

Measures to Combat Coronavirus and Complying with Substance Requirements

It is becoming increasingly clear that the efforts to combat the worldwide and local spread of the coronavirus, COVID-19, will have an impact on the way that many companies operate. In the light of the restrictions on travel, reductions in numbers of face to face meetings and the possibility of individuals self-isolating this is relevant to the ability of certain companies to comply with their obligations under the economic substance requirements. In particular, this may restrict their ability to meet the directed and managed test and also to demonstrate that all core income generating activities are taking place in Guernsey.

On 11th March 2020, Jersey's Minister for Treasury & Resources issued a statement saying that where companies have had to adjust their operating practices to compensate for the coronavirus outbreak, the Jersey Comptroller will not determine that they have failed the economic substance test. This treatment will only apply to adjustments to the normal operating practices, and to the extent they are required to mitigate the threats from the outbreak.

GIBA and the GSCCA have had a number of discussions with the Revenue Service on this matter. We understand that they would take a similar pragmatic approach to their Jersey counterparts. The Chief Minister of Guernsey has endorsed this pragmatic approach.

Companies should maintain and retain relevant records that show what their policy was in respect of restrictions on travel for the company officers and the period of time for which that policy was in place. This will ensure that companies can demonstrate where COVID-19 restriction measures prohibited the company from holding an adequate number of board meetings in the Island or required meetings to temporarily be held virtually, such as conference call, video conferencing, Skype or similar. It should be noted that the normal protocols for such meetings should be observed, as far as possible.

You may also find it useful to refer to section 5 of the published guidance (<https://www.gov.gg/CHttpHandler.ashx?id=122152&p=0>) which already recognises that there are times when meetings may need to be held overseas. It should also be noted that a virtual meeting where there is a quorum of directors physically present in the Island, would already count towards demonstrating that board meetings are held in the Island.

Businesses should also give consideration to the ability to appoint alternate directors on Island who can attend meetings in Guernsey and thereby address any short-term practical difficulties arising from the coronavirus and indeed other unforeseen eventualities.

A similar approach would apply to relevant "CIGA" meetings.

16th March 2020