

## 提示简报

## Important Amendments to Bermuda's Economic Substance Legislation

### 对百慕大经济实质法例的重要修正

作者：Neil Henderson 董事 | Anthony D. Whaley 董事

On 24 December 2019, both the Economic Substance Amendment (No.2) Act 2019 and the Economic Substance Amendment (No.3) Regulations 2019 (the Amendment Legislation) came into force. The Amendment Legislation makes key changes to Bermuda's economic substance regime, principally to harmonise the legislation with the legislation of other British Overseas Territories and Crown Dependencies. Simultaneous with the introduction of the Amendment Legislation, the Minister of Finance released Guidance Notes on the scope and application of the economic substance legislation.

The most significant changes under the Amendment Legislation are related to:

- Holding entities
- Financing and leasing
- Shipping
- Insurance
- Local entities

#### Holding Entities

The definition of "holding entity" has been narrowed in line with other jurisdictions to limit the relevant activity to being a pure equity holding entity.

An entity will be regarded as a "pure equity holding entity" if its primary function is to acquire and hold shares or an equitable interest in other entities, it performs no commercial activity and the shares or equitable interests are controlling stakes in such other entities. The main effect of this change is that entities which carry on another commercial activity other than being a pure equity holding entity will, as long as that activity is not a relevant activity, be out of scope of the economic substance legislation.

2019 年 12 月 24 日，《2019 年经济实质修正（第 2 号）法》和《2019 年经济实质修正（第 3 号）条例》（修正法例）均生效。该修正法例对百慕大的经济实质制度进行了重大修改，主要是为了使该法例与其他英国海外领土和皇家属地的立法保持一致。在推出该修正法例的同时，财政部长还发布了关于经济实质法例的范围和应用情况的《指导说明》。

该修正法例中最重要的修正涉及：

- 控股实体
- 融资和租赁
- 航运
- 保险
- 当地实体

#### 控股实体

“控股实体”的定义已加以缩小从而与其他司法管辖区保持一致，以便将相关活动限于纯股权控股实体。

如果一个实体的主要职能是购买和持有其他实体的股份或公平权益，不进行任何商业活动，而该股份或公平权益控制了此等其他实体的股权，则该实体被视为“纯股权控股实体”。如果实体进行其他商业活动而不是作为一个纯股权控股实体，只要该活动不是相关的活动，则此实体不在经济实质法例的范围之内。

Furthermore, a pure equity holding entity need only comply with the minimum economic substance requirements meaning the entity must comply with corporate governance requirements set out in the Companies Act 1981 (or equivalent legislation) and complete and file an annual economic substance declaration form. A pure equity holding entity must also have adequate “people” (rather than adequate “employees”) for holding and managing its equity participations, and adequate premises in Bermuda.

### Financing and Leasing

The hitherto separate activities of financing and leasing have been combined. The relevant activity of “financing and leasing” now encompasses providing to any person for consideration credit facilities of any kind, such as loans, hire purchase arrangements, finance leases (excluding in relation to land) and conditional sale or credit sale arrangements.

Financing and leasing will also include situations where any credit receivable is assigned to another person. The assignee will be considered to be the person providing the credit facility, and will therefore be in scope.

However, banking, insurance and fund management activities will not constitute financing and leasing.

### Shipping

The relevant activity of shipping has been redefined. Under the new definition, shipping consists of activities involving the operation of a ship anywhere outside Bermuda territorial waters, including transporting, by sea, passengers or animals, goods or mail for a charge. Ownership of ships alone will no longer bring an entity within scope, although entities operating cruise ships, being involved in the transportation of passengers, have now been brought in scope.

Other activities relating to the operation of a ship that are in scope now include renting or chartering of ships for the purpose of transporting, by sea, passengers or animals, goods or mail for a charge, as well as the sale of travel tickets or related services, the use, maintenance or rental of containers, and functioning as a private seafarer recruitment and placement service.

For this purpose, the definition of “ship” does not include a pleasure vessel.

### Insurance

An insurance entity will now only be in scope if it engages in insurance business in accordance with the Insurance Act 1978. Previously all entities engaged in business for which registration is required under that Act were in scope.

Consequently, insurance agents, brokers and managers, and other intermediaries that are regulated under the Insurance Act 1978, will be out of scope of the economic

此外，纯股权控股实体仅需遵守最低经济实质要求，这意味着该实体必须遵守《1981 年公司法》（或同等法律）中规定的公司治理要求，并填写和提交年度经济实质申报表。纯股权控股实体还必须拥有足够的“人员”（而不是足够的“雇员”）来持有和管理其参股，并在百慕大拥有足够的场所。

### 融资和租赁

迄今为止彼此分开的融资活动与租赁活动已合并在一起。

“融资和租赁”的相关活动现在包括向任何人提供任何种类的信贷安排供其考虑，例如贷款、租购安排、融资租赁（不包括土地）及有条件销售或赊销安排。

融资和租赁也包括将任何应收信贷转让给他人的情况。受让人被视为提供信贷安排的人，因此将在范围之内。

但是，银行、保险和基金管理活动将不构成融资和租赁。

### 航运

航运的相关活动已重新定义。根据新的定义，航运包括在百慕大领海以外的任何地方涉及船舶作业的活动，包括海路收费运输乘客或动物、货物或邮件。

尽管经营游轮并提供旅客运输的实体现已纳入范围，但仅拥有船舶所有权将不再使实体处于范围之内。

与范围内船舶的营运有关的其他活动现在包括以海路收费运输乘客、动物、货物或邮件为目的的船舶租用或包租，旅行船票的发售或相关服务，集装箱的使用、维护或租用，以及提供私营海员招募和安置服务。

为此，“船舶”的定义不包括游乐船只。

### 保险

现在，只有根据《1978 年保险法》从事保险业务的保险实体才在范围之内。以前，所有根据该法令要求注册的从业实体都在范围之内。

因此，受《1978 年保险法》监管的保险代理人、经纪人和管理人以及其他中介，只要他们不从事保险业务或其他

substance regime as long as they are not carrying on insurance business or another relevant activity.

### Local Entities

Local entities that are carrying on a relevant activity (with the exception of banking and insurance business) and which (i) are required to be at least 60% beneficially owned and controlled by Bermudian persons, (ii) carry on business only in Bermuda, and (iii) are not part of a multinational enterprise group<sup>1</sup>, are subject to reduced economic substance requirements.

Such local entities will be required only to comply with corporate governance requirements set out in the Companies Act 1981 (or equivalent legislation) but will not be required to complete and file an annual economic substance declaration form.

### Guidance Notes

#### Carrying on as a business

The Guidance Notes have clarified that carrying on an activity “as a business”, which is a requirement of the definition of each relevant activity, means earning any gross income in respect of such activity. Accordingly, an entity which earns no gross income will be out of scope of the economic substance regime.

#### Core Income Generating Activities (CIGA)

Additionally, the Guidance Notes have clarified that where activities being undertaken by an entity outside of Bermuda result in a foreign permanent establishment (as understood under the OECD model tax convention), such that the entity can evidence that it is earning income and performing CIGA within that foreign permanent establishment, that may be taken into consideration by the Registrar of Companies in its assessment. In any event, an entity must ensure that CIGA is undertaken in Bermuda to meet the economic substance requirements.

#### Activities other than CIGA

Activities which are not CIGA will only need to be carried on in Bermuda where they are of central importance to the entity in terms of generating gross income from a relevant activity. Otherwise, activities may be carried on in, or outsourced to, a jurisdiction other than Bermuda.

#### Annual filing

All Bermuda entities (whether exempted or local) and

相关活动，就不在经济实质制度范围之内。

### 当地实体

开展某项相关活动（银行和保险业务除外）及符合以下情况的当地实体，对其经济实质的要求会降低：(i) 必须至少有 60% 的百慕大人实益拥有和控制，(ii) 仅在百慕大开展业务，以及 (iii) 不属于某个跨国企业集团<sup>1</sup>。

这些当地实体只需遵守《1981 年公司法》（或同等法例）中规定的公司治理要求即可，无需填写和提交年度经济实质申报表。

### 《指导说明》

#### 作为一家企业开展活动

《指导说明》明确指出，“作为一家企业”开展某项活动（这是每个相关活动定义的要求）意思是指从该活动中赚取任何毛收入。因此，不赚取毛收入的实体就不在经济实质制度的范围内。

#### 核心创收活动（CIGA）

此外，《指导说明》还明确指出，如果某个实体在百慕大境外进行的活动导致其设立外国常设机构（根据对《经合组织税项协定范本》的理解），则该实体可证明其在该外国常设机构赚取收入并从事 CIGA，公司注册处在进行评估时可能会考虑这一点。无论如何，实体必须确保 CIGA 在百慕大进行，以满足经济实质的要求。

#### CIGA 以外的活动

不属于 CIGA 的活动只需在百慕大进行，就相关活动产生的毛收入而言，这些活动在百慕大对实体至关重要。否则，活动可在百慕大以外的司法管辖区进行或外包给百慕大以外的司法管辖区。

#### 年度申报

百慕大的所有实体（无论是受豁免的还是当地的）及许可

<sup>1</sup> A multinational enterprise group is a group of companies that includes two or more enterprises for which the tax residence is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

<sup>1</sup> 跨国企业集团是一组公司，其中包括两个或两个以上纳税居所位于不同司法管辖区的企业，或者其中包括在一个司法管辖区出于税收目的而居住的企业，且该企业须就通过在另一个司法管辖区的常设机构开展业务而纳税。

permit companies, whether or not subject to the economic substance laws, will be required to include as part of their annual declaration to the Registrar of Companies a statement of whether or not the relevant entity carries on or proposes to carry on a relevant activity for purposes of the Economic Substance Act 2018, and, if so, the type of relevant activity carried on or proposed to be carried on by the entity.

### Economic substance filing

All entities in scope of the economic substance requirements (except certain local companies referred to above) are required to file an economic substance declaration no later than six months after the last day of each relevant financial period. For entities with a financial year ending on 31 December 2019, the first filing will be required on or before 30 June 2020. That declaration must demonstrate compliance with the economic substance requirements in respect of the period ending 31 December 2019. We understand that the Registrar is in the process of building an e-registration system to accept and manage the economic substance filings.

This bulletin is intended to alert clients and practitioners to the principal changes made by the Amendment Legislation. A more detailed summary of Bermuda's economic substance regime as updated by the Amendment Legislation will be distributed in January 2020.

公司，无论是否受经济实质法律的约束，都必须在向公司注册处提交的年度申报中包含有关该实体是否开展或打算开展以《2018 年经济实质法》为目的的相关活动，如果是，则需说明实体开展的或打算开展的相关活动的类型。

### 经济实质申报

在经济实质要求范围内的所有实体（上述某些当地公司除外）都必须在每个相关财务期的最后一天之后的六个月内提交经济实质申报。对于财政年度于 2019 年 12 月 31 日结束的实体，必须在 2020 年 6 月 30 日或之前进行首次申报。该申报必须证明其在 2019 年 12 月 31 日结束的财年内遵守了经济实质要求。我们了解到，注册处正在建立电子注册系统来接受和管理经济实质申报。

本简报旨在提醒客户和从业人员该修正法例的主要变更。由该修正法例更新的百慕大经济实质制度的更详细的总结将于 2020 年 1 月分发。

### 作者：

#### Neil Henderson

董事

neil.henderson@conyers.com  
+1 441 298 7846

#### Anthony D. Whaley

董事

anthony.whaley@conyers.com  
+1 441 299 4927

### 其他联系人：

#### Graham B.R. Collis

董事，百慕大企业业务负责人

graham.collis@conyers.com  
+852 2842 9525

#### Marcello Ausenda

董事

marcello.ausenda@conyers.com  
+1 441 299 4954

本文无意替代法律建议或法律意见。它仅涉及泛泛的概念，旨在仅提供简要概述并提供一般信息。

欲获得更多信息，请联系：media@conyers.com