

## 提示简报

## British Virgin Islands - Economic Substance - Update

## 英属维尔京群岛 - 经济实质法 - 最新资讯

We refer to our [alert](#) from June 2019 for guidance on the requirements of the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the ES Act) and the definitions of Legal Entity, Relevant Activity and Financial Period.

On 10 October 2019 the British Virgin Islands International Tax Authority (the ITA) published the Rules on Economic Substance in the British Virgin Islands (the Rules). The Rules provided much welcomed clarification on the economic substance requirements, and are very similar to the draft guidelines published in August 2019.

We have prepared a compendium containing the updated ES Act, the Beneficial Ownership Secure Search System Act, and the Rules. It is available to you at the following link:

<https://www.conyers.com/news-insights/consolidated-acts/bvi-economic-substance-boss-acts/>

Commencing in 2020, all companies and limited partnerships with legal personality will need to make a filing to evidence satisfaction with economic substance requirements or to state that the entity is out of scope. The purpose of this alert is to provide preliminary details about the filings which will need to be made in 2020.

As well, it must be emphasised that all British Virgin Islands business companies and limited partnerships with legal personality which are Legal Entities carrying on a Relevant Activity are required to have established economic substance in the British Virgin Islands as of 30 June 2019.

### Timing for Filings

For entities incorporated or formed prior to 1 January 2019, the first filing period starts on 30 June 2020 with the deadline for filing being 30 December 2020. We anticipate sending a further notice to these entities in July 2020 to begin the filing process. For entities incorporated or formed on or after 1 January 2019, the filing period starts on the anniversary of the date of incorporation with the deadline for filing being six months later. As a result, we anticipate sending notices to such entities commencing in January

兹提述本所日期为 [2019年6月的提示简报](#)（内容有关 2018 年《经济实质（公司及有限合伙）法》（下称“《ES 法》”）规定之指引），及日期为 2019 年 6 月的提示简报（内容有关对“法律实体”、“相关活动”和“财务期间”的定义）。

英属维尔京群岛国际税务局（下称“ITA”）于 2019 年 10 月 10 日颁布了《英属维尔京群岛经济实质规则》（Rules on Economic Substance in the British Virgin Islands）（下称“《规则》”）。《规则》对经济实质规定的说明深受欢迎，内容与 2019 年 8 月发布的指引草案十分相似。

本所已准备了涵盖《ES 法》、《实益所有权安全搜索系统法》和《规则》最新资讯的概要。阁下可透过以下链接查阅：

<https://www.conyers.com/news-insights/consolidated-acts/bvi-economic-substance-boss-acts/>

自 2020 年起，所有具法人资格的公司和有限合伙均须进行备案，以证明其符合经济实质要求或声明其为不受规限的实体。本提示简报旨在提供有关需在 2020 年进行备案的初步详情。

亦须强调的是，所有属法律实体并从事相关活动的具法人资格的英属维尔京群岛商业公司和有限合伙必须自 2019 年 6 月 30 日起在英属维尔京群岛确立经济实质。

### 备案时间

对于在 2019 年 1 月 1 日之前成立或组成的实体，其首个备案期间为 2020 年 6 月 30 日至 2020 年 12 月 30 日。本所预期将于 2020 年 7 月向该等实体发出进一步通知，以启动备案程序。对于在 2019 年 1 月 1 日或之后成立或组成的实体，其备案期间为该实体之成立周年日起计六个月。因此，本所预期将于 2020 年 1 月起开始向该等实体发送通知。该等通知将载列备案的具体方式，而本提示简报则仅提供有关备案规定的说明。

2020. These notices will set out the exact filing process, but this alert provides an indication of the filing requirements.

## Anticipated Filing Requirements

**Out of Scope:** For those business companies and limited partnerships with legal personalities which did not carry on any Relevant Activity at any time during their Financial Period, then we anticipate the filing requirement being a simple “tick the box” indicating that the entity is out of scope.

However and importantly, the ITA has indicated that they will carry out spot audits and that entities which determine that they are out of scope should evidence their careful consideration of the issue during the filing period. For business companies, this would be a resolution of the directors setting out the business of the company and setting out the directors’ analysis as to why the company is out of scope. The general partner should similarly consider and evidence the analysis for a limited partnership with legal personality. To the extent the analysis is not self-evident, the ITA has also recommended that the entity obtain a legal opinion. The ITA has indicated that they will have more tolerance for an entity which has considered the issue and genuinely got it wrong, than for an entity which did not consider the issue. As such, it is highly recommended that this evidence of analysis be prepared and kept on file. We are happy to assist with legal advice or a legal opinion, if helpful, as well as documenting the determination made by the directors or general partner.

**Tax Resident Elsewhere:** Companies and limited partnerships with legal personality which are carrying on a Relevant Activity but which are tax resident in another jurisdiction (which is not on the EU blacklist) can claim in their annual filing that they are not a Legal Entity (as defined). The entity will then need to support this claim by filing:

- (a) a letter or certificate from, or issued by, the competent authority for the jurisdiction in question stating that the entity is considered to be resident for tax purposes in that jurisdiction, or
- (b) an assessment to tax on the entity, a confirmation of self-assessment to tax, a tax demand, evidence of payment of tax, or any other document, issued by the competent authority for the jurisdiction in question.

It will also be necessary to provide certain information on the parent of the entity, being name, company number and jurisdiction, if the entity has a parent and where “parent” refers to holding 75% or more of the shares or voting rights of the entity.

For those entities where one piece of evidence (such as an assessment) does not cover the entire Financial Period as

## 预期备案规定

**不受规限实体:** 对于在其财务期间的任何时候均未从事任何相关活动的具法人资格的商业公司和有限合伙而言, 本所预期备案规定仅为简单地“勾选选项框”, 表明其属于不受规限的实体。

不过, 重要的是, ITA 表示会进行现场审核, 且那些确定自己不受规限的实体须在备案期间证明其有审慎考虑过该问题。就商业公司而言, 其须提供董事决议, 其中载明公司的业务及董事对公司不受规限的原因分析。就具法人资格的有限合伙而言, 其普通合伙人同样须考虑该问题及证明其分析。若相关分析并非显而易见, 则 ITA 建议相关实体获取法律意见。ITA 表示, 相较于未考虑该问题的实体而言, 他们将对已考虑该问题但确实理解有误的实体给予更多的包容。因此, 强烈建议阁下准备分析证明并存档。如有需要, 本所乐意协助提供法律意见或出具法律意见书, 以及记录董事或普通合伙人的决定。

**其他地区税务居民:** 从事相关活动但属另一司法管辖区 (不在欧盟黑名单中) 税务居民的具法人资格的公司和有限合伙可在其年度备案中声明其并非法律实体 (见定义)。其后, 该实体将须提交以下证明来支持其声明:

- (a) 相关司法管辖区的主管当局发出或出具的信函或证明, 声明该实体被视为该司法管辖区的税务居民, 或
- (b) 相关司法管辖区的主管当局出具的对该实体的税收评估、自我评税确认书、缴纳税款通知书、缴税证明或任何其他相关文件。

该实体亦须提供其母公司的若干信息, 包括名称、公司编号和所属司法管辖区。此处的“母公司”指持有实体 75% 或以上股份或投票权的公司。

若实体提供一份证明 (例如一份评估结果) 无法涵盖《ES 法》所定义的整体财务期间, 则其须提供多于一份证明, 以

defined in the ES Act, then it will be necessary to provide more than one piece of evidence such that the evidence spans the entire Financial Period.

When an entity is unable to provide evidence as indicated above, for example because it has not as of yet received an assessment for tax, then it may apply to be treated provisionally as resident in the other jurisdiction pending the availability of the evidence. In this instance, it will be necessary to demonstrate amongst other requirements that the evidence while not currently available will be forthcoming and provide the reason why it is not available (such as the entity being recently formed or recently assuming tax residency).

**Holding Business:** For those companies and limited partnerships with legal personality which are in scope of the economic substance requirements because they are carrying on a passive holding business, and are not tax resident in another jurisdiction, we anticipate the filing requirements being as follows:

- the total number of employees engaged in the relevant activity
- the number of employees engaged in the relevant activity within the British Virgin Islands
- the address of any premises within the British Virgin Islands which is used in connection with the holding business and the address of each such premises

The Rules indicate that the services of the registered agent will be taken into account when assessing economic substance for entities carrying on passive holding business. We note that most of our clients have us acting as registered agent and secretary. While at this point in time we cannot be certain, assuming the company has no other officers or employees, we anticipate this will be sufficient for most entities carrying on only passive holding business. We also anticipate that the registered office address will be sufficient for these purposes.

**Other Relevant Activity:** For those companies and limited partnerships with legal personality which are in scope of economic substance requirements because they are carrying on a Relevant Activity, other than passive holding business, and not tax resident in another jurisdiction, then these entities are required to have already established economic substance in the British Virgin Islands as of 30 June 2019. These entities will need to provide the following information:

- the total turnover generated by the relevant activity
- the total amount of expenditure incurred on the relevant activity
- the amount of expenditure incurred on the relevant activity within the British Virgin Islands

使证明涵盖整个财务期间。

若某一实体无法提供上述证明（例如因其尚未收到税收评估而无法提供证明），则其可申请在待取得证明期间暂被视为另一司法管辖区的税务居民。这种情况下，除其他规定外，该实体亦须证明其即将取得当前尚未取得的证明，并说明当前尚未取得证明的原因（例如，该实体近期才成立或近期才承担税务居民的义务）。

**控股业务:** 对于因从事被动控股业务而须遵守经济实质规定（且非其他司法管辖区税务居民）的具法人资格的公司和有限合伙而言，本所预期要求备案的内容如下：

- 从事相关活动的雇员总数
- 在英属维尔京群岛内从事相关活动的雇员人数
- 英属维尔京群岛内任何用作控股业务之场所的地址

《规则》表明，在评估从事被动控股业务之实体的经济实质时，会考虑其注册代理的服务。本所留意到，本所所有客户均委任我们担任注册代理和秘书。尽管当前尚无法确定，但假定公司并无其他高级职员或雇员，则本所预期对于大多数仅从事被动控股业务的实体而言，本所担任注册代理和秘书应足以满足经济实质要求。本所亦预期注册办事处的地址亦足以满足相关的经济实质要求。

**其他相关活动:** 公司及具有法人资格的有限合伙如因从事相关活动（被动持股业务除外）而须符合经济实质要求，并且不属于另一司法管辖区的税务居民，则必须于 2019 年 6 月 30 日之前在英属维尔京群岛建立经济实质。该等实体将需提供下列资料：

- 相关活动产生的营业总额
- 相关活动的开支总额
- 英属维尔京群岛境内相关活动的开支款额

- the total number of employees engaged in the relevant activity
  - the number of employees engaged in the relevant activity within the British Virgin Islands
  - the address of any premises within the British Virgin Islands which is used in connection with the relevant activity and the address of each such premises
  - the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the company and whether they are resident in the British Virgin Islands
- 从事相关活动的雇员总数
  - 英属维尔京群岛境内从事相关活动的雇员人数
  - 英属维尔京群岛境内任何用作相关活动之场所的地址
  - 负责指导和管理相关活动的人员姓名、其与公司的关系和是否为英属维尔京群岛居民

There is no requirement to file any documentation to evidence the responses, but the entity should be prepared to provide evidence if the ITA requests it following their review of the filing. It should also be noted that the responses should evidence that the Relevant Activity is in fact being carried on in the British Virgin Islands, for example by having an adequate number of employees in the British Virgin Islands.

For those entities carrying on intellectual property business, there are additional filing requirements. Please contact us for further information.

## Conclusion

As indicated above, this bulletin is merely a preliminary indication as to your future filing requirements. Shortly after the end of each Conyers Corporate Services client's Financial Period we will be sending out notices to start the filing process formally.

In the interim, if you have any questions, please contact one of our lawyers listed below or your usual Conyers lawyer or manager. We recommend that all clients seek legal advice on how the economic substance requirements affect them. **To the extent your entity is a Legal Entity carrying on a Relevant Activity, other than passive holding business, and has not otherwise established economic substance in the British Virgin Islands, we recommend that you urgently contact your usual Conyers contact for legal advice. If you are our Asian client, please feel free to contact us via [substanceinfohk@conyers.com](mailto:substanceinfohk@conyers.com).**

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

实体毋须提交任何文件来证明已作出回应，但如果 ITA 审查备案后要求提供证据，实体应作好相关准备。另须注意，回应应该证明相关活动确实于英属维尔京群岛开展（例如在英属维尔京群岛有足够的雇员）。

对于从事知识产权业务的实体，另有其他备案要求。请联系我们获取更多信息。

## 结论

如上所述，此公告只是初步说明阁下日后所需符合的备案要求。我们会在每位康德明企业服务客户的相关财务期间末分别发送通知，详列备案方式。

在此期间，如有任何疑问，敬请联系下文所列的律师，或阁下日常联络的康德明律师或经理。我们建议，所有客户均应就经济实质要求的影响寻求法律意见。**如果阁下的实体是从事相关活动（被动持股业务除外）的法律实体，并且没有以其他方式在英属维尔京群岛建立经济实质，我们建议应尽快联系阁下的康德明律师，以寻求法律意见。我们的亚洲客户也可以发送电子邮件至 [substanceinfohk@conyers.com](mailto:substanceinfohk@conyers.com)，与我们联系。**

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

### Authors:

**Robert J.D. Briant**  
Partner, Head of BVI Corporate  
robert.briant@conyers.com  
+1 284 852 1100

**Anton Goldstein**  
Partner  
anton.goldstein@conyers.com  
+1 284 852 1119

### Global Contacts:

**Adam Holdt**  
Corporate Manager  
adam.holdt@conyers.com  
+1 284 852 1142

**Andrew Swapp**  
Corporate Manager  
andrew.swapp@conyers.com  
+1 284 852 1141

**Mimen Lo**  
Head of Corporate Services Hong Kong  
mimen.lo@conyers.com  
+852 2842 9515

### 作者:

**Robert J.D. Briant**  
合伙人、英属维尔京群岛企业部主管  
robert.briant@conyers.com  
+1 284 852 1100

**Anton Goldstein**  
合伙人  
anton.goldstein@conyers.com  
+1 284 852 1119

### 主要联络人:

**Adam Holdt**  
企业事务经理  
adam.holdt@conyers.com  
+1 284 852 1142

**Andrew Swapp**  
企业事务经理  
andrew.swapp@conyers.com  
+1 284 852 1141

**Mimen Lo 卢宝莹**  
香港企业服务主管  
mimen.lo@conyers.com  
+852 2842 9515

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### For further information, please contact:

**Conyers Dill & Pearman**  
29th Floor  
One Exchange Square  
8 Connaught Place  
Central  
Hong Kong  
T: +852 2524 7106  
F: +852 2845 9268  
Email: [hongkong@conyers.com](mailto:hongkong@conyers.com)  
Web: [www.conyers.com](http://www.conyers.com)

### 若需要更多资讯, 请联络:

康德明律师事务所  
香港中区康乐广场8号  
交易广场第一座29楼  
电话: +852 2524 7106  
传真: +852 2845 9268  
电邮: [hongkong@conyers.com](mailto:hongkong@conyers.com)  
网址: [www.conyers.com](http://www.conyers.com)