



Doing business in Bahrain

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

In Bahrain, there have been periods of unrest since 2011. However, the level of unrest continued to decline (although there are still occasional minimal disturbances which are effectively controlled). On 11 June 2016, His Majesty King Hamad bin Isa Al-Khalifa issued an amendment to the country's political society law, banning the use of religion in political societies. On 17 July 2016, Bahrain's High Civil Court dissolved the Al Wefaq National Islamic Society, citing attempts to undermine the constitution, support for terrorism, slander of the judiciary and incitement of lawless action. However, the government reiterated its intention to continue its co-operation with political societies within the bounds of the law, including the ban on the use of religion in political societies. The steps taken by the Al Wefaq National Islamic Society against the dissolution before the Bahraini courts did not yield any positive results.

The country is generally now at peace, and there is no threat of any potential adverse political event that may impact the country's security or economy.

Other developments in 2016 include that Bahrain and other Gulf Co-operation Countries (GCC) continue to be impacted by low oil prices. However, effective steps have been taken to address this impact. The Economic Development Board attracts and encourages inward investment and currently targets five priority sectors for investment promotion: financial services, manufacturing, logistics, information and communications technology and tourism. As a result, international companies have been recently investing and expanding in Bahrain. For example, at the Bahrain International Investment Park, Mondelez International is building a plant at a cost of US\$90 million, and JBF has completed an investment of US\$200 million. Also, a few foreign banks have opened branches in Bahrain.

Bahrain is committed to build a national fibre optic national broadband network, capable of delivering ultrafast broadband to 95% of all households and 100% of all businesses in Bahrain by the end of 2018.

The Bahrain Tourism Strategy 2015-2018 has focused on a number of initiatives, including the development of public waterfront developments, improving access to culture and antiquity sites, as well as large scale development projects from the private and public sector, which include re-developing Hawar island and building several mixed-use projects.

A number of major projects have been identified and approved by the government, including:

- Major housing projects amounting to US\$2.2 billion.
- Electricity and water projects amounting to US\$1.1 billion.
- Roads and sewerage projects amounting to US\$0.9 billion.
- Airport improvement projects amounting to US\$0.8 billion.
- Sa'ada, a BHD45 million waterfront project.

- A BHD350 million North Hawar development project.
- A number of other projects focusing on education, health, social development, youth, sports and industry, which will be funded by grants received from the GCC Development Fund.

The Government is currently implementing the National Development Strategy 2015-2018, to ensure economically and ecologically sustainable growth, and further rationalise the operations of the government to better respond to the needs of the citizenry and the economy.

The government has introduced a Government Action Plan 2015-2018, which focuses on capitalising Bahrain's resources and capabilities. Its objective is to maintain a strong and diverse economy with a stable financial and monetary system. This is resilient towards global economic challenges through increased public-private sector partnerships and strategic programmes, designed to invest in key resources and sectors that act as drivers for sustainable economic growth. Its priorities are:

- Economy and finance.
- Human development and social services.
- Infrastructure.
- Environment and urban development.
- Government performance.

See *Question 4* for information about Bahrain cutting ties with Qatar.

LEGAL SYSTEM

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

There is no federal system in Bahrain. The legal system in Bahrain is influenced by Egyptian law which is mainly based on French law.

Bahrain has a national constitution and the laws are codified.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

The Commercial Companies Law (Legislative Decree No. 21 of 2001) provides for the incorporation of companies with 100% foreign capital.

However, certain business activities are reserved for Bahraini nationals and companies.

Under recent amendments to the Commercial Companies Law, companies can be fully or partly owned by non-Bahraini shareholders, to practise activities reserved for Bahraini nationals or companies in which Bahrainis must be majority shareholders. The Council of Ministers determines those activities that can be undertaken by foreign ownership companies. Also, on approval of



the Council of Ministers, the Minister of Trade Affairs can approve licences for companies with foreign capital to practise those activities that may have a strategic economic significance or a profitable return for Bahrain's economy.

The website of the Ministry of Industry, Commerce and Tourism (<https://www.sijilat.bh>) sets out the restrictions on foreign ownership (if any) in relation to the relevant activity.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

Bahrain does not trade with countries where there is a United Nations measure in place that prohibits trade with that country.

A prohibition exists under Law No. 5 of 1963 that bans all dealings with persons, entities and citizens of Israel. An office was established to co-ordinate the prohibition; however the office has subsequently closed.

The contracts of certain ministries impose conditions that goods should not be imported in violation of Law No. 5 of 1963.

In June 2017, Bahrain severed diplomatic ties with Qatar and cut trade and transport links on the grounds that Qatar supports terrorist and extremist organisations, and interferes in Bahrain's internal affairs. Diplomatic efforts to resolve the crisis are being undertaken by Kuwait and several other countries.

5. Are there any exchange control or currency regulations?

There are no currency or exchange control restrictions currently in force under Bahrain law and the free transfer of currency in and out of Bahrain is permitted (subject to anti-money laundering regulations and international regulations).

6. What grants or incentives are available to investors?

Companies with foreign capital may be permitted to hold directors' and shareholders' meetings outside of Bahrain on a case-by-case basis (subject to certain approvals).

Companies that do not want to purchase land in Bahrain may lease it from the government. This can be advantageous, with low rentals or even exemption from rentals for short periods of time.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The most commonly used business vehicles in Bahrain are the closed joint stock company (CJSC) and limited liability company (WLL) (called a WLL in Bahrain but synonymous with an LLC) due to their flexible corporate structures.

Foreign companies can set up branch, agency or offices (Branch) without being subject to the same provisions as for the formation of companies. Also, following a recent amendment, it is now possible to establish shelf companies, which can take any form and are valid for one year, during which time approvals and licences must be obtained. The shelf company can be sold but its activities must be approved by the Ministry.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

The following documents must be submitted for incorporation of a closed joint stock company (CJSC) and limited liability company (WLL):

- Online application.
- Pre-approval from other government ministries (if relevant) through an online portal called Sijilat (<https://www.sijilat.bh/>).
- Draft memorandum or articles of association.
- Capital deposit certificate.
- In-kind capital evaluation by auditor (If required).
- ID/passport copies (for the individual shareholders/directors/authorised signatories).
- Bank reference and CV.
- Commercial registration certificates or [##commercial registration] CR extracts.
- Latest audited financial statements.
- Power of attorney for registration agent.
- Corporate resolutions (if the promoter or shareholder is a corporate entity).
- Lease agreement for the physical address of the proposed company.

The following documents must be submitted for incorporation of branch, agency or offices (Branch):

- Online application.
- Pre-approval from other government ministries (if relevant) through Sijilat (<https://www.sijilat.bh/>).
- ID/passport copies (for the individual shareholders/directors/authorised signatories).
- Commercial registration certificates or CR extracts.
- Latest audited financial statements.
- Power of attorney for registration agent.
- Guarantee by head office.

Foreign documents must be notarised and legalised, or notarised and apostilled.

Companies offering financial services must also obtain a licence from the Central Bank of Bahrain (CBB) which takes 60 days. Details can be obtained from www.cbb.gov.bh/.

If all documents are in order, commercial registration by the Ministry of Industry, Commerce and Tourism will be completed in approximately one to three weeks (depending on the activity).

Reporting requirements

Annually, the company must file the following with the Ministry:

- Annual report of the board and auditor's report.
- Company balance sheet and profit and loss statement.
- A detailed list of the names of the chairman and members of the board and their designation and the names of the company's managers.

A company licensed by the CBB must file additional documents periodically with the CBB.

There are no costs for complying with the reporting requirements.

Share capital

The minimum share capital (subject to its adequacy to realise the company's objectives):

- CJSC: BHD250,000 for companies undertaking non-financial related activities although a higher amount determined by the CBB is a requirement in relation to companies undertaking financial activities and services.
- WLL: There is no minimum. It depends on the activity/objective to be undertaken.
- Branch: There is no requirement for share capital.

Non-cash consideration

Shares can be issued for non-cash consideration, for example, in kind and in the form of services.

Rights attaching to shares

Restrictions on rights attaching to shares. There are no restrictions on rights attaching to shares.

Automatic rights attaching to shares. Specifically, shareholders have the following rights:

- To attend shareholders' meetings and vote on resolutions.
- Dispute a board member's position.
- Receive dividends, financial statements and directors' report.
- To file a case or declaration that any resolution passed by the general meeting or by the board of directors is null and void.
- Sell his shares and have priority to subscribe for new shares.
- To access the company's records.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

The management structure for the most commonly used business vehicles in Bahrain are as follows:

- Closed joint stock company (CJSC): board of directors (minimum three).
- Limited liability company (WLL): manager or board of directors.
- Branch, agency or offices (Branch): manager nominated by head office.
- The board members can be nominated by the shareholders.

Management restrictions

There are no restrictions on foreign managers. See *Question 12*.

Directors' and officers' liability

A director is liable to the company, shareholders and third parties for acts involving:

- Betrayal of trust.
- Misuse of power.
- Breach of the law.
- Breach of the articles and memorandum of association.
- Mismanagement.

- Submission of incorrect data or information.
- If the company is used for fraudulent purposes or illegal acts.
- If he does not separate between his personal interests and the interests of the company.
- If he encumbers the company with obligations, despite knowing that the company cannot perform the same as they fall due, or if the company fails to fulfil those obligations due to gross negligence or wrongdoing.
- If his act results in the company failing to meet its tax or fee payment obligations to government departments, or if the company fails to pay those taxes due to gross negligence or wrongdoing.

A director is not liable if he opposed the resolution and his objection was recorded.

Parent company liability

A parent company is generally only liable for the debts of its subsidiaries if it has provided guarantees for those debts.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The Labour Law for the Private Sector (*Law No. 36 of 2012*) (Labour Law) and its amendments regulate employment relationships and apply to:

- Bahrainis and non-Bahrainis employed in Bahrain.
- Bahrainis working abroad, if the employment contract is governed by Bahraini law.
- The Labour Law will be applied, as a matter of public policy, irrespective of the choice of law in the employment contract. However, the court may uphold foreign law provisions that are more favourable to the employee.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Contracts must be in a written form. In the absence of a written contract, the employee alone can establish his rights using all methods of evidence. An employee's rights can be acquired through a contract of employment, the company's labour regulations or according to custom and practice. The important particulars of the contract must include:

- Employer's name, address and commercial registration number.
- Employee's name, date of birth, qualifications, position, address, nationality and identification details.
- Nature and type of work and the duration of the employment contract.
- Salary and privileges, and the method and time of payment.

Implied terms and/or collective agreements apply to the employment relationship if they are more beneficial than the Labour Law provisions.

12. Do foreign employees require work permits and/or residency permits?

The Labour Market Regulatory Authority (LMRA) must issue visas (usually within one week) for foreign employees. The fee payable to the LMRA is BHD100 per year for a work permit, and BHD72 per year as basic healthcare fee is payable per year for each non-Bahraini employee. Also, a fee of BHD5 per month for each foreign employee up to five employees and BHD10 per month from the 6th employee onwards is payable.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or to be consulted on corporate transactions.

14. How is the termination of individual employment contracts regulated?

The Labour Law provides for two types of employment contracts:

- Definite term (that is, for a fixed period of time).
- Indefinite term.

Employees can be dismissed at will. No notice is required for the termination of individual employment contracts for serious infringements (*Article 107, Labour Law*) if the alleged infringement can be proven in an enquiry.

All other terminations (not made under Article 107, Labour Law) require 30 days' notice (or a longer notice period if provided under the contract). The court must determine whether a termination is for a justified cause. An enquiry must be held to prove that the termination was justified. Compensation is awarded for unjustified termination. For an indefinite period contract, two days' salary for each month of service (minimum one month and maximum 12 months) is awarded. For a definite period contract, the salary for the remaining period of the contract is awarded, or if the parties agree, lesser compensation (minimum three months' salary or the unexpired term of the contract, whichever is less).

For unjustified dismissals, employees must approach the Ministry of Labour in an attempt to settle the matter amicably, and if there is no amicable settlement, the matter will be referred to the court.

15. Are redundancies and mass layoffs regulated?

The employer may terminate the contract of employment due to the whole or partial closure of his business establishment, the reduction of its size of activity or the replacement of a production system in a manner that affects the quantity of manpower. The Ministry of Labour must be notified 30 days prior to notifying the worker of the termination. A worker is entitled to a remuneration of one day's salary for each month of service subject to a minimum of a half month's salary and a maximum of six months' salary.

TAX**Taxes on employment**

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

The concept of tax residence is not recognised in Bahrain.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

This is not applicable in Bahrain.

Non-tax resident employees

There is no income tax payable in Bahrain.

Bahraini employees pay 7% of their salary and non-Bahraini employees pay 1% of their salary as social security contributions.

Employers

The following social security payments are made to the social security organisation on behalf of the employees by employers:

- Non-Bahraini employees: 3%.
- Bahraini employees: 12%.

Salaries of over BHD4,000 per month are ignored for social security contributions.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

The concept of tax residence for businesses is not recognised in Bahrain.

Non-tax resident business

No taxes are levied in Bahrain except on companies (wherever established) that are directly engaged in the exploration or production of crude oil or other natural hydrocarbons from Bahrain for their own purposes or refining crude oil, wherever produced, in their own facilities in Bahrain.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

See *Question 18*.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

There is no tax levied on dividends, interest or royalty payments.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There are no thin capitalisation rules in Bahrain.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules in Bahrain.

23. Are there any transfer pricing rules?

There are no transfer pricing rules in Bahrain.

Customs duties

24. How are imports and exports taxed?

Imports are taxed before delivery. Exports are not taxed in Bahrain.

Double tax treaties

25. Is there a wide network of double tax treaties?

Bahrain has executed double tax treaties with many countries, such as the UK, China and France. Bahrain and the US have signed the Free Trade Agreement.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

Currently, there is no competition law in force in Bahrain. However, Legislative Decree No. 7 (Law of Commerce) addresses unfair competition and provides prohibitions for certain acts. The Law of Commerce provides for a broad prohibition on activities that would have damaging effects on competition and companies are forbidden from undertaking practices detrimental to their competitors or attracting the custom of their competitors.

There is no official competition authority in Bahrain. However, a law is in place to ensure prohibition on the monopoly of the cement trade. Also, the Consumer Protection Directorate is responsible for ensuring that the law with respect to determining prices and control is implemented and violators are punished.

Restrictive agreements and practices

Legislative Decree No. 19 of 2001 (Civil Code) addresses restrictive agreements. A contract containing arbitrary conditions can be amended by a judge.

Unilateral conduct

A unilateral contract is prohibited in the cement trade and in relation to food commodities.

27. Are mergers and acquisitions subject to merger control?

The Takeovers, Mergers and Acquisitions Module, Volume 6, Rulebook (TMA Module) issued by the Central Bank of Bahrain applies to take-overs, mergers and acquisitions affecting Bahrain domiciled publicly listed companies and overseas companies whose ordinary voting equity securities are listed on a licensed exchange in Bahrain. These include partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control of a company is to be obtained or consolidated. References to takeovers and offers include, where appropriate, all such transactions, including share repurchases by mandatory offer.

Generally, the TMA Module is triggered when 30% or more of company's voting rights are acquired.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. An invention is patentable if it:

- Comprises a creative step and is capable of being applied industrially, whether the invention relates to new industrial products, or products that are imported or locally produced by industrial methods or by a new application of known industrial methods.
- Improves, modifies or adds to an invention for which a patent was previously awarded.

A patent owner can prevent third parties from producing, using, exploiting or displaying for sale or import a patented invention.

Registration. A patent must be registered with the relevant Directorate of the Ministry of Industry, Commerce and Tourism (Ministry).

Enforcement and remedies. The patent owner can request the court to undertake one of the following measures:

- A detailed investigation of the offence.
- A precautionary attachment.
- To prohibit the products from entering the commercial channels.
- A cease and desist order.

Length of protection. The term of protection is 20 years.

Trade marks

Definition and legal requirements. A trade mark includes everything which has a distinctive form, such as:

- Names.
- Words.
- Characters.
- Numbers.
- Drawings.

A trade mark can also take the form of a sign or (group of signs) if the sign is used (or intended to be used) to:

- Distinguish products, goods or services.
- Indicate the performance of specific services.
- Indicate that the item or the product intended to display the mark, belongs to the owner of the mark due to its brand, production, invention or trading.

A trade mark holder has the right to:

- Use the trade mark or use any similar or identical mark, including any geographical indicator in the course of business, to distinguish the goods or services related to the mark.
- Request the relevant authority to make any amendment or addition to his trade mark without undermining the fundamental nature of the mark.
- Allow others to use the trade mark.

Registration. See above, Patents.

Enforcement and remedies. See above, Patents.

Length of protection and renewability. Trade mark registration is valid for ten years and is renewable for ten year periods.

Registered designs

Definition. A design must be a feature of a shape, configuration, pattern or ornament applied to an object by an industrial process or means. The finished object must appeal to, and be solely judged by, the eye and the not by the function it performs.

Registration. See above, Patents.

Enforcement and remedies. The right holder can seek the following remedies:

- Drawing up a detailed description of goods preserving relevant evidence about the infringement.
- An order for the seizure of the article.
- A cease and desist order in relation to the infringement.

Length of protection and renewability. Registration of designs are valid for ten years in Bahrain and are renewable for five year periods.

Unregistered designs

Unregistered designs do not have any legal rights or protection in Bahrain.

Copyright

Definition and legal requirements. Copyright protection is available to:

- Authors of creative works that are of a literary, scientific, artistic or cultural nature.
- Writers or producers of any creative work relating to any kind of knowledge.

Protection. The protection of a copyright exists automatically.

Enforcement and remedies. The right holder can seek the following remedies:

- An order suspending the violation.
- A precautionary attachment over the infringing material.
- An order barring or prohibiting the infringing act.
- The appointment of a court receiver.
- A determination of the financial proceeds generated from the infringing act.

Length of protection and renewability. Protection lasts for 50 years.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

The Commercial Agency Law regulates the:

- Rights and obligations of agents and principals.
- Prerequisites for registration as an agent.
- Consequences of non-registration as an agent.
- Payment of compensation to a registered agent in the event of non-renewal or termination.

Distribution

The provisions of the Commercial Agency Law apply to distribution agreements (*see above, Agency*).

Franchising

The provisions of the Commercial Agency Law apply to franchising agreements (*see above, Agency*).

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

There are no general laws or codes of practice relating to e-commerce. However, Legislative Decree No. 28 of 2002 covers:

- The application of electronic records and signatures.
- Electronic transactions, records.
- Legal recognition of electronic records in evidence.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

Law No (35) of 2012 With Respect to Protection of the Consumer regulates advertising for products and services (non-financial). However, the Central Bank of Bahrain and Financial Institutions Law 2006 and its regulations (mainly rulebooks issued by the Central Bank of Bahrain) deal with advertising in the financial sector.

Those responsible for advertisements that are considered an offence under the Bahrain Penal Code will be subject to prosecution.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

There is no specific law governing data protection as such. However, there is legislation that regulates the concept of data protection in different sectors in Bahrain, such as the:

- Central Bank of Bahrain and Financial Institutions Law 2006, which regulates data protection in the banking sector.
- Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law, which regulates data protection in the telecommunication sector.
- Labour Law, which regulates data protection in employee-employer relationships.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

In Bahrain, product liability is regulated by the Civil Code and Law No 35 of 2012 With Respect to Protection of the Consumer. The seller must provide the buyer with all the necessary information about the item being sold. The seller is liable to the consumer for defective goods (except under certain circumstances).

MAIN BUSINESS ORGANISATIONS

Ministry of Industry, Commerce and Tourism

W www.moic.gov.bh/En

Main activities. The Ministry of Industry, Commerce and Tourism is responsible for industrial and commercial activities in Bahrain.

Central Bank of Bahrain

W <http://cbb.gov.bh/>

Main activities. Financial regulator, responsible for licensing companies to undertake financial service activities.

Ministry of Finance

W www.mof.gov.bh/

Main activities. Ministry in charge of finance, revenue and budget.

Labour Market Regulatory Authority

W www.lmra.bh/

Main activities. Authority responsible for coordinating and issuing visas for foreign workers.

Ministry of Labour

W www.mol.gov.bh/

Main activities. Ministry responsible for labour affairs of the private sector.

ONLINE RESOURCES

Legislation & Legal Opinion Commission

W www.legalaffairs.gov.bh/

Description. The website is maintained by the Government of Bahrain and contains many of the laws of Bahrain in the Arabic language.

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Recent transactions

- Advised international lenders in relation to a large loan for Bahrain LNG Import Terminal Project (**Billion Plus Dollars Project**) involving many clients and many jurisdictions.
- In 2016, CHAMBERS GLOBAL awarded Noor Radhi as a Leading Individual in Corporate & Finance and Dispute Resolution.

Languages. Arabic, English

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Areas of practice. Banking and finance; M&A; commercial companies; labour.

Recent transactions

- Advised international banks in relation to the issue of bonds and sukuk by the government.
- Advised international lenders in relation to a large loan to a Bahraini company engaged in constructing an industrial unit on a long-term build, operate and transfer basis.

Languages. English, Bangla