

Hong Kong

Introduction of Substance Requirements for Certain British Virgin Islands Legal Entities

The British Virgin Islands Government has passed legislation, with effect from 1 January 2019, 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

香港

针对某些英属维尔京群岛法人实体的实质规定概述

英属维尔京群岛（下称“**BVI**”）政府已通过立法，规定于 **BVI** 注册成立或登记的部分法人实体须在当地维持‘经济实质’，该法例自 2019 年 1 月 1 日起生效。下文概述将受到新法例影响的法人实体，及合规所需采取的步骤。

《2018 年经济实质（公司及有限合伙）法》（*Economic Substance (Companies and Limited Partnerships) Act, 2018*）（下称“**ES 法**”）乃为响应欧盟商业税收行为准则小组（European Union’s Code of Conduct Group (Business Taxation)）于 2018 年 6 月发布的范围文件（scoping paper）而颁布。该文件载列欧盟以外若干司法管辖区为避免列入欧盟黑名单而必须对当地实体采纳的经济实质规定。百慕大、开曼群岛及海峡群岛等其他主要离岸司法管辖区亦已颁布大致相若的法例。

法人实体

根据 **ES 法**，从事‘**相关活动**’的‘**法人实体**’将需在 **BVI** 确立经济实质。法人实体是具有法人资格的商业公司或有限合伙企业，包括在 **BVI** 登记的外国公司及外国有限合伙企业。以下实体不包含在法人实体的定义范围内：(a) 属 **BVI** 以外司法管辖区的税务居民的实体和

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 in the BVI ‘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 in due course from regulations, rules and guidance notes as to the meaning of the phrase ‘adequate employees and premises’.

(b) 没有法人资格的有限合伙企业。

相关活动

从事下列任何一项或多项‘相关活动’的法人实体将受法例规限，必须遵守经济实质规定：

- 银行业务
- 分销和服务中心业务
- 融资及租赁业务
- 基金管理业务
- 总部业务
- 控股业务
- 保险业务
- 知识产权业务
- 航运业务

该等词汇在 ES 法中已有界定，载于本文的附录 1。预期英属维尔京群岛相关机构会适时发布规例、规则及指引说明，对该等词汇的涵义作出进一步说明。

不受规限实体

不属于**法人实体**或没有从事**相关活动**的实体毋须遵守经济实质规定，但如下文所述会有若干存档义务。

从事控股业务的法人实体

仅于其他实体参股且仅赚取股息及资本收益的法人实体乃从事‘控股业务’。若法人实体正从事‘控股业务’，则 ES 法的经济实质规定较为宽松。具体而言，法人实体需遵守现有的法定义务，需在 BVI 拥有‘充足的雇员及场所以持有衡平法权益或股份’，且（若管理该等衡平法权益或股份）需有‘充足的雇员及场所以进行该等管理’。我们预期日后会适时发布规例、规则及指引说明，对‘充足的雇员及场所’一词的涵义提供进一步指引。

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.

从事其他相关活动的法人实体

正从事相关活动（‘控股业务’除外）的法人实体将需在 BVI 确立经济实质，并在 BVI 开展指定的‘核心创收活动’。我们注意到，从事某些形式的‘知识产权业务’的法人实体可能被推定为不合规。

本报无法就每项相关活动的经济实质性质和程度提供意见，但我们认为，针对从事相关活动（‘控股业务’除外）的法人实体的经济实质规定相当重要。简而言之，管理决策（可能包括日常管理决策）必须实际在 BVI 作出。此外，法人实体必须在 BVI 拥有适当的场所、足够的开支和充足的合格雇员。相关规定因业务而异。若阁下担心阁下的法人实体可能正在从事相关活动，建议咨询阁下日常联络的康德明律师。

新存档规定

ES 法对 BVI 实体提出了新的存档规定，具体规定取决于各实体在 ES 法下的类别。

没有从事相关活动的公司或合伙企业

具有法人资格的 BVI 商业公司或有限合伙企业若没有从事任何相关活动，则需要提交周年申报表，表明其没有从事相关活动。

因外国税务居民身份而不属法人实体的公司或合伙企业

具有法人资格的 BVI 商业公司或有限合伙企业若由于是 BVI 以外司法管辖区（且并非欧盟的税务不合作司法管辖区名单中的司法管辖区）的税务居民而不符合‘法人实体’的定义，则需向 BVI 相关机构证明其为 BVI 以外的税务居民。

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

Timing

Existing legal entities carrying on a relevant activity and incorporated or registered prior to 1 January 2019 are required to comply with the economic substance requirements in the BVI by 1 July 2019.

New legal entities carrying on a relevant activity and incorporated or registered from 1 January 2019 must comply with the economic substance requirements in the BVI immediately.

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.

从事相关活动的法人实体

从事相关活动的法人实体必须提交以下资料存档：

- 相关活动产生的总营业额
- 相关活动在 BVI 境内所产生的开支数额
- 参与相关活动的雇员总人数
- 在 BVI 境内参与相关活动的雇员人数
- BVI 境内任何用于相关活动之场所的地址
- BVI 境内任何用于相关活动之设备的性质
- 负责指导和管理相关活动之人员的姓名，以及彼等与公司的关系和是否属 BVI 居民

时间安排

从事相关活动并于 2019 年 1 月 1 日之前注册成立或登记的现有法人实体必须在 2019 年 7 月 1 日之前遵守 BVI 的经济实质规定。

从事相关活动并于 2019 年 1 月 1 日后注册成立或登记的新法人实体必须立即遵守 BVI 的经济实质规定。

监督与执行

国际税务局 (International Tax Authority) 将负责贯彻、监督和执行经济实质制度。从事相关活动的法人实体如未能遵守 ES 法，将被处罚及/或除名。首次不合规的罚款最高可达 20,000 美元或 (如属 '高风险知识产权法人实体') 最高可达 40,000 美元，而第二次被认定为不合规的罚款最高可达 200,000 美元或 (如为 '高风险知识产权法人实体') 最高可达 400,000 美元。

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 substanceinfohk@conyersdill.com or your usual Conyers lawyer.

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.

本所如何提供协助？

本所明白在部分情况下现有业务模式须根据法例进行变更。康德明律师事务所可协助客户了解其根据法例所须履行的义务及协助进行任何所需的变更。如需进一步资料，敬请发送电邮至 substanceinfohk@conyersdill.com 或联络阁下在康德的日常联络律师。

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

FOR FURTHER INFORMATION, PLEASE CONTACT:

Conyers Dill & Pearman
29th Floor
One Exchange Square
8 Connaught Place
Central
Hong Kong
Tel: +852 2524 7106
Fax: +852 2845 9268
Email: hongkong@conyersdill.com
Web: www.conyersdill.com

若需要更多资讯，请联络：

康德明律师事务所
香港中区康乐广场 8 号
交易广场第 1 座 29 楼
电话: +852 2524 7106
传真: +852 2845 9268
电邮: hongkong@conyersdill.com
网址: www.conyersdill.com

APPENDIX 1
附录 1
DEFINITIONS
定义

| Term 词汇 | Definition 定义 |
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| Banking Business 银行业务 | <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, 指接受存款的业务，而该等存款可应要求或在固定期限后或通知后以支票或其他方式提取或偿还，以及将该等存款（全部或部分）用于：</p> <p>(a) in making or giving loans, advances, overdrafts, guarantees or similar facilities; or 发放贷款、预支款、透支、担保或同类工具；或</p> <p>(b) the making of investments, 进行投资，</p> <p>for the account and at the risk of the person accepting such deposits 所产生的任何损益及风险全部由接受该等存款的人士承担</p> |
| Distribution and Service Centre Business 分销及服务中心业务 | <p>Means the business of either or both of the following 指下列一种或两种业务：</p> <p>(a) purchasing from foreign affiliates 自外国附属公司购买</p> <p>(i) component parts or materials for goods; or 商品零部件或材料；或</p> <p>(ii) goods ready for sale; and 制成品；及</p> <p>(iii) reselling such component parts, materials or goods; 转售该等零部件、材料或商品；</p> <p>(b) providing services to foreign affiliates in connection with the business, 向外国附属公司提供与业务有关的服务，</p> <p>but does not include any activity included in any other relevant activity except holding business 但除控股业务外，任何其他相关活动所涵盖的任何活动均不包含在内。</p> |
| Finance and Leasing Business 融资及租赁业务 | <p>Means the business of providing credit facilities of any kind for consideration 指提供任何类型的信贷以获取对价的业务</p> |
| Fund Management Business 基金管理业务 | <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 从事此类业务的法人实体须根据《2010年证券及投资业务法》第4条及附表3类别3持有投资业务牌照</p> |

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| <p style="text-align: center;">Headquarters Business 总部业务</p> | <p>Means the business of providing any of the following services to an entity in the same Group: 指向同一集团的实体提供下列任何服务的业务：</p> <ul style="list-style-type: none"> (a) the provision of senior management; 提供高级管理人员； (b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or 对同一集团内的任何实体所进行的活动承担或控制重大风险；或 (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b), 就(b)段所述的承担或控制风险提供实质意见， <p>but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business 惟不包括银行业务、融资及租赁业务、基金管理业务、知识产权业务、控股公司业务或保险业务。</p> |
| <p style="text-align: center;">Holding Business 控股业务</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 指作为仅于其他实体持股且仅赚取股息和资本收益的法人实体的业务</p> |
| <p style="text-align: center;">Insurance Business 保险业务</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 指根据保险协议承担就损失或损害作出赔偿或补偿的责任（包括在发生特定事件时支付赔偿金或补偿金的责任）的业务，且包括人寿保险业务和再保险业务</p> |
| <p style="text-align: center;">Intellectual Property Business 知识产权业务</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) 指持有无形资产的任何知识产权（包括但不限于版权、专利、商标、品牌和专有技术）的业务，且可为业务带来可识别的收入（该等收入可从任何存在知识产权的有形资产所产生的收入中单独识别出来）</p> |
| <p style="text-align: center;">Shipping Business 航运业务</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) 指在世界任何地方（仅在 BVI 领海（定义见《2001 年商船法》第 2(2)(a) 条）内除外）涉及船舶运营的下列任何活动</p> <ul style="list-style-type: none"> (a) the business of transporting, by sea, persons, animals, goods or mail; 经由海路运送乘客、动物、商品或邮件的业务； |

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| | <ul style="list-style-type: none">(b) the renting or chartering of ships for the purpose described in paragraph (a); 为(a)段所述的目的而租用或包租船舶；(c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship; 销售旅行船票或同等票券，以及与船舶运营有关的辅助性服务；(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; 使用、维修或租用集装箱（包括用于运送集装箱的拖车和其他工具或设备）用于海上运输；(e) the management of the crew of a ship 管理船员 |
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