

STATUTORY INSTRUMENT

2021 No. 64

**The Income Tax (Substance Requirements)  
(Implementation) Regulations, 2021**

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STATUTORY INSTRUMENT

2021 No. 6†

**The Income Tax (Substance Requirements)  
(Implementation) Regulations, 2021**

<i>Made</i>	15 <sup>th</sup> June, 2021
<i>Coming into operation</i>	30 <sup>th</sup> June, 2021
<i>Laid before the States</i>	, 2021

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 75CC(1A), 171A, 171B and 203A of the Income Tax (Guernsey) Law, 1975<sup>a</sup>, and all other powers enabling them in that behalf, hereby makes the following regulations:-

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; sections 75CC(1A) and 171A were inserted by the Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018 and section 203A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII of 2005); there are other amendments not material to these Regulations.

*Introductory*

**Implementation of substance requirements.**

1. (1) These Regulations prescribe, for the purposes of section 171A of the Income Tax (Guernsey) Law, 1975 ("the Law"), the requirements and criteria that must be complied with or fulfilled by or in respect of –

- (a) a company resident in Guernsey within the meaning of section 4 of the Law, or
- (b) a company which is eligible for exemption from tax under paragraph 3 or 5 of Schedule 1 to, and which has been granted an exemption by the Director under section 3 of, the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989<sup>b</sup>, and which would be resident in Guernsey within the meaning of section 4 of the Law had such an exemption not been granted,

("substance requirements") in order to ensure that real economic activity is being carried on in Guernsey in respect of the profits and income of the company.

(2) A company described in paragraph (1)(a) or (b) is referred to in these Regulations as a "resident body".

(3) These Regulations do not apply to –

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<sup>b</sup> Recueil d'Ordonnances Tome XXV, p. 106; there are amendments not material to these Regulations.

(a) a foundation established under the Foundations (Guernsey) Law, 2012<sup>c</sup>, or

(b) an equivalent or similar body created or established under the law of another jurisdiction (and however named).

(4) These Regulations do not apply to a collective investment vehicle within the meaning of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 unless it is a self-managed collective investment vehicle.

(5) A self-managed collective investment vehicle is subject to the provisions of these regulations –

(a) in all respects as if it carried on the relevant activity of fund management and received income from that relevant activity (and the provisions of these regulations shall apply accordingly with the necessary adaptations), and

(b) whether or not it has been granted an exemption from tax by the Director under section 3 of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989.

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<sup>c</sup> Order in Council No. I of 2013; there are amendments not material to these Regulations.

**Application of substance requirements to partnerships.**

2. (1) Except where they make provision to the contrary, these Regulations apply to partnerships described in paragraph (2) as they apply to companies described in regulation 1(1)(a) (companies resident in Guernsey within the meaning of section 4 of the Law), and references in these Regulations to resident bodies, IP bodies, high risk IP bodies and pure equity holding bodies shall be construed accordingly.

(2) The partnerships are –

- (a) a partnership within the meaning of section 1 of the Partnership (Guernsey) Law, 1995 formed in Guernsey, not being a limited partnership or a limited liability partnership referred to in subparagraph (b) or (c), which carries on business activity in Guernsey, referred to in these Regulations as a "**general partnership**",
- (b) a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality), which does not have its place of effective management in a qualifying jurisdiction, referred to in these Regulations as a "**limited partnership**",
- (c) a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013 which does not have its place of effective management in

a qualifying jurisdiction, referred to in these Regulations as a **"limited liability partnership"**,

(d) a person, entity or arrangement registered, formed or entered into under the laws of a place outside Guernsey (and however named) –

(i) which corresponds to a general partnership, limited partnership or limited liability partnership, and

(ii) which has its place of effective management in Guernsey and carries on business activity in Guernsey,

referred to in these Regulations as a **"foreign partnership"**.

(3) In paragraph (2) **"qualifying jurisdiction"** means a jurisdiction other than Guernsey in respect of which the following conditions are met –

(a) the partnership is subject to the application of substance requirements under the law of that jurisdiction that are substantially the same as the substance requirements set out in these Regulations, or

(b) the highest rate of tax on the income of any person in that jurisdiction is at least 10%.

(4) These Regulations do not apply to a partnership described in paragraph (2) where –

(a) the activities of the partnership are wholly domestic, that is, the partnership –

(i) substantially carries on its activities within Guernsey, and

(ii) is not part of an intra group collection of persons any other member of which is –

(A) tax resident in a different jurisdiction, or

(B) resident for tax purposes in one jurisdiction and subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction,

(b) all partners of the partnership (or members, in the case of a limited liability partnership) are individuals subject to income tax under the Law on their share of the profits of the partnership.

(5) The question of whether or not, for the purposes of regulation 3, substance requirements apply in respect of a partnership described in paragraph (2) shall be determined by reference to the business and activities of the partnership as a whole, and not by reference to the business and activities of the individual partners (whether bodies corporate or natural persons).

However –

- (a) for the avoidance of doubt, the business and activities of the individual partners may be taken into account for the purposes of determining that question and also in determining the partnership's compliance with substance requirements, and
- (b) a person who is a partner of a partnership described in paragraph (2) is not required to comply with the substance requirements set out in regulations 4 to 6 in respect of any income derived by that person from the partnership's carrying on of a business or activity specified in regulation 3.

*Substance requirements*

**Bodies to which substance requirements apply.**

3. Substance requirements apply in respect of a resident body specified in any of the following subparagraphs -

- (a) a resident body with income from carrying on business or activities of any of the following classes or descriptions ("relevant activities") -
  - (i) banking,
  - (ii) insurance,

- (iii) fund management,
  - (iv) financing and leasing,
  - (v) headquartering,
  - (vi) shipping,
  - (vii) a distribution and service centre,
- (b) a resident body with income from intellectual property assets held by it (an "IP body"),
  - (c) a resident body -
    - (i) which is a pure equity holding body, and
    - (ii) with income from that activity.

**Substance requirements for bodies carrying on relevant activities.**

4. (1) A resident body carrying on a relevant activity must ensure that

- (a) the relevant activity is directed and managed in Guernsey (see paragraph (2)),
- (b) it carries on core income-generating activity in relation to that relevant activity in Guernsey (see paragraph (3)),

- (c) there is an adequate level of appropriately qualified employees in Guernsey proportionate to the level of that relevant activity carried on in Guernsey, whether or not employed by it or another person and whether on temporary or long-term contracts,
- (d) there is an adequate level of operating expenditure in Guernsey proportionate to the level of that relevant activity carried on in Guernsey, and
- (e) there is an adequate physical presence in Guernsey (including, without limitation, offices and/or premises) proportionate to the level of that relevant activity carried on in Guernsey,

and the body must be able to demonstrate to the satisfaction of the Director that these requirements are or were complied with in each accounting period in which the requirements apply or applied in respect of it.

(2) For the purposes of paragraph (1)(a), a relevant activity carried on by a resident body is directed and managed in Guernsey if -

- (a) the body's governing board meets in Guernsey with adequate frequency having regard to the level of decision-making required in respect of that relevant activity,
- (b) during those meetings, a quorum of the members of the governing board is physically present in Guernsey,

- (c) strategic decisions of the body are made at meetings of the governing board and the minutes of the meetings record those decisions,
- (d) the governing board, as a whole, has the necessary knowledge and expertise to make those decisions, and
- (e) all minutes of meetings of the governing board and all other company or partnership records relevant for the purposes of this Regulation are kept in Guernsey,

and in this paragraph the "governing board" means –

- (i) in the case of a resident body which is a company, the board of directors, and
- (ii) in the case of a resident body which is a partnership, the relevant management committee or other similar governing body (however constituted).

(3) For the purposes of paragraph (1)(b), a resident body carrying on a relevant activity carries on core income-generating activity in relation to that activity in Guernsey even if it outsources such activity, provided that -

- (a) the outsourcing is performed in Guernsey, and

- (b) the body is able to demonstrate to the satisfaction of the Director adequate supervision of the outsourced activity.

**Substance requirements for IP bodies.**

- 5. (1) A resident body which is an IP body must ensure that -
  - (a) its business of obtaining or otherwise deriving income from intellectual property assets is directed and managed in Guernsey (see paragraph (2)),
  - (b) it carries on core income-generating activity in relation to intellectual property assets in Guernsey (see paragraph (3)),
  - (c) there is an adequate level of appropriately qualified employees in Guernsey proportionate to the level of that activity carried on in Guernsey, whether or not employed by it or another person and whether on temporary or long-term contracts,
  - (d) there is an adequate level of operating expenditure in Guernsey proportionate to the level of that activity carried on in Guernsey,
  - (e) there is an adequate physical presence in Guernsey (including, without limitation, offices and/or premises) proportionate to the level of that activity carried on in Guernsey,

and the body must be able to demonstrate to the satisfaction of the Director that these requirements are or were complied with in each accounting period in which the requirements apply or applied in respect of it.

(2) For the purposes of paragraph (1)(a), an IP body's business of obtaining or otherwise deriving income from intellectual property assets is directed and managed in Guernsey if –

- (a) the IP body's governing board meets in Guernsey with adequate frequency having regard to the level of decision-making required in respect of that business (and for the purpose of this subparagraph periodic decisions of non-resident members of the governing board are not taken into account),
- (b) during those meetings, a quorum of the members of the governing board is physically present in Guernsey,
- (c) strategic decisions of the IP body are made at meetings of the governing board and the minutes of the meetings record those decisions,
- (d) the governing board, as a whole, has the necessary knowledge and expertise to make those decisions, and
- (e) all minutes of meetings of the governing board and all other company or partnership records relevant for the purposes of this Regulation are kept in Guernsey

and in this paragraph the "governing board" means –

(i) in the case of an IP body which is a company, the board of directors, and

(ii) in the case of an IP body which is a partnership, the relevant management committee or other similar governing body (however constituted).

(3) For the purposes of paragraph (1)(b), an IP body carries on core income-generating activity in relation to intellectual property assets in Guernsey, even if it outsources such activity provided that –

(a) the outsourcing is performed in Guernsey, and

(b) the body is able to demonstrate to the satisfaction of the Director adequate supervision of the outsourced activity.

**Substance requirements for bodies which are pure equity holding bodies.**

6. A resident body which is a pure equity holding body must ensure that

(a) it complies with all obligations applicable to it under the provisions of the applicable company or partnership legislation of the jurisdiction of its incorporation, registration or establishment, and

(b) there is -

- (i) an adequate level of persons in Guernsey proportionate to the level of activity carried on in Guernsey, and
- (ii) an adequate physical presence in Guernsey (including, without limitation, offices and/or premises) proportionate to the level of activity carried on in Guernsey,

for holding and managing the shares or equitable interests,

and the body must be able to demonstrate to the satisfaction of the Director that these requirements are or were complied with in each accounting period in which the requirements apply or applied in respect of it.

**Non-application to bodies with no income in accounting period.**

7. For the avoidance of doubt, a resident body specified in any subparagraph of regulation 3 need not, in any accounting period, comply with the substance requirements set out in regulations 4 to 6 if in that accounting period it has no income from the business or activity carried on by it and by virtue of which that subparagraph would, but for the provisions of this paragraph, apply to it.

**Core income-generating activity.**

8. For the purposes of these Regulations "core income-generating activity" -

- (a) in relation to banking, includes -
  - (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 regulatory capital, and
  - (vi) preparing regulatory reports and returns,
  
- (b) in relation to insurance, includes -
  - (i) predicting and calculating risk,
  - (ii) insuring or re-insuring against risk, and
  - (iii) providing client services,
  
- (c) in relation to fund management, includes -
  - (i) taking decisions on the holding and selling of investments,

- (ii) calculating risks and reserves,
  - (iii) taking decisions on currency or interest fluctuations and hedging positions, and
  - (iv) preparing relevant regulatory or other reports for governmental or regulatory authorities and investors,
- (d) in relation to financing and leasing, includes -
- (i) agreeing funding terms,
  - (ii) identifying and acquiring assets to be leased (in the case of leasing),
  - (iii) setting the terms and duration of any financing or leasing,
  - (iv) monitoring and revising any agreements, and
  - (v) managing any risks,
- (e) in relation to headquartering, includes -
- (i) taking relevant management decisions,
  - (ii) incurring expenditures on behalf of intra group persons, and

- (iii) co-ordinating group activities,
- (f) in relation to shipping, includes -
- (i) managing crew (including hiring, paying, and overseeing crew members),
  - (ii) hauling and maintaining ships,
  - (iii) overseeing and tracking deliveries,
  - (iv) determining what goods to order and when to deliver them, and
  - (v) organising and overseeing voyages,
- (g) in relation to distribution and service centres, includes -
- (i) transporting and storing goods, components and materials,
  - (ii) managing stocks,
  - (iii) taking orders, and
  - (iv) providing consulting or other administrative services,

- (h) in relation to intellectual property assets, include -
  - (i) in respect of a business exploiting intellectual property assets which are patents and assets that share the same feature of a patent, any research and development,
  - (ii) in respect of a business exploiting intellectual property assets which are marketing intangibles such as trademarks, any marketing, branding and distribution, and
  - (iii) in exceptional cases, and other than in the case of a high risk IP body other core income generating activities relevant to the business and the intellectual property assets, which may include –
    - (A) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intellectual property asset,
    - (B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third party acquisition and subsequent exploitation of the intellectual property asset, and

- (C) carrying on the underlying trading activities through which the intellectual property asset is exploited and which lead to the generation of revenue from third parties.

*Provision of information and reporting, etc*

**Reporting obligations.**

9. (1) Subject to paragraph (2), a resident body must, in respect of its first accounting period beginning after the 31<sup>st</sup> December, 2018 and every following accounting period, provide the Director with such reports and returns (containing such declarations, statements and other information), and such other documents and information or class or description of documents or information, as may be required -

- (a) for the purpose of ascertaining whether the resident body -
  - (i) is or was, in that accounting period, one in respect of which substance requirements apply or applied by virtue of regulation 3, and
  - (ii) is or was, in that accounting period, in compliance with any substance requirements applicable in respect of it,
- (b) generally in respect of substance requirements and adequacy,

- (c) otherwise by, under or for the purposes of these Regulations or the performance of the Director's functions under them,
- (d) for the purposes of any approved international agreement or international tax measure, or
- (e) for purposes relating to the spontaneous exchange of information,

and as the Director may by notice specify.

(2) Paragraph (1) applies in respect of a resident body which is a partnership described in regulation 2(2) as if for the expression "the 31<sup>st</sup> December, 2018" there were substituted "the 30<sup>th</sup> June 2021 (or, in relation to a partnership in existence on the 30<sup>th</sup> June 2021, the 31<sup>st</sup> December, 2021)".

(3) Reports, returns and other documents and information required to be provided by or under paragraph (1) must be provided in such form and manner (including, without limitation and for the avoidance of doubt, by being set out in or appended to the body's return of income under section 68 of the Law), by such means, at such times, intervals or places and in respect of such periods as the Director may by notice require.

(4) For the purposes of, but without prejudice to the generality of, paragraphs (1), (2) and (3) -

- (a) the notices referred to in those paragraphs may require a resident body to register with, to use and to provide documents and information by means of an electronic portal specified in the notices for that purpose,
- (b) the notices may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Revenue Service or by being set out in guidance notes issued under regulation 29.

**Provisions as to high risk IP bodies.**

10. In respect of any accounting period, and irrespective of whether the substance requirements are met, the Director shall, under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to a high risk IP body.

**Application of information powers.**

11. (1) Section 75A of the Law ("power to call for documents, etc, from taxpayer") applies in respect of these Regulations as if there were added at the end of subsection (1)(a)(iii) the words "and/or compliance with the Income Tax (Substance Requirements) (Implementation) Regulations, 2018", and sections -

- (a) 75C ("notices under section 75A and 75B: requests for information"),
- (b) 75D ("sections 75A and 75B: supplementary"),

- (c) 75E ("court orders for delivery of documents, etc, from a taxpayer"),
- (d) 75G ("court orders under sections 75E and 75F: supplementary"),
- (e) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (f) 75I ("entry with warrant to obtain material"),
- (g) 75J ("procedure where documents etc, are removed"),
- (h) 75K ("right of appeal to Royal Court"), and
- (i) 75L ("offences in relation to falsification, etc, of documents"),

of the Law, apply accordingly.

(2) Section 75B of the Law ("power to call for documents, etc, relating to taxpayer") applies in respect of these Regulations as if there were added at the end of subsection (2)(c) the words "and/or compliance with the Income Tax (Substance Requirements) (Implementation) Regulations, 2018", and sections -

- (a) 75C ("notices under section 75A and 75B: requests for information"),

- (b) 75CB ("notices under section 75B: ancillary provision"),
- (c) 75D ("sections 75A and 75B: supplementary"),
- (d) 75F ("court orders for delivery of documents, etc, relating to a taxpayer"),
- (e) 75G ("court orders under sections 75E and 75F: supplementary"),
- (f) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (g) 75I ("entry with warrant to obtain material"),
- (h) 75J ("procedure where documents etc, are removed"),
- (i) 75K ("right of appeal to Royal Court"), and
- (j) 75L ("offences in relation to falsification, etc, of documents"),

of the Law, apply accordingly.

**Exchange of information with competent authorities.**

12. (1) Reports, returns and other documents and information provided to the Director under or for the purposes of these Regulations or otherwise held or obtained by the Director for the purposes of or in the course of the performance of the Director's functions may be disclosed by the Director for any of the purposes set out in regulation 9(1) to any relevant competent authority.

(2) This regulation is without prejudice to the powers conferred by regulation 10.

*Procedure, penalties and other sanctions in respect of non-compliance*

**Penalties and spontaneous exchange of information where substance requirements not met - first accounting period of default.**

13. (1) Where, following the submission by a resident body of its return pursuant to regulation 9 in respect of its first accounting period of default, the Director forms the opinion that the body -

- (a) is or was, in that accounting period, one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not, in that accounting period, in compliance with any of the substance requirements applicable in respect of it,

the Director -

- (i) shall by notice impose a penalty not exceeding £10,000,

- (ii) shall, under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the body, and
- (iii) may, where he decides that there is no realistic possibility of the body complying with the substance requirements applicable in respect of it –
  - (A) where the body is a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>d</sup>, give notice to the Registrar of Companies for the purposes of section 355(1)(f) of that Law (striking defaulting company off Register of Companies),
  - (B) where the body is a company the memorandum and articles of which are registered in the Register of Companies

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<sup>d</sup> Order in Council No. VIII of 2008; there are amendments not material to these Regulations.

within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>e</sup>, give notice to the Registrar of Companies for the purposes of section 107(1)(e) of that Law (striking a company off the Register),

- (C) where the body is a limited partnership registered in the Register of Limited Partnerships within the meaning of section 7 of the Limited Partnerships (Guernsey) Law, 1995<sup>f</sup> which has legal personality pursuant to section 9A of that Law, give notice to the Her Majesty's Greffier for the purposes of section 32A of that Law (striking defaulting limited partnership off Register of Limited Partnerships), and
- (D) where the body is a limited liability partnership registered in the Register of Limited Liability Partnerships within the meaning of section 6 of the Limited

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<sup>e</sup> Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not material to these Regulations.

<sup>f</sup> Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not material to these Regulations.

Liability Partnerships (Guernsey) Law, 2013<sup>8</sup>, give notice to the Registrar of Limited Liability Partnerships for the purposes of section 62 of that Law (striking defaulting LLP off Register of LLPs).

- (2) The notice under paragraph (1) must -
- (a) state the grounds of the Director's decision,
  - (b) set out particulars of the substance requirements which in the opinion of the Director –
    - (i) are or were, in that accounting period, applicable in respect of the body, and
    - (ii) the body is not or was not, in that accounting period, complying with or fulfilling,
  - (c) explain the sanctions (civil or criminal) that may arise or be imposed under these regulations or the Law in respect of non-compliance or non-fulfilment, and

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<sup>8</sup> Order in Council No. VI of 2014; there are amendments not material to these Regulations.

- (d) set out particulars of any right of appeal that may be applicable.

(3) The notice under paragraph (1) may, without prejudice to the powers conferred by regulation 9, require the provision of such documents or information or class or description of documents or information as the Director may require for any of the purposes set out in subparagraphs (a) to (e) of regulation 9(1).

(4) A resident body's first accounting period of default means an accounting period of the body beginning after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)) in which, in the opinion of the Director, the body -

- (a) is or was one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not in compliance with any of the substance requirements applicable in respect of it,

being an accounting period -

- (i) beginning on the 1st January, 2019, or
- (ii) which immediately succeeds an accounting period of the body ending after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)) in which, in the opinion of the Director, the body -

(A) was not one in respect of which substance requirements applied by virtue of regulation 3, or

(B) was in compliance with any of the substance requirements applicable in respect of it.

**Penalties and spontaneous exchange of information where substance requirements not met - third accounting period of default.**

14. (1) Where, following the submission by a resident body of its return pursuant to regulation 9 in respect of its third accounting period of default, the Director forms the opinion that the body -

(a) is or was, in that accounting period, one in respect of which substance requirements apply or applied by virtue of regulation 3, and

(b) is not or was not, in that accounting period, in compliance with any of the substance requirements applicable in respect of it,

the Director –

(i) shall by notice impose a penalty not exceeding £50,000, and

(ii) shall, under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the body, and

(iii) may, where he decides that there is no realistic possibility of the body complying with the substance requirements applicable in respect of it

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(A) where the body is a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008, give notice to the Registrar of Companies for the purposes of section 355(1)(f) of that Law (striking defaulting company off Register of Companies),

(B) where the body is a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994, give notice to the Registrar of Companies for the purposes of section 107(1)(e) of

that Law (striking a company off the Register),

- (C) where the body is a limited partnership registered in the Register of Limited Partnerships within the meaning of section 7 of the Limited Partnerships (Guernsey) Law, 1995<sup>h</sup> which has legal personality pursuant to section 9A of that Law, give notice to the Her Majesty's Greffier for the purposes of section 32A of that Law (striking defaulting limited partnership off Register of Limited Partnerships), and
  
- (D) where the body is a limited liability partnership registered in the Register of Limited Liability Partnerships within the meaning of section 6 of the Limited Liability Partnerships (Guernsey) Law, 2013<sup>i</sup>, give notice to the Registrar of Limited Liability Partnerships for the purposes of section 62 of that Law

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<sup>h</sup> Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not material to these Regulations.

<sup>i</sup> Order in Council No. VI of 2014; there are amendments not material to these Regulations.

(striking defaulting LLP off Register of  
LLPs).

- (2) The notice under paragraph (1) must -
- (a) state the grounds of the Director's decision,
  - (b) set out particulars of the substance requirements which in the opinion of the Director –
    - (i) are or were, in that accounting period, applicable in respect of the body, and
    - (ii) the body is not or was not, in that accounting period, complying with or fulfilling,
  - (c) explain the sanctions (civil or criminal) arising under these regulations or the Law in respect of non-compliance or non-fulfilment, and
  - (d) set out particulars of any right of appeal that may be applicable.

(3) The notice under paragraph (1) may, without prejudice to the powers conferred by regulation 9, require the provision of such documents or information or class or description of documents or information as the Director may require for any of the purposes set out in subparagraphs (a) to (e) of regulation 9(1).

(4) A resident body's third accounting period of default means a third consecutive accounting period of the body beginning after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)) in which, in the opinion of the Director, the body -

- (a) is or was one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not in compliance with any of the substance requirements applicable in respect of it.

**Penalties and spontaneous exchange of information where substance requirements not met - fourth and subsequent accounting periods of default.**

15. (1) Where, following the submission by a resident body of its return pursuant to regulation 9 in respect of its fourth accounting period of default and any subsequent accounting period of default, the Director forms the opinion that the body

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- (a) is or was, in that accounting period, one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not, in that accounting period, in compliance with any of the substance requirements applicable in respect of it,

the Director shall -

- (i) by notice impose a penalty not exceeding £100,000 or, as the case may require, the enhanced penalty prescribed by regulation 16,
- (ii) under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the body,
- (iii) where the body is a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>j</sup>, give notice to the Registrar of Companies for the purposes of section 355(1)(f) of that Law (striking defaulting company off Register of Companies),
- (iv) where the body is a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law,

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<sup>j</sup> Order in Council No. VIII of 2008; there are amendments not material to these Regulations.

1994<sup>k</sup>, give notice to the Registrar of Companies for the purposes of section 107(1)(e) of that Law (striking a company off the Register),

- (v) where the body is a limited partnership registered in the Register of Limited Partnerships within the meaning of section 7 of the Limited Partnerships (Guernsey) Law, 1995<sup>l</sup> which has legal personality pursuant to section 9A of that Law, give notice to the Her Majesty's Greffier for the purposes of section 32A of that Law (striking defaulting limited partnership off Register of Limited Partnerships), and
- (vi) where the body is a limited liability partnership registered in the Register of Limited Liability Partnerships within the meaning of section 6 of the Limited Liability Partnerships (Guernsey) Law, 2013<sup>m</sup>, give notice to the Registrar of Limited Liability Partnerships for the purposes

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<sup>k</sup> Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not material to these Regulations.

<sup>l</sup> Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not material to these Regulations.

<sup>m</sup> Order in Council No. VI of 2014; there are amendments not material to these Regulations.

of section 62 of that Law (striking defaulting LLP off Register of LLPs).

- (2) The notice under paragraph (1)(i) must -
- (a) state the grounds of the Director's decision,
  - (b) set out particulars of the substance requirements which in the opinion of the Director -
    - (i) are or were, in that accounting period, applicable in respect of the body, and
    - (ii) the body is not or was not, in that accounting period, complying with or fulfilling,
  - (c) explain the sanctions (civil or criminal) arising under these regulations or the Law in respect of non-compliance or non-fulfilment, and
  - (d) set out particulars of any right of appeal that may be applicable.

(3) The notice under paragraph (1)(i) may, without prejudice to the powers conferred by regulation 9, require the provision of such documents or information or class or description of documents or information as the Director may require for any of the purposes set out in subparagraphs (a) to (e) of regulation 9(1).

(4) A resident body's fourth accounting period of default means a fourth consecutive accounting period of the body beginning after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)) in which, in the opinion of the Director, the body -

- (a) is or was one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not in compliance with any of the substance requirements applicable in respect of it.

(5) A resident body's subsequent accounting period of default means a consecutive accounting period of the body, after its fourth accounting period of default and beginning after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)), in which, in the opinion of the Director, the body -

- (a) is or was one in respect of which substance requirements apply or applied by virtue of regulation 3, and
- (b) is not or was not in compliance with any of the substance requirements applicable in respect of it.

**Non-registered partnerships – enhanced penalties for subsequent accounting periods of default.**

16. (1) Where the resident body referred to in regulation 15(1) is a partnership which is not a limited partnership or limited liability partnership described in item (v) or (vi) of that regulation, the Director shall by notice impose on the body, in respect of the body's subsequent accounting periods of default within the

meaning of regulation 15(5), instead of the penalty of £100,000 referred to in regulation 15(1)(i), an enhanced penalty of £150,000, in respect of the first and any succeeding subsequent accounting period of default.

(2) The provisions of regulation 15 apply in relation to the enhanced penalties of £150,000 in respect of subsequent accountings period of default prescribed by this regulation as they apply in relation to the penalty in respect of subsequent accounting periods of default prescribed by regulation 15(1)(i).

**High risk IP bodies - special procedure.**

17. (1) In the case of a high risk IP body, the substance requirements are presumed not to be met, even if there are core income-generating activities being carried on in Guernsey relevant to the business and the intellectual property assets, unless the body provides evidence to satisfy the Director that this presumption is rebutted.

(2) For the purpose of paragraph (1), the evidence referred to includes –

- (a) information which demonstrates to the satisfaction of the Director that there is and historically was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intellectual property assets, exercised by an adequate number of full-time employees with the necessary qualifications who permanently reside and perform their activities in Guernsey,

- (b) detailed business plans which demonstrate to the satisfaction of the Director the commercial rationale for the body holding the intellectual property assets in Guernsey,
- (c) information regarding the body's employees, their level of experience, type of contract, qualifications and the duration of their employment,
- (d) evidence that the body's decision making takes place within Guernsey, and
- (e) any other information required by the Director.

(3) The body's return under regulation 9 in respect of each of its accounting periods beginning after the 31<sup>st</sup> December, 2018 (or, in the case of a partnership described in regulation 2(2), the alternative date specified in regulation 9(2)) must -

- (a) declare that the substance requirement in regulation 5(1)(b) is met and contain or be accompanied by evidence sufficient to rebut the presumption that the substance requirement is not met, or
- (b) declare that the body is unable to rebut the presumption and that the substance requirement in regulation 5(1)(b) is not met.

(4) The provisions of regulations 13, 14 and 15 apply in respect of a high risk IP body with the following modifications -

- (a) regulation 13(1)(ii) applies as if after the words "relating to the spontaneous exchange of information," there were inserted "and without prejudice to the powers conferred by regulation 10,"
- (b) regulation 14(1) applies with the substitution of the words "second accounting period of default" for the words "third accounting period of default",
- (c) regulation 14(1)(ii) applies as if after the words "relating to the spontaneous exchange of information," there were inserted "and without prejudice to the powers conferred by regulation 10,"
- (d) regulation 14(4) applies with the substitution of the word "second" for the word "third", wherever appearing,
- (e) regulation 15(1) applies with the substitution of the words "third accounting period of default" for the words "fourth accounting period of default",
- (f) regulation 15(1)(ii) applies as if after the words "relating to the spontaneous exchange of information," there were inserted "and without prejudice to the powers conferred by regulation 10,"

- (g) regulations 15(4) and 15(5) apply with the substitution of the word "third" for the word "fourth", wherever appearing.

**Penalties for failure to provide information or for false information.**

18. (1) Section 193 of the Law (penalties in respect of returns not relating to income) applies in respect of these Regulations with the following modifications -

- (a) subsections (1) and (2) apply as if the references to a return other than a return of income included references to a return or other document or information required to be provided by or under these Regulations,
- (b) subsection (1) applies as if the references to the time prescribed included references to the time prescribed by or under these Regulations, and
- (c) subsection (3) of that section is omitted.

(2) The penalties arising under section 193 of the Law are in addition to any penalties applicable under these Regulations.

**Right of appeal against penalties.**

19. (1) A person aggrieved by a decision of the Director to impose a penalty under these Regulations may appeal to the Guernsey Tax Tribunal on giving to the Director notice in writing, stating the grounds of appeal, within a period of 30 days beginning on the date of the notice imposing the penalty.

(2) The Guernsey Tax Tribunal may admit an appeal under paragraph (1) after the expiration of the 30 day period if satisfied that a person was prevented from giving notice of appeal within that period by reason of exceptional circumstances.

(3) The sole grounds of appeal are that the body on which the penalty was imposed -

(a) is not one in respect of which substance requirements apply by virtue of regulation 3,

(b) is in compliance with the substance requirements applicable in respect of it, or

(c) is not subject to the penalty under the provisions of these Regulations.

(4) In disposing of an appeal the Guernsey Tax Tribunal may confirm or annul the penalty.

(5) Subject to section 80 of the Law, the decision of the Guernsey Tax Tribunal is final and conclusive.

(6) This regulation applies to the exclusion of sections 76 and 79 of the Law.

(7) Sections 77, 78, 78A and 80 of the Law apply in relation to an appeal under this regulation as they apply in relation to an appeal under section 76 of the Law.

*Powers of entry and inspection, etc*

**Power to enter premises and inspect documents.**

20. (1) The Director may, during normal business hours or at any other reasonable time, if he considers necessary to do so for any of the purposes set out in subparagraphs (a) to (e) of regulation 9(1) -

- (a) enter any business premises, and
- (b) inspect the premises and any business documents therein.

(2) The entry and inspection may only take place if -

- (a) the occupier of the premises consents,
- (b) the Director has given the occupier at least 7 days' written notice of the entry and inspection and when it will take place, or
- (c) the entry and inspection has been approved by the Bailiff under regulation 21 and the Director complies with regulation 22.

(3) The Director may not inspect -

- (a) any part of the premises used solely as a dwelling.

- (b) items subject to legal professional privilege within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (but for the purposes of this regulation items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege), or
- (c) a document relating to the conduct of any appeal relating to tax or taxation.

(4) The powers of inspection conferred by this regulation include power to obtain and record information (whether electronically or otherwise) relating to business premises and business documents inspected.

(5) In these Regulations -

**"business documents"** means documents which relate to the carrying on of a business or activity and which -

- (a) are of a class or description required under the Law (or any Ordinance or regulation thereunder) to be kept in respect of the business or activity, or
- (b) contain or may contain information relevant to any of the purposes set out in subparagraphs (a) to (e) of regulation 9(1),

"business premises" means premises or any parts of premises which the Director has reason to believe are used in connection with the carrying on of a business or activity.

**Approval of entry and inspection by Bailiff.**

21. (1) The Director shall, where he wishes to obtain approval of an entry and inspection for the purposes of regulation 20(2)(c), make a written application accompanied by information on oath to the Bailiff.

(2) The application must specify the reasons for making it and identify the premises, the occupier and the business documents or class or description of business documents to which the application relates.

(3) The application may, with the approval of the Bailiff, and subject to such terms and conditions as he may direct, be made ex parte.

(4) The Bailiff may give approval in writing if he is satisfied that he is reasonably justified in doing so in all the circumstances of the case.

(5) The approval may be given on such terms and conditions (including, without limitation, a term or condition that the Director must or may be accompanied by any person specified, or of a class or description specified, in the approval) and subject to such penalty as the Bailiff thinks just.

(6) In these Regulations the "Bailiff" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué and, where the premises in question are in Alderney, includes the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof.

**Notice requirement for entry and inspection.**

22. The Director must, when entering premises pursuant to the approval of the Bailiff under regulation 21, give notice -

- (a) to the occupier of the premises, if he is present,
- (b) if the occupier is not present, to another person who appears to be in charge of the premises, or
- (c) if there is no such person, by leaving it in a prominent place in the premises.

**Power to require reasonable assistance.**

23. (1) This regulation applies if the Director has entered business premises pursuant to the approval of the Bailiff under regulation 21.

(2) The Director may require a person described in paragraph (3) who is present on the premises to give the Director all such assistance as may reasonably be requested to facilitate the execution of the search for, accessing, inspection or removal of any document and otherwise to enable the performance of the Director's functions for the purposes of the entry and inspection (an "assistance requirement").

(3) The persons referred to in paragraph (2) are -

- (a) the person whose tax position, business or activities are being examined (the "investigated person"),
- (b) a tax adviser of the investigated person,

- (c) anyone employed or engaged by the investigated person or the tax adviser to perform work at the business premises, and
- (d) any other person on the premises appearing to have charge of, or to be otherwise concerned in the operation of, the management, recording or storage of any document which is on or accessible from the premises, whether or not stored or recorded in electronic form, or any system, arrangement or technology in or by virtue of which any such document is stored, recorded or accessed.

(4) When making an assistance requirement of a person, the Director must inform the person in writing that a contravention of the requirement is an offence under these Regulations.

**Other provisions in respect of documents.**

24. (1) The Director may take copies of or extracts from any business document.

(2) The Director may -

- (a) at any reasonable time, remove any business document and retain it for a reasonable period, or

- (b) take any steps which appear to be necessary for preserving any business document or preventing interference with it.

(3) The Director may require any person who was required to produce a business document -

- (a) to attend at such time and place as may be required and to give an explanation of and to answer questions relating to it or anything in it, and
- (b) if the document is not produced, to state, to the best of his knowledge and belief, where it is.

(4) If a business document is stored or recorded in electronic form, the Director may require the document to be produced in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(5) The Director must, if the owner of any business document removed and retained under this regulation so requests at any time, give the owner -

- (a) a receipt for the document, and
- (b) if the owner reasonably requires the document for any immediate purpose, and the Director does not wish to

return it, a copy of the document, which must be given free of charge.

(6) If a business document is lost or damaged before it is returned to the owner, the Director must compensate the owner for any costs reasonably incurred in the document's replacement or repair.

**Offences of obstruction, etc.**

25. A person who, without reasonable excuse, contravenes an assistance requirement made of him under regulation 23 or otherwise obstructs or fails to comply with any requirement imposed by a person exercising or purporting to exercise any power conferred by or under these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989.

*Penalties and offences, etc*

**Criminal penalties for false statements, etc.**

26. (1) Without prejudice to the application of regulation 11, section 75L of the Law (offences in relation to falsification, etc, of documents) applies in respect of these regulations as if -

- (a) references in subsection (1) of that section to a document required by a notice under section 75A to be delivered included references to a return or other document or information required to be provided by or under these Regulations,

- (b) paragraphs (b) and (c) of subsection (2) were omitted, and
- (c) subsection (3), and the reference thereto in subsection (4), were omitted.

(2) Section 75M of the Law (duties of confidentiality, liens, and self-incrimination) applies in respect of these Regulations as if in subsection (4)(b)(ii)(A) of that section after the words "section 75L(3)" there was inserted "or section 201(1) by virtue of a contravention of section 201(4)".

**Offences by legal persons, etc.**

27. (1) Where an offence under these Regulations is committed by a body corporate or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer of the body corporate or other legal person,
- (b) without prejudice to item (a) -
  - (i) in the case of a limited partnership with legal personality, any general partner,
  - (ii) in the case of a limited liability partnership, any member,
  - (iii) in the case of a foundation, any foundation official, or

- (c) any person purporting to act in any capacity described in item (a) or (b),

he as well as the body corporate or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate or other legal person are managed by its members, subparagraph (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under these Regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of sub-item (ii),
  - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in item (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subparagraph (3), be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations shall be paid from the funds of that body.

(6) References in this regulation to an offence under these Regulations include references to an offence under the Law as it has effect by virtue of, or in consequence of the enactment of, these Regulations.

#### *Miscellaneous*

#### **Anti-avoidance.**

28. (1) If -
- (a) a person enters into any transaction or series of transactions, and
  - (b) the main purpose, or one of the main purposes, of the person in entering into the transaction or series of

transactions is to avoid any obligation or liability under these Regulations,

these Regulations have effect as if the transaction or series of transactions had not been entered into.

(2) In paragraph (1) "transaction" has the meaning given by subsection (2) of section 67 of the Law (general provision against legal avoidance), as read with subsection (3) of that section, which has effect for the purposes of this regulation accordingly.

(3) Subsection (4) of section 67 of the Law has effect for the purposes of this regulation as if references therein to tax under the Law included references to tax imposed by the laws of another jurisdiction.

(4) Subsection (5) of section 67 of the Law does not have effect for the purposes of this regulation.

**Guidance notes.**

29. (1) The Director may issue guidance notes -

(a) in respect of -

(i) substance and the adequacy thereof, and

(ii) the meaning of expressions used in these Regulations, and

(b) generally for the purpose of providing clarification or practical guidance in respect of any provision of, and in connection with the administration, implementation or enforcement of, these Regulations.

(2) Guidance notes -

(a) shall come into force on such date as the Director may appoint,

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient,

(c) may be revoked or revised by subsequent guidance notes,

(d) shall be published in such manner as the Director considers appropriate, and

(e) may set out any notices of the Director referred to in paragraphs (1) and (3) of regulation 9.

(3) Guidance notes must be taken into account by the Director in exercising his functions under these Regulations and the Law.

(4) In any legal proceedings, criminal or otherwise, whether or not under the Law or these Regulations (including, for the avoidance of doubt, proceedings before the appropriate body under section 76 of the Law), guidance notes

are admissible in evidence, and if any provision of guidance notes appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings, then -

- (a) the provision may be taken into account in determining that question, and
- (b) the provision may be relied on as tending to support or, as the case may be, defeat any representation or submission of any party to the proceedings.

(5) The powers conferred by paragraph (1) are without prejudice to any power conferred by the Law to issue statements of practice.

(6) Section 203A(2) of the Law applies in respect of guidance notes as it applies in respect of Regulations.

**Amendment of provisions as to company residence.**

30. (1) For section 4(1)(a) of the Law<sup>n</sup> (definition of "resident" in the case of a company) substitute the following paragraph –

- "(a) it is controlled in Guernsey, or it is centrally managed and controlled in Guernsey, in that year of charge, or".

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<sup>n</sup> Section 4(1)(a) was inserted by the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018.

(2) In section 4(1)(b) of the Law for the word “incorporated” substitute “registered”.

**Amendment of provisions as to partnerships.**

31. (1) After section 42 of the Law insert the following sections –

**“Duty of partnerships to register with Director.**

42A. (1) This section applies to the following descriptions of partnership –

- (a) a partnership within the meaning of section 1 of the Partnership (Guernsey) Law, 1995 formed in Guernsey, not being a limited partnership or a limited liability partnership referred to in paragraph (b) or (c), which carries on business activity in Guernsey,
- (b) a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality),
- (c) a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013,

- (d) a person, entity or arrangement registered, formed or entered into under the laws of a place outside Guernsey (and however named) –
  - (i) which corresponds to a partnership, limited partnership or limited liability partnership described in paragraph (a), (b) or (c), and
  - (ii) which has its place of effective management in Guernsey and carries on business activity in Guernsey.

(2) A partnership described in subsection (1) must register with the Director in such manner, by such means, at such times or intervals and in respect of such periods as the Director may by notice require.

(3) For the purposes of, but without prejudice to the generality of, subsection (2), a notice of the Director under that subsection –

- (a) may require a partnership described in subsection (1) to register with, to use and to provide documents and information by means of an electronic portal specified in the notice for that purpose,
- (b) may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication

on the official website of the States of Guernsey Revenue Service or by being set out in a statement of practice issued under section 204.

(4) The “**place of effective management**” of a person, entity or arrangement means the place where the management and commercial decisions necessary for the conduct of the business as a whole of that person, entity or arrangement are substantially made, having regard to all relevant facts and circumstances.

**Duty of partnerships in relation to tax returns.**

42B. (1) A partnership described in section 42A(1) must, if so required by the Director, for the purposes of section 68(1) (duty to deliver return as to income), appoint –

- (a) a partner (or, in the case of a limited partnership, a general partner, or in the case of a limited liability partnership, a member), or
- (b) some other officer of the partnership,

with responsibility for the delivery to the Director of the partnership’s return as to its income under that section and all other documents and information required thereunder.

(2) A partnership described in section 42A(1) must give notice to the Director of the name and position within the partnership of the person appointed in accordance with paragraph (1) in such form and manner and accompanied by such information and documents as the Director may

require; and the Director may at any time after receipt of the notice require the person giving notice to furnish such additional information and documents in relation to the person appointed and the appointment as the Director may require.”.

(2) In section 68(1) of the Law after the words “every person” insert “(including, for the avoidance of doubt, a partnership described in section 42A(1))”.

(3) In section 68(2) of the Law -

(a) after the words “chargeable with tax” insert “or any partnership described in section 42A(1)”, and

(b) after “that he is so chargeable” insert “or, as the case may be, is such a partnership”.

(4) In section 189 of the Law –

(a) the existing text is numbered as subsection “(1)”, and

(b) after subsection (1), as so numbered, insert the following subsection –

“(2) A partnership which fails to give to the Director notice in accordance with section 68(2) is liable –

(a) if the failure was occasioned by its negligence, to a penalty not exceeding £10,000:

Provided that if the partnership gives such notice before the Director institutes enquiries which reveal the negligent failure, it is not liable to a penalty under this paragraph,

(b) if the failure was occasioned by its fraud, to a penalty not exceeding £20,000."

(5) After section 201(5)(a) insert the following paragraph –

“(aa) being a partnership described in section 42A(1), fail to register with the Director in accordance with the provisions of section 42A(2), or”.

(6) In section 201(5)(a) after "schedule," insert "notice,".

**Application of provisions as to service of notice.**

32. Without prejudice to the provisions of regulation 9, section 68(1AAA) of the Law (giving of notice from Director) applies in relation to a notice of the Director under regulation 9(1) or (3) or otherwise given by the Director under or for the purposes of these Regulations, as it applies in relation to a notice of the Director requiring a person to deliver a return as to income, and references (however expressed) in these Regulations to the giving or receipt of such a notice shall be construed accordingly.

**Application of duty to submit in electronic form and by electronic means.**

33. Section 68AA of the Law ("returns to be submitted in electronic form and by electronic means") applies in respect of these Regulations as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to these Regulations,
- (b) references in subsection (1) of that section to a return as to a person's income included references to a return or other document or information required or authorised to be provided by, under or for the purposes of these Regulations, and
- (c) paragraph (a) of subsection (1) of that section and, in paragraph (b) the words "in the case of a company", were omitted.

**General modification of provisions of Law.**

34. For the purposes of these Regulations, and without prejudice to any other provision of these Regulations -

- (a) any reference in the Law to the Law (whether by use of the expression "this Law" or otherwise) or any provision thereof has effect as if the reference were to the Law or that provision as modified in its application by these Regulations, and
- (b) the provisions of the Law shall be construed and shall have effect subject to those modifications.

**Amendment of Companies Laws.**

35. (1) After section 355(1)(e) of the Companies (Guernsey) Law, 2008<sup>0</sup>  
insert the following paragraph -

"or (f) the Registrar has received notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default)."

(2) After section 355(8) of the Companies (Guernsey) Law, 2008  
insert the following subsection -

"(8A) Where this section applies in relation to a company by virtue of subsection (1)(f), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless the Registrar is satisfied, after consultation with the Director of the Revenue Service, that the company would, if not struck off, comply with the substance requirements applicable to it by virtue of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018, but this is without prejudice to the application of section 366 (companies party to proceedings)."

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<sup>0</sup> Order in Council No. VIII of 2008; there are amendments not material to these Regulations.

(3) After section 370(5)(a) of the Companies (Guernsey) Law, 2008 insert the following paragraph –

"(aa) the Director of the Revenue Service in respect of a company struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default),".

(4) After section 371(1)(a) of the Companies (Guernsey) Law, 2008 insert the following paragraph -

"(aa) the Director of the Revenue Service in respect of a company struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default),".

(5) After section 371(2)(a) of the Companies (Guernsey) Law, 2008 insert the following paragraph -

"(aa) that the company would, in the case of a company struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation)

Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default), if reinstated, comply with the substance requirements applicable to it by virtue of those regulations,".

(6) In section 371(10)(a) of the Companies (Guernsey) Law, 2008 after "Her Majesty's Receiver General" insert ", the Director of the Revenue Service in the case of a company struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default)".

(7) After section 107(1)(d) of the Companies (Alderney) Law, 1994<sup>P</sup> insert the following paragraph -

"or (e) the Registrar has received notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default)."

(8) After section 107(8) of the Companies (Alderney) Law, 1994 insert the following subsection -

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<sup>P</sup> Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not material to these Regulations.

“(8A) When this section applies in relation to a company by virtue of subsection (1)(e), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless the Registrar is satisfied, after consultation with the Director of the Revenue Service, that the company would, if not struck off, comply with the substance requirements applicable to it by virtue of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018.”.

(9) After section 108(1)(a) of the Companies (Alderney) Law, 1994 insert the following paragraph -

“(aa) in the case of a company struck off pursuant to a notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – second, third or fourth accounting period of default), that the company would, if reinstated, comply with the substance requirements applicable to it by virtue of those regulations, or”.

**Amendment of Limited Liability Partnership Law.**

36. (1) After section 62(1)(d) of the Limited Liability Partnerships (Guernsey) Law, 2013<sup>9</sup> insert the following paragraph –

"or (e) the Registrar has received notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default)."

(2) After section 62(8) of the Limited Liability Partnerships (Guernsey) Law, 2013 insert the following subsection –

"(8A) Where this section applies in relation to an LLP by virtue of subsection (1)(e), the LLP shall not be considered to have shown cause to the contrary within the meaning of this section unless the Registrar is satisfied, after consultation with the Director of the Revenue Service, that the LLP would, if not struck off, comply with the substance requirements applicable to it by virtue of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018, but this is without prejudice to the application of section 63 (LLPs party to proceedings)."

(3) After section 66(4)(d) of the Limited Liability Partnerships (Guernsey) Law, 2013 insert the following paragraph –

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<sup>9</sup> Order in Council No. VI of 2014; there are amendments not material to these Regulations.

"(dd) the Director of the Revenue Service in respect of an LLP struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default), and".

(4) After section 67(1)(c) of the Limited Liability Partnerships (Guernsey) Law, 2013 insert the following paragraph –

"(cc) the Director of the Revenue Service in respect of an LLP struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default), and".

(5) After section 67(2)(a) of the Limited Liability Partnerships (Guernsey) Law, 2013 insert the following paragraph –

"(aa) that the LLP would, in the case of an LLP struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default), if

reinstated, comply with the substance requirements applicable to it by virtue of those regulations, or".

(6) In section 67(9) of the Limited Liability Partnerships (Guernsey) Law, 2013 insert the following text immediately after paragraph (b) –

"provided that in each case the Registrar has previously consulted Her Majesty's Procureur, Her Majesty's Receiver-General, the Director of the Revenue Service in the case of a body struck off pursuant to notice from the Director of the Revenue Service under regulation 11, 12 or 13 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (penalties where substance requirements not met – first, third or fourth accounting period of default) and, in the case of a supervised LLP, the Commission".

#### *Supplementary*

#### **Interpretation.**

37. (1) In these Regulations, unless the contrary intention appears -

"approved international agreement" means an agreement or arrangement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax or taxation, which is made between the States of Guernsey and the government of another territory, or which is otherwise binding upon Guernsey and governed by international law (including, without limitation, an agreement or arrangement which has been acceded to or ratified by the United Kingdom on behalf of Guernsey), and which is specified for the purposes of the Law by Ordinance of the States,

**"banking"** means deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 carried on by a licensed institution within the meaning of that Law,

**"beneficial owner"**, in the case of any person, has the meaning given by paragraph 22 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

**"business documents"** : see regulation 20,

**"business premises"** : see regulation 20,

**"carry on"** includes undertake (and related expressions shall be construed accordingly),

**"competent authority"** means a person, body or authority designated as a competent authority by the Director in respect of any one or more of the following –

- (a) the jurisdiction in which the immediate or ultimate parent, or the beneficial owner, of the relevant body is resident,
- (b) the jurisdiction under the laws of which the relevant body was incorporated, registered, formed or entered into,

- (c) the jurisdiction in which the relevant body has its place of effective management or in which it is centrally managed and controlled,
- (d) the qualifying jurisdiction in which the relevant body has its place of effective management,
- (e) the jurisdiction in which the relevant body is tax resident, or
- (f) any jurisdiction with which it is necessary or desirable for the Director to exchange information,

for the purposes of -

- (i) an approved international agreement or international tax measure, or
- (ii) these Regulations,

and includes a competent authority within the meaning of section 75C of the Law,

"**contravention**" includes failure to comply (and related expressions shall be construed accordingly),

"**core income-generating activity**" : see regulation 8,

"**Director**" means the Director of the Revenue Service,

**"distribution and service centre"** means a business the sole or main activity of which is -

- (a) to purchase raw materials and finished products from other members of the same group which are non-resident and to re-sell them for a percentage of profits, or
- (b) the provision of services to other members of the same group which are non-resident,

but does not include any business or activity falling within the definition of banking, insurance, fund management, financing and leasing, shipping or headquartering,

**"document"** : see section 75O of the Law,

**"electronic form"** : see section 75O of the Law,

**"financing and leasing"** means the provision of credit facilities of any kind for consideration to any person (a **"customer"**), and for the purposes of this definition -

- (a) consideration includes consideration by way of interest,
- (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with -

- (i) the supply of goods by hire purchase,
  - (ii) financial leasing (excluding land and interests in land), or
  - (iii) conditional sale or credit sale, and
- (c) where any credit repayable by a customer to a person is assigned to another person, that other person shall be considered to be the person providing the credit facility,

but any activities falling within the definitions of banking, insurance or fund management do not constitute financing and leasing for the purposes of these Regulations,

**"foreign partnership"** : see regulation 2(2)(d),

**"fund management"** means "management" within the meaning of paragraph 5 of Schedule 2 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987, when carried on in connection with a collective investment scheme within the meaning of that Law under the authority of a licence issued under section 4 of that Law,

**"general partnership"** : see regulation 2(2)(a),

**"headquartering"** means the provision of any of the following services to non-resident intra group persons of the resident body -

- (a) the provision of senior management,
- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those intra group persons, and
- (c) the provision of substantive advice in relation to the assumption or control of risk for such activities or assets,

but does not include -

- (i) any business or activity falling within the definition of banking, insurance, fund management, financing and leasing, shipping, or a distribution and service centre, or
- (ii) the business of holding intellectual property assets,

**"high risk IP body"** means an IP body which falls within subparagraph (a) below -

- (a) a body which –
  - (i) holds intellectual property assets,
  - (ii) did not create the intellectual property in the intellectual property assets which it holds,

- (iii) acquired the intellectual property assets –
  - (A) from an intra group person, or
  - (B) in consideration of funding research and development by another person situated in a territory other than Guernsey, and
- (iv) licences the intellectual property asset to one or more non-resident intra group persons or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by non-resident intra group persons,

and see also regulation 2(1),

**"income from intellectual property assets"** includes income or profits derived from, or from the holding, development or exploitation of, intellectual property assets (including, without limitation, royalties, income from franchise agreements and income from licensing such assets),

**"insurance"** means insurance business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 carried on by a licensee within the meaning of that Law,

**"intellectual property assets"** means any intellectual property right including copyright, design right, trademark, patent, brand or similar asset,

**"international tax measure"** means an agreement, arrangement or measure described in paragraph (a) or (b) of section 75CC(1A) of the Law,

**"intra group"** means a collection of persons related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the persons were traded on a public securities exchange,

**"IP body"** : see regulation 3(b) and regulation 2(1),

**"jurisdiction"** includes a territory, and vice versa,

**"the Law"** means the Income Tax (Guernsey) Law, 1975,

**"limited liability partnership"** : see regulation 2(2)(c),

**"limited partnership"** : see regulation 2(2)(b),

**"non-resident"**, in the case of any person, means that he is not resident or solely or principally resident within the meaning of section 3 or 4 of the Law, as the case may be,

**"partnership"** includes a limited partnership and a limited liability partnership,

**"person"** has the meaning given by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016 and also includes a body, partnership, entity, enterprise, trust or arrangement,

**"place of effective management"** of a person means the place where the management and commercial decisions necessary for the conduct of the business as a whole of that person are substantially made, having regard to all relevant facts and circumstances,

**"pure equity holding body"** means a body which is a legal person within the meaning of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 or (as the case may be) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017 -

- (a) which has as its primary function the acquisition and holding of shares or equitable interests in other bodies,
- (b) which carries on no commercial activity, and
- (c) which –
  - (i) holds the majority of the voting rights in another body,
  - (ii) is a member of another body and has the right to appoint or remove a majority of the board of directors, or members of the management committee or other similar governing body, of that other body, or

- (iii) is a member of another body and controls alone, under an agreement with other members, a majority of the voting rights in that other body,

**"Registrar of Companies" means -**

- (a) in relation to a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008, the Registrar of Companies within the meaning of that Law,
- (b) in relation to a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994, the Alderney Greffier, performing the functions of Registrar under that Law,

**"Registrar of Limited Liability Partnerships" means the Registrar of LLPs within the meaning of the Limited Liability Partnerships (Guernsey) Law, 2013,**

**"relevant activities" : see regulation 3(a),**

**"resident body" : see regulation 1(2) and regulation 2(1),**

**"self-managed collective investment vehicle" means a person which is a collective investment vehicle within the meaning of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 and which has no other person or body conducting fund management in respect of it, and for this purpose fund**

management means exercising any managerial function in relation to an investment or in relation to the assets underlying an investment,

"ship" includes every description of vessel used in navigation but does not include –

- (a) a fishing vessel within the meaning of section 294 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002,
- (b) vessels of a kind primarily for sport or recreation,
- (c) harbour craft, or
- (d) a small ship within the meaning of section 1 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (a ship less than 24 metres in length),

"shipping" means the operation of ships in international traffic for income from the transport of passengers or cargo, and includes any of the following activities where directly connected with, or ancillary to, such operation -

- (a) the rental on a charter basis of ships,
- (b) the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the person itself or any other person,

- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,
- (d) the management of the crew of ships,

"substance requirements" : see regulation 1(1),

and other expressions have the same respective meanings as in the Law.

(2) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016<sup>r</sup> applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Revocations.**

38. The following Regulations are revoked –

- (a) the Income Tax (Substance Requirements) (Implementation) Regulations, 2018<sup>s</sup>,

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<sup>r</sup> Order in Council No. V of 2018; there are amendments not material to these Regulations.

<sup>s</sup> G.S.I. No. 90 of 2018.

- (b) the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018<sup>t</sup>,
- (c) the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019<sup>u</sup>, and
- (d) the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2020<sup>v</sup>.

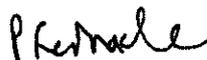
**Citation.**

39. These Regulations may be cited as the Income Tax (Substance Requirements) (Implementation) Regulations, 2021.

**Commencement.**

40. These Regulations shall come into force on the 30<sup>th</sup> day of June, 2021.

Dated this 15<sup>th</sup> day of June, 2021



DEPUTY P. T. R. FERBRACHE

President of the Policy & Resources Committee

For and on behalf of the Committee

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<sup>t</sup> G.S.I. No. 93 of 2018.

<sup>u</sup> G.S.I. No. 84 of 2019.

<sup>v</sup> G.S.I. No. 85 of 2020.

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## EXPLANATORY NOTE

*(This note is not part of the regulations)*

These Regulations implement and enable the administration and enforcement in domestic law of substance requirements in respect of companies which are tax resident and which carry out relevant activities and other specified classes or descriptions of business or activity, in Guernsey. The regulations also now apply to the following descriptions of partnership –

- (a) general partnerships which carry on business activity in Guernsey,
- (b) limited partnerships which are registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality), which do not have their place of effective management in a qualifying jurisdiction,
- (c) limited liability partnerships registered under the Limited Liability Partnerships (Guernsey) Law, 2013 which do not have their place of effective management in a qualifying jurisdiction, and
- (d) foreign partnerships registered, formed or entered into under the laws of a place outside Guernsey (and however named) –
  - (i) which correspond to a general partnership, limited partnership or limited liability partnership mentioned in (a), (b) or (c), and

- (ii) which have their place of effective management in Guernsey and carry on business activity in Guernsey.

Companies and partnerships described above which carry out relevant activities and other specified classes or descriptions of business or activity, in Guernsey, must comply with the substance requirements set out in the Regulations in order to ensure that real economic activity is being carried on in Guernsey in respect of the profits and income of the companies or partnerships in question.

The regulations are a consolidation of the original substance requirements regulations, G.S.I. no. 90 of 2018, as amended by no. 93 of 2018, no. 84 of 2019 and no. 85 of 2020, and include the necessary amendments to accommodate the application of substance requirements to partnerships.