

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.)
_____)

ICANN'S MOTION TO DISMISS

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Pursuant to Rule 9 of the Independent Review Process (“IRP”) Interim Supplementary Procedures that apply to this proceeding, the Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby moves to dismiss Claimant GCCIX, W.L.L.’s (“GCCIX”) Second Amended Request for Independent Review Process submitted on 22 December 2023 (“Second Amended IRP Request”) due to the fact that GCCIX is a defunct entity that is not capable of pursuing an IRP.

INTRODUCTION

1. In its Second Amended IRP Request, GCCIX challenges the ICANN Board’s decisions in 2013 and 2023 that GCCIX’s .GCC application should not proceed.¹ GCCIX’s ultimate goal is to reverse ICANN’s decision making such that GCCIX could operate the .GCC gTLD one day. It is unclear, however, how GCCIX would be able to do so given its lapsed corporate status.

2. GCCIX initiated this IRP in June 2021, even though its Commercial Registration (“CR”) in Bahrain,² the country under which GCCIX was formed, had been “Deleted by law” by the Bahraini Ministry of Industry and Commerce (“Bahraini MOIC”) *in 2018*, meaning that GCCIX is not licensed to engage in commercial activities and has not been licensed to do so since 2018.

3. In addition, despite ICANN’s discovery requests regarding GCCIX’s corporate status and GCCIX’s agreement to “provide evidence that GCCIX remains in good standing in Bahrain[,]” no such documents were ever produced.³

¹ See generally Second Amended IRP Request (22 December 2023), Exhibit 1.

² GCCIX was incorporated in 2011 under Commercial Registration No. 78805-1. See Commercial Registration Information for GCCIX W.L.L (28 August 2011), Exhibit 2.

³ Declaration of E. Enson In Support of Motion to Dismiss Second Amended IRP Request (“E. Enson Decl.”) (5 February 2024), Exhibit B (Email chain between K. Watne and M. Rodenbaugh (18 October 2022 – 21 October 2022)); see also E. Enson Decl., Exhibit A (Claimant’s Response to Request for Production of Documents (16

4. Rather, GCCIX provided a letter from a Bahraini lawyer in January 2023 stating that, despite the “Deleted by law” status, GCCIX allegedly “is in good standing” in Bahrain and its corporate status would be changed to “active” in 45 days (i.e., by mid-March 2023).⁴ However, no support was provided with regard to GCCIX’s alleged “good standing;” there is no mention of how GCCIX’s corporate status could be changed to “active” after having been, at that time, “Deleted by law” for more than four years; and, even after another year has passed, there has been no change to that corporate status.

5. Thereafter, ICANN provided GCCIX with a legal opinion letter obtained by ICANN from a seasoned corporate lawyer in Bahrain who confirmed that: (i) a CR is required in order to engage in commercial activity in Bahrain; (ii) a CR must be renewed annually; (iii) a CR that is not renewed annually is considered expired and is deemed “Deleted by law” by the Bahraini MOIC; and (iv) a CR that has been “Deleted by law” for more than three years, as GCCIX’s has, is “finally struck off the commercial register and may not be restored.”⁵

6. Since that time, GCCIX has not responded to the opinion letter provided by ICANN, has not provided any additional information about GCCIX’s CR, despite numerous requests from ICANN, and GCCIX’s CR remains “Deleted by law” and cannot be revived.

7. Given GCCIX’s “Deleted by law” status and its legal inability to restore its CR, this IRP should be summarily dismissed for at least two reasons. First, GCCIX does not qualify as a IRP “Claimant” because the Bylaws define a Claimant as a “legal . . . entity,”⁶ yet GCCIX is not a legal entity, has not been a legal entity since 2018, and was not a legal entity when it

September 2022)) (Request No. 17 seeks “All documents and communications relating to Claimant’s formation as a W.L.L., including but not limited to any Articles of Association, any documents reflecting Claimant’s mission or purpose, and documents sufficient to show when Claimant was formed.”).

⁴ E. Enson Decl., Exhibit D (Letter from A. Sayyar to M. Rodenbaugh (30 January 2023)).

⁵ E. Enson Decl., Exhibit H (Opinion Letter of Fatima Al Ali (23 August 2023)).

⁶ Bylaws for Internet Corporation for Assigned Names and Numbers (“Bylaws”) (as amended 17 November 2023), Art. 4, § 4.3(b)(i), Exhibit 3.

initiated this IRP (or when it filed its First or Second Amended IRP Requests). GCCIX is not properly licensed in its home country and does not have a right to engage in commercial activities or participate in legal actions because it has been “Deleted by law” for more than three years. Second, this IRP is subject to dismissal under ICANN’s Bylaws in that the IRP now “lack[s] substance.”⁷ Specifically, regardless of the outcome of this IRP, it is unclear how GCCIX could operate a .GCC gTLD. As a defunct legal entity, GCCIX is not permitted to engage in the commercial activities required to operate a .GCC gTLD, such as entering into a registry agreement and/or other agreements necessary to operate a gTLD. Thus, the entire aim of GCCIX’s IRP Request, namely, to allow GCCIX to ultimately operate .GCC, is untenable at this point.

8. Moreover, this is not an issue that GCCIX can fix by filing for a new CR. Even if GCCIX were to file for a new CR and receive one, that CR would be a new registration number associated with a *new* legal entity, not the applicant that submitted the application for the .GCC gTLD and not the complainant that filed this IRP.

9. While summary dismissal would indeed be dispositive of this IRP, it is warranted considering the facts that: (i) GCCIX was “Deleted by law” when it first filed this IRP; (ii) GCCIX has not produced any documents indicating that the Bahraini MOIC has restored GCCIX’s CR; (iii) GCCIX has had several years to attempt to change GCCIX’s corporate status to “active,” but has failed to do so; and (iv) ICANN’s Bahraini counsel has explained that GCCIX’s CR cannot be restored and GCCIX, therefore, is unable to engage in commercial activities.

⁷ See *id.*, Art. 4, § 4.3(o)(i).

10. Dismissal of this IRP is even more appropriate in that much of the procedural relief GCCIX seeks in this IRP has already been awarded to GCCIX. Specifically, as GCCIX argued ICANN should have done, ICANN went back to Governmental Advisory Committee (“GAC”) to request a written rationale for the GAC’s advice, ICANN independently evaluated that advice as well as various other materials, including GCCIX’s communications and position papers; and ICANN issued a detailed rationale in the April 2023 Resolution as to why it found that GCCIX’s .GCC application was not in the public interest and should not proceed, all of which is consistent with the findings in two prior IRPs and how ICANN responded to them.⁸

11. Accordingly, ICANN respectfully requests that the Panel set a briefing schedule on this motion and that the Panel ultimately dismiss this IRP.

SUMMARY OF RELEVANT FACTS

I. IRP PROCEEDINGS.

12. GCCIX instituted this IRP in June 2021 challenging the ICANN Board’s June 2013 decision that the processing of GCCIX’s application to operate a .GCC gTLD should be halted based on the GAC’s consensus advice that the application should not proceed (“GAC Advice”).⁹ In light of two previous IRP final declarations relating to Board acceptance of GAC consensus advice, and GCCIX’s claims and requests for relief in this IRP, the ICANN Board adopted a resolution authorizing ICANN to open a dialogue with the GAC regarding the rationale for the GAC Advice, noting that such discussions with the GAC could provide valuable information that may be beneficial to reaching a determination as to the next steps regarding this IRP and the .GCC application.¹⁰

⁸ See Approved Resolutions | Regular Meeting of the ICANN Board (30 April 2023), Exhibit 4.

⁹ See generally, Claimant’s Request for Independent Review (1 June 2021), Exhibit 5.

¹⁰ Approved Board Resolutions | Regular Meeting of the ICANN Board (12 September 2021), p. 9, Exhibit 6.

13. After receiving information from the GAC regarding its rationale for the 2013 GAC Advice that the .GCC application should not proceed, receiving further information from GCCIX regarding its .GCC application and the GAC Advice, and after reviewing various materials relating to the .GCC application and objections and challenges thereto as well as a recommendation from ICANN’s Board Accountability Mechanisms Committee (“BAMC”), the ICANN Board resolved on 30 April 2023, along with a detailed rationale for its decision, to reaffirm acceptance of the GAC Advice and that proceeding with the .GCC application would not be in the public interest (“April 2023 Resolution”).¹¹

14. Thereafter, GCCIX filed a Second Amended IRP Request challenging the ICANN Board’s actions in 2013 as well as the April 2023 Resolution.¹²

II. GCCIX’S CORPORATE REGISTRATION WAS “DELETED BY LAW” BY BAHRAIN’S MINISTRY OF INDUSTRY AND COMMERCE IN 2018.

15. During the course of this IRP, ICANN learned that GCCIX’s Corporate Registration (“CR”) was “Deleted by law” on 28 August 2018 in the country of GCCIX’s incorporation, Bahrain, by the Bahraini MOIC.¹³ At the same time, ICANN also learned that GCCIX has undergone significant corporate changes including, but not limited to, changes in its officers and directors, changes in its shareholders with more than 15% ownership interest, changes to its authorized signatories, as well as abandonment of its website/domain name (gccix.net), which is being operated by what appears to be a completely unrelated business, GCCIX Media.¹⁴ These changes, which appear to have occurred in 2016, were never

¹¹ Approved Resolutions | Regular Meeting of the ICANN Board (30 April 2023), pp. 17–18, Exhibit 4.

¹² See Second Amended IRP Request (22 December 2023), Exhibit 1.

¹³ Commercial Registration Information for GCCIX, W.L.L., Exhibit 2.

¹⁴ E. Enson Decl., Exhibit C (Letter from E. Enson to M. Rodenbaugh (13 January 2023)); Commercial Registration Information for GCCIX, W.L.L., Exhibit 2.

communicated to ICANN regarding the .GCC application, despite GCCIX being obligated to do so.¹⁵

16. As part of the ordinary discovery process, ICANN requested that GCCIX produce documents regarding its corporate formation in Bahrain.¹⁶ GCCIX objected to the request, but ultimately agreed, on 21 October 2022, to “provide evidence that GCCIX remains in good standing in Bahrain.”¹⁷ GCCIX, however, was never able to do that.

17. On 13 January 2023, ICANN wrote GCCIX about its corporate status and explained ICANN’s understanding that if an entity has been “Deleted By law” for more than three years, as GCCIX had been, that entity cannot be reinstated under Bahraini law.¹⁸ Accordingly, ICANN again asked GCCIX to produce to ICANN “evidence that GCCIX remains in good standing in Bahrain.”¹⁹

18. Thereafter, on 30 January 2023, GCCIX provided ICANN with a letter from Abdulla Sayyar, purportedly a Bahraini lawyer, stating “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.”²⁰ Mr. Sayyar further claimed that GCCIX “is in good standing,”

¹⁵ ICANN gTLD Applicant Guidebook (“Guidebook”) (4 June 2012), § 1.2.7, Exhibit 7 (“If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant . . . Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.”).

¹⁶ E. Enson Decl., Exhibit A (Request No. 17 seeks “All documents and communications relating to Claimant’s formation as a W.L.L., including but not limited to any Articles of Association, any documents reflecting Claimant’s mission or purpose, and documents sufficient to show when Claimant was formed.”).

¹⁷ E. Enson Decl., Exhibit B.

¹⁸ E. Enson Decl., Exhibit C.

¹⁹ *Id.*

²⁰ E. Enson Decl., Exhibit D.

and that “GCCIX and throw [sic] its chairman are working hand to hand with the ministry to submit the financials and all the requirements and the company status will be changed to active in 45 days.”²¹

19. In advance of a 7 February 2023 status conference with the Panel, ICANN provided the Panel with ICANN’s 13 January letter and Mr. Sayyar’s letter and requested that the parties and Panel discuss GCCIX’s corporate status.²² During the status conference, the Panel instructed the parties to continue to discuss the issue and raise the issue with the Panel if needed.

20. Over the course of the next few months, ICANN was assured by GCCIX that its Bahraini counsel was working on the corporate status issue, and GCCIX’s IRP counsel confirmed for ICANN that the only person still associated with the company is Fahad al Shirawi as its “Chief Executive Officer and [] sole employee.”²³ All other directors, officers and shareholders identified in GCCIX’s .GCC application were no longer associated with GCCIX.

21. Despite GCCIX’s counsel’s assurances, there was no change in GCCIX’s corporate status – it remained “Deleted by law.” As a result, ICANN obtained guidance from a Bahraini corporate attorney with the law firm of Hassan Radhi & Associates, Ms. Fatima Al Ali, and provided GCCIX a copy of Ms. Ali’s 23 August 2023 opinion letter (“Opinion Letter”).²⁴ Ms. Al Ali was asked by ICANN to explain the meaning of GCCIX’s “Deleted by law” status. Based on her experience and knowledge of Bahraini corporate law, Ms. Al Ali concluded as follows, as set forth in her Declaration supporting this Motion:

²¹ *Id.*

²² E. Enson Decl., Exhibit E (Email from E. Enson to Panel (6 February 2023)).

²³ E. Enson Decl., Exhibit G (Stipulated Protective Order at 8(c) (26 May 2023)).

²⁴ E. Enson Decl., Exhibit H; *see also* Declaration of Fatima Al Ali (31 January 2024) (“F. Al Ali Decl.”), Exhibit A (Ms. Al Ali’s 23 August 2023 Opinion Letter).

- “[N]o person may conduct a commercial activity in Bahrain without a valid commercial registration (“CR”) and license from the licensing authority/ies relevant to their commercial activity/ies.”²⁵
- “Each CR must be maintained and renewed on an annual basis.”²⁶
- “A CR not renewed on the anniversary of its issuance is therefore considered expired, and may be reinstated only in accordance with the CR Law and CR Implementing Regulations.”²⁷
- “If a CR is expired, the Ministry will delete the CR off the register. Reviving a deleted CR requires the payment of a fee and fine for every month of delay.”²⁸
- “Pursuant to Article 20 of the CR Implementing Regulations, a CR may be restored within three years from the date of deletion. In order to restore the CR, the CR owner must: (a) make a request to the Ministry; (b) pay the applicable fees; and (c) pay the applicable fine for each month of delay. The Ministry has the authority to impose additional requirements to complete the restoration of the deleted CR.”²⁹
- “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*.”³⁰

22. Ms. Al Ali further confirmed that GCCIX’s CR was in fact “Deleted by law” on 29 August 2018 and remained “Deleted by law” as of the date she executed her Declaration, 31 January 2024.³¹ Ms. Al Ali further opined that Mr. Sayyar’s claim that GCCIX’s CR would be

²⁵ F. Al Ali Decl. ¶ 14.

²⁶ F. Al Ali Decl. ¶ 16.

²⁷ F. Al Ali Decl. ¶ 17.

²⁸ F. Al Ali Decl. ¶ 17.

²⁹ F. Al Ali Decl. ¶ 18.

³⁰ F. Al Ali Decl. ¶ 20 (emphasis added).

³¹ E. Enson Decl. ¶ 10, Exhibit H, pp. 6-7; *see also* F. Al Ali Decl. ¶ 22.

changed to “active” was not legally possible because GCCIX’s CR “has been ‘Deleted by law’ for a period exceeding three years. It is therefore finally struck off and may not be restored.”³² Finally, Ms. Al Ali stated that she “do[es] not agree with the statement by GCCIX’s Bahraini counsel that GCCIX ‘is in good standing’” because “GCCIX may no longer engage in commercial activities” and “without legal personality, GCCIX may not take part in legal disputes.”³³

23. GCCIX has never responded to Ms. Al Ali’s Opinion Letter, has not provided any additional information about GCCIX’s CR, despite ICANN’s requests for as much, and the CR remains “Deleted by law” as of the filing of this Motion and cannot be revived. Indeed, on 29 January 2024, ICANN provided GCCIX with notice that ICANN planned on filing this Motion, asked for “any new information regarding GCCIX’s CR” and attempted to meet and confer with GCCIX on a briefing schedule for this Motion, but GCCIX did not respond.³⁴

STANDARD OF REVIEW

24. The IRP is embedded in ICANN’s Bylaws, which were developed over a period of years with extensive input from the ICANN community. The Bylaws provide that only a “Claimant” can institute an IRP.³⁵ A Claimant is defined by the Bylaws as “any legal or natural person, group, or entity ... that has been materially affected by a Dispute.”³⁶

25. Under the Bylaws and the IRP Interim Supplementary Procedures, this Panel is authorized to “[s]ummarily dismiss Disputes that are brought without standing, lack substance,

³² F. Al Ali Decl. ¶ 23.

³³ F. Al Ali Decl. ¶ 24.

³⁴ E. Enson Decl. ¶ 21, Exhibit J (Email from E. Enson to M. Rodenbaugh (29 January 2024)).

³⁵ Bylaws, Art. 4, § 4.3(b)(i).

³⁶ *Id.*, Art. 4, § 4.3(b)(i); Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) for Independent Review Process (IRP) (“Interim Supp. Proc.”) (25 October 2018), Rule 1, Exhibit 8.

or are frivolous or vexatious.”³⁷ This Panel is required to decide all disputes “in compliance with ICANN’s Articles and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.”³⁸

ARGUMENT

26. This IRP should be summarily dismissed for at least two reasons. First, GCCIX does not qualify as a “Claimant” because it is not a “legal . . . entity” in that its CR has been “Deleted by law” for over three years, since 2018, and cannot be restored. Second, this IRP now lacks substance because – regardless of the outcome of this IRP – GCCIX, as a defunct entity, is not permitted to engage in the commercial activities required to operate a .GCC gTLD, including but not limited to entering into a registry agreement with ICANN.

I. GCCIX DOES NOT QUALIFY AS AN IRP “CLAIMANT” BECAUSE IT IS NO LONGER A “LEGAL ENTITY.”

27. The Bylaws define a “Claimant” entitled to file and prosecute an IRP as a “legal . . . entity.”³⁹ A “legal entity” has been defined by Black’s Law Dictionary as: “A lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to (1) enter into agreements or contracts, (2) assume obligations, (3) incur and pay debts, (4) sue and be sued in its own right, and (5) to be accountable for illegal activities.”⁴⁰

28. GCCIX, however, fails to satisfy these definitions. One, GCCIX is not a “legally standing” entity because its CR has been “Deleted by law” for more than three years and its CR has been “finally struck off the commercial register and may not be restored.”⁴¹ Indeed, GCCIX is not in good standing under the laws of Bahrain. Two, GCCIX is not a legal entity because it

³⁷ Bylaws, Art. 4, § 4.3(o)(i); *see also* Interim Supp. Proc. Rule 9.

³⁸ Bylaws, Art. 4, § 4.3(i)(ii).

³⁹ Bylaws, Art. 4, § 4.3(b)(i).

⁴⁰ Black’s Law Dictionary “Legal Entity” Definition & Legal Meaning (2nd Ed. 2002), Exhibit 9.

⁴¹ F. Al Ali Decl. ¶ 23.

does not have a valid CR permitting it to engage in commercial activities, such as entering into agreements or contracts.⁴² And three, “without legal personality, GCCIX may not take part in legal disputes.”⁴³

29. In fact, GCCIX was not a legal entity when it filed this IRP in 2021 because its CR had already been “Deleted by law.”⁴⁴ Moreover, GCCIX cannot fix its legal status simply by filing for a new CR.⁴⁵ While there is no evidence that Mr. al Shirawi, GCCIX’s “sole employee[,]”⁴⁶ has actually made any effort to remedy this situation, even if he were to file for a new CR and receive one, that CR would have a different registration number associated with a different legal entity, not the applicant that submitted the application for the .GCC gTLD and not the Claimant that filed this IRP.⁴⁷

30. Accordingly, this IRP should be summarily dismissed due to the fact that GCCIX does not qualify as a “Claimant” permitted to prosecute this IRP.

II. THIS IRP “LACK[S] SUBSTANCE” BECAUSE GCCIX, AS A DEFUNCT ENTITY, CANNOT ENGAGE IN THE TYPE OF COMMERCIAL ACTIVITIES NECESSARY TO OPERATE A GTLD.

31. GCCIX’s ultimate goal in this IRP is the operation of a .GCC gTLD.⁴⁸ That goal, however, is not feasible at this point because GCCIX, as a defunct entity, is not permitted to

⁴² F. Al Ali Decl. ¶¶ 1, 24 (citing Article 7 of Decree Law No. 27 of 2015 with respect to Commercial Registration, stating “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.”).

⁴³ F. Al Ali Decl. ¶ 24.

⁴⁴ See F. Al Ali Decl. ¶ 22.

⁴⁵ F. Al Ali Decl. ¶¶ 20, 25.

⁴⁶ E. Enson Decl., Exhibit G at 8(c).

⁴⁷ F. Al Ali Decl. ¶ 25 (“Finally, if GCCIX were to apply for a new CR in Bahrain and a CR is granted, that CR would be associated with a new legal entity, not a continuation of GCCIX.”); see also *id.* ¶ 20 (“A deleted CR that is not restored within three years from the date of the decision to delete it, is considered finally struck off the commercial register and may not be restored.”).

⁴⁸ Second Amended IRP Request (22 December 2023), p. 41, Exhibit 1 (“GCCIX urges the Panel to order that ICANN follow the precedent of the .Africa decision, disregard the unsubstantiated GAC advice to reject that application, and return the application to processing. Alternatively, GCCIX urges the Panel to order that ICANN facilitate dialogue with the government objectors, with the stated aim to permit GCCIX to operate the .GCC TLD in accord with a mutually agreed governance model such as GCCIX has proposed from the start.”).

engage in the commercial activities required of a registry operator, such as entering into a registry agreement and/or other necessary agreements. Accordingly, this IRP now lacks substance and should be dismissed on this basis.

32. The New gTLD Applicant Guidebook (“Guidebook”) is clear that applicants successfully completing all stages of evaluation are required to carry out a series of concluding steps before delegation of the applied-for gTLD, including “execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.”⁴⁹ According to the Base Registry Agreement, which GCCIX would be required to sign in order to operate a .GCC gTLD, the Registry Operator must warrant that it “is duly organized, *validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto*, [i.e., its state or country of incorporation] and Registry Operator has all requisite power and authority and has obtained all necessary approvals to enter into and duly execute and deliver this Agreement[.]”⁵⁰ GCCIX, however, cannot make this warranty because, as an entity that has been “Deleted by law” in Bahrain for over three years, it is not validly existing or in good standing under Bahraini law.⁵¹

33. Likewise, the Base Registry Agreement requires registry operators to warrant that “*all material information provided and statements made in the registry TLD application*, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, *and such information or statements continue to be true and correct in all material respects* as of the Effective Date except as otherwise previously disclosed

⁴⁹ Guidebook, § 1.1.2.11 (“Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.”).

⁵⁰ ICANN Base Registry Agreement (30 April 2023), § 1.3(a)(ii), p. 1, Exhibit 10 (emphasis added).

⁵¹ F. Al Ali Decl. ¶¶ 23, 24. The Guidebook is also clear that only “[e]stablished corporations, organizations, or institutions *in good standing* may apply for a new gTLD.” Guidebook § 1.2.1 (emphasis added).

in writing by Registry Operator to ICANN[.]”⁵² GCCIX cannot warrant that all the material aspects of its application “continue[s] to be true and correct” because GCCIX has been “Deleted by law” and is no longer in good standing in Bahrain. Moreover, as noted above, there have been dramatic changes to GCCIX’s ownership and management, in that it now has only a “sole employee,”⁵³ all of its other officers, directors, shareholders, and authorized signatories are no longer affiliated with GCCIX, and it seems to have abandoned its website/domain name (gccix.net), which is being operated by what appears to be a completely unrelated business, GCCIX Media.⁵⁴

34. Separate and apart from an inability to enter into a registry agreement due to its lack of a valid CR, GCCIX would similarly not be permitted under Bahraini law to conduct the commercial activities required of a registry operator. For example, in its .GCC application, GCCIX envisioned entering into an agreement with a “back-end” registry operator to provide the technical services needed to operate the gTLD.⁵⁵ GCCIX, however, cannot enter into such an agreement because it is not permitted to engage in these types of commercial activities.⁵⁶ It is likewise unclear how GCCIX would be able to provide a valid Continued Operations Instrument (similar to a letter of credit), which is required by ICANN’s registry agreement.⁵⁷

35. Simply put, ICANN cannot enter into a registry agreement with an applicant that does not meet the baseline eligibility requirements stated in the Guidebook and the Registry Agreement. Going through the expense and time commitment of an IRP that no longer can accomplish Claimant’s stated goal is unjustified.

⁵² ICANN Base Registry Agreement (30 April 2023), § 1.3(a)(i), p. 1, Exhibit 10 (emphasis added).

⁵³ E. Enson Decl., Exhibit G at 8(c).

⁵⁴ See E. Enson Decl., Exhibit C; Commercial Registration Information for GCCIX, W.L.L., Exhibit 2.

⁵⁵ ICANN New gTLD Application Submitted to ICANN by GCCIX W.L.L. (13 June 2012), pp. 16–19, Exhibit 11.

⁵⁶ F. Al Ali Decl. ¶ 24.

⁵⁷ ICANN Base Registry Agreement (30 April 2023), § 1.3(a)(iii), Exhibit 10.

36. This is even more the case in that GCCIX has already obtained the procedural relief that it seeks in this IRP – namely, an independent Board review of the GAC Advice and a detailed rationale for the Board’s decision. In last two years, the ICANN Board has conducted a thorough review of the underlying basis for the GAC Advice, the Board’s prior acceptance of that advice, the .GCC application and the objections and challenges to it, and other inputs and materials relevant to the .GCC application as well as the public interest, as set forth in the detailed rationale for the Board’s April 2023 Resolution.⁵⁸ Accordingly, this IRP should be summarily dismissed as lacking substance.

CONCLUSION

37. For the foregoing reasons, ICANN respectfully requests the Panel set a briefing schedule on this motion and ultimately dismiss GCCIX’s Second Amended IRP Request.

Respectfully submitted,

JONES DAY

By: /s/ Eric P. Enson

Eric P. Enson

Counsel for Respondent ICANN

Dated: 5 February 2024

⁵⁸ See Approved Resolutions | Regular Meeting of the ICANN Board (30 April 2023), Exhibit 4.