

Dear Client,

At Lennox Paton Corporate Services, we recognize the importance of your patronage, and in return we are committed to delivering a quality service. Keeping you abreast of changes in the regulatory environment that may affect your corporate entity goes hand-in-hand with this.

In December 2018, the government of The Bahamas passed the Commercial Entities (Substance Requirements) Act, 2018 ([CESRA](#)). CESRA is likely to affect your entity in at least one of two ways:

- a) It mandates that commercial entities registered in The Bahamas, which are engaged in particular types of business/trade, maintain a **substantial economic presence** in The Bahamas.
- b) It mandates that commercial entities registered in The Bahamas submit an annual declaration to the Minister of Finance.

There are some exceptions to these requirements outlined below. You are encouraged to refer to the flowchart linked below to determine your responsibility under CESRA.

Commercial Entities

CESRA applies to **commercial entities**, which it defines as an entity incorporated, registered or continued under the:

- Companies Act, including registered foreign entities
- International Business Companies Act
- Partnership Act
- Partnership Limited Liability Act
- Exempted Limited Partnership Act

CESRA excludes from the definition those entities which are resident-owned in The Bahamas and which conduct core business activities in The Bahamas and those which are centrally managed and controlled in foreign jurisdictions and which are tax resident of the respective jurisdictions.

Substantial Economic Presence Requirement

It is anticipated that commercial entities engaged in certain relevant activities will be impacted significantly by CESRA and will need to demonstrate a **substantial economic presence**. These particular commercial entities are referred to as **included entities**. **Included entities** are those engaged in the following types of relevant activities:

- Banking
- Insurance
- Fund Management
- Financing or Leasing
- Headquarters
- Distribution or Service Centers
- Shipping
- Intellectual Property
- Holding company of a subsidiary entity which is engaged in one of the identified relevant activities

Any **commercial entity** which is **not** engaged in any of the aforementioned activities is a **non-included entity**.

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Demonstrating a **substantial economic presence** is satisfied by way of a two-part test:

1. The first part of the test determines whether the included entity is conducting its core income-generating activities (CIGA) in The Bahamas. Industry-specific CIGA are outlined in Part II Section 5(4) of CESRA. You are encouraged to refer the Act to determine the CIGA relevant to your entity. As a general rule, CIGA entail adequate:
 - a. amounts of annual operating expenditure;
 - b. levels of qualified full-time employees; and
 - c. physical offices.
2. The second part of the test determines whether the included entity's direction and management are located in The Bahamas, which is satisfied by five requirements:
 - a. an adequate number of meetings of the included entity's board of directors must take place in The Bahamas;
 - b. at least a quorum of the board must be physically present in The Bahamas during the meetings;
 - c. strategic decisions concerning the included entity must be made at the above-mentioned meetings and recorded in the meeting minutes;
 - d. all of the included entity's records and minutes must be kept in The Bahamas; and
 - e. the board of directors as a whole must possess the necessary knowledge and expertise to discharge its duties.

The deadline for meeting CESRA's substantial economic presence requirement is 30 June 2019.

Exceptions to the Substantial Economic Presence Requirement

1. Any entity which:
 - a. Conducts its core income-generating activities in The Bahamas; and
 - b. Is 100 percent-owned by natural persons who are ordinarily resident in The Bahamas or who possess a certificate of annual or permanent residence and physically reside in The Bahamas for a minimum cumulative period of three months of every calendar year.
2. A **pure equity holding company** is an **included entity** which only holds equity participation interest and earns dividends or other income from its equity participation interest. A typical example is a holding company of an operating subsidiary company. A pure equity holding company has reduced substantial economic presence requirements, whereby it is only required to have adequate human resources and premises.
3. A **passive holding entity** is a **non-included entity** which is not engaged in any of the activities above and does not own a subsidiary engaged in such activities. Passive holding entities are exempt from the substantial economic presence requirement.
4. Any **included entity** may elect instead to demonstrate its residency in another jurisdiction. To do so, the entity must be able to show that it resides where its real business is conducted, *and* that the conducted business takes place where the entity's central management and control reside. The included entity must certify its foreign tax residency in writing to the Minister of Finance and produce evidence of its compliance with that jurisdiction's tax requirements. Evidence of tax residency in a foreign jurisdiction may be satisfied through the provision of a combination of the following:
 - a. Tax identification number issued by the foreign jurisdiction;
 - b. Tax residency certificate issued by the foreign jurisdiction;
 - c. Official receipt of statement issued by the foreign tax authority;
 - d. Certification by the included entity that the majority of the meetings of its board of directors or other controlling persons took place in the foreign jurisdiction; and/or
 - e. Proof of the ordinary residence of the majority of the board of directors or controlling persons of a non-corporate entity.

Penalties and Enforcement

A failure to meet the substantial economic presence requirement or demonstrate compliant tax residency status in another jurisdiction will ultimately result in the ***included entity*** being struck from the Register of Companies in The Bahamas. A breach of the substantial economic presence requirement may also subject the entity to administrative fines.

If you believe your entity may be classified as an included entity (inclusive of a pure equity holding company) under CESRA, we ask that you contact Lennox Paton Corporate Services as a matter of priority for future guidance.

Reporting requirements

CESRA is expected to impact ***commercial entities*** as defined above, inclusive of both ***included entities*** and ***non-included entities***. Each commercial entity is required to submit an annual declaration through the Ministry of Finance's online portal. The respective declaration filed by the entity, will be selected from Forms A through D in the first schedule of the Act, depending on the entity's classification under CESRA. The deadline for filing is nine months after the end of each respective entity's fiscal year.

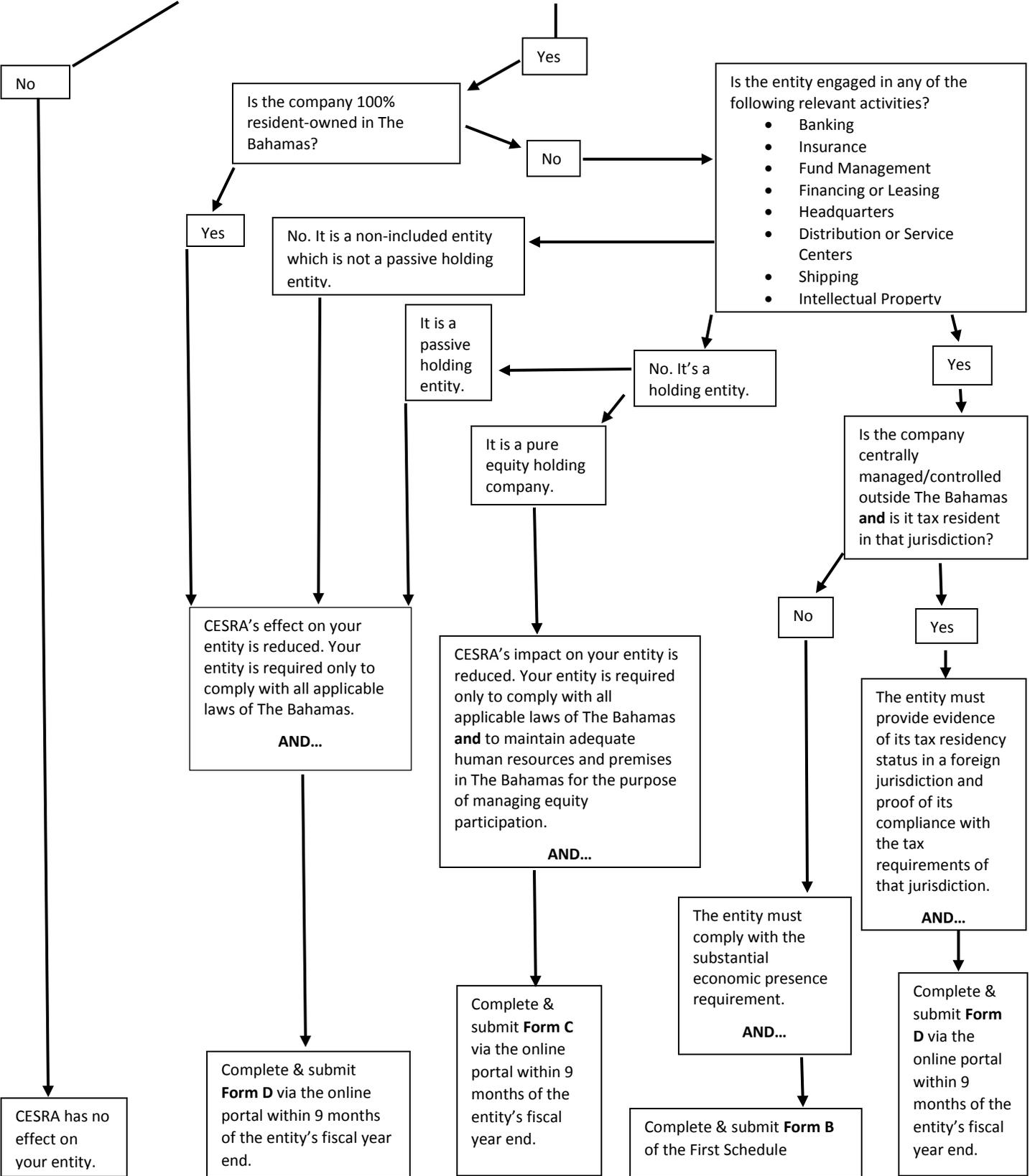
We encourage you to consult the annexed flowchart in conjunction with this guidance to determine the best way forward for your entity under CESRA. To find out more about CESRA, its potential impact on your entity and your obligations, contact Lennox Paton Corporate Services today at lpcs@lennoxpaton.com.

Yours faithfully,

Corinne Lampkin
LPCS Corporate Manager

Is your entity registered, incorporated or continued under one of the following Acts? If you are unsure, please refer to the entity's incorporation documents.

- The Companies Act, 1992
- The International Business Companies Act, 2000
- The Partnership Act, 1905 (as amended)
- The Partnership Limited Liability Act, 1861 (as amended)
- The Exempted Limited Partnership Act, 1995 (as amended)



CESRA has no effect on your entity.

Complete & submit **Form D** via the online portal within 9 months of the entity's fiscal year end.

Complete & submit **Form C** via the online portal within 9 months of the entity's fiscal year end.

Complete & submit **Form B** of the First Schedule

Complete & submit **Form D** via the online portal within 9 months of the entity's fiscal year end.