

Cayman Islands Economic Substance Requirements – 'Relevant Activity' of 'Fund Management Business'

For general background on The International Tax Co-operation (Economic Substance) Law, 2018 (as amended by relevant regulations, the "Economic Substance Law"), the related Guidance on Economic Substance for Geographically Mobile Activities (the "Guidance") and for the meaning of 'relevant entity', please click [here](#).

This update assumes that an entity has already been determined to be a 'relevant entity' under the Economic Substance Law and that the 'relevant entity' is now considering whether it is carrying on one of the nine categories of geographically mobile 'relevant activities' - in particular, under the 'fund management business' category.

What is 'fund management business'?

'Fund management business' in the Economic Substance Law is defined as 'the business of managing securities as set out paragraph 3 of Schedule 2 to the Securities Investment Business law (2015 Revision) ("SIBL") carried on by a relevant entity licensed or otherwise authorised to conduct business under that Law for an investment fund.'

SIBL has been both revised and amended in 2019 and, accordingly, references both in the Economic Substance Law and this update are to the 2019 Revision of SIBL as amended by the Securities Investment Business (Amendment) Law, 2019 (the "SIBL Amendment").

The relevant definition of "managing securities" in SIBL is "managing securities belonging to another person in circumstances involving the exercise of discretion". Following the implementation of the SIBL Amendment, certain persons that are engaged in "managing

securities" (including those currently registered as "excluded persons" under SIBL), will be required to register as "registered persons" under SIBL by 15 January 2020. The reference in the Economic Substance Law to persons "otherwise authorised to conduct business" will include such "registered persons".

Economic Substance Test

If a 'relevant entity' carries on the 'relevant activity' of 'fund management business' it will be subject to the economic substance test set out in the Economic Substance Law (unless it has no relevant income in respect of that relevant activity, in which case only notification and reporting obligations will apply). The economic substance test can be satisfied in relation to that 'fund management business' if the 'relevant entity':

- (a) conducts 'Cayman Islands core income generating activities';
- (b) is directed and managed in an appropriate manner in the Cayman Islands; and
- (c) has adequate operating expenditure, physical presence and personnel in the Cayman Islands.

Cayman Islands Core Income Generating Activities

The relevant 'Cayman Islands core income generating activities' in the context of 'fund management businesses include:

- (a) taking decisions on the holding and selling of investments;

- (b) calculating risk and reserves;
- (c) taking decisions on currency or interest fluctuations and hedging positions;
- (d) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both.

Guidance on 'Fund Management Business'

At present, there is no specific section on 'fund management business' in the Guidance. However, the Guidance does provide that:

'Given the stringent regulatory requirements in the Cayman Islands, which result in significant overlap with the substance requirements, it is expected that relevant entities licensed to carry on ... licensed fund management business will already generally be operating in the Islands with adequate resources and expenditure. However, those relevant entities will still be subject to the [Economic Substance] Law (i.e. filing requirements, Cayman Islands CIGA performed in the Islands, and monitoring by the Authority).'

Careful consideration as to the individual circumstances of any relevant entity carrying on fund management business is required, as the considerations factoring into the approach taken are likely to be highly fact-specific.

What to do if a 'Relevant Entity' is Carrying on the 'Relevant Activity' of 'Fund Management Business'

It is worth noting that there are a range of consequences for breaches of the Economic Substance Law (including financial penalties and potential striking-off) and that entities carrying out fund management activities may be required to be licensed or registered under SIBL (see above).

If you have any questions in relation to a 'relevant entity' conducting 'fund management business' or

on this update please speak to your usual Maples Group contact or to:

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