

Bahrain

Chamber of commerce:

Bahrain Chamber of Commerce &
Industry
PO Box 248
Manama
Bahrain
Tel: +973 229555
Fax: +973 224985

Professional body:

Bahrain Bar Society
PO Box 5025
Manama
Bahrain
Tel: +973 720566
Contact: Hassan Radhi



Investment funds in the Kingdom of Bahrain

Zubair Mir
Norton Rose
Bahrain

The Kingdom of Bahrain (Bahrain) has firmly established itself as the leading jurisdiction in the Middle East in which to establish investment funds.

The regulators

Investment funds are established in Bahrain under the joint auspices of the Bahrain Monetary Agency (the BMA) and the Ministry of Commerce (the MOC) (together, the Regulatory Authorities) with the former having primary responsibility for ongoing regulation. The BMA has been increasingly aggressive in establishing Bahrain as the jurisdiction of first choice for all regionally domiciled funds.

The Regulatory Authorities are receptive to innovation with regard to fund structures which can, in theory, vary from limited partnerships, common in jurisdictions such as Bermuda but rare in Bahrain, to structures that comply with Islamic requirements. Recently Bahrain has seen a major overhaul of the Commercial Companies Law as described below.

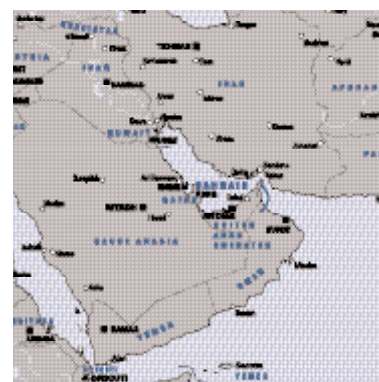
The new laws

The new Commercial Companies Law 2001 (the New Law) and the Implementing Regulations of the Commercial Companies Law 2002 (the New Regulations) have made the regulatory regime in Bahrain more flexible, with the introduction of a number of new corporate structures. Before the New Law and New Regulations the vehicle most generally used for the establishment of investment funds in Bahrain was the exempt joint-stock investment company (the Exempt Company). The Exempt Company has now been abolished and investment funds will now be most likely incorporated as closed joint-stock companies (BSC(c)).

Investment funds are established in Bahrain in two ways:

One approach is for a BSC(c) to be established with a divided share capital consisting of management shares and participating shares. Management shares, typically, are fixed non-redeemable voting shares held by the managers of the fund and with no rights to dividends. The participating shares constitute the actual investments in the fund. These are variable, redeemable non-voting shares with a right to a dividend (if any). Upon winding-up of the company they ordinarily enjoy a preferential status. Participating shares are commonly issued in classes, with each class relating to a particular investment. The main limitation of this type of approach is the requirement that there be a strict ratio of at least one management share for every nine participating shares. Such a restriction does not exist in respect of the units structure described below.

The accepted and conventional approach is for the BSC(c) to issue units pursuant to an instrument of deed poll. Units are issued and redeemed by the BSC(c) and may be divided into sub-funds representing particular investments. Both arrangements have



been repeatedly used for the establishment of umbrella funds, whereby investors have purchased particular classes of participating shares or units that have fed directly into other distinct funds commonly incorporated in offshore jurisdictions such as Guernsey and Bermuda. While the administration of units is generally considered to be easier, the absence, until now, of developed trust legislation in Bahrain suggests that, for the investor, the unit is not as secure as a participating share. The BMA is understood to be working on the introduction of appropriate trust regulations.

Establishment of an investment fund

The establishment and approval of an investment fund consists, essentially, of three elements:

Incorporation and registration of the fund vehicle, the BSC(c)

The BMA and the MOC supervise this process, which involves the kind of standard requirements for company establishment as is common in other jurisdictions. The New Law and New Regulations do not require that the majority of the management share capital of the investment company be Bahraini-owned. The New Law and the New Regulations permit companies with foreign capital to operate in Bahrain. As such, the investment company can be incorporated as wholly foreign owned.

Approval of the BMA under its regulations regarding the general supervision, operation and marketing of collective investment schemes

This approval is required in respect of any fund established in, or marketed from within, Bahrain or, effectively, if any material activity regarding the fund takes place in Bahrain. In practice, the process involves a detailed review of the draft prospectus or information memorandum of the investment fund and the vehicle's memorandum and articles of association.

The approval of the fund by the MOC

Strictly speaking, the MOC, although responsible for the incorporation of the BSC(c), has no specific authority to review and approve the actual fund. However, in practice, it assumes such a function under its general powers emanating from the New Law (previously under Decree Law No 28/1975 Commercial Companies Law), and its approval is an absolute prerequisite to the launch of any investment fund in Bahrain. Under a new system established by the BMA this past year, it now takes primary responsibility for managing the approval by the MOC making the BMA a one-stop shop. The BMA now also manages any listing approvals for the Bahrain Stock Exchange.

Conclusion

In conclusion, Bahrain, in addition to being an increasingly large investor market, represents a well-regulated and disciplined regulatory regime that has maintained an ability to be open minded and flexible. That, together with an aggressive enthusiasm to attract financial services business to the country and accommodate the requirements of investors, makes it a highly attractive location for fund business in the Gulf region.

Banking and capital markets

Recommended firms

Baker & McKenzie

Norton Rose

Al Mahmood & Zu'bi

Hassan Radhi & Associates

Qays H Zu'bi

Trowers & Hamblins

Ahmed Zaki Yamani

Taqi & Mohammed Ahmed

Mergers and acquisitions

Recommended firms

Norton Rose

Trowers & Hamblins

Al Mahmood & Zu'bi

Baker & McKenzie

Hassan Radhi & Associates

Qays H Zu'bi

Ahmed Zaki Yamani

Taqi & Mohammed Ahmed

Project finance

Recommended firms

Norton Rose

Baker & McKenzie

Trowers & Hamblins

Al Mahmood & Zu'bi

Hassan Radhi & Associates

Ahmed Zaki Yamani

According to lawyers outside the firm, Mohammed Ahmed in the Bahrain office of Saudi Arabian firm Ahmed Zaki Yamani is a rising star. He is “coming along well”, especially in dispute resolution, and is “someone to watch”.

The firm was founded by Sheikh Ahmed Zaki Yamani in Jeddah in 1956. The Bahrain office opened a few years later, one of the first foreign firms to set up a presence on the island. Its international clients include Saudi Airlines, Procter & Gamble, the Arab African Bank, Caltex, the Saudi American Bank and the Hanyang Corporation. The firm advises national and international oil and gas companies with concessions for fields in Bahrain, as well as the producers of oil and petrochemical products. It is recommended for both conventional and Islamic financing agreements.

The office is headed by partner Omar El Mardi, with the firm’s other two partners and five associates splitting their time between the firm’s three offices. Three of the partners and three associates can speak English fluently. Managing partner Faisal Ahmed Zaki worked in the project finance departments of international firms White & Case and Shearman & Sterling in New York before founding the Saudi firm.

Key contact partners

Nahar Al Otaibi
Omar El Mardi
Ala’a Yamani

Al Mahmood & Zu’bi

The public reputation of Al Mahmood & Zu’bi as one of Bahrain’s leading local law firms rests largely on partner Hugh Stokes, who is “good for local law enquiries,” “covers everything, is a general all-round lawyer,” and is “very helpful, he does so much” according to his peers.

The firm backs this up with quality work, particularly in respect of its advice on finance work. One of the firm’s stand-out deals was acting as local counsel to lead arrangers HSBC, BNP Paribas, Bank of Tokyo-Mitsubishi and Bank of Bahrain and Kuwait on an innovative \$255 million export credit facility that was used to fund the expansion of the Al Hidd Power & Desalination Station. The deal was the first Islamic facility and export credit agency-backed loan to be structured jointly in the Middle East for a sovereign financing. The other law firms involved were Norton Rose as international counsel to the lenders and Hassan Radhi & Associates as advisors to the Ministry of Finance and National Economy.

More recently, the firm advised on the largest private power project in Saudi Arabia – the financing of Saudi Aramco, the first large-scale independent power project (IPP) in the country. The 1000 MW project, comprising four plants, is hoped to provide a template for much-needed investment. The deal was sponsored by the UK’s International Power and Saudi Oger of Saudi Arabia, who both signed contracts in December 2003 with Saudi Aramco, the national oil company. The project follows a BOOT

(build-operate-own-transfer) model, with the project company, Tihama Power Generation, building, owning and operating the facilities and transferring them to Saudi Aramco 20 years after the expected start of operations in 2006.

Key contact partner

Hugh Stokes

Leading lawyer

Hugh Stokes

Baker & McKenzie

Although it only opened its doors in Bahrain in 1999, Baker & McKenzie already represents national and international clients in the jurisdiction, including Chase, the National Bank of Bahrain, and Gulf International Bank. It is also the only US firm with an office on the island.

The firm’s “primary focus is not mergers and acquisitions” according to partners, although it does do some top-notch corporate work. Rather, it is a banking and finance practice, and one which is often used by French bank BNP Paribas, one of the biggest players in the region.

Partner Ian Siddell and associate Julie Alexander are permanently located in the Manama office, working with lawyers in the Cairo and Riyadh offices on large project finance deals. Siddell is highly recommended, particularly for his understanding of his clients’ business.

In 2003 the firm closed the \$1.55 billion funding of Aluminium Bahrain’s Line 5 expansion project. Baker & McKenzie advised the lenders on all the various tranches – a commercial tranche arranged by a syndicate of Bahraini, Qatari and Japanese banks, a metals facility tranche arranged by Gulf International Bank and Goldman Sachs, an Islamic tranche arranged by several regional banks and HSBC’s Middle East branch, and a tranche backed by various export credit agencies.

Key contact partner

Ian Siddell

Leading lawyer

Ian Siddell

Hassan Radhi & Associates

Name partner Hassan Radhi is the local lawyer most consistently recommended to our researchers and fully deserves his place as a leading lawyer in the country. He “gives sound advice” on both banking and corporate issues and “tends to be first choice for local counsel”.

The firm as a whole is particularly strong on litigation work – although the larger, international firms tend to get most of the work on the large banking and corporate deals, the specialist knowledge required for local law means domestic firms lead the way on litigation. Yet Hassan Radhi did advise the Ministry of Finance and National Economy on the innovative \$255 million export credit deal to fund the

expansion of the Al Hidd Power & Desalination Station a couple of years ago, which was the first national financing in the Middle East to include both an Islamic facility and a export credit agency-backed loan.

Key contact partner

Hassan Radhi

Leading lawyer

Hassan Radhi

Norton Rose

The Norton Rose office in Manama, Bahrain comprises partner Carol Roberts – “certainly a star lawyer,” “one of the best” – and a rotating team of associates. George Gibson joined the office from Milan in March 2004 after Nadim Khan had left the previous September to go to Dubai.

While Norton Rose is one of the leaders in Bahrain for all areas of work, it is in project finance and mergers and acquisitions that the firm really shines. It advised Aluminium Bahrain on its \$1.5 billion financing, which is likely to be the largest deal in the Middle East and Africa for some time. It also advised a syndicate of banks on their bid to provide financing for the Bapco-Bahrain Petroleum power project, which is valued at \$650 million.

Other financing work includes advice to the Bahrain Monetary Agency on the first ever international sukuk issue for \$250 million by the Kingdom of Bahrain, advising BNP Paribas on the ECGD-backed financing of aircraft for Bahrain and advising the Ministry of Finance and National Economy on the Exim-backed financing of an aircraft.

In M&A Norton Rose recently advised Havelock Europa and Sana International on the sale of Havelock AHI to a company established by HSBC Private Equity and on the subsequent reinvestment by Havelock and Sana in the company as minority shareholders. It also advised Scimitar Global Ventures on its acquisition of Corning’s subsidiary, CIV LLC, which holds Corning’s venture capital portfolio, represented Bahrain Telecommunications Company on its purchase of telecom licences in Iraq, Saudi Arabia, Jordan and Oman, and acted for leading Islamic investment bank KFH on the acquisition of 50% of Durrat Khaleej Al Bahrain, the development responsible for the \$1 billion Durrat Al Bahrain project in Southern Bahrain.

Key contact partner

Carol Roberts

Leading lawyer

Carol Roberts

Qays H Zu’bi

Ever since Qays H Zu’bi set up his own office in Bahrain in 2002 his reputation has grown and grown. He is now the regular port of call for two of the biggest international banks

operating on the island, Citibank and Arabbank. Zu’bi was a partner at Al Mahmood & Zu’bi until 1997, when he moved to international law firm White & Case. In 2000 Zu’bi founded White & Case’s office in Manama, until the firm pulled out of the country in October 2002. Although Zu’bi is the sole partner at the firm, he is supported by a talented team of four associates. Ayman Khaleq joined from White & Case in 2002 and Samer Amro joined from Ali Sharif Zu’bi & Sharif Zu’bi in 2003. The firm is also helped by a cooperation agreement it has with Clifford Chance through the UK firm’s Dubai office.

The firm recently acted as Bahraini counsel on a \$300 million syndicated credit facility for a major German bank, advised a US investment bank on setting up a fund of funds compliant with *Sharia* law and acted on an auto receivables securitization in Saudi Arabia.

Previous highlights are advising UBS on the establishment in Bahrain of its Islamic subsidiary, Noriba Bank, acting for the government on the liberalization of the telecoms industry, and acting for Bahrain Airport services on an international joint venture.

Key contact partner

Qays H Zu’bi

Leading lawyer

Qays H Zu’bi

Trowers & Hamblins

Trowers & Hamblins has a wide array of expertise on corporate finance law, but is best known for its mergers and acquisitions work. The firm is “right up there” in M&A, according to one competitor, while another says “that’s their field”.

A good example is the firm’s advice to Gulf Finance House (GFH), the Bahrain-based investment bank, on the £25.4 million (\$41 million) acquisition of offices in Reading, UK from Hermes Asset Management. It was the last in the acquisition programme for GFH’s Gulf Atlantic Real Estate UK fund, which uses *Ijara* leases – specialized Islamic leasing contracts compliant with *Sharia* law. Outside of M&A the firm is known for international, *Sharia*-compliant deals, including securitizations, refinancings and debt restructurings.

The firm, headquartered in the UK, has developed a strong Middle East focus, with lawyers in Bahrain, Oman, Abu Dhabi, Dubai and Cairo. As Bahrain is acknowledged to be the Gulf’s pre-eminent banking centre, the firm bases its regional banking and finance partner, Dominic O’Neil, in the country.

The firm has also been seconding lawyers to the government of Bahrain for more than 40 years and, as such, has substantial experience of the country’s industrial, oil and gas, and infrastructure development. Partner Neale Downes also works in the Manama office, with associate Paul McKendry.

Key contact partner

Dominic O’Neil