

Business Companies (Economic Substance) Act

The Business Companies (Economic Substance) Act ('the Substance Act') was passed in December 2018, with a commencement date of 1 January, 2019.

Background

The Substance Act is designed to address concerns that entities could be used to artificially attract profits that are not commensurate with economic activities and substantial economic presence in Barbados. With this in mind, the legislation requires certain entities to demonstrate that they have substance in the Island by:

- being directed and managed in Barbados;
- conducting Core Income Generating Activities ('CIGA') in Barbados; and
- having adequate people, premises and expenditure in Barbados.

Relevant activity

The Substance Act will now require business entities that are conducting 'relevant activity' to demonstrate substantial economic presence and real economic activity in Barbados. Relevant activity is defined by the Substance Act and includes the following categories of geographically mobile financial and other service activities:

- banking business;
- insurance business;
- fund management business;
- finance and leasing business;
- headquarters business;
- shipping business;
- holding company business;
- intellectual property holding business;
- distribution and service centre business; and
- such other activities as the Minister of International Business may by order prescribe to be relevant activities.

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Satisfying the economic substance test

Core Income Generating Activities are considered to be the key essential and valuable activities that generate the income of the entity. Entities carrying on relevant activities must conduct their CIGA, defined by a non-exhaustive list within the Substance Act, from within Barbados, as well as meet other criteria to satisfy the substance test.

Examples of the criteria an entity will be required to demonstrate, include the following:

- adequate levels of board management, direction and control in Barbados in relation to the activity;
- having regard to the level of relevant activity carried on in Barbados:
 - adequate number of employees in relation to the relevant activity, who are physically present in Barbados, whether or not employed by the resident entity or by any other entity and whether on temporary or long term contracts
 - adequate expenditure incurred in Barbados
 - adequate physical assets in Barbados
- conducting of CIGA for each relevant activity from within Barbados;
- in the case of Barbados based CIGA being carried out on behalf of the relevant entity by another entity, the ability to monitor and control the carrying out of that activity by the other entity.

Applicability of Economic Substance Requirements

There remains some uncertainty as to the date of implementation of these requirements as well as application to grandfathered entities. These matters are under review and we will provide further information as this becomes available.

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