the *Official Gazette*. This includes information such as the company's:
 - name;
 - commercial registration number;
 - shareholders' names;
 - authorised and issued capital;
 - authorised signatories and directors.

The Company is legally incorporated from the date following publication of its formation in the *Official Gazette*.

Company constitution

Public and Closed Joint Stock Companies require both memoranda and articles of association. A Single Person Company requires articles of association and a founder's declaration. A Foreign Company Branch is governed by the constitutional documents of its parent company.

Although model documents are not used, the majority of the articles and memoranda of association are similar as they are based on best practice norms and the provisions of the Commercial Companies Law. The company's constitutional documents are not public, however, information such as the company's directors, authorised signatories, investors and share capital are public and appear on the Ministry of Industry and Commerce website.

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

With the exception of Simple Commandite, Partnership and Foreign Branch Companies, which have no obligation to file their financial reports, all other companies (that is, Public and Closed Joint Stock, With Limited Liability, Single Person and Commandite by Shares Companies) must file their audited financial reports with the Ministry of Industry and Commerce within three months from the end of each financial year of the company. Foreign Branch Companies must also comply with the company laws of the relevant foreign jurisdiction.

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

All companies must display their commercial registration number at their place of business. They must also display the company name in a visible place. The name of the company along with its registered head office address and commercial registration number must also appear on all company documentation. There are no specific requirements of disclosure for company websites. All banks, whether Public or Closed Joint Stock Companies, publish their annual financial reports on their websites. If the activity of the business relates to online services, it will be regulated by the Ministry of E-commerce.

Joint Stock Companies

Joint Stock Companies (whether public or closed) must derive their name from their business objective. The name of the company must always be followed by the phrase or abbreviation:

- "(Bahraini Joint Stock Company)" or "(BSC (Closed))".
- "(Bahraini Joint Stock Company)" or "(BSC (Public))".

With Limited Liability Company

A With Limited Liability Company can have a special commercial name, which may be derived from its business objectives and include the name of a partner or partners, followed by the phrase or abbreviation "(With Limited Liability)" or "(WLL)".

Single Person Company

A Single Person Company must have a special commercial name, which may be derived from its business objectives. The company must also be associated with the name of its owner, followed by the phrase or abbreviation "(Single Person Company)" or "(SPC)".

Partnership Company

The name of a Partnership Company must consist of the names of all the partners or the name of one or more partner followed by "(& Co.)" The name of the company must also be followed by the phrase "(A Bahraini Partnership Company)".

Simple Commandite Company

The name of a Simple Commandite Company must consist of the names of the managing (unlimited) partners. The names of the sleeping (limited) partners must not appear in the company name. If there is only one managing partner in the company his name must be followed by "(& Co.)".

Commandite by Shares Company

A Commandite by Shares Company name must consist of the name of a joint partner or more and an innovative name derived from its business objective. The name of the limited partners (shareholders) must not appear in the company name.

11. How do companies execute contracts or deeds?

All companies set up in Bahrain must have named authorised signatories. The names of the signatories appear in the company's public records. They can be appointed by the company to act singly or jointly with one or more authorised signatories.

The company's authorised signatories can therefore bind the company in contracts such as notarised declarations on behalf of the company.

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

Each type of company has its own restrictions on the number of members it can have. For example, a:

- Public Joint Stock Company (BSC Public), must have a minimum of seven members, but there is no maximum limit on the number of members.
- Closed Joint Stock Company (BSC Closed) must have a minimum of two members with no maximum limit on the number of members.
- Single Person Company can only have one member.
- With Limited Liability Company must have a minimum of two and a maximum of 50 members.
- Commandite by Shares Company must have a minimum of four partners.

See *Question 2*.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

There is a different minimum capital requirement for each type of company that can be formed in Bahrain. However, depending on the business activity of the company, there may be a requirement for a higher capital investment. For example, a Single Person Company generally requires a share capital of BHD50,000. However, the minimum capital required increases to BHD250,000 where the business activity of the company involves dealings with real estate (such as sale and purchase or management).

There is no minimum investment required for setting up a Partnership Company, however, again the business activity of the company will determine the minimum capital required. The capital of the company can either be made up of cash in Bahraini Dinars or in-kind.

14. Are there restrictions on the transfer of shares in private companies?

Shares in a company cannot be transferred or otherwise dealt with in the following circumstances:

- The shares are under mortgage.
- The shares have been sequestered by the court.
- Transfer of the shares is to a person or corporate body that increases foreign ownership in the company beyond the permitted limit of the business activity of the company.
- The shares are not fully paid up to the company.
- Transfer would be in breach of the law.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

All shares of the same class must give the holder equal rights and obligations proportionate to their shareholding.

Minority shareholders do not have specific protection under the law, however, where they object to a particular action of the majority shareholders, such as an increase or decrease in the capital of the company or its winding down, they have the right of recourse to the courts.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?

Depending on the company type, there are different quorum and voting requirements at shareholders' meetings.

Annual general meetings must be attended by shareholders representing, at first invitation, more than 50% of the capital. If the quorum is not reached at the first meeting, the second meeting is valid if attended by shareholders representing a minimum of 30% of the capital. The third meeting is valid regardless of the number of attendees.

Extraordinary general meetings must be attended by shareholders representing more than 65% of the capital at first invitation. If the quorum is not reached at the first meeting, the second meeting is valid if attended by shareholders representing a minimum of one-third of the company's capital. The third reconvened meeting is valid if attended by a quarter of the shareholders.

Shareholders must have the right to attend shareholder meetings and have voting rights proportionate to their shareholding. Any provision to the contrary is null and void. All shares of the same class must give the holder equal rights and obligations proportionate to their shareholding.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

A majority vote of 75% of votes in attendance is required for the following corporate actions:

- Increase and decrease in capital.
- Extending the company's term.
- Winding up.
- Converting or merging of the company with another.

In practice, the Ministry of Commerce and Industry requires the approval and signature of all the partners before allowing a company to be liquidated.

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Resolutions passed by shareholders at the company's extraordinary general meetings or annual general meetings in accordance with the law and the company's constitution binds all the shareholders, whether they attended the meeting or not, or voted for or against the resolutions.

However, any resolution passed in contravention of the law or the company's constitution is null and void. In this case, only shareholders whose objections to the resolution were noted in the minutes of the meeting or who failed to attend the meeting for a reasonable cause have the right of recourse through the courts. There are otherwise no other exemptions or protections available for the protection of minority shareholders.

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

There are certain sectors and activities that are completely restricted to non-Bahraini nationals and those that are only open to Bahrainis and Gulf Co-operation Council (GCC) nationals.

There are also some business activities which require minimum Bahraini investment, such as 51%.

Construction is one of the main sectors in which there are restrictions on non-Bahraini investment. Others only permitted for Bahrainis include:

- Press, publishing and distribution.
- Car and motorbike rental.
- Fishing.
- Foreign manpower supply.
- Gas bottling and distribution.
- Gas cylinder distribution.

Although some sectors and business activities may be closed to non-Bahraini nationals, the Ministry of Industry and Commerce can grant exemptions to enable foreign investment if it deems the investment favourable to the development of the economy. Such exemptions are considered on a case-by-case basis.

Since January 2005, under the Bahrain–United States Bilateral Investment Treaty, US nationals are accorded GCC treatment so that they are entitled to invest in business activities that might otherwise be restricted to foreign nationals.

If the investor of a company being formed is a Bahraini corporate body, the nationality of the Bahraini corporate body's shareholders must be proved to ensure compliance with the limit on foreign investment for the business activity.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

In general there are no restrictions on foreign shareholders. Once a foreign investor is over the hurdle of restrictions placed on the business activity of the company (which dictates whether foreign investment is permitted and to what extent), he is treated in the same way as a Bahraini shareholder and no distinction is made.

However, in the case of a Public Joint Stock Company which is incorporated with foreign investment with special approval of the Minister of Industry and Commerce, there are some restrictions placed on foreign shareholders. In this case, a foreign investor cannot sell, transfer or otherwise deal with such shares for a period of three years from the date of incorporation of the company, unless the transaction is between one of the founding foreign partners.

21. Are there any exchange control or currency regulations?

Bahrain has exchange and currency regulations, which are contained in Decree No. 64 of 2006 and the Central Bank of Bahrain (CBB) rules and regulations.

The CBB also:

- Enforces international disclosure standards.

- Supervises:
 - the Bahrain stock exchange;
 - the clearing, settlement, depository and custodial systems;
 - brokerage firms; and
 - market makers.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There are no restrictions placed on foreign occupation of real estate. However, there are restrictions on where non-Bahraini persons or corporate bodies can own property in Bahrain.

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

There are various requirements for a director of a company. The main requirements include that the person:

- Has capacity to act.
- Has not been convicted (unless the conviction is spent) of any crime of:
 - fraud or default;
 - honour. The Penal Code Decree No.15 of 1976 categorises all sexual offences and theft, in addition to others, as crimes of honour;
 - breach of trust or any other crime due to his violation of the provisions of the Commercial Companies Law.
- Has not been bankrupted.

In addition, the director or the person the director represents (that is, the investor who appoints him as director) in a Public or Closed Joint Stock Company must hold the higher of either a number of shares:

- With a minimum nominal value of BHD10,000.
- In the company equal to a minimum of 1% of its share capital.

Note that the articles of association can require that a higher number of shares be held.

A Partnership Company must be managed by all the partners unless the partners appoint one or more of them or a non-partner to manage the company. If there is more than one manager and the company's memoranda of association do not specify the duties of each manager, each manager can act individually but the other managers have the right to object to those actions. In such a case, the managers' decisions can be passed by a bare majority.

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

A company often nominates one or more of its directors as the company's authorised signatories with the power to bind the company in decisions and agreements with third parties.

The minimum requirements for the composition of the board of directors are:

- Public Joint Stock Company: five directors.
- Closed Joint Stock Company: three directors.
- Single Person Company: one director who may be the owner of the company.
- With Limited Liability Company: at least one director.

REREGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to reregister as a public company?

Any company can convert from one legal form to another.

For a company to be converted into a Public Joint Stock Company, at least two financial years must have lapsed since the company was registered with the Commercial Registry. The company's managers must prepare a report on the company's assets and liabilities and the results of the balance sheet for the preceding two financial years, to be signed by the auditor and ratified by the Ministry of Industry and Commerce. In addition:

- The Ministry of Industry and Commerce must approve the conversion.
- All the shares must be fully paid up.
- The company must have experienced a minimum of 10% distributable net profits for at least two financial years preceding the conversion.
- If the company being converted is a Closed Joint Stock Company, the resolution to convert it into a public company must be made by the extraordinary general meeting by a majority of 75% of the shareholders who attend to vote.
- The company must repay all its loans and banking facilities before conversion or obtain the creditors' approval of the conversion.
- The company must increase its capital to the minimum required for a Public Joint Stock Company.

A converted company does not acquire a new corporate entity, but maintains its rights and obligations established before the conversion. Conversion discharges the joint partners (unlimited partners) from the company's obligations before the date of conversion unless the creditors object to the conversion within 60 days from the date of notification to each of them.

TAX

26. What main taxes are businesses subject to in your jurisdiction?

There is no concept of residency for tax purposes in Bahrain and there are no taxes payable by employees in Bahrain. However, employers must pay social security contributions as a percentage of the first BHD4,000 of an employee's monthly salary to the General Organisation for Social Insurance. This applies to both Bahraini and non-Bahraini employees, although the percentage payable differs.

There are no corporate, withholding, sales or value-added taxes imposed on business entities in Bahrain. There is no tax regime other than that imposed on foreign companies directly engaged in the exploration or production of crude oil or other natural hydrocarbons or in refining of crude oil. Bahrain has also signed tax information exchange agreements with a number of countries including Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden, India, Australia and, most recently, Canada.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

See *Question 26*.

28. What is the tax position when profits are remitted abroad?

There are no restrictions or taxes applicable for profits remitted out of Bahrain.

29. What thin-capitalisation rules and transfer pricing rules apply?

Companies must submit their annual audited financial reports to the Ministry of Industry and Commerce (*see Question 9*). As part of that, the Ministry will examine the company's capital. If it sees that a company's capital is made up of a much greater proportion of debt than equity, the Ministry of Industry and Commerce can summon the company to take immediate action to rectify the situation. This can include the requirement to increase the capital or use the company's legal reserves. If the company fails to take action the Ministry can place the company's commercial licence under sequester.

For Partnership and Simple Commandite Companies the law provides that any deficit in the share capital as a result of losses must be made up from the profits of the following years unless there is agreement to the contrary. In addition, a partner is not bound (except with his consent) to make good any deficit in his share of the capital of the company resulting from losses.

Public and Closed Joint Stock Companies, Closed Simple Commandite by Shares Companies, With Limited Liability Companies and Single Person Companies must all keep a statutory reserve of 10% from their net profits each year. Such deductions can be suspended once the reserve amounts to 50% of the company's paid up capital.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

The main incentive for businesses to set up in Bahrain is that there are no applicable taxes (*see Question 26*).

EMPLOYMENT

31. What are the main laws regulating employment relationships?

The Bahrain Labour Law for the Private Sector, No. 36 of 2012 (Labour Law) was issued on 26 July 2012 and came into force on 2 September 2012. It repealed the previous labour law of 1976.

The Labour Law regulates employment for both national and foreign employees. The Labour Law sets a highly regulated regime concerning the employer-employee relationship and grants various rights and protections to employees, including provisions relating to:

- Health and safety.
- Compensation for work injuries and occupational illnesses.
- Conditions of employment of juveniles and women.

- Annual and sick leave.
- Limitations on working hours.
- Payment of overtime.
- End of service gratuity for foreign workers.

The current Labour Law reinforces Bahrain's efforts to bring its employment law into line with international standards. It has aligned Bahrain's domestic law with several of the Arab and international labour treaties to which it is a signatory. The new Labour Law has removed the distinction between national and foreign employees in that it no longer requires employers to consider making non-Bahraini employees redundant before Bahrainis and nationals of other gulf countries. The Labour Law applies as a matter of public policy regardless of the choice of law selected in the employment agreement.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

There are three types of visa available to foreign nationals requiring entry into Bahrain for business purposes:

- Investor visas. Investor visas can be granted where the person requiring entry is a holder of shares in the company.
- Employee residence and work visas. An employee residence and work visa is valid for an initial period of two years and can be renewed for the same period. The fee for both permit and renewal is currently BHD200, in addition to BHD10 which must be paid on a monthly basis to the Labour Market Regulatory Authority (LMRA).
- Temporary work visas. A temporary work permit is valid for a six-month period. The employer can renew the temporary work permit only once for a further period of six months.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform?

An amendment to the Commercial Company Law has been recommended by the Shura Council and Council of Representatives, but has yet to be promulgated.

THE REGULATORY AUTHORITIES

Ministry of Industry and Commerce

Main activities. The Ministry of Industry and Commerce is the regulator of industrial affairs. Its website holds the public records for all companies registered in Bahrain as well as a link to various legislation relating to commerce in both English and Arabic. The English translations are for guidance only.

W www.moic.gov.bh/moic/en/

Central Bank of Bahrain (CBB)

Main activities. The CBB is responsible for maintaining monetary and financial stability in Bahrain. It is also the single integrated regulator of Bahrain's financial industry. It is necessary to obtain the approval of the CBB before establishing a business in the financial and insurance sector in Bahrain. Its website contains all the rules and regulations for the industry, which are all provided in the English language.

W www.cbb.gov.bh

ONLINE RESOURCES

Bahrain

W www.bahrain.com/en/bi/Pages/default.aspx#.UpIQ8cSbJQs

Description. Managed by the Bahrain Economic and Development Board, this website provides guidance and assistance to investors wishing to set up business in Bahrain.

See above, *The regulatory authorities*.

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