

UPDATE

Draft Jersey Substance Law released

Update prepared by the Funds team, Jersey

On 23 October a draft form of the Taxation (Companies – Economic Substance) (Jersey) Law (the **Draft Law**) was presented to the States of Jersey with a view to enabling enactment of the Draft Law prior to the end of 2018.

The Draft Law provides a first view of the statutory framework provisionally outlined in the Jersey government's consultation proposals in August 2018 (the **Consultation**).

Background

The issuance of the Draft Law is the next step in delivering the commitments that were made by the Jersey government in December 2017, to directly address concerns previously raised by the EU Code of Conduct Group on Business Taxation (the **EU Code Group**) in relation to economic substance in Jersey companies. The Draft Law evidences not only a fully coordinated approach as between the governments of Jersey, Guernsey and the Isle of Man (with Guernsey and the Isle of Man expected to produce equivalent legislation), but an ability of the Jersey government to work closely and rapidly with the EU Code Group and ECOFIN who have been consulted on the formulation of the Draft Law.

This is a key further step. It will be necessary for the Draft Law to go through Jersey parliamentary process, and also for Guidance Notes (**GNs**) to be issued, which are referred to in the Draft Law and which will be an integral part of interpreting the requirements. However the Draft Law provides a helpful insight as to how the negotiations with the EU Code Group have progressed, and a further indication of the likely landing position of this legislation which is anticipated to be in force by the start of 2019.

Areas which have been developed in the Draft Law:

- **Scope:** It was previously clear from the Consultation that the scope of the Law would apply to companies carrying out "relevant activities". By way of recap, the existing relevant activities fall under eight headings - banking business; insurance business; fund management business; finance and leasing business; headquarters business; shipping business; holding company business; and intellectual property holding business. To the existing activities have been added an additional relevant activity of distribution and service centre business (which refers only to trade in goods, materials or component parts).
- **Clarification of levels of "Core Income Generating Activity" (or "CIGA") to be carried out:** The wording of the Draft Law clarifies that some, rather than all, "CIGA" will need to be carried out in Jersey, subject to Jersey oversight. This is a helpful clarification, and will allow Jersey companies to assess the impact in the context of their own business.
- **Outsourcing:** It is also clear that outsourcing of relevant activities will be possible, subject to certain checks and balances contained in the Draft Law.
- **Concept of "adequacy":** The concept of "adequacy" has been included in the Draft Law, further detail in relation to which will be included in the GNs.

Fund management impact

As we previously commented in relation to the earlier Consultation in our update [Consultation on future Channel Islands Fund Management Substance: the Codification of a Sustainable Model](#), it is anticipated that

the legislative enactment of substance requirements for managers will largely be a codification of substance arrangements which have already been applied by fund management structures in the CI.

The Draft Law clarifies that the scope for managers attaches not only to regulated corporate managers, but also to corporate managers which are exempt from regulation and which manage, for example, Jersey private funds.

It is, however, clear that managers to non-fund structures such as joint ventures and JPUTs will be outside the scope of the Draft Law.

The Draft Law does not contain any requirements in relation to fund vehicles themselves. Whilst the Consultation did refer to the possibility of also attaching substance tests to corporate fund vehicles, this possibility has not been brought into the Draft Law (reflecting a position that funds themselves are designed to be tax transparent, in common with EU and global tax policies regarding funds/collective investment vehicles).

Areas for clarification in Guidance Notes and Next Steps

GNs will provide more detail around the operation of substance in practice. These are anticipated to be released shortly in draft, in coordination with the parliamentary process concerning the Draft Law. These will be important in evaluating compliant practice in relation to scope, adequacy and appropriate levels of substance and permissible outsourcing in particular.

The publication of the Draft Law should be seen as a welcome development. In particular this process has represented a highly responsive reaction on the part of the Jersey government, following the Consultation over the summer; to deliver a draft statute that clearly reflects not only the requirements of the EU Code Group and ECOFIN, but which has been based on existing industry good practice developed over many years. It is helpful that some of the industry responses to the Consultation (with which this firm was closely involved) appear to have been reflected. This provides Jersey with a further opportunity to demonstrate its commitment at the highest political level to work closely with key overseas governments and agencies on a good neighbour basis.

Industry now awaits the publication of draft Guidance Notes, which are anticipated in the coming weeks.

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