

## Economic Substance

### Summary: Relevant Activities and CIGA in the BVI



The Economic Substance (Companies and Limited Partnerships) Act (Revised) (the **ES Act**) specifies nine categories of Relevant Activity whose definitions are described in the supplementary Rules on Economic Substance in the Virgin Islands (the **Rules**) issued by the International Tax Authority (**ITA**) which includes examples of British Virgin Islands (**BVI**) core income generating activities (**CIGA**) that a Relevant Entity must conduct as part of the Economic Substance Test (ES Test).

The table below lists out the provided definitions of each Relevant Activity and corresponding CIGA. It should be noted that these are not exhaustive lists and there is no requirement for a Relevant Entity to conduct all BVI CIGA for the Relevant Activity if it does not do so as part of its business. It should also be noted that a Relevant Entity may conduct one, more, or none of the Relevant Activities below.

Relevant Activity	Definition	BVI CIGA
<b>holding business</b>	<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>Equity participation includes shares in a company and encompasses other forms of investment in an entity which give the investor the right to participate in the profits of the entity. The interest of a general partner in a limited partnership will usually be of this quality.</p> <p>Entities which hold assets which are not equity participations are not considered to be carrying on holding business. Thus 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, but may be found to be carrying on other relevant activities.</p>	<p>There are no specified CIGA relating to holding businesses in the BVI.</p> <p>The ES Act provides that a pure equity holding entity meets the economic substance requirement if:</p> <p>(a) it complies with its statutory obligations under the BVI <a href="#">Business Companies Act (Revised)</a>, or the <a href="#">Limited Partnerships Act (Revised)</a> (whichever is relevant); and</p> <p>(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.</p>
<b>banking business</b>	<p><i>has the meaning specified in the <a href="#">Banks and Trust Companies Act (Revised)</a>, 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,</i></p> <p>(a) in making or giving loans, advances, overdrafts, guarantees or similar facilities, or</p> <p>(b) the making of investments,</p>	<p>(i) raising funds, managing risk including credit, currency and interest risk</p> <p>(ii) taking hedging positions</p> <p>(iii) providing loans, credit or other financial services to customers</p> <p>(iv) managing regulatory capital</p> <p>(v) preparing regulatory reports and returns</p>

	for the account and at the risk of the person accepting such deposits.	
<b>distribution and service centre business</b>	<p><i>means the business of either or both of the following</i></p> <p><i>(a) purchasing from foreign affiliates</i></p> <p><i>(i) component parts or materials for goods</i></p> <p><i>(ii) goods ready for sale</i></p> <p><i>(iii) reselling such component parts, materials or goods</i></p> <p><i>(b) providing services to foreign affiliates in connection with the business,</i> <i>- but does not include any activity included in any other relevant activity except "holding business".</i></p> <p>For an entity to carry on distribution and service centre business it must have a business which consists of purchasing assets from other entities in the same group, and/or a business providing services to entities in the same group. The affiliates in question must be "foreign" – that is to say an affiliate which is an entity which is not a legal entity for the purposes of the legislation.</p>	<p>(i) transporting and storing goods</p> <p>(ii) managing stocks</p> <p>(iii) taking orders</p> <p>(iv) providing consulting or other administrative services</p> <p>It should be noted that the following <b>do not</b> constitute distribution and service centre business:</p> <p>(a) the business of purchasing and reselling assets from, or providing services to, entities in the same group both of which are located in the BVI</p> <p>(b) the business of purchasing and reselling assets from, or providing services to, entities which are not part of the same group as the entity carrying on the business, even if located outside the BVI, or</p> <p>(c) occasional transactions within the description which do not form part of a business, but are undertaken ancillary to a different business.</p>
<b>financing and leasing business</b>	<p><i>means the business of providing credit facilities of any kind for consideration, whereby</i></p> <p><i>(a) consideration may include consideration by way of interest</i></p> <p><i>(b) 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></p> <p><i>(i) the supply of goods by hire purchase</i></p> <p><i>(ii) leasing other than any lease granting an exclusive right to occupy land</i></p> <p><i>(iii) conditional sale or credit sale</i></p>	<p>(i) agreeing funding terms</p> <p>(ii) identifying and acquiring assets to be leased (in the case of leasing)</p> <p>(iii) setting the terms and duration of any financing or leasing</p> <p>(iv) monitoring and revising any agreements</p> <p>(v) managing any risks</p>

	<p>An entity which provides credit as an incidental part of a different sort of business will not thereby be treated as carrying on a finance and leasing business.</p> <p>Entities which hold debt or debt instruments for the purpose of investment will not be regarded as being in the business of providing credit facilities.</p> <p>The essence of the activity, as the definition makes clear, is the provision of credit facilities. The mere fact that an entity leases items does not mean it is carrying on a finance and leasing business.</p>	<p>Any activity falling within the scope of “banking business”, “fund management business” or “insurance business” is excluded from this definition.</p>
<b>fund management business</b>	<p><i>means the conduct of an activity that requires the legal entity to hold an investment business licence pursuant to section 4 and category 3 of Schedule 3 of the <a href="#">Securities and Investment Business Act (Revised)</a>, which includes the following sub-categories:</i></p> <p><b>Investment Management</b></p> <p><i>Sub-category A: Managing Segregated Portfolios (Excluding Mutual Funds);</i></p> <p><i>Sub-category B: Managing Mutual Funds;</i></p> <p><i>Sub-category C: Managing Pension Schemes;</i></p> <p><i>Sub-category D: Managing Insurance Products; and</i></p> <p><i>Sub-category E: Managing Other Types of Investment</i></p>	<p>(i) taking decisions on the holding and selling of investments</p> <p>(ii) calculating risks and reserves</p> <p>(iii) taking decisions on currency or interest fluctuations and hedging positions</p> <p>(iv) preparing relevant regulatory or other reports for government authorities and investors</p>
<b>headquarters business</b>	<p><i>means the business of providing any of the following services to an entity in the same group:</i></p> <p><i>(a) the provision of senior management</i></p> <p><i>(b) the assumption or control of material risk for activities carried out by any of those entities in the same group</i></p> <p><i>(c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b)</i></p>	<p>(i) taking relevant management decisions</p> <p>(ii) incurring expenditures on behalf of affiliates</p> <p>(iii) co-ordinating group activities</p>

	but does not include “banking business”, “finance and leasing business”, “fund management business”, “intellectual property business”, “holding business” or “insurance business”.	
<b>insurance business</b>	<i>has the meaning specified in the <a href="#">Insurance Act (Revised)</a>, 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.</i>	<ul style="list-style-type: none"> <li>(i) predicting and calculating risk</li> <li>(ii) insuring or re-insuring against risk</li> <li>(iii) providing insurance business services to clients</li> </ul>
<b>intellectual property business</b>	<p><i>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).</i></p> <p><i>“income” in respect of an intellectual property asset includes:</i></p> <ul style="list-style-type: none"> <li><i>(a) royalties</i></li> <li><i>(b) capital gains and other income from the sale of an intellectual property asset</i></li> <li><i>(c) income from a franchise agreement</i></li> <li><i>(d) income from licensing the intangible asset.</i></li> </ul> <p>The definition does not therefore apply to a business which owns intellectual property merely as an adjunct to its business and not earning specific amounts of revenue, but simply contributing to (or protecting) the general profitability of the business.</p>	<ul style="list-style-type: none"> <li>(i) where the business concerns intellectual property assets such as patents, research and development</li> <li>(ii) where the business concerns non-trade intangible assets such as brand, trademark and customer data, marketing, branding and distribution</li> </ul>

<p><b>shipping business</b></p>	<p><i>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 <a href="#">Merchant Shipping Act (Revised)</a>)</i></p> <p><i>(a) the business of transporting, by sea, persons, animals, goods or mail;</i></p> <p><i>(b) the renting or chartering of ships for the purpose described in paragraph (a);</i></p> <p><i>(c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;</i></p> <p><i>(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;</i></p> <p><i>(e) the management of the crew of a ship.</i></p> <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 (Revised).</p>	<p>(i) managing the crew (including hiring, paying and overseeing crewmembers)</p> <p>(ii) hauling and maintaining ships</p> <p>(iii) overseeing and tracking deliveries</p> <p>(iv) determining what goods to order and when to deliver them</p> <p>(v) organising and overseeing voyages</p>
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**Disclaimer**

This memo has been prepared for clients of Marbury to be read in conjunction with our updates on [Economic Substance Requirements in the British Virgin Islands](#). The information contained is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations. The information contained is believed to be correct as at 21 April 2021. It does not take account of any changes in law or practice after that date. The referenced Rules on Economic Substance in the Virgin Islands can be view [here](#).

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