



**Corporate Agents  
(BVI) Ltd.**

—  
Palm Grove House  
P.O. Box 438  
Road Town, Tortola  
British Virgin Islands

—  
E: [bvi@corpag.com](mailto:bvi@corpag.com)  
W: [www.corpag.com](http://www.corpag.com)

**Carolina Lacerda**

E: [carolina@corpag.com](mailto:carolina@corpag.com)

M: +1 (284) 343 9928

**Alexander Dugdale**

E: [alexander@corpag.com](mailto:alexander@corpag.com)

M: +1 (284) 542 1412

## **Economic Substance Requirements – Bahamas, BVI and Cayman**

### **Introduction**

The purpose of this memo is to give a brief comparison of the economic substance legislation regimes for the Bahamas, British Virgin Islands and the Cayman Islands showing the overall similarity of the legislations, whilst highlighting the regional adaptations that have come about due to the differing aspects of each of these financial centres.

### **Renewed focus on economic substance**

Concerns about granting tax advantages without also requiring real economic activity and substantial presence are not new:

- BEPS (base erosion and profit shifting) initiative put economic substance back on the agenda.
- In 2016, EU widened focus to include substance in nominal and zero tax jurisdictions as part of its listing exercise.
- In 2018, OECD adopted substance standards to be applied to nominal and zero tax jurisdictions.

### **Summary**

As the purpose of the economic substance legislation regimes for the Bahamas, British Virgin Islands and the Cayman Islands is fundamentally the same, the variations are small, but have been specifically tailored to reflect each jurisdiction's particular focus and specialties in the industry.

Corpog shall be glad to assist you in determining which jurisdiction best meets your needs, allowing you to efficiently achieve your corporate or personal goals.



## Economic Substance Regime

<b>Bahamas</b>	<b>British Virgin Islands</b>	<b>Cayman Islands</b>
<p>Commercial Entities (Substance Requirements) Act, 2018 (“CESRA” or the “Act”): specifies economic substance requirements and enforcement regime.</p> <p>Department of Inland Revenue e-portal: Used to facilitate electronic reporting to the Minister of Finance (the “Authority”) and the Authority’s sharing of information with other competent authorities pursuant to the Act.</p> <p>Ministry of Finance regulations and guidance: set out the effect of the legislation for better carrying out of, and compliance with, CESRA.</p>	<p>Economic Substance (Companies and Limited Partnerships) Act (the “Act”): specifies economic substance requirements and enforcement regime.</p> <p>Beneficial Ownership Secure Search System Act: expanded to include reporting regime for substance requirements.</p> <p>International Tax Authority (the “ITA”) Economic Substance Code: sets out the effect of the legislation in rules and guidance.</p>	<p>International Tax Co-operation (Economic Substance) Act (2020 Revision) (the “ES Law”): specifies economic substance requirements and enforcement regime.</p> <p>Cayman Islands Department for International Tax Cooperation Portal: Launched to facilitate electronic reporting to the Tax Information Authority (the “TIA”) and the TIA’s sharing of information with other competent authorities pursuant to the ES Law.</p> <p>TIA Economic Substance For Geographically Mobile Activities Guidance: sets out the effect of the legislation in rules and guidance.</p>



## Scope of the Economic Substance Act

Bahamas	British Virgin Islands	Cayman Islands
<p>CESRA imposes an annual reporting obligation on every commercial entity as defined in the Act.</p> <p>A commercial entity carrying on a relevant activity must meet Bahamas substance requirements unless it is a non-included entity, or it is resident for tax purposes in a jurisdiction outside the Bahamas which is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes</p>	<p>Applies to all companies and limited partnerships with legal personality (“legal entities”).</p> <p>A legal entity carrying on a <i>relevant activity</i> must meet BVI substance requirements <i>unless</i> it is resident for tax purposes in a jurisdiction outside the BVI which is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes.</p> <p>A legal entity which is not carrying on a relevant activity is <i>not</i> subject to the substance requirements.</p> <p>All legal entities must comply with self-assessment reporting requirements prescribed in the Act.</p>	<p>The ES Law imposes an annual notification obligation (ESN) on every entity as defined in the ES Law.</p> <p>The ES Law imposes a reporting obligation on every relevant entity carrying on a relevant activity unless it is an investment fund, or it is resident for tax purposes in a jurisdiction outside the Cayman Islands (the “CI”).</p> <p>The ES Law requires a relevant entity that is carrying on relevant activities to satisfy the ES Test in relation to each relevant activity.</p> <p>Entities operating within the Cayman Enterprise City’s Special Economic Zones must consider whether they are relevant entities for the purposes of the ES Law and, if so, whether they are carrying on relevant activities and required to satisfy the ES Test under the ES Law.</p>



## Relevant Activities

Bahamas	British Virgin Islands	Cayman Islands
<ul style="list-style-type: none"><li>• Insurance Business</li><li>• Fund Management Business</li><li>• Finance and Leasing Business</li><li>• Headquarters Business</li><li>• Shipping Business</li><li>• Holding Company Business</li><li>• Intellectual Property Business</li><li>• Distribution and Service Centre Business</li><li>• Banking Business</li></ul>	<ul style="list-style-type: none"><li>• Insurance Business</li><li>• Fund Management Business</li><li>• Finance and Leasing Business</li><li>• Headquarters Business</li><li>• Shipping Business</li><li>• Holding Company Business</li><li>• Intellectual Property Business</li><li>• Distribution and Service Centre Business</li><li>• Banking Business</li></ul>	<ul style="list-style-type: none"><li>• Insurance Business</li><li>• Fund Management Business</li><li>• Finance and Leasing Business</li><li>• Headquarters Business</li><li>• Shipping Business</li><li>• Holding Company Business</li><li>• Intellectual Property Business</li><li>• Distribution and Service Centre Business</li><li>• Banking Business</li><li>• <u>Excludes</u> Investment Fund Business</li></ul>



## Demonstrating Substance

<b>Bahamas</b>	<b>British Virgin Islands</b>	<b>Cayman Islands</b>
<p>A commercial entity that is carrying on a relevant activity (“included entity”) must have substantial economic presence in the Bahamas.</p> <p>All included entities, other than those only carrying on holding business, must: carry on core income generating activity in the Bahamas; have adequate expenditure in the Bahamas; and the relevant activity must be managed and controlled from within the Bahamas.</p> <p>Additional requirements apply to IP businesses.</p>	<p>All entities (other than non-resident entities) carrying on a relevant activity must have an adequate number of suitably qualified employees and adequate premises in the BVI.</p> <p>All entities other than those only carrying on holding business must also: carry on core income generating activity in the BVI; have adequate expenditure in the BVI; and the relevant activity must be directed and managed from within the BVI.</p> <p>Additional requirements apply to IP businesses.</p>	<p>A relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test must prepare and submit to the Authority an ES return for the purpose of the Authority’s determination whether the ES Test has been satisfied in relation to that relevant activity.</p> <p>All relevant entities, other than those only carrying on holding business, must also: carry on core income generating activity in CI; have adequate expenditure in CI; and the relevant activity must be directed and managed from within CI.</p> <p>A relevant entity that carries on a relevant activity, but which has no relevant income is not obliged to meet the requirements of the ES Test as set out in section 4 of the ES Law. That relevant entity will still, however, be required to satisfy its notification and reporting obligations under the ES Law.</p> <p>Additional requirements apply to IP businesses.</p>



## Outsourcing

Bahamas	British Virgin Islands	Cayman Islands
<p>An included entity may outsource core income generating activity to a third party and count this towards compliance with substance requirements if:</p> <ul style="list-style-type: none"><li>• the third party carries on the activity within the Bahamas.</li><li>• the outsourced activities are adequately supervised by the included entity.</li><li>• The entity or person providing outsourcing services shall report to the Authority on an annual basis in the manner as set out in the Act.</li></ul> <p><u>No included entity shall outsource any of its core income generating activities to any entity or person outside of the Bahamas</u></p>	<p>A legal entity may outsource core income generating activity to a third party and count this towards compliance with substance requirements if:</p> <ul style="list-style-type: none"><li>• the third party carries on the activity in the BVI;</li><li>• records are kept evidencing the work carried on for the legal entity;</li><li>• the outsourced activities are monitored and controlled; and</li><li>• FSC licensed entities comply with FSC requirements on outsourcing.</li></ul>	<p>A relevant entity may outsource core income generating activity to a third party and count this towards compliance with substance requirements if:</p> <ul style="list-style-type: none"><li>• the third party carries on the activity in the CI.</li><li>• records are kept evidencing the work carried on for the relevant entity.</li><li>• the outsourced activities are monitored and controlled.</li><li>• A relevant entity must not use outsourcing to circumvent compliance with the ES Test.</li><li>• Relevant entities that are conducting banking business, insurance business, and fund management business will be subject to the Cayman Islands Monetary Authority's "Statement of Guidance: Outsourcing Regulated Entities" in addition to the principles set out above under the ES Law.</li></ul>



## Non-Resident Entities

<b>Bahamas</b>	<b>British Virgin Islands</b>	<b>Cayman Islands</b>
<p>Entities that can demonstrate they are tax resident in another jurisdiction are not regarded as included entities for the purposes of the Act.</p> <p>The Guidance sets out the evidence that the Authority will accept as demonstrating tax residence in another jurisdiction.</p> <p>Residence cannot be claimed in a jurisdiction listed by the EU as “non-cooperative”.</p>	<p>Legal entities that can demonstrate they are tax resident in another jurisdiction are exempt from the substance requirements.</p> <p>The Substance Code sets out the evidence that the ITA will accept as demonstrating tax residence in another jurisdiction.</p> <p>Residence cannot be claimed in a jurisdiction listed by the EU as “non-cooperative”.</p>	<p>Entities that can demonstrate they are tax resident in another jurisdiction are not regarded as relevant entities for the purposes of the ES Law.</p> <p>The Guidance sets out the evidence that the TIA will accept as demonstrating tax residence in another jurisdiction.</p> <p>Residence cannot be claimed in a jurisdiction listed by the EU as “non-cooperative”.</p>



## Reporting Requirements

Bahamas	British Virgin Islands	Cayman Islands
<p>An entity is required to file the requisite forms to the Department of Inland Revenue.</p> <p>An outsourcing service provider shall report on its compliance with the Act to the Department of Inland Revenue.</p> <p>An included entity shall report on its compliance with the Act to the Department of Inland Revenue within nine months of its fiscal year end.</p> <p>A non-included entity shall report on its compliance with the Act to the Department of Inland Revenue within nine months of its fiscal year end.</p>	<p>Built on pre-existing self-reporting regime for collection of beneficial ownership information under the BOSS Act.</p> <p>Each legal entity must report the prescribed substance information for each financial period which cannot exceed 12 months.</p> <p>Each legal entity is responsible for providing accurate and complete information to the Registered Agent (the "RA").</p> <p>RA's responsibility limited to entering the substance information in the RA database.</p>	<p>Built on pre-existing self-reporting regime for filing its Annual Return via the General Registry's Corporate Administration Platform.</p> <p>The deadline for submitting the ESN is the date after which the General Registry can impose penalties for late payment of the Annual Return fees, namely 31 March each year.</p> <p>A relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test must prepare and submit to the Authority an ES return.</p> <p>The ES return must be made within twelve months after the last day of the end of each financial year of the relevant entity commencing on or after 1 January 2019.</p>



## Reporting Format

<b>Bahamas</b>	<b>British Virgin Islands</b>	<b>Cayman Islands</b>
<p>The Regulations prescribe what information the Authority requires to determine whether an entity has complied with the Act.</p> <p>An entity shall provide the Authority with appropriate evidence to support the above-mentioned information provided to the Authority as may be reasonably required by the Authority.</p> <p>Such information shall be in the form approved by the Authority and shall be provided within a reasonable time specified by the Authority.</p>	<p>Registered Agent adds Entity's Economic Substance information to Entity's existing BOSSs entry.</p> <p>Entity's ES information and supporting documentation, including those of any Tax Residence claims, are submitted by the RA to the ITA through the BOSS system.</p> <p>The submission will be available for review by the ITA.</p>	<p>The Regulations prescribe what information the Authority requires to determine whether a relevant entity has satisfied the ES Test.</p> <p>A relevant entity shall provide the Authority with appropriate evidence to support the above-mentioned information provided to the Authority as may be reasonably required by the Authority.</p> <p>Such information shall be in the form approved by the Authority and shall be provided within a reasonable time specified by the Authority.</p>

## Penalties

<b>Bahamas</b>	<b>British Virgin Islands</b>	<b>Cayman Islands</b>
<ul style="list-style-type: none"><li>• Fine of up to US\$150,000</li><li>• Up to 6 months in prison</li><li>• Entity will be struck off</li></ul>	<ul style="list-style-type: none"><li>• Fine of up to US\$400,000</li><li>• Up to 5 years in prison</li><li>• Entity will be struck off</li></ul>	<ul style="list-style-type: none"><li>• Fine of up to US\$100,000</li><li>• Up to 5 years in prison</li><li>• Entity will be struck off</li></ul>



**Additional Information:**

**Bahamas**

<https://bfsb-bahamas.com/wp-content/uploads/2019/02/DOCReprintofCommercialEntitiesSubstanceRequirementsActNo32of2018.pdf>

[https://bfsb-bahamas.com/wp-content/uploads/2019/04/MOF-Substance-Requirements-Act-FAQ\\_2019\\_REVISION-C.pdf](https://bfsb-bahamas.com/wp-content/uploads/2019/04/MOF-Substance-Requirements-Act-FAQ_2019_REVISION-C.pdf)

**BVI**

[http://www.bvi.gov.vg/pub/Economic\\_Substance\\_Act\\_Unofficial\\_Consolidation.pdf](http://www.bvi.gov.vg/pub/Economic_Substance_Act_Unofficial_Consolidation.pdf)

<http://www.bvi.gov.vg/pub/Unofficial%20Consolidation%20BOSSs.pdf>

[https://bvi.gov.vg/sites/default/files/resources/ita\\_rules\\_v2.pdf](https://bvi.gov.vg/sites/default/files/resources/ita_rules_v2.pdf)

**Cayman Islands**

[https://www.ditc.ky/wp-content/uploads/Economic\\_Substance\\_-\\_Guidance\\_-\\_v3.0190713.pdf](https://www.ditc.ky/wp-content/uploads/Economic_Substance_-_Guidance_-_v3.0190713.pdf)

<http://gazettes.gov.ky/portal/pls/portal/docs/1/12912491.PDF>

<http://www.legislativeassembly.ky/portal/pls/portal/docs/1/12930557.PDF>

---

**\*\*Disclaimer of No Legal Advice Intended\*\***

The contents of this memo are intended to convey general information only and not to provide legal advice or opinions. The contents of this memo, and the posting and viewing of the information in this memo, should not be construed as, and should not be relied upon for, legal or tax advice in any particular circumstance or fact situation. No action should be taken in reliance on the information contained in this memo. An attorney should be contacted for advice on specific legal issues.