



## Bermuda Economic Substance Update

Following consultation with industry, the Economic Substance Regulations 2018 have been amended by the Economic Substance Amendment (No.2) Regulations 2021 ("**Amendment Regulations**") which amends the definition of the relevant activity of "fund management" in Bermuda. Certain consequential revisions have also been made to the Economic Substance Guidance Notes ("**Revised Guidance Notes**"). The Amendment Regulations and Revised Guidance Notes became operative with effect from 1 January 2022.

Consequently, with immediate effect, an entity (which includes a company to which the Bermuda Companies Act 1981 applies, a Bermuda LLC and a Bermuda partnership, but excludes an entity that is resident for tax purposes in a jurisdiction outside of Bermuda that is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes) will be carrying on the relevant activity of "fund management" if it manages investments for an 'investment fund' (as such term is defined in the Investment Funds Act 2006) and must comply with the Economic Substance Act 2018 ("**ES Act**") and related regulations. Prior to the amendment, only entities with physical presence in Bermuda were regarded as carrying on "fund management" business.

"Managing investments" is construed in accordance with the Investment Business Act 2003 ("**IBA**") and is defined as "managing or offering, or agreeing to manage, assets belonging to another person where those assets consist of or include investments".

Post amendment, for the avoidance of doubt, where an entity is managing investments for an investment fund, it will be carrying on the relevant activity of fund management for the purposes of the ES Act whether or not it is required to be licensed to conduct such activity in accordance with the IBA. This will therefore include all entities, even if they do not have a physical presence in Bermuda.

For entities with a financial year end of 31 December, the first reporting period where entities will have to detail their compliance with the economic substance requirements will be 30 June 2023. However, steps need to be taken now to ensure compliance with the relevant 'CIGAs' (core income generating activities).

Walkers has a dedicated global Regulatory & Risk Advisory practice group that can offer legal advice and assistance in connection with all aspects of economic substance and all other regulatory compliance. The WPS team can assist with economic substance implementation and the submission of filings. For further assistance or to discuss the economic substance requirements in Bermuda and how they may impact your business, please speak with your usual Walkers contact or one of the contacts listed below:

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