



Kingdom of Bahrain

Ministry of Commerce

Helping business help itself

The Ministry of Commerce Vision

To make Bahrain as a global and competitive marketplace clustered around knowledge driven economy, and to become a model for innovation and timely customer services.

The With Limited Liability Company (WLL)

1. Introduction

This booklet is one in a series produced by the Ministry of Commerce with the purpose of introducing new Directors to the various laws and regulations which govern the formation & liquidation of companies, their reporting requirements as well as other obligations to the various stakeholders, including MOC, and the roles, responsibilities and obligations of shareholders and directors, chairmen, partners and managers.

The principle laws which govern companies incorporated in Bahrain are :

- ✚ The Commercial Companies Law – Decree # 21 of 2001 and the Implementing Regulations of the Commercial Companies Law - Ministerial - Order No. 6 of 2002 (the “Companies Law”)
- ✚ The Commercial Law – Decree # 7 of 1987 (the “Commercial Law”)
- ✚ The Bankruptcy & Composition Law – Decree # 11 of 1987 (the “Bankruptcy Law”)
- ✚ Decree # 4 of 1987 establishing the Bahrain Stock Exchange (the “BSE Law”)
- ✚ Decree # 1 Finance of 1961 with respect to Establishing the Commercial Registry, as amended

In addition, there are other laws that regulate the formation and operation of banks and insurance companies in Bahrain.

All companies operating in Bahrain must take one of the 7 legal forms provided for in the Companies Law. Companies other than partnerships enjoy the benefit of having their liability limited to their share of the company capital, whereas partnerships generally are unlimited, with the exception of certain partnership types which provide for both limited and unlimited partners.

Article 363 of the Companies Law provides, that any company established prior to the coming into force of the Companies Law, has a maximum period of 3 years from the effective date of the Companies Law to amend its articles of association to conform to the Companies Law, or else the company must be placed into liquidation.

2. The With Limited Liability Company (WLL)

Is a company formed by no less than 2 and no more than 50 partners, and with a minimum capital of Bahraini Dinars Twenty Thousand (BD20,000). However a derivative of the WLL, the Single Owner Company, which apart from higher capital requirements (BD50,000), imposes the same obligations and responsibilities on directors, can be owned by one person. In any event, the capital of the company must be sufficient to realize its objects.

The WLL limits the liability of its partners to the amount of their paid capital. The WLL cannot make a public offering of either shares or debt, and its shares are non-negotiable.

A WLL may not undertake banking or insurance business or investment funds for third parties.

The WLL is formed on the basis of a memorandum of association which sets out the basic information about the company, including its name, registered address, capital, objectives, names of the partners and managers as well as the conditions for assignment of shares and the distribution of profits and losses. The memorandum of association will also contain full details of any capital which has been paid in kind, and may provide for a Board of managers (the “**Board**”) and specify the manner in which the Board will operate, otherwise it must specify a Supervisory Board which should consist of at least 3 partners. If the number of partners is less than 10, and no Supervisory Board is specified, then the law provides that partners who are

not designated as managers, have the right to supervise the acts of the managers and have full access to the company's records.

Unlike Joint Stock Companies, the partners of a WLL are required to pay the capital in full prior to incorporation.

The shares of a WLL are non-negotiable, but may be sold subject to a written instrument, provided that other partners have the preemptive right of first refusal. In any event no transfer of shares is valid unless first registered in the Commercial Register at MOC .

The company is administered by one or more managers who are appointed initially by the promoters, but subsequently by a resolution of the general assembly meeting.

The Company must have a general assembly consisting of all partners, which must convene at least once every year within 4 months of the financial year end, and for which a greater than 50% quorum is required, if this is not achieved then a second meeting may proceed after 10 days irrespective of the number attending.

The company is required to maintain a statutory reserve by deducting 10% from its annual profits accumulating up to 50% of its capital, unless such higher deduction or accumulation is provided for in the memorandum of association.

A WLL company has an indefinite life, unless otherwise provided by its memorandum of association, and is not required to liquidate on the withdrawal of any of its partners. In the event that such withdrawal results in only one partner, then new partners must be appointed within 30 days, or the WLL is required to convert to a single owner company.

3. Obligations/ responsibilities of the WLL

Limited liability status protects the individual assets of the partners, who are responsible only to the extent of their share of the issued capital, however there are a number of responsibilities and

obligations attached to this benefit.

There may also be circumstances under which partners may still have their personal assets attached in a liability suit.

3.1 To Partners

Partners may include in the memorandum of association, provisions regarding their right of retrieval of their shares, and the method of evaluation.

The Memorandum must specify any in-kind shares offered by partners and their nature and value.

Assignment of shares is not effective against partners or third parties except after entry in the Commercial Register and publication in the Official Gazette.

The shares of a partner devolve to his heirs or beneficiaries under a will.

There is an obligation to maintain a special register at the company's headquarters in which the details of all partners are recorded, and to which the partners and every interested party has access.

The managers are jointly responsible towards the Company, partners and third parties for breach of the law or the company's Memorandum of Association, and for mismanagement.

Members of the Supervisory Board are not responsible for the actions of the managers, or the results of such actions, unless they become aware of such wrongful acts and neglect to report these to the general assembly meeting.

Partners representing 25% of the capital have the right to summon a general assembly meeting.

Each partner may request the managers to include any issue on the agenda for the general assembly meeting, and if rejected, have the right to take the matter to the general assembly.

The summons for a general assembly meeting must be sent at least 1 week prior to the date set for the meeting, and include the agenda.

Each partner has the right to attend the general assembly meeting, or appoint a proxy.

Partners financial obligations may not be increased except by their unanimous approval.

3.2 To MOC

Incorporation of all companies, is subject to application to and approval of MOC.

The MOC must be provided with a notarized copy of the memorandum of association for the purpose of issuing the commercial registration license. The incorporation is published in the Official Gazette and in a local newspaper at the company's expense, and does not achieve its legal status until such registration has taken place.

The partners must submit a bank certificate to MOC, evidencing that they have paid the capital in full.

The company's memorandum of association may not be amended nor its capital increased or decreased, except by a general assembly resolution passed by partners owning at least 75% of the capital, unless the memorandum of association provides otherwise. MOC must be notified of all proposed changes, which are to be registered in the Commercial Register. This includes changes to partners and their respective shareholdings and personal details.

Any resolution issued restricting the powers of managers must also be registered in the Commercial Register at MOC and has no affect towards third parties before the lapse of 5 days from such entry.

A copy of the annual audited financial statement, auditors report and the annual report to be filed with MOC within 10 days of their completion.

MOC has the right to call for a general assembly meeting.

Subject to appeal by any interested person, the company may be struck off by MOC in the event that it does not undertake its business within one year of its formation, or discontinues its business for a continuous period of one year without providing a valid reason. Any partner also has the right to petition the Court for the dissolution of the company but dissolution will only be ordered if there are serious reasons justifying this.

4. Partners'/Managers' Obligations / Responsibilities

The WLL must be administered by one or more managers from amongst the partners, or they may be third parties appointed by the partners for this purpose. The duties, responsibilities and obligations of the managers is the same as that of the members of a Board of Directors of a Joint Stock Company (please also see the PJS Booklet). The managers can be removed from office by partners owning the majority of the capital.

4.1 To become a Manager, a person must :

- be qualified to act.
- not have been convicted of a crime involving negligence or fraudulent bankruptcy, or a crime affecting honour or involving a breach of trust, unless having been reinstated.
- be appointed by the promoters and thereafter by resolution passed at a general assembly meeting.

4.2 Partners' / Managers Responsibilities

Partners must appoint a manager or managers to manage the business

The managers' must register the company in the Commercial Register at MOC, and publish such registration in the Official Gazette.

A partner wishing to sell his shares must notify the other partners of any offers he receives, the other partners have preemptive rights to purchase such shares for 2 weeks from being notified of a third party offer, after which the shares may be sold to the third party.

The company's managers have full powers to represent the company unless otherwise provided by the memorandum, and are jointly responsible towards

the company, partners and third parties for breach of the law or the company's memorandum of association and for mismanagement.

The managers may not, without the prior approval of the partners, engage in the management of a competitive company, or conduct such business for their own account or on behalf of third parties.

The Supervisory Board oversees the management of the company, and may require the managers at any time to present reports on their management.

The managers are responsible for the preparation, and signing, of the annual financial statement, and a report on the activities of the company during the year and the financial position of the company, together with their recommendations as to the distribution of profits.

Minutes are to be kept for each meeting, and must contain an adequate resume of the deliberations and resolutions of the general assembly. The managers are responsible for the accuracy of these minutes, which are to be kept in a special register at the company's head office.

The managers may not vote on resolutions exonerating them of any liability for their administration of the company.

5. Penalties provided by the Commercial Company Law

Without prejudicing any sterner penalties provided for by other laws of the Kingdom of Bahrain, the Companies' Law provides for a prison term and/or fines of not less than BD5,000 and with a maximum set at BD10,000, for breaches of the Law as follows :

Article 361

- A) Making false statements in official or other documents, or signing or distributing such documents
- B) Any person involved in a public subscription contrary to the law-
- C) Any person who has fraudulently over-valued in-kind shares
- D) Any person involved in the production/presentation of the financial statements which do not reflect or honestly represent the company's financial position
- E) Any director, manager or auditor who has approved the distribution of fictitious profits or dividends or in contravention of the Law or company's Articles of Association
- F) Any director or manager who has taken a remuneration more than provided for by the law, or the company's Articles of Association.
- G) Any person involved in the production/presentation of the company's financial statements or annual report, or who has defaulted on the submission of such reports, who willfully omits material facts resulting in those statements not providing a true and fair view.
- H) Any person trusted with company information who discloses such facts, or exploits such secrets to serve his own interests or those of others.
- I) Any person appointed by MOC to inspect the company, who willfully omits material facts from his report thereby effecting its conclusion.

Without prejudicing any sterner penalties provided for by other laws of the Kingdom of Bahrain, the Companies' Law provides for a fines of BD5,000, for breaches of the Companies Law as follows :

Article 362

- A) Any person who has issued shares, subscription receipts, interim certificates or bonds, or has offered them for trading in a manner contrary to the law
- B) Any director, or managing director of a shareholding company, who remains in office, has been appointed as a superintendent or held an office in the company, or has obtained security or a loan there from, contrary to the law.
- C) Any person who has established a company in contravention of the provisions relating to Bahraini percentage of capital.
- D) Any involved person who has omitted material facts from the financial statements of the company, resulting in such statements not providing a true and fair view of the company's financial position.
- E) Any person who has omitted to invite the general assembly or partners to convene when the company has sustained losses to the limit provided for by the law or the company's Articles of Association.
- F) Any person who has omitted to invite the general assembly to convene or from listing issues on the agenda, as provided for by the law.
- G) Any director/auditor who has prepared a report for which he is responsible, which is contrary to the provisions of the law.
- H) Any person who has issued orders of spending or has spent company funds without supporting documents.
- I) Any person delegated by MOC to carry out an inspection, who omits material facts affecting the outcome of the inspection.
- J) Any person who prevents any authorized inspector, MOC officer, or a partner, auditors or other authorized person from access to books and documents to which they have lawful access.
- K) Any person who willfully refrains from enforcing any order provided for in the law.

6. Good Corporate Governance – it's in your hands

The recent corporate accounting scandals in the US have focused the public attention on the responsibility of the board of directors on managing the affairs of the company in the best interests of all stakeholders, these include not only shareholders, but also employees, creditors, and the community at large.

There are many issues which have been recommended as being critical to the establishment of good corporate governance, particularly in respect to public companies, and a number of landmark reports have been issued, including The Cadbury and Turnbull Reports, and the OECD 'Principles of Corporate Governance', all of which focus on the need for director's close involvement (particularly in strategic planning, risk management and performance assessment), the need for transparency and full disclosure, and

the need for internal mechanisms that ensure that the governance objectives are met.

The board is responsible for identifying and managing risk, and this risk can come from numerous sources, including competition, failure of new products, risk of losing critical employees to name but a few. In addition to the need of identifying and managing risk, is the need to be equally able to identify new business opportunities, and where necessary to take calculated business risks. Often the risk of taking no risk, is riskier than the risk itself.

Good internal control mechanisms are critical to ensuring the objectives of all stakeholders are being met, and should, inter alia, include financial, operational compliance controls, as well as risk management policies which will significantly reduce the possibility of poor judgment in decision making, human errors, and deliberate breach of procedures.

It is also not sufficient that such controls and mechanism are built into operations, they must also be monitored for effectiveness, reliability and relevance.

Internal audits of the company and the establishment of an audit committee are also key components of a good corporate governance structure.

As a Partner or Manager responsible for the management of a WLL company, it is your responsibility to ensure that a good corporate governance structure is in place, and where it is not to raise your concerns, and advise your colleagues on the Board of the risk of not managing the affairs of the company in a manner which protects the interests of all the stakeholders.

7. Where to get help/advice

If you are in any doubt as to your responsibilities or obligations under the Companies Law and other laws in Bahrain, in relation to your position as a partner or manager of a WLL company, staff at MOC , will be only too pleased to assist.

You may also visit the OECD web site at www.oecd.org for information on Corporate Governance issues.

You should also make yourself familiar with the Companies Law, and with your company's memorandum of association and articles of Association.

If you have a question on any particular issue concerning your company, ask for an explanation from the key management staff responsible.

What every you do, do not keep silent if you are unsure about an issue, silence means acceptance, and could make you liable.

8. Role of MOC

MOC is primarily the Registrar of companies, but does also have a regulatory role in ensuring that companies comply with their obligations under the Companies Law. However the strategic focus of MOC is on ensuring that the commercial legal and administrative infrastructure is conducive to the development of globally competitive businesses, and it perceives good corporate governance, and the role played by directors, as being the cornerstones of success.

9. Useful contacts :

Dr. Abdulla A. Mansoor : Undersecretary [Tel / Fax]
Mr. Ali Radhi, Assistant Undersecretary, Internal Trade
Mr. Abdulraheem Saeedi, Director of Company Affairs
www.commerce.gov.bh

10. Disclaimer

Every care has been taken to ensure the accuracy of the information in this brochure, however, MOC makes no warranty, and accepts no responsibility, for the completeness or accuracy of the information contained herein.

Directors should read the full text of the Companies Law and the memorandum and articles of association of the company or companies of which they are directors, and where uncertain on any particular point, seek legal advice to ensure a complete understanding of their obligations and responsibilities.

The Ministry of Commerce Mission

- ▶ To provide a relevant, market-driven commercial infrastructure based on a suite of laws and regulations, which support Bahrain's legitimacy as a home for business, and which provides balanced protection for both investors and consumers.
- ▶ To promote and foster the take-up of eCommerce as a business driver in Bahrain to support business competitiveness, and as a growth sector in its own right.
- ▶ To provide an efficient, fast and cost effective incorporation service.
- ▶ To promote and foster the take up of ISO registration amongst Bahraini companies with a view to enhancing their international competitiveness.
- ▶ To promote the interests of Bahrain's companies by negotiating bilateral trade agreements with trading partners; and establishing trade representatives in strategic locations around the world.
- ▶ Represent the interest of the business community and the citizens of the Kingdom of Bahrain on the international arena through the active participation in WTO, UNCTAD, WIPO and other international organizations.
- ▶ Boosting the reputation of the kingdom of Bahrain in the sector of pearl, jewelry and gemstones through the provision of high quality testing and assay services.
- ▶ Creating a legal infrastructure that is inductive to fair competition and in accordance with the market economy principles.
- ▶ To enforce anti-trust laws as to combat monopolistic practices and suspicious trading.
- ▶ Promoting regional integration under the GCC umbrella.
- ▶ Promoting the Kingdom of Bahrain's as internal and regional center for exhibition and conventions.
- ▶ To adhere and promote recognized international standards and best practices.
- ▶ To ensure that the Kingdom of Bahrain has a voice in international trade issues, and that the Kingdom's interest and those of its citizens and corporations are represented in the global arena, through such organizations as the WTO, UNCTAD, WIPO etc.
- ▶ To provide an efficient gem and precious stones testing laboratory in order to ensure that the reputation of Bahrain as a home for natural pearls and quality jewelry is protected, and to promote the interests of local jewelers.