

提示简报

Complying with Economic Substance Requirements in the Face of the COVID-19 Pandemic

在百慕大或从百慕大境内管理或促销外国投资基金须符合新的注册规定

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In the face of travel restrictions and lock-downs imposed globally to contain the spread of COVID-19, many entities will be concerned about their ability to comply fully with legislated economic substance requirements in their jurisdictions, for example where entities address economic substance requirements by holding a certain number of board meetings with a quorum and majority of those voting physically present in the jurisdiction.

The regulatory authorities in Bermuda, the Cayman Islands and the British Virgin Islands have issued guidance notices on this matter, acknowledging the current extraordinary circumstances and outlining circumstances that will be taken into account when assessing compliance with economic substance requirements.

Bermuda

The Bermuda Registrar of Companies (RoC) has recognised that some of the usual factors they would look to for economic substance – including board meetings and/or having other persons in Bermuda who are suitably qualified for oversight or execution of the entity's activities – may be difficult to satisfy in the current period. In response, in a notice issued on 20 March 2020, the RoC confirmed that they will take all appropriate circumstances into account in assessing compliance with the Economic Substance Act 2018, in line with the principles set out in the Bermuda economic substance guidance notes and assuming entities act on a good faith basis. As such, where meetings or other similar compliance measures are not possible due to necessary travel or quarantine restrictions, this may be taken into account by the RoC in assessing an entity's compliance with the legislated

面对为遏制 COVID-19 的传播而在全世界实施的旅行限制和封锁，许多实体会担心无法完全遵守所在辖区立法规定的经济实质要求，例如，为了符合经济实质要求，实体须召开达到法定人数的若干次董事会会议且大多数人亲身在该辖区表决。

百慕大、开曼群岛和英属维尔京群岛的监管机构已就此事项发布了指导性通知，承认目前的特殊情况，并概括了在评估实体是否符合经济实质要求时将会顾及的情况。

百慕大

百慕大公司注册处 (RoC) 认识到，在当前时期，他们寻求的经济实质的一些常见要素可能难以实现，包括董事会会议和/或在百慕大有适当资格监督或执行实体活动的其他人员。作为应对措施，RoC 在 2020 年 3 月 20 日发布的通知中确认，他们将根据百慕大经济实质指导说明中规定的原则并假定实体在诚信的基础上行事，在评估对《2018 年经济实质法》的遵守情况时会顾及所有适当情况。因此，如果是因为必要的旅行或隔离限制而造成会议无法召开或其他类似的合规措施无法实施，则 RoC 在评估实体对立法规定的经济实质要求的合规性时可考虑到这一点。实体应仔细记录所有受影响的会议、此类限制的详细信息和采取的步骤。

economic substance requirements. Entities should keep a careful record of all meetings affected, the details of such restrictions and steps taken.

British Virgin Islands

For legal entities which are within scope of the BVI economic substance regime and which are required to hold board meetings within the BVI, the BVI International Tax Authority (ITA) has provided the following guidance in light of the COVID-19 pandemic:

- where possible, recourse should be had to the appointment of alternate directors in the BVI in order to meet substance requirements
- all directors do not have to attend Board meetings in the BVI - only as many as required to make the meeting quorate (given social distancing protocols, virtual meetings may be preferred)
- not all Board meetings need to be held in the BVI - only those related to core income generating activities
- where it is still not possible to have a Board meeting in the BVI or to meet some other substance requirement due to restrictions (whether in the BVI or otherwise) due to the COVID-19 outbreak, then entities are urged to retain documentation to be able to support such claims for the applicable periods of time affected
- individual requests should be made to the ITA for any extension of time within which to comply with Notices, along with any supporting evidence

It should be noted that the above guidance is temporary and entities are urged to make every effort to otherwise comply with full substance requirements (including filing deadlines) as the practical and reasonable approach described above only applies where entities need to make adjustments to their usual operating practices and so far as these are necessary to manage threats from the COVID-19 outbreak.

Cayman Islands

On 21 March 2020, the Cayman Islands Ministry of Financial Services issued an industry advisory in which it noted that where board of director meetings are required to be held virtually due to the measures put in place to combat COVID-19, the Cayman Department for International Tax Cooperation (DITC) will take this into consideration when determining whether an entity has passed or failed the economic substance test in its reporting due in 2021. However, it is noted that the requirement to be directed and managed in Cayman is only one element of the economic substance test and that an entity that is within scope is also required to conduct core income generating activities in relation to its relevant activity.

英属维尔京群岛

针对在英属维尔京群岛经济实质制度范围内并需要在英属维尔京群岛举行董事会会议的法人实体，英属维尔京群岛国际税务局（ITA）已根据 COVID-19 大流行的情况提供了以下指导：

- 在可能的情况下，应诉诸任命英属维尔京群岛的候补董事，以达到实质要求
- 不是所有董事都必须参加英属维尔京群岛的董事会会议，只需达到会议需要的法定人数即可（考虑到社交距离规则，虚拟会议可能更可取）
- 并非所有董事会会议都需要在英属维尔京群岛举行，只有那些与核心创收活动有关的会议在这里举行
- 如果由于 COVID-19 疫情导致的限制（无论是在英属维尔京群岛还是其他地方）造成仍无法在英属维尔京群岛举行董事会会议或无法满足其他实质要求，则实体被敦促保留文件，以便能够为在适用的受影响期间发生的此类情况提供证明
- 对于需要延长时间来遵守“通知”的情况，应向 ITA 提出单独申请并提供所有证据

应当指出，上述指导是临时性的，实体需尽一切努力遵守所有实质要求（包括申报截止日期），因为上述实用且合理的方法仅适用于实体需要对其日常经营进行调整并且只要这些措施对管理 COVID-19 疫情威胁是必需的情况下。

开曼群岛

2020年3月21日，开曼群岛金融服务部发布了一份行业咨询报告，其中指出，如果因为抗击 COVID-19 而采取的措施致使董事会会议需要以虚拟的方式举行，开曼国际税务合作部在判断实体在 2021 年到期的报告是否通过经济实质检验时将考虑到这一点。但是，需要指出的是，在开曼群岛进行指挥和管理的要求只是经济实质检验的一个要素，在范围内的实体还需要开展与其相关活动有关的核心创收活动。

The deadline for entities required to make an economic substance notification for the past financial year has been extended to 30 June.

Corporate Governance

All entities are advised to ensure that their governance arrangements enable them to function despite physical 'social distancing' restrictions. Constitutional documents should be reviewed to ensure that meetings can be held by telephone or video conferencing, rather than requiring physical meetings to take place. If not, consider legal advice on amending bye-laws to include these provisions.

When submitting economic substance filings for the period of the COVID-19 disruption, companies may be asked to provide evidence as to how their operating practices have been affected. Detailed records should be kept of all circumstances that may have impacted compliance, including travel restrictions imposed on company officers, the dates of such restrictions and the reasons for them (e.g. government prohibitions).

Resident Directors

If a company is in scope of economic substance requirements and is looking to add substance through board meetings in its jurisdiction, consideration should be given to appointing one or more resident directors. In today's business environment, where excellence in corporate governance is increasingly important to meet the expectations of both regulators and the business community at large, appointing an experienced local lawyer as a professional independent director on your board can add value from a corporate governance as well as an economic substance perspective. Conyers provides independent professional directors for a commercially competitive fee.

We are here to help

Please reach out to your usual Conyers contacts if you have questions relating to compliance with economic substance requirements, or any other matter. We will do our best to keep you up to speed with developments as the COVID-19 situation evolves. Please visit the dedicated page on our website for useful information and articles: <https://www.conyers.com/news-insights/covid-19/>

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. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

要求实体就上一财政年度发出经济实质通知的截止日期已延长至 6 月 30 日。

公司治理

对所有实体的建议是，虽然存在人际间的“社交距离”限制，但要确保其治理安排仍能使其正常运作。实体应审查其章程文件，确保可以通过电话或视频召开会议，而不是要求举行亲身出席的会议。不然的话，请考虑就修订章程寻求法律建议，以包括这些条款。

在提交 COVID-19 中断期间的经济实质申报时，公司可能会被要求提供证据，证明其经营活动是如何受到影响的。实体应保留所有可能影响合规性的情形的详细记录，包括对公司高管施加的旅行限制，此种限制的日期及其原因（例如政府禁止）。

常驻董事

如果一家公司在经济实质要求的范围内，并希望通过董事会会议在其辖区内增加实质内容，则应考虑任命一名或多名常驻董事。在当今的商业环境中，卓越的公司治理对于满足监管机构和整个业界的期望变得越来越重要，任命一位经验丰富的本地律师作为董事会的专业独立董事，从公司治理和经济实质的角度看均可增加价值。康德明律师事务所提供独立的专业董事，费用极具商业竞争力。

我们在此竭诚为您服务

如果您对遵守经济实质要求或任何其他事情有什么疑问，请与康德明律师事务所中您惯常联络的律师联系。随着 COVID-19 情况的变化，我们会尽最大努力使您跟上事态的发展。请访问我们网站的专页获取有用的信息和文章：<https://www.conyers.com/news-insights/covid-19/>

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