

A BILL

entitled

ECONOMIC SUBSTANCE AMENDMENT ACT 2026

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WHEREAS it is expedient to amend the Economic Substance Act 2018 so as to transfer responsibility for the administration, monitoring and enforcement of Bermuda's economic substance regime from the Registrar of Companies to the Corporate Income Tax Agency;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act which amends the Economic Substance Act 2018, may be cited as the Economic Substance Amendment Act 2026.

Interpretation

2 In this Act "principal Act" means the Economic Substance Act 2018.

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Amends section 2

3 Section 2 of the principal Act is amended by inserting in the correct alphabetical order, the following new definition—

“Agency” means the Corporate Income Tax Agency established under section 3 of the Corporate Income Tax Agency Act 2024; and

Amends principal Act generally

4 The principal Act is amended by deleting the word ‘Registrar’ wherever it appears and substituting it with the word “Agency” in the following sections—

- (a) section 5;
- (b) section 5A;
- (c) section 6;
- (d) section 7; and
- (e) section 12.

Inserts sections 4A to 4E

5 The principal Act is amended by inserting after section 4 the following new sections 4A to 4G—

“Functions of the Agency regarding inspection of registered entities

4A. The functions of the Agency relating to compliance by a registered entity under this Act or any regulations made under this Act include the following—

- (a) to encourage and ensure compliance with this Act and any regulations made under this Act;
- (b) to inspect a registered entity for the purposes set out in paragraph (a);
- (c) to investigate instances of a registered entity’s failure to comply with the provisions of this Act or any regulations made under this Act;
- (d) to perform any other functions in respect of any matters to which this Act relate as the Agency considers appropriate, for the purpose of ensuring the effective application and enforcement of the obligations, standards and procedures to which registered entities and their officers are subject under this Act or any regulations made under this Act; and
- (e) to take such measures in accordance with the powers conferred on the Agency under this Act as is considered appropriate to ensure compliance with or to enforce the provisions of this Act or any regulations made under this Act.

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Power of inspection

4B Every registered entity in respect of which the Agency has, under this Act or any regulations made under this Act, statutory functions, duties and responsibilities, shall be subject, pursuant to this Act or any regulations made under this Act, to the regulation and inspection by the Agency for the purpose of the Agency enforcing compliance by the registered entity with the registered entity's obligations and requirements under this Act or any regulations made under this Act.

Power to require information and documents

4C (1) The Agency may, by notice in writing to a registered entity or a connected person, require the registered entity or connected person, as the case may be—

- (a) to provide the information or documents as may be specified in the notice; or
- (b) to attend before the Agency (or a representative of the Agency) at a time and place specified in the notice and to answer questions.

(2) For the purposes of subsection (1), a connected person is a person or entity that is, or has at any time been, in relation to the registered entity—

- (a) if the registered entity is a company or limited liability company—
 - (i) an officer, director or manager;
 - (ii) an employee;
 - (iii) an agent; or
- (b) if the registered entity is a partnership, a person who is a member, manager, an employee or an agent of the partnership.

(3) The Agency may exercise powers under this section only if the document sought to be obtained as a result is reasonably required in connection with the exercise of the Agency's functions under this Act or any regulations made under this Act.

(4) Where the Agency requires information to be provided or produced pursuant to this section—

- (a) the notice shall set out the reasons why the Agency requires the document to be provided or produced; and
- (b) the information shall be provided or produced—
 - (i) before the end of the reasonable period as may be specified in the notice; and
 - (ii) at a place as may be specified.

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(5) The production of a document does not affect any lien which a person has on the document.

(6) A person or registered entity shall not be required under this section to provide or produce information or to answer questions which the person or registered entity would be entitled to refuse to provide, produce or answer on the grounds of legal professional privilege in proceedings in the Court.

(7) Subject to subsection (8), a statement made by a person on behalf of a registered entity in compliance with a requirement imposed by this Act or any regulations made under this Act may not be used in evidence against him in criminal proceedings.

(8) Subsection (7) does not apply on a prosecution for—

- (a) perjury; or
- (b) some other offence where, in giving evidence, a person makes a statement inconsistent with the statement mentioned in subsection (7) if evidence relating to it is adduced and a question relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution.

(9) For the purposes of this section, the following are connected persons—

- (a) where the person is a body corporate, a person who is—
 - (i) an officer, a director or manager of the body corporate;
 - (ii) an employee of the body corporate;
 - (iii) an agent of the body corporate;
- (b) where the registered entity is a partnership, a person who is a member, manager, an employee or agent of the partnership;
- (c) where the registered entity is an unincorporated association of persons which is not a partnership, a person who is an officer, a manager, an employee or agent of the unincorporated association; and
- (d) where the person is an individual, a person who is an employee or agent of that individual.

Ancillary powers to require production of documents

4D (1) The Agency's power to require a registered entity or connected person to produce documents pursuant to section 4C shall also include the following powers—

- (a) where the documents are produced, the power to take copies of or extracts from them;

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- (b) where the documents are produced, the power to require the following persons to provide, as far as they are reasonably able to do so, an explanation of any of the documents, including an explanation of any apparent omissions from them or of any omission of any document—
 - (i) the person producing the documents;
 - (ii) an officer of the registered entity;
 - (iii) a person who was within the period of five years immediately preceding the request, an officer of the registered entity; and
 - (iv) a person who is employed by the registered entity, including a person employed in a professional, consultancy or similar capacity;
- (c) where the documents are not produced, the power to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are; and
- (d) the power to require the registered entity or any of the persons specified in paragraph (b) to give all assistance to the Agency as the registered entity or the person is reasonably able to give in connection with an examination of the documents in question.

(2) Section 4C (7) and (8) apply where a person is required to provide an explanation under this section.

Inspections and site visits

4E (1) This section applies where the Agency has reasonable cause to believe that any premises are being used in connection with the business of a registered entity.

- (2) Subject to subsection (3), the Agency may, at any reasonable time—
 - (a) enter the premises;
 - (b) inspect the premises;
 - (c) inspect any documents found on the premises and make copies of, or take extracts from, any of the information; and
 - (d) require any person on the premises to provide an explanation of any recorded information or to state where it may be found.

(3) The Agency may exercise powers under this section only where the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the Agency of its functions under this Act.

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(4) The power of entry conferred by this section shall only be exercised during normal working hours and upon reasonable notice to the registered entity.”.

Amends section 6

6 Section 6 of the principal Act is amended by—

(a) inserting, after subsection (1A), the following new subsection (1B)—

“(1B) Subsections (1) and (1A) shall not apply where the Agency has been authorised to act as, or has been delegated the function of acting as, competent authority.”.

(b) inserting the words “or where the Agency is acting as competent authority,” after the words “relating to an entity” in subsection (2);

(c) inserting the words “or where the Agency is acting as competent authority,” after the words “relating to a non-resident entity” in subsection (2A); and

(d) deleting the words “or the Registrar’s powers under section 18(3)(b) of the Registrar of Companies (Compliance Measures) Act 2017” in subsection (4).

Amends section 7

7 Section 7 of the principal Act is amended—

(a) in subsection (1) by deleting the words “his duties” and replacing them with “its duties”; and

(b) by repealing subsection (2) and substituting the following—

“(2) Subsections (2) and (4) of section 20 of the Corporate Income Tax Agency Act 2024 apply for the purposes of this section.”.

Repeals and replaces section 8

8 The principal Act is amended by repealing section 8 and substituting the following—

“Immunity from suit and indemnification for foreign suits

8 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, employee or agent of the Agency in respect of any act done bona-fide in pursuance or execution or intended execution of this Act or any other Act or any regulations made under this Act.

(2) The Agency shall not be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless it is indemnified by or on behalf of a person who wishes the Agency to act against any judgment,

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order or costs that may have been awarded against that person by deed guarantee or deposit, as the person may require.”.

Amends section 12

9 Section 12 of the principal Act is amended in subsection (2) by repealing paragraph (b) and substituting the following—

“(b) was either—

- (i) published on the Agency’s official website (www.cita.bm); or
- (ii) prior to 1 March 2026, published by the Registrar in a manner approved by the Registrar as appropriate in his opinion to bring guidance to the attention of persons likely to be affected by it.”.

Repeals and replaces sections 13 and 14

10 The principal Act is amended by repealing section 13 and 14 and substituting the following—

“Power to impose Civil Penalties for breach of requirements

13 (1) Where any registered entity or person fails, without reasonable excuse—

- (a) to file the information required by section 5 or 5A by the date prescribed by regulation;
- (b) to comply with any notice issued by the Agency pursuant to section 4C; or
- (c) to permit the Agency to access premises pursuant to section 4E,

it shall be subject to a default fine of an amount the Agency considers appropriate for each day during which the default continues, and the daily default fine shall be not less than \$100 nor more than \$500.

(2) Where, pursuant to an inspection or otherwise, the Agency has determined that a registered entity has failed to comply with the requirements of section 3 for a relevant financial period, the Agency shall issue a notice in writing (a “first notice”) to the registered entity—

- (a) notifying the entity that the Agency has determined that the registered entity does not meet the economic substance requirements for the relevant financial period and the reasons for that determination; and
- (b) requiring the entity to, within the time period specified in the notice, take the steps to remedy the failure as may be specified in the notice.

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(3) Following the expiry of the time period specified in a first notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, it shall issue a further notice (a “second notice”) specifying the matters set forth in subsection (2)(a) and (b).

(4) Following the expiry of the time period specified in a second notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, it shall issue a further notice (a “third notice”) specifying the matters set forth in subsection (2) (a) and (b).

(5) Following the expiry of the time period specified in a third notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, and subject to any appeal made by the registered entity under section 14C within the time period for an appeal, the Agency shall exercise its powers under section 14D.

(6) Where a registered entity fails, within the specified time period, to comply with any requirements in a first, second or third notice to take the steps as are specified in the notice to remedy its failure to comply with section 3 of this Act, then, subject to section 14, the Agency shall impose a civil penalty which shall be—

- (a) with respect to failure to comply with a first notice, an amount of not less than \$7,500 but not exceeding \$50,000;
- (b) with respect to failure to comply with a second notice, an amount of not less than \$25,000 but not exceeding \$100,000; and
- (c) with respect to failure to comply with a third notice, an amount of not less than \$50,000 but not exceeding \$250,000. ”

Procedure for imposing civil penalties

14 (1) Where the Agency proposes to impose a civil penalty under section 13(6), it shall give the registered entity concerned notice (a “warning notice”) of—

- (a) its proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make written representations to the Agency within a specified period (which shall not be less than 28 days).

(2) After considering any representations made by the registered entity, the Agency shall decide, within three months from the end of the period specified in subsection (1)(c) whether or not to impose a civil penalty.

(3) Following the period specified in subsection (2), the Agency shall issue a decision notice of—

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- (a) the decision of whether or not to impose a civil penalty;
- (b) the amount of any penalty;
- (c) the reasons for its decision; and
- (d) the right to appeal to the Court within 28 days of the date of the decision notice.

(4) In assessing the amount of any default fine or civil penalty, the Agency shall determine the amount based upon the amount it considers is effective, proportionate and dissuasive in the context of the relevant default fine or civil penalty.

(5) The Agency may recover any default fine or civil penalty as a debt owing to it in any court of competent jurisdiction.”.

Inserts sections 14A to 14D

11 The principal Act is amended by inserting after section 14 the following new sections—

“Default fine or civil penalty not to apply in case of conviction

14A (1) Where a person is convicted of an offence under this Act, the person shall not also be liable to a default fine imposed under section 13 or a civil penalty imposed under section 13 in relation to the same matter.

(2) When a person pays a default fine imposed under section 13 or a civil penalty imposed under section 13, the person shall not also be charged with an offence under this Act in relation to the same matter.

(3) A default fine or civil penalty is a debt due to the crown and may be recovered by the Agency in the Court or in a court of summary jurisdiction.

Criminal offences

14B (1) Where any person knowingly provides false information to the Agency, the person shall be liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for two years or to both.

(2) Where any person wilfully obstructs the Agency in the exercise of its powers under this Act or knowingly fails to comply with any notice issued by the Agency under this Act, then the person commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both.

(3) Where an offence under subsection (1) or (2) is committed by an entity which is a body corporate is proved to have been committed with the consent or connivance of an officer of the body corporate, the officer as well as the body corporate commits the offence and shall be liable on summary conviction to a fine of \$10, 000.

(4) In subsection (3), “officer”, in relation to—

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- (a) a company, means a director as that term is defined in section 2 of the Companies Act 1981;
- (b) a limited liability company, means a manager as that term is defined in section 2 of the Limited Liability Company Act 2016;
- (c) a partnership, means a director or the general partner of the partnership.

Appeals to court

14C (1) A person may appeal to the Court against a decision of the Agency to impose a default fine or a civil penalty.

(2) A decision appealed against under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) where an appeal is brought, until it is determined or withdrawn.

Power of agency to apply to Court

14D (1) Where the Agency determines that a registered entity has failed to comply with a third notice issued pursuant to section 13 then, subject to section 14C, the Agency may apply to the Court for an order under this section.

(2) Where, on receiving an application under subsection (1), the Court is of the opinion that the registered entity that is the subject of the application has failed to comply with section 3 of this Act following the issuance of a third notice pursuant to section 13, then the Court may make an order as it thinks fit requiring the entity to take any action specified in the order for the purpose of meeting the economic substance requirements, or shall make another order as it sees fit in the circumstances.

(3) Without prejudice to the generality of subsection (2), the Court may make any order as it thinks fit including an order—

- (a) for—
 - (i) regulation of; or
 - (ii) restricting, the conduct of the registered entity's affairs or business in the future;
- (b) authorising further proceedings on terms as the Court may direct, including winding-up, dissolution or strike-off.

(4) The Court may at any time after an order is made under subsection (3), and on proof to the satisfaction of the Court that the registered entity has taken steps to comply with the economic substance requirements, stay the application of the order either altogether or for a limited time, on terms and conditions as the Court thinks fit.

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(5) Where the Court makes an order under subsection (3)(a)(ii) restricting the conduct of the registered entity's business altogether it may on hearing the Agency make an order as it considers desirable to enable the registered entity to conduct its business as nearly as practicable as it did before the order restricting business was made.

(6) On any application under this section, the Court may, before making an order, require the Agency to furnish to the Court a report with respect to any facts or matters which the Court considers relevant to the application.”.

Consequential amendment of Registrar of Companies (Compliance Measures) Act 2017

12 (1) The Registrar of Companies (Compliance Measures) Act 2017, which in this section is referred to as the “principal Act” is amended as provided in the section.

(2) Section 2 of the principal Act is amended by deleting the following definitions—

- (a) “economic substance requirements”; and
- (b) “relevant financial period”.

(3) The principal Act is amended by repealing the following—

- (a) section 9A;
- (b) section 11 (4) and (5); and
- (c) section 16A.

Transitional

13 Notwithstanding any provision of this Act, nothing in this Act shall invalidate or otherwise affect the enforceability of any notice, including any penalty notice or fines, issued by the Registrar pursuant to Registrar of Companies (Compliance Measures) Act 2017 prior to the commencement date of this Act, and the Registrar shall remain authorised and entitled to enforce any notice, fine or penalty following the commencement of this Act.

Commencement

14 This Act shall come into force on 31 March 2026.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Economic Substance Act 2018 to transfer responsibility for the administration, monitoring and enforcement of Bermuda's economic substance regime from the Registrar of Companies to the Corporate Income Tax Agency. The Government finds that there is a need to create economies of scale in the administration of international tax matters including the administration of the economic substance framework and the exchange of information regime in Bermuda. Therefore, the purposes of these amendments are to provide the following: (a) to provide for the functions of the Agency regarding inspection of registered entities;(b) to provide various powers for the Agency to carry out its work;(c) to enable the Agency to carry out inspections and site visits; (d)to provide the Agency with powers to enforce the economic substance requirements.

Clause 1 provides the title of the Bill.

Clause 2 provides the interpretation provision for the Bill.

Clause 3 amends section 2 of the principal Act by providing for the insertion of the new definition for "Agency" in the correct alphabetical order.

Clause 4 amends the principal Act generally by providing for deletion of the word "Registrar" wherever it appears and to replace it with the word "Agency".

Clause 5 provides for the insertion of sections 4A, 4B, 4C, 4D and 4E in the principal Act to provide for the functions of the agency regarding inspection of registered entities; the power of the Agency to carry out regulation and inspection of a registered entity; the power to require information and documents; the power to require a registered entity to produce documents and to give assistance to the Agency; the power for the Agency to enter and inspect premises, and to inspect documents found on premises; to issue a notice to comply after an inspection or otherwise; and to issue a notice to comply with the economic substance requirements.

Clause 6 amends section 6 of the principal Act to allow the Agency to act as the competent authority.

Clause 7 provides for references to be made to the Agency by removing "his duties" to "its duties".

Clause 8 inserts a new section 8 to provide for no action, suit, prosecution or other proceeding to be brought or instituted against an officer, employee or agent of the Agency.

Clause 9 amends section 12 by providing for the Agency to be able to publish the appropriate guidance on the Agency's website.

Clause 10 repeals and replaces sections 13 and 14 to ensure that the Agency has the power to impose civil penalties for the breach of the economic substance requirements and also provides for the procedure to be used for imposing civil penalties.

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Clause 11 inserts sections 14A, 14B, 14C and 14D to enable the Agency to impose default fines; to provide for a default fine or civil penalty not to apply in case of a conviction; to provide for a person to appeal to the court against a decision of the Agency to impose a default fine or civil penalty; to give the Agency the power to apply to a court where a registered entity fails to comply with a third notice.

Clause 12 provides for a consequential amendment to the Registrar of Companies (Compliance Measures) Act 2017 to remove the references and provisions that are no longer necessary given the transfer of these functions and responsibilities to the Agency.

Clause 13 provides a transitional provision to ensure continuity and the validity of any notice, penalty notice or fine issued by the Registrar under the Registrar of Companies (Compliance Measures) Act 2017 prior to the commencement date of this amending Act.

Clause 14 provides the commencement provision.