

Jersey economic
substance 2021

Legal framework

Legislation

What legislation sets out the economic substance requirements in your jurisdiction?

The primary legislation in Jersey is the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (as amended), which was adopted on 6 December 2018.

The Jersey Legal Information Board maintains online versions of Jersey legislation.

At the time of writing, a version of the law as amended is not available. Substance is also a fast-moving area of law. Care should therefore be taken to ensure amendments made by subsequent legislation are taken into account when reading. At the time of writing, this would include:

- the Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 2019 adopted 4 June 2019; and
- the Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 2021 adopted 10 February 2021. Additional amendments are also expected during 2021.

The law also makes clear that the Comptroller may issue guidance on how the economic substance test may be met, including any expression in the law, and that regard must be had to any guidance. The Jersey Tax Office maintains links to relevant guidance.

Relevant entities

What types of entity are subject to the economic substance requirements in your jurisdiction?

The Jersey economic substance test applies to companies that are tax resident in Jersey and generating gross income from relevant activities in a financial period commencing on or after 1 January 2019.

Self-managed funds structured as companies are required to satisfy the economic substance test in respect of their activities in financial periods commencing on or after 1 January 2021.

The EU Code Group has also requested that partnerships also be brought into scope by 1 July 2021, with a maximum six-month transition period. Those amendments are to be confirmed; therefore, at present, this guide relates only to companies.

It should be noted the term ‘companies’ above will include vehicles that may not formally be companies but are treated as such for corporate income tax purposes. For example, an incorporated cell will have to meet the test in its own right, as it is taxed as a company separately from the incorporated cell company. By comparison, a protected cell company and its cells will be treated as one entity. Non-Jersey vehicles tax resident in Jersey will be assessed accordingly.

Relevant activities

What activities trigger the economic substance requirements in your jurisdiction?

There are nine relevant activities, some of which take precedence over others. The economic substance test will be triggered for a relevant entity in any given financial year commencing on or after 1 January 2019 if it has gross income on an accruals basis from such activity.

Each category of relevant activity has its own definition that should be considered in detail but can be summarised as follows:

- ‘banking business’ means a deposit-taking business required to be registered under article 9 of the Banking Business (Jersey) Law 1991;
- ‘distribution and service centre business’ means the business of:
 - a. purchasing parts, materials or goods from foreign-connected persons and reselling them; or
 - b. providing services to foreign-connected persons in connection with the business, except where such activities fall within another category of relevant activity except holding company business;
- ‘finance and leasing business’ means the business of providing credit facilities of any kind for consideration, except where such activities fall within banking business, fund management business or insurance business;
- ‘fund management business’ means the provision of management services (specifically regarding investment and risk) to a fund;
- ‘headquarters business’ means the business of providing certain services to one or more foreign-connected persons, including the provision of senior management, the assumption or control of material risk for activities carried out by, or assets owned by, any of those connected persons, and the provision of substantive advice in relation to those matters, in each case except where such activities fall within finance and leasing business, intellectual property holding business, insurance business or banking business;
- ‘holding company business’ means the business of being a controlling parent vehicle that has as its primary function the acquisition and holding of shares or equitable interests in other companies and does not carry on any commercial activity (which includes any other relevant activity);
- ‘insurance business’ means long-term business or general business within the meaning of and requiring a category A permit or category B permit under the Insurance Business (Jersey) Law 1996; ‘intellectual property holding business’ means the business of holding intellectual property assets such as copyright where income arises separately from any intangible asset in which the right subsists; and
- ‘shipping business’ means certain activities involving the operation of a ship anywhere in the world other than solely

between Jersey and Guernsey or within the territorial waters of Jersey, including the business of transporting persons, animals, goods or mail by sea (or renting or chartering ships for such purpose), selling travel tickets or equivalent, ancillary operation services, the use, maintenance or rental of shipping containers, and the management of the crew of a ship.

The activities of collective investment funds under Jersey law (or funds that would be collective investment funds were the units in the fund not considered to be an offer to the public) are not to be considered relevant activity. However, 'self-managed funds' (i.e., funds with no separate manager) will be separately required to meet an economic substance test in respect of their activities to the extent they generate gross income in a financial period commencing on or after 1 January 2021.

Tax residence requirements

[Must entities be tax resident \(or deemed tax resident\) in your jurisdiction to be subject to the economic substance requirements? If yes, what are the tax residence rules and requirements? If not, do the economic substance requirements in your jurisdiction differ with respect to non-resident entities?](#)

The Jersey economic substance test applies to companies that are tax resident in Jersey, whether or not they are incorporated in Jersey.

Under Jersey law, a company is considered tax resident in Jersey if it is either:

- a Jersey incorporated company that is not centrally managed and controlled and recognised as tax resident in another jurisdiction where the highest rate of corporate income tax is at least 10 per cent; or
- a non-Jersey incorporated company that is centrally managed and controlled in Jersey.

Jersey is also party to a number of double-taxation agreements, which may apply.

Guidance

[Has the government published guidance on the economic substance requirements?](#)

Yes. The primary guidance at the time of writing is that published jointly with Guernsey and the Isle of Man on 22 November 2019. It should be noted that, as joint guidance, the text is drafted in a generic manner so as to explain the scope and application of the legislation across all three jurisdictions. The Jersey Tax Office maintains links to relevant guidance.

Economic substance requirements

General requirements

[What general economic substance requirements apply in your jurisdiction?](#)

A Jersey tax resident company must satisfy the Jersey economic substance test in relation to any relevant activity carried on by it that generates gross income in a financial period commencing on or after 1 January 2019.

The law provides that a resident company meets the economic substance test in relation to any such relevant activity if:

- the company is directed and managed in Jersey in relation to that activity;
- having regard to the level of relevant activity carried on in Jersey:
 - a. there are an adequate number of employees (which can include directors) in relation to that activity who are physically present in Jersey (whether or not employed by the resident company or by another entity and whether on temporary or long-term contracts);
 - b. there is adequate expenditure incurred in Jersey; and
 - c. there are adequate physical assets in Jersey;
- all of the company's core income-generating activities (CIGA) are carried out in Jersey; and
- if any CIGA are carried out in Jersey for the company by another entity, the company is able to monitor and control the carrying out of that activity by the other entity.

In addition, a self-managed fund must satisfy the economic substance test in relation to any activity carried on by it that generates gross income in a financial period commencing on or after 1 January 2021.

The law provides that a self-managed fund will meet the economic substance test if:

- having regard to an activity carried on in Jersey:
 - a. there are an adequate number of employees (which can include directors) in relation to that activity who are physically present in Jersey (whether or not employed by the self-managed fund or by another entity and whether on temporary or long-term contracts);
 - b. there is adequate expenditure incurred in Jersey; and
 - c. there are adequate physical assets in Jersey;
- all of the self-managed fund's CIGA are carried out in Jersey; and
- if any CIGA are carried out in Jersey for the self-managed fund by another entity, the self-managed fund is able to monitor and control the carrying out of that activity by the other entity.

In each case, what is 'adequate' will depend on the specific circumstances.

Directed and managed

What requirements apply in relation to board meetings and the location where entities are directed and managed?

The law provides that a company is directed and managed in Jersey in relation to a relevant activity if:

- the company's board of directors meets in Jersey at an adequate frequency having regard to the amount of decision-making required at that level;
- at such board meetings, there is a quorum of directors physically present in Jersey;
- the minutes of such board meetings described record the making of strategic decisions of the company at the meeting;
- the directors of the company have the necessary knowledge and expertise to discharge the duties of the board; and
- the minutes of all board meetings and the records of the company are kept in Jersey.

In each case, what is 'adequate' will depend on the specific circumstances.

Core income-generating activities

What requirements apply in relation to core income-generating activities?

Where the Jersey economic substance test applies, the law provides that all relevant CIGA are required to be carried out in Jersey, whether carried out by the company itself or by another entity. Where any CIGA are carried out by another entity, the company must also be able to monitor and control them doing so.

The guidance further provides that where CIGA involves making a decision (as opposed to the implementation or acting within the parameters of such decisions), the majority of those making the decision must be present in Jersey when the decision is made for it to be considered made in Jersey. This broadly reflects the centrally managed and controlled principles relevant to tax residency.

Premises

What requirements apply in relation to the physical premises of relevant entities?

Where the Jersey economic substance test applies, the law provides that, having regard to the level of relevant activity carried on in Jersey, the company is required to have adequate physical assets in Jersey. The guidance provides that resources provided by local services providers, which may include the provision of registered office services, will be taken into consideration. In each case, what is 'adequate' will depend on the specific circumstances.

Employees and personnel

What requirements apply in relation to the employees and personnel of relevant entities?

Where the Jersey economic substance test applies, the law provides that, having regard to the level of relevant activity carried on in Jersey, the company is required have an adequate number of employees in relation to that activity who are physically present in Jersey (whether or not employed by the resident company or by another entity and whether on temporary or long-term contracts). The term 'employees' here has a wide meaning and includes directors. However, the guidance makes clear that, where the resources of a services provider are used, there must be no double-counting if the employee services are provided to more than one company. In each case, what is 'adequate' will depend on the specific circumstances.

Expenditure

What requirements apply in relation to expenditure?

Where the Jersey economic substance test applies, the law provides that, having regard to the level of relevant activity carried on in Jersey, the company is required to incur adequate expenditure in Jersey. In each case, what is 'adequate' will depend on the specific circumstances.

Enhanced requirements

Are there any instances where enhanced substance requirements apply?

Where a company receives income from intellectual property, it will also have to consider if it is a 'high-risk IP company', which has a detailed definition but can be summarised as a company that either (1) did not create the IP, obtained it from a connected person or in return for funding research and development by someone outside Jersey, and licenses it to connected persons or otherwise generates income from the IP as a result of activities of foreign-connected persons; or (2) does not carry out research and development, branding or distribution as part of its CIGA.

The law provides there is a rebuttable presumption that a high-risk IP company has failed the substance requirements, which the guidance explains is because the risks of artificial profit shifting are considered to be greater. The guidance also provides that:

- in order to rebut the presumption, a high-risk IP company will have to produce materials that will explain how the development, enhancement, maintenance, protection and exploitation functions have been under its control, and that this has involved people who are highly skilled and perform their core activities in Jersey; and

- there is a higher evidential threshold, which requires:
 - a. detailed business plans that clearly lay out the commercial rationale for holding the IP in Jersey;
 - b. concrete evidence that the decision making is taking place in Jersey, and not elsewhere; and
 - c. information on employees in Jersey, their experience, the contractual terms, their qualifications and their length of service.

Periodic decisions by non-resident directors or board members, or local staff passively holding intangible assets, are stated as being insufficient to rebut the presumption.

Reduced requirements

Are there any instances where reduced economic substance requirements apply?

No, though what is considered 'adequate' in any given circumstances will clearly depend on those circumstances.

Outsourcing

What requirements apply in relation to outsourcing activities to entities located in your jurisdiction and entities located outside your jurisdiction?

The law does not prohibit a company from outsourcing, which in this context includes outsourcing, contracting or delegating activities to third parties or group companies. However, the requirements for that outsourcing will depend on the nature of the activities being outsourced.

Where the Jersey economic substance test applies, the law provides that all relevant CIGA are required to be carried out in Jersey, which includes where those activities are carried on by another entity. Where any CIGA are carried out by another entity, the company must also be able to monitor and control them doing so.

The guidance further notes that, in relation to the outsourcing of CIGA:

- the company must be able to demonstrate that it has adequate supervision of the outsourced activities and that those activities are undertaken in Jersey;
- the resources of the service provider in Jersey will be taken into consideration when determining whether the people and premises test is met, although there must be no double-counting if the services are provided to more than one company;
- the company remains responsible for ensuring accurate information is reported on its return and this will include precise details of the resources employed by its service providers, for example, based on the use of timesheets; and
- where there are corporate directors, these will be looked through, to the individuals (officers of the corporate director) actually performing the duties of the director.

The guidance further notes that the outsourcing of activities not being CIGA will not affect a company's ability to meet the substance requirement (for example, back office functions, such as IT support); nor are companies precluded from seeking expert professional advice or engaging the services of specialists in other jurisdictions. However, the income subject to tax in Jersey must be commensurate to the CIGA undertaken in Jersey.

Enforcement and compliance

Enforcement authorities

Which government authorities are responsible for the enforcement of economic substance requirements? What is the extent of their information-gathering powers?

Compliance is assessed by the Jersey Comptroller of Taxes (ie, the Jersey Tax Office), which also enforces the information sharing and financial penalties. Referrals may also be made by the Comptroller to the Minister for Treasury and Resources for related court orders, including potentially for winding-up.

A resident company must provide any information reasonably required by the Comptroller in order to assist the Comptroller in making a determination. The Comptroller may also serve notice on any person requiring the person to provide, within the period specified in the notice and at such place as is specified in the notice, such documents and information as the Comptroller may reasonably require for the purpose of facilitating the Comptroller's exercise of functions under the legislation.

A statutory limitation period for determinations (and therefore by implication the information powers above) of six years after the end of the relevant financial period applies unless the Comptroller is not able to make a determination within that period by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident company or by any other person.

Reporting formalities

What reporting formalities apply with respect to the economic substance requirements?

All companies that are incorporated or tax resident in Jersey are required to file a Jersey annual tax return, which is due by 31 December in the calendar year subsequent to a financial year end. Companies that are not tax resident in Jersey and therefore asserting that the Jersey substance requirements do not apply will be required to confirm as such and provide supporting information. Companies that are tax resident in Jersey will be required to provide various confirmations intended to determine whether the economic substance test applies to the financial year being reported and, if so, whether it has been met. This includes a declaration by the company submitting the return (it being generally an offence to submit a return that is either false or misleading). The company is also

required to submit its financial statements for the relevant period, prepared in accordance with Jersey law. Additional information may also be submitted as felt appropriate.

Outside of that standard reporting requirement, the Jersey Tax Office has the ability to request such information as it may reasonably require from time to time in order to make a determination in respect of any given financial period, subject to a limitation period of six years.

The consent of the Jersey Tax Office is also currently required prior to a Jersey company entering certain processes, including winding up, migrations out of Jersey and mergers/de-mergers. In providing that consent, the Jersey Tax Office will require that annual tax returns are brought forward, and a submission is made in respect of the current financial period to date, which similarly confirms the position with regard to economic substance.

Demonstrating compliance

[How does an entity in practice demonstrate its compliance with the economic substance requirements? How do the enforcement authorities assess compliance?](#)

The Jersey annual tax return requires various confirmations, together with the financial statements of the company prepared in accordance with Jersey law.

All confirmations given in the return should be supported by evidence that could be provided to the Jersey Tax Office upon request. The form of such evidence would depend on the circumstances, but it will primarily be expected in the form of:

- keeping detailed board minutes of meetings in Jersey that demonstrate compliance with the requirements of the directed and managed test, for decisions constituting core income-generating activities to be made in Jersey, and (where applicable) for outsourcing;
- employee records and (as applicable) timesheets to demonstrate that the company has adequate employees in Jersey;
- maintaining a registered office and such other assets in Jersey as may be considered adequate given the nature of the relevant activity; and
- records of expenditure that reflect the financial statements provided by the company and demonstrating adequate expenditure being incurred in Jersey.

High-risk IP companies will also be required to evidence compliance to the higher threshold, which includes a detailed business plan as to the commercial rationale for holding the IP in Jersey.

Subject to being required to the rebuttable presumption of failure for high-risk IP companies, the Jersey Tax Office has complete discretion based on the information received to make its determination and (subject to the relevant maximum) the fine to be imposed. However, that determination can be appealed within 30 days of the notice issued to a Commission of Appeal, with either party then able to appeal within 21 days of its determination to the Royal Court of Jersey.

Penalties

[What are the potential penalties for failure to comply with the economic substance requirements?](#)

The penalties for a company not meeting the substance requirements are primarily:

- financial, being a fine of:
 - a. up to £10,000 for a failure in any given financial period; and
 - b. up to £100,000 for a failure in a financial period following a financial period in which a notice of failure has been issued; and
- in all cases, the automatic exchange of information by the Jersey Tax Office with the authorities in each jurisdiction in which the company has a holding body, ultimate holding body and ultimate beneficial owner (as well as its jurisdiction of incorporation if outside Jersey) subject to being permitted to do so by international agreements and protocols.

There is also the possibility that a court order be made regulating the affairs of the company or, if viewed to be in the public interest, that the company be wound up.

Financial and criminal penalties also apply to individuals for failure to provide information or for inaccurate information, or for obstructing the Comptroller in the exercise of its powers.

Update and trends

Recent developments

[What have been the most significant recent developments in the law on economic substance in your jurisdiction, including any notable regulatory actions or legislative changes?](#)

Economic substance is a fast-moving area of law that responds quickly to international developments and discussions, and legislation tends to be adopted quicker than other areas of law. Since being adopted, the most notable amendments are that:

- all relevant core income-generating activities are to be carried on in Jersey;
- self-managed funds will be required to meet the economic substance test for financial periods commencing on or after 1 January 2021; and
- partnerships are expected to be brought into scope by 1 July 2021.

The advent of COVID-19 and the related restrictions on meetings and travel have also had a clear impact, given the requirements of the economic substance test. The Jersey Tax Office issued guidance that such matters will be taken into account, but the expectation remains that Jersey companies will continue to have adequate employees, expenditure and physical assets in Jersey, as well as carry out all core income-generating activities in Jersey. Detailed records should be maintained by any company wishing to rely on any concessions.

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