CAYMAN ISLANDS

INTERNATIONAL TAX CO-OPERATION (ECONOMIC SUBSTANCE) ACT

(2024 Revision)

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CAYMAN ISLANDS

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(2024 Revision)

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CAYMAN ISLANDS

INTERNATIONAL TAX CO-OPERATION (ECONOMIC SUBSTANCE) ACT

(2024 Revision)

Short title

1. This Act may be cited as the *International Tax Co-operation (Economic Substance) Act (2024 Revision).*

Interpretation

2. (1) In this Act —

"**Authority**" means the Tax Information Authority designated under section 4 of the *Tax Information Authority Act* (*2021 Revision*) or a person designated by the Authority to act on behalf of the Authority;

"**Cayman Islands Monetary Authority**" means the Authority established as such under section 5(1) of the *Monetary Authority Act (2020 Revision)*;

"**director**", in relation to an entity, means any director, member or other person in whom the management of the entity is vested and "**board of directors**" shall be construed accordingly;

"**economic substance test**" shall be construed in accordance with section 4; and

"**Registrar**" —

(a) in the case of a company that is incorporated or registered under the *Companies Act (2023 Revision)*, has the meaning given to that expression by section 2(1) of that Act;

(b) in the case of a limited liability company that is registered under the *Limited Liability Companies Act (2023 Revision)*, has the meaning given to that expression by section 2 of that Act; or

(c) in the case of a limited liability partnership that is registered under the *Limited Liability Partnership Act (2023 Revision)*, has the meaning given to that expression by section 2(1) of that Act.

(2) In this Act, words and expressions listed in the Schedule are to be construed in accordance with that Schedule.

Functions of the Authority

3. Notwithstanding any other functions of the Authority under any other law, the Authority shall have the following functions —

(a) to administer this Act;

(b) to determine whether a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity satisfies such test;

(c) to monitor compliance with this Act; and

(d) any other function specified in this Act.

Requirement to satisfy economic substance test

4. (1) Subject to subsections (5), (6) and (7) and to regulations made under section 15, a relevant entity that carries on a relevant activity is required to satisfy the economic substance test in relation to that relevant activity.

(2) Subject to subsections (3), (4) and (5), a relevant entity satisfies the economic substance test in relation to a relevant activity, if the relevant entity —

(a) conducts core income generating activities in relation to that relevant activity;

(b) is directed and managed in an appropriate manner in the Islands in relation to that relevant activity; and

(c) having regard to the level of relevant income derived from the relevant activity carried out in the Islands —

(i) has an adequate amount of operating expenditure incurred in the Islands;

(ii) has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and

(iii) has an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands.

(3) A relevant entity complies with subsection (2)(b) if in relation to a relevant activity —

(a) the relevant entity's board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors;

(b) meetings of the board of directors are held in the Islands at adequate frequencies given the level of decision making required;

(c) during a meeting of the board of directors described in paragraph (b), there is a quorum of directors present in the Islands;

(d) the minutes of the meetings of the board of directors described in paragraph (b) record the making of strategic decisions of the relevant entity at the meeting; and

(e) the minutes of all meetings of the board of directors and appropriate records of the relevant entity are kept in the Islands.

(4) A relevant entity satisfies the economic substance test in relation to a relevant activity if its core income generating activities in relation to that relevant activity are conducted by any other person and the relevant entity is able to monitor and control the carrying out of core income generating activities by that other person.

(5) A relevant entity that is only carrying on a relevant activity that is the business of a pure equity holding company is subject to a reduced economic substance test which is satisfied if the relevant entity confirms that —

(a) it has complied with all applicable filing requirements under the *Companies Act (2023 Revision)*; and

(b) it has adequate human resources and adequate premises in the Islands for holding and managing equity participations in other entities.

(6) A relevant entity that is carrying on a relevant activity shall satisfy the economic substance test from the date prescribed.

(7) A relevant entity that is carrying on a relevant activity that is a high risk intellectual property business is presumed not to have met the economic substance test for a financial year, even if there are core income generating activities relevant to the business and the intellectual property assets being carried out in the Islands, unless the relevant entity —

(a) can demonstrate that there was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset, exercised by an adequate number of full-time employees with the necessary qualifications that permanently reside and perform their activities within the Islands; and

(b) provides sufficient information under section 7(4)(j) to the Authority in relation to that financial year to rebut this presumption.

(8) A relevant entity that is carrying on more than one relevant activity is required to satisfy the economic substance test in relation to each relevant activity.

Guidance

5. (1) The Authority shall, after private sector consultation, issue guidance on satisfying the economic substance test, including guidance as to the meaning of "**adequate**" and "**appropriate**" for the purposes of this Act.

(2) A relevant entity that is required to satisfy the economic substance test shall have regard to the guidance issued under subsection (1).

(3) The Authority shall publish the guidance issued under subsection (1) in the Gazette and in any other manner that the Authority considers will bring the guidance to the attention of the persons who are most likely to be affected by it.

(4) The Authority may, after private sector consultation, revise guidance issued under subsection (1) from time to time and any reference to guidance includes a reference to revised guidance.

Determination of whether economic substance test is satisfied

6. (1) The Authority shall have the power, in accordance with this Act, regulations made under this Act and the guidance issued under section 5, to make a determination as to whether a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity satisfies such economic substance test for any financial year of the relevant entity commencing on or after the date prescribed under section 4(6), except that such a determination shall not be made later than six years after the end of such financial year.

(2) The limitation period of six years under subsection (1) shall not apply if the Authority is not able to make a determination within six years after the end of a relevant entity's financial year by reason of any material misrepresentation, action taken in bad faith or fraudulent action by or on behalf of the relevant entity.

Requirement to provide information

7. (1) An entity shall annually notify the Authority of the following —

(a) whether or not it is carrying on a relevant activity;

(b) if it is carrying on a relevant activity, whether or not it is a relevant entity;

(c) in the case of an entity that is carrying on a relevant activity and is tax resident in a jurisdiction outside the Islands —

(i) the name and address of its immediate parent, ultimate parent and ultimate beneficial owner and any other information reasonably required to identify its immediate parent, ultimate parent and ultimate beneficial owner;

(ii) the date of the end of its financial year; and

(iii) the jurisdiction in which the entity is claiming to be tax resident and any other information as may reasonably be required to support that claim;

(d) in the case of a relevant entity that is carrying on a relevant activity —

(i) the date of the end of its financial year; and

(ii) the name and address of the officer who is responsible for providing information to the Authority,

and shall provide appropriate evidence to support the information provided in the notification as may reasonably be required by the Authority.

(2) The notification under subsection (1) shall be made at the time specified by the Authority and in the form and the manner approved by the Authority.

(3) Subject to subsection (4), a relevant entity that is carrying on a relevant activity and is required to satisfy the economic substance test shall, no later than twelve months after the last day of the end of each financial year of the relevant entity commencing on or after the prescribed date, prepare and submit to the Authority a report for the purpose of the Authority's determination under section 6.

(4) The report under subsection (3) shall be in the form approved by the Authority and shall include the following information with respect to the relevant entity —

(a) the type of relevant activity conducted by it;

(b) the amount and type of relevant income in respect of the relevant activity;

(c) the amount and type of expenses and assets in respect of the relevant activity;

(d) the location of the place of business or plant, property or equipment used for the relevant activity of the relevant entity in the Islands;

(e) the number of full-time employees or other personnel with appropriate qualifications who are responsible for carrying on the relevant entity's relevant activity;

(ea) the name and address of any person other than the relevant entity who is conducting the relevant entity's core income generating activities in relation to its relevant activity;

(f) information showing the core income generating activities in respect of the relevant activity that have been conducted;

(g) a declaration as to whether or not the relevant entity satisfies the economic substance test in accordance with this Act;

(h) in the case of a relevant activity that is an intellectual property business, a declaration as to whether or not it is a high risk intellectual property business and, if it is, whether or not the relevant entity will provide the information under paragraph (j) to rebut the presumption in section 4(7) within the time specified in subsection (3);

(i) details of any MNE Group in respect of which the relevant entity is a Constituent Entity for the purposes of the *Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017*;

(j) in the case of a relevant entity that is carrying on a high risk intellectual property business —

(i) detailed business plans which demonstrate the commercial rationale for holding the intellectual property assets in the Islands;

(ii) employee information, including level of experience, type of contracts, qualifications and duration of employment;

(iii) evidence that decision making is taking place within the Islands; and

(iv) any other information as may be reasonably required by the Authority to determine whether the relevant entity meets the economic substance test; and

(k) such other information as may be prescribed.

(5) A relevant entity shall, subject to subsection (6), provide the Authority with such additional information (including a copy of a relevant book, document or other record, or of electronically stored information) as shall be reasonably required by the Authority in making a determination under section 6.

(6) The information referred to in subsection (5) shall be in the form approved by the Authority and shall be provided within a reasonable time specified by the Authority.

(6A) Where under section 4(4), a person is conducting core income generating activities in relation to the relevant activity of a relevant entity, that person may verify the information provided to the Authority under subsection (4) within thirty days after the day on which the information is provided.

(7) The Authority may, by notice served on any person that the Authority reasonably believes to have relevant information, require that person —

(a) within a reasonable time specified by the Authority in the notice, to provide the Authority with information (including a copy of a relevant book, document or other record, or of electronically stored information); or

(b) at a reasonable time, during office hours, specified by the Authority, to make available to the Authority for inspection, a book, document or other record, or any electronically stored information,

that is in the person's control or possession that the Authority reasonably requires in discharging its functions under this Act.

(8) A relevant entity that is required to satisfy the economic substance test in relation to a relevant activity shall retain for six years after the end of a financial

year, a book, document or other record, including any information stored by electronic means that relates to the information required to be provided to the Authority under this section.

(8A) Where a relevant entity that is required to satisfy the economic substance test fails to prepare and submit to the Authority the report required under subsection (3) within the time specified in that subsection, the Authority shall by notice in writing impose a penalty of five thousand dollars and an additional penalty of five hundred dollars for each day during which the failure to comply continues.

(8B) The Authority shall not impose a penalty under subsection (8A) after the earlier of the following —

(a) one year after becoming aware of the contravention; or

(b) six years after the contravention occurred.

(8C) A penalty under subsection (8A) must be paid before the end of the period of thirty days commencing with the date mentioned in subsection (8D).

(8D) That date referred to in subsection (8C) is the later of —

(a) the date from which the penalty is due under subsection (8A); or

(b) if a notice of appeal is given under subsection (8F), the date on which the appeal is finally determined or withdrawn.

(8E) A penalty under subsection (8A) shall be paid into the general revenue of the Islands and may be recovered as a civil debt due to the general revenue of the Islands.

(8F) A relevant entity that has a penalty imposed pursuant to subsection (8A) may, within thirty days after the notice is given under that subsection, appeal against the penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

(8G) A relevant entity upon whom a penalty is imposed under subsection (8A) may appeal against the penalty on the ground that liability to a penalty does not arise.

(8H) An appeal under this section may be made on questions of law or fact or both and the Grand Court may affirm or reverse the penalty or substitute its own penalty for that imposed by the Authority.

(9) A person who, having been required under this section to provide or make available to the Authority any information (including a copy of a relevant book, document or other record, or of electronically stored information) that is in that person's possession or under that person's control —

(a) without lawful excuse fails so to do, within the time specified by the Authority under this section, or by the Authority by notice; or

(b) knowingly or willfully alters, destroys, mutilates, defaces, hides or removes any such information,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

(10) In this section "**entity**" means —

(a) a company that is —

(i) incorporated under the *Companies Act (2023 Revision)*; or

(ii) a limited liability company registered under the *Limited Liability Companies Act (2023 Revision)*;

(b) a limited liability partnership that is registered in accordance with the *Limited Liability Partnership Act (2023 Revision)*; or

(c) a company that is incorporated outside of the Islands and registered under the *Companies Act (2023 Revision)*.

Failure to satisfy economic substance test

8. (1) If the Authority determines under section 6 that a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity has failed to satisfy such economic substance test for a financial year, the Authority shall issue a notice to the relevant entity notifying the relevant entity of —

(a) the Authority's determination that the relevant entity has failed to satisfy the economic substance test in relation to the relevant activity for that financial year;

(b) the reasons for the determination;

(c) the amount of any penalty imposed under subsection (2);

(d) the date on which the penalty under subsection (2) is due being not less than twenty-eight days after the date of issue of the notice;

(e) the Authority's direction as to the action to be taken by the relevant entity to satisfy the economic substance test in relation to the relevant activity and the date by which such action must be taken; and

(f) the relevant entity's right of appeal under section 9.

(2) The Authority shall impose a penalty of ten thousand dollars on a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity for failing to satisfy such economic substance test.

(3) If, for the financial year following a financial year in which a notice was issued under subsection (1) ("subsequent financial year"), the Authority determines a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity has failed to satisfy the economic substance test in relation to such relevant activity, the Authority shall issue a further notice to the relevant entity notifying the relevant entity of —

(a) the Authority's determination that the relevant entity has not satisfied the economic substance test in relation to the relevant activity for the subsequent financial year;

(b) the reasons for the determination;

(c) the amount of any penalty imposed on the relevant entity under subsection (4), in addition to the penalty previously imposed under subsection (1);

(d) the date from which the penalty under subsection (4) is due, being not less than twenty-eight days after the issue of the notice;

(e) the Authority shall make a report to the Registrar under paragraph (6);

(f) the Authority's direction as to the action to be taken by the relevant entity to satisfy the economic substance test in relation to the relevant activity and the date by which such action must be taken; and

(g) the relevant entity's right of appeal under section 9.

(4) The Authority shall impose a penalty of one hundred thousand dollars on a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity for failing to comply with the economic substance test in relation to that relevant activity for a subsequent financial year.

(5) The Authority shall not impose a penalty under this section after the earlier of the following —

(a) one year after becoming aware of the contravention; or

(b) six years after the contravention occurred.

(6) Following the issue of a notice under subsection (3), the Authority shall provide the Registrar with a report of the matters referred to in that notice together with any additional information (whether or not provided to the Authority under section 7).

(7) A penalty under this section must be paid before the end of the period of twenty-eight days commencing with the date mentioned in subsection (8).

(8) That date referred to in subsection (7) is the later of —

(a) the date from which the penalty is due under subsection (1)(d) or (3)(d); or

(b) if a notice of appeal is given pursuant to section 9, the date on which the appeal is finally determined or withdrawn.

(9) A penalty under this section shall be paid into the general revenue of the Islands and may be recovered as a civil debt due to the general revenue of the Islands.

(10) If the Registrar receives a report under subsection (6), the Registrar shall apply to the Grand Court for an order under subsection (11).

(11) If, on receiving an application under subsection (10), the Grand Court is satisfied that the relevant entity was required to satisfy the economic substance

test in relation to a relevant activity and failed to satisfy such economic substance test, the Grand Court may make such order as it sees fit including —

(a) an order requiring the relevant entity to take such action as specified in the order, including for the purpose of satisfying such economic substance test; or

(b) in the case of a relevant entity that is —

(i) a company that is registered or incorporated under the *Companies Act (2023 Revision)*, an order that it is a defunct company to which Part VI of that Act applies;

(ii) a limited liability company that is registered under the *Limited Liability Companies Act (2023 Revision)*, an order that it is a defunct company to which section 40 of that Act applies; or

(iii) a limited liability partnership that is registered under the *Limited Liability Partnership Act (2023 Revision)*, an order that the limited liability partnership be struck off in accordance with section 31 of that Act as if it is a limited liability partnership that the Registrar has reasonable cause to believe is not carrying on business or is not in operation.

Appeal

9. (1) A relevant entity that has been notified of a determination of a failure to satisfy the economic substance test and has a penalty imposed pursuant to section 8 may, within twenty-eight days after the notification, appeal against the determination and penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

(2) An appeal under this section may be made on questions of law or fact or both and the Grand Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Authority.

(3) A person upon whom a penalty is imposed may appeal against the penalty on the ground that liability to a penalty does not arise.

Sharing of information

10. (1) The Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Act in respect of a relevant entity that fails to satisfy the economic substance test in relation to a relevant activity for a financial year to —

(a) the competent authority in the relevant jurisdiction in which the immediate parent, ultimate parent and ultimate beneficial owner of the relevant entity resides; and

(b) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the relevant entity is incorporated.

(2) In the case of a relevant entity that is carrying on a high risk intellectual property business, the Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Act in respect of the relevant entity to —

(a) the competent authority in the relevant jurisdiction in which the immediate parent, ultimate parent and ultimate beneficial owner of the relevant entity resides; and

(b) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the relevant entity is incorporated.

(3) In the case of an entity that is carrying on a relevant activity and is tax resident in a jurisdiction outside of the Islands, the Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Act —

(a) to the competent authority in the jurisdiction in which that entity is tax resident;

(b) to the competent authority in the jurisdiction in which the immediate parent, ultimate parent and ultimate beneficial owner of the entity resides; and

(c) if the relevant entity is incorporated outside the Islands, to the competent authority of the relevant jurisdiction in which the entity is incorporated.

(4) The Authority may, in accordance with relevant international standards and scheduled agreements, provide any information provided to it under this Act as appropriate.

(5) In this section "**entity**" means —

(a) a company that is —

(i) incorporated under the *Companies Act (2023 Revision)*; or

(ii) a limited liability company registered under the *Limited Liability Companies Act (2023 Revision)*;

(b) a limited liability partnership that is registered in accordance with the *Limited Liability Partnership Act (2023 Revision)*; or

(c) a company that is incorporated outside of the Islands and registered under the *Companies Act (2023 Revision)*.

Confidentiality

11. (1) A person who discloses any information —

(a) relating to the affairs of the Authority;

(b) relating to the affairs of a relevant entity;

(c) relating to the affairs of any officer, customer, investor, member, client or policyholder of a relevant entity; or

(d) shared by or with a competent authority or any communication related thereto,

that the person has acquired in the course of the person's duties, or in the exercise of the Authority's functions, under this Act, commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year, or to both, and on conviction on indictment to a fine of fifty thousand dollars, or to imprisonment for a term of three years, or to both.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully made in accordance with section 3(1) of the *Confidential Information Disclosure Act, 2016 [Law 23 of 2016]*;

(b) if the information disclosed is or has been available to the public from any other source;

(c) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any relevant entity, or of any officer, customer, investor, member, client or policyholder of a relevant entity to which the information relates to be ascertained; or

(d) by the Authority under this Act.

Immunity

12. Neither the Authority, nor any person designated to act on the Authority's behalf, shall be liable in damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was in bad faith.

Misleading information

13. (1) A person shall not knowingly or wilfully supply false or misleading information to the Authority under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of five years, or to both.

Offence by officers of a body corporate

14. (1) Where an offence under this Act that has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person who was purporting to act in such a capacity, the officer or any person purporting to act in that capacity, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Regulations

15. (1) The Cabinet may make regulations —

(a) prescribing anything that may be prescribed under this Act;

(b) amending the Schedule;

(c) further defining the scope of relevant entities that are required to satisfy the economic substance test;

(d) further defining the scope of relevant activities;

(f) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act and its administration.

(2) Regulations made under this Act may —

(a) make different provisions in relation to different cases or circumstances; or

(b) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary or expedient for the purposes of such regulations.

Savings, transitional and consequential provisions

16. (1) Notwithstanding sections 4 and 15, the Cabinet may make regulations to provide for such savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of this Act as are necessary or expedient.

(2) Regulations made under subsection (1) may be given retrospective operation to a day not earlier than the day that this Act comes into force.

SCHEDULE

(section 2(2))

Construction of words and expressions

1. (1) In this Act —

"**adequate**" shall be construed in accordance with the guidance issued under section 5;

"**appropriate**" shall be construed in accordance with the guidance issued under section 5;

"**arrangement**" includes —

(a) a scheme, agreement or understanding, whether or not it is legally enforceable; and

(b) a convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise);

"**banking business**" has the meaning given to that expression by section 2 of the *Banks and Trust Companies Act (2021 Revision)*;

"**carrying on business in the Islands**" has the same meaning as "carry on business in the Islands" in section 2(2) of the *Local Companies (Control) Act (2019 Revision)* except that references in that definition to "company" and "exempted company" shall be interpreted to include "partnership";

"**core income generating activities**" means activities that are of central importance to a relevant entity in terms of generating relevant income and, must be carried on in the Cayman Islands including —

(a) in relation to banking business —

(i) raising funds, managing risk including credit, currency and interest risk;

(ii) taking hedging positions;

(iii) providing loans, credit or other financial services to customers;

(iv) managing capital and preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;

(b) in relation to a distribution and service centre business —

(i) transporting and storing goods, components and materials;

(ii) managing stocks;

(iii) taking orders;

(iv) providing consulting or other administrative services;

(c) in relation to financing and leasing business —

(i) negotiating or agreeing funding terms;

(ii) identifying and acquiring assets to be leased;

(iii) setting the terms and duration of financing or leasing;

(iv) monitoring and revising financing or leasing agreements and managing risks associated with such financing or leasing agreements;

(d) in relation to fund management business —

(i) taking decisions on the holding and selling of investments;

(ii) calculating risk and reserves;

(iii) taking decisions on currency or interest fluctuations and hedging positions;

(iv) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;

(e) in relation to headquarters business —

(i) taking relevant management decisions;

(ii) incurring expenditures on behalf of Group entities;

(iii) co-ordinating Group activities;

(f) in relation to insurance business —

(i) predicting or calculating risk or oversight of prediction or calculation of risk;

(ii) insuring or re-insuring against risk;

(iii) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;

(g) in relation to intellectual property business —

(i) where the intellectual property asset is a —

(A) patent or an asset that is similar to a patent, research and development; or

(B) non-trade intangible (including a trademark), branding, marketing and distribution;

(ii) in exceptional cases, except if the relevant activity is a high risk intellectual property business, other core income generating activities relevant to the business and the intellectual property assets, which may include —

(A) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income;

(B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset;

(C) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of income from third parties;

(h) in relation to shipping business —

(i) managing crew (including hiring, paying and overseeing crew members);

(ii) overhauling and maintaining ships;

(iii) overseeing and tracking deliveries;

(iv) determining what goods to order and when to deliver them, organising and overseeing voyages; or

(i) in relation to holding company business, all activities related to that business;

"**competent authority**" means, for each respective jurisdiction, the persons and authorities authorised pursuant to a scheduled agreement;

"**Consolidated Financial Statements**" means the financial statements of a Group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent and the Constituent Entities are presented as those of a single economic entity;

"**Constituent Entity**" means —

(a) any separate business unit of a Group that is included in the Consolidated Financial Statements of the Group for financial reporting purposes, or would be so included if equity interests in such business unit of a Group were traded on a public securities exchange;

(b) any such business unit that is excluded from the Group's Consolidated Financial Statements solely on size or materiality grounds; and

(c) any permanent establishment of any separate business unit of the Group included in (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"**distribution and service centre business**" means the business of either or both of the following —

(a) purchasing from an entity in the same Group —

(i) component parts or materials for goods; or

(ii) goods ready for sale, and

reselling such component parts, materials or goods outside the Islands;

(b) providing services to an entity in the same Group in connection with the business outside the Islands,

but does not include any activity included in any other relevant activity except holding company business;

"**domestic company"** means a company that is not part of an MNE Group and that is —

(a) only carrying on business in the Islands and which complies with section 4(1) of the *Local Companies (Control) Act (2019 Revision)* or section 3(a) of the *Trade and Business Licensing Act (2021 Revision)*; or

(b) a company referred to in section 80 of the *Companies Act (2023 Revision)*;

"**financing and leasing business**" means the business of providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business;

"**fund management business**" means the business of managing securities as set out in paragraph 3 of Schedule 2 to the *Securities Investment Business Act* (*2020 Revision*) carried on by a relevant entity licensed or otherwise authorised to conduct business under that Act for an investment fund;

"**Group**" means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange ;

"**headquarters business**" means the business of providing any of the following services to an entity in the same Group —

(a) the provision of senior management;

(b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or

(c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business;

"**high risk intellectual property business**" means an intellectual property business carried on by an entity that —

(i) did not create the intellectual property in an intellectual property asset that it holds for the purposes of its business,

(ii) acquired the intellectual property asset —

(A) from an entity in the same Group; or

(B) in consideration for funding research and development by another person situated in a country or territory other than the Islands; and

(iii) licences the intellectual property asset to one or more entities in the same Group or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by entities in the same Group;

"**holding company business**" means the business of a pure equity holding company;

"**immediate parent**", in relation to an entity, means a person that owns directly twenty-five percent or more of the ownership interest or voting rights in the entity;

"**insurance business**" has the meaning given to that expression by section 2 of the *Insurance Act, 2010 [Law 32 of 2010]*;

"**intellectual property business**" means the business of holding, exploiting or receiving income from intellectual property assets;

"**intellectual property asset**" means an intellectual property right including a copyright, design right, patent and trademark;

"**investment fund**" means an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held), but does not include a person licenced under the *Banks and Trust Companies Act* (*2021 Revision*) or the *Insurance Act, 2010 [Law 32 of 2010]*, or a person registered under the *Building Societies Act* (*2020 Revision*) or the *Friendly Societies Act* (*1998 Revision*);

"**investment fund business**" means the business of operating as an investment fund;

"**investment interests**" means a share, trust unit, partnership interest or other right that carries an entitlement to participate in the profits or gains of the entity;

"**joint arrangement**" means an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement;

"**local partnership**" means a partnership as defined under section 3 of the *Partnership Act (2024 Revision)* that is not part of an MNE Group and —

(a) that is only carrying on business in the Islands and is empowered by its partnership agreement to carry on business in the Islands; and

(b) that —

(i) is licensed under the *Trade and Business Licensing Act (2021 Revision)* and, at the relevant time, is carrying on such business in accordance with the terms and conditions imposed in such licence and not otherwise;

(ii) is operating under a franchise granted by the government; or

(iii) complies with section 3(a) of the *Trade and Business Licensing Act (2021 Revision)*;

"**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;

"**pleasure yacht**" has the meaning given to that expression by section 11(6) of the *Merchant Shipping Act* (*2021 Revision*);

"**pure equity holding company**" means an entity that only holds equity participations in other entities and only earns dividends and capital gains;

"**Registrar**"—

(a) in relation to a partnership means the Registrar of Limited Partnerships under section 48 of the *Partnership Act (2024 Revision)*;

(b) in relation to an exempted limited partnership means the Registrar of Exempted Limited Partnerships under section 8 of the *Exempted Limited Partnership Act (2021 Revision)*; or

(c) in relation to a foreign limited partnership registered under section 42 of the *Exempted Limited Partnership Act (2021 Revision)*, means the Registrar of Exempted Limited Partnerships under section 8 of the *Exempted Limited Partnership Act (2021 Revision)*;

"**relevant activity**" means —

(a) banking business;

(b) distribution and service centre business;

(c) financing and leasing business;

(d) fund management business;

(e) headquarters business;

(f) holding company business;

(g) insurance business;

(h) intellectual property business; or

(i) shipping business;

but does not include investment fund business;

"**relevant entity**" means —

(a) a company, other than a domestic company, that is —

(i) incorporated under the *Companies Act (2023 Revision)*; or

(ii) a limited liability company registered under the *Limited Liability Companies Act (2023 Revision)*;

(aa) a partnership as defined under section 3 of the *Partnership Act (2024 Revision)*, except where the partnership is a local partnership;

(ab) an exempted limited partnership as defined under section 2 of the *Exempted Limited Partnership Act (2021 Revision)*;

(ac) a foreign limited partnership registered under section 42 of the *Exempted Limited Partnership Act (2021 Revision)*;

(b) a limited liability partnership that is registered in accordance with the *Limited Liability Partnership Act (2023 Revision)*;

(c) a company that is incorporated outside of the Islands and registered under the *Companies Act (2023 Revision)*,

but does not include —

(i) an investment fund; or

(ii) an entity that is tax resident outside the Islands;

"**relevant income**", in relation to an entity, means all of that entity's gross income from its relevant activities and recorded in its books and records under applicable accounting standards;

"**relevant jurisdiction**" means a country or territory that is a party to a scheduled agreement;

"**scheduled agreement**" means an agreement that is scheduled to the *Tax Information Authority Act (2021 Revision)* in accordance with the provisions of that Act;

"**seafarer recruitment and placement service**" has the meaning given to that expression by the *Maritime Labour Convention, 2006*;

"**shipping business**" means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands —

(a) the business of transporting, by sea, passengers or animals, goods or mail for a charge;

(b) the renting or chartering of ships for the purpose described in paragraph (a);

(c) the sale of travel tickets and ancillary ticket related services connected with the operation of a ship;

(d) the 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) the functioning as a private seafarer recruitment and placement service,

but does not include a holding company business or the owning, operating or chartering of a pleasure yacht;

"**subsidiary company**" means, with respect to another company, a company of which that other company is the immediate parent;

"territorial waters" has the same meaning given to "**territorial sea**" in the *Cayman Islands (Territorial Sea) Order 1989 of the United Kingdom [UKSI 1989 No. 2397]*;

"**ultimate beneficial owner**" —

(a) in relation to a company that is incorporated or registered under the *Companies Act (2023 Revision)*, has the same meaning as "beneficial owner" in section 244 of that Act;

(b) in relation to a limited liability company that is registered under the *Limited Liability Companies Act (2023 Revision)*, has the same meaning as "beneficial owner" in section 70 of that Act;

(c) in relation to a partnership as defined under section 3 of the *Partnership Act (2024 Revision)*, has the same meaning as "beneficial owner" in section 51 of the *Limited Liability Partnership Act (2023 Revision)* except that references to "limited liability partnership" in sections 51 and 54 of the *Limited Liability Partnership Act (2023 Revision)* shall be interpreted to mean a reference to "partnership";

(d) in relation to an exempted limited partnership as defined under section 2 of the *Exempted Limited Partnership Act (2021 Revision)*, has the same meaning as "beneficial owner" in section 51 of the *Limited Liability Partnership Act (2023 Revision)* except that references to "**limited liability partnership**" in sections 51 and 54 of the *Limited Liability Partnership Act (2023 Revision)* shall be interpreted to mean a reference to "exempted limited partnership";

(e) in relation to a foreign limited partnership registered under section 42 of the *Exempted Limited Partnership Act (2023 Revision)*, has the same meaning as "beneficial owner" in section 51 of the *Limited Liability Partnership Act (2023 Revision)* except that references to "limited liability partnership" in sections 51 and 54 of the *Limited Liability Partnership Act (2023 Revision)* shall be interpreted to mean a reference to "foreign limited partnership"; or

(f) in relation to a limited liability partnership that is registered under the *Limited Liability Partnership Act (2023 Revision)*, has the same meaning as "beneficial owner" in section 51 of that Act; and

"**ultimate parent**" means a Constituent Entity of a Group that meets the following criteria —

(a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and

(b) there is no other Constituent Entity of the Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

(2) Notwithstanding sections 7(10) and 10(5) of the Act, a partnership under the *Partnership Act (2024 Revision)*, an exempted limited partnership under section 2 of the *Exempted Limited Partnership Act (2021 Revision)* or a foreign limited partnership under section 42 of the *Exempted Limited Partnership Act (2021 Revision)* is, from the commencement of the *International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021*, an entity for the purposes of sections 7 and 10 of the Act.

Publication in consolidated and revised form authorised by the Cabinet this 30th day of January, 2024.

Kim Bullings
Clerk of the Cabinet

ENDNOTES

Table of Legislation history:

SL #	Act/Law #	Legislation	Commencement	Gazette
48/2021		International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021	20-Jun-2021	LG38/2021/s1
		International Tax Co-operation (Economic Substance) Law (2021 Revision)	5-Feb-2021	LG12/2021/s5
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
90/2020		International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2020	10-Jul-2020	LG50/2020/s2
	7/2020	International Tax Co-operation (Economic Substance) (Amendment) Law, 2020	12-Feb-2020	LG10/2020/s4
		International Tax Co-operation (Economic Substance) Law (2020 Revision)	14-Jan-2020	LG5/2020/s3
33/2019		International Tax Co-operation (Economic Substance) (Amendment of Schedule) (No.3) Regulations, 2019	10-Sep-2019	LG31/2019/s1
20/2019		International Tax Co-operation (Economic Substance) (Amendment of Schedule) (No.2) Regulations, 2019	30-Apr-2019	LG12/2019/s1
10/2019		International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2019	22-Feb-2019	LG5/2019/s1
	45/2018	International Tax Co-operation (Economic Substance) Law, 2018	1-Jan-2019	GE98/2018/s2

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