

**INLAND REVENUE DEPARTMENT  
MINISTRY OF FINANCE, ECONOMIC PLANNING,  
SUSTAINABLE DEVELOPMENT AND INFORMATION TECHNOLOGY**



**SAINT VINCENT AND THE GRENADINES**

**Economic Substance For  
Geographically Mobile Activities**

**GUIDANCE**

Issued under section 30 of the  
International Tax Co-operation (Economic Substance) Act 2020

Date of Issue: ..... 2021

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## LIST OF ACRONYMS

<b>BEPS</b>	Base Erosion and Profit Shifting
<b>CIGA</b>	Core Income Generating Activities
<b>ECOFIN</b>	EU Economic and Financial Affairs Council
<b>ES</b>	Economic Substance
<b>EU</b>	European Union
<b>EU COCG</b>	European Union Code of Conduct Group (Business Taxation)
<b>FHTP</b>	Forum for Harmful Tax Practices
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>SVG</b>	St. Vincent and the Grenadines

### Glossary of Frequently Used Terms:

**"CIGA"** – means the core income generating activities defined in section 8 of the ES Act and further explained in this Guidance;

**"Comptroller"** - means the Comptroller of Inland Revenue appointed under Section 5 of the Tax Administration Act 2019;

**"director"** – in relation to an entity, includes:

- (a) a person who is a member of the governing body of the entity and, in the case of a limited partnership, includes a general partner; and
- (b) a person who, in relation to the entity, occupies or acts in the position of director, by whatever name called;<sup>1</sup>

**"entity"** – has the meaning provided in Section 2 of the ES Act, (see paragraph 2.4);

**"ES Act"** - means the International Cooperation (Economic Substance) Act 2020;

**"ES legislation"** - means collectively, the ES Act and the ES Regulations;

**"ES Regulations"** - means the International Cooperation (Economic Substance) Regulations 2021;

**"ES requirements"** – means the economic substance requirements outlined in Section 9 of the ES Act and described in this Guidance;

**"holding entity"** – has the meaning specified in Section 7(a) of the ES Act;

**"holding entity business"** – means the business of being a holding entity;

**"locally controlled"** – has the meaning given by Section 6 of the ES Act;

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<sup>1</sup> Section 2 of the ES Act

**“pure equity holding company”** – has the meaning specified in Section 7(b) of the ES Act;

**“relevant activities”** – is defined in Section 2 of the ES Act and discussed in paragraph 2.5 of this Guidance.

## I. 0 Overview

### 1.1 Introduction and Purpose

- A) This Guidance is issued under section 30 of the International Cooperation (Economic Substance) Act 2020 (**'the ES Act'**). The Guidance is intended to provide practical assistance in understanding the scope and application of the economic substance ('ES') legislation.
- B) More specifically, the purpose of this Guidance is to:
- (i) assist entities to determine if they are within the scope of the ES legislation;
  - (ii) if within scope, assist them in understanding how to satisfy or comply with the ES requirements; and
  - (iii) provide guidance as to how the Comptroller of Inland Revenue (**'the Comptroller'**) will assess the criteria for satisfying the ES requirements.
- C) In determining whether an entity has complied with obligations under the ES legislation, the Comptroller will consider whether that entity has followed the principles set out in this Guidance. This Guidance, which does not have the force of law, is principles based and cannot cover specific scenarios or provide an exhaustive list of all matters that an entity should consider when assessing its compliance with the ES requirements. It will not, therefore, replace the need to take independent professional advice.
- D) The Guidance is to be treated as a work in progress, recognising that additional technical aspects will develop through further discussions with the Organisation for Economic Co-operation and Development (**'OECD'**), its Inclusive Forum on Harmful Tax Practices (**'FHTP'**) and the European Union Code of Conduct Group on Business Taxation (**'EU COCG'**), as well as the St. Vincent and the Grenadines' industry.
- E) It is intended that this Guidance will be published in the Official Gazette and on the websites of the Inland Revenue Department ([www.svg.gov.vc](http://www.svg.gov.vc)) and the Financial Services Authority ([www.svgfsa.com](http://www.svgfsa.com)).

### 1.2 Background: *Compliance with European Union and OECD International Tax Criteria*

- A) In December 1997, the Council of the European Union and the representatives of the governments of EU Member States adopted a resolution on a Code of Conduct for Business Taxation, with the objective of curbing harmful tax practices. The following year, ECOFIN (the organization responsible for EU economic policy, taxation issues and the regulation of financial services) established the Code of Conduct Group (Business Taxation) ('EU COCG') to assess certain tax measures.

- B) Although the original focus of the EU COCG was on EU member states, the EU COCG began to turn its attention to third countries and territories to which EU treaties do not apply and began the process of applying the same principles to those countries and territories. Those principles include ensuring that jurisdictions do not facilitate the use of structures which attract profits but which do not reflect real economic activity that is being undertaken in that jurisdiction (the principle of “substantial economic presence”).
- C) In 2017, the EU COCG investigated and screened the tax policies of ninety-two (92) jurisdictions, both within and outside the European Union (EU), including St. Vincent and the Grenadines, against its Code of Conduct for Business Taxation, with the objective of curbing harmful tax competition. St. Vincent and the Grenadines was classified by the EU COCG as a “Criterion 2.1” jurisdiction for the purpose of the EU’s “scoping” or “screening” exercise. Criterion 2.1 assesses whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, and whether advantages are “ring-fenced” from the domestic market, so that they do not affect the national tax base.
- D) Such classification arose from the fact that, although the Income Tax Act provided for tax to be charged on a worldwide basis, international business companies (‘IBCs’) and international trusts enjoyed wide tax exemptions under their respective Acts, the International Business Companies (Amendment and Consolidation) Act and the International Trusts Act. Both Acts were amended in December 2018 to remove the tax exemptions and abolish ring fencing. These legislative amendments enabled St. Vincent and the Grenadines to successfully pass the EU’s screening exercise in March 2019 and also, an assessment conducted by the OECD’s Base Erosion and Profit Shifting (‘BEPS’) Inclusive Framework in January 2019.

### 1.2.1 *Background: Transition to a System of Territorial Taxation and the Enactment of Economic Substance Legislation in St. Vincent and the Grenadines*

- A) During the EU’s screening exercise, the Government of St. Vincent and the Grenadines disclosed to the EU COCG and the OECD that its longer-term policy goal was to introduce a territorial based system of corporate income tax, such that tax is charged only on income that accrues directly or indirectly from sources in St. Vincent and the Grenadines. This goal was achieved in December 2020 by the enactment of the Income Tax (Amendment) Act 2020 which introduced a territorial source principle of taxation with respect to registered companies<sup>2</sup> and registered trusts.<sup>3</sup> This could not be achieved via legislative amendments of 2018, due to the lack of clarification available from the EU<sup>4</sup> in respect of the treatment

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<sup>2</sup> Defined by section 2 of the Income Tax (Amendment) Act 2020.

<sup>3</sup> Ibid.

<sup>4</sup> Through the EU COCG and the EU Commission.

of territorial taxation systems or ‘Foreign Source Income Exemption’ (‘FSIE’) regimes.<sup>5</sup>

- B) Under the new system of territorial taxation, tax is charged only on the assessable income of a registered company or registered trust, that accrues directly or indirectly from sources in St. Vincent and the Grenadines.<sup>6</sup> The intention is to enable the financial services sector to remain competitive in the international market.
- C) However, by transitioning to a territorial tax system, St. Vincent and the Grenadines moved to being classified as a FSIE taxation regime by the EU COCG and the OECD. Such a regime is regarded as a preferential tax regime and must ensure that it does not facilitate the use of structures which attract profits which do not reflect real economic activity that is being undertaken in the jurisdiction. It must accordingly ensure that its geographically mobile activities have “economic substance.” To this end, specific economic substance legislation by means of the ES Act, was simultaneously enacted with the Income Tax (Amendment) Act 2020, to accompany the country’s move to a territorial tax system.
- D) The ES Act requires certain entities resident in St. Vincent and the Grenadines which carry on geographically mobile business, to meet ES requirements designed to ensure that real economic activity is being carried on in the jurisdiction, in respect of income generated by the entity from those types of business.
- E) Both the Income Tax (Amendment) Act 2020 and the ES Act entered into force on January 01, 2021.

### 1.3 What is “Economic Substance”?

- A) Economic substance refers to a judicial doctrine of tax law, codified in some jurisdictions, under which a transaction must have both a substantial purpose aside from reduction of tax liability and an economic effect aside from the tax effect, in order for tax advantages to be granted. Accordingly, to justify tax benefits, there must be “**substantial economic presence**” imposed which can demonstrate “**real economic activity**” in a country.
- B) The economic substance concepts underpinning the ES legislation in Saint Vincent and the Grenadines are similar to those found in legal systems of other jurisdictions. The common denominator for these systems is the OECD FHTP, which developed and set the global

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<sup>5</sup> In October 2019, the EU Council (ECOFIN) endorsed long awaited guidance (*Item Note FISC ECOFIN 800, Annex 2, Guidance on Foreign Income Exemption Regimes*) which provided long awaited clarification that such FSIE regimes were not in themselves problematic, contrary to previous indications to Vincent and the Grenadines.

<sup>6</sup> More identically outlined in Section 8(1)(a) of Income Tax (Amendment) Act 2020.



standard that requires geographically mobile activities to have substantial activities in a jurisdiction (also known as “economic substance”), regardless of whether the activities are conducted in a no or nominal tax jurisdiction or in a preferential tax regime of a jurisdiction that has corporate income tax. Those principles are set out in the BEPS Action 5 international minimum standard and include ensuring that jurisdictions do not facilitate the use of structures which attract profits, but which do not reflect real economic activity that is being undertaken in that jurisdiction (the principle of “substantial economic presence”).

- C) The standards for substantial economic presence agreed upon by the EU are set out in a Scoping Paper issued by the EU COCG and approved by ECOFIN in June 2018. The Scoping Paper is commonly referred to as the “2.2 Scoping Paper” and forms the basis for the EU’s economic substance requirements.

#### 1.4 Role of the Comptroller of Inland Revenue under the ES Act

- A) The Comptroller is responsible for administering and applying the provisions of the ES legislation under section 25 of the ES Act.
- B) The Comptroller’s functions also include determining whether a relevant entity satisfies the ES requirements in respect of its relevant activities, monitoring compliance with the ES legislation, and sharing information with other competent authorities. The Comptroller is also responsible for collecting and accounting for penalties under the ES Act.
- C) The Comptroller and the Inland Revenue Department will monitor arrangements which appear to be circumvention mechanisms and will investigate cases where an entity or person has entered into any arrangement, the main purpose or one of the main purposes of which, is to circumvent any obligation under the ES legislation. An example could include an entity which seeks to manipulate or artificially suppress its income to circumvent substance requirements.

#### 1.5 Format of Guidance Notes

This Guidance is comprised of a general part (Sections 1.0 -12.0) and includes two annexes, Annex 1 and Annex 2, which form part of this Guidance.

## 2.0. Application and Scope of the ES legislation

### 2.1 SUMMARY OF THE ES ACT:

- A) The Act is comprised of four (4) Parts, namely:
- Part I – Primarily interpretative provisions, which set out important definitions;
  - Part II – Covers the ES requirements and their enforcement;
  - Part III – Provides for the exchange of information with Competent Authorities;
  - Part IV – Sets out miscellaneous provisions, including the responsibility for the administration of the ES legislation by the Comptroller of Inland Revenue.
- B) The Act requires all “**relevant entities**” that carry on certain specified geographically mobile activities (defined as “**relevant activities**”) to satisfy the legal ES requirements, unless **excluded** under the provisions of the Act.
- C) Key features of the Act include the identification of relevant entities, the identification of entities carrying on relevant activities, the imposition of ES requirements on entities that undertake relevant activities, the enforcement of the ES Act and the exchange of economic substance information by the Comptroller.
- D) Although trusts benefit from a zero rate of tax on their global income by reason of the transition to territorial taxation, they are not required to comply with the economic substance legislation. This is because trusts they are currently outside the scope of the economic substance requirements of the EU and the OECD.

### 2.2 SUMMARY OF THE ES REGULATIONS

- A) The Minister of Finance (“**the Minister**”) is empowered under Section 32 of the ES Act to make Regulations prescribing anything under the ES Act which is to be prescribed, or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of the Act, or to give force and effect to its provisions. The Minister may make different provision in relation to different persons, circumstances and cases.
- B) The ES Regulations 2021 is the first set of Regulations issued by the Minister. The primary purpose of the ES Regulations is to provide necessary clarification and elaboration of the information and documentation which are required to be included in the annual return to be submitted to the Comptroller under section 11(1) of the ES Act. The ES Regulations also provide for the publication of the approved form to be used for the purposes of the annual return. The term “publicly owned

entity” is defined for the purposes of Section 6(1)(e) of the ES Act and regulation 6 specifies the information that the Comptroller must provide under sections 22(1), 22(2) and 23(2) of the ES Act.

- C) The information and documentation prescribed in the ES Regulations, including identification information, are examined under the **Reporting of Information** in section 4.0.

## 2.3 COMMENCEMENT OF THE ES ACT AND TRANSITIONAL PROVISIONS

- A) The ES Act came into force on 1 January 2021.
- B) However, the ES Act does not apply to a “transitioning business company” until 1 July 2021. A transitioning business company is a business company that was incorporated before 1 January 2019, although there are exceptions relating to intellectual property assets and income.<sup>7</sup>
- C) The first assessment period of a transitioning business company is the period of six months commencing on 1 July 2021 and ending on 31 December 2021, **OR**, such other period as may be approved by the Comptroller, upon the application of the business company.
- D) The first assessment period for all other entities is the period of twelve months commencing from January 01, 2021.

## 2.4 WHO DOES THE ES LEGISLATION APPLY TO?

- A) **The ES Act imposes an annual reporting obligation on every resident entity.**

The ES Law applies to every resident entity, although the application of the Law on many entities will be limited to a reporting obligation.

The term “**resident entity**” – is defined in section 2 of the ES Act as:

- a) a company within the meaning of the Companies Act;
- b) a registered external company; or
- c) a business companies within the meaning of the Business Companies (Amendment and Consolidation) Act.

In summary, therefore, the following companies are resident entities and are required to complete an annual return, regardless of the type of business, if any, carried on by the company:

- a company incorporated or continued under the Companies Act;
- an external company registered under the Companies Act; and
- a business company incorporated or continued under the Business Companies (Amendment and Consolidation) Act and a company that results from the consolidation

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<sup>7</sup> See definition in the ES Act, section 33 and section 199A of the Business Companies (Amendment and Consolidation) Act. Reporting obligations of transitioning business companies are also outlined under section 4.0 of this Guidance.

of two or more companies under that Act.

The reporting obligation is in the form of an annual return which is used by the Comptroller in the first instance to determine:

- whether a resident entity was a “relevant entity” during the assessment period covered by the return; and
- if it was a “relevant entity” during the assessment period, whether the entity undertook a relevant activity during the assessment period.

The criteria for determining whether a resident entity is a relevant entity are considered in section 2.4 (B) below, and the criteria for determining whether a relevant entity undertakes a relevant activity are considered in section 2.4 (D).

If a resident entity is not a relevant entity, its only obligation under the ES Act (in addition to completing the annual return, so far as it applies) is to retain all documentation relevant to the return for a period of 7 years following the end of the assessment period to which the return relates.

However, a resident entity is required to provide the Comptroller with any information or documents that the Comptroller requests under section 12 of the ES Act for the purpose of enabling the Comptroller to determine whether the resident entity is a relevant entity.

#### **B) Criteria for determining whether a company is a “relevant entity” -**

The purpose of the ES regime is to eliminate harmful tax competition by ensuring that companies incorporated or continued in St. Vincent and the Grenadines and foreign companies carrying on business in St. Vincent and the Grenadines are not able to attract profits which do not reflect real economic activity that is being undertaken in St. Vincent and the Grenadines.

If a resident entity is tax resident in another jurisdiction, then it will pay tax on its profits in that jurisdiction, provided that the jurisdiction’s tax system includes an ES regime that complies with the Code of Conduct for Business Taxation.

Furthermore, as income tax is charged on income that accrues directly or indirectly from sources in St. Vincent and the Grenadines, a company carrying on business primarily in St. Vincent and the Grenadines will pay tax on its profits in St. Vincent and the Grenadines. It follows that the company will not have established St. Vincent and the Grenadines for the purposes of attracting profits which do not reflect real economic activity being undertaken in St. Vincent and the Grenadines.

The ES Act therefore provides for the exclusion of these two categories of company. This is achieved by defining a “relevant entity” as:

“a **resident entity** that is not an excluded entity”.

Section 5 of the ES provides that a resident entity is an excluded entity if it meets either of the following two tests:

1. The resident entity is tax resident in a country outside St. Vincent and the Grenadines which is not on the European Union list of non-cooperative jurisdictions for tax purposes<sup>8</sup>.
2. The resident entity meets the cumulative conditions of conducting its activities exclusively in St. Vincent and the Grenadines, is locally controlled<sup>9</sup> and is not part of a multinational enterprise<sup>10</sup> ('MNE') group.

**Example:** *In relation to the first test, a business company which is tax resident in Italy or Jamaica will be an excluded company and be excluded from the definition of "relevant entity". However, a business company which is tax resident in Panama, Trinidad and Tobago or the US Virgin Islands will not be excluded as each of these jurisdictions is currently on the European Union list of non-cooperative jurisdictions for tax purposes.*

**Example:** *In relation to the second test, a local insurance company which provides insurance services in St. Vincent and the Grenadines and conducts its business activities in St. Vincent and the Grenadines only, which is also locally controlled and not part of a MNE, will be excluded from the definition of relevant entity.*

In this example, it may be noteworthy to bear in mind that even if that insurance company is unable to wholly satisfy the conditions outlined in the Act to qualify for an exclusion, the company would, in all likelihood, already be fulfilling or substantially fulfilling the kind of ES requirements outlined in the Act - for example, being directed and managed in St. Vincent and the Grenadines, having adequate premises or assets in St. Vincent and the Grenadines, adequate employees and expenditure and conducting core income generating activities in St. Vincent and the Grenadines. Thus, meeting any additional requirements for economic substance stipulated in the Act would not likely be onerous for such a company.

### **C) Criteria for determining whether an entity is "locally controlled" -**

Section 6(3) of the ES Act provides that a resident is locally controlled if (in summary) each of the following conditions is met:

1. At least 60% of the issued shares of the entity are owned by local persons.
2. Local persons are entitled to exercise or control at least 60% of the voting rights in the resident entity.

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<sup>8</sup> The EU 'Blacklist' comprises twelve (12) jurisdictions as at February 12, 2021: American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

<sup>9</sup> See paragraph C below.

<sup>10</sup> See Section 2, ES Act for definition of multinational enterprise.

3. At least 60% of the directors are local persons.

For the purposes of these criteria, an individual is treated as a “local person” if the individual has a right to reside in St. Vincent and the Grenadines. This includes a right to reside granted under the Residence Act.

***There are three other categories of local person:***

- The Government;
- A local authority; and
- A publicly owned entity within the meaning of the ES Regulations.

The ES Regulations<sup>11</sup> provide that a publicly owned entity is an entity that is both:

- constituted under an Act of Parliament (but excluding a company or a business company); and
- is wholly owned by the Government or a local authority.

For the purposes of establishing 60% control, the ownership of an issued share or the control of a voting right may be direct or indirect.

***Direct and indirect ownership of a share***

The Comptroller will regard a person as having direct ownership of a share if the share is registered in the person’s own name and the share is not held on trust or for the benefit of any other person.

Section 6(4) of the ES Act provides that a person owns an issued share in an entity indirectly if any of the following circumstances apply:

1. The share is owned by a legal entity in which the person has a controlling interest.
2. A legal entity in which the person has a controlling interest is part of a legal chain of entities where:
  - the last entity in the legal chain owns the share; and
  - each of the legal entities in the legal chain has a controlling interest in the entity below it in the legal chain.
3. The person owns the share through a nominee.

A person has a controlling interest in a legal entity if the person owns at least 60% of the issued shares in the legal entity and holds at least 60% of the voting rights in the legal entity<sup>12</sup>.

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<sup>11</sup> Regulation 6(3).

<sup>12</sup> Regulation 6(6).

### ***Direct and indirect exercise of voting rights***

Section 6(5) of the ES Act applies a similar approach to the exercise or control of the exercise of a voting right in a resident entity. In summary, a person exercises or controls the exercise of a voting right in a resident entity if any of the following circumstances apply:

1. A legal entity in which the person has a controlling interest is entitled to exercise or control the exercise of the voting right.
2. A legal entity in which the person has a controlling interest is part of a legal chain of entities where:
  - The last entity in the legal chain is entitled to exercise or control the exercise the voting right; and
  - Each of the legal entities in the legal chain has a controlling interest in the entity below it in the legal chain.
4. The person exercises or controls the exercise of the voting right through a nominee.

The definition of “controlling interest” is as set out above.

#### **D) *Criteria for determining whether a relevant entity which is subject to the ES requirements, is undertaking relevant activities -***

Section 9(1) of the ES Act provides that:

“A relevant entity which, in any assessment period, undertakes a relevant activity shall ensure that, during the assessment period, it satisfies the economic substance requirements.”

Therefore, if a relevant entity undertakes a relevant activity, it will be subject to the ES requirements. Relevant activities are considered in section 2.5 and the economic substance requirements in section 2.6.

#### **E) *Application of the ES Act - Summary***

In summary, the steps to determining the application of the ES Act to a company are as follows:

1. Determine whether a company is a “resident entity”. If the company is a resident entity, it is required to complete an annual return, as described in paragraph A above.
2. Determine whether the resident entity is an “excluded entity” using the two section 5 tests described in paragraph B above. If it is an excluded entity, the resident entity is not a relevant entity and it is not necessary to consider whether the company carries on any relevant activities.

3. If the resident entity is not an excluded entity, it is a relevant entity and the ES requirements will apply to the company if it undertakes a relevant activity.

## F) Annual Return

The annual return must be made by means of a form approved and issued by the Comptroller, entitled '**Annual Economic Substance Return.**' This information indicated in this Form will be utilized for the purpose of the Comptroller's determination as to whether a resident

company is a relevant company and, if so, whether it is subject to the ES requirements **and** whether the ES requirements have been satisfied.

This Form must be submitted within four (4) months after the last day of the end of each financial year commencing on or after January 01, 2021, with the prescribed information and documentation as at the end of the relevant financial year.

Section 4.0 below entitled "Reporting of Information" describes the reporting process.

## 2.5 WHAT ARE THE RELEVANT ACTIVITIES?

A) There are nine (9) categories of relevant activities listed and defined in the Act, namely:

- banking business;
- distribution and service centre business;
- finance and leasing business;
- fund management business<sup>13</sup>;
- headquarters business;
- holding entity business;
- insurance business;
- intellectual property holding business; and
- shipping business.

**Each of these terms is defined in the ES Act.**

If a relevant entity undertakes one or more of the above activities, it falls within the scope of section 9 of the Act (the ES requirements).

**Example:** A business company registered in St. Vincent and the Grenadines (that is not an excluded entity) that carries out fund management business must comply with ES requirements but a business company that undertakes other types of management business is not subject to the ES requirements, on the basis that the activity it carries out is not a relevant activity for the purposes of the ES Act.

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<sup>13</sup> Does not include investment fund business.



- B) The term “relevant activity” does not require an entity to be actively engaged in the businesses listed above, i.e., passive collection of income from one of the businesses would be a relevant activity.
- C) The Comptroller will consider that the above activities are being carried on as a business where the activity is being undertaken by an entity with a view to a profit (whether or not a profit is actually earned) and will have regard to whether or not the entity earns any gross income in respect of a relevant activity during the relevant assessment period.
- D) An entity formed for charitable purposes, whose income is used solely in promoting those charitable purposes and no dividends or distributions are paid to its members or partners, will not be regarded by the Comptroller as undertaking a relevant activity.

## 2.6 WHAT ARE THE ECONOMIC SUBSTANCE REQUIREMENTS?

- A) The following are the ES requirements<sup>14</sup> which a relevant entity must satisfy in relation to each relevant activity that it undertakes:
  - the relevant entity must be **directed and managed** in St. Vincent and the Grenadines in relation to that activity;
  - having regard to the level of relevant activity carried on in St. Vincent and the Grenadines, the entity must have -
- B) an **adequate** number of appropriately experienced and if appropriate, qualified fulltime employees proportionate to the level of that activity who are physically present in St. Vincent and the Grenadines, whether or not employed by the relevant entity or by another entity and whether on temporary or long-term contracts;
- C) an **adequate** level of operating expenditure in St. Vincent and the Grenadines proportionate to the level of the relevant activity carried on in St. Vincent and the Grenadines;
- D) **adequate** physical assets or physical presence in St. Vincent and the Grenadines, proportionate to the level of the relevant activity carried on in St. Vincent and the Grenadines; and the relevant entity must conduct **core income generating activities** in St. Vincent and the Grenadines.
- E) The treatment of IP assets and IP entities (definitions<sup>15</sup> refer) deemed to be ‘high risk’ are given especial prominence under the EU and the OECD economic substance criteria. The provisions included in the Act are consistent with the requirements of these criteria.

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<sup>14</sup> Section 9, ES Act

<sup>15</sup> Sections 2, 4 and 6.

- F) A pure equity holding entity satisfies the ES requirements if the entity has an adequate number of persons and has adequate premises for managing the shares or equitable interests that it holds.<sup>16</sup>
- G) In the case of a high-risk IP entity, there is a presumption that the entity does not conduct core income generating activity in St. Vincent and the Grenadines, which the entity may rebut by providing sufficient evidence to the contrary.<sup>17</sup>

The approach of the Comptroller to assessing whether the ES requirements have been met by a relevant entity are considered in section 3.

## 2.7 WHAT ARE THE CORE INCOME GENERATING ACTIVITIES?

- A) “Core income generating activities” (CIGA) are those activities undertaken by a relevant entity that generate the income earned by relevant entity with respect to a particular relevant activity. To qualify as CIGA, activities must be of central importance to the relevant entity in terms of generating the income arising from a relevant activity. As the CIGA are specific for each relevant activity undertaken, specific explanations are given with respect to each relevant activity. The CIGA include the following:
  - 1) **Banking business:** raising funds, managing risk including credit, currency and interest risk, taking hedging positions, providing loans, credit or other financial services to customers, managing regulatory capital and preparing regulatory reports or returns.
  - 2) **Distribution and service centre business** – transporting and storing goods, components and materials, managing stocks, taking and processing orders and providing consulting or other administrative services.
  - 3) **Finance and leasing business** - agreeing funding terms, in the case of leasing business, identifying and acquiring assets to be leased, setting the terms and duration of financing or leasing agreements, monitoring and revising finance and leasing agreements and managing risks associated with finance and leasing agreements.
  - 4) **Fund management business** - taking decisions on the holding and selling of investments, calculating risk and reserves, taking decisions on currency or interest fluctuations and hedging positions and preparing reports and returns to investors and to the FSA, any authority or body with equivalent functions to the FSA with respect to the regulation or supervision of fund management or other government authorities.
  - 5) **Headquarters business** – taking relevant management decisions, incurring expenditures on behalf of group entities and co-ordinating group activities.

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<sup>16</sup> Section 9 (5).

<sup>17</sup> Section 9 (6).

- 6) **Insurance business** – predicting and calculating risk, insuring or re-insuring against risk and providing insurance business services to clients.
- 7) **Intellectual property holding business** where the entity holds, exploits or receives income **from one or more patents**, research and development relating to the patent including – advancing the understanding of scientific relations or technologies, addressing scientific or technological obstacles and increasing scientific or technical knowledge or developing new applications.
- 8) **Intellectual property holding business** where the entity holds, exploits or receives income from any intellectual property assets or assets, **other than patents** - marketing, branding and distribution activities relating to the asset or assets, or in exceptional cases, provided that the relevant entity is not a high-risk IP entity –
  - (a) taking strategic decisions and managing, as well as bearing, the principal risks related to development and subsequent exploitation of the asset or assets that generate the income;
  - (b) taking the strategic decisions and managing, as well as bearing, the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the asset or assets; and
  - (c) carrying on the underlying trading activities through which the asset or assets are exploited leading to the generation of income from third parties.
  - (d) assets are exploited leading to the generation of income from third parties.
- 9) **Shipping business** - managing crew, including hiring, paying and overseeing crew members, hauling and maintaining ships, overseeing and tracking deliveries, determining what goods to order and when to deliver them and organising and overseeing voyages.
- 10) **Holding entity business** – where the entity is a pure equity holding entity, complying with its statutory obligations under the Companies Act or the Business Companies (Amendment and Consolidation) Act, as the case may be, and where the entity is not a pure equity holding entity, the activities specified in the preceding paragraphs **1 to 9** aforementioned, that are associated with the income that the entity earns from the relevant activity concerned.

If an entity is engaged in more than one relevant activity, it must satisfy the ES requirements and CIGA relative to each relevant activity that it is engaged in.

**Further details on each sector specific relevant activity are outlined in [ANNEX 1](#).**

## 3.0 Compliance with ES Requirements

### 3.1 THE COMPTROLLER'S APPROACH TO ES REQUIREMENTS

- A) In general, the Comptroller will take a practical approach to the interpretation and application of the economic substance ('ES') requirements. As previously noted, in his analysis of each Entity, the Comptroller will have regard to the nature, scale and complexity of that entity's business, and will apply criteria such as "adequacy" in that context.
- B) What is adequate or appropriate for each relevant entity will be dependent on the particular facts of the relevant entity and its business activity. As such, the directors (or equivalent) of each relevant entity should address their minds to these questions and make their determination in good faith. A relevant entity must ensure that it maintains and retains appropriate records to demonstrate the adequacy and appropriateness of the resources utilized and expenditures incurred.
- C) Given the stringent legal and regulatory requirements in St. Vincent and the Grenadines for relevant entities licensed to carry on banking business, insurance business and fund management business, it is expected that those requirements will significantly overlap with the ES requirements, as those licenced and regulated entities will already generally be operating in the State with adequate resources and expenditure. However, those relevant entities will still be subject to the ES Act (i.e. reporting requirements, CIGA performed in St. Vincent and the Grenadines and monitoring by the Comptroller) in addition to the applicable regulatory requirements.

### 3.2 The ES "TEST"

The assessment of ES requirements is commonly referred to in many jurisdictions as the "ES Test." For practical purposes and consistent with the provisions of Section 9 of the ES Act, this is not a single test but broken down into the three test components, referred to as the '**directed and managed test**,' the "**adequacy test**" and the "**CIGA test**".

### 3.3 THE DIRECTED AND MANAGED TEST

- A) As required by Section 9(3)(a) and Section 10 of the ES Act, a relevant entity satisfies the ES Test regarding the requirement to be **directed and managed** in St. Vincent and the Grenadines in relation to a relevant activity if –
- meetings of the board of directors are held in St. Vincent and the Grenadines at adequate frequency having regard to the level *of* decision making required in relation to the relevant activity;
  - during each board meeting which is held in St. Vincent and the Grenadines, there is a quorum of directors present in St. Vincent and the Grenadines;

- strategic decisions of the entity are made at those meetings held in St. Vincent and the Grenadines and the minutes of those meetings record the making of those strategic decisions;
  - it keeps all such meeting minutes and appropriate records<sup>18</sup> in or accessible in St. Vincent and the Grenadines; and
  - its board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors in relation to the relevant activity.
- B) The directed and managed test is designed to ensure that there is an adequate frequency of board meetings held and attended in St. Vincent and the Grenadines (although it is not necessary for all meetings to be held locally). What constitutes an adequate frequency of meetings in St. Vincent and the Grenadines will be dependent on the relevant activities of the relevant entity. The test also seeks to ensure that the associated minutes and records are kept in St. Vincent and the Grenadines and that the board is a decision-making body with the appropriate knowledge and experience. In the case where there are corporate directors, the requirements will apply to the individual(s) (officers of the corporate director) actually performing the duties.
- C) Accordingly, in considering whether or to what extent a relevant entity is “directed and managed” in St. Vincent and the Grenadines,” the Comptroller will assess whether the entity:
- (a) holds board meetings in St. Vincent and the Grenadines where strategic or risk management and operational decisions are made; and
  - (b) has an adequate number of senior executives, employees and other persons in St. Vincent and the Grenadines who are suitably qualified and responsible for oversight or execution of the entity’s CIGA.
- D) An entity is expected to have board meetings at a frequency proportionate to the nature, scale and complexity of the relevant activities it conducts. It is generally expected that even for entities with a minimal level of activity, there will be at least one board meeting held by such entity in St. Vincent and the Grenadines in each relevant financial period. However, it is not always necessary for all such meetings to be held in St. Vincent and the Grenadines or that the quorum<sup>19</sup> always be present in St. Vincent and the Grenadines, where the circumstances of the entity reasonably require the holding of some meetings outside of St. Vincent and the Grenadines (provided that the entity is able to evidence such circumstances). The Covid pandemic would clearly be regarded as sufficient reason for board meetings to be held outside St. Vincent and the Grenadines if it would otherwise require directors to travel to St. Vincent and the Grenadines.

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<sup>18</sup> Required to be kept by the Companies Act or the Business Companies (Amendment and Consolidation) Act.

<sup>19</sup> Quorum in this context will be determined in accordance with any applicable law and/or the entity’s constitutional documents.

- E) It is expected that minutes will be kept of all board meetings and that such minutes will evidence all the relevant strategic or risk management and operational decisions taken. It is also expected that all such minutes will be available for inspection in St. Vincent and the Grenadines, whether held electronically or in hard copy. Where records are held electronically, it is sufficient that such records are maintained and accessible in St. Vincent and the Grenadines and it is not necessary that the relevant data centre be located in St. Vincent and the Grenadines.

In respect of the senior executives, employees or other persons responsible for oversight or execution of an entity's CIGA, the entity in question will be expected to maintain records in (or accessible from) St. Vincent and the Grenadines that evidence that such persons are suitably qualified to hold such responsibilities.

### 3.3.1 Direction and Management – Liquidation or Ceasing to Carry on Relevant Activities

- A) A relevant entity will, so long as it exists, continue to have any obligations which the ES Act imposes on it. Where relevant activities continue during the liquidation or winding up process, the liquidators (or equivalent) must ensure that the relevant entity continues to satisfy all its obligations under the ES Act.
- B) Reporting to the Comptroller will continue to be required with respect to any period during which the relevant entity carries on any relevant activity or activities, however such reporting will not be required with respect to any period during which the relevant entity is no longer carrying on relevant activities, other than the requirement to notify the Comptroller through the annual return that the relevant entity has not undertaken any relevant activities during the applicable assessment period.
- C) Any liquidators (or equivalent) or other representatives of a relevant entity who were responsible for the liquidation, winding up or dissolution of the relevant entity have duties to maintain the relevant entity's records and to respond to the Comptroller's information requirements under the ES Act for seven years after final dissolution. For the purpose of this Guidance, final dissolution refers to the date on which the certificate of dissolution of a company is issued.

## 3.4 THE "ADEQUACY" TEST

- A) Section 9 (3)(b) of the ES Act encapsulates what is referred to as the "*adequacy*" test with respect to *employees, operating expenditure* and physical *assets or premises* of the relevant entity.

The word "adequate" is used several times in section 9, as are the words "appropriate" and "appropriately," and these words are used in similar context in other parts of the ES Act.

What is adequate or appropriate for each relevant entity will be dependent on the particular facts of the relevant entity and its business activity. As such, the directors of each relevant entity should address their minds to these questions and make their determination in good

faith. A relevant entity must ensure that it maintains and retains appropriate records to demonstrate the adequacy and appropriateness of the resources utilized and expenditures incurred.

For the purpose of this Guidance, the words “adequate” and “appropriate” have their ordinary dictionary meaning *viz a viz* the meaning derived from their context, bearing in mind the following:

- “adequate” means “as much or as good as necessary for the relevant requirement or purpose;” and
- “appropriate” means “suitable or fitting for a particular purpose, person or occasion.”

### 3.4.1 Employees Requirement

- A) The ES legislation<sup>20</sup> requires that, to satisfy the ES requirements in relation to a relevant activity, having regard to the level of relevant activity carried on in St. Vincent and the Grenadines, a relevant entity<sup>21</sup> must have an **adequate** number of **appropriately** experienced and if **appropriate**, qualified fulltime employees proportionate to the level of that activity who are physically present in St. Vincent and the Grenadines, whether or not employed by the relevant entity or by another entity and whether on temporary or long-term contracts.
- B) As previously indicated, what is considered “adequate” for any relevant entity will depend on the nature, scale and complexity of the business of that entity. There is no one rule or formula that will fit all entities or be suitable for all relevant activities and the requirement does not imply a positive obligation on an entity to hire full time (or any) employees, if no such employees are reasonably required for the business of that entity in any event.
- C) If the entity, either itself or through some appropriately monitored outsourcing arrangements with a service provider or an affiliate, has adequate employees to carry on the relevant CIGA, this requirement would be satisfied.
- D) For the purposes of the ES requirements, the term “employees” is not limited to individuals who are legally employed by the entity itself. In this context, the Comptroller will regard “employee” as having a meaning similar to that used by the EU in relation to small to medium-sized enterprises (“SMEs”). Accordingly, employees for this purpose include:
  - employees of the relevant entity; and
  - owner-managers and directors.

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<sup>20</sup> Section 9(3)(b)(i), ES Act.

<sup>21</sup> Other than a pure equity holding entity.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are excluded.

- E) A “full time” employee does not necessarily mean an individual working on a full-time basis in connection with a relevant activity. The staffing requirement will be considered adequate and satisfied provided that the employee is engaged for that portion of the employee’s time needed to fulfill the requirements of his/her function in relation to the relevant activity. An employee may also work for more than one entity (either directly or via a monitored outsourcing arrangement). The time of an employee can be allocated between activities or between entities if appropriate in the circumstances, provided that the time allocated in respect of that employee is not double counted.
- F) The entity must establish that it has sufficient suitably qualified employees in St. Vincent and the Grenadines to carry on its relevant activity(ies). The directors (or equivalent) of an entity may sometimes perform CIGA in addition to performing their fiduciary duties for the entity. This will result in the reduction or possible elimination of the entity’s need for full time employees or an outsourcing arrangement. In such cases, the Comptroller may consider evidence of the CIGA performed by the directors in St. Vincent and the Grenadines.

In most circumstances, better qualified staff are more efficient and as such, fewer may be required. Increases in digitalization and automation of processes may also mean that fewer staff are required.

- G) When considering what an adequate number of qualified employees is, this must relate to the employees needed to be able to conduct the relevant activity as a whole (not just the CIGA). The qualifications that are considered to be adequate will depend on the relevant sector that the company has activity in, the CIGA undertaken in St. Vincent and the Grenadines and the duties performed by those employees. Qualifications taken into account could include academic qualifications, vocational qualifications, relevant industry technical qualifications and also qualification by reason of relevant experience.
- H) Each entity will be expected to maintain records in (or accessible from) St. Vincent and the Grenadines that evidence the time spent by employees or other persons in relation to each relevant activity (and in relation to each entity, where time is spent with more than one entity), and that such employees or other persons are suitably qualified to fulfill the duties undertaken by them.



### 3.4.2 Operating Expenditure Requirement

- A) The ES legislation requires<sup>22</sup> that, to satisfy the ES requirements, a relevant entity<sup>23</sup> must have an adequate level of operating expenditure in St. Vincent and the Grenadines that is proportionate to the level of that relevant activity carried on in St. Vincent and the Grenadines.<sup>24</sup>
- B) The entity must incur adequate expenditure in St. Vincent and the Grenadines in relation to the relevant activity in which it is engaged. Expenditure must be adequate relative to the CIGA undertaken in St. Vincent and the Grenadines and proportionate to the nature, scale and complexity of the business of the entity in question. If the entity engages in more than one relevant activity, the expenditure in respect of each relevant activity will be assessed separately. The expenditure will generally be expected to be in respect of business expenses, fees, goods, services and employment costs paid to individuals or entities located in St. Vincent and the Grenadines.

### 3.4.3 Physical Assets or Physical Presence Requirement

- A) The ES Act requires that, to satisfy the ES requirements, a relevant entity<sup>25</sup> must have adequate physical assets or physical presence in St. Vincent and the Grenadines, proportionate to the level of that relevant activity carried on in St. Vincent and the Grenadines.<sup>26</sup>
- B) As previously indicated, what is considered “adequate” for any relevant entity will depend on the nature, scale and complexity of the business of that entity. There is no one rule or formula that will fit all entities or be suitable for all relevant activities, and the requirement does not imply a positive obligation on an entity to acquire assets or acquire or occupy premises if no such assets or premises are reasonably required for the business of that entity in any event.
- C) If the entity, either itself or through monitored outsourcing arrangements with a service provider or an affiliate, has an adequate physical presence in St. Vincent and the Grenadines to undertake the relevant activity, this requirement would be satisfied.
- D) Premises may be shared with one or more entities, provided that such premises are adequate for the relevant activities undertaken by each such entity.
- E) In lieu of adequate physical presence, adequate physical assets will satisfy this economic substance requirement and vice versa. What constitutes adequate assets for the purposes of the ES requirement under this limb of the law will be determined as a matter of fact by the Comptroller.

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<sup>22</sup> Section 9(3)(b)(ii).

<sup>23</sup> Other than a pure equity holding entity.

<sup>24</sup> Section 9(3)(b)(ii), ES Act.

<sup>25</sup> Other than a pure equity holding company.

<sup>26</sup> Section 9(3)(b)(iii), ES Act.

### 3.5 THE “CIGA” TEST

- A) The ES legislation requires that, to satisfy the ES requirements, a relevant entity<sup>27</sup> must conduct “core income -generating activity” (“CIGA” as previously referenced) in relation to a relevant activity in St. Vincent and the Grenadines.<sup>28</sup>
- B) As indicated in section 2.7, CIGA means activities that are of central importance to a relevant entity in terms of generating income and a relevant entity must conduct the appropriate elements of CIGA in St. Vincent and the Grenadines. The elements listed in the definition of CIGA<sup>29</sup> in relation to each relevant activity are neither exhaustive nor mandatory. It is a question of fact in each case which elements are actually undertaken to generate income.
- C) The Comptroller’s assessment of the ES requirements in St. Vincent and the Grenadines will include careful consideration of the relevant activity or activities of the relevant entity and what CIGA are being undertaken by the entity in the jurisdiction. For example, a relevant entity that is carrying on banking business and is only generating income from deposit-taking, need not carry on other listed elements of CIGA for banking business, such as hedging or providing loans or credit.
- D) The ES Act requires a relevant entity that is carrying on more than one relevant activity to satisfy the CIGA requirements in relation to each relevant activity.
- E) Where the CIGA are undertaken by a service provider under an outsourcing arrangement or by an affiliate of the entity, such activity must also be undertaken in St. Vincent and the Grenadines.

### 3.6 Sector-Specific Guidance on Relevant Activities

***Sector Specific Guidance outlined in Annex 1 will more closely examine the CIGA corresponding to each relevant activity*** and provide additional guidance on the practical application of the ES requirements to the various relevant activities.

### 3.6 Illustrative Synopsis of Approach to Economic Substance Requirements

The following **Flowchart** is intended to provide a high-level illustration of the general approach by the Comptroller to ES requirements. It should be read in conjunction with the ES legislation and the key aspects of this Economic Substance Guidance.

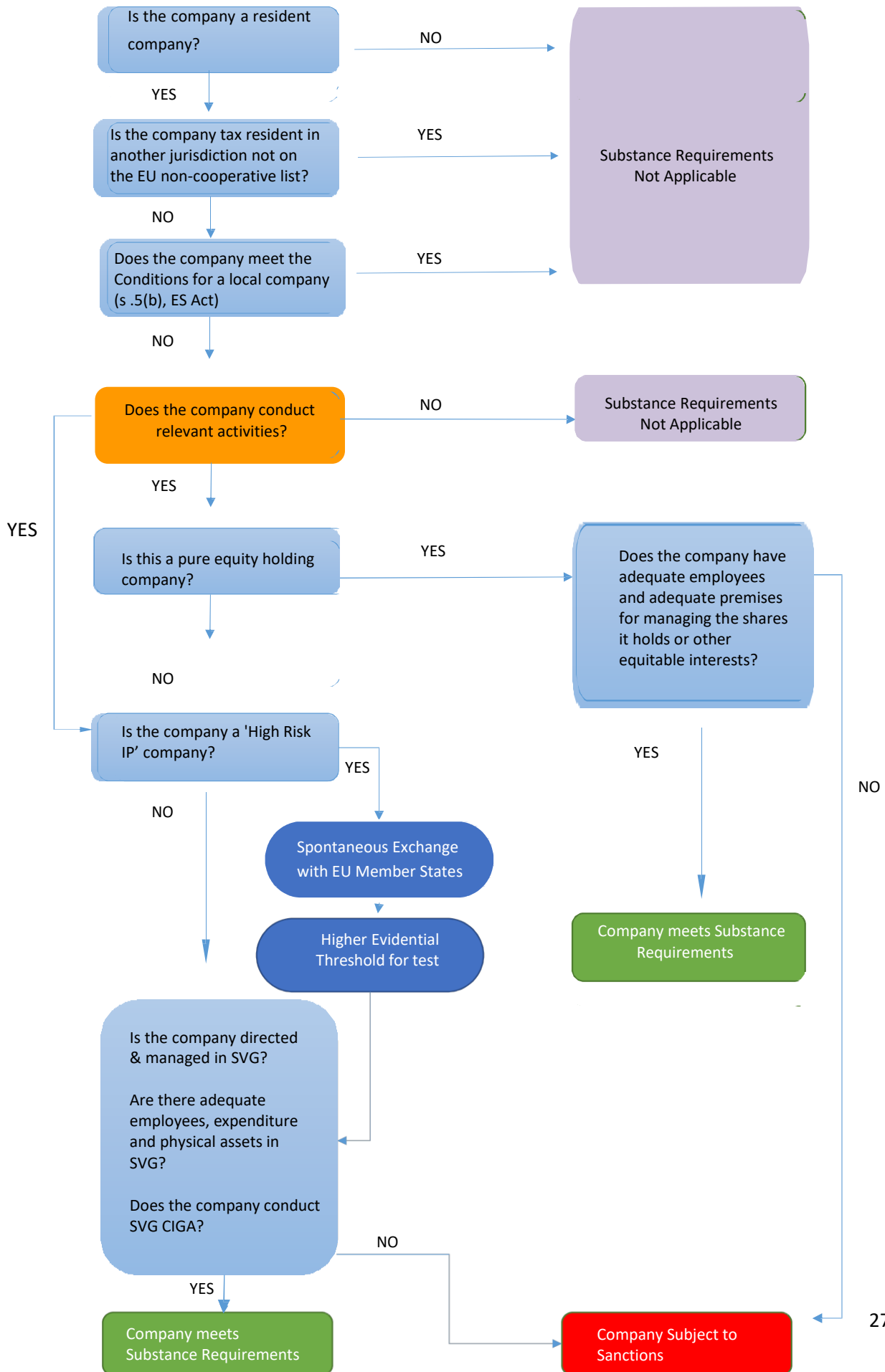
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<sup>27</sup> Other than a pure equity holding company.

<sup>28</sup> Section 9(3)(c), ES Act.

<sup>29</sup> Section 8, ES Act and outlined hereinbefore at Paragraph 2.8.

### Illustrative Synopsis of Approach to Economic Substance Requirements



## 4.0 REPORTING OF INFORMATION

### 4.1 Reporting Obligation

- A) Section 11 of the ES Act obliges every resident entity, in respect of each assessment period, to submit to the Comptroller a return for the purpose of enabling the Comptroller:
- to determine whether the entity is a relevant entity during the assessment period;
  - if the resident entity is a relevant entity, to assess whether, during the assessment period, the entity is or was an entity required to meet the ES requirements; and
  - if a relevant entity is required to meet the ES requirements, whether the entity meets or met the ES requirements applicable to it during the assessment period.
- B) The other purposes of the reporting obligation under the ES legislation centre around enabling the proper performance of the Comptroller's functions under the ES Act and enabling the implementation of certain international obligations with respect to exchange of information.<sup>30</sup>
- C) For the avoidance of doubt as to who must comply with reporting obligations, the definition of a resident entity is outlined in paragraph 2.4 (A).
- D) Accordingly, every resident entity, must submit a **return** to the Comptroller for every assessment period or relevant financial period, containing the information specified and supported by documentation as appropriate.

### 4.2 Reporting in Approved Form

- A) The return required by Section 11 of the ES Act will collect information that will be considered by the Comptroller when determining whether an entity meets the ES requirements. The information to be provided by each entity will include the matters indicated in Regulations 4 and 5 of the ES Regulations. The Comptroller will have regard to the nature, scale and complexity of each entity's business in his analysis of the information provided when determining if or to what extent the ES requirements have been satisfied by that entity.

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<sup>30</sup> Section 11(1)(iii) and 11(b) (c) and (d) refer.

- B) Every resident entity must use the Form approved and issued for the purpose of the Section return, namely, the **ANNUAL ECONOMIC SUBSTANCE RETURN FORM**. This Form comprises two parts, the first, **PART 1A**, entitled ‘**Economic Substance Notification**’ and the second, **PART 1B** entitled ‘**Economic Substance Return.**’
- C) Every entity will be required to complete the Economic Substance Notification annually, for the purpose of determination by the Comptroller -
- i. whether or not it is carrying on a relevant activity;
  - ii. if it is carrying on a relevant activity, whether or not it is an excluded entity.

The information which will be required to demonstrate an entity’s claim that it is an excluded entity is outlined in Regulation 4 of the ES Regulations. The entity will be required to provide information and documentation stipulated in the said Regulation and any additional information requested by the Comptroller, to show that it is either tax resident in a country outside St. Vincent and the Grenadines which is not on the EU’s list of non-cooperative jurisdictions for tax purposes, or that it is excluded on the basis of being a locally controlled entity.

- D) **Sections 5 and 6 of the ES Act and Regulation 4(1)** contain comprehensive details on the criteria to be satisfied and the information to be provided for an entity to be classified as an excluded entity, on the basis of being tax resident outside the jurisdiction or being a locally controlled entity.
- E) If the entity is relying on a claim of being an excluded entity, the entity is not required to complete Part 1B, unless the Comptroller does not accept the entity’s claim.
- F) A relevant entity (i.e. a resident entity carrying on a relevant activity which is not an excluded entity) is required to complete and submit to the Comptroller Part 1B Economic Substance Return for the purpose of the Comptroller’s determination whether the ES requirements have been satisfied in relation to that relevant activity. The ES return must be made within four months after the last day of the end of each financial year of the relevant entity commencing on or after January 01, 2021. The exception is that transitioning business companies are required to submit the ES return within twelve months after the last day of the end of each financial year commencing on or after July 01, 2021.
- G) The Annual Economic Substance Return Form by a relevant entity shall contain the information specified in the form and be accompanied by such documents as are also specified. It shall include the following information with respect to the relevant entity as of the end of the relevant financial year –

- (a) each type of relevant activity undertaken by the entity;
- (b) if the entity carried on intellectual property holding business, whether or not it was a high-risk IP entity;
- (c) the information relied upon to establish that the entity was directed and managed in St. Vincent and the Grenadines in relation to each relevant activity undertaken;
- (d) the CIGA/core income generating activities conducted in St. Vincent and the Grenadines with respect to each relevant activity undertaken;
- (e) the gross income generated by the relevant activities undertaken during the assessment period;
- (f) the number of full-time employees or other personnel responsible for carrying on the relevant activity–
  - (i) specifying the experience and, if relevant, qualifications of the employees or other personnel;
  - (ii) demonstrating that the employees or other personnel were physically present in Saint Vincent and the Grenadines while carrying on the relevant activity in Saint Vincent and the Grenadines;
  - (iii) if the activity was outsourced, demonstrating how section 9(4) of the ES Act was complied with;
- (g) the amount and type of operating expenditure in St. Vincent and the Grenadines in respect of the relevant activity;
- (h) the amount and type of expenses and assets utilised for the relevant activity;
- (i) the location of the place of business or the physical assets utilised for the relevant activity;
- (j) the physical assets or physical presence in St. Vincent and the Grenadines;
- (k) the prescribed identification information with respect to each director of the entity;
- (l) details of each meeting of the board of directors held in St. Vincent and the Grenadines and a declaration that, in the case of each meeting, there was a quorum of directors physically present in St. Vincent and the Grenadines;

- (m) a declaration that section 10(c), (d) and (e) of the ES Act have been complied with;
- (n) a declaration as to whether or not the entity claims to satisfy the substance requirements during the assessment period;
- (o) in the case of a high-risk IP entity –
  - i. detailed business plans that demonstrate the commercial rationale for holding the intellectual property assets in Saint Vincent and the Grenadines;
  - ii. the information relied on to rebut the presumption that the entity does not conduct core income-generating activity in Saint Vincent and the Grenadines and, in particular, to demonstrate the matters specified in section 9 (8) of the Act; and
- (p) such other information as may be specified in the return.

### **4.3. Additional Guidance**

Additional Guidance in relation to information which will be requested by the Annual Economic Substance Return and how to complete the return Form is provided in [Annex 2](#).

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## 5.0 Enforcement and Sanctions

- A) The process for enforcement of the ES requirements is set out in sections 14 and 15 of the ES Act.
- B) If the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the ES requirements during an assessment period, the Comptroller is required to issue a penalty notice to the relevant entity notifying the relevant entity of the Comptroller's determination, giving the reasons for the determination, details regarding the penalty imposed including the amount, directing any action to be taken to satisfy the ES requirements and advising of the relevant entity's right to appeal. This penalty notice may be referred to as the **First Penalty Notice**.
- C) The penalty that must be imposed by the Comptroller on a relevant entity under a First Penalty Notice is in an amount of up to sixty thousand dollars. The relevant entity must pay the penalty stated in the notice on or before the date specified in the notice, unless the entity makes an application for a review of the Comptroller's determination in accordance with Section 17 of the ES Act and thereafter, also appeals the decision of the Comptroller.
- D) Failure to satisfy the ES requirements for a second or subsequent assessment period is treated more severely by the Comptroller. If the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the ES requirements during an assessment period that immediately follows an assessment period in which a First Penalty Notice was already issued or during a subsequent assessment period, the Comptroller is required to issue another penalty notice, referred to as a **Second Penalty Notice**, outlining the Comptroller's determination that the entity has not satisfied ES requirements for that assessment period. In that Second Penalty Notice, the matters required to be outlined identical to the First Penalty Notice referenced above<sup>31</sup> and the imposition of a penalty of up to seventy-five thousand dollars will also be stipulated.
- E) Failure to pay a penalty stipulated on or before the date indicated in the First Penalty Notice is a criminal offence, with liability upon summary conviction to a fine of up to seventy thousand dollars or imprisonment for one year or both.
- F) Failure to pay a penalty stipulated on or before the date indicated in the Second Penalty Notice is a criminal offence, with liability upon summary conviction to a fine of up to one hundred thousand dollars or imprisonment for two years or both.

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<sup>31</sup> Section 15 of the ES Act refers.



- G) If the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the ES requirements during the assessment period that immediately follows an assessment period in which a Second Penalty Notice was issued or during a subsequent assessment period, the Comptroller is required to ***apply to the Court*** for an order requiring the entity to take such action as the Court considers appropriate or necessary for the entity to satisfy the ES requirements, including either having the company struck of the relevant register of companies or having the company wound up.

## **6.0 REVIEW AND APPEALS**

Once an entity receives a penalty notice, it can make an application for an internal review of the determination of the Comptroller<sup>32</sup>. Thereafter, if the entity is dissatisfied with the result of the internal review, the entity can appeal this result to the High Court of St. Vincent and the Grenadines.<sup>33</sup>

## **7.0 MISLEADING INFORMATION**

It is an offence for a person to knowingly or willfully supply false or misleading information to the Comptroller under the ES Act<sup>34</sup>. Such an offence is punishable on summary conviction by a fine of one hundred thousand dollars or with imprisonment for two years or both.

## **8.0 OFFENCE BY OFFICERS OF A BODY CORPORATE**

Where an offence under the ES Act has been committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits the offence and is liable on conviction to the penalty specified for the commission of the offence.

## **9.0 CONFIDENTIALITY**

The information and documents provided by an entity to the Comptroller in respect of the ES requirements must be kept strictly confidential except in so far as disclosure is permitted by law.<sup>35</sup> Disclosure is only permissible with the consent of the Comptroller to:

- (a) a person or authority or court in the Competent Authority's jurisdiction for the purposes of the administration and enforcement of its tax laws or the determination of appeals relating thereto; or

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<sup>32</sup> See Section 17 of the ES Act.

<sup>33</sup> See Section 19 of the ES Act.

<sup>34</sup> Section 27, ES Act.

<sup>35</sup> Section 24, ES Act.

(b) a person employed or authorised by the government of the Competent Authority to oversee data protection.

Accordingly, the exchange of information provisions contained in the ES Act do not breach any obligation as to confidentiality in relation to authorized disclosure of information in the ES Act or any other relevant law.<sup>36</sup>

## 10.0 EXCHANGE OF INFORMATION

The Comptroller will systematically and/or spontaneously exchange information<sup>37</sup> provided to it under the ES Act in accordance with the tax exchange of information laws of St. Vincent and the Grenadines and exchange of information agreements or Conventions, with other competent authorities in respect of relevant entities that fail to satisfy the ES requirements in relation to relevant activities and in relation to high-risk IP business. Information will also be shared with the competent authority of the jurisdiction where an entity claims to be tax resident or subject to income tax on its income.

Recipient competent authorities could be in the jurisdiction of residence of the relevant entity's immediate parent, ultimate parent, and ultimate beneficial owner and could also be in the jurisdiction where the relevant entity (or the entity claiming not to be a relevant entity by reason of its tax residence) itself is incorporated or claims to be tax resident, if that is outside St. Vincent and the Grenadines.

The modalities of the above exchange framework, including the terminology used in the framework, timing for such exchanges, the precise data points, the mechanism for opting in, and the development of any standardized template or schema, will be used by the Comptroller in the form approved by the OECD.

## 11.0 INTERNATIONAL MONITORING PROCESSES

The OECD Forum on Harmful Tax Practices (FHTP) will conduct annual monitoring of the enforcement of the ES requirements in practice by no or nominal tax jurisdictions, in addition to monitoring of preferential regimes of most other jurisdictions that are members of the BEPS Inclusive Framework.<sup>38</sup> This monitoring process considers details on the monitoring mechanism to ensure compliance and supporting statistical data.

Implementation of ES requirements by St. Vincent and the Grenadines will also be monitored by the EU COCG and the EU Member States.

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<sup>36</sup> Section 22(3), ES Act.

<sup>37</sup> See Section 22 and 23, ES Act and Regulation 6, ES Regulations.

<sup>38</sup> St. Vincent and the Grenadines has been a member of the BEPS Inclusive Framework since 2018.

## 12.0 ENCLOSURES

The following enclosures are appended hereto and form part of this Guidance –

- **Annex 1** - entitled “Economic Substance for Geographically Mobile Activities Sector Specific Guidance;”
- **Annex 2** – entitled “Economic Substance for Geographically Mobile Activities Guidance on Economic Substance Annual Return.”