



The Bahrain-United States Free Trade Agreement

Cross Border Trade in Services

The Cross Border Trade in Services Chapter of the FTA applies to measures adopted or maintained by the Kingdom of Bahrain and the United States that affect the provision of services and cross-border trade in services.

The Agreement requires that the Kingdom of Bahrain and the United States accord each other's service suppliers National Treatment or Most-Favored-Nation Treatment. The chapter also requires that neither party adopts or maintains measures that would impose Market Access or Local Presence requirements on the other.

Bahraini professionals and service providers will therefore be allowed to supply their services both through local commercial presence and across borders. Vice-versa, U.S. professionals and service providers may establish in Bahrain and provide services to the Bahrain and surrounding regional markets, or supply services across borders. This, however, shall not be construed to interfere with either party's ability to enforce its licensing requirements or registration procedures.

National Treatment

The Chapter requires that both Bahrain and the US accord each other's service suppliers a treatment no less favorable than they accord, in like circumstances, their own service suppliers.

Most-Favored-Nation Treatment

The Chapter requires that the Kingdom of Bahrain and the United States shall accord each other's service suppliers treatment no less favorable than that they accord, in like circumstances, service suppliers of a third country.

Therefore, for agreements in existence according to which Bahrain or the US has committed to granting a specific level of preference to service suppliers of a third country, the Chapter requires that Bahrain and the US grant each other's service suppliers a treatment no less favorable than that granted to the suppliers of the third country in like circumstances.

Market Access

The Agreement provides service suppliers of both Bahrain and the US unfettered access to the other's services markets. It prohibits restrictive measures, including:

1. Numeric limitations on:
 - a. Number of service suppliers allowed to operate in a market
 - b. Total number of service transactions
 - c. Total value of assets
 - d. Output of service suppliers
 - e. Number of employees in a particular services sector
2. Monopolies
3. Exclusivity granted to some service suppliers
4. Restrictions on the Nationality of Senior Management

Local Presence

The FTA stipulates that each of the two countries shall not require a service supplier of the other country to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Domestic Regulation

The Agreement's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Where either country requires authorization for the supply of a service, authorization shall be based on objective and transparent criteria.

The relevant authorities shall provide the applicant of the decision concerning the application within a reasonable period of time after the submission of a complete application. At the request of the applicant, the competent authorities shall provide, without undue delay, information concerning the status of the application.

Transparency

The FTA requires that appropriate mechanisms be established or maintained for responding to inquiries regarding regulations related to the subject matter of the services chapter. All relevant legislations shall be available to the public. In addition, authorities shall provide the public and interested parties the chance to review and comment on proposed legislation, and, to the extent possible, address in writing substantive comments received with respect to the proposed regulations.

Professional Standards

The Agreement stipulates that Bahrain and the US shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers.

Such standards and criteria may be developed with regard to:

1. Accreditation of schools or academic programs;
2. Qualifying examinations for licensing;
3. Standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
4. Requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and
5. Consumer protection

Investment

In 1999, the Kingdom of Bahrain and the United States negotiated a comprehensive Bilateral Investment Treaty (BIT), “*the Treaty Between the Government of the United States and the Government of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment.*”¹ The BIT was ratified in Bahrain by Legislative Decree 37 of 1999.

The BIT guarantees the right to invest on terms no less favorable than those accorded domestic or third-country investors. It also guarantees the free transfer of capital, profits and royalties, freedom from performance requirements that distort trade and investment flows, access to international arbitration, and internationally recognized standards for expropriation and compensation.

The BIT provides for a full range of investment benefits and disciplines, and therefore the FTA does not include investment-specific provisions. However, the market access, domestic regulation, and transparency provisions of this Chapter govern the treatment of investors and investment from both countries.

¹ For the complete text of the BIT, please refer to the Economic Agreements Section of the FTA website www.fta.gov.bh

Exclusions

Commitments of the Cross Border Trade in Services Chapter covers all services sectors excluding financial services, air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, and services provided by the government in the exercise of governmental authority.

Non-Conforming Measures

The Kingdom of Bahrain and the United States negotiated the FTA Agreement within a “Negatives List” Approach. Accordingly, all services sectors are a-priori covered and open, except those specific sectors designated in the Non-Conforming Measures (NCMs).

1. Sectors Excluded from the Local Presence Commitments

Bahrain has reserved to itself a Local Presence NCM in order to protect its Local Presence Requirements for WTO Mode 4 (supply of services through the presence of natural persons) in certain sectors.

For the following sectors, except where a service is supplied on behalf of a Bahraini enterprise, persons of the United States wishing to supply services in the territory of Bahrain must maintain a place of business in Bahrain in order to comply with the commercial registration requirements:

- Accounting, Financial Auditing, Bookkeeping, and Related Services
- Advertising Services
- Architectural and Engineering Services
- Car Rental Services
- Census, Market Research and Public Opinion Polling
- Construction Services and Construction Related Services
- Consultancy and Management Services
- Debt Collection Services
- Legal Services
- Private Security Guard Services
- Publishing and Printing
- Real Estate Services
- Services Incidental to Mining
- Small Business Services
- Terrestrial over the Air Radio, Television and Satellite Transmission and Subscription Services in the Territory of Bahrain
- Tourism – Hotel Operations and Management
- Transportation Services
- Travel Agency Tour Operators and Tourist Guide Services
- Wholesale and Retail Services
- Telecommunications

The Local Presence requirement will be phased-out within three years of the date of entry into force of the FTA in the following sectors:

- Advertising Services
- Car Rental Services
- Consultancy and Management Services
- Debt Collection Services
- Transportation Services
- Travel Agency, Tour Operators, and Tourist Guide Services

The Local Presence requirement will be phased out within seven years of the date of signature of the FTA in the following sectors:

- Accounting, Financial Auditing and Bookkeeping Services
- Architectural and Engineering Services
- Services Incidental to Mining
- Construction and Construction Related Services

However, US service suppliers who are licensed and authorized in the US states to supply the following professional services may apply for a maximum of three temporary licenses to supply services through the presence of a natural person in the territory of Bahrain without having to maintain a place of business in Bahrain. Each temporary license shall be for an initial period of 12 months, renewable for another maximum period of 12 months:

- Accounting, Book-keeping and Related Services
- Architectural and Engineering Services
- Construction and Construction Related Services
- Consultancy and Management Services
- Services Incidental to Mining
- Terrestrial over the Air Radio, Television and Satellite Transmission and Subscription Services in the Territory of Bahrain

The United States will maintain a local presence requirement in the following sectors:

- Business Services
- Air Transportation
- Transportation Services – Customs Brokers
- Professional Services – Patent Attorneys, Patent Agents, and Other Practices before the Patent and Trademark Office
- Sectors of all existing non-conforming measures of individual states of the United States, the District of Columbia, and Puerto Rico.

2. Sectors Excluded from the National Treatment/Most Favored Nation Commitments

The provision of certain services in the territory of Bahrain will be reserved for Bahraini nationals, and in some cases, nationals of the Gulf Cooperation Council. Therefore, based on existing Bahraini measures, the following sectors will remain closed for US service suppliers:

- Legal Services
- Advertising*
- Publishing – Local Newspapers and Periodicals
- Publishing*
- Customs Clearance Services
- Pilotage and Berthing Services
- Coastal Water Transportation Services
- Real Estate Services
- Islamic Pilgrimage Services

* In these sectors, the NCM will be phased-out within 5 years of entering into force of the Agreement, opening the sectors for US service suppliers.

The United States has excluded the following sectors:

- Business Services
- Air Transportation
- Transportation Services – Customs Brokers
- Professional Services – Patent Attorneys, Patent Agents, and Other Practices before the Patent and Trademark Office
- Sectors of all existing non-conforming measures of individual states of the United States, the District of Columbia, and Puerto Rico.

3. Sectors Excluded from the Market Access Commitments:

The following are the sectors where Bahrain has taken a market access reservation, therefore allowing it to impose certain restriction on the supply of services, provided they are non-discriminatory:

- Energy Services – Wholesale Distribution of Petroleum Products
- Freight and Cargo Services
- Energy Services – Water Distribution Services
- Energy Services – Electricity Distribution Services
- Telecommunications**

For the United States: No such reservation has been taken.

** Bahrain reserves the right to maintain a duopoly in the telecommunications market until December 31st, 2005.