

# UAE ESR Law

UAE / ECONOMIC SUBSTANCE REGULATIONS / Laws and Regulations

This is the UAE's ESR Law, Cabinet Resolution No. 57 of 2020 revoking Cabinet Resolution No. 31 of 2019. Cabinet Resolution No. 57 of 2020 was issued on 10 August 2020.

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The Cabinet:

- After reviewing the Constitution,
- Federal Law No. (1) Of 1972 on Competencies of Ministries and the Powers of Ministers, as amended;
- Federal Law No. (18) Of 1981 concerning the Organisation of Commercial Agencies, as amended;
- Federal Law No. (26) Of 1981 on Maritime Commercial Law, as amended;
- Federal Law No. (5) Of 1985 promulgating the Civil Transactions Law, as amended;
- Federal Law No. (3) Of 1987 promulgating the Penal Code, as amended;
- Federal Law No. (10) Of 1992 promulgating the Evidence Law in the Civil and Commercial Transactions, as amended;
- Federal Law No. (11) Of 1992 promulgating the Civil Procedures Law, as amended;
- Federal Law No. (37) Of 1992 concerning Trademarks, as amended;
- Federal Law No. (4) Of 2000 on the Emirates Securities and Commodities Authority, as amended;
- Federal Law No. (7) Of 2002 on copyright and neighbouring rights, as amended;
- Federal Law No. (17) Of 2002 on regulating and protecting industrial property for patents, drawings and industrial forms, as amended;
- Federal Law No. (8) Of 2004 on Financial Free Zones,
- Federal Law No. (6) Of 2007 on establishment of the Insurance Authority and regulating its works, as amended;
- Federal Law No. (2) Of 2015 on Commercial Companies, as amended;
- Federal Law No. (8) Of 2015 on the Federal Customs Authority,
- Federal Decree-Law No. (13) Of 2016 on the establishment of the Federal Tax Authority,
- Federal Law No. (14) of 2016 on violations and administrative penalties in the Federal Government,
- Federal Law No. (19) Of 2016 on combating commercial Fraud,
- Federal Law No. (7) Of 2017 on tax procedures,
- Federal Decree-Law No. (8) Of 2017 on Value Added Tax,
- Federal Law No. (8) of 2018 on financial lease,
- Federal Decree-Law No. (14) Of 2018 on the Central Bank and the Regulation of Financial Institutions and Activities,
- Federal Decree No. (48) Of 2018 on ratification of the Multilateral Administrative Agreement for the Automatic Exchange of Information,
- Federal Decree No. (54) Of 2018 on ratification of the Convention on Mutual Administrative Assistance in Tax Matters,
- Cabinet Decision No. (31) of 2019 on Economic Substance Regulations, as amended;

- Cabinet Decision No. (58) Of 2019 on defining the regulatory authorities concerned with the activities indicated in the Cabinet Decision No. (31) Of 2019 on Economic Substance Regulations, and
- Based on proposal of the Minister of Finance and approval of the Cabinet,

Decided

## Article (1)

### Definitions

In application of the provisions of this resolution, the following words and phrases shall have the meanings ascribed thereto, unless the context otherwise requires:

Country: UAE

Banking: shall have the meaning specified in the law regulating banking in the country.

Working day: days of the week from Sunday to Thursday except leaves and official holidays.

Business document: any of the following documents:

(a) which related to the conducting of a Relevant Activity by a Licensee or an Exempt Licensee.

(b) which forms part of any record under any legislation applicable to a Licensee or an Exempt Licensee.

Business premises: the premises used in connection with the carrying on of a Relevant Activity in the State by a Licensee or Exempt Licensee.

Competent Authority: Ministry of Finance.

Central bank: Central Bank of UAE.

Foreign Competent Authority: foreign authority designated by virtue of an agreement, international treaty or similar international arrangement concluded by the country to request and receive any information or documents related to implementation of any provision indicated in this resolution.

Related person: an entity forming part of the same group to which the licensee or exempt licensee belongs.

Distribution and Service Center Business: A business conducting any of the following activities:

(a) Buying from a foreign related person, components of parts, materials for goods or commodities ready for sale and re-sale of these components or goods.

(b) providing services to foreign related persons.

Economic Substance Test: the requirements defined in Article (6) of this Resolution.

Economic Substance Report: the report to be submitted based on provision of clause (4) of Article (8) pursuant to provision of clause (5) of Article (8) of this Resolution.

Financial Free Zone: financial free zone established by virtue of the Federal Law No. (8) Of 2004 as

aforementioned.

Financial Free Zone Authority: the authority delegated in the competent financial free zone to be the Regulatory Authority for purposes of this Resolution.

Financial Year: the financial year for business activities of the licensee or exempt licensee.

Foreign related person: the related person who has no tax residency is not in the country.

Free Zone: free zone established in the country.

Free Zone Authority: the authority delegated in the competent free zone is the Regulatory Authority for purposes of this Resolution.

Investment Funds Management: shall have the meaning defined in the law regulating these services in the country.

Headquarter Business: provision of any of the following services to one or more foreign related persons:

- (a) Senior management duties.
- (b) Assumption or control of material risk for activities carried out by, or assets owned by, any Foreign Connected Person
- (c) Provision of consultancy on the substantive services related to the bearing or controlling the risks mentioned in paragraph (b) of this definition.

High Risk IP Licensee: A Licensee, who carries on an Intellectual Property Business and who:

- (a) Did not personally create the title to assets of intellectual property held for purposes of practising commercial activities.
- (b) Possesses assets of intellectual property either:
- (c) Licenses the intellectual property asset to one or more Related Persons or otherwise generates income from the asset in consequence of activities performed by Foreign Related Person.

Holding Company Business: means the activity that:

- (a) is confined to ownership and possession of stocks, shares, rights in the capital of other companies.
- (b) generates its only income from the profits and capital earnings from capital rights.

Income generated from the assets of the intellectual property: includes the following:

- (a) Revenues.
- (b) Income from concession agreements.
- (c) Income out of licensing assets of intellectual property.
- (d) Income generated from raising value and any other income out of sale of the assets of the intellectual property.

Insurance: shall have the meaning as identified in the law regulating these works in the UAE.

Intellectual Property Works: works of ownership and exploitation or getting an income out of assets of the intellectual property.

Assets of Intellectual Property: any right of intellectual property in non-materials assets; including for example but not limited to, copyrights, patents, trademarks, brands, technical knowledge, that generate income that can be separated in the accounting from any revenues generated from material assets.

Notification: notification to be submitted based on provisions of Article (8) of this Resolution.

Financial Leasing: shall have the meaning identified in the law regulating these services in the UAE.

National Assessing Authority: the Federal Tax Authority designated pursuant to provisions of Article (5) of this Resolution.

Regulatory Authority: the authority or authorities entrusted with regulating an activity relevant to purposes of this Resolution as defined in Article (4) of this Resolution.

Relevant Activity: any of the activities indicated in article (3) of this Resolution.

License: commercial license or permit issued by the competent licensing authority in the UAE including the free zone and financial free zone.

Licensee: any of the two entities as follows:

(a) a Legal person (established within or outside the UAE).

(b) Unincorporated Partnership

registered in the UAE, including the free zone and financial free zone and conducts a relevant activity.

Exempt Licensee: any of the following licensees:

(a) Investment Fund.

(b) An entity that is tax resident in a jurisdiction other than the UAE.

(c) An entity wholly owned by UAE residents which meets the following conditions:

1. the entity is not part of a multinational group of companies.
2. the entity conducts its activity in the UAE only.

(d) Branch of a foreign entity registered in the UAE the income of which is subject to tax in another country than the UAE

(e) Any licensee for whom the Minister of Finance issues a resolution to grant it capacity of "an exempt licensee".

Ultimate Beneficial Owner: natural person who owns directly or indirectly of twenty five percent (25%) or more of the capital shares of the licensee or exempt licensee.

Vessel: shall have the same meaning as indicated in Article (11) of the Federal Law No. 26 of 1981 on

the maritime commercial law, as amended but does not include fishing vessel, small ship or picnic boat (as identified in Article (18) of the same law.

Consolidated Financial Statements: the consolidated financial statements for the group that include all assets, liabilities, entries, expenses, financial flows of the parent company as one economic unit.

Group: two or more entities related through property or control to the extent, pursuant to the applicable accounting standards, that requires preparing standard financial statements for purposes of submitting the financial reports.

Investment Fund: an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests (but does not include an entity or entities in which the fund invests).

Multinational group of companies: any group consisting of the following:

1. Two or more entities, which tax residence is located in different countries.
2. One entity which is a tax resident in one country and is subject to a tax levied on the business it conducts through a branch or permanent establishment located in another country.

Joint Venture:

- (a) a limited partnership with no legal personality.
- (b) General Partnership Company: registered in the country including free zone or financial free zone.

Income out of the relevant activity: total income out of the relevant activity registered in the register of the licensee or exempt licensee pursuant to the accounting standards applicable in this respect.

Shipping Business: any of the following activities involving the operation of a ship anywhere in the world other than within the territorial waters of the State for:

- (a) The transport of persons, animals, goods or post by sea.
- (b) The chartering ships for a journey or certain period, for the purpose indicated in paragraph (a) above.
- (c) The sale of travel tickets or equivalent, and ancillary services connected with the operation of the vessel.
- (d) The use, maintenance or lease of containers, including trailers and other vehicles or equipment required for the transport of containers, used for the transportation of anything by sea.
- (e) Management of the vessel crew.

Core Income Generating Activity: shall have the meaning indicated in Article (3) of this Resolution.

Parent Company

- (a) Owner directly of voting by majority in the licensee or exempt licensee.

(b) Entitled to appoint or dismiss the majority of the board members of the licensee or exempt licensee.

(c) Solely controlling or, by virtue of a joint arrangement with shareholders or other members, the right of voting by majority in the licensee or exempt licensee.

(d) Entitled right to practice or actually practise authority of influence or direct control of the licensee or exempt licensee.

Ultimate Parent Company: the entity member of the group that have the following standards:

(a) owns in the licensee or exempt licensee, directly or indirectly, an interest sufficient to oblige it to prepare consolidated financial statements pursuant to the accounting standards applicable in this respect in the country of tax residence, or would have been requested to prepare them if the equity shares are traded in the stock market of the country of tax residency.

(b) it shall not include any other member entity which directly or indirectly has an interest as described in paragraph (a)

Third party service provider: a person or entity practises activity that generates main income on behalf of the licensee pursuant to the conditions defined in clause (2) of Article (6) of this Resolution.

#### Article (2)

#### Objectives of the Resolution

This Resolution aims to identify the requirements for compliance by the licensee and develop the standards confirming that the licensee is carrying out an activity in the State that achieves economic substance interest.

#### Article (3)

#### Relevant Activity and Core Income Generating Activity

1. The Relevant Activity for purposes of this Resolution is one of the following:

(a) Banking works.

(b) Insurance works.

(c) Investment Management Services.

(d) Finance Leasing.

(e) Headquarter Business.

(f) Shipping Business.

(g) Holding company.

(h) Intellectual property Businesses.

(i) Distribution and Services Center Businesses.

2. Core Income Generating Activities are those of basic importance to the licensee for the purposes of generating income from a relevant activity. This includes the following:

(a) Banking services related to the following:

1. Collection of funds and risk management, including risks related to credit processes, currencies, interest.
2. Hedging concerning fluctuation of prices with respect to the credit, currencies and interest rates.
3. Providing loans, credit services, or other financial services to the clients.
4. Management of capital, reporting for investors or any government authority having the same duties in relation to supervising or regulating these works.

(b) Insurance services to any of the following:

1. Predicting and calculating risk.
2. Insuring or reinsuring against risk and providing Insurance Business services to clients.
3. Underwriting insurance and re-insurance.

(c) Management of investment funds services related to any of the following:

1. Taking decisions on holding and selling of investments.
2. Calculating risk and reserves.
3. Taking decisions on currency or interest fluctuations and hedging positions.
4. Preparing reports to investors or any other government authority with functions relating to the supervision or regulation of such business.

(d) Lease Finance Business related to any of the following:

1. Agreeing funding terms.
2. Identification and acquisition of the assets to be leased (in case of leasing).
3. Identify conditions and duration of any financing or leasing.
4. Control and review any agreements.
5. Management of any risk.

(e) Headquarters Business related to any of the following:

1. Take relevant management decisions.
2. Bearing operational expenditure on behalf of the group.
3. Coordination of group activities.

(f) Shipping Business related to any of the following:

1. Management of the crew (including hiring, paying and overseeing crew members)
2. Overhauling and maintaining of the vessels.
3. Overseeing and tracking shipping.
4. Determining what goods to order and when to deliver them, organising and overseeing voyages.

(g) Holding Company Business:

Practice of all activities relevant to this business.

(h) Intellectual property Business related to any of the following:

(1) Assets of intellectual property include the following:

(a) Patents or similar assets of intellectual property, the activity generating main income in this case is represented in research and development.

(b) Marketing intangibles intellectual property assets, or similar intellectual property assets, the core income generating activity represented in the brand, marketing and distribution.

(c) In exceptional cases (but does not include case of the licensee involved in High Risk IP activity) the core income generating activity may contain any of the following:

(a) Take strategic decisions, management and bearing of the principal risks related to development of intellectual property assets and subsequent exploitation of the generated income.

(b) Take strategic decisions, management and bearing the principal risks related to third party acquisition of intellectual property assets, subsequent exploitation and protection of the generated income.

(c) Carrying on ancillary trading activities through which the intangible assets are exploited leading to the generation of income from third parties.

(i) Distribution and Service Centre Business:

1. Transporting and storing goods, components and materials or goods ready for sale.
2. Management of inventories.
3. Taking orders.
4. Providing consulting or other administrative services.

#### Article (4)

#### Regulatory Authorities

1. By virtue of this Resolution, each of the following authorities shall be appointed as Regulatory Authority to regulate the relevant activities as follows for purposes of this Resolution:

(a) Banking Services:

1. Central Bank.
2. Financial free zone authority in relation to the banking works practised in the financial free zone

(b) Insurance Services:

1. Insurance authority.
2. Free zone authority including insurance business conducted in the free zone.
3. Financial free zone authority in relation to insurance business conducted in the financial free zone.

(c) Investment Funds Management Services:

1. Securities and Commodities Authority.
2. Free zone authority in relation to investment funds management business conducted in the free



zone.

3. Financial free zone authority in relation to investment funds management business conducted in the financial free zone.

(d) Lease Finance:

1. Central bank.
2. Free zone authority in relation to finance lease services practised in the free zone.
3. Financial free zone authority in relation to financial lease services conducted in the financial free zone.

(e) Headquarter Business:

1. Ministry of Economy.
2. Free zone authority in relation to headquarters business conducted in the free zone.
3. Financial free zone authority in relation to headquarters business conducted in the financial free zone.

(f) Shipping Business:

1. Ministry of Economy.
2. Free zone authority in relation to shipping services conducted in the free zone.
3. Financial free zone authority in relation to shipping services conducted in the financial free zone.

(g) Holding Company Business:

1. Ministry of Economy.
2. Free zone authority in relation to holding company business conducted in the free zone.
3. Financial free zone authority in relation to holding company business conducted in the financial free zone.

(h) Intellectual Property Business:

1. Ministry of Economy.
2. Free zone authority in relation to intellectual property business conducted in the free zone.
3. Financial free zone authority in relation to intellectual property business conducted in the financial free zone.

(i) Distribution and Service Centre Business:

1. Ministry of Economy.
2. Free zone authority in relation to works of distribution and service centres business conducted in the free zone.
3. Financial free zone authority in relation to works of distribution and service centre business conducted in the financial free zone.
4. Each Regulatory Authority practices the following duties within the scope of its competence:

(a) collecting Notifications and Economic Substance Reports from Licensees and Exempt Licensees (as applicable) as well as all other relevant supporting documents.

(b) Review Notifications, Economic Substance Reports and any information attached thereto for

accuracy and completeness.

(c) Reporting on whether the exempt Licensee has submitted the information and documents sufficient to qualify it for the exemption set forth in this Resolution.

(d) Perform the requirements of the report as set forth in article (9) of this Resolution.

(e) Perform any other duties required for implementation of this Resolution.

(f) Perform any other duties required for implementation of any resolution issued by the Minister of Finance or National Assessing Authority pursuant to this Resolution.

#### Article (5)

##### National Assessing Authority

By virtue of this Resolution, the Federal Tax Authority shall be appointed as the National Assessing Authority to practice the duties entrusted therewith by virtue of this Resolution, including:

1. Decide whether the licensee or exempt licensee has met the Economic Substance Test pursuant to provisions of article (7) of this Resolution.
2. Apply the administrative fines set forth pursuant to provisions of articles (13), (14) and (15) of this Resolution.
3. Looking into the appeals and deciding upon them pursuant to provisions of article (10) of this Resolution.
4. Perform requirements of the report pursuant to provisions of article (10) of this Resolution.
5. Practice any other duties required for application of provisions of this Resolution.
6. Perform any duties required for implementation of any resolution issued by the Minister of Finance pursuant to this Resolution.

#### Article (6)

##### Complying with the Economic Substance Requirements

1. Subject to the provisions indicated in clauses (5), (6) and (7) of this article, except the exempt licensee, the licensee shall meet the standards identified below to meet the Economic Substance Test in relation to any relevant activity practised:
  - (a) If the licensee conducts a core income generating activity.
  - (b) If the direction and management of the relevant activity is conducted in the country.
  - (c) Considering the level of the relevant activity as follows:
    - (1) There are an appropriate number of qualified employees working in this activity full time and which are actually present in the country (either they are working for the licensee or for another entity, whether their contracts are temporary or long term).
    - (2) The licensee incurred sufficient operating expenses in the country.
    - (3) There are sufficient material assets in the country.

2. The licensee may assign a third party on its behalf to carry out the Core Income Generating

Activity; on condition that the following conditions are met:

- (a) the Licensee can monitor and control implementation of this activity by the third party and can prove its full control within the country on the activity assigned to this third party.
- (b) Employees of the third party and expenses incurred as well as its material assets in the country are sufficient to practice the relevant activity assigned thereto.
- (c) The core income generating activity carried out by the third party is conducted within the country.
- (d) Employees, expenses and material assets for the third party will not be counted multiple times when demonstrating that the licensee has sufficient economic substance.

3. The requirements defined in paragraph (b) of clause (1) of this article are met if the following conditions are met:

- (a) The licensee's Board holds meeting in the country at an adequate frequency having regard to the amount of decision making required at that level.
- (b) There is complete quorum of directors attending the board meetings mentioned in paragraph (a) of clause (3) of this article in person.
- (c) The board meetings are recorded in minutes signed by the directors attending these meetings.
- (d) The minutes of such board meetings described in paragraph (a) of clause (3) of this article record the making of strategic decisions by the Licensee in relation to the relevant activity in this meeting.
- (e) the directors of the Licensee have the necessary knowledge and expertise to discharge the duties of the board.
- (f) the minutes of all board meetings and the records of the Licensee are kept in the State.

4. When the licensee is managed by a shareholder, partner, one or more individual managers, the requirements of the clause (3) of this article are applicable to this shareholder, partner, or manager(s) as if a board member.

5. In relation to the licensee whose activity is limited to the business of a holding company, the licensee is considered meeting the economic substance requirements in case the following conditions are met:

(a) Completion of requirements of submitting any data, documents, or information that should be submitted to the competent Regulatory Authority pursuant to the law applicable to this licensee in the country.

(b) Have employees and premises sufficient to perform the business of the holding company.

6. The licensee is not required to meet the Economic Substance Test if it did not generate income from a Relevant Activity within a certain financial year.

7. The exempt licensee who failed to meet the requirements of the notification set forth in article (8) of this Resolution shall:

(a) Meet the requirements of the economic substance in relation to any relevant activity conducted within each financial year where it failed to meet the requirements of the notification.

(b) The licensee is subject to all provisions applicable in this Resolution.

#### Article (7)

##### Economic Substance Test Evaluation

1. The National Assessing Authority is entitled to decide that the Licensee did not meet the Economic Substance within any financial year; if this decision is taken within a maximum period of six (6) years from end of the financial year related to this decision.
2. The period indicated in clause (1) of this article is not applicable if the National Assessing Authority could not take a decision within the period of six (6) years due to gross negligence, deception or fraud committed by the licensee or any other person.
3. For purposes of clause (1) of this article, the National Assessing Authority shall decide that the licensee conducting a "high risk" intellectual property activity did not complete the requirements of the actual economic activities within the period of the financial year unless the licensee submits sufficient information to convince the National Assessing Authority that these requirements are completed pursuant to provisions of clause (6) of article (8) of this Resolution.

#### Article (8)

##### Requirement to provide information

1. Each licensee and exempt licensee shall send to the Regulatory Authority each year a notification stating the following:
  - (a) Relevant activity conducted by the licensee or exempt licensee within the financial year concerned.
  - (b) If it received income out of a relevant activity within the financial year concerned.
  - (c) Start and end dates of its financial year.
  - (d) Any other information or documents as required by the Regulatory Authority.
2. The exempt licensee shall submit to the Regulatory Authority, with the notification mentioned in clause (1) of this article, all the information and documents required to ensure its capacity as exempt licensee, and any other information as required by the Regulatory Authority.
3. The notification mentioned in clause (1) of this article shall be sent on time as specified by the Regulatory Authority and pursuant to the form and method defined by that authority in coordination with the Competent Authority.
4. The licensee to meet the economic substance requirements is required to submit to the Regulatory Authority a report on the economic substance pursuant to clause (5) of this article. This report shall be submitted in a period not exceeding twelve (12) months from end of the financial year for the licensees, starting on first of January 2019 or in any subsequent financial year.
5. The report on the economic substance is prepared pursuant to the form and method approved by the National Assessing Authority in coordination with the Competent Authority. The report should contain the following information and documents related to the licensee within the financial year concerned:
  - (a) Type of the relevant activity conducted.

- (b) Value and type of its income out of the relevant activity.
- (c) Value and type of operating expenses and assets of the relevant activity practised.
- (d) Location of its activity headquarters, if any, factory, properties or devices used to practise the relevant activity practised in the country.
- (e) Number of full time employees with their qualifications and number of those responsible of practising the relevant activity.
- (f) The activity generating the principal income in proportion to the relevant activity conducted.
- (g) Its financial reports.
- (h) Disclosure whether it has met the economic substance conditions.
- (i) In case the relevant activity practised is intellectual property business, disclosure on whether the licensee practises "high risk" intellectual property business.

6. If the licensee declared conducting high-risk intellectual property activity, it shall submit to the National Assessing Authority the information and documents to prove that currently and in the past it exercised a high degree of control on the development, exploitation, preservation, maintenance and enhancement of intellectual property assets. This is through employees working full time with appropriate qualifications, permanent residents, and which practise their activity within the country in order to refute the report reached by the National Assessing Authority by virtue of clause (3) of article (7) of this Resolution. The licensee shall also submit the following:

- (a) Work plan to indicate reasons of owning intellectual property assets in the country.
- (b) Information on the personnel, including level of expertise, type of contracting with them, their qualifications, period of working for the licensee.
- (c) Proof that the decisions related to the relevant activity are taken in the country.

- 7. When the licensee assigned a third party to perform the core income generating activity, it shall submit the information to prove its fulfilment of the conditions defined in clause (2) of Article (6) of this Resolution.
- 8. The licensee shall submit to the National Assessing Authority any extra information, documents, or any papers as requested reasonably by the National Assessing Authority to decide upon the issue defined in article (7) of this Resolution.
- 9. The Regulatory Authority and National Assessing Authority may send notification to the licensee and exempt licensee to request any documents or information that should be submitted in the form and within the period as defined in the notification in order to implement provisions of this Resolution.
- 10. Each licensee and exempt licensee are required to submit any information or documents pursuant to this Resolution in English language.
- 11. Each licensee and exempt licensee are required to submit any information or documents pursuant to this Resolution and shall keep them for six (6) years from the date of submitting these information or documents.

## Article (9)

### Submission of Information by the Regulatory Authority

1. When the Regulatory Authority receives the notification and the Economic Substance report by virtue of this Resolution, it shall send the notification and the Economic Substance report as well as all relevant documents pursuant to provisions of this Resolution to the National Assessing Authority within thirty (30) working days from receipt.
2. In case the licensee or exempt licensee fails to submit the notification or report on the actual economic activities or any document or information related to any and should be submitted pursuant to this Resolution within the period defined by virtue of this Resolution, the Regulatory Authority shall notify the National Assessing Authority of this breach in a period not exceeding thirty (30) working days from date of informing the Regulatory Authority of this breach.
3. The Regulatory Authority shall submit any information available to the National Assessing Authority as requested by the latter for purposes of implementing provisions of this Resolution.
4. The Regulatory Authority shall submit to the National Assessing Authority all the information received pursuant to this Resolution and related to any exempt licensees as follows:
  - (a) Whose tax residence is outside the country.
  - (b) Who is considered a branch of a foreign entity and the income of its relevant activity is taxable in another country than the UAE.

## Article (10)

### Submission of Information by the National Assessing Authority

1. Subject to the right of the licensee to an appeals procedure according to provisions of article (17) of this Resolution, if the National Assessing Authority decided by virtue of article (7) of this Resolution that the licensee did not meet the Economic Substance Test for a certain financial year, it shall notify the Competent Authority of this decision and provide the information set forth by virtue of article (8) of this Resolution, and any other information related to this licensee accessible upon request of the National Assessing Authority.
2. Concerning the licensee which conducts a "high risk" intellectual property business, regardless of whether the National Assessing Authority has taken a decision by virtue of article (7) of this Resolution in this respect, the National Assessing Authority shall submit to the Competent Authority the information available pursuant to provision of article (8) of this Resolution concerning this licensee for each financial year.
3. The National Assessing Authority shall submit to the Competent Authority all the information relevant as received and related to any of the exempt licensees as follows:
  - (a) Whose tax residence is located outside the country.
  - (b) Who is considered a branch of a foreign company and the income of its relevant activity is taxable in another country than the UAE.
4. The National Assessing Authority shall notify the Regulatory Authority concerned of its decision to impose an administrative fine or of its decision concerning the appeals request pursuant to provisions of this Resolution.

## Article (11)

## Exchange of Information by the Competent Authority

1. When the Competent Authority receives from the National Assessing Authority information stating that the licensee did not meet the economic substance test for a certain financial year pursuant to clause (1) of article (10) of this Resolution, the Competent Authority, pursuant to provisions of an agreement, international treaty, or any similar international arrangement to which the country is a party, will submit the relevant information related to this licensee to the foreign Competent Authority in the country where the parent company or the ultimate beneficial owner of the Licensee are located.
2. When the Competent Authority receives from the National Assessing Authority information related to a licensee conducting a high-risk intellectual property business pursuant to provisions of clause (2) of article (10) of this Resolution, the Competent Authority, pursuant to provisions of an agreement, international treaty, or any similar international arrangement to which the country is a party, will submit the relevant information related to this licensee to the competent foreign authority in the country where the parent company or the ultimate beneficial owner of the Licensee are located.
3. When the Competent Authority receives from the National Assessing Authority information related to an exempt licensee whose tax residence is located outside the country for a certain financial year pursuant to provisions of clause (3) of article (10) of this Resolution, it shall, pursuant to provisions of an agreement, international treaty or any similar arrangement to which the country is a party, submit any relevant information related to this exempt licensee to the competent foreign authority:
  - (a) In the country where the exempt licensee declares as its tax residency.
  - (b) In the country or region where the parent company and the ultimate beneficial owner of the Licensee are located.
4. When the Competent Authority receives from the National Assessing Authority information related to an exempt licensee being a branch of a foreign entity whose tax residence is located outside the country, for a certain financial year pursuant to provisions of clause (3) of article (10) of this Resolution, it shall, pursuant to provisions of an agreement, international treaty or any similar arrangement to which the country is a party, submit any relevant information related to this exempt licensee to the competent foreign authority in:
  - (a) The country declared by the exempt licensee as its tax country.
  - (b) Country or region in which the parent company or beneficiary of property for this exempt licensee is located.
5. Employees of the Competent Authority, National Assessing Authority, Regulatory Authority, any ministry or other government authority, federal or local, may not disclose any data, information, documents reviewed or under their custody due to performing their works as assigned pursuant to provisions of this resolution, unless this disclosure is mandatory to implement any of its provisions.
6. The Regulatory Authority and National Assessing Authority shall submit to the Competent Authority any extra information as required by the Competent Authority for purposes of practising its duties pursuant to provisions of this Resolution or by virtue of agreement, international treaty or similar international arrangements in which the country is a party.

## Article (12)

### Cooperation of Other Government Authorities

1. All ministries and other government authorities, federal or local, shall submit to the Regulatory Authority, National Assessing Authority and/or the Competent Authority any data, information or documents in its possession related to licensees or exempt licensees upon request of any authority.
2. All ministries, and other government authorities, federal or local, shall cooperate with the Regulatory Authority, National Assessing Authority and/or the Competent Authority to take the necessary actions to implement provisions of this resolution. This cooperation includes receiving information from the place of business of the licensee or exempt licensee, requests to submit or update any data or information, which are required to implement provisions of this resolution.

## Article (13)

### Administrative Fines Imposed for non-Submission of the Notification

1. An administrative fine of AED20,000 (twenty thousand AED) shall be imposed if the licensee or exempt licensee did not submit the notification (or any information or relevant documents) under the provisions of this resolution.
2. If the National Assessing Authority decided that the licensee or exempt licensee committed the violation set forth in clause (1) of this Article for a certain financial year, it shall notify as follows:
  - The National Assessing Authority decided that the licensee or exempt licensee did not submit the notification pursuant to provisions of this resolution for that financial year.
  - The Reasons for taking the decision of imposing the administrative fine.
  - The Value of the administrative fine imposed by virtue of this article.
  - The Due date of the administrative fine by virtue of this article, provided that its period is not less than thirty (30) working days after issuance of the notification.

## Article (14)

1. An administrative fine is imposed for AED50,000 (fifty thousand AED) on the licensee or exempt licensee, if he commits any of these two violations:
  - Non-submission of the economic substance report (and any information or relevant documents) pursuant to provisions of this resolution.
  - In case of failure to fulfill the economic substance requirements for any financial year.
2. If the National Assessing Authority decided by virtue of article (7) of this resolution that the licensee or exempt licensee did not submit its Economic Substance Report (and any information or relevant documents) pursuant to provisions of this resolution, or did not meet the economic substance test for a certain financial year, it should notify the licensee or exempt licensee of the following:
  - The National Assessing Authority decided that the licensee or exempt licensee did not complete the Economic Substance Test for that financial year.
  - The Reasons of this decision.
  - The Value of the administrative fine imposed on the licensee or the exempt licensee by virtue of clause (1) of this article.



- The Due date of the administrative fine by virtue of clause (1) of this article, provided that its period is not less than thirty (30) working days after issuance of the notification.
3. If the National Assessing Authority decided that the licensee or exempt licensee who committed the financial violation set forth in clause (2) of this article, has committed the same violation in the financial year following this violation, in this case, the value of the administrative fine imposed will be AED400,000 (four hundred thousand AED). In this case, the National Assessing Authority shall issue a notification to the licensee or exempt licensee to report the following:
- The National Assessing Authority has decided that the licensee or exempt licensee did not complete the requirements of the actual economic activities for the second consecutive time.
  - Reasons of this decision.
  - Value of the administrative fine imposed on the licensee or the exempt licensee by virtue of clause (3) of this article.
  - Due date of the administrative fine by virtue of clause (3) of this article, provided that its period is not less than thirty (30) working days after issuance of the notification.
  - Any other administrative procedure taken by the National Assessing Authority, including ceasing of license issued for the licensee or exempt licensee, withdrawal or non-renewal. The National Assessing Authority shall notify the competent Regulatory Authority of this decision. The competent Regulatory Authority shall take all necessary actions to implement it.

#### Article (15)

##### Administrative Fine Imposed for Submission of Inaccurate Information

1. An administrative fine of AED50,000 (fifty thousand AED) shall be imposed on the licensee or exempt licensee if he submitted inaccurate information to the Regulatory Authority or National Assessing Authority; while knowing its inaccuracy when submitted and did not notify the Regulatory Authority or the National Assessing Authority thereof when discovered its inaccuracy after submission.
2. If the National Assessing Authority decided that the licensee or exempt licensee committed the violation set forth in clause (1) of this article for a certain financial year, it shall notify it of the following:
  - The National Assessing Authority decided that it has not met the Economic Substance Test for that financial year.
  - Reasons of taking the decision to impose the administrative fine.
  - Value of the administrative fine imposed by virtue of this article.
  - Due date of the administrative fine by virtue of this article, provided that its period is not less than thirty (30) working days after issuance of the notification.

#### Article (16)

##### Statute of limitations for Imposing the Administrative Fine on the Violation

1. Without prejudice to provisions of clause (2) of this article, any administrative fine may not be imposed by virtue of this resolution after a period of six (6) years elapsed starting from the date of committing the violation requiring that administrative fine.
2. If the licensee or exempt licensee is responsible for payment of an administrative fine by virtue of article (15) of this resolution, the administrative fine may not be imposed after twelve (12)

months elapsed from the date of informing the National Assessing Authority of this violation.

3. Provisions of the period mentioned in the clauses (1) and (2) of this article are not applicable in case the licensee or exempt licensee misleads the National Assessing Authority intending to prevent it to impose the administrative fine within the period defined in clause (1) of this article or charged it with payment within the period defined in clause (2) of this article.

#### Article (17)

##### Right of Appeal against the Administrative Fine

1. Any licensee or exempt licensee may submit a grievance request to the National Assessing Authority against its decision to impose the administrative fine for any of the following reasons:
  - Has not committed the administrative violation attributed thereto.
  - The administrative fine imposed is disproportionate to the violation.
  - The administrative fine imposed exceeds the limit prescribed for the violation committed pursuant to this resolution.
2. The National Assessing Authority shall issue a resolution to identify the procedures of the grievance by virtue of clause (1) of this article; including the method of applying for the grievance and other procedures related to consideration of the grievance and adjudication as well as informing the licensee or exempt licensee of its decision in this respect.

#### Article (18)

##### Payment Date of the Administrative Fine

Any administrative fine shall be paid by virtue of this resolution prior to or at any of the following dates whichever is earlier:

1. Due date of the administrative fine by virtue of the notification issued from the National Assessing Authority pursuant to provisions of articles (13), (14) and (15) of this resolution.
2. In case of grievance against this resolution by virtue of article (17) of this resolution, the date will be that of grievance report or withdrawal thereof.

#### Article (19)

##### Access to Workplace and Examination of the Working Documents

1. Any employee authorized by the Regulatory Authority and National Assessing Authority may examine any working document found in the workplace and get copies of it.
2. Any employee authorized by the Regulatory Authority and National Assessing Authority may access the workplace within the official working hours for the purpose of practicing the terms of reference defined in clause (1) of this article.
3. The terms of reference defined in the clauses (1) and (2) of this article are only practiced for purposes of any administrative investigation conducted by the Regulatory Authority or the National Assessing Authority to verify compliance of any person to the provisions of this resolution.
4. Both the Regulatory Authority and the National Assessing Authority are allowed, by virtue of a notification, to request within the official working hours from any person to submit any working document kept in the workplace for the purpose of enabling the Regulatory Authority and the

National Assessing Authority to practice its terms of reference as indicated in clause (1) of this article.

- Both the Regulatory Authority and the National Assessing Authority collaborate in case any of its employees practices any of the terms of reference identified in the clauses (1), (2) and (3) of this article.

#### Article (20)

##### Executive Decisions

The Minister of Finance shall issue the decisions required to implement the provisions of this resolution.

#### Article (21)

##### Cancellations

Cabinet resolution No. (31) of 2019, as amended, and Cabinet resolution No. (58) of 2019 as aforementioned will be cancelled and any provision which violates or contradicts with the provisions of this resolution shall be superseded.

#### Article (22)

##### Publication and Enforceability

This resolution shall be published and come into force from the date of its issuance.

Mohamed Bin Rashid Al-Maktoum

Prime Minister

Issued on: 20<sup>th</sup> Zul Hijja 1441 A.H. corresponding to 10<sup>th</sup> August 2020 A. D.