

CABINET OF MINISTERS RESOLUTION
No. 57 of 2020
CONCERNING ECONOMIC SUBSTANCE REQUIREMENTS

Cabinet of Ministers

Having reviewed:

- The Constitution;
- Federal Law No. (1) of 1972 on the 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 Issuing the United Arab Emirates Civil Transactions law, as amended;
- Federal Law No. (3) of 1987, Issuing the Penal Code, as amended;
- Federal Law No. (10) of 1992 Issuing the Code of Evidence in Commercial and Civil Transactions, as amended;
- Federal Law No. (11) of 1992 Issuing the Civil Procedure Law, as amended;
- Federal Law No. (37) of 1992 concerning Trademarks, as amended;
- Federal Law No. (4) of 2000 Concerning the Securities and Commodities Authority, as amended;
- Federal Law No. (7) of 2002 Concerning Copyrights and Neighboring Rights, as amended;
- Federal Law No. (17) of 2002 concerning organizing and protecting the patents, drawings and industrial forms, as amended;
- Federal Law No. (8) of 2004 Regarding Financial Free Zones;
- Federal Law No. (6) of 2007 Establishing Insurance Authority, 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 Decretal Law No. (13) of 2016 Establishing Federal Tax Authority;
- Federal Law No. (14) of 2016 on Administrative Violations and Penalties in the Federal Government;
- Federal Law No. (19) of 2016 on Combatting Commercial Fraud;
- Federal Law No. (7) of 2017 concerning the Tax Procedures;
- Federal Decretal Law No. (8) of 2017 on Value Added Tax;
- Federal Law No. (8) of 2018 on Finance Lease;
- Federal Decretal Law No. (14) of 2018 concerning the Central Bank and the Regulations of Financial Institutions and Activities;
- Federal Decretal Law No (48) of 2018 Approving the Multilateral Administrative Agreement for the Automatic Exchange of Information;
- Federal Decretal Law No (54) of 2018 Approving the Convention on Mutual Administrative Assistance in Tax Matters;
- Cabinet of Ministers Resolution No. (31) of 2019 Concerning Economic Substance Regulations, as amended;
- Cabinet of Ministers Resolution No. (58) of 2019 Determining the Regulatory Authorities concerned with the business mentioned in Cabinet Resolution No. (31) of 2019 Concerning Economic Substance Regulations;
- And based on the proposal of the Minister of Finance and the approval therefore by the Cabinet of Ministers;

Has Resolved:

Article 1
Definitions

For the purpose of implementing this Resolution, the following words and expressions shall have, unless the context otherwise requires, the meanings respectively assigned thereto:

State: The United Arab Emirates.

Banking Business: shall have the meaning as set out in the law governing such activity in the State.

Business Day: the days of the week from Sunday to Thursday, except weekends and official holidays.

Business Document: any document of the following:

- (a) that relates to the carrying on of a Relevant Activity by a Licensee or an Exempted Licensee or
- (b) that forms part of any record under any legislation applicable to a Licensee or an Exempted Licensee.

Business Premises: business premises used in connection with the carrying on of a Relevant Activity in the State by a Licensee or an Exempted Licensee.

Competent Authority: the Ministry of Finance.

Central Bank: means the Central Bank of the United Arab Emirates.

Foreign Competent Authority: the foreign authority designated under an international agreement, treaty, or similar international arrangement entered into by the State to request and receive any information or documentation in respect of and relating to the implementation of any provision of this Resolution.

Connected Person: An entity that is a part of the same Group as the Licensee or the Exempted Licensee.

Distribution and Service Centre Business: means a centre that carries out any of the following businesses:

- (a) purchasing from a Foreign Connected Person component parts or materials for goods; or goods ready for sale, and reselling such component parts, materials or goods; or
- (b) providing services to Foreign Connected Persons.

Economic Substance Test: the requirements set out under Article 6 of this Resolution.

Economic Substance Report: the report required to be submitted pursuant to Clause 4 of Article 8 and in accordance with Clause 5 Article 8 of this Resolution.

Financial Free Zone: a financial free zone established pursuant to the aforementioned Federal Law No. 8 of 2004.

Financial Free Zone Authority: means the authority designated by the relevant Financial Free Zone to act as the Regulatory Authority for the purposes of the ESR Resolution.

Financial Year: the annual accounting fiscal year of the business of a Licensee or an Exempted Licensee.

Foreign Connected Person: a Connected Person that is not tax resident in the State.

Free Zone: a free zone established in the State.

Free Zone Authority: means the authority designated by a Free Zone to act as the Regulatory Authority for the purposes of the ESR Resolution.

Investment Fund Management Business: shall have the meaning as set out in the law governing such activity in the State.

Headquarters Business: the business of providing any of the following services to one or more Foreign Connected Person:

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any Foreign Connected Person; or
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b) of this definition.

High Risk IP Licensee : is a Licensee which carries on an Intellectual Property Business and the Licensee:

- (a) did not create the intellectual property in an Intellectual Property Asset which it holds for the purposes of its business;
- (b) acquired the Intellectual Property Asset either from -
 - (i) a Connected Person; or
 - (ii) in consideration for funding research and development by another person situated in a country other than the State;

and

- (c) licenses or has sold the Intellectual Property Asset to one or more Connected Persons, or otherwise earns separately identifiable income from a Foreign Connected Person in respect of the use or exploitation of the Intellectual Property Asset.

Holding Company Business: a business that:

- (a) has as its sole function the acquisition and holding of shares or equitable interests in other companies;

(b) only earns dividends and capital gains from its equitable interests.

Income from Intellectual Property Assets: includes:

- (a) royalties;
- (b) income from a franchise agreement;
- (c) income from licensing the Intellectual Property Asset; or
- (d) capital gains and other income derived from the sale of an Intellectual Property Asset.

Insurance Business: shall have the meaning as set out in the law governing such activity in the State.

Intellectual Property Business: a business which holds, exploits, or receives income from the Intellectual Property Asset(s).

Intellectual Property Asset: any intellectual property right in intangible assets, including but not limited to copyright, patents, trademarks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists).

Notification: the notification required to be submitted pursuant to Article 8 of this Resolution.

Lease-Finance Business: shall have the meaning as set out in the law governing such activity in the State.

National Assessing Authority: the Federal Tax Authority of the State as appointed pursuant to Article 5 of this Resolution.

Regulatory Authority: the authority or authorities tasked with regulating a Relevant Activity for the purposes of this Resolution as set out under Article 4 of this Resolution.

Relevant Activity: any of the activities set out under Article 3 of this Resolution.

Licence: the trade license or permit issued by the relevant competent licensing authority of the State, including a Free Zone or a Financial Free Zone.

Licensee: Means any of the following two entities:

- (a) a juridical person (incorporated inside or outside the State); or
 - (b) a Unincorporated Partnership;
- registered in the State, including a Free Zone and a Financial Free Zone and carries on a Relevant Activity.

Exempted Licensee: means any of the following:

- (a) a Licensee that is an Investment Fund;

- (b) a Licensee that is a tax resident in a jurisdiction other than the State;
- (c) a Licensee that is wholly owned by one or more residents in the State and meets the following two conditions :
 - (1) it is not part of an MNE Group; and
 - (2) it only carries out business in the State.
- (d) a Licensee that is a branch of a foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than the State; and
- (e) any other Licensee as determined pursuant to a decision of the Minister of Finance.

Ultimate Beneficial Owner: an individual who owns directly or indirectly twenty five percent (25%) or more of the share capital of the Licensee or the Exempted Licensee.

Ship: has the same meaning as in Article 11 of Federal Law No. 26 of 1981 on the Maritime Commercial Law, as amended, but does not include a fishing, small, or leisure vessel (as defined in Article 18 of the same law).

Consolidated Financial Statements: means the financial statements of a Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Company are presented as those of a single economic entity.

Group: two or more entities related through ownership or control such that they are required to prepare Consolidated Financial Statements for financial reporting purposes under the accounting standards applicable thereto.

Investment Fund: means 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).

MNE Group: means any Group that includes

- (i) two or more entities the tax residence of which is in different jurisdictions or;
- (ii) an entity that is resident for tax purposes in one jurisdiction and is subject to tax, with respect to the activities carried out through a branch or permanent establishment, in another jurisdiction.

Unincorporated Partnership:

- (a) limited partnership (which is not a juridical person); or
 - (b) general partnership,
- that is registered in the State, including in a Free Zone or a Financial Free Zone

Relevant Income: means all gross income from a Relevant Activity that is recorded in the books and records of the Licensee or the Exempted Licensee under the accounting standards applicable thereto.

Shipping Business: means the business of operating a Ship anywhere in the world other than within the territorial waters of the State, including

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the chartering of a Ship for the purpose described in subparagraph (a) above;
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a Ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
- (e) the management of the crew of a Ship.

Core Income-Generating Activity: has the meaning given by Article 3 of this Resolution.

Parent Company: means an entity that directly –

- (a) holds a majority of voting rights in the Licensee or the Exempted Licensee; or
- (b) has the right to appoint or remove a majority of the boards of directors of the Licensee or the Exempted Licensee; or
- (c) controls alone or pursuant to a joint arrangement with other shareholders or members, a majority of the voting rights in the Licensee or the Exempted Licensee; or
- (d) has the right to exercise, or actually exercises, dominant direct influence or control over the Licensee or the Exempted Licensee.

Ultimate Parent Company: means an entity of a Group that-

- (a) owns directly or indirectly a sufficient interest in the Licensee or the Exempted Licensee such that it is required to prepare Consolidated Financial Statements under the accounting standards applicable thereto or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other entity in the Group that owns directly or indirectly a sufficient interest in such entity such that it is required to prepare Consolidated Financial Statements under the accounting standards applicable thereto, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence.

Outsourcing Provider: means a person or entity that undertakes a Core Income Generating Activity on behalf of a Licensee in accordance with the conditions set out in Clause (2) of Article 6 of this Resolution.

Article 2

Objective of the Resolution

The objective of this Resolution is to determine the requirements and set out the criteria that confirms that a Licensee that is carrying on an activity in the State has economic substance.

Article 3
Relevant Activity and Core Income Generating Activity

1. A Relevant Activity for the purpose of this Resolution is any of the following activities:
 - (a) Banking Business
 - (b) Insurance Business
 - (c) Investment Fund Management Business
 - (d) Lease-Finance Business
 - (e) Headquarters Business
 - (f) Shipping Business
 - (g) Holding Company Business
 - (h) Intellectual Property Business
 - (i) Distribution and Service Centre Business

2. Core Income Generating Activities means activities that are of central importance to a Licensee for generating income from a Relevant Activity and may include the following:
 - (a) Banking Business related to any of the following:
 - (i) raising funds, managing risk including credit, currency and interest risk.
 - (ii) taking hedging positions.
 - (iii) providing loans, credit or other financial services to customers.
 - (iv) managing capital and preparing reports to investors or any government authority with functions relating to the supervision or regulation of such business.

 - (b) Insurance Business related to any of the following:
 - (i) predicting and calculating risk.
 - (ii) insuring or re-insuring against risk and providing Insurance Business services to clients.
 - (iii) Underwriting insurance and reinsurance.

 - (c) Investment Fund Management Business related to any of the following:
 - (i) taking decisions on the holding and selling of investments.
 - (ii) calculating risk and reserves.
 - (iii) taking decisions on currency or interest fluctuations and hedging positions.
 - (iv) preparing reports to investors or any government authority with functions relating to the supervision or regulation of such business.

- (d) Lease-Finance Business related to any of the following:
 - (i) agreeing funding terms.
 - (ii) identifying and acquiring assets to be leased (in the case of leasing).
 - (iii) setting the terms and duration of any financing or leasing.
 - (iv) monitoring and revising any agreements.
 - (v) managing any risks.

- (e) Headquarters Business related to any of the following:
 - (i) taking relevant management decisions.
 - (ii) incurring operating expenditures on behalf of a Group.
 - (iii) coordinating Group activities.

- (f) Shipping Business related to any of the following:
 - (i) managing crew (including hiring, paying and overseeing crew members).
 - (ii) overhauling and maintaining Ships.
 - (iii) overseeing and tracking shipping.
 - (iv) determining what goods to order and when to deliver them, organising and overseeing voyages.

- (g) Holding Company Business: all activities related to that business.

- (h) Intellectual Property Business related to any of the following:
 - (i) where the Intellectual Property Asset is a:
 - A. patent or a similar Intellectual Property Asset; the Core Income Generating Activity shall be research and development.
 - B. marketing intangible or a similar Intellectual Property Asset; the Core Income Generating Activity shall be branding, marketing and distribution.

 - (ii) in exceptional cases, except in the case where the Licensee is a High Risk IP Licensee, the Core Income-Generating Activity in respect of an Intellectual Property Business may include any of the following:
 - A. taking strategic decisions and managing as well as bearing the principal risks related to development and subsequent exploitation of the Intellectual Property Asset generating income;
 - B. taking the strategic decisions and managing as well as bearing the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the Intellectual Property Asset;
 - C. carrying on the ancillary trading activities through which the Intellectual Property Asset are exploited leading to the generation of income from third parties.

- (i) Distribution and Service Centre Business related to any of the following:
 - (i) transporting and storing component parts, materials or goods ready for sale.
 - (ii) managing inventories.
 - (iii) taking orders.
 - (iv) providing consulting or other administrative services.

Article 4
Regulatory Authorities

1. Each of the following authorities is hereby appointed as the Regulatory Authority to regulate the following Relevant Activities for the purposes of this Resolution:

(a) Banking Business:

- (i) Central Bank
- (ii) Financial Free Zone Authority in relation to a Banking Business carried out in a Financial Free Zone

(b) Insurance Business:

- (i) Insurance Authority
- (ii) Free Zone Authority in relation to an Insurance Business carried out in a Free Zone
- (iii) Financial Free Zone Authority in relation to an Insurance Business carried out in a Financial Free Zone.

(c) Investment Fund Management Business:

- (i) Securities and Commodities Authority
- (ii) Free Zone Authority in relation to an Investment Fund Management Business carried out in a Free Zone
- (iii) Financial Free Zone Authority in relation to an Investment Fund Management Business carried out in a Financial Free Zone.

(d) Lease-Finance Business:

- (i) Central Bank
- (ii) Free Zone Authority in relation to a Lease Finance Business carried out in a Free Zone
- (iii) Financial Free Zone Authority in relation to a Lease Finance Business carried out in a Financial Free Zone

(e) Headquarters Business:

- (i) Ministry of Economy
- (ii) Free Zone Authority in relation to a Headquarters Business carried out in a Free Zone

- (iii) Financial Free Zone Authority in relation to a Headquarters Business carried out in a Financial Free Zone
 - (f) Shipping Business:
 - (i) Ministry of Economy
 - (ii) Free Zone Authority in relation to a Shipping Business carried out in a Free Zone
 - (iii) Financial Free Zone Regulatory Authority in relation to a Shipping Business carried out in a Financial Free Zone
 - (g) Holding Company Business:
 - (i) Ministry of Economy
 - (ii) Free Zone Authority in relation to a Holding Company Business carried out in a Free Zone
 - (iii) Financial Free Zone Authority in relation to a Holding Company Business carried out in a Financial Free Zone
 - (h) Intellectual Property Business
 - (i) Ministry of Economy
 - (ii) Free Zone Authority in relation to an Intellectual Property Business carried out in a Free Zone
 - (iii) Financial Free Zone Authority in relation to an Intellectual Property Business carried out in a Financial Free Zone
 - (i) Distribution and Service Centres Business
 - (i) Ministry of Economy
 - (ii) Free Zone Authority in relation to a Distribution and Services Centres Business carried out in a Free Zone
 - (iii) Financial Free Zone Authority in relation to a Distribution and Services Centres Business carried out in a Financial Free Zone
2. Each Regulatory Authority shall, within its jurisdiction, carry out the following functions:
- (a) collect the Notification, Economic Substance Report and all relevant supporting documents relating thereto;
 - (b) review the Notification and the Economic Substance Report along with supporting documentation to ensure completeness and correctness thereof;
 - (c) undertake an assessment to determine whether an Exempted Licensee has submitted sufficient information and documents to evidence that it is eligible for the applicable exemption provided for under this Resolution;
 - (d) carry out the reporting requirements set out under Article 9 of this Resolution; exercise any other powers or functions as required to implement this Resolution; and

- (e) carry out any other powers or functions as may be required to implement any decision of the Competent Authority, the Minister of Finance, or the National Assessing Authority issued pursuant to this Resolution.

Article 5
National Assessing Authority

The Federal Tax Authority is hereby appointed as the National Assessing Authority and shall carry out the functions prescribed to it under this Resolution, including:

1. undertake assessments to determine whether a Licensee or an Exempted Licensee has met the Economic Substance Test pursuant Article 7 of this Resolution;
2. impose the administrative penalties pursuant to Articles 13, 14 and 15 of this Resolution;
3. hear and decide on appeals pursuant to Article 17 of this Resolution;
4. carry out the reporting requirements set out under Article 10 of this Resolution;
5. exercise any other powers or functions as required to implement this Resolution; and
6. exercise any other powers or functions as may be required to implement any decision of the Competent Authority or the Minister of Finance issued pursuant to this Resolution.

Article 6
Requirement to meet Economic Substance Test

1. Without prejudice to the provisions of Clauses (5) (6) and (7) of this Article, a Licensee that is not an Exempted Licensee, must satisfy the following criteria to meet the Economic Substance Test in relation to any Relevant Activity carried on by it:
 - (a) the Licensee conducts the necessary Core Income-Generating Activity in the State;
 - (b) the Relevant Activity is directed and managed in the State;
 - (c) having regard to the level of Relevant Activity, as follows:
 - (i) there is an adequate number of qualified full-time employees in relation to that activity who are physically present in the State (whether or not employed by the Licensee or by another entity and whether on temporary or long-term contracts);
 - (ii) there is adequate operating expenditure incurred by the Licensee in the State; and
 - (iii) there are adequate physical assets in the State.

2. A Licensee may outsource a Core Income-Generating Activity to an Outsourcing Provider, provided that the following conditions are met;
 - (a) The Licensee must be able to monitor, control and demonstrate adequate supervision in the State of the Core Income-Generating Activity being carried out by the Outsourcing Provider;
 - (b) The employees, expenditures and physical assets of the Outsourcing Provider are adequate in respect of the Core Income-Generating Activity carried out by the Outsourcing Provider;
 - (c) The Core Income-Generating Activity being carried out by the Outsourcing Provider is conducted in the State; and
 - (d) The employees, expenditures and physical assets of the Outsourcing Provider are not counted multiple times by multiple Licensees when evidencing compliance with the Economic Substance Test.

3. The Economic Substance Test in paragraph (b) of Clause (1) of this Article is satisfied if the following conditions are met:
 - (a) the Licensee's board of directors meets in the State at an adequate frequency having regard to the amount of decision-making required at that level;
 - (b) at such board meetings described in paragraph (a) of Clause (3) of this Article, there is a quorum of directors physically present in the State;
 - (c) the board meetings are recorded in written minutes and signed by the directors attending the board meetings;
 - (d) the minutes of such board meetings described in paragraph (a) of Clause (3) of this Article record the making of strategic decisions in relation to the Relevant Activity at the board meeting
 - (e) the directors of the Licensee have the necessary knowledge and expertise to discharge the duties of the board; and
 - (f) the minutes of all board meetings and the records of the Licensee are kept in the State.

4. Where a Licensee is managed by a shareholder or a partner or by one or more managers, the requirements of Clause (3) of this Article shall apply to any such shareholder, partner or manager(s) as if they were a director.

5. In relation to a Licensee whose activity is restricted to carrying on a Holding Company Business, such Licensee meets the Economic Substance Test if it meets the following conditions:
 - (a) Complies with the requirement to submit any documents, records or information to the relevant Regulatory Authority in accordance with the law applicable to such Licensee in the State; and
 - (b) Has adequate employees and premises for holding and managing the Holding Company Business.

6. A Licensee is not required to meet the Economic Substance Test in a Financial Year in which it has no Relevant Income.

7. An Exempted Licensee that fails to meet the applicable reporting requirements prescribed under Article 8 of this Resolution shall:
 - (a) be required to meet the Economic Substance Test in relation to any Relevant Activity carried on by it for each Financial Year in which such failure occurs; and
 - (b) be subject to all provisions set out under this Resolution as applicable to a Licensee.

Article 7

Assessment of whether Economic Substance Test is met

1. The National Assessing Authority may determine that a Licensee has not met the Economic Substance Test during any Financial Year of the Licensee, provided that such determination is made no later than six (6) years after the end of the Financial Year to which the determination relates.
2. The time bar period stipulated under Clause (1) of this Article shall not apply if the National Assessing Authority is not able to make a determination within the six (6) year period by reason of any misrepresentation, fraudulent action, or gross negligence by the Licensee or by any other person.
3. In relation to a High Risk IP Licensee, for the purposes of Clause (1) of this Article, the National Assessing Authority must determine that the Economic Substance Test is not met during a Financial Year unless the Licensee provides sufficient information in accordance with Clause 6 of Article 8 of this Resolution to satisfy the National Assessing Authority that the Economic Substance Test is met.

Article 8

Requirement to provide information

1. Each Licensee and Exempted Licensee shall notify the Regulatory Authority annually of the following -
 - (a) the Relevant Activity being carried out by such Licensee or Exempted Licensee during the Relevant Financial Year;
 - (b) whether it has generated Relevant Income during the Relevant Financial Year ;
 - (c) the date of commencement and end of its Financial Year;
 - (d) any other information or documents as may be requested by the Regulatory Authority.
2. An Exempted Licensee shall submit to the Regulatory Authority, along with the Notification under Clause (1) of this Article, all information and documentation evidencing its status as an Exempted Licensee, and any further information as may be requested by the Regulatory Authority.
3. The Notification under Clause (1) of this Article shall be made at the time, form and manner approved by the Competent Authority.

4. A Licensee that is required to meet the Economic Substance Test pursuant to this Resolution shall, no later than twelve (12) months after the last day of the end of each Financial Year commencing on or after 1 January 2019 of the Licensee, prepare and submit to the Regulatory Authority an Economic Substance Report in accordance with Clause (5) of this Article.

5. The Economic Substance Report shall be in the form and manner approved by the National Assessing Authority in coordination with the Competent Authority and shall include the following information and documents with respect to the Licensee for the relevant Financial Year:
 - (a) the type of Relevant Activity conducted by it;
 - (b) the amount and type of the Relevant Income earned by it;
 - (c) the amount and type of operating expenses and assets in respect of the Relevant Activity carried out by it;
 - (d) the location of the place of its business and, if applicable, plant, property or equipment used for the Relevant Activity by it in the State;
 - (e) the number of full-time employees with qualifications and the number of personnel who are responsible for carrying on its Relevant Activity;
 - (f) the Core Income-Generating Activity in respect of the Relevant Activity being carried out by it;
 - (g) its financial statements;
 - (h) a declaration as to whether or not it satisfies the Economic Substance Test;
 - (i) in the case of a Relevant Activity being an Intellectual Property Business, a declaration as to whether or not it is a High Risk IP Licensee.

6. If the Licensee declares that it is a High Risk IP Licensee, the Licensee shall provide to the National Assessing Authority information and documentation demonstrating that the Licensee does and historically has exercised a high degree of control over the development, exploitation, maintenance, protection and enhancement of the Intellectual Property Asset, exercised by an adequate number of full-time employees, with the necessary qualifications, who permanently reside and perform their activities in the State to refute a determination made by the National Assessing Authority under Clause (3) of Article 7 of this Resolution and shall also provide the following:
 - (a) business plan showing the reasons for holding the ownership in the Intellectual Property Asset in the State;
 - (b) employee information, including level of experience, type of contracts, qualifications and duration of employment with the Licensee;
 - (c) evidence that decision making is taking place within the State.

7. Where a Licensee outsources a Core Income-Generating Activity, the Licensee shall submit information evidencing compliance with the conditions set out under Clause (2) of Article 6 of this Resolution.

8. A Licensee shall provide the National Assessing Authority with any such additional information, documents or records as shall reasonably be required by the National Assessing Authority to make a determination under Article 7 of this Resolution.
9. The Regulatory Authority and the National Assessing Authority may each serve notice on a Licensee and an Exempted Licensee requesting the provision, within the period specified in the notice and in such form as is specified in the notice, such documents and information as the Regulatory Authority and the National Assessing Authority may reasonably require for the purpose of implementing the provisions of this Resolution.
10. Each Licensee and Exempted Licensee who is required under this Resolution to submit any information or documentation shall provide such documentation in English.
11. Each Licensee and Exempted Licensee who is required under this Resolution to submit any information or documentation, must retain such information or documentation for a period of six (6) years from the date on which such information or documents is submitted.

Article 9

Provision of information by the Regulatory Authority

1. Upon receipt by the Regulatory Authority of a Notification and an Economic Substance Report pursuant to this Resolution, the Regulatory Authority shall send the National Assessing Authority any such Notification and Economic Substance Report and all relevant documents received in accordance with the provisions of this Resolution to the National Assessing Authority within thirty (30) Business Days of receipt thereof.
2. In the event that a Licensee or an Exempted Licensee fails to submit the Notification or the Economic Substance Report or any document or information as may be required under this Resolution in relation to such Notification or Economic Substance Report within the period stipulated pursuant to this Resolution, the Regulatory Authority shall notify the National Assessing Authority of such failure within no more than thirty (30) Business Days of the Regulatory Authority becoming aware of such failure.
3. The Regulatory Authority shall provide the National Assessing Authority with any information available to the Regulatory Authority as may be required by the National Assessing Authority for the purposes of implementing this Resolution.
4. The Regulatory Authority shall provide to the National Assessing Authority all information received pursuant to this Resolution relating to any of the following Exempted Licensees:
 - (a) a tax resident in a jurisdiction other than the State; and
 - (b) a branch of a foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than the State.

Article 10

Provision of Information by the National Assessing Authority

1. Subject to a Licensee's right of appeal under Article 17 of this Resolution, if the National Assessing Authority determines under Article 7 of this Resolution that a Licensee has not met the Economic Substance Test for a Financial Year, the National Assessing Authority shall notify the Competent Authority of this determination and shall submit the information provided under Article 8 of this Resolution and any other information as may be obtained at the request of the National Assessing Authority relating to that Licensee to the Competent Authority.
2. In respect of a High Risk IP Licensee, regardless of whether or not the National Assessing Authority has made a determination under Article 7 of this Resolution in relation to such Licensee, the National Assessing Authority must provide to the Competent Authority all information submitted to the National Assessing Authority under Article 8 of this Resolution in respect of that Licensee for each Financial Year of the such Licensee.
3. The National Assessing Authority shall provide to the Competent Authority all relevant information received pursuant to this Resolution relating to any of the following Exempted Licensees:
 - (a) a is tax resident in a jurisdiction other than the State; and
 - (b) a branch of a foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than the State.
4. The National Assessing Authority shall notify the relevant Regulatory Authority of any administrative penalty imposed and decision issued in respect of any appeal pursuant to this Resolution.

Article 11

Exchange of Information by Competent Authority

1. Upon receipt by the Competent Authority of information relating to a Licensee that has not met the Economic Substance Test for a Financial Year from the National Assessing Authority pursuant to the Clause (1) of Article 10 of this Resolution, the Competent Authority shall, pursuant to an international agreement, treaty or similar international arrangement to which the State is a party, provide the relevant information relating to such Licensee to the Foreign Competent Authority of the country or territory in which resides the Parent Company, the Ultimate Parent Company, and the Ultimate Beneficial Owner of the Licensee.
2. Upon receipt by the Competent Authority of information relating to a Licensee that is a High Risk IP Licensee from the National Assessing Authority pursuant to the provisions of Clause (2) of Article 10 of this Resolution, the Competent Authority shall, pursuant to an international agreement, treaty or similar

international arrangement to which the State is a party, provide the relevant information received relating to such Licensee to the Foreign Competent Authority of the country or territory in which resides the Parent Company, the Ultimate Parent Company, and the Ultimate Beneficial Owner of the Licensee.

3. Upon receipt by the Competent Authority of information relating to an Exempted Licensee that is tax resident in a jurisdiction other than the State for a Financial Year from the National Assessing Authority pursuant to Clause (3) of Article 10 of this Resolution the Competent Authority shall, pursuant to an international agreement, treaty or similar international arrangement to which the State is a party, provide the relevant information in relation to any such Exempted Licensee to the Foreign Competent Authority of:
 - (a) the jurisdiction of claimed tax residence by such Exempted Licensee; and
 - (b) the country or territory in which resides the Parent Company, the Ultimate Parent Company, and the Ultimate Beneficial Owner of such Exempted Licensee.
4. Upon receipt by the Competent Authority of information relating to an Exempted Licensee that is a branch of a foreign entity subject to tax in a jurisdiction other than the State for a Financial Year from the National Assessing Authority pursuant to Clause (3) of Article 10 of this Resolution, the Competent Authority shall, pursuant to an international agreement, treaty or similar international arrangement to which the State is a party, provide the relevant information in relation to any such Exempted Licensee to the Foreign Competent Authority of:
 - (a) the jurisdiction in which such Exempted Licensee claims to be subject to tax; and
 - (b) the country or territory in which resides the Parent Company, the Ultimate Parent Company, and the Ultimate Beneficial Owner of such Exempted Licensee.
5. The employees of the Competent Authority, the National Assessing Authority, the Regulatory Authority or any ministry or any other government authority, whether federal or local, may disclose any data, information or documentation disclosed to them or within their custody by virtue of carrying out their duties assigned to them in accordance with the provisions of this Resolution, provided that such disclosure is required for the implementation of any provisions of this Resolution.
6. The Regulatory Authority and the National Assessing Authority shall provide the Competent Authority with any further information as may be requested by the Competent Authority for the purposes of carrying out its functions under this Resolution or pursuant to an international agreement, treaty or similar international arrangement to which the State is a party.

Article 12

Cooperation by other Governmental Authorities

1. All ministries and other governmental authorities, whether federal or local, shall provide the Regulatory Authority, National Assessing Authority, and/or the Competent Authority with any data, information, and

documentation in respect of a Licensee or an Exempted Licensee within its possession, as may be requested by any of the aforementioned Authorities.

2. All ministries and other governmental authorities, whether federal or local, shall cooperate with the Regulatory Authority, the National Assessing Authority and/or the Competent Authority to carry out whatever is required to implement the provisions of this Resolution, including identifying the Business Premises of any Licensee or Exempted Licensee subject to an inquiry pursuant to this Resolution and to request the filing or updating of any data or information as may be required for the implementation of the provisions of this Resolution.

Article 13

Offences and Penalties for failure to provide a Notification

1. An amount of administrative penalty of dirhams twenty thousand (AED 20,000) shall be imposed on a Licensee or Exempted Licensee who fails to submit the Notification (and any relevant information or documentation) in accordance with the provisions of this Resolution.
2. If the National Assessing Authority has determined that the Licensee or the Exempted Licensee has committed the offence stipulated in Clause (1) of this Article in respect of any Financial Year, it shall notify the Licensee or the Exempted Licensee of the following:
 - (a) that the National Assessing Authority has determined that the Licensee or the Exempted Licensee has failed to submit the Notification pursuant to the provisions of this Resolution.
 - (b) the reasons for imposing the administrative penalty.
 - (c) the amount of administrative penalty imposed on the Licensee or the Exempted Licensee under this Article.
 - (d) the date from which the administrative penalty imposed under this Article are due, being not less than thirty (30) Business Days after the issue of the notice.

Article 14

Offences and Penalties for failure to submit an Economic Substance Report and for failure to meet the Economic Substance Test

1. An amount of administrative penalty of dirhams fifty thousand (AED 50,000) shall be imposed on a Licensee or Exempted Licensee for committing any of the following violations:
 - (a) failure to submit the Economic Substance Report and any relevant information or documentation required to be submitted in accordance with the provisions of this Resolution; or
 - (b) for failure to meet the Economic Substance Test for each Financial Year.
2. If the National Assessing Authority determines under Article 7 of this Resolution that a Licensee or an Exempted Licensee has failed to submit an Economic Substance Report and any relevant information or documentation required to be submitted in accordance with the provisions of this Resolution or has failed

to meet the Economic Substance Test for a Financial Year, the National Assessing Authority must issue a notice to the Licensee or Exempted Licensee notifying it of the following:

- (a) that the National Assessing Authority has determined that the Licensee or Exempted Licensee has not met the Economic Substance Test for the said Financial Year.
 - (b) the reasons for that determination.
 - (c) the amount of administrative penalty imposed on the Licensee or Exempted Licensee under Clause (1) of this Article.
 - (d) the date upon which the administrative penalty under Clause (1) of this Article is due, being not less than thirty (30) Business Days after the issue of the notice.
3. If the National Assessing Authority has determined that a Licensee or an Exempted Licensee that committed the violation set out under Clause 2 of this Article has committed the same violation in the Financial Year immediately following the Financial Year in which this violation was committed, an administrative penalty of AED 400,000 shall be imposed on such Licensee or Exempted Licensee. The National Assessing Authority shall in this case issue a notification to the Licensee or the Exempted licensee notifying it of the following:
- (a) that the National Assessing Authority has determined that the Licensee or Exempted Licensee does not meet the Economic Substance Test for the second consecutive Financial Year.
 - (b) the reasons for the determination.
 - (c) the amount of the administrative penalty imposed on the Licensee or Exempted Licensee under Clause (3) of this Article;
 - (d) the date upon which the administrative penalty under Clause (3) of this Article is due, being not less than thirty (30) Business Days after the issue of the notice; and
 - (e) any other administrative action the National Assessing Authority may impose, including the suspension, revocation or non-renewal of the Licence of a Licensee or an Exempted Licensee, in which case the National Assessing Authority shall notify the Relevant Regulatory Authority of any such decision and the Relevant Regulatory Authority shall take all necessary actions for the purposes of executing any such decision.

Article 15

Offences and Penalties for providing inaccurate information

1. An amount of dirhams fifty thousand (AED 50,000) shall be imposed on the Licensee or the Exempted Licensee that provides inaccurate information to the Regulatory Authority or the National Assessing Authority and knows of the inaccuracy at the time the information is provided but fails to inform the Regulatory Authority or the National Assessing Authority at that time of it discovering the inaccuracy of the provided information.

2. If the National Assessing Authority has determined that the Licensee or the Exempted Licensee has committed the offence stipulated in Clause (1) of this Article in respect of any Financial Year, it shall notify the Licensee or the Exempted Licensee of the following:
 - (a) that the National Assessing Authority has determined that the Licensee or the Exempted Licensee has not met the Economic Substance Test for such Financial Year.
 - (b) the reasons for imposing the administrative penalty.
 - (c) the amount of administrative penalty imposed on the Licensee or the Exempted Licensee under this Article.
 - (d) the date from which the administrative penalty imposed under this Article is due, being not less than thirty (30) Business Days after the issue of the notice.

Article 16

Period for Imposition of an Administrative Penalty

1. Without prejudice to Clause (2) of this Article, an administrative penalty under this Resolution may not be imposed after the lapse of six (6) years from the date on which the violation was committed.
2. In the case the Licensee or the Exempted Licensee is subject to an administrative penalty under Article 15 of this Resolution, an administrative penalty shall not be imposed after the lapse of twelve (12) months from the date on which such violation came to the attention of the National Assessing Authority.
3. The provisions of Clause (1) and Clause (2) of this Article shall not apply if the Licensee or the Exempted Licensee has committed fraud that has resulted in the inability of the National Assessing Authority to impose the administrative penalties within the periods stipulated thereunder.

Article 17

Right of Appeal against Administrative Penalty

1. A Licensee or an Exempted Licensee upon whom an administrative penalty is imposed by the National Assessing Authority may appeal against it on any of the following grounds:
 - (a) it did not commit the violation attributed to it;
 - (b) the administrative penalty imposed is not proportionate to the violation;
 - (c) the administrative penalty imposed exceeds the limited prescribed hereunder.
2. The National Assessing Authority shall issue a resolution setting out the procedures for an appeal under Clause (1) of this Article, including the mechanism for filing an appeal and other procedures relating to its

review and decision in relation to an appeal and means for notifying its decisions to the Licensee or the Exempted Licensee.

Article 18

Date of Payment of Administrative Penalties

An administrative penalty under this Resolution must be paid before or on any of the following dates whichever is taking place first:

1. the date upon which the administrative penalty is due pursuant to a notice issued by National Assessing Authority under Articles 13, 14 and 15 of this Resolution.
2. if notice of appeal under Article 17 of this Resolution is given, the date on which the appeal is finally determined or withdrawn.

Article 19

Power to Enter Business Premises and Examine Business Documents

1. The authorized personnel of the Regulatory Authority and the National Assessing Authority may examine and take copies of any Business Document that is located in Business Premises.
2. The authorized personnel of the Regulatory Authority and the National Assessing Authority may during official working hours enter Business Premises for the purpose of exercising the power under Clause (1) of this Article.
3. The powers under Clause (1) and Clause (2) of this Article may be exercised only for the purpose of any administrative investigation conducted by the Regulatory Authority or the National Assessing Authority to ensure compliance with any provision of this Resolution.
4. The Regulatory Authority and the National Assessing Authority may each by notice require during official working hours any person to produce any specified Business Document at the Business Premises where the Business Document is located for the purpose of enabling the Regulatory Authority and the National Assessing Authority to exercise the power under Clause (1) of this Article in relation to that document.
5. The Regulatory Authority and the National Assessing Authority shall coordinate with each other in the carrying out any of the powers referred to under Clauses (1), (2), (3) and (4) of this Article by any of their respective employees.

Article 20

Executive Regulations

The Minister of Finance shall issue shall issue the necessary decisions to implement any of the provisions of this Resolution.

Article 21
Revocation

Cabinet of Ministers Resolution No. 31 of 2019(as amended) and Cabinet of Ministers Resolution No. 58 of 2019 are hereby repealed and replaced by this Resolution and any decision contrary thereto.

Article 22
Entry into Force

This Resolution shall be published in the Official Gazette, shall come into force on the date of its issuance.

Mohammed Bin Rashed Al Maktoum
Prime Minister

Issued: by us on:
20 Zi Al Hijja 1441 Hijri
10 August 2020