

Corporate Formations in Bahrain: A Brief Round-up of Last Year's Key Changes and Developments

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The past twelve months have proved to be a busy time in the arena of corporate formations in Bahrain with the implementation of a raft of procedural and legal changes, as well as the introduction of various exciting new initiatives. We have set out below a summary of some of these key developments.

E-Key system: your business venture just a click away

Commencing in 2007, the government of Bahrain committed itself to launching its eGovernment strategy. The aim was to establish an online 'one-stop-shop' to link all the relevant government agencies and entities together to provide better and faster services, and to facilitate the online completion of all government services through the development and implementation of an electronic E-Key System.

Connected to these changes and in line with the increasing shift towards a 'paperless' government, the Ministry of Industry, Commerce & Tourism ("MOICT") took the further step of introducing the 'Sijilat' system in 2016. The Sijilat system comprises an online portal accessed through the use of an E-Key containing details all the existing commercial entities and individual establishments in Bahrain. The portal allows suitably registered individuals to search for records of existing commercial registrations and to initiate applications to register commercial entities as well as the ability to complete many more commercial services electronically, eliminating the burden of physically attending the various ministries to complete such procedures.

Incorporating companies in Bahrain: a two stage process

When applying to establish a new entity utilising the Sijilat system, the application now undergoes a simplified two stage process.

Stage one involves the submission of the key information relating to the new entity including its proposed legal form, shareholder details, commercial name, share capital, proposed commercial activities and details of managers/directors. The MOICT will verify the details, approve the same, and issue an inactive provisional commercial registration (CR) certificate, without any active licenses. The effect of this is that the entity is deemed to have initiated its establishment in Bahrain, and is treated as being 'under formation'. The entity is then able to complete various formalities, including entering into a lease agreement and the registration of the same with the MOICT as part of the process to reach the final stage whereby the permanent CR is issued enabling the company to commence commercial operations.

Stage two involves the submission of applications for all required licenses and approvals which, once completed, should result in the issuance of the final CR, rendering the company legally operational. The

nature of the licenses and approvals will vary depending on the proposed commercial activities of the entity. It is essential that the entity's legal advisors guide it through this process carefully as delays in the timely submission of the various documents and information to the various competent authorities can result in considerable delays in the issuance of the final CR.

Commercial activities: ISIC4 Codes

When incorporating an entity in Bahrain with the MOICT, relevant commercial activities need to be selected. Depending on the types of activities selected, certain conditions may apply and/or approvals may be required.

In April 2016 the MOICT made changes to the list of available commercial activities. The changes are a result of Bahrain adopting the International Standard Industrial Classification of All Economic Activities ("ISIC") Rev. 4. These standards have been developed by the Department of Economic and Social Affairs of the United Nations Secretariat. As a result, the MOICT streamlined the list of commercial activities from over 1800 to approximately 381 by consolidating various activities. More information in relation to the activities can be found on the MOICT's online Sijilat database. On the face of it this change had the effect of lifting various foreign ownership restrictions allowing for greater foreign direct investment and a more competitive market.

Bahrain Chamber of Commerce registration

The Bahrain Chamber of Commerce ('BCCI'), in close co-operation with the MOICT, has also implemented its own initiatives relevant to corporate structuring in Bahrain.

Historically, membership of the BCCI has been entirely voluntary. However, commencing in 2017 it is now a mandatory requirement that any new establishment in Bahrain be registered as a member of the BCCI. Said registration is completed automatically, and the membership fees are collected upon completion of the online incorporation process or upon the renewal of the registration of any existing entity.

Encouraging Bahraini Start Ups: 'Sijili' CR

Late 2016 saw the roll out by the MOICT of a new form of commercial registration aimed specifically at aspiring Bahraini start ups. The 'Sijili' system (Sijili meaning 'my registration' in Arabic) has been launched by the MOICT to support and encourage Bahraini citizens in launching start ups without the burden of the usual red tape associated with starting a business. There are currently 39 commercial activities (mostly related to arts and design, photography, translation, computer programming,) to choose from, involving a streamlined application process. Significantly, under the Sijili process the Bahraini owner is not required to sign a lease over commercial premises.

Once a Sijili CR has been obtained, the owner is able to sign contracts with companies that demand a commercial registration and to engage in commercial activities.

Change to certain local ownership requirements: GCC ownership

Whilst it has long been possible for foreign investors to own 100% of the legal interest in various Bahrain based businesses, certain sector-related restrictions apply. Some commercial activities are only allowed to be undertaken by Bahraini nationals (or entities fully owned by Bahraini nationals); whilst other commercial activities are restricted to Bahraini nationals and/or nationals of the Gulf Co-Operation Council (GCC) states, and/or nationals of the United States (in line with the United States-Bahrain Free Trade Agreement).

Additionally, it has long been the case that certain commercial activities require a minimum Bahraini investment, typically 51%. Examples of such commercial activities include (subject to some exceptions):-

- Construction;
- Selling and/or trading in items;
- Import and export of items;
- Internet based retail sales;
- Catering and food transportation;
- Printing; and
- Waste collection, treatment and disposal activities

For such commercial activities, historically, it has not been possible for the 51% Bahraini ownership requirement to be satisfied by way of the shares being owned by a non-Bahraini GCC national. Rather, a non-Bahraini GCC national would be required to own no less than 100% of the shares in the business vehicle.

We now informally understand, via the Head of Licences and Approvals of MOICT,, that where any given commercial activity necessitates a minimum 51% ownership by a Bahraini national, that requirement may be satisfied by a GCC shareholder owning 51% of the entity's shares (i.e. the previous requirement that a non-Bahraini GCC national should, in these circumstances, own 100% of the entity's shares has been deleted).

Whilst this position remains subject to formal confirmation by MOICT, such a development may be of particular interest to businesses based in other GCC jurisdictions which are owned 51% by local citizens (for example, in the United Arab Emirates or Qatar) who wish to establish a business presence in Bahrain to engage in a commercial activity which traditionally requires 51% Bahraini ownership. Upon formal confirmation of the position, such businesses will now be able to establish a presence in Bahrain together with their existing non-Bahraini GCC partner, rather than being required to partner with a Bahraini national.

Changes to government fees and charges

The past year has also seen a variety of changes to the type and level of government fees and charges implemented in connection with the corporate formation process in Bahrain. Whilst these charges will vary from time to time, the following list contains details of the relevant fees correct as of the date of publishing.

Transaction Licence / Approval	Government Fee	Government Authority
Renewal/Issuance of New CR	BHD50	Ministry of Industry Commerce & Tourism
Membership of BCCI	BHD30	Bahrain Chamber of Commerce and Industry
Renewal of BCCI membership	BHD20	Bahrain Chamber of Commerce and Industry
Municipality Site approval	BHD10	Municipality

Health Certificate	BHD50-150	Ministry of Health
Fire safety approval	BHD30	Ministry of Interior – General Directorate of Civil Defence
COEPP license	BHD50	The Council of Regulating the Practice of Engineering Profession
Civil Aviation Affairs licenses	BHD100-2000	Civil Aviation
Coast guard directorate approvals	BHD25	Coast Guard
Ministry of Works final approvals	BHD10	Ministry of Works
International Transport of goods license	BHD1000	Ministry of Transportation and Telecommunication
International Transport of goods licence renewal	BHD100	Ministry of Transportation and Telecommunication
Gas bottling and distribution license	BHD1200	National Oil and Gas Authority
Ministry of Education approvals	BHD40-50	Ministry of Education

It is anticipated that the fees and charges will be further updated in accordance with new regulations being issued by the MOICT which we understand to be due for implementation in September 2017.

Whilst the changes on the whole represent an increase in fees and/or the introduction of fees for services which were not previously chargeable, the fees remain competitive in comparison to the level of governmental fees imposed by neighbouring jurisdictions. Additionally, in line with its liberal business environment spirit, Bahrain continues to impose zero taxation for private companies, has few indirect taxes for private enterprises and individuals, and continues to allow the free repatriation of capital to foreign jurisdictions.

Conclusion

The above changes are, by and large welcomed as facilitating more efficient and faster corporate

formations in Bahrain, streamlining the administration process, further minimising the restrictions on foreign ownership in Bahrain, and encouraging start-up businesses in the Kingdom. Accordingly, such developments further demonstrate the Bahraini government's continued commitment to ensuring Bahrain retains its position as one of the most flexible and business friendly jurisdictions in the region.

Al Tamimi & Company's Corporate Structuring team regularly advises on all forms of corporate formations in Bahrain and is registered with the MOICT. For further information please contact Rad El Treki (r.eltreki@tamimi.com) or Dana Al Ghareeb (d.alghareeb@tamimi.com).