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COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2023

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No. 45 of 2023

COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2023

AN ACT TO PROVIDE FOR SUBSTANTIAL ECONOMIC PRESENCE AND ANNUAL REPORTING OF A COMMERCIAL ENTITY CARRYING ON RELEVANT ACTIVITIES AND FOR CONNECTED PURPOSES, TO REPEAL THE COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018 AND FOR CONNECTED MATTERS

[Date of Assent - 11th August, 2023]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Commercial Entities (Substance Requirements) Act, 2023.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation.

In this Act —

“**Authority**” means the Minister of Finance as Competent Authority under the Automatic Exchange of Financial Account Information, Act, 2016 (*No. 37 of 2016*);

“**Bahamian waters**” has the meaning assigned to the term in the Merchant Shipping Act, 2021 (*No. 33 of 2021*);

“banking business” has the meaning assigned to the term in section 2 of the Banks and Trust Companies Regulations Act, 2020 (*No. 22 of 2020*) except paragraph (b);

“beneficial owner” has the meaning assigned to the term in section 5 of the Register of Beneficial Ownership Act, 2018 (*No. 38 of 2018*);

“commercial entity” is an entity incorporated, registered or continued under the —

- (a) Companies Act (*Ch. 308*) and includes a foreign company 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*),

but does not include an entity under paragraphs (a) to (e) which —

- (i) is resident owned in The Bahamas;
- (ii) is tax resident in a jurisdiction other than The Bahamas; or
- (iii) is an investment fund;

“commercial use of intellectual property” means the business of holding, exploiting or receiving income from intellectual property assets;

“Compliance Commission” means The Compliance Commission of The Bahamas;

“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 present as those of a single economic entity;

“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;

“economic substance test” shall be understood within the context of sections 4, 6, 7, 8, 9 and 10;

“electronic portal” means the electronic portal for the spontaneous exchange of information maintained by the Authority;

“Entity” means any entity which is incorporated registered or continued under the –

- (a) Companies Act (*Ch. 308*) and includes a foreign company 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*);

“financing and leasing business” means the business of providing credit facilities for any kind of consideration to another person but does not include—

- (a) financing and leasing of land or an interest in land;
- (b) banking business;
- (c) fund management business;
- (d) holding business;
- (e) insurance business;

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;

“fiscal year” means an annual accounting period not being not more than one year with respect to which the Entity prepares its financial statements or accounts;

“fund management business” 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 authorised to conduct business under that Act and/or under the Investment Funds Act, 2019 (*No. 2 of 2019*) 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 business or insurance business;

“holding business” means the business of being a pure equity holding entity;

“immediate parent” in relation to an Entity, means a person that owns directly 25% or more of the ownership interest or voting rights in the Entity;

“included entity” means an Entity which —

- (a) is a commercial entity; and
- (b) is engaged in relevant activities;

“insurance business” has the meaning assigned to the term in section 2 of the Insurance Act (*Ch. 347*);

“Intellectual property asset” means an intellectual property right including a copyright, design right, patent and trademark;

“investment fund” has the meaning assigned to the term in the Investment Funds Act, 2019 (*No. 2 of 2019*) 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 licensed under the Banks and Trust Companies Regulation Act 2020 (*No. 22 of 2020*) or the Insurance Act (*Ch. 347*) or a person registered under the Friendly Societies Act (*Ch. 313*) or the Co-Operative Societies Act (*Ch. 314*);

“Investment fund business” means the business of operating as an investment fund;

“partnership” includes general partnerships, exempted limited partnerships, and limited partnerships;

“pure equity holding entity” means a commercial entity that only holds equity participations in other entities and only earns dividends and capital gains;

“regulated entity” includes an entity regulated in accordance with —

- (a) the Banks and Trust Companies Regulation Act (*Ch. 316*);
- (b) the Securities Industry Act (*No. 10 of 2011*);

- (c) the Insurance Act (*Ch. 347*);
- (d) the External Insurance Act (*Ch. 348*);
- (e) the Financial and Corporate Services Providers Act (*Ch. 369*); and
- (f) the Investment Funds Act, 2019 (*No. 2 of 2019*);

“Registered Agent” means 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 the Companies Act and includes a regulated entity providing a registered office for an entity;

“Registrar” means the Registrar General;

“relevant income” in relation to a commercial entity, means all of that commercial entity’s gross income from its relevant activities and recorded in its books and records under applicable accounting standards;

“Repealed Act” means the Commercial Entities (Substance Requirements) Act, 2018 (*No. 32 of 2018*);

“reportable jurisdiction” means a jurisdiction specified in the *First Schedule*;

“resident owned in The Bahamas” means direct or indirect ownership of one hundred (100) percent of the beneficial interests in an Entity by one or more natural persons who —

- (a) are ordinarily resident and domiciled in The Bahamas; or
- (b) have been issued a certificate of annual or permanent residence and who physically resides in The Bahamas for a cumulative period of at least three months in every calendar year.

“ship” has the meaning assigned to it in section 2 of the Merchant Shipping Act 2021 (*No. 33 of 2021*), but does not include a pleasure yacht, fishing vessel or pleasure craft;

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than solely within Bahamian waters —

- (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 business or the owning, operating or chartering of a pleasure yacht;

“ultimate parent” means an entity that meets the following criteria —

- (a) it owns directly or indirectly a sufficient interest in the Entity 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 entity that owns directly or indirectly an interest described in paragraph (a) in the first mentioned entity.

PART II – THE COMPETENT AUTHORITY

3. Functions of the Authority.

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

- (a) to administer this Act;
- (b) to determine whether an Entity is required to satisfy the economic substance test;
- (c) to determine whether an Entity that is required to satisfy the economic substance test in relation to a relevant activity does satisfy it in accordance with this Act;
- (d) to monitor compliance with this Act; and
- (e) any other function specified in this Act.

PART III- SUBSTANCE REQUIREMENTS

4. Requirements to meet substantial economic presence.

- (1) An included entity must have substantial economic presence in The Bahamas.

- (2) In order to satisfy the requirement under subsection (1), an included entity shall satisfy the requirements of sections 6,7, 8, 9 and 10 as applicable to the included entity's relevant activities.

5. Meaning of relevant activities.

For the purposes of this Act, a commercial entity is engaged in a relevant activity if that commercial entity carries out any of the following activities, namely —

- (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.

6. Meaning of core income generating activities.

- (1) An included entity must conduct core income generating activities in The Bahamas.
- (2) Core income generating activities mean activities that are of central importance to an included entity in terms of generating relevant income.
- (3) An included entity may outsource any or all of its core income generating activities conducted in The Bahamas to an outsourcing service provider in The Bahamas.
- (4) Where any part of the core income generating activities are outsourced in The Bahamas there must be adequate —
 - (a) amounts of annual operating expenditure;
 - (b) qualified full-time equivalent employees; and
 - (c) physical offices,within The Bahamas, and the included entity must be able to monitor and control the carrying out of that activity by the third party.
- (5) The core income generating activities referred to in subsection (2) may include, but are not limited to the following if carrying on the business of —
 - (a) banking —

- (i) the raising of 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 regulatory capital, and preparing regulatory reports and returns;
- (b) insurance —
 - (i) the predicting and calculating of risk;
 - (ii) insuring, or re-insuring against risk, and providing client services;
- (c) fund management —
 - (i) the taking of decisions on the holding and selling of investments;
 - (ii) calculating risks and reserves;
 - (iii) taking decisions on currency or interest fluctuations and hedging positions;
 - (iv) preparing relevant regulatory or other reports for government authorities and investors;
- (d) financing or leasing —
 - (i) the agreeing of funding terms;
 - (ii) identifying and acquiring assets to be leased, in the case of leasing;
 - (iii) setting the terms and duration of any financing or leasing;
 - (iv) monitoring and revising any agreements;
 - (v) managing any risks;
- (e) headquarters —
 - (i) the taking of relevant management decisions;
 - (ii) incurring expenditure on behalf of group entities;
 - (iii) coordinating group activities;
- (f) distribution or service centre —
 - (i) the transporting and storing of goods;
 - (ii) managing stocks and taking orders;
 - (iii) providing consulting or other administrative services;
- (g) shipping—
 - (i) the managing of the crew, including hiring, paying and overseeing crew members;

- (ii) hauling and maintaining ships;
- (iii) overseeing and tracking deliveries;
- (iv) determining what goods to order and when to deliver them, and organizing and overseeing voyages;
- (h) commercial use of intellectual property —
 - (i) patents and similar intellectual property assets – research and development;
 - (ii) intangible intellectual property assets such as brand, trademark and customer data—marketing, branding and distribution.

7. Requirement to meet economic substance test.

- (1) Subject to subsection (4), an included entity must satisfy the economic substance test in relation to any relevant activity carried on by it.
- (2) An included entity meets the economic substance test in relation to a relevant activity if—
 - (a) the included entity has direction and management in The Bahamas in relation to that activity;
 - (b) having regard to the level of relevant activity carried on in The Bahamas –
 - (i) 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;
 - (ii) there is adequate operating expenditure incurred in The Bahamas, and
 - (iii) there are adequate premises and physical assets in The Bahamas;
 - (c) all of the included entity’s core income-generating activities are carried out in The Bahamas; and
 - (d) if any core income-generating activities are carried out in The Bahamas for the included entity by a third party, the included entity (or in the case of a partnership, the partnership’s governing body) is able to monitor and control the carrying out of that activity by the third party.
- (3) The Competent Authority may issue guidelines in accordance with section 29 on how the economic substance test may be met.

8. Direction and management.

- (1) An included entity (other than a partnership) shall satisfy the direction and management test referenced in section 7(2) if—
 - (a) an adequate number of meetings of the Board of Directors are conducted in The Bahamas given the level of decision making required;
 - (b) there is a quorum of the Board of Directors physically present within The Bahamas during the meetings referred to in paragraph (a);
 - (c) strategic decisions of the included entity made at the meetings referred to in paragraph (a) must be recorded in the minutes of the meetings;
 - (d) all included entity records and minutes are kept in The Bahamas; and
 - (e) the Board of Directors, as a whole, has the necessary knowledge and expertise to discharge its duties.
- (2) An included entity that is a partnership will satisfy the direction and management test referenced in section 7(2) if—
 - (a) the partnership's governing body meets in The Bahamas at an adequate frequency having regard to the amount of decision-making required at that level;
 - (b) the majority of the partnership's governing body are physically present at those meetings;
 - (c) records are kept of the strategic decisions made at those meetings;
 - (d) the members of the governing body, as a whole, have the necessary knowledge and expertise to discharge their duties; and
 - (e) the records of the partnership, including the records referred to in sub-paragraph (c), are kept in The Bahamas.
- (3) In subsection (2), unless guidelines to the contrary are issued by the Competent Authority, "governing body", in relation to a partnership, means—
 - (a) the person or group of persons responsible for making the partnership's strategic and management decisions; but
 - (b) if that person or group is not able to be identified, all of the partners in the partnership.

9. Reduced substance requirements for holding business.

An included entity that engages in holding business is subject to reduced substance requirements as follows—

- (a) it shall comply with all applicable laws and regulations of The Bahamas; and
- (b) it shall have adequate human resources and adequate premises in The Bahamas for holding and managing equity participation in other entities,

10. Enhanced substance requirements for intellectual property income generating included entities.

- (1) For the purposes of this section, an included entity carrying on intellectual property activities is —
 - (a) low risk, if the intellectual property asset —
 - (i) is developed in-house;
 - (ii) is acquired from unrelated party;
 - (iii) is licensed to unrelated parties;
 - (b) high-risk, if the intellectual property asset —
 - (i) is acquired from a related party; or
 - (ii) is not obtained through research and development activities within The Bahamas; or
 - (iii) is licensed or sold to a related party; or
 - (iv) is monetized through activities performed by a related party outside of The Bahamas.
- (2) There is a presumption that an included entity carrying on the commercial use of intellectual property that is high risk does not meet the economic substance test, even if there are core income generating activities relevant to the business and the intellectual property assets being carried out in The Bahamas, unless the included entity satisfies the requirements under subsection 3(b) and provides sufficient evidence under subsection (4) to rebut the presumption.
- (3) Included entities carrying on —
 - (a) low-risk intellectual property activities shall satisfy the economic substance test by satisfying the requirements of sections 4, 6, 7 and 8 and additionally demonstrate that the following activities are undertaken in The Bahamas —
 - (i) taking the strategic decisions and managing, as well as bearing the principal risks relating —
 - (aa) to the development and subsequent exploitation of the intellectual property asset; or
 - (bb) to the third-party acquisition and subsequent exploitation of the intellectual property asset; or

- (ii) carrying on the underlying trading activities through which the intellectual property asset are exploited and which lead to the generation of revenue from a third-party;
 - (b) high-risk intellectual property activities in order to satisfy the economic substance test by satisfying the requirements of sections 4, 6, 7 and 8, and additionally in order to rebut the presumption in subsection (2) demonstrate that the following activities are undertaken in The Bahamas —
 - (i) taking the strategic decisions and managing as well as bearing the principal risks relating –
 - (aa) to the development and subsequent exploitation of the intellectual property asset; or
 - (bb) to the third party acquisition and subsequent exploitation of the intellectual property asset;
 - (ii) carrying on underlying trading activities within The Bahamas through which the intellectual property asset are exploited and which lead to the generation of revenue from a third party;
 - (iii) a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intellectual property asset.
- (4) In order to provide evidence —
 - (a) that income being generated is directly linked and justified by activities undertaken in The Bahamas; and
 - (b) of the matters referred to in subsection (3)(b),
 the included entity shall provide additional information including —
 - (i) detailed business plan which clearly shows the commercial rationale of holding the intellectual property assets in The Bahamas;
 - (ii) employee information including level of experience, type of contracts, qualifications, and duration of employment; and
 - (iii) verification that decision making is taking place within The Bahamas.

PART IV - REPORTING

11. Reporting to Registered Agent and duty to collect and maintain information.

- (1) An Entity shall report to its Registered Agent or the Compliance Commission where an Entity has no Registered Agent, the information required by this section to enable the Registered Agent or Compliance Commission to report in accordance with section 12 the information maintained by it in accordance with this section.
- (2) The Entity shall report to the Registered Agent or Compliance Commission and the Registered Agent or Compliance Commission shall maintain the following information in relation to an Entity—
 - (a) the information required under section 9(2) of the Register of Beneficial Ownership Act (*No. 38 of 2018*);
 - (b) the date of its fiscal year;
 - (c) whether it carried on a relevant activity;
 - (d) if it carried on relevant activities, the relevant activities it carried on;
 - (e) in relation to an included entity in respect of each relevant activity it carried on during a fiscal year, and in respect of that fiscal year—
 - (i) the relevant income generated by the relevant activity;
 - (ii) the total amount of expenditure incurred on the relevant activity;
 - (iii) the amount of expenditure incurred on the relevant activity within The Bahamas;
 - (iv) the total number of employees of the included entity;
 - (v) the total number of full-time equivalent employees engaged in the relevant activity;
 - (vi) the number of employees engaged in the relevant activity in The Bahamas;
 - (vii) the address of any premises within The Bahamas which is used in connection with the relevant activity;
 - (viii) the nature of any equipment and other tangible or physical assets located within The Bahamas which is used in connection with the relevant activity;
 - (ix) the core income generating activities in relation to each relevant activity being conducted;

- (x) the names of persons responsible for the direction and management of the relevant activity together with their relationship to the included entity and whether they are resident in The Bahamas;
- (xi) details of the board meetings held by the included entity including—
 - (aa) total number of board meetings held;
 - (bb) total number of board meetings held in The Bahamas;
 - (cc) the quorum for board meetings;
 - (dd) whether the minutes of the meetings and strategic decisions taken at such meetings were kept in The Bahamas;
 - (ee) whether a quorum of directors was physically present in The Bahamas at such meetings;
 - (ff) name, qualifications, and years of experience of directors;
- (xii) in respect of the included entity's immediate parent and ultimate parent (if any)—
 - (aa) the names of its immediate parent and ultimate parent;
 - (bb) the incorporation numbers or the equivalent;
 - (cc) the tax identification numbers or other identification reference numbers; and,
 - (dd) the jurisdictions in which the immediate parent and ultimate parent are formed,

save that where the relevant activity is holding business, the prescribed information required under this subsection (2) (e) shall be limited to sub-paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii);

- (f) with respect to an included entity which carries on the commercial use of intellectual property, in addition to the particulars supplied under subsection (2)(a) to (e) in relation to that activity—
 - (i) whether the included entity is high-risk or low-risk within the meaning of section 10;
 - (ii) the relevant intellectual property asset which the included entity holds;
 - (iii) explanation of how the intellectual property asset is being used to generate income;

- (iv) identify the decisions for which each employee is responsible for in respect of the generation of income from the intellectual property asset;
 - (v) the nature and history of the strategic decisions (if any) taken by the included entity in The Bahamas;
 - (vi) the nature and history of the trading activities (if any) carried out in The Bahamas by which the intellectual property asset is exploited for the purpose of generating income from third parties;
 - (vii) in relation to an included entity engaged in the commercial use of intellectual property that is high risk, whether the included entity will rebut the presumption in section 10(2), and in that case, the documents and information referenced in section 10(3)(b) and section 10(4); and
 - (viii) any other facts and matters necessary to demonstrate compliance with or required by section 10;
- (g) with respect to any included entity for which core income generating activity is carried out by a third party, in addition to the particulars supplied under subsection 2 (a) to (e) (and (f) as applicable)—
- (i) the name of the third party which carries out the core income generating activity on its behalf;
 - (ii) the core income generating activities, and what proportion of the included entity's total core income-generating activity, is carried out by the third party;
 - (iii) the geographical location of the activities carried out by the third party
 - (iv) how the included entity monitors and controls the activity carried out on its behalf by the third party;
 - (v) state the resources employed by the third party in performing the outsourced activity.
- (3) An Entity that is carrying on a relevant activity but is tax resident in a jurisdiction other than The Bahamas shall report to its Registered Agent or Compliance Commission, and the Registered Agent or Compliance Commission shall maintain the following information—
- (a) the matters prescribed under subsection (2)(a),(b).(c) and (d);
 - (b) the jurisdiction in which the Entity is claiming to be tax resident;
 - (c) the tax payer identification number (“TIN”) or other identification reference number;

- (d) in respect of the Entity's immediate parent and ultimate parent (if any)—
 - (i) the names of its immediate parent and ultimate parent;
 - (ii) the incorporation numbers or the equivalent;
 - (iii) the tax identification numbers or other identification reference numbers; and,
 - (iv) the jurisdictions in which the immediate parent and ultimate parent are formed;
 - (e) and any other information as may reasonably be required by the Authority to support the claimed tax residence outside of The Bahamas.
- (4) An Entity that is carrying on a relevant activity but is resident owned in The Bahamas shall report and the Registered Agent or Compliance Commission shall maintain the information prescribed under subsection (2)(a), (b), (c) and (d) in relation to that entity in addition to a statement that it is resident owned and centrally managed and controlled in The Bahamas.
 - (5) An entity that is not carrying on a relevant activity shall report and the Registered Agent or Compliance Commission shall maintain the information prescribed under subsection (2)(a), (b), and (c) in relation to that entity in addition to a statement that it did not carry on a relevant activity.

12. Compliance with reporting requirements.

- (1) The prescribed information maintained by the Registered Agent or Compliance Commission and required by section 11 shall be uploaded or otherwise provided by the Registered Agent or Compliance Commission as applicable, to the electronic portal maintained by the Authority within nine months of the fiscal year end of each entity.
- (2) In addition to the information required by section 11, the Registered Agent or Compliance Commission shall upload the following—
 - (I) in relation to an entity claiming to be centrally managed and controlled and tax resident outside of the jurisdiction, documentary evidence of the entity's tax residency as prescribed by regulations or guidelines;
 - (ii) in relation to an included entity engaged in the commercial use of intellectual property, the documentary evidence prescribed by section 10(4); and

- (iii) in relation to any included entity, any documentary evidence prescribed by regulations or guidelines to demonstrate compliance with the economic substance test.
- (3) Any entity making a report to its Registered Agent or the Compliance Commission under section 11 and subsection (2) shall be deemed to have affirmed or sworn an oath of the truth of the statements contained in the report which may be relied on by the Registered Agent or the Compliance Commission without any obligation to verify the content of such report.
- (4) Unless the contrary is proved, a report that has been accepted by the electronic portal or such other method of compliance as prescribed shall be deemed to be made —
 - (a) in accordance with this Act;
 - (b) at the time the report was accepted by the electronic portal or such other method of compliance as prescribed;
 - (c) by the person who made the report by using the electronic portal; and
 - (d) with the approval of the entity on whose behalf the report purports to have been made.

13. Authority to Report.

- (1) The Authority shall, spontaneously exchange the information filed on behalf of an entity that carries on a relevant activity and is tax resident in a jurisdiction outside of The Bahamas, with –
 - (a) the competent authority of the reportable jurisdiction in which the entity is tax resident;
 - (b) the competent authority of the reportable jurisdiction in which the entity's immediate parent, ultimate parent and beneficial owner resides; and
 - (c) if the entity is incorporated outside of The Bahamas, the competent authority of the reportable jurisdiction in which the entity is incorporated.
- (2) The Authority shall, spontaneously exchange the information filed on behalf of an included entity that carries on the commercial use of intellectual property and is high-risk, with –
 - (a) the competent authority of the reportable jurisdiction in which the immediate parent, ultimate parent, and beneficial owner of the included entity resides; and
 - (b) if the included entity is incorporated outside of The Bahamas, the competent authority of the reportable jurisdiction in which the included entity is incorporated.

- (3) The Authority shall, spontaneously exchange the information filed on behalf of an included entity that fails to satisfy the economic substance test in relation to a relevant activity for a fiscal year with—
 - (a) the competent authority of the reportable jurisdiction in which the immediate parent, ultimate parent, and beneficial owner of the included entity resides; and
 - (b) if the included entity is incorporated outside of The Bahamas, the competent authority of the reportable jurisdiction in which the included entity is incorporated.

14. Compliance measures.

- (1) The Authority may request additional information or documentation from an entity in order to verify its compliance with the economic substance test or any other provision of this Act.
- (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.
- (3) The Authority may, in such cases where it is unable to conduct an on-site inspection, designate an approved auditor to conduct the inspection, and that person shall submit a report thereon to the Authority.
- (4) If the information required by the Authority under this Act is outside of The Bahamas, the Authority shall request the entity to provide such information to the Authority in The Bahamas, within a specified period and the entity shall comply with such requirement.
- (5) The Authority shall provide all necessary resources to ensure effective supervision and monitoring of compliance with this Act.
- (6) An entity and any Registered Agent or Compliance Commission in receipt of information collected pursuant to section 11 and 12, shall retain for six (6) years following the end of a fiscal year to which the information relates, any book, document, electronically stored information or other record that relates to the information required to be reported to the Authority under this Act.

15. Approved auditor.

- (1) In order to be designated as an approved auditor in accordance with section 15(2) or section 18(3), the auditor must —
 - (a) be a licensee in good standing of the Bahamas Institute of Chartered Accountants Act (*No. 13 of 2015*);

- (b) not be barred or suspended by the Securities Commission from acting for any person registered under Part V of the Securities Industry Act, 2011 (*No. 10 of 2011*) a registered firm or a public issuer in The Bahamas;
 - (c) not be barred or suspended by any domestic regulatory authority or overseas regulatory authority from acting as auditor for any person under that regulatory authority's jurisdiction.
- (2) An approved auditor shall —
- (a) comply with the International Code of Ethics for Professional Accountants of the International Federation of Accountants;
 - (b) be independent of the persons being audited and shall not also be the auditor of the entity's financial statements; and
 - (c) not cause, assist or abet others in breaching any relevant laws of The Bahamas, any regulations made thereunder, or standards made by the Bahamas Institute of Chartered Accountants.
- (3) For the purposes of subsection (2)(b), "independent" means without any direct or indirect material relationship with the person being audited.
- (4) Where an approved auditor, in the course of performing the duties required by section 14 or section 18, determines that the information provided by the included entity in a report made in accordance with this Act cannot be verified, he shall notify the Authority immediately and cause a copy of the notice to be delivered promptly to the included entity being inspected.
- (5) The notice shall contain complete details about the nature of the circumstances giving rise to the notice.

16. Confidentiality.

- (1) A person who discloses any information —
- (a) relating to the affairs of the Authority;
 - (b) relating to the affairs of an entity;
 - (c) relating to the affairs of any officer, customer, investor, member, client or policyholder of an 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) if the information disclosed is or has been available to the public from any other source;
 - (b) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any entity, or of any officer, customer, investor, member, client or policyholder of an entity to which the information relates to be ascertained; or
 - (c) by the Authority under this Act.

17. Immunity.

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.

PART V - OFFENCES AND PENALTIES

18. Failure to meet economic substance and measures to ensure compliance.

- (1) Where the Authority determines that an included entity has failed to meet the economic substance test in respect of a fiscal year the Authority shall issue a First Notice of Non-Compliance to the included entity indicating that—
 - (a) the included entity is not in compliance with the economic substance test as of the fiscal year assessed; and
 - (b) such included entity shall have a period of thirty (30) days to comply with any directions in the Notice of Non-Compliance.
- (2) The Authority may, in its discretion, direct the included entity by notice in writing to deliver to the Authority all such information and documentation necessary to satisfy itself of the included entity's compliance with the economic substance test.
- (3) Where no formal audit has been performed in accordance with section 14, an included entity that fails to comply with subsections (1) or (2), shall be directed by notice in writing to conduct a formal audit by an approved auditor under section 15 to assess its compliance with the economic substance test.

- (4) A formal audit completed under subsection (3) shall be at the expense of the included entity, and the approved auditor shall submit the Audit report to the Authority.
- (5) Where a formal audit has already been conducted under section 14, and the included entity has failed to comply with a First Notice of Non-Compliance under subsection (1) or any direction under subsection (2), the included entity shall be subject to the penalties set forth in subsection (9).
- (6) If the included entity does not commence the formal audit within thirty (30) days of the Authority's direction under subsection (3), the included entity shall be subject to an administrative penalty not exceeding Fifty Thousand Dollars (\$50,000.00), and a further administrative penalty of Five Hundred Dollars (\$500.00) for every day the offence has continued.
- (7) Where a formal audit conducted under subsection (3) reveals deficiencies, the Authority shall issue a Second Notice of Non-Compliance to the included entity for remedial measures.
- (8) A First Notice of Non-Compliance issued under subsection (1) and a Second Notice of Non-Compliance issued under subsection (7), must –
 - (a) contain details of the areas where further remedial measures are required; and
 - (b) state the deadline for compliance with the Notice of not more than thirty days.
- (9) If the included entity fails to comply a First Notice of Non-Compliance under subsection (1) in the circumstances prescribed under subsection (5) or a Second Notice of Non-Compliance in the circumstances prescribed under subsection (7), the included entity shall be –
 - (a) subject to an administrative penalty not exceeding Three Hundred Thousand Dollars (\$300,000.00);
 - (b) subject to strike off from the Register of Companies or any other register maintained by the Registrar in respect of partnerships.

19. Offences.

A person commits an offence, if the person —

- (a) contravenes section 11;
- (b) contravenes section 12 without reasonable excuse;
- (c) obstructs the Authority in performing its functions under this Act;
- (d) alters, destroys, mutilates, defaces, hides or removes information in a way that causes the person or another person to contravene this Act in relation to the information;

- (e) authorizes, advises or counsels another person to do anything referred to under paragraph (d); or
- (f) provides inaccurate information when making a report to the Compliance Commission or Registered Agent under section 11 or filing a report with the Authority under section 12 and —
 - (i) knows of the inaccuracy at the time the information is provided in the report, but does not inform the Registered Agent, the Compliance Commission, or the Authority (as applicable) of the inaccuracy at that time; or
 - (ii) discovers the inaccuracy after the information is provided in the report to the Registered Agent, the Compliance Commission, or the Authority (as applicable) and fails to take reasonable steps to inform the Authority of the inaccuracy.

20. Administrative penalty and default penalty.

- (1) The Authority may impose an administrative penalty of —
 - (a) Five Thousand Dollars (\$5,000.00), to be paid within thirty days of such penalty being imposed, where a person commits an offence under section 19(a) or 19(b);
 - (b) One Hundred Thousand Dollars (\$100,000.00), to be paid within Thirty (30) days of such penalty being imposed, where a person commits an offence under section 19(c) through (f).; and
- (2) Where the offence referred to under section 19 (a) or (b) is continuing, to a further administrative penalty of Five Hundred Dollars (\$500.00) for every day the offence has continued and where an offence referred to under section 19(c) through (f) is continuing to a further administrative penalty of One Thousand Dollars (\$1,000.00) for every day the offence has continued.
- (3) An administrative penalty for an offence under section 19 may only be imposed —
 - (i) within the period of twelve (12) months beginning with the date on which the inaccuracy first came to the attention of the Authority; or
 - (ii) within the period of six (6) years beginning with the date on which the person became liable to the penalty.

21. Notices of administrative and default penalty.

- (1) If the Authority decides to impose an administrative penalty under section 20(1), the Authority shall notify the person of its decision.
- (2) A notice referred to under subsection (1), shall —

- (a) be in such form as the Authority determines;
- (b) be within a reasonable time;
- (c) specify —
 - (i) the person's name;
 - (ii) the Authority's reasons, in writing, for imposing the penalty;
 - (iii) the amount of the penalty and when payment is due; and
 - (iv) a reasonable period (which may not be less than fourteen days) within which the person to whom the notice is given may make representations to the Authority.
- (3) Where representations are made under subsection (2)(c)(iv), the Authority shall take them into account in deciding whether to impose an administrative penalty.
- (4) The Authority shall notify the person who has failed to pay the administrative penalty of its decision to impose a daily default penalty under section 20(2).

22. Administrative penalty not to apply.

- (1) If a person is convicted in a court of an offence under this Act, that person shall not also be liable to an administrative penalty in relation to the same facts.
- (2) Where an administrative penalty is imposed under this Act, the person liable for that penalty shall not be subsequently or simultaneously charged with an offence under this Act in relation to the same facts.
- (3) An administrative penalty payable under this Act may be recovered by the Attorney-General in a court as a civil debt.

23. Punishment on summary conviction.

Subject to section 20, a person who commits an offence under this Act is liable on summary conviction to a fine of Ten Thousand Dollars (\$10,000.00) or to imprisonment for a term of six (6) months, or to both.

24. Protection for Registered Agents.

Where a Registered Agent or the Compliance Commission has collected the prescribed information in accordance with the laws of The Bahamas or includes information on the electronic portal not specified in this Act, the collection or inclusion of such information by the Registered Agent or the Compliance Commission shall be treated as done in accordance with this Act and the Registered Agent or the Compliance Commission is not in breach of any

agreement, professional code of conduct, or rule of law to which they are subject.

PART V – MISCELLANEOUS

25. Anti-avoidance.

If a person enters into an arrangement, the main purpose of which is to avoid an obligation under this Act, the arrangement, for the purposes of this Act, shall be deemed to be one which was not entered into and this Act shall have effect as if the arrangement had never been in existence.

26. Removal from the register.

- (1) Any Entity, which fails to comply with any provision of this Act shall be deemed to be non-compliant with the Act under which it is incorporated, registered or continued.
- (2) In the event that the Authority concludes that the Entity is in willful non-compliance, the Authority shall direct the Registrar General that the Entity be removed from the register pursuant to the relevant Act.

27. Appeals.

- (1) A person upon whom an administrative penalty is imposed may, subject to this section, appeal against it to the Supreme Court and such appeal shall act as a stay on the enforcement of the administrative penalty.
- (2) An appeal under this section may be made on questions of law or fact or both and the Supreme Court may affirm or reverse the penalty or substitute its own penalty for that imposed by the Authority.
- (3) A person upon whom an administrative penalty is imposed may appeal —
 - (a) the penalty on the ground that liability to such penalty does not arise; and
 - (b) against the amount imposed by the Authority.
- (4) For the avoidance of doubt, this section does not limit or otherwise affect any obligation of the person under this Act.

28. Amendment of First Schedule.

The Minister of Finance may, by order, amend the *First Schedule*.

29. Regulations.

The Minister of Finance may make regulations to —

- (a) prescribe adequate levels of qualified full-time equivalent employees and physical office resources;
- (b) prescribe the circumstances which amount to outsourcing and the prohibition thereof;
- (c) further define the scope of entities that are required to satisfy the economic substance test;
- (d) further define the scope of relevant activities;
- (e) provide for such matters as may be necessary or convenient for carrying out or giving effect to this Act and its administration.

30. Guidelines.

The Authority may issue guidelines for interpreting and complying with this Act and any person or Entity subject to the Act shall comply with such guidelines.

31. Transitional.

Notwithstanding the provision of any other law —

- (a) a commercial entity which prior to the commencement of this Act was solely carrying on the business of acting as a non-included entity or non-included passive holding entity as defined under the Repealed Act, but which would have been required to report as an included entity carrying on holding business if this Act had been in force, shall for the fiscal year which concluded prior to the commencement of this Act, report that it conducted the relevant activity of holding business;
- (b) a commercial entity to whom paragraph (a) applies, which reported in the electronic portal prior to the commencement of this Act for the fiscal year ended immediately prior to the commencement of this Act, shall not be deemed to have contravened paragraph (a), but shall inform the Compliance Commission or Registered Agent of its change of classification within thirty (30) days of the commencement of this Act;
- (c) a commercial entity to whom paragraph (a) applies, shall, within six (6) months from the date of commencement of this Act, satisfy the economic substance test prescribed by this Act.
- (d) an Entity which has already submitted a report in the electronic portal in accordance with the Repealed Act for the fiscal year ending immediately prior to the commencement of this Act, shall—

- (i) inform its Registered Agent or the Compliance Commission (as applicable) that it has already performed its reporting obligations; and
 - (ii) provide its Registered Agent or the Compliance Commission (as applicable) with supporting documentation to confirm that its reporting obligations have been satisfied.
- (e) the Registered Agent or the Compliance Commission (as applicable) shall be required to report to the Authority in the electronic portal the information collected under paragraphs (b) and (d).

32. Repeal.

The Commercial Entities (Substance Requirements) Act, 2018 (*No. 32 of 2018*) is repealed.

33. Consequential amendments.

The Acts specified in the first column of the *Second Schedule* shall be amended to the extent specified in the second column of the *Second Schedule*.

FIRST SCHEDULE

(section 2)

REPORTABLE JURISDICTIONS

1. Argentina
2. Australia
3. Austria
4. Belgium
5. Columbia
6. Denmark
7. Finland
8. France
9. Germany
10. India
11. Ireland
12. Italy
13. Japan
14. Korea
15. Luxembourg
16. Netherlands

17. Norway
18. Malaysia
19. Portugal
20. Russia (inclusion needs policy decision),
21. Singapore
22. Slovak Republic
23. South Africa
24. Spain
25. Sweden
26. United Kingdom.

SECOND SCHEDULE

(section 33)

Act	Amendment
Companies Act (Ch. 308)	<p>In section 271, repeal subsection (1A) and replace it as follows —</p> <p>“(1A) The Registrar shall, after being duly notified by the Authority continued under section 2 of the Commercial Entities (Substance Requirements) Act, 2023 that a company is non-compliant under that Act, remove such company from the register of companies.</p> <p>(1B) Before removing a company from the register, the Registrar shall send a notice to that company advising it as to the default and stating that, unless the default is remedied within twenty-one days after receipt of the notice, the company shall be removed from the register of companies.”.</p>
International Business Companies Act (Ch. 309)	<p>(a) In section 165 insert immediately after subsection (1) the following —</p> <p>“(1A) The Registrar shall, after being duly notified by the Authority continued under section 2 of the Commercial Entities (Substance Requirements) Act, 2023 that a company is non-compliant under that Act,</p>

	<p>serve an order for compliance as prescribed in Part A of the Second Schedule.”</p> <p>(b) In Part A of the Second Schedule, delete the words “Commercial Entities (Substance Requirements) Act, 2018” and replace it with the words “Commercial Entities (Substance Requirements) Act, 2023”</p>
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