



Economic Substance Regulation: Use of Non-Executive Directors to pass Economic Substance Test

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"The new UAE substance law is applicable to any UAE Natural or Legal Person conducting Relevant Activity(ies) in the UAE"

Use of Non-Executive Directors to pass Economic Substance Test

By Mohammed Rahali– Estate & Tax Partner Wincore Advisory Group

IN BRIEF

The United Arab Emirates has enacted the ESR on 30th April 2019, which requires companies carrying on relevant activities to satisfy an economic substance test by having real, proportionate to the UAE registered profits and demonstrable substantial economic activities in the UAE, taking into account the global standards developed by the OECD and the EU for business taxation to curb harmful tax practices.

NEDs as independent directors are core assets highly contributing to the company's management and commercial development through their skills and experiences on the ground. A NED is a board member only, and do not hold a full-time executive position, who is not incurring any responsibility for company's daily management or operations.

1. NON-EXECUTIVE DIRECTOR (NED) ON BOARD & UAE ECONOMIC SUBSTANCE REGULATION

NEDs as independent directors are core assets highly contributing to the company's management and commercial development through their skills and experiences on the ground. They catalyse the creation of the added value and development of the company by reinforcing its credibility and GRC (Governance, Risk & Compliance) standards.

2. WHAT ARE NEDS' LIABILITIES?

A NED is a board member only, and do not hold a full-time executive position, who is not incurring any responsibility for company's daily management or operations. NED is not employed by the company but appointed through a letter of appointment.

However his legal duties, responsibilities and liabilities are the same as executive directors 'ones. Executives and non-executives directors have board-level roles and both have a fiduciary duty to the company to act in its best interests.

Furthermore any executive director of one board could act as a *non-executive director* on another company's board without any restriction or limitation. **Currently around 30% of executive directors have non-executive roles elsewhere considering also that the demand for non-executive directors has increased in recent years.**

3. WHAT ARE NEDS' ATTRIBUTIONS?

NEDs are to be selected and appointed for their personal qualities, experience, expertise and specialist knowledge skills which are missing on the board.

NEDs focus on board's strategic decisions, risk management policies, remuneration policy, executive appointments or removals and external parameters affecting the company with an independent, clearer and impartial eye as an outsider and are not to be involved in the day to day business and management of the company.

NEDs challenge, question, hold to account, support, mentor and monitor the CEO and senior management bringing an independent perspective to decision-making process while acting in the best interest of all the company's stakeholders (e.g. shareholders, employees, pensioners, suppliers).

NEDs have also responsibility on the board sub-committees (e.g. Audit Committee, Risk Committee, Nomination Committee, Remuneration Committee, etc.).

4. WHAT IS THE BENEFIT OF APPOINTING NEDS TO COMPLY WITH ECONOMIC SUBSTANCE REGULATION (ESR)?

The United Arab Emirates has enacted the ESR on 30th April 2019, which requires companies carrying on relevant activities **to satisfy an economic substance test by having real, proportionate to the UAE registered profits and demonstrable substantial economic activities in the UAE**, taking into account the global standards developed by the OECD and the EU for business taxation to curb harmful tax practices.

A company passes the test if:

- a) It is directed and managed in the UAE
- b) Its Core Income Generating Activities (CIGAs) are being conducted in the UAE
- c) It has adequate number of qualified full-time employees physically present in the UAE, adequate premises in the UAE and adequate operating expenditure incurred by it in the UAE.

In this respect, the expertise and composition of the Board of directors is paramount to fulfil these criteria, notably the (a) and (b) ones.

5. HOW CAN WE ASSIST YOU?

Wincore Advisory Group provides NED services (NEDS) for both holding and operative companies. Our in-house NED -having relevant industry experience- and through our large network of external NEDs -built over years of professional relationship- we are able to provide our clientele with NEDs that meet their specific needs on time and with all required dedicated expertise.

Wincore Advisory Group provide also Corporate Secretarial Services (CSS) for all UAE entities at the most cost effective rate to meet your governance and statutory compliance duties.

LET'S GET INTOUCH

If you wish to discuss the Use of Non-Executive Directors to pass the Economic Substance Test, or any other legal entity, feel free to contact us.

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ABOUT WINCORE ADVISORY GROUP

Wincore Advisory Group is a multi-disciplinary aggregate of tax planning, corporate services, corporate finance and wealth structuring advisory services provider. Our group was founded by prior executives and directors of major banks, trust, CSP and law firms to provide unmatched on-the-ground competences in the Middle East, Africa, US and Europe.

Under a private and independent ownership, our goal and commitment is to provide high quality pragmatic, confidential, flexible and efficient solutions to address our clientele's specific needs in the fast-moving international business and tax law environment.

Our corporate, finance and tax structuring team comprises multidisciplinary experts who have gained significant experience in the GCC, Africa and Europe in large and reputable international firms and financial institutions.

To keep pace with the changing international marketplace, we also continuously work to strengthen our international networks to deliver seamless and first-class services.