

Commercial Entities (Substance Requirements) Act 2018

The **Commercial Entities (Substance Requirements) Act 2018 (the “Substance Act”)** came into force on 31st December, 2018, and will affect all entities incorporated, registered or continued, under Bahamian company law within the jurisdiction that carry on specified activities. It is apparent that a key objective of the Substance Act is to prevent and deter “shell” companies from being formed in The Bahamas with an intention to evade/avoid taxes in a party’s home country.

The implications of the Substance Act will now require commercial entities that are conducting “relevant activity” to demonstrate substantial economic presence and real economic activity within The Bahamas. Commercial entities, in this regard, include companies incorporated under the International Business Companies Act, and the Companies Act, amongst other entities. Relevant activity is defined by the Substance Act, and is relegated to the following:

- banking business;
- insurance business;
- fund management business;
- financing and leasing business;
- headquarters business;
- distribution and service centres business;
- shipping business;
- commercial use of intellectual property; or
- as a holding company, engaged, or one or more of its subsidiaries engaged in one of the activities listed in paragraphs i – viii.

Commercial entities carrying on relevant activity must conduct “core income generating activity”, as defined by a non-exhaustive list within the Substance Act, as well as meet other criteria to meet the substance test. Examples of the criteria an entity will be required to demonstrate shall include the following:

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- i. An adequate level of qualified full-time employees in The Bahamas, or an adequate level of expenditure on outsourcing to service providers in The Bahamas proportionate to the activities of the entity;
- ii. An adequate level of annual expenditure incurred in The Bahamas; or adequate level of expenditure on outsourcing to service providers in The Bahamas, proportionate to the activities of the included entity;
- iii. adequate levels of board management, direction and control in The Bahamas;
- iv. Adequate physical offices and/or premises in The Bahamas, or adequate level of expenditure on outsourcing to service providers in The Bahamas, proportionate to the activities of the included entity;

An entity is prohibited from outsourcing any core income generating activity to an entity or person outside of The Bahamas. Outsourcing of core income generating activity to a third party within The Bahamas can occur, however, there must be a sufficient degree of supervision and management over the third party by the particular entity offshore.

All existing commercial entities will be required to comply within six (6) months from the Substance Act's enactment; new companies will be required to comply immediately upon incorporation. Additionally, reporting to the competent authority should occur within nine (9) months following the fiscal year end of the entity.

While all commercial entities will require reporting, entities used for the purpose of a collective investment, also referred to within the Substance Act as a "passive holding entity", will have minimum reporting requirements regarding substance.

In relation to low-risk and high-risk Intellectual Property income generating entities, there are enhanced substance requirements that will apply, in addition to the substance requirements outlined above.

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Failure to meet the substance requirements test and/or comply with reporting to the competent authority, may result in a number of penalties that include; monetary administrative fines, country to country reporting, or striking off of the company.

PwC advises previously incorporated companies, and companies anticipated to be incorporated in The Bahamas to seek advice regarding the implications of the Substance Act, and its compliance accordingly.

This summary is intended to be a general overview, and does not serve as legal advice. Please contact the undersigned if you have any particular questions/concerns regarding the Substance Act.

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