

ANNEX 1:

Economic Substance For Geographically Mobile Activities

SECTOR SPECIFIC GUIDANCE

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SAINT VINCENT AND THE GRENADINES

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Economic Substance for Geographically Mobile Activities - Sector Specific Guidance

1.0 INTRODUCTION:

The Sector Specific Guidance in this Annex provides an overview of each relevant activity, the factors that comprise such activity to be within the scope of economic substance (ES) requirements and what must be satisfied by a relevant entity carrying out the relevant activity. As with the general Guidance, it is intended to assist the industry to interpret the ES Legislation and to meet its requirements. However, the Sector Specific Guidance does not replace the need for independent professional advice, as appropriate.

Examples outlined are intended to provide high-level guidance to the industry and do not bind the Comptroller in any way. Whether a relevant entity meets the economic substance requirements will be dependent on the facts and circumstances of each specific case and will be determined against the principles of the ES Legislation on a case by case basis.

This Sector Specific Guidance is an initial broad overview of sector specific ES obligations and it is anticipated that additional sector specific details may be issued after further consultation with the OECD and EU COCG and representatives of each sector.

The Guidance outlined in this Annex should be read in conjunction with the ES Legislation.

2.0 SUMMARY OF ES REQUIREMENTS – COMMON DENOMINATORS FOR ALL RELEVANT ACTIVITIES:

- A) **In summary**, a relevant entity conducting a relevant activity is required to:
- a) be directed and managed in St. Vincent and the Grenadines in relation to that relevant activity;
 - b) having regard to the level of the relevant activity carried out in St. Vincent and the Grenadines and proportionate to the level of that activity -
 - (i) have an adequate number of appropriately experienced and if appropriate, qualified full-time employees or other personnel in St. Vincent and the Grenadines;
 - (ii) have an adequate amount of operating expenditure incurred in St. Vincent and the Grenadines;
 - (iii) have an adequate physical assets or presence in St. Vincent and the Grenadines; and
 - c) conduct core income generating activities (**CIGA**) in relation to that relevant activity in St. Vincent and the Grenadines.

The above requirements are cumulative and are required to be conjunctively satisfied.

- B) Descriptions of “**directed and managed**” and “**adequate**” and “**appropriate**” were already indicated in the general part of the Guidance.
- C) Section 8 of the ES Act sets out the **CIGA** of the different relevant activities. The CIGA with respect to every type of relevant activity are activities that are of central importance to a relevant entity in terms of generating income and must be carried on in St. Vincent and the Grenadines.
- D) A relevant entity conducting a relevant activity may satisfy the ES requirements by outsourcing the conduct of its CIGA to another person in St. Vincent and the Grenadines. A relevant entity that outsources its CIGA must be able to demonstrate adequate supervision of the outsourced activity, for example, by monitoring and controlling the carrying out of the CIGA.
- E) For clarification, the term “business” as outlined in the ES Legislation, does not require an entity to be actively engaged in day-to-day operations and can include the passive collection of income.

3.0 SECTORS INVOLVED IN RELEVANT ACTIVITIES

3.1 Banking Business

- A) The ES Act¹ provides that “banking business” has the meaning specified by the Banking Act 2015. Accordingly, “banking business” means the business of receiving funds through the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation, the frequent sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or in part for extensions of credit or investment for the account and at the risk of the person doing such business.
- B) The definition includes any other activity recognized by the Central Bank² as banking practice and which a licensed financial institution may additionally be authorised to do.
- C) The companies within the scope of these activities are essentially deposit taking businesses which are subject to regulation as banks, whether domestic banks or international banks, in St. Vincent and the Grenadines. All companies involved in banking business are required to hold a licence issued by the financial services regulator, namely the Eastern Caribbean Central Bank (ECCB) or the Financial Services Authority (FSA).

Examples:

SVG Banker Ltd has a number of branches from which it offers current or savings accounts and other banking services. It uses funds from deposits for loans and investment. SVG Banker Ltd is clearly a bank and regulated as such.

Banking Services Ltd is part of a banking group, however it does not take deposits, it only provides advisory and other services to clients of the banking group. Banking Services Ltd would not be conducting deposit taking activities although it may be conducting activities which fall into another relevant activity category.

¹ Section 2.

² Eastern Caribbean Central Bank.

3.1.1 CIGA for Banking Business

A) The ES Act sets out a list of CIGA for banking, which are described below:

‘Raising funds, managing risk including credit, currency and interest risk’ – These are the activities of ensuring the bank has an adequate capital base. Whilst raising funds clearly includes taking deposits, it can also include going to the money markets, issuing bonds or new capital. The risks to be managed will be linked to ensuring that this capital base is not eroded.

‘Taking hedging positions’ – Banks need to ensure that where there is risk, they mitigate it, this is often done by taking hedging positions. Hedging activities may form part of a bank’s risk management strategy, which the bank must be able to demonstrate as appropriate.

‘Providing loans, credit or other financial services to customers’ – Banks will utilize the monies they have received from deposits to provide other financial products and services, such as loans and mortgages, to customers. There is usually a wide range of products and services which may be offered. The term “customer” is not just limited to retail customers, but could also be corporate groups or other financial institutions. The bank will need to be able to show it offers such financial products and services.

‘Managing regulatory capital and preparing regulatory reports and returns’ – Banks are highly regulated in St. Vincent and the Grenadines and have substantial monitoring and reporting requirements to their regulators. Banks or its domestic service provider would need to perform this reporting activity to its regulator.

B) Whilst it is expected that regulated companies carrying on banking business will readily be able to demonstrate that they conduct the CIGA in St. Vincent and the Grenadines, such companies are still subject to the other ES requirements (direction and management in St. Vincent and the Grenadines and adequate staff, operating expenditure and physical assets or physical presence in St. Vincent and the Grenadines. Regardless of CIGA, a bank that fails to satisfy these other ES requirements will be in breach of the ES Act and liable to a penalty.

Examples:

Class “A” Bank with physical presence -

This type of bank should consider whether it needs to enhance CIGA for its banking business in St. Vincent and the Grenadines and its direction and management from within the jurisdiction.

Class “B” Bank with physical presence -

This type of bank should consider whether it needs to enhance its physical presence in order to satisfy the ES requirements by conducting CIGA for its banking business in St. Vincent and the Grenadines and its direction and management from within the jurisdiction.

C) Different Types of Income

A bank earns different types of income, including interest income, non-interest income and net gains (or losses) on financial instruments. Both interest income (e.g., interest on loans and interest and dividends on investments) and interest expenses (e.g., on deposits due to customers, interest on trading portfolio and on debt securities issued by the bank) are income generated by the CIGA for banking business. Certain types of non-interest income, such as income from trust business and investment management may not be income generated from CIGA for banking business. If appropriate, the bank should report any income from fund management business separately for that relevant activity rather than with respect to its banking business.

Example:

SVG Banker Ltd receives deposits from other banks and trust companies. This is SVG Banker Ltd.’s only activity.

Though SVG Banker Ltd may be required to get a banking licence for this activity, it is not engaging in banking business for the purpose of the ES Act. SVG Banker Ltd should also consider whether it may be conducting activities which fall into another relevant activity category.

3.2 Distribution and Service Centre Business

- A) The ES Act defines³ “**Distribution and service centre business**” as the business of purchasing materials or component parts for products or products ready for sale from a group entity and reselling the materials, component parts or products outside Saint Vincent and the Grenadines or providing services to another group entity in connection with the business outside Saint Vincent and the Grenadines.
- B) The definition encompasses companies which purchase raw materials, component parts or finished products from other non-resident members of the same group/connected persons and re-sell them for a profit.

The definition also encompasses companies which provide services, consulting or other administrative services, to other non-resident members of the same group/connected persons.

- C) The scope of the definition does not extend to cases where the distribution and service centre activity is not the main activity of a company, but only if that other activity is recharged at cost or less, for example, where a company seconds staff for a limited period recharging at cost rather than for a profit.
- D) However, if there is any indication that a company is seeking to manipulate or artificially suppress its income to avoid being subject to substance requirements the Inland Revenue Department will take the appropriate action.
- E) The scope does not extend such activities to cases where a company purchases raw materials and finished products from, or provides services to third parties.
- F) In banking, insurance, fund management, financing and leasing, shipping or headquartering businesses, it may be a normal part of their activities to provide such services, and so such activities are excluded from being within the scope of Distribution and Service Centre, to prevent duplicate reporting.

Example 1:

ABC Ltd buys CDs from other group companies based in Asia and re-sells them to other group companies and customers in the Caribbean. These activities are within the scope of the definition, therefore ABC Ltd is subject to ES requirements.

³ Section 2, ES Act.

Example 2:

DEF Ltd.'s main activity is to provide administration services to another group company based in the UK, which are recharged at cost. These activities are within the scope of the definition, therefore DEF Ltd is subject to ES requirements.

Example 3:

FGH Ltd is the service company for an audit and accountancy company, whose main activity is to provide services to customers in St. Vincent and the Grenadines. FGH Ltd employs the staff and also owns the premises used for the business of the company. Another group company based in the UK requires specialist IT skills, which sit within FGH Ltd and requests those skills for a period of 3 months, agreeing to reimburse costs. As FGH Ltd is not in the business of providing those services to other group companies, nor does it offer/solicit such services or maintain employees to provide such services, FGH Ltd is not considered to be providing services and is therefore not conducting the relevant activity.

Example 4 A:

Bequia Ltd provides administrative services to a group company also based in St. Vincent and the Grenadines. This is Bequia Ltd.'s only activity.

Bequia Ltd is not carrying on a relevant activity for the purposes of the ES Legislation as the services are provided solely to another SVG entity.

Example 4B:

Bequia Ltd provides administrative services to another group company based in the US. This is Bequia Ltd.'s only activity.

Bequia Ltd is carrying on the relevant activity of Distribution and Service Centre business.

Example 5:

Battowia Ltd is a service company responsible for taking manufacturing orders from group entities based in the US and Europe, for goods to be manufactured by another group entity in Asia. Battowia Ltd.'s gross revenue is earned based on the percentage of orders executed. This is Battowia Ltd.'s only activity.

Battowia Ltd is carrying on the relevant activity of distribution and service centre business.

3.2.1 CIGA for Distribution and Service Centres

- A) The ES Act sets out a list of CIGA for distribution and service centres,⁴ which are outlined and further described below:

‘Transporting and storing goods, components and materials’- This refers to the movement and storage of raw materials or finished products, including inbound and or outbound transportation management and management of the associated risks.

‘Managing stocks’- This includes considering minimum acceptable stock levels, managing the frequency of stocktake, whether using storage space effectively, perishability of stock and ensuring security procedures are in place.

‘Taking and processing orders’- This includes the provision of the order processing element of the entire fulfilment process, whether that is manual or electronic.

The above CIGA generally apply in relation to distribution centres.

‘Providing consulting or other administrative services’- This includes providing such services to other group companies, usually with a mark-up, in connection with business outside SVG.

The above CIGA generally applies to service centres.

Example 1A:

Bequia Ltd provides administrative services to other non-resident group companies. The company employs qualified individuals in St. Vincent and the Grenadines, who record how their time is spent in order that this can be billed to the relevant company at the agreed rate. The directors of Bequia Ltd will recruit and train employees according to the anticipated needs of other group companies.

The company will be regarded for the purposes of the ES requirements as carrying out the CIGA of providing administrative services in St. Vincent and the Grenadines.

Example 1B:

Baliceux Ltd is responsible for the distribution of raw materials purchased from group entities in Asia, to other entities based in the US. Baliceux Ltd contracts the transportation of goods to LMN Ltd which is based outside St. Vincent and the Grenadines. Goods are stored in a UK warehouse by a third-party company OPQ Ltd, who liaises directly with LMN Ltd over deliveries.

⁴ Section 8(1)(b).

The Board of Directors of Baliceux Ltd do not oversee the activities of LMN Ltd nor those of STO Ltd. As the Board of Baliceux Ltd do not undertake the relevant CIGA at all, Baliceux Ltd will not satisfy the ES requirements.

3.3 Finance and Leasing Business

- A) "Finance and Leasing Business" is defined in the ES Act⁵ to mean the business of providing credit facilities of any kind for consideration but excludes an activity included within the definition of "banking business," "fund management business" or "insurance business."
- B) For the purposes of this definition –
- (a) Consideration includes consideration by way of interest:
 - (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with –
 - (i) the supply of goods by hire purchase;
 - (ii) leasing, excluding a lease over land or an interest in land; or
 - (iii) conditional sale or credit sale; and
 - (iv) where an advance or credit repayable by a customer to a person is assigned to another person, that other person is considered to be providing the credit facility.
- C) The definition encompasses any company which offers credit or financing of any kind for consideration, such as loans, hire purchase agreements, long term credit plans and finance leases in relation to assets other than land. This includes intra-group financing.
- D) The scope of the definition also extends to the situation where a loan advanced for consideration by one company, which is within the scope of this relevant activity, is transferred to a different company, which then receives the loan capital repayments and consideration.
- E) The scope does not extend to cases where credit is offered and there is no expectation of consideration from the credit when providing it. A lending fee would be consideration, whereas the grant of security in favour of the lender would not constitute consideration.
- F) The scope also does not extend to cases where the company has purchased debt securities as an investment, as opposed to providing a credit facility, for example, where the company has purchased gilts, quoted bonds or similar securities, which are actively traded on one of the major security exchanges.

⁵ Section 3.

- G) In banking, fund management and insurance businesses, it may be a normal part of the activities to provide credit, therefore these activities are excluded from being within the scope of financing and leasing business, to prevent duplicate reporting.

Example 1:

ABC Ltd lends \$1,000,000 to its subsidiary, CDE Ltd, at a 5% interest rate. ABC Ltd's activities would come within the definition of financing and leasing.

The loan of \$1,000,000 to CDE Ltd, is transferred by ABC Ltd to another company 123 Ltd. 123 Ltd.'s activities in relation to the loan now come within the definition of financing and leasing. If this was the only loan ABC Ltd held, then ABC Ltd would cease to be carrying on financing and leasing.

Example 2:

FGH Ltd is a trading company that provides its customers with 45 days trade credit on invoices. If the customers have not paid their invoice in the 45 days, FGH Ltd will charge late payment interest. This arrangement is not within financing and leasing, as the credit is not offered with the intention of generating interest.

3.3.1 CIGA for Financing and Leasing Business

- A) The ES Act sets out a list of CIGA for financing and leasing⁶, which are outlined and further described below:

'Agreeing funding terms' refers to funding of the lender or lessor itself and includes agreeing the type of funding (e.g. equity/preference shares/debt/bank borrowing etc.), the terms of the agreement, the quantum of funding, the rates of interest payable, the security given (if any) and any covenants.

'Identifying and acquiring assets to be leased' (in the case of leasing business) includes agreeing a suitable price or quantity, identifying sources of those assets and negotiating the acquisition and the terms of supply.

'Setting the terms and duration of financing or leasing agreements' includes the financial terms, the parameters as to acceptable counterparties, the amounts, rates of interest, the legal agreements and the period for which financing or leasing is to be provided.

⁶ Section 8(1)(c).

‘Monitoring and revising finance and leasing agreements’ includes the acquisition of data about a borrower or lessee (or group of them), testing against covenants, extending durations of loans and feeding back into decision making on writing new terms.

‘Managing risks associated with financing and leasing agreements’ includes instigating debt collection, considering spreading of risk across sectors or

consumer groups. In leasing, it includes monitoring and maintaining the underlying assets.

Example 1:

ABC Ltd is considering the CIGA it performs in relation to its loan of \$100,000,000 to its subsidiary CDE Ltd.

ABC Ltd had agreed its funding for the loan from a third-party bank, its Finance Director and his deputy, had compiled the data required, met with a number of banks and negotiated a long term facility with one.

ABC Ltd.’s Board of Directors in setting the terms of the financing had set the amount it could lend to CDE Ltd, and the rate based on CDE Ltd.’s assets and expected income streams and ABC Ltd.’s own financial commitments and requirements for a return.

In order to do this, ABC Ltd had engaged the services of a professional to model different cashflow scenarios from the lending and the borrowing, so that ABC Ltd.’s Board could better understand the potential risks and rewards, enabling the Board to then ultimately make the final strategic decision.

ABC Ltd has set up a system in which a member of office staff in St. Vincent and the Grenadines, ensures the information required to undertake the monitoring of both the payments of interest and the financial data from CDE Ltd, are provided in accordance with the agreement, with a process to escalate issues to the Finance Director.

The Finance Director takes the information provided and discusses the loan and its own and CDE Ltd.’s performance with the Board of ABC Ltd and ensures they take steps to manage any risks emerging.

ABC Ltd will be regarded for the purposes of the ES requirements as conducting CIGA in St. Vincent and the Grenadines.

Example 2:

XYZ Ltd is a finance leasing company which has one crane which it leases to an overseas connected company. The company is considering the CIGA it performs for this finance leasing.

XYZ Ltd was funded by capital for its initial shares, which it used to acquire the crane, and has determined that it requires no additional funding.

XYZ Ltd had been introduced to the previous crane owners to acquire the crane. XYZ Ltd.'s Board of Directors approved the proposal to purchase the crane, however, the asset had been identified prior to XYZ Ltd.'s incorporation and no alternatives were considered once XYZ Ltd had been incorporated.

Whilst the Board of directors of XYZ Ltd considered the finance lease agreement that had been drawn up prior to the incorporation, they did not have the necessary knowledge and expertise to understand the terms of that lease agreement and they did not seek appropriate specialist advice. Ultimately, the Board of Directors accepted the agreement as drafted and did not properly consider the terms.

XYZ Ltd outsource their monitoring to a professional adviser, who has a member of staff who spends up to half an hour a week reconciling the monies received, as well as sending invoices, etc. XYZ Ltd relies on the professional adviser to raise any issues and does not monitor the professional advisor at all.

XYZ Ltd did not include clauses within the lease agreement to mitigate the risk of the lessee not making the lease payments, or the risk of the crane not being properly maintained or improperly used throughout the duration of the lease.

XYZ Limited will not meet the ES requirements because the company is unable to demonstrate that the CIGA are being performed in St. Vincent and the Grenadines.

3.4 Fund Management Business

- A) Fund Management Business is defined in the ES Act⁷ to mean “**managing funds and includes the management of investments for and on behalf of funds.**”

The definition of fund management encompasses companies which provide management services in relation to funds (i.e., collective investment vehicles) but does **not** include the fund itself.

- B) Those activities which are caught are the provision of fund management services to a fund, in relation to its investment decisions and its risk decisions. All companies that provide fund management services are subject to ES requirements. This includes when the fund manager and the fund are part of the same legal entity.
- C) Other types of services which funds require such as administration, advisory services or custodian services are **not** within the activities defined.

Example 1:

FM Ltd is a company which undertakes fund management activities in relation to a number of funds which requires it to be licensed as a fund manager with the regulator. Such fund management activities are within the scope of the definition, therefore FM Ltd is subject to the substance requirements.

Example 2:

MF Ltd is a fund which has an administrator in St. Vincent and the Grenadines, Admin Ltd. Neither MF Ltd nor Admin Ltd perform fund management activities and so neither are subject to substance requirements.

3.4.1 CIGA for Fund Management

- A) The ES Act sets out a list of CIGA for fund management,⁸ which are outlined and further described below:

‘Taking decisions on the holding and selling of investments’ - The CIGA are focused on the taking of decisions regarding the acquisition, disposal or trading of investments. A company which is implementing decisions of another entity, by selling investments, does not perform the CIGA. It is a commercial reality that in some circumstances a committee of directors or an investment committee, will take decisions when not all

⁷ Section 2.

⁸ Section 8(1)(d).

the members are physically present. For a decision to be determined as being taken in a jurisdiction for the purposes of this CIGA, the majority of those making the decision or a quorum of directors should be physically present in the jurisdiction.

‘Calculating risk and reserves’ - Funds are vehicles where capital is pooled and risks spread over a number of investments. In managing the fund, consideration must be given to risk in a number of areas: market risk, credit risk (where applicable), liquidity risk as well as operational risks. A fund manager can satisfy the CIGA by assessing its client’s fund risks as a whole, and calculating the overall risk across the investment fund and the reserves required on a strategic basis.

A fund manager is unlikely to satisfy this CIGA if calculations are limited to a marginal calculation for one area of applicable risk and do not encompass other areas of applicable risk.

‘Taking decisions on currency or interest fluctuations and hedging positions’- These activities are those required to determine if the fund is exposed to, or if it is in the best interests of the fund to enter into hedging arrangements against, currency or interest fluctuations, and if the fund manager can take relevant decisions regarding those determinations. A fund manager can satisfy this CIGA by taking a strategic approach on risk management of its client investment fund’s overall position arising from currency or interest rate fluctuations. For example, the fund manager’s CIGA could include conducting foreign exchange, interest rate or other hedging functions, or similar, with a view to controlling risks or minimizing risk exposures of the client investment fund.

A fund manager is unlikely to satisfy this CIGA by taking only isolated decisions involving specific investments of its client investment fund.

‘Preparing reports and returns to investors and the Financial Services Authority of Saint Vincent and the Grenadines or any authority or body with equivalent functions relating to the regulation or supervision of such business’⁹ – A fund manager can satisfy the requirements of this CIGA by ensuring that there are systems and processes in place, so that the fund manager is able to provide its client investment fund with accurate and timeous information on the fund's financial position.

This CIGA does not necessarily involve the administrative task of compiling the various routine annual or quarterly returns, albeit it is expected that the company would have this ultimate responsibility. It is acceptable for the investment fund’s administrator or another person to perform this administrative task (of compiling the various routine reports and returns for the fund to its investors and any regulatory returns), however

⁹ Section 8(1)(d)(iv) paraphrased.

the fund manager should ensure that such contractual arrangements are in place so as to allow for appropriate reporting to be available on a timely manner.

Whilst especially in small companies, many of these decisions will ultimately be taken by the Board of Directors, the CIGA require more than just the fact of a Board meeting, in that the company must be able to assess and react on behalf of the fund to risks and opportunities as they arise.

Example 1:

A mutual fund is established as a partnership in St. Vincent and the Grenadines and appoints a general partner (XYZ Ltd) who takes on the fund management role. XYZ Ltd outsources administrative activities to an administrator company, Service Ltd, which is also based in St. Vincent and the Grenadines. However, XYZ Ltd monitors and retains the ability to control the activities of Service Ltd. It is clear XYZ Ltd.'s directors collectively have the ability and knowledge to understand the fund and its investments, also to judge the activities of Service Ltd.

XYZ Ltd.'s Board of Directors takes the overarching strategic decisions as to the fund's investments, including such considerations as the mix of investment types, the markets and sector(s) to be invested in. XYZ Ltd sets out these investment parameters and decides within these parameters how to implement these decisions. Two companies Euro GmbH (in the EU) and USA Inc (in the US) are appointed to acquire the investments in their regions, XYZ Ltd giving them limited discretion to act within the overall parameters it decided. The performance of Euro GmbH and USA Inc, including how they use this discretion, is carefully monitored by XYZ Ltd supported by Service Ltd.

XYZ Ltd requests frequent returns and reports to be provided to it from Service Ltd, Euro GmbH and USA Inc. These returns and reports assess the risks of the fund and also the reserves position. Service Ltd has to reassure XYZ Ltd that the processes and systems it has in place mean that the reports are accurate and comprehensive. Service Ltd collates these returns and reports so they give the overall risk position and overall reserves and provides to XYZ Ltd for incorporation in the Board's decision making, monitoring and control.

XYZ Ltd has taken the strategic view at the outset that hedging in respect of currency or interest rates was not appropriate based on the overarching strategy of the fund. This decision is however kept under review periodically by the Board.

If the directors and employees of XYZ Ltd are conducting the roles described above, XYZ Ltd will be regarded for the purposes of the ES requirements as carrying out CIGA in St. Vincent and the Grenadines. Euro GmbH and USA Inc's activities will not undermine the fact that CIGA is conducted in St. Vincent and the Grenadines.

Example 2:

A mutual fund is set up in St. Vincent and the Grenadines and a company tax resident in St. Vincent and the Grenadines, ABC Ltd, is appointed as the fund manager.

ABC Ltd in turn appoints an investment manager company in the US, FMB Inc. ABC Ltd.'s Board has sufficient knowledge and experience of the fund management business. ABC Ltd provides FMB Inc with the prospectus of the fund, with full discretion for FMB Inc to make investment decisions for the fund within the scope of the prospectus.

Despite having an adequately comprised board of directors, ABC Ltd does not take any strategic decisions regarding the execution of the fund's investment strategy, including such considerations as the mix of investment types and the markets and sectors in which to be invested and does not set out the parameters of investment to FMB Inc. Instead, ABC Ltd leaves all such strategic decisions to FMB Inc. In addition, ABC Ltd does not oversee FMB Inc's activities. In such circumstances, it will not be possible to say that ABC Ltd is carrying out the CIGA of taking decisions on the holding and selling of investments.

FMB Inc provides commentary and content for the reports which are then collated and sent to investors and regulatory authorities without further reference to, or review by, ABC Ltd. FMB Inc also calculates the risks and reserves and makes any decisions on currency/interest rate hedging. Again, ABC Ltd has not taken any strategic decision in relation to these activities and has not set out any parameters within which FMB Inc must operate.

As the Board of ABC Ltd has neither made any strategic decisions nor undertaken the relevant CIGA it was contracted to perform for the fund, ABC Ltd has not satisfied the ES requirements.

3.5 Headquarters Business

- A) Headquarters business is defined by the ES Act¹⁰ and means “the business, carried on by a relevant entity, of providing any of the following services to one or more foreign group entities of the relevant entity –
- (a) the provision of senior management;
 - (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those foreign group entities; or
 - (c) the provision of substantive advice in relation to the assumption or control of risk activities or assets referred to in paragraph (b);
 - (d) but excludes an activity included within banking business, finance and leasing business, insurance business or intellectual property holding business.”
- B) The definition encompasses companies which provide headquarters services to other non-resident members of the same group/connected persons. “Foreign group entity” means a group entity that is incorporated, formed or otherwise constituted outside Saint Vincent and the Grenadines.¹¹
- C) The definition of headquarters business makes it clear that whether an entity carries on a headquarters business, is not determined by its position in the group structure, but rather by reference to the services that it provides to other companies in the group.
- D) A headquarters will take responsibility for the overall success of the group, or an important aspect of the group’s performance, and ensure corporate governance. Such headquarters services include the provision of senior management, taking responsibility or control of material risk for activities carried out by, or assets owned by, any of those persons or entities, or the provision of substantive advice in relation to such risks.
- E) In conducting banking, financing and leasing, insurance or intellectual property businesses, it may be a normal part of those activities to provide headquarters services, and so these activities are excluded from being within the scope of headquarters business, to prevent duplicate reporting. It is possible for a relevant entity to be regarded as carrying on both headquarters business and another relevant activity if the activities form two distinct business activities.

¹⁰ Section 2, ES Act.

¹¹ Ibid.

Example 1:

ABC Ltd based in St. Vincent and the Grenadines, is part of a group, with subsidiaries around the world. The senior management team each have responsibility for a different region, and will regularly spend time at the subsidiaries with the senior management teams, providing strategic direction and helping manage material risks. These activities are within the scope of the definition, therefore ABC Ltd is subject to ES requirements.

Example 2:

FGH Ltd is a trading company based in St. Vincent and the Grenadines, which has subsidiaries in the UK. Whilst the senior management team of FGH Ltd has regular dialogue with staff at the subsidiaries, the senior management team of each subsidiary sets their strategic direction and manage risks in line with the corporate policy set by the headquarters based in the USA. FGH Ltd is not considered to be providing headquarters services and is therefore not subject to ES requirements.

3.5.1 CIGA for Headquarters Business

A) The ES Act sets out a list of CIGA for Headquarters Business¹², which are outlined and further described below:

‘Taking relevant management decisions’ - This includes making decisions on the substantive functions and significant risks for other group companies such as strategic planning, marketing strategies, acquiring premises, etc.

‘Incurring expenditures on behalf of group entities’ This includes the taking of specialist advice or procuring technology on behalf of the group as a whole, or purchasing significant assets / specific services for / on behalf of a group entity. Other common shared expenses include marketing, Information Technology and Human Resources.

‘Co-ordinating group activities’ - This includes ensuring where there are specific advantages to the group, group entities activities are co-ordinated in a way that produces the best outcome for the group, rather than the individual companies. Demonstrating this CIGA therefore includes co-ordinating activities to aggregate demand for the group in order to realize synergies and cost savings.

¹² Section 8(1) (1) (e).

Example 1:

ABC Ltd, based in St. Vincent and the Grenadines, is the regional headquarters for a global group. The directors of ABC Ltd are responsible for the success of the region, setting the strategic direction and managing risks. The senior management team of ABC Ltd each have responsibility for a different area within the region and regularly spend time with the leadership teams of the subsidiaries, providing strategic direction and helping manage material risks.

ABC Ltd takes specialist advice on matters of compliance relevant to the region, with staff disseminating that advice and co-ordinating activities to ensure compliance by all subsidiaries. Each quarter, the directors review the regional performance and risk profile, ensuring they take steps to manage any risks.

ABC Ltd will be regarded for the purposes of the ES requirements as carrying out CIGA in St. Vincent and the Grenadines.

Example 2:

ZYX Ltd, based in St. Vincent and the Grenadines, is the headquarters for a small group of foreign companies (not based in St. Vincent and the Grenadines). ZYX Ltd provides the senior management team, assumes and controls risks for the activities and assets of the group companies and provides advice to the group companies on the control of risk.

The Board of Directors of ZYX Ltd acts as the senior management team for the group companies. All members are resident outside St. Vincent and the Grenadines. Although they hold an annual board meeting in St. Vincent and the Grenadines, all the relevant management decisions are taken outside St. Vincent and the Grenadines.

All meetings, deliberations and decisions in relation to the incurring of expenditures on behalf of group entities take place outside St. Vincent and the Grenadines.

As the Board of ZYX Ltd does not undertake the relevant CIGA in St. Vincent and the Grenadines, ZYX Ltd will not satisfy ES requirements.

3.6 Holding Entity Business (and Pure Equity Holding Entity Business)

- A) The ES Act defines holding entity business as “the business of being a holding entity.”¹³
- B) The term “pure equity holding entity” is defined as “a relevant entity that –
- (i) is a holding entity;
 - (ii) has, as its primary function, the acquisition and holding of shares or equitable interests in other entities; and
 - (iii) does not carry on any commercial activity.”
- C) For holding companies that hold a variety of assets and earn different types of income (e.g., interest, rents, and royalties), the core income generating activities would be those activities that are associated with the income that the holding companies earn.¹⁴ For example, a holding company that receives benefits for banking income would be required to have the core income generating activities associated with banking business. Such companies must therefore comply with the full substance requirements of that relevant activity.
- D) A company will be regarded as a pure equity holding company if, as a holding entity, its primary function is to acquire and hold shares or partnership interests or any equitable interests that fall within the definition of “holding company” (including voting rights and the right to appoint or remove the majority of directors). A pure equity holding company accordingly only holds shares (or partnership interests) or equitable interests in another entity or other entities, and only earns dividends and capital gains. Dividend income will be interpreted to encompass any income payments made to a pure equity holding company in respect of equity participations and will include distributions made by non-corporate entities that are equivalent to dividends. Equity participations include shares in a company, but will also include other forms of investment in the equity of an entity, which give the investor the right to participate in the profits of that entity. Equity participations do not include investments made by way of debt or other non- equity participations.
- E) As part of the functions of a pure equity holding company, activities may include, for example, ownership of a bank account, governance decisions, entering into contractual arrangements with professional or other service providers and the payment of fees and expenses.

¹³ See Section 7 of the ES Act for a full definition of ‘holding entity.’

¹⁴ As specified on page 41 of the OECD Action 5 2017 Progress Report.

- F) The ownership of any other form of investment or asset (for example, an interest-bearing bond, government securities, legal or beneficial interests in real property), even if held in addition to one or more equity participations, will result in the entity falling outside this definition. Similarly, where a company undertakes other activities or earns other income that is not part of, or incidental to, its business as a pure equity holding company, it is outside the scope of the pure equity holding company business definition and will instead need to meet the higher substance requirements, if applicable, for any relevant activity it carries on.
- G) If a company meets the criteria to be regarded as a pure equity holding company, the placing of dividend monies received on deposit or using them to acquire and passively hold other securities, will not constitute a “commercial activity” and therefore the company will still be regarded as a pure equity holding company and subject to substance requirements.

Example 1:

Holdco Ltd is an intermediary pure equity holding company in a group structure. It holds 100% of the shares in three other companies and receives dividends annually. This is Holdco Ltd.’s only activity. Holdco Ltd is a (pure equity) holding company.

Example 2:

Restaurant Ltd runs 2 restaurants, it also acquired all the shares in another company Bistro Ltd which is constructing a new restaurant. Restaurant Ltd will not be a (pure equity) holding company as besides holding shares it is in the business of running restaurants.

Example 3:

Trust Ltd acts as trustee to a number of unconnected trusts, holding assets in its capacity as trustee. As Trust Ltd commercially provides trustee services and is not the beneficial owner of the assets, it will not be a pure equity holding company, but should consider if it carries on any other relevant activities for its own account, not acting as trustee.

3.7 Insurance Business

- A) The ES Act provides that “insurance business” has the meaning specified by the Insurance Act.¹⁵ Insurance business is accordingly defined as “the assumption of obligations of an insurer to pay a certain sum on the happening of a particular event and includes reinsurance business.”
- B) This definition would encompass companies which undertake insurance business in or from within St. Vincent and the Grenadines as an insurer, in both the life and non-life sectors. For avoidance of doubt, reinsurance business is within the scope of the ES requirements, as it is included in the definition of insurance business. Insurance business is a regulated activity in St. Vincent and the Grenadines and all companies carrying on insurance business must first obtain insurance licences from the FSA.
- C) Companies which or persons who undertake activities connected with insurance (for example, insurance brokers or other intermediaries), or provide services to insurers (for example, insurance managers), but which are not themselves insurers, do **not** fall within this definition.

Example 1:

Insurance Co Ltd provides life insurance in and from within St. Vincent and the Grenadines. Insurance Co Ltd undertakes all of its business in St. Vincent and the Grenadines and is regulated as an “insurer” for its own insurance business. Insurance Co Ltd.’s activities as an insurer are within the scope of the relevant activity definition, therefore Insurance Co Ltd is subject to the substance requirements.

Example 2:

Intermediary Co Ltd is an insurance intermediary providing services to the public via telephone and internet. Intermediary Co Ltd undertakes all of its business in St. Vincent and the Grenadines and is regulated as an insurance broker, but is not required to be regulated as an “insurer”. Intermediary Co Ltd does not undertake insurance business as an insurer and so is not subject to the substance requirements.

¹⁵ Chapter 306 of the Revised Laws of St. Vincent and the Grenadines (Section 2). This definition also encompasses insurance business carried out pursuant to the International Insurance (Amendment and Consolidation) Act, Chapter 307 of the stated Revised Laws.

3.7.1 CIGA for Insurance Business

- A) The insurance sector may be categorized into two key areas, life insurance and non-life insurance. Both will be required to demonstrate that they undertake CIGA in the context applicable to their business area in St. Vincent and the Grenadines.
- B) The ES Act sets out a list of CIGA for insurance, which are indicated below and further described:

‘Predicting and calculating risk’ - This includes oversight of the determination of the quantification and likelihood of the insured event occurring and the likely costs, and ensuring that the premiums charged are commensurate with the risks accepted.

Some examples could include:

1. Preparation of risk assessments and underwriting submissions.
2. Approval of loss runs, management of claims and reports on losses and claims.
3. Preparation of actuarial funding and loss picks.
4. Rate setting for life or annuity contracts.

‘Insuring or re-insuring against risk’ – This includes insuring policyholders against specific risks and providing reinsurance to insurers who provide cover to those policy holders against risks.

An example could include analysis and agreement of underwriting submissions, insurance policies, reimbursement agreements, reinsurance agreements and/or other similar contracts, such as commutations, novation and loss portfolio transfers.

‘Providing insurance business services to clients’ – This includes taking strategic decisions regarding the commissioning of client services relevant to insurance and ensuring that oversight of systems and processes are put in place for the provision of support services.

Example 1:

Non-Life Insurer Ltd is a non-life insurer that provides policies to clients to insure against the risk of building damage. Non-Life Insurer Ltd outsources some of its CIGA to an insurance manager, IM Ltd, which is also based in St. Vincent and the Grenadines. However, Non-Life Insurer Ltd monitors and retains the ability to control the activities of IM Ltd.

IM Ltd employs specialist staff members in St. Vincent and the Grenadines to predict and calculate the risk associated with the policies that Non-Life Insurer Ltd provides. The Board of Directors of Non-Life Insurer Ltd meets regularly in St. Vincent and the

Grenadines to consider the results and recommendations of this specialist analysis undertaken by IM Ltd and make the decisions in relation to increases to premiums and changes to conditions of cover, etc.

Non-Life Insurer Ltd also outsources other non CIGA activities outside of St. Vincent and the Grenadines, in the location of the assets insured. Global1 Ltd is appointed to handle overseas claims up to specific limits and is the loss adjuster appointed to investigate large, complex or contentious claims on overseas buildings. Global2 Ltd is appointed to provide some aspects of treasury functions. The performance of Global1 Ltd and Global2 Ltd, including ensuring they comply with the specific limits, is carefully monitored by Non-Life Insurer Ltd, supported by IM Ltd.

If Non-Life Insurer Ltd, acting either directly or through IM Ltd, is conducting the activities described above, Non-Life Insurer Ltd will be regarded for the purposes of the substance requirements as carrying out CIGA in St. Vincent and the Grenadines. Global1 Ltd and Global2 Ltd.'s activities will not undermine the fact that CIGA is conducted in St. Vincent and the Grenadines because the activities they undertake are not CIGA.

Example 2:

Non-Life Ltd is a non-life insurer which outsources some of its activities to another group entity, GroupCo Ltd, which is based in the UK.

GroupCo Ltd predicts and calculates the risks associated with the policies Non-Life Ltd provides. GroupCo Ltd also advises on the risks of insuring particular customers, preparing regular reports for the Board of Non-Life Ltd. The reports, recommendations and commentary are collated by staff working for Non-Life Ltd and are regularly implemented without amendment by the Board of Non-Life Ltd and without evidence of due consideration.

As the Board and employees of Non-Life Ltd do not oversee the process or critically assess the recommendations made by GroupCo Ltd, the company does not undertake the relevant CIGA in St. Vincent and the Grenadines. Therefore, Non-Life Ltd has not satisfied the substance requirement.

Example 3:

Life Insurer Ltd is an insurer in the life sector, providing single premium life insurance. The insurance provides a guaranteed death benefit.

Life Insurer Limited employs a team of staff to maintain and service the client accounts from the company's offices in St. Vincent and the Grenadines.

The maintenance and servicing of client accounts undertaken by the employees include

setting up the client accounts, ensuring that the premiums are invested, monitoring the performance of the investments, preparing annual statements on policy performance, dealing with client transactions related to the policy, such as permitted terminal illness claims and processing claims made on the death of a policyholder.

In line with the terms of the regulatory framework in St. Vincent and the Grenadines, the regulator in St. Vincent and the Grenadines is satisfied that the senior management are fit and proper to undertake/supervise the work that they have been employed to do/have oversight of.

Life Insurer Ltd outsources the CIGA to another company within the same group. That company is also located in St. Vincent and the Grenadines and has a team of specialist qualified employees who provide these services to Life Insurer Ltd and other life insurers in the group. That company performs underwriting functions (i.e., choosing who Life Insurer Ltd will insure) and manages the prediction and calculation of risk (i.e., oversees the calculation of the likelihood of the insured event occurring and the likely costs).

Life Insurance Ltd outsources HR and IT services, which are not CIGA, to other group companies both in and outside of St. Vincent and the Grenadines.

Life Insurer Ltd can clearly demonstrate that its CIGA are undertaken locally, either by its own employees, or by the employees of another group company in St. Vincent and the Grenadines. The fact that activities which are not CIGA are undertaken outside of St. Vincent and the Grenadines does not adversely impact this as the company meets economic substance requirements in relation to its CIGA.

Example 4:

Life Example Ltd is a self-managed life insurer which offers the same single premium life policies as Life Insurer Ltd. However, only the Board of Directors of Life Example Ltd are present in St. Vincent and the Grenadines. The Board of Directors meet fit and proper regulatory requirements and have sufficient knowledge and experience of the insurance market.

The underwriting and client account management functions are outsourced to another group company WI Group Service Ltd which is based in Jamaica. Suitably qualified employees of WI Group Service Ltd provide all services at its premises in Jamaica.

WI Group Service Ltd predicts and calculates the risks associated with the policies Life Example Ltd provides, also advising on the risks of insuring particular customers, preparing regular reports for the Board. The reports, recommendations and commentary are regularly implemented without amendment by the Board of Life Example Ltd and without evidence of due consideration.

As the Board of Life Example Ltd does not oversee the process or critically assess the

recommendations made by WI Group Service Ltd, the company does not undertake the relevant CIGA in St. Vincent and the Grenadines. Therefore, Life Example Ltd has not satisfied the substance requirement.

3.8 Intellectual Property Holding Business

- A) Intellectual Property Holding Business is defined by the ES Act to mean “the business of holding, exploiting or receiving income from an intellectual property asset or assets.”¹⁶
- B) Intellectual Property asset is defined¹⁷ to mean a property right or interest of one of the following types –
- (a) copyrighted software;
 - (b) patents;
 - (c) technical know-how;
 - (d) industrial design rights.
- C) For the purposes of this Guidance, the term “IP Company” will be used to describe companies with intellectual property holding business. IP Companies’ income comes from the holding or exploitation of intellectual property (“IP assets”) and are within the scope of this relevant activity. A company which has an intangible asset that is not intellectual property is not within the scope of this relevant activity.
- D) For the purposes of this Guidance, the Comptroller will regard the term IP asset, as defined, to include any such right from which identifiable income accrues to the business (i.e., such income being separately identifiable from any income generated from any tangible asset in which the right subsists). The stated term does not apply to a business which owns IP assets merely as an adjunct to its business or sells a product or services having aspects derived from IP assets. This interpretation applies to IP business generally (i.e., including high risk IP business). Typical sources of separately identifiable income in respect of an IP asset include income from licensing the IP asset, such as royalties or licence fees, and income from the assignment/sale of IP assets.
- E) A relevant entity should take care that it does not falsely disguise IP income as embedded sales income, such that the result would be a circumvention of the economic substance obligations. Accountants may aggregate various intangible assets together under the heading ‘Goodwill’ - where on analysis this includes IP assets, as outlined above, the company will be an IP Company.
- F) A relevant entity that is not the legal or economic owner of the IP asset will not be

¹⁶ Section 2, ES Act.

¹⁷ Ibid.

within the scope of the definition of IP business. Thus, for instance, a relevant entity that is a licensee in relation to rights in an IP asset will not ordinarily be regarded as holder/owner of that IP asset. However, a licensee whose licence confers full and exclusive rights (including the right to sub-licence), so that it is in effect an assignment, will be regarded as the legal or economic owner of the underlying IP asset.

G) An IP company may hold and receive income from an IP asset in a number of different scenarios.

Example 1:

BrandCo holds a brand, the rights for which are licensed to others in return for a licence fee. BrandCo is an IP company.

Example 2:

DrinkCo has a trademarked range of fizzy beverages, which it manufactures and markets to unrelated third parties. DrinkCo is not an IP company as its income is derived from the sale of finished goods to third parties, not the exploitation of IP assets (i.e., the use of the trademark is incidental).

Example 3:

KnowHowCo developed a unique IT software platform for accepting, processing and tracking online orders that it holds and uses within its own business of online marketing and also licences to others to use within their online marketing businesses. The users pay KnowHowCo a licence fee in order to use the copyrighted software, therefore KnowHowCo is an IP company.

Example 4:

SubLicenceCo has a licence to use or exploit copyrighted software developed by fellow group company DevelopCo, both companies are resident in St. Vincent and the Grenadines. SubLicenceCo sub-licences the right to use or exploit the copyrighted software to two unrelated companies outside St. Vincent and the Grenadines. The unrelated companies pay SubLicenceCo a licence fee in order to use the copyrighted software, and SubLicenceCo pays a fee to DevelopCO for its licence to use the copyrighted software.

Both SubLicenceCo and DevelopCo are IP companies within this sector.

3.8.1 Income from IP Assets

Income from IP assets includes royalties, licence fees, franchise fees and any other payments arising from allowing another party to use an IP asset.

Where a company purchases or develops an IP asset with the intention of selling it at more than cost, the proceeds from the sale will be gross income in line with general taxation principles.

Example:

ProfitSeeker Limited acquires patents from other companies with the specific intention of selling those patents at a profit. The disposal proceeds for each IP asset disposed of in the period is income from IP assets.

3.8.2 CIGA for IP Holding Business

- A) Income derived from IP assets can pose a higher risk of artificial profit attribution or profit shifting than non-IP assets and as such the CIGA for IP holding business are specific in nature. The ES Act sets out a list of CIGA for IP holding business (an IP Company as above referenced) which are outlined below and further described:

‘Research and development’ – relating to patents:

These activities include advancing the understanding of scientific relations or technologies, addressing scientific or technological obstacles and increasing scientific or technical knowledge or developing new applications.

‘Marketing, branding and distribution activities relating to the asset or assets’ – other than patents:

These activities should be directly linked to the specific marketing intangible.

Marketing and branding could include marketing, advertising, seeking endorsements, artistic design, developing consumer awareness and developing customer loyalty.

Distribution could include securing market access to allow the intellectual property to be exploited efficiently. This includes allowing on demand services, such as video demand, and in business-to-business sectors, integrating into complex Information Technology systems.

- B) In exceptional circumstances, provided that the IP Company is not a high -risk IP entity¹⁸, an IP company may be able to demonstrate that it is undertaking the following alternate CIGA in order to meet the economic substance requirement:
- (i) taking strategic decisions and managing, as well as bearing, the principal risks related to development and subsequent exploitation of the asset or assets generating the income,
 - (ii) 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,
 - (iii) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of revenue from third parties.
- C) The CIGA required to be undertaken will ultimately depend on the nature of the asset being exploited and how that asset is being used to generate income for the company.
- D) Periodic decisions by non-resident directors or board members, or local staff passively holding intangible assets, will not be capable of demonstrating CIGA for IP.
- E) An IP company is not required to undertake all of the CIGA listed in the legislation in each assessment period. However, the company will be required to demonstrate that it was undertaking in St. Vincent and the Grenadines, the CIGA relevant to the type(s) of IP asset(s) it held throughout the assessment period.
- F) Due credit will be given for research and development, or marketing, branding and distribution, undertaken in St. Vincent and the Grenadines by the company in earlier periods, the value of which is being realized by the exploitation of the IP asset in the current period.

Example 1

Patent Co holds a patent which it licences to foreign related parties around the world. The directors of Patent Co are resident in St. Vincent and the Grenadines and make all of the strategic decisions in relation to the development, maintenance and enhancement of the patent in St. Vincent and the Grenadines.

All of the “research and development” activities required to create the patent were undertaken in St. Vincent and the Grenadines by Patent Co employees. Employees involved hold technical qualifications relevant to the work undertaken. Patent Co’s employees in St.

¹⁸ Section 4, ES Act.

Vincent and the Grenadines undertake all necessary maintenance and enhancement work to retain the value of the patent it holds.

Patent Co would meet the substance requirement because it undertakes the CIGA of 'research and development' in St. Vincent and the Grenadines.

Example 2

Patent OffIsland Co holds a patent which it licences to unrelated foreign parties around the world.

Some of the directors of Patent OffIsland Co are resident in St. Vincent and the Grenadines but the majority are resident where the activities take place and all the strategic decisions in relation to the development, maintenance and enhancement of the patent actually take place outside St. Vincent and the Grenadines, at the locations where the company's activities take place.

All of the "research and development" activities required to create the patent were undertaken in various locations outside St. Vincent and the Grenadines. Employees involved hold technical qualifications relevant to the work undertaken. Patent OffIsland Co does not undertake maintenance and enhancement work to retain the value of the patent.

Based on these facts, Patent OffIsland Co does not undertake the CIGA for IP Companies in St. Vincent and the Grenadines and accordingly, does not meet ES requirements.

G) **Additional Points to Note:**

- An IP Company may have more than one type of IP asset and may conduct different activities in relation to each IP asset. It must consider the ES requirements in respect of each of the IP assets it has in the assessment period.
- An IP Company will also need to consider whether it falls within the definition of **High-Risk IP Entity** during the assessment period.
- The definition of High-Risk IP Entity and the application of the economic substance requirement to such companies are hereinafter explained.

3.8.3 High Risk IP Entity

- A) Where a company receives income from IP, it will also have to consider if it is a “High Risk IP entity,” which term is clearly defined in the ES Act.¹⁹
- B) As the risks of artificial profit shifting by a high-risk IP entity (as defined) (hereinafter referred to as a “high risk IP company” or “HRIP”) are considered to be greater, there is a presumption²⁰ that a high-risk IP company does not conduct CIGA in St. Vincent and the Grenadines for a financial year. This is so even if there are CIGA relevant to the business and the IP assets being carried out in St. Vincent and the Grenadines. As a result, the Comptroller will exchange all of the information, provided by the company, with the Competent Authority of the relevant EU Member State where the immediate parent company, ultimate parent company and/or ultimate beneficial owner is resident. Such exchange of information will be in accordance with the existing international tax exchange law and agreements.
- C) A high-risk IP company may rebut this presumption if it can produce sufficient evidence to demonstrate or explain that there is, and historically has been, a high degree of control over the development, exploitation, maintenance, protection and enhancement (also referred to as “DEMPE”) of the IP asset, exercised by an adequate number of full-time employees with the suitable qualifications who reside in and/or perform their core activities in St. Vincent and the Grenadines.
- D) This high evidential threshold requires: -
- Detailed business plans which clearly lay out the commercial rationale for holding the Intellectual Property asset(s) in St. Vincent and the Grenadines;
 - Concrete evidence that the decision making is taking place in St. Vincent and the Grenadines, and not elsewhere; and
 - Information on employees in St. Vincent and the Grenadines, their experience, the contractual terms, their qualifications, and their length of service.
- E) Periodic decisions by non-resident directors or board members, or local staff passively holding intangible assets, cannot rebut the presumption.

¹⁹ Section 4.

²⁰ Section 9(7) and (8) of the ES Act.

- F) A relevant entity will not be conducting high risk IP business where it is the sole creator of the IP asset and undertook the CIGA in St. Vincent and the Grenadines. The Comptroller recognizes that it is a question of fact as to who is the creator of an IP asset, that there may be more than one creator of such IP and creation may take place over time over the course of a chain of ownership. However, where there is more than one creator of the IP asset and the relevant entity entered into a cost sharing agreement this could be considered high risk IP business.

3.9 Shipping Business

- B) Shipping business is defined by the ES Act²¹ and means “any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Saint Vincent and the Grenadines –
- (a) the business of transporting, by sea, persons, animals, goods or mail;
 - (b) the renting or chartering of ships for the purpose described in paragraph (a);
 - (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
 - (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
 - (e) the management of the crew of a ship.”
- C) The relevant entity will have to be carrying on at least one of the above activities involving “the operation of a ship” to be within the scope for the ES requirements.
- D) The definition of a ship includes “every description of vessel used in navigation but does not include-
- (a) a fishing vessel;
 - (b) a vessel of a type used primarily for sport or recreation; or
 - (c) a vessel under 24 metres in length.”
- E) A company which undertakes any of the activities referred to above, where the company does not also operate a ship, or ships, in international traffic is not “shipping business” for the purposes of the ES Act.

²¹ Section 2.

- F) To carry on shipping business, a company must operate one or more ships in international traffic, for the transport of either passengers, cargo or both.
- G) Other activities, where conducted, will be included within this relevant activity, but only if they are undertaken by a company in connection with its trade of operating ships in international traffic, as indicated above. These other activities briefly include:
- the rental on a charter basis of other ships;
 - the sale of tickets or similar documents;
 - the use, maintenance or rental of containers;
 - the management of crew of other ships.
- H) A company which undertakes any of these other activities as outlined in (F) above, where the company does not also operate a ship, or ships, in international traffic does not carry on the relevant activity of shipping business.
- I) Shipping business does not include holding company business or the owning, operating or chartering of a pleasure yacht. Pleasure vessels as defined in the Shipping Act,²² are engaged on private voyages or excursions and are not engaged in trade by transporting merchandise or carrying passengers for reward or remuneration (other than as a contribution to the actual cost of the yacht or its operation for the period of the voyage or excursion). Thus, the owning, operating, or chartering of a private yacht, does not fall within the definition of shipping business as a relevant activity and is not subject to the ES test.
- J) Similarly, the charter by demise or bareboat charter of a private yacht for the pleasure or recreational use by the charterer or others does not constitute shipping business. The chartering of ships on a bareboat basis does not fall within this relevant activity because the company which charters the ship is not operating the ship, however the bareboat charter may fall within the financing and leasing business.

Example 1:

SVG Ltd carries on the business of a general travel agent. As part of its business, SVG Ltd sells tickets for passenger cruises.

SVG Ltd will not be treated as carrying on a shipping business merely because, amongst other things, it sells tickets for passenger cruises. This would be regarded as incidental to what is properly regarded as SVG Ltd.'s main business (i.e., travel agent).

²² Chapter 363 of the Revised Laws of St. Vincent and the Grenadines 2009.

Example 2:

SVG Ltd manufactures goods for export. SVG Ltd arranges for those goods to be dispatched by sea, in containers or otherwise.

SVG Ltd will not be treated as carrying on shipping business merely because it arranges for those goods to be dispatched by sea. Similar to the above example, this would be regarded as incidental to what is properly regarded as SVG Ltd.'s main business (i.e., manufacturing business).

Example 3:

SVG Ltd is registered as a foreign company in St. Vincent and the Grenadines which is carrying on shipping business as defined in the ES Act.

SVG Ltd will not be regarded as a relevant entity where it is tax resident outside St. Vincent and the Grenadines. However, SVG Ltd will still be required to file an ES annual return and also to provide evidence that it is tax resident outside St. Vincent and the Grenadines, as outlined in this Guidance.

If SVG Ltd is not tax resident outside St. Vincent and the Grenadines and it is carrying on shipping business as defined in the ES Act, it will be treated as a relevant entity carrying on a relevant activity and will be required to file an ES return and to satisfy the ES requirements.

Example 4:

SVG Ltd owns a passenger ship and its business is to operate that ship in international traffic to carry passengers from port A in Canada to port B in the USA.

SVG Ltd is within the shipping business (relevant activity) sector because it is operating a ship in international traffic for the transport of passengers.

Example 5:

SVG Crew Ltd provides and manages the crew of SVG Ferry Ltd.'s ship as part of its crew management business, but it does not operate ships.

SVG Crew Ltd is not within the shipping business sector because it is not undertaking the management of crew directly in connection with or ancillary to its own operation of a ship.

Example 6:

SVG II Ltd owns a ship and charters it on a bareboat charter basis to Charter Ltd. Ship II Ltd does not operate that ship, or any other ship.

SVG II Ltd is not within the shipping business sector because the rental on a charter basis of the ship is not directly in connection with or ancillary to its own operation of a ship.

Example 7:

Charter Ltd uses the ship it has chartered on a bareboat charter basis in its own ship operation business, to carry cargo from a port in country A to a port in a number of other countries.

Charter Ltd is within the shipping business sector because it is operating a ship in international traffic for the transport of cargo.

3.9.1 CIGA for Shipping Business

The ES Act²³ sets out a list of CIGA for shipping business, which are indicated below and further described:

‘Managing crew, including hiring, paying and overseeing crew members’ – This includes the crew sourcing, recruitment, selection, deployment, scheduling, training and on-going management of seafarers engaged on vessels and administrative aspects, such as payroll services, travel arrangements, insurance, etc.

‘Hauling and maintaining ships’– This includes procuring and/or overseeing the hauling or overhauling and/or general maintenance of ships.

‘Overseeing and tracking deliveries’– This includes the logistical aspects of the transportation of cargo such as tracking package and cargo deliveries as part of the business services of the vessel.

‘Determining what goods to order and when to deliver them’ – This CIGA includes negotiating contracts for delivery of goods, managing shipping schedules and organising and overseeing voyages. These activities can be carried out by an agent, manager or the master of the ship.

‘Organizing and overseeing voyages’- This includes the logistical aspects of the operation of ships, determining which routes to use, when and making adequate contingency arrangements.

²³ Section 8(1)(i).

Example

Company G operates a fleet of three ships transporting passengers from Port A in Spain to Port B in Greece. It manages the crew of all three vessels from its leased offices in St. Vincent and the Grenadines.

Six staff members in St. Vincent and the Grenadines are responsible for ensuring that there is sufficient crew available at all times, that the crew members hold all necessary certificates, for co-ordinating renewals of appropriate crew certifications etc., for overseeing the wage claims and the payment of crew, although physical payments are made to the crew via a third-party paying agent.

The company undertakes the technical management of its ships from St. Vincent and the Grenadines, employing specialist staff members to organize and oversee the voyages. The maintenance of the vessels is undertaken in specialist shipyards outside St. Vincent and the Grenadines, operated by independent third parties.

The Board of Directors of Company G holds relevant technical qualifications and meets regularly with the specialist staff members to consider the strategic direction of the business and to make the necessary financial decisions to support the continued operations.

Company G conducts the CIGA outlined above and these CIGA are conducted from its premises in St. Vincent and the Grenadines. The company has adequate people in St. Vincent and the Grenadines, in the form of the Board of Directors and the staff members, to undertake those CIGA.

The maintenance being undertaken by independent third parties in shipyards close to where the vessels are operated, is an industry standard, and is not sufficient to adversely affect the economic substance of the company in St. Vincent and the Grenadines.

Determination as to whether entities engaged in Shipping Business meet the ES Requirements

In determining ES in the context of shipping business, the Comptroller recognizes that significant CIGA within shipping are performed in transit outside of St. Vincent and the Grenadines, and that the value creation attributable to the CIGA that occur from a fixed location is more limited than for other types of regimes for mobile business income. This means that a relevant entity engaged in shipping business may satisfy the ES test by the operation of the vessel in international traffic, including the management of the crew aboard the vessel, maintenance of the vessel, and overseeing voyages and activities related thereto.

The determination will further consider whether the relevant entity handles all obligations under the St. Vincent and the Grenadines' Shipping Act, including compliance with applicable International Maritime Organization and International Labour Organization regulations, customs, and manning requirements and whether all financial obligations to St. Vincent and the Grenadines have been fulfilled.

This Annex forms part of the Economic Substance Guidance V 1.0 issued by the Comptroller of the Inland Revenue Department of St. Vincent and the Grenadines.