



Belize Economic Substance Act, 2019

CONSULTATION DRAFT

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1. INTRODUCTION

The Guidance Notes ('Notes') for the Economic Substance Act, 2019 are intended to provide regulatory interpretations of the law's scope and assistance with compliance. These Notes are not intended to be a substitute for legal advice in particular circumstances of individual cases.

The Notes are reflected as at the date of release and it is the responsibility of the user to keep up to date with any amendments made to the legislation.

Users will find the economic substance concepts in Belize mirror the policies found in legal systems of other jurisdictions that comply with global regulatory standards.

The OECD Forum on Harmful Tax Practices (FHTP), defined the global standard that requires companies to have substantial economic presence in a jurisdiction where they operate (also known as "economic substance"). Over 130 jurisdictions are members of the Organization of Economic Cooperation Development Base Erosion and Profit Shifting (BEPS) Inclusive Framework. BEPS was conceived to counter tax planning strategies used by companies to exploit gaps and mismatches in tax rules between countries. The FHTP is a sub-body of the Inclusive Framework and is responsible for assessing and monitoring the BEPS Action 5 (assessment of preferential tax regimes, transparency and substantial activities requirements) for all member jurisdictions. Globally, the FHTP reviews compliance to ensure that they are implemented effectively, and to ensure a level and fair system is being executed (as between the no or only nominal tax jurisdictions, as well as with jurisdictions offering preferential regimes).

The European Union has, for many years, turned its attention to offshore financial centers. Specifically, the Code of Conduct Group (COCG) within the EU's Economic and Financial Affairs Council (ECOFIN). The COCG has determined that jurisdictions that fail to satisfy the COCG's requirement to end "preferential treatment" for non-resident companies are to be deemed "non-cooperative" or "blacklisted". Those that meet most COCG requirements and show an effort to resolve shortcomings are "grey-listed," while those that meet all requirements are "white-listed."

To address the COCG's requirements, Belize passed the Economic Substance Act, 2019 which came into force on October 11th, 2019. The Economic Substance Act sets out the framework for determining when certain Belize entities, or foreign entities operating in Belize, may be required to demonstrate economic substance in Belize.

Additional clarification on the guidance provided herein may be obtained by contacting the Competent Authority at belizeguidancenotes@ifsc.gov.bz.

2. OVERVIEW

The Economic Substance Act, 2019 was enacted to ensure improved provisions for substantial economic presence to be fulfilled by certain commercial entities ('entity') that are registered and conduct business in Belize. This approach of economic substance for commercial entities is based on the global standards on fair taxation and anti-money laundering promoted by the Financial Action Task Force (FATF), Caribbean Financial Action Task Force (CFATF), Organization of Economic Cooperation Development (OECD), and the European Union (EU).

3. THE COMPETENT AUTHORITY

The Competent Authority (Authority) for the purposes of the Act is the International Financial Services Commission. The Authority's functions under the Act include administering the Act, determining whether a relevant entity satisfies the economic substance criteria in respect of its relevant activities, monitoring compliance with the Act and sharing information with other competent authorities and jurisdictions.

The Authority has statutory responsibilities under the International Financial Service Commission Act (Chapter 272) in addition to those under the Economic Substance Act, 2019.

4. SCOPE OF ECONOMIC SUBSTANCE LAW

A. INCLUDED ENTITY/ RELEVANT ACTIVITY (ESA s.2, s.5)

The Economic Substance Act states the definition of "included entity".

An "included entity" means-

An entity that carries out any of the following relevant activities, outlined under s.5 -

- a) banking business;
- b) insurance business;
- c) fund management business;
- d) financing and leasing business
- e) headquarters business;
- f) distribution and service centre business;
- g) shipping business;
- h) as a holding company, engaged, or where one or more of its subsidiaries is engaged in one of the activities listed under s.5 (a) to (g).
- i) all Regulated Entities under the IFSC Act.

B. NON- INCLUDED ENTITIES (ESA s.2)

The substance requirements of the Act do not apply to any entity that does not conduct relevant activities in Belize.

The substance requirements of the Act do not apply to a commercial entity that is controlled and managed outside of Belize and is tax resident in a jurisdiction other than Belize; however, such an entity must provide the Authority with sufficient proof that is tax resident in the jurisdiction that it asserts which is elaborated in section 5 of the Guidance Notes.

C. LOCAL ENTITIES INCORPORATED UNDER THE COMPANIES ACT, CHAPTER 250

local entities will be required only to comply with corporate governance requirements set out under the Business Companies Act Chapter 250 as well as any obligation as licensees under the International Financial Services Commission Act, Chapter 272 but will not be required to complete and file an annual economic substance declaration Form D.

D. LEGAL ENTITIES IN SCOPE

The Act applies to commercial entities which are incorporated, licensed or continued under: -

- (a) International Business Companies Act (Chapter. 270)
- (b) International Financial Services Commission Act (Chapter. 272)

which conduct relevant activities or are tax resident in Belize (see Guideline 5: Tax Residence).

5. TAX RESIDENCE (ESA s.3(3))

The substance requirements of the Act shall only apply to included entities that are tax resident in Belize. There is the presumption of residency for all entities registered in Belize.

Where an entity states that they are tax resident in a jurisdiction outside Belize, the Authority will have regard to where such entity is centrally managed and controlled. The entity will need to be able to provide the Authority with a letter or certificate -

- (a) From or issued by the tax authority of its jurisdiction of residence, stating that the commercial entity is considered to be resident for tax purposes in that jurisdiction;
- (b) Showing a clear and specific period of validity; and
- (c) Showing an assessment of tax on the entity, a confirmation of self-assessment of tax, a tax demand, evidence of payment of tax, or any other equivalent document issued by the tax authority for the jurisdiction in question.

- (d) There will be a prohibition for tax residency if the jurisdiction is listed in the EU Annex 1 jurisdictions.

The Authority will exchange all information received from an entity claiming foreign tax residence with the relevant jurisdiction(s) in accordance with article 4 and 7 of the OECD convention on Mutual Administrative Assistance in Tax Matters.

All IBC's need to obtain a TIN number (Tax identification number) from the registry as the liability for tax remain with the IBC until they can satisfactorily prove non-resident status. Having a TIN number does not mean that the IBC will pay taxes. The purpose for this initiative is strictly for regulatory and tax authorities to efficiently monitor the status of IBC.

In the absence of such evidence the entity will be regarded as an included entity that is subject to the substance requirements of the Act.

6. CORE INCOME GENERATING ACTIVITIES

Any included entity engaged in any of the relevant activities shall conduct its core income generating activities (CIGA) in Belize, other activities (other than those on the list) would not allow the substance test to be satisfied. The list may include (ESA s.6):

- (a) Banking- the core income generating activities may include 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 and returns.
- (b) Insurance - the core income generating activities may include predicting and calculating risk, insuring or re-insuring against risk, and providing client services. An entity will only be in scope if it engages in "insurance business" as defined under the Insurance Act Chapter 251. Insurance agents, brokers, and other intermediaries that are regulated under the Insurance Act Chapter 251, will be out of scope providing they are not carrying on insurance business or another relevant activity.
- (c) Fund Management - the core income generating activities may include taking decisions on the holding and selling of investments; calculating risks and reserves; taking decisions on currency or interest fluctuations and hedging positions; and preparing relevant regulatory or other reports for government authorities and investors.
- (d) Financing and Leasing - the core income generating activities may include agreeing funding terms; identifying and acquiring assets to be leased in the case of leasing; setting the terms and duration of any financing or leasing; monitoring and revising any agreements; and managing any risks. It also encompasses providing to any person for consideration credit facilities of any kind, such as loans, hire purchase arrangements, finance leases (excluding in relation to land) and conditional sale or credit sale arrangements.

- (e) Headquarters - the core income generating activities may include taking relevant management decisions; incurring expenditures on behalf of group entities; and coordinating group activities.
- (f) Distribution and Service Centre - the core income generating activities may include activities such as transporting and storing goods; managing stocks and taking orders; and providing consulting or other administrative services
- (g) Shipping - the core income generating activities may include managing the 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 organizing and overseeing voyages.

For each relevant activity, the Act provides an illustrative list of the core income generating activities that an included entity undertaking such relevant activity may carry on. The Act does not stipulate the type of activity that constitutes CIGA, rather it identifies certain activities that may qualify as CIGA. It is not necessary for the included entity to perform every CIGA listed under the Act. However, the assessment of whether the entity meets the substance requirement in Belize will include a careful analysis of which CIGA elements the included entity is conducting in Belize. An entity which earns no gross income will be considered out of scope.

7. SUBSTANTIAL ECONOMIC PRESENCE

An included entity demonstrates substantial economic presence in Belize if the following criteria relating to Board management and control are satisfied (ESA s.8) -

- (a) An adequate number of meetings of the Board of Directors are conducted in Belize given the level of decision making required;
- (b) There is a quorum of the Board of Directors present for meetings in Belize;
- (c) Strategic decisions of the included entity made at the meetings specified in paragraph (a) must be recorded in the minutes of the meetings;
- (d) All records and minutes of the included entity are kept in Belize; and
- (e) The Board of Directors has the necessary knowledge and expertise to discharge its duties.

It is the primary responsibility of the included entity to demonstrate that it conducts CIGA in Belize proportionate to its business activities.

This shall include adequate (ESA s.6):

- a) amounts of annual operating expenditure;
- b) number of qualified full-time employees; and
- c) physical offices.

8. REDUCED SUBSTANCE REQUIREMENTS FOR PURE EQUITY HOLDING COMPANIES (ESA s.9)

An included entity which engages in business as a pure equity holding company is subject to reduced substance requirements, as follows -

- (a) It shall comply with all applicable laws and regulations of Belize; and
- (b) It shall have adequate human resources and premises in Belize for holding equity participation in other entities and where it manages those equity participations in other entities, have adequate human resources and premises in Belize for carrying out the management.

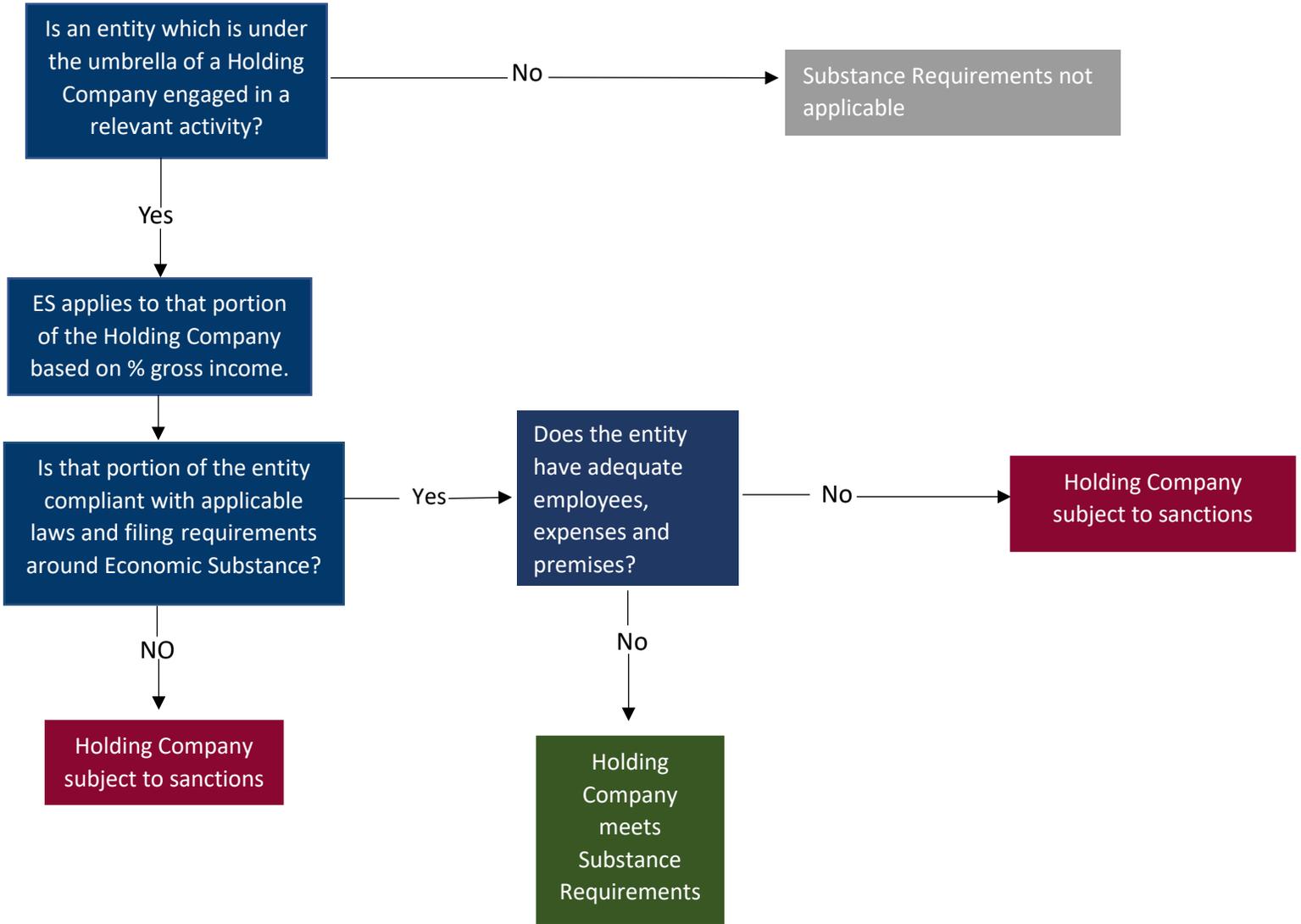
Pure equity holding companies (PEHC) that do not have any activity other than passively holding equity and earning dividends etc., only minimal substance requirements would apply. Other PEHCs that may initiate (possibly at the instruction of outside investment managers) the trading activities of the assets it holds, more substance may be required. A pure equity holding company must comply with corporate government requirement set out in Companies Act and complete and file an annual economic substance declaration form.

Entities which carry on non-relevant commercial activities will be out of scope of the economic substance legislation.

9. HOLDING COMPANIES WITH MULTIPLE ACTIVITIES

A holding company as defined typically holds/controls several entities. It is not relevant that all of the entities of a holding company to be performing a relevant activity to be applicable to the substantial economic presence stated in s.4 of the Act. If one of the entities that is under the umbrella is engaged in a relevant activity the economic substance applies to that portion of the holding company.

Figure 1: Flow chart depicting when a Holding Company includes entities with relevant and non-relevant activities will be required to comply with the Economic Substance requirements.



10. MEANING OF ADEQUATE

The Act refers to the term “adequate”. However, as this is not defined in the Act, the word “adequate” therefore carries its ordinary dictionary meaning.

For the purposes of the Act, the ordinary meaning of “adequate” is: “as much or as good as necessary and sufficient for a specific need or requirement”.

What is adequate for each company will be dependent on the particular facts of the company and its business activity. An included entity will have to ensure that it maintains and retains appropriate records to demonstrate the adequacy of staffing, resources utilized in respect of CIGA and expenditure incurred in Belize, having regard to the size, nature and complexity of the relevant activity.

11. OUTSOURCING (ESA s.7)

An included entity may satisfy its substance requirements by outsourcing its CIGA in relation to that relevant activity to persons in Belize licensed by the IFSC as a Managing Agent. The included entity must monitor and control the execution of the CIGA performed by the Managing Agent. The outsourced CIGAs must take place in Belize, and that the supervision of the outsourced activities by the outsourcing entity must also take place in Belize.

Only that part of the relevant activity outsourced to a Managing Agent which is attributable to generating income for the included entity shall be considered in determining whether the included entity has established adequate economic substance. If some or all the CIGA is outsourced, the relevant entity must be able to show that it has adequate supervision of the outsourced activities to satisfy economic presence.

Where CIGA is outsourced, the resources of the Managing Agent in Belize will be taken into consideration when determining whether the adequate people and premises test is met. The employees of the Managing Agent can be counted for the purpose of identifying the employees of the relevant entity used to satisfy adequate economic presence. This must be verified to ensure that only the portion of full-time equivalent employee time directly used in the service of the relevant entity is counted. There must be no double counting if the services are provided to more than one relevant entity carrying out relevant activities. For example, if an employee of a service provider spends an hour performing Belize CIGA for a relevant entity, the same employee cannot spend the same hour performing Belize CIGA for a different relevant entity. Tasks should be specific to each relevant entity so that there is no double counting of any specific task.

The included entity remains responsible for ensuring accurate information is reported on its return and this will include precise details of the resources employed by its service providers, for example based on the use of timesheets or other details of the scope of the engagement as the Authority may request.

An included entity must not use outsourcing to circumvent compliance with adequate economic presence. The Act does not prevent an included entity from outsourcing any activities that are not CIGA to any other person.

If an included entity has adequate economic substance in Belize under the Act, it is always based on facts and circumstances applicable to the included entity. It is the responsibility of the included entity to demonstrate that it has adequate substance and conduct its business accordingly even when outsourcing.

If that activity is not part of the CIGA this will not affect the included entity's ability to meet the substance requirements.

The International Financial Services Commission is currently working on the construction of the Managing Agent Regulations to set out the requirements for Managing Agents.

12. SPONTANEOUS EXCHANGE OF RELEVANT INFORMATION (ESA s.12)

The competent authority will spontaneously exchange relevant information with the relevant jurisdiction of the legal or beneficial owners of the included entity if the included entity:

- I. Has failed to satisfy substance requirements of the Act; or
- II. Has declared that it is tax resident in another jurisdiction.

The information about non-resident companies is to be sent to jurisdiction(s) where the tax residence is claimed and where the legal beneficial owner is resident, if they differ

13. RETENTION OF INFORMATION (ESA s.13(5))

An entity shall retain information for a period of at least five (5) years from the date the relevant business or transaction was completed or if the business relationship was terminated, whichever is later, any book, document, electronically-stored information or other record that relates to the information required to be reported to the competent authority under this Act.

14. METHOD OF REPORTING FOR COMPLIANCE PURPOSES

An entity shall comply with reporting requirements.

Reporting under this Act shall be carried out within nine months of the end of a fiscal year in the following manner-

- a) In the case of an included entity, Form B prescribed in the schedule is to be completed by the included entity;
- b) In the case of an included entity that is a holding company, Form C prescribed in the Schedule is to be completed by the holding company;
- c) In the case of a non-included entity, Form D prescribed in the Schedule is to be completed by the non-included entity

15. SANCTIONS AND INTERNATIONAL REPORTING (ESA PART IV)

The Act includes vigorous and strict sanctions for failure to meet the substance requirements, with the ultimate sanction leading to the striking off the included entity from the Companies Register.

If an entity fails to comply with the requirements of the Act, that entity may be directed by the Competent Authority to conduct a formal audit at the expense of the entity.

If an audit reveals deficiencies, the Competent Authority shall within thirty days, issue a notice of non-compliance to the entity stating the areas where remedial measures are required and a deadline of not more than thirty days for compliance.

If an entity does not commence an audit within sixty days, the entity commits a violation and may be subject to an administrative penalty of \$150,000 BZD, with a possible further administrative penalty of a suspension or revocation of license, an administrative penalty of \$300,000, and strike off from the Register.

Where a violation aforementioned is continuing, the person may be subject to a further administrative penalty of \$1,000 BZD for every day or part thereof in which the violation continues.

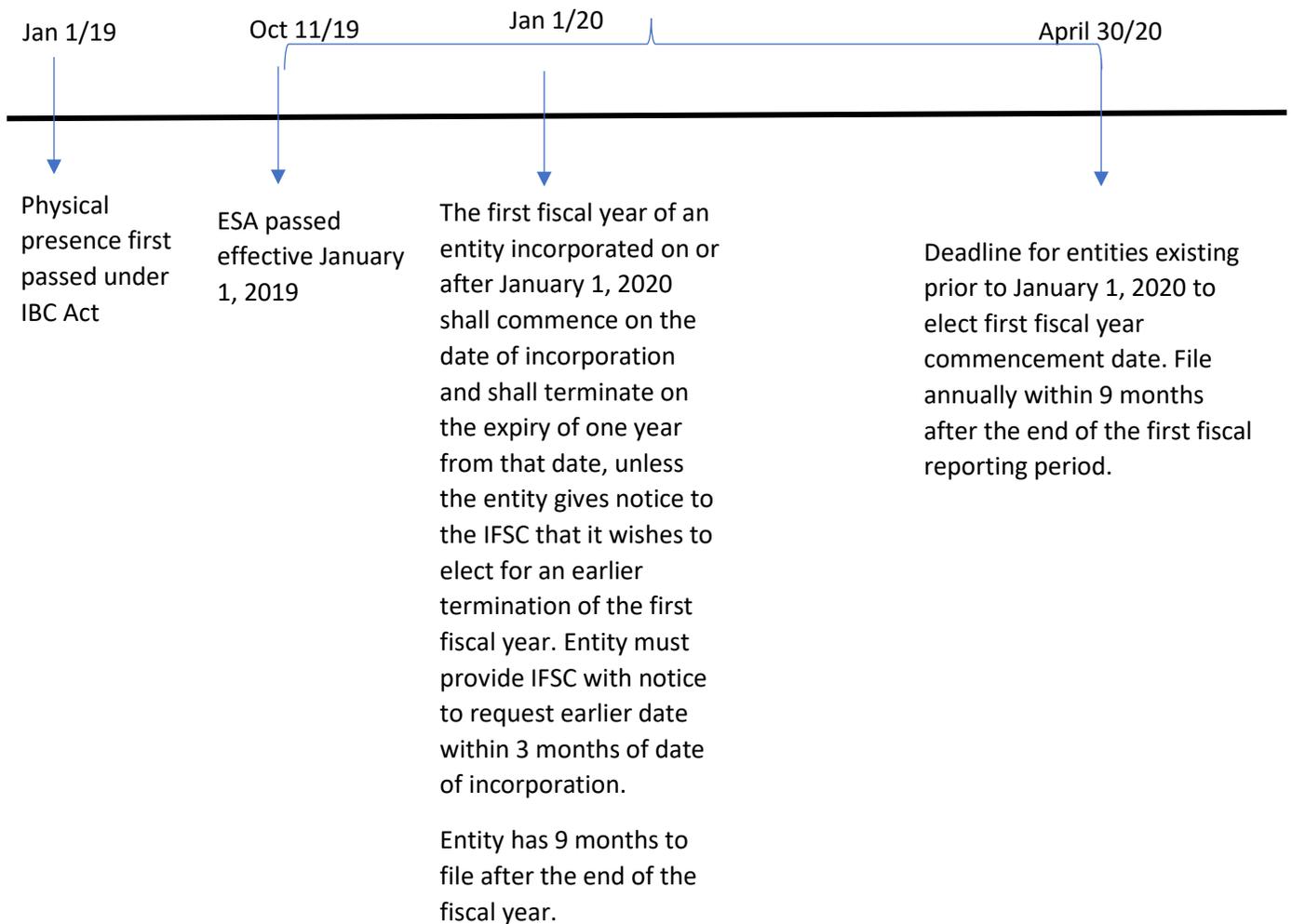
Further, where an included entity fails to satisfy the economic substance requirements, the Authority has the power to exchange the same with the competent authority of a jurisdiction of the legal or beneficial owners of such included entity the findings of any inspection or audit conducted or commissioned in respect of any report in accordance with the Act.

16. TIMING FOR FILINGS

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Fiscal Year End Reporting Requirements

The first fiscal year reporting period for entities incorporated before January 1, 2020 shall commence on April 30, 2020 unless the entity gives notice to the IFSC that it wishes to elect an earlier commencement date (but not before October 11, 2019). Entities will be required to file annually within 9 months after the end of the fiscal year reporting period.



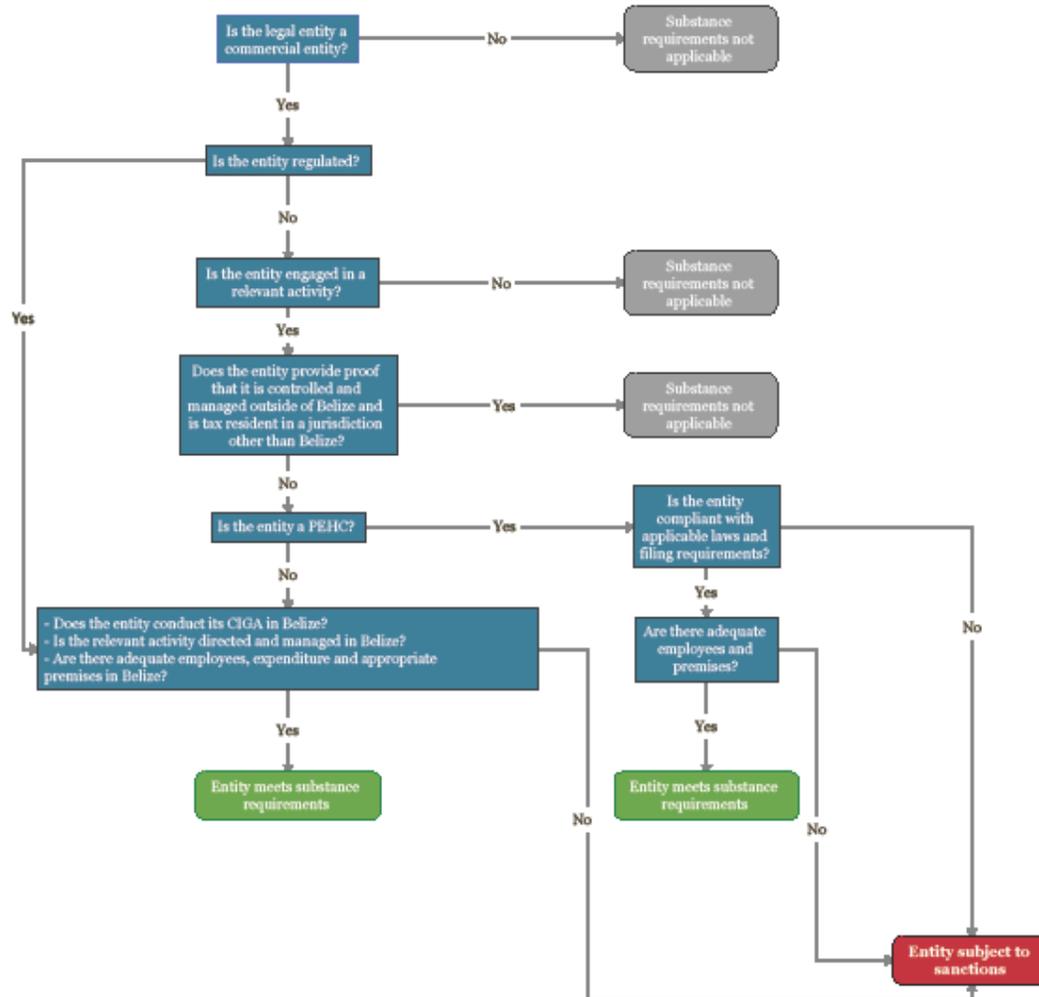
17. COMPLIANCE WITH THE GUIDELINES

The Act requires that any person or entity subject to the Act must comply with the Guidelines issued by the Authority.

Appendix 1- Flowchart intended to provide high-level illustration of the ESA 2019



Belize Economic Substance Requirements



This flowchart is issued by the IFSC and is intended to provide a high-level illustration of the Economic Substance Act, 2019 in respect of its application to legal entities under the law of Belize.

Appendix 2- List of Abbreviations

- BEPS Base Erosion and Profit Shifting (G20/OECD initiative)
- CFATF Caribbean Financial Action Task Force
- CIGA Core Income Generating Activities
- COCG Code of Conduct Group
- ECOFIN Economic and Financial Affairs Council
- ESA Economic Substance Act
- EU European Union
- FATF Financial Action Task Force
- FHTP Forum on Harmful Tax Practice
- IFS International Financial Services Commission
- OECD Organization of Economic Cooperation Development
- PEHC Pure Equity Holding Company