

BAHAMAS: COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018 (“CESRA”)

Under the Commercial Entities (Substance Requirements) Act, 2018 (“CESRA”), legal entities formed or registered in the Bahamas are required to have economic substance in the Bahamas.

Which entities will be affected?

The CESRA applies to certain companies registered in the Bahamas carrying on “relevant activities”.

What activities are covered?

Legal entities carrying on any “relevant activities” will be required to satisfy an economic substance test. Relevant activities include the following types of business/business activity:

- Banking Business
- Fund management Business
- Insurance Business
- Intellectual property Business
- Shipping Business
- Finance and leasing Business
- Headquarters Business
- Distribution and service center Business
- Any holding company engaged or where one or more of its subsidiaries is engaged in one of the activities listed above.

Test for Relevant Activity:

An entity which carries on more than one relevant activity must comply with the economic substance requirements and must satisfy the economic substance test which is:

- A. Is the entity of a type which falls within the economic substance legislation?
- B. Is it carrying on a relevant activity?
- C. If it is carrying on a relevant activity, is it resident for tax purposes in a jurisdiction outside the Bahamas.

Only if the answers to (A) and (B) are affirmative and the answer to (C) is negative will the economic substance requirements apply to the entity.

Legal entities that fall within the scope of the Bahamas Law must notify their registered agent in the Bahamas of any relevant activities they carry on as well as certain other prescribed information.

Economic Substance Test

Subject to below, in order to meet the Economic Substance Test, a legal entity carrying on a relevant activity must:

- conduct core income generating activities (“CIGA”) in The Bahamas;
- be directed and managed in The Bahamas; and
- taking into account the nature and scale of the relevant activity, have:
 - an adequate number of suitably qualified full time employees;
 - an adequate amount of expenditure incurred in The Bahamas; and
 - appropriate physical offices for CIGA.

It is possible to outsource some or all of The Bahamas CIGA provided the legal entity is able to demonstrate that it is able to monitor and control the outsourced activities and that those activities are undertaken in The Bahamas.

- The legal entity may demonstrate Management and Control in The Bahamas if it satisfies the following criteria
- An adequate number of meetings of the board of directors are conducted in The Bahamas given the level of decision making required.
- There is a quorum of the board of directors physically present within The Bahamas during the meeting of the board of directors.
- Strategic decisions of the included entity made at the meetings of the board of directors must be recorded in the minutes of the meetings.
- All included entity records and minutes are to be kept in The Bahamas.
- The board of directors, as a whole, has the necessary knowledge and expertise to discharge its duties.

What is a non-included entity?

A non-included entity is one that is:

- a tax resident in another jurisdiction and centrally managed outside of The Bahamas, even if it conducts a relevant activity;
- not engaged in a relevant activity itself or by any of its subsidiaries;
- owned by residents and centrally managed in The Bahamas, even if it conducts a relevant activity.

How an entity claims to be tax resident in another jurisdiction?

As per the Guidelines, the tax residency test may be satisfied by the entity providing the following documents to the Ministry of Finance of The Bahamas:

- tax identification number issued by a foreign jurisdiction;
- tax resident certificate issued by a foreign jurisdiction;
- official receipt or statement issued by a foreign tax authority;
- certification by the entity that the majority of meetings of the Board of Directors or controlling persons took place in a foreign jurisdiction;
- the ordinary residence of the majority of the Board of Directors or controlling persons.

This certification of foreign tax residence must be filed by the entity as part of its annual filing requirements.

What are the penalties?

An administrative penalty of \$150,000 for failing to comply with the requirements of CESRA with a possible further administrative penalty of \$300,000 and in certain circumstances the entity concerned being struck off of the Registrar of Companies.

How can we help?

In order to assist you in complying with this law, please we shall provide you with a CESRA DECLARATION FORM which must be duly completed and returned to our offices for review and approval.

If and when applicable, we will ask you to provide further information or evidence showing the legal entity is non-resident for tax purposes in The Bahamas.

For complex situations where legal advice is necessary to confirm if a legal entity must establish and demonstrate Economic Substance in The Bahamas, Quijano & Associates can assist you by obtaining a bespoke legal opinion from a law firm in The Bahamas.

What is the time period for compliance with CESRA?

We shall provide you shortly with our CESRA DECLARATION FORM including deadlines in which information needs to be received.

Compliance and Filing Fees

Our annual fees to guide our clients accordingly with the classification of their companies and ensuring the updated information is duly filed with the Ministry of Finance of The Bahamas shall amount to US\$600.00 which shall be included in our annual maintenance invoices as of 2020.

Further Information/Whom to Contact

For further information or clarification, please do not hesitate to contact us at quijano@quijano.com

Si usted desea consultar esta información en español, favor hacer clic en el siguiente enlace:

[BAHAMAS CESRA ESPAÑOL](#)