

GUIDE

GUERNSEY'S ECONOMIC SUBSTANCE REQUIREMENTS

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INTRODUCTION

Guernsey implemented the **Income Tax (Substance Requirements) (Implementation) Regulations, 2021** (the **Substance Regulations**)¹ to address the concerns of the EU Code of Conduct Group that certain Guernsey bodies could be used to artificially attract profits that are not commensurate with economic activities and substantial economic presence in Guernsey.

EU Finance Ministers signalled their approval of the Substance Regulations by 'whitelisting' Guernsey on 12 March 2019. The Organisation for Economic Co-operation and Development (OECD) subsequently endorsed Guernsey's domestic legal framework as being in line with the relevant standard and therefore 'not harmful' - a positive endorsement for Guernsey.

The Substance Regulations impose economic substance requirements on **certain bodies** that have **income** arising from a **relevant activity**. Essentially, a body that is in scope of the Substance Regulations must demonstrate to the Director of the States of Guernsey Revenue Service (the **Director**) that it has adequate substance in Guernsey by:

- (a) being directed and managed in Guernsey
- (b) having adequate people, premises, and expenditure in Guernsey, **and**
- (c) conducting core income generating activities (**CIGA**) in Guernsey.

This Guide sets out the steps to be taken to ascertain whether a body is in scope of the Substance Regulations and, if so, what the relevant requirements are.

WHO DO THE SUBSTANCE REGULATIONS APPLY TO?

The Substance Regulations apply to:

- (a) certain companies that are tax resident in Guernsey
- (b) certain Guernsey tax resident partnerships, including general partnerships, limited partnerships, limited liability partnerships, and foreign partnerships with a place of 'effective management' and carrying on business activity in Guernsey (essentially the place where the management and commercial decisions necessary for the conduct of the business as a whole of that person are substantially made, having regard to all relevant facts and circumstances)
- (c) certain bodies that are tax exempt under the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989, as amended (the **Tax Exempt Bodies Ordinance**) and which would be tax resident in Guernsey had such an exemption not been granted, and
- (d) certain charities and non-profit organisations that are established, administered, controlled in or operating from either Guernsey or Alderney,

and which have income arising from a **relevant activity** in respect of financial periods commencing on or after:

- (i) 1 January 2019 in respect of a company
- (ii) 1 July 2021 in respect of a partnership formed on or after 1 July 2021, and
- (iii) 1 January 2022 in respect of a partnership existing as at 30 June 2021, and every following accounting period

(each referred to in this Guide as a **resident body**).

WHO IS NOT SUBJECT TO THE SUBSTANCE REGULATIONS?

The Substance Regulations do **not** apply to:

- (a) collective investment schemes (**funds**) (excluding self-managed funds, ie funds which do not have any other person or body exercising any managerial function in relation to an investment(s) or the asset(s) underlying an investment(s))
- (b) partnerships, the activities of which are wholly domestic, ie activities substantially carried on in Guernsey and not part of an intra-group collection of persons any other member of which is tax resident in a different jurisdiction or resident for tax purposes in one jurisdiction and subject to

¹ The Substance Regulations consolidate the original 2018 regulations, subsequent amendments and include necessary amendments to accommodate the application of substance requirements to partnerships.

tax with respect to the business carried out through a permanent establishment in another jurisdiction

- (c) partnerships where all the partners (or members in the case of a limited liability partnership) are individuals subject to income tax under the Income Tax (Guernsey) Law, 1975, as amended (the **Income Tax Law**) on their share of the profits of the partnership, and
- (d) foundations established under the Foundations (Guernsey) Law, 2012, as amended (or any equivalent or similar body created or established under the law of another jurisdiction).

WHAT CONSTITUTES TAX RESIDENCY FOR THE PURPOSES OF THE SUBSTANCE REGULATIONS?

A company is tax resident in Guernsey in a particular year of charge if:

- (a) it is controlled in Guernsey, or is centrally managed and controlled (generally where the directors meet and exert control) in Guernsey, in that year of charge, or
- (b) it is registered in Guernsey and has not been granted an exemption from tax under the Tax Exempt Bodies Ordinance for that year of charge.

A company will not however be treated as tax resident in Guernsey in a year of charge, even if it is registered or controlled in Guernsey, if it is proved to the satisfaction of the Director that, in that year of charge:

- (a) the company is, under the domestic law of another territory (Territory A), tax resident in Territory A, and
- (b) the company is centrally managed and controlled in Territory A, and
- (c) either:
 - (i) the company is tax resident in Territory A under the domestic law of Territory A by virtue of:
 - (1) a double taxation arrangement entered into with Territory A, or
 - (2) an international tax measure made with Territory A in which a tie breaker clause applies, or
 - (ii) the highest rate of tax on a company in Territory A is at least 10 per cent, **and**
- (d) the company's tax resident status in Territory A is not motivated by the avoidance, reduction, or deferral of the liability of any person to tax.

A partnership is considered as tax resident in Guernsey in a particular year of charge if it is legally formed in Guernsey and its place of effective management is not elsewhere, or if it is foreign formed but has its place of effective management in the Island.

WHAT CONSTITUTES TAX EXEMPTION FOR THE PURPOSES OF THE SUBSTANCE REGULATIONS?

A body which has been granted exemption under paragraphs 3 or 5 of Schedule 1 to the Tax Exempt Bodies Ordinance (and which would be tax resident in Guernsey had such an exemption not been granted) is **in scope** of the Substance Regulations.

Paragraph 3 of the Tax Exempt Bodies Ordinance applies to entities (excluding funds) established in Guernsey or elsewhere solely for the purposes of, among other things, the management of, or enabling investment into, a specific fund (Guernsey or otherwise).

Paragraph 5 of the Tax Exempt Bodies Ordinance applies to companies which are in the beneficial ownership of, or a wholly owned subsidiary of, an exempt body but only to the extent that the subsidiary company does not have income taxable in Guernsey at the company intermediate or higher rate.

Funds regulated by the Guernsey Financial Services Commission under the Protection of Investors (Bailiwick of Guernsey) Law, 2020, as amended (the **POI Law**) are therefore out of scope of the Substance Regulations but any Guernsey tax exempt subsidiary of such a fund (which is not itself regulated), will be in scope.

DOES THE RESIDENT BODY HAVE ANY INCOME ARISING FROM A RELEVANT ACTIVITY?

A resident body with **income** arising from a **relevant activity** is **in scope** of the Substance Regulations and therefore subject to the applicable substance requirements.

An in-scope resident body does **not** however need to comply with the substance requirements for a particular accounting period during which it does **not** receive any income from a relevant activity but note:

- (a) **Guidance Notes** published by the Director contain an anti-avoidance rule for instances where bodies seek to manipulate or suppress income to avoid being subject to the substance requirements, and
- (b) a resident body in liquidation that has income from a relevant activity is still subject to the substance requirements albeit it will be the liquidators that are required to demonstrate that the substance requirements are met.

WHAT IS A RELEVANT ACTIVITY FOR THE PURPOSES OF THE SUBSTANCE REGULATIONS?

A **relevant activity** is any one or more of the following activities when carried on by a resident body with income arising from such activity:

- (a) **banking**: deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 2020, as amended carried on by a licensed institution within the meaning of that law (and, in this regard, a resident body that does not take deposits but is part of a banking group will not be undertaking banking business although it may be undertaking another relevant activity)
- (b) **insurance**: insurance business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended carried on by a licensee within the meaning of that law
- (c) **fund management**: exercising any managerial function in relation to an investment or in relation to the assets underlying an investment, when carried on in connection with a fund within the meaning of the POI Law under the authority of a licence issued under that law. Funds are not caught and neither are other types of services which funds require such as administration, advisory or custodian services
- (d) **financing and leasing**: the provision of credit facilities of any kind (including intra-group loans) for consideration (such as interest or a lending fee, but not the grant of security) to any person (the **customer**). Bodies that purchase debt securities as an investment are not caught. A provider of credit includes a body that becomes the transferee of a loan. The provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with, the supply of goods by hire purchase, financial leasing (excluding land and interests in land), or conditional sale or credit sale. Where credit is offered without expectation of consideration when the credit is provided, it is not caught (such as where an interest free credit period is given on a sale of goods but late payment interest is charged thereafter). Banking, insurance, and fund management are excluded from being within the scope of financing and leasing to prevent duplicate reporting
- (e) **headquartering**: the provision of any of the following services to non-resident intra-group persons of the resident body:
 - (i) the provision of senior management
 - (ii) the assumption or control of material risk for activities carried out by, or assets owned by, any of those intra-group persons, and
 - (iii) the provision of substantive advice in relation to the assumption or control of risk for such activities or assets,

but does not include any such business undertaken as part of banking, insurance, fund management, financing and leasing, shipping or a distribution and service centre to prevent duplicate reporting. It also excludes the business of holding intellectual property assets.

For the purposes of the Substance Regulations, the term 'group' is a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange

- (f) **shipping**: the operation of ships in international traffic for income from the transport of passengers or cargo, and includes any of the following activities where directly connected with, or ancillary to, such operation:
 - (i) the rental on a charter basis of ships
 - (ii) the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the enterprise itself or any other enterprise

- (iii) the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, or
- (iv) the management of the crew of ships
- (g) **distribution and service centre**: a business the sole or main activity of which is:
 - (i) to purchase raw materials and finished products from other non-resident members of the same group and to re-sell them for a profit, or
 - (ii) the provision of services (such as administrative, advisory, consulting, or employee services) to other non-resident members of the same group,
 but does not include purchasing from, or providing services to, third parties, or any such activity undertaken as part of banking, insurance, fund management, financing and leasing, shipping, or headquartering (to prevent duplicate reporting)
- (h) **intellectual property assets**: any intellectual property right including copyright, design right, trademark, patent, brand, or similar asset, and
- (i) **pure equity holding**: a body which is a legal person within the meaning of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, as amended and:
 - (i) which has as its primary function the acquisition and holding of shares or equitable interests in other bodies
 - (ii) which does not carry on any commercial activity, and
 - (iii) which:
 - (1) holds the majority of voting rights in another body
 - (2) is a member of another body and has the right to appoint or remove a majority of the board of directors, or members of the management committee or other similar governing body, of that other body, or
 - (3) is a member of another body and controls alone, under an agreement with other members, a majority of the voting rights in that other body.

WHAT IS THE SUBSTANCE TEST FOR A RESIDENT BODY IN SCOPE OF THE SUBSTANCE REGULATIONS?

A resident body, which is in scope of the Substance Regulations, must satisfy the applicable substance test which has the following three limbs:

- (a) the relevant activity must be directed and managed in Guernsey
- (b) the resident body must carry on CIGA in relation to that relevant activity in Guernsey, and
- (c) the resident body must meet the adequacy test.

DIRECTED AND MANAGED IN GUERNSEY

To satisfy this limb of the substance test:

- (a) the resident body's governing board must meet in Guernsey at an adequate frequency given the level of decision-making required. It is not necessary for all board meetings to be held in Guernsey provided that a majority are and even companies with a minimal level of activity should hold at least one board meeting in Guernsey each year
- (b) during those meetings, a quorum of the members of the governing board is physically present in Guernsey (quorum being determined in accordance with the Companies (Guernsey) Law, 2008, as amended and the resident body's constitutive documents). While it is not necessary that a quorum of directors is always present in Guernsey, best practice will be to ensure that it is
- (c) strategic decisions of the resident body are made at meetings of the governing board and the minutes reflect those decisions (and such minutes should refer to all relevant decisions taken, even where a course of action has been considered and rejected). Where a resident body has a sole director, written resolutions are passed and signed by that director when physically present in Guernsey
- (d) the governing board, as a whole, has the necessary knowledge, expertise, and experience to make those decisions (and it is not giving effect to decisions taken outside of Guernsey whether by the directors or others), and
- (e) all minutes of the governing board and all other relevant company or partnership records are kept in Guernsey (eg constitutional documents, financial statements, operating licences, copies or originals of major funding documentation and mortgages and other documents required by a

governing board to make decisions; and in the case of a non-Guernsey resident body that is Guernsey tax resident, additional requirements apply).

For these purposes, the 'governing board' means the board of directors in the case of a company and the relevant management committee or other similar governing body in the case of a partnership. For a limited partnership, the governing body will be considered to be the board of directors of the body corporate which is the general partner. For a limited liability partnership, the governing body will be its management committee or team as mandated pursuant to its partnership agreement. For a general partnership, it will be necessary to have regard for the facts and circumstances of that partnership and its partnership agreement to determine what is the governing body.

In the case of corporate directors, the requirements will apply to the individual officers of the corporate director who actually perform the duties.

CIGA

The second limb of the substance test is a requirement that a resident body's CIGA are performed in Guernsey. CIGA are the key essential and valuable activities that generate the income of the resident body.

The CIGA vary according to the relevant activity:

- (a) **banking** includes raising funds, managing risk (including credit, currency, and interest risk), taking hedging positions, providing loans, credit or other financial services to customers, managing regulatory capital, and preparing regulatory reports and returns
- (b) **insurance** includes predicting and calculating risk, insuring or re-insuring against risk, and providing client services
- (c) **fund management** includes taking decisions on the holding and selling of investments (and the majority of those making the decision should be physically present in Guernsey), calculating the overall risk across a fund and the reserves required on a strategic basis, taking decisions on currency or interest fluctuations and hedging positions in relation to a fund's position as a whole, and ensuring that systems and processes are in place to ensure timely and accurate preparation of regulatory and investor reports and returns
- (d) **finance and leasing** include agreeing funding terms, identifying and acquiring assets to be leased (in the case of leasing), setting the terms and duration of any financing or leasing, monitoring and revising any agreements, and managing any risks
- (e) **headquartering** includes taking relevant management decisions for other group bodies (and the majority of those making the decisions should be physically present in Guernsey), incurring expenditures on behalf of group entities, and co-ordinating group activities to produce the best outcome for the group rather than individual bodies
- (f) **shipping** includes managing crew (including hiring, paying and overseeing crew members), hauling and maintaining ships, overseeing and tracking deliveries, determining what goods to order and when to deliver them, and organising and overseeing voyages, and
- (g) **distribution and service centre** includes transporting and storing goods, components and materials, managing stocks, taking orders, and providing consulting or other administrative services.

The following should also be noted in relation to CIGA:

- (a) it is not necessary for a resident body to perform all of the CIGA listed in the Substance Regulations for the particular relevant activity, but it must perform the CIGA that generate the income that it has
- (b) a resident body may undertake or outsource all or part of an activity outside of Guernsey only if that activity is not part of the CIGA (eg back-office functions)
- (c) the CIGA requirements do not preclude resident bodies seeking expert professional advice or engaging the services of specialists in other jurisdictions
- (d) a fund manager can appoint one or more brokers outside Guernsey to buy and sell investments and may even give those brokers some discretion to execute trades without breaching the requirement for CIGA to be conducted in Guernsey provided that the brokers act within investment parameters set by the fund manager which are carefully monitored and controlled by the fund manager

- (e) a resident body undertaking financing and leasing business will need to evidence decision making by its board in relation to decisions to lend, setting the terms of loans and monitoring and managing the risk of loans
- (f) whether a resident body will be undertaking headquartering will depend on the extent to which management and responsibility for subsidiaries by the resident body is in fact taking place
- (g) where CIGA is undertaken for the resident body by another in Guernsey (eg by an administrator or another group body), the resident body must be able to demonstrate that it supervises the carrying on of that activity by the other body and, to meet the substance test, that it undertakes such supervision in Guernsey
- (h) where a CIGA is outsourced, the resources of the service provider in Guernsey will be taken into consideration when determining whether the people and premises test is met (below) but there must be no double counting if the services are provided to more than one resident body, and
- (i) the income subject to tax in Guernsey must be commensurate to the CIGA undertaken in Guernsey.

THE ADEQUACY TEST

The third limb of the substance test is satisfied if the resident body can demonstrate that:

- (a) it has an adequate number of appropriately qualified employees in Guernsey proportionate to the level of relevant activity carried on in Guernsey, whether employed by it or another person and whether on temporary or long-term contracts
- (b) it has adequate expenditure proportionate to the level of relevant activity carried on in Guernsey, **and**
- (c) it has an adequate physical presence in Guernsey (including, without limitation, offices and/or premises) proportionate to the level of that relevant activity carried on in Guernsey.

For the purposes of assessing adequacy:

- (a) what is adequate will be assessed by reference to its ordinary dictionary meaning being 'enough or satisfactory for a particular purpose' which will be dependent on the particular facts of the body and its business activity
- (b) owner-managers and directors will be treated as employees
- (c) employees must collectively demonstrate appropriate qualifications, experience, competency and a broad, complementary skill set relevant to the relevant activities undertaken
- (d) when considering what an adequate number of qualified employees is, this must relate to the employees needed to conduct the relevant activity as a whole and not just the CIGA (and employing qualified staff, and adopting digitisation and automation of processes, may mean that fewer staff are needed)
- (e) the employee count is based on the number of full-time equivalents (**FTE**) working a 35-hour week (so, if two people worked part time for 17.5 hours a week for or on behalf of a resident body during an accounting period, this would equal one FTE and, for these purposes, directors should be counted as a fraction of a FTE reflecting the time committed to the role), and
- (f) where a resident body outsources its CIGA to a service provider in Guernsey (and provided that the body adequately supervises the outsourced activities):
 - (i) the time spent by the staff of that service provider providing services to the resident body will count towards assessing whether it has an adequate number of employees
 - (ii) where the service provider makes available meeting rooms for meetings of the governing board to be held in Guernsey, this will count towards assessing whether the resident body has adequate premises, and
 - (iii) the cost of outsourcing to a service provider in Guernsey will count towards assessing whether the resident body has an adequate level of expenditure.

A resident body will be responsible for ensuring accurate information is reported on its tax return including precise details of the resources employed by its service providers (eg based on the use of timesheets or another allocation methodology). A resident body will therefore have to ensure it maintains and retains appropriate records to demonstrate the adequacy of the resources utilised and expenditure incurred.

WHAT IS THE APPLICABLE SUBSTANCE TEST FOR A RESIDENT BODY THAT IS AN IP BODY?

An IP body is that which has income from intellectual property assets held by it. Income from intellectual property assets includes income or profits derived from, or from the holding, development or exploitation of, intellectual property assets (including, without limitation, royalties, income from franchise agreements and income from licensing such assets).

The substance test that applies to a resident body, which is an IP body (a **resident IP body**), differs to that set out above in the paragraph **What is the substance test for a resident body in scope of the Substance Regulations?** in that the substance test is enhanced.

The three limbs of the substance test equally apply to a resident IP body, **except that**:

- (a) in relation to the **directed and managed test**, the resident IP body is considered to be directed and managed in Guernsey if its governing board meets in Guernsey with adequate frequency having regard to the level of decision-making in respect of that business **and for these purposes periodic decisions of non-resident members of the governing board are not taken into account**, and
- (b) in relation to **CIGA**, the CIGA in relation to intellectual property assets include:
 - (i) in respect of a business exploiting intellectual property assets which are patents and assets that share the same feature of a patent, any research and development
 - (ii) in respect of a business exploiting intellectual property assets which are marketing intangibles such as trademarks, any marketing, branding and distribution, and
 - (iii) in exceptional cases, and other than in the case of a high-risk IP body, other CIGA relevant to the business and the intellectual property assets, which may include:
 - (1) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intellectual property asset
 - (2) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third-party acquisition and subsequent exploitation and protection of the intellectual property asset, and
 - (3) carrying on the underlying trading activities through which the intellectual property asset is exploited and which lead to the generation of revenue from third parties.

HOW DOES THIS APPLY TO A RESIDENT BODY THAT IS A HIGH-RISK IP BODY?

A 'high-risk' IP body is a body which:

- (a) holds intellectual property assets
- (b) did not create the intellectual property in the intellectual property assets which it holds
- (c) acquired the intellectual property assets from an intra-group person or in consideration of funding research and development by another person situated in a territory other than Guernsey, and
- (d) licences the intellectual property asset to one or more non-resident intra-group persons or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by non-resident intra-group persons.

As the risks of artificial profit shifting are considered to be greater, there is a **rebuttable presumption** that a resident high-risk IP body will not meet the substance test, even if there are CIGA being carried on in Guernsey relevant to the business and the intellectual property assets.

The information required to rebut the presumption includes:

- (a) materials which explain how there is/was a high degree of control over the development, enhancement, maintenance, protection, and exploitation of the IP assets, and that this involved an adequate number of full-time employees who are highly skilled and reside and perform their core activities in Guernsey
- (b) detailed business plans which clearly lay out the commercial rationale for holding the intellectual property assets in Guernsey
- (c) information on employees in Guernsey, their experience, their contractual terms, qualifications, and length of service, and
- (d) concrete evidence that the decision making is taking place in Guernsey.

WHAT IS THE APPLICABLE SUBSTANCE TEST FOR A RESIDENT BODY THAT IS A PURE EQUITY HOLDING BODY?

A 'pure equity holding body' is a body which:

- (a) has as its primary function the acquisition and holding of shares or equitable interests, which are controlling stakes, in other bodies and it receives income on its own behalf from those holdings, ie as a beneficial owner and not, for example, as trustee or general partner
- (b) does not carry on any commercial activity (and, for these purposes, placing dividend monies on deposit or using them to acquire and passively hold other securities will not constitute a commercial activity), and
- (c) which:
 - (i) holds the majority of voting rights in another body
 - (ii) is a member of another body and has the right to appoint or remove a majority of the board of directors, or members of the management committee or other similar governing body, of that other body, or
 - (iii) is a member of another body and controls alone, under an agreement with other members, a majority of the voting rights in that other body.

The substance test that applies to a resident body, which is a pure equity holding body (a **resident holding company**), differs to that set out above in that it is reduced and simply requires that it:

- (a) complies with all obligations applicable to it under the applicable legislation in the jurisdiction of its incorporation, registration, or establishment, **and**
- (b) has:
 - (i) an adequate level of persons in Guernsey proportionate to the level of activity carried on in Guernsey, and
 - (ii) an adequate physical presence in Guernsey (including, without limitation, offices, and/or premises) proportionate to the level of that activity carried on in Guernsey,

for holding and managing the shares or equitable interests which it can demonstrate to the satisfaction of the Director in each relevant accounting period.

If a resident holding body is also undertaking other commercial activities, then it will need to meet the higher substance requirements according to the relevant activity it carries on.

SELF ASSESSMENT AND REPORTING

Any resident body will be required to provide information reasonably required by the Director to assist the Director in determining whether the applicable substance test has been met (in the form of an annual tax return (and such other documents and information as the Director may require)).

EXCHANGE OF INFORMATION

If the Director is of the opinion that a resident body has not met the substance test for a particular accounting period, the Director will, in accordance with any approved international agreement or tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the resident body.

In the case of a resident body that is a high-risk IP body, the Director must disclose to a competent authority any information which relates to it for that period, whether or not it meets the substance test for any accounting period.

For these purposes, a 'competent authority' means a person, body or authority designated as a competent authority by the Director in respect of any one or more of the following:

- (a) the jurisdiction in which the immediate or ultimate parent, or the beneficial owner, of the relevant body is resident
- (b) the jurisdiction under the laws of which the relevant body was incorporated, registered, formed or entered into
- (c) the jurisdiction in which the resident body has its place of effective management or in which it is centrally managed and controlled
- (d) the qualifying jurisdiction in which the resident body has its place of effective management
- (e) the jurisdiction in which the resident body is tax resident, or

(f) any jurisdiction with which it is necessary or desirable for the Director to exchange information, for the purposes of an approved international agreement or international tax measure or the Substance Regulations and includes competent authority within the meaning of the Income Tax Law.

PENALTIES

If the Director determines that a resident body has failed to meet the substance test in respect of its first accounting period of default, the Director will issue a notice to the resident body imposing a penalty not exceeding £10,000.

The notice must:

- (a) state the grounds of the Director's decision
- (b) set out particulars of the substance requirements which, in the opinion of the Director, are applicable in that accounting period and with which the resident body has not complied
- (c) explain the sanctions (civil or criminal) that may arise or be imposed in respect of non-compliance, and
- (d) set out the particulars of any right of appeal that may be applicable.

The notice may also require the provision of such documents or information as the Director may require for the purpose of the Director's functions under the Substance Regulations.

The same applies in relation to a resident body's failure to meet the substance test in respect of its third and fourth (and subsequent) accounting periods of default, the penalty for such being up to £50,000 and £100,000 respectively (second and third (and subsequent) accounting periods of default in relation to high-risk IP bodies). Note that there is an enhanced penalty of £150,000 in respect of the first subsequent (ie after the fourth accounting period of default) and any succeeding subsequent accounting periods of default by non-registered partnerships.

The Director may, in addition to the imposition of a financial penalty, where there is no realistic possibility of the body complying with the substance requirements, take measures which may ultimately lead to the resident body being struck off.

CONCLUSION

The Director has published various information on its [website](#), including the (joint) Guidance Notes (mentioned above) on the scope and application of the Substance Regulations together with guidance setting out the additional questions that will be included on the Guernsey resident body's annual tax return.

THINGS TO THINK ABOUT

It is recommended that consideration is given to the following matters if the substance requirements apply to a resident body:

- (a) assessing where board meetings are held and whether quorum requirements in constitutive documents or other documentation (eg shareholders' agreements) might prevent meetings being held in Guernsey
- (b) assessing whether members of the governing board of the resident body have the necessary qualifications and expertise to discharge the duties of the board (the rubber stamping of decisions taken elsewhere is unlikely to pass the substance test)
- (c) improving the way board meetings are minuted so that the detail of a board's deliberations is captured and that decisions not to take action are minuted as well as decisions to take action
- (d) assessing what CIGA is undertaken in Guernsey and what is undertaken outside Guernsey
- (e) evidencing in board minutes where CIGA are discharged, or otherwise documenting at board level where decisions in relation to CIGA are to be made
- (f) assessing where the resident body's statutory and non-statutory records are located to ensure that they are located in Guernsey or accessible from Guernsey
- (g) assessing the resident body's staff, premises and expenditure in Guernsey and outside of Guernsey and assessing whether this is proportionate and adequate
- (h) reviewing outsourcing arrangements to see whether relevant CIGA is or can be undertaken in Guernsey

- (i) ensuring that administration agreements are amended to:
 - (i) require the administrator to ensure adequate service provision by employees of the administrator both in terms of time and qualifications/experience
 - (ii) require the administrator to make adequate premises available when needed
 - (iii) require the administrator to report to the resident body the necessary information as regards time allocation, qualifications and experience of staff, premises, and expenditure
 - (iv) require the administrator to maintain procedures that enable levels of input to be measured and ascertained including, for example, the use of timesheets, and
 - (v) agree the fees for assessing whether a resident body is in or out of scope and, if it is in scope, the fees for any additional service required to meet the substance test
- (j) assessing the adequacy of the supervision and monitoring by the resident body of any outsourced CIGA
- (k) assessing the way the resident body makes decisions, how decisions are implemented and how execution of decisions and outsourcing is monitored as well as making an assessment of the adequacy of the same
- (l) implementing procedures now to ensure that information required to be provided to the Director will be available to be included in future returns, and
- (m) documenting policies and procedures to improve decision making, implementation and oversight.

CONTACTS

For further information, please contact your usual Mourant contact or, alternatively, a list of contacts can be found [here](#).