

# inBrief



## **BVI Companies - Economic Substance Law**

By Bashir Ahmed and Saurbh Kothari | 30 April 2019

British Virgin Islands (BVI) companies are commonly used in the UAE by investors to hold real estate properties and/or shares in UAE companies. Investors need to be aware of a recently enacted BVI law, the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the **Law**), which introduces economic substance requirements in the BVI.

In order to avoid being identified/blacklisted as a non-cooperative jurisdiction for tax purposes by the European Union's Code of Conduct Group (a group responsible for EU's taxation policy), many offshore jurisdictions such as the BVI, the Isle of Man, the Cayman Islands, etc., have introduced legislation requiring entities established in such jurisdictions to demonstrate economic substance in their respective jurisdictions.

The Law came into force on 1 January 2019. Existing legal entities (companies or limited partnerships) in the BVI are required to demonstrate compliance with the requirements of the Law by 30 June 2019.

### **Applicability: Companies and Limited Partnerships**

The Law applies to all companies (registered in the BVI under the BVI Business Companies Act, 2004) and limited partnerships (registered in the BVI under the Limited Partnership Act, 2017), except "non-resident companies", "non-resident limited partnerships" and limited partnerships which do not have a legal personality.

A "non-resident company" or a "non-resident limited partnership" is a company/limited partnership which is resident for tax purposes in a jurisdiction outside the BVI (such a jurisdiction should not be on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes).

The Law is applicable to all companies and limited partnerships unless such companies and limited partnerships are considered as tax residents of other jurisdictions.

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## **Relevant Activities**

A legal entity is required to demonstrate economic substance in the BVI if it is carrying on any of the following activities (called “relevant activities”): (a) banking business; (b) insurance business; (c) fund management business; (d) finance and leasing business; (e) headquarters business; (f) shipping business; (g) holding business; (h) intellectual property business; (i) distribution and service centre business. These activities are defined in detail under the Law.

## **Requirements under the Law**

The Law requires a legal entity carrying a relevant activity during any financial period to comply with the economic substance requirements in relation to that activity. A legal entity is considered to have complied with the economic substance requirements if:

- a) the relevant activity is directed and managed in the BVI;
- b) there are adequate number of qualified employees in the BVI;
- c) there is adequate expenditure incurred in the BVI;
- d) there are physical offices or premises in the BVI;
- e) in case the relevant activity is intellectual property business and requires the use of specific equipment, that equipment is located in the BVI; and
- f) it conducts core income-generating activity.

## **Holding Business**

A BVI company which is carrying on the business of an equity/share holding company and earns dividends and capital gains, and carries on no other relevant activity is required to comply with a slightly relaxed level of economic substance requirements. Such a BVI company is considered to have adequate substance if it (a) complies with statutory obligations under the BVI companies law; and (b) has adequate employees and premises for holding and/or managing equitable interests or shares.

## **Requirement to Provide Information**

A legal entity shall provide (in addition to the reporting requirements under other BVI laws) any information reasonable required by the competent authority to assess if such a legal entity has complied with the requirements under the Law.

## **Penalties**

If the competent authority has determined that a legal entity has not complied with the economic substance requirements as per the Law, the competent authority shall issue a notice to the legal entity and impose a penalty (ranging between USD 5,000 to USD 50,000). A notice issued by the competent authority shall include its findings and steps required to be taken by the said legal entity to ensure compliance under the Law.

If the legal entity fails to comply with the first notice, the competent authority shall issue a second notice and impose additional penalty on the legal entity (ranging between USD 10,000 to USD 400,000).

If the legal entity fails to comply with the second notice, the competent authority may submit a report to the Financial Service Commission in BVI recommending striking the said legal entity off the Register of Companies or the Register of Limited Partnerships (as applicable).

A legal entity who has received a notice from the competent authority has a right to appeal to the BVI courts against the competent authority’s determination/findings (relating to compliance with the economic substance requirements) and amount of penalty imposed.

## Next Steps

All legal entities are required to assess and determine if they are in compliance with the Law and if not, what steps are required to be taken to ensure compliance. ■

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