

Guernsey substance requirements released: Guernsey passes the CIGAs?

November 2018

Guernsey has released further detail and draft legislation addressing the economic substance requirements for Guernsey companies. Continuing their global leadership on compliance issues amongst international finance centres, Guernsey together with the Isle of Man and Jersey produced legislation in consultation with industry intended to be practical and efficient whilst continuing to meet the needs of the EU. The proposed requirements arise as a result of the screening of non EU jurisdictions by the EU Code of Conduct Group and their expressed need for a "legal substance requirement for entities doing business in or through" a jurisdiction.

Broadly the proposals will require companies tax resident in Guernsey, and undertaking certain categories of geographically mobile financial and other service activities, to demonstrate that they have sufficient substance in Guernsey. The substance requirements apply to the following categories identified by the OECD's Forum on Harmful Tax Practices:

- Banking;
- Insurance;
- Shipping;
- Fund Management (this does not include companies that are Collective Investment Vehicles);
- Financing & leasing;
- Headquarters;
- Distribution and service centres;
- Holding Company (a pure equity holding company); and
- Intellectual Property (for which there are specific requirements in high-risk scenarios).

Substance can be demonstrated in the Island by:

- being directed and managed;
- conducting Core Income Generating Activities ("CIGA"); and
- there being adequate people, premises and expenditure.

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The new legislation is proposed to take effect 1 January 2019, so directors of Guernsey companies need to consider the structure of their businesses in light of the substance requirements. Importantly, in our view, the quality of regulation applied by Guernsey's GFSC licensing regime means that for most GFSC licensees (including fund managers), meeting these requirements will mean little, if any, change is required.

Notably the legislation resists prescribed staffing numbers or premise requirements in favour of a concept of adequacy, adaptable to the particular facts of each company and its activities. The legislation also permits outsourcing provided that adequate supervision is demonstrable and providing that where required to meet the substance requirements the outsourced activity still occurs on-island.

Further detail on the proposals together with the draft legislation can be obtained [online](#) or by contacting the Collas Crill Guernsey Corporate, Finance and Funds team.

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