

The economic substance requirements for Jersey resident partnerships

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The Taxation (Partnerships - Economic Substance) (Jersey) Law 2021 (the **Law**) came into force on 8 October 2021 with an effective date of 1 July 2021 and a six month transition period to 1 January 2022 for partnerships established before 1 July 2021.

The Crown Dependencies issued their joint guidance on the application of the economic substance rules to partnerships on 21 December 2021 (the **Guidance**).

The economic substance requirements apply to "resident partnerships" (including incorporated limited partnerships, limited liability partnerships, limited partnerships, separate limited partnerships, Jersey-resident foreign limited partnerships and general partnerships) that carry on certain specified geographically mobile activities, including fund management business and finance and leasing business. Limited liability partnerships and incorporated limited partnerships that carry on holding partnership business are also subject to the substance requirements.

Resident partnerships are in scope of the Law where they have gross income in relation to their relevant activities.

The Law provides that the following resident partnerships are outside the scope of the law:

- resident partnerships that are investment fund vehicles (including collective investment funds and private funds)
- resident partnerships that are not part of a multinational group and do not undertake business activities outside of Jersey
- and resident partnerships where all the partners in the partnership are individuals who are subject to income tax in Jersey

Jersey partnerships will be deemed resident partnerships automatically unless their place of effective management is in another jurisdiction where either (i) the highest rate at which a company or individual may be charged to income tax rate is at least 10% or (ii) partnerships are required to satisfy a test that is substantially the same as the economic substance test set out in the Law. The Guidance Notes contain a list of jurisdictions with substantially similar economic substance requirements.

Foreign partnerships are resident partnerships if their place of effective management is in Jersey.

The Law provides that a partnership's "effective place of management" is the place where key management and commercial decisions that are necessary for the conduct of the partnership's business as a whole are in substance made. A partnership will have one place of effective management at any one time (even if there is more than one place where management decisions are made). The Guidance provides further insight to the meaning of "effective place of management" noting that the focus should be on where true control and management of the entity occurs in conducting its business, that is, where the entity is actually managed. The Guidance suggests that this can be ascertained by considering the form, membership and location of the governing body which can be established by reviewing the partnership agreement, partnership registers, minutes of meetings, or from the records of the Registrar of Companies.

The Law establishes an economic substance test which requires in-scope partnerships to demonstrate that:

1. They are managed in Jersey in relation to that activity:

In particular:

- meetings of the partnership's governing body (all of whom must have the necessary knowledge and expertise to discharge their duties as a board) must be held in Jersey at adequate frequencies, having regard to the level of decision making required
- a majority of that governing body must be physically present in Jersey at those meetings
- records are kept of the strategic decisions of the partnership made at those meetings; and
- and such records must be retained in Jersey (or, if in electronic form, maintained and accessible in the Island)

The Guidance provides that resident partnerships will be required to demonstrate that the relevant activity is directed and managed by its "governing body", that is to say that its governing body has the general supervision of the affairs of the relevant partnership.

As expected, for a limited partnership, being the most commonly established form of partnership in Jersey, the governing body will be considered to be the board of directors of the body corporate which is the general partner. For a limited liability partnership, the governing body will be its management committee or team, as mandated pursuant to its partnership agreement.

2. They have adequate people, expenditure and physical assets

Having regard to the level of relevant activity carried on in Jersey, the partnership has adequate:

- people performing work in relation to the activity of the partnership who are physically present in Jersey
- expenditure in Jersey; and
- and physical assets in Jersey (eg dedicated premises or access to meeting rooms)

In this context, "people performing work" is not limited to partners or persons employed by the resident partnership, but includes persons employed by the resident partnership or another entity or partnership and whether on temporary or long-term contracts.

The Guidance confirms that qualified employees would cover those working for the partnership, the governing body, including a general partner, or any other partners, or for persons to whom activities have been outsourced, provided that those duties are performed or held in Jersey.

3. All of the partnership's "core income-generating activities" are carried out in Jersey

A resident partnership's governing body must conduct all of its core income-generating activities (**CIGA**) in Jersey and must be able to monitor and control any CIGAs carried out by another entity or partnership in Jersey.

The Law does not prohibit the outsourcing of activities to other entities, provided the partnership's governing body monitors and retains the ability to control the activities of service providers in Jersey.

Implications and sanctions

The Law provides sanctions for non-compliance including financial penalties, reporting to relevant tax or regulatory authorities and the ability to make applications to the Royal Court of Jersey for a winding up order in relation to certain partnerships.

Where a partnership does not have separate legal personality, its general partner (or, if it has more than one general partner, all of its general partners jointly) will be liable for any penalty

for breach of the Law.

For more information on economic substance in Jersey please read our [briefings](#).

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