

Bahrain's International Drive to be More Transparent: UBO, ESR and Anti-Commercial Concealment

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In line with the Bahrain Economic Vision 2020, the Kingdom of Bahrain continues to introduce various rules and regulations with a view to adopting and applying international best practice in Bahrain. In this regard many of these rules and regulations are part of Bahrain's drive to increase transparency and to promote and aid fair competition, and thereby to increase investor confidence in the Kingdom.

Commensurate with the Government's approach, the Bahrain Ministry of Industry, Commerce and Tourism ("**MOICT**") introduced new rules and campaigns relating to Bahrain registered Commercial Registrations ("**CR**"), including Ultimate Beneficial Ownership rules, the Anti-Commercial Concealment Campaign and the Economic Substance Rules. This article provides a high-level overview of the various rules and

campaigns.

Ultimate Beneficial Ownership

The MOICT passed Resolution Number 83 of 2020 concerning the Standards, Requirements and Rules to Determine the Ultimate Beneficiaries, with the aim of prescribing rules and guidelines for determining who falls under the definition of an Ultimate Beneficial Owner (“**UBO**”).

With the exception of entities licensed and regulated by the Central Bank of Bahrain, the UBO Rules apply to all companies registered with the MOICT (“**Registered Person(s)**”). Amongst other obligations, the Registered Person must provide the MOICT with all prescribed information relating to its UBO(s), and has a continuing obligation to update such information and documents immediately (if applicable) upon a change of UBO(s) or their details.

The UBO Resolution defines a UBO as any natural person or persons who satisfy any one of 7 factors below:

1. owning or controlling, directly or indirectly, 10% or more of the Registered Person’s capital or voting rights;
2. having the ability to make or influence decisions of the Registered Person either directly or through other means such as personal communications or through participation in the financing of the project, a family relationship, any contract, arrangement or understandings, or through a hierarchical entity (in the ownership chain of legal entities);
3. contributing towards the financing of the business of the Registered Entity or its assets or benefiting from the Registered Person’s transactions;
4. having effective ultimate control of the Registered Person through a series of ownership or other control instruments other than direct control;
5. having direct or indirect control over the operations of the Registered Person, whether through a management agreement, power of attorney or similar instrument;
6. where the Registered Person is an entity owned by another entity, then the UBO is the natural person who is the ultimate owner of the ownership chain or who has effective control over it; or
7. exercising control through management positions within the Registered Person in such a way as affects the strategic decisions or influences the general direction of the Registered Person.

In terms of timeline for registration of the UBO, the information and documents should now be submitted to the MOICT without delay. Where a Registered Person has not submitted such details, it is not able to submit any other applications on the MOICT’s online portal. **Penalties for non-compliance include** violations placed on the CR, suspension of the CR for a period of up to six months, cancellation of the CR and imposition of financial penalties.

Economic Substance Rules:

The Kingdom of Bahrain has imposed economic substance requirements on entities that carry on geographically mobile business activities. The MOICT and Central Bank of Bahrain have issued Ministerial Order number 106 of 2018 regarding the requirements of validating the actual economic substance of entities’ activities in the Kingdom of Bahrain, and Directive OG/499/2018 respectively, providing initial guidance on demonstrating Economic Substance. Resolution (106) of 2018 can be considered to be the Bahrain Government’s response the [OECD Base Erosion and Profit Shifting \(BEPS\) project](#), specifically Article 5 which relates to the countering of harmful tax practices. Following the issuance of the Ministerial Order, the MOICT published detailed guidance notes that serve as a preliminary guide to which aim to clarify and re-confirm certain aspects of the Resolution.

The aim of Resolution (106) of 2018 (as supplemented by the Guidance Notes) is to introduce into the Bahrain corporate regime requirements that corporate entities incorporated or registered in Bahrain

maintain an adequate level of economic substance within Bahrain. Accordingly, together with other such broadly comparable low/no-tax jurisdictions (such as the United Arab Emirates and the Cayman Islands) the regime can be said to constitute a key development in terms of Bahrain's positioning in the global tax landscape.

The economic substance rules apply to commercial entities in the Kingdom of Bahrain that engage in the following commercial activities: distribution and service centre activities, headquarters activities, holding company activities, leasing activities, shipping activities, and intellectual property activities ("**Relevant Entities**"). Amongst other obligations, all Relevant Entities are required to file an Economic Substance Rules Annual Return Form with the MOICT within three months of the Relevant Entity's financial year end. This annual return includes details such as details of the Core Income Generating Activities (CIGA) of Relevant Entities, board details, strategic decisions, employee details, physical address and offices of the company, details of the company's internal policies and books of account, details of outsourced activities and ultimate beneficial owner details, all aimed at ensuring that Relevant Entities can demonstrate a sufficient level of economic substance in the Kingdom.

Penalties for non-compliance with the Economic Substance Rules include a written order requiring that the company cease its failure to adhere to the Ministerial Order within a designated timeframe, suspension of the CR for a period of up to six months, imposition of a fine of up to 100,000 Bahraini Dinars and cancellation of the CR.

The Kingdom of Bahrain's National Anti-Commercial Concealment Campaign

In recent years the Kingdom of Bahrain has eased foreign ownership restrictions with respect to commercial activities, and in doing so, massively liberalised the landscape for direct foreign investment.

However, certain activities still require a prescribed minimum percentage of Bahraini (or other GCC) ownership, such as certain sale / trade, manufacture, construction, rental and repair activities.

Historically, the MOICT has identified instances whereby an activity being practised in Bahrain necessitates requires 100% Bahraini ownership, has a Bahraini national listed as the owner, however the Commercial Registration (CR) of the relevant company is effectively rented out to foreign nationals, thereby circumventing the restrictions on foreign ownership. To combat these violations of Bahrain law, the MOICT has recently introduced a National Anti-Commercial Concealment Campaign.

The Anti-Concealment Campaign and related enforcement action is based on interpretation of Bahrain Decree Law (1) of 1987 Regarding the Sale and Lease of Commercial Stores; and Bahrain Legislative Decree 27 of 2015 Promulgating the Commercial Registry Law. Commercial concealment can, broadly speaking, be considered to be the process by which a non-Bahraini national practices a restricted commercial activity under a Commercial Registration (CR). In this regard, restricted commercial activities are those that prohibit non-Bahraini (or non GCC) ownership and/or limit the percentage of foreign ownership ("**Restricted Activities**").

In this regard, the campaign refers to commercial concealment conducted in various forms, the most prevalent form being where a Bahraini (or other GCC) national rents or sells their CR or activity licenses to a non-Bahraini person. An additional example of commercial concealment is where a Bahraini (or other GCC) national assigns a non-Bahraini national to run their CR in exchange for a sum of money, without the involvement of such Bahraini (or other GCC) national. Commercial concealment also takes place where the renting or selling of a commercial address is undocumented. As ever however whether commercial concealment will be considered to have taken place will depend on the relevant factual matrix of circumstances on a case by case basis

As a matter of Bahrain law Commercial concealment is considered to be a criminal offence. The right to practice a Restricted Activity does not extend past the business owner, and cannot be granted to others.

Additionally, commercial concealment would lead to monopolisation of non-Bahrainis in relation to the

Restricted Activities, while conducting the activities in unregulated ways, and potentially exposing the Bahraini business owner to legal accountability.

Where commercial concealment is detected by the competent authorities, the MOICT MOICT has the right to take actions including administrative closure of the Commercial Registration (CR) until the legal status of the Commercial Registration (CR) is remediated. In instances of repeated offences, the MOICT can impose a penalty of a period not exceeding one year of imprisonment and/or a penalty of a fine not exceeding 1,000 Bahraini Dinars. The MOICT may also strike off and terminate the Commercial Registration (CR). It is notable that all relevant penalties will be applicable to the Bahraini and non-Bahraini nationals that are involved in commercial concealment.

Conclusion

The Ultimate Beneficial Ownership rules, the Anti-Commercial Concealment Campaign and the Economic Substance Rules enable a more efficient and safer business environment, and demonstrate the Kingdom of Bahrain's efforts and commitments to provide a clear direction for the Bahrain Economic Vision 2020, in line with international best practice, all of which stand to further increase investor confidence in the Kingdom.

It is important for your Bahrain based businesses to understand the application and importance of the UBO Rules, the Economic Substance Rules and the Anti-Commercial Concealment Campaign, and where relevant, to undertake a "health check" on your existing arrangements to ensure that they are compliant with all of the prescribed requirements.

For further information, please contact [Rad El Treki](#) or [Yara Frotan](#).