

Saudi's Anti-Concealment Law...It's still a "Thing"



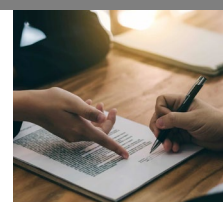
In the past few years, the Kingdom of Saudi Arabia has made a concerted effort to court foreign direct investment and foreign participation in the broader economy.

This effort has resulted in a series of measures aimed at relaxing and streamlining the foreign capital investment regime, including allowing for 100% foreign ownership in most industry sectors and the recent advent of the regional headquarters regime to entice multinational companies to establish a presence in the Kingdom, and the list goes on.

The Kingdom has gone to great lengths to establish clear lines of demarcation as to what is or is not permissible. Put simply, the rules have limits, and attempts to circumvent them will have consequences.

Case in point, on May 6, 2024, an article published in the *Saudi Gazette* detailed the investigation and prosecution of a Syrian resident and a Saudi citizen under Saudi Arabia's Anti-Concealment Law (Cabinet Decision No. 785/1441) ("ACL").

The two individuals prosecuted under the law were found guilty of a "commercial cover-up" or an act of "concealment." Each was sentenced to a period of incarceration and fined by the Riyadh Criminal Court.



The related investigations determined that the Saudi citizen had permitted the Syrian resident, acting through the Saudi's commercial company, to engage illegally in the contracting business. It was also determined that the turnover of the offending business operations had yielded SAR2 million in value.

The Ministry of Commerce (MoC) regularly announces violations of the Anti-Concealment Law on its website, summarizing final judgments of the criminal courts. By publishing the consequences and penalties for violating the ACL, the ministry intends to discourage businesses and individuals from engaging in hidden economic activities.¹

This incident sheds light on the severity and importance of the Anti-Concealment Law issued by Cabinet Decision No.785/1441.

So, what exactly is the Anti-Concealment Law? The Anti-Concealment Law defines concealment as *"an agreement or arrangement whereby a person enables a non-Saudi to practice economic activity in the Kingdom that he is not licensed to practice by using the license or approval issued in the Saudi citizen's favor."*²

Although the law speaks specifically in terms of "offenses," any non-compliance with ACL (i.e., acts of concealment) will be categorized as either an "offense" or a "violation," both of which have consequences (i.e., penalties).

Offenses. The ACL considers **concealment "offenses"** to be acts involving:³

- a) A Saudi citizen enabling a non-Saudi to engage in commercial activities in which the non-Saudi is not licensed by (but not limited to) using his name, trademark, and commercial register.
- b) A non-Saudi engaging in commercial activities in Saudi Arabia for personal gain, despite lacking authorization, with facilitation from a Saudi citizen.
- c) Aiding and abetting others in committing the offenses above (a or b), which includes advising, assisting, or encouraging someone to engage in such illegal business activities.
- d) Obstructing officials enforcing the law in performing their duties, which includes failing to provide needed information or providing false information.

Violations. Further, the ACL and the courts prohibit indirect acts of **concealment**, termed **"violations,"** which, as stipulated in the law, include acts whereby:⁴

- a) An entity illegally gives a non-Saudi complete control over the company by providing the non-Saudi excessive access, allowing the non-Saudi to take full control over the company.
- b) A non-Saudi illegally exploits and retains tools, illegally giving him full control over the company (e.g., passwords, special keys, etc.).
- c) A company uses a bank account for commercial activities other than its own.
- d) A non-Saudi illegally appoints or dismisses the company's director.
- e) A non-Saudi who is not licensed illegally accepts the company's profit distribution terms to its partners or shareholders.⁵

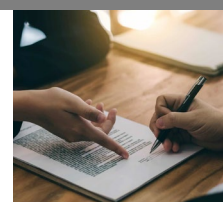
¹ Article 11 of the Anti-Concealment Law

² Article 2 of the Anti-Concealment Law

³ Article 3 of the Anti-Concealment Law

⁴ Article 4 of the Anti-Concealment Law

⁵ Article 2 of the Anti-Concealment Implementing Regulations



Penalties for Offenses. The penalties for **offenses** vary depending on several factors, such as the nature of the act, the size of the company, whether it is a repeated act and the impact of such an offense. To that end, the court will determine the severity of the acts and impose the penalty accordingly. Notably, penalties for repeat offenders will be doubled.

Specifically, the penalties for concealment offenses are (i) imprisonment for a period not to exceed five (5) years and (ii) a fine not exceeding SAR 5 million. However, the court has discretion to reduce these penalties for mitigating behavior by the accused—i.e., turning over material evidence that the authorities may not otherwise be able to obtain on their own.⁶

Further, depending on the severity of the offense, the court may confiscate the proceeds derived from the offense, whether from the Saudi or the non-Saudi defendant. Additionally, non-Saudi offenders will be deported back to their home country for good after serving their sentence and paying all requisite fines and taxes.⁷

Business enterprises involved in the offense also face punitive actions, which may include being shut down entirely, losing their license to operate, and having their commercial registration revoked.

Offenders are obliged to pay all the Zakat, taxes, fees, and other obligations resulting from the shutdown of the entity. However, the court has the discretion to decide otherwise. Additionally, the offender would be banned from both the specific activity related to the offense and any other business activities for five years after the sentence is finalized.⁸

Penalties for Violations. As for **violations**, similar to offenses, the penalties will vary depending on several factors, such as the nature of the act, the size of the company, whether it's a repeated act, and the impact of such offense.

These penalties for **concealment violations** are (i) a fine not exceeding SAR 500,000 and (ii) a shutdown of the company for a period not exceeding ninety (90) days.

Further, concerned authorities can look into a violator's business for up to five (5) years, which includes demanding financial records like bank statements or payroll information. If the business refuses to hand over these documents, they could face the same penalties as for the original violation—i.e., a fine up to SAR 500,000 and/or a closure for up to 90 days.⁹

Whistleblowers. Additionally, the ACL encourages whistleblowing by protecting the identity of those who report wrongful acts. Their identities are kept in sealed records and kept confidential.

Further, the ACL incentivizes whistleblowing by offering a reward of up to 30% of the collected fines (as long as they are not involved in the acts themselves).

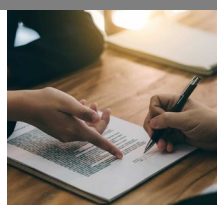
Case Summary:

⁶ Article 9 of the Anti-Concealment Law

⁷ Article 10 of the Anti-Concealment Law

⁸ Article 12 of the Anti-Concealment Law

⁹ Article 14 of the Anti-Concealment Law



According to a statement from the MoC, the Syrian resident will be deported after he serves his prison sentence. For his part, the Saudi citizen has been banned from participating in any commercial activity in the Kingdom for a period of 5 years (the maximum penalty).

Additionally, the court canceled the license and the commercial registration of the subject company and seized all the proceeds resulting from the concealment offenses and violations.

The Saudi Citizen:

- Violated (Article 3) of the Anti-Concealment Law: Enabling a non-Saudi to carry out an unlicensed commercial activity.
- Penalties:
 - Six (6) months imprisonment (Article 9).
 - Revocation of his contracting license (his current activity) and cancellation of his commercial register (Article 12.a).
 - Banned from participating in any other commercial activity for five (5) years (Article 12.b).

The Syrian Resident:

- Violated (Article 3) of the Anti-Concealment Law: Practicing a commercial activity without a license.
- Penalties:
 - Two (2) years imprisonment (Article 9).
 - Deportation from Saudi Arabia upon completion of sentence and fulfilling financial obligations (Article 11).

As per the publication in the Saudi Gazette, there were no details regarding the individual fines imposed on each participant as only the aggregate figure was published.

This case highlights the seriousness of commercial concealment in Saudi Arabia. Both the Saudi citizen and the Syrian resident faced significant penalties for facilitating the Syrian resident's unlicensed business.

The court remained silent on any whistleblowing. It's unclear whether any individuals reported the cover-up or if law enforcement uncovered the act on its own. Regardless, the court would ensure the confidentiality of any whistleblowers involved.

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Should you have any queries or require further clarification, please do not hesitate to reach out to our team. This article can also be accessed at www.blkpartners.com.