

# Jersey substance proposals – the Banking and Finance perspective

Insights - 19/03/2019

EU finance ministers have formally approved Jersey's economic substance legislation by removing the jurisdiction from the "grey list" on 12 March 2019 and the Privy Council granted formal approval to the Taxation (Companies - Economic Substance) (Jersey) Law 2019 (the Law) on 13 March 2019. The Law takes effect from 1 January 2019.

The Law – similar to laws passed in other offshore jurisdictions in response to findings of the EU Code of Conduct Group - requires relevant companies to demonstrate economic substance in the jurisdictions in which they are tax resident.

Following approval of the Law, further Guidance Notes about the practical implications of the Law are expected shortly.

Our view, in anticipation of those Guidance Notes, is that:

- clients and advisers should review outsourcing arrangements in respect of Jersey tax-resident companies that fall within the scope of the Law and consider whether the third-party service provider agreements in place meet the tests set out, particularly in relation to provision of office space and appropriate access to sufficiently senior employees;
- the Law defines "finance and leasing business" broadly to mean the provision of credit facilities of any kind for consideration, so while interest free lending arrangements are not likely to be caught, consideration should be given to whether any intra-group financing arrangements are within the scope of the Law;
- the Law also captures "holding company business", which captures the business of primarily acquiring and holding a controlling interest in shares or equitable interests; and
- we anticipate further detailed guidance on the precise definition of activities to fall within the scope of the Law, and the definition of adequacy in respect of employees, expenditure and premises under the tests.

The Law includes three key tests.

Relevant companies must be **directed and managed** in Jersey, which requires:

- meetings of the board of directors (all of whom must have the necessary knowledge and expertise to discharge their duties as a board) in Jersey at adequate frequencies, given the level of decision making required;
- a quorum of the Board of Directors to be physically present in Jersey at these meetings;
- minutes recording the strategic decisions of the company made at these meetings; and
- retention of all company records and minutes in Jersey.

Relevant companies must also demonstrate **adequate activity** in Jersey:

- have an adequate number of employees;
- demonstrate adequate expenditure in Jersey; and
- have access to adequate "physical assets", or premises, in Jersey.

They must also conduct **Core Income Generating Activities**, or CIGAs, in Jersey, which in the case of "finance and leasing business" includes:

- (i) agreeing funding terms,
- (ii) identifying and acquiring assets to be leased (in the case of leasing),
- (iii) setting the terms and duration of any financing or leasing,
- (iv) monitoring and revising any agreements,
- (v) managing any risks

In relation to "holding company business" the CIGAs are broadly defined as all activities related to that business. Consideration will need to be given to ensuring sufficient CIGAs are carried on in Jersey in order to demonstrate compliance with the requirements of the Law.

If you would like to discuss any aspects of the Law, or whether your companies or clients may be affected, please speak to your usual Ogier contact, or contact a member of our Economic Substance team.

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## Meet the Author



[Katrina Edge](#)

Partner

[Jersey](#)

E: [katrina.edge@ogier.com](mailto:katrina.edge@ogier.com)

T: [+44 1534 514192](tel:+441534514192)

## Key Contacts



[Bruce MacNeil](#)

Partner

[Jersey](#)

E: [bruce.macneil@ogier.com](mailto:bruce.macneil@ogier.com)

T: [+44 1534 514394](tel:+441534514394)



Kate McCaffrey

Partner

Jersey

E: [kate.mccaffrey@ogier.com](mailto:kate.mccaffrey@ogier.com)

T: [+44 1534 514355](tel:+441534514355)



James Lydeard

Group Partner, Ogier Legal L.P.

Jersey

E: [james.lydeard@ogier.com](mailto:james.lydeard@ogier.com)

T: [+44 1534 514270](tel:+441534514270)

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