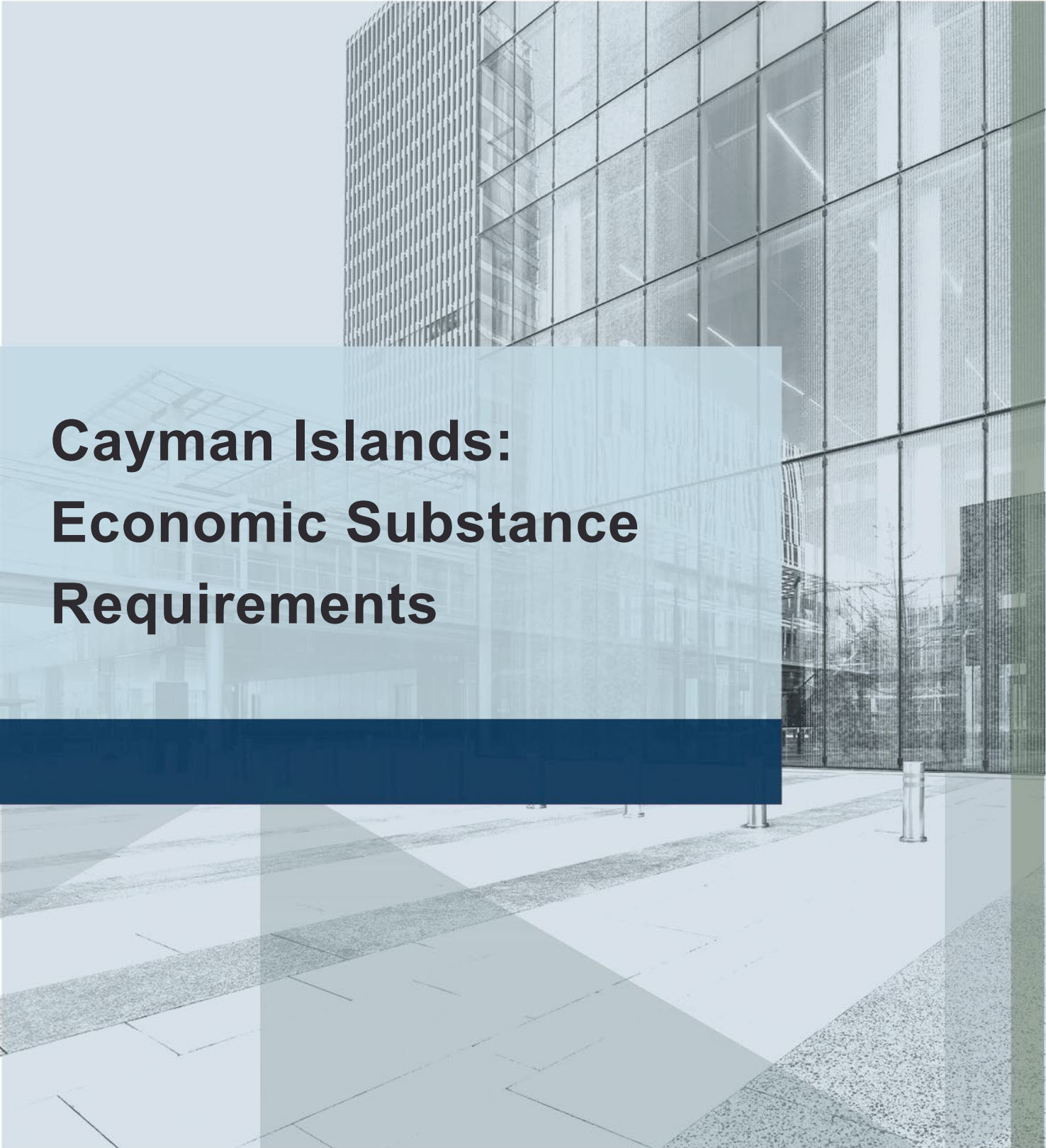


# CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with a pattern of light and dark tiles.

## **Cayman Islands: Economic Substance Requirements**

## Preface

This publication has been prepared for the assistance of the Cayman companies, partnerships and Cayman registered foreign companies and partnerships that will be required to assess the application of, and comply with, The International Tax Co-operation (Economic Substance) Act (2021 Revision) (as amended). It is not intended to be exhaustive but rather to provide an overview which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands in respect of their legal obligations arising under this act.

### **Conyers**

## TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	BACKGROUND	4
3.	WHO MUST COMPLY?	4
4.	ECONOMIC SUBSTANCE TEST	7
5.	RELEVANT ACTIVITIES	9
6.	NOTIFICATION AND REPORTING	15
7.	MONITORING AND ENFORCEMENT	17
8.	CONFIDENTIALITY	18
9.	INFORMATION SHARING WITH COMPETENT AUTHORITIES	18

## 1. INTRODUCTION

The International Tax Co-operation (Economic Substance) Act (2021 Revision) (the “**ES Act**”) came into force on 1 January 2019. The ES Act requires that all Cayman Islands entities notify the Cayman Islands Tax Information Authority (the “**TIA**”) of, amongst other things, whether or not they are carrying on a “Relevant Activity” (as defined in the ES Act and as discussed further below) and, if so, whether or not they are a “**Relevant Entity**” (see further below). The notification to the TIA is by way of an annual Economic Substance Notification (“**ESN**”) which must be filed prior to an entity filing its annual return with the General Registry’s Corporate Administration Portal (“**CAP**”).

Generally, Relevant Entities need to comply with the ES Act from the date on which they commence a “**Relevant Activity**”. The economic substance test (“**ES Test**”) can be satisfied in relation to a Relevant Entity carrying on a Relevant Activity if it (i) conducts core income generating activities (“**CIGAs**”); (ii) is directed and managed in an appropriate manner in the Cayman Islands in relation to that Relevant Activity; and (iii) has adequate operating expenditure, physical presence and personnel in the Cayman Islands. Relevant Entities must report their Relevant Activities on an annual basis and show “adequate substance” in the Cayman Islands.

The ES Act was most recently amended on 30 June 2021 and is supplemented by the Guidance on Economic Substance for Geographically Mobile Activities V 3.2 (July 2022) and Enforcement Guidelines (31 March 2022) (the “**Guidance**”).

The International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021, together with the International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021 (the “**Amendment Regulations**”) serve to expand the range of entities subject to the ES Act to include partnerships, exempted limited partnerships and foreign limited partnerships from 1 January 2022 (for entities in existence as at 30 June 2021) or the date of commencement of a Relevant Activity (if not in existence as at 30 June 2021, the commencement date of the Amendment Regulations).

## 2. BACKGROUND

In 2017, following an assessment by the EU Code of Conduct Group (the “**CoCG**”), the Cayman Islands was included in a list of jurisdictions permitting corporate structures perceived to be lacking in economic substance. The ES Act aims to address the concerns raised by the CoCG. In a scoping paper issued in June 2018, the CoCG applied the methodology adopted by the OECD Forum on Harmful Tax Practices (“**FHTP**”) in focusing on a sector-by-sector assessment of what economic substance means. The “Relevant Activities” subject to the ES Act have been derived from the categories of geographically mobile activities identified by the FHTP. Following further concerns raised by the European Commission, the Cayman Islands Ministry of Financial Services conducted an industry consultation in early 2021 resulting in the passing of the Amendment Regulations which expand the scope of the ES Act to partnerships.

## 3. WHO MUST COMPLY?

Generally speaking, a Relevant Entity that carries on a Relevant Activity is required to satisfy the ES Test. Where a Relevant Entity carries on more than one Relevant Activity the Relevant Entity will be

required to satisfy the ES Test in respect of each Relevant Activity conducted. All “entities” (legal persons, partnerships, exempted limited partnerships and foreign limited partnerships that are registered with the Cayman Islands General Registry), including those that do not conduct Relevant Activities will be required to submit an ESN to the TIA to confirm, amongst other things, whether or not they conduct one or more Relevant Activities and, if so, whether or not they are a Relevant Entity.

### 3.1. Relevant Entity

The definition of Relevant Entity includes a company incorporated under the Companies Act (2023 Revision); a limited liability company registered under the Limited Liability Companies Act (2023 Revision); a limited liability partnership registered in accordance with the Limited Liability Partnership Act (2023 Revision), a company incorporated outside of the Islands and registered under the Companies Act (2023 Revision), a partnership defined in section 3 of the Partnership Act (2013 Revision), an exempted limited partnership as defined in section 2 of the Exempted Limited Partnership Act (2021 Revision) and a foreign limited partnership registered under section 42 of the Exempted Limited Partnership Act (2021 Revision) but **excludes**:

- (a) a local partnership;<sup>1</sup>
- (b) an entity that is an “investment fund”;<sup>2</sup>
- (c) an entity that is a “domestic company”;<sup>3</sup> and
- (d) an entity that is “tax resident” outside the Cayman Islands.

Trusts are not currently considered to be Relevant Entities.

The Guidance provides that the TIA may regard a corporate entity as tax resident outside the Islands if the entity is subject to corporate income tax on all of its income from a Relevant Activity by virtue of its tax residence, domicile, or any other criteria of a similar nature in that other jurisdiction.<sup>4</sup> For partnerships, the general partner is required to provide objective and sufficient evidence that the place

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<sup>1</sup> “Local partnership” means a partnership that is not part of an MNE Group and that is only carrying on business in the Islands with persons resident in the Islands and that is licensed under the Trade and Business Licensing Act (2021 Revision); operating under a government franchise; or complies with section 3(a) of the Trade and Business Licensing Act (2021 Revision).

<sup>2</sup> “**Investment Fund**” means an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity’s acquisition, holding, management or disposal of investments and includes an entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held), but does not include a person licensed under the Banks and Trust Companies Act (2021 Revision) or the Insurance Act, 2010, or a person registered under the Building Societies Act (2020 Revision) or the Friendly Societies Act (1998 Revision). “**Investment Interests**” means a share, trust unit, partnership interest or other right that carries an entitlement to participate in the profits or gains of the entity.

<sup>3</sup> A “**domestic company**” is one that is not part of an MNE Group and that is only carrying on business in the Islands and which complies with section 4(1) of the Local Companies (Control) Act (2019 Revision) or section 3(a) of the Trade and Business Licensing Act (2021 Revision); or a company referred to in section 80 (not-for-profit) of the Companies Act (2023 Revision).

<sup>4</sup> Where an entity claims to be tax resident in Anguilla, Bahamas, Bahrain, Barbados, Bermuda, BVI, Turks and Caicos, or the UAE, it will not be accepted due to their lack of corporate income tax system.

of effective management is in another jurisdiction and the partnership is either taxed in that jurisdiction or required to satisfy similar economic substance requirements in that jurisdiction.

If an entity does not constitute a Relevant Entity it will not be required to satisfy the ES Test. However, an entity claiming to be tax resident outside the Cayman Islands will be required to produce satisfactory evidence to substantiate the same. An entity which is tax resident outside the Cayman Islands must disclose annually:

- (a) proof that the entity is tax resident in another jurisdiction, providing one or more of the following from the competent tax authority as proof:
  - (i) certificates / letters;
  - (ii) tax assessments / demands or evidence of payment;
  - (iii) tax returns; or
  - (iv) rulings.
- (b) proof that the entity is subject to the jurisdiction's corporate income tax system including the following from the competent authority:
  - (i) tax assessments, demands or evidence of payment;
  - (ii) tax returns submitted
  - (iii) confirmation that the entity is required to submit a corporate tax return.

If an entity is a Relevant Entity but it does not carry on a Relevant Activity, it will not be required to satisfy the ES Test but it will still be required to notify the TIA annually of:

- (a) whether or not it is carrying on one or more Relevant Activities;
- (b) if it is carrying on a Relevant Activity, whether or not all or any part of the Relevant Entity's gross income in relation to the Relevant Activity is subject to tax in a jurisdiction outside of Cayman and if so, provide appropriate evidence to support that tax residence as may be required by the TIA; and
- (c) the date of the end of its financial year.

### **3.2. Relevant Activity**

Relevant Activity is defined to include the following businesses:

- (a) banking;
- (b) distribution and service centre;
- (c) financing and leasing;

- (d) fund management;
- (e) headquarters;
- (f) holding company;
- (g) insurance;
- (h) intellectual property; or
- (i) shipping,

but does not include investment fund business<sup>5</sup>.

For further details see sections 5.1 – 5.10 below.

#### 4. ECONOMIC SUBSTANCE TEST

In order to satisfy the ES Test, a Relevant Entity carrying on a Relevant Activity will need to show that it:

- (a) conducts CIGAs in relation to that Relevant Activity;
- (b) is directed and managed in an appropriate manner in or from within the Cayman Islands in relation to that Relevant Activity; and
- (c) having regard to the level of relevant income<sup>6</sup> derived from the Relevant Activity carried out in or from within the Islands –
  - (i) has an adequate amount of operating expenditure incurred in or from within the Islands;
  - (ii) has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and
  - (iii) has an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands.

The TIA will take a “principles-based approach” to determining whether or not a Relevant Entity has satisfied the ES Test with respect to its Relevant Activities and there have been no specific recommendations to have a prescribed minimum number of full time employees for a particular level of relevant income either generally or for any particular Relevant Activity. Accordingly, compliance with the ES Test will differ as between Relevant Entities depending upon individual business circumstances.

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<sup>5</sup> “Investment fund business” is the business of operating an investment fund.

<sup>6</sup> “Relevant income” in relation to an entity, means all of that entity’s gross income from its relevant activities and recorded in its books and records under applicable accounting standards.



Entities engaged in Holding Company Business (which can include any entity, not just companies) will be subject to a reduced ES Test (see section 5.6 below).

A Relevant Entity that carries on a Relevant Activity but which has no relevant income will not be required to comply with the ES Test but it will be subject to notification and reporting obligations.

#### **4.1. Core Income Generating Activities**

CIGAs are activities that are of central importance to a Relevant Entity in terms of generating income and that are being carried out in the Islands. The CIGAs for each of the Relevant Activities are described at sections 5.1 – 5.10 below.

A Relevant Entity may satisfy the ES Test by outsourcing the conduct of its CIGAs to another person provided that the Relevant Entity is able to monitor and control the carrying out of the CIGAs. The TIA will only accept the Relevant Entity's claim to have satisfied the ES Test by means of domestic outsourcing if the information is verified by the service provider. Such verification must be made within thirty days of the Relevant Entity providing the same information to the TIA. Service providers undertaking outsourcing functions are required to register with the Cayman Islands Department of International Tax Cooperation ("**DITC**") in order for the DITC to independently verify the engagement of service providers and the nature of their services.

#### **4.2. Directed and Managed from or within the Cayman Islands**

A Relevant Entity will be considered to be directed and managed in an appropriate manner in the Islands in relation to a Relevant Activity where:

- (a) the Relevant Entity's board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors;
- (b) meetings of the board of directors are held in the Islands at adequate frequencies given the level of decision making required;
- (c) during a meeting of the board of directors described in paragraph (b), there is a quorum of directors present in the Islands;
- (d) the minutes of the meetings of the board of directors described in paragraph (b) record the making of strategic decisions of the Relevant Entity at the meeting; and
- (e) the minutes of all meetings of the board of directors and appropriate records of the Relevant Entity are kept in the Islands.

According to the Guidance, it is expected that even for companies with a minimal level of activity there will be at least one meeting of its board of directors per year.

#### **4.3. Adequate Expenditure, Physical Presence and Employees in the Cayman Islands**

The Guidance indicates that "**adequate**" means "as much or as good as necessary for the relevant requirement or purpose"; and "**appropriate**" means "suitable or fitting for a particular purpose, person, occasion".



What is adequate or appropriate will depend upon the facts in each case. Accordingly Relevant Entities should conduct a thorough internal review of its relevant activities and maintain and retain records to demonstrate the adequacy and appropriateness of resources utilized and expenditures incurred.

## 5. RELEVANT ACTIVITIES

### 5.1. Banking Business

Banking business means the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise.

Banking business CIGAs include:

- (a) raising funds, managing risk including credit, currency and interest risk;
- (b) taking hedging positions;
- (c) providing loans, credit or other financial services to customers;
- (d) managing capital and preparing reports or returns, or both, to investors or CIMA.

The Guidance provides 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 banking business...will already generally be operating in the Islands with adequate resources and expenditure. However, those relevant entities will still be subject to the ES Act (i.e. filing requirements, CIGA performed in the Islands and monitoring by the Authority).”*

### 5.2. Distribution and Service Centre Business

Distribution and Service Centre Business means the business of either or both of the following –

- (a) purchasing from an entity in the same Group<sup>7</sup> –
  - (i) component parts or materials for goods; or
  - (ii) goods ready for sale, and
 reselling such component parts, materials or goods outside the Islands;

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<sup>7</sup> “Group” means 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. “Consolidated Financial Statements” means the financial statements of a Group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent and the Constituent Entities are presented as those of a single economic entity.

- (b) providing services to an entity in the same Group in connection with the business outside the Islands,

but does not include any activity included in any other Relevant Activity except holding company business.

Distribution and service centre CIGAs include:

- (a) transporting and storing goods, components and materials;
- (b) managing stocks;
- (c) taking orders;
- (d) providing consulting or other administrative services.

### 5.3. Financing and Leasing Business

Financing and Leasing Business means the business of providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business.

Financing and leasing CIGAs include:

- (a) negotiating or agreeing funding terms;
- (b) identifying and acquiring assets to be leased;
- (c) setting the terms and duration of financing or leasing;
- (d) monitoring and revising financing or leasing agreements and managing risks associated with such financing or leasing agreements.

### 5.4. Fund Management Business

Fund Management Business means the business of managing securities as set out in paragraph 3 of Schedule 2 to the Securities Investment Business Act (2020 Revision) (as amended) carried on by a Relevant Entity licensed or otherwise authorised to conduct business under that act for an investment fund. “**Managing securities**” means managing securities belonging to another person in circumstances involving the exercise of discretion.

Fund management business CIGAs 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 CIMA or both.

The Guidance provides 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 ES Act (i.e. filing requirements, CIGA performed in the Islands and monitoring by the Authority).”*

## 5.5. Headquarters Business

Headquarters Business means the business of providing any of the following services to an entity in the same Group<sup>8</sup> –

- (a) the provision of senior management;
- (b) the assumption of control or material risk for activities carried out by any of those entities in the same Group; or
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business.

Headquarters business CIGAs include:

- (a) taking relevant management decisions;
- (b) incurring expenditures on behalf of Group entities;
- (c) coordinating Group activities.

## 5.6. Holding Company Business

Holding Company Business means the business of a “**pure equity holding company**” which is itself defined to mean “an entity that only holds equity participations in other entities and only earns dividends and capital gains”.

If a Relevant Entity only carries on the Relevant Activity of a pure equity holding company it will be subject to a reduced ES Test which will be satisfied if it can confirm that:

- (a) it has complied with all applicable filing requirements under the Companies Act (2023 Revision); and
- (b) it has adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participations in other entities.

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<sup>8</sup> See Footnote 7 above.

Accordingly, such entities will not be required to conduct CIGAs or be directed and managed in the Cayman Islands.

The Guidance provides that a pure equity holding company maintaining a registered office in the Cayman Islands engaging its registered office service provider in accordance with the Companies Act (2023 Revision) may be able to satisfy the reduced ES Test where the pure equity holding company is passively holding equity interests in other entities depending on the level and complexity of activity required to operate its business.

### 5.7. Insurance Business

Insurance Business means the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or indirectly, and includes running-off business including the settlement of claims. Reinsurance business is also in scope for the ES Act.

Insurance business CIGAs include:

- (a) predicting or calculating risk or oversight of prediction or calculation of risk;
- (b) insuring or reinsuring against risk;
- (c) preparing reports or returns or both to investors or CIMA or both.

The Guidance provides 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 ... insurance business ... will already generally be operating in the Islands with adequate resources and expenditure. However, those relevant entities will still be subject to the ES Act (i.e. filing requirements, CIGA performed in the Islands and monitoring by the Authority).”*

### 5.8. Intellectual Property Business

Intellectual Property Business means the business of holding, exploiting or receiving income from intellectual property assets. “Intellectual property asset” means an intellectual property right including a copyright, design right, patent and trademark.

Intellectual property business CIGAs include:

- (a) where the intellectual property asset is a:
  - (i) patent or an asset that is similar to a patent, research and development; or
  - (ii) non-trade intangible (including a trademark), branding, marketing and distribution
- (b) in exceptional cases, except if the Relevant Activity is a high risk intellectual property business, other CIGAs relevant to the business and the intellectual property assets which may include:

- (i) taking strategic decisions and managing (as well as bearing) the principal risks related to the development and subsequent exploitation of the intangible asset generating income;
- (ii) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset;
- (iii) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of income from third parties.

### 5.9. High Risk Intellectual Property Business

High Risk Intellectual Property Business means an intellectual property business carried on by:

- (a) an entity that:
  - (i) did not create the intellectual property in an intellectual property asset that it holds for the purposes of its business;
  - (ii) acquired the intellectual property asset:
    - from an entity in the same Group; or
    - in consideration for funding research and development by another person situated in a country or territory other than the Islands; and
  - (iii) licences the intellectual property asset to one or more entities in the same Group or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by entities in the same Group.

Section 4(7) of the ES Act provides that a Relevant Entity that is carrying on a Relevant Activity that is a high risk intellectual property business is presumed not to have met the ES Test for a financial year even if there are CIGAs relevant to the business and the intellectual property assets being carried out in the Islands, unless the Relevant Entity:

- (a) can demonstrate that there was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset, exercised by an adequate number of full-time employees with the necessary qualifications that permanently reside and/or perform their activities within the Islands; and
- (b) provides sufficient information under section 7(4)(j) to the TIA in relation to that financial year to rebut this presumption.

The Guidance provides that:

*“To rebut the presumption, a relevant entity with a high risk IP business will have to produce materials to demonstrate that there was, and historically has been,*

*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 the Islands.”*

The FHTP policy on “IP income – exceptional cases and rebuttable presumption” suggests the following evidential requirements:

- (a) detailed business plans which demonstrate the commercial rationale for holding the IP assets in the Islands;
- (b) employee information, including level of experience, type of contracts, qualifications and duration of employment; and
- (c) evidence that decision making is taking place within the Islands,
- (d) and any other information as may be reasonably required by the TIA to determine whether the Relevant Entity meets the ES Test.

#### **5.10. Shipping Business**

Shipping Business means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands:

- (a) the business of transporting, by sea, passengers or animals, goods or mail for a charge;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
- (e) the functioning as a private seafarer recruitment and placement service,

but does not include a holding company business or the owning, operating or chartering of a pleasure yacht<sup>9</sup>.

Shipping business CIGAs include:

- (a) managing crew (including hiring, paying and overseeing crew members);
- (b) overhauling and maintaining ships;
- (c) overseeing and tracking deliveries;
- (d) determining what goods to order and when to deliver them, organising and overseeing voyages.

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<sup>9</sup> “Pleasure yacht” has the meaning given to that expression by section 11(6) of the Merchant Shipping Act (2021 Revision).

## 6. NOTIFICATION AND REPORTING

### 6.1. Notification and Reporting - General

All Cayman entities are required to make an ESN to the TIA as a pre-requisite to filing their annual return. Partnerships will be required to file ESNs for their first financial year within scope of the ES Act. For partnerships established on or after 1 July 2021, the first ESN will be due with the 2022 annual return. For partnerships in existence when the Amendment Regulations took effect on 30 June 2021, the first ESN will be in respect of the first financial year commencing on or after 1 January 2022 – namely an ESN due with the annual return in 2023. The notification obligation is separate from the timing of compliance with the ES Test for entities that are Relevant Entities conducting Relevant Activities. Such entities are required to satisfy the ES Test and prepare and submit a report electronically via the Cayman Islands Department for International Tax Cooperation Portal (“**DITC Portal**”) on an annual basis. The name and address of the officer responsible for providing information to the TIA must also be included in the annual report. Annual reports are generally due no later than 12 months after the last day of the Relevant Entity’s financial year. By way of example:

*If a (corporate) Relevant Entity conducting a Relevant Activity is subject to the ES test and has a financial year of 1 January 2022 to 31 December 2022; its annual report would be due on or before 31 December 2023.*

As only recently brought within the scope of the ES reporting regime, partnerships, exempted limited partnerships and foreign limited partnerships that are Relevant Entities must satisfy the ES Test in relation to a Relevant Activity:

- (a) If not in existence prior to the commencement of the Amendment Regulations – the date of commencing the Relevant Activity; or
- (b) If in existence at the commencement of the Amendment Regulations – 1 January 2022.

Partnerships that are required to satisfy the ES Test will be required to prepare and submit reports no later than 12 months after the last day of the financial year commencing on or after 1 July 2021 and annually thereafter.

According to the ESN Practice Points issued by the DITC, where an entity has already become inactive in CAP such that it is not possible to file the ESN, the TIA requires the ESN data to be submitted via email to [CaymanESportal@gov.ky](mailto:CaymanESportal@gov.ky).

### 6.2. Reporting Information Required

The report required by the TIA should, depending on the circumstances of the Relevant Entity, include the following information:

- (a) the type of Relevant Activity conducted by it;
- (b) the amount and type of relevant income, expenses and assets in respect of the Relevant Activity;



- (c) the location of the place of business or plant, property or equipment used for the Relevant Activity of the Relevant Entity in the Islands;
- (d) the number of full-time employees or other personnel with appropriate qualifications who are responsible for carrying on the Relevant Entity's Relevant Activity;
- (e) the name and address of any person other than the Relevant Entity who is conducting the Relevant Entity's CIGA in relation to its Relevant Activity;
- (f) information showing the Cayman Islands CIGA in respect of the Relevant Activity that have been conducted;
- (g) a declaration as to whether or not the Relevant Entity satisfies the ES Test in accordance with the Act;
- (h) in the case of a Relevant Activity that is an intellectual property business, a declaration as to whether or not it is a high risk intellectual property business and, if it is, whether or not the Relevant Entity will provide certain information (see (j) below);
- (i) details of any MNE Group in respect of which the Relevant Entity is a Constituent Entity for the purposes of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;
- (j) in the case of a Relevant Entity that is carrying on a high risk intellectual property business —
  - (i) detailed business plans which demonstrate the commercial rationale for holding the intellectual property assets in the Islands;
  - (ii) employee information, including level of experience, type of contracts, qualifications and duration of employment;
  - (iii) evidence that decision making is taking place within the Islands; and
  - (iv) any other information as may be reasonably required by the TIA to determine whether the Relevant Activity meets the ES Test;
- (k) the name and address of the Relevant Entity's immediate parent, ultimate parent and ultimate beneficial owner and any other information as may reasonably be required by the TIA to identify the Relevant Entity's immediate parent, ultimate parent and ultimate beneficial owner;
- (l) the jurisdiction of tax residence of the relevant entity's immediate parent, ultimate parent and ultimate beneficial owner;
- (m) information as may reasonably be required by the TIA in respect of expenditure incurred in respect of a person other than the Relevant Entity who is conducting CIGA for Relevant Activities on behalf of the Relevant Entity;

- (n) information as may reasonably be required by the TIA to confirm that the Relevant Entity monitors and controls in the Islands the carrying out of its CIGA by another person;
- (o) a copy of the Relevant Entity's financial statements or books of account for the financial year;
- (p) information as may reasonably be required by the TIA in respect of employees who are conducting CIGA for Relevant Activities including the number of employees and appropriate qualifications of such employees;
- (q) confirmation of —
  - (i) compliance with the requirement to be directed and managed in an appropriate manner in the Islands in relation to the Relevant Activity;
  - (ii) the number of board meetings held in the Islands; and
  - (iii) the number of board meetings held outside the Islands.;
- (r) in the case of a Relevant Activity that is a pure equity holding business, confirmation of compliance with the reduced ES Test (see section 5.6 above).

## 7. MONITORING AND ENFORCEMENT

The TIA is responsible for implementing, monitoring and enforcing the ES Act. The ES Act provides for civil penalties up to CI\$100,000/US\$121,950 to be applied in relation to non-compliance with the applicable ES Test. If, after failing the ES Test for two consecutive years, a Relevant Entity continues its failure to comply, the TIA will report such non-compliance to the Cayman Islands Registrar of Companies who shall apply to the Grand Court which may make an order including:

- (a) an order requiring the Relevant Entity to take a specified action, including for the purpose of satisfying such ES Test; or
- (b) in the case of a Relevant Entity that is -
  - (i) a company that is registered or incorporated under the Companies Act (2023 Revision), an order that it is a defunct company to which Part VI of that Act applies;
  - (ii) a limited liability company that is registered under the Limited Liability Companies Act (2023 Revision), an order that it is a defunct company to which section 40 of that act applies; or
  - (iii) a limited liability partnership that is registered under the Limited Liability Partnership Act (2023 Revision), an order that the limited liability partnership be struck off in accordance with section 31 of that act as if it is a limited liability partnership that the Registrar has reasonable cause to believe is not carrying on business or is not in operation .

It is an offence for a person to knowingly or wilfully supply false or misleading information to the TIA under the ES Act. Such an offence is punishable on summary conviction by a fine of CI\$10,000/US\$12,195 or with imprisonment for a term of five years, or both.

The TIA has issued detailed enforcement guidelines (Version 1.0 dated March 2022) which provide guiding principles for the application of the administrative penalty regime to persons that are potentially subject to enforcement action.

## **8. CONFIDENTIALITY**

There are criminal sanctions for improper disclosure of any information relating to the affairs of the TIA, a Relevant Entity or any officer, customer, investor, member, client or policyholder of a Relevant Entity. The offence is punishable with fines and imprisonment.

## **9. INFORMATION SHARING WITH COMPETENT AUTHORITIES**

The TIA will share information provided to it under the Act in accordance with relevant international standards and scheduled agreements under the Tax Information Authority Act (2021 Revision) with other competent authorities in respect of Relevant Entities that fail to satisfy the ES Test in relation to Relevant Activities and in relation to high risk IP business. Information may also be shared with the competent authority of the jurisdiction where an entity claims to be tax resident and therefore not a Relevant Entity for the purposes of the Act. The TIA may also share information with other competent authorities in other circumstances established by the FHTP.

Such other competent authorities could be in the jurisdiction of residence of the Relevant Entity's parent company, ultimate parent, and ultimate beneficial owner and could also be in the jurisdiction where the Relevant Entity itself is incorporated or claims to be tax resident, if that is outside the Cayman Islands.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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