The Mergers & Acquisitions Review

Ninth Edition

Editor
Mark Zerdin

Law Business Research

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For further information please email
Nick.Barette@lbresearch.com

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Mark Zerdin

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PUBLISHER
Gideon Roberton

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Nick Barette

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EDITOR'S PREFACE

By a number of measures, it could be argued that it has been some time since the outlook for the M&A market looked healthier. The past year has seen a boom in deal making, with many markets seeing post-crisis peaks and some recording all-time highs. Looking behind the headline figures, however, a number of factors suggest deal making may not continue to grow as rapidly as it has done recently.

One key driver affecting global figures is the widely expected rise of US interest rates. Cheap debt has played a significant part in the surge of US deal making in the first few months of 2015, and the prospects of a rate rise may have some dampening effects. However, the most recent indications from the Federal Reserve have suggested that any rise will be gradual and some market participants have pushed back predictions for the first rate rise to December 2015. Meanwhile, eurozone and UK interest rates look likely to remain low for some time further.

The eurozone returned to the headlines in June as the prospect of a Greek exit looked increasingly real. Even assuming Greece remains in the euro (as now seems likely), the crisis has severely damaged the relationship between Greece and its creditors. The brinksmanship exhibited by all parties means that meaningful progress cannot occur except at the conclusion of a crisis: the idea that reform will benefit Greece has been lost and each measure extracted by creditors is couched as a concession. However, while the political debate has become ever more fractious, the market's response to the crisis has been relatively sanguine. This is largely a result of the fact that the volume of Greek debt is no longer in the market, but in the hands of institutions. But it is also a sign of the general market recovery and expectations that major economies will continue to grow.

Perhaps one of the more interesting emerging trends in the last year is the interplay between growth and productivity. Some commentators have suggested that the recent rise in deal making is a symptom of a climate in which businesses remain reluctant to invest in capital and productivity. Pessimistic about the opportunities for organic growth, companies instead seek to grow profits through cost savings on mergers. It is difficult to generalise about such matters: inevitably, deal drivers will vary from industry to industry, from market to market. However, if synergies have been the principal motivation in much of the year's deal making (it certainly has been in a number of large-cap deals) then it may be that the market is a little farther from sustainable growth than some would like to think.

I would like to thank the contributors for their support in producing the ninth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
August 2015

Chapter 9

BAHRAIN

Haifa Khunji and Natalia Kumar[1]

I OVERVIEW OF M&A ACTIVITY[2]

Despite a severe global downturn since 2009, political and social challenges experienced by Bahrain in 2011 and oil production dips in 2012, the Bahraini economy has consistently posted positive growth throughout this period.

In 2012, Bahrain's real gross domestic product (GDP) grew by 3.4 per cent, despite a 8.5 per cent fall in oil production due to unscheduled maintenance in the Abu Sa'afa field, which accounts for the majority of Bahrain's crude oil production. Therefore, growth in 2012 was driven by the non-oil sector, which expanded by 6.7 per cent. The hotels and restaurants sector experienced the fastest growth of any sector in 2012, growing by 13.6 per cent over the year. While impressive, this growth rate in large part represented normalisation from disruptions in 2011. Manufacturing as well as social and personal services grew by a robust 5 per cent and 13 per cent, respectively. The main drivers were expansion in the petrochemical and oil-related industry as well as private health care.[3]

In 2014, the Bahraini economy continued to expand. The oil sector performed above expectation posting a higher than expected 3 per cent real growth rate for the year as a whole. By contrast the non-oil sector experienced a sustained pick-up in activity from a 3 per cent year on year growth rate in the first quarter of 2014 to 6.7 per cent in the last quarter of 2014. This marked the fastest pace of expansion in over two years. The acceleration in non-oil growth towards the end of 2014 was broad-based with the

1 Haifa Khunji is a partner and Natalia Kumar is an associate at KBH Kaanuun.

2 All statistics and references in this chapter are derived from publicly available sources but have not been independently verified. The information in this chapter is correct as of June 2015.

3 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

strongest pick-up in activity being observed in the construction industry, which, having grown by 1.4 per cent in the first quarter of 2014, accelerated to 3.6 per cent, 12.3 per cent and eventually 12.5 per cent year on year in the other three quarters of 2014. This highlights the initiation of a number of major infrastructure projects including road transportation.[4]

The hotels and restaurants industry continued its strong performance with an 11.9 per cent year on year increase in the last quarter of 2014 and an overall expansion rate of 9.9 per cent year on year during 2014 as a whole. This sector has benefited from both a significant capacity build-up with several new establishments opening in 2014 but also a continued positive momentum in visitor numbers. Continuing an established pattern, social and personal services again featured among the top sectors of the non-oil economy. This is attributable to ongoing robust expansion in private health care and education, an area where Bahrain can, among other things, capitalise on its advantageous location in the broader region. The sector expanded by 7.5 per cent in 2014, having consistently been one of the most dynamic sectors over the last decade.

The financial services sector plays an important role in Bahrain's economy as the largest sector of the non-oil economy. As at 30 April 2015 Bahrain had a total of 403 financial institutions including but not limited to retail and wholesale banks, Islamic banks, investment firms and insurance companies.[5] This sector contributed 17.2 per cent of Bahrain's total real GDP in 2012. As of 2012, the sector's output totalled 1.76 billion dinars, an increase of 4.03 per cent year on year. Financial services registered a compound annual growth rate of 8.14 per cent over 2001–2012. The sector experienced negative growth in 2009, for the first time since 2002, due to the impact of the financial crisis. However, it was resilient amid the uncertainty, growing at an annual average of 2.61 per cent from 2009 to 2012. The insurance market, which expanded at an annual pace of 25.1 per cent in 2009 and 24 per cent in 2010, has become an increasingly important driver of growth in the financial industry over the past few years.

The health of Bahrain's economy is generally influenced by the pace and outcome of mergers and acquisitions (M&A) in the Middle East and North Africa (MENA) region so it is essential to have an overview of the rate of M&A in the MENA region by way of comparison. The Gulf Cooperation Council (GCC) countries are a central bloc of the MENA region; they have recorded strong economic performances boosted by large infrastructure projects. This performance has strengthened the positions of GCC banks, which remain well capitalised and profitable. In Bahrain, banks also remain quite profitable and well capitalised, and their reported non-performing loan ratios remain low. However, the recent sharp drop in the price of oil and some other commodities, should it become persistent, will weigh on the overall GCC economy.[6] The MENA M&A market is led mainly by the GCC countries and the key players are the UAE,

4 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

5 The Central Bank of Bahrain. (2015) CBB Register [Online] Available from: www.cbb.gov.bh/page.php?p=cbb_register [Accessed: 13 June 2015].

6 The Central Bank of Bahrain (2015) The Financial Stability Report February 2015.

Saudi Arabia and Qatar. The revival of Egypt's M&A market in 2014 is expected to continue in 2015 according to Anil Menon, MENA M&A and IPO Leader at Earnest and Young (EY). Announced MENA M&A deals rose by 6 per cent in 2014 to 468 deals from 442 deals in 2013 on the back of strong market fundamentals, according to EY's Q4 MENA M&A update. In 2014, announced deal value decreased from US$50.7 billion in 2013 to US$44.9 billion in 2014, a decrease of 11 per cent.

The MENA M&A market performed very well in 2014. Deal value saw a slight dip compared to 2013, which witnessed some large ticket consolidations. However, the number of deals was 6 per cent higher as regional markets displayed resilience to oil price volatility. The growth of MENA M&A is expected to continue in 2015 at a normalised year-on-year growth rate of up to 10 per cent. The majority of MENA M&A transactions tend to occur in consumption-led sectors such as food and beverage, retail, health care and education, which have little correlation to economic activity and changes in oil price, so the positive trend is expected to continue.[7]

Some recent notable acquisitions in Bahrain in 2014 and 2015 were:

a Bahrain Kuwait Insurance Company BSC acquired Takaful International Company BSC (announced on 5 April 2015);

b Social Insurance Organisation (Bahrain) acquired 4 per cent of National Bank of Bahrain (announced on 3 April 2014); and

c Al Salam Bank BSC and BMI Bank BSC merged (announced on 3 February 2014).[8]

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Bahrain Commercial Companies Law (Legislative Decree No. 21 of 2001) (BCCL) sets out the general rules and procedures that apply to the merger of domestic companies. The BCCL provides for two methods of merger: acquisition or consolidation. In all cases, a merger in Bahrain must not result in a monopoly of any economic activity, commodity or product.

Under the BCCL, a company can be wound up into another company by transferring its patrimony to an existing company or a merger can be effected by the winding up of two or more companies and incorporating a new one to which the patrimony of the merged companies is transferred.

In the case of a merger by way of acquisition, the merged company must pass a resolution approving its dissolution and proceed with an evaluation of 'in-kind' shares in accordance with the BCCL. The merging company then passes a resolution to amend its capital based on the result of the evaluation of the merged company. The capital increase is distributed among the partners in the merged company in proportion to their respective shares.

7 BQ. 2015. MENA M&A to maintain healthy growth into 2015: EY. [ONLINE] Available at: www.bqdoha.com/2015/02/mergers-acquisitions-mena. [Accessed 13 June 15].

8 KBH Kaanuun would like to thank National Commercial Bank Capital for contributing to this section.

In the event of a merger by way of consolidation, each merged company must pass a resolution approving its dissolution. Then, a new company is incorporated in accordance with the BCCL. Subsequently, each merged company is allotted a number of shares equal to its shareholding in the new company's capital. These shares are distributed among the parties in each merged company in proportion to their respective shares therein.

Regardless of the method chosen, notice of the merger must be published in the Official Gazette and in one local daily newspaper. Any creditor may object to the merger within 60 days of the publication of the notice. In such a case, the merger is not binding upon the creditor unless the creditor gives up his objection, a court rejects it or the company pays or makes provision for the settlement of the debt of the creditor. If no objection is made within the 60-day period the merger is effective towards the creditors and the merging company is subrogated in all the rights and obligations of the merged companies.

As for newly created Bahraini companies, they can be constituted with 100 per cent foreign capital (except for the Simple Commandite, which requires a minimum of 51 per cent to be held by a Bahraini national). The only difference is that the contribution of foreign capital or foreign expertise to a Bahraini company is subject to approval of the Minister of Industry and Commerce.

However, certain business activities are reserved for Bahraini nationals and companies such as accounting services (excluding auditing), cargo clearing and fishing. Other types of activities, which are reserved for Bahrainis and nationals of countries that are members of the GCC, include real estate services, rental, management of land and property (not including buying and selling, management of personal property or consultancy services), press, publication and distribution houses, film studios and management of cinemas and film distribution, land transportation of goods, persons and tourists as well as commercial agencies. Further restrictions are applicable in certain areas such as trade and retail where a minimum of 51 per cent Bahraini ownership is mandated.[9]

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The Central Bank of Bahrain (CBB), which is the regulator for M&A in Bahrain, published the Takeovers, Mergers & Acquisitions Module of Volume 6 of the CBB Rulebook, which came into effect on 1 January 2009 and includes general principles and rules applicable to takeovers and mergers. It applies where there is an acquisition or consolidation of control of Bahraini domiciled companies whose ordinary voting equity securities are listed on the Bahrain Stock Exchange (BSE) and overseas companies whose primary listing of ordinary voting equity securities is on the BSE.

9 Ministry of Industry and Commerce . 2015. Selection of Business Activities. [ONLINE] Available at: www.moic.gov.bh/En/MoIC per cent20Centers/BahrainInvestorsCenter/Commercial per cent20Registration/SelectionofBusinessActivities/Pages/Selection-f per cent20Business per cent20-Activities.aspx. [Accessed 13 June 15].

The general principles and more detailed rules are similar to the principles and rules of the UK Takeover Code. In summary, the key principles are:

a all offeree shareholders must be treated fairly and equitably;

b minority shareholders must not be oppressed and rights of control should be exercised in good faith;

c information must not be made available to some offerees, which is not made to all shareholders;

d offers must be announced only after careful and responsible consideration and offerors and their financial advisers should be satisfied that the offeror can and will be able to implement the offer in full;

e offeree shareholders must be given sufficient time and information to reach an informed decision on an offer;

f disclosure must be full, prompt and not misleading;

g directors of the target must not take steps to frustrate a *bona fide* offer without prior shareholder approval; and

h directors of the target should appoint independent advisers in connection with an offer.

Furthermore, a number of countries in the MENA region have recently implemented effective risk management and corporate governance rules. Following this trend, Bahrain adopted a new Corporate Governance Code (the Code) initially for publicly listed companies, which became effective on 1 January 2011. The Code incorporates many international standards such as the independence of directors as well as training and constitution of audit, nomination and remuneration committees.

All joint stock companies, which are incorporated under the BCCL were required to abide by the Code by the end of 2011 or provide an explanation to their shareholders for not doing so.

The Code supplements the principles of corporate governance, which exist within the Bahrain legislative framework, such as rules regulating the convening and holding of shareholders and directors meetings, the dealing in company shares and the establishment of best practices through the adoption of a UK Financial Services Authority type principles-based approach to corporate governance. The Code requires all listed companies to explain non-compliance with a specific recommendation or rule in a comply-or-explain report to shareholders at annual meetings.

The Code includes interesting developments in the functioning of the board of a company. For example, no individual or group of directors should dominate the board's decision-making. As for companies that call themselves 'Islamic', they are subject to additional governance requirements and disclosures to ensure that they are in fact following shariah principles. The directive provides that each such company should establish a shariah supervisory board of at least three shariah scholars who will be responsible for ensuring compliance with shariah principles.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The government of Bahrain actively promotes foreign investments in Bahrain in line with Bahrain's Economic Vision 2030, a comprehensive economic vision for the development of the economy.

Although Bahrain's economy is relatively overshadowed by the economies of its neighbours such as Saudi Arabia and the United Arab Emirates, it has the most diverse economy in the GCC with high value-added sectors such as financial services, manufacturing and logistics featuring heavily in the economic mix.[10] The government of Bahrain has sought to reduce dependence on declining oil reserves and encourage foreign investment by diversifying the economy. As a result, real non-oil growth was 4.9 per cent in 2014, driven by tourism, social and personal services and construction. Execution of GCC-financed project work by local subcontractors supports non-oil growth of 4.0 per cent–4.5 per cent over the forecast period. The tourism industry, which is driven by the Saudi Arabian market, is also expected to continue registering high growth. Major expansions to manufacturing projects will contribute to growth. Inflation is forecast to stay below the peer median.[11]

The World Bank's 'Doing Business 2015' report ranked Bahrain at number 131 out of 189 countries in the world for 'ease of doing business' for foreign investors[12] and ranked Bahrain at number 54 in the MENA region.[13]

Principal sectors open to foreign investment include health care and education and training. As mentioned above, companies can be constituted in Bahrain with 100 per cent foreign capital (subject to certain restrictions). Opportunities for foreign investment also stem from Bahrain's programme of privatisation, which includes communications, transport, electricity and water, the ports and airport services.

The Bahrain International Investment Park (BIIP) is a high-quality 247-hectare business park that has been developed by the Ministry of Industry and Commerce[14] and was ranked among the top-25 best 'future duty free zones in the world' from 700 free

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10 Bahrain Economic Development Board. 2015. Key Investment Sectors. [ONLINE] Available at: www.bahrainedb.com/en/investing/sectors/Pages/default.aspx#.VXyLntsVjIV. [Accessed 13 June 15].

11 Twenty Four Seven News/Mahmood Rafique. 2015. Bahrain's economic growth not impacted by low oil prices. [ONLINE] Available at: www.twentyfoursevennews.com/headline/bahrains-economic-growth-not-impacted-by-low-oil-prices/. [Accessed 13 June 15].

12 The World Bank, 2015. Doing Business 2015 Going Beyond Efficiency. Economy Profile 2015 Bahrain, [Online]. 12th Edition, pg 8. Available at: www.doingbusiness.org/data/exploreeconomies/~/media/giawb/doing per cent20business/documents/profiles/country/BHR.pdf?ver=2 [Accessed 13 June 2015].

13 World Bank Group. 2015. Ease of Doing Business in. [ONLINE] Available at: www.doingbusiness.org/data/exploreeconomies/bahrain. [Accessed 13 June 15].

14 Kingdom of Bahrain Ministry of Industry and Commerce. 2015. Bahrain International Investment Park. [ONLINE] Available at: www.biip.com.bh/default.asp?action=category&id=2. [Accessed 13 June 15].

trade zones worldwide in 2010.[15] BIIP is an initiative developed by the Ministry of Industry and Commerce to attract export-oriented companies in manufacturing and internationally traded services by offering incentives such as 100 per cent foreign ownership, zero per cent corporate tax (with a 10-year hiatus) and duty-free access to the GCC markets.

Further opportunities for investment in financial services have arisen from Bahrain's recognition as a global centre for Islamic finance. For the second year in a row, Bahrain has been named the GCC's leading Islamic finance market and second out of 92 countries worldwide according to the Islamic Corporation for the Development of the Private Sector-Thomson Reuters Islamic Finance Development Indicator. Bahrain is well on its way to regaining its reputation as a vibrant regional financial hub.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

The insurance industry has progressed effectively during the past few years and has grown into a regional hub. The boom in Islamic banking and Islamic financial services has made Bahrain a very attractive destination for Islamic finance.[16]

The development of the insurance industry was also considered an integral part of Bahrain's Economic Vision 2030 strategy. Bahrain's insurance market encompasses 151 insurance firms and organisations (as of February 2013), including 27 locally incorporated entities that are limited to offshore operations. There are 20 locally incorporated insurance firms in Bahrain, including two reinsurance firms and three retakaful firms, while foreign firms include 11 insurance firms. Evolving with the regional and local demand for shariah-compliant financial services, Bahrain's insurance sector also incorporates six domiciled takaful and two retakaful firms. Other companies represent ancillary services such as insurance brokers, loss adjusters, actuaries, and insurance consultants.[17]

Total gross premiums in the Bahraini insurance industry grew by 2.1 per cent year on year from 210.5 to 214.9 million dinars in 2011, underpinned by a 31 per cent surge in engineering insurance along with a 10 per cent increase in medical insurance from 2010. Medical policies are increasingly being incorporated as part of the benefit packages that companies offer to employees. The outlook for the Bahraini insurance market and the GCC in general remains positive. Recent figures indicate penetration in Bahrain stood at 2.3 per cent in 2012 as compared to 2.2 per cent in 2011. The GCC average was a much lower 1.1 per cent in 2012. Across the region, penetration rates are well below

15 Gulf Daily News. 2010. Top global honour for Bahrain Logistics Zone . [ONLINE] Available at: www.gulf-daily-news.com/NewsDetails.aspx?storyid=280930. [Accessed 13 June 15].

16 Central Bank of Bahrain Financial Stability Directorate, (2015) Financial Stability Report February 2015.

17 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

the global average of 6.5 per cent. This, coupled with low insurance density, suggests an untapped market potential.[18]

Motor insurance was the single largest segment in the insurance market in 2011, largely due to the mandatory status of vehicle insurance. With 55.6 million dinars in premiums, the motor segment was responsible for 26 per cent of the gross written premiums. Long-term insurance was the second-largest segment with 48.9 million dinars in written premiums. It represented 23 per cent of total written premiums along with the highest retention ratio of 91 per cent in 2011, up from 69 per cent in 2010. The third-largest segment is fire, property and liability insurance (18 per cent). This product category recorded 8.4 per cent growth in total premiums to 38.6 million dinars in 2011. Finally, medical insurance, and marine and aviation insurance accounted for 16 per cent and 3 per cent of the written premiums, respectively, in 2011. Other smaller segments comprised 14 per cent of the total gross premiums and included areas such as miscellaneous financial losses and engineering insurance; the latter registered the highest annual growth of 31 per cent in 2011 compared to other segments. Growth in the Bahraini insurance market and the increase in the number of takaful firms in recent years has necessitated the development of a reinsurance and retakaful market. As of February 2013, there were four conventional reinsurance firms, along with two retakaful firms. Gross premiums and contributions from the reinsurance and retakaful industries increased by 8 per cent year on year to 349.5 million dinars in 2011 from 323 million dinars in 2010. With significant growth of around 36 per cent, gross claims stood at 272.8 million dinars, according to the 2011 data published by the CBB.[19]

Licensed by the CBB in 2006, Hannover Retakaful Company is the first in its line of business to start operations in Bahrain, joined two years later by ACR Retakaful Company. Gross contributions of the two retakaful firms rose 10.3 per cent to 86 million dinars in 2011 from 78.1 million dinars the previous year. The retakaful industry accounts for 25 per cent of the total reinsurance and retakaful premiums and contributions.[20]

With regards to the manufacturing industry, due to a large and diverse domestic and expatriate workforce, excellent logistics infrastructure, and an attractive investment environment have helped increase real manufacturing output by 90 per cent over the past decade. In 2012, the manufacturing industry constituted the third-largest sector after hydrocarbons and financial services, contributing 15 per cent to real GDP and 13 per cent to total employment. Non-oil manufactured goods comprised 20 per cent of Bahrain's total goods exports.[21]

18 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

19 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

20 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

21 Bahrain Economic Development Board, (2013) Kingdom of Bahrain Economic Year Book 2013.

Hotels and restaurants, construction and real estate have been among the most dynamic sectors of the Bahraini economy in recent years. Recently, the government has introduced new legislation to improve the regulatory standards in the real estate industry that includes a formal tenancy registration process designed to better protect the rights of tenants and landlords as well as legislation regarding development projects. In February 2015 the government announced plans to oversee the completion of various stalled real estate projects through the engagement of local and regional financial institutions. New projects include a 1.5 million square metres Ras Al Barr Resort reclamation project by PK Development Company. Located to the south of Durrat Al Bahrain, the mixed-use waterfront development will offer housing, hotels, retail spaces, a public beachfront and community facilities.[22]

A number of new facilities have begun operations in the hotel and restaurants sector. The inauguration of the Four Seasons Hotel on 1 March 2015 marked an important addition to the five-star segment. Other significant hotels to have opened in 2015 include ART Rotana, an ocean-front development in Amwaj Islands and IBIS Seef Manama in the commercial district of the capital.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

M&A transactions in the Middle East have grown by 250 per cent in the second quarter of 2014 compared to the first quarter of 2014, recording a value of US$14 billion, according to the Thomson Reuters' quarterly investment banking analysis on the Middle East. This is the highest registered quarterly value since the first quarter of 2011. However, on a larger scale, the value of M&A deals during the first half of 2014 has declined 4 per cent from the same period in 2013, highlighting US$19.7 billion in total. Fees earned from M&A transactions amounted to US$110.6 million during the same period, a 3 per cent increase compared to that during the first half of 2013. The number of domestic and inter-Middle Eastern M&A transactions has declined 49 per cent from the first half of 2013 to US$6.9 billion during the first half of 2014. Inbound M&A has declined 19 per cent in the first half of 2014 compared to the first half of 2013, registering US$1.3 billion, and outbound M&A activity has risen by 83 per cent to reach US$7.6 billion, the highest first half total since 2011. The total value of equity and equity-related issuance in the Middle East during the first half of 2014 has registered US$2.9 billion, marking a 6 per cent increase compared to the corresponding period in 2013. Meanwhile, the debt issuance in the second quarter of 2014 has reached the highest quarterly total ever, recording US$18 billion. Middle Eastern investment banking fees have also surged 72 per cent in the second quarter, marking US$237.9 million. However, fees earned during the first half of 2014, which registered USD375.9million, have witnessed a 19 per cent decline year on year.[23]

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22 Bahrain Economic Development Board (2015) Bahrain Economic Quarterly March 2015.

23 Daily News Egypt/Doaa Farid. 2014. Mergers and acquisitions in Middle East up 250 per cent in Q2 2014. [ONLINE] Available at: www.dailynewsegypt.com/2014/07/14/mergers-acquisitions-middle-east-250-q2-2014/. [Accessed 13 June 15].

The fixed income market of Bahrain has seen significant activity in 2015. Apart from ongoing short-term issuance by the CBB the first quarter of 2015 saw three longer sovereign offerings namely a 10 million dinar three-year sukuk-al-ijarah and 250 million dinar 10-year facility. Both deals were significantly oversubscribed at 321 per cent and 141 per cent repectively. A number of corporate issues are expected to be launched in 2015, and players including Gulf Finance House and Al-Baraka Banking Group have already announced plans for sukuk issuances for later in the year.

In one of the most significant debt finance transactions in Bahrain since 2014, Bahrain Steel launched a US$340 million term and revolving facility, which closed over-subscribed. With a syndicate comprising eight local and international banks, including HSBC Middle East, Mashreq Bank and Arab Banking Corporation as joint initial mandated lead managers.[24]

VII EMPLOYMENT LAW

Generally, the labour laws in Bahrain are very protective of employees and employers are regularly faced with having to justify their decisions for dismissing employees.

Bahrain Labour Law for the Private Sector, No. 23 of 1976, was repealed and replaced by the Bahrain Labour Law for the Private Sector, No. 36 of 2012 (the Labour Law), which was issued on 26 July 2012 and came into force on 2 September 2012.

The Labour Law regulates employment for both national and foreign employees and extends its application to domestic workers. Like the old law, it sets up a highly regulated regime of 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 and end-of-service gratuity. The Labour Law builds on these rights and is arguably even more pro-employee with the intention to create a better investment environment in Bahrain by aligning the practices and benefits for private sector employment with Bahrain's public sector.

The Labour Law grants an additional 15 days paid maternity leave and an additional 10 days' sick leave. Further, it grants 30 days' annual leave regardless of the duration of service, unlike the old law, which granted all employees 21 days' annual leave until the completion of five years' service with the same employer, following which it granted 28 days.

The Labour Law, like the old labour law, applies as a matter of public policy regardless of the choice of law selected in the employment contract.

The Labour Law reinforces Bahrain's efforts to reflect international standards, and it has aligned Bahrain's domestic law with several of the Arab and international labour treaties to which it is a signatory. The Labour Law has removed the distinction between national and foreign employees in that it no longer requires employers to consider

24 Bahrain Economic Development Board (2015) Bahrain Economic Quarterly March 2015.

making non-Bahraini employees redundant before Bahrainis and then nationals of other Gulf countries.

In addition to benefiting the working environment in the private sector, the Labour Law facilitates much faster resolutions of labour disputes. Under the Labour Law all labour-related claims must be filed with the Labour Office and in the first instance heard before a labour administration judge and the judge will propose a suitable amicable settlement. If no settlement is reached the case will be referred to the High Civil Court. The High Civil Court will hear disputes on an urgent basis and make a decision within 30 days of the date of the first hearing. However, in practice the courts have not been able to cope with the volume of cases and therefore labour cases can still take in excess of one year to settle.

Following a successful merger or acquisition a major consideration is often the termination of the employment relationship of certain employees. The Labour Law has provided a specific process for redundancies and requires the employer to notify the Ministry of Labour of potential redundancies at least 30 days before it informs the employee of his or her redundancy. Failure of the employer to notify the Ministry of the intended redundancies will make the dismissal unjustified, consequently doubling the employer's liability to pay compensation for such redundancy.

The Labour Law also provides very clear guidelines on the calculation of the award of redundancy due to an employee who is made redundant. Under the Labour Law there are two types of employment contracts: those of a fixed duration and those of an indefinite duration. If the employee is made redundant, his or her entitlement to compensation will be determined by the form of contract of employment he or she has.

If an employee's employment is terminated without a valid reason, it is regarded as an abuse of right on the part of the employer and he or she has to indemnify the employee as per the provisions of the Labour Law, which clearly set out the calculation for compensation available to employees in the event of an unfair dismissal.

Overall the Labour Law implements tougher penalties, but to some extent removes the powers of the judges to determine an employee's entitlement to compensation. Non-compliance with the provisions of the Labour Law is a punishable offence with a term of imprisonment of up to three months, fines of 500 to 1,000 dinars, or both. In case of a repeat offence, the penalty will be doubled. Furthermore, under the Labour Law if an establishment is wholly or partially transferred, the person to whom it is transferred is jointly responsible with the employer for discharging all the obligations imposed by the Labour Law.

VIII TAX LAW

There are no personal, corporate, withholding or value-added taxes applicable in Bahrain. There is no tax regime other than that on entities directly engaged in the exploration or production of crude oil or other natural hydrocarbons or on refining of crude oil. Income tax is levied at the rate of 46 per cent of the income derived by those entities. There is no personal tax except municipal tax of 10 per cent on the monthly rental of residential and business property. In addition, a 5 per cent government levy on gross turnover is imposed on hotel services and entertainment. Customs (import) duties are generally levied at a rate of 5 per cent but there are may items such as medicines, most food products, capital goods and raw material for industry that are exempt from duty.

There has been speculation as to whether corporate tax or VAT will be introduced in Bahrain or whether there will be some form of harmonisation of indirect tax across the GCC. Until further announcements are made that rule out the introduction of such taxes by individual countries or the wider GCC for a defined period, speculation will continue. In the context of double tax treaties, Bahrain continues to expand its network in this sector, and has signed double taxation treaties with the following countries:

a Bahrain–Czech Republic double taxation treaty, signed on 24 May 2011;
b Bahrain–Sri Lanka double taxation treaty, signed on 24 June 2011; and
c Bahrain–Georgia double taxation treaty, signed on 18 July 2011.

The Bahrain–Uzbekistan double taxation treaty came into force on 12 January 2011. Bahrain has entered into avoidance of double taxation treaties with several countries, notably, Algeria, Belarus, Brunei, Bulgaria, China, the Czech Republic, Egypt, France, Iran, Jordan, Lebanon, Morocco, the Philippines, Singapore, Sri Lanka, Syria, Thailand, Turkey, Turkmenistan, Uzbekistan and Yemen.[25]

IX COMPETITION LAW

There is no generally applicable competition law in Bahrain.

Restrictive practices and agreements are not regulated in Bahrain. However, an agreement is void when an obligation is undertaken for no consideration or for a consideration contrary to public policy pursuant to the Civil Law (Legislative Decree No. 19 of 2001).

However, there are some provisions in the Constitution and the Law of Commerce (Legislative Decree No. 7 of 1987) that deals with this aspect. The Constitution stipulates that any monopoly shall only be awarded by law and for a limited time. The Law of Commerce, which is applicable to traders and to all commercial activities undertaken by any person giving protection to the owner of a trade name and trademark. It also prohibits traders from resorting to fraud and cheating when marketing their goods and further prohibits them from disseminating false or misleading information or using methods with regard to the origin or description of their goods or importance of their trade or their credentials that might have damaging effects on their competitors or might attract the customers of such competitors. It further prohibits a trader from inducing the employees of a competitor to assist them in attracting a rival's customers or to leave employment with a view to learning the secrets of their competitors. It prohibits any person engaged in the business of supplying information to commercial houses from supplying untrue statements about the behaviour or financial standing of a trader.

25 PKF. 2012. Bahrain Tax Guide 2012. [ONLINE] Available at: www.pkf.com/media/386987/bahrain_2012.pdf. [Accessed 13 June 15].

X OUTLOOK

Bahrain has emerged as a major regional financial centre. This has been essential to the development of its economy and the financial sector has come to play a significant role in economic activity and employment creation.

Credit rating agencies such as Moody's changed their outlook on Bahrain's retail banking system to stable from negative. The outlook change reflects the banks' solid funding, liquidity and capital positions, in addition to Moody's expectation of further economic recovery, fuelled by increased government spending, which will shore up banks' profitability and asset quality.[26]

The Bahraini economy is on the mend and despite continuing political risk, at the time of writing the Bahrain Economic Development Board expects headline real GDP growth to decelerate to below the 4 per cent mark over the coming two years. Its current estimates foresee 3.6 per cent and 3.2 per cent growth in 2015 and 2016 respectively.

26 Moody's Investors Service, N/A, 2014. Banking System Outlook, Bahrain. 31 March 2014.

Appendix 1

ABOUT THE AUTHORS

HAIFA KHUNJI

KBH Kaanuun

Haifa Khunji is a graduate of the University of Buckingham and a dual-qualified attorney in Bahrain and Kuwait with over 14 years' experience in litigation and corporate finance. She trained and worked with three City firms in the region for over seven years and prior to this worked for four years as in-house counsel for a multinational trading company in the UAE. She joined KBH Kaanuun as a partner at its inception and manages the Bahrain operation.

Haifa has experience of litigation at all levels for individuals and corporate clients in a variety of sectors including insurance, financial services, real estate and shipping.

NATALIA KUMAR

KBH Kaanuun

Natalia Kumar is an English-qualified solicitor. Natalia trained at JMW Solicitors LLP in Manchester, England, where she gained vast experience in civil and commercial litigation, employment law, clinical negligence and private client matters including taxation, trusts and probate. Prior to that Natalia worked at DWF LLP. Natalia works in KBH's Bahrain team and undertakes a broad range of work including corporate and commercial and real estate matters.

KBH KAANUUN
Al Zamil Tower, Office No. 151
Building 31, Road 383, Block 305
PO Box 65005
Manama Centre
Kingdom of Bahrain
Tel: +973 172 12130
Fax: +973 172 12132
h@kbh.bh
maryia.abdul@kbh.bh
natalia.kumar@kbh.bh

www.kbh.ae