



Rules under the Economic Substance (Companies and Limited Partnership) Act, 2018 (the “Act”) have now been issued and published and are referred to herein as the “Rules”. The Rules will take effect on the date when the Beneficial Ownership Secure Search System (Amendment) (No. 3) Act, 2019 comes into effect.

Whilst every effort has been made to keep these as close as possible to the earlier draft, some changes have had to be made in light of, amongst other things:

- a) on-going discussions with the European Union;
- b) the recently passed Beneficial Ownership Secure Search System (Amendment) (No. 2) Act, 2019 and the pending Beneficial Ownership Secure Search System (Amendment) (No. 3) Bill, 2019 which is expected to be passed and come into effect very shortly;
- c) certain earlier legislative changes referred to but not yet completed;
- d) concerns voiced by the industry where these were able to be taken on board; and
- e) internal decisions taken in the best interest of the Public Sector.

The Rules are not static and so it is intended that they will be updated from time to time, as necessary. For example, a revision of the Rules can be expected once legislative changes referred to in (c) above have been completed.

For ease of reference, salient changes include the following:

- the inclusion of a more robust requirement that, where a legal entity makes an application to be treated as provisionally tax resident in a jurisdiction outside the BVI, if the ITA accedes to such an application, the requirement for the ITA to specify a “reasonable” period in which evidence is to be submitted would typically not extend beyond two financial periods (inclusive of the financial period for which the entity has applied for provisions treatment);
- the insertion of a new rule to clarify that the expression “expenditure” in section 8 of the Act and section 10 of the Beneficial Ownership Secure Search System Act, 2017;
- confirmation that substance requirements are expected to be complied with during the time that an entity is in liquidation;
- in terms of the economic substance information that is to be uploaded to the Registered Agent database, the following are additional filing requirements (as appropriate):
 - confirmation as to whether a legal entity carries on a relevant activity (hence, legal entities that claim to be outside the scope of economic

substance requirements by virtue of being tax resident in a jurisdiction outside the BVI, will also have to provide this information to its registered agent);

- the residential address of the beneficial owner;
- the total amount of expenditure incurred on the relevant activity (as a whole);
- the total number of employees engaged in the relevant activity both as a whole and within the BVI);
- in relation to an entity carrying on intellectual property business that wishes to rebut the presumption that it does not conduct core income generating activity:
 - detailed business plan explaining the commercial rationale of holding the IP asset in the BVI; and
 - concrete evidence that decision-making is taking place within the BVI e.g detailed minutes of meeting which have taken place in the BVI.

Although the reference to the Code of Conduct Group's further work on collective investment schemes have been deleted, this discussion is actively on-going with the BVI and further communication will be had with the industry on this regard.