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## Commercial Entities (Substance Requirements) Act, 2018

### INTRODUCTION

The Commercial Entities (Substance Requirements) Act, 2018 (“**CESRA**” or “**the Act**”) came into force on 31<sup>st</sup> December, 2018 in The Bahamas. CESRA seeks to ensure that entities which are Bahamian resident for tax purposes do, in fact, have a legitimate nexus to the jurisdiction by introducing certain economic substance requirements and reporting obligations.

### AFFECTED ENTITIES

CESRA applies to all entities/companies in The Bahamas that is incorporated, registered or continued under any of the following statutes:

- Companies Act, including registered foreign entities;
- International Business Companies Act;
- Partnership Act;
- Partnership Limited Liability Act; and
- Exempted Limited Partnership Act.

Accordingly, every Bahamian entity/company, at the very least, will have to comply with the reporting obligations imposed by CESRA. However, only ***included entities*** would have to demonstrate a substantial economic presence by meeting the relevant economic substance requirements prescribed by CESRA by the allotted time.

***Included entities*** are commercial entities that carry out the following relevant activities:

- Banking business;
- Insurance business;
- Fund management business;
- Finance and Leasing business;
- Headquarters business;
- Distribution and service centre business;
- Shipping business;
- Commercial use of intellectual property; and
- Holding company of a subsidiary entity which is engaged in either or the above.

### REPORTING OBLIGATIONS AND DEADLINES

Every entity/company is required to submit an annual declaration via the appropriate form through the Ministry of Finance’s online portal [<https://substancereporting.revenue.gov.bs/>].

**Form D** is to be completed by non-included entities. The deadline for filing is nine (9) months after the end of the entity's fiscal year<sup>1</sup>.

#### **PENALTIES FOR NON-COMPLIANCE**

Failure to comply with CESRA can result in administrative penalties for non-compliance which start at \$150,000.00. Criminal penalties also exist and include summary conviction, a fine of \$10,000.00 and/or six (6) months imprisonment. The entity in breach may also be struck-off the Companies Register in The Bahamas.

#### **CONCLUSION & NEXT STEPS**

CESRA imposes a spectrum of obligations on entities and companies that are incorporated, registered or continued in the Bahamas. To ascertain where a company falls within that spectrum, it is important for the company to be classified as either a *non-included entity* or an *included entity*. Only included entities are required to meet the substance requirements of CESRA<sup>2</sup> in The Bahamas. If you believe that your entity may be classified as an included entity under CESRA, we ask that you contact Lyford Corporate Management Ltd. as a matter of priority for further guidance. If you should have any further questions regarding CESRA or would like support with the filing process, please contact Bionca Rolle at the law offices of Klonaris & Co.

Bionca Rolle

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#### **AUTHOR PROFILE**

**BIONCA ROLLE** is as an Associate at Klonaris & Co. Her areas of practice include real property sales and acquisitions and other areas of property law, corporate and company law and commercial transactions. Bionca holds a Bachelors of Law (LLB) Degree with Honours in the First Class, from the University of Buckingham, in the United Kingdom. In 2016, while at Buckingham she received the Routledge-Cavendish Prize for Best Performance in the Preliminary Law Examinations. Bionca then went on to complete the Bar Professional Training Course at BPP University in Bristol, England. In 2019, she was admitted to the Bar of England and Wales and The Bahamas Bar.

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<sup>1</sup> However due to the Covid-19 pandemic, a Twelve (12) month deadline has been imposed for filings for the 2019 fiscal year.

<sup>2</sup> i.e. local offices performing core income generating activities, staffing with adequate/relevant qualifications, skills or experience.

#### **DISCLAIMER**

**The information provided herein is supplied for informative purposes only and does not aim to be comprehensive. It is not intended to act as or be a substitute for legal or professional advice and services.**