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BVI Economic Substance (Companies and Limited Partnership) Act, 2018

The BVI Economic Substance (Companies and Limited Partnership) Act, 2018 has been gazetted on 19 December 2018 and effective from 1 January 2019.

You are required to do the following under the new Act:

1. Identify whether your BVI company business activities are in the scope of relevant activities

If your BVI company conduct the business activity in the scope of below relevant activities, your BVI company is required to comply with the economic substance requirements unless point 2 below is applied.

Relevant activities are:

- Banking business
- Insurance business
- Fund management business
- Finance and leasing business
- Headquarter business
- Shipping business
- Holding business
- Intellectual property business
- Distribution and service centre business

Please refer to the Annex 1 for the definition of relevant activities .

2. Identify whether your BVI company is a tax resident outside of the BVI

If your company is a tax resident outside of the BVI (except for jurisdictions included in the EU list of non-cooperative jurisdictions), the economic substance requirements do not apply to your company. To prove the non-resident status in BVI, the government of the BVI may require you to provide the satisfactory evidence such as Tax Identification Number, Tax Residence Certificate and assessment or payment of a tax liability, etc.

3. Economic Substance Requirements

Under the circumstances that your BVI company is not able to confirm its non-resident status outside of the BVI and is engaged with one or several of the relevant activities, the company is required and will be deemed to comply with the economic substance requirements if:-

- a. The relevant activity is directed and managed in the BVI;
- b. Having regard to the nature and scale of the relevant activity carried on and in BVI;
- c. The legal entity conducts BVI core income-generating activity; 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 of the BVI;

- (ii) only that part of the activities of that other entity which are attributable to generating income for the relevant 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.

4. Important Date for Annual Economic Substance Reporting

Existing companies are required to comply with the economic substance requirements under the Act by 1 October 2019 and to meet reporting obligations before 30 June 2020.

New companies formed on or after 1 January 2019 are required to comply with the economic substance requirements under the Act immediately and to meet reporting obligations within one year of formation.

From 1 October 2019, the BVI company which carry on any relevant activities should:

- a) Determine whether they are a tax resident in BVI or outside BVI
- b) Classify which relevant activities is/are in the scope of business
- c) Determine the starting and ending date of financial period
- d) Start to collect the material of meeting the economic substance test and report the material to the BOSS system in BVI

Penalty will be imposed if BVI company cannot comply with the economic substance requirements.

The Final version of the Rules on Economic Substance has published on 9 October 2019, you are required to identify and provide the relevant information and documents as soon as possible to comply with this new regulation.

Rules on Economic Substance in the Virgin Islands

BVI Economic Substance (Companies and Limited Partnerships) Act, 2017 (Consolidated)

Beneficial Ownership Secure Search System, Act 2017 (Consolidated)

If you are requiring further information or would like to discuss about the Economic substance and business solution, please get in touch with your contact persons in Kaizen.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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Annex 1

<u>Relevant Activities</u>	<u>Definition</u>
<i>Banking Business</i>	<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,</p> <p>(a) in making or giving loans, advances, overdrafts, guarantees or similar facilities, or</p> <p>(b) the making of investments,</p> <p>for the account and at the risk of the person accepting such deposits.</p>
<i>Insurance Business</i>	<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.</p>
<i>Fund Management Business</i>	<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, which includes:</p> <p>Sub-category A: Managing Segregated Portfolios (excluding Mutual Funds)</p> <p>Sub-category B: Managing Mutual Funds</p> <p>Sub-category C: Managing Pension Schemes</p> <p>Sub category D: Managing Insurance Products</p> <p>Sub-category E: Managing Other Types of Investment.</p>

<p><i>Finance and Leasing Business</i></p>	<p>means the business of providing credit facilities of any kind for consideration. But without limiting the generality that:</p> <p>(a) consideration may include consideration by way of interest;</p> <p>(b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with</p> <p>(i) the supply of goods by hire purchase,</p> <p>(ii) leasing other than any lease granting an exclusive right to occupy land, or</p> <p>(iii) conditional sale or credit sale.</p> <p>Where an advance or credit repayable by a customer to a person is assigned to another person, that other person is deemed to be providing the credit facility for the purposes.</p> <p>Any activity falling within the definition of “banking business”, “fund management business” or “insurance business” is excluded.</p>
<p><i>Headquarters Business</i></p>	<p>means the business of providing any of the following services to an entity in the same group:</p> <p>(a) the provision of senior management</p> <p>(b) the assumption or control of material risk for activities carried out by any of these entities in the same group</p> <p>(c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b)</p> <p>but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business.</p>

<p><i>Shipping Business</i></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)</p> <p>(a) the business of transporting, by sea, persons, animals, goods or mail;</p> <p>(b) the renting or chartering of ships for the purpose described in paragraph (a);</p> <p>(c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;</p> <p>(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;</p> <p>(e) the management of the crew of a ship.</p>
<p><i>Holding Business</i></p>	<p>means the business of being a pure equity holding entity</p> <p>“pure equity holding entity” means a legal entity that only holds equity participations in other entities and only earns dividends and capital gains.</p> <p>Entities which own other forms of asset (eg bonds, government securities, legal or beneficial interests in real property) will clearly not be pure equity holding entities (even if they also own equity participations) and will not be treated as carrying on holding business.</p>

<p><i>Intellectual Property Business</i></p>	<p>means the business of holding intellectual property assets;</p> <p>“ intellectual property asset” means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, 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);</p> <p>“income” in respect of an intellectual property asset includes</p> <ul style="list-style-type: none"> (a) royalties; (b) capital gains and other income from the sale of an intellectual property asset; (c) income from a franchise agreement; and (d) income from licensing the intangible asset; <p>It is focusing on businesses which make money from licensing or otherwise exploiting intellectual property rights.</p>
<p><i>Distribution and Services Centre Business to affiliates</i></p>	<p>means the business of either or both of the following</p> <ul style="list-style-type: none"> (a) purchasing from foreign affiliates <ul style="list-style-type: none"> (i) component parts or materials for goods; or (ii) goods ready for sale; and (iii) reselling such component parts, materials or goods; (b) providing services to foreign affiliates in connection with the business, <p>but does not include any activity included in any other relevant activity except holding business;</p>