

Alert

Bermuda – 2022 Economic Substance Declaration Form Updates, Registrar of Companies Compliance Reviews and Prospective Compliance Planning

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The Economic Substance Act 2018 (the “ES Act”)¹ requires Bermuda-based entities that are carrying on a “relevant activity” in a relevant financial period and entities claiming “non-resident entity” status under the ES Act to file an Economic Substance Declaration Form (a “Declaration Form”) with the Bermuda Registrar of Companies (the “Registrar”). Such Declaration Form has recently been updated and now requires every in-scope entity, unless such entity is publicly traded, to provide details of its “beneficial owners” as such term is defined in the Companies Act 1981 (the “Companies Act”).

The Declaration Form can only be filed via the Registrar’s Online Register Portal (the “Portal”). Due to current upgrades to the Portal and updates to the Declaration Form, in-scope entities that did not earn any gross revenue in respect of a relevant activity, as defined by the ES Act, in a relevant financial period are temporarily unable to file the requisite ‘nil’ Declaration Form on the Portal. It is anticipated the Portal changes will be complete before the most common filing deadline of 30 June 2022.

The Registrar has issued two industry notices during the past month. The first notice, issued on 16 May 2022, indicated that the Registrar will immediately increase the number of desk-based reviews and onsite inspections of entities to ensure compliance with the economic substance requirements. The second notice, issued on 25 May 2022, advised of recent and upcoming changes to the Portal (as outlined above and described in more detail below).

Conyers would be pleased to advise you on what to expect from the Registrar’s compliance review process and how to plan for future compliance.

Relevant Activities

The following are relevant activities, as defined by the ES Act:

- Banking
- Insurance
- Fund management
- Financing and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centres
- Holding entity

¹ In 2018, Bermuda enacted legislation with respect to economic substance requirements for relevant entities based in the jurisdiction. All other major offshore jurisdictions have enacted similar legislation.

Updates to Economic Substance Declaration Form

Every entity carrying on a relevant activity in respect of the relevant financial period must file a Declaration Form within six months of the last day of the entity's financial year (which means an entity with a financial year-end of 31 December 2021 will be required to file its completed Declaration Form by 30 June 2022). The Declaration Form, which has recently been updated, requires certain financial and other information and the extent of the information required will depend on the nature of the relevant activity and the particular circumstances of the entity. Notable updates are outlined below, and Conyers will be happy to assist you with understanding these recent changes and how they may impact your Declaration Form filings.

Provision of Beneficial Ownership Information

Among other updates, the Declaration Form now requires each in-scope entity (other than a publicly traded entity) to provide details of its beneficial owners as such term is defined in the Companies Act.

Where an entity is publicly traded (i.e., it is an entity whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange), it will not have to declare its beneficial owners but instead must provide the name of the country and the name of the exchange on which it is traded.

However, an in-scope entity that is otherwise exempt from the requirement to maintain a beneficial ownership register in accordance with the Companies Act must now report its beneficial ownership, as required under the ES Act. Such entities include:

- overseas (permit) companies;
- subsidiaries of an entity whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange; or
- financial institutions as defined in the Third Schedule to the Bermuda Monetary Authority 1969 (e.g., registered insurance companies or investment funds).

Inability to Submit Nil Gross Revenue Filings

In-scope entities that do not earn any gross revenue in respect of a relevant activity in a relevant financial period are only required to file a 'nil' Declaration Form in order to comply with its economic substance requirements. Due to ongoing Portal system updates that the Registrar is undertaking, entities are currently unable to file such a 'nil' Declaration Form. At this time, it is anticipated that this update to the Portal will be complete before the most common filing deadline of 30 June 2022. As such, please reach out to your relevant Conyers contact to begin the preparation of your 'nil' Declaration Form for submission at that time, should you require assistance.

Increased Compliance Reviews

In the industry notice of 16 May 2022, the Registrar announced its intention to immediately increase the number of desk-based reviews and onsite inspections of entities regarding their compliance with the economic substance requirements. Such reviews are a vital way for Bermuda to meet international regulatory standards. The Registrar has advised that entities can expect to receive notice from them over the coming weeks that they will be subject to a compliance review (desk-based or onsite).

Please reach out to your Conyers contact if you have any queries regarding these compliance reviews.

Planning for Your Future Compliance

Where an entity is (i) not a non-resident entity, (ii) has conducted a relevant activity and (iii) earned gross revenue in a relevant financial period in respect of such activity, its economic substance requirements will depend on the nature of the relevant activity and the particular circumstances of the entity.

Most entities are now several months into the relevant financial period that will be the subject of their 2023 Declaration Form filings. Compliance with the economic substance regime for in-scope entities can require careful planning and clients are encouraged to contact Conyers for advice regarding how to achieve their commercial goals while ensuring compliance with the economic substance regime.

For an overview of economic substance requirements for Bermuda-based entities, [click here](#). We recommend seeking legal advice in Bermuda concerning the individual situation of any entity or proposed entity.

How Can We Help?

Conyers has been closely involved with the implementation of Bermuda's economic substance legislation. The Declaration Form can only be filed via the Portal, which is accessed via the following link: www.registrarofcompanies.gov.bm

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 Declaration Forms. In so doing, we have acquired an unrivalled understanding in Bermuda of the economic substance requirements of various types of entity, across all relevant activities.

Please reach out to 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 advising on appropriate record keeping;
- navigating the Portal and completing and filing the Declaration Form, particularly in light of recent updates;
- advising on preparing for desk-based reviews and onsite inspections; and
- planning your future compliance with the economic substance regime.

If you would like Conyers to assist with any of the above, please contact us as soon as possible.

Corporate Services

In some instances, entities required to meet economic substance requirements may benefit from our fiduciary services, including local directorship services. Contact us to find out whether we can assist you in fulfilling your obligations under the economic substance regime.

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