

Corporate Structuring related developments in the Kingdom of Bahrain: spring round-up

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Subsequent to the emergence of the Novel Coronavirus ('COVID-19') global pandemic, the Kingdom of Bahrain has implemented swift and decisive measures which seek to protect the health of the population of Bahrain, whilst also mitigating the impact of the pandemic on economic growth in the Kingdom. The measures also demonstrate the government's continued support of the private sector's role in the local economy and its commitment to minimise the legal and/or financial obligations of businesses operating in Bahrain.

In this article we provide a brief summary of some of the key ministerial decisions and resolutions which have been passed, clarifications issued, and amendments made to existing laws aimed at achieving the above stated objectives.

Shareholder meetings: videoconferencing facilities

Commensurate with the global emphasis on social distancing, the Minister of Industry, Commerce and Tourism passed Resolution No. 26 of 2020 allowing commercial companies to hold shareholder meetings via electronic or telephonic means of communication ('Decision'). Meetings may also be held by circulation if the number of shareholders does not exceed ten.

The usual requirements applied by the Ministry of Industry, Commerce and tourism ('MOICT') in relation to the holding of shareholder meetings via electronic means of communication is that this is only permissible in the event that the Articles or Memorandum of Association of the commercial company clearly and explicitly provide for the same. The Decision however, allows all commercial companies, for a period of three months from 8 March 2020, to hold their shareholder meetings via electronic means, even if a company's Articles or Memorandum of Association do not expressly provide for the holding of meetings by such means.

The Decision lists the requirements of the MOICT in order to render such shareholder meetings valid. Requirements include: (i) submission of the reasons and justifications for holding the meeting via electronic means of communication; (ii) verification of the identity of the participants of the meeting (and the validity of any power of attorney, if applicable); (iii) enabling the attendee to participate fully in the meeting as if such attendee were physically present at the meeting venue; and (iv) correctly recording any statement or vote or decisions taken during the meeting. The provisions of the Decision do not apply to decisions requiring secret voting in accordance with the provisions of the Commercial Companies Law.

As we approach the so called Annual General Meeting season in Bahrain, the above mentioned measures will offer considerable reassurance to many corporate entities, by providing them with the means to remain compliant with their legal obligations in the circumstances.

Extension of the deadline to submit the economic substance rules annual return form

The MOICT previously issued Resolution No. 106 of 2018 ('Resolution') regarding the requirements for validating the actual economic substance of entities' activities in the Kingdom of Bahrain, prescribing the requirements to be met by entities in Bahrain in terms of economic substance in Bahrain ('Rules'). Following the issuance of the Resolution, the MOICT published detailed guidance notes that serve as a preliminary guide to relevant entities on the scope and application of the Rules ('Guidance Notes').

In brief, the Rules and Guidance Notes apply to commercial entities in Bahrain which engage in the following commercial activities ('Relevant Entities'): distribution and service centre activities; headquarters activities; holding company activities; leasing activities (other than those activities undertaken by licensees of the Central Bank of Bahrain); shipping activities; and intellectual property activities in Bahrain.

Amongst other obligations, as per the Guidance Notes, all Relevant Entities are required to file an Economic Substance Rules Annual Return Form ('ESR Annual Return') with the MOICT within three months of the Relevant Entity's financial year end. This meant that for Relevant Entities with a financial year that ended on 31 December 2019, the ESR Annual Return should have been submitted to the MOICT by 31 March 2020.

In light of the spread of COVID-19, and as a means to providing more flexibility to the Relevant Entities,

the MOICT has extended the deadline for Relevant Entities to submit the ESR Annual Return until 30 June 2020. Whilst the MOICT online system (Sijilat) is not currently accepting online submissions of the ESR Annual Return, the MOICT is accepting submissions by way of hard copy submissions in person at the MOICT, as well soft copy PDF submissions by way of email. We anticipate that the MOICT online portal will have been updated to accept online submissions of the ESR Annual Return by the extended deadline of 30 June 2020.

Suspension of Labour Market Regulatory Authority ('LMRA') fees

The LMRA typically imposes administrative fees on employers in Bahrain, including the following:

1. fees for issuing and renewing all types of work permits;
2. monthly work fees in relation to (1) above; and
3. enhanced fees for employers not compliant with the required Bahrainisation rate(s).

In support of the private sector, Resolution No. 5 of 2020 on the Exemption of Some Fees Imposed by the LMRA was passed. As a result, effective from 1 April 2020, the above fees are to be waived for a period of three months, as part of the government's efforts in combating the economic effects of COVID-19. The Resolution further clarifies that, where an employee relocates to another employer during the months of April, May or June, the new employer will compensate the previous employer for any fees for the remaining period of the permit.

Three-month salary payment scheme for Bahraini employees

As part of the 4.3 billion Bahraini Dinars (approximately US\$11.4 billion) economic stimulus package announced by the Ministry of Finance and National Economy ('Ministry of Finance') to support citizens, residents and businesses in the Kingdom, the government recently approved a bill to cover the salaries of all Bahraini employees in the private sector who are registered with the Social Insurance Organisation ('SIO'), which will be paid from the Unemployment Insurance Fund. The funding is expected to support more than 100,000 Bahraini employees in the private sector.

The payments, which will be made directly to the relevant private companies, will cover the relevant employees' wages for the months of April, May and June. The salaries will be calculated after deducting the SIO contributions payable by employers, and will have a cap of four thousand Bahraini Dinars (approximately US\$10,600); where an employee's salary exceeds the cap, the employer has the discretion as to whether or not to pay the rest of the amount. The mechanism of the pay-out to ensure that payments made are exact and timely is still in the process of being finalised by the Ministry of Finance, SIO, and the Information and eGovernment Authority.

Amendment to Article 284(a) of the Commercial Companies Law No. 21 of 2001 ('CCL') - use of

shareholder proxies

Whilst not directly related to the COVID-19 pandemic, Law No. 6 of 2020 was issued, amending paragraph (a) of Article 284 of the CCL relating to the use of proxies at shareholder meetings.

It is worth noting that paragraph (a) of Article 284 was previously amended in 2018. The article previously stated that a proxy shall represent no more than one partner, and was amended in 2018 by removing the reference to a proxy representing more than one partner.

The article, as amended now, provides that each shareholder shall have the right to attend the meetings of the general assembly either in person or by way of a proxy, provided that the proxy shall not be a member of the control board or the company's manager, or a company's employee.

Additionally, the amendment clarifies that the proxy attending on behalf of a partner must clearly have a written power of attorney prepared by the company for the specific purpose of attending such meeting.

The remainder of the article remains unchanged (whereby each shareholder is entitled to exercise a number of votes equal to the shares he or she owns in the company)

Conclusion

The measures implemented by the Government of Bahrain are to be commended in seeking to protect the general public whilst also easing the burden placed on businesses by the unprecedented circumstances which have culminated as a result of the COVID-19 Pandemic.

In light of the uncertainty behind the longevity of the virus in the Kingdom, it remains unclear whether the decisions and resolutions mentioned in this article will be renewed by the government to cover the months beyond June 2020. However, given the extremely pro-active and decisive approach taken by the government to date, we anticipate that additional clear guidance will be issued by the government in a timely and complete manner as developments continue to unfold.

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