

# Economic Substance Classification Solution Terms and Conditions

## 1. PURPOSE OF THIS DOCUMENT

This document contains the terms on which we, Harney Westwood & Riegels LP (**Harneys**) provide the use of the online Economic Substance Classification Solution (the **Service**) to you.

It applies only to your use of the Service with respect to an entity (the **relevant entity**) and does not affect any other relationship you have with us as a law firm or our affiliated fiduciary services businesses (collectively, **Harneys Fiduciary**).

## 2. THE SERVICE

In consideration for the payment of the specified fee you may utilise the Service with respect to each relevant entity. You will utilise the Service through the online link which will be sent to you at the e-mail address provided.

Through the Service Harneys shall advise you based upon the information submitted in relation to each relevant entity and its classification under the Economic Substance (Companies and Limited Partnerships) Act 2018 in accordance with our professional judgment based upon legislation, regulation, guidance notes and the rules on economic substance in the BVI issued by the International Tax Authority and current practice as at the effective date specified in the Service. We make no attempt to verify any of the information you provide or to check for inconsistencies with other data or information about the relevant entity which we or Harneys Fiduciary may hold in the course of other instructions from any person or the provision of other services to the relevant entity.

As part of the Service, in certain cases Harneys may provide an example template of resolutions for the relevant entity utilising the Service in relation to certain associated matters. This aspect of the Service does not include a review of the constitutional documents or registers or corporate records of the relevant entity, and the template is prepared on a general basis for the most common form of constitutional documents. Harneys expresses no view as to whether the precise wording is appropriate for the specific entity. Each relevant entity must make any necessary changes to adapt the template to accommodate any specific requirements under its own constitutional documents, and to reflect its incumbent directors or other management body. We

recommend that the entity and its advisors consider whether it is appropriate to pass any resolutions as written resolutions or at a board meeting as this may be restricted under its constitutional documents or agreements or have consequences under applicable law (for example, in relation to the entity's tax residence). Harneys (and its affiliates and each of Harneys' and such affiliates' respective directors, partners, employees and agents or any of them) does not assume any responsibility, duty or liability whatsoever to you, the relevant entity or to any other person whatsoever arising from use of template resolution wording.

The Service is provided for the benefit of you as our client and the relevant entity with respect to which the Service is used. We accept a duty of care towards you and the relevant entity in relation to the provision of the Service. You and the relevant entity may only disclose a copy of the classification summary and advice (**classification advice**) provided by the Service to third parties upon a non-reliance basis. We do not accept any duty of care to any third party to whom you disclose the classification advice.

If Harneys Fiduciary provides any services to the relevant entity, we will share the classification advice with Harneys Fiduciary on a confidential basis who may hold it and add it to the records of the relevant entity which it maintains and use it for any reasonable purpose incidental to the services provided.

We may suspend the provision of the Service from time to time to facilitate routine maintenance of the relevant systems and/or to update or modify the operation of the Service to reflect changes in the law, regulation or official guidance and/or the proper interpretation thereof.

We will maintain the operation of the Service until 31 December 2020.

## 3. COMMUNICATION

We will use various forms of electronic communication in the course of taking and acting on instructions from you. Unless you advise us otherwise we will assume communication by email is acceptable to you. With electronic communication there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties.

We use scanning software to reduce the risk of viruses, malware and similar damaging items being transmitted through emails or electronic storage devices. We also expect you to operate such software. However, electronic communication is not totally secure and we cannot be held responsible for damage or loss caused by non-receipt, delayed receipt, inadvertent misdirection, interception by third parties, viruses nor for communications which are corrupted or altered after despatch. Nor do we accept any liability for problems or accidental errors relating to this means of communication especially in relation to commercially sensitive material.

Any email communications to or from us may be monitored by us for operational or business reasons.

Legal advice or attorney-client privilege is likely to attach to our communications relating to the Service (including the printed summary). You should be aware however that legal privilege may be lost by communicating with third parties or with people in your own organisation who are not involved in the giving of instructions to, or in the seeking, obtaining or receipt of advice from, us.

Whilst making every reasonable attempt to secure personal data, we cannot accept responsibility for any unauthorised access or loss of private information that is beyond our control.

Please refer to the provisions of our Privacy Policy (<https://www.harneys.com/privacy-policy/>) for further information on how we collect personal data, how we use it, what rights and choices you have in relation to the personal data we hold and process and how you may contact us.

#### 4. LIABILITY CAP AND SCOPE OF LIABILITY

Our maximum aggregate liability to you in respect of the provision of the Service is limited to **US\$20,000** or the equivalent value in any other currency.

Further:

- (a) we will not be liable for the acts or defaults of any third party, including Harneys Fiduciary or any agents or sub-contractors, and will only accept liability for direct loss suffered by the person instructing us or the relevant entity and, in any event, only to the extent that such loss was reasonably foreseeable as arising from our act or default giving rise to the loss;
- (b) we will not be liable for any punitive, exemplary or multiplicative damages or similar claims beyond the actual amount of your loss;
- (c) we will not be liable for any consequential loss or loss of profit however arising, whether or not such loss was foreseeable and whether it

was suffered by the person by whom we are instructed or any third party;

- (d) we will not be liable if you act on advice given by us on an earlier occasion without first confirming with us that the advice remains valid in the light of any changes in the law or your circumstances and will accept no liability for losses arising from changes in the law or in the interpretation of the law which are first published after the date on which our advice is given;
- (e) we will not be liable for any losses where those losses are due to inaccurate, incomplete or misleading information provided to us; and
- (f) we shall not be liable for any inability on our part to perform our services for any cause beyond our reasonable control, including adverse weather conditions affecting the relevant Harneys office,

and you agree not to bring such claims against us.

It is a fundamental provision of these terms and conditions that you agree no individual has or will have any personal responsibility to you for the legal services provided by them on behalf of Harneys. This does not limit or exclude any liability of Harneys for the acts or omissions of any of its employees acting under the supervision of the firm or within the scope of their employment with the firm.

#### 5. COMPLIANCE AND CONFLICTS OF INTEREST

We are satisfied that the provision of the Service does not constitute 'relevant business' for the purposes of the Anti-money Laundering Regulations 2008 and associated code of practice. Accordingly it is not necessary for you to provide know-your-client documentation to us in order to use the Service.

Because the nature of the advice provided under the Service is general and rendered upon an automated basis, we do not consider it a conflict of interest for different clients of Harneys to use the Service even where their interests are opposed, and the Services is not provided on a limited or exclusive basis to any person or group. This does not affect our obligation to maintain the confidentiality of information provided by each and every client in relation to the use of the Service.

Where Harneys is engaged by another law firm in any country in relation to the Service then, unless otherwise indicated, we will act on the basis that law firm is engaging us as agent for their underlying clients. Where we are engaged by an agent on behalf of a principal these terms will be binding upon both the principal and agent. In all other cases Harneys acts for the instructing

client as principal and not as agent for any other party unless otherwise agreed. Any advice given will be solely for the benefit of our instructing client and the relevant entity. You agree not to share such advice with any other person except as may be expressly agreed by us or as expressly permitted by these Terms, and we will not be liable to any other person with respect to that advice.

## 6. BASIS OF CHARGING

Use of the Service is charged on a per entity basis at the specified rate.

Our charges are net of any bank charges and withholding taxes and you should not assume that we are registered for tax in any country or state from which you may choose to make payment. If you are compelled to make any deductions from payments on account of such charges or taxes, you must gross up the payment so that we receive the amount stated on the face of any invoice which we issue.

No VAT, GST or similar charge is currently payable for the provision of the Service.

Invoices will be submitted by email only.

We will, unless agreed otherwise, require advance payment for the Service. In any other cases, payment is due within 14 days of the date of the invoice.

If you wish to dispute any part of an invoice in good faith then you must do so within 30 days of receipt of the invoice after which time the invoice shall be treated for all purposes as agreed. Any notice of dispute must be in writing and must clearly set out the basis of your objection.

## 7. BANK FAILURES

We accept no liability for any sums held in a client account which are not readily available to us as a consequence of failure of any financial institution which is regulated and doing business in any jurisdiction where you have instructed Harneys (a **Bank**), or any restriction by that Bank of access to deposits.

In the event of the failure of a Bank or similar event relating to insolvency or illiquidity of the Bank, our liability for sums held by us (whether money on account for fees or sums received by us as part of a transaction) which have been deposited with a Bank is limited to such sums as we can reasonably recover in the bankruptcy or reorganisation of the Bank.

## 8. UNPAID INVOICES

With respect to unpaid invoices for the provision of the Service:

- (a) **45 days.** Where any sums are not paid within 45 days of the date of an invoice, interest shall become payable on the invoice from the date on the face of the invoice at an annual rate of 8.5%.
- (b) **90 days.** Where any sums are not paid within 90 days of the date of an invoice we reserve the right to impose a late payment charge of US\$250 in relation to administration of the outstanding fees. For any sums not paid within 90 days of the date of the invoice we also reserve the right to rescind and forfeit any discounts or preferential fee arrangements which otherwise applied to the relevant invoice and re-invoice at the full amount which otherwise would have been payable, and you agree to pay such amounts in full.
- (c) **120 days.** In the event that it becomes necessary to engage collection agents, tracing agents, lawyers or other third parties to secure payment of any invoice which has been outstanding for over 120 days, you will be responsible for the payment of all such charges on an indemnity basis, which shall be added to the relevant invoice. We may provide any documents relating to you (including documents provided for compliance purposes) to such collection agents to assist with recovery of outstanding amounts. We may also factor or assign debts which relate to invoices which are unpaid after 120 days.

## 9. CONFIDENTIALITY

All information that you provide to us will be treated as confidential unless you advise us otherwise or the information is already in the public domain. Much of the information you provide to us will also be covered by legal professional privilege, although the rules relating to privilege vary by jurisdiction, and are determined by law.

We will take all commercially reasonable steps to maintain adequate safeguards to protect the confidentiality of any information relayed to us. We will not be liable for any loss of confidentiality caused by the actions of a third party which could not have been prevented by the operation of commercially reasonable safeguards.

Under the laws of various jurisdictions in which we operate we may in certain circumstances be permitted or compelled to disclose confidential information to regulatory or law enforcement authorities. In such cases we will not be liable for any disclosure which we reasonably believe to be in compliance with our legal obligations in such jurisdiction.

At the completion of a matter we will retain relevant documents for at least the minimum periods prescribed required under applicable law. After the end of those

periods we may dispose of the files without further reference to you.

## 10. INTELLECTUAL PROPERTY RIGHTS

We will retain all copyright in any document prepared by us during the course of our instructions unless specifically agreed otherwise.

The trademarks, service marks, trade names, and logos, including, but not limited to, page headers, custom graphics, button icons, and scripts (together, **Trademarks**) used and displayed on the Services are registered and unregistered trademarks, service marks and/or intellectual property of Harneys or its licensors, and you may not copy, imitate or use the Trademarks, in whole or in part, for any purpose. No license or other right to use any Trademark used or displayed on the Services is granted to you.

You agree and undertake that you will not (i) reverse engineer or decompile the Service or any part thereof, or attempt to do so; (ii) access, or attempt to access, any areas of the computer system or other information thereon in relation to the Service (except as expressly provided as the use of the Service in the ordinary course through the relevant Link); (iii) use any robot, spider, other automatic device, or manual process to “screen scrape,” monitor, “mine,” or copy the pages provided through the Service or the content contained thereon in whole or in part; and (iv) use any device, software or routine to interfere or attempt to interfere with the proper working of the Service, or (in each case) procure, enable, permit or assist any other person to do any of these things.

You may not without the prior written consent of Harneys use framing techniques to enclose the online Service or any Trademark, logo or trade name or other proprietary information including the images or information obtained found on the Services or the content of any text or the layout/design of any page or any form contained on a page as part of the Service.

## 11. DATA PROTECTION

We may obtain, use, process and disclose personal data about you in order to carry out our instructions and for other related purposes including updating and enhancing our client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance, and in any case as further set out and explained in our Privacy Policy (<https://www.harneys.com/privacy-policy/>).

We will comply with all relevant law and in particular, where applicable, with the provisions of the EU General Data Protection Regulation (Regulation 2016/679). Please refer to the provisions of our Privacy Policy for further information on how we collect personal data, how we use it, what rights and choices you have in relation to the personal data we hold and process and how you may contact us.

## 12. MISCELLANEOUS

These terms and conditions shall govern the terms of our relationship in relation to the provision of the Service. These terms and conditions are Harneys standard terms and conditions of engagement for the provision of the Service, and as such may be amended from time to time by Harneys. However no variation shall affect any accrued rights.

If Harneys merges or amalgamates with another firm any engagement which we have with you shall not terminate as a result and the successor firm shall continue the engagement.

You may not assign any rights which you may have against Harneys or any of its partners to any other person without our prior written consent.

If any of the provisions of these terms and conditions are found to be unenforceable for any reason in any jurisdiction, the remaining provisions shall not be affected.

## 13. APPLICABLE LAW AND DISPUTE RESOLUTION

These terms and conditions and your relationship with Harneys with respect to the Service is made under and governed by British Virgin Islands law.

Any dispute or disagreement between you and Harneys which cannot be resolved amicably shall be resolved exclusively by arbitration in the British Virgin Islands by a sole arbitrator appointed under the BVI IAC Arbitration Rules. The arbitration shall be conducted in Road Town, the seat of the arbitration shall be in the British Virgin Islands, and all of the provisions of Schedule 2 to the Arbitration Act 2013 shall apply.

The preceding paragraph does not limit Harneys' ability to claim or take any proceedings against you in any court for unpaid fees or disbursements, and you shall be entitled to ask for a stay on the basis of the provision for arbitration of bona fide disputes.