

## Alert

### Economic Substance – Preparing for Filing the First Declarations

As you will be aware, Bermuda enacted economic substance legislation requiring every company, LLC and limited partnership that has a separate legal personality which is carrying on a “relevant activity” (each, a “relevant entity”) to file an economic substance declaration form (the Declaration Form) with the Bermuda Registrar of Companies (the Registrar). The Declaration Form must include information demonstrating that either the relevant entity: (a) has satisfied the economic substance requirements applicable to that entity, or (b) is resident for tax purposes in another jurisdiction (which is not on the European Union’s list of non-cooperative jurisdictions for tax purposes). The Registrar will determine whether or not the applicable substance requirements are met, based on the information provided by the relevant entity.

Every relevant entity is required to file its Declaration Form no later than six months after the last day of the first financial year of that entity which commenced on or after 1 January 2019. For any such entity with a financial year which ended on 31 December 2019 and which carried on a relevant activity<sup>1</sup> during this financial period, the filing deadline in respect of such period is **30 June 2020**<sup>2</sup>.

Please note:

- The Registrar is in the process of finalising an online portal (the ESD Portal) through which you will be able to file the information required to complete the Declaration Form.
- We are currently advised by the Registrar that the ESD Portal will be made available from around 1 May 2020. Between now and 12 May 2020 the Registrar will be offering a live webinar on how to use the ESD Portal and a separate on-demand webinar will be made available on 1 May 2020. Attached are the registration details and we would encourage you to attend one of the sessions ([Webinar Registration](#)).
- For an overview of the principal information that we are expecting will be required in order for you to complete your filing in respect of each registered entity, please see [ESD Portal Information](#).

It is important also to note that the Declaration Form can only be filed via the ESD Portal and we recognise that a number of clients will need advice in connection with the filing process. Conyers has been closely involved with the implementation of Bermuda’s economic substance legislation as well as the ESD Portal, and we will be available to assist. Once we receive notice from the Registrar that the ESD Portal is available to be accessed, we will circulate the link to the ESD Portal, together with initial instructions. A dedicated Conyers team will be available to assist with your filing(s).

In the meantime, should you have any queries in connection with the filing process or require legal advice with respect to the economic substance requirements generally, please contact one of our lawyers listed below or your usual Conyers lawyer.

<sup>1</sup> “Relevant activity” means carrying on as a business any one or more of the following: banking, insurance, fund management, financing and leasing, headquarters, shipping, distribution and service centres, intellectual property and holding entity (as each term is defined in the economic substance legislation). The Registrar will consider that a “relevant activity” is being carried on as a business where the entity earns any gross income in respect of such activity during the relevant financial period.

<sup>2</sup> Any relevant entity which fails to meet its filing deadline may be subject to sanctions imposed by the Registrar.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: [media@conyers.com](mailto:media@conyers.com)

## Appendix 1

### Economic Substance Declaration Webinars

During the webinar, presenters will demonstrate functionality of the ESD Portal and the Declaration Form submission process. In addition, the presentation will include a brief reminder of the economic substance requirements in Bermuda including an overview of the entities and relevant activities in scope. A live Q&A session will be included.

Please note that each session will cover the same material. To register for a session, click on the relevant link below :

Date: Monday 20 April 2020

Time: 12pm – 1.30pm (EDT, New York)

1pm – 2.30pm (ADT, Bermuda)

5pm – 6.30pm (BST, London)

Date: Tuesday 21 April 2020

Time: 12am – 1.30am (GMT, Hong Kong/Singapore)

[Click here to register for this webinar.](#)

Date: Thursday 23 April 2020

Time: 1pm – 2.30pm (EDT, New York)

2pm – 3.30pm (ADT, Bermuda)

6pm – 7.30pm (BST, London)

Date: Friday 24 April 2020

Time: 1am – 2.30am (GMT, Hong Kong/Singapore)

[Click here to register for this webinar.](#)

Date: Monday 4 May 2020

Time: 12pm – 1.30pm (EDT, New York)

1pm – 2.30pm (ADT, Bermuda)

5pm – 6.30pm (BST, London)

Date: Tuesday 5 May 2020

Time: 12am – 1.30am (GMT, Hong Kong/Singapore)

[Click here to register for this webinar.](#)

Date: Tuesday 12 May 2020

Time: 10am – 11.30am (EDT, New York)

11am – 12.30pm (ADT, Bermuda)

3pm – 4.30pm (BST, London)

10pm – 11.30pm (GMT, Hong Kong/Singapore)

[Click here to register for this webinar.](#)

## Appendix 2

### Overview of Information Required for Economic Substance Declaration<sup>1 2</sup>

Below is an overview of the principal information that we are expecting will be required in order for you to complete your filing in respect of each registered entity.

#### 1. General Information<sup>3</sup>

- Entity name\*
- Registration number\*
- Year of incorporation/formation\*
- Registered office address
- Financial period
- Financial period reporting currency
- Relevant Activity

#### 2. Management and Direction

- Number of board/manager/partnership (including executive/committee) meetings held in Bermuda and elsewhere
- Number of board/manager/partnership (including executive/committee) meetings held in Bermuda where strategic decisions were made
- Number of board/manager/partnership (including executive/committee) meetings held in Bermuda where risk management and operational decisions were made
- Details of directors/managers ordinarily resident in Bermuda

#### 3. Ownership Structure<sup>4</sup>

- Details of immediate and ultimate parent

#### 4. Beneficial Owners<sup>5</sup>

- Details of beneficial owner(s)

#### 5. Entity Information - Details of the following, if applicable:

- physical premises in Bermuda
- net book value of tangible assets
- total annual gross income
- outsourcing arrangements for core income generating activities (“**CIGA**”) in respect of a relevant activity

#### 6. Relevant Activity

- Indication of which CIGA the entity performed
- Gross income
- Annual operating expenditure in Bermuda
- Outsourcing expenditure incurred in Bermuda
- Qualified Full Time Equivalents in Bermuda

<sup>1</sup> Please note that this is not a comprehensive list of all information which will be required by the online portal and that each “relevant activity” will have separate requirements. The information requested relates to the relevant financial period.

<sup>2</sup> An entity which is tax resident outside of Bermuda will be required to upload evidence of such tax residency and provide its tax identification number (“TIN”) (or a reason why it does not have or require a TIN).

<sup>3</sup> Items marked (\*) are required in order to access the online portal.

<sup>4</sup> Note that a TIN (or a reason why the entity does not have or require a TIN) will be required for each entity in the ownership structure (and beneficial owner(s)) listed in the Declaration Form.

<sup>5</sup> “Beneficial owner” has the meaning given to such term in s. 98E of the Companies Act 1981.