



Implications of the BVI Economic Substance Act

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BVI Economic Substance

The Economic Substance (Companies and Limited Partnership) Act 2018 (the Act) has been enacted in the British Virgin Islands (BVI) and came into force on 1 January 2019. The Act requires certain BVI legal entities carrying on relevant activities to demonstrate adequate economic substance in the BVI.

Which entities will be affected?

In general, the Act applies to all BVI companies or BVI limited partnerships carrying on any of the relevant activities unless they can demonstrate that they are tax-resident in another jurisdiction outside the BVI.

A BVI tax resident legal entity is subject to the economic substance requirements if it conducts any of the following relevant activities:

- Banking business
- Insurance business
- Fund management business
- Finance and leasing business
- Headquarters business
- Shipping business
- Holding business (pure equity holding entity)
- Intellectual property business
- Distribution and service centre business

New entities which are incorporated after 1 January 2019 must comply with the economic substance requirements immediately and meet the reporting obligations within one year of the date of incorporation.

Pre-existing entities which are in existence on 1 January 2019 will need to demonstrate economic substance requirements no later than 30 June 2019 and meet reporting obligations within one year of that date.

What relevant activities does a Trust Underlying Company conduct?

Many trust companies and fiduciaries are seeking answers however BVI has yet to release guidelines and interpretation of The Economic Substance (Companies and Limited Partnership) Act 2018. The fact that pure equity holding companies are included in the list of relevant activities, indicates the breadth of the potential impact of the rapidly rising EU economic substance tide. Most offshore trusts, for a variety of reasons, have underlying companies. Though the exact definition of a “holding company” and a “pure equity holding company” varies slightly from one offshore jurisdiction to the next and guidance on certain matters of interpretation is still awaited, perhaps a trust underlying company could qualify as a “holding company” or “pure equity holding company”, thereby triggering the required reduced substance requirements. In light of the Economic Substance requirements, OECD Common Reporting standards and other compliance requirements professional trustee companies may find it easier to establish trusts without an underlying company.

What are the economic substance requirements?

A pure equity holding entity, which carries on no relevant activity other than holding equity participations



in other entities and earning dividends and capital gains, has adequate substance if it:

- a. complies with its statutory obligations under the BVI companies laws; and
- b. has adequate employees and premises for holding and, where relevant, managing those equitable interests or shares (Can this requirement be fulfilled by the Registered Agent through contractual administration and perhaps a BVI Director?)

For the other entities subject to the economic substance requirements (other than pure equity holding entities) must conduct the following core-income generating activity in the BVI:

- a. the relevant activity is directed and managed in the BVI;
- b. there are an adequate number of suitably qualified employees who are physically present in the BVI (whether employed by the relevant entity or by another entity and whether on temporary or long-term contracts);
- c. there is adequate expenditure incurred in the BVI;
- d. there are physical offices or premises as may be appropriate for the core income-generating activities; and
- e. where the relevant activity is intellectual property business and requires the use of specific equipment, that equipment is in the BVI.

What are the reporting obligations?

The Act also amends the Beneficial Ownership Secure Search System Act 2017 (BOSS Act) by imposing additional annual reporting requirements on legal entities with respect to their status and relevant activities.

All entities now must provide information regarding any relevant activities performed; details of the parent entity (if any) and the jurisdiction in which the parent is formed.

Legal entities which carry on a relevant activity and are considered resident must provide the following information in relation to each such relevant activity, on an annual basis:

- Total turnover;
- Expenditure incurred within the BVI;
- Total number of employees engaged in the relevant activity;
- Number of employees engaged in the relevant activity within the BVI;
- Address of any premises within the BVI used in relation to the relevant activity;
- Nature of any equipment located within the BVI; and
- Names of the persons responsible for the direction and management of the activity, together with their relationship to the company and whether they are resident in the BVI.

What to do now?

The following actions should be considered:

- Identify which entities within a structure are within the scope of the legislation, and whether any BVI entities are considered non-resident companies or LPs;
 - Classifying structures on an entity-by-entity basis to ascertain relevant activities and, therefore, fall within the scope of the new requirements;
 - How the economic substance assessments will be documented and evidenced; and
 - Identify any operational or structural changes that may be required to meet the substance requirements.
 - Develop policies and procedures for the above points
- We expect further guidance and interpretation will be issued by the BVI in due course. ■

