

REPUBLIC OF THE MARSHALL ISLANDS ECONOMIC SUBSTANCE REGULATIONS SEMINAR

SPEAKERS



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Presented by:

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Piraeus | 5 December 2024



OVERVIEW

- Abbreviations and Acronyms
- European Union Listing Update
- ESR Reporting Overview
- Audits and Compliance Actions
- Questions?

ABBREVIATIONS AND ACRONYMS

| | |
|-------------|---|
| CRS | Common Reporting Standard |
| ESR | Economic Substance Regulations, 2018 |
| Etc. | et cetera |
| EU | European Union |
| FME | Foreign Maritime Entity |
| IRI | International Registries, Inc. and its affiliates |
| RMI | Republic of the Marshall Islands |
| US | United States |
| USD | US Dollars |



EU LISTING UPDATE

EU LISTING UPDATE

- RMI undergoes continual monitoring from the EU to assess enforcement by the Registrar of Corporations and compliance by RMI entities.
- RMI remains **Whitelisted** as of the last assessment on 8 October 2024.
- List updated every February and October.
Next update – February 2025.
- Current lists:
 - **Blacklist:** American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands, and Vanuatu.
 - **Greylist:** Antigua and Barbuda, Belize, British Virgin Islands, Costa Rica, Curacao, Eswatini, Seychelles, Türkiye, and Vietnam.





ESR REPORTING OVERVIEW

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- All entities and FMEs must report on an annual basis for the previous financial year. The due date is the anniversary date of the entity.
 - A newly formed entity's first ESR Report is due 24 months after the incorporation date.
- Entities must report if they:
 - Had a business activity or not (dormant).
 - Earned income or not.
 - Are a tax resident outside of the RMI.
 - Are not tax residents outside of the RMI, if the entity has earned income from a relevant activity.
- If an ESR Report is not filed:
 - Within three months after the deadline: grace period of three months, then suspension of services until a report is filed (USD 500 penalty fee imposed, non-waivable).
 - Within 12 months after the deadline, imposition of additional fees and annulment of the entity. Reinstatement is allowed upon payment of all fees and filing of outstanding ESR Reports.

ESR REPORTING OVERVIEW (continued)

- Relevant activities:
 - distribution and service center business;
 - financing and leasing business;
 - fund management business;
 - headquarters business;
 - holding company business;
 - intellectual property business;
 - shipping business;
 - banking business; and
 - insurance business.
- Relevant activities are defined in the RMI Economic Substance Regulations, 2018.
- A relevant entity must, for each financial period in which it derives income from a relevant activity, have economic substance in the RMI in relation to that relevant activity.

ESR REPORTING OVERVIEW (continued)

Holding company business

- **IS:** an entity that only holds equity participation in other companies.
- **IS NOT:** an entity that performs any other business function, such as holding a yacht or other assets.

Shipping business

- **IS:** an entity that operates an RMI-flagged ship in international traffic for income from the transport of passengers or cargo.
- **IS NOT:** an entity that operates a non-RMI vessel or an entity that owns or operates a private yacht.



AUDITS AND COMPLIANCE ACTIONS



AUDITS

- Entities are selected at random or based upon a risk-based analysis after a review of the entity's ESR Report.
- The ESR auditor will send a letter to the reporting individual seeking documentation to verify the ESR Report.
- Relevant documentation could include tax certificates, financial statements / accounting records, ship certificates of registry, evidence of payment of tonnage tax, etc.
- Please file your ESR Reports with accurate information and in a timely manner. If a request from the Registrar is made, please also respond to the same in a timely manner with the requested information and documentation.



AUDITS (continued)

Common Reporting and Audit Response Errors

- Entity reports as “No Business Activity” when it engages in business. Only dormant entities or entities that have not begun any business should be categorized as “No Business Activity.”
 - Business Activity Includes: Holding shares, owning a vessel or yacht, entering into contracts, opening or holding a bank account, etc.
- Entity reports as being engaged in a relevant activity, but the business activity does not meet the narrowly defined definition of the relevant activity.
- Documentation provided for the wrong financial year – documents should cover the financial year being audited.
- Documentation provided in a foreign language. All documentation must be provided in English or translated into English and certified.



COMPLIANCE ACTIONS

- Both monetary fines and/or annulment of the entity will be imposed if the entity fails to:
 - file the ESR Report within the three-month grace period after the reporting deadline; or
 - respond to an audit by the deadline stated in the audit letter; or
 - meet the substance requirements, where applicable.
- If an entity fails to:
 - file its ESR Report by the required date, the Registrar will suspend “*all corporate services for that entity.*”
 - file an ESR Report or provide the required information for the Registrar, a penalty of USD 10,000 can be levied and/or the entity can be dissolved or revoked.
 - satisfy the economic substance test a penalty of up to USD 50,000 can be levied and/or the entity can be dissolved or revoked for the first offence. If the non-compliance continues into the following financial period, then a penalty of up to USD 100,000 can be levied and/or the entity can be dissolved or revoked.

THANK YOU



QUESTIONS?



The background of the slide is a blue-tinted photograph of a corrugated metal surface, likely a roof or wall of a building. The image is split diagonally from the top right to the bottom left. The upper-left portion is a dark blue gradient, and the lower-right portion is white. The main title is centered in the dark blue area.

RMI ESR SEMINAR – LATEST DEVELOPMENTS – PRACTICAL ASPECTS

Presented by:

Vanessa Tzoannos

Partner (Hill Dickinson International)



A presentation by
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Organization for Economic Cooperation and Development (OECD) and EU Status:

- largely compliant
- whitelisted



To ensure continuous compliance the Marshall Islands has made certain revisions to the ESR portal:

- A. Subject to another tax regime
- B. CRS
- C. Holding company / pure equity business
- D. Shipping business



A. SUBJECT TO ANOTHER TAX REGIME

- Entities claiming tax residency in Guernsey, Jersey, or Isle of Man will need to upload 2 sets of documents supporting the tax residency claim.
- Entities claiming tax residency in Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands, and the United Arab Emirates must also meet the substance criteria for any relevant activities, as required by the Forum on Harmful Tax Practices (**FHTP**) guidelines.
- Entities claiming tax residency in Austria, Luxembourg, Belgium, Netherlands, Czech Republic, Slovak Republic, Germany, Spain, Ireland, or Sweden must upload documentation evidencing tax residency.

SUBSTANCE CRITERIA FOR ANY RELEVANT ACTIVITIES, AS REQUIRED BY FHTP

Non-Intellectual Property (IP) income

- i. defined core income-generating activities for each relevant business sector;
- ii. such core income-generating activities relevant to the type of activity are undertaken by the entity (or are undertaken in the jurisdiction);
- iii. require the entity to have an adequate number of full-time employees with necessary qualifications and incurring an adequate amount of operating expenditures to undertake such activities; and
- iv. transparent mechanisms to ensure compliance and provide an effective enforcement mechanism if these core income-generating activities are not undertaken by the entity or do not occur within the jurisdiction.

B. CRS

Compliance through the ESR portal:

Is the entity managed by another entity that is a Financial Institution?



CRS: LEGAL FRAMEWORK IN THE MARSHALL ISLANDS

- The Marshall Islands' legal framework implementing the Automatic Exchange of Information (**AEOI**) Standard for the automatic exchange of financial account information between tax authorities of different countries. is in place and is consistent with the CRS. This includes the Marshall Islands' domestic legislative framework requiring Reporting Financial Institutions to conduct due diligence and reporting procedures and its international legal framework to exchange the information with all of the Marshall Islands' Interested Appropriate Partners.
- The Marshall Islands commenced exchanges under the AEOI Standard in 2018. In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, the Marshall Islands: (i) enacted the Automatic Exchange of Financial Account Information Act, 2016; (ii) relies on Chapter 5 of Title 48 of the Marshall Islands Revised Code; and (iii) introduced the AEOI Regulation 2016.

CRS / FINANCIAL INSTITUTION – DEFINED

Investment Entity:

- *As a business, does your entity carry out any of these activities for or on behalf of a customer? Trading in money market instruments / managing portfolios (individual and collective) / otherwise investing, administering, or managing financial assets or money on behalf of other persons.*
- *Does this make up a significant portion of the Entity's business (more than 50%)?*

Examples:

- collective investment vehicles;
- mutual or exchange-traded funds;
- private equity or hedge funds; and
- venture capital or leveraged buy-out funds.

CRS / FINANCIAL INSTITUTION – DEFINED

(continued)

Custodial Institution:

- *Does your entity hold financial assets on behalf of others? Financial assets include securities (such as corporation stocks, notes, bonds, and debentures), partnership interests, commodities, swaps, and insurance or annuity contracts.*
- *Does this make up a substantial part of its business? In other words, over the last three accounting periods (or since your entity came into existence, if that's shorter), has 20% or more of its gross income come from holding assets like these and from related financial services?*

Examples:

- custodian banks;
- brokers;
- central securities depositories;
- trust companies;
- clearing organizations and nominees; and
- employment benefit trusts holding shares for an employee after they have been granted.

CRS / FINANCIAL INSTITUTION – DEFINED

(continued)

Depository Institution:

- *Does your entity accept deposits or other similar investments in the ordinary course of a banking or similar business?*

Examples:

- savings or commercial banks;
- credit unions;
- savings and loan associations;
- industrial and provident societies; and
- building societies.

CRS / FINANCIAL INSTITUTION – DEFINED (continued)

Specified Insurance Company:

- *Is your entity an insurance company or a holding company of an insurance company?*

Examples:

- most life insurance companies;
- general insurance;
- term life insurance;
- reinsurance companies that only provide indemnity reinsurance contracts; and
- insurance brokers.

C. HOLDING COMPANY / PURE EQUITY BUSINESS

- Amount and type of:
 - gross income;
 - assets such as tangible, intangible, current, fixed, operating, or non-operating assets; and
 - expenses such as tangible, intangible, current, fixed, operating, or non-operating assets, and **Currency**.
- Number of employees, including the number of full-time employees, or other qualified personnel responsible for carrying out the relevant activity in the Marshall Islands.

D. SHIPPING BUSINESS

- Amount and type of:
 - Gross Income
 - Assets
 - Expenses and **Currency**

- Number of employees, including the number of full-time employees, or other qualified personnel responsible for carrying out the relevant activity in the Marshall Islands. This includes seafarers serving on board an RMI-flagged vessel for the financial period of the ESR Report.



CONTACT DETAILS



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ABOUT THE FIRM

- An international commercial law firm
- More than 850 people, including 185 partners and legal directors
- Offices in the United Kingdom, mainland Europe and Asia
- Over 200 years of heritage
- Full-service offering
- Specialists in a wide range of market sectors
- Comprehensive corporate responsibility program of activity

The logo for Hill Dickinson, featuring the company name in a black, serif, all-caps font centered within a white rectangular box.

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THANK YOU





QUESTIONS?



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