



BERMUDA

ECONOMIC SUBSTANCE AMENDMENT (NO. 3) REGULATIONS 2019

BR 132 / 2019

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The Minister of Finance, in exercise of the power conferred by section 11 of the Economic Substance Act 2018, makes the following Regulations:

Citation

1 These Regulations, which amend the Economic Substance Regulations 2018 (the “principal Regulations”), may be cited as the Economic Substance Amendment (No. 3) Regulations 2019.

Amends regulation 4

2 The principal Regulations are amended in regulation 4 as follows—

(a) in paragraph (2), by revoking and replacing subparagraphs (a) and (b) as follows—

“(a) in relation to a pure equity holding entity—

(i) compliance with applicable corporate governance requirements set forth in the Companies Act, the Limited Liability Company Act 2016 and Partnerships Acts including

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keeping records of account, books and papers and financial statements; and

(ii) submission of an annual economic substance declaration form;

(b) in relation to a local entity, compliance with applicable corporate governance requirements set forth in the Companies Act and the Limited Liability Company Act 2016 including keeping records of account, books and papers and financial statements.”;

(b) by inserting after paragraph (2) the following—

“(3) A local entity to which paragraph (1)(b) applies complies with the economic substance requirements if it complies with the minimum economic substance requirements set out in paragraph (2)(b).”

Amends regulation 8

3 The principal Regulations are amended in regulation 8(1) by deleting the words “business for which registration is required” and substituting the words “insurance business”.

Amends regulation 10

4 The principal Regulations are amended in regulation 10—

(a) by revoking and replacing paragraph (1) as follows—

“(1) An entity engages in financing and leasing if it provides credit facilities of any kind for consideration to any person (a “customer”), and for the purposes of this definition—

(a) consideration includes consideration by way of interest;

(b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with—

(i) the supply of goods by hire purchase;

(ii) financial leasing (excluding land and interests in land); or

(iii) conditional sale or credit sale; and

(c) where any credit repayable by a customer to a person is assigned to another person, that other person shall be considered to be the person providing the credit facility,

but, any activities falling within the activities of banking, insurance or fund management do not constitute financing and leasing for the purposes of these Regulations.”;

(b) in paragraph (2)—

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- (i) by inserting after the word “financing” where it first appears, the words “and leasing”;
 - (ii) by inserting after subparagraph (a) the following—
 - “(aa) identifying and acquiring assets to be leased (in the case of leasing);”;
 - (iii) in subparagraph (b), by inserting after the word “financing” the words “for leasing”;
- (c) by revoking paragraphs (3) and (4).

Amends regulation 12

5 The principal Regulations are amended in regulation 12—

- (a) by revoking and replacing paragraph (1) as follows—

“(1) An entity engages in shipping if it engages in any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Bermuda—

- (a) transporting, by sea, passengers or animals, goods or mail for a charge;
 - (b) renting or chartering of ships for the purpose described in paragraph (a);
 - (c) sale of travel tickets and ancillary ticket-related services connected with the operation of a ship;
 - (d) use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
 - (e) functioning as a private seafarer recruitment and placement service.”;
- (b) by inserting after paragraph (2) the following—

“(3) For the purposes of this regulation—

“ship” does not include a pleasure vessel;

“pleasure vessel” has the meaning given in regulation 2 of the Merchant Shipping (Registration of Ships) Regulations 2003.”.

Amends regulation 14

6 The principal Regulations are amended in regulation 14—

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(a) in paragraph (1), by deleting the words “engages in activities including holding or managing any assets or equity participations” and substituting the words “is a pure equity holding entity”;

(b) by revoking and replacing paragraph (2) as follows—

“(2) An entity is a pure equity holding entity if it is an entity which as its primary function acquires and holds shares or an equitable interest in other entities, performs no commercial activity and which—

(a) holds the majority of the voting rights in another entity;

(b) is a shareholder, member or partner in another entity and has the right to appoint or remove a majority of the board of directors, managers or equivalent of that other entity; or

(c) is a shareholder, member or partner in another entity and controls alone, under an agreement with others, a majority of the voting rights in that other entity.”;

(c) in paragraph (3)—

(i) by deleting the words “that is engaged in a relevant activity”;

(ii) in subparagraph (b), by deleting the word “employees” and substituting the word “people”;

(d) by revoking paragraph (4).

Made this 23rd day of December 2019

Acting Minister of Finance

[Operative Date: 24 December 2019]