

REVISED BILL AS TABLED IN THE HOUSE OF ASSEMBLY  
(WITH PROPOSED AMENDMENTS)

A BILL

entitled

ECONOMIC SUBSTANCE ACT 2018

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WHEREAS it is expedient to enhance provisions relating to economic substance for registered entities and connected matters; and to amend the Investment Funds Act 2006 and the Bermuda Monetary Authority Act 1969;

Be it enacted by The Queen'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:

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### Citation

1 This Act may be cited as the Economic Substance Act 2018.

### Interpretation

2 In this Act, unless the context otherwise requires—

“affiliate” in relation to—

- (a) a company, means an affiliated company as that term is defined in section 2 of the Companies Act 1981;
- (b) a limited liability company, has the meaning given in section 3(3) of the Limited Liability Company Act 2016;
- (c) a partnership, means a general partner of the partnership;

“company” means a company to which the Companies Act 1981 applies and, for the avoidance of doubt, this includes a permit company and an overseas company;

“economic substance requirements” has the meaning given in section 3(2);

“entity” means a registered entity;

“exempted limited partnership” means a partnership registered under the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883;

“exempted partnership” means an exempted partnership registered under the Exempted Partnerships Act 1992;

“high risk IP related activities” has the meaning as shall be prescribed;

“holding entity” may include a pure equity holding entity;

“IP” means intellectual property;

“limited liability company” means a limited liability company formed under the Limited Liability Company Act 2016;

“limited partnership” means a limited partnership registered under the Limited Partnership Act 1883;

“local company” has the meaning given in section 2 of the Companies Act 1981;

“local LLC” has the meaning given in section 2 of the Limited Liability Company 2016;

“local entity” means a local company or a local LLC;

“Minister” means the Minister responsible for companies;

“overseas company” has the meaning given in section 2 of the Companies Act 1981;

“overseas partnership” means an overseas partnership registered under the Overseas Partnerships Act 1995;

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“partnership” means an exempted partnership, an exempted limited partnership or an overseas partnership that has elected, or elects, to have separate legal personality in accordance with section 4A of the Partnership Act 1902;

“permit company” has the meaning given in section 2 of the Companies Act 1981;

“prescribed” means prescribed by regulations;

“registered entity” means a company, limited liability company or partnership;

“Registrar” means the Registrar of Companies appointed under section 3 of the Companies Act 1981;

“relevant activity” means carrying on as a business any one or more of the following—

- (a) banking;
- (b) insurance;
- (c) fund management;
- (d) financing;
- (e) leasing;
- (f) headquarters;
- (g) shipping;
- (h) distribution and service centre;
- (i) intellectual property; and
- (j) holding entity,

and “relevant activities” shall be construed accordingly;

“relevant financial period” has such meaning as shall be prescribed.

### Economic substance requirements

3 (1) Every entity to which this section, by virtue of section 4, applies shall maintain a substantial economic presence in Bermuda, and in that regard shall comply with the economic substance requirements set forth in subsection (2).

(2) An entity referred to in subsection (1) complies with the economic substance requirements if—

- (a) the entity is managed and directed in Bermuda;
- (b) core income generating activities (as may be prescribed) are undertaken in Bermuda with respect to the relevant activity;
- (c) the entity maintains adequate physical presence in Bermuda;
- (d) there are adequate full time employees in Bermuda with suitable qualifications; and

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(e) there is adequate operating expenditure incurred in Bermuda in relation to the relevant activity.

(3) An entity complies with subsection (2), if the entity satisfies the economic substance requirements that are set forth in that subsection and as shall be prescribed.

### Application of section 3

4 Section 3 applies to an entity that is engaged in a relevant activity.

### Filing of minimum required information with Registrar relating to economic substance requirements

5 (1) Entities that are subject to the economic substance requirements shall file an economic substance declaration with the Registrar on an annual basis in the prescribed form and on or before the prescribed date.

(2) The economic substance declaration shall at a minimum include the following information for the relevant financial period—

- (a) whether or not the entity is carrying on a relevant activity, and the type of relevant activity carried on or undertaken by the entity;
- (b) whether the entity is engaging in high risk IP activity;
- (c) whether the entity will outsource the relevant activity and to whom;
- (d) the core income generating activities (as may be prescribed) that are undertaken in Bermuda with respect to the relevant activity;
- (e) the gross income for the relevant financial year;
- (f) the premises in Bermuda;
- (g) the name(s) and physical address(es) of the following—
  - (i) where the entity is a company, the director or directors;
  - (ii) where the entity is a limited liability company, the manager or managers;
  - (iii) where the entity is a partnership, the general partner or general partners,  
who are ordinarily resident in Bermuda;
- (h) the holding entity, the ultimate parent entity, the owner or the beneficial owner of the entity;
- (i) the operating expenses and assets for the relevant financial year;
- (j) the number of full time employees; and
- (k) such other information as may reasonably be required by the Registrar.

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### Provision of information to competent authority

6 (1) If—

- (a) the Registrar determines that an entity has not met the economic substance requirements for a relevant financial period; or
- (b) an entity is engaged in such intellectual property related activities prescribed as high risk, with an affiliate outside of Bermuda,

the Registrar shall provide to the competent authority the information filed pursuant to section 5(2) relating to that entity for that period.

(2) Where the competent authority receives information from the Registrar under subsection (1) relating to an entity, the competent authority shall provide the information so received relating to that entity for that period to the foreign competent authority of any relevant EU member state in which—

- (a) a holding entity;
- (b) the ultimate parent entity;
- (c) an owner; or
- (d) the beneficial owner,

of the entity is incorporated, formed, registered or resident.

(3) The exchange of information by the competent authority shall be subject to the provisions of the International Cooperation (Tax Information Exchange Agreements) Act 2005 (and any Agreement with the relevant EU member state made thereunder) and shall be exchanged in such form or manner as shall be prescribed.

(4) Nothing in this section shall be construed as affecting the exchange under the International Cooperation (Tax Information Exchange Agreements) Act 2005 of information that does not relate to the economic substance requirements, or the Registrar's powers under section 18(3)(b) of the Registrar of Companies (Compliance Measures) Act 2017.

(5) In this section—

“Agreement” has the meaning given in section 2 of the International Cooperation (Tax Information Exchange Agreements) Act 2005;

“beneficial owner” has the meaning given in section 98E of the Companies Act 1981;

“competent authority” means the competent authority for Bermuda as defined in section 2 of the International Cooperation (Tax Information Exchange Agreements) Act 2005;

“foreign competent authority” means a competent authority which, in the relevant EU member state, exercises functions corresponding to the functions of the competent authority for Bermuda;

“owner” means the person registered as the owner of the entity;

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“ultimate parent entity” has the meaning given in regulation 2 of the International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Regulations 2017.

### Confidentiality

7 (1) Except in so far as may be necessary for the due performance of his functions relating to the economic substance requirements, the Registrar and any officers or other persons who are acting as an officer, a servant, an agent or an adviser of the Registrar shall preserve and aid in preserving confidentiality with regard to all matters relating to information or documents that may come to his knowledge in the course of the performance of his duties under this Act.

(2) Subsections (2) and (3) of section 18 of the Registrar of Companies (Compliance Measures) Act 2017 apply for the purposes of this section.

### Immunity from suit

8 Sections 282 and 283 of the Companies Act 1981 apply with any necessary modifications for the purposes of this Act.

### Application of Public Access to Information Act 2010

9 (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Act, no person who—

- (a) obtains information relating to economic substance in respect of any entity directly or indirectly for the purposes of or pursuant to this Act; and
- (b) receives a request under the Public Access to Information Act 2010 for such information relating to economic substance,

shall disclose the request or such information so requested.

### Application of Personal Information Protection Act 2016

10 Nothing in this Act authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

### Regulations

11 (1) The Minister may make such regulations as are expedient to give effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may provide for additional penalties, the exchange of information relating to economic substance requirements and savings and transitional matters.

(3) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

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### Guidance

12 (1) The Minister may from time to time give guidance on the application of this Act and regulations made under it.

(2) In determining whether a person has complied with section 3 or 5, the Minister shall consider whether an entity to which that section applies has followed any relevant guidance which was at the time—

- (a) issued by the Minister; and
- (b) published in a manner approved by the Registrar as appropriate in his opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) Guidance issued under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

### Penalties

13 Where an entity fails to comply with the provisions of this Act, or regulations made in relation to this Act, the Registrar may exercise the powers conferred on him by Part 2 or 3, as the case may be, of the Registrar of Companies (Compliance Measures) Act 2017.

### Offences

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

(2) Where an offence under subsection (1) 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 to be proceeded against and punished accordingly.

(3) In subsection (2), “officer”, in relation to—

- (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 of the general partner of the partnership.

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

15 (1) The Registrar of Companies (Compliance Measures) Act 2017 is amended in section 2—

(a) by inserting in the appropriate alphabetical order the following—

“economic substance requirements” has the meaning given in section 2 of the Economic Substance Act 2018;

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“relevant financial period” has such meaning as may be prescribed under the Economic Substance Act 2018.”

(2) The Registrar of Companies (Compliance Measures) Act 2017 is amended by inserting after section 9 the following—

“Notice to comply with economic substance requirements

9A (1) Where, pursuant to an inspection or otherwise, the Registrar has determined that a registered entity (in this section and section 16A referred to as “an entity”), to which the economic substance requirements under the Economic Substance Act 2018 or any regulations made thereunder apply, has failed to meet the economic substance requirements for a relevant financial period, the Registrar shall notify the Minister accordingly.

(2) The Registrar shall after such notification under subsection (1) issue a notice in writing to the entity concerned—

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

(3) If, at any time after the expiry of the time period specified in the notice issued by the Registrar under subsection (2) to an entity, the Registrar determines that the entity fails to meet the economic substance requirements, the Registrar shall issue a further notice to the entity specifying the matters set forth in subsection (2)(a) and (b).

(4) If, pursuant to the notice to an entity issued by the Registrar under subsection (3), the Registrar determines that an entity fails to meet the economic substance requirements, the Registrar shall issue a further notice to the entity specifying the matters set forth in subsection (2)(a) and (b).

(5) Where an entity fails to comply with a requirement of the Registrar under subsection (2), (3) and (4), or if no appeal is made under section 16 within the time period for such appeal or if such appeal is not allowed, the Registrar shall notify the Minister and shall thereafter exercise such powers as are conferred on him under section 16A. ”.

(3) The Registrar of Companies (Compliance Measures) Act 2017 is amended in section 11 by inserting after subsection (3) the following—

“(4) Where an entity fails to comply with a requirement of the Registrar under section 9A(2), (3) or (4), the Registrar shall, subject to section 12, exercise such powers conferred on him under this section with a view to ensuring compliance.



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(5) Any civil penalty imposed by the Registrar under this section shall be—

- (a) with respect to subsection (2) of section 9A, an amount of not less than \$7,500 and not exceeding \$50,000;
- (b) with respect to subsection (3) of section 9A, an amount of not less than \$25,000 and not exceeding \$100,000;
- (c) with respect to subsection (4) of section 9A, an amount of not less than \$50,000 and not exceeding \$250,000.”.

(4) The Registrar of Companies (Compliance Measures) Act 2017 is amended in section 12(3)(c), by inserting after the word “Court” the words “within 28 days of the date of the decision notice”.

(5) The Registrar of Companies (Compliance Measures) Act 2017 is amended by inserting after section 16 the following—

“Power for Registrar to apply to Court regarding economic substance requirements

16A (1) Where pursuant to section 9A(5), the Registrar determines that an entity (as that term is defined in section 9A(1)) has not met the economic substance requirements, he may apply to the Court for an order under this section.

(2) If, on receiving an application under subsection (1), the Court is of the opinion as set forth in the Registrar’s determination in respect of the entity that is the subject of the application, the Court may make such 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 such other order as it sees fit in the circumstances.

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

- (a) for—
  - (i) regulation of; or
  - (ii) restricting,  
the conduct of the entity’s affairs or business in the future;
- (b) authorising such proceedings under the relevant Act to be taken by the Registrar on such terms as the Court may direct, including 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 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 such 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 entity's business altogether it may on hearing the Registrar make such order as it considers desirable to enable the 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 Registrar to furnish to the Court a report with respect to any facts or matters which the Court considers relevant to the application.”.

### Transitional

16 (1) In this section, “existing”, in relation to an entity, means an entity which exists on the date of the coming into operation of this Act.

(2) An existing entity shall, within six months of the date of the coming into operation of this Act, comply with the provisions of section 3.

(3) The Minister may by order subject to the negative resolution procedure extend the period set forth in subsection (2).

### Amendment of Investment Funds Act 2006

17 (1) Section 2 of the Investment Funds Act 2006 is amended—

(a) in the definition of “service provider”, by inserting after the words “investment manager” the words “corporate service provider”;

(b) by inserting in the appropriate alphabetical order the following—

“Private fund” has the meaning given in section 6;

“Professional Class A fund” has the meaning given in section 6A;

“Professional Class B fund” has the meaning given in section 7;”.

(2) Section 5 of the Investment Funds Act 2006 is amended—

(a) by deleting the heading to that section and substituting “Prohibition of unauthorised or unregistered funds”;

(b) in subsection (2), by deleting the words “sections 6A and 8A” where they first appear and substituting the words “sections 6, 6A and 7”;

(c) in subsection (2)(a)—

(i) by inserting after the word “authorised”, the words “or registered”;

(ii) by inserting after the words “section 13” the words “or section 6, 6B or 8A or ”;

(d) by repealing subsection (2)(b) and replacing that subsection as follows—

“(b) the fund is registered under sections 6, 6A and 7;”.

(3) The Investment Funds Act 2006 is amended as follows—

- (a) by deleting the heading “Exempted Funds,” where it appears immediately above section 6, and substituting “Registered Funds”;
- (b) in section 6—
  - (i) by deleting the heading “Excluded funds” and substituting “Private funds”;
  - (ii) by repealing subsection (1);
  - (iii) in subsection (2), by deleting the words “For the purpose of subsection (1)(a)”, and inserting the word “A”;
  - (iv) by inserting after subsection (2) the following—

“(2A) The operator of the fund is required to appoint a local service provider authorised and regulated by the Authority.

(2B) The operator must appoint a custodian with regard to ensuring safekeeping of the fund’s assets.

(2C) The Authority may waive the requirement to appoint a custodian if it is satisfied that the fund meets such criteria as the Authority may determine and has published on its website: [www.bma.bm](http://www.bma.bm).”

- (v) by repealing subsection (3), and inserting the following—

“(3A) An operator of a private fund falling within this section shall apply to the Authority, in such form as the Authority may direct, confirming that the private fund qualifies for registration under this section.

(3B) When submitting an application under this section, the operator must also provide to the Authority—

- (a) information related to the fund;
- (b) a copy of the offering document;
- (c) details of the service providers;
- (d) the registration fee.

(3C) If on application under this section in respect of a private fund, the Authority is satisfied that the fund complies with the requirements of this section, the Authority may grant the application for the fund to be registered as a private fund.

(3D) The operator of a private fund must certify to the Authority annually, in such form as the Authority may direct, that the fund satisfies the qualifying criteria and requirements for registration and will continue to satisfy them on an ongoing basis.

(3E) The operator of a private fund must at the time of filing the certificate, also file with the Authority—

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- (a) information on the net asset value of the fund and its underlying assets;
  - (b) a copy of the fund's management accounts or audited financial statements;
  - (c) information on any material changes that took place during the course of the year (reporting or accounting period).";
- (vi) by repealing subsection (4), and by inserting the following—
- “(5) The Authority may determine an incomplete application if it considers it appropriate to do so.
- (6) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.
- (7) The operator of a private fund must at the time of filing the certificate also file with the Authority—
- (a) information on the net asset value of the fund and its underlying assets;
  - (b) a copy of the funds management accounts or audited financial statements;
  - (c) information on any material changes that took place during the course of the year (reporting or accounting period).
- (8) An operator may apply to the Authority for a change of classification of a private fund.
- (9) The Authority may reclassify the fund. ”.
- (4) The Investment Funds Act 2006 is amended as follows—
- (a) by deleting the heading “Exempted Funds” where it appears immediately above section 6A and substituting the heading “Professional Funds”;
  - (b) in section 6A—
    - (i) by deleting the heading and substituting “Professional Class A Fund: qualification”;
    - (ii) by repealing subsection (1) and replacing that subsection as follows—
- “(1) A fund that satisfies the requirements of subsection (2) is designated as a Professional Class A Fund.”.
- (5) Section 6B of the Investment Funds Act 2006 is amended as follows—
- (a) by deleting the heading and substituting “Professional Class A fund: procedure for registration”;
  - (b) in subsection (1)—

- (i) by deleting the words “Class A Exempt Fund” and substituting the words “Professional Class A fund”;
- (ii) by deleting the words “certify to the Authority” and substituting the words “apply to the Authority for registration”;
- (iii) by deleting the word “exemption” and substituting the word “registration”;
- (c) in subsection (2), by deleting the word “exemption”, the word “registration”;
- (d) in subsection (3), by deleting the words “Class A Exempt Fund”, the words “Professional Class A fund”.
- (e) by inserting after subsection (3) the following—

“(4) If, on an application under subsection (1) above in respect of a Professional Class A fund, the Authority is satisfied that the fund complies with the qualification criteria of section 6A, the Authority may grant the application for the fund to be registered as a Professional Class A fund.

(5) The Authority may determine an incomplete application if it considers it appropriate to do so.

(6) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.

(7) An operator may apply to the Authority for a change of classification of a registered fund.

(8) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of registration, the Authority may reclassify the fund.”.

(6) Section 7 of the Investment Funds Act 2006 is amended as follows—

- (a) by deleting the heading and substituting “Professional Class B fund: qualification”;
- (b) by repealing subsection (1) and replacing that subsection as follows—

“(1) A fund that satisfies the requirements of subsection (2) is designated as a Professional Class B Fund.”.

- (c) by inserting after subsection (2) the following—

“(2A) The Authority may waive the requirement to appoint a custodian if it is satisfied that alternative arrangements have been made that would uphold safekeeping obligations.

(2B) The operator must notify the Authority immediately if it is no longer operating within the qualifying criteria set out for the fund.”

(7) Section 8 of the Investment Funds Act 2006 is amended as follows—

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- (a) by deleting the heading and substituting “Professional Class B Fund: procedure for registration”;
  - (b) by deleting the word “exemption” wherever it appears and substituting the word “registration”;
  - (c) by deleting the words “Class B Exempt fund” and substituting the words “Professional Class B fund”.
- (8) Section 8A of the Investment Funds Act 2006 is amended as follows—
- (a) by deleting the heading and substituting “Professional Class B Fund: application for registration”;
  - (b) by deleting the word “exemption” wherever it appears, and substituting the word “registration”;
  - (c) by deleting the words “Class B Exempt fund” and substituting the words “Professional Class B fund”.
- (9) Section 9 of the Investment Funds Act 2006 is amended by deleting the heading and substituting “Qualified Participants”.
- (10) Section 9A of the Investment Funds Act 2006 is amended as follows—
- (a) in the heading by deleting the word “Exempt” and substituting the word “Registered”;
  - (b) in subsection (1), by deleting the words “an exempt” and substituting the words “a registered”;
  - (c) in subsection (4)—
    - (i) by deleting the words “an exempt” and substituting the word “a registered”; and
    - (ii) by deleting the words “been made exempt” and substituting the word “registered”.
- (11) Section 10 of the Investment Funds Act 2006 is amended as follows—
- (a) in the heading and in subsection (1), by deleting the word “exempted” wherever it appears and substituting the word “registered”;
  - (b) by repealing subsection (1) and replacing that subsection as follows—

“(1) An investment fund registered under sections 6, 6B and 8 may make an application under section 12 for authorisation.”.
  - (c) in subsection (2)(a), by deleting the words “an exempted” and substituting the words “ a registered”.
- (12) Section 16 of the Investment Funds Act 2006 is amended as follows—
- (a) in the heading, by deleting the word “exemptions” and substituting the word “registrations”;

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- (b) by deleting the word “exemption” and substituting the word “registration”.
- (13) Section 17(1) of the Investment Funds Act 2006 is amended—
- (a) by repealing paragraph (ba) and replacing that paragraph as follows—
    - “(ba) on the initial filing of the application for registration in accordance with sections 6, 6B and 8A, in relation to a registered fund;”
  - (b) by repealing (bb).
- (14) The Investment Funds Act 2006 is amended—
- (a) in the heading immediately above section 30, by inserting after the word “authorised” the words “or registered”;
  - (b) in section 30, by inserting after the word “authorised” wherever it appears the words “or registered”.
- (15) The Investment Funds Act 2006 is amended—
- (a) in the heading above section 33, by inserting after the word “authorised” the words “or registered”; and
  - (b) in subsection (1), by inserting after the word “authorised” the words “or registered”.
- (16) Section 36(1)(a) of the Investment Funds Act 2006 is amended as follows—
- (a) by inserting after the word “authorised” the words “or registered”; and
  - (b) by inserting after the word “revoked” the words “or been disqualified from registration”.
- (17) Section 37 of the Investment Funds Act 2006 is amended as follows—
- (a) in subsection (1)—
    - (i) by inserting after the word “authorised” wherever it appears, the words “or registered”;
    - (ii) by deleting the full stop at the end of paragraph (d) and substituting “; and”, and by inserting after paragraph (d) the following—
      - “(e) prudential requirements of the fund and obligations of the fund operator with respect to its services providers.”.
  - (b) in subsection (2)—
    - (i) by inserting after the word “authorised” wherever it appears, the words “or registered”;
    - (ii) in paragraph (g), by deleting the words “the authorised fund” and substituting “the fund”, and by inserting after paragraph (g), the following—

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- “(h) obligations with respect to depositary functions and safekeeping obligations;
  - (i) for additional requirements related to—
    - (i) reports to the Authority;
    - (ii) public disclosure;
    - (iii) disclosure to investors.”.
  - (c) in subsection (3), by inserting after the word “authorised” the words “or registered”.
- (18) Section 38 of the Investment Funds Act 2006 is amended as follows—
- (a) in subsections (1), (3) and (4), by inserting after the word “authorised” the words “Professional Class A and Professional Class B fund”;
  - (b) in subsection (4), by deleting the words “an authorised fund” and substituting the words “authorised Professional A and Professional B funds”.
- (19) Sections 40(1), 55(1), 59(1), 60(a), 61(1)(a), subsections (2), (3), (3)(a), (4) and (5) of section 61, subsections (1), (2) and (3) of section 63, subsections (1), (4), (5) and (7)(c) of section 64 of the Investment Funds Act 2006 are amended by inserting after the word “authorised” the words “or registered”.
- (20) Section 64A of the Investment Funds Act 2006 is amended—
- (a) in subsection (1)(b), by deleting the words “an excluded” and substituting the word “a private”, and by deleting the word “exclusion” and substituting the word “registration”;
  - (b) in subsection (1)(c), “an exempted” and substituting “a professional”, and by deleting the word “exemption” and substituting the word “registration”;
  - (c) in subsection (2)—
    - (i) by inserting after the word “authorised” where it first appears the words “or registered”;
    - (ii) in paragraphs (a) and (b), by inserting after the word “authorised” where it first appears “, registered”.
- (21) Section 65(1A) of the Investment Funds Act 2006 is amended by inserting after the words “an authorised fund”, the words “, registered fund”.
- (22) Section 67E of the Investment Funds Act 2006 is amended
- (a) in subsection (8), by deleting the words “an exempted person”, and substituting the words “a registered”;
  - (b) in subsection (10)—
    - (i) by repealing the definition of the term “exempted person”;



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(ii) by inserting in the appropriate alphabetical order the following—

“registered person” means a person who is registered under any of the provisions of this Act;”.

(23) Section 69(2) of the Investment Funds Act 2006 is amended by inserting after the word “authorised” the words “or registered”.

Amendment of Bermuda Monetary Authority Act 1969

18 The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule in the entry with respect to fees under the heading “Investment Funds Act 2006” as follows—

- (a) by deleting the words “exempted funds” wherever they appear and substituting the words “Professional Class A funds, Professional Class B funds”;
- (b) by inserting in the appropriate alphabetical order the following—

“

Application fee for private fund	\$1,250.00
Annual fee (private fund)	\$1,250.00

”.

Savings: section 17

19 (1) In this section, “existing”, in relation to a fund, means a fund which exists under the provisions of the Investment Funds Act 2006 on the date of the coming into operation of section 17 of this Act.

(2) An existing fund which immediately before the date of the coming into operation of section 17 was an exempted fund or excluded fund shall, on and from the said date and subject to the applicable provisions of the Investment Funds Act 2006 as amended by section 17, be a registered fund.

Transitional: section 17

20 (1) In this section, “existing”, in relation to a fund, means a fund which exists under the provisions of the Investment Funds Act 2006 on the date of the coming into operation of section 17 of this Act.

(2) An existing fund shall, within six months of the date of the coming into operation of this Act, comply with the applicable provisions of the Investment Funds Act 2006 as amended by section 17.

Commencement

21 This Act shall come into operation on 31 December 2018.

## ECONOMIC SUBSTANCE BILL 2018

### EXPLANATORY MEMORANDUM

The purpose of this Bill is to enhance provisions relating to economic substance for registered entities and connected matters. This Bill also seeks to amend the Investment Funds Act 2006 and the Bermuda Monetary Authority Act 1969.

Clause 1 provides a title for this Bill.

Clause 2 provides definitions for the interpretation of this Bill.

Clause 3 imposes an obligation on an entity that is engaged in a relevant activity to maintain a substantial economic presence in Bermuda and, in that regard, comply with economic substance requirements ("ESR") set forth in subsection (2).

Clause 4 provides that the ESR regime applies to any registered entity that is engaged in a relevant activity (as that term is defined in section 2).

Clause 5 sets forth the filing requirements under the ESR regime. An economic substance declaration form will be prescribed for purposes of this regime.

Clause 6 makes provision for the competent authority for Bermuda, pursuant to the International Cooperation (Tax Information Exchange Agreements) Act 2005, to exchange ESR information with any EU member state. Regulations will be made to prescribe matters relating to such exchange of information.

Clause 7 requires that confidentiality be preserved. This clause applies certain provisions of the Registrar of Companies (Compliance Measures) Act 2017 which prescribe criminal penalties for a breach of confidentiality. Clause 7 specifies limited circumstances where the disclosure of information is permitted.

Clause 8 applies the provisions in the Companies Act 1981 to provide for immunity from suit for any officer, employee or agent of the Registrar and others acting on his behalf provided such persons act in good faith in the performance of their duties.

Clause 9 provides for matters relating to the Public Access to Information Act 2010.

Clause 10 provides for matters relating to the Personal Information Protection Act 2016.

Clause 11 provides for the making of Regulations. Such regulations will be subject to the negative resolution procedure.

Clause 12 provides for guidance to be issued by the Minister in relation to the application of this Bill and regulations made under the Bill. This clause also allows the Registrar to publish such guidance in such manner as he thinks fit.

Clause 13 allows the Registrar to exercise the powers conferred on him by the Registrar of Companies (Compliance Measures) Act 2017 where an entity fails to comply with the provisions of this Bill, or regulations made in relation to this Bill.

Clause 14 provides for offences related to the provision of false information.

## ECONOMIC SUBSTANCE BILL 2018

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Clause 15 amends the penalty provisions set forth in the Registrar of Companies (Compliance Measures) Act 2017 in respect of the sanctions which will be applied where an entity is determined to have failed to comply with the economic substance requirements. This clause provides for the Registrar to apply for a Court order which may ultimately result in the exercise of power to strike-off the entity.

Clause 16 provides for transitional matters. The ESR regime will be immediately applicable to new entities registered after this Act comes into operation. The operative date for the imposition of ESR is anticipated to be 1 January 2019, with a six-month transitional period for existing entities.

Clause 17 amends the Investment Funds Act 2006 in a number of respects in relation to exempted and excluded funds.

Clause 18 amends the Fourth Schedule to the Bermuda Monetary Authority Act 1969 (which relates to fees under the Investment Funds Act 2006) to refer to registered funds. This clause also adds fees for private funds.

Clause 19 provides for savings related to clause 17.

Clause 20 provides for transitional matters related to the provisions amending the Investment Funds Act 2006 that are set forth in clause 17. The operative date for the amendments relating to funds is anticipated to be 1 January 2019, with a six-month transitional period for existing funds.

Clause 21 provides for commencement.