Ministerial Order No. (106) of 2018
Concerning Economic Substance Requirements in the Kingdom of Bahrain

The Minister of Industry Commerce and Tourism having perused Legislative Decree No. 27 of 2015 as amended concerning Commercial Registration

And according to the presentation of the Undersecretary of Commerce Affairs

Has resolved the following:

Article 1

The purpose of this Order is to enhance economic substance requirements in the Kingdom of Bahrain and clarify the requirements for any Traders carrying out the following types of Relevant Activities in or through Bahrain: distribution and service centre activities headquarters activities, holding company activities, leasing activities (other than those activities undertaken by licensees of the Central Bank of Bahrain), shipping activities and intellectual property activities in Bahrain.

Article 2

Traders carrying out the types of Relevant Activities set out in Article 1 herein must:

(a) be directed and managed in Bahrain as follows:
    (i) there must be meetings of the Board of Directors, managers or partners held in Bahrain at adequate frequencies given the level of decision making required;
    (ii) during these meetings, there must be a quorum of the Board of Directors, managers or partners physically present in Bahrain;

(iii) strategic decisions of the Trader must be set out at meetings of the Board of Directors, managers or partners and the minutes of the meeting must reflect those decisions;

(iv) all records (including minutes of meetings) of the Trader must be readily available in Bahrain;

(v) the Board of Directors, managers or partners, as a whole, must have the necessary knowledge and expertise to discharge their duties.

(b) undertake their Core Income Generating Activities (CIGAs) in Bahrain (either by them or third party service providers);

(c) have an adequate level of qualified full-time employees resident in Bahrain, or adequate level of expenditure on outsourcing to third party service providers, whose activities, employees, expenditure and premises are in Bahrain and are proportionate to the activities of the Trader;

(d) have an adequate level of annual operating expenditure incurred in Bahrain, or adequate level of expenditure on outsourcing to third party service providers whose activities, employees, expenditure and premises are in Bahrain and are proportionate to the activities of the Trader;

(e) have adequate physical offices and/or premises in Bahrain, or adequate level of expenditure on outsourcing to third party service providers in Bahrain, for the activities of the Trader;

(f) establish an adequate set of internal policies and controls for their operation, compliance, corporate governance and risk management, these policies to be regularly reviewed to ensure that they remain appropriate, relevant and prudent;

(g) maintain adequate and proper records and books of accounts in Bahrain, such records and books of account to meet International Financial Reporting Standards (IFRS),

and contain *inter alia* the following information:

(i) Type of business;

(ii) Amount and type of gross income; and

(iii) Amount and type of expenses and assets.

(h) clearly indicate their name and commercial registration number on their letterhead, stationery and other documents, websites and social media platforms;

(i) obtain the prior approval of the Ministry for:

(i) the establishment of an office outside Bahrain;

(ii) change of shareholders; and

(iii) appointment of directors.

For the purposes of paragraphs (c), (d) and (e) of this Article, Traders may elect to outsource a Relevant Activity to third party service providers, provided that:

(i) the Trader is able to demonstrate adequate supervision of the outsourced activity;

(ii) the outsourced activity is conducted in Bahrain; and

(iii) the economic substance of service providers will not be counted multiple times by multiple Traders when evidencing their own substance in Bahrain.

Article 3

For the purpose of this Ministerial Order, CIGA consists of those principal functions that drive the business value (rather than exclusively or mostly administrative support activities) and includes:

(a) for *Distribution and Service Centre activities* - transporting and storing goods; managing stocks and taking orders; and providing consulting or other administrative services;

(b) for *Headquarters' activities* - taking relevant management decisions, incurring expenses on behalf of group entities, co-ordinating group activities

(c) for *Holding Company activities* - those activities that are associated with the income that the holding companies earn (such as interest, rents, and royalties). Traders which purely hold equities will need to confirm they meet all applicable commercial law requirements, have an adequate level of qualified full-time employees resident in Bahrain, have adequate physical offices and/or premises in Bahrain to hold and manage equity participations. Where holding companies also conduct other relevant activities they will additionally be subject to the requirements associated with that activity;

(d) for *Leasing Activities* - identifying or acquiring assets to be leased, setting the terms and duration of acquiring assets to be leased, monitoring and revising agreements, managing any risk;

(e) for *Shipping activities* - managing the crew (including hiring, paying and overseeing crew members), hauling and maintaining ships, overseeing and tracking deliveries, determining what goods to order and when to deliver them, organising and overseeing voyages.

(f) for *Intellectual Property activities* – if the intangible asset is*:*

(i) *a patent* – research and development activities;

(ii) *a brand, trademark and customer data* – branding, marketing and distribution activities;

(iii) *any other intangible assets:*

- taking strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset; or
- taking strategic decisions and managing (as well as bearing) the

principal risks relating to the third-party acquisition and subsequent exploitation of the intangible asset; or

- carrying on the underlying trading activities through which the intangible assets are exploited and which lead to the generation of revenue from third-parties.

Article 4

For Intellectual Property activities, where intellectual property rights were acquired through a related party or obtained through the funding of overseas research and development activities such as under a cost-sharing agreement and are licensed to foreign related parties or monetised through activities performed by foreign related parties there will be a rebuttable presumption that the Trader does not have an economic substance in Bahrain.

Article 5

Traders may rebut the presumption referred to in Article 4 herein by providing the following information to the Ministry as proof that, in addition or alternatively to research and development, branding and distribution activities, there was, and historically has been, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset, which is, and historically has been, exercised by full time highly skilled employees that permanently reside and perform their core activities in Bahrain:

(a) Detailed business plans which allow to clearly ascertain the commercial rationale of holding IP assets in Bahrain;
(b) Employee information including level of experience, type of contracts, qualifications, duration of employment;
(c) Concrete evidence that decision making is taking place within Bahrain;

Article 6

Traders carrying out the types of Relevant Activities set out in Article 1 herein must notify the Ministry within 30 days of the following matters:

(a) resignation of directors and officers responsible for managing the Traders;
(b) any change of information with regard to the place of business or office in Bahrain; and
(c) any changes to the constituent documents and business plans of the Traders.

Article 7

Traders carrying out the types of Relevant Activities set out in Article 1 herein must:

(a) appoint an approved external auditor to undertake an audit in respect of its accounts and business operations;

(b) name the immediate and ultimate parent company, and ultimate beneficial owner of the Trader, together with their jurisdiction of tax residence; and

(c) provide such additional statistics and information as may be required by the Ministry from time to time.

Article 8

Traders carrying out the types of Relevant Activities set out in Article 1 herein must, upon applying for a new commercial registration or upon renewing their commercial registration, file a Report to the Ministry submitting documentation showing that the Trader has complied with the requirements set out in Articles 2, 7, and 5 herein.

Article 9

(a) In addition to and without prejudice to the generality of any sanctions or penalties set out in Legislative Decree No. 27 of 2015 concerning Commercial Registration as amended, if any Trader is found to be in breach of any of the provisions of this Order, the Ministry will issue a written warning notice to the Trader to remedy the breach within 30 days.

(b) If the Trader referred to in paragraph (a) herein continues to be in breach of this order, the Ministry may take one of the following administrative enforcement measures:

(i) suspend the Commercial Registration of the Trader;

(ii) impose a daily administrative fine. Such fine shall not exceed Bahrain Dinars One Thousand (BD 1,000) per day when the breach is committed for the first time, and Bahrain Dinars Two Thousand (BD 2,000) per day if the Trader in breach commits any other breach within three years from the date when a decision was issued against the Trader in relation to the previous breach. In all cases, the sum of the administrative fine may not exceed Bahrain Dinars Fifty Thousand (BD 50,000);

(iii) impose a total administrative fine not exceeding Bahrain Dinars One Hundred Thousand (BD 100,000), and

(iv) strike the Trader from the Commercial Register.

(c) The Ministry may refer the breach to the Public Prosecution if after an Administrative Investigation, under Legislative Decree No. 27 of 2015 concerning Commercial Registration as amended, it believes the breach constitutes a criminal offence. This may result in imprisonment for a term not exceeding one year and/or to a fine not less than Bahrain Dinars One Thousand (BD 1,000) and not exceeding Bahrain Dinars Fifty Thousand (BD 50,000).

Article 10

This Order shall come into effect:

(a) on the 1st of January 2019 for:

(i) traders applying for new commercial registrations;

(ii) existing Traders with respect to new Relevant Activities or acquiring new Intellectual Property assets; and

(b) on the 1st of July 2019 for any other existing Traders.

Article 11

This Order shall be implemented by the Undersecretary of Commerce Affairs, and shall be effective as of the date of its issue and shall be published in the Official Gazette.

Minister of Industry, Commerce & Tourism
Zayed R. Alzayani
Issued on: 23 December 2018