

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

GCCIX, W.L.L.,) ICDR CASE NO. 01-21-0004-1048
)
Claimant,)
)
and)
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS,)
)
Respondent.)
_____)

**REPLY DECLARATION OF FATIMA AL ALI IN SUPPORT OF
ICANN'S MOTION TO DISMISS**

I, Fatima Al Ali, declare as follows:

1. I am a Partner at the law firm Hassan Radhi & Associates, Kingdom of Bahrain, which was originally established in 1974 as Hassan Radhi Law Office and was later converted into a partnership with eight partners. The address of the Firm is P.O. Box 5366, Era Building, Diplomatic Area, Manama, Kingdom of Bahrain. The Firm's office telephone number is +973-17535252 and its fax number is +973-17533358. The Firm's website is www.hassanradhi.com, and I can be contacted by e-mail on fatima.alali@hassanradhi.com or the Firm's central mailbox info@hassanradhi.com. My credentials, my experience, and the scope of my engagement for this matter remain the same as I previously declared in my declaration dated 31 January 2024 in support of ICANN's Motion to Dismiss, and I remain fully capable to testifying to these matters if called as a witness.

2. After reviewing the briefing of GCCIX and the supporting declaration of its Bahraini counsel, Abdullah Sayyar, I write to further clarify the scope and application of Bahraini law to GCCIX and this proceeding. The sources Mr. Sayyar cites in his declaration are wholly misapplied to the issues in this case. Under the laws and regulations in Bahrain, GCCIX cannot engage in any commercial activity—including any form of contracting—due to its deleted Commercial Registration (“CR”) with the Bahraini Ministry of Industry and Commerce (“Bahraini MOIC”).

3. There are two overarching problems with the information provided in Mr. Sayyar’s declaration. First, this proceeding does not involve GCCIX’s ability to litigate during liquidation, which was the narrow issue addressed in the case extract attached to Mr. Sayyar’s declaration in Exhibit A (“Appeal No. 349”). Second, regulations in the Kingdom of Bahrain have the full force and effect of law absent explicitly contradictory authority and a judgment confirming the contradiction. I address both in turn.

Appeal No. 349 of 2012

4. Appeal No. 349, included as Exhibit A to Mr. Sayyar’s declaration, stands only for the proposition that a company in liquidation retains a “legal personality” to the extent necessary to “carry out the liquidation.”¹ Put simply, Appeal No. 349 establishes that a company maintains the right to seek to recover assets while it is in the process of dissolving. But GCCIX’s “legal personality” under Bahraini law is not at issue here; rather, the issue is whether GCCIX has the ability to operate in the Kingdom of Bahrain, which it does not. In Bahrain, a company’s ability to operate and engage in commercial activity is determined by its CR status.

5. A valid CR allows a company to operate in the Kingdom of Bahrain.² To maintain a valid CR, a company must annually meet specific disclosure and reporting requirements. Some

¹ Declaration of Abdullah Sayyar, Exhibit A, page 3.

² Article 7 of the CR Law (3.1.3 Decree Law No. (27) of 2015) (emphasis added): “*The concerned Directorate shall grant the registration applicant a certificate of his registration in the Commercial Register before obtaining the necessary licenses from the competent authorities to undertake the activity, provided that in the registration certificate there should be an indication that he has not obtained such licenses. The registration applicant, in this case, **may not undertake commercial activity before obtaining the necessary licenses from the competent authorities** and submitting them to the concerned Directorate and obtaining a certificate of registration in the Commercial Register stating the type of the licensed commercial activity.*” Article 4 of the CR Law (3.1.3 Decree Law No. (27) of 2015): “*Every trader conducting commercial activity shall be registered in the Commercial Register, in which all the particulars prescribed in the Implementing Regulations and other laws shall be recorded, as well as every change occurring to such particulars.*”

annual requirements include paying applicable registrations fees, but certain other requirements mandate proof that the entity maintain an office space, maintain audited financial statements, and regularly conduct general meetings. When a company does not meet these requirements, it forgoes the ability to conduct commercial activity, including entering into contracts, other than for the purposes of its own liquidation.

6. Although Appeal No. 349 of 2012 is “good law” in the Kingdom of Bahrain, the opinion is misapplied here because it does not even suggest, much less maintain, that GCCIX has any ability to operate and conduct commercial activity in Bahrain, given the fact that its CR has been deleted by law for more than three years. The result of that is, even if GCCIX were to obtain a favorable ruling from this Panel, the ruling would lack any practical legal effect because GCCIX does not have the ability to engage in any commercial activity in Bahrain such that it could contract to operate the “.GCC” top-level domain.

Article 20 of the Commercial Registration Implementing Regulations

7. Bahrain is a civil law jurisdiction. Thus, regulations in the Kingdom of Bahrain are binding unless revoked by the lawmaker or deemed unconstitutional by the Constitutional Court for non-compliance with the Constitution.

8. As I explained in my original declaration, Article 20 of the CR Implementing Regulations (3.1.4 Order No. (126) of 2016) clearly states that the relevant authority may only reinstate the registration “*within three years from the date of deletion*[.]” (emphasis added). Article 13 of Decree Law No. (27) of 2015, which is cited by Mr. Sayyar, does not conflict with this requirement. In fact, the cited Article confirms that the trader is required to renew the registration “within the prescribed period”, stating at the outset that “*If the trader does not renew his registration within the prescribed period ...*”, where such period is stated in Article 20 of the CR Implementing Regulations as three years. Article 20 of the CR Implementing Regulations is not conflicting, but in fact supplementary to Article 13 of the CR Law. In the absence of any conflict, Article 20 of the CR Implementing Regulations maintains the full force and effect of law in Bahrain and governs the issue in this case. Additionally, Appeal No. 349 was decided *before* Article 20 of the CR Implementing Regulations came into effect which further exemplifies the misapplication of Appeal No. 349 to this case.


9. As part of my engagement in this matter, within the past several months, I contacted the Bahraini MOIC to confirm that commercial registrations that have expired for more than three years may not be revived. In response to my request, the Bahraini MOIC confirmed that Article 20 is controlling and that a CR cannot be reinstated after three years of deletion. Thus, GCCIX cannot reinstate its CR.

10. The Bahraini MOIC has an online portal (the “Sijilat Portal”), which states that, as of 29 August 2018, GCCIX was deleted by law. As of the date of this declaration, GCCIX’s status remains “deleted by law” per the Sijilat Portal.

11. In sum, Mr. Sayyar cites to several existing provisions of Bahraini law in his declaration, but such provisions do not address the issue in this matter. The plain text of Article 20 of the CR Implementing Regulations is directly applicable to this matter because GCCIX’s CR has been “deleted by law” for a period over three years and is therefore incapable of revival. It is my professional opinion, based on my substantial knowledge of and experience with Bahraini law, that there is no action GCCIX can take to remedy this defect.

12. This opinion is based on my analysis of and my deductions from the laws and practices currently in place in Bahrain and is limited to the purposes of this matter.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this Fifth day of April 2024 at Manama, Bahrain.

By: 

Fatima Al Ali