

NT

The trusted solution in wealth structuring

BVI Economic Substance FAQs

The answers to the following frequently asked questions ("FAQs") have been prepared in relation to the: (1) the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the "**Original Act**"); and (2) the new Economic Substance (Companies and Limited Partnership) (Amendment) Act, 2021 (the "**Amendment Act**"). Together, we shall refer to the Original Act and the Amendment Act as the "**Substance Legislation**".

1. What changes have been made to the Substance Legislation in 2021?

The Amendment Act made three notable amendments to the Original Act:

(a) Partnerships

The Amendment Act brought all limited partnerships, exempted partnerships and foreign partnerships in-scope, irrespective of whether such partnerships have a separate legal personality. Under the Original Act, only: (a) companies; and (b) partnerships (with legal personality), were in-scope.

As a result of the Amendment Act, all limited partnerships formed on or after 1 July 2021 are now in-scope. For limited partnerships (without legal personality) formed before 1 July 2021, the Amendment Act introduced a six-month transition period, making them to be subject to the Substance Legislation by no later than 1 January 2022.

(b) Investment Funds

The Amendment Act created two new terms: "*investment fund*" and "*investment fund business*", which it expressly excludes from carrying on a Relevant Activity. This removed any doubt as to the treatment of investment funds in the BVI. In short, if an Entity is established to operate as an investment fund and it only carries on investment fund business, it will not carry out a Relevant Activity.

(c) Distribution and Service Centre Business

The Amendment Act amended the definition of "*Distribution and Service Centre Business*" to include the provision of consulting or administrative services to foreign affiliates.

The changes implemented by the Amendment Act are in line with evolving international requirements in relation to economic substance standards. Comparable jurisdictions, including the Cayman Islands, Bermuda and the Crown Dependencies, have implemented similar changes to their respective economic substance legislative frameworks (to the extent applicable).

2. What Entities need to comply with the Substance Legislation?

All companies and limited partnerships registered or incorporated in the BVI ("**Entities**") must comply with the Substance Legislation, save for limited partnerships (without legal personality) formed before 1 July 2021, which must comply with the Substance Legislation by no later than 1 January 2022.

3. How often does an Entity need to carry out an economic substance review?

All Entities should carry out an annual review of their assets, activities and tax residency, to determine: (1) if they have carried on a Relevant Activity (*see Question 4 below*); (2) where they are tax resident (*see Question 5 below*); and (3) if they need to demonstrate substance in the BVI (*see Question 7 below*) ("**Annual Review**"). Nerine's online portal can help your Entity carry out its Annual Review.

4. What are Relevant Activities?

There are nine "Relevant Activities" in the BVI, which are summarised in more detail in our Factsheet that can be found by clicking [here](#):

1. Banking Business	2. Insurance Business	3. Shipping Business
4. Fund Management Business	5. Finance and Leasing Business	6. Headquarters Business
7. Holding Business	8. Intellectual Property Business	9. Distribution & Service Centre Business

5. How do I determine Tax Residency?

When carrying out its Annual Review, an Entity must determine where it is tax resident:

(a) Tax Resident in a Cooperative Jurisdiction

If an Entity is tax resident outside the BVI, and in a Cooperative Jurisdiction, it should be able to obtain a tax certificate from the relevant tax authority to evidence this. A "**Cooperative Jurisdiction**" is any jurisdiction outside the BVI that is not on Annexure 1 of the EU list of non-cooperative jurisdictions, for tax purposes, which can be found by clicking [here](#):

(b) **Tax Resident in a Non-Cooperative Jurisdiction**

If an Entity is tax resident outside the BVI, and in jurisdiction that it not a Cooperative Jurisdiction, it should be able to obtain a tax certificate from the relevant tax authority to evidence this.

(c) **Cannot Prove Tax Residency**

If an Entity cannot prove its tax residency (in the BVI, or in another tax jurisdiction), it can confirm that it: "*cannot prove that it is (or will be) resident, for tax purposes, in a jurisdiction outside of the British Virgin Islands during the Financial Period*". This declaration is sufficient to for the Annual Declaration (see *Question 9 below*).

(d) **Tax Resident in the BVI**

If an Entity is tax resident in the BVI, it should be able to obtain a tax certificate to evidence this. That said, most Entities do not pay tax in the BVI and therefore cannot be regarded as tax resident in the BVI. We would only expect an Entity to be tax resident in the BVI if it owns a property in the BVI or it has a trade licence and operates in the BVI.

6. What if I cannot provide a foreign tax certificate?

The Entity's legal or tax advisor (where the Entity is tax resident) should provide written evidence/support of the Entity's tax residency in a Cooperative Jurisdiction.

7. When does an Entity need to demonstrate substance in the BVI?

All Entities that carry on a Relevant Activity during a particular Financial Period (see *Question 8 below*) must demonstrate substance in the BVI, unless they can demonstrate that they are tax resident in a Cooperative Jurisdiction.

8. What is a Financial Period?

Economic substance is assessed by reference to financial periods. Set out below are the financial periods, prescribed in the Substance Legislation. It is worth noting that Entities can adopt bespoke financial periods, provided the correct notice is given to the BVI International Tax Authority (the "**Tax Authority**"). The financial periods prescribed by the Substance Legislation do not have to (and usually do not) correlate with an Entity's accounting financial period.

(a) **Companies**

For companies incorporated or registered before 1 January 2019, their financial period is 30 June to 29 June each year. For companies incorporated or registered on or after 1 January 2019, their financial period will commence on their date of incorporation or registration and terminate a year (minus a day) later e.g. a company incorporated on 17 May 2021 will have a 17 May to 16 May financial period each year.

(b) Partnerships

For partnerships (with legal personality) formed or registered before 1 January 2019, their financial period is 30 June to 29 June each year. For partnerships (with legal personality) formed or registered on or after 1 January 2019, their financial period will commence on their date of formation or registration and terminate a year (minus a day) later e.g. a partnership formed on 15 October 2021 will have a 15 October to 14 October financial period each year.

For partnerships (without legal personality) formed or registered before 1 July 2021, their financial period must commence no later than 1 January 2022. We anticipate that most of these partnerships will elect to have a 1 January to 31 December financial period each year. For partnerships (without legal personality) formed or registered on or after 1 July 2021, their financial period will commence on their date of formation or registration and terminate a year (minus a day) later e.g. a partnership formed on 15 October 2021 will have a 15 October to 14 October financial period each year.

9. What are my Entity's annual reporting obligations?

An Entity should carry out its Annual Review (*see Question 3 above*) and then instruct its registered agent (Nerine) to file its annual substance declaration on the Database (*defined below*) (the "**Annual Declaration**"). The Annual Declaration should confirm the following:

(a) No Relevant Activity

If the Annual Review confirms that an Entity did not carry on a Relevant Activity, the Entity must instruct its registered agent to file a '*nil return*' Annual Declaration.

(b) Relevant Activity – Cannot Prove Tax Resident in Cooperative Jurisdiction

If the Annual Review confirms that an Entity: (1) carried on any Relevant Activity; and (2) cannot prove that it was tax resident in a Cooperative Jurisdiction, the Entity must instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) that the Entity can demonstrate substance (*see Question 9 below*) in the BVI for the relevant Financial Period.

(c) Relevant Activity - Tax Resident in Cooperative Jurisdiction

If the Annual Review confirms that an Entity: (a) carried on any Relevant Activity; and (b) can prove it was tax resident in a Cooperative Jurisdiction, the Entity must instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) where it is tax resident. A copy of the Entity's foreign tax certificate (or other documentation supporting its foreign tax residency) must be filed with the Annual Declaration.

The Annual Declaration must be filed within six months of an Entity's Financial Period ending (the "**Annual Filing Requirements**").

The Annual Filing Requirements build upon the pre-existing reporting regime under the Beneficial Ownership Secure Search System Act, 2017 (the "**BOSS Act**"). The BOSS Act requires prescribed information (about an Entity's beneficial owners) to be entered on a database, established by the Tax Authority and maintained by the Entity's registered agent (Nerine) in the BVI (the "**Database**"). The content of the Database was expanded under the Substance Legislation, to include information that enables the Tax Authority to determine what substance requirements apply to each Entity and if each Entity has complied with them.

10. What are my Entity's annual substance requirements?

An Entity should carry out its Annual Review (see *Question 3 above*) and instruct its registered agent to file its Annual Declaration (see *Questions 9 above*). The Annual Declaration must confirm if the Entity carried on a Relevant Activity, and what (if any) substance requirements it needs to comply with:

(a) No Relevant Activity

If the Annual Review confirms that the Entity did not carry on a Relevant Activity, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period. However, the Entity must still instruct its registered agent to file a '*nil return*' Annual Declaration.

(b) Relevant Activity – Cannot Prove Tax Resident in Cooperative Jurisdiction

If the Annual Review confirms that an Entity: (1) carried on any Relevant Activity; and (2) cannot prove that it was tax resident in a Cooperative Jurisdiction, the Entity will have to demonstrate substance in the BVI for the relevant Financial Period. To demonstrate substance, the Entity will have to show that it employed adequate employees in the BVI and that it maintained adequate premises in the BVI. The Entity may also have to show that: (a) it was managed and directed from the BVI; (b) it incurred adequate expenditure in the BVI; and (c) it carried out its core income generating activities in the BVI.

The Entity must also instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) that the Entity was able to demonstrate substance in the BVI for the relevant Financial Period.

(c) Relevant Activity - Tax Resident in Cooperative Jurisdiction

If the Annual Review confirms that an Entity: (a) carried on any Relevant Activity; and (b) can prove it was tax resident in a Cooperative Jurisdiction, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period. The Entity may need to comply with economic substance requirements where it is tax resident, but this is outside the scope of this guidance note.

The Entity must instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) where it is tax resident. A copy of the Entity's foreign tax certificate (or other documentation supporting its foreign tax residency) must be filed with the Annual Declaration.

11. What is the deadline for my Entity to comply with its Annual Filing Requirements?

Economic substance is assessed by reference to Financial Periods (see Question 8 above). The Annual Declaration (see Question 9 above) must be submitted within six months of a Financial Period ending. Set out below are the filing deadlines, prescribed in the Substance Legislation. It is worth noting that an Entity can adopt bespoke financial periods and therefore it can adopt bespoke filing deadlines.

(a) Companies

For companies incorporated or registered before 1 January 2019, their Annual Declaration must be filed by 29 December each year. For companies incorporated or registered on or after 1 January 2019, their Annual Declaration must be filed 18 months (minus a day) from the date of their incorporation or registration e.g. a company incorporated on 17 May 2021 will have a 17 May to 16 May financial period, so its filing deadline will be 16 November each year.

(b) Partnerships

For partnerships (with legal personality) formed or registered before 1 January 2019, their Annual Declaration must be filed by 29 December each year. For partnerships (with legal personality) formed or registered on or after 1 January 2019, their Annual Declaration must be filed 18 months (minus a day) from the date of their formation or registration e.g. a partnership formed on 15 October 2021 will have a 15 October to 14 October financial period, so its filing deadline will be 14 April each year.

For partnerships (without legal personality) formed or registered before 1 July 2021, their financial period must commence no later than 1 January 2022. We anticipate that most of these partnerships will elect to have a 1 January to 31 December financial period, so their filing deadline will be 30 June each year. For partnerships (with without legal personality) formed or registered on or after 1 July 2021, their Annual Declaration must be filed 18 months (minus a day) from the date of their formation or registration e.g. a partnership formed on 15 October 2021 will have a 15 October to 14 October financial period, so its filing deadline will be 14 April each year.

Please provide all information and documents we need to submit the Annual Declaration at least one month before the filing deadline, to ensure we have enough time to make the filing.

12. Does my Entity need to report anything to the BVI Tax Authority?

No. Nerine, as the Entity's registered agent, will file the Annual Declaration on the Database. The Entity just need to provide Nerine will all information and documents it requires make the filing.

13. My Entity does not carry on a Relevant Activity, what are its Substance Requirements?

If the Annual Review confirms that the Entity did not carry on a Relevant Activity, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period, it just needs to instruct its registered agent to file a 'nil return' Annual Declaration.

14. My Entity carries on a Relevant Activity, what are its Substance Requirements?

(a) Cannot Prove Tax Resident in a Cooperative Jurisdiction

If the Annual Review confirms that an Entity carried on any Relevant Activity, but it cannot prove that it was tax resident in a Cooperative Jurisdiction, the Entity will have to demonstrate substance in the BVI for the relevant Financial Period. To demonstrate substance, the Entity will have to show that it employed adequate employees in the BVI and that it maintained adequate premises in the BVI. The Entity may also have to show that: (a) it was managed and directed from the BVI; (b) it incurred adequate expenditure in the BVI; and (c) it carried out its core income generating activities in the BVI. The Entity must also instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) that the Entity was able to demonstrate substance in the BVI for the relevant Financial Period.

(b) Can Prove Tax Resident in a Cooperative Jurisdiction

If the Annual Review confirms that an Entity: (a) carried on any Relevant Activity; and (b) can prove it was tax resident in a Cooperative Jurisdiction, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period. The Entity may need to comply with economic substance requirements where it is tax resident, but this is outside the scope of this guidance note. The Entity must instruct its registered agent to file its Annual Declaration confirming: (1) what Relevant Activity the Entity carried on; and (2) where it is tax resident. A copy of the Entity's foreign tax certificate (or other documentation supporting its foreign tax residency) must be filed with the Annual Declaration.

INCOME

15. Does my Entity have to earn income to carry on a Relevant Activity?

For classification purposes, income should only be considered for Entities that carry on Holding Business or Intellectual Property Business. For all other Relevant Activities (together the "**Other Businesses**") income is not a factor for the purposes of classification, although it will be taken into account when determining how the Entity can demonstrate substance.

(a) Holding Business

An Entity can only carry on Holding Business if it receives income, in the form of capital gains and/or dividends, during the Financial Period. If the Entity does not receive such income, it does not carry on Holding Business, even if its assets are exclusively Equity Participations.

(b) Intellectual Property Business

An Entity can only carry on Intellectual Property Business if it receives income, in the form of royalties, capital gains and other income from the sale of an IP Asset (*defined below*), income from a franchise agreement, and income from licensing the intangible asset) during the Financial Period. If the Entity does not receive such income, it does not carry on Intellectual Property Business, even if its assets are exclusively IP Assets.

"IP Asset" means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how.

(c) **Other Business**

Income should not be considered when classifying if an Entity carries on any Other Business. However, income should be taken into account when determining how the Entity can demonstrate substance.

16. How is income defined?

The Substance Legislation has not defined the term "income", so it is not clear if the term should be given its corporate accounting meaning, as either "gross income" or "net income" or if income should be synonymous with revenue. The corporate accounting meaning is well settled and therefore one might expect the term income to refer to a figure that is net of at least some expense. Guidance notes issued in the Cayman Islands and by the Crown Dependencies (which have similar substance requirements to the BVI) confirm that "income" should be regarded as gross income. Although these foreign guidance notes are not binding, they do provide good guidance, which is consistent with BEPS.

HOLDING BUSINESS

17. My Entity carries on a Holding Business, what are its Substance Requirements?

To carry on Holding Business, an Entity must be a Pure Equity Holding Entity i.e. an entity that only: (1) holds Equity Participations (*see Question 18 below*); and (2) earns dividends and capital gains, in respect of its holding of such Equity Participations.

(a) **Cannot Prove Tax Resident in a Cooperative jurisdiction**

If the Annual Review confirms that an Entity: (1) carried on Holding Business; and (2) cannot prove that it was tax resident in a Cooperative Jurisdiction, the Entity will have to demonstrate substance in the BVI for the relevant Financial Period.

To demonstrate substance, the Entity must show that it: (a) employed an adequate number of suitably qualified employees to carry on its Holding Business, who were physically present in the BVI; and (b) maintained adequate premises in the BVI to carry on its Holding Business. The Entity must also instruct its registered agent to file its Annual Declaration confirming: (1) that it is carried on Holding Business; and (2) that the Entity can demonstrate substance in the BVI for the relevant Financial Period.

The terms "*appropriate*" and "*adequate*" are subjective and vary according to the nature and scale of the Holding Business and the Entity's general business activities. However, assuming an Entity passively held the Equity Participations during the relevant Financial Period, it can usually demonstrate substance by simply maintaining Nerine as its registered agent and its registered office in the BVI, during the relevant Financial Period.

(b) **Can Prove Tax Resident in a Cooperative jurisdiction**

If the Annual Review confirms that an Entity: (a) carried on Holding Business; and (b) can prove it was tax resident in a Cooperative Jurisdiction, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period. The Entity may need to comply with economic substance requirements where it is tax resident, but this is outside the scope of this guidance note.

The Entity must instruct its registered agent to file its Annual Declaration confirming: (1) it carried on Holding Business; and (2) where it is tax resident. A copy of the Entity's foreign tax certificate (or other documentation supporting its foreign tax residency) must be filed with the Annual Declaration.

18. What are "Equity Participations"?

The term "**Equity Participation**" includes shares in a company and other forms of investments in an entity, which give the investor the right to participate in the profits of that entity. The interest of a general partner in a limited partnership will usually be of this quality.

An Entity will only carry on Holding Business if it: (1) holds nothing but Equity Participations; and (2) yields dividends or capital gains from those Equity Participations. The ownership of any other form of investment (such as bonds, government securities, legal or beneficial interests in real property) will take an Entity outside the definition of carrying on Holding Business, even if it also owns Equity Participations.

19. My Entity only holds real estate, what are its Substance Requirements?

If the Annual Review confirms that the Entity's only assets were commercial or residential real estate, the Entity will not carry on a Relevant Activity for the relevant Financial Period. The Entity will not have to demonstrate substance in the BVI for the relevant Financial Period, it just needs to instruct its registered agent to file a '*nil return*' Annual Declaration

20. My Entity that holds a brokerage account, what are its Substance Requirements?

If the Annual Review confirms that the Entity's only assets was a brokerage account, the assets in the brokerage account need to be reviewed. If the assets are:

(a) **Exclusively Equity Participations**

The Entity must consider if it (rather than the broker) is the legal and beneficial owner of the Equity Participations. Usually the Broker will be the legal owner and the Entity will be the beneficial owner of the Equity Participations. In these scenarios, the broker is entitled to all dividends and capital gains from the Equity Participations, even though these are subsequently passes on to the Entity. On a strict reading of the Substance Legislation, this means the broker (rather than the Entity) holds Equity Participations. As such, the Entity will not carry on Holding Business (or any other Relevant Activity). Therefore, the Entity will not have to demonstrate substance in the BVI for the relevant Financial Period, and it just need to instruct its registered agent to file a '*nil return*' Annual Declaration.

However, this strict interpretation of the Substance Legislation has not yet been tested with the Tax Authority, so the Entity may wish to err on the side of caution and instead declare that it does carry on Holding Business. As a result the Entity would need to demonstrate substance in the BVI for the relevant Financial Period, by showing that it: (a) employed an adequate number of suitably qualified employees to carry on its Holding Business, who were physically present in the BVI; and (b) maintained adequate premises in the BVI to carry on its Holding Business. The terms "*appropriate*" and "*adequate*" are subjective and vary according to the nature and scale of the Holding Business and the Entity's general business activities. However, the Entity can usually demonstrate substance by simply maintaining Nerine as its registered agent and its registered office in the BVI, during the relevant Financial Period. The Entity must also instruct its registered agent to file its Annual Declaration confirming: (1) that it is carried on Holding Business; and (2) that the Entity has been able to demonstrate substance in the BVI for the relevant Financial Period.

(b) Not Exclusively Equity Participations

The Entity will not carry on Holding Business (or any other Relevant Activity). The Entity will not have to demonstrate substance in the BVI for the relevant Financial Period. However, the Entity must still instruct its registered agent to file a '*nil return*' Annual Declaration.

FINANCE AND LEASING BUSINESS

21. What is a credit facility?

An Entity engages in "*Finance and Leasing Business*" when it provides credit facilities of any kind, for consideration. The only exception to this rule is if the credit facility was merely "*incidental*" to a different sort of the Entity's business (*see Question 23 below*). The term "**credit facilities**" encompasses all types of lending and credit facilities. Providing any form of credit facility, even a one-off loan, can bring an Entity in-scope of Finance and Leasing Business.

The provision of credit can be made by way of instalments, for which a separate charge is made and disclosed to the customer in connection with: (i) the supply of goods by hire purchase; (ii) leasing other than any lease granting an exclusive right to occupy land; or (iii) conditional sale or credit sale.

Where an advance or credit repayable by a customer is assigned to another person, that other person is deemed to be providing the credit facility for the purposes of Finance and Leasing Business.

Entities that hold debt or debt instruments for the purpose of investment will not be regarded providing credit facilities. Further, although the activity is described as 'finance and leasing', the essence of the activity is the provision of credit facilities. The fact that an Entity leases items does not mean it carries on Finance and Leasing Business. Short term rentals/leases for properties, vehicles, boats or equipment do not fall in-scope of Finance and Leasing Business.

22. What is consideration?

An Entity engages in "*Finance and Leasing Business*" when it provides credit facilities of any kind, for consideration. The only exception to this rule is if the credit facility was merely "*incidental*" to a different sort of the Entity's business (see *Question 23 below*). The term "**consideration**" is not defined in the Substance Legislation, so it should be considered in the broadest terms. However, it is clear that consideration includes (but is not limited to) interest.

If an Entity makes (or has made) a credit facility available to a third party, from which it receives income (i.e. interest) during a Financial Period, the Entity has carried on Finance and Leasing Business. This is true even if the income is very small and insignificant, when compared to the Entity's other activities.

If an Entity has provided a credit facility for *nil consideration* e.g. an interest-free loan to a third party, from which it receives no other form of consideration during the Financial Period, the Entity has not carried on Finance and Leasing Business.

23. When is a credit facility incidental?

If an Entity provides a credit facility, as an incidental part of a different sort of its business, the Entity has not carried on Finance and Leasing Business. To determine if the credit facility is "*incidental*", it is important to look at the relationship, link and interaction between the credit facility and the other activities of the Entity i.e. if the credit facility is incidental to the Entity's main business activities.

The provision of a credit facility cannot be "*incidental*" simply: (i) by reference to the Entity's size; or (ii) because the credit facility only accounts for a particular fraction of the Entity's overall income or output; or (iii) by reference to the relative value of the credit facility to the overall business of the Entity. If the provision of the credit facility can be seen as a business activity in its own right (even a very small one by comparison), the Entity will be treated as if part of its business is Finance and Leasing Business.

24. Are intra-group loans considered Finance and Leasing Business?

The Substance Legislation does not directly deal with how an Entity should be classified if it has issued an intra-group loan, which is interest-bearing. It is possible to argue that the loan should be considered incidental, but each loan needs to be reviewed and classified on its own merits.

25. My Entity has issued a one-off loan that generates interest, has it carried on Finance and Leasing Business?

Granting the one-off loan will be classified as the provision of a credit facility. The generation of interest on the loan, will be deemed to be consideration. If the Entity can prove the one-off loan was an incidental part of a different sort of business that it carries on, the Entity will not carry on Finance and Leasing Business. However, if the Entity cannot prove the one-off loan was incidental, the Entity will be classified as carrying on Finance and Leasing Business.

FUND MANAGEMENT BUSINESS

26. My Entity is an investment fund, has it carried on Fund Management Business?

No. Investment funds are excluded from the definition of Fund Management Business (and all other Relevant Activities). An Entity established to operate as an investment fund that only carries on investment fund business will not carry out a Relevant Activity.

An Entity only carries on "*Fund Management Business*" if it conducts activity that requires it to hold an investment business license under the Securities and Investment Business Act, 2010. Only Entities that hold one of the relevant licence(s) issued by the BVI Financial Services Commission, can lawfully carry on Fund Management Business.

HEADQUARTERS BUSINESS

27. When does an Entity carry on Headquarters Business?

An Entity engages in "*Headquarters Business*" when it provides any of the following services to another entity in its Group (*see Question 28 below*): (a) the provision of senior management; (b) the assumption or control of material risk for activities carried out by any of these entities in the same Group; and (c) the provision of substantive advice in connection with the assumption or control of risk referred to in (b).

Whether an Entity carries on Headquarters Business is not dependent on its position in the Group structure. It is entirely dependent on the services it provides to other entities in its Group, whether parents or subsidiaries.

An Entity that carries on Headquarters Business is likely to have some of the following: an active management of other group entities, employees/directors, formal services agreements in place with group entities (possibly including provision for remuneration, although this is not necessary).

Any activity falling within the definition of Banking Business, Finance and Leasing Business, Fund Management Business, Intellectual Property Business, Holding Business, or Insurance Business is excluded from the definition of Headquarters Business.

28. What is a Group?

An Entity, is in the same "**Group**" as any other entity that is: (a) a Parent of the Entity; (b) a Subsidiary of the Entity; (c) a Subsidiary of a Parent of the Entity; or (d) a Parent of a Subsidiary of the Entity.

A "**Parent**" is another entity that, whether acting alone or under an agreement with one or more other persons: (a) holds, whether legally or equitably, a majority of the issued shares of the Entity; (b) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the Entity; (c) has the right to appoint or remove the majority of the directors of the Entity; (d) has the right to exercise a dominant influence over the management and control of the Entity, pursuant to a provision in the constitutional documents of the Entity; or (e) is a parent of a parent of the Entity. A "**Subsidiary**" is another entity of which the Entity is a Parent.

DISTRIBUTIONS AND SERVICE CENTRE BUSINESS

29. When does an Entity carry on Distribution and Service Centre Business?

The definition of Distribution and Service Centre Business was amended under the Amendment Act, to include the provision of consulting and administration services.

Now, an Entity engages in "*Distribution and Service Centre Business*" when it is in the business of: (a) purchasing from foreign affiliates: (i) component parts or materials for goods; or (ii) goods ready for sale, and reselling such component parts, materials or goods; and/or (b) providing consulting or administrative services to foreign affiliates, but does not include any activity included in any other Relevant Activity except Holding Business.

30. My Entity purchases assets from another entity in its Group, and re-sells such assets to customers. Is this Distribution and Service Centre Business?

No. To fall in-scope of Distribution and Service Centre Business, the Entity must purchase assets such assets from a "*Foreign Affiliate*" (see Question 32 below), and not just another entity in its group.

31. My Entity provides services to another entity in its Group. Is this Distribution and Service Centre Business?

No. To fall in-scope of Distribution and Service Centre Business, the Entity must purchase assets such assets from a "*Foreign Affiliate*" (see Question 32 below), and not just another entity in its group.

32. What is a Foreign Affiliate?

A "**Foreign Affiliate**" is another entity in the same Group (see Question 28 above), which is not: (a) a BVI business company; a BVI limited partnership; (c) a company incorporated outside of the BVI that is registered in the BVI as a foreign company; or (d) a limited partnership formed outside of the BVI that is registered in the BVI as a foreign limited partnership.

INTELLECTUAL PROPERTY BUSINESS

33. What is an IP Asset?

An Entity carries on "*Intellectual Property Business*" when it engages in the business of holding any IP Asset from which identifiable IP Income (See Question 34 below) accrues to the business, such IP Income being separately identifiable from any income generated from any tangible asset in which the right subsists. An "**IP Asset**" is any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how.

34. What is an IP Income?

An Entity carries on "*Intellectual Property Business*" when it engages in the business of holding any IP Asset (See *Question 33 above*) from which identifiable IP Income accrues to the business, such IP Income being separately identifiable from any income generated from any tangible asset in which the right subsists. "**IP Income**" means any royalties, capital gains and other income from the sale of an IP Asset, income from a franchise agreement, and income from licensing the intangible asset.

35. My Entity holds IP Assets and licences them to others, is this Intellectual Property Business?

If the Entity receives no IP Income from licensing the IP Asset, it has not carried on Intellectual Property Business. However, if the Entity receives IP Income from licensing the IP Asset, it has carried on Intellectual Property Business.

36. My Entity holds a trade mark and manufactures products featuring this trade mark, is this Intellectual Property Business?

If an Entity manufactures and markets a trademarked products to unrelated third parties, it will not carry on Intellectual Property Business because its income is derived from the sale of finished goods to third parties, not the exploitation of the IP Asset. In this scenario, the use of the trade mark is an adjunct to the Entity's business.

37. My Entity has developed software, is this Intellectual Property Business?

If an Entity develops IT software (an IP Asset) that it holds and uses for its own business, it will not carry on Intellectual Property Business. However, if the Entity also licenses this IT software (for a fee) to others, it would be classified as carrying on Intellectual Property Business.

Example: An Entity develops IT software and manufactures computers, which it sells to consumers. If the consumers pay a licence fee to use the IT software, even if this fee is included in the purchase price of the computer and there is no visible licence fee extra licence fee paid by the consumer, this would still be regarded as Intellectual Property Business.

STRUCK-OFF ENTITIES

38. How do we treat struck-off and dissolved Companies?

If you no longer need your BVI Company, you have two options: (1) appoint a liquidator and commence a voluntary liquidation; or (2) abandon the BVI Company, leaving it to be administratively struck-off the register of companies in the In the BVI. The voluntary liquidation process usually takes four to six weeks to completed, whilst it takes **seven years** for an abandoned company to be dissolved.

(a) Voluntary Liquidated

As soon as the BVI Registrar issues the certificate of dissolution, the company ceases to exist and it will have no further obligations under the Substance Legislation. As a result, the company should ensure it has complied with all of its substance requirements and obligations before the liquidation is finalised.

(a) Administratively Struck-Off

A company that is abandoned and administratively struck-off (an "**Abandoned Company**") after 1 January 2016 must comply with the Substance Legislation and: (1) conduct Annual Reviews; and (2) ensure its Annual Declarations are filed, for each of the seven years it is administratively struck-off. Failure to do so will expose the company to penalties.

The only actions an Abandoned Company can carry out during its seven year strike-off period are to: (1) make an application to restore the Abandoned Company to good standing; or (2) continue any proceedings made by (or against) the Abandoned Company that commenced before it was administratively struck-off. Throughout the seven year strike-off period, an Abandoned Company will be incapacitated and it cannot: (1) act in any way with respect to the affairs of the Abandoned Company; (2) commence or defend any legal proceedings in the name of the Abandoned Company; or (3) make any claim or claim any right for, or in the name, of the Abandoned Company.

If you need assistance with a voluntary liquidation, please reach out to your usual contact at Nerine, who would be delighted to assist.

GENERAL SUPPORT

39. What if I fail to classify or provide any information to Nerine?

The Substance Legislation provides for both criminal and financial sanctions for non-compliance or providing inaccurate information in an Annual Declaration. The Tax Authority has responsibility for monitoring and investigating compliance of the Substance Legislation.

40. How will I be charged for economic substance?

(a) Classification

A substance fee will be added to your first/incorporation invoice, to cover: (1) the initial substance classification; and, subject to the date of incorporation, (2) filing the first Annual Declaration.

(b) Re-Confirmation / Re-Classification

A substance fee will be added to your annual invoices, to cover: (1) re-confirming the initial classification;

and (2) filing the Annual Declaration.

(c) Additional Reporting Fees

An additional reporting fee will be added to your annual invoices if the Entity carries on a Relevant Activity and needs to demonstrate substance in the BVI because Nerine will have to upload significant data to the Database.

We have chosen to include the substance fees in these invoices, to reduce bank charges and the need for additional invoices.

41. Who do I contact if I need to demonstrate substance in the BVI?

We have a designated support email address substance@nerinebvi.com. We would be happy to discuss your requirements and how we can help.

42. Who do I contact if I need specialist advice, and will this incur additional fees?

Please use our designated support email address substance@nerinebvi.com. We do not give legal advice, but we can provide initial support and (if required) introduce you to legal advisers who can assist with more complex matters. This will incur additional fees.

43. Who do I contact if I need general support or have more questions?

Please use our designated support email address substance@nerinebvi.com or reach out to your usual contact at Nerine.

The contents of this document are private and confidential, intended only for use by the addressee and are not to be shared with third parties. This document constitutes neither professional advice nor a binding offer by us to provide professional services. Any engagement in respect of our professional services is subject to our standard terms and conditions of business and the provision of all necessary due diligence.

Nerine Trust Entity (BVI) Limited is a PraxisIFM Group company and is licensed by the British Virgin Islands Financial Services Commission under the Banks & Trusts Companies Act 1990.