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KUWAIT INTERNATIONAL LAW SCHOOL

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أبحاث ودراسات باللغة العربية

أبحاث ودراسات باللغة الإنجليزية

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English Studies & Research

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إعلان مهم

جديد قواعد النشر في مجلة كلية القانون الكويتية العالمية

“تعزيزًا لدور المجلة في نشر وتشجيع البحث العلمي القانوني كويتيًا وخليجيًا وعربيًا وعالميًا، وفي إطار السعي المستمر لتطوير مناهج البحوث القانونية العلمية بما يزيد من القيمة المضافة إليها، وإسهامًا منها في خدمة القطاعات القانونية الأكاديمية والمهنية خاصة والمجتمعية عامة، ومواكبة للسياسات البحثية الجديدة لكلية القانون الكويتية العالمية (الناشر).
فقد أقرت هيئة تحرير المجلة إضافة بنود جديدة إلى قواعد النشر، تتمثَّل في التالي:”

- تدعو "المجلة" الباحثين إلى التركيز في أبحاثهم المقدمة للنشر على دراسة القضايا والإشكاليات القانونية العملية والتطبيقية التي تهم القطاعات الإدارية والاقتصادية والاجتماعية وغيرها، ذات الصلة بشكل مباشر أو غير مباشر، ويشمل ذلك دراسة الحالات المحددة.
- تحث "المجلة" على اعتماد المناهج العلمية التي تسهم في دراسة هذا النوع من القضايا، ومن بينها المنهج التحليلي، والمنهج النقدي، والمنهج المقارن، كما تحثهم على اختيار الآليات والأساليب التي تسهم في وضوح كل من التحليل والمناقشة والتأويل ودقته، ومن بينها قواعد البيانات والإحصائيات والمؤشرات وغيرها.
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- تمنح "المجلة" أولوية النشر للبحوث ذات الطابع التطبيقي والعملي، سواء كانت من داخل الكلية أم من خارجها.
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Rules for Publication in the KILAW's Journal and its Supplements

Kuwait International Law School's journal is a quarterly academic, legal and reviewed journal, and an academic platform that seeks quality, seriousness and excellence. It accepts research papers in all relevant legal issues of interest to the Journal in Arabic, French and English, in any of the following areas:

1- Research and studies
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4- Academic reports on seminars and conferences
5- A presentation of new legal books

In any of the following academic fields, especially

1- Law and its various areas
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3- Public finance, economy and economic legislations
4- Social and natural sciences related to law
5- Comparative studies
6- Arabization in any of the previous areas

In accordance with the following rules

I- General Policies for Publication:

1- The School's administration gives great importance to the role of the academic journal in spreading and encouraging the academic research. It seeks to enhance and deepen its role and mission, and constantly review it in order to raise the quality of published researches according to the best international standards and practices, to enhance its impact and influence in its area.

2- The journal seeks, and after the first five years of its establishment, to be an academic, serious and distinct platform, and that the research published in it constitutes an added value which would place it in the ranks of international academic journals, within the framework of a project of innovation in thought and research methodology.

3- The journal is keen to ensure the quality of the research that it accepts for publication, through the application of publishing rules, referral, editorial review, and proofreading before publishing.

4- The journal ensures that the research submitted for publication is on realistic cases, through following a mechanism that would accommodate the current changes in terms of objectivity, methodology and formality.

5- The journal encourages comparative legal studies.

6- The journal encourages the submitted researches for publication to follow a method of criticism, analysis, and brainstorm through modern methodology and techniques.

7- All submitted research papers are subject to referral by specialists in the area, and holders of an academic degree that is higher than that of the researcher or equivalent to it (if the researcher is Full Professor).

II- Publication Rules:

■ For Academic Research and Studies:

A- General Rules:

1- Research or study should be unpublished or submitted for publication in another journal.

2- Research or study must not be part of PhD or masters theses, or from published books, unless it has a new value or addition, which shall be approved by the Editorial Board in advance.

3- The subject of the research should be current, original and innovative.

4- The focus in the research should be on the topic without theoretical introductions or unnecessary additions or expansions. The researcher should refer to the references that has already dealt with it when necessary.

5- The researcher should use the critical method in his study and discuss in depth the subject of the research and the problems he raises.

6- The Conclusion of the research should include a statement of the results of the research, and the recommendations to issues or problems in question, and the proposals for future studies.

7- The research or study references should be modern and varied, local and international, Arab and foreign whenever possible, and fully documented.

8- The number of words of the research or study should not exceed fifteen thousand (15000) words, and not exceed the number of (30) pages, A4 size. (Font type: Times new Roman , size 14 - the distance between lines per page: 1.15 - margins: the same font type - size 10 - the distance between lines: 1.0), including abstracts (Arabic, English and references).

9- The research should be accompanied by an abstract in Arabic and English, each of which shall consist of a maximum of 200 words (or one page). It shall include the research objectives, methodology, conclusions and recommendations, and keywords, not exceeding five words (not mentioned in the research), expressing the fields covered by the research, for use in indexing.
10- The research or study may not be published in another academic journal after its approval for publication in the journal of the Kuwait International Law School, except after a written permission from the Editorial Board.
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1- Customize a list of references at the end of the research or study include the references mentioned in the text, and placed in a separate page , sources and references should organized starting from Arabic references, then foreign references, without numbering.
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7- Receipt date of the research by the Chief Editor, and precedence of research amendments.
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■ **For Comments on Judicial Provisions:**

The journal publishes commentary on court provisions, believes in the importance of the views of jurisprudence in analyzing the ruling, mainstreaming, and criticizing it in fact of, linking theory and knowledge, and practical application, with no prejudice to the board and judges who ruled the verdict.

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- Conclusion of what researcher gets of conclusions and recommendations.

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- The report should not exceed 5 pages.

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- The book must be outstanding and includes adding new academic interest.
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- should not been already offer for publication in other printing association.
- The reviewer should present adequate summary of contents, with an indication of the most important aspects of excellence and incompetence, no more than (5) pages.
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Practical and Realistic Legal Initiatives to Prosecute the Criminals of the Genocide in Gaza

Prof Dr Badria Abdullah Al Awadi (*)

Western complicity in general, and the United States in particular, has provided political and diplomatic cover for the Israeli occupation state and its gangs for the crimes of genocide, crimes against humanity, and war crimes they are committing against defenseless civilians in Gaza. It has also provided an unprecedented license in history for the perpetrators to escape due punishment and justice.

All of this has had an impact on the status of international law and international humanitarian law, with their presence, influence, and respect declining, as has faith and certainty in them as rational and civilized means of regulating coexistence among nations and peoples. In their place, the laws and regulations of the jungle have taken their place, relying on force and arrogance as an approach to dealing with and imposing the status quo. This is reflected in the Israeli crimes throughout Palestine, and in Gaza in particular, as well as in Lebanon, Syria, Iraq, Iran, and Yemen.

Facts and information have revealed that this criminal approach has found tangible material support from many countries, as the flow of military aid to the occupying state has increased from a number of Western countries including the United States, the United Kingdom, Germany, France, and others. This approach has also found diplomatic support, represented by the paralysis of the Security Council through objection and veto resolutions against any resolutions to halt the aggression and war, as well as intelligence and media support from Western and European institutions.

These facts and contexts were aimed at empowering the occupying state with a false and fabricated international legitimacy, and terrorizing international humanitarian, legal, and diplomatic institutions and figures in order to paralyze their ability to take practical initiatives to confront the crime of genocide against the Palestinian people in Gaza But it failed to do so, and a broad human awakening and trend emerged..

This impulse and broad humanitarian awakening have also been manifested in the launch by many individuals and institutions of practical legal initiatives to confront the war of extermination. This is a realistic approach that can create real and effective pressure if implemented

(*) Emeritus Professor and Former chair of Public International Law Department, Kuwait International Law school, and former Dean of Law College, Kuwait University.

professionally and thoughtfully, with clear objectives, mechanisms, and sincere intentions.

Among these practical legal initiatives is the “Hind Rajab Foundation,” a human rights organization established in Belgium in 2024 in honor of the child Hind Rajab, who was martyred with her family in Gaza in tragic circumstances that confirmed the unprecedented brutal and criminal nature of the gangs of the occupying state.

Since its founding, this organization has successfully prosecuted perpetrators and their accomplices, documented a number of Israeli violations in videos posted on social media, and identified many Israeli soldiers who themselves posted evidence of their crimes.

The organization has filed lawsuits in Germany, Brazil, Greece, and elsewhere against Israeli soldiers who participated in war crimes in Gaza. It also filed a lawsuit with the International Criminal Court in November 2024, requesting arrest warrants for approximately 1,000 Israeli soldiers named in a document it submitted to the court. In January 2025, judicial authorities in Brazil issued an urgent police order to arrest and investigate an Israeli soldier on charges related to his commission of crimes in Gaza, based on a criminal complaint filed by the Hind Rajab Foundation.

Several other practical legal initiatives have emerged in recent times, including the “Gaza Tribunal,” an international human rights initiative to investigate the crimes of the occupation. Organized by a group of academics and human rights defenders from around the world, along with representatives of human rights organizations, the initiative was held in London in November 2024, under the leadership of former UN Special Rapporteur Richard Falk. The Justice and Accountability for Palestine initiative also filed lawsuits against hundreds of German officials for their role in supporting genocide both in Germany and abroad, along with other effective and influential practical initiatives and programs.

These and other practical legal initiatives have exerted real pressure, troubling the criminals and their sponsors. They have also affirmed the awakening of the global human and human rights conscience to achieve justice for the Palestinian people, end the culture of impunity pursued by the Israeli occupation state, and achieve justice for all victims of genocide.

This requires legal professionals, academics, and lawyers to intensify their practical efforts in this regard and activate available mechanisms of international law and international humanitarian law by joining international human rights and legal bodies and organizations, and launching initiatives to prosecute and confront the perpetrators of genocide.

English Abstracts of Arabic Research

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Judicial Fees and Value Jurisdiction in Administrative Cases under Kuwaiti Law: An Analytical Study of Decree-Law No. 94 of 2024(*)

Dr Fahad Marzouq Alenezi
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Kuwait International Law School

Abstract

Using a descriptive and analytical approach, this study examines judicial fees and value jurisdiction in administrative cases, in light of the recent amendments contained in Decree-Law No. 24 of 2024. The Kuwaiti legislator emphasized the effects of the administrative nature of litigation before the Administrative Circuit of the Court of First Instance, limiting its impact to one party to the exclusion of the other. This prompted the legislator to introduce several amendments to Law No. 20 of 1981 Establishing the Administrative Circuit, the most notable of which was Decree-Law No. 94 of 2024, amending certain provisions of the Decree Establishing the Administrative Circuit, introducing estimates for judicial fees and modifying the value jurisdiction of the Appeals and Cassation Circuits.

The study derives its importance from its analysis and scrutiny of the new texts introduced by Decree-Law No. 94 of 2024, amending certain provisions of Decree-Law No. 20 of 1981, regarding the establishment of a department within the Court of First Instance to hear administrative disputes. This study's impact on access to litigation before the Administrative Division and the extent to which individuals without sufficient financial resources are empowered to exercise their constitutional right to litigate before they are empowered. It also examines whether Decree-Law No. 94 of 2024 correctly considered some annulment claims to be inadmissible to appeal before the Court of Cassation, under the pretext that the Court of Cassation should not be preoccupied with minor disputes and should devote itself to other matters, fulfilling its role in unifying legal principles and monitoring the proper application of the law.

Despite the issuance of Decree-Law No. 94 of 2024, the rules of litigation remain a fundamental resource in administrative procedures under Kuwaiti law. Furthermore, the effect of failure to pay court fees is the inadmissibility

(*) Date of research submission for publication: 2 December 2024
& date of acceptance: 9 March 2025.

of the statement of claim and exclusion from the court's agenda; however, this does not entail nullity. Decree-Law No. 94 of 2024 deprived a large segment of employees of the right to appeal to the Court of Cassation. It also deemed disciplinary sanctions issued through salary deductions to have little impact on the employee's life. A ruling issued by a court of first instance is final if it is issued within the legal quorum stipulated in Article (12) of Decree-Law No. 94 of 2024. The exemption of government agencies from court fees stipulated in Article (11) of the decree does not extend to appeals filed by employees of those agencies, given the absence of a specific provision in the Kuwaiti Civil Service Decree regarding this exemption.

The study recommended the need to introduce a special law regulating administrative procedures before the administrative judiciary, taking into account the economic situation of litigants, and ensuring that the assessment of fees does not conflict with the right to litigate.

Keywords: court fees, legal quorum, final disciplinary rulings, administrative procedures, administrative judiciary.

Legal Issues Facing Public-Private Partnership Projects in Kuwaiti Legislation: A Critical Analytical Study(*)

Dr Mona Talaq Al Hajri
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College of Law, Kuwait University

Abstract

The Kuwaiti public authorities decided to create a favorable climate for investors, focusing particularly on public-private partnerships. To this end, the Kuwaiti Parliament adopted Law No. 7 of 2008, which included a general regulation for Build-Operate-Transfer (BOT) contracts. The legislator later adopted Law No. 116 of 2014, which is based on partnerships and addresses, in greater detail, the forms of cooperation between the public and private sectors. To this end, a Public Authority for Partnerships and a Higher Committee were established, with very broad amendments. From the implementation of the partnership contract (inviting bids, negotiations, contract completion, duration, financing, etc.), however, despite the issuance of the law regulating private sector participation in Kuwait more than thirteen years ago, implementation remains extremely limited. Since its issuance, only a very small number of applications have been implemented.

This study identified the reasons that led to the private sector's reluctance to participate, and the problems raised by the legal regulation of the partnership law in practical application. The study concluded with a set of recommendations and solutions to activate the role of partnership and stimulate an appropriate investment climate for private sector participation in public projects.

Keywords: Public-Private Partnership, Administrative Contracts, Audit Bureau, Partnership Contracts, Legal Oversight, Project Concept, Fatwa and Legislation Department.

(*) Date of research submission for publication: 28 April 2024
& date of acceptance: 26 November 2024.

The Artificial Womb (Artificial Womb) and Its Medical Uses Sharia Rulings and Legal Frameworks: A Fundamental Study(*)

Dr Khaled Jassim Al Houli
Associate Professor, Department of Comparative Jurisprudence and Sharia Policy
College of Sharia and Islamic Studies, Kuwait University

Abstract

The main idea of this research is to clarify the Sharia rulings on the artificial womb and its medical uses. It also establishes legal frameworks for this modern technology. The importance of this research lies in the fact that the artificial womb is a modern medical industry; it requires a Sharia examination of all its details and a legal framework that prevents the tyranny of human beings. The research problem, which this study attempts to answer, is the ruling on the artificial womb in terms of its origin, given its contents. It then examines the rulings on the uses of this modern technology, the conditions for such use, and the permissibility of its use. It also outlines the legal frameworks that should govern the artificial womb.

The research aims to clarify the reality of the artificial womb and the ruling on its use. This is achieved by examining the legal evidence and jurisprudential rulings, without neglecting the views of earlier jurists. This is to issue a ruling that combines the authenticity of adherence to Islamic law and jurisprudence with a contemporary understanding of reality, thus clarifying what needs to be clarified. Furthermore, this technology may lead to undesirable consequences, so we need to establish legal frameworks that achieve the intended purpose and prevent corruption.

The research methodology adopted in this study is a combination of description, induction, and analysis. The descriptive approach was used to clarify the reality of the artificial womb, while the inductive approach was used to investigate the legal texts and jurisprudential opinions relevant to the subject of the study. The analytical approach was used by analyzing these legal texts and jurisprudential opinions, comparing them with reality, and then attempting to arrive at a jurisprudential opinion based on a legal text related to the

(*) Date of research submission for publication: 11 January 2025
& date of acceptance: 10 February 2025.

subject of the study. One of the study’s most notable findings is that artificial wombs are a modern technology whose use is not prohibited by Sharia law. Furthermore, artificial wombs may be used as a substitute for the mother’s womb if the mother’s womb is unable to support the embryo due to illness or defect.

Keywords: artificial womb, use, medicine, jurisprudence, and law.

Distorting Digital Fatwas Using Deepfake Technology: A Comparative Jurisprudential Study with Kuwaiti Laws(*)

Dr Wassan Al Dubais Al Rashidi
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College of Sharia and Islamic Studies, Kuwait University

Abstract

This study addresses the crime of distorting digital fatwas using deepfake technology. Deepfake technology is a modern technology that relies on artificial intelligence to falsify audio or video clips falsely attributed to religious scholars. This crime aims to distort religious discourse, incite discord, and mislead society. The study aims to clarify the Sharia ruling on this crime and analyze the legal frameworks for combating it in the State of Kuwait, focusing on the Anti-Cybercrime Law No. 63 of 2015 and the Communications and Information Technology Regulatory Law No. 37 of 2014.

The first section of the study addresses the concept of digital fatwas, their rulings, and their Sharia controls. The second section analyzes the concept of distorting fatwas using deepfake technology, explaining how this technology works and its various forms of content falsification. The third section addresses the Sharia ruling on this crime. The study also addresses the appropriate Sharia penalties for this crime. Additionally, the research reviews the legal frameworks for criminalizing these acts under Kuwaiti law, analyzes the material and moral elements of this crime, and classifies it as one of the emerging cybercrimes.

The study adopts descriptive and analytical approaches. It reviewed the legal texts that address lying and distortion and discussed the laws criminalizing this act within the framework of Kuwaiti legislation. The material and moral elements of the crime were analyzed, while clarifying the legal classification of this crime as a newly emerging cybercrime. Furthermore, the study relied on the deductive approach to extract legal rulings from general principles and relevant legal texts and applied them to the emerging issue of the use of deepfake technology to distort fatwas.

The study concluded that distorting fatwas using deepfake technology is

(*) Date of research submission for publication: 15 November 2024
& date of acceptance: 22 December 2024.

a major sin in Islamic law, as it involves lying about God and His Messenger and distorting facts. It is also legally classified as a digital forgery crime and a crime that offends societal values. The study recommended the development of precise technical legislation that keeps pace with the development of artificial intelligence, tightening oversight of digital religious content, and enhancing cooperation between legal, religious, and technical authorities to combat this phenomenon.

Keywords: deepfake, digital fatwas, distortion, cybercrimes, and Kuwaiti law.

Shari’a Supervisory Governance for Takaful Insurance Companies in Kuwaiti Law No. 125 of 2019: A Comparative Analytical Study(*)

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Abstract

Considering the development of regulations related to Sharia governance and its need for analytical and comparative studies, this research examines the Sharia governance regulations of Takaful insurance companies in Kuwait. The research employs the inductive, analytical, and comparative methodologies. The research covers three main topics: the first defines the concept of Sharia governance along with its principles and foundations, the second elucidates the concept of Takaful insurance, its legitimacy, and principles, and the third conducts a study of the Sharia governance regulations for Takaful insurance companies, comparing them with the regulations issued by the regulatory authorities in Kuwait.

The research concludes that the Sharia governance system for Takaful insurance companies in Kuwait necessitates the formation of a supreme body for Sharia oversight under the Insurance Regulation Unit. It also emphasizes the appointment of specialized entities for Sharia oversight in Takaful insurance companies and the establishment of an internal Sharia auditing mechanism. The research recommends the coordination between regulatory authorities in Kuwait upon issuing regulations, especially those related to Sharia governance. This study stresses the necessity of completing the elements of the Sharia governance system by having all the Sharia functions: Sharia oversight body, internal Sharia auditing, and external Sharia auditing.

Keywords: Sharia governance, Takaful insurance, Sharia inspection and auditing, and State of Kuwait.

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& date of acceptance: 4 September 2024.

An Analytical Study of the Principles and Procedural Rules of Pardon Considering the Issuance of Amiri Decrees No. 202 and 203 of 2021 in the State of Kuwait in Comparison with the French Criminal Code(*)

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Abstract

This research deals with the procedure of pardoning the penalty as a traditional political system owned by the head of state, a system known in most constitutions and modern systems, by reviewing the historical and legal philosophical basis for pardoning the penalty, and its types in the French and Kuwaiti laws, recognizing the beginning of the emergence of the special pardon and its development, and reviewing the nature of the penalty and the right of the state to punish - since the focus of this study lies in its punitive basis that is carried out by the convicted person and thus the pardon thereof.

The research outlines the conditions for the application of a pardon, its criminal and civil effects, and methods of revocation, and clarifies the constitutional and legal basis for pardoning punishment in the State of Kuwait in particular, by reviewing the pardon decrees in the history of the State of Kuwait, and concludes by shedding light on the two Amiri pardon decrees, the first No. 202 related to the Kuwaiti National Assembly storming case and the second No. 203 related to the Abdali cell issued in 2021 and their legal and procedural compliance with the foundations and procedural rules of the general theory of pardon of punishment.

This research provided a critical analytical and descriptive reading of the pardon procedure in Kuwaiti penal legislation in comparison to the principles of this procedure in the French Penal Code, and concluded that the two pardon decrees did not fulfill some of the conditions and procedural principles recognized in penal laws in granting pardon of punishment, but was granted by the high desire of the Emir of the country in an attempt to achieve national reconciliation with the people of Kuwait.

(*) Date of research submission for publication: 14 May 2024
& date of acceptance: 20 November 2024.

The research concluded with a number of recommendations, including that the State Constitution grants the President of the State the right to grant a special pardon, but it is advisable to clearly and specifically define the offenses that are excluded from the pardon decision, and to consider the interest of society when making the decision to pardon a sentence, by looking at the crime committed and the person accused in it, who may be reformed and morally upright. It is advisable to clearly and specifically define the offenses that are excluded from the pardon decision, and to consider the interest of society when making the decision to pardon the sentence, by looking at the crime committed and the person accused thereof, who may be reformed and virtuous, which makes it likely that he does not need to remain in prison, and that starting to serve the sentence is a prerequisite to be taken into account before issuing a pardon.

Keywords: historical basis for pardon, French Penal Code, constitutional basis, collective and individual pardons, and Amiri amnesty decrees in Kuwait 2021.

The Extent to Which the Crime of By-Elections Is Considered Crime Breaching Honor and Trust In Kuwaiti Law and Judiciary(*)

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Abstract

This research presents, through a descriptive and analytical approach, the crime of by-elections as one of the crimes imposed by the social nature of Kuwaiti society. By-elections have appeared since the beginning of the democratic experiment with the 1962 Constitution. Considering it an uncivilized phenomenon carried out by a group or sect of the Kuwaiti society, the Kuwaiti legislator has criminalized these by-elections by issuing Law No. 9 of 1998 AD by adding a new clause to Article (45) of Law No. 35 of 1962 AD regarding the election of members of the National Assembly (repealed), due to its seriousness and its violation of the integrity of the electoral process and equal opportunities.

The Kuwaiti legislator was keen in the High Commission Law No. 120 of 2023 AD (temporarily suspended) by Decree-Law No. 4 of 2024 AD regarding the election of members of the National Assembly to criminalize by-elections. The research problem is raised around answering a primary question: the extent to which the crime of by-elections is considered a crime of honor and trustworthiness. This is done by presenting the position of the Kuwaiti legislator in the High Commission Law No. 120 of 2023 (temporarily suspended) regarding the election of members of the National Assembly, and Decree-Law No. 4 of 2024, which conducted the National Assembly elections on April 4, 2024. We also clarify the jurisprudential and judicial approach to this crime and the extent to which it is linked to crimes of honor and trustworthiness.

The research primarily aims to clarify the nature of the crime of by-elections, whether it is a crime of honor and trustworthiness, and the limits of its consideration as an impediment to election. The research is divided into two

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main sections: The first section addresses the nature of the by-election crime. The second section examines the relationship between crimes of honor and integrity and the by-election crime, as well as the Kuwaiti Court of Cassation's recent position on the legal description of this crime. The research concludes with a set of findings, the most important of which is the Court of Cassation's expansion of its consideration of the by-election crime as a crime of honor and integrity, not according to its traditional concept, but rather according to a newly developed concept of "political honor and integrity."

The main recommendation of the research is the necessity for Kuwaiti legislators to intervene and define crimes that violate honor and integrity in the election law, given the serious implications for political rights, including the right to vote or run for office.

Keywords: election crimes, high Commission, by-election crime, crimes of honor and integrity.

Metaverse Technology from Shari'a and Law Perspective: A Comparative Study According to Kuwaiti Law(*)

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Abstract

The study aimed to clarify the jurisprudential rulings and Shari'a objectives of Metaverse technology, in addition to reviewing the legal legislation regulating this technology and the shortcomings, if any, according to Kuwaiti law, in addition to mentioning the legal and jurisprudential treatments and perceptions for the development of Metaverse. The study also included the main concepts of Metaverse technology by reviewing the theoretical approach to this technology, whether in terms of the historical development of Metaverse or definitions and sections.

The study concluded that the jurisprudential characterization of Metaverse digital currencies is that they are virtual assets and not assets, and that the digital assets in Metaverse are virtual money, which is subject to the sale, lease, mortgage, endowment and other contracts, and the study concluded that the legal structure in the State of Kuwait is insufficient to regulate Metaverse activity, and there is an urgent need to legislate a special and detailed law for Metaverse technology.

Keywords: Metaverse, Virtual reality, Augmented reality Islamic financial transactions and Islamic economics.

(*) Date of research submission for publication: 8 September 2024
& date of acceptance: 18 November 2024

The Role of the National Judiciary in Resolving the Battle of the Forms Under the CISG(*)

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Abstract

Standard terms are widely used in making international commercial contracts. The seller's standard terms often conflict with the buyer's standard terms in some aspects, as each of them – when pre-drawing its own set of standard terms – is keen to consider its own interests only. This paper deals with this problem of battle of the forms, i.e. the conflict between the seller's standard terms and the buyer's standard terms under the 1980 United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention).

In particular, this paper aims to answer the following questions: Is the contract concluded in case of such conflict? If so, what terms would become part of its content? Are they the seller's terms? Or the buyer's terms? Or something else?

Because the Vienna Convention did not contain an explicit provision in this regard, the case law dealing with this issue was divided. This paper discusses the judicial rulings issued in different countries to resolve the conflict between the seller's and buyer's standard terms under the Vienna Convention, whether those that adopted the Last Shot Theory, or those that applied the Knock Out Theory, or those that referred to these two theories together.

The paper adopts the descriptive analytical approach; it tracks the relevant judicial rulings, and analyzes them critically, in order to identify the theory that is more consistent with the provisions of the Vienna Convention and its goal to achieve uniformity in application. The paper concludes that the application of the last shot theory is consistent with the provisions of the Vienna Convention, and materializes its goal of achieving uniformity in application, more than the knock out theory. Accordingly, the paper recommends that national courts should adopt the last shot theory in order to resolve any difference between the standard terms of both seller and buyer.

Keywords: standard terms, battle of the forms, Vienna Convention, and uniformity.

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& date of acceptance: 15 August 2024

Towards a Legal Regulation of the Salam Contract in Qatari Law: A Comparative Analytical Study in Light of the Provisions of Islamic Jurisprudence and Comparative Law(*)

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Abstract

Given that the Qatari legislature does not regulate the Salam contract similarly to the Kuwaiti legislature, this research highlights the importance of the Qatari legislature regulating this contract by examining the provisions related to the Salam contract, as it is a financing tool for owners of agricultural and livestock farms, and owners of various industries. This study necessitated examining Salam from various aspects, clarifying the meaning of the Salam contract, the wisdom behind its legitimacy, and the difference between it and similar but different contracts, such as the sale of non-existent goods and the Istisna' contract. The research topic also addresses the specific conditions that must be met for this contract to be legitimate. These conditions include those related to the contracting parties - the salam contract and the salam contract recipient - those related to the contract subject - the salam capital and the salam contract - and those related to the formula - the offer and acceptance.

The research topic also covers the practical aspect of the salam contract, explaining the areas in which bank financing is achieved through the salam contract, such as agriculture, livestock, industry, and other sectors.

There is no doubt that financing these projects, whether from Islamic banks or individual financiers, results in a comprehensive renaissance in all economic sectors. It also achieves self-sufficiency for the state, eliminating its need for imported goods, which can sometimes be used as a means of extortion by importing countries.

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& date of acceptance: 15 August 2024

Through the salam contract, the state's ability to confront any external aggression, economic blockade, or other means is also achieved. Through it, the state can stand on its own two feet, relying on itself and its people, without being deprived of others or subject to the ambitions of spiteful individuals. We concluded that a legitimate attachment contract contravenes usurious transactions, and we recommended that the Qatari legislator establish a legal framework for the Salam contract.

Keywords: Salam contract, food security, economic renaissance, Qatari law, and bank financing.

Legal Protection Provided for Notified Persons and Witnesses in Corruption Cases and their Procedural Aspects: A comparative Study between Palestinian, Kuwaiti, and Tunisian Legislations(*)

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Abstract

This study addressed the issue of protecting whistleblowers and witnesses in corruption cases and its procedural aspects, as it is considered one of the important means that contribute to combating corruption crimes. The study aimed to shed light on the definition of the protection provided to whistleblowers and witnesses, its forms and procedural aspects related to requesting it, and the resulting effects. To achieve the study's objectives, the researcher relied on the analytical approach and the comparative approach in order to examine the experiences of some countries that have regulated the issue of protection and the procedures for obtaining it, with the aim of benefiting from their experiences in developing the legal framework governing protection in Palestinian legislation. The texts pertaining to the request for protection and its procedures were compared with Kuwaiti and Tunisian legislations.

The study concluded with a set of findings, including that protection and the ease of obtaining it constitute a significant factor in the success of criminal policy in combating corruption. Extending the timeframe for processing a protection request and implementing its procedures may result in harm to the person covered by it, putting their lives at risk. Providing protection should begin from the moment the request is submitted or information related to corruption crimes is provided ensures success in protecting the persons covered by it from any danger.

Grievances and appeals against a decision to reject a protection request also constitute important safeguards that help informants and witnesses seek redress from the competent authorities.

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As for the most important recommendations, the researcher recommended that the Palestinian legislator specify time periods for deciding on a protection request and appealing a decision to reject it, and stipulate a ban on civil and disciplinary prosecution of informants and witnesses. He also urged the Kuwaiti legislator to stipulate the right to appeal a decision to reject it.

Keywords: protection, corruption crimes, witnesses, whistleblowers, and request for protection.

Judicial Delegation between Enforcement Circuits According to Palestinian Enforcement Law(*)

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Abstract

The researcher approached the subject of ‘Judicial Delegation between Enforcement Circuits According to Palestinian Enforcement Law’ using a descriptive-analytical and deductive approach, with the goal of clarifying the meaning of judicial delegation, its importance, distinguishing features from other similar legal systems, and identifying cases of delegation, their conditions, procedures, and legal effects.

The researcher concluded various findings, the most notable of which are: Judicial delegation is an authorization issued by the competent executing circuit judge (the delegating judge) to the judge of the receiving executing circuit (the delegated judge) to carry out an enforcement measure at an enforcement site within the delegated circuit’s territorial jurisdiction rather than the delegating one.

One of the researcher’s most important recommendations is to encourage Palestinian legislators to create a legal system specifically for judicial delegation between enforcement circuits, including its definition, cases, conditions, procedures, and legal consequences, in order to meet procedural justice requirements and facilitate enforcement procedures.

Keywords: judicial delegation, judicial cooperation, enforcement circuits, and palestinian Law.

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Guarantees for Stakeholders in Single Owner Limited Liability Companies in Bahraini Legislation(*)

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Abstract

The legal thought governing commercial companies has undergone a radical transformation: it has shifted from a traditional, contract-based paradigm to viewing the company as an organizational vehicle for investment. In this context, the study addresses the issues arising from Decree-Law No. (28) of 2020 amending the Commercial Companies Law in the Kingdom of Bahrain, and Decision No. (64) of 2021 amending certain provisions of its Executive Regulations. By permitting the incorporation of a single-member limited liability company, the Bahraini legislator has not merely updated the law; it has effected a rupture with the entrenched traditional concept of the company as founded on a contract between two or more persons and embodying the intention to participate as an essential element.

Among the problems examined is the impact of the legislator's abolition of the minimum capital requirement for limited liability companies, and how that affects the rights and obligations of stakeholders dealing with the company. Capital has long served as the principal general guarantee and the minimum level of solvency that reassures creditors and third parties. With this requirement removed - and coupled with the principle of limited liability that shields the personal estate of the founder of a single-member limited liability company - the traditional guarantees available to stakeholders have sharply diminished. This creates an imbalance in the distribution of risk: the sole owner enjoys the full benefits of limited liability, while creditors bear heightened credit risk, raising legitimate concerns about the actual solvency of these entities and their ability to meet their obligations.

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& accepted for publication on: 22 December 2024.

Starting from these issues, the study seeks to achieve a set of integrated objectives: first, to conduct a critical legal analysis of the legal position of the founder of a single-member limited liability company and to delineate the boundaries of separation between the founder's personal estate and that of the company; second, to assess the adverse effects of the absence of a minimum capital requirement on the trade-credit system and on investor confidence in this type of company; and third, to examine the adequacy of existing legal mechanisms for protecting stakeholders dealing with the company. Is mere disclosure that the company is owned by a single individual sufficient, in and of itself, to protect third parties, or does reality require additional safeguards?

The study seeks to answer a central question: does the current legal framework strike a fair balance between encouraging investment and facilitating the conduct of business, on the one hand, and ensuring adequate protection of creditors' rights, on the other? To that end, it explores the effectiveness of modern governance mechanisms - particularly disclosure and transparency standards - as alternative tools that may help build confidence and reduce risk, thereby supporting a sustainable credit environment without sacrificing the flexibility and utility of this legal form. The study concludes that there is an urgent need for legislative intervention to recalibrate this relationship, whether by introducing complementary safeguards or by imposing additional obligations on the sole owner, in order to ensure the stability of commercial transactions and strengthen confidence in this type of company.

Keywords: Limited Liability Company, Founding Owner, Separate Patrimony, General Guarantee, Principles of disclosure and transparency.

1. Introduction

Commercial companies emerged as a necessity to meet the human need for cooperation and evolved with economic progress to become fundamental social entities that drive global economic activity. Their role has transcended the economic framework to influence the public policies of many countries. With the development of the concept of trade and the complexity of economic projects, the legal form of the company emerged as an ideal way to achieve economic goals, due to the flexibility of this form and its ability to keep pace with complex commercial developments.

Since the individual merchant cannot face the challenges of huge projects alone, the need arose to pool resources and form larger entities capable of achieving the desired goals. In this context, limited liability companies have become the best choice for entrepreneurs who wish to control their companies and preserve their personal assets. Limited liability companies represent the ideal solution for those who wish to establish their own businesses, as they combine ease of management with limited individual liability(1).

The establishment of a single-person company was not a new concept in Bahraini legislation. It was previously approved by the Commercial Companies Law No. 21 of 2001(2), to which an entire chapter is devoted and regulated by a set of legal articles. However, with the amendment of Companies Law No. 28 of 2020(3), this chapter was repealed and limited to amending Article (1) and Article (261), to allow the establishment of a limited liability company by a single person.

This study highlights the contradiction created by the Bahraini legislator in the Companies Law by allowing the establishment of a limited liability company by a single person, thus contravening the traditional concept of a company, which is based on the plurality of partners and the intention to

(1) Refer to Aziz Al-Akili, The Mediator in Commercial Companies: A Jurisprudential and Judicial Comparative Study in General and Private Provisions, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2022, p. 9 et seq.; Mahmoud Al-Kilani, The Commercial and Banking Encyclopedia, Volume Five, Commercial Companies: A Comparative Study, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p.13.

(2) Decree Law No. 21 of 2001, Annex to the Official Gazette, Issue No. 2482, issued on June 20, 2001.

(3) Decree Law No. 28 of 2020, Official Gazette, Issue No. 3419, issued on October 1, 2020.

participate. How can one conceive the existence of an intention to participate in a company consisting of one person?

The plurality of partners is the basis of the existence of the company to achieve positive cooperation and the pursuit of a common goal. Undoubtedly, allowing the establishment of a limited liability company by a single person empties the concept of participation of its content and makes it a mere formality, as the essence of the company, which is based on sharing profits and losses between more than one partner, disappears.

This study also sheds light on understanding the nature of a single-owner limited liability company from a legal perspective, with a focus on clarifying the legal status of this owner. In addition, the study seeks to analyze the financial liability of these companies and their impact on the protection of the rights of external parties, and how this model affects the concept of "unity of financial liability." The study also aims to assess the effectiveness of traditional safeguards used to protect stakeholders dealing with the company, and to evaluate the effectiveness of contractual safeguards and governance principles in protecting other parties dealing with the company.

This study sheds light on a radical shift in the concept of establishing companies in the Kingdom of Bahrain, where the legislator has abandoned the idea of a contract as the basis for founding a company, moving towards a different approach. This change is clearly evident in Article 1 of the Companies Law, which permits the establishment of a company by a single person, as well as in Article 261, which permits the ownership of a limited liability company by a single individual.

This new approach raises questions about its consistency with the traditional principles of establishing companies, especially in light of the text of Article (453) of the Bahraini Civil Code, which defines a company as a contract between two or more individuals.

Thus, the Bahraini legislator has adopted two conflicting approaches, one that recognizes the permissibility of establishing a company by a single individual, and the other that emphasizes the contractual nature of the company, which raises confusion and threatens the established principle of the contractual relationship.

The Bahraini legislator's adoption of this company model has created complex legal problems, as adopting this model leads to a decline in the confidence of creditors and investors in limited liability companies, because it raises concerns about the creditworthiness of the company, due to the separation of the financial liability of the sole partner from the financial liability of the company, in addition to limiting his liability to the invested capital only.

These concerns deepened after the abolition of the minimum capital for limited liability companies, which deprived them of the legal basis for the capital control mechanism, made them less attractive to those dealing with them, and increased the risks associated with dealing with this type of company.

These problems raise the necessity of in-depth analysis of the legal status of the partner in a single-owner limited liability company, and studying its impact on the weakness of the company's financial credit toward stakeholders dealing with the company. This study also focuses on analyzing the traditional guarantees stated by the law to protect the interests of those who do not deal with the company, with emphasis on evaluating the effectiveness of these guarantees to achieve the desired protection. This leads to a set of questions:

1. tablishment of a single-member limited liability company (LLC)? In other words, how does this type of company affect the rights and obligations of stakeholders dealing with the company?

2. What are the legal implications of allowing the establishment of a single-member LLC without a minimum capital requirement, and how does this affect stakeholders?

3. Does the disclosure of the legal nature of single-member LLCs sufficient to guarantee the rights of those dealing with them? Or is there a need for additional safeguards to protect their rights?

4. How effective are the current safeguards to protect the rights and interests of parties dealing with a single-member LLC? Are these safeguards sufficient to provide them with the necessary protection?

5. How effective is the standard of disclosure and transparency in regulating the relationship between stakeholders and a single-member LLC? How does disclosure and transparency contribute to protecting the rights of stakeholders?

2. The Legal Status of a Partner in Single-Owner Limited Liability Companies

Bahraini legislation, in its regulation of companies, is based on the traditional theory that a company is a contract between two or more individuals. This principle is clearly embodied in Article (1)(4) of the Companies Law and Article (453)(5) of the Civil Code.

However, the recent amendments to the Companies Law(6) have brought a fundamental shift in this regard, as they have allowed the establishment of limited liability companies by a single individual, which contradicts the traditional concept of a company as a multi-party contract.

This has created a number of questions about the compatibility of this new model with the traditional principles of companies, which requires a careful study of the legal status of the partner according to the company's management mechanism and the limits of the partner's liability in limited liability companies.

1.1. The Legal Status of the Partner According to the Company's Management Mechanism

To determine the nature of the legal status of the sole partner in a limited liability company, it is necessary to analyze the management structure adopted in the company. Does the company resort to a self-management system, where the founding partner assumes the management tasks himself, or is the company managed through the delegation of a foreign manager?(7)

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(4) Article (1) of the Bahraini Companies Law stipulates that a company is "a contract whereby two or more persons undertake to contribute each to an economic project aimed at profit by providing a share of money or work to share what may arise from this project of profit or loss...".

(5) Article (453) of the Civil Code stipulates that a company is "a contract whereby two or more persons undertake to contribute each to a financial project, by providing a share of money or work, to share what may arise from this project of profit or loss."

(6) Decree Law No. 28 of 2020 amending some provisions of the Commercial Companies Law promulgated by Decree Law No. 21 of 2001, Official Gazette No.3491.

(7) See Amir Mohamed Mahmoud Taha, "The Legal Status of the Partner in a Single-Person Company "A Comparative Study", International Journal of Jurisprudence, Judiciary and Legislation, Vol. 4, No. 2, 2023, p.446; Ikhlas Hamid Hamza, "Single-Person Limited Liability Company (A Comparative Study between French, Egyptian and Iraqi Legislation)",

2.1.1. The Legal Status of the Partner as Manager

When the Bahraini legislator permits a single person to establish a limited liability company, legal logic requires that this person manage it himself. The founding partner, by virtue of being the sole owner, is more keen to achieve the company's goals and protect it from risks.

Therefore, assigning the management of the company to another person may expose it to risks arising from the errors or negligence of this person, which may result in personal liability for the founding partner. It can be said that when the founding partner assumes the management of the company, he has broad powers that enable him to control the company's path according to his own vision, and this gives the company great flexibility in making decisions, which contributes to achieving its goals effectively.

The founding partner can acquire these powers either through the Articles of Association(8) or through a subsequent decision. The importance of the subsequent decision lies in the fact that it gives the founding partner greater flexibility in modifying the management structure, as he can at any time appoint a non-partner manager to manage the company on his behalf and does not have to amend the Articles of Association to exercise management functions(9).

Given the novel nature of a limited liability company established by a single person, the partner has become the authority to issue a decision appointing himself as manager of the company. This requires a precise definition of his powers and responsibilities, in order to avoid any exploitation of these powers at the expense of the interests of the company or others. It also aims to avoid exposing the company's decisions to cancellation, either by the manager himself or by other persons who rely on the invalidity of the appointment decision(10).

Journal of the College of Basic Education for Educational and Human Sciences, University of Babylon, 2017, p.1003; Firas Abdul Salam Mohammad Abu Al-Haija, The Legal Status of the Partner in a One-Person Company in Jordanian Law, Master's Thesis, Al al-Bayt University, 2011, p.60.

(8) The term "company establishment contract" was replaced by the term "company establishment document" by Decree Law No. 20 of 2021.

(9) Amir Mohamed Mahmoud Taha, ibid, p.446.

(10) Raed Ahmed Khalil, "The Single-Person Limited Liability Company: A Study in the Iraqi

Upon reviewing the texts of the Bahraini Companies Law, it becomes clear that there are no specific provisions regarding the management of a limited liability company (LLC) in the case of its establishment by a single person. This effectively means that the general rules for managing an LLC apply to the company even if it is founded by one person. The legislator has permitted the appointment of one or more external managers to manage it(11).

2.1.2. The legal status of the partner when an external manager is appointed.

This section of the study addresses the legal status of a partner when the company is managed by an external director. As previously mentioned, Bahraini law allows the founding partner to appoint an external director. This might be because the founding partner is a legal entity, lacks the necessary management skills, doesn't have the time to manage the company themselves, or wishes to benefit from the expertise of a specialized manager(12).

In this case, the partner has all the supervisory powers that the Bahraini legislator has granted to the supervisory board, so their role becomes one of oversight of the company(13). These powers include the right to access the company's records and documents, examine its financial status, and provide guidance to the director(14).

Therefore, when appointing an external director for the company, the company's articles of association must specify the powers of the appointed director in accordance with the company's objectives. These powers must be clearly defined by outlining their scope in a manner consistent with the company's goals. This ensures that the founding partner can prevent any overreach of authority by monitoring the director's actions and ensuring their adherence to the conferred powers(15).

Companies Law No. 21 of 1997, as amended", Tikrit University Journal of Legal and Political Sciences, Iraq, Vol. 2, Year 5, No. 91, p.290.

(11) Article (275) of the Bahraini Companies Law.

(12) Laith Nayef Khalaf, Management of the one Person Company in Jordanian Law, Master's Thesis, Yarmouk University, Jordan, 2014, p.17.

(13) Article (282) of the Bahraini Companies Law.

(14) Article (46) of the Bahraini Companies Law.

(15) See Laith Nayef Khalaf, ibid, p.26; Firas Abdul Salam Mohammad Abu Al-Haija, ibid, p.66.

Because the founding owner is the sole partner in the company, they have the right to monitor the progress of the company's business by examining all aspects of its activity and ensuring its smooth operation. This enables the partner to monitor the manager's work and intervene when necessary to correct any deviations. They also have the right to dismiss the manager if they deem it necessary, and they have the right to amend or dismiss the manager's powers and appoint another manager.

The founding owner has the right to make some administrative decisions that are in the interest of the company. Although the appointed manager has broad powers in managing the daily affairs of the company, the founding owner retains the right to make decisions related to the smooth running of the business and management that directly affect the future of the company. These decisions include, but are not limited to, amending the articles of association, mergers, and acquisitions. As for the daily decisions related to the management of the company, such as preparing the budget and accounts, they are within the powers of the manager.

There is no doubt that the founding owner has the absolute right to access all information related to the company, including financial and administrative data. This right includes access to books, records, accounts, and obtaining periodic financial reports. The manager is also obligated to provide the founding owner with data related to the company whenever requested.

The manager should periodically provide the founder of the company with documents that illustrate the company's progress(16).

2.2. The Limits of Partner Liability in Limited Liability Companies

Limited liability companies (LLC), including those founded by a single person, are characterized by the principle of limited liability. This means that the liability of the partner is limited to the value of their share in the company's capital. In other words, the company's creditors cannot claim the partner's personal assets to pay off the company's debts. When examining a single-member LLC, it is essentially an individual project that enjoys the advantage of limited liability. This is achieved by allocating a portion of their assets to

(16) See Thamer Khalif Abdullah, Single Person Company, Dar Al-Jadida, Alexandria, 2016, p.162; Amir Muhammad Mahmoud Taha, ibid, p.448; Firas Abdul Salam Mohammad Abu Al-Haija, ibid, pp.88-89.

this project, and their liability for the company's losses is limited to the value of their investment, providing them with broad legal protection(17).

This is what was confirmed by a ruling of the Court of Cassation in a judgment it issued that as a rule, a limited liability company is solely responsible for its obligations as a separate legal entity with its own legal personality and independent financial liability, distinct from its representatives, partners, and their personal assets.

Neither the founder, partner, capital owner, company manager, member of the board of directors in joint-stock companies, closed joint-stock companies, or limited liability companies, as the case may be, shall be liable with all their personal assets for any damages incurred by the company, partners, shareholders, or third parties, except in specific cases expressly stipulated by the legislator under Article 18 bis of the Commercial Companies Law issued by Decree-Law No. 21 of 2001, as added by Law No. 50 of 2014, amended by Law No. 1 of 2018, and Decree-Law No. 28 of 2020.

Therefore, if one of these cases is proven against the aforementioned persons in their aforementioned capacity, the provisions of tortious liability shall apply to them on the basis of fault, damage, and a causal link between them»(18).

This advantage protects the personal assets of the partner, so those who wish to establish a single-member limited liability company benefit from this feature. To prevent the founding owner from exploiting this advantage negatively in a way that harms the interests of stakeholders dealing with the company, effective legal mechanisms and legislative guarantees must be put in place to protect them(19).

(17) See CCH Tax Law Editors, Guide to Limited Liability Companies, Publisher: CCH, Inc, 2007, p.208; Maxwell Rotheray, how to start a limited liability company beginners guide for making the best use of LLC for your business, ZeroNever, 2022, p.6; Janet Dine, Company Law, Fourth Edition, Palgrave Macmillan, 2001, p.10.

(18) Bahraini Court of Cassation, appeal no.38 of 2023, Commercial Dispute.

(19) See Abdullah bin Mubarak bin Ibrahim, The extent of compatibility of the one-person company with the traditional nature of the company in the Saudi system (a comparative study), Journal of Sharia and Law, Issue Thirty-Five, Part Three, 2020, p.1029; Jamal Al-Sayed Khalifa, Civil Protection of the Rights of Company Creditors, A Comparative Study, Helwan Rights Journal for Legal and Economic Studies, Helwan University, Egypt, Volume 39, Issue 39, July 2018, p.204.

Therefore, Article (18) of the Bahraini Companies Law emphasizes the responsibility of the founding partner in a limited liability company[(20)]. If the partner submits misleading information or forged documents that affect the financial status of the company, or exploits the company for personal purposes, or mixes their funds with the company's funds, their liability exceeds the limits of their contribution and includes their personal assets. This means that the founding partner may lose everything they own to cover the company's debts[(21)].

In addition to the above, the founding partner bears full personal responsibility if they, intentionally or negligently, expose the company to obligations that it cannot fulfill[(22)]. This includes, but is not limited to, burdening the company with debts known in advance that company is unable to pay, or causing the company to fail to pay taxes and government fees. This provision aims to protect the interests of creditors and ensure the payment of the company's debts[(23)].

The founding owner has a duty to comply with the provisions of the law and the company's memorandum of association. They must also manage the company's affairs with wisdom and honesty, and avoid any actions that may harm its interests. In the event of a breach of these duties, they bear personal responsibility for any losses incurred by the company.

Therefore, the Bahraini legislator aims, through the aforementioned provisions, to deter the founding owner from committing any acts that may harm the company or others, by making them liable with their personal assets for any damages resulting from those acts[(24)].

But nevertheless, are these guarantees sufficient to protect stakeholders against the founding owner? Therefore, it is necessary to shed light on the effectiveness of the current guarantees provided by the founding owner in the face of stakeholders in the company.

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(20) Where the founding partner of a single-person limited liability company is held liable for all of their private funds, and this is confirmed by Article (18) repeated of the Bahraini Companies Law.

(21) Jamal Al-Sayed Khalifa, ibid, p.216.

(22) Article (18) bis /A/5 of the Bahraini Companies Law.

(23) Article (18) bis /A/6 of the Bahraini Companies Law.

(24) Article (18) bis /A.

3. Legal guarantees provided by the founding owner of limited liability companies

Due to the limited liability of the founding owner in a limited liability company, which is limited to the value of its share in the capital, the of stakeholders' confidence in the company decreases. Limited liability weakens the guarantees available to anyone dealing with the company to recover their rights in the event of the company's failure. Therefore, it is necessary to assess the adequacy of the guarantees available to them under Bahraini legislation.

3.1. Effectivity of Guarantees in Confronting Stakeholders

The establishment of single-person limited liability companies has created a significant challenge, represented by the weakness of guarantees available to the company's stakeholders. Due to the limited liability of the shareholder and the weak capital of this type of company, which resulted to a state of distrust among others doing business with these companies. As a consequence, this type of company faces difficulty to achieve its goals.

Therefore, it has become necessary to develop new mechanisms to ensure the protection of the rights of others when dealing with a single-owner limited liability company(25). Accordingly, we will divide this part of the study into: First, legal guarantees, and second, the effectiveness of the unity of financial liability as a control to protect stakeholders.

3.1.1. Legal Guarantees

The liability of the founding owner in a limited liability company, as a general rule, is limited to the extent of his contribution to the company's capital. However, the Bahraini legislator has approved some exceptions to allow the expansion of this liability to include the owner's personal assets(26), in the event of a violation of the provisions of the law. This expansion aims to protect the interests of others and guarantee the payment of the company's debts.

Therefore, those violations - which were previously addressed - would

(25) See Khalil Ahmed Taluba, Single-Person Limited Liability Company in Syria, Doctoral Thesis, Islamic University, Lebanon, 2015, p.51; Jamal Sayed Khalifa Muhammad, ibid, p.209.

(26) Article (18) bis of the Companies Law.

transform the owner’s liability from limited to a liability that extends to all of his personal assets. In this part of the study, we will evaluate and the effectivity of some traditional guarantees to protect the interests of others in the face of single-owner limited liability companies.

A. Announcement of the Legal Nature of a Single-Owner Company

The Bahraini legislator has emphasized the necessity of announcing the legal nature of this type of company by including in the company’s name and its status as a limited liability company. Article (263) of the Companies Law states: “A limited liability company may adopt a special name, and its name may be derived from its purposes.

It may include the name of one or more partners, and the phrase (limited liability) must follow the name of the company. All of this must be mentioned in all company contracts, invoices, advertisements, papers, and printed materials. If it is not mentioned, the company’s directors shall be jointly liable with their personal assets to third parties.

As affirmed by the Court of Cassation in a ruling it issued that “According to Article (263) of the Commercial Companies Law issued by Legislative Decree No. 21 of 2001, a limited liability company may adopt a specific name. This name may be derived from its objectives or may include the name of one or more partners.

The company’s name must be followed by the phrase “Limited Liability Company” and must be mentioned in all the company’s contracts, invoices, advertisements, papers, and publications. Failure to do so shall render the company’s directors jointly liable with their personal assets towards third parties. This means that the directors of a limited liability company are jointly liable with their personal assets for obligations arising from contracts entered with third parties if they fail to state in the contract that the company is a limited liability company(27).

Is the announcement of the nature of the company sufficient as a guarantee for those dealing with this type of company? Announcing the nature of the company as a limited liability company provides dealers with basic information that enables them to assess the appropriateness of dealing with it. However, this information alone is not sufficient to fully protect the rights

(27) Bahraini Court of Cassation, appeal no.46 of 2018, Commercial Dispute.

of others. Therefore, it must be accompanied by other legal mechanisms that guarantee the protection of the rights of stakeholders of the company, which enhances the confidence of investors and those doing business with this type of company[(28)].

Despite the fact that the amendment of the Bahraini Companies Law No. 28 of 2020 permitted the establishment of a limited liability company by a single person, it did not oblige the founder to explicitly and clearly indicate this characteristic. We believe that this constitutes a legislative shortcoming, especially since the declaration of the nature of the company is not a new concept in Bahraini legislation. It would have been preferable for the legislator to oblige the founder to indicate that the limited liability company is owned by a single person, due to its importance for others in deciding whether or not to deal with this type of company.

The failure to disclose that a limited liability company is owned by a single person leads to a weakening of commercial trust and undermines its credibility, as doing business with a company owned by one person is different from dealing with a company owned by several people. Providing sufficient information about the company, including the nature of its ownership, enables those dealing with it to properly assess potential risks, contributes to building trust, and enhances commercial transactions. Therefore, failure to disclose the nature of the company is a breach of commercial trust and can lead to dealers refraining from dealing with it in the future[(29)].

Therefore, in order to protect the rights of those dealing with limited liability companies established by a single person, we believe that the Bahraini Companies Law should include a provision obligating these companies to disclose their organizational structure. This would enable clients of the company to better assess the risks associated to doing business with it. Thus, the disclosure would contribute to creating more equitable commercial environment.

(28) Khalil Ahmad Taluba, ibid, p.98.

(29) Rasha Mostafa Abu El-Gheit, The Legal Balance between Limited Liability and Creditors' Guarantees in Single-Person Companies, Journal of Legal and Economic Research, Faculty of Law, Menoufia University, 2021, p.153.

B. The sufficiency of the company’s capital as a legal guarantee.

The principle of the sufficiency of a company’s capital is the basis for achieving the company’s purpose and is the cornerstone of the company’s stability. It represents the basic guarantee that others rely on as a general guarantee to protect their rights and fulfill their debts. By having sufficient capital, the company is able to face expected and unexpected risks, which reduces the likelihood of bankruptcy and ensures the continuity of its business(30).

The Bahraini legislator has previously followed this approach by setting a minimum limit for the capital of a limited liability company. Article 167 of the Executive Regulations of the Companies Law(31) stipulates: “The minimum capital of a limited liability company shall be twenty thousand dinars, and the capital of the company shall be divided into equal value shares, each of which shall not be less than fifty dinars. In all cases, the minimum capital must not be less than twenty thousand dinars.”

The latest amendment to the Executive Regulations of the Bahraini Commercial Companies Law, issued by Resolution No. 64 of 2021, has brought about a significant shift in the requirements for establishing limited liability companies. It abolished the minimum capital requirement, allowing them to be established with any amount of capital.

This change raises questions about its compatibility with the “principle of capital adequacy,” which is considered one of the guarantees for the stability of companies and the protection of those dealing with them. The removal of the minimum capital requirement increases the risks of dealing with these companies, which may discourage investors from financing them and lead to an increase in their borrowing costs.

The cancellation of Article 167 of the Executive Regulations of the Bahraini Commercial Companies Law has weakened the principle of “capital adequacy,” threatening the stability of limited liability companies, especially those established by a single person. Undoubtedly, maintaining the current

(30) Ayad Abd Al-Razzaq Saad Allah, Provisions for Claiming the Remaining Part of the Capital of a Joint Stock Company from Shareholders in Case of Bankruptcy, Faculty of Law, Mansoura University, Volume 71, 2020, p.1251.

(31) Executive Regulations of the Commercial Companies Law, Resolution No.6 of 2002 issued by Decree Law No. 21 of 2001, Annex to the Official Gazette, Issue No. 2530, issued on May 15, 2002.

situation will lead to the emergence of financially weak companies, vulnerable to bankruptcy, and causing damage to the economy.

Therefore, we call upon the Bahraini legislator to reconsider the cancellation of Article 167 and to formulate new controls that positively reflect on the stakeholders dealing with this type of company. This can be achieved by setting a suitable minimum limit for their capital, ensuring the protection of the rights of those dealing with them, and enhancing confidence in this type of company.

3.1.2. The Reality of Financial Liability as a Safeguard for the Protection of Stakeholders

The financial statement of a company represents a comprehensive picture of its financial position, as it reflects all its own assets and debts in liabilities. This picture consists of two sides: a positive side represented by the company's resources of fixed assets such as real estate and machinery, and current assets such as goods and cash, and a negative side that includes all the company's obligations to others, such as outstanding loans. By analyzing these two sides, it is possible to determine the extent of the company's financial strength and its ability to meet its obligations.(32)

The financial liability of a single-member limited liability company (LLC) can be a guarantee for those dealing with it, but this guarantee is limited to the company's capital. Therefore, those dealing with such companies find themselves in dire need of additional guarantees to better protect their interests and secure their rights. This is due to the multiple financial liabilities in this type of company: the liability of the owner and the company.

This separation has raised questions about the extent to which the rights of bona fide third parties dealing with the company are guaranteed. Logically, the company's liability should be the same as the owner's, without any separation, as it is a single, non-plural liability. However, the Bahraini legislator contradicted this logic and decided on limited liability for this type of company, which may affect the rights of those dealing with it(33).

(32) See Abdullah bin Mubarak bin Ibrahim, ibid, p. 1031; Firas Abdul Salam Mohammad Abu Al-Haija, ibid, p. 22; Fatima Zahra El Baz, The Concept of Capital in a Limited Liability Company, Al-Bahith Journal for Legal and Judicial Studies, 2022, p.246.

(33) See Hafez Jaafar Ibrahim, Sole Proprietorship and its Role in the Formation of a One-Person Company: UAE Law as a Model, Moroccan Law Journal, 2017, p.185; Amir Muhammad Mahmoud Taha, ibid, p.458.

Although the separation of the founding partner's financial liability from the company's liability in single-member limited liability companies aims to protect the partner's personal assets, it weakens confidence in the company and limits the guarantees for stakeholders. By making the company's liability independent, it becomes difficult for stakeholders to recover their dues in the event of the company's bankruptcy, as their right is limited to the company's assets only(34).

This raises serious questions about the adequacy of the guarantees available to stakeholders in such companies and emphasizes the need for new legal mechanisms to enhance the protection of their rights.

Despite the importance of existing legal guarantees in fostering stakeholder confidence in the company, they still fall short of providing full protection for the rights of those dealing with it. This has sometimes led to a breach of commercial credit and tarnished the reputation of this type of company. Therefore, it has become necessary to search for additional guarantees that ensure the protection of the rights of all parties. In this context, we will propose some additional guarantees that would enhance the protection granted to stakeholders dealing with the company.

3.2. Governance as an Additional Guarantee for Protecting the Rights of Stakeholders

This part of the study seeks to search for additional legal mechanisms that enhance the protection of the rights of others in single-owner limited liability companies. The focus will be on exploring the role of sound governance as an effective guarantee for stakeholders.

Governance is an effective means of ensuring the protection of stakeholders dealing with a single-owner limited liability company (LLC). This is achieved by establishing rules and standards that define the relationship between the company and its external stakeholders, by regulating the behavior of the founding partner, including management and financial guarantees. This is done by promoting the standards of disclosure and transparency. Therefore, a sound governance system is essential to maintain their trust.

Establishing a sound governance system has become an urgent matter to eliminate problems that stakeholders may encounter due to the sole founder's

(34) Rasha Mostafa Abu El-Gheit, ibid, p.120.

actions and exploitation of current legal loopholes. These loopholes include the allocation of the company's financial liability and the absence of a minimum capital requirement for the company[35].

Governance aims to enhance trust between the company and its stakeholders. This is achieved by providing them with the necessary information about its status, through providing financial statements that reflect the company's creditworthiness. This helps stakeholders make sound decisions regarding their dealings with the company. To achieve this result, sound governance must be applied by activating its most important principles:

4.0 Principles of disclosure and transparency

Disclosure is defined as one of the effective safeguards through which policies of complete transparency are followed by revealing all material financial facts that could influence the decisions of investors and other stakeholders interested in dealing with a single-member limited liability company (LLC). This information includes providing audited financial statements of the company to determine the strength of its financial credit guarantee.

This reflects the stakeholders' access to sufficient and reliable data to make informed investment decisions and avoid any misleading practices, due to the disclosure of all the company's financial facts, to make appropriate decisions in dealing with it.[36]

The disclosure standard aims to provide those dealing with a limited liability company with all important information about it, such as: its financial status, profit and loss accounts, bonuses, the owner of the company, and specific information about its management mechanism. This aims to involve third parties in making appropriate decisions about whether or not to deal with the company[37].

(35) Wiley Best Practices, Frederick D. Lipman, L.Keith Lipman, Corporate Governance Best Practices: Strategies for Public, Private, and Not-for-Profit Organizations, John Wiley & Sons, 2006, pp.4-5.

(36) Tariq Abdel Aal Hammad, Financial Reports: Basis of Preparation and Analysis According to the Latest Releases and Amendments in American, British, Arab and Egyptian International Accounting Standards, University House, Alexandria, 2000, p.53.

(37) Salem Suleiman Salem Al-Jbour, "Protection of Creditors of a One-Person Company "Limited Liability" in the Jordanian Companies Law", Master's Thesis, Al al-Bayt Uni-

Therefore, to ensure the effectiveness of the disclosure standard, it is necessary to provide all important information related to the limited liability company, including its financial status. A strong disclosure system is considered a fundamental pillar for the existence of regulatory oversight, which encourages investors’ confidence to do business with this type of company despite its weak financial creditworthiness, in light of the absence of sufficient capital and the limited liability of the founding partner(38).

Disclosure should include the outcomes of the company’s operations in general and financial results in particular. It should also include the purpose of its establishment and the future goals it is pursuing, as well as non-financial information, especially administrative information. It should also include the mechanisms for rewarding those who manage the company, whether it is the founding partner or in the case of appointing a manager or managers to run it.

It is necessary to provide information about the nature of the company’s management by knowing the expertise, qualifications, and methods of selecting management team, and specifying the mechanism followed for dealing with them and with the company in general. The company’s information must be accurate and correct to ensure the effectiveness of the disclosure standard in limited liability companies, especially those established by a single person.

Therefore, compliance with the disclosure standard requires that the disclosed information be reliable and consistent, which helps individuals dealing with the company to make appropriate decisions based on the actual situation of the company, both financially and legally. Therefore, providing inaccurate or incorrect information is pointless, as this information is essential for anyone who wishes to deal with the company(39).

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versity, Jordan, 2018, p.126.

(38) Mohammed Jamil Haboush, The Extent of Compliance of Palestinian Public Shareholding Companies with Corporate Governance Rules: An Analytical Study of the Opinions of Internal Auditors, External Auditors, and Managers of Public Shareholding Companies, unpublished Master’s thesis, Faculty of Commerce, Islamic University, Gaza, Palestine 2007, p.44 and 45.

(39) Ali Miftah Al-Taib et al., The Extent of Compliance of Libyan Commercial Banks with the Application of the Disclosure Standard According to the Mechanisms of Banking Governance and its Impact on Enhancing Market Share, Journal of Economic Studies, Faculty of Economics, Sirte University, Volume 4, Issue 2, April 2021, p.173; Ammar Habib Jahlouk, The Legal System for Corporate Governance, Zain Legal Publications, 2011, p.170.

One of the main points for the application of a proper disclosure standard is the necessity of timely disclosure. Effective disclosure requires that the announcement be made at the appropriate time, and it should be done in a way that allows the disclosed information to be utilized. If the purpose of disclosure is to guide stakeholders, especially creditors, to know the economic status of the company and make correct decisions based on accurate knowledge, then there is no value to disclosure if it is delayed beyond the appropriate time.

Effectiveness in disclosure appears when accurate, correct, and truthful information is provided in a timely and sufficient manner to stakeholders, especially creditors, which reflects positively and enables them to make the right decisions. In general, limited liability companies are obligated to disclose information related to their economic activity at the end of each fiscal year, in order to evaluate their past activity and to review their future development plans, with the aim of strengthening their credit file and protecting the rights of those who deal with them(40).

To ensure proper disclosure, companies must provide vital credit information, which forms the core of the disclosure obligation. This information plays a significant role in the decisions of stakeholders when dealing with the company. In other words, the information represents vital aspects of its economic activity and is of interest to those not dealing with the company, helping them make appropriate decisions regarding their investments.

This information should be vital and impactful to the company's activity, to the extent that it significantly influences the contracting party's will and decision to their relationship with the company. For the purpose of protecting the company's interests, the disclosure obligation does not include sensitive information(41) that may harm its competitive position. Instead, disclosure

(40) Abd al-Ra'ouf Rabaya, Disclosure in the Markets, research presented to the Third Scientific Professional Conference held by the Jordanian Association of Certified Public Accountants under the slogan "The Auditor and Professional, Legal and Social Responsibility", Amman, Jordan, September 2001, p. 7; Ammar Habib Jahlouk, ibid, pp.172-173.

(41) Sensitive information is defined as the information that constitutes a competitive advantage for a company and distinguishes it from others in the market. This information is considered a trade secret and includes technical knowledge specific to the nature of the company's business, which is not publicly available, such as methods for manufacturing a particular product or unique strategies for retaining customers. Hani Muhammad Dwidar, The Scope of Technological Knowledge Monopoly, Dar Al-Jamia Al-Jadida Publishing, Alexandria, 1996, p.74.

focuses on information that enables investors to assess the company’s performance and future(42).

The standard of transparency plays a vital role in enabling stakeholders to make sound investment decisions regarding single-owner limited liability companies. By providing accurate and comprehensive data about the company, external parties can accurately assess the risks and opportunities associated with it, which enhances mutual trust between the company and its investment environment.

The importance of transparency lies in disclosing all financial and administrative information, including the compensation of the founder or manager, which enhances trust in the company and ensures that it is managed with integrity and fairness. To achieve this, all information related to the company must be clearly and transparently available, ensuring that stakeholders have the necessary information to make informed decisions and enhancing the company’s accountability and transparency(43).

5.0. Conclusion

Despite the Bahraini legislator abolishing the single-person company by amending the Commercial Companies Law No. 28 of 2020, the same amendment allowed for the establishment of a single-owner limited liability company (LLC), which created challenges and problems, especially with regard to credit guarantees provided to stakeholders dealing with this type of company.

Effective guarantees play a pivotal role in enhancing stakeholder confidence in a company, as they solidify its credibility and ability to fulfill its obligations to others. This, in turn, attracts investors seeking a secure and responsible environment to invest their funds.

The impact of guarantees extends beyond attracting investments; it also facilitates the company’s access to necessary financing from banks and financial institutions. The presence of strong guarantees provides these institutions with the confidence to offer loans and banking facilities to the company, assured of its ability to meet its financial obligations.

(42) Ammar Habib Jahlok, ibid, pp.172-173.

(43) Salem Suleiman Salem Al-Jbour, Ibid, p.126; Na’ima Rahmawi Maoui Amina Boukhrouba, The Role of Internal Audit in Activating the Principles of Corporate Governance, Master’s Thesis, University of 8 May 45, Guelma, 2012, p.18.

Based on the foregoing, we have reached a set of conclusions and recommendations that may help in establishing effective guarantees to protect those dealing with single-owner LLCs, as follows:

5.1. Results

- Despite the fact that Bahraini law traditionally required multiple partners to establish a company, an exception is made for limited liability companies (LLCs) which allows ordinary or legal person to establish an LLC independently, with no financial liability beyond their contributed capital.
- The legal status of the partner in a single-owner LLC is determined by their role: either as a manager directly responsible for managing the company, or as a supervisor who oversees management without detailed interference.
- The manager of a single-owner LLC bears personal liability if their decisions lead to any of the violations specified in Article 18 bis. In this case, their personal assets can be seized to compensate for the damage caused.
- A criticism of Bahraini legislation is its lack of sufficient guarantees for stakeholders dealing with single-owner LLCs. The legislator does not oblige the founder to explicitly indicate the legal nature of the company in its title, documents, or correspondence. This weakens credit confidence in this type of company, especially since the sole partner's liability is limited to the company's capital, there is an urgent need to strengthen the legislative framework to ensure the protection of those dealing with these companies and provide greater transparency about their nature, thus creating guarantees that go beyond those currently in place.
- The principles of disclosure and transparency are effective supervisory tools for the performance of LLCs. They enable stakeholders to monitor and evaluate management decisions, which limits the misuse of funds and reduces the risks the company may encounter. Therefore, the application of governance principles in these companies must be effectively and seriously strengthened.
- Credit information provided to those dealing with the company refers to information that influences the decision to deal with it or not. It does not include information considered trade secrets.

5.2. Recommendations

- Given the unique nature of single-member limited liability companies (LLCs), we urge the Bahraini legislator to revise the legal provisions governing them, particularly concerning their establishment. We propose amending Article 263 to explicitly clarify the inherent structure of these companies and mandate clear disclosure of their single-member status in all transactions. This aims to ensure greater transparency, inform stakeholders about the company’s legal form and creditworthiness without ambiguity, and prevent any obstacles arising from unclear information.

- To enhance the protection of stakeholders dealing with single-member LLCs, we recommend enforcing corporate governance principles, particularly disclosure and transparency rules. This enables external parties to assess the risks associated with dealing with these companies and make informed decisions based on accurate and clear information.

- To strengthen financial guarantees, we recommend making the sole shareholder’s financial liability unlimited. This holds them personally and unconditionally accountable for the company’s obligations, protecting stakeholders’ rights and fostering a secure investment environment.

- To enhance creditworthiness and trust in single-member LLCs, we urge the Bahraini legislator to establish a minimum capital requirement, considering the nature of the business activity. We also propose requiring these companies to deposit a specific percentage of their capital in a dedicated bank account before commencing operations. This ensures the existence of actual capital, reassures those dealing with the company, enhances its credibility, and reduces the risks of financial distress.

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