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Let's talk about Jersey economic substance: Enforcement and sanctions regime

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Jersey is a popular place to establish an asset holding company because its corporate law is modern, flexible and modelled on English companies legislation.

Jersey introduced the **Substance Law** to require Jersey companies which carry on particular activities (called **relevant activities**) to have economic substance in Jersey.

This guide looks at the key things you need to know about enforcement and sanctions regime under the **Substance Law** in Jersey.

For a high-level overview of the economic substance requirements in each of our offshore jurisdictions (BVI, Cayman, Guernsey and Jersey), please view our fact sheet which is accessible from this page.

Words in bold text are defined at the end of this guide.

Why was the Substance Law introduced?

As a part of its base erosion and profit sharing (or BEPS) initiative, the European Union required **OFCs** like Jersey to introduce legislation which seeks to ensure that an **OFC** does not facilitate structures that generate profits which do not reflect real economic activity in that **OFC**.

To avoid being placed on the European Union blacklist of non-compliant jurisdictions, Jersey introduced the **Substance Law** which came into force on 1 January 2019.

The **Substance Law** is supported by the **Guidance** published by the **Comptroller** which is periodically revised.

When does the Substance Law apply?

As explained in our other guides in this series, the **Substance Law** applies where:

- a **tax resident company**;
- carries on a **relevant activity** in a **financial period**; and
- earns gross income from that **relevant activity**.

Comptroller's enforcement powers

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The **Substance Law** equips the **Comptroller** with the following enforcement powers.

Produce documents or information

The **Comptroller** may serve notice on any person requiring the person to provide, within the time period and at the place, specified in the notice, any documents or information the **Comptroller** reasonably requires to facilitate the exercise of the **Comptroller**'s powers under the **Substance Law**.

Investigative powers

For the purpose of investigating any issue relating to compliance with the **Substance Law**, the **Comptroller** may:

- examine and take a copy of any document that is located on business premises;
- enter business premises at any reasonable time; and
- give notice to any person requiring the person to produce any document at the business premises where the business document is located.

Court orders

If the **Comptroller** has determined that a **tax resident company** has failed to satisfy:

- the **substance requirements** for any **relevant activity** in a **financial period**; and
- those **substance requirements** in any subsequent **financial period**,

the **Comptroller** may send a report to the **Minister** which (among other things):

- notifies the **Minister** of those failures; and
- recommends that the **Minister** applies the **Court** for an order to be made against the company under the **Companies Law**.

Under the **Companies Law**, if the **Minister** receives a report from the **Comptroller**, the **Minister** may apply to the **Court** for (among others) any order the **Court** thinks fit requiring the company to take any action specified in the order for the purpose of satisfying the **substance requirements**.

It is likely that the **Comptroller** would only recommend that the **Minister** apply for an order against a company if the company repeatedly or persistently fails to satisfy the **substance requirements**.

Anti avoidance measures

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The **Guidance** states that, if there is any indication that a company is seeking to manipulate or artificially suppress its income to avoid being subject to the **substance requirements**, the **Comptroller** will apply the anti avoidance provisions of the **Tax Law**.

Sanctions

The **Comptroller** may impose a range of sanctions under **Substance Law**. The **Guidance** states that the sanctions that would be imposed under the **Substance Law** are progressive.

Penalties

If a **tax resident company** fails to satisfy the **substance requirements** for any **relevant activity** carried on by it in a **financial period**, the **Comptroller** may impose a penalty of up to:

- £10,000 for the first **financial period**; and
- £100,000 for any subsequent **financial period**,

in which the company fails to satisfy those **substance requirements**.

A person is liable to a penalty of up to £3,000 if the person fails to provide any information required by the **Comptroller**.

A person is liable to a penalty of up to £3,000 if the person provides the **Comptroller** with inaccurate information and the person:

- knows about the inaccuracy at the time the person provides the information but fails to tell the **Comptroller** about the inaccuracy; or
- discovers the inaccuracy after the person provides the information and fails to take reasonable steps to inform the **Comptroller** about the inaccuracy.

Providing information to competent authorities

If the **Comptroller** determines that a **tax resident company** has not satisfied the **substance requirements** for a **relevant activity** for a **financial period**, the **Comptroller** must provide the information given to the **Comptroller** for that **financial period** to the competent authority in:

- the jurisdiction in which each holding body, ultimate holding body and ultimate beneficial owner of the company resides; and
- (where the company is a foreign company) the jurisdiction in which the company is incorporated.

The **Comptroller** is only required to provide the information to a competent authority if it is permitted to do so under:

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- a bilateral agreement between Jersey and that jurisdiction; or
- the Convention on Mutual Administrative Assistance in Tax Matters.

Winding up

In the circumstances explained under the heading *Court orders* above, the **Comptroller** may send a report to the **Minister** which (among other things) recommends that the **Minister** applies to the **Court** for an order against the company under the **Companies Law**.

Under the **Companies Law**, if the **Minister** receives a report from the **Comptroller**, the **Minister** may apply to the **Court** for an order that the company be wound up on just and equitable grounds or in the public interest.

The **Comptroller** would only recommend that the **Minister** apply to the **Court** for an order seeking the winding up of a company if the company repeatedly or persistently failed to satisfy the **substance requirements**.

The **Guidance** states that the ultimate sanction for non-compliance would be for a company's name to be struck off (or removed from) the register of companies kept by the Jersey registrar of companies.

Enforcement of penalties

A penalty imposed under the Substance Law:

- must be paid within 30 days of the payment date stated in the penalty notice or the date on which an appeal is dismissed or withdrawn; and
- may be enforced by the **Comptroller** as if it were income tax that is due and payable under the **Tax Law**.

Appeals

A company may appeal against a penalty being imposed on it or the amount of the penalty imposed. Notice of appeal must:

- be given to the **Comptroller** before the payment date stated in the penalty notice; and
- state the grounds for the appeal.

A Commission of Appeal will be established for the purposes of hearing the appeal and the appeal will be carried out in accordance with the **Tax Law**.

The Commission of Appeal may confirm or cancel the penalty or alter the amount of the penalty.

Offences

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Obstruction

A person commits an offence if, without reasonable excuse, the person:

- obstructs the **Comptroller**; or
- fails to provide any reasonable assistance required by the **Comptroller**,

in connection with an inspection of business premises or the requirement to produce a document.

A person who is convicted of this offence is liable to imprisonment for up to six months and a fine.

Altering, suppressing or destroying documents

A person commits an offence if the person intentionally alters, supresses or destroys any document which the **Comptroller** has required the person to be produced in a written notice given under the **Substance Law**.

A person who is convicted of this offence is liable to imprisonment for up to two years and a fine.

Terms used

CIGA means a core income generating activity.

Companies Law means the Companies (Jersey) Law 1991.

Comptroller means the Jersey Comptroller of Revenue.

Court means the Royal Court of Jersey.

financial period means a period of up to 18 months for which a company's financial statements are prepared.

Guidance means the documents entitled:

- Key *aspects in relation to the economic substance requirements, as issued by Guernsey, Isle of Man and Jersey,* version 2 dated 21 December 2018; and
- *Guidance on aspects in relation to the economic substance requirements issued by Guernsey, Isle of Man and Jersey*, version 2 dated 22 November 2019.

Minister means the Minister for Treasury and Resources.

OFC means an offshore financial centre.

relevant activity means banking business, distribution and service centre business, fund management business, finance and leasing business, headquarters business, holding company business, intellectual property holding business, insurance business or shipping business.

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Substance Law means the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

substance requirements means the requirements that a company to which the **Substance Law** applies must:

- be directed and managed from Jersey;
- (having regard to the level activity carried on by it):
  - have an adequate number of employees physically present in Jersey (whether employed by it or by another person);
  - incur adequate expenditure in Jersey; and
  - have adequate physical assets in Jersey;
- carry on all of its **CIGAs** in Jersey; and
- (to the extent any of its **CIGAs** is carried out for it in Jersey by another person (like a corporate services provider)) be able to monitor and control in Jersey the carrying out of those **CIGAs**.

Tax Law means the Income Tax (Jersey) Law 1961.

tax resident company means company that is regarded as tax resident in Jersey under the **Tax Law**. A Jersey company is regarded as tax resident in Jersey under the **Tax Law** unless:

- its business is centrally managed and controlled outside Jersey in a jurisdiction where the highest rate at which any company may be charged to tax on any part of its income is 10% or higher; and
- the company is resident for tax purposes in that jurisdiction.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

About this series

This guide is part of our series *Let's talk about Jersey economic substance* which looks at aspects of Jersey's economic substance regime. The other guides in this series can be found in the Latest thinking section of our website.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

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