SUPPLEMENT PART I

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COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) (AMENDMENT) ACT, 2019

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No. 1 of 2019

COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) (AMENDMENT) ACT, 2019

AN ACT TO AMEND THE COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018

[Date of Assent - 21st February, 2019]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

(1) This Act may be cited as the Commercial . Entities (Substance Requirements) (Amendment) Act, 2019.

(2) This Act shall be deemed to have come into force on the 31st day of December, 2018.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended —

(a) the deletion and substitution of the definition of "commercial entity" as follows —

" **"commercial entity"** is an entity incorporated, registered or continued under the —

(a) Companies Act *(Ch. 308)* and includes a foreign entity 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) – (e) which —

(i) is resident owned in The Bahamas and conducts its core income generating activities in The Bahamas; or

(ii) is centrally managed and controlled outside The Bahamas and is tax resident in a jurisdiction other than The Bahamas;";

(b) by the insertion in the appropriate alphabetical order of the following new definitions —

""**non-included entity**" means any entity which is not an included entity and which is incorporated, registered or continued under the —

(a) Companies Act *(Ch.308)* and includes a foreign entity registered under Part VI thereof;

(b) International Business Companies Act *(Ch. 309)*;

(c) Partnership Act *(Ch. 310)*;

(d) Partnership Limited Liability Act *(Ch. 311)*;

(e) Exempted Limited Partnership Act *(Ch. 312)*;";

"**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, 2018;";

"resident owned in The Bahamas" means direct or indirect ownership of one hundred 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."; and

(c) by the deletion of the definition of "resident owned".

3. Repeal and replacement of section 6 of the principal Act.

Section 6 of the principal Act is repealed and replaced as follows —

"6. Outsourcing of core income generated activities.

(1) No included entity shall outsource any of its core income generating activities to an entity or person outside of The Bahamas.

(2) An included entity may outsource any of its core income generating activities conducted in The Bahamas to an outsourcing service provider in The Bahamas, provided that the included entity is able to demonstrate supervision and control of the outsourcing service provider in respect of such outsourced core income generating activities.

(3) The resources of the outsourcing service provider conducting outsourced core income generating activities in The Bahamas on behalf of the included entity must not be counted multiple times in respect of outsourced core income generating activities services to multiple included entities.

(4) Any entity or person providing outsourcing services to an included entity shall report to the Authority on an annual basis in the manner set out in Form A of the *First Schedule*.".

4. Amendment of section 7 of the principal Act.

The headnote to section 7 of the principal Act is amended by the deletion of the words "Management and control" and the substitution of the words "Direction and management".

5. Amendment of section 8 of the principal Act.

Section 8 of the principal Act is repealed and replaced as follows —

"8. Reduced substance requirements for holding companies.

(1) An included entity that only engages in business as a pure equity holding company 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.

(2) A non included entity that is a passive holding entity is subject to reduced substance requirements of complying with all applicable laws and regulations of The Bahamas.

(3) Where a holding company engages in any relevant activity, that company will be required to satisfy substance requirements in accordance with this Act.

(4) For the purposes of this Act —

"pure equity holding company" means a company which only holds equity participations and only earns dividends and capital gains or incidental income; and

"passive holding entity" means an entity which does not by itself, or by any of its subsidiaries conduct any relevant activity but does not include a collective investment vehicle.".

6. Repeal and replacement of section 10 of the principal Act.

Section 10 of the principal Act is repealed and replaced as follows —

"10. Reporting requirement.

(1) Reporting under this Act shall be carried out within nine months of the fiscal year end in the manner set out below —

(a) in Form B of the *First Schedule* by an included entity and a regulated entity;

(b) in Form C of the *First Schedule* by a holding company; and

(c) in Form D of the *First Schedule* by a non-included entity.

(2) Any non-included entity that is centrally managed and controlled and claims to have tax residence in a jurisdiction outside of The Bahamas shall —

(a) report on its compliance with this Act to the Authority within nine months of its fiscal year end in the manner set out in Form D of the *First Schedule*; and

(b) append to its annual report, evidence that it is registered and compliant with the tax requirements in that jurisdiction.

(3) Any entity which fails to report to the Authority in accordance with this section shall be liable to an

administrative penalty or removal from the applicable register pursuant to section 15.".

7. Repeal and replacement of section 12 of the principal Act.

Section 12 of the principal Act is amended by the deletion and substitution of subsections (1) and (2) as follows —

"(1) The Authority shall upon the receipt of a form filed by an included entity spontaneously exchange the same with a reportable jurisdiction of the legal or beneficial owner of such included entity where —

(a) the included entity engages in high risk intellectual property activities; or

(b) there is any non-compliance with the substance requirements of the Act by the included entity.

(2) The Authority shall upon the receipt of a form filed by a non-included entity, pursuant to section 10(1)(c), spontaneously exchange the same to a reportable jurisdiction of the legal or beneficial owner of such non-included entity and also to the reportable jurisdiction of its claimed tax residence.".

8. Amendment of section 15 of the principal Act.

Subsection (1) of section 15 of the principal Act is amended by the deletion of the words "(11)" and the substitution thereof of the words "(13)".

9. Amendment of section 16 of the principal Act.

Subsection (1) of section 16 of the principal Act is amended —

(a) by the deletion of the words "(11)" and the substitution thereof of the words "(13)"; and

(b) by the deletion of the words "and fails to comply with section 15".

10. Amendment of section 26 of the principal Act.

Section 26 of the principal Act is amended by the insertion immediately after the word "Act", of the words "and any person or entity subject to the Act shall comply with such guidelines".

11. Amendment of First Schedule to the principal Act.

The First Schedule to the principal Act is amended —

(a) in Form C, by the deletion of the word "Passive" wherever it appears; and

(b) by the insertion immediately after Form C of the following new Form D —

"

FORM D

Non - Included Entities

Name of Entity		
Registration Number		
Type	☐ Companies Act *(Ch. 308)*	☐ International Business Companies Act *(Ch. 309)*
Description of the nature of business		
Registered Address of Included Entity	Physical Address of Included Entity	
JURISDICTION OF TAX RESIDENCE *(If the entity is asserting tax residency in a jurisdiction other than The Bahamas, append additional information (section 10)*		
DETAILS OF CONTROLLING PERSONS		
Directors *(make an entry in respect of every Director)*		
Name	Name	
Address	Address	
Contact Information	Contact Information	
Registered Shareholders *(make an entry in respect of every Shareholder)*		
Name	Name	
Address	Address	
Contact Information	Contact Information	
Jurisdiction of Tax Residence	Jurisdiction of Tax Residence	
I certify that the particulars set out in this Form are true and correct to the best of my knowledge, information and belief.		

....

(Name of Director) *(Date)* ".