

# **TURKS AND CAICOS ISLANDS**

## **COMPANIES AND LIMITED PARTNERSHIPS (ECONOMIC SUBSTANCE) ORDINANCE 2018 (Ordinance 32 of 2018)**

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**TURKS AND CAICOS ISLANDS**  
**COMPANIES AND LIMITED PARTNERSHIPS**  
**ORDINANCE 2018**

**(Ordinance 32 of 2018)**

*Assent*.....27<sup>th</sup> December 2018

*Publication in Gazette*.....28<sup>th</sup> December 2018

*Commencement*..... in accordance with section 1

**AN ORDINANCE** TO REQUIRE COMPANIES AND LIMITED PARTNERSHIPS RESIDENT IN THE ISLANDS THAT CARRY ON CERTAIN SPECIFIED TYPES OF BUSINESS TO MEET SUBSTANCE REQUIREMENTS SO AS TO ENSURE THAT REAL ECONOMIC ACTIVITY IS BEING CARRIED ON OR UNDERTAKEN IN THE ISLANDS IN RESPECT OF THE INCOME OF THE COMPANY OR LIMITED PARTNERSHIP AND FOR CONNECTED PURPOSES.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

**Short title and commencement**

**1.** (1) This Ordinance may be cited as the Companies and Limited Partnerships (Economic Substance) Ordinance, 2018.

(2) The provisions of this Ordinance shall come into force on the day or days specified in the Schedule.

**Interpretation**

**2.** In this Ordinance—

“accounting period”, in relation to a TCI entity, has the meaning prescribed in the Regulations;

“approved form” means a form approved by the Competent Authority under section 23;

“banking business” has the meaning specified in the Banking Ordinance;

“board” or “board of directors”, in relation to an entity, means—

- (a) the directors of the entity acting together as the board of directors, by whatever name called; or
- (b) if the entity has only one director, that director;

“Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance;

“Competent Authority” means the Competent Authority designated under the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance;

“Companies Ordinance” means the Companies Ordinance, 2017;

“core income-generating activity” has the meaning specified in section 7;

“country” includes a territory;

“Court” means the Supreme Court;

“directed and managed” shall be construed in accordance with section 9;

“director, in relation to an entity, includes—

- (a) a person who is a member of the governing body of the entity and, in the case of a limited partnership, includes a general partner; and
- (c) a person who, in relation to the entity, occupies or acts in the position of director, by whatever name called;

“distribution and service centre business” means (as the sole or main activity) the business of either or both of the following—

- (a) purchasing from a group entity—
  - (i) materials or component parts for products; or
  - (ii) products ready for sale; andreselling such component parts, materials or products outside the Islands;
- (b) providing services to another group entity in connection with the business outside the Islands;

but excludes an activity included within any other relevant activity;

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) a book, graph or drawing; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“entity” means a body corporate or a limited partnership, whether incorporated, formed or otherwise constituted in or outside the Islands;

“finance and leasing business” has the meaning specified in section 4;

“foreign group entity” means a group entity that is incorporated, formed or otherwise constituted outside the Islands;

“fund management business” means the business of acting as a fund manager within the meaning of the Investment Dealers (Licensing) Ordinance;

“group entity”, in relation to an entity (the “first entity”), means another entity that is in the same group as the first entity;

“group”, in relation to an entity (the “first entity”), means the first entity and any other entity that is—

- (a) a holding entity of the first entity;
- (b) a subsidiary of the first entity;
- (c) a subsidiary of a holding entity of the first entity;
- (d) a holding entity of a subsidiary of the first entity;

“headquarters business” means the business, carried on by a resident entity, of providing any of the following services to one or more foreign group entities of the resident entity—

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those foreign group entities; or
- (c) the provision of substantive advice in relation to the assumption or control of risk activities or assets referred to in paragraph (b);

but excludes an activity included within banking business, finance and leasing business, insurance business or intellectual property holding business;

“high-risk IP entity” has the meaning specified in section 6;

“holding entity” has the meaning specified in section 5(a);

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

“income”, in relation to an intellectual property asset, includes royalties, income from a franchise agreement, income from licensing the asset and competent authority and capital gains and other income from the sale of the asset;

“insurance business” has the meaning specified in the Insurance Ordinance;

“intellectual property asset” means an intellectual property right or interest, including—

- (a) copyright;
- (b) patents;
- (c) technical know-how;
- (d) trademarks and service marks;
- (e) brand or image rights;
- (f) design rights; and
- (g) performers rights;

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

“pure equity holding entity” has the meaning specified in section 5(b);

“registered foreign company” means a foreign company registered under Part XVI of the Companies Ordinance;

“Register of Companies” means the Register of Companies maintained by the Registrar under section 290(1)(a) of the Companies Ordinance;

“Register of Foreign Companies” means the Register of Foreign Companies maintained by the Registrar under section 290(1)(b) of the Companies Ordinance;

“Registrar of Companies” means the Registrar of Companies appointed under section 289 of the Companies Ordinance;

“relevant activity” means—

- (a) banking business;
- (b) distribution and service centre business;
- (c) finance and leasing business;
- (d) fund management business;
- (e) headquarters business;
- (f) holding entity business;
- (g) insurance business;
- (h) intellectual property holding business; and
- (i) shipping business;

“resident entity” has the meaning specified in section 3;

“ship” includes every description of vessel used in navigation;

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands—

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary 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;
- (e) the management of the crew of a ship;

“subsidiary”, in relation to an entity (the “first entity”), means an entity of which the first entity is a holding entity;

“substance requirements” is to be construed in accordance with section 8;

“TCI company” means a company within the meaning of the Companies Ordinance;

“TCI entity” means—

- (a) a TCI company;
- (b) a TCI limited partnership; or
- (c) a registered foreign company;

“TCI limited partnership” means a limited partnership registered under section 7 of the Limited Partnership Ordinance; and

“ultimate beneficial owner” means a person who would be a registrable person within the meaning of section 148 of the Companies Ordinance if a reference to a company to which section 148 of the Companies Ordinance applies is construed as a reference to a resident entity specified in section 8(1).

### **Resident entities**

**3.** (1) A TCI entity is a resident entity unless it is tax resident in a country outside the Islands which is not on the European Union list of non-cooperative jurisdictions for tax purposes.

(2) The Regulations may specify the criteria for determining whether a TCI company or a TCI limited partnership is considered to be a resident entity during the accounting period that commences on its registration as a company incorporated or continued under the Companies Ordinance or, in the case of a limited partnership, on its registration under section 7 of the Limited Partnership Ordinance.”;

### **Meaning of “finance and leasing business”**

**4.** (1) In this Ordinance, “finance and leasing business” means the business of providing credit facilities of any kind for consideration but excludes an activity included within banking business, fund management business or insurance business.

(2) For the purposes of subsection (1)—

(a) consideration includes consideration by way of interest;

(b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with—

(i) the supply of goods by hire purchase;

(ii) leasing, excluding a lease over land or an interest in land; or

(iii) conditional sale or credit sale; and

(c) where an advance or credit repayable by a customer to a person is assigned to another person, that other person is considered to be providing the credit facility.



**Meaning of “holding entity” and “pure equity holding entity”**

5. For the purposes of this Ordinance—

- (a) an entity is the “holding entity” of another entity if it—
  - (i) holds a majority of the issued shares or the partnership interests in the entity;
  - (ii) holds a majority of the voting rights in the entity;
  - (iii) is a member or partner of the entity and, under an agreement with other members or partners of the entity, controls a majority of the voting rights in the entity;
  - (iv) is a member or partner of the entity and has the right to appoint or remove the majority of the directors of the first entity; or
  - (v) is the holding entity of a holding entity of the entity; and
- (b) a “pure equity holding entity” is a resident entity that—
  - (i) is a holding entity;
  - (ii) has, as its primary function, the acquisition and holding of shares or equitable interests in other entities; and
  - (iii) does not carry on any commercial activity.

**Meaning of “high-risk IP entity”**

6. (1) For the purposes of this Ordinance, an entity is a high-risk IP entity if it carries on intellectual property holding business and

- (a) the entity—
  - (i) acquired the intellectual property asset—
    - (A) from a group entity; or
    - (B) in consideration for funding research and development by another person situated in a country other than the Islands; and
  - (ii) licences the intellectual property asset to one or more group entities or otherwise generates income from the asset in consequence of

activities (such as facilitating sale agreements) performed by foreign group entities; or

- (b) the entity does not carry out either research and development or branding and distribution as part of its core-income-generating activities in the Islands.

(2) Subsection (1)(b) does not apply with respect to intellectual property assets that comprise technical know-how, performers rights or both.

### **Core income-generating activities in the Islands**

7. (1) For the purposes of this Ordinance, “core income-generating activities” in relation to a relevant activity includes—

- (a) with respect to banking business—
  - (i) raising funds;
  - (ii) managing risk including credit, currency and interest risk;
  - (iii) taking hedging positions;
  - (iv) providing loans, credit or other financial services to customers;
  - (v) managing capital; and
  - (vi) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of banking business;
- (b) with respect to distribution and service centre business—
  - (i) transporting and storing goods, components and materials;
  - (ii) managing stocks;
  - (iii) taking and processing orders; and
  - (iv) providing consulting or other administrative services;
- (c) with respect to finance and leasing business—
  - (i) negotiating or agreeing funding terms;
  - (ii) in the case of leasing business, identifying and acquiring assets to be leased;

- (iii) setting the terms and duration of financing or leasing;
  - (iv) monitoring and revising finance and leasing agreements;
  - (v) managing finance agreements and leases; and
  - (vi) managing risks associated with finance and leasing agreements;
- (d) with respect to fund management business—
- (i) taking decisions on the holding and selling of investments;
  - (ii) calculating risk and reserves;
  - (iii) taking decisions on currency or interest fluctuations and hedging positions; and
  - (iv) preparing reports and returns to investors and the Commission, any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of fund management or other government authorities;
- (e) with respect to headquarters business—
- (i) taking relevant management decisions;
  - (ii) incurring expenditures on behalf of group entities; and
  - (iii) co-ordinating group activities;
- (f) with respect to insurance business—
- (i) predicting and calculating risk;
  - (ii) insuring or re-insuring against risk;
  - (iii) providing insurance business services to clients;
  - (iv) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of insurance business;
- (g) with respect to intellectual property holding business where the entity holds, exploits or receives income from one or more patents, research and development relating to the patent including—

- (i) advancing the understanding of scientific relations or technologies;
  - (ii) addressing scientific or technological obstacles; and
  - (iii) increasing scientific or technical knowledge or developing new applications;
- (h) with respect to intellectual property holding business where the entity holds, exploits or receives income from any intellectual property assets or assets, other than patents—
- (i) marketing, branding and distribution activities relating to the asset or assets; or
  - (ii) in exceptional cases, provided that the resident entity is not a high-risk IP entity—
    - (a) taking strategic decisions and managing, as well as bearing, the principal risks related to development and subsequent exploitation of the asset generating income;
    - (b) taking the strategic decisions and managing, as well as bearing, the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the asset; and
    - (c) carrying on the underlying trading activities through which the assets are exploited leading to the generation of income from third parties;
- (i) with respect to shipping business—
- (i) managing 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
  - (v) organising and overseeing voyages; and
- (j) with respect to holding entity business—
- (i) where the entity is a pure equity holding entity, complying with its statutory obligations under the Companies Ordinance or the Limited Partnership Ordinance, as the case may be;

- (ii) where the entity is not a pure equity holding entity, the activities specified in paragraphs (a) to (i) that are associated with the income that the entity earns from the relevant activity concerned.

(2) An entity carries on core income-generating activities in the Islands to the extent that it carries on the activity in the Islands.

## PART II

### SUBSTANCE REQUIREMENT

#### **Substance requirements applicable to resident companies**

8. (1) A resident entity which, in any accounting period, undertakes a relevant activity shall ensure that, during the accounting period, it satisfies the substance requirements specified in subsection (3), or in the case of a pure equity holding entity subsection (5), in relation to any relevant activity that it carries on.

(2) A resident entity which, in any accounting period, carries on more than one relevant activity shall satisfy the substance requirements in respect of each activity.

(3) A resident entity, other than a pure equity holding entity, satisfies the substance requirements in relation to a relevant activity if the entity—

- (a) is directed and managed in the Islands in relation to that activity;
- (b) having regard to the level of relevant activity carried on in the Islands—
  - (i) has an adequate number of appropriately experienced and, if appropriate, qualified full-time employees proportionate to the level of that activity who are physically present in the Islands, whether or not employed by the resident entity or by another entity and whether on temporary or long-term contracts;
  - (ii) has an adequate level of operating expenditure in the Islands proportionate to the level of that relevant activity carried on in the Islands; and
  - (iii) has adequate physical assets or physical presence in the Islands, proportionate to the

level of that relevant activity carried on in the Islands; and

(c) conducts core income-generating activity in the Islands.

(4) For the purposes of subsection (2)(c), a resident entity may outsource core-income-generating activity where—

(a) the activity is conducted in the Islands;

(b) it is able to demonstrate adequate supervision of the outsourced activity; and

(c) only that part of the activities of the outsourcing service provider which are attributable to generating income for the relevant legal entity shall be taken into account when considering if the relevant legal entity meets the economic substance requirements.

(5) A pure equity holding entity satisfies the substance requirements if the entity has an adequate number of persons and has adequate premises for managing the shares or equitable interests that it holds.

(6) In the case of a high-risk IP entity, there is a presumption that the entity does not conduct core income-generating activity in the Islands, which the entity may rebut by providing sufficient evidence to the contrary.

(7) The presumption in subsection (6) may be rebutted by demonstrating that there is, and in the past there has been, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intellectual property asset exercised by an adequate number of suitably qualified full-time employees of the entity who reside in, and perform their functions from within, the Islands.

### **Direction and management in the Islands**

**9.** For the purposes of section 8(3)(a), a resident entity carrying on a relevant activity is directed and managed in the Islands if—

(a) the entity's board of directors meets in the Islands with adequate frequency having regard to the level of decision-making required of the board;

(b) during each board meeting, there is a quorum of directors physically present in the Islands;

(c) strategic decisions of the entity are made at the meetings of the board of directors held in the

- Islands and the minutes of the meetings record those decisions;
- (d) the directors, collectively as a board, have a sufficient spread of knowledge, experience and expertise to discharge the duties of the board;
  - (e) the minutes of all board meetings and the records of the entity required to be kept by the Companies Ordinance or the Limited Partnerships Ordinance are kept in the Islands.

### PART III

#### REPORTING AND PROVISION OF INFORMATION

#### **Reporting obligations**

**10.** (1) A TCI entity shall, in respect of each accounting period, submit to the Competent Authority a return for the purpose of enabling the Competent Authority—

- (a) to determine whether the entity is a resident entity during the accounting period;
  - (b) if the TCI entity is a resident entity, to assess whether, during the accounting period—
    - (i) the entity is or was an entity required by section 8(1) to meet the substance requirements;
    - (ii) the entity meets or met any substance requirements applicable to it;
  - (c) to perform its functions under this Ordinance and the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance; and
  - (d) for the purposes of any Agreement within the meaning of the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance.
- (2) A return under subsection (1) shall—
- (a) be in the approved form;
  - (b) contain the information specified in and be accompanied by such documents as may be prescribed or specified in the approved form; and
  - (c) be submitted to the Competent Authority at such times and intervals and in respect of such periods as may be prescribed.

(3) An entity that is required to submit to the Competent Authority under this section shall retain every document that relates to information required to be provided to the Competent Authority for a period of six years after the end of the accounting period to which it relates.

(4) A TCI entity that fails to submit a return to the Competent Authority, as required by this section, commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.

### **Requirement to provide information and documents**

**11.** (1) A TCI entity shall, in addition to complying with section 10, provide the Competent Authority with such information or documents that the Competent Authority may, by written notice, reasonably require in order “to assist it to—

(a) determine whether a TCI entity is a resident entity in an accounting period; or

(b) make a determination under section 13.

(2) The Competent Authority may, by notice in writing given to any person that the Competent Authority reasonably believes to have information or documents relevant to the discharge of its functions under this Ordinance, require the person, within the time period specified in the notice—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(3) The Competent Authority may require—

(a) any information provided under this section to be provided in such form as it may specify;

(b) any information provided or documents produced under this section to be verified or authenticated in such manner as it may reasonably specify; and

(c) that the information is to be provided to, or the documents are to be produced—

(i) to a person; and

(ii) at the place;

specified in the notice.

(4) The Competent Authority may take copies or extracts of any document produced under this section.



(5) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(6) A TCI entity which, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Competent Authority under subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.

(7) A person who, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Competent Authority under subsection (2), commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.

### **Search warrant**

**12.** (1) A Magistrate may issue a search warrant under this section if he is satisfied on information on oath or affirmation given on behalf of the Competent Authority that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

(a) that a person has failed to fully comply with a notice issued by the Competent Authority under section 11(1) or (2) within the time period specified in the notice and that on the premises specified in the warrant—

(i) there are documents that have been required to be produced; or

(ii) there is information that has been required to be provided; or

(b) that—

(i) a notice could be issued by the Competent Authority under section 11(1) against a TCI entity or section 11(2) against a person;

(ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under section 11(1) or (2) could be issued; and

(iii) if a notice under section 11(1) or (2) was to be issued, it would not be fully complied with, the documents or information to which the notice related would be removed, tampered with or destroyed or the purposes for which

the notice was intended to be issued might otherwise be seriously prejudiced; or

- (c) it would not be appropriate to issue a notice under section 11(1) or (2) to require the information or documents because—
  - (i) it is not practicable to communicate with any person entitled to provide the information or produce the documents; or
  - (ii) it is not practicable to communicate with any person entitled to grant access to the information or documents or entitled to grant entry to the premises on which the information or documents are situated.

(3) A warrant issued under this section shall authorise a named representative of the Competent Authority, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within one week from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(4) In this section, “premises” includes a vehicle, vessel or aircraft.

#### PART IV

#### PENALTIES AND SANCTIONS

### **Assessment of compliance with substance requirements**

**13.** (1) The Competent Authority may determine that a resident entity has not met the substance requirements during any accounting period commencing on after 1st January 2019.

(2) Subject to subsection (3), the Competent Authority shall not make a determination under subsection (1)—

(a) more than two years after it becomes aware of the failure of a resident entity to satisfy the substance requirements; or

(b) more than six years after the end of the accounting period to which the determination relates.

(3) Subsection (2) does not apply if the Competent Authority is not able to make a determination within the two or six year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident entity or by any other person.

### **Failure to satisfy substance requirements, first accounting period of default**

**14.** (1) If the Competent Authority determines under section 13 that a resident entity carrying on a relevant activity has not satisfied the substance requirements during an accounting period, the Competent Authority shall impose a penalty on the entity in accordance with this section.

(2) Within fourteen days of making a determination that a resident entity carrying on a relevant activity has not satisfied the substance requirements during an accounting period, the Competent Authority shall issue a penalty notice to the entity notifying it of—

(a) the Competent Authority's determination that the entity does not satisfy the substance requirements for that accounting period;

(b) the reasons for its determination;

(c) the amount of the penalty imposed on the entity in accordance with subsection (3);

(d) the date on which the penalty is due to be paid to the Competent Authority, being a date not earlier than twenty-eight days after the issue of the notice;

(e) what action the Competent Authority considers should be taken by the entity to meet the substance requirements; and

(f) the entity's right of appeal under section 20.

(3) The penalty imposed by the Competent Authority on a resident entity carrying on a relevant activity that has not satisfied the substance requirements shall be such amount, not exceeding \$25,000, as the Competent Authority considers appropriate.

(4) A resident entity that receives a penalty notice under subsection (2) shall pay the penalty stated in the notice to the Competent Authority on or before the date specified in the notice.

(5) A resident entity that fails to pay a penalty on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

**Failure to satisfy substance requirements, second or subsequent accounting period of default**

**15.** (1) If, the Competent Authority determines that a resident entity carrying on a relevant activity has not satisfied the substance requirements during an accounting period that immediately follows an accounting period in which a notice was issued under section 14(2) or during a subsequent accounting period, the Competent Authority shall impose a penalty on the entity in accordance with this section.

(2) Within fourteen days of making a determination under subsection (1) that a resident entity carrying on a relevant activity has not satisfied the substance requirements during the following or a subsequent accounting period, the Competent Authority shall issue a penalty notice to the entity notifying it of—

- (a) the Competent Authority's determination that the entity does not satisfy the substance requirements for that accounting period;
- (b) the reasons for its determination;
- (c) the amount of the penalty imposed on the entity in accordance with subsection (3), in addition to the penalty or penalties imposed under a previous accounting period or periods;
- (d) the date on which the penalty is due to be paid to the Competent Authority, being a date not earlier than twenty-eight days after the issue of the notice;
- (e) what action the Competent Authority considers should be taken by the entity to satisfy the substance requirements; and
- (f) the entity's right of appeal under section 20.

(3) The penalty imposed by the Competent Authority on a resident entity under this section shall be such amount, not exceeding \$150,000 as the Competent Authority considers appropriate.

(4) A resident entity that receives a penalty notice under subsection (2) shall pay the penalty stated in the notice to the Competent Authority on or before the date specified in the notice.

(5) A resident entity that fails to pay a penalty imposed under this section on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding \$150,000.

### **Penalties**

**16.** (1) A penalty imposed under section 14 or 15 which is not paid by the due date constitutes a debt to Government and may be recovered in the Court.

(2) The Competent Authority shall pay all penalties that it receives into the Consolidated Fund.

### **Application to Court**

**17.** (1) If the Competent Authority determines that a resident entity carrying on relevant activities has not satisfied the substance requirements during the accounting period that immediately follows an accounting period in which a notice was issued under section 14(2) or during a subsequent accounting period, it shall apply to the Court for an order under this section.

(2) If, on an application under subsection (1), the Court is satisfied that the entity has not satisfied the substance requirements during the relevant accounting period, it may make an order—

- (a) requiring the entity to take such action as the Court considers appropriate or necessary for the entity to satisfy the substance requirements;
- (b) in the case of a TCI company—
  - (i) directing the Registrar to strike the company off the Register of Companies; or
  - (ii) appointing a liquidator under section 161(1)(c) of the Insolvency Ordinance, 2017;
- (c) in the case of a TCI limited partnership, ordering the dissolution of the limited partnership under section 14(3) of the Limited Partnership Ordinance;

(d) in the case of a registered foreign company—

- (i) directing the Registrar to remove the company from the Register of Foreign Companies; or
- (ii) appointing a liquidator of the company under section 237(1)(f) of the Insolvency Ordinance, 2017,

and may give such directions or make such further order as it considers appropriate for giving effect to the order.

(3) If the Court directs the Registrar to strike a TCI company from the Register of Companies, the following sections of the Companies Ordinance are disapplied—

- (a) section 256 (1) to (4); and
- (b) section 260.

(4) An application may be made to the Court to restore a TCI company struck off the Register of Companies pursuant to an order under subsection (2)(b), but not dissolved, by—

- (a) the company, a creditor, director or member of the company; or
- (b) any person who can establish an interest in having the company restored to the Register of Companies.

(5) If the Court is of the opinion that the company is, or following its restoration will be, carrying on a relevant activity, the Court shall not restore the company to the Register of Companies unless it is satisfied that the company satisfies, or within such period after its restoration as the Court may specify in the order, will satisfy, the substance requirements.

## PART V

### EXCHANGE OF INFORMATION

#### **Exchange of information with competent authorities**

**18.** (1) If a TCI entity claims to be tax resident in a jurisdiction outside the Islands during an accounting period, the Competent Authority shall provide such of the information provided to it under section 10 as may be prescribed to—

- (a) the Competent Authority of any country in the European Union in which—
  - (i) the TCI entity claims to be resident;
  - (ii) each holding entity of the TCI entity is located;

(iii) each ultimate holding entity of the TCI entity is located; or

(iv) each ultimate beneficial owner of the TCI entity is located; and

(b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

(2) If the Competent Authority determines that a resident entity carrying on a relevant activity has not satisfied the substance requirements during an accounting period, whether the first accounting period specified in section 14 or a subsequent accounting period, the Competent Authority shall provide such of the information provided to it under section 10 as may be prescribed to—

(a) the Competent Authority of any country in the European Union in which is located—

(i) each holding entity of the resident entity;

(ii) each ultimate holding entity of the resident entity; or

(iii) each ultimate beneficial owner of the resident entity; and

(b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

(3) Subsections (1) and (2) have effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any other enactment, contract or rule of law and disclosure of information under this Ordinance does not breach—

(a) any obligation of confidentiality in relation to the information disclosed; or

(b) any other restriction on the access to or disclosure of the information accessed.

### **Exchange of information, high-risk IP entities**

**19.** (1) This section applies with respect to a high-risk IP entity, regardless of whether the Competent Authority has determined that the entity has not satisfied the substance requirements during an accounting period.

(2) The Competent Authority shall provide such of the information provided to it under section 10 as may be prescribed with respect to a high-risk IP entity for the entity's first accounting period and each of the entity's subsequent accounting periods to—

- (a) the Competent Authority of any country in the European Union in which is located—
  - (i) each holding entity of the resident entity;
  - (ii) each ultimate holding entity of the resident entity; or
  - (iii) each ultimate beneficial owner of the resident entity; and
- (b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

## PART VI

### MISCELLANEOUS PROVISIONS

#### **Appeals**

**20.** (1) A resident entity that has been notified of a determination of a failure to satisfy the substance requirements and on which the Competent Authority has imposed a penalty under section 14 or 15 may, within twenty-eight days after the notification, appeal to the Court against the determination and penalty to the Court.

(2) An appeal under this section may be made on questions of law or fact or both and the Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Competent Authority.

(3) An appeal under subsection (1) does not stay the enforcement of the penalty.

#### **Application of the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance**

**21.** (1) The following provisions of the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance apply with respect to the exercise by the Competent Authority of its functions under this Ordinance, information and documents provided to the Competent Authority under this Ordinance and the avoidance of compliance with this Ordinance—



- (a) section 11 (Protection of persons disclosing confidential information);
- (b) section 12 (Confidentiality);
- (c) section 13 (Immunity from liability); and
- (d) section 15 (Effect of avoidance of compliance with Ordinance).

### **False and misleading information**

**22.** (1) A person shall not knowingly or wilfully provide to the Competent Authority—

- (a) false information; or
- (b) misleading information, including by the omission of material information.

(2) A person who contravenes subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

### **Approval of forms by Competent Authority**

**23.** (1) The Competent Authority may, by publication in the prescribed manner, approve forms to be used for returns to be made and documents to be issued, produced or submitted under this Ordinance or the Regulations.

(2) Where the Competent Authority has published an approved form with respect to a return or other document, the return or document shall—

- (a) be in the form of, and contain the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified by the approved form.

### **Guidance**

**24.** (1) The Competent Authority may, with the approval of Cabinet, issue guidance concerning compliance with the requirements of this Ordinance and concerning such other matters as it considers relevant to its functions under or in relation to this Ordinance.

(2) Without limiting subsection (1), the guidance may—

- (a) provide for how the substance requirements may be met;

(b) provide guidance on the interpretation of any words or expressions used in section 8 for the purpose of assessing the substance requirements, including the meaning of “adequate”.

(3) The Competent Authority may revise guidance issued under subsection (1) from time to time and a reference to guidance includes a reference to revised guidance.

### **Competent authority to consult**

**25.** (1) Before issuing, amending or replacing any approved form or issuing any guidance, the Competent Authority shall—

(a) provide persons that the Competent Authority considers will be substantially affected with a copy of the proposed—

(i) approved form or guidance;

(ii) amendments to the approved form or guidance; or

(iii) replacement of the approved form or guidance;

(b) give those persons a reasonable opportunity to make representations to the Competent Authority; and

(c) consider any representations that it receives.

(2) The Competent Authority may comply with its obligations under—

(a) subsection (1)(a), by publishing the relevant documents on its Internet site,

(b) subsection (1), in respect of a person by consulting with any professional or trade association of which the person is a member and considering representations by that association.

(3) The failure of the Competent Authority to comply with subsection (1) does not affect the validity of any approved form or guidance issued.

### **Regulations**

**26.** (1) The Governor may make regulations prescribing anything under this Ordinance which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Ordinance, or to give force and effect to its provisions.

(2) The regulations may make different provision in relation to different persons, circumstances and cases.

(3) Regulations made under this section shall be laid before the House of Assembly at its next meeting immediately following the date of publication of the regulations in the *Gazette*.

(4) If, at the meeting of the House of Assembly referred to in subsection (3), the House of Assembly passes a resolution annulling regulations which have been laid before it in accordance with that subsection or if regulations made under this section are not laid before the House of Assembly in accordance with that subsection, the regulations shall cease to have effect on and after the day of the annulment or the day next following the day that the meeting is concluded, as the case may require, but without affecting the validity or curing the invalidity of anything done or omitted to be done thereunder before that day or the making of new regulations.

### **Amendment of Companies Ordinance**

**27.** The Companies Ordinance is amended—

- (a) in section 2, by deleting the definitions of “domestic company” and “international company”;
- (b) in section 7, by repealing subsection (3);
- (c) by repealing section 12;
- (d) in section 13, by repealing subsection (4);
- (e) in section 29(1)—
  - (i) in paragraph (a), by inserting after the semi colon, the word “and”;
  - (ii) in paragraph (b)—
    - (a) by deleting “an international company nor”;  
and
    - (b) by deleting “; and” and substituting a full stop; and
  - (iii) by repealing paragraph (c).

### **Transitional provisions**

**28.** The transitional provisions in the Schedule apply.

### **Amendment of Schedule**

**29.** (1) The Governor may, by order, amend the Schedule to this Ordinance.

(2) An order made under this section shall be laid before the House of Assembly at its next meeting immediately following the date of publication of the order in the *Gazette*.

(3) If, at the meeting of the House of Assembly referred to in subsection (2), the House of Assembly passes a resolution annulling an order which has been laid before it in accordance with that subsection or if an order made under this section is not laid before the House of Assembly in accordance with that subsection, that order shall cease to have effect on and after the day of the annulment or the day next following the day that the meeting is concluded, as the case may require, but without affecting the validity or curing the invalidity of anything done or omitted to be done thereunder before that day or the making of a new order.

(4) Notwithstanding section 23(2) of the Interpretation Ordinance, where—

- (a) an order is annulled under subsection (3) or is not laid before the House of Assembly in accordance with subsection (2); and
- (b) that order amended or revoked an order that was in operation immediately before the first mentioned order came into operation,

the annulment or failure to comply with subsection (2) revives the previous order on and after the day of the annulment or, in the case of failure to comply with subsection (2), on and after the day next following the day that the meeting of the House of Assembly referred to in subsection (2) is concluded.

## **SCHEDULE**

### TRANSITIONAL PROVISIONS

#### **Commencement**

1. (1) Subject to subparagraph (2), the provisions of this Ordinance come into force on 1 January 2019.

(2) Section 27 comes into force on 1 July 2019.

#### **Interpretation**

2. In this Schedule

“existing TCI entity” means a TCI entity that, on 1<sup>st</sup> January 2019—

- (a) is a company on the Register of Companies;
- (b) is a foreign company on the Register of Foreign Companies; or
- (c) is registered as a limited partnership under section 7 of the Limited Partnerships Ordinance; and

“transition period” means the period commencing on 1 January 2019 and terminating at midnight on 30 June 2019.

#### **Ordinance not to apply to existing TCI entities during transition period**

3. This Ordinance shall not apply to an existing TCI entity during the transition period.

#### **First accounting period, existing TCI entity**

4. The first accounting period of an existing TCI entity is—

- (a) the period of six months commencing on 1 July 2019 and ending on 31 December 2019; or
- (b) such other period as may, on the application of the entity, be approved by the Competent Authority.