

The background features a city skyline, likely New York City, with prominent skyscrapers like the Freedom Tower. The image is overlaid with several semi-transparent blue hexagonal shapes of varying sizes and orientations, creating a modern, geometric aesthetic.

Cayman Law and BVI Law Issues in times of COVID-19

May 2021



Loeb Smith

Advantages of using BVI and Cayman Islands entities in financing transactions

- Reliable and efficient legal system
- Confidentiality
- No taxation/stamp duty
- No deemed residence or domicile
- Light touch regulation
- Strong creditor protection



Finance and leasing business from an economic substance point of view

- OECD – base erosion and profit shifting
- Three stage test: “relevant entity”, “relevant activity” and tax residence
- Definition of “finance and leasing business”
- Does not capture “incidental” business
- Difference in treatment of intra-group loans vs commercial loans



The impact of Covid-19 on finance transactions

- Loan transactions dried up in Q1/Q2 in 2020
- Cause for optimism in 2021 as loan issuance up by 30.4% in March 2021 in APAC (excl. Japan) year-on-year
- Little impact on how transactions are run from a BVI/Cayman Islands point of view
 - Corporate governance
 - Execution of documents



Economic Substance for Holding Companies

- It has complied with all applicable filing requirements under the Companies Act (2021 Revision); and
- It has adequate human resources and adequate premises in the Islands for holding and managing equity participations in other entities.
- ES notification can be done by either Registered Office or a Director of the company.



Cayman Investment Funds + BVI Approved Managers

- Cayman Investment Manager impacted by Economic Substance Act
- BVI Approved Managers + Hong Kong licensed Managers are now the preferred Investment Managers for Cayman Funds
- Impact of increased regulatory regime for Funds in Cayman and the BVI



Administrative Fines

Category of breach - Amount of Fine

- Minor - US\$6,100
- Serious (individual) – US\$61,000
- Serious (corporate) – US\$122,000
- Very serious (individual) – US\$122,000
- Very serious (corporate) – US\$1,220,000



For further guidance, please contact:

- E: gary.smith@loebsmith.com
- Tel: +1 (345) 749 7590
- E: peter.vas@loebsmith.com
- Tel: +852 5225 4920
- E: faye.huang@loebsmith.com
- Tel: +86 186 1690 1880

Please scan QR code below to add us on wechat.

