

**REPUBLIC OF THE
MARSHALL ISLANDS
ECONOMIC SUBSTANCE
REGULATIONS AND
REDOMICILIATION WEBINAR**

15 June 2021



AGENDA

- Housekeeping Notes and Moderator – Mr. Bob Allen, *Senior Partner and Founder (Robert Allen Law)*
- Introduction to Economic Substance in the Republic of the Marshall Islands (RMI) – Alison Wilson, *Senior International Counsel, Head of Office – Long Beach (International Registries, Inc. (IRI))*
- RMI Economic Substance Regulations 2018 – Damien Magee, *Partner (Campbells Grand Cayman)*
- RMI Corporate Registry Redomiciliation – Diego Ramirez, *General Manager (IRI – Ft. Lauderdale)*

INTRODUCTION TO ECONOMIC SUBSTANCE IN THE REPUBLIC OF THE MARSHALL ISLANDS (RMI)

Presented by:

Alison Wilson, Senior International Counsel, Head of Office – Long Beach

15 June 2021



INTERNATIONAL REGULATORY ENVIRONMENT

Economic substance requirements globally are a result of European Union (EU) and the Organisation for Economic Co-operation and Development (OECD) initiatives to combat harmful tax practices



- **OECD**
 - Currently has a rating of **Largely Compliant**
- **EU**
 - EU implemented its own initiative on economic substance requiring non-EU countries to implement economic substance legislation
 - Currently **whitelisted**



ECONOMIC SUBSTANCE REGULATIONS (ESRs)

- **When did the ESRs become effective?**

- Effective as of 1 January 2019
- *However*, the RMI and EU continued to negotiate amendments to the ESRs and the RMI removal from the blacklist throughout 2019
- RMI officially removed from EU blacklist on 4 October 2019

- **Who is affected?**

- ESRs are applicable to all relevant entities that perform a relevant activity

- **RMI is not alone**

- Similar requirements in Cayman Islands, BVI, Bermuda, etc. as a result of the EU and OECD measures



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Marshall Islands Economic Substance Regulations and Reporting

15 June 2021

By **Damien Magee**

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Disclaimer

- *This presentation is intended for general guidance only and is not, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances. This presentation has been prepared on the basis of the law and practice as at May 2021.*

Why does any of this impact me?

- The Regulations create an obligation on non-resident domestic entities (such as Corporations, LLC, LPs) and foreign registered entities (such as FMEs) to file Economic Substance Reports (or “ESRs”).
- The ESR may be filed to declare that the entity is a “non-relevant entity” because its business is centrally managed and controlled outside the Republic and it is tax resident outside the Republic (to be discussed further).
- ESRs must be filed for each financial period; so in respect of each financial year.
- The ESR deadline is 12 months from the entity’s anniversary date. Please check your annual invoice, as it will have details on the ESR deadline.
- Please remember that each entity must file an ESR, even if they did not engage in a “relevant activity”.
- If an entity does not file its ESR by the relevant date, the Registrar of Corporations and Registered Agent will cease to provide services until the entity has remedied its deficiency and penalties of up to USD10,000 can be applied.

Is my entity a “relevant” or a “non-relevant” entity

- Please note that independent tax advice should be sought on this issue.
- Section 2 of the Regulations defines a relevant entity as “a corporation, partnership, limited partnership, or limited liability company, other than a resident domestic corporation, partnership, limited partnership, or limited liability company, that is incorporated or formed under the Business Corporations Act, Revised Partnership Act, Limited Partnership Act, or Limited Liability Company Act, unless its business is centrally managed and controlled outside the Republic and it is tax resident outside the Republic” [there is a similar definition for foreign entities]
- So if an entity is managed and controlled outside of the RMI (most entities are) and tax resident outside the RMI (again, most entities are), then the entity is not a “relevant entity” and this should be declared in the ESR.
- The above scenario is what Section 8, paragraph 4 of the Regulations addresses when it refers to “non-relevant entities”. If, for example, the yacht owning entity is declared for US tax purposes (the “ticking the box” approach), then it is a “non-relevant entity”.

So how do I determine if the entity is engaged in “relevant activities”?

- Section 3 of the Regulations provides that relevant activities (which are defined in Section 2) are as follows;
 - distribution and service center business;
 - financing and leasing business;
 - fund management business;
 - headquarters business;
 - holding company business;
 - intellectual property business;
 - shipping business;
 - banking business; or
 - insurance business.

What is “shipping business”?

- Section 2 of the Regulations provides that "shipping business" means the operation of ships in international traffic for income from the transport of passengers or cargo and includes any of the following activities where the relevant activity is directly connected with, or ancillary to, such operation: i. the rental on a charter basis of a ship; ii. the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the enterprise itself or any other enterprise; iii. the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; iv. the management of the crew of a ship; v. the registration of a ship; vi. the recording of a financial instrument or lien in relation to a ship; vii. the ownership of a ship; viii. the financing of a ship; ix. the obtaining of statutory certificates for a ship; x. the surveying of a ship; or xi. the provision of services related to the foregoing

What if the entity owns a yacht?

- Whilst the definition of “shipping business” in broad, it must be kept in mind that the focus is on a “business”.
- A “private yacht” means “*any yacht not for hire, not engaged in trade or commerce, and used solely for private use, pleasure or recreational purposes by its owner*” (§112 of the RMI Maritime Act).
- So a private yacht, even if engaged in limited charters, should not be deemed to be a “shipping business” and thus would not undertake the relevant activity of a shipping business. This is as the purpose of the charter is not to engage in trade or commence a business, but merely to reduce the operating losses of the private yacht owner.
- The same analysis would apply for a private yacht taking part in the YET scheme. The chartering is designed to reduce operating losses via limited chartering.
- A “commercial yacht” however is “*a yacht engaged in trade, commerce or on charter for hire*” (§112 of the RMI Maritime Act) and so would appear to be a shipping business.
- There is a clear distinction to be made between private and commercial yachts.

What is “holding company business”?

- Section 2 of the Regulations provides that “holding company business” means the business of a “pure equity holding company“, which means “a company that only holds equity participations in other entities, only earns dividends and capital gains, and performs no commercial activity.”
- If it is a pure equity holding company, Section 4 of the Regulations provides that “A pure equity holding company is subject to a reduced economic substance test which is satisfied if the relevant entity confirms that it: (a) complies with its statutory obligations under the Business Corporations Act, Revised Partnership Act, Limited Partnership Act, or Limited Liability Companies Act, as appropriate; and (b) has adequate human resources and premises in the Republic for holding and managing equity participations in other entities.”
- Please keep in mind this is a narrow concept. If the entity holds title to a yacht, it would not be deemed to be a pure equity holding company.

What are the economic substance requirements?

- Section 4 of the Regulations addresses the requirements for economic substance; the “economic substance test”.
- *“A relevant entity has economic substance in the Republic in relation to a relevant activity if the relevant entity:*
- *(a) is directed and managed in the Republic in relation to that relevant activity;*
- *(b) having regard to the level of relevant activity carried out in the Republic:*
 - *i. has an adequate number of qualified employees in the Republic (whether or not employed by the relevant entity or by another entity and whether on temporary or long-term contracts);*
 - *ii. has an adequate physical presence in the Republic; and*
 - *iii. has an adequate amount of expenditure incurred in the Republic; and*
- *(c) it carries out core income-generating activity in relation to that relevant activity in the Republic as set forth in Section 5 of these Regulations.”*

What if the entity is engaged in “shipping business”?

- If the entity is engaged in a shipping business then it must satisfy the economic substance test.
- Section 5 of the Regulations addresses that and what constitutes “core income generating activity”, or “CIGA”, which relates to “*activities of central importance to a relevant entity in terms of generating income*”.
- At Section 5(g) of the Regulations, footnote 3 provides that “*The determination of economic substance in the context of shipping business recognizes that significant core income generating activities within shipping are performed in transit outside of the Republic, and that the value creation attributable to the core income-generating activities that occur from a fixed location is more limited than for other types of regimes for mobile business income. The determination further considers whether the relevant entity handles all obligations under the Associations Law and Maritime Act 1990, including compliance with applicable International Maritime Organisation regulations, customs, and manning requirements.*”

Penalties

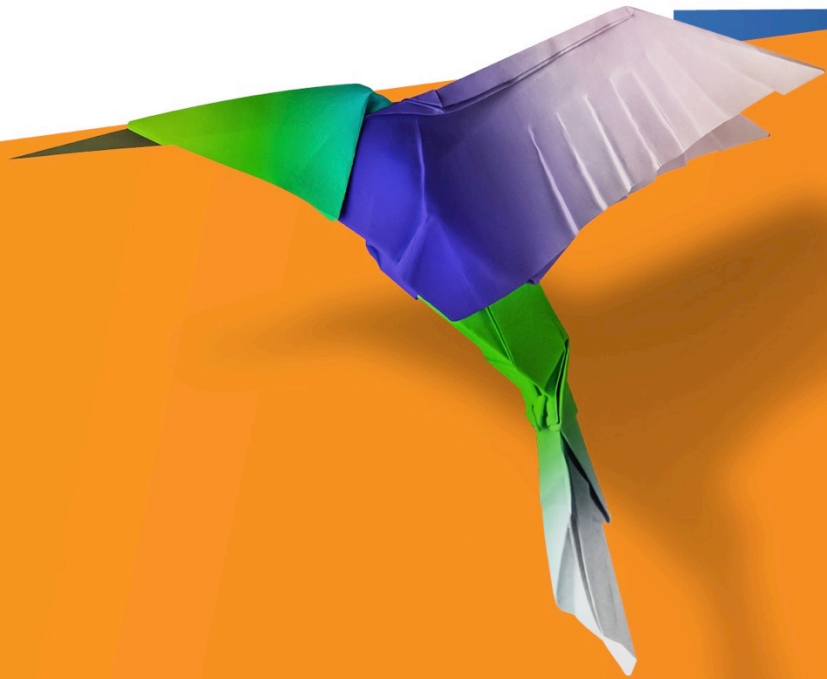
- If an entity fails to file its ESR by the required date, the Registrar will suspend “all corporate services for that entity”. This could have rather wide ranging consequences.
- Section 6 of the Regulations provides that if an entity fails to file an ESR or provide the required information for the Registrar to make a determination, then a penalty of USD10,000 can be levied and/or the entity can be dissolved or revoked.
- Section 7 of the Regulations addresses the penalties for failing to satisfy the economic substance test. For a first offence, a penalty of up to USD50,000 can be levied and/or the entity can be dissolved or revoked. If the non-compliance continues into the following financial period, then a penalty of up to USD100,000 can be levied and/or the entity can be dissolved or revoked.
- The penalties, which have teeth and can be have real financial consequences or may result in annulment of the entity, can be avoided by filing the required information within the necessary time period.
- Please file your ESRs with accurate information and in a timely basis. If a request from the Registrar is made, please also respond to same in a timely basis with the requested information and documentation.

How to file an ESR?

- The Registrar has invested in a microsite to assist in providing access to information and documentation, as well as filing ESRs.
- The microsite can be located at: <https://www.register-iri.com/corporate/esr/>
- There is a user guide (<https://www.register-iri.com/wp-content/uploads/Republic-of-the-Marshall-Islands-Economic-Substance-Reporting-Portal-User-Guide-063020.pdf>), frequently asked questions are addressed (<https://www.register-iri.com/corporate/esr-faqs/>) and there are also guidance notes (<https://www.register-iri.com/wp-content/uploads/Republic-of-the-Marshall-Islands-GUIDANCE-AND-FREQUENTLY-ASKED-QUESTIONS-ON-ECONOMIC-SUBSTANCE-051520-A4.pdf>).
- There are also links to the Regulations themselves and the ESR reporting portal.

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Q&A



REPUBLIC OF THE MARSHALL ISLANDS (RMI) CORPORATE REGISTRY REDOMICILIATION (REDOM)

Presented by:

Diego Ramirez, *General Manager (Ft. Lauderdale)*

15 June 2021



WHY SHOULD A COMPANY REDOM TO RMI?

- **No need** to file directors, officers, shareholders, or ultimate beneficial owner information. Client may choose to file any of this information voluntarily.
- No **mandatory** annual filings other than the Economic Substance Regulations (ESR) Report which is easiest to submit on the market.
- Speed and ease of formation: procedure takes maximum of **24 hours** upon completion of Know Your Customer (KYC) requirements/Trade Compliance.
- **Free apostille** on all documents issued by the RMI.
- **Free acknowledgement** for all RMI companies.
- Cost of Redom is US\$500 but is currently being **waived**.
- First year's annual fees that are included in the Redom service have also been **waived**. Client will pay beginning the second year (renewal fees (US\$500 + ESR Compliance Certificate US\$150)).
- Zero tax jurisdiction.
- **Largely compliant** with Organisation for Economic Co-operation and Development (OECD), **whitelisted** by European Union, and **highest rating** with Asia/Pacific Group on Money Laundering (APG).

PROCEDURE TO REDOM TO THE RMI

- Fill-in and sign the *Articles of Domestication and Articles of Incorporation* forms.
- As cost of Redom is currently waived, annual invoice will only be issued on the anniversary date of Redom.
- Supporting documents (*scanned copies sufficient*):
 - ✓ Certified copy of the Articles of Incorporation (Memorandum and Articles of Association) from the current jurisdiction including any amendments.
 - ✓ Confirmation of existence e.g., Good Standing, not older than 30 days.
 - ✓ If above requested documents are not in English, a translation into English will be required.
- Process takes maximum 24 hours upon completion of KYC/Trade Compliance.
- Request for Redom must be made through a qualified intermediary who is obligated to perform due diligence.

Note: ESR Report is to be completed on an annual basis for all RMI entities. Redom entities would have 12 months from Redom date to file ESR Report.

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