



The impact of the coronavirus (COVID-19) on economic substance and tax residency in Guernsey and Jersey

Service area / [Taxation and Economic Substance](#)

Location / [Guernsey, Jersey](#)

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Both Guernsey and Jersey require companies that are tax resident in their jurisdiction and generating gross income from certain activities to meet an economic substance test, which includes a requirement to hold certain board meetings in the jurisdiction with both a quorum and majority of those voting being physically present. Although a simplification, both jurisdictions also provide that a company is tax resident there if its business is centrally managed and controlled there, a key part of which is where the directors make their decisions.

The outbreak of COVID-19 therefore clearly raises concerns as to what impact directors not being able to fly out for board meetings has on the ability of the company to meet the economic substance test and its tax resident status in those jurisdictions.

Fortunately, the tax authorities of both jurisdictions have confirmed that where operating practices have to be adjusted to compensate for the outbreak of COVID-19, that will not mean a company has failed to meet the economic substance test or (in the case of Jersey) disturbed its tax residence status, provided the adjustments are to the extent required to mitigate the threats from the outbreak and any changes are temporary.

The full statements are available here ([Guernsey/Jersey](#)) and clearly represent a helpful and pragmatic approach. Whilst companies should ensure that any measures taken are a proportional response to COVID-19, it means a company should not be unfairly prejudiced, where the inability to hold

compliant meetings is legitimately outside its control. Companies should however confirm the position in any other relevant jurisdiction from where directors may be dialling in.

It will be important to document and retain evidence of the difficulties encountered and why operating practices have had to change in order to demonstrate that the measures are commensurate to the impediments to normal practice and are temporary in nature. Consequently, companies should maintain and retain relevant records that show what their policy was in respect of restrictions on travel for the directors concerned and the period of time for which that policy was in place. This will ensure that companies can evidence where extreme measures prohibited them from holding an adequate number of board meetings in the Island with directors attending in person or instead, necessitated meetings to be held by telephone or by other means and on a temporary basis.

Client boards might also wish to consider the appointment of alternate Guernsey or Jersey resident directors to ensure that they can form a quorum on island if necessary and for so long as the directors' ability to travel to and from the island is disrupted by the virus or applicable travel restrictions. Carey Olsen is able to assist with filings and consents necessary to appoint alternate directors to client boards. In the case of regulated entities, any requisite regulatory formalities around such arrangements should be anticipated as part of business continuity measures.

More generally, Carey Olsen is equipped to advise on the implications of the legislation and its guidance to your structures. To help businesses ensure compliance with economic substance requirements for current and future periods, our team also conducts economic substance audits on existing structures and procedures to help identify and remedy any gaps. For advice on the application of economic substance requirements to any specific circumstances and how the guidance could apply, please contact a member of our taxation and substance team. Members of our taxation and substance team also advise clients across all sectors on various other local tax matters, including tax residence, income tax, FATCA and the OECD's Common Reporting Standard.



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