

British Virgin Islands Economic Substance Requirements – 'Relevant Activity' of 'Fund Management Business'

For general background on The Economic Substance (Companies and Limited Partnerships) Act, 2018 (the "Economic Substance Act"), the related draft International Tax Authority Economic Substance Code that was issued on 22 April 2019 (the "Guidance") and for the meaning of 'legal entity', please click [here](#).

This update assumes that an entity has already been determined to be a 'legal entity' under the Economic Substance Act and that the 'legal entity' is now considering whether it is carrying on one of the nine categories of geographically mobile 'relevant activities' - in particular, under the 'fund management business' category.

What is 'Fund Management Business'?

'Fund management business' as defined in the Economic Substance Act '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 ("SIBA"). It is noted under the Guidance that Category 3 of Schedule 3 of SIBA reads as follows:

Investment Management

- (a) Sub-category A: Managing Segregated Portfolios (excluding Mutual Funds);
- (b) Sub-category B: Managing Mutual Funds;
- (c) Sub-category C: Managing Pension Schemes;
- (d) Sub category D: Managing Insurance Products;
- (e) Sub-category E: Managing Other Types of Investment.

The Guidance further provides that reference should be made to SIBA and to the BVI Regulatory Code, 2009, issued under section 41(1) of the Financial Services Commission Act, 2001 (the "FSC Code") for a more detailed understanding of these concepts. The Guidance states that it should be noted that management of funds is contrasted with the business of being a custodian of investments, which falls within Category 5 of SIBA.

Economic Substance Test

If a 'legal entity' only carries on a 'relevant activity' that is a 'fund management business', it will be subject to the economic substance test set out in the Economic Substance Act. The economic substance test can be satisfied in relation to that 'fund management business' if the 'legal entity' ensures that:

- (a) the 'fund management business' is directed and managed in the British Virgin Islands;

- (b) having regard to the nature and scale of the 'fund management business':
 - (i) there are an adequate number of suitably qualified employees in relation to that activity who are physically present in the British Virgin Islands (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 British Virgin Islands;
 - (iii) there are physical offices or premises as may be appropriate for the core income-generating activities (as described below in the context of 'fund management business');
- (c) the legal entity conducts core income-generating activity in the British Virgin Islands as described below in the context of 'fund management business': and
- (d) in the case of income-generating activity carried out for the relevant legal entity by another entity:
 - (i) no core income generating activity is carried on outside the British Virgin Islands;
 - (ii) only that part of the activities of that other entity which are solely attributable to generating income for the relevant legal entity and not for any other legal entity shall be taken into account when considering if the relevant legal entity meets the economic substance requirements;
 - (iii) the relevant legal entity is able to monitor and control the carrying out of that activity by the other entity.

British Virgin Islands Core Income Generating Activities

The relevant British Virgin Islands core income generating activities in the context of 'fund management business' include:

- (a) taking decisions on the holding and selling of investments;
- (b) calculating risks and reserves;
- (c) taking decisions on currency or interest fluctuations and hedging positions;
- (d) preparing relevant regulatory or other reports for government authorities and investors.

The Guidance on 'Fund Management Business'

At present there is no detailed sector specific guidance in respect of 'fund management business' except that the Guidance provides that the International Tax Authority will follow the interpretation of the Financial Services Commission of the British Virgin Islands of what does or does not fall within the definition of 'fund management business'.

What to do if a Legal Entity is Carrying on the 'Relevant Activity' of 'Fund Management Business'

It is worth noting that there are a range of consequences for breaches of the Economic Substance Act (including financial penalties and potential striking-off).

If you have any specific questions in relation to a 'legal entity' conducting 'fund management business' or this update, please speak to your usual Maples Group contact or:

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