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Bahrain

Corporate Governance

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Bahrain.

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Bahrain: Corporate Governance

1. What are the most common types of corporate business entity and what are the main structural differences between them?

The Commercial Companies Law (the “CCL”) (promulgated by Decree Law No. 21 of 2001 and most recently amended in January 2022) provides for six types of corporate business entities, the most common of which are public joint stock companies, closed joint stock companies, and limited liability companies.

Public Joint Stock Companies

A public joint stock company is established by a number of persons who subscribe to it via negotiable shares.

This form is subject to a minimum share capital of BHD1 million (around USD2.6 million). The minimum number of shareholders is two, with the exception of companies formed by the government or in which the government is associated in the formation thereof.

A public joint stock company is managed by a board of directors of no less than five members and no more than fifteen members as determined by its memorandum and articles of association (the “Constitutional Documents”). The board's term of office must not exceed three years. Companies licensed to provide financial services by the Central Bank of Bahrain (“CBB”) may be subject to additional independence requirements depending on the nature and specific requirements of their license, in accordance with the regulations of the CBB.

The board of directors' authority includes setting the company's overall plan and strategy, and overseeing the day-to-day management of the Company. The board is authorized to make recommendations to the shareholders for matters that fall exclusively within the authority of the shareholders, including but not limited to:

- Deciding any changes to the company's capital or Constitutional Documents;
- Reviewing and approving the company's financial reports;
- Making decisions with regards to the allocation of profits, payment of remuneration to the board members, and dividends to the shareholders;
- Appointment of the company's external auditors and the determination of their fees;

- Deciding the fate of the company in terms of continuity or, were required, resorting to liquidation.

The members of the board of directors must act in the best interest of the company and all its shareholders regardless of the source and means of their appointment.

Closed Joint Stock Companies

A closed joint stock company is established with a minimum of two shareholders and a minimum share capital of BHD50,000 (around USD132,241). The shares of the company may not be publicly offered;

The management of a closed joint stock company is subject to similar composition and corporate governance requirements of a public joint stock company, except that the shareholders' agreement on the formation of the board of directors in a respective company's Constitutional Documents is legally permitted to prevail and the minimum number of board of directors for this form of company is three.

Limited Liability Companies

Limited liability companies are companies with a minimum of one and a maximum of 50 partners who are responsible only to the extent of their shareholding in the capital. Partners may not resort to public subscription for raising shares or loan capital. This type of company may not undertake insurance activities, banking or the investment of funds for the account of third parties. The owners of this form of company are referred to as “partners”.

The management of the company may be conducted by a manager or managers, or a board of managers which is equivalent to a board of directors, as determined by the company's partners in the company's Constitutional Documents. The company is not required to have a board of directors unless the number of partners exceed ten.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

A corporate governance code (the “CG Code”) was issued in 2018 by virtue of Decision No. (19) of 2018 by the Minister of Industry and Commerce pursuant to Article

358 bis of the CCL, and most recently amended in 2022. The CG Code is intended to provide corporate governance guidance for all forms of corporate entities but is currently enforced upon closed and public joint stock companies on a comply-or-explain basis with mandatory reporting requirements to the Ministry of Industry and Commerce (the "MOIC").

Companies licensed to provide financial services by the CBB are subject to special corporate governance requirements as detailed further in the response to Question 5.

In 2022, the Bahraini Economic Development Board (the "EDB"), carried out discussions with stakeholders regarding proposed amendments to the CCL which seek to widen the grounds of personal liability of directors and bases for piercing the corporate veil. These proposals are still a matter of discussion and have not yet been raised to Parliament.

3. Who are the key persons involved in the management of each type of entity?

The key persons involved in the management of each type of entity are the shareholders/partners, the board, and members of a company's executive management.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)?

In each form of corporate entity, there is a segregation of powers between the entity's management and economic owners, i.e. shareholders and partners.

Limited liability companies are more flexible in this regard, in the sense that the determination of the composition and powers of the manager/s or board of managers of the company are left completely to the company's partners to decide.

As for closed and joint stock companies, the CCL stipulates the matters that fall within the scope of authority of the board of directors, and those that fall within the scope of authority of the shareholders as provided for in the response to Question 1 above.

5. What are the principal sources of corporate

governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

The main legislations related to corporate governance that must be observed by companies incorporated in Bahrain are as follows.

The CCL

The CCL is the law governing commercial companies, their types, formation and management. The CCL has been in force since 2001 and subsequently been amended, with the last amendment issued on 13 January, 2022. It includes rules related to the segregation of powers and scope of powers of the board of directors and the shareholders, as well as accountability and cases of personal liability.

Rules relating to disclosure of interests by board members and avoidance of conflict of interest are included in the CCL.

The Corporate Governance Code

The CG Code was issued by Decision No (19) of 2018 by the Minister of Industry, Commerce and Tourism pursuant to Article 358 bis of the CCL. This code provides the minimum required standards for corporate governance and applies to all companies incorporated in Bahrain, with the exception of companies carrying out regulated financial services and licensed by the CBB, which are subject to a designated corporate governance code.

This code includes 11 main corporate governance principles as follows:

- The board shall be effective, qualified and have the required expertise;
- The directors and executive management shall have full loyalty to the company;
- There must be rigorous controls for financial audit and reporting, internal control and compliance with the law;
- The requirement for effective procedures for appointment, training and evaluation of the directors;
- Fair and responsible remuneration for directors and senior officers;
- The requirement of a clear and efficient management structure with defined job titles, powers, roles and responsibilities;
- Shareholder involvement by encouraging communication, participation;
- Disclosure of companies' corporate governance;

- For companies with offer Islamic services, adherence to the principles of Shari'a;
- Integrity of the financial statements and the importance of external auditors as a responsibility of the board;
- Social responsibility.

Boards of joint stock companies, closed and public, are required to form a corporate governance committee, to appoint a corporate governance officer to ensure compliance with the corporate governance rules, and submit a corporate governance report annually to the Ministry, setting out each principle and the measures taken to comply therewith, with a special section for related-party transactions.

The Rulebook of the CBB

The Corporate Governance Code applicable to CBB licensee companies is included in the High-Level Control Module of the Rulebook of the CBB applicable to each category of CBB licensee. This is issued by the CBB and the compliance therewith is supervised by the CBB.

This code includes the first nine principles of the CG Code listed above.

Constitutional Documents

The Constitutional Documents, issued by the company's shareholders, which provide company-specific rules that include the authority of the board, the extent of its powers and duties.

Rules, Regulations and Circulars

The rules, regulations and circulars by the CBB and the Bahrain Bourse (the company taking over the powers of the Bahrain Stock Exchange) applicable to listed companies (all public companies and some listed closed companies).

6. How is the board or other governing body constituted? Does the entity have more than one? How is responsibility for day-to-day management or oversight allocated?

The constitution of the management body of a limited liability company or closed joint stock company is subject to the company's deed of association issued by its owners. The responsibilities, duties and powers of the management body/board is determined by the economic owners.

The constitution of board of directors of a public joint

stock company, in accordance with the composition requirements explained in Question 1 above, is set out by law. Shareholders who own 10% of the company's capital have the right to appoint a member on the board of directors and use any excess percentage ownership for election purposes. Shareholders who own less than 10% or choose to give up their appointment rights, may use their percentage to elect members on the board.

The CG Code and the CBB's Corporate Governance Code require the boards of directors of companies' subject to their provisions to set up audit, remuneration, nomination and corporate governance committees required by the code, and allows the board to decide on setting up additional specialised committees as required by the activities of the company.

- the audit committee is in charge of reviewing the company's audit, financial and accounting procedures, and ensuring compliance with the law and the company's Constitutional Documents;
- the remuneration committee is in charge of reviewing and setting the basis for remunerating directors and senior managers;
- the nomination committee is in charge of making nominations and recommendations for directorship and senior management positions in the company. It is also in charge of reviewing the independence criteria and status of directors on an ongoing basis; this committee may be merged with the remuneration committee and usually is; and
- the corporate governance committee is in charge of reviewing the company's corporate governance policy and making recommendations to ensure compliance; this committee may be merged with the nomination and remuneration committee.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

The members of the board are appointed in the manner set out in the response to Question 6 above.

As for removal, a company's Constitutional Documents shall set out the grounds for removal. In any case, the general assembly may remove members of the board if the same is requested by shareholders representing no less than 10% of the Company's capital.

A removed member reserves the right to seek compensation if the removal is without just cause or done at an inappropriate timing.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

Typically, the board is constituted of members chosen by the economic owners of the company, either through appointment or election.

Boards of CBB licensed companies are required to be composed of members who are deemed "fit and proper" to be involved in the management of the specialized industry of financial service providing companies. Such boards are also subject to independence requirements.

As for tenure, the maximum tenure of board membership is three years, extendable only by special approval of the CBB for companies subject to its supervision, and only once for a maximum of six months. Any board member may be re-appointed or re-elected for another term if approved by the general assembly of the shareholders.

9. What is the role of the board with respect to setting and changing strategy?

As per the CG Code and the CBB's Corporate Governance Code the board's role and responsibilities include the overall business performance and strategy for the company. Moreover, the Chairman and other directors (as appropriate) is obligated to maintain ongoing personal contact with key shareholders to solicit their views and understand their concerns. The Chairman shall ensure that the views of shareholders are communicated to the Board as a whole. It is the responsibility of the Chairman to discuss governance and strategy with key shareholders.

As per the CBB's Corporate Governance Code the board must ensure that remuneration policies for the approved persons and material risk-takers are consistent with the corporate values and strategy of the bank. The board shall ensure that policy and processes are developed for risk-taking, that are consistent with the risk management strategy. The board is also responsible for ensuring that the systems and controls framework is appropriate for the company's overall business strategy. The board shall continuously assess the systems and controls framework to keep consistent and to ensure that the company's operations, individually and collectively are measured, monitored and controlled by appropriate, effective and prudent risk management systems for maintaining the overall business strategy of the company.

10. How are members of the board compensated? Is their remuneration regulated in any way?

Members of the board are financially compensated by remuneration, and subject to the Constitutional Documents and internal policies of each company, additional compensation in the form of sitting fees, benefits and allowances, disbursements or share of profits.

Remuneration shall not exceed 10% of the company's net profit after deduction of statutory reserves and distributing dividends of no less than 5% of the company's paid up capital to the shareholders. In the years where dividends are not distributed or where the company does not make any profit, payment of dividends shall be subject to special approval by the Minister of Industry and Commerce.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

While not specifically stipulated as a defined form of duty in the law, the board's duty towards the company and its shareholders can be said to be a duty of care and reasonable diligence.

The consequences of breaching such duties include removal from office and personal liability claims against the board member in question.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Indemnities and insurance covers for board members' potential personal liability are permitted in Bahrain. Such covers may be considered typical especially in large companies with high exposure.

13. How (and by whom) are board members typically overseen and evaluated?

Board members are typically overseen and evaluated by the economic owners of the corporate entity.

Board members of joint stock companies, both public and closed, are required to submit a report to the

shareholders' general assembly on the business of the company, its financial standing, major transactions, and related party transactions, on an annual basis. The remuneration of the board members is determined by the shareholders in each financial year.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

The board is required to engage actively with the entity's economic owners at least once annually in the entity's annual general meeting which is required to take place within three months from the end of the entity's financial year for joint stock companies, and within six months for limited liability companies.

The board is considered to owe a duty of care towards the company and all of its shareholders.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

The CCL and CG Code in Bahrain emphasize the requirement for equal treatment of shareholders. According to Article 203 of the CCL, each shareholder, regardless of the number of shares they hold, has the right to attend the general assembly and possesses a number of votes equal to the number of their shares. Any provision or decision that contradicts this principle is considered null and void. This legal framework inherently discourages the implementation of dual-class or multi-class capital structures, which typically involve different classes of shares with varying voting rights.

While dual-class and multi-class structures are not allowed, preference shares are legally recognized and quite common in Bahrain. Preference shares can have different terms, including preferential rights to dividends and restrictions on voting rights. These terms are typically agreed upon between the company and the preference shareholders and can include different levels of preference shares.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

The boards of public joint stock companies are required to publish the company's financial statements, a summary of its annual report, and the full text of the audit

report in a local newspaper no less than fifteen days prior to the date of the annual general assembly meeting.

In addition, public joint stock companies and Bahrain Bourse listed closed joint stock companies are subject to public disclosure requirements put together by the CBB and Bahrain Bourse as follows:

The Bahrain Bourse Listing Rules

These Listing Rules have been approved in Board of Directors Meeting (4/2019) of Bahrain Bourse dated 8 October 2019 and were last updated in November 2024.

The purpose of these Listing Rules is to set out the requirements that must be complied with by all applicants, issuers, their directors, officers, advisers or other persons to whom these Listing Rules are directed. The Listing Rules comprise of both requirements which have to be met before securities may be listed and also continuing obligations that an issuer must comply with after listing.

The principles on which these Listing Rules are based include the following:

- issuers shall have acceptable standards of quality, operations, management experience and expertise;
- investors and their professional advisers shall be kept fully informed by the issuer of all facts and information that might affect their existing or potential interests in the Issuer; in particular, full, accurate and timely disclosure shall be made of any information which may reasonably be expected to have a material effect on the price, value or market activity in the securities of issuers;
- all holders of any Class of Securities will be treated fairly and equitably;
- directors, officers and advisers of issuers will maintain the highest standards of integrity, accountability, corporate governance and responsibility; and
- directors of an issuer shall act in the interests of shareholders as a whole.

The Disclosure Standards by the Bahrain Bourse

Disclosure Standards were issued by Bahrain Monetary Agency (now known as the CBB) pursuant to its circular dated 3 December 2003. Except for the First Chapter, which is superseded by the Offering of Securities Module under Rulebook 6, the Disclosure Standards still apply to listings, public offerings and sales of securities in Bahrain. The Disclosure Standards contain, among other, guidelines for trading by directors and senior management and policy on immediate public disclosure of material information regarding an issuer's affairs, or

about events or conditions in the market that will affect the issuer's securities, relating to the business that would significantly affect the market price or value of any of the issuer's securities, or that would reasonably be expected to have a major influence on any investor's decisions.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Economic owners representing at least 10% of a corporate entity's capital may call for a general assembly meeting to be held.

Economic owners representing at least 5% of the capital may request the board to add items to the agenda of the general assembly meeting.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

Investors have a right of action against the company in the cases where the company's affairs are being managed in a manner that is harmful to the interests of the shareholders in general or a certain shareholder or group of shareholders.

Investors also have a right of action against board members for any conduct that may be harmful to the said investors' legitimate interests, and any clause or agreement that intends to limit or otherwise restrict such right shall be considered null and void in accordance with the CCL.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Amongst the rights that economic ownership of shares confers upon a shareholder is the right to be involved in the management of the company, by way of attending and voting in general assembly meetings and through the exercise of the right to appoint or elect members of the board, depending on the shareholding percentage as detailed in the response to Question 6 above.

Shareholders also have the right to request any information regarding the work of the company and obtain copies of its records and information.

Shareholder activism is more common in limited liability companies and closed joint stock companies than public joint stock companies, given the usually smaller size of the business of limited liability companies and closed joint stock companies.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

Shareholder meetings or general assembly meetings are required to be held at least once annually.

The general assembly of the shareholders must be presented with the audit report and audited financial statements of the company. In addition, the general assembly must be provided with a report of the board of directors on the business of the company in the past financial year, including details of all amounts paid to each member of the board and company's executive management team, in any form or under any title.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

The practice of recommending or influencing voting is not common in Bahrain. However, economic owners are free to seek advice in respect of their interests in the company, but they must at all times avoid conflict-of-interest situations.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

The regulators' role is a supervisory and enforcement role over companies in respect of corporate governance matters.

Suppliers and customers are affected by conflict-of-interest avoidance requirements and the requirement to disclose and seek special approval for related-party transactions.

Debt-holders may have a right of action against the

economic owners and/or board members and management team, if there are grounds for piercing the corporate veil in accordance with Article 18 (bis) of the CCL which include grounds of fraud, abuse of power, failure to adhere to the laws, regulations or constitutional documents, failure to act prudently and reasonably in given circumstances, and failure to observe conflict of interest avoidance requirements.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

The CG Code recognizes the concept of stakeholders, in that it defines "Stakeholders" as Individuals and groups affected by the company's business, such as workers, employees, suppliers, customers, banks, society and government. GC Code further provides that Corporate Governance shall include mechanisms to regulate the various relationships between the Board of Directors, executives, shareholders and stakeholders by establishing special rules and procedures to facilitate decision making as well as follow-up foundations to evaluate and monitor performance and to ensure transparency and credibility, for the purpose of protecting the rights of shareholders and stakeholders and achieving justice, competitiveness and transparency.

Under CG Code, principle 2 provides that the directors and executive management shall have full loyalty to the company. In demonstrating such loyalty each director and executive management member shall be committed to all laws and regulations, represent all shareholders, and only serve the interests of the company, shareholders and other stakeholders, rather than the interest of a specific group only.

As per the CBB's Corporate Governance Code the CBB expects that the Board and its members individually and collectively to act with honesty, integrity and in good faith, with due diligence and care, with a view to the best interest of the licensee and its shareholders and other stakeholders.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

In the general sense, ESG issues are typically given consideration where legally required. ESG consideration is generally encouraged and is rising as a concern to companies in Bahrain as well as a marketing tool. It is a rising trend for entities to sponsor and promote recycling,

tree-planting and beach clean up activities.

Companies in the industrial sector are subject to certain environmental parameters relevant to area of business.

Companies in the certain industries such as the telecommunications services industry are required by law to contribute a percentage of net profits towards corporate social responsibility, in a manner deemed acceptable by the Telecommunications Regulatory Authority. Failure to adhere to such responsibility subjects the company to administrative penalties and fines.

Corporate governance requirements, including social responsibility, gender diversity, accountability, shareholder involvement and transparency, equitable treatment...etc., is advised to be observed by all companies, and apply mandatorily to others.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

The corporate governance observance requirements apply to the companies subject to such requirements by law and not to the investors in the said companies.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

As per the current market we note that there is a booming trend whereby Investors and regulators are considering ESG i.e. environmental, social and governance issues as of critical importance to the core business of the companies and focusing on the importance of sustainable development agenda and green finance. Investors are considering these non-financial factors as part of their evaluation process before deciding on a particular investment opportunity. In this context factors that focus on the environment include climate change, waste management, energy efficiency etc. Under the social pillar factors include as to how the company manage their employee development and labour practices etc. With regards to governance, factor include shareholders rights, board diversity, ensuring gender equality, the compensation structure of the executives and how it is impacting towards the company's

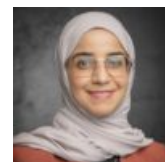
sustainability performance etc. Please note that in line with its commitment to transparency, strong corporate governance, and the pursuit of social and climate-related

objectives, the CBB has released the Environmental, Social, and Governance (ESG) requirements module on the 5th of November 2023.

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