

# BVI Draft Economic Substance Code

May 2019

The BVI International Tax Authority (ITA) has released a draft version of the Economic Substance Code (the “Code”), which is intended to assist entities and registered agents in complying with their obligations under the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the “ESA”). Although the Code is currently in draft (and therefore may be amended before it is finalised), it provides useful guidance regarding the ITA’s intended approach to implementation and monitoring compliance with the ESA and its interpretation.

## Key Clarifications in the Code

The Code clarifies and explains the following key points.

## Exempted Entities

The following companies and limited partnerships (“legal entities”) are exempt from the economic substance requirements under the ESA:

- limited partnerships that do not have legal personality;
- legal entities which are not carrying on one of the nine relevant activities; and
- legal entities which can demonstrate that they are tax resident in another jurisdiction.

Note however, that all legal entities must comply with the self-assessment reporting requirements required under the Beneficial Ownership Secure Search System Act, 2017 (the “BOSS Act”). These requirements are outlined later in this update.

## Proof of Foreign Tax Residency

The ITA will accept the following documents as evidence of tax residency in a foreign jurisdiction:

- a letter or certificate issued by the competent authority for the foreign jurisdiction stating that the legal entity is considered to be resident there for tax purposes;
- an assessment of tax on the legal entity;
- a legal entity’s confirmation of self-assessment tax return;
- a tax demand;
- evidence of payment of tax; or
- any other document issued by the competent authority for the foreign jurisdiction.

A legal entity may apply to be treated as provisionally tax resident in a foreign jurisdiction pending submission of the required evidence. This facility may be particularly useful for legal entities which are unable to obtain the required evidence for their financial period by the stipulated deadline for submitting their return.

The Code also details options for those legal entities which claim tax residency in zero or nominal tax jurisdictions.

## Direction and Management in the BVI

The Code clarifies that, generally, the relevant activity (not the legal entity itself) must be directed and managed in the BVI. However, if the legal entity’s only business is carrying on one or more relevant activities, then the legal entity itself must be directed and managed from the BVI.

For a legal entity to be directed and managed from the BVI, it must conduct an adequate number of Board meetings in the BVI (i.e., the quorum of directors must be physically present in the Territory for the board meeting) and the Board should have adequate expertise to direct the relevant activity. The management decisions of the Board taken in relation to the relevant activity should be minuted and copies of the minutes must be maintained in the BVI.

#### “Adequate” and “Appropriate”

The Code does not offer a definition of the terms “adequate” or “appropriate”, but it explains that those words must be given their ordinary English meaning. An adequate number of employees and appropriate premises in the BVI will vary according to the size of the business and its core income generating activities (CIGA). The Code makes it clear that if a legal entity is genuinely (and successfully) carrying on CIGA in the BVI with the expenditure, staff and premises it currently has, there is no requirement to engage more employees or utilize more premises in order to be ESA compliant.

#### Pure Equity Holding Entities

A pure equity holding entity is defined as a legal entity which only holds equity participations and only earns dividends and capital gains. The definition is to be narrowly construed. If a legal entity that holds equity participations (e.g., shares in another legal entity) also owns any other form of asset, the legal entity will be out of scope of the ESA. In addition, legal entities which hold assets that are not equity participations (e.g., real estate, bank accounts) are not pure equity holding entities. If such entities do not carry on any other relevant activity, they will not be subject to economic substance requirements.

#### Self-Reporting Regime

The ESA introduces a self-reporting regime, which will require each legal entity to report certain additional information related to its jurisdiction of tax residency and, if engaged in one or more relevant activity, its expenditure, employees and premises in the BVI. This is in addition to the beneficial ownership information which legal entities were previously required to provide under the BOSS Act.

#### Financial Period

- The financial period for a company or limited partnership incorporated or formed on or after 1 January 2019 (“new legal entity”) begins on the date of its incorporation or formation and ends 12 months thereafter, unless it elects for a shorter initial financial period. For new legal entities the economic substance requirements will only apply for that part of the financial period during which the relevant activity is being conducted.
- The financial period for a company or limited partnership incorporated or formed prior to 1 January 2019 (“existing legal entity”) will commence on a date on or after 30 June 2019, except where the entity notifies the ITA that its financial period commences on an earlier date. Whatever the date of commencement, an existing legal entity must comply with the economic substance requirements as from that date.

#### Reporting Timelines

All legal entities must complete and submit their economic substance report within six (6) months of the end of their financial period (or 18 months from the start of its financial period). Thus, the latest dates by which a return can be submitted are:

- 29 December 2020 for existing legal entities (eighteen (18) months from 30 June 2019)
- Between 30 June 2020 and 30 June 2021, depending on the date of incorporation of the new entity (entities incorporated/formed on 1 January 2019 will have until 30 June 2020 to file and entities incorporated on 31 December 2019 will have until 30 June 2021 to file)

The full text of the Economic Substance Code can be accessed [here](#).

Our previous memo on the Economic Substance (Companies and Limited Partnerships) Act, 2018 can be accessed [here](#).

For more information, please contact your usual Trident BVI representative.

# Offices

## The Americas/Caribbean

### Bahamas

Trident Corporate Services  
(Bahamas) Ltd  
T: +1 242 322 6154  
bahamas@tridenttrust.com

### Barbados

Trident Corporate Services  
(Barbados) Ltd  
T: +1 246 621 0760  
barbados@tridenttrust.com

### British Virgin Islands

Trident Trust Company (BVI) Ltd  
T: +1 284 494 2434  
bvi@tridenttrust.com

### Canada

TT Services (Canada) Ltd  
T: +1 604 687 0811  
vancouver@tridenttrust.com

### Cayman Islands

Trident Trust Company  
(Cayman) Ltd  
T: +1 345 949 0880  
cayman@tridenttrust.com

### Nevis

Morning Star Holdings Ltd  
T: +1 869 469 1817  
nevis@tridenttrust.com

### Meridian Trust Company Ltd

T: +1 869 469 1333  
nevis@tridenttrust.com

### Panama

Trident Trust (Panama) S.A.  
T: +507 302 7494  
panama@tridenttrust.com

### United States

**Atlanta**  
Trident Corporate Services, Inc  
T: +1 404 233 5275  
usa@tridenttrust.com

### Trident Fund Services, Inc

T: +1 404 364 2019  
americasfunds@tridenttrust.com

### Miami

Integritas, Inc  
T: +1 305 405 9006  
contact@integritastrust.com

### New York

Trident Corporate Services, Inc  
T: +1 212 840 8280  
nyc@tridenttrust.com

### Sioux Falls

Trident Trust Company  
(South Dakota) Inc  
T: +1 605 679 4355  
sd@tridenttrust.com

### US Virgin Islands

Trident Trust Company (VI) Ltd  
T: +1 340 774 7322  
usvi@tridenttrust.com

## Asia

### Hong Kong

Trident Corporate Services (Asia) Ltd  
& Trident Trust Company (HK) Ltd  
T: +852 2805 2000  
hongkong@tridenttrust.com

### New Zealand

Trident Trust Company (NZ) Ltd  
T: +64 9 300 6067  
nz@tridenttrust.com

### Singapore

Trident Corporate Services  
(Singapore) Pte Ltd &  
Trident Trust Company  
(Singapore) Pte Ltd  
T: +65 6653 1800  
singapore@tridenttrust.com

## EMEA

### Cyprus

Trident Trust Company (Cyprus) Ltd  
T: +357 258 20 650  
cyprus@tridenttrust.com

### Trident Fiduciaries (Middle East) Ltd

T: +357 253 53 520  
fiduciariesme@tridenttrust.com

### Dubai

Trident Trust Company (UAE) Ltd  
DMCC Branch  
T: +971 4 423 9988  
dubai@tridenttrust.com

### Trident Fund Services (DIFC) Ltd

T: +971 4 277 1191  
dubai@tridenttrust.com

### Guernsey

Trident Trust Company  
(Guernsey) Ltd  
T: +44 1481 727571  
guernsey@tridenttrust.com

### Isle of Man

Trident Trust Company (IOM) Ltd  
T: +44 1624 646700  
iom@tridenttrust.com

### Jersey

Trident Trust Company Ltd  
T: +44 1534 733401  
jersey@tridenttrust.com

### Luxembourg

Trident Trust Company  
(Luxembourg) S.A.  
T: +352 26 30 28 48  
luxembourg@tridenttrust.com

### Malta

Trident Corporate Services  
(Malta) Limited &  
Trident Trust Company (Malta) Ltd  
T: +356 21 434 525  
malta@tridenttrust.com

### Mauritius

Trident Trust Company  
(Mauritius) Ltd  
T: +230 210 9770  
mauritius@tridenttrust.com

### Seychelles

Trident Trust Company  
(Seychelles) Ltd  
T: +248 4 422 000  
seychelles@tridenttrust.com

### Switzerland

Trident Corporate Services AG  
T: +41 44 396 1080  
switzerland@tridenttrust.com

### United Kingdom

Trident Trust Company (UK) Ltd  
T: +44 20 7935 1503  
uk@tridenttrust.com

### Trident Company

Services (UK) Ltd  
T: +44 20 7487 0460  
corpservices@tridenttrust.com