

10 January 2021

### UPDATE – Economic Substance Regulations in the UAE

The UAE Government has revised the UAE Economic Substance Regulations (“ESR”) by issuing UAE Cabinet Resolution No. 57 of 2020 concerning Economic Substance and the updated guidance Ministerial Decision No. 100 of 2020 on the issuance of directives for the implementation of the provisions of the Cabinet Decision No. 57 of 2020 concerning Economic Substance Requirements (“the Regulations”). The Regulations require UAE onshore and free zone companies and certain other business forms that carry out any of the defined “Relevant Activities” listed to maintain and demonstrate an adequate “economic presence” in the UAE relative to the activities they undertake (“Economic Substance Test”). MENA LEGAL informed about the introduction of the ESR in our respective previous newsletters.

It has been clarified that natural persons, sole proprietorships, trusts and foundations are not considered “Licensees” under the Regulations and hence, are excluded to submit a Notification.

Moreover, the ESR Regulations exclude certain forms of entities from the requirement to meet the Economic Substance Test. For the purpose of the ESR Regulations, an Exempted Licensee includes any of the following entities registered in the UAE and which carry out a Relevant Activity:

- a) an Investment Fund;
- b) an entity that is tax resident in a jurisdiction other than the UAE;
- c) an entity wholly owned by UAE residents and meets the following conditions:
  - i. the entity is not part of a MNE (multinational enterprise) Group;
  - ii. all of the entity's activities are only carried out in the UAE;
- 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 UAE.

Branches registered in the UAE are regarded to be an extension of their “parent” or “head office” and therefore are not considered to have separate legal personality. As such, a “parent” or “head office” registered in the UAE must file as a single Licensee, reporting the Relevant Activities of itself and all its branches in one composite Notification and/or Economic Substance Report.

As per the new regulations every Licensee and Exempted Licensee is required to submit a ESR Notification **by 31 December 2020**. Licensees and Exempted Licensees that have already submitted a Notification directly to their Regulatory Authorities are required to re-submit a Notification in accordance with the provisions of the ESR Regulations on the Ministry of Finance Portal once available. The respective Portal is expected to be setup by beginning of December 2020.

Subsequently, the ESR Notification must be submitted within six months from the end of the Financial Year of the Licensee or Exempted Licensee. The Economic Substance Report shall be submitted within twelve months from the end of the relevant Financial Year.

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Further guidance is made available on the Ministry of Finance's website (<https://www.mof.gov.ae/en/StrategicPartnerships/Pages/ESR.aspx>) and portal.

Please do not hesitate contacting us for support and/or further clarification required.

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