



## UPDATE - Amendments to Bermuda's Economic Substance Legislation

### Author:

Michael Frith, Director

As set out in our previous client alert, the *Economic Substance Act 2018* and the Economic Substance Regulations 2018 came into force in Bermuda at the end of 2018. On 22 February 2019, following further discussions with the European Union, the Bermuda Government made a number of amendments to certain key regulations.

The amendments were generally clarifying in nature, but some of the more significant amendments include:

- (1) **the addition of new definitions of “holding entity” and “intellectual property” as relevant activities**, including description of the core income generating activities for such entities; and
- (2) **changes to the enhanced IP economic substance requirements**, including in relation to “high risk IP activities”.

Attached is a revised Appendix 2 from our original client alert, incorporating the changes to the relevant definitions and core income generating activities. Registered entities which believe they may be undertaking IP business should seek legal advice regarding the changes to enhanced IP economic substance requirements.

The EU continues its process of reviewing Bermuda's economic substance legislation, and the legislation enacted by other jurisdictions. The final decision as to whether or to what extent the legislation meets the EU's requirements is expected before the end of Q1 2019. Following that decision, additional amendments may be made to Bermuda's legislation to bring it into line with that of other jurisdictions. Any such changes will be the subject of future client bulletins.

### How can we help?

We recognise that this legislation will in some cases require changes to existing business models. Conyers Dill & Pearman is ready to assist clients in understanding their obligations under the legislation and in implementing any such changes that may be required.

For further information, please contact one of our lawyers listed below or your usual Conyers lawyer.

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### AUTHOR:

**MICHAEL FRITH**  
DIRECTOR  
michael.frith@conyersdill.com  
+1 441 278 7969

### OTHER CONTACT:

**GRAHAM B.R. COLLIS**  
DIRECTOR, HEAD OF BERMUDA CORPORATE  
graham.collis@conyersdill.com  
+1 441 299 4965

**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@conyersdill.com](mailto:media@conyersdill.com)

## APPENDIX 2

## LIST OF CORE INCOME GENERATING ACTIVITIES FOR EACH RELEVANT ACTIVITY

Relevant Activity	Definition and Core Income Generating Activities
<b>BANKING</b>	<p>Engaging in deposit-taking business for which a licence is required in accordance with the <i>Banks and Deposit Companies Act 1999</i></p> <ul style="list-style-type: none"> <li>• raising funds</li> <li>• managing risk including credit, currency and interest risk</li> <li>• taking hedging positions</li> <li>• providing loans, credit or other financial services to customers</li> <li>• managing regulatory capital</li> <li>• preparing regulatory reports</li> </ul>
<b>INSURANCE</b>	<p>Engaging in business for which registration is required in accordance with the <i>Insurance Act 1978</i></p> <ul style="list-style-type: none"> <li>• predicting and calculating risk</li> <li>• insuring or reinsuring against risk</li> <li>• providing client services</li> <li>• preparing regulatory reports</li> </ul>
<b>FUND MANAGEMENT</b>	<p>Managing investments for funds and in respect of which a licence is required in accordance with the <i>Investment Business Act 2003</i> or for which a licence would be required if such activity were taking place in Bermuda</p> <ul style="list-style-type: none"> <li>• taking decisions on the holding and selling of investments</li> <li>• calculating risk and reserves</li> <li>• taking decisions on currency or interest fluctuations and hedging positions</li> <li>• preparing relevant regulatory or other reports for government authorities and investors</li> </ul>
<b>FINANCING</b>	<p>Providing funds, other than by way of subscription for shares or other equity contributions, for the business activities of one or more other entities (whether or not affiliated)</p> <ul style="list-style-type: none"> <li>• agreeing funding terms</li> <li>• setting the terms and duration of any financing</li> <li>• monitoring and revising agreements</li> <li>• managing risk associated with such agreements</li> </ul>
<b>LEASING</b>	<p>Providing leasing arrangements in respect of which it is the lessor of one or more assets leased to one or more affiliates or third parties</p> <ul style="list-style-type: none"> <li>• identifying and acquiring assets to be leased</li> <li>• setting the terms and duration of any leasing</li> <li>• monitoring and revising agreements</li> <li>• managing any risk associated with such agreements</li> </ul>

<p><b>HEADQUARTERS</b></p>	<p>Engaging in the general management and administration of its affiliates within or outside Bermuda</p> <ul style="list-style-type: none"> <li>• taking relevant strategic or management decisions</li> <li>• incurring expenditures on behalf of affiliates</li> <li>• coordinating group activities</li> </ul>
<p><b>SHIPPING</b></p>	<p>Engaging in ownership, leasing, operation or management of a ship that is used to transport goods</p> <ul style="list-style-type: none"> <li>• managing the crew (including hiring, paying and overseeing crew members)</li> <li>• hauling and maintaining ships</li> <li>• overseeing and tracking deliveries</li> <li>• determining what goods to order and when to deliver them</li> <li>• organising and overseeing voyages</li> </ul>
<p><b>DISTRIBUTION &amp; SERVICE CENTRE</b></p>	<p>Engaging in resale of goods purchased from a foreign affiliate (distribution centre); or primarily providing consulting or administrative services to a foreign affiliate (service centre)</p> <ul style="list-style-type: none"> <li>• transporting and storing goods (distribution centre)</li> <li>• managing stock and taking orders (distribution centre)</li> <li>• providing consulting or administrative services to a foreign affiliate (service centre)</li> </ul>
<p><b>INTELLECTUAL PROPERTY</b></p>	<p>Engaging in the creation or otherwise exploitation of IP assets</p> <ul style="list-style-type: none"> <li>• conducting research and development in relation to IP assets and;</li> <li>• marketing, branding, and distribution of IP assets;</li> </ul> <p>OR, if the above activities are not undertaken in Bermuda:</p> <ul style="list-style-type: none"> <li>• taking the strategic decisions and managing and bearing the principal risks related to the development and subsequent exploitation of an IP asset;</li> <li>• carrying on the underlying trading activities through which IP assets are exploited and which lead to the generation of IP income from third parties</li> </ul>
<p><b>HOLDING ENTITY</b></p>	<p>Engaging in activities including holding or managing any assets or equity participations</p> <ul style="list-style-type: none"> <li>• For a holding entity that holds a variety of assets and earns different types of income (such as interest, rents and royalties), the core income generating activities are those activities that are associated with the income that the holding company earns.</li> </ul> <p>A <b>pure equity holding entity</b> is an entity that only holds or manages equity participations, and earns passive income from dividends, distributions, capital gains and other incidental income only</p> <ul style="list-style-type: none"> <li>• Have adequate employees for holding and managing equity participations, and adequate premises in Bermuda.</li> </ul>