

# BVI ECONOMIC SUBSTANCE

For life, not just a year

**LBC**  
LITTLE BAY CONSULTING

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The BVI economic substance regime is now fully embedded and here to stay. For the vast majority of BVI companies and certain limited partnerships, another financial period for economic substance purposes ended on 29 June 2022. This LBC Quick Guide, sets out what BVI entities need to be doing in the coming months to meet their economic substance obligations.

## A RECAP: WHAT IS ECONOMIC SUBSTANCE?

The Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended) (the “**ES Act**”) imposes annual economic substance reporting and filing requirements on every BVI company and limited partnership.

The ES Act sets out nine relevant activities which, if a BVI entity is conducting one or more, may require it to demonstrate substance in the BVI. The relevant activities are holding business; intellectual property business; banking business; insurance business; fund management business; finance and leasing business; headquarters business; distribution and service centre business; and shipping business.

As such, each BVI entity is required, amongst other things, to (a) confirm if it carries on a relevant activity; (b) confirm its tax residency; and (c) make the appropriate filing with the ITA via its registered agent.

## FINANCIAL PERIODS

Unless a bespoke financial period has been approved by the ITA, financial periods for almost all BVI entities incorporated prior to 1 January 2019, will run from 30 June to 29 June (the “**Standard FS Period**”). The exception to this is in respect of legal partnerships with no legal personality (“**NPLPs**”) which were incorporated before 1

## KEY POINTS

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### FILING

Irrespective of whether a BVI entity carries on a relevant activity or not, it must make a filing with the ITA via the BOSS system each year.

### FINANCIAL PERIOD

Standard financial period for BVI entities (other than NPLPs) incorporated prior to 1 January 2019 runs from 30 June to 29 June. Financial periods can be changed to align with a more convenient year end.

January 2019, whose financial period will run for 12 months from the date they elected between 30 June 2021 and 1 January 2022 (or such other period as approved by the ITA).

For BVI entities incorporated on or after 1 January 2019 (or NPLPs incorporated on or after 1 July 2021), financial periods will run for 12 months from the date of incorporation, or such period as the BVI entity may request of the ITA via its registered agent (for example, to align the economic substance financial period with the BVI entity's accounting financial period).

For each financial period, a BVI entity must confirm what relevant activity or activities it carried on (if any). If a BVI entity carried on a relevant activity during a financial period, the BVI entity should confirm if it generated any income from that relevant activity. Finally, the tax residency of the BVI entity should be determined; if a BVI entity is tax resident in a jurisdiction which is not on the EU taxation blacklist, it is not required to demonstrate substance in the BVI, even if it is carrying on a relevant activity.

### **FILING TIMESCALES**

A BVI entity is required to complete its economic substance filing within six months from the end of a financial period. For BVI entities who have a Standard FS Period, they need to ensure they have completed their economic substance filing on or before 29 December 2021.

### **DEMONSTRATING SUBSTANCE**

Once a BVI entity has completed its economic substance review for a financial year and documented it appropriately, the registered agent of the BVI entity will make a filing on the BVI Beneficial Ownership Secure Search System (the "**BOSS System**") to confirm: (a) if the BVI entity is carrying on a relevant activity; and (b) where the BVI entity is tax resident. If a BVI entity is carrying on a relevant activity other than holding business, and is not tax resident outside of the BVI, then it needs to demonstrate that an appropriate amount of its core income generating activity for the relevant activity is done in the BVI (for example, by appointing a director, secretary and/or accountant resident in the BVI).

It is important to note that even if a BVI entity does not carry on a relevant activity, it is still required to make a filing with the ITA via the BOSS System.

### **FINES**

The ITA will issue penalty notices and will fine BVI entities for non-compliance with the ES Act. Fines range from \$5,000 to \$400,000 depending on the nature of the breach and relevant activity being carried on by the BVI entity.

### **REVIEWS AND ASSISTANCE IN DEMONSTRATING SUBSTANCE**

Should you need any assistance with completing an economic substance review and/or demonstrating substance in the BVI, via the appointment of BVI resident directors, company secretary and/or accountants, please do not hesitate to contact the LBC economic substance team: [sharon@littlebayconsulting.com](mailto:sharon@littlebayconsulting.com) (+1 284 340 6873) and [helen@littlebayconsulting.com](mailto:helen@littlebayconsulting.com) (+1 284 340 0104).

## **KEY POINTS**

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### **RELEVANT ACTIVITIES**

Nine relevant activities. A BVI entity can be carrying on more than one relevant activity.

### **TAX RESIDENCY**

Proof of tax residency in an EU taxation non-blacklisted jurisdiction will need to be provided by the BVI entity if claiming tax residency outside of the BVI.

### **FILING**

Filings on the BOSS System are made by the BVI entity's registered agent and must be made within six months from the end of a financial period to avoid fines being levied.

### **SUBSTANCE**

If a BVI entity is carrying on a relevant activity, then it may need to demonstrate substance in the BVI. LBC is able to provide substance solutions as required.