

British Virgin Islands: The Economic Substance (Companies and Limited Partnerships) Act 2018

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1. What is the effect of the Economic Substance (Companies and Limited Partnerships) Act, 2018 (The Act) in the British Virgin Islands?

The Economic Substance (Companies and Limited Partnerships) Act, 2018 (the Act) was introduced in the BVI, effective 1 January 2019, to address the concerns of the EU Code of Conduct Group and the OECD Forum on Harmful Tax Practices. Related amendments to the Beneficial Ownership Secure Search System Act, 2017 (the BOSS Act) will implement an economic substance reporting regime.

A draft Economic Substance Code was issued by the International Tax Authority on 23 April 2019 containing Rules and Guidance relating to the interpretation of the Act and how the ITA will carry out its obligations. The final Code is expected to be published in September 2019 at which point this FAQ will be updated.

The Act introduces requirements for BVI entities that are carrying on one or more “relevant activities” to have adequate economic substance in the BVI. Entities which do not carry on any “relevant activity” are not subject to the economic substance requirements. Entities which are tax resident in a jurisdiction outside of the BVI which is not on the EU taxation “blacklist” are also not subject to the economic substance requirements, but still need to determine whether they carry on any “relevant activities”.

For those entities which are subject to the requirements, the extent of the economic substance required depends on which of the relevant activities the entity is carrying on, and the nature and scale of that relevant activity. Entities which are only conducting the business of being a “pure equity holding entity” are subject to a much-reduced economic substance requirement.

The Act applies to BVI companies, foreign companies registered in the BVI, BVI limited partnerships with legal personality and foreign limited partnerships registered in the BVI and which have legal personality. BVI limited partnerships which have not elected to have legal personality are not subject to the Act.

All BVI entities which are subject to the Act need to consider the impact and report information to their registered agent regarding the relevant activity. The registered agent is required to then report the relevant details via the BOSS system.

The Act came into effect on 1 January 2019 and applied immediately to entities incorporated, formed or registered in the BVI on or after that date. The Act applied to entities existing before 1 January 2019 with effect from 30 June 2019.

2. What are the reporting periods for the Act?

Compliance with the economic substance and related reporting requirements is assessed over periods of time of not more than 12 months. Default reporting periods apply but an entity subject to the Act can consider whether it wishes to align its economic substance reporting period with its own financial year (or any other date). For relevant entities incorporated, formed or registered in the BVI in 2019, the first reporting period will start from the date of incorporation, formation or registration and, by default, run for 12 months.

By default, the first reporting period for entities existing before 1 January 2019 is for 12 months from 30 June 2019.

3. What constitutes a “relevant activity”?

The Act specifies nine categories of relevant activity. All entities must determine whether they are carrying on one or more of the following relevant activities. An entity which does not carry on any relevant activity is not subject to the economic substance requirements.

While the Code provides that an entity will be treated as carrying on a relevant activity during any reporting period which it receives income from that activity, it cannot be assumed that the absence of any income during a period means that an entity is definitely not carrying on a relevant activity.

4. What are the relevant activities?

<p>“banking business”</p>	<p>has the meaning specified in the Banks and Trust Companies Act, 1990, s2(1), being 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, (a) in making or giving loans, advances, overdrafts, guarantees or similar facilities, or (b) the making of investments,</p> <p>for the account and at the risk of the person accepting such deposits.</p>
<p>“insurance business”</p>	<p>has the meaning specified in the Insurance Act, 2008, s3(1), being 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>
<p>“fund management business”</p>	<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 the following sub-categories: Investment Management Sub-category A: managing Segregated Portfolios (Excluding Mutual Funds); Sub-category B: Managing Mutual Funds; Sub-category C: Managing Pension Schemes; Sub-category D: Managing Insurance Products; and Sub-category E: Managing Other Types of Investment</p>
<p>“finance and leasing business”</p>	<p>means the business of providing credit facilities of any kind for consideration. Consideration may include consideration by way of interest. 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: (i) the supply of goods by hire purchase (ii) leasing other than any lease granting an exclusive right to occupy land (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 these purposes. Any activity falling within the scope of “banking business”, “fund management business” or “insurance business” is excluded from this definition.</p>

<p>“headquarters business”</p>	<p>means the business of providing any of the following services to an entity in the same group:</p> <ul style="list-style-type: none"> (a) the provision of senior management; (b) the assumption or control of material risk for activities carried out by any of those entities in the same group; or (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b) <p>but does not include “banking business”, “finance and leasing business”, “fund</p>
<p>“distribution and service centre business”</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> <p>Broadly, an entity is affiliated with another entity if it is in the same group of the other entity.</p>
<p>“shipping business”</p>	<p>means any of the following activities involving the operation of a ship anywhere in the world other than solely within British Virgin Islands waters (as defined in section 2(2)(a) of the Merchant Shipping Act, 2001)</p> <ul style="list-style-type: none"> (a) the business of transporting, by sea, persons, animals, goods or mail; (b) the renting or chartering of ships for the purpose described in paragraph (a); (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship; (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; (e) the management of the crew of a ship. <p>The definition of “ship” for these purposes does not include a “fishing vessel”, “pleasure vessel”, or a “small ship” (under 24m) as defined in the Merchant Shipping Act, 2001.</p>
<p>“holding business”</p>	<p>means the business of being a “pure equity holding entity”, meaning a legal entity that only holds equity participations in other entities and only earns dividends and capital gains.</p> <p>An entity which holds assets which are not equity participations is not a pure equity holding entity. An entity which holds a mixed asset portfolio (shares and real estate for example), or non-equity assets such as bonds or government securities, falls outside the definition of a pure equity holding entity.</p>

<p>“intellectual property business”</p>	<p>means the business of holding “intellectual property assets”, meaning any intellectual property right in intangible assets, including but not limited to copyright, patents, trademarks, 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>The focus here is on entities receiving income from licensing or otherwise exploiting the intellectual property rights, rather than owning IP relating to its business activities.</p>
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The first of the three relevant activities listed above are subject to existing regulatory licensing regimes, and accordingly any entity carrying on banking business, insurance business or fund management business should already hold a licence issued by the BVI Financial Services Commission to conduct such business. If the activity is outside the scope of the regulatory regime then, in respect of that relevant activity, the entity will not be required to meet the economic substance requirement.

For the relevant activity of “holding business”, there is a reduced economic substance requirement for an entity which only carries on such holding business.

5. What is Tax Residency?

An entity that carries on a relevant activity during a reporting period will not need to meet the economic substance requirements during that reporting period if it is resident for tax purposes in a jurisdiction outside the BVI which is not on the EU taxation “blacklist” for the entirety of that reporting period. The Code specifies that tax residence may be demonstrated for entities which are tax transparent in respect of each of the participators or partners on whom the entity’s profits are taxable. Entities which carry on a relevant activity and claim to be resident for tax purposes outside of the BVI will need to be able to provide evidence of their tax residence. If such evidence cannot be supplied the entity may be treated as having failed to establish tax residence outside the BVI and will need to meet the economic substance requirements.

6. What are the economic substance requirements?

There are three different economic substance requirements depending on the nature of the relevant activity:

1. The Holding Business Requirement:

The Act provides that a pure equity holding entity meets the economic substance requirement if:

- a. it complies with its statutory obligations under the BVI Business Companies Act, 2004, or the Limited Partnerships Act, 2017 (whichever is relevant); and
- b. it has in the BVI adequate employees and premises for holding equity participations and, where it manages those equity participations, it has in the BVI adequate employees and premises for carrying out that management.

The Code acknowledges that holding of equity participations can be (and, in many cases, is) entirely passive in nature and that in such cases the requirement for adequate employees and premises may be capable of being met by the BVI registered agent and the existing registered office.

2. The General Requirement:

An entity conducting a relevant activity (other than holding business or intellectual property business) meets the economic substance requirement if:

- a. the relevant activity is directed and managed in the BVI;
- b. having regard to the nature and scale of the relevant activity:
 - i. there are an adequate number of suitably qualified employees physically present in the BVI (employed directly or employed by another entity);
 - ii. there is adequate expenditure incurred in the BVI; and
 - iii. there are physical offices or premises as may be appropriate for the core-income generating activities;
- c. the entity conducts core income generating activity in the BVI.

3. The Intellectual Property Business Requirement:

As income derived from intellectual property assets are considered to be at higher risk of profit shifting from higher to lower (or zero) tax jurisdictions, a more rigorous requirement applies to certain entities which carry on intellectual property business. The general economic substance requirement (as set out above) is enhanced by creating presumptions against compliance with the requirement to conduct core income generating activity in two scenarios. The presumptions against non-compliance may be rebutted in certain circumstances. The scenarios and the steps required to rebut the presumptions are detailed and it is recommended that any entity which believes it is carrying on intellectual property business contact Newhaven for further guidance.

7. What is the direction and management of a relevant activity?

The economic substance requirements (other than for holding business) include that the relevant activity be directed and managed in the BVI. This requirement relates to the relevant activity which must be directed and managed in the BVI, not the entity by which the activity is being conducted. For this purpose, sufficient board meetings would need to be held in the BVI having regard to the nature of the relevant activity which would with a quorum of directors physically present in the BVI.

8. What is Core income generating activity (CIGA)?

An important aspect of the General economic substance requirement is that an entity carrying on a relevant activity must, in connection with that activity, conduct core income generating activity in the BVI. At least some of the CIGA must be carried out in the BVI by employees located working in the BVI. Section 7 of the Act defines CIGA as including activities specific to each relevant activity. Please contact Newhaven for further details. The definitions are non-exhaustive examples of activities that comprise CIGA, and what is the CIGA for a particular entity and its relevant activity will be a question of fact. CIGA can be outsourced within the BVI in certain circumstances, provided sufficient outsourced resources are provided and the entity is able to oversee and control the outsourced activity.

9. What are the definitions of Core Income Generating Activities in the Act?

Banking business	<p>“Core Income Generating Activities” includes, in respect of banking business:</p> <ul style="list-style-type: none"> (a) raising funds, managing risk including credit, currency and interest risk; (b) taking hedging positions; (c) providing loans, credit or other financial services to customers; (d) managing regulatory capital; (e) preparing regulatory reports and returns.
Distribution and service centre business	<p>“Core Income Generating Activities” includes, in respect of distribution and service centre business:</p> <ul style="list-style-type: none"> (a) transporting and storing goods; (b) managing stocks; (c) taking orders; (d) providing consulting or other administrative services.
Insurance business	<p>“Core Income Generating Activities” includes, in respect of insurance business:</p> <ul style="list-style-type: none"> (a) predicting and calculating risk; (b) insuring or re-insuring against risk; (c) providing insurance business services to clients.
Fund management business	<p>“Core Income Generating Activities” includes, in respect of fund management business:</p> <ul style="list-style-type: none"> (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.

Finance or leasing business	<p>“Core Income Generating Activities” includes, in respect of finance or leasing business:</p> <ul style="list-style-type: none"> (a) agreeing funding terms; (b) identifying and acquiring assets to be leased (in the case of leasing); (c) setting the terms and duration of any financing or leasing; (d) monitoring and revising any agreements; (e) managing any risks;
Headquarters business	<p>“Core Income Generating Activities” includes, in respect of headquarters business:</p> <ul style="list-style-type: none"> (a) taking relevant management decisions; (b) incurring expenditures on behalf of affiliates; (c) co-ordinating group activities.
Shipping business	<p>“Core Income Generating Activities” includes, in respect of shipping business:</p> <ul style="list-style-type: none"> (a) managing the crew (including hiring, paying and overseeing crewmembers); (b) hauling and maintaining ships; (c) overseeing and tracking deliveries; (d) determining what goods to order and when to deliver them; (e) organising and overseeing voyages.
Intellectual property business	<p>“Core Income Generating Activities” includes, in respect of intellectual property business:</p> <ul style="list-style-type: none"> (a) where the business concerns intellectual property assets such as patents, research and development; (b) where the business concerns non-trade intangible assets such as brand, trademark and customer data, marketing, branding and distribution.

Note: these are not exhaustive lists.

10. What are the reporting obligations?

The Act introduces new obligations on entities, to provide information to be submitted by their Registered Agents in order to enable the International Tax Authority to monitor compliance with the economic substance requirements.

Reporting is to be made via the Beneficial Ownership Secure Search System (BOSS). The BOSS system is the secure system which is currently used to hold beneficial ownership information on BVI entities.

Once the amendments to the BOSS Act come into force, entities will be required to identify certain prescribed information related to the requirements under the Act and provide it to their registered agent which is required to take reasonable steps to collect such information and to submit the information through BOSS. Entities have an obligation to notify their registered agent whether or not they are carrying on a relevant activity and, if they are, then whether or not they are resident for tax purposes in another jurisdiction.

Where relevant activities are conducted by an entity that is not tax resident in another jurisdiction, the entity will need to report detailed prescribed information to its registered agent to demonstrate its compliance with the appropriate economic substance requirements. The registered agent will submit the data through the BOSS system. It is important to be aware that entities will have to report in relation to all relevant activity conducted in the period, even if the relevant activity is not carried on for the entire reporting period.

11. What enforcement measures and Sanctions are there?

There are two situations where enforcement action may be applicable and sanctions resulting:

- a. When any person (possibly including a director or partner) fails to provide information or provides inaccurate or misleading information to the International Tax Authority (via BOSS or otherwise);
- b. An entity fails to comply with the economic substance requirement.

A failure to provide information without reasonable excuse and the intentional provision of false information to the International Tax Authority is an offence and enforcement action would be taken through the Courts.

While not complying with the economic substance requirement is not a criminal offence, failure to do so could give rise to financial sanctions, orders to take remedial steps and the possibility of an entity being struck off.

12. What are the next steps?

All BVI companies and limited partnerships with a corporate identity must determine:

- Whether the entity is carrying on a relevant activity.
- If so, whether the entity is resident for tax purposes in another jurisdiction and whether or not that jurisdiction is “blacklisted” by the EU for tax purposes.
- If it is subject to the economic substance requirements, what steps need to be taken to fulfil them and the action needed to meet the resultant reporting obligations.

Newhaven has developed a low cost online interactive tool to assist clients with the classification of their BVI entities.

In the meantime, your usual contacts at Newhaven are available to answer any enquiries which you may have, and should you need any assistance in determining the appropriate classification for your entity.

Last update: 24 September 2019

DISCLAIMER:

The information provided herein is for general guidance only and should not be relied on. It is accurate as at the date of publication based on the currently available applicable legislative sources.

英屬維爾京群島（BVI）：2018 年經濟實質（公司和有限合夥企業）法

常見問題

1. 《2018 年經濟實質（公司和有限合夥企業）法》（以下簡稱該《法案》）給英屬維爾京群島帶來了哪些影響？	12
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1. 《2018 年經濟實質（公司和有限合夥企業）法》（以下簡稱該《法案》）給英屬維爾京群島帶來了哪些影響？

英屬維爾京群島《2018 年經濟實質（公司和有限合夥企業）法》（以下簡稱該《法案》）於 2019 年 1 月 1 日起實施，致力於解決歐盟行為準則小組和經合組織論壇提出的有關有害稅收競爭的問題。《2017 年實益擁有權安全搜索系統法》（以下簡稱《BOSS 法案》）的相關修訂規定英屬維爾京群島將實施經濟實質申報制度。

國際稅務局於 2019 年 4 月 23 日發佈了《經濟實質守則》草案，涵蓋了解釋該《法案》有關的規則和指南以及國際稅務局將如何履行其義務等問題。最終版《經濟實質守則》預計將於 2019 年 9 月發佈，屆時本常見問題將進行有關更新。

該《法案》要求在英屬維爾京群島從事一項或多項“相關活動”的英屬維爾京群島實體需在英屬維爾京群島擁有足夠的經濟實質。不進行任何“相關活動”的實體不受經濟實質要求的約束。屬於英屬維爾京群島以外司法管轄區的稅務居民且未列入歐盟稅收“黑名單”的實體同樣不受經濟實質要求的約束，但仍需要確認其是否有進行任何“相關活動”。

對於受經濟實質要求約束的實體，其所需經濟實質的程度取決於其正在進行的相關活動，以及該相關活動的性質和規模。僅從事“純股權控股實體”業務的實體，其所需較少的經濟實質要求。

該《法案》適用於英屬維爾京群島公司、在英屬維爾京群島註冊的外國公司、具有法人資格的英屬維爾京群島有限合夥企業，以及在英屬維爾京群島註冊並具有法人資格的外國有限合夥企業。不具有法人資格的英屬維爾京群島有限合夥企業不受該《法案》約束。

所有受該《法案》約束的英屬維爾京群島實體都需考慮其影響，並向其註冊代理人申報與有關活動相關的資訊。註冊代理人需通過 BOSS 系統上報相關細節。

該《法案》於 2019 年 1 月 1 日生效，並立即適用於在該日或之後在英屬維爾京群島成立、組建或註冊的實體。對於 2019 年 1 月 1 日前存在的實體，該《法案》自 2019 年 6 月 30 日起生效。

2. 該《法案》的申報期限是如何？

有關經濟實質和相關申報要求的遵守情況的評估，其時間間隔不超過 12 個月。申報期限按既定規定，但受該《法案》約束的實體可考慮其經濟實質申報期限是否需要與其財政年度（或任何其他日期）相一致。對於 2019 年在英屬維爾京群島成立、組建或註冊的相關實體，其第一個申報期限既定為從成立、組建或註冊之日起的 12 個月。

對於 2019 年 1 月 1 日之前存在的實體，其既定的第一個申報期限為自 2019 年 6 月 30 日起之後的 12 個月。

3. 什麼是“相關活動”？

該《法案》詳列了九類相關活動。所有實體必須確定其是否正在進行下列一項或多項相關活動。未進行任何相關活動的實體不受經濟實質要求的約束。

雖然《法案》規定，若某一實體在任何申報期限內有從該類活動中獲得收益，則其將被視為從事相關活動，但若某一實體在任何申報期限內未從該類活動中獲得收益，並不意味著其肯定沒有進行相關活動。

4. 有什麼相關活動？

<p>“銀行業務”</p>	<p>涵蓋《1990年銀行和信託公司法》第s2(1)條規定的含義。接受可按要求提取或償還的存款，或在定期或通知後，以支票或其他方式提取或償還的存款，且可將該等存款全部或部分用於</p> <p>(一) 提供貸款、預付款、透支服務、擔保或類似服務；或</p> <p>(二) 投資；</p> <p>費用和風險由接受存款的人承擔</p>
<p>“保險業務”</p>	<p>涵蓋《2008年保險法》第s3(1)條規定的含義。根據保險合同承擔賠償責任，賠償或補償某人的損失或損害，包括因特定事件的發生而承擔的損害賠償責任，包括人壽保險業務和再保險業務。</p>
<p>“基金管理業務”</p>	<p>指根據《2010年證券投資商法》第4節和附表3第3類的規定，要求法人實體須持有投資業務許可證方可進行的活動，包括以下子類別：</p> <p>投資管理子類別A：管理獨立投資組合（不包括共同基金）；子類別B：管理共同基金；子類別C：管理養老金計劃；子類別D：管理保險產品；以及子類別E：管理其他類型的投資。</p>
<p>“融資及租賃業務”</p>	<p>指提供任何形式的信貸服務業務。</p> <p>考慮因素可包括利息。</p> <p>信貸服務可以分期支付的方式進行，並且可就下列事項向客戶單獨收費和披露：</p> <p>(一) 分期付款的貨物供應；</p> <p>(二) 除授予土地專用權的租賃外的租賃；</p> <p>(三) 附條件銷售或賒銷；</p> <p>若客戶應向某人償還的預付款或信貸被轉讓給另一人，則該另一人應被視為提供此類信貸服務。</p> <p>任何屬於“銀行業務”、“基金管理業務”或“保險業務”範圍的活動均不在此定義範圍內。</p>
<p>“總部業務”</p>	<p>指向同一集團內的實體提供下列任何服務的業務：</p> <p>(一) 提供高級管理人員；</p> <p>(二) 承擔或控制同一集團內任何實體開展活動的重大風險；或</p> <p>(三) 就第(二)條所提及的風險承擔或控制提供實質性意見；</p> <p>但不包括“銀行業務”、“融資及租賃業務”、“基金管理業務”中提及的業務。</p>

<p>“分銷和服務中心業務”</p>	<p>指下列任一種或兩種業務： (一) 從外國關聯公司購買 a. 貨物的零部件或材料；或 b. 可供出售的貨物；及 c. 轉售零部件、材料或者貨物； (二) 向外國關聯公司提供與此類業務相關的服務。 除“持有資產業務”外，不涵蓋任何其他相關活動。一般來說，若某一實體與另一實體屬於同一集團，則該實體與另一實體為關聯實體。</p>
<p>“航運業務”</p>	<p>指在英屬維爾京群島領海以外的世界任何地方，涉及航運的任何下列活動（定義見《2001年商船法》第2節第(2)條(a)項） (一) 通過海路運送人、動物、貨物或郵件； (二) 以第(一)條所述的目的租用船舶； (三) 出售旅行票或等價物，以及與航運經營有關的輔助服務； (四) 使用、檢修或出租集裝箱，包括用於運輸裝有海上物品的集裝箱的拖車和其他運輸車輛或設備； (五) 管理船員。 就以上目的而言，“船舶”的定義不包括《2001年商船法》所界定的“漁船”、“遊樂船”或“小型船舶”（24米以下）。</p>
<p>“控股業務”</p>	<p>指作為“純股權控股實體”，即僅持有其他實體的參與股權並只賺取股息和資本利得的法人實體的業務。 持有非參與股權資產的實體不屬於純股權控股實體。持有混合資產組合（例如股票和房地產）或非股權資產（例如債券或政府證券）的實體亦不屬於純股權控股實體。</p>
<p>“知識產權業務”</p>	<p>指持有“知識產權”的業務，即無形資產所含的任何知識產權，包括但不限於版權、專利、商標、品牌和專有技術，且從中可產生可辨認收入（該收入與權利所附的任何有形資產產生的任何收入分開可辨認）。 知識產權資產的“收入”包括： (一) 版稅； (二) 源自出售知識產權的資本利得和其他收入； (三) 源自特許經營協議的收入；以及 (四) 源自無形資產使用許可獲取的收入。 此處的重點在於以獲得許可或以其他方式利用知識產權取得收入的實體，而非擁有與其業務活動有關的知識產權。</p>

上述前三項相關活動須遵守現行的監管牌照制度，因此，任何經營銀行業務、保險業務或基金管理業務的實體應持有英屬維爾京群島金融服務委員會頒發的經營此類業務的牌照。若該活動不在監管制度的範圍內，則就此項相關活動而言，該實體不必滿足經濟實質要求。

就“控股業務”類相關活動而言，對僅從事此類持有資產業務的實體的經濟實質要求相對較低。

5. 什麼是稅務居民？

在申報期限內開展相關活動的實體，若其為英屬維爾京群島以外的司法管轄區的稅務居民，且該司法管轄區在申報期限內並未被列入歐盟稅務“黑名單”中，則無需在该申報期限內滿足經濟實質的要求。《經濟實質守則》規定，對於利潤應納稅的每位參與人或合夥人都稅務透明的實體，可證明其為稅務居民。在英屬維爾京群島境外從事相關活動並聲稱其為稅務居民的實體須能夠提供其為稅務居民的證據。若無法提供此類證據，則該實體可能被視為未能在英屬維爾京群島境外成為稅務居民，且需要滿足經濟實質的要求。

6. 什麼是經濟實質要求？

根據相關活動的性質，經濟實質要求可分為三類：

一、 控股業務要求

《法案》規定，若純股權控股實體滿足以下條件，則其符合經濟實質要求：

1. 遵守《2004年英屬維爾京群島商業公司法》或《2017年有限合夥企業法》（以相關性為準）規定的法定義務；以及
2. 若持有參與股權，則其須在英屬維爾京群島擁有足夠的雇員和營業場所；若需管理參與股權，則其須在英屬維爾京群島擁有足夠的雇員和場所以實現該管理。

《經濟實質守則》確認，持有參與股權可能（大多數情況下確實）屬於完全被動的性質，在這種情況下，對足夠的雇員和場所的要求可能只需滿足在英屬維爾京群島擁有註冊代理人 and 存續的註冊辦事處。

二、 一般要求

若從事相關活動（持有控股業務或知識產權業務除外）的實體滿足以下條件，則其符合經濟實質要求：

1. 相關活動須在英屬維爾京群島內指導和管理；
2. 有關活動的性質和規模滿足下列要求：
 - a) 在英屬維爾京群島用有足夠且有適當資質的雇員（直接受雇於該實體或受雇於其他實體）；
 - b) 在英屬維爾京群島有足夠的費用開支；及
 - c) 有適合核心創收活動的實體辦公室或場地；
3. 在英屬維爾京群島開展核心創收活動。

三、 知識產權業務要求

源自知識產權的收入，其利潤很大程度上可能會從高稅收管轄權轉移到低稅收管轄權（或零稅收管轄權），因此，對從事知識產權業務的某些實體須實行更為嚴格的要求。可通過確立在兩種情況下符合開展核心創收活動要求的前提以加強一般經濟實質要求（如上文所述）。在某些情況下，對不合規的前提可予以駁回。駁回前提所需的條件和步驟已詳細列出，任何正在開展知識產權業務的實體可聯繫 Newhaven 尋求進一步指引。

7. 什麼是相關活動的督導和管理？

經濟實質要求（除控股業務外）含有“相關活動須在英屬維爾京群島內指導和管理”這一項要求。這項要求涉及的是必須在英屬維爾京群島內指導和管理的相關活動，而非進行活動的實體。為此，需要在英屬維爾京群島召開充分的董事會會議，考慮到相關活動的性質，實際出席的董事須達到法定人數。

8. 什麼是核心創收活動？

一般經濟實質要求中有一項重要規定為：從事相關活動的實體必須在英屬維爾京群島開展核心創收活動。至少部分核心創收活動必須由在英屬維爾京群島工作的雇員在當地開展。《法案》第7節對核心創收活動的定義中列出了每一項具體活動。詳情請諮詢 Newhaven。然而這些定義並未詳細列盡全部核心創收活動，具體某一實體及其相關活動的核心創收活動是什麼是一個事實問題，須以事實為根據。在特定情況下，只要有足夠的外包資源，核心創收活動可在英屬維爾京群島內外包，且實體能夠監督和控制外包活動。

9. 《法案》中對核心創收活動的定義是什麼？

“銀行業務”	就銀行業務而言，“核心創收活動”包括： 1. 籌集資金，管理風險，包括信貸、貨幣和利息風險； 2. 對沖頭寸； 3. 向客戶提供貸款、信貸或其他金融服務； 4. 管理監管資本； 5. 編制監管報告和報表。
“分銷和服務中心業務”	就分銷和服務中心業務而言，“核心創收活動”包括： 1. 運輸和儲存貨物； 2. 管理庫存； 3. 接受訂單； 4. 提供諮詢或其他管理服務。
“保險業務”	就保險業務而言，“核心創收活動”包括： 1. 預測與計算風險； 2. 針對風險進行投保或再投保； 3. 為客戶提供保險業務服務。
“基金管理業務”	就基金管理業務而言，“核心創收活動”包括： 1. 決定投資的持有和出售； 2. 計算風險和準備金； 3. 做出有關貨幣或利率波動以及對沖頭寸的決定； 4. 為政府部門和投資者編制相關監管報告或其他報告。
“融資及租賃業務”	就融資及租賃業務而言，“核心創收活動”包括： 1. 批准融資條款； 2. 確定和取得租賃資產（如有租賃）； 3. 設定融資或租賃的條款及期限； 4. 監督和修訂協議； 5. 管理風險。
“總部業務”	就總部業務而言，“核心創收活動”包括： 1. 做出相關管理決策； 2. 代表附屬公司做出的支出； 3. 協調集團活動。
“航運業務”	就航運業務而言，“核心創收活動”包括： 1. 管理船員（包括僱傭、支付和監督船員）； 2. 拖運和檢修船舶； 3. 監督和跟蹤運輸過程； 4. 確定訂購何種貨物以及何時交付； 5. 組織和監督航運。
“知識產權業務”	就智慧財產權業務而言，“核心創收活動”包括： 1. 涉及專利、研發等智慧財產權資產的活動； 2. 涉及品牌、商標和客戶資料、行銷、品牌推廣和分銷等非貿易無形資產的活動。

注意：以上並非為詳盡列表。

10. 有什麼申報義務？

《法案》對實體規定了新的義務，即應提供由其註冊代理人提交的資訊，以便國際稅務局能夠監測經濟實質要求的遵守情況。

申報將通過實益擁有權安全搜索系統（BOSS 系統）作出。BOSS 系統是一個安全系統，目前用於保存英屬維爾京群島實體的實益擁有權資訊。

一旦《BOSS 法案》修正案生效，各實體需要明確《法案》要求的某些規定資訊，並將其提供給其註冊代理人，而註冊代理人須採取合理步驟收集此類資訊並通過 BOSS 系統進行提交。實體有義務告知其註冊代理人其是否正在進行相關活動，如果是，則需告知其是否在另一個司法管轄區為稅務居民。

若某一實體開展相關活動，但其並非為另一管轄區稅務居民，則該實體需向其註冊代理人申報詳細的規定資訊，以證明其符合適當的經濟實質要求。註冊代理人將通過 BOSS 系統提交資料。各實體必須就本申報期限內開展的所有相關活動作出申報，即使在整個申報期限內並沒有進行相關活動。

11. 有哪些強制執行措施和處罰措施？

在以下兩種情況下可採取強制性措施，並處以相應處罰：

1. 任何人（包括董事或合夥人）未能向國際稅務局提供資訊，或提供不準確或誤導性資訊（通過 BOSS 系統或其他方式）；
2. 實體未遵守經濟實質要求。

無合理理由而不提供資訊以及有意向國際稅務局提供虛假資訊屬於違法行為，將通過法院採取強制執法行動。

雖然不遵守經濟實質要求不構成刑事犯罪，但如果不履行，可能會導致金融制裁、收到須採取補救措施的命令以及實體被除名等。

12. 接下來的步驟是什麼？

所有具有公司身份的英屬維爾京群島公司和有限合夥企業必須確定：

- 實體是否正在進行相關活動。
- 如果是，該實體是否為另一個司法管轄區的稅務居民，以及該司法管轄區是否有被歐盟列入稅務“黑名單”。
- 如果受經濟實質要求的約束，需要採取哪些步驟來履行這些要求，以及需要採取哪些行動來履行由此產生的申報義務。

Newhaven 研發了一個低成本的線上互動工具，可幫助客戶對其英屬維爾京群島實體進行分類。

與此同時，如果您有任何問題，或需要任何協助來確定實體的適當分類，可隨時聯繫 Newhaven。

最後跟新：2019 年 9 月 24 日

免責聲明：

此處提供的資訊僅供一般參考與指導。資訊來源根據當前適用的法律，截至發表之日是真實無誤的。

此中文譯本僅供參考，文義如與英文有歧異，概以英文本為準。