



BERMUDA

ECONOMIC SUBSTANCE ACT 2018

2018 : 63

TABLE OF CONTENTS

1	Citation
2	Interpretation
3	Economic substance requirements
4	Application of section 3
4A	Functions of the Agency regarding inspection of registered entities
4B	Power of inspection
4C	Power to require information and documents
4D	Ancillary powers to require production of documents
4E	Inspections and site visits
5	Filing of minimum required information with Agency relating to economic substance requirements
5A	Filing of information by non-resident entity
6	Provision of information to competent authority
7	Confidentiality
8	Immunity from suit and indemnification for foreign suits
9	Application of Public Access to Information Act 2010
10	Application of Personal Information Protection Act 2016
11	Regulations
12	Guidance
13	Power to impose Civil Penalties for breach of requirements
14	Procedure for imposing civil penalties
14A	Default fine or civil penalty not to apply in case of conviction
14B	Criminal offences
14C	Appeals to court
14D	Power of agency to apply to Court
15	Consequential amendment of Registrar of Companies (Compliance Measures) Act 2017
16	Transitional

ECONOMIC SUBSTANCE ACT 2018

17	Amendment of Investment Funds Act 2006
18	Amendment of Bermuda Monetary Authority Act 1969
19	Savings: section 17
20	Transitional: section 17
21	Commencement

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:

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;

“Agency” means the Corporate Income Tax Agency established under section 3 of the Corporate Income Tax Agency Act 2024; and

“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, but does not include a non-resident 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;

“Group” has the meaning given in the International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Regulations 2017;

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

ECONOMIC SUBSTANCE ACT 2018

- “holding entity” means 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” means a company to which the requirements of Part I of the Third Schedule to the Companies Act 1981 applies, which carries on business only in Bermuda, and which is not a part of an MNE Group;
- “local LLC” means a limited liability company to which the requirements of section 11 of the Limited Liability Company Act 2016 applies, which carries on business only in Bermuda, and which is not a part of an MNE Group;
- “local entity” means a local company, a local LLC or a local partnership;
- “local partnership” means a partnership which is not registered as an exempted partnership, carries on business only in Bermuda and which is not a part of an MNE group;
- “Minister” means the Minister responsible for companies;
- “MNE Group” means any Group that includes two or more enterprises for which the tax residence is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction;
- “non-resident entity” means an entity which is resident for tax purposes in a jurisdiction outside Bermuda that is not in Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes;
- “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;
- “partnership” means—
- (a) a partnership to which the Partnership Act 1902 applies;
 - (b) a limited partnership;
 - (c) an exempted partnership;
 - (d) an exempted limited partnership; or
 - (e) an overseas partnership,
- but shall not include a local partnership;

ECONOMIC SUBSTANCE ACT 2018

“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 and leasing;
- (e) *[Repealed by 2019 : 50 s. 2]*
- (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.

[Section 2 amended by 2019 : 19 s. 2 effective 28 June 2019; Section 2 definitions "entity" amended, and "non-resident entity" inserted by 2019 : 19 s. 2 effective 28 June 2019; Section 2 definitions "Group" and "MNE Group" inserted by 2019 : 50 s. 2 effective 24 December 2019; Section 2 definitions "holding entity" and "relevant activity" amended, and definitions "local company" and "local LLC" repealed and replaced by 2019 : 50 s. 2 effective 24 December 2019; Section 2 definitions "partnership" and "local entity" repealed and replaced, and definition "local partnership" inserted by 2021 : 28 s. 2 effective 30 June 2021; Section 2 definition "Agency" inserted by 2026 : 2 s. 3 effective 31 March 2026]

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;

ECONOMIC SUBSTANCE ACT 2018

- (c) the entity maintains adequate physical presence in Bermuda;
- (d) there are adequate full time employees in Bermuda with suitable qualifications; and
- (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.

Functions of the Agency regarding inspection of registered entities

4A The functions of the Agency relating to compliance by a registered entity under this Act or any regulations made under this Act include the following—

- (a) to encourage and ensure compliance with this Act and any regulations made under this Act;
- (b) to inspect a registered entity for the purposes set out in paragraph (a);
- (c) to investigate instances of a registered entity's failure to comply with the provisions of this Act or any regulations made under this Act;
- (d) to perform any other functions in respect of any matters to which this Act relate as the Agency considers appropriate, for the purpose of ensuring the effective application and enforcement of the obligations, standards and procedures to which registered entities and their officers are subject under this Act or any regulations made under this Act; and
- (e) to take such measures in accordance with the powers conferred on the Agency under this Act as is considered appropriate to ensure compliance with or to enforce the provisions of this Act or any regulations made under this Act.

[Section 4A inserted by 2026 : 2 s. 5 effective 31 March 2026]

Power of inspection

4B Every registered entity in respect of which the Agency has, under this Act or any regulations made under this Act, statutory functions, duties and responsibilities, shall be subject, pursuant to this Act or any regulations made under this Act, to the regulation and inspection by the Agency for the purpose of the Agency enforcing compliance by the registered entity with the registered entity's obligations and requirements under this Act or any regulations made under this Act.

[Section 4B inserted by 2026 : 2 s. 5 effective 31 March 2026]

ECONOMIC SUBSTANCE ACT 2018

Power to require information and documents

4C (1) The Agency may, by notice in writing to a registered entity or a connected person, require the registered entity or connected person, as the case may be—

- (a) to provide the information or documents as may be specified in the notice; or
- (b) to attend before the Agency (or a representative of the Agency) at a time and place specified in the notice and to answer questions.

(2) For the purposes of subsection (1), a connected person is a person or entity that is, or has at any time been, in relation to the registered entity—

- (a) if the registered entity is a company or limited liability company—
 - (i) an officer, director or manager;
 - (ii) an employee;
 - (iii) an agent; or
- (b) if the registered entity is a partnership, a person who is a member, manager, an employee or an agent of the partnership.

(3) The Agency may exercise powers under this section only if the document sought to be obtained as a result is reasonably required in connection with the exercise of the Agency's functions under this Act or any regulations made under this Act.

(4) Where the Agency requires information to be provided or produced pursuant to this section—

- (a) the notice shall set out the reasons why the Agency requires the document to be provided or produced; and
- (b) the information shall be provided or produced—
 - (i) before the end of the reasonable period as may be specified in the notice; and
 - (ii) at a place as may be specified.

(5) The production of a document does not affect any lien which a person has on the document.

(6) A person or registered entity shall not be required under this section to provide or produce information or to answer questions which the person or registered entity would be entitled to refuse to provide, produce or answer on the grounds of legal professional privilege in proceedings in the Court.

(7) Subject to subsection (8), a statement made by a person on behalf of a registered entity in compliance with a requirement imposed by this Act or any regulations made under this Act may not be used in evidence against him in criminal proceedings.

(8) Subsection (7) does not apply on a prosecution for—

- (a) perjury; or

ECONOMIC SUBSTANCE ACT 2018

- (b) some other offence where, in giving evidence, a person makes a statement inconsistent with the statement mentioned in subsection (7) if evidence relating to it is adduced and a question relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution.
- (9) For the purposes of this section, the following are connected persons—
 - (a) where the person is a body corporate, a person who is—
 - (i) an officer, a director or manager of the body corporate;
 - (ii) an employee of the body corporate;
 - (iii) an agent of the body corporate;
 - (b) where the registered entity is a partnership, a person who is a member, manager, an employee or agent of the partnership;
 - (c) where the registered entity is an unincorporated association of persons which is not a partnership, a person who is an officer, a manager, an employee or agent of the unincorporated association; and
 - (d) where the person is an individual, a person who is an employee or agent of that individual.

[Section 4C inserted by 2026 : 2 s. 5 effective 31 March 2026]

Ancillary powers to require production of documents

- 4D (1) The Agency's power to require a registered entity or connected person to produce documents pursuant to section 4C shall also include the following powers—
- (a) where the documents are produced, the power to take copies of or extracts from them;
 - (b) where the documents are produced, the power to require the following persons to provide, as far as they are reasonably able to do so, an explanation of any of the documents, including an explanation of any apparent omissions from them or of any omission of any document—
 - (i) the person producing the documents;
 - (ii) an officer of the registered entity;
 - (iii) a person who was within the period of five years immediately preceding the request, an officer of the registered entity; and
 - (iv) a person who is employed by the registered entity, including a person employed in a professional, consultancy or similar capacity;
 - (c) where the documents are not produced, the power to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are; and

ECONOMIC SUBSTANCE ACT 2018

- (d) the power to require the registered entity or any of the persons specified in paragraph (b) to give all assistance to the Agency as the registered entity or the person is reasonably able to give in connection with an examination of the documents in question.

(2) Section 4C (7) and (8) apply where a person is required to provide an explanation under this section.

[Section 4D inserted by 2026 : 2 s. 5 effective 31 March 2026]

Inspections and site visits

4E (1) This section applies where the Agency has reasonable cause to believe that any premises are being used in connection with the business of a registered entity.

(2) Subject to subsection (3), the Agency may, at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) inspect any documents found on the premises and make copies of, or take extracts from, any of the information; and
- (d) require any person on the premises to provide an explanation of any recorded information or to state where it may be found.

(3) The Agency may exercise powers under this section only where the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the Agency of its functions under this Act.

(4) The power of entry conferred by this section shall only be exercised during normal working hours and upon reasonable notice to the registered entity.

[Section 4E inserted by 2026 : 2 s. 5 effective 31 March 2026]

Filing of minimum required information with Agency relating to economic substance requirements

5 (1) Entities that are subject to the economic substance requirements shall file an economic substance declaration with the Agency on an annual basis in such form as the Agency may determine 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;

ECONOMIC SUBSTANCE ACT 2018

- (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 Agency.

[Section 5 subsection (1) amended by 2019 : 50 s. 3 effective 24 December 2019; Section 5 amended by 2026 : 2 s. 4 effective 31 March 2026]

Filing of information by non-resident entity

5A With respect to a non-resident entity that carries on a relevant activity, the non-resident entity shall provide to the Agency for each relevant financial period, the jurisdiction in which it claims to be resident for tax purposes together with sufficient evidence to support that tax residence.

[Section 5A inserted by 2019 : 19 s. 3 effective 28 June 2019; Section 5A amended by 2026 : 2 s. 4 effective 31 March 2026]

Provision of information to competent authority

- 6 (1) If—
- (a) the Agency 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 Agency shall provide to the competent authority the information filed pursuant to section 5(2) relating to that entity for that period.

(1A) With respect to a non-resident entity, the Agency shall provide to the competent authority the information provided to him under section 5A by the non-resident entity relating to the jurisdiction in which the entity claims to be resident for tax purposes together with evidence to support that tax residence.

ECONOMIC SUBSTANCE ACT 2018

(1B) Subsections (1) and (1A) shall not apply where the Agency has been authorised to act as, or has been delegated the function of acting as, competent authority.

(2) Where the competent authority receives information from the Agency under subsection (1) relating to an entity or where the Agency is acting as competent authority, 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 or other jurisdiction 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.

(2A) Where the competent authority receives information from the Agency under subsection (1A) relating to a non-resident entity or where the Agency is acting as competent authority, the competent authority shall provide the information so received relating to that non-resident entity for that relevant financial period to the foreign competent authority of the relevant EU member state or other jurisdiction in which the non-resident entity claims to be resident for tax purposes, and in which—

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

of the non-resident 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 or other jurisdiction 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.

(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 2 of the Beneficial Ownership Act 2025;

ECONOMIC SUBSTANCE ACT 2018

“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 or other jurisdiction, exercises functions corresponding to the functions of the competent authority for Bermuda;

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

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

[Section 6 subsections (1A) and (2A) inserted, and subsections (2), (3) and (5) amended by 2019 : 19 s. 4 effective 28 June 2019; Section 6 subsection (5) amended by BR 100 / 2025 para. 4 effective 3 November 2025; Section 6 amended by 2026 : 2 s. 4 effective 31 March 2026; Section 6 amended by 2026 : 2 s. 6 effective 31 March 2026]

Confidentiality

7 (1) Except in so far as may be necessary for the due performance of its functions relating to the economic substance requirements, the Agency and any officers or other persons who are acting as an officer, a servant, an agent or an adviser of the Agency 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 functions under this Act.

(2) Subsections (2) and (4) of section 20 of the Corporate Income Tax Agency Act 2024 apply for the purposes of this section.

[Section 7 amended by 2026 : 2 s. 4 effective 31 March 2026; Section 7 subsections (1) and (2) amended by 2026 : 2 s. 7 effective 31 March 2026]

Immunity from suit and indemnification for foreign suits

8 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, employee or agent of the Agency in respect of any act done bona-fide in pursuance or execution or intended execution of this Act or any other Act or any regulations made under this Act.

(2) The Agency shall not be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless it is indemnified by or on behalf of a person who wishes the Agency to act against any judgment, order or costs that may have been awarded against that person by deed guarantee or deposit, as the person may require.

[Section 8 repealed and substituted by 2026 : 2 s. 8 effective 31 March 2026]

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.

ECONOMIC SUBSTANCE ACT 2018

- (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.

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 Agency 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) was either—
 - (i) published on the Agency’s official website (www.cita.bm); or
 - (ii) prior to 1 March 2026, published by the Registrar in a manner approved by the Registrar as appropriate in his opinion to bring 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.

[Section 12 subsection (2) amended by 2019 : 50 s. 4 effective 24 December 2019; Section 12 amended by 2026 : 2 s. 4 effective 31 March 2026; Section 12 subsection (2)(b) repealed and substituted by 2026 : 2 s. 9 effective 31 March 2026]

ECONOMIC SUBSTANCE ACT 2018

Power to impose Civil Penalties for breach of requirements

- 13 (1) Where any registered entity or person fails, without reasonable excuse—
- (a) to file the information required by section 5 or 5A by the date prescribed by regulation;
 - (b) to comply with any notice issued by the Agency pursuant to section 4C; or
 - (c) to permit the Agency to access premises pursuant to section 4E,

it shall be subject to a default fine of an amount the Agency considers appropriate for each day during which the default continues, and the daily default fine shall be not less than \$100 nor more than \$500.

(2) Where, pursuant to an inspection or otherwise, the Agency has determined that a registered entity has failed to comply with the requirements of section 3 for a relevant financial period, the Agency shall issue a notice in writing (a “first notice”) to the registered entity—

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

(3) Following the expiry of the time period specified in a first notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, it shall issue a further notice (a “second notice”) specifying the matters set forth in subsection (2)(a) and (b).

(4) Following the expiry of the time period specified in a second notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, it shall issue a further notice (a “third notice”) specifying the matters set forth in subsection (2)(a) and (b).

(5) Following the expiry of the time period specified in a third notice, if the Agency determines that the registered entity has again failed to comply with the requirements of section 3 for a relevant financial period, and subject to any appeal made by the registered entity under section 14C within the time period for an appeal, the Agency shall exercise its powers under section 14D.

(6) Where a registered entity fails, within the specified time period, to comply with any requirements in a first, second or third notice to take the steps as are specified in the notice to remedy its failure to comply with section 3 of this Act, then, subject to section 14, the Agency shall impose a civil penalty which shall be—

- (a) with respect to failure to comply with a first notice, an amount of not less than \$7,500 but not exceeding \$50,000;
- (b) with respect to failure to comply with a second notice, an amount of not less than \$25,000 but not exceeding \$100,000; and

ECONOMIC SUBSTANCE ACT 2018

- (c) with respect to failure to comply with a third notice, an amount of not less than \$50,000 but not exceeding \$250,000. ”

[Section 13 repealed and substituted by 2026 : 2 s. 10 effective 31 March 2026]

Procedure for imposing civil penalties

14 (1) Where the Agency proposes to impose a civil penalty under section 13(6), it shall give the registered entity concerned notice (a “warning notice”) of—

- (a) its proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make written representations to the Agency within a specified period (which shall not be less than 28 days).

(2) After considering any representations made by the registered entity, the Agency shall decide, within three months from the end of the period specified in subsection (1)(c) whether or not to impose a civil penalty.

(3) Following the period specified in subsection (2), the Agency shall issue a decision notice of—

- (a) the decision of whether or not to impose a civil penalty;
- (b) the amount of any penalty;
- (c) the reasons for its decision; and
- (d) the right to appeal to the Court within 28 days of the date of the decision notice.

(4) In assessing the amount of any default fine or civil penalty, the Agency shall determine the amount based upon the amount it considers is effective, proportionate and dissuasive in the context of the relevant default fine or civil penalty.

(5) The Agency may recover any default fine or civil penalty as a debt owing to it in any court of competent jurisdiction.

[Section 14 repealed and substituted by 2026 : 2 s. 10 effective 31 March 2026]

Default fine or civil penalty not to apply in case of conviction

14A (1) Where a person is convicted of an offence under this Act, the person shall not also be liable to a default fine imposed under section 13 or a civil penalty imposed under section 13 in relation to the same matter.

(2) When a person pays a default fine imposed under section 13 or a civil penalty imposed under section 13, the person shall not also be charged with an offence under this Act in relation to the same matter.

(3) A default fine or civil penalty is a debt due to the crown and may be recovered by the Agency in the Court or in a court of summary jurisdiction.

[Section 14A inserted by 2026 : 2 s. 11 effective 31 March 2026]

ECONOMIC SUBSTANCE ACT 2018

Criminal offences

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

(2) Where any person wilfully obstructs the Agency in the exercise of its powers under this Act or knowingly fails to comply with any notice issued by the Agency under this Act, then the person commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both.

(3) Where an offence under subsection (1) or (2) is 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 on summary conviction to a fine of \$10, 000.

(4) In subsection (3), “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 or the general partner of the partnership.

[Section 14B inserted by 2026 : 2 s. 11 effective 31 March 2026]

Appeals to court

14C (1) A person may appeal to the Court against a decision of the Agency to impose a default fine or a civil penalty.

(2) A decision appealed against under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) where an appeal is brought, until it is determined or withdrawn.

[Section 14C inserted by 2026 : 2 s. 11 effective 31 March 2026]

Power of agency to apply to Court

14D (1) Where the Agency determines that a registered entity has failed to comply with a third notice issued pursuant to section 13 then, subject to section 14C, the Agency may apply to the Court for an order under this section.

(2) Where, on receiving an application under subsection (1), the Court is of the opinion that the registered entity that is the subject of the application has failed to comply with section 3 of this Act following the issuance of a third notice pursuant to section 13, then the Court may make an 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 another order as it sees fit in the circumstances.

ECONOMIC SUBSTANCE ACT 2018

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

- (a) for—
 - (i) regulation of; or
 - (ii) restricting, the conduct of the registered entity’s affairs or business in the future;
- (b) authorising further proceedings on terms as the Court may direct, including winding-up, dissolution or 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 registered 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 terms and conditions as the Court thinks fit.

(5) Where the Court makes an order under subsection (3)(a)(ii) restricting the conduct of the registered entity’s business altogether it may on hearing the Agency make an order as it considers desirable to enable the registered 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 Agency to furnish to the Court a report with respect to any facts or matters which the Court considers relevant to the application.

[Section 14D inserted by 2026 : 2 s. 11 effective 31 March 2026]

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;

“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.

ECONOMIC SUBSTANCE ACT 2018

(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.

(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”.

ECONOMIC SUBSTANCE ACT 2018

(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.

(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.

ECONOMIC SUBSTANCE ACT 2018

(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—

ECONOMIC SUBSTANCE ACT 2018

“(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.”

(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—

- (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.

ECONOMIC SUBSTANCE ACT 2018

(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”.

ECONOMIC SUBSTANCE ACT 2018

(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—

(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—

ECONOMIC SUBSTANCE ACT 2018

- (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”;
- (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—

ECONOMIC SUBSTANCE ACT 2018

“(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—

“(h) obligations with respect to depositary functions and safekeeping obligations;

(i) for additional requirements related to—

ECONOMIC SUBSTANCE ACT 2018

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

ECONOMIC SUBSTANCE ACT 2018

“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.

[Assent Date: 21 December 2018]

[Operative Date: 31 December 2018]

ECONOMIC SUBSTANCE ACT 2018

[Amended by:

2019 : 19

2019 : 50

2021 : 28

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2026 : 2]