



Council of the  
European Union

Brussels, 30 April 2020  
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ADD 1

FISC 153

## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Code of Conduct Group (Business Taxation)  
Subject: The EU list of non-cooperative jurisdictions for tax purposes  
– Bahamas: final legislation and assessment under criterion 2.2  
= Bahamas: final legislation on collective investment funds and  
assessment under criterion 2.2

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The ECOFIN Council acknowledged on 12 March 2019 that further work was needed to define acceptable economic substance requirements for collective investment funds (CIVs) under criterion 2.2 and invited the Code of Conduct Group (business taxation) (COCG) to "*continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019*". In June 2019, the ECOFIN Council subsequently endorsed a technical guidance on substance requirements for CIVs that had been developed by the COCG. The deadline of end of 2019 was confirmed for Bahamas to address COCG's concerns relating to economic substance in the area of CIVs.

## **A/ FINAL LEGISLATION:**

On 1 September 2019, the Bahamas Investment Funds Act, 2019, (see doc. 7220/19 ADD 1 ADD 2-6) entered into force.

On 30 January 2020, Bahamas enacted the new Investment Funds Regulations (IFR) repealing the previous Regulations of 2003.<sup>1</sup>

On 11 February 2020, the amendments to the Investment Funds Act, 2019, were published in the Official Gazette (see doc. 7220/19 ADD1 ADD1).

## **B/ FINAL ASSESSMENT:**

Bahamas legislative framework on CIVs, comprising the Investment Funds Act, 2019 (IFA), was found adequate under pillars 1 and 2 by the COCG in September 2019, subject to monitoring of certain aspects. Under pillar 1, funds established, incorporated, registered, operated or sold to retail investors in the Bahamas must be licensed and foreign funds managed or administered in or from the Bahamas must be notified. Under pillar 2, the Securities Commission of the Bahamas (SCB) is an IOSCO member, with staff, resources and significant supervisory and enforcement powers. However, Member States raised concerns under pillars 3 and 4. To address these concerns, Bahamas proposed to amend IFA 2019 and to adopt the Investment Fund Regulations (IFR). In December 2019, Member States agreed that the latest versions of the IFA amendment and the IFR addressed their concerns, subject to monitoring of certain aspects. Under pillar 3, applicable accounting and audit standards (IFRS and US GAAP) and valuation requirements for retail funds were clarified. Under pillar 4, funds will have to appoint a custodian complying with independence safeguards.

## **Conclusion**

Bahamas' revised legislative framework for CIVs complies with the requirements of the 4 pillars. Therefore, Bahamas has implemented its commitment to introduce economic substance in the area of collective investment funds under criterion 2.2 and was removed from Annex II at the ECOFIN meeting on 18 February 2020.

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<sup>1</sup> <http://www.scb.gov.bs/documents/Investment%20Funds%20Regulations,%202020.pdf>