

Alert

Economic Substance Requirements to Apply to ALL Bermuda Partnerships

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The Economic Substance Amendment Act 2021 was enacted on 30 June 2021, bringing within scope of the Economic Substance Act 2018 all Bermuda partnerships and overseas partnerships registered in Bermuda that are engaged in a relevant activity¹, including those partnerships without separate legal personality.

Prior to this amendment, all Bermuda companies, permit companies and limited liability companies were in scope of the economic substance regime, but only those partnerships that elected to have separate legal personality, were required to comply with the economic substance requirements if they were carrying on a relevant activity². However, with the enactment of these amendments, all Bermuda partnerships³ and overseas partnerships registered in Bermuda that are carrying on a relevant activity are now required to satisfy the economic substance requirements, irrespective of whether such partnerships have elected to have separate legal personality.

All partnerships formed and/or registered in Bermuda on or after 1 July 2021 carrying on or expecting to carry on a relevant activity are immediately subject to the economic substance requirements. However, partnerships that were not previously in scope of the Economic Substance Act 2018, but which were formed and/or registered in Bermuda on or prior to 30 June 2021, and are carrying on a relevant activity, will be subject to the economic substance requirements from 1 January 2022. Their first economic substance declaration therefore must be filed in respect of relevant periods ending on or after 31 December 2022.

Any local partnership (being a partnership that (i) is not registered as an exempted partnership, (ii) is not part of an MNE Group (as such term is defined in the Economic Substance Act) and (iii) which carries on business only in Bermuda) carrying on a relevant activity will, along with other local entities, be subject to reduced economic substance requirements. Such local partnerships are required only to comply with governance requirements set forth in the relevant Partnerships Act (as applicable), but will not be required to complete and file an Economic Substance Declaration Form (the Declaration Form).

These changes are consistent with economic substance legislative changes made in other jurisdictions (including the Cayman Islands, the British Virgin Islands and the Channel Islands) and are compliant with current international economic substance requirements.

How can we help?

Conyers has been closely involved with the implementation of Bermuda’s economic substance legislation as well as the Registrar’s Economic Substance Declaration Portal.

Our lawyers have advised and assisted our clients with their assessment of the impact of the economic substance requirements, as well as the filing of their initial Declaration Forms. In so doing, we have acquired an unrivalled understanding in Bermuda of the economic substance requirements of various types of entities, across all relevant activities.

¹ “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 centre; intellectual property; and holding entity.

² Economic substance requirements do not apply to such entities that can provide evidence of their residence for tax purposes in a jurisdiction outside Bermuda that is not listed in Annex 1 to the European Union’s list of non-cooperative jurisdictions for tax purposes.

³ Includes partnerships to which the Partnership Act 1902 applies, limited partnerships, exempted partnerships, and exempted limited partnerships

Please get in touch with your usual Conyers contact, or contact our economic substance team at substanceinfobda@conyers.com for help with:

- determining the status of an entity for economic substance purposes;
- advising on the compliance of an entity with the economic substance requirements;
- clarifying the reporting obligations of an entity; and
- completing and filing the Declaration Form.

If you would like Conyers to assist with any of the above in connection with your Economic Substance filings, please contact us.

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For further information please contact: media@conyers.com