

**IN THE MATTER OF AN INDEPENDENT
REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE
RESOLUTION**

GCCIX, W.L.L.,)
)
 Claimant,)
)
 vs.)
)
 INTERNET CORPORATION for)
 ASSIGNED NAMES AND NUMBERS,)
)
 Respondent.)
)
 _____)

**CLAIMANT’S OPPOSITION TO
ICANN’S MOTION TO DISMISS
SECOND AMENDED REQUEST FOR
INDEPENDENT REVIEW**

March 15, 2024

Claimant hereby opposes ICANN’s Motion to Dismiss (“MTD”) the Claimant’s Second Amended Request for Independent Review (“IRP Request”). The MTD alleges just one ground for dismissal, “that GCCIX is a defunct entity that is not capable of pursuing an IRP.” (MTD, p.1).¹ However, the ICANN Bylaws specifically state: “No special pleading of a Claimant’s capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings.” Moreover, in fact, GCCIX is not a “defunct entity”, as it has been neither liquidated nor dissolved. So, under controlling Bahraini law it remains capable of pursuing any and all legal claims that it may have.

I. STANDARD OF REVIEW

To the extent there is any doubt on this question, at this stage it must be resolved in favor of GCCIX. Where standing is raised in connection with a motion to dismiss, the panel is to “accept as true all material allegations of the complaint, and . . . construe the complaint in favor of the complaining party.” *See, e.g., Levine v. Vilsack*, 587 F.3d 986, 991 (9th Cir. 2009) (citing *Thomas v. Mundell*, 572 F.3d 756, 760 (9th Cir. 2009) (quoting *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975))). Here, the Claimant’s IRP Request states at p.4: “Claimant GCCIX is a company organized under the laws of Bahrain, which is the sole applicant to ICANN to operate the .GCC generic top-level domain.”

II. ICANN BYLAWS FORECLOSE ICANN’S ARGUMENT

ICANN Bylaws state that “ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws.” (Bylaws, Sec. 4.1

¹ ICANN argues in parallel that GCCIX could not, if it prevails in this IRP, execute a Registry Agreement because it is defunct. Since GCCIX is not defunct, that hypothetical argument also fails. Both arguments rely upon the same false premise. As a hypothetical argument fancying GCCIX’ corporate status at some unknown time in the future, GCCIX will not address it further here.

PURPOSE). The term “Claimant” is defined as broadly as possible as “any person, group, or entity ... that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.” (Bylaws, Sec. 4.1(b)(i)). Here, regardless of its current corporate status, GCCIX has suffered injury as alleged in the IRP Request, *seriatim*. At this stage of the proceeding, all of those allegations must be accepted as true and in the light most favorable to Claimant. This Dispute stems from ICANN behavior beginning in 2013, many years before there became any ambiguity about GCCIX’ corporate status in 2018. Had ICANN acted in good faith then, rather than ignoring GCCIX for more than seven years during the so-called, sham “Cooperative Engagement Process”, then this issue never would have arisen. ICANN cannot be allowed to escape accountability now – to its broad community, or to this Claimant -- for its actions and inaction then (and over such a long period of time), based on later developments and technicalities as to Claimant’s corporate status. That would eviscerate the entire purpose of the IRP, and leave ICANN wholly unaccountable for its egregious, bad faith actions as alleged.

Indeed, ICANN willfully neglects to inform the Panel that its own Bylaws further expound upon the issue of standing, stating: “No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings.” (Bylaws, Sec. 4.3(b)(i)(B) (emphasis added)). That section continues to define the only circumstance by which standing may be denied; namely, “if the IRP Panel ... concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.” Here, the Claimant GCCIX – regardless of its current corporate status – purports to act on behalf of itself and its shareholders, as well as the broader ICANN community which has specific interest in this case. ICANN

presents no evidence to the contrary, and thus cannot successfully deny GCCIX standing in this Dispute.

III. GCCIX IS NOT DEFUNCT, AND SO MAINTAINS RIGHTS TO LITIGATE

ICANN falsely states GCCIX has never provided “evidence that GCCIX remains in good standing in Bahrain.” (MTD, #3). However, ICANN Bylaws specifically refute any such requirement to provide any such allegation, or any such evidence. Moreover, in fact, on January 30, 2023, GCCIX provided a legal opinion from an experienced Bahraini corporate lawyer, Abdullah Sayyar, which provided quotation of relevant Bahraini statutes, and clearly stated: “Any company registered in Bahrain according to the law gets a juristic entity and earns all rights until it is totally dissolved and gets liquidated.” Furthermore, Mr. Sayyar stated:

regarding GCCIX status as deleted by law: deleted by law is a status applied by the Ministry of Industry, Commerce and Tourism to any company that does not pay the annual renewal fee or that holds any current administrative violation that can be amended by simply resolving the violation and it does not affect in any aspect the company’s rights and contract and its abilities to gain such rights.

Nine months later, on August 28, 2023, ICANN reverted with a contrary opinion from another Bahraini lawyer, set forth in the Declaration of Fatima Al Ali, submitted with the MTD, at #21. This includes the disputed opinion: “A deleted CR that is not restored within three years from the date of deletion is considered finally struck off the commercial register and may not be restored.”

To the contrary, Mr. Sayyar now provides another Declaration in support of this Opposition, proving that the highest Bahraini court has issued a decision in 2015 which is consistent with Mr. Sayyar’s prior advice, and is inconsistent with the opinion of Ms. Al Ali. A

copy of this opinion and a certified translation is submitted therewith. (Sayyar Decl., Exhibit A).

The opinion says exactly what Mr. Abdullah previously had said (emphasis added):

It is established that while a limited liability company does not acquire its legal personality according to Article 268 of the Commercial Companies Law issued by Decree-Law No. 21 of 2001, it does not cease until its liquidation is completed and retains it to the extent necessary to carry out the liquidation actions, including recovering the company's rights from others, in application of Articles 326, 332 of the same law. Since the documents lack evidence of the dissolution of the company being appealed against and the conduct of its liquidation, the appellant's claim of the cessation of the legal personality of the company being appealed against is baseless.

Similarly in this case, ICANN presents no evidence that GCCIX has been liquidated and dissolved. To the contrary, GCCIX remains in “deleted by law” status, as GCCIX works to remedy that situation through Bahraini courts and the Ministry. But meanwhile, as stated by Mr. Sayyar and by the highest Bahraini court, GCCIX retains all rights to pursue legal remedies against anyone else, including ICANN.

Mr. Sayyar again states his opinion that “GCCIX maintains all rights to litigate against any party.” (*Id.*, #2.). He reiterates the key Bahraini statutes and the Court of Cassation opinion that make clear that a limited liability company maintains all rights as an entity unless and until it is liquidated and dissolved. (*Id.*, #2-7). And, he specifically addresses and refutes the opinion of Ms. Al Ali, on four independent bases. (*Id.*, #8-14). First, her opinion is contrary to Article 326 of the Bahraini statutes and the Court of Cassation opinion interpreting it. (*Id.*, #9). Second, it is contrary to Article 13 of the Bahraini statutes, which puts no time limit on rectification prior to striking off a company. (*Id.*, #10-11). Third, it is based only on a Ministry decision to promulgate ‘implementing regulations’ which have no legal effect to the extent they contradict statutes or the Court of Cassation. (*Id.*, #12-13 and Exhibit B). Fourth, the opinion cites no

authority for the opinion that a deleted by law company cannot pursue litigation as such. (*Id.*, #14).

Finally, Mr. Sayyar concludes by reiterating his expert opinion that “it is clear that GCCIX maintains its legal personality and may litigate to protect its rights, because it is neither liquidated nor dissolved.” (*Id.*, #15-16).

IV. CONCLUSION

For all of the foregoing reasons, ICANN’s Motion to Dismiss must be denied.

Respectfully submitted,

By: 

Mike Rodenbaugh
RODENBAUGH LAW
548 Market Street
San Francisco, CA 94104

Counsel for Claimant