

# Company setup and administration - a risk based approach



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Founded in 1978, Trident Trust is a leading independent provider of corporate, trust and fund administration services to the financial services sector worldwide, employing over 900 staff across a global footprint that spans Africa, the Americas, Asia, the Caribbean, Europe and the Middle East.

# Global Presence



**20+**  
Jurisdictions

**40+**  
Languages spoken

**1978**  
First office opened in Jersey

- Risk factors commonly considered by a Corporate Services Provider (“CSP”) before establishing a company to own a vessel:
  - Due diligence on the beneficial owner (the client) including source of wealth / source of funds to be used in the structure (wealth trajectory); is the SOW/SOF from high risk activities or countries?
  - The commercial rationale underlying the structure and the nature of the proposed activities, the scale and complexity of the activities and the countries in which the company will operate or has a connection to (high risk activities or countries?)
  - Has tax and legal advice been obtained?
  - Who will be the directors of the company? “Limited services” pose the same (and possibly higher) risks for CSPs. Higher risk will = higher cost because of frequency of reporting required to allow CSP to monitor corporate governance, AML/CTF compliance etc (gone are the days of bucket shops selling companies and walking away)
  - Consideration of persons to whom, and the manner in which, services will be provided (eg liaise directly with the client or through an intermediary?)
  - Is the client a PEP or a PEP by association?
  - Sanctions/export controls

- Directors' duties – onerous. Management and control of company must be real and must be evidenced
- Delegation of any authority by the directors to client owners only on very strict terms
  - Small yachts (less than 24m) - suitable operator's agreement to be put in place for delegation of liabilities and suitable monitoring and reporting
  - Large yachts (over 24m) which are owner managed:
    - High risk of argument that the client is a shadow director. Tax authorities may assess for benefits in kind and seek to tax accordingly
    - Directors must have suitable monitoring and reporting
  - Large yachts (over 24m) which are have a professional manager:
    - VAT applicable? Who is responsible?
    - Anti bribery and corruption policy?
    - Separation of charter broker, commercial manager, technical manager, crew manager? Or same entity?
    - Suitable monitoring and reporting to the directors (not just the owner) in respect of all commercial risks

▶ In summary...



## Basic Requirement

- Section 80C “A *corporate taxpayer* that is a *resident company* must, for each accounting period in which it derives any income from a relevant sector, have adequate substance in the Island.”

## 6 Stages

- Identify corporate taxpayers (includes limited liability companies but not partnerships, even if they have elected for legal personality)
- Confirm tax residency status - note that all companies incorporated in the IOM are resident in IOM; includes any company directed and managed in the IOM.
- Does the company carry on ‘relevant activities’ and fall into a ‘relevant sector’?
- Does the corporate generate any income from a relevant sector?
- Companies falling within a relevant sector must meet the adequate substance requirements (directed and managed in the Island, with ‘core income generating’ activities taking place there)
- Must meet the reporting requirements

## ➤ Relevant sectors

- Banking
- Insurance
- Fund management
- Shipping
- Headquartering
- Finance and leasing
- Operation of a holding company (pure equity holding)
- Holding intangible property
- Distribution and service centre businesses

## ➤ Shipping = “the operation of ships in international traffic for income for the transport of passengers or cargo”

- This does not include fishing vessels, vessels of a kind primarily for sport or recreation, harbour craft or any vessel under 24 metres in overall length, and also does not include yachts (of any length)

In summary: be very careful to ensure that different types of activities are not carried on through the same corporate vehicle without careful consideration of the impact of the economic substance regulations.

Close

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Thank you

Any questions?

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