

Anti-Concealment in the Kingdom of Saudi Arabia

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The Saudi Ministries of Commerce and Justice, and the Zakat, Tax and Customs Authority (collectively the “**Saudi Authorities**”) have recently and significantly beefed up their approach to parties breaching anti-concealment legislation in the Kingdom, i.e. foreign entities unlawfully operating within the Kingdom, frequently behind the veil of a lawfully registered Saudi company.

Since 2004, the Saudi Authorities have attempted through the Anti-Concealment Law to make it illegal for foreign companies to operate in the Kingdom through arrangements under which a company is wholly owned by Saudi nationals but the economic beneficiary of such business is a non-Saudi, i.e. the true control and beneficial ownership is being concealed.

Recent developments to the Anti-Concealment Law mean that a ‘*concealment act*’ which includes *any agreement or arrangement enabling a non-Saudi party to undertake non-licensed economic activities in Saudi by using a license or issued approval of the concealing Saudi party* (a “**Concealment Act**”) is now a criminal activity.

Examples of such illegal conduct under the Anti-Concealment Law include: (i) establishments’ unlawfully granting non-Saudis authority over the operation and management of their establishment; (ii) non-Saudis unlawfully possessing or using authority that leads to them gaining absolute power over the operations and management of a Saudi owned establishment; and (iii) non-Saudis gaining access to an establishment’s bank account.

The Saudi Authorities can impose various penalties against parties that infringe the Anti-Concealment Law. These include monetary fines of up to SAR 5 million (circa. US\$1.3 million) and potential custodial sentences for individuals who are found to have been involved in such activities. In addition the Saudi Authorities have the power to prevent a foreign party infringer from entering the Saudi market in the future and for the entity that was used to breach the law being dissolved.

Not only should the potential penalties be of concern to those parties who are actively and principally engaged in a Concealment Act, but due to the widened scope of the new Anti-Concealment Law, these penalties also potentially extend to third parties, whose involvement in an Concealment Act is indirect, such that those that have advised on the implementation of a structure that gives rise to a Concealment Act could be deemed to be in breach of the Anti-Concealment Law. Furthermore, parties who fail to assist the Saudi Authorities in the undertaking of investigations (or the like) regarding breaches of the Anti-Concealment Law

could find themselves in “hot water”.

Demonstrating the seriousness with which the Saudi Authorities are taking their role in respect of policing Concealment Acts, ‘whistle-blower rewards’ are being offered. Under the Anti-Concealment Law, Saudis who report a Concealment Act are offered a reward of up to 30% of collected fines relating to the same. The Saudi Authorities are regularly reminding citizens of their duty on this front, by way of sending out messages directly to mobile phones encouraging reporting. Furthermore, the Saudi Authorities have made it clear that part of their clamp-down will include public naming and shaming, as demonstrated by twitter pages and websites that have readily identified offenders.

It is clear that the Saudi Authorities are keen to clamp down on illegal activity. Consequently, those looking to enter the Kingdom should ensure that they do so without being in breach of the Anti-Concealment Law and those businesses already active in the Kingdom that may be in breach should (without further delay) properly regulate their activities in accordance with the laws, directives and regulations of the Kingdom.