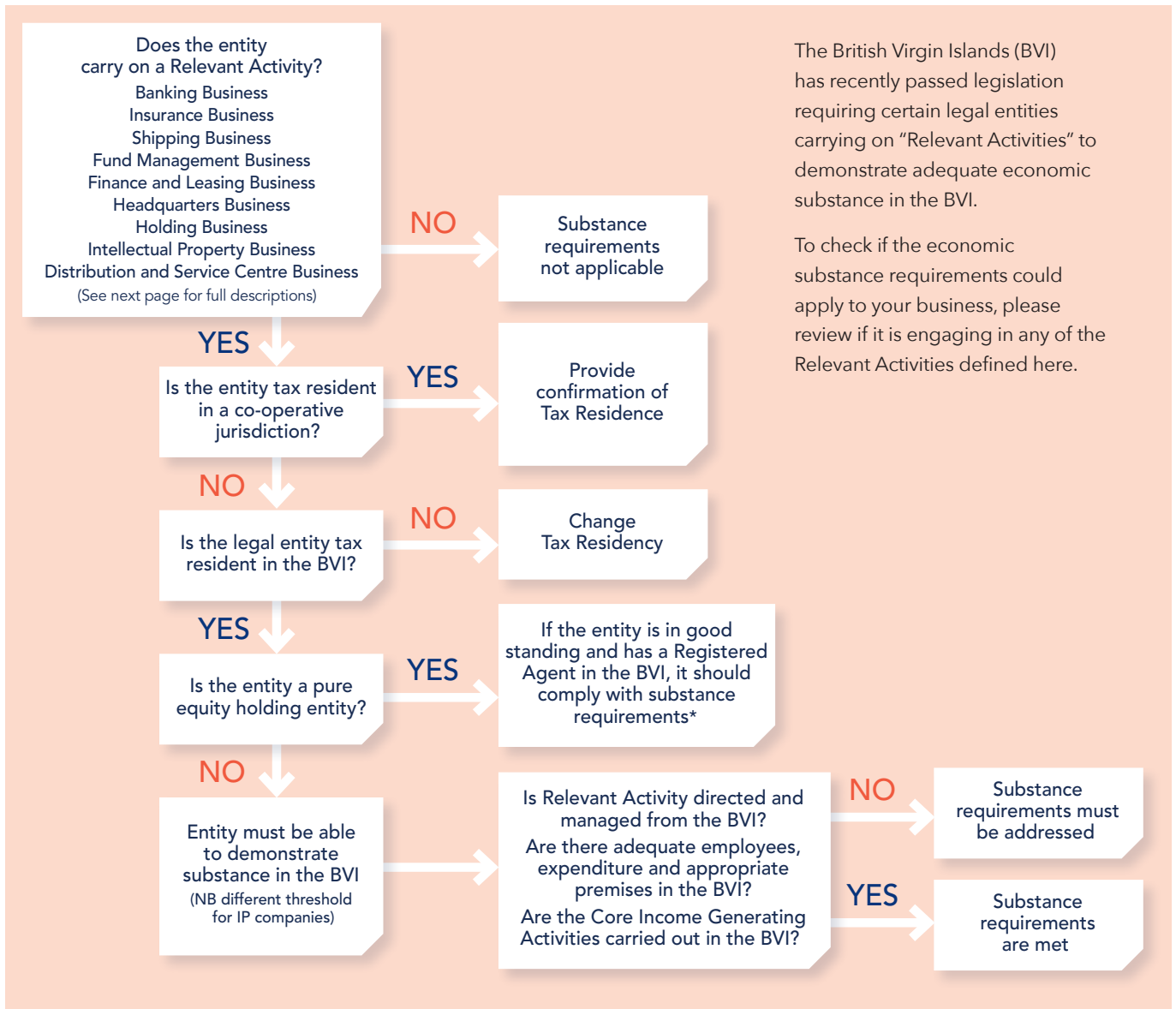




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## BVI Substance Requirements

### Relevant Activities



The British Virgin Islands (BVI) has recently passed legislation requiring certain legal entities carrying on "Relevant Activities" to demonstrate adequate economic substance in the BVI.

To check if the economic substance requirements could apply to your business, please review if it is engaging in any of the Relevant Activities defined here.

**Banking Business** - an entity engages in "Banking Business" where it is in the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or similar account, money that is repayable by cheque or order and is capable of being invested by way of advances to customers or otherwise (as per section 2(1) of the Banks and Trust Companies Act, 1990).

The receipt of savings, deposits or similar account money, which is paid by one company to another at a time when: (a) one is the subsidiary of the other; or (b) both are subsidiaries of another company is not caught by the definition of "Banking Business".

**Insurance Business** - an entity engages in "Insurance Business" where it is in 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 (as per section 4(1)(a) of the Insurance Act, 2008).

**Shipping Business** - any of the following activities involving the operation of a ship<sup>†</sup> anywhere in the world other than solely within the BVI:

- the business of transporting, by sea, persons, animals, goods or mail
- the renting or chartering of ships for the purpose of the previous point
- the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship
- 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
- the management of the crew of a ship

**Fund Management Business** - an entity engages in "Fund Management Business" where it conducts an activity that requires it to hold a Category 3 Investment Business License under the Securities and Investment Business Act, 2010 ("SIBA").

Category 3 Investment Business Licenses are divided into the following sub-categories:

- Sub-Category A Licence, for Managing Segregated Portfolios (Excluding Mutual Funds)
- Sub-Category B Licence, for Managing Mutual Funds
- Sub-Category C Licence, for Managing Pension Schemes
- Sub-Category D Licence, for Managing Insurance Products; and
- Sub-Category E Licence, for Managing other Types of Investment

The management of funds is separate and distinct from the business of being a custodian of investments. To provide management of funds services, an entity would need to hold Category 5 (rather than Category 3) Investment Business License. As such the management of funds is outside the scope of the economic substance requirements.

The business of being an investment fund is not deemed to be a "Relevant Activity" and it is outside the scope of the economic substance requirements. However, if an entity carries on other activities, besides being an investment fund, and those activities do constitute a "Relevant Activity", then the economic substance requirements will still have to be fulfilled in respect of those other "Relevant Activities".

**Finance and Leasing Business** - providing credit facilities of any kind for consideration.

**Headquarters Business** - the business of providing any of the following services to an entity in the same Group:

- the provision of senior management
- the assumption of control or material risk for activities carried out by any of those entities in the same Group; or
- the provision of substantive advice in connection with the assumption or control of risk referred to in the above point

**Holding Business** - 'Pure Equity Holding Entity' - a legal entity that only holds equity participations in other entities and only earns dividends and capital gains.

\* If the holding company **actively** manages its equity participations then it should have adequate and suitably qualified employees, and appropriate premises, in the BVI to carry out this function.

**Intellectual Property Business** - Holding intellectual property assets - 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).

**Distribution and Service Centre Business** - either or both of the following:

- purchase from foreign affiliates
  - component parts or materials for goods; or
  - goods ready for sale; and
  - reselling such component parts, materials or goods
- providing services to foreign affiliates in connection with the business

but does not include any activity included in any other Relevant Activity except holding business.

† **Ship** - includes every description of vessel used in navigation. But, does not include a fishing vessel, a pleasure vessel or a small ship.

"fishing vessel" means a vessel for the time being used or, intended to be used, for or in connection with fishing for sea fish other than a vessel used or intended to be used for fishing otherwise than for profit or a vessel for the time being used or intended to be used wholly for the purpose of conveying persons wishing to fish for pleasure.

"small ship" means a ship less than twenty-four metres in length.

"pleasure vessel" means (a) any vessel including a dive boat which at the time it is being used is (i) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or (ii) in the case of a vessel owned by a body corporate, one on which the persons are employees, officers or shareholders of the body corporate, or their immediate family or friends; and (iii) on a voyage or excursion for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, or (b) any vessel wholly owned by or on behalf of a club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club, and in the case of any vessel referred to in paragraph (a) or (b), no other payments are made by or on behalf of the users of the vessel, other than by the owner; and in this definition, "immediate family" means, in relation to an individual, the husband or wife of the individual, and a relative of the individual or the relative's husband or wife, and "relative" means brother, sister, ancestor or lineal descendant, and "owner" includes charterer.


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