

# Cabinet of Ministers Resolution No 31 of 2019 Concerning Economic Substance

☎ +971 5 28532600, +971589141671

✉ [info@gspuuae.com](mailto:info@gspuuae.com)

🌐 [www.gspuuae.com](http://www.gspuuae.com)

## **CABINET OF MINISTERS RESOLUTION**

**No. 31 of 2019**

**CONCERNING**

## **ECONOMIC SUBSTANCE REGULATIONS**

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 Decretal Law No. (8) of 2011 on Regulations of Preparing Balance Sheet and Closing Accounts,
- 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 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,
- 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.
- (b) that forms part of any record under any legislation applicable to a Licensee.

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

**Competent Authority:** the Ministry of Finance.

**Foreign Competent Authority:** the foreign authority designated under an international agreement, treaty, or similar 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:** a natural or juridical person who is related to one or more natural or juridical person(s) through direct or indirect ownership or control, or common control.

**Distribution and Service Centre Business:** any of the following businesses:

- (a) purchasing from a Foreign Connected Person and importing and storing in the State: component parts or materials for goods; or goods ready for sale, and reselling such component parts, materials or goods outside the State.
- (b) providing services to Foreign Connected Persons in connection with a business outside the State.

**Economic Substance Test:** the test that a Licensee must meet as set out under Article 6 of this Resolution.

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

**Financial Year:** the annual accounting Financial Year of the business of a Licensee as specified in its constitutive document(s).

**Foreign Connected Person:** a Connected Person that is not resident or deemed as resident in the State.

**Free Zone:** a free zone established in the State.

**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 by the Licensee.

- (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.
- (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 in respect of which any of the following two conditions apply:

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

- iii. licences the intellectual property asset to one or more Connected Persons or otherwise generates income from the asset in consequence of activities performed by Foreign Connected Persons.
- (b) the Licensee does not carry out research and development, or branding, marketing and distribution as part of its State Core Income-Generating Activity.

**Holding Company:** shall have the meaning as set out in the law governing such activity in the State.

**Holding Company Business:** a business that is:

- (a) a Holding Company in accordance with the law applicable to the Licensee carrying out such activity in the State.
- (b) has as its primary function the acquisition and holding of shares or equitable interests in other companies.
- (c) does not carry on any other commercial activity.

**Income :** in respect of an intellectual property asset includes any of the following:

- (a) royalties.
- (b) income from a franchise agreement.
- (c) income from licensing the intangible asset.
- (d) income from 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).

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

**Regulatory Authority:** the authority delegated pursuant to a resolution of the Cabinet of Ministers to regulate a Relevant Activity for the purposes of this Resolution.

**Relevant Activity:** any of the activities set out under Article 4 of this Resolution.

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

**Licensee:** a natural or juridical person licensed by the competent licensing authority/ authorities in the State to carry out a Relevant Activity in the State, including a Free Zone and a Financial Free Zone.

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

**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:

- (a) the business of transporting, by sea, persons, animals, goods or mail.
- (b) the chartering of ships for the purpose described in subparagraph (a).
- (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.
- (e) the management of the crew of a Ship.

**State Core Income-Generating Activity :** has the meaning given by Article 5 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 the Licensee is carrying out an activity in the State that achieves economic substance interest.

### **Article 3 Scope of Application**

1. The provisions of this Resolution shall apply to a Licensee that carries out any Relevant Activity.
2. The provisions of this Resolution shall not apply to any commercial company (as defined in Article 1 of the Commercial Companies Law) in which the Government of the State, or the Government of any Emirate of the State, or any governmental authority or body of any of them has any direct or indirect ownership in its share capital.

### **Article 4 Meaning of Relevant Activity and Regulatory Authority**

- (a) In this Resolution, any of the following activities shall be considered a “Relevant Activity”:
  - (1) Banking Businesses as licensed in the State, including Banking Businesses licensed in a Free Zone or a Financial Free Zone.
  - (2) Insurance Businesses as licensed in the State, including Insurance Businesses licensed in a Free Zone or a Financial Free Zone.
  - (3) Investment Fund Management Businesses as licensed in the State, including Investment Fund Management Businesses licensed in a Free Zone or a Financial Free Zone.
  - (4) Lease-Finance Businesses as licensed in the State, including Lease-Finance Businesses licensed in a Free Zone or a Financial Free Zone.
  - (5) Headquarters Businesses as licensed in the State, including Headquarters Businesses licensed in a Free Zone or a Financial Free Zone.
  - (6) Shipping Businesses as licensed in the State, including Shipping Businesses licensed in a Free Zone or a Financial Free Zone.
  - (7) Holding Company Businesses as licensed in the State, including Holding Businesses licensed in a Free Zone or a Financial Free Zone.



(8) Intellectual Property Businesses as licensed in the State, including Intellectual Property Businesses licensed in a Free Zone or a Financial Free Zone.

(9) Distribution and Service Centers Businesses as licensed in the State, including Distribution and Service Centres Businesses licensed in a Free Zone or a Free Zone.

(b) For the purpose of this Resolution, the Cabinet of Ministers shall issue a resolution determining the Regulatory Authority that shall regulate the activities mentioned in Clause (a) of this Article.

#### **Article 5 “State Core Income-Generating Activities”**

“State Core Income-Generating Activities” means, for the purpose of this Resolution, activities that must be conducted by a Licensee in the State and shall include:

1. in respect of Banking Business:

(a) raising funds, managing risk including credit, currency and interest risk.

(b) taking hedging positions.

(c) providing loans, credit or other financial services to customers.

(d) managing capital and preparing reports to investors or any government authority with functions relating to the supervision or regulation of such business.

2. in respect of Insurance Business:

(a) predicting and calculating risk.

(b) insuring or re-insuring against risk and providing Insurance Business services to clients.

(c) Underwriting insurance and reinsurance.

3. in respect of Investment Fund Management Business:

(a) taking decisions on the holding and selling of investments.

- (b) calculating risk and reserves.
  - (c) taking decisions on currency or interest fluctuations and hedging positions.
  - (d) preparing reports to investors or any government authority with functions relating to the supervision or regulation of such business.
4. in respect of Lease-Finance Business:
- (a) agreeing funding terms.
  - (b) identifying and acquiring assets to be leased (in the case of leasing).
  - (c) setting the terms and duration of any financing or leasing.
  - (d) monitoring and revising any agreements.
  - (e) managing any risks.
5. in respect of Headquarters Business:
- (a) taking relevant management decisions.
  - (b) incurring operating expenditures on behalf of group entities.
  - (c) coordinating group activities.
6. in respect of Shipping Business:
- (a) managing crew (including hiring, paying and overseeing crew members).
  - (b) overhauling and maintaining ships.
  - (c) overseeing and tracking shipping.
  - (d) determining what goods to order and when to deliver them, organising and overseeing voyages.

7. in respect of Holding Company Business, all activities related to that business; and in respect of Holding Company Business that derives income from other sources other than dividends and capital gains from its equity interest, the state Core Income-Generating Activities shall be those activities associated with the income generated.
  
8. in respect of Intellectual Property Business:
  - (a) where the Intellectual Property Asset is a -
    - i. patent or an asset that is similar to a patent, research and development.
    - ii. non-trade intangible (including a trademark), branding, marketing and distribution.
  - (b) if the Relevant Activity is conducted by a Licensee that is regarded as a High Risk IP Licensee, the State Core Income-Generating Activity must include any of the following additional activities:
    - i. taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income.
    - ii. 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 intangible asset.
    - iii. carrying on the ancillary trading activities through which the intangible assets are exploited leading to the generation of income from third parties.
  
9. in respect of Distribution and Service Centre Business;
  - (a) transporting and storing component parts, materials or goods ready for sale.
  - (b) managing inventories.
  - (c) taking orders.
  - (d) providing consulting or other administrative services.

**Article 6 Requirement to meet Economic Substance Test**

1. A Licensee must satisfy the following criteria to meet the Economic Substance Test in relation to any Relevant Activity carried on by it.
2. Save as provided in Clause 4 of this Article, a Licensee meets the Economic Substance Test in relation to a Relevant Activity in the following cases:
  - (a) if the Licensee conducts State Core Income-Generating Activity in the State.
  - (b) if the Licensee is directed and managed in the State in relation to that activity.
  - (c) having regard to the level of Relevant Activity, if 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), or adequate level of expenditure on outsourcing to third party service providers, whose activities, employees, expenditure, and premises are in the State; and these activities, employees, expenditures and premises are adequate for carrying out the Relevant Activity being outsourced.
  - (d) if there is adequate operating expenditure incurred by it in the State, or adequate level of expenditure on outsourcing to third party service providers whose activities, employees, expenditure and premises are in the State; and these activities, employees, expenditures and premises are adequate for carrying out the Relevant Activity being outsourced.
  - (e) if there are adequate physical assets in the State or adequate level of expenditure on outsourcing to third party service providers in the State, for the activities of the Licensee;
  - (f) in the case of State Core Income-Generating Activity carried out for the relevant Licensee by another entity, if it is able to monitor and control the carrying out of that activity by the other entity.
3. The Test in paragraph (b) of Clause 2 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 meetings are recorded in written minutes and signed by the directors attending the meetings.

- (d) the minutes of such board meetings described in paragraph (a) of Clause 3 of this Article record the making of strategic decisions of the Licensee at the 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.
  - (g) In the case of branch offices and representative offices of foreign companies and other commercial companies that do not have a board of directors but rather are managed and operated by a single manager, such manager shall be physically present in the State when taking key decision relating to the management and operation of these entities.
  - (h) For the purposes of Clause 2 paragraphs (c), (d) and (e) of this Article, a Licensee may elect to outsource a Relevant Activity to third party service providers, provided that:
    - i. the Licensee is able to demonstrate adequate supervision of the outsourced activity.
    - ii. the outsourced activity is conducted in the State.
    - iii. the economic substance of service providers will not be counted multiple times by multiple Licensees when evidencing their own substance in the State.
4. In relation to a Licensee whose activity is restricted to carrying out a Holding Company Business that derives its income from dividends and capital gains only, 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 the Licensee in the State.
  - (b) Has adequate employees and premises for holding and managing the Holding Company Business.
5. Clause 4 of this Article shall not apply to a Holding Company Business that derives income from other sources other than dividends and capital gains from its equity interest. In relation to such company, the state Core Income-Generating Activities shall be those activities associated with the income generated.

6. The Competent Authority shall issue guidance on how the Economic Substance Test may be met, including without prejudice to the generality of the foregoing, any expression used in this Article for the purpose of that test, including the meaning of “adequate”.
7. Regard must be had to any guidance under Clause 6 of this Article concerning the interpretation of any expression.
8. The Competent Authority may revise guidance issued under Clause 6 of this Article from time to time and a reference to guidance includes a reference to revised guidance.

#### **Article 7 Assessment of whether Economic Substance Test is met**

1. The Regulatory 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 Regulatory Authority is not able to make a determination within the six (6) year period by reason of any deliberate misrepresentation or negligent or fraudulent action 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 Regulatory Authority must determine that the Economic Substance Test is not met during a Financial Year unless the Licensee provides sufficient information to satisfy the Regulatory Authority that the Test is met.

#### **Article 8 Requirement to provide information**

1. A Licensee shall notify the Regulatory Authority annually of the following -
  - (a) whether or not it is carrying on a Relevant Activity.
  - (b) if the Licensee is carrying on a Relevant Activity; whether or not all or any part of the Licensee’s gross income in relation to the Relevant Activity is subject to tax in a jurisdiction outside of the State, in all cases such Licensee shall provide the Regulatory Authority with all information and documentation required to be submitted by it pursuant to this Resolution or any further guidance or decision issued pursuant to this Resolution.
  - (c) the date of the end of its Financial Year.

2. The notification under Clause 1 of this Article shall be made at the time specified by the Regulatory Authority and in the form and the manner approved by the Regulatory Authority.
3. A Licensee that is carrying on a Relevant activity and is required to satisfy the Economic Substance Test shall, no later than twelve (12) months after the last day of the end of each Financial Year of the Licensee, prepare and submit to the Regulatory Authority a report which report shall be submitted by the Regulatory Authority to the Competent Authority.
4. The report under sub clause 3 of this Article shall be in the form approved by the Competent Authority and shall include the following information with respect to the Licensee –
  - (a) the type of Relevant Activity conducted by it.
  - (b) the amount and type of relevant income in respect of the Relevant Activity.
  - (c) the amount and type of operating expenses and assets in respect of the Relevant Activity.
  - (d) the location of the place of business and, if applicable, plant, property or equipment used for the Relevant Activity of the Licensee in the State.
  - (e) the number of full-time employees with qualifications and the number of personnel who are responsible for carrying on the Licensee's Relevant Activity.
  - (f) information showing the State Core Income-Generating Activity in respect of the Relevant Activity that has been conducted.
  - (g) a declaration as to whether or not the Licensee satisfies the Economic Substance Test.
  - (h) in the case of a Relevant Activity being an Intellectual Property Business, a declaration as to whether or not it is a high risk intellectual property business. If the Licensee declares that it is a high risk intellectual property business, the Licensee shall provide the information under paragraph (i) to refute a determination made by the Regulatory under Clause 3 of Article 7 of this Resolution.
  - (i) in the case of a Licensee that is carrying on a high risk intellectual property business the following additional information must be provided:
    - i. Information demonstrating that the Licensee does and historically has exercised a high degree of control over the development, exploitation, maintenance, enhancement and protection of the

intellectual property asset by an adequate number of full-time employees, with the necessary qualifications, who permanently reside and perform their activities in the State.

- ii. business plan showing the reasons for holding the ownership in the Intellectual Property Asset in the State.
- iii. employee information , including level of experience, type of contracts, qualifications and duration of employment with the Licensee.
- iv. evidence that decision making is taking place within the State.

(j) where a Relevant Activity is outsourced by a Licensee, the Licensee must demonstrate the following:

- i. the Relevant Activity that is outsourced is a Core Income-Generating Activity being carried out in the State.
- ii. the Licensee has adequate supervision of the Relevant Activity outsourced.
- iii. the Licensee shall submit to the Regulatory Authority a report containing information in relation to the level of resources employed by the third party service provider to which the Relevant Activity is being outsourced, demonstrating that the service provider's activities, employees, operating expenditures and premises in the State are adequate in relation to the level of Relevant Activity outsourced.

- 5. A Licensee shall provide the Regulatory Authority with any such additional information, documents or other records as shall be reasonably required by the Regulatory Authority to make a determination under Article 7 of this Resolution.
- 6. The Regulatory Authority may serve notice on the Licensee requesting the provision, within the period specified in the notice and at such place as is specified in the notice, such documents and information as the Regulatory Authority may reasonably require for the purpose of facilitating the Regulatory Authority's exercise of functions under this Resolution.
- 7. A Licensee who, as may be required under this Resolution, to keep any records in a language other than English, must, upon a request by the Regulatory Authority, provide a translation of these records into English.



## **Article 9 Exchange of information**

1. The Regulatory Authority shall provide the Competent Authority with any information submitted pursuant to this Resolution by a Licensee.
2. Without prejudice to Clause 1 of this Article 9 of this Resolution and subject to a Licensee's right of Appeal under Article 13 of this Resolution, if a Regulatory Authority determines under Article 7 of this Resolution that a Licensee has not met the Economic Substance Test for a Financial Year, the Regulatory Authority shall provide the information provided under Article 8 of this Resolution relating to that Licensee for that period to the Competent Authority.
3. Upon receipt by the Competent Authority of notification containing information that a Licensee has not met the Economic Substance Test for a Financial Year from a Regulatory Authority pursuant to the above Clause 2, the Competent Authority shall, pursuant to an international agreement, treaty or similar international arrangement to which the State is a party, provide the information relating to such Licensee to –
  - (a) 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.
  - (b) If the Licensee is incorporated outside the State, the Foreign Competent Authority of the country or territory in which the Licensee is incorporated.
4. In respect of a High Risk IP Licensee, regardless of whether or not the Regulatory Authority has made a determination under Article 7 of this Resolution in respect of it, the Regulatory Authority must provide to the Competent Authority the information provided to the Regulatory Authority under Article 8 of this Resolution in respect of that Licensee for each Financial Year of the Licensee . The Competent Authority shall, pursuant to an international agreement, treaty or similar international arrangement to which the State is a party, provide any information received under this Article to –
  - (a) 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 such Licensee.
  - (b) if the High Risk IP company is incorporated outside the State, the Foreign Competent Authority of the country or territory in which the company is incorporated.

5. The Competent Authority's and the Regulatory Authority's power to disclose information under this Article shall not be regarded as a breach of any obligation of confidentiality imposed by the applicable laws of the State.

#### **Article 10 Offences and Penalties where the Economic Substance Test is not met**

1. An amount of administrative penalty of not less than dirhams ten thousand (AED 10,000) and not exceeding dirhams fifty thousand (AED 50,000) shall be imposed for failure to meet the Economic Substance Test.
2. If the Regulatory Authority determines under Article 7 of this Resolution that a Licensee has failed to meet the Economic Substance Test for a Financial Year, the Regulatory Authority must issue a notice to the Licensee notifying it of the following:
  - (a) that the Regulatory Authority has determined that the Licensee does not meet 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 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.
  - (e) what action(s) the Regulatory Authority considers should be taken by the Licensee to meet the economic substance test.
  - (f) the Licensee's right of appeal under Article 13 of this Resolution.
3. An amount of administrative penalty of not less than dirhams fifty thousand (AED 50,000) and not exceeding dirhams three hundred thousand (AED 300,000) shall be imposed for failure to meet the Economic Substance Test if the Regulatory Authority has determined that, for the Financial year following a Financial Year in which a notice was issued under Clause 2 of this Article, (Further Financial Year), the Licensee has failed to meet the Economic Substance Test pursuant to Article 7 of this Resolution, the Regulatory Authority must issue a further notice to the Licensee notifying it of the following:

- (a) that the Regulatory Authority has determined that the Licensee does not meet the Economic Substance Test for the Further Financial Year.
- (b) the reasons for the determination.
- (c) the amount of the administrative penalty imposed on the Licensee under Clause 3 of this Article;
- (d) the date from 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.
- (e) what action the Regulatory Authority considers should be taken by the Licensee to meet the Economic Substance Test.
- (f) the Licensee's right of appeal under Article 13 of this Resolution.
- (g) any other administrative action the Regulatory Authority may impose, including the suspension, revocation or non-renewal of the Licence of a Licensee.

**Article 11 Offences and Penalties for failure to provide information or for inaccurate information**

1. An amount of an administrative penalty of not less than dirhams ten thousand (AED 10,000) and not exceeding dirhams fifty thousand (AED 50,000) if the Licensee commits any of the following offences:
  - (a) if it fails to provide information that the Licensee is required to provide under Article 8 of this Resolution.
  - (b) if it provides inaccurate information to the Regulatory Authority and knows of the inaccuracy at the time the information is provided but does not inform the Regulatory Authority at that time of it discovering the inaccuracy after the information is provided to the Regulatory Authority.
2. If the Regulatory Authority has determined that the Licensee has committed any of the offences mentioned in Clause 1 of this Article in respect of any Financial Year, it shall notify the Licensee of the following:
  - (a) that the Regulatory Authority has determined that the Licensee has not met the Economic Substance Test for such Financial Year.
  - (b) the reasons for imposing the penalty.

- (c) the amount of penalty imposed on the Licensee under Clause 1 of this Article.
- (d) the date from which the penalty is due under Clause 1 of this Article, being not less than thirty (30) Business Days after the issue of the notice.
- (e) the measures that the Regulatory Authority decides that the Licensee must take to meet the Economic Substance requirements.
- (f) the Licensee's right of Appeal under Article 13 of this Resolution.

**Article 12 Period for Imposition of Penalties**

1. An administrative penalty under Article 10 or Article 11 of this Resolution may not be imposed after the lapsing of six (6) years beginning with the date on which the Licensee became liable to the penalty; and
2. in the case of a Licensee liable to a penalty under Article 11 of this Resolution, of an administrative penalty shall not be imposed after the lapse of twelve (12) months beginning with the date on which the inaccuracy first came to the attention of the Regulatory Authority.

**Article 13 Right of Appeal against Administrative Penalty**

1. A Licensee upon whom a penalty is imposed by the Regulatory Authority may appeal against it on any of the following grounds
  - (a) that liability to that penalty does not arise.
  - (b) Appeal against its amount.
2. The Regulatory 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 the review and decision in relation to an appeal by the Regulatory Authority on receipt of an appeal and means for notifying its decisions to a Licensee.

**Article 14 Date of Payment of Administrative Penalties**

1. An administrative penalty under this Resolution must be paid on or before the date mentioned in 2any of the following dates whichever is taking place first :

2. the date upon which the administrative penalty is due pursuant to a notice issued by Regulatory Authority under Article 10 of this Resolution.
3. if notice of appeal under Article 13 of this Resolution is given, the date on which the appeal is finally determined or withdrawn.

#### **Article 15 Power to Enter Business Premises and Examine Business Documents**

1. The authorised personnel of the Regulatory Authority may examine and take copies of any Business Document that is located on Business Premises.
2. The power under Clause 1 of this Article may be exercised only for the purpose of investigating any issue relating to compliance with any provision of this Resolution.
3. The authorised personnel of the Regulatory Authority may at any reasonable hour enter Business Premises for the purpose of exercising the power under Clause 1 of this Article.
4. The Regulatory Authority may by notice require 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 to exercise the power under Clause 1 of this Article in relation to that document.

#### **Article 16 Repeal**

Any provision contrary to or conflicting with the provisions of this Resolution shall be repealed.

#### **Article 17 Executive Regulations**

The Cabinet of Ministers or a delegated authority may issue one or more decisions for the purpose of implementing any provision of this Resolution.

#### **Article 18 Entry into Force**

This Resolution shall come into force on the date of its issuance.

#### **Article 19 Publication**

This Resolution shall be published in the Official Gazette.

Mohammed Bin Rashed Al Maktoum

Prime Minister

Issued: by us on:

24 Shabaan 1440 Hijri

30 April 2019