

Economic Substance Requirements and The Impact of Covid-19

16th April 2020

International Travel Restrictions

Legislation introduced in response to the Coronavirus pandemic, includes significant restrictions on the movement of people. This applies not only to international travel with the closure of borders and the suspension of flights and other forms of transport, but also in relation to travel within countries themselves.

Impact on Meetings and Specifically Board Meetings

The travel restrictions detailed above, coupled with individuals being requested to practice social distancing or in some cases isolation, are having an impact on the way in which corporate meetings are being held across the world.

For the day to day management of many companies, on-line forums are replacing physical meetings.

However, this does raise the question as to whether companies will be able to meet a number of the tests specified in economic substance legislation, introduced worldwide in the past eighteen months. In particular the 'directed and managed' test, which requires a certain number of board meetings with a quorum and a majority of those voting, being physically present in the particular jurisdiction.

The Current Situation?

Dixcart can provide guidance on the revised obligations in light of the current circumstances, across the jurisdictions where we have offices:

- Cyprus, Guernsey, Isle of Man, Malta, Portugal, Switzerland and the UK.

Guidance from Guernsey

The Guidance from Guernsey reflects the position taken by many other jurisdictions.

The Guernsey Revenue authorities have advised, that where a company has had to implement changes in the manner in which they conduct their business as a result of Covid-19, as far as economic substance requirements are concerned, provided that:

- the changes are as a result of the outbreak and to mitigate the threats from it, and
- are on a temporary basis,

these changes, will not in themselves, cause a company to fail the relevant economic substance test.

Companies should, however, maintain relevant records, showing both local regulations and their own internal policies, in respect of restrictions on travel for company officers, and the period of time for which these policies are in place.

This will ensure that companies can demonstrate that COVID-19 restriction measures prevented the company from holding an adequate number of board meetings on the island, or temporarily required meetings to be held virtually, for example; conference calls, video conferencing, Skype or similar.

Normal protocols for such meetings should be observed, as far as possible.

Corporate Governance

Constitutional and other governance documents should be reviewed to ensure that they allow for meetings to be held remotely (for example, by telephone, video conferencing or other platforms), rather than there being a requirement for physical meetings to take place.

How Can Dixcart Help?

Please contact us if you need advice to help you to meet economic substance requirements during this challenging time. With offices in eight jurisdictions, Dixcart is ideally positioned to provide advice and assistance in relation to these matters.

Please speak to your usual Dixcart contact or email us at: advice@dixcart.com.

Alternatively, please contact one of our managers in the Dixcart Guernsey office:

advice.guernsey@dixcart.com.