



PORTCULLIS NEWS

MCI (P) 019/06/2018

30 January 2019

BRITISH VIRGIN ISLANDS – ECONOMIC SUBSTANCE (COMPANIES AND LIMITED PARTNERSHIPS) ACT, 2018

KEY POINTS

Economic substance requirements are imposed on all BVI companies and LPs unless they can prove they are tax resident elsewhere.

Companies and LPs must submit information about their tax residence status and relevant activity on an annual basis.

New companies and LPs must comply immediately with effect from 1 January 2019.

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The British Virgin Islands (“BVI”) has enacted legislation that imposes economic substance requirements on all BVI companies and Limited Partnerships (“LPs”) carrying on ‘relevant activities’ unless they are resident for tax purposes in a jurisdiction outside the BVI. Non tax resident companies will be expected to provide evidence of their non-tax resident status.

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

NEW COMPANIES AND LIMITED PARTNERSHIPS

New companies and LPs (incorporated or formed from 1 January 2019) must comply with economic substance requirements immediately and meet the reporting obligations within one year of date of incorporation or formation.

EXISTING COMPANIES AND LIMITED PARTNERSHIPS

Existing companies and LPs must comply with economic substance requirements by 30 June 2019 and meet the reporting obligations within one year of that date.

OBLIGATIONS

All companies and LPs must provide information to enable the BVI International Tax Authority (“Competent Authority”) to monitor whether the relevant company and LP is carrying on relevant activities, and if so, whether it is complying with the economic substance requirements. The information will be integrated in to the existing BVI BOSS System which obliges Registered Agents (“RAs”) in the BVI to keep up to date information on beneficial ownership and allows Competent Authority to search the database.

ECONOMIC SUBSTANCE TEST

(a) the relevant activity is directed and managed in the Virgin Islands;

(b) Having regard to the nature and scale of the relevant activity:

i. there are adequate numbers of suitably qualified employees who are physically present in the BVI (whether or not employed by the relevant legal entity or by another entity and whether on temporary or long-term contracts);

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PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co



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ii. there is adequate expenditure incurred in the BVI;

iii. there are appropriate physical offices or premises in the BVI appropriate for the core income-generating activities; and

(c) where the relevant activity is intellectual property business and requires the use of specific equipment, the equipment is located in the BVI.

Outsourcing of core income generating activities is permitted in certain circumstances. Holding companies are required to meet a reduced test for economic substance, while intellectual properties companies may face more onerous requirements.

Pure equity holding entities which carry on no relevant activity other than holding equity participations in other entities and earning dividends and capital gains will be considered as having adequate substance if it:-

(a) complies with its statutory obligations under the BVI Business Companies Act, 2004 or the Limited Partnership Act, 2017 (whichever is relevant);

(b) has adequate employees and premises for holding equitable interests or shares and, where it manages those equitable interests or shares, has adequate employees and premises for carrying out that management.

PENALTIES

Significant penalties are imposed both for failure to provide required information, and for operating a company or LP in breach of the economic substance requirement which may include fines, imprisonment and/or strike off.

It was recently proposed that the effective date of the legislation be pushed back to 30 June 2019, however the amendment to that effect has not yet been gazetted. Further guidance from the BVI Government is expected to be published shortly and Portcullis will update you accordingly. Please contact your Portcullis Relationship Manager or one of our representatives for assistance or further information should you have any questions or difficulty in meeting these regulatory requirements



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www.portcullis.co

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