



British Virgin Islands – Economic Substance (Companies and Limited Partnerships) Act, 2018

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Introduction of Substance Requirements for Certain British Virgin Islands Legal Entities

The British Virgin Islands Government has passed legislation requiring certain legal entities incorporated or registered in the British Virgin Islands to maintain ‘economic substance’ in the jurisdiction. We set out below a summary of the legal entities affected by this new legislation and steps that will be required for compliance.

The *Economic Substance (Companies and Limited Partnerships) Act, 2018* (the “ES Act”) was enacted in response to a scoping paper issued by the European Union’s Code of Conduct Group (Business Taxation) in June 2018. The paper set out requirements that certain jurisdictions outside the EU must adopt with regard to the economic substance of entities based in those jurisdictions, in order to avoid being black-listed by the EU. Broadly equivalent legislation has been enacted in other major offshore jurisdictions, including Bermuda, the Cayman Islands and the Channel Islands.

Legal Entities

Under the ES Act, ‘**legal entities**’ carrying on a ‘**relevant activity**’ will need to establish economic substance in the BVI. A legal entity is a business company or limited partnership with legal personality, and includes foreign companies and foreign limited partnerships that are registered in the British Virgin Islands. Excluded from the definition of legal entities are (a) entities which are resident for tax purposes outside of the British Virgin Islands and (b) limited partnerships that do not have legal personality.

Relevant Activities

Legal entities which carry on any one or more of the following ‘relevant activities’ will be in scope and must comply with economic substance requirements:

- Banking business
- Distribution and service centre business
- Financing and leasing business
- Fund management business
- Headquarters business
- Holding business
- Insurance business
- Intellectual property business
- Shipping business

These terms are defined in the ES Act and are included in Annex 1 to this bulletin. It is anticipated that regulations, rules and guidance notes will be issued by the British Virgin Islands authorities in due course to provide greater insight into the meaning of these terms.

Entities out of scope

Entities which are not **legal entities** or do not carry on a **relevant activity** will not be required to comply with economic substance requirements. They will however have certain filing obligations as discussed below.

Legal entities carrying on Holding Business

A legal entity that **only** holds equity participations in other entities and only earns dividends and capital gains is carrying on 'holding business'. To the extent a legal entity is carrying on 'holding business', then the economic substance requirements of the Act are less onerous. Specifically, the legal entity will need to comply with existing statutory obligations and it will need to have 'adequate employees and premises for holding equitable interests or shares' and, where it manages those equitable interests or shares, it will need to have 'adequate employees and premises for carrying out that management'. We expect further guidance from regulations, rules and guidance notes as to the meaning of the phrase 'adequate employees and premises'.

Legal Entities Carrying on Other Relevant Activities

A legal entity which is carrying on a relevant activity (other than 'holding business') will need to establish economic substance in the BVI and carry out specified 'core income generating activities' in the BVI. We note that legal entities carrying on some forms of 'intellectual property business' are subject to certain presumptions of non-compliance.

It is beyond the scope of this bulletin to advise as to the nature and level of economic substance for each of the relevant activities. However, we can advise that the economic substance requirements for legal entities carrying on a relevant activity (other than 'holding business') are significant. In short, management decisions, possibly including day-to-day management decisions, must be physically taken in the BVI. Furthermore, the legal entity is required to have appropriate premises, adequate expenditures and an adequate number of suitably qualified employees in the BVI. The requirements vary by business. If you are concerned that your legal entity may be carrying on a relevant activity, we recommend that you speak to your usual Conyers lawyer.

New Filing Requirements

The ES Act imposes new filing requirements on BVI entities, which depend upon each entity's classification under the Act.

A Company or Partnership not carrying out a Relevant Activity

A BVI business company or limited partnership with legal personality which is not carrying on any relevant activity will need to file an annual return stating that it does not carry on a relevant activity.

A Company or Partnership which is not a Legal Entity as it is a Foreign Tax Resident

A BVI business company or limited partnership with legal personality which does not satisfy the definition of 'legal entity' because it is resident for tax purposes in a jurisdiction outside the BVI (and not in a jurisdiction which is on the European Union list of non-cooperative jurisdictions for tax purposes) will need to demonstrate to the BVI authorities that it is resident for tax purposes outside of the BVI.

Legal Entity carrying on a Relevant Activity

A legal entity carrying on a relevant activity must file the following information:

- total turnover generated by the relevant activity
- the amount of expenditure incurred on the relevant activity within the BVI
- the total number of employees engaged in the relevant activity
- the number of employees engaged in the relevant activity within the BVI

- the address of any premises within the BVI which is used in connection with the relevant activity
- the nature of any equipment located within the BVI which is used in connection with the relevant activity
- the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the company and whether they are resident in the BVI

Monitoring and enforcement

The International Tax Authority will be responsible for implementing, monitoring and enforcing the economic substance regime. A legal entity carrying on a relevant activity which fails to comply with the ES Act is subject to penalty, strike off or both. At first instance the fines can be up to US\$20,000 (or up to US\$40,000 for a 'high risk IP legal entity') and up to US\$200,000 (or up to US\$400,000 for a 'high risk IP legal entity') for a second determination of non-compliance.

How can we help?

We recognise that this legislation will in some cases require changes to existing business models. Conyers Dill & Pearman is ready to assist clients in understanding their obligations under the legislation and in implementing any such changes that may be required. For further information please contact one of our lawyers listed below or your usual Conyers lawyer.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: media@conyersdill.com

APPENDIX 1
DEFINITIONS

Term	Definition
<p>Banking Business</p>	<p>Means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, by cheque or otherwise and the employment of such deposits, either in whole or in part,</p> <ul style="list-style-type: none"> (a) in making or giving loans, advances, overdrafts, guarantees or similar facilities; or (b) the making of investments, <p>for the account and at the risk of the person accepting such deposits</p>
<p>Distribution and Service Centre Business</p>	<p>Means the business of either or both of the following</p> <ul style="list-style-type: none"> (a) purchasing from foreign affiliates <ul style="list-style-type: none"> (i) component parts or materials for goods; or (ii) goods ready for sale; and (iii) reselling such component parts, materials or goods; (b) providing services to foreign affiliates in connection with the business, <p>but does not include any activity included in any other relevant activity except holding business</p>
<p>Finance and Leasing Business</p>	<p>Means the business of providing credit facilities of any kind for consideration</p>
<p>Fund Management Business</p>	<p>Means the conduct of an activity that requires the legal entity to hold an investment business license pursuant to section 4 and category 3 of Schedule 3 of the Securities and Investment Business Act, 2010.</p>
<p>Headquarters Business</p>	<p>Means the business of providing any of the following services to an entity in the same Group:</p> <ul style="list-style-type: none"> (a) the provision of senior management; (b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph <p>but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business</p>

<p>Holding Business</p>	<p>Means the business of being a legal entity that only holds equity participations in other entities and only earns dividends and capital gains</p>
<p>Insurance Business</p>	<p>Means the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business and reinsurance business</p>
<p>Intellectual Property Business</p>	<p>Means the business of holding any intellectual property right in intangible assets, including but not limited to copyright, patents, trademarks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists)</p>
<p>Shipping Business</p>	<p>Means any of the following activities involving the operation of a ship anywhere in the world other than solely within Virgin Islands waters (as defined in section 2(2)(a) of the Merchant Shipping Act, 2001)</p> <ul style="list-style-type: none"> (a) the business of transporting, by sea, persons, animals, goods or mail; (b) the renting or chartering of ships for the purpose described in paragraph (a); (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship; (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; (e) the management of the crew of a ship