

Amendments to the commercial companies law in Bahrain

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The Kingdom of Bahrain continues to cement its positioning in the global market as a jurisdiction committed to meet international standards and to update, modernise and where relevant simplify and consolidate its legislative regime to reflect changes in the market and to address investor and stakeholder feedback.

More recently, Bahrain's Ministry of Industry, Commerce and Tourism ("**MOICT**") published Resolution 28 of 2020 amending certain provisions of Legislative Decree No. 21 of 2001 promulgating the Commercial Companies Law. The Commercial Companies Law is the primary legislation in the Kingdom of Bahrain which governs the operations of commercial companies,

This article provides a high-level overview of the notable amendments made to the Commercial Companies Law, including the merging of Single Person Companies with With Limited Liability Companies; new methods of capital increase applicable to Joint Stock Companies and some other notable changes made to the Commercial Companies Law.

This article will also touch upon on the recent decision to ease foreign ownership restrictions with respect to the entities which practice the activity of selling goods via the internet (e-commerce).

Merging of Single Person Companies with Limited Liability Companies

A significant change brought about by the Amendment to the Commercial Companies Law is the removal of the Single Person Companies ("**SPCs**") corporate form, and their merger with With Limited Liability Companies ("**WLLs**").

The provisions in the Commercial Companies Law that specifically covered SPCs have been repealed. In terms of related changes to the provisions of the law governing WLLs, these include the removal of a minimum or maximum number of shareholders. Moreover, there is no longer a minimum capital requirement for WLLs (with the exception of certain activities). Rather, in a more general sense a company should have a capital sufficient enough for it to achieve its objectives.

As a result of the merge, business owners need to take certain actions to ensure compliance with the law - these include the following:-

- The MOICT have automatically updated the records of all SPC Companies whereby all SPCs (WLLs owned by one shareholder) commercial names now end with "WLL" instead of "SPC". Affected companies should ensure that they reflect the new name on the company's documents and signage.
- Companies which were formerly SPCs (and are now WLLs owned by one shareholder) must, if they have not already done so, take all required steps to change their constitutional documents from "Articles of Association and Founder's Declaration" to "Declaration of Incorporation".
- Companies which were formerly SPCs (and are now WLLs owned by one shareholder) will be required to adhere to the general requirement applicable to WLLs that a general assembly of the shareholders is convened at least once annually (within six months of the end of the company's financial year) - this is so even despite the fact that for a WLL with one shareholder, the general assembly will consist of a single shareholder.

Share Capital Considerations: Joint Stock Companies

Another key change to the Commercial Companies Law is the introduction to additional methods by which Joint Stock Companies can raise capital

These rules in principle make it easier and faster for Joint Stock Companies to raise capital. Companies can choose from different options to raise finance or increase capital. For example, companies can issue preference shares or convertible notes to get finance and increase capital. Convertible notes will allow companies to obtain finance from investors in the form of a loan which can be either paid with interest or converted into shares equivalent to amount of loan plus interest. This benefits investors as it provides some protection whereby the note holder has priority over rights of shareholders.

Additionally, the rules related to in-kind assets have been amended. Based on the Amendment to the Commercial Companies Law and its Implementing Regulations, the valuation of in-kind assets can be carried out by experts or audit firms. The valuation would then need to be approved by the MOICT.

Previously, the valuation would be carried out by a committee formed by the MOICT.

Formerly the Commercial Companies Law provided for the issuance by a joint stock company of shares with certain privileged rights with respect to such matters as voting and profits, as well as distribution upon liquidation. The Amendment to the Commercial Companies Law take these concepts further in expressly providing for the issuance of preference shares that have rights and privileges with respect to voting or profits, or other rights and privileges. The law is also clear that a Joint Stock Company may issue various classes of preference shares, provided that all shares of a given class have equal rights.

Other changes

- Limited Partnerships can now have a standalone commercial name, rather than a commercial name that incorporates the names of the partners only.
- Not-for-profit Companies: a new section has been added to the Commercial Companies Law introducing a new form of company called the not-for-profit company.
- Subject to rules of the Central Bank of Bahrain, a company's statutory reserve can be used to increase its capital in order to cover any losses.
- Employee share schemes and pre-emption rights: T&Cs of employee share schemes must be fully disclosed to employees. Additionally, pre-emption rights in respect of shares issued under such employee share schemes or issued to a strategic shareholder have been waived.
- A Joint Stock Company's board report must include details of the board's remuneration, bonuses, shareholdings and benefits.

No Foreign Ownership Restrictions for Retail Sale via the Internet

Historically, the MOICT has periodically liberalised the foreign ownership restrictions with respect the previous foreign ownership restrictions which applies to a wide variety of sectors and activities, and permitting such commercial activities to be carried out by entities which are owned 100% by foreign persons or entities

With reference to the MOICT Decision 6 of 2021, the e-commerce activities (specifically, "Retail Sale via the Internet") has now also been liberalised to permit for 100% foreign ownership, provided that certain minimum capital requirements.

The addition of e-commerce activities to the list of activities which permit for 100% foreign ownership confirms the government of Bahrain's continued commitment to open up Bahrain for foreign investment, with particular focus on the rapidly burgeoning e-commerce sector in Bahrain and the region.

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