

Economic substance requirements for ADGM entities

Helping community members navigate the path ahead

Session Agenda

1. Background
2. Overview of the Economic Substance Regime
3. Overview of the Relevant Activities
4. Annual Notification Requirement
5. Industry Perspectives
6. Q&A



1 – BACKGROUND



Background

- Why were the Economic Substance Regulations Introduced to the UAE?

OECD Global Standard on
Base Erosion and Profit
Shifting

European Union Code of
Conduct Group on Business
Taxation

The UAE Regulatory Response

Federal Economic Substance Regime, comprising:

- *Cabinet Resolution No. 31 of 2019 concerning Economic Substance Regulations, as amended by Cabinet Resolution No. 7 of 2020 (Regulations)*
- *Ministerial Decision No. 215 of 2019 (Guidance)*
- *Cabinet Decision No. 58/2019 on the Determination of Regulatory Authorities*

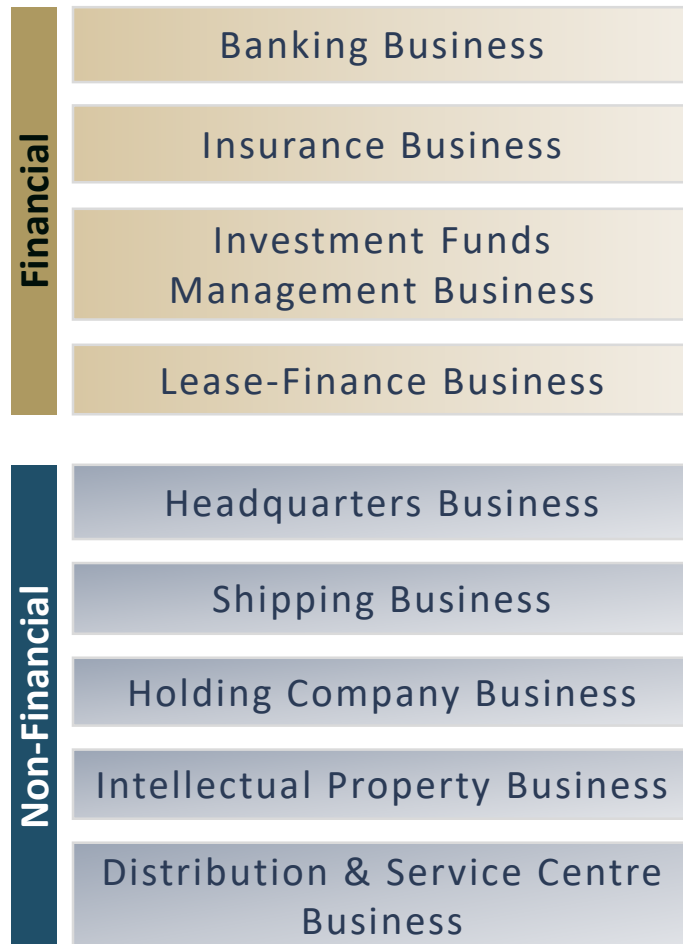
2 – OVERVIEW OF THE ESR



Overview of the Economic Substance Regime

1	Licensee	A natural or a legal person licensed by a Competent Licensing Authority in the UAE, including FZs and FFZs, to carry out a Relevant Activity
2	Exempt Licensee	A Licensee directly or indirectly owned 51% or more by the UAE Government
3	Application in ADGM	Licensees can be companies, partnerships, foundations, non-profit organisations, or branches that: <ul style="list-style-type: none">✓ are located in ADGM✓ undertake + earn income from a Relevant Activity(ies)✓ for Financial Years commencing on/after 1 January 2019
4	UAE Competent Authority	The UAE Ministry of Finance
5	Regulatory Authority	ADGM and other Regulatory Authorities across the UAE
6	Administrator of the Regime in ADGM	Registration Authority

ESR Requirements



All Licensees (including Exempt Licensees)

- ✓ Notify the Regulatory Authority of whether or not undertaking one or more Relevant Activity(s)

Non-Exempt Licensees deriving income from the Relevant Activity

- ✓ Meet the Economic Substance Test; and
- ✓ File Economic Substance Return

Economic Substance Test – General

A Licensee (other than those carrying out a Holding Company Business or a High Risk IP Business) needs to satisfy all three requirements below:

- 1. Core Income Generating Activities (CIGAs) undertaken in UAE ***
- 2. Directed and Managed in the UAE**
- 3. Adequate employees, physical assets and expenditure in the UAE ***

** Requirements 1 and 3 are subject to 'Permitted Outsourcing Arrangements'*

Note: COVID -19 Industry Advisory Notification issued by the Ministry of Finance

Permitted Outsourcing Arrangements

What can be outsourced?

- ✓ Core Income Generating Activities (CIGAs) or parts of CIGAs
- ✓ Adequate employees, operating expenditure, physical assets

What cannot be outsourced?

The requirement to be 'directed and managed in the UAE'

To whom?

Adequately resourced third party service provider or related companies in the UAE

What are the conditions for outsourcing?

The Licensee must demonstrate:

- ✓ Adequate supervision by the Licensee
- ✓ All parts of outsourced CIGAs are undertaken in the UAE
- ✓ Third party service provider or related companies have substance in the UAE
- ✓ No 'double counting' where the services are provided to more than one Licensee

Outsourcing must not be used to circumvent the Economic Substance Test

ES Test Variation 1: 'Holding Company Business'

Reduced Economic Substance Requirements

Requires:

- ✓ Compliance with existing ADGM reporting/compliance requirements by submitting necessary records or information to the Regulatory Authority
- ✓ Adequate number of employees and premises:
 - may be satisfied through a corporate service provider/related company
 - directors can be counted as 'equivalent full-time employees'
 - registered offices or flexi-desks can be counted as 'premises'

Does not require:

- to be 'directed and managed' in the UAE- *subject to ADGM regulatory/policy framework*
- to incur 'adequate expenditure' being incurred in the UAE

ES Test Variation 2: 'High Risk IP Business'

Increased Economic Substance Requirements

Rebuttable Presumption: the Licensee is presumed to not meet the Economic Substance Test, unless the Licensee meets the increased substance requirements.

How: the Licensee must demonstrate and provide evidence that:

- ✓ it does, and historically has, exercised a high degree of control over developing IP
- ✓ it has an adequate number of qualified full time employees that permanently reside and perform their activities in the UAE
- ✓ it has a business plan, showing the reasons for holding the IP in the UAE
- ✓ its decision-making takes place in the UAE

Reporting Requirements for Regulatory Authorities

Regulatory Authorities must provide all information provided by a High Risk IP Business to the Competent Authority, irrespective of the Economic Substance Test Determination

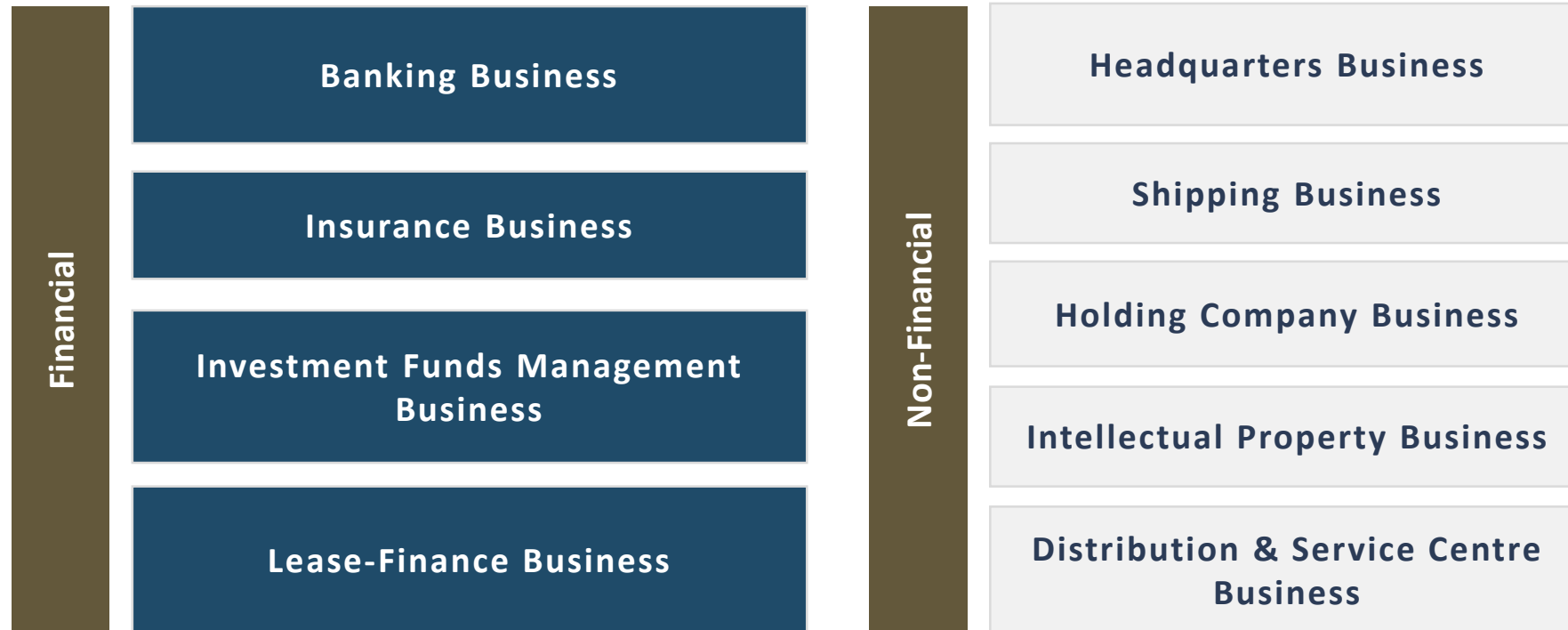
Exchange of Information by the Competent Authority

The Competent Authority will provide the information received in relation to a High Risk IP Business to the relevant Foreign Competent Authority

3 – OVERVIEW OF THE RELEVANT ACTIVITIES



Overview of the Relevant Activities



4 – THE ANNUAL NOTIFICATION



The ESR Annual Notification ^(1/2)

What is the ESR Annual Notification?

All Licensees are required to notify the Registration Authority of the following annually (regardless of being **exempt** or not earning income), i.e. the ESR “Annual Notification”:

1. Whether or not the Licensee is carrying on a Relevant Activity;
2. 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 the UAE; and
3. The date of the end of the Licensee’s financial-year.

What is it not?

The *Annual Notification* is not the same as the *Economic Substance Return*.

The *Economic Substance Return* is not within the scope of today’s webinar.

The ESR Annual Notification (2/2)

Who needs to file by 30 June 2020?

The **30 June 2020 Annual Notification deadline** applies to ADGM Licensees that:

1. conduct a Relevant Activity(s) (regardless of being exempt or not earning income), and
2. have a financial-year commencing on or after 1 January 2019, and
3. have a 31 December 2019 financial-year end.

Who does not?

Those who **do not** need to file the Annual Notification by 30 June 2020 are

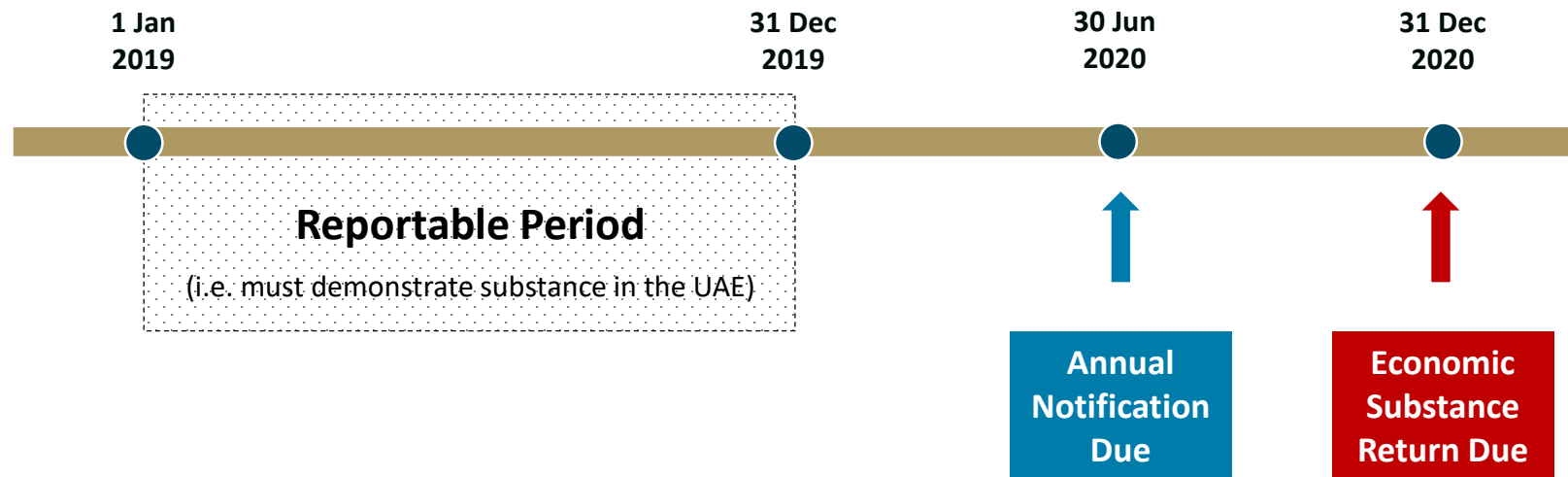
1. ADGM Licensed Persons not subject to the ESR (these firms do not need to file at all),
2. Dissolved / struck off / de-registered entities,
3. ADGM Licensees with a financial-year ending after 31 December 2019 (e.g. 31 March 2020)*

*These Licensees may file by 30 June but are not obligated to. The notification deadline for these Licensees will be communicated shortly.

Annual Notification Filing Examples (1/5)

Example #1:

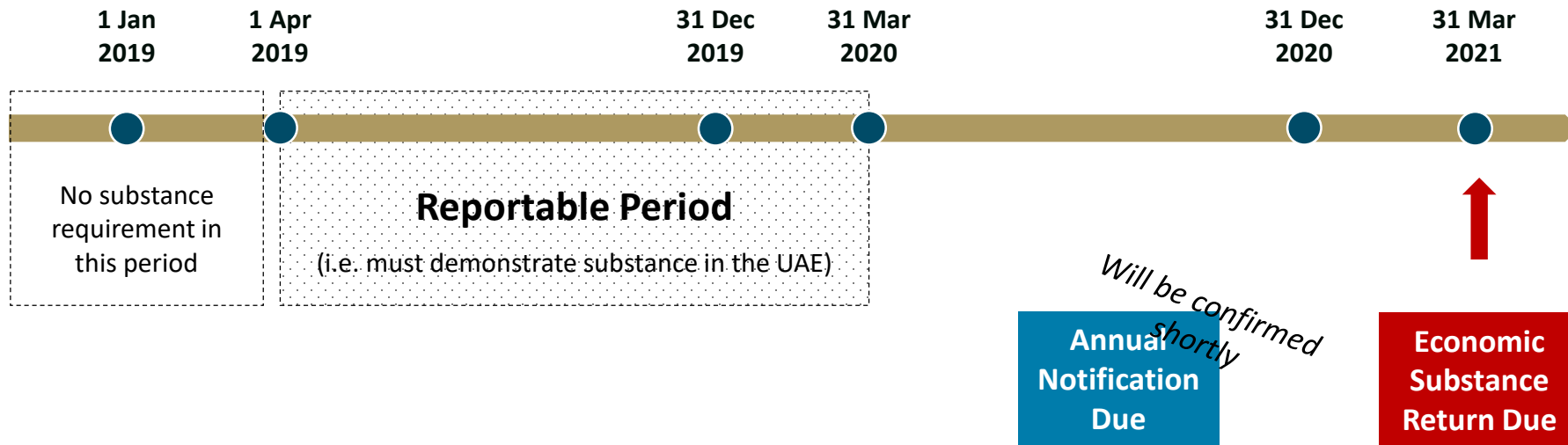
Existing Licensee with a 1 January 2019 to 31 December 2019 financial year.



Annual Notification Filing Examples (2/5)

Example #2:

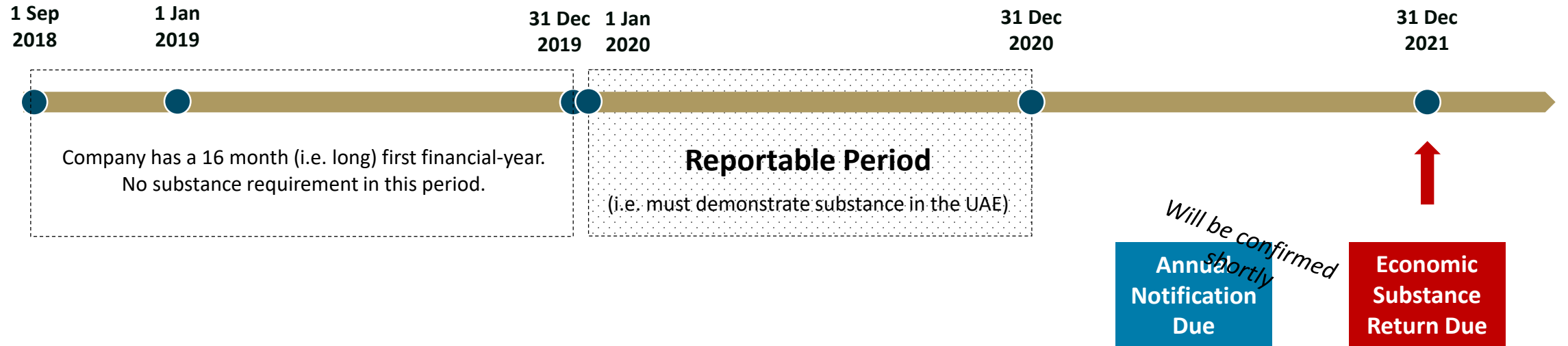
Existing Licensee with a 1 April 2019 to 31 March 2020 financial year.



Annual Notification Filing Examples (3/5)

Example #3:

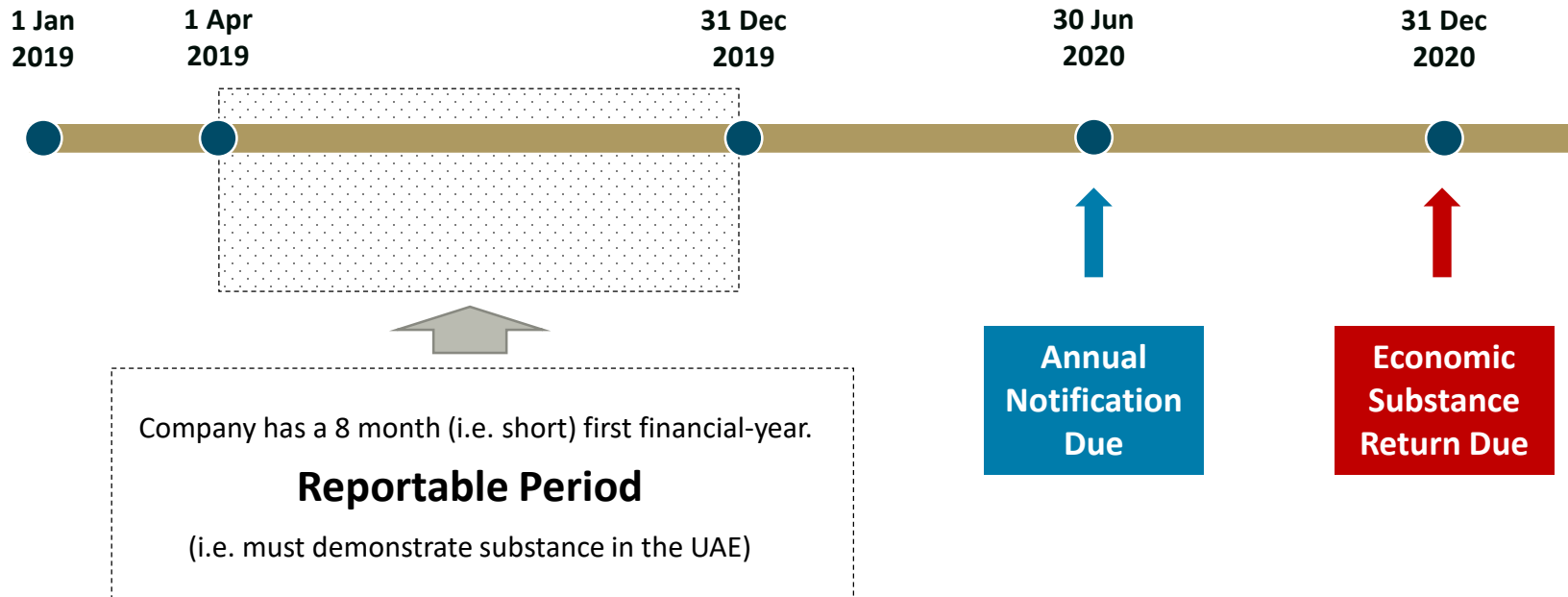
Existing Licensee incorporated on 1 September 2018 with a 31 December financial year.



Annual Notification Filing Examples (4/5)

Example #4:

New Licensee incorporated on 1 April 2019 with a 31 December financial year.



Annual Notification Filing Examples (5/5)

Example #5:

New Licensee incorporated on 1 October 2019 with a 31 December financial year.



Completing and filing the Annual Notification

Economic Substance Annual Notification Form

ADGM Economic Substance Annual Notification Form V1.2 16062020

Important Information

The purpose of this Economic Substance Annual Notification (ES Notification) is to provide the Registration Authority with certain initial information on an ADGM Licensee and its activities in the United Arab Emirates (UAE). The ES Notification is a requirement under Article 8(1) of Cabinet Resolution No. (31) of 2019 Concerning Economic Substance Regulations (as amended by Cabinet Resolution No. (7) of 2020) (the "Economic Substance Regulations"). The ES Notification is a prerequisite to filing an Economic Substance Return for the Reportable Period (where required).

For assistance in completing the ES Notification, refer to the [ES Notification Filing Guide](#).

A. Licensee Details

1. Licensee Name:	
2. Commercial Licence No.:	
3. Financial year end / accounting reference period:	
4. Registered Office Address:	
5. Legal Form:	

B. Reportable Period

1. Reportable Period for the purpose of Economic Substance Regulations:	
Start date:	End Date: 31/12/2019

REGISTRATION AUTHORITY
adgm.com

ADGM Economic Substance Annual Notification Form V1.2 16062020

C. Relevant Activities

1. Did the Licensee carry on a Relevant Activity (as defined under Article 4 of the Economic Substance Regulations) during the Reportable Period?	Please Select	
2A. Please indicate which Relevant Activity(ies) the Licensee carried on during the Reportable Period	2B. Did the Licensee earn income from the Relevant Activity during the Reportable Period?	2C. Is the income earned from the Relevant Activity subject to tax outside the UAE?
<input type="checkbox"/> Banking business	Please Select	Please Select
<input type="checkbox"/> Insurance business	Please Select	Please Select
<input type="checkbox"/> Fund management business	Please Select	Please Select
<input type="checkbox"/> Lease-Finance business	Please Select	Please Select
<input type="checkbox"/> Headquarters business	Please Select	Please Select
<input type="checkbox"/> Shipping business	Please Select	Please Select
<input type="checkbox"/> Holding company business	Please Select	Please Select
<input type="checkbox"/> Intellectual Property ("IP") business	Please Select	Please Select
<input type="checkbox"/> Distribution and service centre business	Please Select	Please Select
3. If you selected "Intellectual property business" in Question 2A, please confirm if you are a High Risk IP Licensee	Please Select	
3A. If you are a High Risk IP Licensee, please provide the following details relating to your direct parent company, ultimate parent company, and ultimate beneficial owner(s) (as applicable)	Name	Country
Parent company		
Ultimate Parent Company (if applicable)		
Ultimate Beneficial Owner(s)		

REGISTRATION AUTHORITY
adgm.com

ADGM Economic Substance Annual Notification Form V1.2 16062020

D. Additional Information

1. During the Reportable Period, was the share capital of the Licensee at least 51% directly or indirectly owned by the UAE Federal Government, or the Government of an Emirate, or any governmental authority or body of the UAE Federal or an Emirate Government?	Please Select
2. Was the Licensee tax resident outside the UAE during the Reportable Period?	Please Select
If "Yes", please select the country in which the Licensee was resident for tax purposes.	Please Select.

E. Declaration

1. Designated contact person (refer to the [ES Notification Filing Guide](#) on eligible contact persons)

Individual Full Name:	
Designation:	
Phone:	
Email:	

2. Signature

By submitting this ES Notification, the Licensee confirms that the information provided in this ES Notification is accurate, and acknowledges that there are sanctions for providing inaccurate information as per Article 11 of the Economic Substance Regulations. The Licensee further declares that the designated contact person is authorised to respond to queries raised by and provide further information and documentation to the Regulatory Authority.

X _____

REGISTRATION AUTHORITY
adgm.com

Consequences for non-compliance

The focus here is on the Annual Notification

(i.e. there are further penalties related to non-compliance with economic substance)

Failure to notify

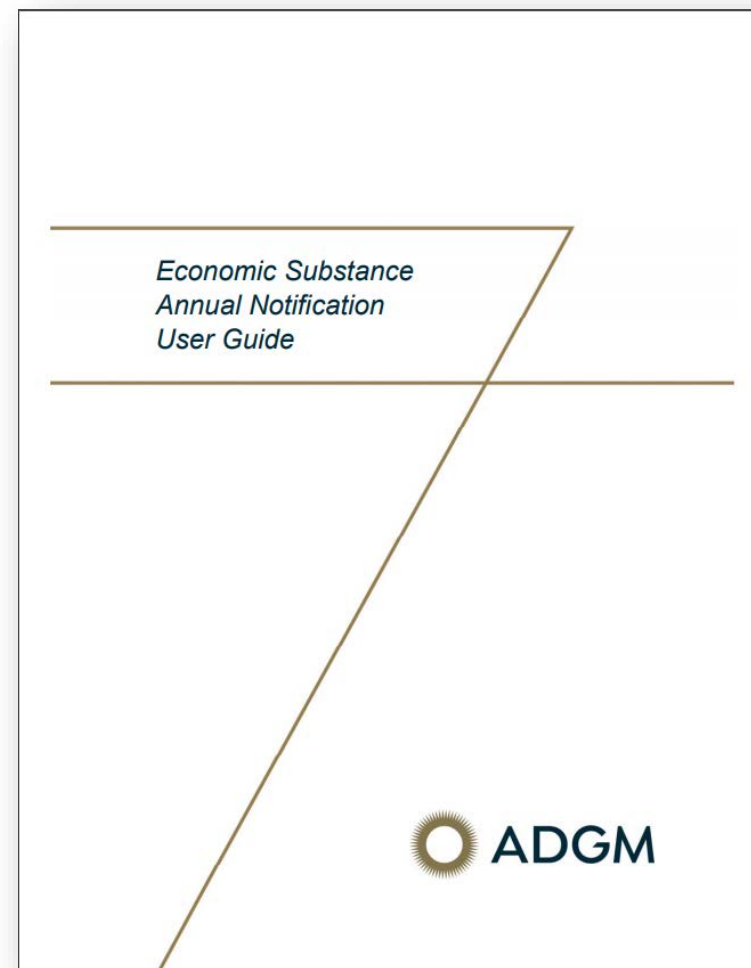
Financial Penalty of: **AED 10,000 to 50,000**

Failure to provide accurate or complete information

Financial Penalty of: **AED 10,000 to 50,000**

Where can I find more information?

- Refer to ADGM's Annual Notification User Guide
- User Guide and Annual Notification available here: <https://www.adgm.com/operating-in-adgm/obligations-of-adgm-registered-entities/economic-substance>
- UAE Ministry of Finance guidance here: <https://www.mof.gov.ae/en/StrategicPartnerships/Pages/ESR.aspx>
- Completed notification to be submitted by email to: economicsubstance@adgm.com
- Email queries to: economicsubstance@adgm.com



5 – INDUSTRY PERSPECTIVES



INDUSTRY PERSPECTIVE – BEST PRACTICE

- **Allocate Responsibility**
- **Determine Relevant Activity**
 - Substance over Form – review Business Plan
 - Review MoF Relevant Activity Guide (Section 3)
- **Record Decision**
 - File Note of Rationale & Recommend action to be taken
- **Engage Senior Management & Inform Board**
 - Email Senior Management Decision and get consensus
- **Planning**
 - Update Calendar of Returns - Annual Notification & Annual Return
 - If conducting Relevant Activity ensure business meets Economic Substance Test

6 – Q&A

