

CORPORATE SOLUTIONS

ECONOMIC SUBSTANCE BULLETIN FROM OMNIUM CORPORATE SERVICES



Our philosophy

Together with the law firm Benedek Lewin, Omnim provides a highly personalised yet cost effective suite of services to clients seeking solutions to their corporate finance and corporate services related needs. We have the experience and commitment needed to ensure a successful result.

We are your trusted corporate services provider

Introduction

In December 2018, the Bermuda Government passed legislation requiring “Registered Entities” to comply with economic substance obligations.

The Economic Substance Act 2018 and the Economic Substance Regulations 2018 were passed to address concerns raised by the European Union regarding “profit shifting” and the use of shell companies in a number of offshore jurisdictions, including Bermuda.

At the end of June 2019, the Bermuda Ministry of Finance published guidance notes setting out general principles relevant to the economic substance legislation and setting out the steps “Relevant Entities” should take to comply with the economic substance regulations.

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Registered Entities

The economic substance legislation applies to exempted and local companies, permit companies, exempted and local LLCs and partnerships that have elected to have separate legal personality provided the entity undertakes a “relevant activity”.

Relevant Activities

A Registered Entity undertaking any of the following business activities must comply with the requirements of Bermuda’s economic substance legislation:

- Banking
- Insurance
- Fund Management
- Finance and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centers
- Holding entities

Economic Substance Requirements

The general principle underpinning Bermuda’s economic substance legislation is that a Registered Entity must maintain a substantial economic presence in Bermuda. This requirement will be met if:

- the Registered Entity is managed and directed in Bermuda
- the core income generating activity of the registered entity is undertaken in Bermuda
- the Registered Entity maintains an adequate physical presence in Bermuda
- there are adequate full-time employees in Bermuda with suitable qualifications, and
- there is adequate operating expenditure incurred in Bermuda in relation to the relevant activity

The responsibility for determining whether a Registered Entity satisfies the requirements of the Bermuda economic substance legislation rests with the Registrar of Companies, who will undertake an assessment based upon the following information provided by the Registered Entity:

- the nature and extent of the relevant activity undertaken by the Registered Entity
- where the core income generating activities of the Registered Entity are performed
- the nature and extent of the Registered Entity’s presence in Bermuda

- whether the Registered Entity is managed and directed in Bermuda
- the nature and extent of any outsourcing arrangements the Registered Entity may have entered into

Filing requirements

A Registered Entity must file an annual declaration with the Registrar of Companies within 6 months of the end of its financial year, starting with its financial year commencing on or after 1 January 2019. The annual declaration must at a minimum include the following information for the relevant financial period:

- whether or not the Registered Entity is carrying on a relevant activity and the type of relevant activity carried on or undertaken
- whether the Registered Entity is engaged in “high risk” IP activity
- whether the Registered Entity outsources any of its relevant activities and to whom
- the core income generating activities that are undertaken in Bermuda with respect to the relevant activity
- its gross income for the relevant financial period
- its premises in Bermuda
- the name and physical addresses of the following who are ordinarily resident in Bermuda:
 - where the entity is a company, the director or directors
 - where the entity is a limited liability company, the manager or managers
 - where the entity is a partnership, the general partner or partners
- the holding entity, the ultimate parent entity, the owner or the beneficial owner of the Registered Entity
- the operating expenses and assets for the relevant financial year
- the number of full-time employees
- such other information as may be required by the Registrar

Non-resident entities

A Registered Entity which is a non-resident of Bermuda for tax purposes is outside the scope of the Bermuda economic substance requirements. An entity claiming to be non-resident of Bermuda for tax purposes must make an annual filing with the Registrar of Companies confirming its non-resident status accompanied by evidence of its tax residence (which must not relate to a black-listed jurisdiction).

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Local companies and pure holding companies

Pure equity holding companies and local companies are subject to minimum economic substance requirements and are deemed to be compliant provided:

- they comply with applicable corporate governance requirements set out in the Companies Act 1981, the Limited Liability Company Act 2016 and the Partnership Acts
- they keep proper records of account, books and papers and financial statements
- they submit an annual economic substance declaration form to the Registrar of Companies

Economic Substance Regulations 2018

The Economic Substance Regulations 2018 set out sector specific guidance.

For example, Regulation 8(3) provides that an insurance company licensed under the Insurance Act 1978 will comply with its economic substance obligations provided it complies with its obligations under the Companies Act 1981 and the Insurance Act 1978 (includes all rules regulations and codes of conduct passed under the Insurance Act 1978).

IP holdings companies are obliged to comply with enhanced economic substance requirements.

Non-compliance

The Registrar of Companies has extensive enforcement powers under the Registrar of Companies (Compliance Measures) Act 2017. If the Registrar of Companies determines that a Registered Entity fails to meet the economic substance requirements, the Registrar must:

- notify the Minister
- issue a notice to the Registered Entity setting out why the Registrar considers the Registered Entity to be non-compliant and steps the Registrar requires the Registered Entity to take to remedy its failures within a specified time period
- Issue further notices to the Registered Entity in respect of continued or further non-compliance

The Registrar may also levy fines and take enforcement action against a non-compliant Registered Entity.

Next steps

We recommend that you review your business models and assess whether you comply with the requirements of Bermuda's economic substance legislation.

Specific guidance and advice is beyond the scope of the bulletin, which is designed to notify the clients of Omnium Corporate Services Limited of the new economic substance regime. In any event, every company is different and many of the judgments and evaluations required to be made to determine compliance are subjective and depend on a number of interrelated factors which differ from company to company.

Benedek Lewin is able to provide advice to clients of Omnium Corporate Services Limited and to assist them to assess their business and to implement any changes required to comply with Bermuda's new economic substance legislation.

Please contact Simon Benedek on (441) 299 7055 or at sbenedek@benedeklewin.com with any questions.



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We firmly believe that one size doesn't fit all, so our solutions are specifically designed around our clients' needs. Whether it's providing corporate, private client, shareholder and employee solutions, Omnium can help you manage and grow your business.

Omnium Corporate Services Limited is affiliated with Benedek Lewin Limited, a professional services firm. Benedek Lewin provides legal services to in the banking, corporate and property sectors.

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