



ECONOMIC SUBSTANCE - CAYMAN AND OTHERS

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We are Prepared with Monday Morning Proverbs

“Все меняется, ничто не исчезает.” [*nothing disappears, only changes*]

Хорошá верёвка длинная, а речь корóткая. [*Rope is good when it's long; speech is good when it's short.*]

“Деревья скоро садят, да не скоро с них плоды едят.” [*one generation plants the trees, the next gets the shade*]

“Знал бы, где упасть, там соломки постлал бы.” [*If you could know where you fall, you would spread some straw.*]

Ничто не ново под луной. [*there is nothing new under the sun*]

Умный в гóру не пойдёт, умный гóру обойдёт. [*A smart person will not climb a mountain; A smart person will go around it.*]



HISTORY AND BACKGROUND OF ECONOMIC SUBSTANCE LAWS AND WHAT IS IT

- Legislation

WHO IS AFFECTED

-relevant entities, who

-are carrying out relevant activities, and who

-are tax resident in the relevant jurisdiction (that is, Cayman or BVI, respectively).

[excludes exempted limited partnerships and investment funds]



WHO IS AFFECTED

- **a Relevant Entity is -**

- (a) a **company**, other than a domestic company, that is (i) incorporated under the **Companies Law (2018 Revision)**; or (ii) a limited liability company registered under the **Limited Liability Companies Law (2018 Revision)**;
- (b) a limited liability partnership that is registered in accordance with the Limited Liability Partnership Law, 2017;
- (c) a company that is incorporated outside of the Cayman Islands and registered under the Companies Law (2018 Revision);

but does not include:

- (a) an investment fund; or
- (b) an entity that is tax resident outside of the Cayman Islands.

- *****

- **The ES Law defines an “investment fund”** as 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 any entity through which an investment fund directly or indirectly invests or operates**, but does not include a person licensed under the Banks and Trust Companies Law (2018 Revision) or the Insurance Law, 2010, or a person registered under the Building Societies Law (2014 Revision) or the Friendly Societies Law (1998 Revision). “Investment fund business” is defined as the business of operating as an investment fund. “**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.



RELEVANT ACTIVITIES

- **Relevant Activities** are considered to be activities in the following categories:
- **banking business**
- **Distribution and service centre business**
- **financing and leasing business**
- **fund management business** – meaning the business of **managing securities** belonging to another person in circumstances involving the exercise of discretion carried on by a relevant entity licensed under the Securities Investment Business Law (2019 Revision) for an **investment fund**;
- **headquarters business**
- **holding company business** – meaning the business of a pure equity holding company;
- **insurance business**
- **intellectual property business**
- **shipping business**
- *[Excluded Activity: Investment Fund business]*



WHAT IS THE TEST AND HOW DO WE COMPLY

- **I am a director or beneficial owner of Cayman company that is tax resident in Cayman, is not a domestic company, and is not an investment fund. What do I need to do to comply?**



- **Satisfying economic substance test, in further detail**

- (a) conduct Cayman Islands core income generating activities ("CIGA") in relation to the Relevant Activity – this relates to activities which are of central importance to a relevant entity in terms of income generation and which are carried out in the Cayman Islands;

- (b) be directed and managed in an appropriate manner in the Cayman Islands in relation to a Relevant Activity; and

- (c) having regard to the level of income derived from the Relevant Activity carried out in the Cayman Islands:
 - a. have an adequate amount of operating expenditure incurred in the Cayman Islands;
 - b. have adequate physical assets or an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - c. have an adequate number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.



TWO EXAMPLES FOR FUNDS AND MANAGERS

- **Licensed fund management business**
- **Pure equity holding business**



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WHAT ARE SOME OPTIONS AVAILABLE TO A RELEVANT ENTITY THAT CARRIES ON RELEVANT ACTIVITY?

ENGAGE AND COMPLY

RESTRUCTURE – EXTERNAL MANAGER TO INTERNAL MANAGER

REDOMICILE

DISSOLVE



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Steve has been with the firm, in Cayman, for over 12 years – his practice is concentrated on funds, corporate finance and distributed ledger and blockchain companies – including crypto-funds. His clients include investment managers, fund administrators, banks, family offices, financial houses and early stage companies.



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