

British Virgin Islands Economic Substance Requirements – 'Relevant Activity' of 'Insurance 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 'insurance business' category.

What is 'Insurance Business'?

'Insurance business' in the Economic Substance Act is defined under section 3(1) of the Insurance Act, 2008 to mean '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'.

Economic Substance Test

If a 'legal entity' **only** carries on a 'relevant activity' that is an 'insurance 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

'insurance business' if the 'legal entity' ensures that:

- (a) the 'insurance business' is directed and managed in the British Virgin Islands;
- (b) having regard to the nature and scale of the 'insurance 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 'insurance business');
- (c) the legal entity conducts core income-generating activity in the British Virgin Islands as described below in the context of 'insurance 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 'insurance business' include:

- (a) predicting and calculating risk;
- (b) insuring or re-insuring against risk; and
- (c) providing insurance business services to clients.

The Guidance on 'Insurance Business'

At present there is no detailed sector specific guidance in respect of 'insurance 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 (the "FSC") of what does or does not fall within the definition of 'insurance business'. The Guidance further notes the effect of Section 4(1)(a) of the Insurance Act, 2008 that requires any person carrying on, or holding himself out as carrying on, insurance business of any kind in or from within

the British Virgin Islands to have a licence under section 8 of that Act. A BVI business company is deemed to be carrying on business in the British Virgin Islands even if its insurance business is in fact located outside the British Virgin Islands.

What to do if a Legal Entity is Carrying on the 'Relevant Activity' of 'Insurance 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 'insurance business' or this update, please speak to your usual Maples Group contact or:

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