

Economic Substance Requirements in British Virgin Islands

Dear Sirs,

The British Virgin Islands (the “BVI”) enacted a new legislation requiring certain legal entities carrying on relevant activities to have adequate economic substance in the BVI. The Economic Substance (Companies and Limited Partnerships) Act 2018 (the “Act”) also introduced certain reporting obligations for these entities.

a) Scope

The Act came into force on the 1st of January 2019 (with a six-month transitional period for existing legal entities) and imposes economic substance requirements on “legal entities” which carry on a “relevant activity”.

“Legal entities” include companies, limited partnerships and foreign companies and foreign limited partnerships (excluding limited partnerships which elected not to have a legal personality), as defined by the BVI Business Act 2004 or the Limited Partnerships Act 2017, but does not include companies or limited partnerships which are resident for tax purposes in a jurisdiction outside the BVI which is not on Annex 1 to the EU list of non-cooperative jurisdictions.

Consequently, economic substance requirements are imposed on all legal entities carrying on “relevant activities” which are tax resident in the BVI.

“Relevant activities” are defined in the Act as:

1. Banking business
2. Insurance business
3. Fund management business
4. Finance and leasing business
5. Headquarters business
6. Shipping business
7. Holding business
8. Intellectual property business
9. Distribution and service centre business

Even though the above relevant activities are defined in the Act, further guidance will be issued to assist with the determination of whether a legal entity is conducting any relevant activity and as such be subject to the requirements of the Act.

a) Substance Test

Legal entities, with the exception of pure equity holding entities, that are engaged in the relevant activities, comply with the economic substance requirements if:

- 1) The relevant activity is directed and managed in the BVI
- 2) Having regard to the nature and scale of the relevant activity:
 - (I) There is an adequate number of suitably qualified employees in relation to that activity who are physically present in the BVI (whether or not employed by the relevant legal entity or by another entity and whether on temporary or long-term contracts)
 - (II) There is adequate expenditure incurred in the BVI
 - (III) There are physical offices or premises as may be appropriate for the core income-generating activities
 - (IV) Where the relevant activity is intellectual property business and requires the use of specific equipment, that equipment is located in the BVI
- 3) The legal entity conducts (defined) core income-generating activity
(Outsourcing of core income generating activities is permitted in certain circumstances.)

A pure equity holding entity, carrying no relevant activity other than holding equity participations in other entities and earning dividends and capital gains, has adequate substance if:

- 1) It complies with its statutory obligations
- 2) Has adequate employees and premises in the BVI for holding and where applicable, for carrying out the relevant management of the equitable interests or shares

A pure equity holding entity is defined as a legal entity that holds only equity participations in other entities and earns only dividends and capital gains.

b) Reporting Obligations

The Act also makes amendments to the Beneficial Ownership Secure Search System Act, 2017 (the “BOSS Act”). The BOSS Act is amended to require companies and limited partnerships to provide information to enable the International Tax Authority to monitor whether the entity is carrying on relevant activity and, if so, whether the entity meets the economic substance tests within the meaning of the Act. The non-compliance with the obligations may carry on both criminal and financial sanctions in the case of non-compliance.

It is anticipated that regulations and guidelines are to be issued in an effort to advise on the implementation of these new obligations and provide guidance on the interpretation of the Act. These regulations, rules and related guidance will be issued in due course, and we will provide summary details of these when published.

It is important to highlight the fact that similar substance requirements have been implemented in other offshore jurisdictions including inter alia, Cayman Islands, Bermuda, Guernsey, Jersey and Isle of Man.

HOW CAN WE HELP YOU?

Should you wish to obtain legal advice or additional information in relation to the aforesaid and or any other substance legislation that has been or will be introduced by any other jurisdiction, do not hesitate to contact our legal department which is at your disposal to assist you in this respect.

CONTACT DETAILS:

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