

# Bahrain

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## 1 Foreign Investment Policy

### 1.1 What is the national policy with regard to the review of foreign investments (including transactions) on national security and public order grounds?

The Kingdom of Bahrain seeks to create a business-friendly environment that is attractive to foreign investors through laws and regulations that facilitate foreign entry into the market, as will be demonstrated in the different sections of this chapter, while maintaining measures required for the protection of national security and the maintenance of public order. There are a wide range (almost 95%) of commercial activities that may be licensed to foreign individual investors and companies fully owned by foreign nationals. A limited range of commercial activities are restricted to companies in which Bahraini ownership represents a minimum of 51%. Another set of activities requires involvement of a Bahraini shareholder/partner, irrespective of the shareholding percentage. Some considerations apply in respect of certain nationalities, such as nationals of countries in the Gulf Cooperation Council (the “GCC”) who are given Bahraini national treatment, and US citizens, who are also given the most-favoured nation’s treatment pursuant to the Free Trade Agreement (“FTA”) between Bahrain and the United States.

A foreign investor applying to the Ministry of Industry and Commerce (the “MOIC”) to obtain a commercial licence is subject to security screening by the Ministry of Interior, clearance of which is required before the MOIC processes the application. The MOIC and the relevant regulatory authority, depending on a given company’s activities, also supervise board of director appointments and any changes made thereto.

Companies are also required to submit to the MOIC information regarding the ultimate beneficiary owner of any shareholder with more than 10% ownership in their share capital and the individuals with influence over the corporate decisions of said shareholders (the “UBO Disclosure Requirement”).

The Central Bank of Bahrain (the “CBB”) has the role of regulating the financial sector in the Kingdom, as well as supervision of capital markets and combatting financial crime and money laundering. The CBB therefore oversees funds traded in the Bahraini market through foreign direct investment or otherwise.

With respect to transactions and contracts, parties are free to choose the applicable law as long as it does not violate public order. The same applies to foreign judgments and arbitral awards being enforced in Bahrain.

### 1.2 Are there any particular strategic considerations that the State will apply during foreign investment reviews? Is there any law or guidance in place that explains the concept of national security and public order?

Bahraini law allows foreign investment but has a limited list of activities that are restricted to companies with a minimum Bahraini ownership. However, the Minister in charge of commercial affairs (currently the Minister of the MOIC), subject to the approval of the Council of Ministers, has the right to remove that restriction in specific cases where the incorporation of such company shall have a strategic economic significance or is expected to yield profitable return for the economy. This enables the Minister to allow foreign investors with certain activities that are required, especially where there is a void in the Bahraini market, to enter without restriction. Additionally, the Minister of the MOIC may, after arranging with the authority in charge of the relevant activity, waive the minimum capital requirement and allow the company to hold its ordinary and extraordinary general meetings outside of Bahrain as long as it complies with the provisions related to such meetings in the law.

It must be noted that in conducting foreign investment reviews, private institutions, such as banks, supplement the reviews, and carry out due diligence prior to opening corporate bank accounts as they are answerable to the CBB and bound by its regulations.

### 1.3 Are there any current proposals to change the foreign investment review policy or the current laws?

The foreign investment review policy is led mainly by the MOIC, the CBB and the Bahrain Economic Development Board (the “EDB”), which takes the role of promoting foreign investment in Bahrain and liaising with the different authorities to ensure that a business-friendly environment is achieved with a view of supporting both local and foreign investors.

The authorities, especially the EDB, continuously monitor the market and make suggestions to improve and develop policies to promote Bahrain as an investment hub in the region and suggest new laws, regulations or amendments to existing laws to support that.

## 2 Law and Scope of Application

**2.1 What laws apply to the control of foreign investments (including transactions) on grounds of national security and public order? Does the law also extend to domestic-to-domestic transactions? Are there any notable developments in the last year?**

The main piece of legislation in the Kingdom of Bahrain is the Constitution, which includes the main provisions related to national security and public order.

The main legislation relating to the incorporation of companies in Bahrain is the Commercial Companies Law No. 21/2001 (the “CCL”) and the Implementing Regulations issued pursuant to it, which apply to companies with local shareholding as well as companies with foreign shareholding. There are also a number of decisions issued by the Minister of the MOIC on the activities undertaken by companies with 100% foreign ownership and those that require minimum Bahraini ownership.

In respect of investment in real estate, regulations exist relating to the ownership of GCC nationals, and others relating to the ownership of foreign nationals, i.e. Legislative Decree No. 40/1999 with respect to Ownership of GCC Nationals of Constructed Property and Land in Bahrain and the Legislative Decree No. 2/2001 with respect to Ownership by Non-Bahrainis of Constructed Property and Land. Pursuant to the regulations, GCC nationals are given Bahraini national treatment. Foreign nationals and companies owned by foreign nationals are permitted to own real property in certain designated areas. Foreign nationals investing in real estate may be required to undergo a security check.

In respect of transactions, the applicable pieces of legislation would depend on the nature of the transaction and the relevant sector.

In the general sense, all investments and transactions in Bahrain must observe national security requirements and public order. Investments and transactions that are considered by the authorities to pose a national security risk will not be approved, regardless of the nationality of the investor.

The regulatory developments over the past year do not include a notable change in the realm of foreign investment in Bahrain.

**2.2 What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught? Is internal re-organisation within a corporate group covered? Does the law extend to asset purchases?**

As set out in question 1.1 above, foreign investors are subject to security screening. There is no minimum shareholding that triggers this requirement and hence, all foreign investors are subject to said screening, including acquirers of minority interests.

The UBO Disclosure Requirement is triggered at 10% ownership of a company’s share capital. Companies that fall within the jurisdiction of specific authorities may be subject to additional disclosure requirements by the relevant authority.

If internal reorganisation within a corporate group involves a change in foreign ownership or control, such scenario is also covered by the same regulations.

In respect of asset purchases, please refer to question 2.1.

**2.3 What are the sectors and activities that are particularly under scrutiny? Are there any sector-specific review mechanisms in place?**

The scrutiny related to national security and public order stems from the Constitution, which applies to all persons and sectors in Bahrain alike.

Having said that, the different regulations relating to each sector may vary on the basis of the susceptibility of risk and the significance thereof. In terms of the level of regulation, the banking and financial institutions sector, regulated by the CBB, is the most highly regulated and hence subject to the highest level of scrutiny. CBB licensees are required to submit forms with information on its “controllers” (generally defined as persons with at least 10% shareholding in the CBB licensee), members of the board, as well as persons in certain key positions within the entity. Detailed regulations on combatting money laundering and takeover, and mergers and acquisitions, are issued and periodically reviewed and updated by the CBB. The financial sector is also the most inviting to investment, with the above controls in place.

**2.4 Are terms such as ‘foreign investor’ and ‘foreign investment’ defined in the law?**

The law uses the term “companies with foreign capital” in stipulating the provisions related to such companies. What is noticeable in the amendments to the law since its promulgation in 2001, but especially since 2016, is that they follow a trend of reducing restrictions on foreign investment and adopting a relaxed approach towards it.

**2.5 Are there specific rules for certain foreign investors (e.g. non-EU/non-WTO), including state-owned enterprises (SOEs)?**

Bahrain is a member of the GCC, alongside Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. GCC nationals are given national treatment with very few limitations.

Also, pursuant to the FTA with the United States, effective from August 2006, American nationals are also given national treatment with very few limitations.

**2.6 Is there a local nexus requirement for an acquisition or investment? If so, what is the nature of such requirement (sales, existence of subsidiaries, assets, etc.)?**

No; however, any person seeking to undertake commercial activity in Bahrain must have local presence and a commercial licence.

**2.7 In cases where local presence is required to trigger the review, are indirect acquisitions of local subsidiaries and/or other assets also caught (e.g. where a parent company is acquired which has a local subsidiary in the jurisdiction)?**

Local presence *per se* is not required to trigger a national security review. Foreign companies investing in Bahraini companies are

not said to have local presence but have local assets (in the form of shares). This triggers national security reviews. Further, persons falling under the UBO Disclosure Requirement may be subject to reviews at the discretion of the authorities.

In exercising the discretion permitted to the Minister of the MOIC pursuant to the CCL (Article 345), which is to exempt foreign companies from minimum local ownership requirements if required for strategic reasons, the Minister of the MOIC will consider whether the product of the foreign company is required by a state-owned enterprise. In this case, it will, generally, be considered to be required for the public good, and, therefore, is more likely to be considered for exemption.

### 3 Jurisdiction and Procedure

#### 3.1 What conditions must be met for the law to apply? Are there any financial or market share-based thresholds?

The provisions of the CCL apply to all the companies established in Bahrain, as well as to the application process of such companies. There are no monetary thresholds for the law to apply, but percentage of ownership thresholds apply in cases like the UBO Disclosure Requirement.

In the context of monetary thresholds, local ownership requirements for certain business activities relating to sale and trade and other activities may be waived if a foreign company's share capital investment in the Bahraini entity is not less than BD 2 million (around USD 5.3 million) in the first year, and if the parent company operates in at least three international markets with a share capital (of the parent company) of no less than BD 20 million (around USD 53 million).

#### 3.2 Do the relevant authorities have discretion to review transactions that do not meet the prescribed thresholds?

In practice, an application for the establishment of a local entity in Bahrain (regardless of its foreign ownership) will go through a set sequence and order of authorities and approvals. Failure to meet any applicable criteria will result in hindering the application and not proceeding to the next stage, and the relevant authority will therefore not have the chance to review the transaction/application if the application is paused at an earlier stage. However, authorities have the discretion of reviewing any applications and granting any licences in accordance with the applicable laws and regulations governing such authority.

#### 3.3 Is there a mandatory notification requirement? Is it possible to make a notification voluntarily? Are there specific notification forms? Are there any filing fees?

All companies, whether established by foreign capital or otherwise, are mandatorily required to file an application for establishing the company with the MOIC.

Companies must also comply with the UBO Disclosure Requirement in the initial stage and subsequent to any changes in ownership.

The filing fees payable for company incorporation are currently as follows:

| Description  | Fee (in Bahraini Dinars)  |
|--|---|
| Commercial activities (initially up to three activities)                             | BD 100 (annual)   |
| Membership of the Chamber of Commerce and government fees                            | Ranges from BD 8–1,024 annually based on the share capital of the company |
| Registration with the Municipality and the Electricity and Water Authority (Deposit) | BD 100–300  |
| Any additional commercial activity after exceeding three activities (as requested)   | BD 100 per each additional activity (annual)                              |
| Publication  | Approximately BD 30–150   |
| Commercial registration renewal  | Min. BD 50 (annual)   |

#### 3.4 Is there a 'standstill' provision, prohibiting implementation pending clearance by the authorities? What are the sanctions for breach of the standstill provision? Has this provision been enforced to date?

Any application for company incorporation will not be processed unless the security clearance and regulatory approvals are obtained. If an applicant fails to obtain the required licences from the regulatory authorities relevant to its commercial activities within one year of the application, their application will be struck off by the MOIC. This provision is exercised by the MOIC on a regular basis to ensure that all applications are genuine and properly pursued.

If a person proceeds to conduct commercial activities in Bahrain without a licence, they may be subject to monetary penalties (ranging from BD 1,000–100,000) or imprisonment for no longer than one year.

#### 3.5 In the case of transactions, who is responsible for obtaining the necessary approval?

The investor is responsible for obtaining the necessary approvals.

#### 3.6 Can the parties to the transaction engage in advance consultations with the authorities and ask for formal or informal guidance (e.g. whether a mandatory notification is required, or whether the authority would object to the transaction)?

Yes, authorities agree to engage in advance consultations with potential foreign investors for guidance. Additionally, the EDB provides information and assistance that may be required by foreign investors interested in doing business in Bahrain. The EDB may facilitate the arrangement of such advance consultations and provide guidance on how to fulfil requirements.

If we look at the financial sector as an example, the relevant regulatory authority is the CBB. The CBB encourages advance consultations to determine the exact requirements that the prospective investor is required to fulfil. This approach is also encouraged by other regulators such as the Telecommunications

Regulatory Authority and the Council for Regulating the Practice of Engineering Professions.

### 3.7 What type of information do parties to a transaction have to provide as part of their notification?

In the case of individual foreign investors, personal information and personal identification documents are required. If the investment is in a specialised sector, information about the academic and professional background of the investor will then be required.

In the case of a corporate investor, the required information is mainly the commercial licence, constitutional documents of the investor, its capital, its latest audited financial statements, and the corporate decision to establish a company in Bahrain. Additional information may be required by the authorities in charge of the intended activity of the entity.

### 3.8 What are the risks of not notifying? Are there any sanctions for not notifying (fines, criminal liability, invalidity or unwinding of the transaction, etc.) and what is the current practice of the authorities?

Undertaking commercial activities in Bahrain requires a commercial licence. Doing business without a commercial licence may subject the person in charge, depending on the nature and extent of the violation, to criminal liability and civil liability by affected persons. In addition, the relevant transaction may be subject to avoidance.

Existing companies failing to register amendments and other requirements such as financial statements, the UBO Disclosure Requirement, corporate governance reports, etc., will face an administrative “violation” by the MOIC and will not be able to make any applications to the MOIC or relevant authority, such as affecting a share transfer, increase or decrease of capital, etc.

### 3.9 Is there a filing deadline, and what is the timeframe of review in order to obtain approval? Is there a two-stage investigation process for clearance? On what basis will the authorities open a second-stage investigation?

There is no specific timeframe or deadline that is stipulated by the law for obtaining such approvals, as the timeframe may vary on a case-by-case basis.

The timeframe for review varies depending on the form of the company to be established, or an existing company whose shares will be acquired, and the involvement of regulatory authorities depending on the relevant sector of the company. For companies that are not subject to any regulatory authorities, a timeframe of around three weeks (plus or minus), including clearance, may be generally estimated for completion of the entire filing procedure. The system is constantly being revised to increase the efficiency of inter-authority transactions.

From a practical point of view, involvement of the EDB may be a factor in expediting the clearance procedure.

The formal regulatory approvals for company incorporation are a two-stage process, a preliminary approval stage and a final approval stage.

### 3.10 Can expedition of review be requested and on what basis? How often has expedition been granted?

Please refer to question 3.9.

### 3.11 Can third parties be involved in the review process? If so, what are the requirements, and do they have any particular rights during the procedure?

In the formal review process, different government entities are involved depending on the nature of the transaction and the jurisdiction to which it is subject, as detailed in question 3.13 below.

### 3.12 What publicity is given to the process and how is commercial information, including business secrets, protected from disclosure?

Only the details that are available on the commercial registration extract are accessible to the public, and this includes the names of the shareholders, shareholding percentage, authorised, issued and paid-up capital, licensed activities, validity of the commercial registration, names of directors and sequesters attached on the commercial registration. Other details such as financial statements (save for public joint-stock companies) and other trade/business secrets are not disclosed to the public.

Public joint-stock companies are subject to additional disclosure requirements, with their information, decisions, general meetings and financial statements required to be disclosed to the public.

Public joint-stock companies listed on the Bahrain Bourse must publish a summary of the financial statement containing as a minimum requirement the balance sheet, income statement, comprehensive income where applicable, cash flow statement and statement of changes in a shareholder's equity, in at least two local newspapers, one in English and one in Arabic.

### 3.13 Are there any other administrative approvals required (cross-sector or sector-specific) for foreign investments?

Yes, additional administrative approvals may be required by the concerned government authorities depending on the activity of the company. For example (and without limitation), approvals may be required from: the Telecommunications Regulatory Authority, for companies in the telecom sector; the CBB, for companies that undertake regulated financial activities; and the Council for Regulating the Engineering Profession, for companies in the engineering sector.

## 4 Substantive Assessment

### 4.1 Which authorities are responsible for conducting the review?

The authority that is primarily responsible for conducting the review pertaining to any foreign investment is the MOIC.

Commercial activities in Bahrain are categorised pursuant to the International Standard Industrial Classification of All Economic Activities, and companies with activities that fall under the jurisdiction of any specific authority will also be subject to review.

In addition, the Municipality Affairs Authority conducts a review to ensure that the premise that is being used for the particular activity is suitable for such activity. Depending on the activity, an Environmental Authority licence is required to ensure that the impact on the environment is at an acceptable level.

**4.2 What is the applicable test and what is the burden of proof and who bears it?**

The applicable test varies depending on the specific sector at which the investment is aimed.

The applicant bears the burden of proof.

**4.3 What are the main evaluation criteria and are there any guidelines available? Do the authorities publish decisions of approval or prohibition?**

The law is silent on this issue specifically.

However, we are of the view that market considerations, and provisions relating to competition and consumer protection in the different sectors, are likely to be considered.

Publication of the incorporation of new entities must be made in the Official Gazette. Prohibition decisions are not published.

**4.4 In their assessment, do the authorities also take into account activities of foreign (non-local) subsidiaries in their jurisdiction?**

The guidelines differ for each authority and it is possible that the authorities will take into account activities of foreign (non-local) subsidiaries in the process of their review. By way of a specific sector example, the CBB requires certain documents to be submitted along with an application for the investment business sector. These documents include the organisational chart of the group companies of the corporate applicant and details of its “close links”, including its subsidiaries. In general, the relevant regulatory authority enjoys discretion in requesting any document it deems appropriate for the purposes of the review process.

**4.5 How much discretion and what powers do the authorities have to approve or reject transactions on national security and public order grounds? Can the authorities impose conditions on approval?**

The Constitution of the Kingdom of Bahrain gives emphasis to the preservation of state security and the national economy.

The authorities have wide discretion to review transactions on national security and public order grounds.

The authorities have the discretion to impose conditions on approval.

**4.6 Is it possible to address the authorities' objections to a transaction by the parties providing remedies, such as by way of a mitigation agreement, other undertakings or arrangements? Are such settlement arrangements made public?**

This depends largely on the reasons for the objection and the circumstances surrounding the transaction.

**4.7 Can a decision be challenged or appealed, including by third parties? On what basis can it be challenged? Is the relevant procedure administrative or judicial in character?**

The right to litigate is guaranteed under the Constitution of the Kingdom of Bahrain. Where the application is rejected, such rejection shall be grounded. The law applicable to each regulatory authority sets out the appeal process of an administrative decision. There is an administrative court in the judicial system that is competent to hear and resolve disputes with regulatory authorities. A person whose application has been rejected shall have the right to file an appeal against such rejection before the court within 30 days from the date of notification of the rejection.

**4.8 Are there any other relevant considerations? What is the recent enforcement practice of the authorities and have there been any significant cases? Are there any notable trends emerging in the enforcement of the FDI screening regime?**

To the best of our knowledge, we are not aware of any recent significant case that demonstrates the enforcement practice of the relevant regulatory authorities in the Kingdom of Bahrain. When it comes to foreign investment in Bahrain, the relevant regulatory authorities adhere to the rules and regulations described above.



**Fatima Al Ali** is a certified arbitrator and holds a key position as a partner at the firm, leading the corporate, insurance and telecommunications team. She offers expert legal counsel spanning a wide array of subjects and has spearheaded numerous projects involving due diligence, company registration and establishment. This includes work with financial institutions licensed by the Central Bank of Bahrain, and involvement in mergers and acquisitions, as well as restructuring and liquidation projects. Beyond this, she has experience with dispute resolution, encompassing both local and international arbitration. Fatima has publications on various subjects, including conducting business in Bahrain, consumer protection and corporate governance.

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