

UPDATE

Economic Substance Law – Key Aspects Document released

Update prepared by Felicia de Laat (Head of Funds, Jersey)

Following the release of the Draft Economic Substance Law on 23rd October (the Draft Law), which is due to be debated in early December, Jersey's government has now issued a Key Aspects Document (KAD).

Detailed guidance notes will be released at a later stage – but for now, the KAD provides high level comments and clarification on a number of the principles set out in the legislation.

- The KAD restates the nine relevant categories of activity in the Draft Law. However, it also now clarifies that while fund management is in scope, collective investment vehicles themselves are out of scope.
- The Directed and Managed Test is also restated. This emphasises that while there will be overlap with the conventional "management and control" test used to determine tax residence, the Directed and Managed Test includes specific expectations regarding meetings held in Jersey and the need to keep associated minutes and records of such meetings.
- Core Income Generating Activities (CIGAs). The KAD clarifies that some, rather than all, of the CIGAs listed in the law need to be carried out by a company with relevant activities. This allows the option of seeking expert advice or engaging with specialists in other jurisdictions, and reflects how advisory appointments are made in typical fund management structures. The KAD includes a new expectation that the level of income subject to tax in Jersey must be commensurate to the CIGA undertaken. This is likely to be something that companies will need to take into account when considering tax filings.
- There is some commentary on outsourcing. This includes an acceptance that CIGA can be outsourced, provided it is adequately supervised, and a statement that in order to meet substance requirements, those activities must be undertaken in Jersey. The resources of the service provider in Jersey will be taken into consideration for the people and premises tests. "Double counting" the same resources is prohibited, and there is an expectation that accuracy of information would be based, for example, on the use of timesheets.
- In relation to the general question of what is adequate for any company, the KAD has taken a principles-based approach. It states that the particular facts of company/business activity will determine the measure of what is "adequate". There is a general statement of confidence in the banking, insurance and fund management regimes in the island, with the expectation that companies in these areas will, by continuing to comply with those existing regimes, already be operating with adequate resources and expenditure.
- For high-risk IP companies, the KAD includes an explanation of the rebuttable presumption that such firms will fail the substance requirement, unless functions known as DEMPE (development, enhancement, maintenance, protection and exploitation) have been under its control. This includes the involvement of people who are highly skilled and perform their activities in the Island.

The KAD has been issued in conjunction with corresponding documents issued by the governments of Guernsey and the Isle of Man. More detailed Guidance Notes, which the tax administrations of the three Crown Dependencies are currently working on, will be released in due course.

If you would like any more information or assistance with the impact of the Draft Substance Law on your business, your usual Mourant contact will be happy to discuss.

Contacts



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