

## Article

### Establishing Economic Substance in the BVI

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The British Virgin Islands (the “BVI”) has introduced “economic substance” requirements for entities carrying on certain specified activities under the *Economic Substance (Companies and Limited Partnerships) Act, 2018* (the “ES Act”). The ES Act, which was brought into force in the BVI as of 1 January 2019, requires certain legal entities incorporated or registered in the BVI to establish and maintain “economic substance” in the jurisdiction.

Broadly equivalent legislation has been enacted in other major offshore jurisdictions, including Bermuda, the Cayman Islands and the Channel Islands.

#### Is my BVI entity caught?

Under the ES Act, “legal entities” carrying on a “relevant activity” need to establish economic substance in the BVI.

##### Legal Entities

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 BVI. Excluded from the definition of legal entities are: (a) entities which are resident for tax purposes outside of the BVI; 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” are in scope under the ES Act and must comply with economic substance requirements:

- banking business
- distribution and service center business
- financing and leasing business
- fund management business
- headquarters business
- holding business
- insurance business
- intellectual property business
- shipping business

Each of these activities is defined in the ES Act and the activities being carried on by the BVI entity must be carefully considered in order to determine whether it is carrying out a

“relevant activity”. Please contact Conyers who can assist you in carrying out this analysis.

#### Establishing Economic Substance

Once you have determined that your BVI entity is in scope under the ES Act, Conyers can assist you in determining what substance your BVI entity should have in the BVI in order to comply with the relevant economic substance requirements.

##### Step One: Analysis of current business

Rather than a “one size fits all” approach, the ES Act requires entities to carefully consider the scale and nature of their current operations and business and ensure that an “adequate” proportion of such operations are physically located in the BVI (the “core income generating activities” which need to be carried on in the BVI will depend on the type of relevant business that the BVI entity is engaged in).

The ES Act is not intended to require additional employees or premises to be added in the BVI, but rather that an adequate proportion of the current employees, premises and expenditure that are carried out on behalf of the entity outside the BVI are moved to, or replaced by, equivalents in the BVI. In order to analyse what level of substance will be required, specific details of the business and operations of the relevant BVI entity will need to be considered, including (but not limited to):

- the assets, activities and operations of the BVI entity
- the number of directors of the BVI entity, including their qualifications and country of residence

- the number of employees currently employed by the BVI entity and their roles and qualifications
- the current expenditure of the BVI entity on premises and salaries
- the management structure and decision making processes of the BVI entity
- any fees (management, service or otherwise) that are charged by the BVI entity to its subsidiaries for the provision of any services
- the number of transactions carried out annually by the BVI entity

## **Step Two: Recommendations as to substance requirements**

Following determination of the level of substance which is required, Conyers is able to assist clients in putting in place such measures in the BVI (e.g. employees, premises etc.). The implementation cost is entirely dependent upon the scale of the requirements identified in step one above.

**If you have any queries regarding the BVI economic substance regime please contact Conyers BVI who will be pleased to discuss these requirements with you and their applicability to your individual circumstances.**

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