



PORTCULLIS NEWS

MCI (P) 019/06/2018

5 March 2019

FOLLOW UP ON THE CAYMAN ECONOMIC SUBSTANCE REQUIREMENTS

Further to our Newsletter of 28 January 2019 on the Cayman Economic Substance requirements ("ES Requirements"), we inform that the final version of the Guidance Notes was issued on 22 February 2019.

You may download a copy of the Guidance Notes here

https://www.portcullis.co/pdf/KY_Economic_Substance_Guidance_v1.0.pdf.

We note that Investment Funds, entities tax resident outside the Islands and Domestic entities do not come within the meaning of "Relevant Entities" and therefore are not required to comply with the ES Requirements.

Entities tax resident outside the Islands will be required to substantiate such claims by producing satisfactory evidence such as a Tax Identification Number, Tax Residence Certificate and assessment or payment of a tax liability.

Pure Equity Holding Companies (means a company that only holds equity participations in other entities and only earns dividend and capital gains) are subject to a reduced ES requirements and in this respect, it will be considered as having met the ES requirements if:-

1. It has complied with all applicable filing requirements under the Companies Law (2018 Revision); and
2. It has adequate human resources and adequate premises in the Islands for holding and managing equity participation in other entities

What amounts to adequate human resources and adequate premises is not as yet entirely clear although "Adequate" in the Guidelines has the meaning of "suitable or fitting for a particular purpose, person, occasion". Whether a relevant entity has adequate human resources and premise is ultimately dependent on facts of the relevant entity and its business activity and it will be the responsibility of the relevant entity to ensure it maintains and retains appropriate records to demonstrate the adequacy of the resources.

The Guidelines provide that a relevant entity may outsource either some or all of its activity to its service provider but must be able to demonstrate that it has adequate supervision over the outsourced activity. The guidelines clearly state that there must be no "double counting" in this regard.



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Portcullis is currently seeking advice to clarify how the ES requirements may be met for Pure Equity Holding companies. In the interim, we strongly advise entities to identify its activities and determine if they fall within the definition of "Relevant Entity". If so, the relevant entity needs to consider how it will meet the ES requirements. Entities are also advised to take note of the notification and reporting requirements outlined on pages 26 and 27. Please do not hesitate to approach us should you require assistance with preparation of accounts.

Portcullis are working towards assisting you with compliance of the requirements. Please do not hesitate to contact your relationship manager should you require further information.



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