



GOVERNMENT OF BARBADOS

Barbados Economic Substance Guidelines

Issued pursuant to

Section 18 (2) of the Companies
(Economic Substance) Act, (Act 2019-43)

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1. INTRODUCTION

1. The *Companies (Economic Substance) Act, 2019* (Act 2019-43) ("ESA") introducing economic substance requirements for companies in Barbados was approved by Barbados Parliament on 27 November 2019 in response to the work of the Organisation for Economic Cooperation and Development ("OECD") as part of the Base Erosion and Profit Shifting ("BEPS") Action 5 and the European Union ("EU") Criterion 2.2 initiatives.
2. These standards require geographically mobile activities to have economic substance regardless of whether the activities are conducted in a no or nominal tax jurisdiction or in a preferential tax regime of a jurisdiction that has corporate income tax.
3. The ESA applies to all Barbados resident companies conducting relevant activities and is effective for fiscal periods commencing on the dates prescribed in the Regulations.
4. This document provides guidance on the scope and application of the ESA. In accordance with Section 18(2) of the ESA these Guidelines have the force of law.

2. SUMMARY OF THE ESA

5. The ESA replaces the *Business Companies (Economic Substance) Act, 2018* (Act 2018-41) which came into effect on 1 January 2019. The ESA requires a "resident company" which derives income from the carrying on of a "relevant activity" to satisfy the Economic Substance Test ("ES Test") in relation to that relevant activity.
6. A resident company that was in existence prior to the commencement of the ESA must be in compliance with the ESA from 1 January 2019.
7. A resident company that was not in existence prior to the date of commencement of the ESA must be in compliance with the ESA from the date on which the said resident company commenced the relevant activity.
8. Resident companies that were grandfathered pursuant to the *Insurance (Amendment) Act, 2018* (Act 2018-52), *Financial Institutions (Amendment) Act, 2018* (Act 2018-51), *International Business Companies (Repeal) Act, 2018* (Act 2018-40) and the *Societies with Restricted Liability (Amendment) Act, 2018* 2 (Act 2018-47), must be in compliance with the ESA with effect from 1 January 2021.
9. Core Income Generating Activities ("CIGA") are activities that are of central importance to a resident company in terms of generating income and must be carried on in Barbados. CIGA are defined for each type of relevant activity.

10. A resident company may satisfy the ES Test by outsourcing the conduct of its CIGA to another person in Barbados, in accordance with the ESA and the guidance as set out below.

3. INFORMATION REQUIREMENTS FOR RESIDENT COMPANIES

11. A resident company shall, after January 1, 2020, file an Economic Substance Declaration ("declaration") with the Director annually within twelve months after the last day of the end of each fiscal period commencing on the dates prescribed in the Regulations stating:

- (a) whether or not they are carrying on a relevant activity;
- (b) whether or not they derive income a relevant activity;
- (c) if the resident company is carrying on a relevant activity, whether or not all of the resident company's income in relation to the relevant activity:
 - i. is subject to tax in a jurisdiction outside of Barbados and, if so, shall provide appropriate evidence to support the liability to tax as may be required by the Director; or
 - ii. is compliant with economic substance requirements in a jurisdiction outside of Barbados and, if so, shall provide appropriate evidence to support that economic substance as may be required by the Director;
- (d) if the resident company is carrying on a relevant activity whether it is beneficially owned or controlled by residents of Barbados, and whether it carries on a relevant activity exclusively in Barbados and derives income solely from such relevant activities; and
- (e) the date of the end of its fiscal period.

12. For the purposes of these Guidelines, "control" means the possession, whether directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, a voting trust arrangement or by any other means.

13. A resident company which is required to satisfy the ES Test must provide the following information:

- business/income types identifying the type of relevant activity;
- amount and type of income by relevant activity;

- amount of operating expenditure by relevant activity;
- details of business address;
- number of (qualified) full time employees;
- confirmation of the CIGA conducted for each relevant activity; and
- confirmation of whether any CIGA have been outsourced and if so relevant details.

14. A resident company that is carrying on more than one relevant activity is required to satisfy the ES Test in relation to each relevant activity.

15. A resident company that is required to satisfy the ES Test in relation to a relevant activity must retain for six years after the end of a fiscal period any documents or other records, including any information stored by electronic means that relates to the information required to be provided to the Director.

4. SCOPE OF THE ESA

4.1. Resident Company

16. A resident company for the purposes of the ESA must satisfy all of the prescribed definitions in the ESA, simultaneously.

17. Therefore, a resident company for the purposes of the ESA means a company, whether incorporated in Barbados or elsewhere, or a society with restricted liability organised in Barbados, or an association formed in Barbados (other than an association of underwriters), which is managed and controlled in Barbados.

18. For the avoidance of doubt and for the purposes of the ESA:

- a "company" means any body corporate whether incorporated in Barbados or elsewhere and includes a society with restricted liability and an association other than an association of underwriters but does not include a local or public authority;
- the following are expressly included in the definition of "resident company":
 - A company, whether incorporated in Barbados or elsewhere, or a society with restricted liability organised in Barbados, or an

association formed in Barbados (other than an association of underwriters), which is managed and controlled in Barbados.

- A company or partnership incorporated or formed outside of Barbados, that is registered in Barbados as an external company that is not regarded as a tax resident company in the jurisdiction of incorporation.
- A company incorporated in Barbados as an entity but which is not tax resident in any other jurisdiction.

and includes a partnership formed in Barbados which is carrying on one or more relevant activities.

(c) the following are expressly excluded from the definition of “resident company”:

- any unincorporated body or association which does not have separate legal personality;
- a trust;
- a company (or entity) that is tax resident outside of Barbados, and
- a public Director.

4.1.1. Partnerships

4.1.2. Meaning of “Partnership”

19. Partnerships include general partnerships as defined by section 3 of the *Partnerships Act*, Cap. 313 and limited partnerships as defined by section 3 of the *Limited Partnerships Act*, Cap. 312. A partnership must be carrying on a relevant activity to be deemed to be within scope of the ESA.

20. A Foreign partnership registered in Barbados as an external company pursuant to the *Companies Act*, Cap. 308 are also deemed to be ‘resident companies’ within the scope of the ESA.

21. As a resident company for the purposes of the ESA, partnerships are required to meet the same requirements to satisfy the economic substance test as other entities defined as resident companies.

4.1.3. ES Test

22. A partnership must meet the same test as prescribed in the ESA as is required for any resident company as defined. However, it is acknowledged that there are characteristics inherent to partnerships which make their ability to satisfy the ES test different from that of an entity with a separate legal personality. As a result, the following guidance provides the details that must be shown for a partnership to satisfy the ES Test.

23. A partnership should be managed in Barbados in relation to the relevant activity it is carrying on.

24. Having regard to the level of relevant activity carried on in Barbados, a partnership should ensure that there is an adequate number of persons performing work in relation to that activity who are physically present in Barbados. These persons may be partners or employees and similar to any other resident company, the performance of this activity may be outsourced provided the partnership's decision-making body monitors and retains the ability to control the activities of service providers in Barbados and in accordance with the section 5(4) of the ESA relative to Outsourcing. There should also be adequate physical assets and adequate expenditure incurred in Barbados.

25. A partnership must also be able to demonstrate that its core income generating activities are carried out in Barbados.

4.1.4. Direction and Management

26. A partnership meets the economic substance test in relation to a relevant activity carried on by it where it conducts its core income generating activities in Barbados, and the partnership is directed, managed and controlled in Barbados in relation to that activity.

27. No partnership formed in Barbados has a separate legal personality and therefore does not have a board of directors. Consequently, the person or group of persons responsible for making the partnership's strategic and management decisions are deemed to be the decision-making body of the partnership.

28. A partnership is managed in Barbados in relation to a relevant activity if:

- (a) the partnership's decision-making body meets in Barbados at an adequate frequency having regard to the amount of decision-making required at that level;
- (b) the majority of the partnership's decision-making body is physically present at those meetings;
- (c) records are kept of the strategic decisions made at those meetings;

- (d) the members of the decision-making body, as a whole, have the necessary knowledge and expertise to discharge their duties; and
- (e) the records of the partnership, including the records referred to in subparagraph (c), are kept in Barbados.

4.1.5. Penalties

29. All penalties as detailed in the ESA are applicable to partnerships. However, it is acknowledged that section 10(8) of the ESA is not directly applicable to all partnerships as there are no relevant striking-off provisions and this inapplicability of the striking-off provision to partnerships will be one of the factors taken into account by the Director when exercising any discretion as to the amount of penalties to impose in each circumstance. This may result in the application of higher penalties up to and including penalties not exceeding the maximum of \$300,000.00 as prescribed by the ESA, on partnerships deemed to be in breach of the ESA.

30. However, with respect to foreign partnerships registered as external companies for the purposes of the Companies Act, Cap. 308, such registration of partnerships may be suspended or revoked pursuant to the powers of the responsible Minister thereunder.

4.1.6. Liability of Partners

31. Liability of partners with respect to general partnerships and limited partnerships is in accordance with the liability provisions of the *Partnerships Act*, Cap. 313 and the *Limited Partnerships Act*, Cap. 312, respectively.

32. Any requirement in the ESA for a general partnership to take an action is a requirement for the general partners in the partnership to take that action, and all general partners are liable jointly and severally for any penalty resulting from a failure for the action to be taken in accordance with the liability provisions of the *Partnerships Act*, Cap. 313.

33. Any requirement in the ESA for a limited partnership to take an action is a requirement for the general partners in the limited partnership to take that action as limited partners generally do not take part in the management of the partnership business and do not have power to bind it. However, in circumstances where a limited partner takes part in the management of the partnership business, he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner in accordance with the liability provisions of the *Limited Partnerships Act*, Cap. 312.

5. TAX RESIDENT OUTSIDE BARBADOS

34. A company incorporated in Barbados is not regarded as a resident company for the purposes of the ESA if it is tax resident outside Barbados.

35. Likewise, a company incorporated outside of Barbados, that is registered in Barbados as an external company is not regarded as a resident company if it is tax resident outside Barbados. The Director will regard a company, an external company and a branch of a resident company as tax resident outside Barbados if such company is subject to tax on the income from a relevant activity in another jurisdiction with a corporate tax system. The Director will require any such company claiming to be tax resident outside Barbados to produce satisfactory evidence to substantiate the same and that it is compliant with the tax requirements of such jurisdiction.

36. Such evidence should include evidence of its tax residence in that jurisdiction and evidence that an appropriate tax return has been submitted to the relevant tax authority of that jurisdiction in relation to the relevant activity. In the absence of such evidence, the Director will regard any such company as a resident company that is subject to the ESA.

37. In this context, a "branch" refers to a business unit or division of the resident company that is not a separate legal person from the resident company. An external company, or branch of a resident company carrying on a relevant activity in a jurisdiction with economic substance legislation shall not be considered to be a resident company.

38. For the purpose of the application of these Guidelines, an entity which is incorporated in Barbados but which is not tax resident in any other jurisdiction shall be treated as a resident company.

6. LIQUIDATION OR OTHERWISE CEASING TO CARRY ON RELEVANT ACTIVITIES

39. A resident company will, so long as it exists, continue to have any obligations which the ESA imposes on it. Liquidators (or equivalent) must ensure that the resident company continues to satisfy all of its obligations under the ESA. If a resident company is in liquidation, winding up or other equivalent process, it must continue to satisfy the ES Test for any period during which it carries on relevant activities. Reporting will be required with respect to any period during which the resident company earns income derived from carrying on relevant activities.

7. THE ECONOMIC SUBSTANCE TEST ("ES TEST")

7.1. Test of Direction and Management

40. An entity which is a resident company for the purposes of the ESA will have to comply with the requirement to be directed and managed in Barbados. The entity will be deemed to be managed and directed in Barbados where-

- (a) its board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors;
- (b) meetings of the board of directors are held in Barbados at adequate frequencies given the level of decision making required;
- (c) there is a quorum of directors physically present in Barbados during the meetings described in (b) above;
- (d) the minutes of those meetings record the making of strategic decisions of the relevant entity at the meeting; and
- (e) it keeps all such director meeting minutes and appropriate records in Barbados.

41. The directed and managed test is designed to ensure that there is an adequate frequency of board meetings held and attended in Barbados (although it is not necessary for all meetings to be held in Barbados).

42. What constitutes an adequate frequency of meetings in Barbados will be dependent on the relevant activities of the relevant entity.

43. The test also looks to ensure that the associated minutes and records are kept in Barbados and that the board is a decision-making body with the appropriate knowledge and experience. In the case where there are corporate directors, the requirements will apply to the individual(s) (officers of the corporate director) actually performing the duties.

7.2. Compliance with the ES Test

44. A resident company must satisfy the ES Test in relation to any income derived from relevant activities which it carries on.

45. A resident company is subject to the ESA from the date on which the resident company commences the relevant activity. Please refer to Section 2 for further guidance in this regard.

46. A resident company that carries on a relevant activity, but which derives no income is not obliged to meet the requirements of the ES Test. This scenario could arise in cases where a company was incorporated and remained dormant or where a company is in its final stages of liquidation and therefore earning no income. Such a company is however still required to file an ES Declaration. There is an expectation that carrying on relevant activities will result in the generation of income and if there is any indication that a resident company is seeking to manipulate/artificially suppress its income to avoid the substance requirements, action will be taken by the Director in accordance with the legislation.

7.3. Reduced ES Test

47. There is a reduced ES Test for single purpose equity holding companies, as described below under the heading "single purpose equity holding company".

48. A company which is beneficially owned or controlled by residents of Barbados that is not part of a MN Group, and carries on a relevant activity exclusively in Barbados and derives income solely from such relevant activities; shall not be required to provide any other documents or additional information unless as specifically required to do so by the Director.

7.4. Compliance Timeline for Grandfathered Resident Companies

49. A grandfathered resident company shall not be required to comply with the ESA until 1 January 2021, even where provisions of the ESA contain requirements or criteria that are described as necessitating "historical compliance". A grandfathered resident company must demonstrate that it is in compliance and complies with the provisions of the ESA from 2 January 2021 onwards.

7.5. Core Income Generating Activities (CIGA)

50. CIGA means activities that are of central importance to a resident company in terms of generating income and, if carried on in respect of a relevant activity, must be carried on in Barbados. A resident company must conduct the appropriate elements of CIGA. The elements listed in the definition of CIGA in relation to each relevant activity are necessary to generating income and are not exhaustive. It is a question of fact in each case as to which activities are actually undertaken to generate income. The assessment of economic substance in Barbados will include careful consideration of which CIGA are being undertaken by the resident company in Barbados.

51. "Outsourcing" describes the manner in which a resident company is permitted to outsource its CIGA and clarifies that there are no restrictions on outsourcing activities that are not CIGA.

7.6. Interpretation of "Adequate"

52. The Director's guidance is that in each case "adequate" shall mean "as much or as good as necessary for the relevant requirement or purpose".

53. What is adequate for each resident company will be dependent on the particular facts and circumstances of the resident company and its business activity. As such, the directors (or equivalent) of each resident company should address their minds to these questions and make their determination in good faith. A resident company must ensure that it maintains and retains appropriate records to demonstrate the adequacy of the resources utilized and expenditures incurred.

54. The application of these words to a particular type of relevant activity may be included in the section below headed "Sector-Specific Guidance on Relevant Activities".

55. Given the stringent regulatory requirements in Barbados, which result in significant overlap with the substance requirements, it is expected that relevant entities licensed to carry on banking business, insurance business or licensed fund management business will already generally be operating in Barbados with adequate resources and expenditure. However, those relevant entities will still be subject to the ESA.

56. Adequate physical assets include but are not limited to maintaining an appropriate place of business or plant, property and equipment.

7.7. Relevant Activities Conducted by Any Other Person ("Outsourcing")

57. A resident company may satisfy the ES Test in relation to a relevant activity if its CIGA in relation to that relevant activity is conducted by any other person in Barbados and the resident company is able to monitor and control the carrying out of the CIGA by that other person. This monitoring by the resident company must be conducted in Barbados.

58. Only that part of the relevant activity of that other person which is attributable to generating income for the resident company shall be taken into account in considering whether the resident company satisfies the ES Test.

59. That is, the ESA does not prohibit a resident company from outsourcing some or all of its activity. Outsourcing, in this context, includes outsourcing, contracting or delegating to third parties or to entities in the same group.

60. However, if some or all of the CIGA is outsourced, the resident company must be able to demonstrate that it has adequate supervision of the outsourced activities and that those CIGA are undertaken in Barbados.

61. Where CIGA are outsourced, the resources of the service provider in Barbados will be taken into consideration when determining whether the employees and physical assets test is met. The employees of the service provider can be counted for the purpose of identifying the employees of the resident company used to satisfy the ES Test. This must be verified to ensure that only the portion of full time equivalent employee time directly used in the service of the resident company is counted.

62. There must be no double counting if the services are provided to more than one resident company carrying out relevant activities.

63. The resident company remains responsible for ensuring that accurate information is reported on its declaration and this will include precise details of the resources employed by its service providers, for example based on the use of timesheets.

64. Where there are corporate directors, these will be looked through, to the individuals (officers of the corporate director) actually performing the duties of the director.

65. A resident company may outsource activities which are not CIGA to service providers which are located in or outside Barbados. Such activities may include, for example, back-office functions, IT, payroll, legal services, or other expert professional advice or specialist services provided, in each case, they are not of central importance to the resident company in terms of generating income in respect of a relevant activity.

66. Resident companies that are conducting banking business, insurance business, and fund management business will be subject to the industry specific guidance in addition to the principles set out above under the ESA.

67. Where a company fails to meet the ES test due to an inadequate number of employees who are physically present in Barbados, only minor breaches thereof can benefit from the first notice without financial penalty procedure.

7.8. Employees

68. Directors should be counted as a fraction of a full time employee commensurate with the time commitment of the role, and to the extent that they are performing the relevant CIGA for the business.

69. The qualifications that are considered to be adequate will depend on the relevant sector that the company has activity in, the CIGA and the duties performed by those employees. Qualifications taken into account could include academic qualifications, vocational qualifications, relevant industry technical qualifications and also qualification by relevant experience.

8. SECTOR-SPECIFIC GUIDANCE ON RELEVANT ACTIVITIES

8.1. Holding Companies

8.1.1. Single Purpose Equity Holding Company

70. A “single purpose equity holding company” means a resident company that only holds equity participations in other entities and only earns dividends and capital gains.

71. A resident company meets the criteria to be regarded as a single purpose equity holding company when it passively receives income from that activity alone.

72. If a resident company meets the criteria to be regarded as a single purpose equity holding company, the placing of dividend monies received on deposit or using them to acquire and passively hold other securities such as government bonds, will not constitute a “relevant activity” and therefore the company will still be regarded as a single purpose equity holding company. In order to ensure that a Single Purpose Equity Holding Company is not carrying on any relevant activity other than the holding of equity interests; a single purpose equity holding company is required to specify its type of income by uploading to the ES Portal, its corporate income tax return together with any other relevant details on its financial information (eg. Financial Statements).

8.2. Holding Companies Carrying on Other Relevant Activities

73. A resident holding company which derives any income from any other relevant activities must meet the substance requirements applicable for any other relevant activity.

74. If the resident company provides senior management, takes responsibility, control or provides substantive advice in respect of material risks to companies it controls, then it will not be a single purpose equity holding company. The resident company could be considered to carry on the activity of providing headquarters services.

8.3. Intellectual Property (“IP”) Business

75. For the purposes of the ESA, the term “intellectual property asset” includes any right from which identifiable income accrues to the business (i.e. such income being separately identifiable from any income generated from any tangible asset in which the right subsists) and includes royalties and gain on the sale of an IP asset. That is, the term does not apply to a business which owns intellectual property merely as an adjunct to its business. This means that the term IP asset does not include IP which is incidental and not exploited directly by the business.

76. With respect to core income generating activities for patents and similar assets:

- research and development activities include but are not limited to: advancing the understanding of scientific relations or technologies, addressing known scientific or technological obstacles, increasing knowledge or developing new applications.

77. With respect to core income generating activities for marketing intangibles including trademarks:

- marketing, branding and distribution activities should be directly linked to the specific IP asset.

78. The requirements of the ESA would not be met by merely passively holding IP assets and/or having periodic meetings of board members.

79. A resident company that is carrying on high risk IP business is presumed not to have met the ES Test for a fiscal period, even if there are CIGA relevant to the business and the IP assets being carried out in Barbados. A resident company may rebut this presumption if it can produce materials to the Director which demonstrate that there is, and historically has been, a high degree of control over the development, exploitation, maintenance, protection and enhancement (also referred to as "DEMPE") of the IP asset, exercised by an adequate number of suitably qualified employees who are physically present and perform their functions from within Barbados or who are on long-term contracts.

80. For the purposes of section 6(5) sufficient information which must be filed together with the Economic Substance Declaration includes the following:

- (a) detailed business plans which demonstrate the commercial rational for holding the IP assets in the jurisdiction;
- (b) employee information, including level of experience, type of contracts, qualifications and duration of employment;
- (c) evidence that decision making is taking place within Barbados; and (d) any other information as may be reasonably required.

8.4. Shipping Business

81. The OECD recognizes that "around the world, shipping companies appear to be dealt with as a special case in that they are treated particularly favourably by the tax systems of many countries, including those of OECD member countries¹."

¹ The OECD Project on Harmful Tax Practices – Consolidated Application Note – Guidance In Applying The 1998 Report to Preferential Tax Regimes;

82. Under the ESA, "Shipping business" means any of the following activities involving the operation of a ship anywhere in the world, other than solely within the Exclusive Economic Zone of Barbados

- (a) The business of transporting by sea person, animals, goods or mail;
- (b) the hiring or chartering of ships for the purpose set out in paragraph (a);
- (c) the sale of travel tickets or equivalent and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or hire of containers, including trailers and other vehicles or equipment for the transport of containers used for the transport of anything by sea; and
- (e) the management of the crew of the ship;

83. A Ship² shall be defined by reference to the *Shipping Act*, Cap. 296 but shall exclude:

- a fishing boat³
- a Caribbean trade ship⁴
- a near coastal trade ship⁵
- a Barbadian ship⁶
- a passenger ferry⁷

² "ship" means every description of vessel used in navigation which is not propelled by oars and in Parts II and VII includes every description of lighter, barge or like vessel however propelled; and a "vessel" includes any ship or boat used in navigation;

³ "fishing boat" means a vessel used or intended to be used in capturing fish for gain;

⁴ "Caribbean trade ship" means a vessel engaged in a voyage commencing from within the near coastal trading area or Caribbean trading area during which the vessel proceeds beyond the limits of the near coastal trading area but does not proceed beyond the limits of the Caribbean trading area;

⁵ "near coastal trade ship" means a vessel engaged in a voyage or voyages commencing from within the near coastal trading area, to, from or between locations within the limits of the "near coastal trading area" which means an area of the Eastern Caribbean as set out in the regulations regarding certificates made under section 86;

⁶ "Barbados ship" means a vessel registered under Part I;

⁷ "passenger ferry" means a ship that is used to transport more than 12 passengers,

- i. within the Exclusive Economic Zone of Barbados,
- ii. within the Exclusive Economic Zone of Barbados from a port in Barbados to a port in another state, within the Exclusive Economic Zone of Barbados from a port in another state to a port in Barbados;

- a small commercial vessel⁸
- any other ship that operates solely within the Exclusive Economic Zone of Barbados

And shall include:

- a cargo ship⁹
- a foreign ship¹⁰
- a foreign going ship¹¹
- a passenger ship¹²

84. A resident company must operate one or more ships in international traffic, for the transport of either passengers, cargo or both to be regarded as carrying on a relevant activity.

85. Where a resident company also carries on other activities, such activities will be treated as a relevant activity, but only if these activities are undertaken in connection with its trade of operating ships in international traffic, as outlined above.

86. These other activities include:

- the rental on a charter basis of other ships
- the sale of tickets or similar documents
- the use, maintenance or rental of containers

87. A resident company which undertakes any of these other activities where the company does not also operate a ship, or ships, in international traffic is not within the scope of relevant shipping activity.

88. The chartering of ships on a bareboat basis¹³ does not fall within this sector because the company which charters the ship is not operating the ship, however the bareboat charter may fall within the financing and leasing activity.

⁸ "small commercial vessel" means a vessel that is less than 150 gross tons, is registered in Barbados and operates within the Exclusive Economic zone of Barbados;

⁹ "cargo ship" is any ship which is not a passenger ship;

¹⁰ "foreign ship" means a vessel that is not a Barbadian ship;

¹¹ "foreign-going ship" means a ship which is neither a near coastal trade ship nor a Caribbean trade ship;

¹² "passenger ship" is a ship which carries more than 12 passengers (outside the Exclusive Economic Zone of Barbados);

¹³ Shipping Act Section 2 (1) (e) "bareboat chartered" means leased without master and crew and for a given period of time;

89. Core Income Generating Activities (CIGA) for Shipping:

- **'managing crew'** includes compliance with the Maritime Labour Convention, 2006.
- **'overhauling and maintaining ships'** includes procuring and/or overseeing the overhauling and/or maintenance of ships.
- **'overseeing and tracking deliveries'** includes the logistical aspects of the transportation of cargo.
- **'determining what goods to order and when to deliver them'** are the activities used to determine how a ship is to be utilised, the types of cargo acceptable and the scheduling of voyages with the delivery of such cargos, and ensuring any contingency arrangements are in place.
- **'organising and overseeing voyages'** includes the logistical aspects of the operation of ships, determining which routes to use, when and making adequate contingency arrangements. These activities can be carried out by an agent, manager or the master¹⁴ of the ship.

90. The Director will consider whether activities which may appear to fall within the CIGA as listed above, do in fact constitute a shipping business, or whether they are merely incidental to what is properly regarded as a different kind of business.

91. The Director will regard a company, an external company and a branch of a resident company as tax resident outside Barbados if such company is liable to tax on the income from a relevant activity in another jurisdiction. For example, where a company carrying on shipping as a relevant activity submits evidence to the Director that it is liable to a tonnage tax regime in a jurisdiction outside of Barbados in respect of its shipping activity, the Director may regard that company as being tax resident outside Barbados.

92. A resident company which carries on the business of a general travel agent and merely sells tickets for passenger cruises as part of that business shall not be regarded as carrying on shipping business.

93. A resident company which manufactures goods for export and arranges for those goods to be dispatched by sea, in containers or otherwise as part of that business shall not be regarded as carrying on shipping business.

94. A resident company which owns and runs an international shipping pool and acts as an agent for the ship-owners participating in the pool and does not, itself, charter in or out the ships, takes no economic risk and does not operate any ships in

¹⁴ "master" includes every person having command or charge of a ship other than a pilot;

that regard, this would not constitute shipping business.

8.5. Financing and Leasing Business

95. The definition encompasses any company which offers credit or financing of any kind for consideration, such as loans, hire purchase agreements, long term credit plans, and finance leases in relation to assets other than land. This includes intra-group financing.

96. The scope also extends to the situation where a loan advanced for consideration by one company, which is within the scope of this sector, is transferred to a different company which then receives the loan capital repayments and consideration.

97. The scope does not extend to cases where credit is offered and there is no expectation of consideration from the credit when providing it. A lending fee would be consideration, whereas the grant of security in favour of the lender would not constitute consideration.

98. The scope does not extend to cases where the company has purchased debt securities as an investment, as opposed to providing a credit facility, for example, where the company has purchased government bonds, quoted bonds or similar securities which are actively traded on one of the major security exchanges.

99. In banking, insurance and fund management businesses it may be a normal part of their activities to provide credit, and so these sectors are excluded from being within the scope of financing and leasing, to prevent duplicate reporting.

100. 'Setting the terms and duration of any financing or leasing' includes the financial terms, the parameters as to acceptable counterparties, the amounts, rates of interest, the legal agreements and the period for which financing or leasing is to be provided.

101. 'Monitoring and revising any agreements' includes the acquisition of data about a borrower or lessee (or group of them), testing against covenants, extending durations of loans, and feeding back into decision making on writing new terms.

102. "Managing risk" includes instigating debt collection, considering spreading of risk across sectors or consumer groups. In leasing it includes monitoring and maintaining the underlying assets.

8.6. Insurance Business

103. The ESA definition of insurance encompasses companies which undertake insurance business in or from Barbados as an insurer, in both the life and non-life sectors, and this includes reinsurance.

104. CIGA with respect to every type of relevant activity means activities that are of central importance to a relevant entity in terms of generating relevant income and must be carried on in Barbados. The ESA sets out a list of CIGA for insurance which are described below:

- predicting and calculating risk, which includes oversight of the determination of the quantification and likelihood of the insured event occurring;
- insuring or reinsuring against risk, which includes the providing of contracts of insurance and reinsurance under the Insurance Act; or
- providing client services, which includes taking strategic decisions regarding the commissioning of client services related to insurance and ensuring oversight of systems and processes put in place for the provision of support services.

105. The business of insurance brokers, managers and other intermediaries which may provide services to insurers, but which are not themselves insurers does not fall within the definition of insurance business. Such companies may however be required to file an ES declaration if they conduct another relevant activity.

106. Other examples of CIGA may include:

- Preparing reports or returns, or both to investors or FSC. These reports may include:
 - Preparation of regulatory filings to FSC under the Insurance Act; and
 - Ensuring that the systems and processes are in place to ensure that the company is able to effectively discharge its obligations accurately to convey its regulatory position.

8.6.1. Outsourcing

107. The Insurance Act requires a Class 1 or 2 insurer including one which is not self-managed, to appoint an insurance manager in Barbados. For the purposes of satisfying Economic Substance, all records including those documenting outsourcing arrangements must be maintained at the insurance manager's place of business in Barbados or at another location approved by the FSC.

108. It is possible for a relevant entity which is licensed as an insurance company to satisfy the ES Test in relation to the ESA on the basis contemplated by outsourcing performance of its CIGA in Barbados to its FSC-licensed insurance manager. In this situation, the insurer should authorise and direct the insurance manager to perform the insurer's CIGA in Barbados pursuant to the management agreement between the

insurer and the insurance manager or a resolution of the board of directors of the insurer. Relevant entities carrying on insurance business should review their existing management agreements to ensure the substantial activities requirement is satisfied.

8.6.2. Role of the Actuary

109. A licensed insurance company

- underwriting long term insurance business:
 - must appoint an actuary, under Section 45 of the Insurance Act, and
 - in respect of a Class 2 licensee the rate of premium chargeable under the insurance policies must be approved by the actuary, as suitable for the class of policy and
 - in respect of a Class 1 licensee the rate of premium chargeable under the insurance policies are set by the company and does not need to be approved by the actuary.
- underwriting general insurance businesses:
 - are not required to appoint an actuary, under Section 45 of the Insurance Act, and
 - the rate of premium chargeable under the insurance policies are set by the company

8.6.3. Tax resident outside of Barbados

110. An insurer that demonstrates to the Director that it is tax resident outside of Barbados is not considered to be a relevant entity for the purposes of the ESA. Further information on this exemption is outlined in the Guidelines (Section 5). For example, where a Barbados insurance company makes an irrevocable tax election under Section 953(d) of the Internal Revenue Code to be taxed as if it were a US corporation, the Director will consider the entity as tax resident outside of Barbados if satisfactory evidence is provided.

111. The Director understands that when the 953(d) election is made, the Barbados insurance company is required to file an annual US insurance company income tax return directly with the IRS and pays income tax as appropriate. This filing and/or proof of payment of income tax will be satisfactory evidence to demonstrate that it is tax resident outside of Barbados. The Director understands that this may present a timing difficulty and will accept the prior year tax return where the current year tax return is not yet available. Other evidence may include a Tax Identification Number or tax residence certificate.

112. A Segregated Cell Company ("SCC") or an Incorporated Cell Company ("ICC") typically does not make the 953(d) election for the entire SCC or ICC. However, the core and each SCC or ICC may individually make its own election. Each SCC or ICC which is in scope for purposes of the ESA will be required to notify the Director of which of its cells or the core have made the 953(d) election, and which have not. The ESA will apply and the ES Test will need to be met in relation to any insurance business conducted by the core or any cell(s) which have not taken a 953(d) election or are not otherwise tax resident.

8.7. Distribution and Service Centre

113. The definition encompasses companies which purchase raw materials and finished products from other non-resident members of the same group/connected persons and re- sell them for a profit.

114. The definition also encompasses companies which provide services, consulting or other administrative services, to other non-resident members of the same group/connected persons.

115. The scope does not extend such activities to cases where a company purchases raw materials and finished products from, or provides services to third parties.

116. In banking, insurance, fund management, financing and leasing, shipping or headquartering businesses it may be a normal part of their activities to provide such services, and so these activities are excluded from being within the scope of distribution and service centre, to prevent duplicate reporting.

9. HEADQUARTERING

117. The definition encompasses companies which provide headquarters services to other nonresident members of the same group/connected persons. The definition also encompasses services provided from within Barbados. A headquarters will take responsibility for the overall success of the group, or an important aspect of the group's performance, and ensure corporate governance. Such headquarters services include:

- the provision of senior management;
- taking responsibility or control of material risk for activities carried out by, or assets owned by, any of those persons; or
- the provision of substantive advice in relation to such risks.

118. In banking, insurance, fund management, financing and leasing, shipping or distribution and service centre businesses it may be a normal part of their activities

to provide headquarters services, and so these activities are excluded from being within the scope of Headquarters, to prevent duplicate reporting.

10. DIRECTORS' FUNCTIONS

10.1. Determination of Whether ES Test is Satisfied

119. The Director will take a “principles-based” approach to determining whether or not a resident company has satisfied the ES Test with respect to its relevant activities. This Guidance does not prescribe a minimum/maximum number of full-time employees or other personnel for a particular level of income either generally or for any particular type of relevant activity because that would be arbitrary and would prove uneconomical in many cases.

120. For the purpose of conducting an assessment, the Director may consider various factors, including the following:

- (a) CIGA are of central importance in terms of generating income and must be carried out in Barbados;
- (b) such activities for a resident company may naturally fluctuate during the course of a fiscal period and from one fiscal period to the next with the result that what is an adequate level of employees/personnel may not be constant during the period or periods;
- (c) the Director may consider timesheets or other evidence of relevance when assessing whether a resident company has an adequate number of full-time employees or other personnel with appropriate qualifications or experience in Barbados;
- (d) the directors (or equivalent) of a resident company may sometimes perform CIGA in addition to performing their fiduciary duties for the resident company and thereby reduce or even eliminate the resident company's practical need for full-time employees or an outsourcing arrangement. In these cases, the Director may consider evidence of the CIGA performed by the directors (or equivalent) in Barbados.
- (e) the Director will need to take outsourcing activity into account in making its determination as to whether a resident company meets the ES Test, and this may include:
 - (i) identifying cases where outsourcing has taken place;
 - (ii) verifying the accuracy of reports of employee numbers attributable to a resident company where this includes employees of a service provide (rather than counting all employees of a service provider for each entity that engages the

service provider);

- (iii) verifying if outsourcing of CIGA has taken place outside Barbados; and
- (iv) distinguishing cases of genuine outsourcing of non-core activities.

10.2. Sharing of Information

121. It should be noted that the Director is required to automatically and systematically provide full details of relevant information to the Competent Authority for spontaneous exchange when the company in question is non-compliant, a high-risk intellectual property company or a company claiming tax residence outside of Barbados.

10.3. Requests for Information

122. The Director may at any time give notice requiring the provision of additional documents and information, whether in electronic form or otherwise, as the Director requires for the purpose of exercising functions under the ESA including for the purpose of:

- (a) determining whether a resident company has passed or failed the ES test; and
- (b) having information on a company readily available for exchange in the event that exchange of such information becomes necessary.

123. These Barbados Economic Substance Guidelines are hereby re-issued by the Director, International Business, Ministry of International Business and Industry on October 18, 2023.



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SANGENE WATKINS-DIAGNE
Director, International Business (Ag.)

11. GLOSSARY

Terms which are defined in the ESA shall have the same meanings in the guidance. Further the following terms when used in the Guidance shall have the meanings following:

“carrying on business in Barbados” means carrying on a trade or business from in Barbados ;

“competent Director” means, for each respective jurisdiction, the persons and authorities authorised pursuant to a scheduled agreement ;

“Consolidated Financial Statements” has the meaning given to that expression by section 2(1) of the *Tax Information Director (International Tax Compliance) (Country-By- Country Reporting) Regulations, 2017* ;

“Constituent Entity” has the meaning given to that expression by section 2(1) of the *Tax Information Director (International Tax Compliance) (Country-By- Country Reporting) Regulations, 2017*;

“director”, in relation to an entity, means any director, officer, member or other person in whom the management of the entity is vested and “board of directors” shall be construed accordingly;

“the Director” means the Director of the International Business Unit for the purposes of the ESA. The Director’s functions under the ESA include administering the ESA, determining whether a resident company satisfies the ES Test in respect of its relevant activities, monitoring compliance with the ESA and sharing information with other competent authorities;

ES test means **“economic substance test”** and shall be construed in accordance with section 5 of the ESA;

“ESA” means the *Companies (Economic Substance) Act, 2018*;

“ES Portal” means the electronic portal to be developed by the Director for the purpose of receiving notifications and reports from resident companies to facilitate the Director performing its statutory functions under the ESA and ES Regulations, including the sharing of information with other competent authorities;

“ES Regulations” means regulations made by the Minister under the ESA. **“income”** means gross income as recorded in its books and records under the relevant accounting standards;

“grandfathered” when used in respect of a resident company shall mean a resident company which has applied to the relevant Director under any of the following statutory provisions:

section 20(a) of the *Insurance (Amendment) Act, 2018* (Act 2018-52);

section 35(1) (a) of the *Financial Institutions (Amendment) Act, 2018* (Act 2018-51);

section 3(1) of the *International Business Companies (Repeal) Act, 2018* (Act 2018-40);

section 6(1) of the *Societies with Restricted Liability (Amendment) Act, 2018* (Act 2018-47);

“group” means a collection of companies and/or enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the companies and/or enterprises were traded on a public securities exchange;

“Public Director” means a person who exercises the duties of a custodian, receiver, judicial manager, public trustee or otherwise in respect of the administration of the affairs of a resident company under the authority of law;

“Registrar” means

- (a) in the case of a company that is incorporated or registered under the *Companies Act*, Cap. 308 has the meaning given to that expression by section 2 of that Act; and
- (b) in the case of a society with restricted liability that is organised or registered under the *Societies with Restricted Liability Act*, Cap. 318B has the meaning given to that expression by section 2 of that Act;

“ultimate holding company” means a Constituent Entity of a Group that meets the following criteria –

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other Constituent Entity of the Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.