

**THE EXCHANGE OF INFORMATION UNIT**



**Turks and Caicos Islands**

**GUIDANCE NOTES ON THE COMPANIES AND LIMITED  
PARTNERSHIPS (ECONOMIC SUBSTANCE) ORDINANCE  
2018**

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These Guidance Notes are issued in accordance with section 24 of the Companies and Limited Partnerships (Economic Substance) Ordinance 2018 (together with the accompanying Regulations 2018 “**ESO**”) by the Exchange of Information Unit as the Competent Authority.

It should be noted that these Guidance Notes do not have the force of law. If you are in doubt as to your obligations under the law, independent professional advice should be sought.

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## A. GENERAL

### 1. Background

The Organisation for Economic Co-operation and Development's ("OECD") and G20 countries adopted a 15-point Action Plan to address Base Erosion and Profit Shifting in September 2013. The Action Plan identified 15 actions along three key pillars: 1) introducing coherence in the domestic rules that affect cross-border activities, 2) reinforcing substance requirements to the existing international standards, and 3) improving transparency as well as certainty. The measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. The OECD Forum on Harmful Tax Practices ("FHTP") is the body that sets the global standard that requires companies to have substantial activities in a jurisdiction.

There are currently 135 jurisdictions that are members of the OECD/G20 Inclusive Framework on BEPS. The FHTP is the sub-body of the Inclusive Framework, and is responsible for assessing and monitoring the substantial activities standard for all member jurisdictions.

In 2017, the Turks & Caicos Islands joined the Inclusive Framework on BEPS. As a Member, Turks & Caicos is required to implement and support the review of the four BEPS minimum standards on harmful tax practices, tackling tax treaty abuse, country-by-country reporting, and improvements to cross-border tax dispute resolution mechanisms.

Base Erosion and Profit Shifting ("BEPS") is an OECD initiative which refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. These schemes undermine the fairness and integrity of tax systems, as businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level.

Action 5, which the Turks & Caicos Islands has committed to the FHTP, relates to delivering three outputs: first, finalisation of the review of member country preferential regimes; second, a strategy to expand participation to non-OECD member countries; and third, consideration of revisions or additions to the existing framework.

#### *Role of Code of Conduct Group*

The Code of Conduct Group ("COCG") is comprised of high-level representatives of European Union ("EU") Member States and the European Commission. It is chaired by a representative of a member state, serving for a mandate of two years, and assisted by the General Secretariat of the Council (GSC). The current Chair, Ms. Lyudmila Petkova (Bulgaria), was appointed in January 2019 and took up the position on 5 February 2019.

In 2016 the COCG investigated the tax policies of both EU Member States and third countries. The

Economic and Financial Affairs Council (ECOFIN) on 9 March 1998 established within the COCG a group on business taxation to assess tax measures that may fall within the scope of the Code of Conduct. The Code of Conduct is not a legally binding instrument but is a political commitment by Member States to:

- ❖ Re-examine, amend or abolish their existing tax measures that constitute harmful tax competition; and
- ❖ Refrain from introducing new ones in the future.

The Council of the EU adopted a resolution on a Code of Conduct for business taxation, the aim of which was counteracting the effects of zero tax and preferential tax regimes around the world.

The EU listing criteria are aligned with international standards and reflect the good governance standards that Member States must comply with. They are:

- ❖ **Transparency:** The country should comply with international standards on automatic exchange of information and information exchange on request. It should also have ratified the OECD's multilateral convention or signed bilateral agreements with all Member States, to facilitate this information exchange. Until June 2019, the EU only required two out of three of the transparency criteria. After that, countries must meet all three transparency requirements to avoid being listed.
- ❖ **Fair Tax Competition:** The country should not have harmful tax regimes, which go against the principles of the EU's Code of Conduct or OECD's Forum on Harmful Tax Practices. Those that choose to have no or zero-rate corporate taxation, should ensure that this does not encourage artificial offshore structures without real economic activity. They should therefore introduce specific economic substance requirements and transparency measures; and
- ❖ **BEPS implementation:** The country must have committed to implement the OECD's BEPS minimum standards. From 2019, jurisdictions are being monitored on the implementation of these minimum standards, starting with Country-by-Country Reporting.

In December 2017, the COCG prepared a number of Council conclusions, including on the EU list of non-cooperative jurisdictions for tax purposes which was adopted by the ECOFIN Council on 5 December 2017. As endorsed by the ECOFIN Council on 8 November 2016, the COCD, supported by the GSC, conducts and oversees the screening process, whilst the Commission assist the group by carrying out the necessary preparatory work.

At an ECOFIN meeting on 12 March 2019, the COCG decided to remove Turks & Caicos Islands from the European Union's list of non-cooperative jurisdictions grey list. Turks & Caicos Islands is therefore no longer listed and is deemed compliant.

## 2. Purpose of these Guidance Notes

These Guidance Notes are issued by the Government of the Turks & Caicos Islands (the "TCI") with

respect to the economic substance requirements and are intended to provide practical assistance to entities, their directors and other officers, their advisers, other stakeholders and the Competent Authority, each of whom deal with entities affected by the ESO. This document does not form part of the ESO and does not have the force of law. If there are any queries in regard to your obligations under the ESO, professional advice should be sought.

A Financial Institution must apply the Legislation in force at the time with reference to these Guidance Notes.

These Guidance Notes are relevant and apply to any Entity affected by the ESO.

### **3. The role of the Turks and Caicos Islands Competent Authority**

The Exchange of Information Unit has been designated as the Competent Authority (hereinafter the Authority) for the purpose of the ESO by the Permanent Secretary, Finance.

The Exchange of Information Unit's role will include administering the ESO, determining whether a relevant Entity satisfies the Economic Substance Test, monitoring compliance and sharing information with other competent authorities.

### **4. Notification and Reporting**

The reporting period under the ESO commences in 2020; as such all resident TCI entities are required to notify the Competent Authority annually of the following:

- ❖ Whether or not they are carrying on a relevant activity;
- ❖ If the relevant Entity is carrying on a relevant activity, whether or not all or any part of the relevant Entity's gross income in relation to the relevant activity is subject to tax in a jurisdiction outside of the Islands and, if so, shall provide appropriate evidence to support that tax residence as may be required by the Competent Authority; and
- ❖ The date of the end of its financial year.

The Competent Authority will specify the time, form and manner of such notification.

Relevant entities carrying on relevant activities that are required to satisfy the Economic Substance Test must prepare and submit to the Competent Authority a report for the purpose of the Competent Authority's determination whether the Economic Substance Test has been satisfied in relation to that relevant activity within twelve months after the last day of the end of each financial year commencing on or after 1 January 2019.

All reports shall be in the form approved by the Competent Authority with the prescribed information as of the end of the relevant financial year.

The Competent Authority shall not make a determination under subsection (1)—

- (a) more than two years after it becomes aware of the failure of a resident Entity to satisfy the substance requirements; or
- (b) more than six years after the end of the accounting period to which the determination relates.

The above will not apply, if the Competent Authority is not able to make a determination within the two or six-year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident Entity or by any other person.

### **5. Meaning of “Adequate”**

Section 24(2)(b) of the ESO states that the Competent Authority will provide the relevant guidance on the meaning of the terms used in section 8 including the term “adequate”. In this regard, the Competent Authority has determined that what constitutes as being “adequate” is contingent on the nature, scale and complexity of the business that the relevant Entity is conducting. Given the nature of the term and the context in which it is applied in the ESO. An Entity meets Economic Substance requirements if:

- (a) it is managed and directed in TCI;
- (b) its CIGA are undertaken in TCI with respect to the Relevant Activity;
- (c) it maintains an adequate physical presence in TCI;
- (d) there are adequate full time employees in TCI with suitable qualifications; and
- (e) there is adequate operating expenditure incurred in TCI in relation to the Relevant Activity.

All Entities are required to ensure that they maintain and retain the necessary records to demonstrate the adequacy and appropriateness of the resources utilized and expenditure incurred in an effort to determine “adequacy”.

## **B. SCOPE OF THE ORDINANCE**

### **6. Resident Entity**

A TCI Entity under the ESO means a body corporate or a limited partnership, whether incorporated, formed or otherwise constituted in or outside the Islands.

Under the Companies and Limited Partnerships (Economic Substance) Regulations 2018 an Entity which is:

- ❖ A TCI company incorporated or continued under the Companies Ordinance;
- ❖ A limited partnership registered under section 7 of the Limited Partnership Ordinance; or
- ❖ A foreign company registered under Part XVI of the Companies Ordinance,

will be required to report.

A TCI Entity is not a resident Entity if it is tax resident in a country outside the Islands which is not on the EU list of non-cooperative jurisdictions for tax purposes.

### **7. Relevant Activities**

“Relevant activity” includes each of the following:

- ❖ Banking business;
- ❖ Distribution and service centre business;
- ❖ Finance and leasing business;
- ❖ Fund management business;
- ❖ Headquarters business;
- ❖ Holding Entity business;
- ❖ Insurance business;
- ❖ Intellectual property holding business; and
- ❖ Shipping business.

### **8. Tax resident outside the Islands**

A company or a limited partnership incorporated or established in the Islands is not regarded as a relevant Entity for Economic Substance purposes if it is tax resident outside the Islands. Likewise, a foreign company that is registered in the Islands is not regarded as a relevant Entity if it is tax resident outside the Islands.

The Competent Authority may regard an Entity as tax resident outside the Islands if the Entity is subject to tax in another jurisdiction by reason of its domicile, residence or any other criteria of a

similar nature. The Competent Authority will require any Entity claiming to be tax resident outside the Islands to produce the following evidence;

- ❖ A Tax Identification Number;
- ❖ Tax residence certificate;
- ❖ Assessment or payment of corporate income tax liability on all of that Entity's income in the Islands from a relevant activity; and
- ❖ Details of its parent company, ultimate parent company, and ultimate beneficial owners. Included must be information in regards to their respective jurisdictions of tax residence.

Note that only official documents obtained from the relevant authorities in the foreign jurisdiction from which the Entity is claiming to be tax resident will be accepted as evidence. Additionally, all documentation must be in its original form.

Failure to provide the evidence will result in the Competent Authority regarding the Entity as a resident Entity that is subject to the Economic Substance Test requirements.

The Competent Authority will also regard any branch of a relevant Entity as tax resident outside the Islands if the branch is subject to tax on its relevant income in another jurisdiction by reason of its domicile, residence or any other criteria of a similar nature. However, note that to the extent that there was income allocated to the income of the Entity in TCI, the Entity should still be subject to Economic Substance Test in TCI. Only entities whose only sources of income from relevant activities are taxed on a branch or agency basis may be treated as a non-resident (even if it is not necessarily tax resident in that jurisdiction). If there is still some income in TCI, then economic substance rules apply to that income.

The Competent Authority will require any relevant Entity which claims that its branch is tax resident outside the Islands to produce, with respect to its branch, satisfactory evidence of the type described above in relation to an Entity claiming to be tax resident outside the Islands. In this context, a "branch" refers to a business unit or division or establishment/place of business of the relevant Entity that is not a separate legal person from the relevant Entity.

## **9. Ultimate Holding Entity, Group Entity and Ultimate Beneficial Owner**

### ***Ultimate Holding Entity***

Means a group or group Entity that-

- a) owns directly or indirectly a sufficient interest in one or more other 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 public securities exchange in its jurisdiction of tax residence; and
- b) there is no other Entity of the Group that owns directly or indirectly an interest described in paragraph (a).

***Group or Group Entity***

This term is used to describe a group which is a collection of enterprises that are related through ownership or control and is either required to prepare Consolidated Financial Statements for financial reporting purposes.

***Ultimate Beneficial Owner***

Means a person who would be a registrable person within the meaning of section 148 of the Companies Ordinance if a reference to a company to which section 148 of the Companies Ordinance applies.

## C. ECONOMIC SUBSTANCE TEST

### 10. Substance Requirements

The first step under the Economic Substance Test is to ensure that the resident TCI Entity was conducting the relevant activity during the accounting period which is the period of six (6) months commencing on 1 July 2019 and ending on 31 December 2019.

Once it has been established that a relevant activity was conducted during the accounting period, a resident Entity would then satisfy the Economic Substance Test in relation to that relevant activity, if the resident Entity-

- ❖ Is directed and managed in the Islands;
- ❖ Conducts the core income generating activities (“CIGA”) in relation to that relevant activity in the Islands; and
- ❖ Having regard to the level of relevant activity carried on in the Islands-
  - \* Has an adequate amount of operating expenditure incurred in the Islands;
  - \* Has an adequate physical assets or presence in the Islands; and
  - \* Has an adequate number of appropriately experienced and qualified full time employees in the Islands including those employed by third parties.

### 11. Directed & Managed in the Islands

A resident Entity that conducts its CIGA in TCI with respect to the Relevant Activity must be directed and managed in the Islands. Additionally, any undertaking of strategic decisions in relation to the Relevant Activity that is conducted in TCI must also be done in the Islands. A company is managed and directed in the Islands if:

- ❖ The Entity’s board of directors meets in the Islands with adequate frequency given the level of decision-making required of the board;
- ❖ During each board meeting, there is a quorum of directors physically present in the Islands;
- ❖ Strategic decisions of the Entity are made at the meetings of the board of directors held in the Islands and this is reflected in the minutes of the meeting;
- ❖ The directors, collectively as a board must have the sufficient knowledge, experience and expertise to discharge the duties of the board; and
- ❖ The minutes of all board meetings and the records of the Entity are kept in the Islands.

### 12. Employees

The term “employees” is not limited to individuals that are legally employed by the Entity itself. Employees for this purpose of satisfying the requirements include:

- ❖ Employees;

- ❖ Persons working for the enterprise being subordinated to it and deemed to be employees under the laws of Islands; and
- ❖ Owner-managers and directors.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included.

The employee count will be based on the number of full-time employment meaning the number of persons who worked fulltime within the Entity in question, or on its behalf during the course of the entire accounting period. Only full time employees who are conducting activities that are attributable to the CIGA in TCI with respect to the Relevant Activity will be counted as part of the assessment.

Where the Entity outsources, contracts or delegates some or all of its activity, then the resources of the service provider in the Islands or another group company will be taken into consideration when determining whether the adequate employee test is met.

There must be no double counting if the services are provided to more than one company. Outsourced service providers and group companies should provide itemized specific services per Relevant Entity (no double counting, including resources).

The Entity remains responsible for ensuring accurate information is reported on its return and this will include precise details of the resources employed by its service providers or group companies.

The qualifications that are considered to be adequate will depend on the relevant sector and industry that the company has activity in, the CIGA undertaken in the Islands and the duties performed by those employees.

### **13. Core Income Generating Activities (“CIGA”)**

The criterion requires that a resident Entity undertaking a relevant activity must conduct a TCI CIGA.

A resident Entity must conduct the appropriate elements under the TCI CIGA for the particular type of relevant activity that it is carrying on. Note that it is not necessary for the relevant Entity to perform every element listed for the relevant activity in the definition of TCI CIGA. The assessment of substance in the Islands will include careful consideration of what elements of TCI CIGA the relevant Entity is carrying on in the Islands.

It is important to note that a resident Entity will be able to outsource some or all of its CIGA, but the CIGA must still be undertaken in the Islands and must be subject to adequate supervision by the Entity. In such circumstances, the service provider’s resources in the Islands will be taken into account when determining whether the resident Entity has adequate resources in the Islands. For example, a relevant Entity that holds a patent does not have to carry on the TCI CIGA of marketing, branding and distribution as well as the research and development.

Additionally, if activities such as back office functions, IT services, payroll or legal services, is not part of the Islands CIGA, they will not affect the resident Entity’s ability to pass the substance test.

The relevant activities are as follows:

<b>Relevant Activity</b>	<b>Definition</b>	<b>TCI CIGA</b>
<b>Banking Business</b>	<p>The definition of Banking Business can be found in the Banking Ordinance Cap. 16.02.</p> <p>The definition under this Ordinance means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits.</p>	<ul style="list-style-type: none"> <li>(i) raising funds;</li> <li>(ii) managing risk including credit, currency and interest risk;</li> <li>(iii) taking hedging positions;</li> <li>(iv) providing loans, credit or other financial services to customers;</li> <li>(v) managing capital; and</li> <li>(vi) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of banking business;</li> </ul>
<b>Distribution and Service Centre Business</b>	<p>Means the business of either or both of the following—</p> <p>(a) purchasing from a group entity—</p> <ul style="list-style-type: none"> <li>(i) materials or component parts for products; or</li> <li>(ii) products ready for sale; and</li> </ul> <p>reselling such component parts, materials or products outside the Islands;</p> <p>(b) providing services to another group entity in connection with the business outside the Islands;</p> <p>But excludes an activity included within any other relevant activity.</p>	<ul style="list-style-type: none"> <li>(i) transporting and storing goods, components and materials;</li> <li>(ii) managing stocks;</li> <li>(iii) taking and processing orders; and</li> <li>(iv) providing consulting or other administrative services;</li> </ul>
<b>Finance and Leasing Business</b>	<p>Means the business of providing credit facilities of any kind for consideration but excludes an activity included within banking business, fund management business or insurance business.</p> <p>For the purposes of subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) consideration includes consideration by way of interest;</li> <li>(b) the provision of credit may be by way of</li> </ul>	<ul style="list-style-type: none"> <li>(i) negotiating or agreeing funding terms;</li> <li>(ii) in the case of leasing business, identifying and acquiring assets to be leased;</li> <li>(iii) setting the terms and duration of financing or leasing agreements;</li> <li>(iv) monitoring and revising finance and leasing agreements;</li> <li>(v) managing finance agreements and leases; and</li> </ul>

	<p>instalments for which a separate charge is made and disclosed to the customer in connection with—</p> <p>(i) the supply of goods by hire purchase;</p> <p>(ii) leasing, excluding a lease over land or an interest in land; or</p> <p>(iii) conditional sale or credit sale; and</p> <p>(c) where an advance or credit repayable by a customer to a person is assigned to another person, that other person is considered to be providing the credit facility.</p>	<p>(vi) managing risks associated with finance and leasing agreements;</p>
<p><b><i>Fund Management Business</i></b></p>	<p>Means the business of acting as a fund manager within the meaning of the Investment Dealers (Licensing) Ordinance.</p>	<p>(i) taking decisions on the holding and selling of investments;</p> <p>(ii) calculating risk and reserves;</p> <p>(iii) taking decisions on currency or interest fluctuations and hedging positions; and</p> <p>(iv) preparing reports and returns to investors and the Commission, any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of fund management or other government authorities.</p>
<p><b><i>Headquarters Business</i></b></p>	<p>Means the business, carried on by a resident entity, of providing any of the following services to one or more foreign group entities of the resident entity—</p> <p>(a) the provision of senior management;</p> <p>(b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those foreign group entities; or</p> <p>(c) the provision of substantive advice in relation to the assumption or control of risk activities or assets referred to in paragraph (b);</p> <p>But excludes an activity included within banking business, finance and leasing business, insurance business or intellectual property holding business.</p>	<p>(i) taking relevant management decisions;</p> <p>(ii) incurring expenditures on behalf of group entities; and</p> <p>(iii) co-ordinating group activities;</p>

<p><b><i>Insurance Business</i></b></p>	<p>Has the same meaning under the Insurance Ordinance.</p> <p>Insurance Business is conducted when contracts which protect persons against loss or liability is effected or carried out. Also, where there has been the payment of money or something of value on the occurrence of a particular event, this also includes re-insurance business and running-off business including the settlement of claims.</p>	<p>(i) predicting and calculating risk;  (ii) insuring or re-insuring against risk;  (iii) providing insurance business services to clients;  (iv) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of insurance business.</p>
<p><b><i>Intellectual Property Holding Business</i></b></p>	<p>Intellectual Property Holding Business is the business of holding, exploiting or receiving income from an intellectual property asset or assets.</p> <p>The CIGA for Intellectual Property Holding Business is divided into two (2) classifications:</p> <p>1) where the entity holds, exploits or receives income from one or more patents, research and development relating to the patent, and</p> <p>2) where the entity holds, exploits or receives income from any intellectual property assets or assets, other than patents.</p>	<p>1) The CIGA for an entity that receives income from one or more patents, research and development relating to the patent, is as follows:</p> <ul style="list-style-type: none"> <li>❖ Advancing the understanding of scientific relations or technologies;</li> <li>❖ Addressing scientific or technological obstacles; and</li> <li>❖ Increasing scientific or technical knowledge</li> </ul>

		<p>or developing new applications.</p> <p>2) The CIGA for an entity that receives income from any intellectual property assets or assets, other than patents, is as follows:</p> <ul style="list-style-type: none"><li>❖ Marketing, branding and distribution activities relating to the asset or assets; or</li><li>❖ In exceptional cases, provided that the resident entity is not a “high-risk IP entity”:<ul style="list-style-type: none"><li>—</li><li>* Taking strategic decisions and managing, as well as bearing, the principal risks related to development and subsequent exploitation of the asset or assets that generate the income;</li><li>* Taking the strategic decisions and managing, as well as bearing, the principal risks relating to acquisition by third parties and subsequent exploitation and protection</li></ul></li></ul>
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		<p>of the asset or assets; and</p> <p>* Carrying on the underlying trading activities through which the assets or assets are exploited leading to the generation of income from third parties.</p>
<b>Shipping Business</b>	<p>A company is a Shipping Business if it undertakes activities that involve the operation of a ship anywhere in the world other than in the territorial waters of the Islands, or between the Islands. The company is also 1) in the business of transporting, by sea, persons, animals, goods or mail, 2) the renting or chartering of ships, 3) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship 4) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea, or 5) the management of the crew of a ship.</p>	<p>(i) managing crew, including hiring, paying and overseeing crew members;</p> <p>(ii) hauling and maintaining ships;</p> <p>(iii) overseeing and tracking deliveries;</p> <p>(iv) determining what goods to order and when to deliver them; and</p> <p>(v) organising and overseeing voyages.</p>
<b>Holding Entity Business &amp; sole Holding Entity</b>	<p>Means the business of being a holding entity;</p> <p>an entity is the “holding entity” of another entity if it—</p> <p>(i) holds a majority of the issued shares or the partnership interests in the entity;</p> <p>(ii) holds a majority of the voting rights in the entity;</p> <p>(iii) is a member or partner of the entity and, under an agreement with other members or partners of the entity, controls a majority of the voting rights in the entity;</p>	<p>(i) where the entity is a pure equity holding entity, complying with its statutory obligations under the Companies Ordinance or the Limited Partnership Ordinance, as the case may be;</p> <p>(ii) where the entity is not a pure equity holding entity, the activities specified in paragraphs (a) to (i) that are associated with the income that the entity earns from the relevant activity concerned.</p>

	<p>(iv) is a member or partner of the entity and has the right to appoint or remove the majority of the directors of the first entity; or</p> <p>(v) is the holding entity of a holding entity of the entity.</p> <p>a “pure equity holding entity” is a resident entity that—</p> <p>(i) is a holding entity;</p> <p>(ii) has, as its sole function, the acquisition and holding of shares or equitable interests’ in other entities.</p>	
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#### 14. High Risk Intellectual Property Business

A company is considered a High-Risk IP Entity if it carries on Intellectual Property Holding Business and has acquired the intellectual property asset from a group Entity or in consideration for funding research and development by another person situated in a country other than the Islands. The company also licenses the intellectual property asset to one or more group entities or generates income from the asset in consequence of activities (such as facilitating sale agreements, customer lists and goodwill) that are performed by foreign group entities or the Entity does not carry out either research and development or branding and distribution as part of its CIGA in the Islands.

A resident Entity that is carrying on a relevant activity which is considered High Risk IP business is presumed not to have met the substance test for a financial year, even if there are TCI CIGA relevant to the business and the IP assets being carried out in the Islands.

In order to determine if a High-Risk IP Entity meets the substance test, it will have to provide the Competent Authority with the following information:

- ❖ A detailed business plan which demonstrates the commercial rationale for holding the IP assets in the Islands;
- ❖ All employee information, which includes but is not limited to the level of experience, type of contracts, qualifications and duration of employment; and
- ❖ Evidence that decision making is taking place within the Islands.

and any other information as may be reasonably required by the Competent Authority to determine whether the relevant Entity meets the Economic Substance Test.

The Competent Authority’s approach regarding the rebuttable presumption will be aligned with the policy articulated by the FHTP in the following document in paragraphs 32 to 39 under the heading **“IP income – exceptional cases and rebuttable presumption”**:

- OECD (2018, Resumption of application of substantial activities for no or nominal tax jurisdictions – BEPS Action 5, OECD, Paris. <http://www.oecd.org/tax/beps/resumption-of-application-of-substantial-activities-factor.pdf>

Periodic decisions by non-resident directors or board members, or local staff passively holding intangible assets would not be sufficient to satisfy the Economic Substance Test in respect of any IP business and therefore cannot rebut the presumption in the case of high risk IP business.

## **15. Outsourcing**

Outsourcing is not prohibited under the ESO. A company can outsource some or all of its activity. In this instance, outsourcing includes the outsourcing, contracting or delegating to a third party or to group companies.

If some or all of the CIGA are outsourced, the company must be able to demonstrate that it has adequate supervision of the outsourced activities and, to meet the substance requirements, that those activities are undertaken in the Islands.

Where a CIGA is outsourced the resources of the service provider or group company in the Islands will be taken into consideration when determining whether the people and premises test is met.

However, there must be no double counting if the services are provided to more than one company. Only the services provided to that company will be counted (see earlier paragraph 12 for further detail on double counting).

It is important to note that the company ultimately remains responsible for ensuring that accurate information is reported on its return and this will include precise details of the resources employed by its service providers or group companies, for example based on the use of timesheets.

Where there is a corporate director in office, these will be looked through, to the individuals (officers of the corporate director) actually performing the duties of the corporate director.

Note that oversight of the outsourced CIGA's must be conducted in the TCI.

## **D. REPORTING AND SANCTIONS**

### **16. Reporting**

Companies that are carrying on Relevant Activities will be required to provide the following information:

- ❖ Is the reporting Entity a resident Entity and, if not, information on the jurisdiction which it is resident for tax purpose;
- ❖ Information on the Entity's holding Entity and where each holding Entity is located;
- ❖ Details of the beneficial owner;
- ❖ Business/income types in order to identify the type of relevant activity;

- ❖ Amount and type of gross income by relevant activity - the turnover figure from any financial statements;
- ❖ Amount of operating expenditure by relevant activity incurred in the Islands - the company's operating expenditure from the financial statements or similar document, excluding capital;
- ❖ Details of premises - business address;
- ❖ Number of (experienced and/or qualified) employees- specifying the number of full-time employees including experience;
- ❖ Names and physical addresses of the directors;
- ❖ Details of each meeting of the board of directors held in the Islands;
- ❖ Confirmation of the CIGA conducted for each relevant activity;
- ❖ The financial statements; and
- ❖ Confirmation of whether any CIGA have been outsourced and, if so, relevant details.

The relevant activities must result in the generation of income; this includes the earning of any gross income in respect of the Relevant Activity during the relevant financial period.

The Competent Authority has the power to request additional information in relation to any substance information provided on or with the income tax return.

## 17. Penalties and Sanctions

The penalties and sanctions are contained in the table below:

Requirement	Section	Penalty
<b>Reporting Obligation</b>	Section 10(4)	A TCI Entity that fails to submit a return to the Competent Authority, as required by this section, commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.
<b>Requirement to provide information and documents</b>	Section 11(6)	A TCI Entity which, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Competent Authority under subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.
<b>Requirement to provide information and documents</b>	Section 11(7)	A person who, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Competent Authority under subsection (2), commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.
<b>Failure to satisfy substance requirements, first accounting period of default</b>	Section 14(3)	The penalty imposed by the Competent Authority on a resident Entity carrying on a relevant activity that has not satisfied the substance requirements shall be such amount, not exceeding \$25,000, as the Competent Authority considers appropriate.

<b>Failure to satisfy substance requirements, first accounting period of default</b>	Section 14(5)	A resident Entity that fails to pay a penalty on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.
<b>Failure to satisfy substance requirements, second or subsequent accounting period of default</b>	Section 15(3)	The penalty imposed by the Competent Authority on a resident Entity under this section shall be such amount, not exceeding \$150,000 as the Competent Authority considers appropriate.
<b>Failure to satisfy substance requirements, second or subsequent accounting period of default</b>	Section 15(5)	A resident Entity that fails to pay a penalty imposed under this section on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding \$150,000.
<b>Penalties</b>	Section 16(1)	A penalty imposed under section 14 or 15 which is not paid by the due date constitutes a debt to Government and may be recovered in the Court.
<b>Application to Court</b>	Section 17(2)	<p>(2) If, on an application under subsection (1), the Court is satisfied that the entity has not satisfied the substance requirements during the relevant accounting period, it may make an order—</p> <p>(a) requiring the entity to take such action as the Court considers appropriate or necessary for the entity to satisfy the substance requirements;</p> <p>(b) in the case of a TCI company—</p> <p>(i) directing the Registrar to strike the company off the Register of Companies; or</p> <p>(ii) appointing a liquidator under section 161(1)(c) of the Insolvency Ordinance, 2017;</p> <p>(c) in the case of a TCI limited partnership, ordering the dissolution of the limited partnership under section 14(3) of the Limited Partnership Ordinance;</p> <p>(d) in the case of a registered foreign company—</p> <p>(i) directing the Registrar to remove the company from the Register of Foreign Companies; or</p> <p>(ii) appointing a liquidator of the company under section 237(1)(f) of the Insolvency Ordinance, 2017,</p> <p>and may give such directions or make such further order as it considers appropriate for giving effect to the order.</p>

<b>Application Court</b>	<b>to</b>	Section 17(5)	If the Court is of the opinion that the company is, or following its restoration will be, carrying on a relevant activity, the Court shall not restore the company to the Register of Companies unless it is satisfied that the company satisfies, or within such period after its restoration as the Court may specify in the order, will satisfy, the substance requirements.
<b>False misleading information</b>	<b>and</b>	Section 22(2)	person who contravenes subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000

## 18. Appeals

A resident Entity that has been notified of a determination of a failure to satisfy the substance requirements and on which the Competent Authority has imposed a penalty under section 14 or 15 of the ESO may, within twenty-eight days after the notification, appeal to the Court against the determination and penalty.

An appeal may be made on questions of law or fact or both and the Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Competent Authority.

It is important to note that an appeal does not stay the enforcement of the penalty, the penalty must still be paid within the given timeframe.

## **E. GLOSSARY**

### **Abbreviations**

<b>BEPS</b>	Base Erosion and Profit Shifting
<b>CIGA</b>	Core Income Generating Activities
<b>COCG</b>	Code of Conduct Group
<b>ECOFIN</b>	Economic and Financial Affairs Council
<b>ESO</b>	Economic Substance Ordinance
<b>EU</b>	European Union
<b>FHTP</b>	Forum on Harmful Tax Practices
<b>GSC</b>	General Secretariat of the Council
<b>OECD</b>	Organisation for Economic Co-operation and Development's
<b>TCI</b>	Turks & Caicos Islands

## F. FORMS

### Turks & Caicos Islands Economic Substance Information Form



#### Exchange of Information Unit Ministry of Finance

<b>1 Applicant</b>	
<b>2 Entity Name</b>	
<b>3 Address</b>	
Street Address: Street Address Line 1: City: State/Province: Postal/ Zip Code: Country:	
<b>4 Is the reporting Entity a Resident Entity</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>5</b>	<b>If you answered no above, which jurisdiction are you resident for tax purposes:</b> <i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>
<b>6</b>	<b>Provide TIN or Similar for Jurisdiction of Tax Residence</b>
<b>7</b>	<b>Please confirm*:</b> <b>The Entity is subject to corporate income tax on all of its income from the relevant activity by virtue of its tax residence, domicile or other criteria of a similar nature in the</b>
	Yes/No

	<b>jurisdiction of tax residence or</b>	
<b>8</b>	<b>The Entity is a "disregarded entity" for U.S. income tax purposes, and has a U.S. Corporation or Individual as its Parent and all of the Entity's income has been included on the tax return of the U.S. Parent</b>	Yes/No
<b>9</b>	<b>Name of Holding Entity</b>	
<b>10</b>	<b>Address of Each Holding Entity</b>	
	Street Address: Street Address Line 1: City: State/Province: Postal/ Zip Code: Country:	
<b>11</b>	<b>Details of Each Beneficial Owner:</b>	
	<i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>	
	Prefix: First Name: Middle Name: Last Name: Suffix:	
<b>12</b>	<b>Address of Each Beneficial Owner</b>	
	Street Address: Street Address Line 1: City: State/Province: Postal/ Zip Code: Country:	
<b>13</b>	<b>Name of Each Director:</b>	
	<i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>	
	Prefix: First Name: Middle Name: Last Name: Suffix:	
<b>14</b>	<b>Address of Each Director</b>	
	1. Name of Director: Street Address: Street Address Line 1: City:	

State/Province:  
 Postal/ Zip Code:  
 Country:

2. Name of Director:  
 Street Address:  
 Street Address Line 1:  
 City:  
 State/Province:  
 Postal/ Zip Code:  
 Country:

3. Name of Director:  
 Street Address:  
 Street Address Line 1:  
 City:  
 State/Province:  
 Postal/ Zip Code:  
 Country:

4. Name of Director:  
 Street Address:  
 Street Address Line 1:  
 City:  
 State/Province:  
 Postal/ Zip Code:  
 Country:

**15 Business Income Type:**  
*You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.*

	<b>Relevant Activity</b>	<b>TCI CIGA</b>	<b>Provided</b>
	❖ <b>Banking Business:</b>	(i) raising funds; (ii) managing risk including credit, currency and interest risk; (iii) taking hedging positions; (iv) providing loans, credit or other financial services to customers; (v) managing capital; and (vi) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of banking business;	<input type="checkbox"/> Yes <input type="checkbox"/> No

❖ <b>Distribution and Service Centre Business</b>	(i) transporting and storing goods, components and materials; (ii) managing stocks; (iii) taking and processing orders; and (iv) providing consulting or other administrative Services.	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ <b>Finance &amp; Leasing Business</b>	(i) negotiating or agreeing funding terms; (ii) in the case of leasing business, identifying and acquiring assets to be leased; (iii) setting the terms and duration of financing or leasing agreements; (iv) monitoring and revising finance and leasing agreements; (v) managing finance agreements and leases; and (vi) managing risks associated with finance and leasing agreements.	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ <b>Fund Management Business</b>	(i) taking decisions on the holding and selling of investments; (ii) calculating risk and reserves; (iii) taking decisions on currency or interest fluctuations and hedging positions; and (iv) preparing reports and returns to investors and the Commission, any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of fund management or other government authorities.	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ <b>Headquarters Business</b>	(i) taking relevant management decisions; (ii) incurring expenditures on behalf of group entities; and (iii) co-ordinating group activities.	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ <b>Holding Entity Business*</b>	(i) where the entity is a pure equity holding entity, complying with its statutory obligations under the Companies Ordinance or the Limited Partnership Ordinance, as the case may be;  (ii) where the entity is not a pure equity	<input type="checkbox"/> Yes <input type="checkbox"/> No

	holding entity, the activities specified in paragraphs (a) to (i) that are associated with the income that the entity earns from the relevant activity concerned.	
❖ <b>Insurance Business</b>	(i) predicting and calculating risk; (ii) insuring or re-insuring against risk; (iii) providing insurance business services to clients; (iv) preparing reports or returns to the Commission or any authority or body with equivalent functions to the Commission with respect to the regulation or supervision of insurance business.	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ <b>Intellectual Property Holding Business*</b>	<p>3) The CIGA for an entity that receives income from one or more patents, research and development relating to the patent, is as follows:</p> <ul style="list-style-type: none"> <li>❖ Advancing the understanding of scientific relations or technologies;</li> <li>❖ Addressing scientific or technological obstacles; and</li> <li>❖ Increasing scientific or technical knowledge or developing new applications.</li> </ul> <p>4) The CIGA for an entity that receives income from any intellectual property assets or assets, other than patents, is as follows:</p> <ul style="list-style-type: none"> <li>❖ Marketing, branding and distribution activities relating to the asset or assets; or</li> <li>❖ In exceptional cases, provided that the resident entity is not a “high-risk IP entity”: — <ul style="list-style-type: none"> <li>* Taking strategic decisions and managing, as well as bearing, the principal risks related to</li> </ul> </li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No

		<p>development and subsequent exploitation of the asset or assets that generate the income;</p> <ul style="list-style-type: none"> <li>* Taking the strategic decisions and managing, as well as bearing, the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the asset or assets; and</li> <li>* Carrying on the underlying trading activities through which the assets or assets are exploited leading to the generation of income from third parties.</li> </ul>	
	❖ <b>Shipping Business</b>	<p>(i) managing crew, including hiring, paying and overseeing crew members;</p> <p>(ii) hauling and maintaining ships;</p> <p>(iii) overseeing and tracking deliveries;</p> <p>(iv) determining what goods to order and when to deliver them; and</p> <p>(v) organising and overseeing voyages.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>16</b>	<p><b>Holding Entity Business:</b>  <i>Provide information in regards to the exact nature of the activities provided.</i></p>		
<b>17</b>	<p><b>Intellectual Property Holding Business:</b>  <i>Provide information in regards to the exact nature of the activities provided.</i></p>		

<b>18</b>	<b>Outsourcing:</b> <i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>	
	Outsourced	Gross Income Statement
❖ Banking Business:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Distribution and Service Centre Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Finance & Leasing Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Fund Management Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Headquarters Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Holding Entity Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Insurance Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Intellectual Property Holding Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Shipping Business	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>19</b>	<b>Details of Activities which are outsourced:</b> <i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>	
<b>20</b>	<b>Outsourcing Provider Name</b>	
<b>21</b>	<b>Outsourcing Provider Licensing/Registration Category</b>	
<b>22</b>	<b>Trade or Business License Number</b>	
<b>23</b>	<b>Contact Details of Outsourcing Provider</b>	
	<b>Name:</b> <b>Street Address:</b> <b>Street Address Line 1:</b> <b>City:</b> <b>State/Province:</b>	

	<b>Postal/ Zip Code:</b>	
	<b>Country:</b>	
	<b>Email Address:</b>	
	<b>Position:</b>	
<b>24</b>	<b>Detail how the relevant activities they undertake in TCI are directed and managed in TCI:</b> <i>You are required to provide (1) all the documentation that is necessary to support your response and (2) written details and explanations on the reasons for their answers.</i>	
<b>25</b>	<b>Details of Gross Income</b>	
<b>26</b>	<b>Details of Operating Expenditure &amp; List of Physical Assets on Island:</b>	
<b>27</b>	<b>Number of Full Time Employees</b>	
<b>28</b>	<b>Number of Qualified Employees</b>	
<b>29</b>	<b>Details of Experience for Each Employee</b>	
<b>30</b>	<b>Select the additional Documentation Provided</b>	
	Provided	Not Provided
❖ Business License		
❖ Company Documents		
❖ Financial Statements		

❖ Details of Each Board Meeting Held in the Islands		
❖ Other Supporting Documents (Please Detail)		
<b>31 Declaration</b>		
<p>I hereby confirm that all information in this Form is accurate and acknowledges that there are sanctions for knowingly or willfully supplying false or misleading information under section 22(2) Companies and Limited Partnerships (Economic Substance) Ordinance 2018.</p>		

**GUIDANCE NOTES ON COMPLETION OF FORM**

Applicants must complete all fields in the document. Once completed they should be uploaded to the portal or emailed to (insert the address).

Once reviewed the Exchange of Information Unit (“Unit”) reserves the right to request any additional information required to verify the information provided.

For ease of reference, find detailed below information regarding the relevant activities under Economic Substance.

**Relevant Activities**

If your Company provides more than one (1) of the relevant activities listed on the form, you are required to check off all on the list. Also select whether the Entity outsources those activities and if the Gross Income Statement for those activities are provided.

“Relevant activity” under the ESO includes each of the following:

- ❖ banking business;
- ❖ distribution and service centre business;
- ❖ finance and leasing business;
- ❖ fund management business;
- ❖ headquarters business;
- ❖ holding Entity business;

- ❖ insurance business;
- ❖ intellectual property holding business; and
- ❖ shipping business.

### ***Banking Business***

The definition of banking business can be found in the Banking Ordinance Cap. 16.02. The definition under this Ordinance means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits.

### ***Distribution and service centre business***

The definition encompasses companies which purchase from a group Entity raw materials or component parts for products or products ready-for-sale or resale outside of the Islands to other non-resident members of the same group, or to connected persons.

### ***Financing and Leasing Business***

Finance and Leasing Business means the business of providing credit facilities of any kind for consideration, but excludes any activity included within banking business, fund management business or insurance business.

Consideration includes any company which offers credit or financing of any kind, such as loans, long term credit plans and finance leases in relation to assets other than land. Intra-group financing is encompassed in this definition.

### ***Fund Management Business***

The definition provides for companies that provide management services to funds but does not include the fund itself.

### ***Headquarters Business***

Headquarters Business is defined under the ESO as a resident Entity which provides headquarters services to other non-resident members of the same group/connected persons. A 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; and
- ❖ The provision of substantive advice in relation to such risks.

### ***Insurance Business***

Insurance Business is conducted when contracts which protect persons against loss or liability is affected or carried out. Also, where there has been the payment of money or something of value on the occurrence of a particular event, this also includes re-insurance business and running-off business including the settlement of claims.

### ***Intellectual Property Holding Business***

Intellectual Property Holding Business is the business of holding, exploiting or receiving income from an intellectual property asset or assets.

The CIGA for Intellectual Property Holding Business is divided into two (2) classifications: 1) where the Entity holds, exploits or receives income from one or more patents, research and development relating to the patent, and 2) where the Entity holds, exploits or receives income from any intellectual property assets or assets, other than patents.

### ***Shipping Business***

A company is a Shipping Business if it undertakes activities that involve the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands. The company is also: 1) in the business of transporting, by sea, persons, animals, goods or mail, 2) the renting or chartering of ships, 3) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship, 4) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea, or 5) the management of the crew of a ship.

### ***Holding Entity Business***

The purpose of a Holding Entity Business is to hold interests in another Entity. A company holds another Entity if it 1) holds a majority of the issued shares or the partnership interests in the Entity, 2) holds a majority of the voting rights in the Entity, 3) is a member or partner of the Entity and, under an agreement with other members or partners of the Entity, controls a majority of the voting rights in the Entity, 4) is a member or partner of the Entity and has the right to appoint or remove the majority of the directors of the first Entity, or 5) is the holding Entity of a holding Entity of the Entity.

### ***Gross Income and Operating Expenditure Information***

Applicants are required to provide in this field the amount and type of gross income by relevant activity, this would be the turnover figure from the financial statements or similar.

In reference to operating expenditure, this includes the amount of operating expenditure by relevant activity in the Islands. The company's operating expenditure from the financial statements (or similar), excluding capital.