

### CORPORATE SOLUTIONS

## ECONOMIC SUBSTANCE BULLETIN FROM OMNIUM CORPORATE SERVICES – March 2020



#### ***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. Companies incorporated under the Companies Act 1981 are “registered entities”.

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.

Our bulletin of August 2019 contained a summary of the new Bermuda economic substance laws and provided general guidance to Omnium's clients.

## Recent Developments

On 24 December 2019, the Minister of Finance issued further guidance notes to:

- Assist registered entities to determine if they are in scope of Bermuda's new economic substance laws
- Provide guidance on how the Registrar of Companies will measure and assess the criteria for meeting Bermuda's economic substance requirement.

In January 2020, all exempted companies filed an annual return with the Registrar of Companies, which for the first time contained an economic substance declaration. By filing their annual return, each exempted company was required to consider whether it was engaged in a "relevant activity".

Clients should refer to our bulletin of August 2019 for a general overview of Bermuda's economic substance laws and the steps each client must take to ensure that it complies with them. This bulletin will provide further guidance to Omnium's clients arising out of the guidance notes issued in December 2019.

## 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

A company which does not undertake a relevant activity is out of scope of Bermuda's economic substance laws. It need only file an annual declaration with the Registrar of Companies certifying that it does not undertake a regulated activity and state on the annual declaration the nature of its business.

## Recent guidance from the Minister of Finance

### Regulated companies

A company whose business is insurance or banking (for example) is subject to existing regulatory obligations under

Bermuda law which impose substance requirements on the company. Therefore, to the extent a company is carrying on banking or insurance, the company will be deemed to comply with Bermuda's economic substance requirements if it complies with its regulatory obligations (such as under the Banks and Deposit Companies Act 1999 or the Insurance Act 1978 and associated Code of Conduct)

### Pure holding companies

Pure holding companies are subject to "minimum economic substance requirements" which include:

- Compliance with the corporate governance requirements of the Companies Act 1981, including keeping records of account, books and papers and financial statements;
- Filing an annual declaration form;
- Having adequate people in Bermuda for holding and managing equity participations
- Having adequate premises in Bermuda

A company will be a pure equity holding entity if its sole function is to acquire and hold shares or an equitable interest in other entities and the shares or equitable interest are controlling stakes in other entities.

A company which holds a variety of assets and earns different types of income will not be a pure holding company. However, if a company meets the criteria for a pure equity holding entity, the placing of dividends received on deposit or using them to passively hold other securities such as gilts will not constitute a commercial activity and the company will still be regarded as a pure equity holding company.

If the holding company undertakes another business activity which is a regulated activity, it must comply with Bermuda economic substance laws in respect of this other business activity. If the other business activity is not a regulated activity, the holding company will be outside the scope of Bermuda's economic substance laws.

## Next steps

Each company should:

- Review its business activities and assess whether they constitute a relevant activity.
- If it undertakes a relevant business activity, consider whether it is a regulated company in Bermuda and is in compliance with its regulatory obligations.
- If it is not a regulated company in Bermuda, consider whether it complies with Bermuda's economic substance laws.

## Minimum steps

We cannot provide specific advice in this bulletin. However,

it is clear that all companies within the scope of Bermuda's economic substance laws should, as an absolute minimum, do the following:

1. Maintain a registered office in Bermuda.
2. Appoint a corporate services provider to assist the company to comply with the Companies Act 1981 including keeping records of account, books and papers and financial statements.
3. Appoint a suitably qualified and experienced Bermuda resident director.
4. Hold board meetings in Bermuda at which all significant management decisions are made.
5. Hold its annual general meeting in Bermuda.

We would emphasise that the steps set out above will not of themselves constitute compliance with Bermuda's economic substance laws. However, a company which fails to take these steps will almost certainly be non-compliant irrespective of the nature of its "relevant activity".

### Core Income Generating Activities

A company which is not a regulated bank or insurance company or which does not qualify as a pure equity holding company must also ensure that:

- Its core income generating activities are undertaken in Bermuda
- It maintains adequate physical premises in Bermuda
- There are adequate full-time employees in Bermuda with suitable qualifications
- There is adequate operating expenditure incurred in Bermuda.

### 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.

This obligation applies to all of our clients. We request, therefore, that each client of Omnium Corporate Services Limited notifies Simon Benedek ([sbenedek@benedeklewin.com](mailto:sbenedek@benedeklewin.com)) or William White ([wwhite@benedeklewin.com](mailto:wwhite@benedeklewin.com)) of the date of its financial year end to enable us to determine when the company's annual declaration must be filed with the Registrar of Companies.

### We can help

We recommend that each company reviews its business model and assess whether it complies with the requirements of Bermuda's economic substance legislation.

Specific guidance and advice are beyond the scope of the bulletin, which is designed to notify the clients of Omnium Corporate Services Limited of developments to the Bermuda's 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](mailto:sbenedek@benedeklewin.com) with any questions.



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