



Jersey's economic substance requirements – identifying holding company business and its implications

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This Briefing forms part of our series on identifying relevant activity for the purposes of the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the “ESJL”), in this case holding company business. For further information or advice on any specific circumstances please get in touch with one of the key contacts listed.

Identifying holding company business (“HCB”)

The ESJL defines HCB as “the business of being a holding company”, which suggests it applies to all companies holding assets. However, it actually refers to a specific type of holding company. These are described by the OECD as “pure equity holding companies” and will most commonly appear as SPVs in corporate structures.

To identify whether a Jersey tax resident company is carrying on HCB for the purposes of the ESJL, a director should ask themselves the following.

Does the company hold (whether directly or via another subsidiary) or control via agreement a majority of another body corporate’s voting rights or otherwise have the right to appoint or remove a majority of its directors?

The relevant interests are controlling interests held in other body corporates. Minority interests and interests in non-corporate structures or assets should therefore fall outside of scope.

Is the primary function of the company the acquisition and holding of shares or equitable interests in other companies?

Acquiring and holding interests in other companies must be the primary function of the company. If the interests held are incidental to its primary function, the company should fall outside of scope of HCB but it should consider whether that function means it is carrying on any other relevant activity.

Does the company carry on any commercial activity i.e. does it carry on any activity (not just passively holding investments) directly linked to the sale or exchange of goods, assets or services in pursuit of profit (not just charitable, or social in nature)?

A (pure equity) holding company will, by its nature, not be carrying on any other business. Therefore a company will not be carrying on HCB if it is carrying on any commercial activity but it should consider whether that commercial activity falls within any other category of relevant activity.

Implications

A company carrying on HCB will be required to meet the economic substance test in each financial period starting on or after 1 January 2019 in which the company has gross income from it. In practice, this means if it receives distributions or sales proceeds from its relevant shareholdings.

The "CIGA" required to be performed in Jersey for HCB is defined under the ESJL simply as "all activities related to that business". Given the nature of HCB, it will primarily include decisions as to whether to acquire, hold or sell relevant shareholdings. In addition to complying with the economic substance test as a whole, a company carrying on HCB should therefore look to ensure that such decisions are taken at board meetings (or by equivalent written resolutions) with a quorum and majority of those voting being physically present in Jersey.



Key contacts

For further information or professional advice please contact our lawyers below or your usual Carey Olsen contact:

Kate Andrews

Partner, Banking and Finance

D +44 (0)1534 822293

E kate.andrews@careyolsen.com

Peter German

Partner, Banking and Finance

D +44 (0)1534 822372

E peter.german@careyolsen.com

Simon Marks

Partner, Banking and Finance

D +44 (0)1534 822252

E simon.marks@careyolsen.com

Robert Milner

Partner, Investment Funds

D +44 (0)1534 822336

E robert.milner@careyolsen.com

James Mulholland

Partner, Investment Funds

D +44 (0)1534 822369

E james.mulholland@careyolsen.com

Marcus Pallot

Partner, Dispute Resolution

D +44 (0)1534 822427

E marcus.pallot@careyolsen.com

Siobhan Riley

Partner, Trusts and Private Wealth

D +44 (0)1534 822355

E siobhan.riley@careyolsen.com

Robin Smith

Partner, Banking and Finance

D +44 (0)1534 822264

E robin.smith@careyolsen.com

James Willmott

Partner, Corporate

D +44 (0)1534 822307

E james.willmott@careyolsen.com

David Patterson

Senior Associate, Banking and Finance

D +44 (0)1534 822242

E david.patterson@careyolsen.com



FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900

E jerseyco@careyolsen.com



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