

Commercial Law

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Introduction

- What is Commercial Law
 - sometimes = business law
 - usually covers business, commerce, consumer transactions
 - e.g. contract, company law, banking, etc

Introduction

- Focus for the course: company law
- Why? (relevancy to the subject)
 - needs for separate legal entity
 - basis for business/commercial activities
 - applicability of laws & regulations

Commercial Law in Bahrain

- Commercial Companies Law 2001
- Types of Companies
- Companies undertaking Banking/Financial activities
- Requirements to set up those companies

Commercial Companies Law

- Company: a contract by which two persons or more undertake to participate in a profit-making economic project, with each of them offering a share in the form of money or work to divide the yield of this project, whether profit or loss.
- However - it may consist of a single person
(see Article 1 of CCL)

Types of Company

- Types:
 1. General partnership company
 2. Limited partnership company
 3. Association in participation
 4. Joint stock company (public or closed)
 5. Limited partnership by shares
 6. Limited liability company
 7. Single person
 8. Holding company

Partnership Company

- General Partnership Company aka Partnership under a collective name: a company established by two persons or more under a certain name, and in which the partners are jointly liable to the extent of all their property for the company's obligations.
- See Articles 25 - 49 of CCL

Partnership Company

- General Partnership Company aka Partnership under a collective name.
- Main Features:
 - Unlimited liability
 - Banking/insurance activities not allowed
 - Minimum share capital is not applicable
 - Minimum partners & promoters = 2
 - Local sponsor is not required
 - 100% foreign ownership is allowed

Simple Commandite

- Limited Partnership Company aka Simple Commandite Partnership: a company set up by one or more partners who shall be jointly liable for the company's obligations to the extent of all their property, and by another or more partners, who have shares therein but are out of its management. The latter partners are called sleeping partners and shall be liable for the company's obligations only to the extent of their share in the capital.
- See Articles 50 - 55 of CCL

Simple Commandite

- Limited Partnership Company aka Simple Commandite Partnership.
- Main Features:
 - Limited partners and partners with unlimited liability
 - Banking/insurance activities not allowed
 - Minimum share capital is not applicable
 - Minimum partners & promoters & directors = 2
 - Local sponsor is not required
 - Minimum 51% Bahraini shares

Association in Participation

- Association in Participation: a concealed company. It neither has a corporate entity nor is subject to publication procedures.
- There shall be no shares or tradable instruments.
- MOA can be proved by any means.
- A third party will only have recourse against the partner he is dealing with.
- See Articles 56 - 62 of CCL

Joint Stock Company

- Joint Stock Company: a company consists of a number of persons who subscribe in it by way of negotiable shares.
- The shareholders' liability = value of their shares.
- Banking/insurance activities allowed.
- BSC Public : see Articles 63 - 225 of CCL
- BSC (c): see Articles 226 - 245 of CCL

Commandite by Shares

- Limited Partnership by Shares aka Commandite by Shares: a company consists of two categories of partners, joint partners and sleeping partners
- See Articles 246 - 260 of CCL

Commandite by Shares

- Limited Partnership by Shares aka Commandite by Shares.
- Main Features:
 - Limited partners and partners with unlimited liability
 - Banking/insurance activities not allowed
 - Minimum share capital is BD20,000
 - Minimum partners & promoters = 4; directors = 2
 - External auditor required
 - Local sponsor is not required
 - 100% Foreign ownership is allowed

With Limited Liability Co

- Limited Liability Company aka WLL: a company in which the number of partners does not exceed fifty partners and each of them shall only be liable to the extent of his share in the capital.
- If less than two ~> turn into a single person company (if no additional partner within 30 days)
- No public subscription for incorporation or increase of capital. No negotiable shares or bonds.
- See Articles 261 - 288 of CCL

With Limited Liability Co

- Limited Liability Company aka WLL.
- Main Features:
 - Limited liability
 - Banking/insurance activities not allowed
 - Minimum share capital is BD20,000
 - Minimum partners & promoters = 2; maximum = 50
 - Minimum directors = 2
 - Local sponsor is not required
 - 100% Foreign ownership is allowed
 - Annual submission of audited financial statement is required

Single Person Company

- Single Person Company aka SPC: a company which capital owned fully by one natural or corporate person
- Liability = extent of capital.
- Death ~> terminate the company, except see Art 295 of CCL
- See Articles 289 - 297 of CCL

Single Person Company

- Single Person Company aka SPC.
- Main Features:
 - Limited liability
 - Banking/insurance activities not allowed
 - Minimum share capital is BD50,000
 - Minimum partners & promoters = 1; director = 1
 - An external auditor is required
 - Local sponsor is not required
 - 100% Foreign ownership is allowed
 - Annual submission of audited financial statement is required

Holding Company

- Holding Company: a company which purpose is to own shares in shares in joint stock or WLL co (bahraini or foreign).
- Can be in the form of a joint stock, WLL or SPC.
- Must own more than 50% of the capital of the affiliated company.
- See Articles 298 - 304 of CCL

Individual Establishment

- Individual Establishment: Only Bahraini citizens and GCC citizens resident in Bahrain may register an Individual Establishment
- Main Features:
 - It is a non-incorporated entity
 - Owned by one individual only
 - Unlimited liability
 - Owner must be Bahraini or GCC national no less than 18 years of age

Foreign Company Branch

- i.e., operational office, a representative office or a regional office of a company incorporated and registered outside Bahrain
- Main Features:
 - Limits of liability same as the parent company
 - Minimum share capital is not applicable
 - Branch manager & local presence is required
 - Operational Office can undertake local operations & can also undertake Banking & Insurance activities. A local sponsor is required for an operational office (see Art 347 of CCL)
 - Representative and Regional Office can only undertake marketing and promotion

Conversion of Companies

- Conversion - to convert the legal status of a company to another
- Joint stock company - at least two financial years after its incorporation
- Resolution followed by publication in the Official Gazette
- 60 days conversion period (see article 306)
- See Articles 305 - 311 of CCL

Merger of Companies

- Merger: either acquisition or consolidation
- Acquisition: winding up of a company or more and transferring its patrimony to an existing co (see Art 313 of CCL)
- Consolidation: winding up two or more companies and incorporation a new one into which the patrimony of the merged companies shall be transferred (see Art 314 of CCL)
- See articles 312 - 319 of CCL

Winding Up

- Termination = dissolution (see Art 320 of CCL)
- Grounds:
 - Expiry of period (unless MOA/AOA provides for renewal)
 - Attainment of objects
 - Destruction of all its properties or a sizeable portion thereof, rendering its continuation of no purpose
 - Unanimous decision to wind up
 - Merger
 - Struck off by MOIC if no activity within one year

Winding Up

- Termination by Court order by the request of one of partners (Art 321 see also 322) (not applicable to BSC)
- Upon dissolution ~> enter the stage of liquidation (append 'under liquidation' to the name of company)
- Process as per the MOA/AOA or Articles 328-341 of CCL. See also Art 343 of CCL
- Distribution of assets – MOA/AOA or as per the Civil Code

Other Provisions

- MOIC supervision and inspection – Art 351 of CLL
- See also Articles 352-360 of CCL
- Supervision of other regulatory body, eg. CBB (subject to separate applicable law)
- Penalties for contravention – see Articles 361-362 of CCL