COUNCIL OF MINISTERS’ RESOLUTION NO 19, FOR 2005, AMENDING FEE, PENALTY & BANK GUARANTEE REGULATIONS ENFORCED BY MINISTRY OF LABOUR & SOCIAL AFFAIRS

The Council of Ministers;

- After having reference to the Constitution;

- And to the Federal Law No 1, for 1972, on the functions of the Ministries and the powers of the Ministers, and the amending laws thereof;

- And to the Federal Law No 8 for 1980, on regulation of labour relations, and the amending laws thereof;

- And to the Federal Law No 5 for 1983, on nurseries;

- And to the Cabinet Resolution No 80/4 for 1989, on amendment of fees being applied by the Ministry of Labour and Social Affairs;

- And to the Cabinet Resolution No 9 for 1989, on imposition of fees on nurseries;

- And to the Cabinet Resolution No 10 for 1993, on imposition of fees on nurseries;

- And to the Cabinet Resolution No 14 for 2001, on bank guarantees;

- And to the Cabinet Resolution No 21 for 2003, amending Cabinet Resolution No 14 for 2001 on bank guarantees;

• And to the Cabinet Resolution No 7 for 2002, on consolidation of fees and fines imposed by the Ministry of Labour and Social Affairs;

• And to the Cabinet Resolution No 444/2 for 2005, on amendment of the fee, fine and bank guarantee regulations enforced by the Ministry of Labour and Social Affairs;

• And based on the submission of the Minister of Labour and Social Affairs and the approval of the Council of Ministers;

Resolves as follows

ARTICLE ONE
This Resolution shall be applied to all firms upon applying for any transaction.

ARTICLE TWO
The Ministry may classify the firms that are subject to this Resolution into three categories- “A”, “B”, and “C” – based on their adherence to the law and executive orders, and to the Emiratization and multicultural work environment requirements

ARTICLE THREE
The fees and penalties applicable to a firm shall be determined according to its classification category (A, B, or C).

ARTICLE FOUR
A firm shall be classified in class “A” if it fulfilled its Emiratization requirements and kept its cultural diversity default at or below 30%, and had a violation-free record at the effective date of this Resolution.

ARTICLE FIVE
1. A firm is classified in class “B” if it had a cultural diversity default in the range of 31% to 74%, or had on record violations other than those specified under Article 6 herebelow.
2. A firm originally classified in class “B” due to violations but then
managed to clear those violations shall be promoted to class “A” six months after clearance of the violation.

3. A firm originally classified in class “B” due to a default of the cultural diversity formula, but then achieved at least 2% of Emiratisation or cleared its default, shall be promoted directly to class “A” six months after the date of clearing the default or satisfying the Emiratisation rate.

4. A firm originally classified in class “B” due to a default of the cultural diversity formula and to violations, but then managed to clear both defaults shall be promoted directly to class “A” six months after the date of clearing both defaults; if it cleared only one default, it shall not be transferred to class “A” except after six months from clearance of the other default.

Article six

1. A firm is classified in class “C” if it had a cultural diversity default of 75% or more, or had on record violations related to Emiratisation or employment of defaulting employees.

2. A firm originally classified in class “C” due to default in Emiratisation or cultural diversity but then managed to meet the Emiratisation rate shall be promoted to class “A” six months thereafter.

3. A firm originally classified in class “C” due solely to a default of the cultural diversity formula, but then managed to clear that default shall be promoted to either class “A” or “B”, as appropriate, six months after the default clearance date, provided no other violations are recorded against it.

4. A firm originally classified in class “C” due to employment of defaulting personnel, but then managed to satisfy the required Emiratisation percentage shall be transferred to class “A” six months after the violation clearance date.

5. A firm originally classified in class “C” due to employment of defaulting personnel and a default of the cultural diversity formula, but then managed to clear both defaults shall be promoted directly to class “B” six months after the date of clearing both defaults; if it cleared only one default, it shall not be transferred to class “B” except after six months from clearance of the other default.

Article seven

General provisions

1. A firm shall be adjudged to have satisfied the Emiratisation target if it:
   a. proves that it is recruiting Nationals at the rate of 4% per year (for banks).
   b. proves that it is recruiting Nationals at the rate of 5% per year (for insurance companies).
c. proves that it is recruiting Nationals at the rate of 2% per year (for trade sector firms employing 50 workers or more).

2. Firms that do meet the Emiratisation target but fail to prove that shall still be classified in class “C”.

3. Firms that are not bound by Emiratisation quota under the law and the Council of Ministers resolutions, but nonetheless prove that they are recruiting Nationals at the rate of 2% per year shall, without prejudice to this Resolution, be classified in class “A”.

4. Firms that are bound by Emiratisation quotas and prove that they have surpassed their prescribed quotas shall be classified in class “A”, subject to the actual excess achieved and the violation provisions of this Resolution.

**Article eight**

Where a firm has committed, while in class “B” or “C”, another violation or recommitted a previous one, it shall be retained in its respective class for another six months for each violation.

**Article nine**

Where a firm remains in class “B” or “C” for three years, the Ministry may revoke its enterprise card pursuant to the Ministerial Resolution No 851 for 2001 on suspension of dealings with defaulting firms.

**Article ten**

The Minister shall establish incentives for those firms that maintain their “A” classification for three years or more.

**Article eleven**

The value of the bank guarantee that employers shall undertake to submit to the competent Labour Office, as security for workers’ rights, shall be fixed pursuant to the conditions and circumstances stipulated in this Resolution.

**Article twelve**

The bank guarantee provisions provided for in this Resolution shall apply to all firms except:

A. Industrial projects issued with industrial licenses by the Ministry of Economy & Industry, and have priority right to privileges and exemptions.

B. Companies incorporated or co-owned by the Federal or a Local Government.

C. Authorities and public corporations operating in the oil, gas, mining, banking, insurance, tourism or hotels sectors.

D. An individual firm wholly owned and directly managed by
a National, if it is supported by the youth and Emiratisation support organizations/funds.
E. Charitable and cooperative societies, and private social welfare organizations operating under the supervision of the Ministry.
F. firms classified under class “A” pursuant to the classification of the Ministry of Labour and Social Affairs.

Article thirteen
The bank guarantee referred to under Article 11 hereof shall be submitted prior to submission of any transaction to the Ministry of Labour and Social Affairs, or upon approval of importation of a worker (for new work permits).

In all cases, the bank guarantee may be paid in advance to the Ministry of Labour and Social Affairs for all work permit applications a firm may submit during the year.

Article fourteen
The bank guarantee shall be made through a bank operating in the UAE, valid for one year from its date of issue, and payable on demand by the Ministry of Labour and Social Affairs, without objection by, or recourse to, originator. It shall be automatically renewable, using a special form to be developed by the Ministry of Labour and Social Affairs, and shall remain valid and at the Ministry’s disposal.
The issuing bank may not refund the guarantee or reduce its value except under an official letter issued by the Ministry of Labour and Social Affairs.

Article fifteen
The Ministry of labour and Social Affairs may not liquidate the bank guarantee if the employer has paid the prescribed amount due to the employee. The Ministry may not liquidate the bank guarantee or deduct any amount therefrom and pay to the employee except in the following three cases:

First: The cost of employee’s repatriation to his home country or to the point of return agreed with the employer.
Second: The amounts that the employer or his representative admits before the competent labour office are due to the employee.
Third: Where a ruling is issued by a UAE court in favour of fulfillment of the employee’s rights.

In case a bank guarantee is liquidated for the purpose of fulfilling an employee’s entitlements, the employer shall pay such amounts as are necessary to replenish the value of the bank guarantee to the original level.

Article sixteen
An employer may not recover the bank guarantee in whole or in part unless he has replenished the bank guarantee he is required to make to the Ministry of Labour and Social Affairs.
Article seventeen

Without prejudice to Article Sixteen hereof, an employer may recover the bank guarantee in whole or in part in the following cases:

1. The whole guarantee (if presented for a single employee) may be recovered in the following cases:
   A. Canceling an employee’s sponsorship and deporting him (subject to submission of proof of deduction).
   B. Upon the death of the employee (subject to submission of substantiating documents and proof of deduction).
   C. Upon consent to the transfer of an employee’s sponsorship to another employer.
   D. Any of the other circumstances where the sponsor is required to submit proof of deduction.

2. A part of the guarantee (covering more than one employee) may be recovered in the same circumstances noted above, provided that the said guarantee is replaced by another whose value corresponds to the number of remaining employees.

Article eighteen

1. For the purpose of implementing this Resolution, the firms that are subject to the Federal Law No 8 for 1980 shall be grouped into three categories pursuant to Article 2 hereof, as follows:
   1- Class “A” firms.
   2- Class “B” firms.
   3- Class “C” firms.

2. The bank guarantee shall apply to the above categories as follows:

   - **Class “A”**: shall be exempt from the bank guarantee requirement so long as they manage to maintain themselves in that classification.
   - **Class “B”**: shall submit a bank guarantee equivalent to AED 3,000 per worker (if employing one to 500 workers) plus a bank guarantee equivalent to AED 1,000 for each additional worker, subject to a maximum limit of AED 3 million.
   - **Class “C”**: shall submit a bank guarantee equivalent to AED 3,000 per worker, subject to a maximum limit of AED 5 million.

Article nineteen

The Ministry, as the nominated beneficiary, may request the court to obligate the debtor to pay the bank guarantee value in whole or in part. Likewise, the employee—being a third party beneficiary of the guarantee, although not named therein—may request the court to order payment of his dues and charging the cost to the bank guarantee.

Article twenty

The court may order payment of the guarantee value in whole or in part, based on a petition by the worker or the Ministry, pursuant to Chapter 11 of Federal Law No 11
for 1992 on civil procedures. It may order prompt payment against the bank guarantee pursuant to the provisions of the said Law.

**Article twenty one**

This Resolution shall supercede all previous Council of Ministers’ resolutions on fees, penalties and bank guarantees. However, the guarantees collected and procedures adopted pursuant to the said Resolutions shall remain valid until revoked or amended pursuant to this Resolution.

**Article twenty two**

This resolution shall become effective on the date of issue of the Executive Regulations by the Minister of Labour and Social Affairs.

**Article twenty three**

Pursuant to the Council of Ministers’ Resolution No 441/7 for 2003, the Minister of Labour and Social Affairs shall have the authority of exempting from the fees and penalties stipulated in this Resolution.

**Article twenty four**

This Resolution shall be published in the official Gazette.

The Prime Minister