

International Comparative Legal Guides



Practical cross-border insights into insurance and reinsurance law

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The body responsible for supervising and regulating all financial institutions (including insurance and reinsurance companies) is the Central Bank of Bahrain (the “CBB”) in addition to the Ministry of Industry, Commerce and Tourism (the “MOICT”).

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

Please note that providing reinsurance service is a regulated activity which requires a licence or permission from the CBB.

In this regard, we refer to Rule AU-1.4.7 of Rulebook Volume 3, which defines the act of “carrying on of insurance business” in the context of regulated service. This rule provides that carrying on of insurance business includes the carrying out and effecting of insurance contracts as principal, including with limitation contracts of long-term insurance or contracts of general insurance. Effecting contracts of insurance means assuming (as principal) insurance risk, by entering into a contract of insurance or contract of reinsurance. Carrying out contracts of insurance means performing (as principal) obligations under a contract of insurance or reinsurance.

Applicants for a licence must fill in the Application Form 1 (Application for a License) online, available on the CBB website under “E-SERVICES/ONLINE FORMS”. The applicant must upload scanned copies of supporting documents as further described below.

The CBB is required to take a decision within 60 calendar days of an application being deemed complete (i.e. containing all required information and documents).

MOICT requirements:

Insurance and reinsurance services, if conducted within Bahrain, are considered a commercial activity. In order for a commercial activity to be conducted within Bahrain, an entity conducting the activity must have a legal presence in Bahrain. No commercial activity may be conducted within Bahrain unless a commercial registration certificate has been issued by the MOICT.

As per Rule 5.1.5 of Rulebook Volume 3, unless otherwise directed by the CBB, the following documents must be provided in support of a Form 1:

- (a) a duly completed Form 2 (Application for Authorisation of Controller) for each controller (e.g. shareholder with 10% or more holding) of the proposed licensee;
- (b) a duly completed Form 3 (Application for Approved Person Status), for each individual applying to undertake controlled functions (e.g. director, general manager (if a branch)) of the proposed licensee;
- (c) a comprehensive business plan for the application;
- (d) for overseas companies, a copy of the company’s current commercial registration or equivalent documentation (to be legalised/apostilled);
- (e) where the applicant is a Bahraini company, a copy of the applicant’s commercial registration certificate;
- (f) where the applicant is a corporate body, a certified copy of a board resolution of the applicant, confirming its decision to seek a CBB insurance licence (to be legalised/apostilled if a foreign corporate body);
- (g) details of the proposed licensee’s close links;
- (h) in the case of applicants that are part of a regulated group, a letter of non-objection to the proposed licence application from the applicant’s home supervisor, together with confirmation that the group is in good regulatory standing and is in compliance with applicable supervisory requirements, including those relating to capital and solvency requirements;
- (i) in the case of branch applicants, a letter of non-objection to the proposed licence application from the applicant’s home supervisor, together with confirmation that the applicant is in good regulatory standing and the company concerned is in compliance with applicable supervisory requirements, including those relating to capital and solvency requirements;
- (j) in the case of branch applicants, copies of the audited financial statements of the applicant (head office) for the three years immediately prior to the date of application;
- (k) in the case of applicants that are part of a group, copies of the audited financial statements of the applicant’s group, for the three years immediately prior to the date of application;
- (l) in the case of applicants not falling under either (j) or (k) above, copies of the audited financial statements of the

- applicant's major shareholder, for the three years immediately prior to the date of application;
- (m) in the case of applicants seeking to raise part of their capital through a private placement, a draft of the relevant private placement memorandum, together with a formal, independent legal opinion that the documents comply with all applicable capital markets laws and regulations;
 - (n) a draft copy of the applicant's memorandum and articles of association; and
 - (o) for insurance firms and insurance brokers, confirmation of the cash deposit required to be held with a retail bank in Bahrain.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Foreign insurers may write business in Bahrain directly – the CBB has been tolerating and may continue to tolerate foreign financial institutions providing financial products and services on a cross-border basis into Bahrain without a licence/commercial registration in Bahrain, provided that there was a client's reverse enquiry.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Pursuant to Article 698 of the Civil Code: *"Any of the following conditions included in the policy shall be deemed null and void:*

- a. *The condition which excludes from the scope of insurance the business activities that contravene the laws and regulations unless the exclusion is specific.*
- b. *Every arbitrary condition that is found that its breach has had no effect upon the realisation of the insured risk."*

1.5 Are companies permitted to indemnify directors and officers under local company law?

Yes, professional indemnity is a standard insurance acquired by companies to indemnify its directors and officers.

1.6 Are there any forms of compulsory insurance?

Yes, motor insurance and aircraft insurance are examples of mandatory insurance in Bahrain.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

Generally, most of the terms of the Civil Code in relation to insurance contracts are favourable to the insureds, an example of that is Article 696, which considers any condition in the policy related to annulment, avoidance and arbitration to be void in case the insurer failed to incorporate it in a prominent form. *"The conditions relating to nullity, forfeiture or arbitration may not be invoked against the insured unless they are prominently highlighted as by printing them in bold or bigger letters."*

Another example can be found in the standard policies issued by the CBB in relation to car insurance, which prohibit insurance companies from including any additional clause unless it is favourable to the insureds.

2.2 Can a third party bring a direct action against an insurer?

The Bahraini legal framework generally does not regulate this matter; nevertheless, we are of the view that it is sufficient for third parties to prove the existence of an insurance contract in order to prove the capacity of the insurer in a direct action.

Moreover, in some cases, the law clearly allows a direct action to be raised from third parties, such as the claims raised in accordance with Legislative Decree No. 3 of 1987 with respect to Compulsory Insurance for Civil Liability Arising From Traffic Accidents.

2.3 Can an insured bring a direct action against a reinsurer?

Given that there is no direct contractual relationship between the insured and the reinsurer, the insured may not initiate a direct action against a reinsurer.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Article 705 of the Civil Code addresses the remedies for the misrepresentation or non-disclosure of details, and differentiates between cases in which the misrepresentation was discovered before the occurrence of the risk and cases in which the misrepresentation was discovered after the occurrence of the risk. The remedies vary between the annulment of the insurance contract and the reduction of the insurance amount. Article 705 specifically states that:

"a- The insurance contract may be annulled in favour of the insurer if the insured remains silent in respect of a certain matter or submits any incorrect information that may, in the opinion of the insurer, adversely affect the subject matter of the risk or decrease the gravity or contingencies of its occurrence.

b- Where the truth is revealed prior to the materialisation of the risk, the insurer may seek the nullity of the contract after ten (10) days from the date of a notice served by the insurer upon the insured by registered letter with acknowledgment of receipt, unless the insured accepts an increase in the premium pro rata to the increased risk.

Nullity of the contract shall result in the insurer's restitution of the insurance amount to the insured or repayment of such part of the insurance amount for which no risk has been assumed.

c- However, if the truth is revealed after materialisation of the risk, the insurer may reduce the insurance amount pro rata to the amount of premiums actually paid compared with the amount of premiums that should have been paid had the risk been properly notified to the insurer."

However, in case the peril had accrued before the existence of the insurance contract and the insured failed to disclose that information, the contract shall be considered null and void (Article 691).

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Yes, as Article 705 considers the insurance contract to be voidable even if the insured remained silent about a relevant piece of information and had not been specifically asked about it.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Article 715 of the Civil Code provides an automatic right of subrogation for the insured upon paying the compensation, with an exception for cases in which the liable party is related to the insured:

“a- In insurance against damage, the insurer may, to the extent of the compensation paid by him, subrogate the insured in such claims that the insured may have against the person liable for the insured damage, unless such person is a relative or an in-law of the insured residing therewith, or a person for whose acts the insurer is liable.

b- The insurer shall not be liable towards the insured for the payment of the insurance amount or any part thereof if such subrogation is impossible for a reason attributed to the insured.”

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

Unlike the common law judicial system, Bahraini law has not adopted the process of hearing cases in front of juries, all cases shall be resolved by the appointed judges.

For commercial disputes, the law divides jurisdiction between different courts depending on the value of the disputes, as follows:

- The Minor Commercial/Civil Courts: monetary claims that do not exceed BHD 5,000.
- The Senior Commercial/Civil Courts: claims that fall between BHD 5,000 and BHD 500,000, in addition to non-monetary claims.
- Bahrain Chamber for Dispute Resolution (“BCDR”): commercial claims that exceed BHD 500,000.

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

The fee for lodging a claim depends on the claim amount, which approximately equals 2% of the amount claimed.

3.3 How long does a commercial case commonly take to bring to court once it has been initiated?

- The Commercial Courts: within two months if the case is managed by the case management office; otherwise, instantly at the same day of filling the case a hearing date shall be determined, which usually falls after two to four weeks.
- BCDR: within four months.

3.4 Does COVID-19 have, or continue to have, a significant effect on the operation of the courts, or litigation in general?

The impact of the COVID-19 pandemic on litigation in Bahrain was very positive, as the supreme judicial council and the Ministry of Justice collectively issued a set of decisions and rules to expedite the reformation to electronic and remote litigation procedures.

Cases are now administrated by the courts through an online system, and the parties can submit their pleadings and

memoranda without the need of physical attendance. Therefore, the COVID-19 pandemic resulted in expediting the litigation procedures rather than delaying them.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

Bahraini law does not contain any disclosure requirements (in the same way common law systems do). Yet, courts have the right to oblige the parties in some situations to submit documents even if they are covered by non-disclosure agreements.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

Bahraini law does not regulate this matter clearly; as such, it is not clear whether a party may withhold disclosure of the afore-said documents.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Yes, the court possesses the power to require witnesses to testify before the final hearing.

4.4 Is evidence from witnesses allowed even if they are not present?

Articles 61–96 of the Law on Evidence provide the rules relating to witness testimonies given as evidence in civil and commercial cases. Article 88 of the Law on Evidence stipulates that:

“Evidence by witnesses shall be given orally. Written statements may not be referred to in giving evidence unless the Court or the designated judge authorizes this and the nature of the case justifies it.”

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

The Law on Evidence had a major amendment recently, the amendment allowed the parties to appoint their own experts to submit consultancy reports, and the court has the right to summon experts as witnesses to testify or to answer the queries of the court.

The only restrictions on the aforementioned experts are:

- The experts have to be specialised in the matter.
- The experts have to perform their work within the scope of the matter referred to them.
- The experts have to sign a formal form declaring their independence and impartiality.

4.6 What sort of interim remedies are available from the courts?

The law does not list all of the available interim remedy measures. Practically, the main types of interim remedies are as

follows: (i) travel ban; (ii) attachment of all the debtors' assets such as: bank accounts; properties; and movable assets (shares, parts, etc.); (iii) *status quo*; and (iv) ban on disposal of assets, etc.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

a) For the Minor and Senior Civil/Commercial Courts: following issuance of the first instance court judgment, any of the parties may appeal the judgment issued by the Minor Civil/Commercial Court before the High Court of Appeal, or – if the judgment was issued by the High Civil/Commercial Court – before the Upper Court of Appeal.

The aforementioned appeals do not require certain grounds in order to be lodged as the matter shall be viewed by the appeal courts entirely with the same jurisdiction that the first instance courts had.

The final stage of appeal in Bahrain is the Court of Cassation which may not be categorised as a litigation stage as it is specialised in reviewing the application of the law by the lower courts and does not generally rule on the merits of the case; therefore, a cassation appeal shall only be lodged on limited grounds related to the violation of the law by the lower courts.

b) The judgments of the BCDR, on the other hand, are final and can only be appealed in front of the cassation court on the grounds provided in Article 13 of Legislative Decree No. 30 of 2009 with respect to the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution, which stipulates the following:

- “1. Parties to the dispute heard by the Chamber in accordance with the provisions of this Chapter may appeal before the Court of Cassation to invalidate the award issued by the Dispute Resolution Tribunal in any of the following cases:
 - a- If the appellant does not duly serve a notice of the appointment of any of the members of the Dispute Resolution Tribunal or of the procedures of resolving the dispute, or if he is not enabled to lay his defense.
 - b- If the composition of the Dispute Resolution Tribunal or the dispute resolution procedures contravene the provisions of the Bye-Laws.
 - c- If the award handed down by the Dispute Resolution Panel is inconsistent with the public order in the Kingdom of Bahrain.
 - d- If the adversary or his agent commits fraud or ruse that may affect the award of the Dispute Resolution Tribunal.
 - e- If, after the Dispute Resolution Tribunal's award is handed down, an acknowledgement is made of the forgery of documents on which it was based or established, or if a judgment is issued ordering that they are forged, or if the award has been based on the testimony of witness and a ruling has been passed, that such testimony is a perjury.
 - f- If, after the Dispute Resolution Tribunal's award has been passed, the adversary obtains absolute papers in the case which the other adversary prevented him from submitting.
 - g- If the Dispute Resolution Tribunal's award adjudges something which the adversaries did not claim, or which is more than what they claimed. However, if it is possible to separate the awards related to the adversaries' claims from other awards, only the part which includes the orders related to the issues which the award adjudged but the adversaries did not claim or which is more than what they claimed may be revoked.
 - h- If the Dispute Resolution Tribunal's award is in conflict with another award that has gained the absolute power, provided that all the adversaries in the two cases are the same, both in person and capacity, and that the subject-matter of the case should be the same subject-matter of the previous case.
2. Parties to the dispute heard by the Chamber in accordance with the provisions of this Chapter may appeal before the Court of Cassation

to invalidate final awards issued by the Dispute Resolution Tribunal if the award appealed in Cassation is based on a violation of the law or on an error in applying the law or in interpreting it. If the Court passes a ruling overturning the award appealed in Cassation, it must pass a ruling on the subject matter of the case.”

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Yes, in commercial disputes, the courts – upon request from the plaintiff – include the obligation of paying the interest with the obliged amount; and usually the rate of the interest ranges between 1–3% yearly, unless the parties have a prior agreement on the rate.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

Courts order the losing party to pay the court fees as well as nominal lawyers' fees. These may be recovered at the time of execution of the judgment; if the parties reached a settlement at the case management stage, half of the fees shall be returned to the plaintiff.

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

Unfortunately, no; the courts usually advise the parties to refer their disputes to Alternative Dispute Resolution (“ADR”) – such as mediation – but they do not have the legal authority to compel them.

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

In general, there will be no consequences on any party for the refusal of engaging in ADR, unless there was a prior agreement to refer the matter to ADR before lodging the case – in that situation the court shall not accept the case.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The courts in Bahrain respect the parties' agreement to settle their disputes through arbitration. The courts do not intervene in the conduct of an arbitration; however, the assistance of the courts may be required. This is usually required in the event where a party does not cooperate in appointing an arbitrator; in such a case, the counterparty may file a case before the court and request that the court appoint an arbitrator on their behalf. Similarly, assistance is sought from the courts in order to execute an award. No official statistics have been published and therefore we cannot specify the number of cases where the assistance of the courts is required.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

Bahrain has adopted the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 (“Arbitration Law”). The Arbitration Law defines an arbitration agreement as “*an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not*”.

Some arbitration institutions publish their model arbitration clause. For example, the BCDR model clause is as follows: “*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the Bahrain Chamber for Dispute Resolution.*

The arbitral tribunal shall consist of [specify one or three] arbitrator[s].

The place of arbitration shall be [specify town and country].

The language of the arbitration shall be [specify language].”

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

In our experience, we note that the courts have refused to enforce arbitration clauses which give jurisdiction to arbitration institutions that no longer exist or which specify an arbitrator by name who has passed away.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Parties in dispute may resort to the court of urgent matters to obtain an interim attachment over the counterparty’s account and property and to impose a travel ban. Such interim measures may be ordered by the court of urgent matters if there is a genuine fear that the counterparty may smuggle its money outside Bahrain or may dispose it in a way to obstruct the execution of an award. Such interim attachments, if ordered by the court of urgent matters, will be set for a fixed timeframe during which the claimant shall file its substantive case, such period is usually around seven to 14 days. Should the claimant fail to file its substantive case during the timeframe specified by the court, the attachments may be lifted.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

Pursuant to Article 31(2) of the Arbitration Law, the award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the case was concluded by a settlement.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Arbitration awards are final and may not be appealed, the only possible resort is to set aside the award if it falls under any of the grounds listed exhaustively in Article 36 of the Arbitration Law, which are as follows:

- (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.



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Hassan Radhi & Associates ("HRA") is one of the largest and most reputable and leading law firms in Bahrain. The office was founded in 1974 by Dr. Hassan Ali Radhi, the senior partner of the firm, who has more than 45 years of legal experience and professionalism in the legal sector, especially in banking & finance and corporate law. The firm has nine partners and seven lawyers, supported by a dedicated and professional administrative team, which provide exceptional legal services locally and internationally in Arabic and English.

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