

Amendments to the Commercial Companies Law in Bahrain

- Manama

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The Kingdom of Bahrain has marked its presence in the global market with its business friendly environment, and readiness to transform its legislation in order to remain competitive and stay in line with international counterparts. This was evidenced by the 2014 and 2015 amendments to Legislative Decree No. 21 of 2001 promulgating the Commercial Companies Law (“Commercial Companies Law”), and its most recent amendments in Legislative Decree No. 1 of 2018 (“New Law”). Throughout the New Law, consistent references have been made to the Central Bank of Bahrain (“CBB”) to clarify specifically that all CBB licensed companies are subject to the rules and regulations of the CBB.

More Flexibility for Investors

The New Law amends Article 18 (Bis 1) to permit a shareholder in one company to be a shareholder in a competing company, subject to provisions of the Corporate Governance Code and the company’s constitutional documents. As such, there is no longer a requirement to obtain a no objection letter if a person wishes to be a shareholder in more than one competing company.

Amendments to Joint Stock Companies

Requirements for Management

A requirement was added to Articles 172 and 240 of the Commercial Companies Law requiring a the Board of Directors of Joint Stock Companies, whether public or a closed company, to comprise a number of independent and non-executive directors. The CBB will issue requirements relating to such positions which will be relevant to CBB licensed companies and the Minister in charge of Trade Affairs will issue requirements relating to all other companies.

Moreover, the three year term of the board membership for all the types of directors may be extended to a maximum of six months based on a request of the board of directors that, in accordance with the New Law, needs to be substantiated. This will be subject to the CBB’s approval for CBB licensed companies. The New Law restricts the appointment of one person as both a board chairman and deputy chairman.

Personal Interest

The board of directors should be informed of any direct or indirect personal interest of a board member in any matter under consideration. Aside from the members of the board of directors, the New Law extends this responsibility to the Chairman, and this notification should include a thorough description of the details of such interest, including all relevant material. Moreover, such member may not attend the resolutions pertaining to the areas of interest. This amendment is intended to be a positive step to protect the interests of the company, and bona fide third parties.

A person who is appointed as board member should disclose details of any other companies where they act as a director. Where there is a personal interest in a matter, approval is now sought from the board of directors rather than the General Assembly. This is subject to CBB’s rules for CBB licensed entities.

Any outcomes relating to personal interest in a matter should be reported by the company’s chairman to the General Assembly, accompanied with a report by an external auditor, and disclosed in the company’s financial statements and annual reports with relevant details.

In the event that approval was not obtained from the board of directors, in relation to personal interest

matters, there would grounds for claiming invalidity of the relevant agreement or transaction, if the conditions of the same are unfair or involve a conflict of interests. In addition, compensation may be payable to the company in relation to any profit or gain generated from the relevant violation.

In light of the above, the restrictions placed in the New Laws provide added protection and encouragement to investors whilst holding directors accountable.

Formation of an Audit Committee

Under the new Article 184 (Bis), a Joint Stock company is required to form an audit committee through a decision of the Board of Directors. The audit committee will have the authority to revise all financial and accounting documents related to the company and ensure compliance with all internal and external policies. A description of the audit committee's work will be included in the annual financial statement of the company. This inclusion was made by the Ministry in charge of Trade Affairs ("Ministry") in order to have full supervision of companies in Bahrain.

Introduction of a "Cumulative Voting" System

Previously, board members of Joint Stock companies, whether public or a closed company, were selected by a vote of the relative majority at the General Assembly. The New Law introduces the concept of "cumulative voting", which is defined as each shareholder having a number of votes equal to the number of shares held by each shareholder, and which the latter may either give to one candidate or divide among multiple candidates. This approach increases the chance for minority shareholders to be represented on a company's board by concentrating the cumulative votes on one candidate.

Lawsuits

The New Law clarifies the extension of the liability under Article 187 to the chairman and board of directors. In addition, where the company is under liquidation, whether voluntary or by court order, the New Law allows the liquidators to institute a liability lawsuit, and removes the requirement for a resolution of the General Assembly. Essentially, this simplifies the process of filing a lawsuit.

Where a shareholder is looking to initiate a lawsuit for invalidity and claim compensation in respect of any resolution issued by the Ordinary or Extraordinary General Assembly on the grounds that it violates the Commercial Companies Law, public order or the company's constitutional documents must file a claim before the courts. If the claim is successful and the court renders the resolution null and void, the judgment should be published by the board of directors in a local daily newspaper. The New Law sets a limitation period so that a claim should be made within 60 days from the date of the shareholder's knowledge of the resolution or one year from the date of its issuance, whichever less.

Subsidiaries

New Articles 120 and 236 (Bis) prohibit shares of Closed Joint Stock companies listed on the Stock Exchange and Public Joint Stock companies to be held by subsidiaries. A subsidiary company is defined under the New Law as one that is directly or indirectly owned by the parent company through the parent company's ownership of more than half of its share capital or having the rights or a number of shares on the company which enables the parent company to have control over decisions, form its board of directors or appoint its directors.

General Assembly

Joint Stock Companies

(i) When should an Ordinary General Assembly convene?

Public Joint Stock companies and Closed Joint companies that are CBB licensed, shareholders' ordinary assembly must now convene at least once a year within three, rather than six, months following the end of the fiscal year of the company. For all other companies, the General Assembly should convene at least once within six months following the end of the fiscal year.

Moreover, a request for an ordinary general assembly by an auditor or shareholders owning at least 10% of the share capital must be fulfilled by the board of directors, and there is no longer a requirement for

serious reasons to prove such request, hence, simplifying the procedure.

The New Law adds scenarios in which an ordinary general assembly meeting may be requested by the Ministry. Namely, where the board of directors fails to convene a meeting within one month of a request by the above mentioned to do so, or if the authority supervising the company's business requires so. Under the New Law, shareholders owning at least 10% of the capital of the company can no longer submit a request to the Ministry to initiate an ordinary general assembly.

(ii) Calling an Ordinary General Assembly

Under Article 199 of the New Law, the call for a General Assembly should be published in two daily newspapers twenty one days before the scheduled meeting date. This is a stricter time limit than the previous fifteen days. In contrast, the time limit for submitting copies of the call for a General Assembly to the Ministry remains as 10 days prior to the scheduled meeting date.

Additionally, for Closed Joint Stock companies, where the call of a General Assembly is served by a registered letter, the New Law now requires acknowledgment of receipt. Alternatively, the General Assembly may be called by any other means which prove knowledge of time, venue and meeting agenda.

(iii) Proxies at the Ordinary General Assembly

Where a proxy has been appointed by the Ministry to attend a General Assembly, such proxy has no vote in the deliberations. Subject to a decision to be issued by the Minister, and subject to the Cabinet approval, certain fees will be imposed on such attendance. The New Law, however, is silent on any fees imposed on CBB licensed entities.

(iv) Issues discussed at the Ordinary General Assembly

The Commercial Companies Law mentions that the meeting agenda shall list all issues to be discussed at the General Assembly. Aside from issues arising out of urgency and issues that are revealed during the meeting, the New Law states an additional scenario in which an issue that is not listed on the meeting agenda may be discussed. Such scenario requires a written request from the auditor, authority supervising the company, or shareholders holding at least 5% of the capital of the company to be submitted to the Board of Directors at least five business days prior to the scheduled meeting date. Moreover, any issues that arise out of urgency at a general assembly meeting should be notified to the Ministry after 5 business days from the day following the meeting date.

With Limited Liability ("WLL") Companies

(i) When should an Ordinary General Assembly convene?

The General Assembly shall convene once a year during the last six, rather than four, months following from the end of the company's fiscal year.

(ii) Calling an Ordinary General Assembly

Previously, only shareholders holding at least a quarter of the company's share capital had the right to call a General Assembly. The New Law amends this so that a General Assembly may be called by shareholders holding 10% of the company's capital, hence, granting more rights to minority shareholders.

Currently, the call for the meeting should be made at least twenty one days before the date of the meeting. This time limit was previously one week before the meeting convenes. It appears that this amendment has been made with the intention to ensure that all administrative procedures will be fully carried out during the time between the call date and the scheduled meeting date.

(iii) Proxies at the Ordinary General Assembly

The Commercial Companies Law allows a shareholder in a WLL company to attend the general assembly meeting in person or through a representative by virtue of a Power of Attorney, subject to various conditions. The New Law has eased these conditions by allowing one representative to represent more than one shareholder.

(iv) Issues discussed at the Ordinary General Assembly

In cases of increasing a shareholder's financial obligations or admitting a new shareholder into the

company, unanimous consent of the shareholders of a WLL company is needed. Furthermore, the New Law prohibits any disposition in excess of half of the company's asset value unless approval is obtained from majority of the shareholders holding at least three quarters of the company's share capital. This prohibition, however, does not apply to mortgages, cases where the disposition is made in favour of a subsidiary or where it is a part of the ordinary course of business.

WLL Company Accounts

Formerly, all financial reports had to be sent to the Ministry through the directors of a company and its auditors. The New Law shifts the entire burden onto the directors and disregards any responsibilities given to auditors.

Introduction of a new Article 288 (Bis) states that a company shall distribute profits to the shareholders no later than thirty days from the date of approval by the general assembly.

Wider Interpretations

Holding Companies

A holding company is defined more generally in that it may acquire stocks or shares in any Bahraini or foreign corporate entities.

Name of General Partnership

The New Law amends Article 27 so that the name of a General Partnership may be any name that the Ministry in charge of Trade Affairs may accept. This means that the name of a General Partnership does not necessarily need to include the name of all the partners or one of the partners and the phrase "& Partners".

Stricter Penalties

Notably, non-compliance with the Commercial Companies Law results in stricter penalties. A violation of Article 361 constitutes a minimum penalty of 10,000 Bahraini Dinars ("BHD") (previously 5,000 BHD) and a maximum of 100,000 BHD (previously 10,000 BHD). Comparatively, violation of Article 362 results in a maximum penalty of 50,000 BHD, an increase of 45,000 BHD.

Conclusion

Greater restrictive measures have been added to the Commercial Companies Law in an effort to decrease the level of violations, disruptions and conflict within a company, while simultaneously increasing the level of protection towards the interest of the company and stakeholders. Although more stringent requirements have been introduced, such as tighter time limits, the New Law also provides more flexibility, such as added rights to minority shareholders and permitting a single proxy to represent numerous shareholders at a General Assembly. As such, the New Law reinforces Bahrain's 2030 Economic Vision to encourage investment and increase investors' confidence in the economy.

Al Tamimi & Company's Corporate Structuring team regularly advises on Corporate Structuring matters. For further information please contact Eman Al Isa (e.alisa@tamimi.com).