Revised Regulations of Anguilla: L65-2

LIMITED LIABILITY COMPANY ACT (R.S.A. c. L65)

LIMITED LIABILITY COMPANY (ECONOMIC SUBSTANCE) REGULATIONS

Note: These Regulations are enabled under sections 88(5), 90(2) and 106 of the Limited Liability Company Act, R.S.A. c. L65.

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Interpretation

1. In these Regulations—

"core-income generating activity", for a relevant activity, has the meaning specified in Schedule 1;

"economic substance test", in relation to a relevant activity, means the test prescribed in section 4, 5 or, as the case may be, 6;

"exempt LLC" means a LLC exempt from the economic substance test in accordance with section 3; and

"high-risk intellectual property entity" has the meaning specified in section 88(5) of the Act.

"limited liability company" or "LLC" has the same meaning as assigned in the Act.

Economic substance returns

2. (1) An economic substance return required by section 90 of the Act—

(a) shall be filed electronically in a manner specified by the Registrar;

(b) shall be in the form and include the information specified in Schedule 2; and

(c) if the LLC carries on a relevant activity, shall, unless the LLC is an exempt LLC, include adequate information to enable the Registrar to determine whether or not the LLC meets the economic substance test for the relevant activity.

(2) Without limiting the generality of subsection (1)(c), if the LLC carries on a relevant activity, its economic substance return shall include the following information relating to the LLC—

(a) the address and location of its premises (whether leased, rented or owned) in Anguilla;

(b) the number of full-time employees or other personnel with appropriate qualifications, including contracted third parties, who are in Anguilla;

(c) the amount and type of income in respect of each relevant activity carried on by the LLC;

(d) the amount and type of expenses, and assets held, in respect of each relevant activity carried on by the LLC;

(e) a detailed description of its core-income generating activities undertaken in Anguilla;

(f) a statement of whether it claims to be an exempt LLC, and if so, evidence of this;

(g) a statement of whether it considers that the mind and management for the relevant activity is in Anguilla within the meaning of section 7, and if so, evidence of this; and

(h) a declaration as to whether or not the LLC satisfies the economic substance test for the relevant activity in accordance with these Regulations, and if it so satisfies that test, evidence of this.

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Exempt LLCs

3. A LLC that carries on a relevant activity is exempt from the economic substance test in relation to the activity if, and only if—

(a) the LLC is centrally managed and controlled or carries on the relevant activity in a jurisdiction where the rate at which the LLC may be charged tax is 10% or higher;

(b) the LLC is resident for tax purposes in the jurisdiction; and

(c) the LLC files with the Registrar evidence of its tax residence in that jurisdiction and that an appropriate tax return has been submitted to the relevant tax authority of that jurisdiction in relation to the relevant activity.

Economic substance test generally

4. (1) Subject to sections 5 and 6, an LLC meets the economic substance test in relation to a relevant activity that the LLC carries on if it satisfies all three conditions A, B and C in relation to the relevant activity.

(2) Condition A is that, having regard to the level of the relevant activity carried on by the LLC, the LLC—

(a) has an adequate number of qualified employees engaged in the relevant activity who are physically present in Anguilla;

(b) incurs in Anguilla an adequate level of expenditure in relation to the activity; and

(c) has adequate physical assets (whether leased, rented or owned) in Anguilla.

(3) Condition B is that the LLC carries on the appropriate core-income generating activities in Anguilla for the relevant activity.

(4) Condition C is that the mind and management for the relevant activity is in Anguilla, within the meaning of section 7.

(5) A LLC is deemed to satisfy the economic substance test in relation to a relevant activity if—

(a) it outsources the relevant activity to one or more third party providers;

(b) each of those providers satisfies both conditions A and B in Anguilla; and

(c) the LLC can demonstrate that it adequately supervises that relevant activity.

(6) For the purposes of subsection (5), the economic substance of third party providers shall not be counted multiple times by multiple LLCs when evidencing their own economic substance in Anguilla.

Economic substance test for high-risk intellectual property entities

5. (1) A high-risk intellectual property entity is deemed to fail to meet the economic substance test in relation to its intellectual property business unless it demonstrates to the satisfaction of the Registrar that there is and historically has been a high degree of control over the development, exploitation, maintenance, enhancement and protection of its intellectual property asset, exercised by an adequate number of full-time employees with the necessary qualifications who permanently reside and perform these activities in Anguilla.

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(2) A high-risk intellectual property entity seeking to demonstrate the matter specified in subsection (1) shall file with the Registrar any information or evidence reasonably required by the Registrar for this purpose, including—

(a) detailed business plans which demonstrate the commercial rationale for holding its intellectual property asset in Anguilla;

(b) information about its employees, including level of experience, type of contracts, qualifications and duration of employment;

(c) evidence that decision-making in relation to the intellectual property asset is taking place within Anguilla; and

(d) any other information that may be reasonably required by the Registrar to determine whether the entity meets the economic substance test.

Economic substance test for holding company activity

6. (1) This section applies to a LLC that carries on a relevant activity as a holding company (as defined in paragraph 9 of Schedule 2 to the Act).

(2) The LLC is deemed to meet the economic substance test in relation only to this relevant activity if the LLC—

(a) has complied with all applicable statutory filing requirements; and

(b) has adequate human resources and adequate premises in Anguilla for holding and managing equity participations.

(3) Where the LLC holds a variety of assets and earns different types of income such as interest, rents and royalties, the core-income generating activities of the LLC are those activities that are associated with the income that holding companies earn.

Mind and management for relevant activity

7. The mind and management for a relevant activity carried on by a LLC is in Anguilla if—

(a) the directors of the LLC have the necessary knowledge and expertise to discharge the duties of the board of directors in relation to the relevant activity;

(b) the meetings of the board of directors are conducted in Anguilla at a frequency that is appropriate to the decision-making required for the relevant activity;

(c) a quorum of the board of directors is—

(i) resident in Anguilla, or

(ii) present at the meetings of the board conducted in Anguilla;

(d) the minutes of the meetings of the board conducted in Anguilla record the making of strategic decisions of the LLC at those meetings;

(e) the minutes of all board meetings and the records of the LLC are kept in Anguilla;

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(f) the LLC's premises (whether leased, rented or owned) in Anguilla are adequate for the management of the relevant activity; and

(g) where the board of directors has decided to outsource the core-income generating activities in relation to the relevant activity, the board has maintained adequate supervision of those core-income generating activities.

Citation

8. These Regulations may be cited as the Limited Liability Company (Economic Substance) Regulations, Revised Regulations of Anguilla, L65-2.

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SCHEDULE 1

(Section 1)

CORE-INCOME GENERATING ACTIVITIES FOR RELEVANT ACTIVITIES

A core-income generating activity for a relevant activity—

(a) means an essential activity that is necessary to be carried out in order to produce the income from the relevant activity; and

(b) in relation to each relevant activity in the first column of the table below, includes an activity specified in the second column of that table.

Relevant activity*	**Core-income generating activities**
Banking	(a) Raising funds by managing risk, including credit, currency or interest risk; (b) taking hedging positions; (c) providing loans, credit or other financial services to customers; or (d) managing capital.
Insurance	(a) Predicting or calculating risk; (b) insuring or re-insuring against risk; or (c) providing insurance-related services to clients.
Fund management	(a) Taking decisions on the holding and selling of investments; (b) calculating risk and reserves; or (c) taking decisions on currency or interest fluctuations and hedging positions.
Financing and leasing	(a) Agreeing funding terms; (b) identifying and acquiring assets to be leased (in the case of leasing); (c) setting the terms and duration of any financing or leasing; (d) monitoring and revising any agreements; or (e) managing any risks.
Distribution and service centre	(a) Transporting and storing goods, components and materials; (b) managing stocks; (c) taking orders; or (d) providing consulting or other administrative services.
Shipping	(a) Managing crew (including hiring, paying and overseeing crew members); (b) overhauling and maintaining ships; (c) overseeing and tracking deliveries; (d) determining what goods to deliver and when to deliver them; or (e) organising and overseeing voyages.

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Intellectual property business	(**a)** In respect of a business exploiting an intellectual property asset which is a patent or an asset that shares features similar to a patent, research and development— (i) advancing the understanding of scientific relations or technologies; (ii) addressing known scientific or technological obstacles; (iii) increasing knowledge; or (iv) developing new applications; (**b)** In respect of a business exploiting an intellectual property asset that is a marketing intangible that shares features similar to a trademark, marketing, branding and distribution —activities directly linked to the specific intangible; or (c) In exceptional cases, except in the case of a high-risk intellectual property entity, other core-income generating activities relevant to the business and the intellectual property assets may include— (i) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset; (ii) 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 intangible asset; or (iii) carrying on the underlying trading activities through which the intangible asset is exploited leading to the generation of revenue from third parties.
Headquarters	(a) Taking relevant management decisions; (b) incurring expenditures on behalf of group entities; or (c) coordinating group activities.
Holding company	All activities associated with the income that holding companies earn.

*Each relevant activity has the meaning specified in Schedule 2 to the Act.

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SCHEDULE 2

(Section 2(1)(b))

FORM AND INFORMATION FOR ECONOMIC SUBSTANCE RETURN

FORM 1

ANGUILLA

LIMITED LIABILITY COMPANY ACT R.S.A. c. L65 ("the Act")

(Section 90)

ECONOMIC SUBSTANCE RETURN

**attach additional pages and documents as necessary.*

1. LLC Name:

_____

2. LLC No.:

_____

3. Date of Formation or Continuance under the Act:

_____

4. Economic Substance Return Being Filed For (Year) _____ made up to (specify date):

_____

5. Does the LLC conduct any relevant activity? (Yes/No)

If yes provide the following details:

A. Is the LLC an Exempt LLC? (Yes/No)

If yes provide evidence of tax-residence in a jurisdiction other than Anguilla, and that an appropriate tax return has been submitted to the relevant tax authority of that jurisdiction in relation to the relevant activity.

_____

_____

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If no provide the following details:

B. Type of relevant activity conducted:

_____

C. The amount and type of income in respect of the relevant activity:

_____

D. The amount and type of expenses incurred, and assets held, in respect of the relevant activity:

_____

E. The location of the place of business or plant, property or equipment in Anguilla used for the relevant activity:

_____

F. The number of employees with appropriate qualifications or personnel of third party service provider in Anguilla who are responsible for carrying on the relevant activity:

_____

G. Detailed description of the core income generating activities conducted in Anguilla in respect of the relevant activity:

_____

H. Statement whether the mind and management for the relevant activity is in Anguilla within the meaning of section 7 of the Act, and if so, provide evidence:

_____

I. Declaration as to whether or not the LLC satisfies the economic substance test in accordance with the Limited Liability Company (Economic Substance) Regulations, and if it does, provide evidence:

_____

J. In the case of a relevant activity that is an intellectual property business - a declaration as to whether or not the LLC is a high-risk intellectual property entity and, if it is:

(i) Detailed business plans which demonstrate the commercial rationale for holding the intellectual property assets in Anguilla,

(ii) Employee information, including level of experience, type of contracts, qualifications and duration of employment, and

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(iii) Evidence that decision-making is taking place within Anguilla.

6. Certified correct and submitted by:

Name: Signature: Office Held: Date:

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LLC No:
Agent Code No:
Date Filed:
Received By:

_____

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