

Economic Substance (Companies and Limited Partnerships) Act, 2018

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On January 1, 2019, the Economic Substance (Companies and Limited Partnership) Act, 2018, entered into force in the British Virgin Islands. The purpose of the approval of the law is the adaptation to the guidelines of the Organization for Economic Co-operation and Development (OECD) on economic substance of companies in jurisdictions with zero or low taxation.

In accordance with this law:

1. The obligation to annually report the "relevant activities" performed and to show that they have an adequate economic substance is imposed on **(i)** entities incorporated under the laws of the British Virgin Islands (BVI) (that are not taxpayers in a territory outside of BVI); and, **(ii)** foreign entities registered in BVI.
2. The activities that are defined as "relevant" are the following ones: **a)** banking business; **b)** insurance business; **c)** fund management business ; **d)** financing and leasing business; **e)** headquarters business ; **f)** shipping business ; **g)** holding business ; **h)** intellectual property business; and, **j)** distribution and service business. The law defines specific requirements for economic substance for each of these activities, and the competent authority has the power to issue additional guidelines.
3. The law defines as a pure equity holding entity. As a legal entity which has as its primary function the acquisition and holding of shares or equitable interests in other BVI or foreign companies. The law also establishes that a pure equity holding entity has adequate substance if it: **a)** complies with its statutory obligations under the BVI Business Companies Act, 2004, the Partnership Act 1996 or the Limited Partnership Act, 2017 (whichever is relevant); and, **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.
4. The breach of these obligations shall result in the application of penalties which may consist of: **(i)** notices where it is demanded to implement recommendations of the authority within a certain term; **(ii)** the imposition of fines of US \$ 20,000 (first breach) and US \$ 200,000 (second breach); and of US \$ 50,000 and US \$ 400,000, in the case of entities that carry out intellectual property activities; and, **(iii)** the possible cancellation of the entity in the BVI Companies Register. Failure to provide information or the provision of false information shall be punished with fines of US \$ 40,000 to US \$ 75,000 and imprisonment of 2 to 5 years.
5. BVI competent authorities are analyzing and will issue specific guidelines to comply with this new regulation.

Similar legislation entered into force in the Cayman Islands on January 1, 2019 and in the Commonwealth of The Bahamas on December 31, 2018,

For additional information, you may contact:

Rodolfo Alegría

rodolfo.alegria@carrillolaw.com

Mélida Pineda

melida.pineda@carrillolaw.com

Lorena de Marín

lorena.marin@carrillolaw.com