

The Ministry of Finance of The Bahamas



GUIDELINES COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2023

**Date of Issue:
8th September 2023**

Version: 1.1

These Guidelines are issued by the Authority under section 30 of The Commercial Entities (Substance Requirements) Act 2023 (the "Act").

This document will continually be under review with updates being issued periodically. Terms used in the Guidelines have the same meaning as in the Act unless otherwise indicated.

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1. OVERVIEW

- 1.1 The Commercial Entities (Substance Requirements) Act, 2023 (the “Act”) repeals and replaces the Commercial Entities (Substance Requirements) Act 2018 (the “Repealed Act”) which came into force on September 1st, 2023. The Repealed Act was originally enacted to ensure that a commercial entity - that could be used to artificially attract profits that are not commensurate with its economic activities - has a substantial economic presence in The Bahamas, where the entity claims it is not tax resident in another jurisdiction ([see section 7 “Tax Residence”](#)). As was the case under the Repealed Act, the Act continues to provide that a commercial entity conducting relevant activities (an “Included Entity”) must meet the economic substance test.
- 1.2 The Act now provides further clarifying provisions on what constitutes the conduct of each relevant activity. In addition, the Act materially changes the manner in which entities report. Entities must now make their economic substance report to their Registered Agent or the Compliance Commission (as applicable) ([see section 22 “Reporting to Registered Agent or Compliance Commission”](#)).
- 1.3 The new economic substance regime in The Bahamas pursuant to the Act requires that every Entity (as defined in the Act and [see also section 4 “Legal Entities in Scope”](#)) provide an economic substance report via its Registered Agent or the Compliance Commission (as applicable). Following the submission of the report to the Minister of Finance as the competent authority (the “Authority”) by the Registered Agent or the Compliance Commission under section 12 of the Act, the Authority is required to assess the compliance of the Entity with the Act. This assessment begins with the evaluation of the information provided during the reporting stage, but also involves the Authority gathering further information in relation to the Entity, its activities, and other matters contemplated by the Act and these Guidelines.
- 1.4 The Act is based on the global standard on fair taxation promulgated by the OECD Forum on Harmful Tax Practices (“FHTP”) and the European Union (“EU”) which has been adopted by many jurisdictions around the world.

2. THE AUTHORITY

- 2.1 The Authority’s functions under the Act include administering the Act, determining whether an included entity satisfies the Act in respect of its relevant activities, monitoring compliance with the Act and sharing information with other competent authorities and jurisdictions. The Authority is also responsible for enforcing compliance with the Act and making Regulations and Guidelines.

3. PURPOSE OF THIS GUIDELINE

- 3.1 These Guidelines have been issued by the Authority pursuant to section 30 of the Act. The Guidelines issued under the Repealed Act are repealed and replaced by these Guidelines. The Authority has the power to issue Guidelines in order to assist with the interpretation of and compliance with the Act. Compliance with the Guidelines is mandatory in relation to any direction herein expressed to be mandatory. However, the Authority shall not be bound by illustrative examples contained herein, as in each case, the economic substance requirements depend on the specific activities of the Entity involved. These Guidelines may be revised by the Authority from time to time. However, as these Guidelines represent a material and significant change to the interpretation of the economic substance obligations and compliance, the Authority will take account of the fact that an Entity may have relied upon the previous form of Guidelines under the Repealed Act in ordering its affairs and will afford a reasonable time for the Entity to comply with these Guidelines and material changes to the economic substance regime introduced by the Act.
- 3.2 The Authority may also make regulations pursuant to section 29 of the Act. As of the date of this Guideline, no regulations have been issued.
- 3.3 These Guidelines and updates to these Guidelines shall be found on the Authority's website as notified to the public.

4. LEGAL ENTITIES IN SCOPE

- 4.1 It is important to determine whether an entity is in scope of the Act and, if so, what are its obligations under the Act. In summary, all Entities are required to make an economic substance report to their Registered Agent or to the Compliance Commission under the Act. However, only certain Entities (i.e., commercial entities carrying on relevant activities) are required to meet the economic substance obligations and to satisfy the economic substance test in the Act.
- 4.2 To assess whether the entity is in scope for reporting obligations and economic substance obligations, please review the self-assessment diagram below.

Q. How do I determine whether my entity is in scope of the Act?

A. Please answer the following questions:

Self-Assessment:

(1) Is my entity incorporated, registered or continued under:-

- (a) Companies Act (Ch. 308), including foreign entities registered under Part VI thereof;
- (b) International Business Companies Act (Ch. 309);
- (c) Partnership Act (Ch. 310);
- (d) Partnership Limited Liability Act (Ch. 311); or
- (e) Exempted Limited Partnership Act (Ch. 312)

(2) Does it carry on a relevant activity¹?

(3) Is the entity-

- (a) an investment fund
- (b) resident owned in The Bahamas, or
- (c) tax resident in a jurisdiction other than The Bahamas and therefore subject to corporate income taxation in that jurisdiction?

- 4.3 If the answer to (1) is no, the Act does not apply to your entity. If the answer to (1) is yes, but the answer to (2) is no, the entity has a reporting obligation under the Act but is not

¹ Carefully review the sector specific sections of these Guidelines.

required to satisfy the economic substance test. If the answer to (1) and (2) is yes but you have answered no to all of the questions in (3) (a), (b), and (c), the reporting obligation and economic substance test will apply to the entity. If the answer to (1), (2) and any part of (3) is yes, the entity will have a reporting obligation but is not required to satisfy the economic substance test.

4.4 The Authority expects that the Directors of an Entity shall be responsible for assessing and classifying whether the Entity is or is not in scope of the Act and for reporting relevant information to its Registered Agent. Registered Agents have no obligation to verify information provided by an Entity. Directors or similar controllers owe fiduciary obligations and should make a good faith determination based on the Act and the Guidelines.

4.5 **Example 1.** Company A is an LLC that is registered as a foreign company under the Companies Act. It has a filing obligation under the Act. If Company A conducts a relevant activity, Company A will be an Included Entity and will have to comply with the economic substance test. If Company A asserts that it is tax resident in a jurisdiction other than The Bahamas, it will not have to comply with the economic substance test. However, the Entity will still be required to provide evidence to the Authority that it is subject to corporate income taxation in the jurisdiction that it is claiming tax residence.

4.6 **Example 2.** Company A is an IBC licensed as an investment fund. It has a reporting obligation under the Act, but Company A does not have to satisfy the economic substance test.

4.7 **Q. What is the Economic Substance Reporting obligation?**

A. An economic substance report containing certain information and appending documentation prescribed in sections 11 and 12 of the Act and in these Guidelines must be made to the Entity's Registered Agent or if the entity does not have a Registered Agent, the Compliance Commission ([See section 22 "Reporting to the Registered Agent or Compliance Commission"](#)). An Entity must ensure that its Registered Agent or the Compliance Commission has received the information required under the Act relating to its economic substance report in adequate time to enable the Registered Agent or the Compliance Commission to submit a report in respect of the Entity within nine months following the last day of the fiscal year of the Entity (i.e. the Entity's Fiscal Year End).

4.8 An Entity is required to report no later than 9 months after the end of its fiscal year. The information contained in the report is in respect of the fiscal year for which it is reporting. To do so, the Entity should declare a fiscal year by resolution. The Act does not prescribe a particular fiscal year. The particulars of what must be reported depends on whether

the Entity is also a commercial entity carrying on a relevant activity (i.e. an Included Entity) and in that case, depends on what relevant activities the commercial entity is conducting.

4.9 **Q. What is the Economic Substance Test/Economic Substance Requirement?**

Relevant Activities other than holding business and commercial use of intellectual property (Standard Economic Substance)

A. For all relevant activities (other than holding business), the economic substance test requires that an Included Entity:

- 1) conducts all of its core income generating activities in The Bahamas;
- 2) has direction and management in The Bahamas in relation to that relevant activity; and,
- 3) Having regard to the level of relevant activity, has adequate full time equivalent employees with appropriate qualifications physically present in The Bahamas;
- 4) Has adequate operating expenditure incurred in The Bahamas; and
- 5) Has adequate premises and physical assets in The Bahamas.

4.10 If an Included Entity is part of a group and any direct or indirect subsidiary of that group is also an Included Entity, each Included Entity must meet the economic substance test to be in compliance with the Act. The group may not aggregate their economic substance for the purposes of complying with the Act.

The Commercial Use of Intellectual Property (Enhanced Economic Substance)

4.11 There is a rebuttable presumption of non-compliance with the economic substance test in respect of Included Entities conducting the relevant activity entitled “the commercial use of intellectual property”. In addition to the requirements of (1), (2), (3), (4) and (5), enhanced economic substance is required of Included Entities conducting the relevant activity of the commercial use of intellectual property. An Included Entity conducting the relevant activity of the commercial use of intellectual property is subject to enhanced economic substance and must provide evidence to rebut the presumption that it fails to meet the economic substance test. See further discussion in [Section 21 “High Risk and Low Risk Intellectual Property”](#).

Holding Business (Reduced Economic Substance)

- 4.12 An Included Entity conducting the relevant activity of Holding Business is subject to a reduced economic substance test and is only required to:
- (a) comply with all applicable laws and regulations of The Bahamas;
 - (b) have adequate human resources; and
 - (c) have adequate premises in The Bahamas for holding and managing equity participations in other entities.
- 4.13 As to the first limb of the “reduced economic substance test”, the laws of The Bahamas require that companies incorporated, registered or continued in The Bahamas must maintain books and records, which must be available in The Bahamas, and must maintain a registered office in The Bahamas. Although partnerships are required to maintain books and records, they are not typically required to identify a registered office. However, a partnership will still be expected to comply with any mandatory requirements of Bahamas law which relates to partnerships.
- 4.14 As to limb (b) of the reduced economic substance test, compliance depends on the nature of the activity carried on. The requirement for being a pure equity holding entity is simply holding equity participations. If all the commercial entity does is passively hold equity participations, the nature and the requirements for adequate human resources and for adequate premises will be determined accordingly, and in these cases the appointment of a registered agent may be sufficient. The registered agent’s employees would be counted as the Entity’s employees in its substance filing, but in each case no employee shall be double counted. However, if the included entity actively manages its equity participations, it should have adequate human resources, and adequate premises, in The Bahamas to carry out this function. In the case of an “active” holding business, the services provided by the Entity’s Registered Agent may be taken into account but the adequacy of those resources would depend on the size, scope and complexity of the activities. There is no requirement in the case of Holding Business for the entity to be directed and managed in The Bahamas, however the Authority may apply additional surveillance to entities in these circumstances.
- 4.15 The following is an illustrative example of how an Included Entity conducting holding business might calculate a full-time equivalent employee in relation to the use of employees of a registered agent: $1200 \text{ (number of companies under admin in total)} / 5 \text{ (number of employees)} = 240$. Let’s assume, as an example, that each employee manages 240 companies. Each employee has 2080 working hours per year and so let’s assume each employee spends 8.666 hours per year on each of its 240 companies. 8.666 as a proportion of an employee’s total hours of 2080 is 0.004. Therefore, 0.004 of an

employee's time is assumed to be devoted to each company and the RA may allow a client to claim 0.004 of an employee.

- 4.16 In reality, the Registered Agent employee may devote significantly more time or less time to an Included Entity conducting holding business but the calculation is a starting point for illustrative purposes to determine the full time equivalent employees for the Included Entity. In assessing a Registered Agent's human resources devoted to the holding business, the Registered Agent will be obliged to provide the Included Entity with the amount of resources devoted to it, in order for the Included Entity to report to it. A Registered Agent should make a good faith determination taking into account not only a general averaging equation as shown above, but the actual amount of time that the Registered Agent reasonably determines is allocable to the companies performing holding business. Further discussion on holding business is found later in this Guideline in [Section 13 "Holding Business"](#).

5. CORE INCOME GENERATING ACTIVITIES

- 5.1 Core income generating activities are defined in the Act as being activities that are of central importance to an included entity in terms of generating relevant income. (See further discussion in [Section 6 below "Relevant Income"](#)). The Act does not prescribe the type of activity that constitutes CIGA, rather it identifies certain activities that may qualify as CIGA. There are undoubtedly other forms of CIGA that have not been captured in the wording of section 6(5) of the Act. It is not necessary for the included entity to perform every CIGA listed under section 6(5) of the Act. However, all CIGA must be conducted in The Bahamas. The assessment of whether the entity meets the economic substance test in The Bahamas will include a careful analysis of which CIGA elements the included entity is conducting, and if it is conducting them, whether all CIGA is taking place in The Bahamas.
- 5.2 It is the primary responsibility of the Included Entity to demonstrate that it conducts CIGA in The Bahamas proportionate to its business activities. An entity may outsource all or part of an activity in The Bahamas provided that the included entity is able to monitor and control the carrying out of CIGA by that outsourcing service provider. The Act does not preclude an included entity from outsourcing activities which are not part of CIGA outside of The Bahamas. In addition, the substance requirement does not preclude entities seeking expert professional advice or engaging the services of specialists in other jurisdictions as is common world-wide and based on commercial necessity, provided those services provided in the other jurisdiction do not constitute CIGA.

- 5.3 Please see table under [section 12 of this Guideline “Relevant Activities”](#) for the definition of each relevant activity together with examples of CIGA. It is important to note that the list of CIGA is meant to be illustrative and not exhaustive.

6. RELEVANT INCOME

- 6.1 An Included Entity is required to conduct its core income generating activities in The Bahamas. Core income generating activities are activities which are of central importance in terms of generating relevant income to the Included Entity from the conduct of the relevant activity. The term “relevant income”, in relation to an Entity, means “all of that entity’s gross income from its relevant activities recorded in its books and records under applicable accounting standards.”
- 6.2 As discussed in the Q&A below, the absence of relevant income is not always determinative of whether the Included Entity is conducting the relevant activity, but the absence of relevant income may be considered when determining the extent of the economic substance required.
- 6.3 **Q. If a commercial entity carries on a relevant activity but generates no relevant income during the fiscal year in which it carried on the relevant activity, what is required?**
- A.** A commercial entity which carries on a relevant activity (i.e., an Included Entity) in a period but has no relevant income in the period, is not obliged to meet the economic substance test for that relevant activity for which it received no relevant income. However, the commercial entity will still be required to satisfy its reporting obligations under the Act. Note that except in the case of holding business and the commercial use of intellectual property, the absence of relevant income, does not by itself indicate that the Entity is not conducting the relevant activity.
- 6.4 **Q. If I receive income from a relevant activity in this fiscal year but I stopped conducting the relevant activity as of the end of the prior fiscal year, do I need to satisfy the economic substance test?**
- A.** Yes, whether the relevant activity was conducted in the same period as income was received, the commercial entity will be deemed to have carried on the relevant activity in each period in which it received income. In other words, the receipt of relevant income in a period relating to a relevant activity carried on in another period shall constitute the conduct of the relevant activity in the period in which the commercial entity received income.

- 6.5 The amount of the relevant income will be considered in determining the extent of the economic substance required for meeting the economic substance test and if the included entity is only receiving income in a period, relating to activity carried on out in a prior period, the included entity may take this into account in assessing the adequacy of its economic substance arrangements in The Bahamas.

7. LEGAL ENTITIES OUT OF SCOPE FOR ECONOMIC SUBSTANCE REQUIREMENTS

Resident Owned Entities

- 7.1 An entity which is conducting relevant activity, but which is resident owned in The Bahamas and conducting core income generating activities in The Bahamas is not required to satisfy the economic substance test, even though it conducts a relevant activity. The ESS Portal requests that every Entity identify whether it conducts a relevant activity before the Entity confirms whether it meets the definition of a commercial entity. This information is important to the Authority for anti-avoidance purposes. If the Entity conducts no relevant activities, the Authority's view is that the second rung of the test does not have to be met; however, if the Entity conducts a relevant activity, the Entity should also confirm that they conduct their core income generating activities in The Bahamas.
- 7.2 **Q. What, is required with respect to an entity asserting that it is "Resident owned in The Bahamas"?**
- A.** The economic substance test and the substance requirements of the Act do not apply to any Entity that conducts its core income generating activities in The Bahamas, if it is 100% directly or indirectly beneficially owned by:
- (a) one or more persons ordinarily resident and domiciled in The Bahamas; or
 - (b) one or more persons who have been issued a certificate of annual or permanent residence and physically reside in The Bahamas for a cumulative period of at least three months in every calendar year (the "cumulative days test").
- 7.3 The Authority will have regard to the Exchange Control designation or deemed designation of such person in certain circumstances in accordance with the policies of the Central Bank promulgated under the Exchange Control Regulations Act. See: <https://www.centralbankbahamas.com/viewPDF/documents/2019-06-25-09-14-18-Exchange-Control-Regulations-EC-4-Residential-Status.pdf>
- 7.4 As to ordinarily resident and domiciled, Bahamian citizens and other natural persons who are resident in The Bahamas for Exchange Control purposes will be presumed to be

ordinarily resident and domiciled in The Bahamas. A permanent resident may have an unrestricted right to work in The Bahamas and therefore may be treated as resident for Exchange Control purposes. If so, they will also be presumed to be “ordinarily resident and domiciled” even though they hold a “permanent residence card” and do not meet the cumulative days test.

7.5 In other cases, a permanent resident that is treated as non-resident for exchange control purposes, may be ordinarily resident and domiciled in The Bahamas without meeting the cumulative days test. The Entity may still claim that they are resident owned in The Bahamas if the permanent resident (owning 100% of the beneficial interests) meets the common law definition of “ordinarily resident” and “domiciled” under paragraph (a).

7.6 In the case of “ordinary residence”, the Entity shall have regard to the line of common law cases which indicate that ordinary residence is residence that is voluntary and for “settled purposes as part of the regular order of life, for the time being, as opposed to casual, temporary or unusual” per Halsbury’s Laws of England and as to those cases, see vol 19 (Conflict of Laws)

7.7 In the case of domicile, regard shall be had to common law cases such as Lord v Colvin (1859) 28 LJ Ch 361 and Winans v Attorney-General [1904-07] All ER Rep 410, which indicate that domicile should be understood as the present intention to make a permanent home.

7.8 **Q. What documentation is expected to substantiate an Entity that is “Resident owned in The Bahamas”?**

A. Documentary evidence accepted to substantiate an Entity asserting it is Resident Owned in The Bahamas will include but not be limited to:

1. the register of shareholders of the entity including the details of the shareholders and the quantity of their shareholding.
2. Passports of the shareholders or beneficial owners of the entity, if the shareholder is an entity; and
3. Residency Certificate including details of any restrictions or limitations on working within the jurisdiction.

7.9 **Example A.** Company A is owned as to 50% by a Bahamian citizen and 50% by a permanent resident with the unrestricted right to work. As the permanent resident and the Bahamian are deemed residents for exchange control purposes, the Company will be treated as “Resident owned in The Bahamas”.

- 7.10 **Example B.** Company B is owned as to 100% by a permanent resident with the right to work in their own business (i.e., a restricted right to work). Such persons would be considered non-resident for exchange control purposes. As a result, Company B has to be satisfied that the permanent resident owner is either (a) ordinary resident and domiciled based on common law principles or (b) meets the cumulative day's stay test.

Tax Residence

- 7.11 The economic substance obligations comprising the economic substance test do not apply to an Entity that is tax resident in a jurisdiction other than The Bahamas and is subject to that jurisdiction's corporate income taxation regime; however, such an Entity must demonstrate to the Authority that it is tax resident in that jurisdiction.
- 7.12 An Entity that carries on a relevant activity but claims that it is tax resident in a jurisdiction other than The Bahamas must provide to the Registered Agent or the Compliance Commission, the information and documents prescribed by section 11(3) of the Act, which includes details of its jurisdiction of tax residence. The Entity must also provide documentary evidence to substantiate its claim as to both tax residence and that it is subject to tax on all of its relevant income in the other jurisdiction. Two sets of documentary evidence must be provided to exhibit (1) proof that the entity is tax resident in the other jurisdiction and (2) proof that the entity is subject to the other jurisdiction's corporate income tax system. Examples of documentary evidence include:
- 7.13 Proof that the entity is tax resident in the other jurisdiction:
- i. a tax residence certificate issued by a foreign jurisdiction;
 - ii. an official receipt or statement issued by a foreign tax authority;
 - iii. tax assessments, demands or evidence of payment issued by the foreign tax authority;
 - iv. rulings issues by the tax authority of the other jurisdiction;
 - v. tax returns submitted to the foreign tax authority
- 7.14 Proof that the entity is subject to the jurisdiction's corporate income tax system:
- i. tax assessments, demands or evidence of payment issued by the foreign tax authority;
 - ii. tax returns submitted to the foreign tax authority;
 - iii. rulings issued by the tax authority of the other jurisdiction;

7.15 If the jurisdiction in which the Entity is claiming to be tax resident is a jurisdiction that does not assess tax on the Entity's relevant income, the Entity shall not be entitled to claim that they are tax resident in that jurisdiction. If any part of the Entity's relevant income is not taxed in the jurisdiction in which it is claiming tax residence, the Entity shall be required to have economic substance in relation to, and to the extent of its relevant activities and relevant income that is untaxed. In either case, the Entity will be subject to the substance requirements of the Act. The following jurisdictions are no or nominal tax jurisdictions which do not assess corporate income tax. Entities may not claim they are tax resident in these jurisdictions and will be presumed to be tax resident in The Bahamas:

- 1) Anguilla;
- 2) Bahrain;
- 3) Barbados;
- 4) Bermuda;
- 5) Cayman Islands;
- 6) British Virgin Islands;
- 7) Turks and Caicos Islands; and
- 8) United Arab Emirates

Entities claiming to be tax resident in Guernsey, Isle of Man or Jersey can only make such a claim if the Entity is resident for corporate income tax purposes and subject to the relevant corporate income tax law.

Different rules apply for transparent Entities (described in the Q&A below).

7.16 Pursuant to section 12 of the Act, documentary evidence must be filed by the Entity with its annual filing. In the absence of such evidence, the Entity will be regarded as not tax resident in any jurisdiction other than The Bahamas. In the absence of such evidence the Entity will be regarded as an Included Entity that is subject to the substance requirements of the Act.

7.17 The Authority will exchange all information received from an Entity that is conducting a relevant activity but claiming foreign tax residence, with the relevant jurisdiction(s).

7.18 **Q. Company A has a permanent establishment in another jurisdiction on which all of its relevant income is taxed. Can it assert that it is tax resident in that jurisdiction, even though that jurisdiction does not assert taxation on the basis of tax residence?**

A. Yes, there are some jurisdictions which do not charge tax based on an Entity's tax residence in the jurisdiction but on other criteria. If all of the entity's income from relevant activities is attributable to a branch or other permanent establishment and all of its income from the relevant activity is taxed in that foreign jurisdiction, the Entity may assert that it is tax resident in the jurisdiction in which it has the branch or permanent establishment. For these purposes "branch" means a business unit or other division of the Entity that is not a separate legal person from the Entity.

7.19 **Q. If an Entity's relevant income is not subject to tax but by the tax laws of another jurisdiction, all of the relevant income is assessable to the beneficial owners or shareholders of the Entity, can the Entity assert tax residence on the basis that all of its relevant income is taxed in another jurisdiction?**

A. If an Entity is a transparent entity, tax residence in another jurisdiction may be demonstrated by reference to the direct or indirect equity interest holders, participants, or partners of the transparent entity. A "transparent entity" is a legal entity in respect of which the entire profits and gains are treated under the law of another jurisdiction as attributable to and taxable on some or all of the direct or indirect equity interest holders, participants, or partners in the legal entity in question. In the case of a disregarded entity for U.S. income tax purposes it shall be considered as tax resident in the U.S. if all of the entity's income has been included in the corporate tax return of the parent company or individual in the U.S. Evidence of this, in the form of a legal opinion from an external tax advisor or signed statement of a "C" suite executive may be accepted by the Authority in addition to other evidence to substantiate the opinion or statement provided.

Investment Funds

7.20 The Act defines the term investment fund as defined in the Investment Funds Act (No. 2 of 2019) (the "IFA"). Investment fund is defined in the IFA as "*a unit trust, company, partnership or investment condominium that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains arising from the acquisition, holding, management or disposal of investments.*" The Act has expanded this definition by also including as an investment fund, "*Any entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held)*". "Equity interest" is defined in the IFA as a share, a trust unit, a participation interest, or a

partnership interest that carries an entitlement to participate in the profits or gains of the issuer thereof and that, except where the issuer is a closed-end fund, is redeemable or re-purchasable at the option of the investor. Note that any entity that is incorporated in The Bahamas and conducts business as an investment fund, is required to be licensed by the Administrator or the Securities Commission of The Bahamas (the “Commission”) and is subject to on-going supervision by the Commission.

8. DIRECTION AND MANAGEMENT

- 8.1 A commercial entity conducting relevant activities satisfies that part of the economic substance test relating to “direction and management” if in relation to the relevant activity the entity:
- (a) Conducts an adequate number of meetings of the Board of Directors in The Bahamas given the level of decision making required;
 - (b) Has a quorum of the Board of Directors physically present within The Bahamas during the meetings referred to in (a);
 - (c) Makes the strategic decisions of the entity at the meetings referred to in paragraph (a) and those decisions are recorded in the minutes of the meetings;
 - (d) Keeps all records and minutes in The Bahamas;
 - (e) Ensures that the Board of Directors, as a whole, has the necessary knowledge and expertise to discharge its duties.
- 8.2 If the Included Entity is organized as a partnership, the reference to board of directors should be replaced with the “partnership’s governing body”. There are slight differences in the direction and management test in the Act for companies and partnerships. In respect of partnerships, a partnership’s governing body must have an adequate number of meetings given the level of decision-making required and a majority of partners must be present at the meetings of the partnership’s governing body held in The Bahamas. All partnership records are required to be kept in The Bahamas, including minutes of such meetings which occurred in The Bahamas recording strategic decisions. It will be sufficient to satisfy the requirement at (c) for an Included Entity’s records to be kept in The Bahamas if the Entity’s records are “accessible” in or from The Bahamas, in the same manner as that term is understood with respect to an Entity’s obligation to maintain accounting records. Therefore, this does not prevent the Entity from maintaining its records electronically, so long as such records are accessible.

9. ADEQUATE PREMISES, EMPLOYEES AND EXPENDITURE

- 9.1 In relation to the part of the test at section 7 (2)(b), an Included Entity satisfies the part of adequate premises, employees and expenditures in The Bahamas, if having regard to the level of relevant activity carried on in The Bahamas-
- (a) There are an adequate number of full-time equivalent employees with appropriate qualifications in relation to that activity who are physically present in The Bahamas
 - (b) There is adequate operating expenditure incurred in The Bahamas
 - (c) There are adequate premises and physical assets in The Bahamas
- 9.2 The term “adequate” is not defined in the Act and should therefore be given its ordinary meaning. For the purposes of the Act, the ordinary meaning of “adequate” is: *“as much or as good as necessary and sufficient for a specific need or requirement”*.
- 9.3 What is adequate for each Included Entity will be dependent on the particular facts of the Included Entity and its business activity. It will also be relevant to consider the relation between, on the one hand, the employees, expenditure, and relevant income employed, expended and earned in The Bahamas and, on the other hand, the employees, expenditure and relevant income employed, expended and earned outside of The Bahamas. An Included Entity will have to ensure that it maintains and retains appropriate records to demonstrate the adequacy of staffing, resources utilized in respect of CIGA and expenditure incurred in The Bahamas, having regard to the size, nature and complexity of the relevant activity.
- 9.4 The term “full-time equivalent employee” indicates that there may be employees which do not operate as full-time employees individually, but which, along with other employees, collectively provide full-time equivalent hours. Employees employed by an agency may be counted as part of an included entity’s employees as they may be splitting their time between one or more entities.
- 9.5 A registered agent’s employees may be counted toward the human resources of a holding business if appropriate contractual arrangements are in place. An included entity engaged in holding business should report the employees of the registered agent assuming that each employee of the registered agent is a part-time employee. The ES portal allows a Registered Agent to enter a decimal (up to three decimal places) to reflect where an employee does not work solely in relation to a relevant activity. The number of employees should not be entered as 1 where the employee is not engaged full time in relation to the relevant activity.

- 9.6 The requirement for employees to be suitably qualified is intended to ensure that the qualifications of employees in The Bahamas are commensurate with the relevant activity, and the CIGA, being carried on in The Bahamas. What is important is that the employees employed in connection with the relevant activity are based in The Bahamas (not on a transitory basis, temporary travel excluded) and that such employees have the qualifications to conduct or manage the conduct of the relevant activity.
- 9.7 Premises must be suitable for the relevant activity and the size and scope of the business. For an office-based business this should comprise office premises from which the employees can operate. Flexible working arrangements (from home or an alternative premises) may be considered suitable provided that such premises are in The Bahamas. Some types of relevant activity (e.g., shipping and distribution and service centre business) will, in addition to office premises, require appropriate premises for non-office-based activities.
- 9.8 Businesses are not monolithic and come in different sizes, and the employees, expenditure and premises which are adequate or appropriate for a small business will not suffice for a large business. Nor is it the function of the legislation to require an Included Entity to incur more expenditure or engage more employees than it really needs, if it is genuinely carrying on a relevant activity and carrying on CIGA in The Bahamas with the expenditure, staff and premises that it actually has.

10. FISCAL YEAR

- 10.1 Compliance with the economic substance test or any part thereof is assessed in respect of a fiscal year or part thereof. The Authority acknowledges that Entities may:
- (i) An Entity may be incorporated in the middle of a fiscal year and not commence the relevant activity immediately;
 - (ii) An Entity may commence or discontinue a relevant activity other than at the beginning of a fiscal year; or
 - (iii) An Entity may perform two or more different relevant activities within a fiscal year and perform them in different periods within the fiscal year.
- 10.2 An Entity shall state in its economic substance report, if it conducted a relevant activity for the entire fiscal year or simply a portion of a fiscal year. The ESS portal permits a report to indicate a portion of the fiscal year, rather than a whole fiscal year.
- 10.3 In the above cases, the Authority will assess the Included Entity's compliance in respect of that part of the fiscal year in which the Included Entity carried on the relevant activity and was required to meet the economic substance test in relation to that relevant activity.

The Act does not prescribe a fiscal year and entities are free to choose a fiscal year of a period of no more than 12 months. Entities that do not produce audited financial statements are encouraged to adopt a fiscal year by resolution. If an entity wishes to change its fiscal year, it can do so by applying in writing to the Authority to change it.

- 10.4 The ESS portal requests information on the specific periods during which the relevant activity is carried out. This is not an explicit requirement of the Act but it is information which the Authority requests to substantiate economic substance under section 12(2)(iii) of the Act.

11. OUTSOURCING

- 11.1 Under the Act, an included entity demonstrates that it has adequate economic substance if its CIGA(s) in relation to the relevant activity that it engages in is/are conducted by any other person in The Bahamas; this is provided that the included entity is able to monitor and control the undertaking of that CIGA by that other person. Only that part of the relevant activity of that other person which is attributable to generating income for the included entity shall be taken into account in considering whether the included entity has demonstrated adequate economic substance.
- 11.2 Where an included entity outsources CIGA to any other person, there must be no double counting of the resources of the service provider if outsourcing services are provided to more than one included entity. Additionally, the resources of the service provider in The Bahamas will be taken into consideration when determining whether the people and premises test is met as well as precise details of the resources employed by service providers, for example based on the use of worksheets or other details of the scope of the engagement as the Authority may request.
- 11.3 An included entity must not use outsourcing to circumvent the substance requirements of the Act. The included entity remains responsible for ensuring accurate information is reported to the Authority as required and this should include precise details of the resources employed by its service providers.
- 11.4 The substance requirements of the Act do not preclude entities from seeking expert professional advice or engaging the services of specialists in other jurisdictions provided that any activities performed by such advisors or specialists in other jurisdictions is not CIGA and that the income allocated to those services is commensurate with the CIGA undertaken in The Bahamas.

- 11.5 The Act does not prevent an included entity from outsourcing any activities that are not CIGA to any other person. An included entity which is regulated in The Bahamas must also have regard to the outsourcing guidelines issued by the relevant regulator.
- 11.6 Whether an Included Entity has adequate economic substance in The Bahamas under the Act is always based on facts and circumstances applicable to the included entity. It is the responsibility of the Included Entity to demonstrate that it has adequate substance and conduct its business accordingly even when outsourcing.

12. RELEVANT ACTIVITIES

12.1 Relevant activities are defined in section 5 of the Act as follows:-

- (a) banking business;
- (b) insurance business;
- (c) fund management business;
- (d) financing and leasing business;
- (e) headquarters business;
- (f) Distribution and service centres business;
- (g) shipping business;
- (h) Commercial use of intellectual property; or
- (i) Holding business, but does not include the business of operating an investment fund.

RELEVANT ACTIVITY	DEFINITION	EXAMPLES OF CIGA
Banking Business	<p>has the meaning assigned to such term in part a. of the definition in the Banks and Trust Companies Regulations Act, 2020 (No. 22 of 2020);</p> <p><i>“Banking Business means-</i> <i>a. The business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed</i></p>	<ul style="list-style-type: none"> ➤ the raising funds; ➤ managing risk including credit, currency and interest risk; ➤ taking hedging positions; providing loans, credit or other financial services to customers; ➤ managing regulatory capital; and preparing regulatory reports and returns.

	<p><i>period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them;”</i></p>	
Insurance Business	<p>has the meaning given to that expression by section 2 of the Insurance Act (Ch. 347); <i>“insurance business” means —</i> <i>(a) the assumption of the obligations of a company in any class of insurance business;</i> <i>(b) the assumption of the business of insuring risk or liabilities;</i> <i>(c) the renewal and issuing of documents of renewal of existing insurances and liabilities;</i> <i>(d) the receiving of first, subsequent or renewal premiums including reinsurance;</i> <i>(e) reinsurance business; and</i> <i>(f) pensions business and other business directly connected to insurance business;”</i></p>	<ul style="list-style-type: none"> ➤ predicting and calculating risk; ➤ insuring or re-insuring against risk; ➤ providing client services.
Fund Management Business	<p>means the business of managing securities as set out in the First Schedule to the Securities Industry Act, 2011 (No. 10 of 2011) carried on by a commercial entity licensed or otherwise authorized to conduct business under that Act and/or under the</p>	<ul style="list-style-type: none"> ➤ taking decisions on the holding and selling of investments; ➤ calculating risks and reserves; ➤ taking decisions on currency or interest fluctuations and hedging positions; and ➤ preparing relevant regulatory or other reports for government authorities and investors.

	Investment Funds Act, 2019 (No. 2 of 2019) for an investment fund.	
Financing & Leasing Business	<p>means the business of providing credit facilities for any kind of consideration to another person but does not include—</p> <p>(a) financial leasing of land or an interest in land;</p> <p>(b) banking business;</p> <p>(c) fund management business;</p> <p>(d) holding business;</p> <p>(e) insurance business;</p> <p>and where an advance or credit facility repayable to a commercial entity is assigned to another person, that other person shall be deemed to be providing the credit facility for the purposes this definition;</p>	<ul style="list-style-type: none"> ➤ agreeing funding terms; identifying and acquiring assets to be leased (in the case of leasing); ➤ setting the terms and duration of any financing or leasing; ➤ monitoring and revising any agreements; and managing any risks.
Shipping Business	<p>means any of the following activities involving the operation of a ship anywhere in the world other than solely within Bahamian waters —</p> <p>(a) the business of transporting, by sea, passengers or animals, goods or mail for a charge;</p> <p>(b) the renting or chartering of ships for the purpose described in paragraph (a);</p> <p>(c) the sale of travel tickets and ancillary ticket related services connected with the operation of a ship;</p> <p>(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;</p> <p>or</p>	<ul style="list-style-type: none"> ➤ managing the crew (including hiring, paying, and overseeing crewmembers); ➤ hauling and maintaining ships; ➤ overseeing and tracking deliveries; ➤ determining what goods to order and when to deliver them; ➤ organizing and overseeing voyages.

	<p>(e) the functioning as a private seafarer recruitment and placement service, but does not include a holding business or the owning, operating or chartering of a pleasure yacht.</p> <p>Ship has the meaning specified in section 2 of the Merchant Shipping Act (No. 33 of 2021), but does not include a pleasure yacht, fishing vessel or pleasure craft.</p>	
Headquarters Business	<p>means the business of providing any of the following services to an entity in the same group —</p> <p>(a) the provision of Senior Management;</p> <p>(b) the assumption or control of material risk for activities carried out by any of those entities in the same group; or</p> <p>(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 business or insurance business.</p>	<ul style="list-style-type: none"> ➤ taking relevant management decisions; ➤ incurring expenditures on behalf of group entities; and ➤ coordinating group activities.
Distribution and Service Centres Business	<p>means the business of either or both of the following —</p> <p>(a) purchasing from an entity in the same group —</p> <p>(i) component parts or materials for goods; or</p> <p>(ii) goods ready for sale, and reselling such component parts, materials or goods outside The Bahamas;</p> <p>(b) providing services to an</p>	<ul style="list-style-type: none"> ➤ the transporting of goods; ➤ managing stocks and taking orders; ➤ providing consulting or other administrative services

	entity in the same group in connection with the business outside The Bahamas, but does not include any activity included in any other relevant activity except holding business;	
Commercial use of Intellectual Property (“IP”)	means the business of holding, exploiting or receiving income from intellectual property assets; Examples intellectual property assets include: 1. patents and assets that share the same features of a patent including copyrighted software, technical know-how and other similar novel, useful and protected assets. 2. trademarks, brands, customer lists and similar marketing intangible assets	<ul style="list-style-type: none"> ➤ For patents and similar intellectual property assets, the core income generating activities may include research and development; ➤ For intangible intellectual property assets such as brand, trademark and customer data, the core income generating activities may include marketing, branding and distribution.
Holding Business	means the business of being a pure equity holding entity (<i>a commercial entity that only holds equity participations in other entities and only earns dividends and capital gains</i>)	An included entity that only carries out holding business is subject to a reduced economic substance test but the Act does not specify core income generating activities. There is no requirement for CIGA to be conducted in The Bahamas. See section 7 of the Act for further details.

13. HOLDING BUSINESS

- 13.1 The definition of “holding business” is intentionally narrow and relates to entities that only hold equity participations in other entities and only earn interest and capital gains.
- 13.2 Simply holding real estate, bonds, or other non-equity investments will not constitute the conduct of holding business. If an Entity held any of the aforementioned assets or investments, and conducted no other relevant activity, the Entity would not have to satisfy the economic substance test or the reduced economic substance test.

- 13.3 Equity participations will include shares, limited partnership interests, and other equity-like investments. However, if the entity earns income other than dividends and capital gains, the entity is not engaged in holding business.
- 13.4 There is no CIGA requirement for holding business and no requirement that a holding business be directed and managed in The Bahamas. As noted, the reduced economic substance test means that a commercial entity engaged in holding business should demonstrate the adequacy of its human resources and premises for holding and managing equity participations. Adequacy will depend on whether the entity is engaged in the active management of the investments or is simply holding such investments passively. Depending on the activities of the holding business, simply retaining the services of a Registered Agent may satisfy the reduced economic substance test.

Examples:

- 13.5 Entity A is a commercial entity which holds private equity and bonds and earns interest income (from the bonds) as well as dividends from its private equity investments. Entity A is not carrying on the relevant activity of holding business as it is earning more than dividends and/or capital gains. If it conducts no other relevant activity, Entity A will only have a reporting obligation.
- 13.6 Entity B is a commercial entity which holds a brokerage account with equities registered in the Broker's street name. Since Entity B has a claim against the broker but not the issuer of the equities, it does not hold equity participations in other entities; therefore, Entity B is not engaged in holding business.
- 13.7 Entity C is a commercial entity which holds private equity and pays dividends into a bank account which is interest bearing. Entity C is still conducting holding business even though it is in receipt of incidental interest income from a bank account into which the dividends and capital gains are deposited. In these circumstances, the maintenance of a bank account does not prevent the commercial entity from meeting the definition as intended by the Act.

14. FINANCING AND LEASING BUSINESS

- 14.1 A commercial entity conducts the relevant activity of financing and leasing business when it extends credit facilities to any person for any kind of consideration. The definition is not intended to capture incidental, one-off, or minor activity for no consideration or expectation of profit. For these purposes, "incidental" means occasional or minor activity. For example, an entity may provide in-house short-term financing to facilitate the sale of a good. In these circumstances, the entity is in the business of selling the good and the

financing business will be viewed as incidental to its sales business. It is only where the activity can be viewed as a business in its own right that it will be considered to be carrying on the relevant activity.

- 14.2 Credit facilities includes loans, hire purchase agreements, long-term credit plans, and finance leases in relation to assets other than land. For the avoidance of doubt, a long-term or short-term lease of land, including private rentals, commercial rentals or finance leases of land, do not constitute finance and leasing business.
- 14.3 Consideration may take different forms but would typically include interest and/or lending fees in the case of financing and lease payments and, where applicable, residual value payments, in the case of a lease. The grant of security by any party in favour of the lender does not constitute consideration.
- 14.4 The definition is concerned with the extension of credit and genuine investment activities are not intended to be captured. Therefore, the purchase of debt securities or quasi-debt securities as an investment does not constitute the extension of a credit facility. For entities that engage in banking, insurance, and fund management businesses it may be a normal part of their activities to provide credit facilities, and so these sectors are excluded from being within the scope of financing and leasing business.
- 14.5 Where the provision of credit is separated from the consideration received, this will be in scope. For instance, a loan advanced by one company that is then assigned to another company that receives repayments of principal and income, shall be construed on the assignment as if the assignee had advanced the credit facility. In this case, the assignor of the loan, would cease to conduct the business of financing and leasing upon assignment, if that was the only facility which it had extended.

Examples:

- 14.6 Entity A subscribes for one or more of a series of bonds as an investment in a Reg D issuance. Entity A is not extending credit but making an investment in the debt securities of an issuer.
- 14.7 Entity B extends a loan to an affiliate earning an interest rate of 6%. Entity B is conducting the relevant activity of financing and leasing business. If Entity B then assigns the loan to Entity B.2, a commercial entity, Entity B will, on the date of the assignment, not be conducting financing and leasing business; however, Entity B.2 will be conducting financing and leasing business commencing on the date it receives the assignment, even though Entity B.2 did not originally extend the credit.

15. SHIPPING BUSINESS

- 15.1 The key criteria for conducting shipping business is the conduct of one or more of the listed activities in the definition in relation to “the operation of a ship” outside of Bahamian waters. A “ship” should be understood to mean a vessel, boat or craft or any other description of ship designed, used or capable of being used for navigation, and does not include a fishing vessel, pleasure craft or pleasure yachts. A fishing vessel should be understood to mean a vessel being used for the time being for fishing for profit. A pleasure yacht or pleasure craft should be understood to mean a vessel (other than a passenger ship or a ship engaged in trade) primarily used for sport or recreation.
- 15.2 The employment of seafarers by a company, or other entity owned, directly or indirectly, by a ship-owner solely to crew vessels owned by the ship-owner or by an entity within the ship-owner's group of companies or a related entity does not constitute functioning as a private seafarer recruitment and placement service on the basis that it is facilitating the employment of crew for the related ship owner's group and not for a third party ship owner.
- 15.3 A company which undertakes any of the listed activities where the company does not also operate a ship, or ships, in international waters is not “shipping business” because the company which charters out the ship (i.e. the lessor) is not operating the ship.
- 15.4 Shipping business does not include owning, operating or chartering a pleasure yacht, fishing vessel, or pleasure craft, each as defined in the Merchant Shipping Act. A pleasure craft is a vessel (other than a passenger ship or a ship engaged in trade) primarily used for sport or recreation.
- 15.5 Pleasure yachts and pleasure craft are used primarily for sport or pleasure and are not typically operated as a genuine commercial enterprise. Chartering of such vessels or operating such vessels does not fall within the definition of shipping business. A fishing vessel may be used as a genuine commercial enterprise, but the activities conducted are in pursuit of commercial fishing rather than “shipping business”.

16. BANKING BUSINESS

- 16.1 Banking business has the meaning assigned to the term in part a of the definition of banking business in the Banks and Trust Companies Regulation Act, 2020 (“BTCRA”). Banks licensed under the BTCRA are required to have a physical presence in The Bahamas unless they are a “Managed Licensee” or “Managed Branch” operating with an exemption and meeting the requirements of the Central Bank’s guidelines for such entities.

- 16.2 Given The Bahamas' robust regulatory requirements with respect to physical presence, which result in significant overlap with the substance requirements, it is expected that commercial entities licensed to carry on banking business, will already generally be operating in The Bahamas with adequate resources and expenditure. However, those relevant entities will still be subject to the Act (i.e. filing requirements, CIGA performed in The Bahamas, and monitoring by the Authority).
- 16.3 Therefore, a bank which meets the Central Bank's physical presence requirements must still assess whether it satisfies the economic substance test, including but not limited to whether all CIGA is being conducted in The Bahamas in relation to the relevant activity of banking.
- 16.4 The effect of the Act on managed licensees is that unless such licensee is asserting and substantiating tax residence in a jurisdiction outside of The Bahamas or asserting that it is resident owned, notwithstanding the exemptions granted by the Central Bank of The Bahamas, the bank must satisfy the economic substance test. Therefore, compliance with the Central Bank's requirements will not necessarily be sufficient to meet the economic substance test.
- 16.5 As for managed branches, such companies are typically registered under the Companies Act as a foreign company and would be an Entity subject to the Act. They would not be a commercial entity if they were asserting and substantiating that they are tax resident and subject to tax in another jurisdiction in relation to all of their income from the relevant activity.
- 16.6 For the avoidance of doubt, a bank that is asserting that it is resident-owned in The Bahamas and conducting its core income generating activities in The Bahamas or asserting that it is tax resident in a foreign jurisdiction and subject to tax in that foreign jurisdiction is not required to meet the economic substance test. Like all other Entities, the bank will have a reporting requirement.

17. INSURANCE BUSINESS

- 17.1 Insurance business has the meaning assigned to such term in the Insurance Act. "Insurance business" means —
- (a) the assumption of the obligations of a company in any class of insurance business;
 - (b) the assumption of the business of insuring risk or liabilities;

- (c) the renewal and issuing of documents of renewal of existing insurances and liabilities;
- (d) the receiving of first, subsequent or renewal premiums including reinsurance;
- (e) reinsurance business; and
- (f) pensions business and other business directly connected to insurance business;”

17.2 The Insurance Commission of The Bahamas regulates insurance business conducted domestically under the Insurance Act and insurance business conducted externally under the External Insurance Act. The definition of insurance business is not intended to be limited only to entities licensed under the Insurance Act. An Entity licensed under the External Insurance Act and which conducts insurance business would be required to satisfy the economic substance test if it is a commercial entity. An Entity licensed under the Insurance Act should assess whether it meets the “resident-owned exemption” and if so, it would only have a reporting obligation under the Act. Many licensees under the External Insurance Act are captive insurers which are required to retain the services of an insurance manager registered with the Insurance Commission and to designate a resident representative. Although the arrangements with the insurance manager and the resident representative may be such as to satisfy CIGA, the Entity would have to ensure that CIGA was being conducted in The Bahamas and ensure the fulfillment of the other requirements of the economic substance test. In other words, the Entity should not assume that the appointment of an insurance manager and resident representative satisfies the CIGA requirement and should ensure that appropriate arrangements for the conduct of CIGA in The Bahamas on an outsourced basis are provided in the insurance management agreement.

18. DISTRIBUTION AND SERVICE CENTRE BUSINESS

18.1 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 Bahamas;
- (b) providing services to an entity in the same group in connection with the business outside The Bahamas,

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

18.2 “Group” is defined as *“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”*.

18.3 The definition targets commercial entities which purchase goods, components parts or materials from an entity in the same group and resells them outside of The Bahamas and/or provide services to an entity in the same group in connection with a business outside of The Bahamas. There are certain activities which are not intended to be captured:

- Purchasing goods, materials and components from third parties
- Where the activity is conducted as an incidental, one-off or ancillary activity and for no profit-making purposes
- The business of purchasing goods, component parts and materials and reselling such goods from entities in the same Group where both entities are located in The Bahamas
- The business of providing services to an entity in the same Group where that Group entity receiving such services is located in The Bahamas

19. FUND MANAGEMENT BUSINESS

19.1 The Act defines fund management business as the business of managing securities as set out in the First Schedule to the Securities Industry Act, 2011 (No. 10 of 2011) (“SIA”) carried on by a commercial entity licensed or otherwise authorized to conduct business under that Act and/or under the IFA for an investment fund.

19.2 The definition has three requirements:

- a) The entity is managing securities as set out in the First Schedule of the SIA;
- b) The entity is licensed or otherwise authorized to conduct business under the SIA or the Investment Funds Act; and
- c) The entity conducts such business for an investment fund.

19.3 The definition of fund management business applies to commercial entities which manage securities belonging to an investment fund on a discretionary basis. The definition of “securities” is the one given to the term in the SIA.

- 19.4 Fund management business does not include managing securities belonging to other persons that are not investment funds. For further discussion on the definition of investment fund, see [section 7 “Legal Entities out of Scope”](#).
- 19.5 The SIA prohibits a person from carrying on securities business in or from The Bahamas unless that person is registered under the SIA or is exempt from registration. Exempt persons under Part 4 of the First Schedule of the SIA (as well as persons conducting excluded activities under Part 3 of the First Schedule of the SIA) are exempt from registration under the SIA because such persons are not regarded under the SIA as conducting securities business. All commercial entities that are registered under the SIA and/or the IFA that carry on fund management business are subject to the Act and these Guidelines.
- 19.6 Non-registrable persons under the SIA include, among others, persons carrying on securities business only in the course of acting in certain legal capacities (e.g. directors, partners, LLC managers, liquidators, and trustees) provided that they are not separately remunerated for any of the activities which constitute the carrying on of such securities business (otherwise than as part of any remuneration such person receives for acting in that capacity) and either:
- (a) do not hold themselves out as carrying on securities business other than as a necessary or incidental part of performing functions in that capacity, or
 - (b) are acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under the SIA.
- 19.7 Non-registrable persons under the SIA also include companies carrying on securities business exclusively for one or more affiliated companies (e.g., single family offices), joint enterprises, the Bahamas International Stock Exchange and any other registered marketplace, the Government of The Bahamas, or the Central Bank of The Bahamas.
- 19.8 An entity that carries on investment fund business in or from The Bahamas is required to be registered under the IFA. In the context of the Act, operators (that do not receive remuneration for management services), investment funds, fund administrators, and custodians are not in “fund management business”. The IFA permits entities incorporated outside of The Bahamas to act as fund managers of investment funds licensed in The Bahamas once they are registered under the IFA, and in certain circumstances also in a prescribed jurisdiction or the SIA. Entities which are organized outside of The Bahamas and registered under the IFA but which are not required to be registered under the SIA are not subject to either the reporting obligation or the economic substance requirements of the Act.

- 19.9 Entities incorporated in The Bahamas which are registered, or are required to be registered, either under the IFA or the SIA, and which carry on fund management business, will be subject to the economic substance obligation and the reporting obligation if the Entity is not asserting that it is tax resident in another jurisdiction and the Entity is not resident owned and conducting CIGA in The Bahamas. If the Entity is tax resident in another jurisdiction or is resident owned and conducting CIGA in The Bahamas, the Entity is subject to a reporting obligation only.

20. HEADQUARTERS BUSINESS

- 20.1 Headquarters business is defined as *“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;”*
- 20.2 “Group” is defined as *“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”.*
- 20.3 An entity may be a headquarters irrespective of its position in the group. What is important in this context is that the entity provides one or more of the services listed in the definition.
- 20.4 In conducting banking, financing and leasing, fund management, intellectual property, holding business, and insurance businesses a commercial entity may provide, in addition, services that fall within the definition of headquarters business. To prevent duplicate reporting, commercial entities conducting those relevant activities will not also be regarded as conducting headquarters business. It is possible for a commercial entity to be regarded as carrying on both headquarters business and another relevant activity if the activities are separate and distinct business activities.

21. HIGH-RISK AND LOW-RISK INTELLECTUAL PROPERTY (“IP”)

- 21.1 An included entity engaged in the commercial use of intellectual property will have to determine if it conducts high-risk or low-risk activities. A business engaged in such activities is categorized as high-risk when the:-
- i. IP asset is acquired from a related party; or
 - ii. IP asset is obtained through the funding of overseas research and development activities (e.g., under a cost-sharing agreement); or
 - iii. IP asset is licensed to a related party; or
 - iv. IP asset is monetized through activities performed by foreign related parties.
- 21.2 In this scenario, there is a rebuttable presumption that the Included Entity engaged in such high-risk IP activities does not meet the economic substance test, as the risks of artificial profit shifting are considered to be greater. To rebut the presumption, the high-risk IP included entity will have to produce materials which explain how the included entity's income being generated in these high-risk situations is directly linked and substantiated by activities undertaken in The Bahamas. The included entity has to evidence that "in addition or alternatively to research and development, branding and distribution activities, a high degree of control over the development, enhancement, maintenance, protection and exploitation of the intellectual property asset (the "DEMPE") and that the strategic decisions and managing as well as bearing the principal risks relating to the intellectual property asset or the third party acquisition of the intellectual property asset are undertaken in The Bahamas by full time skilled employees that permanently reside and perform their core income generating activities within The Bahamas.
- 21.3 The high evidential threshold requires:-
- i. Detailed business plans which clearly lay out the commercial rationale for holding the Intellectual Property asset(s) in The Bahamas;
 - ii. Evidence that the decision making related to the DEMPE is taking place in The Bahamas;
 - iii. Information on employees in The Bahamas, their experience and their qualifications;
 - iv. any other information as may be reasonably required by the Authority to support compliance and to rebut the presumption of non-compliance with the economic substance test.

- 21.4 An included entity is a low risk intellectual business if the intellectual property asset is:-
- i. developed in-house;
 - ii. acquired from an unrelated party;
 - iii. licensed to unrelated parties.
- 21.5 In this scenario research and development activities are expected to take place in The Bahamas. For non-trade assets (brand, trademarks, customer data) the core income generating activity should include marketing, branding and distribution activities. If these activities are not taking place in The Bahamas, there is a presumption of non-compliance. The included entity, however, can still prove that other core income generating activities are taking place within The Bahamas by:-
1. Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset; or
 2. Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third-party acquisition and subsequent exploitation of the intangible asset; or
 3. Carrying on the underlying trading activities through which the intangible assets are exploited, and which lead to the generation of revenue from third-parties.
- 21.6 In any case, both high-risk and low-risk activities would require the necessary staff, premises and equipment. Such entities would require more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of The Bahamas.
- 21.7 The Authority will use the power vested in it under section 13 of the Act to spontaneously exchange information to the relevant jurisdiction of the legal or beneficial owner of an included entity categorized as high risk intellectual property business.

22. REPORTING TO REGISTERED AGENT OR COMPLIANCE COMMISSION

- 22.1 Sections 11 and 12 of the Act contain information or documentation that an Entity, an Included Entity, an Entity that is conducting a relevant activity by asserting foreign tax residence, and an Entity that is resident-owned are required to report or submit to the Registered Agent or the Compliance Commission. The information or documentation required to be reported to the Registered Agent or the Compliance Commission and which the Registered Agent is then required to report to the Authority in the ES portal

depends on the Entity's classification. Section 11 of the Act places an obligation on the Entity to report to the Registered Agent to enable the Registered Agent or the Compliance Commission to report on behalf of the Entity within but no later than 9 months of the Entity's fiscal year end. These Guidelines may expand on and clarify information required as a function of the portal to ensure compliance with the OECD's guidance.

- 22.2 In addition to the items specifically referenced in sections 11 and 12, each included entity and entity that is conducting relevant activities but asserting tax residence in another jurisdiction, shall confirm whether it is part of an MNE Group and if so, give details of the MNE Group. The term MNE Group has the meaning assigned to the term in the Multinational Entities Financial Reporting Act, 2018 (No. 25 of 2018).
- 22.3 Although Entities that are not Included Entities are not subject to the economic substance test, the Authority requires that each Entity indicate whether or not it conducted a relevant activity during the fiscal year. An investment fund will always report that it does not conduct a relevant activity, but a resident-owned Entity and an Entity that is asserting foreign tax residence (assuming it conducts a relevant activity) will have to indicate whether or not it carried on a relevant activity and what activity it carried on.
- 22.4 An Entity's Registered Agent is defined as the person who is at any particular time performing the functions of registered agent of a company incorporated under the International Business Companies Act or Companies Act and includes a regulated entity providing a registered office for an entity.
- 22.5 Companies Act companies typically do not have a registered agent, but a registered office. As long as a regulated entity provides the registered office, that regulated entity will be considered the Registered Agent solely for the purposes of reporting under the ES Act. As many registered offices which are provided by regulated entities also maintain corporate records and make filings on behalf of Companies Act companies, these regulated entities are best positioned to facilitate reporting.
- 22.6 As for partnerships, many partnerships do not have a registered office and must report to the Compliance Commission. With respect to exempted limited partnerships, every exempted partnership is required to have a registered office in The Bahamas, and these should be reported by the regulated entity providing the registered office.
- 22.7 The term regulated entity is defined as persons regulated in accordance with the Banks and Trust Companies Regulations Act, the Securities Industry Act, the Insurance Act, the External Insurance Act, the Financial and Corporate Services Providers Act and the Investment Funds Act. If a regulated entity is an Entity subject to the Act and provides its own registered office, it may report for itself.

23. REPORTING TO AUTHORITY BY REGISTERED AGENT

- 23.1 A Registered Agent has the obligation to collect information set forth in section 11 of the Act and these Guidelines and to report the information received pursuant to section 12 along with the supporting documentation noted in section 11 and section 12. Pursuant to section 12(3) an entity making a report to its Registered Agent is deemed to have affirmed or sworn an oath of the truth of the statements contained in the report.
- 23.2 The Registered Agent has no obligation to verify the content of the report. In addition, pursuant to section 24 of the Act, all information collected by the Registered Agent and reported but not specified in the Act is treated as done in accordance with the Act without breaching any professional code of conduct or rule of law. It is anticipated that more expansive information may be requested in these Guidelines or may be requested by the Authority under its general powers which is not explicitly set forth in the Act. In cases where the Registered Agent reports this information, the Registered Agent shall be deemed to be submitting the report and all supporting documents and information in pursuance of the Act.

24. ENFORCEMENT POWERS OF THE AUTHORITY

Power to Request Additional Information

- 24.1 Pursuant to section 14(1) of the Act the Authority has the power to request additional information or documentation from an entity in order to verify its compliance with the economic substance test or any other provision of the Act. This is a general power which is not specific to included entities.

Power to compel an audit with respect to an entity

- 24.2 Pursuant to section 14(2) the Authority may, from time to time and at the expense of an entity, cause the conduct of an on-site inspection of the business of the entity for the purpose of verifying the information sworn or affirmed to in the report submitted in accordance with section 11 and 12 of the Act. As above, this is a general power which is not specific to included entities.

Power to compel an audit in cases where non-compliance is suspected

- 24.3 If the Authority determines on the basis of information provided to it under section 14(1) that the entity is an Included Entity which has failed to meet the economic substance test

in respect of a fiscal year, the Authority has the power, if it has only determined non-compliance on the basis of information submitted, to issue a First Notice of Non-Compliance (the “First Notice”) following which the included entity shall have a period of 30 days to comply. If the Included Entity does not comply with the First Notice, the Authority shall instruct the entity to conduct a formal audit. In these circumstances, the Authority has the discretion to conduct an audit on any entity subject to the Act, including at the premises of a Registered Agent. If the Included Entity does not comply with the direction to commence a formal audit within 30 days of the direction, the Act requires that an automatic administrative penalty not exceeding \$50,000 be applied with a further administrative penalty of \$500 for every day the offence (of not commencing the formal audit) continues.

- 24.4 If the formal audit reveals deficiencies not already noted, the Second Notice of Non-Compliance (the “Second Notice”) should indicate the details of the areas where remedial measures are necessary and state a deadline of no more than thirty days to comply. If the included entity does not comply with the Second Notice, the entity will be subject to an automatic administrative penalty of up to \$300,000 and be subject to striking off.
- 24.5 According to the Act, failure to comply with the First Notice in circumstances where the Authority has not conducted a formal audit (e.g., under its power contained in section 14(2)) will not result in the Included Entity being assessed an automatic administrative penalty. However, failure to comply with a First Notice in the circumstances contemplated in section 18(5) i.e. where a formal audit has already been conducted or a request is made for information under section 18(2) which is not complied with, will result in an administrative penalty of up to \$300,000. The Authority has discretion as to the administrative penalty to be applied up to the maximum amount.
- 24.6 If an entity, in exercise of its general power under section 14(2) is issuing its First Notice as a result of a random audit or request for information, failure to comply with the First Notice or any request for information under section 18 (2) shall result in a penalty of up to \$300,000. The Authority has discretion as to the administrative penalty to be applied up to the maximum amount.

25. PENALTIES

- 25.1 The penalties imposed by the Act are intended to dissuade non-compliance and are therefore severe. As noted above, an administrative penalty is assessed for failure to commence an audit, failure to provide information and failure to comply with a First Notice(issued as a result of a formal audit) or a Second Notice which always follows a formal audit. In addition, there are a number of offences in section 19 as follows:

Offence	Administrative Penalty	Reference
Contravening section 11 (reporting to registered agent)	\$5,000 plus daily default for each day continued of \$500	Section 19(a)
Contravening section 12 without reasonable excuse	\$5,000 plus daily default for each day continued of \$500	Section 19 (b)
Obstructing the Authority in performing its functions under the Act	Up to \$100,000 plus daily default for each day continued of \$1,000	Section 19 (c)
Altering, destroying, mutilating, hiding or removing information that causes the person or another person to contravene the Act and advising anyone to alter, destroy, mutilate or remove information.	Up to \$100,000 plus daily default for each day continued of \$1,000	Section 19 (d) and (e)
Providing inaccurate information in a report to the Registered Agent or filing a report to the Authority where the person knows of the inaccuracy or discovers the inaccuracy and fails to take steps to inform the Registered Agent, the Compliance Commission, or the Authority of the same	Up to \$100,000 plus daily default for each day continued of \$1,000	Section 19 (f)
Failure to comply with a first notice of non-compliance or a request for further documents after a random audit in accordance with section 14	Up to \$300,000 and subject to striking off	Section 18(5)
Failure to comply with a first notice of non-compliance commenced under section 18	No penalty but subject to a mandatory audit	Section 18(3)
Failure to commence an audit when requested by the Authority	Up to \$50,000 plus daily default for each day continued \$500	Section 18(3)
Failure to comply with a second notice of non-	Up to \$300,000 and subject to striking off	Section 18(9)

compliance		
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25.2 Note that a person on whom an administrative penalty is imposed may appeal to the Supreme Court pursuant to section 27 of the Act. With respect to any timelines provided in the Act for compliance, the Authority, in its sole discretion will consider requests for extension only where there is good reason for such extension. In those circumstances, the Entity should address a formal request for extension at least 5 business days prior to the deadline given by the Authority.

26. SPONTANEOUS EXCHANGE OF RELEVANT INFORMATION

26.1 The Competent Authority will spontaneously exchange relevant information with competent authorities in reportable jurisdictions in all cases where-

- i. An Included Entity engages in high-risk IP activities; or
- ii. An Included Entity has failed to satisfy substance requirements of the Act; or
- iii. An Entity which conducts relevant activities has declared that it is tax resident in another jurisdiction.

26.2 Recipient competent authorities could be:

1. in the jurisdiction of residence of the entity's immediate parent;
2. In the jurisdiction of residence of the entity's ultimate parent;
3. In the jurisdiction(s) of residence of the entity's ultimate beneficial owner(s); or
4. In the case of an entity claiming to be tax resident in another jurisdiction, sent to the competent authority of the jurisdiction in which they are claiming tax residence.

26.3 Reportable jurisdictions are those jurisdictions listed in the First Schedule of the Act. The listed jurisdictions have activated exchanges by opting to receive spontaneously exchanged information. The modalities of the above exchange framework, the precise data points, the mechanism for opting in, and the development of the standardized template and XML schema will be used by the Authority in the form approved by the OECD.

27. LIQUIDATION

27.1 An Entity continues to be subject to the Act so long as it continues to be an Entity. If the Entity commences liquidation or is otherwise wound up, the Entity's liquidator or the provisional or official liquidator (as the case may be) shall be responsible for submitting

the information contained in section 11 to the Entity's Registered Agent or the Compliance Commission, as applicable.

28. STRUCK-OFF ENTITIES

- 28.1 An Entity that is not formally liquidated remains subject to the requirements of the Act. Although directors of a struck-off company are prohibited from acting in any way with respect to the affairs of the company, until the company is formally liquidated, the company remains liable to the assessment of penalties for non-compliance under the Act.
- 28.2 A Registered Agent should ensure that the Entity is noted as "struck-off" in the BOSS reporting system. If a Registered Agent receives an economic substance report from an Entity that is struck off the register, the Entity should be advised that no report may be submitted on their behalf until the Entity is restored to the register. A Registered Agent will not be liable for failing to report on behalf of a struck-off Entity if they have made the notation in the BOSS system. The Entity will remain liable for failing to report in circumstances where it simply has to pay all outstanding fees in order to restore the Company to the register and report.

29. RETENTION OF INFORMATION

- 29.1 An Entity and any Registered Agent are required to retain the books, documents, electronically stored information or other record that relates to the information reported and required to be reported to the Authority for a period of six (6) years.

30. TRANSITION PERIOD

- 30.1 As the economic substance reporting and other obligations have been a part of Bahamian law since the original commencement of the Repealed Act, the Act does not provide expansive transition periods. The main exception is that under the Repealed Act the list of relevant activities created challenges with interpretation in relation to holding business and pure equity holding entities which has been amended in the Act. As a result, the Authority recognizes that some entities may reclassify themselves. If the Entity has already reported in the old portal on the basis that they would have been a non-included passive holding entity, the Entity should advise its registered agent of the expected reclassification under the Act. An Entity impacted by the change of this definition as aforesaid will have 6 months to meet the economic substance test from the commencement of the Act.
- 30.2 Many entities that reported well before the effective deadline, may already have reported in the electronic portal that has now been deactivated. Section 31 of the Act permits an

entity that has reported in the now deactivated portal before the commencement of the Act for its fiscal year ending prior to the commencement of the Repealed Act, to inform its Registered Agent and provide the Registered Agent with evidence of reporting. Upload of the evidence of reporting provided to the Registered Agent is mandatory. If the receipt is lost, the Registered Agent may wish to obtain an affidavit of loss. Upload of the affidavit of loss is optional, but it is highly recommended. A Registered Agent should only indicate that an entity has reported in the old portal if they are in receipt of appropriate evidence. This evidence may include:

- i) An acknowledgement of receipt issued by the deactivated portal showing the last reporting date; or
- ii) Email correspondence evidencing manual submission, provided there is also evidence of acknowledgment; or
- iii) If the entity has lost the acknowledgment receipt, an affidavit of loss.

30.3 Although the Act does not require it, it is also good practice for the Registered Agent to retain all reports that the Entity has submitted since it became subject to the reporting obligation both under the Repealed Act and under the Act.

30.4 If an Entity has not completed all economic substance reports in the old system (OTAS system) prior to the commencement of the Act, then their Registered Agent must be provided with the information under the Act to complete their economic reports which are due or overdue in the new system. The prescribed information as set out in the Act will be required to be provided even though the Entity is reporting in respect of fiscal years concluded under the Repealed Act.