

WealthBriefingAsia

Global Perspective. Regional Focus.

[Home](#)[Categories](#)[Research](#)[Events](#)[Awards](#)[Videos](#)[About](#)[Account](#)

Plan With Substance: Private Placement Life Insurance

Richard Grasby, 17 November 2020



Private placement life insurance has its place in wealth manager's armoury. However, how can it accommodate demand for proof of "economic substance" by governments seeking to squash what they see as unacceptable forms of tax avoidance? Offshore financial centres are caught up in this saga. This article examines some of the territory.

Private placement life insurance is part of the wealth management toolbox, although it is still relatively "niche" in much of today's industry. Several firms play in the space – Lombard International Assurance and Swiss Life, to give just two. At a time when governments have been trying to peel away veils of privacy to have sight of beneficial ownership information, and establish rules about economic "substance," PPLI providers occupy an interesting position. As governments around the world attempt to squeeze revenues out of investors – a situation likely to get more intense – ensuring that any arrangement has economic "substance" is critical. It is no longer enough to set up an entity that is simply an empty shell without staff or actual business activity.

In this article, Richard Grasby LLB, TEP, founder of [RDG Fiduciary Services](#), examines how PPLI can and should be used with a view to complying with this substance requirement. The editors of this news service are pleased to share these views. The usual editorial disclaimers apply. Jump into the conversation. Email tom.burroughes@wealthbriefing.com and jackie.bennion@clearviewpublishing.com

PPLI is being considered as a planning tool more and more frequently. PPLI (also known as unit-linked insurance) can be used to hold a wide range of assets - subject to the insurer's approval. For

some of the uses and benefits of PPLI, see for example an earlier article co-written by the author. (1) In the correct environment, using PPLI can deal with succession planning in a tax-efficient, probate-free manner without the need for a trust. It should be noted that a trust combined with PPLI can also be an efficient structure.

In recent years, owners of “legal entities” (2) incorporated in many international financial centres (3) are having to deal with new economic substance requirements (4). The author has written several pieces on how economic substance may impact on private wealth - with a particular focus on British Virgin Islands companies (5).

Concentrating on BVI companies for the purposes of this article (6), owners of BVI companies (7) carrying out any one (or more) of nine relevant activities (8) have to comply with the applicable economic substance requirements. In simple terms, for two of the activities - holding business and intellectual property business - the holding of specific types of asset is the activity. This is where PPLI may be able to assist. It being noted that for existing structures the rules apply so the current substance requirements need to be complied with.

For future periods or new structures, the assets in question could be held in the PPLI (9) and not by a legal entity (in this example a BVI company). The proceeds from the assets arise in the PPLI account and not to any “legal entity”. Economic substance ceases to be an issue and at the same time succession issues relating to the BVI company can also be dealt with (10). Alternatively, the BVI company could hold its assets via a PPLI. This solves economic substance and succession planning for the assets (by having third parties as beneficiaries of the PPLI) and leaves only succession planning for the shares of the BVI company which are likely to be of nominal value.

The rules relating to each of holding business and IP business are slightly different.

Holding business: It is fair to say that in many cases the substance requirements are not regarded as too onerous. If (11) the company owns non-equity participations (such as bonds or a PPLI) as well as equity participations and/or (12) earns no income/capital gains during the financial period, it falls outside the scope.

Where the company is carrying on holding business, there is a reduced level of economic substance required and no need for the holding business to be directed and managed in the BVI. However, there is still some uncertainty as to the use of nominees/custodians to hold equity participations (and whether or not this would cause the company to be in scope) and also the level of substance required in the BVI where equity participations are being “managed” (13). Holding the equity participations in a PPLI removes this uncertainty. As stated above, this could be the equity participations held in a PPLI by the owners of the BVI company or a PPLI owned by the BVI company.

IP business: This activity has the most onerous level of economic substance requirements. One caveat - if no income is received then the legal entity would be out of scope. However, if IP business is being undertaken by a BVI company, the substance requirements will be difficult to satisfy.

Firstly, there is a rebuttable presumption that the substance requirements are not met. Second, the IP business must be directed and managed in the BVI and the amount of expenditure/number of employees etc. in the BVI must be adequate. Strategic decisions relating to the IP should be taken in the BVI.

BVI ITA Rule 9.6 (14) states: “In determining whether the presumption has been rebutted, the ITA will need to be satisfied on the basis of the information provided by the entity that the activity taking place in the BVI is more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of the jurisdiction. Equally, periodic decisions of non-resident board members will not suffice. Instead, the entity must employ local, permanent and qualified staff who make active and ongoing decisions in relation to the generation of income in the BVI.”

Furthermore, in cases of “high risk” IP legal entities (15), there needs to be suitably qualified employees in the BVI on long-term contracts who, *inter alia*, develop, maintain, and exploit the IP.

Thus, for a private client holding IP via a BVI company there is a large regulatory burden to overcome. If the IP can be held in a PPLI then this is no longer the case. This could be the IP held in a PPLI by the owners of the BVI company or a PPLI owned by the BVI company.

How would this be achieved? Fact-specific advice would need to be taken. This would relate to matters such as:

- Any tax on a transfer of the equity participations or IP to the PPLI;
- Issues of registration of the equity participations or IP in the PPLI;
- Finding a suitable PPLI for the assets in question (in terms of provider, jurisdiction, terms etc).

Footnotes

1 <https://www.hubbis.com/article/ppli-an-overlooked-planning-tool>

2 Or other such terms such as relevant entity.

3 Including Anguilla, the Bahamas, Bahrain, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey, the Marshall Islands, Mauritius, Seychelles, Turks and Caicos, the United Arab Emirates, and Vanuatu

4 The rules and definitions are different in each jurisdiction.

5 See for example: <https://www.linkedin.com/pulse/bvi-economic-substance-private-wealth-snagging-items-grasby-tep> or <https://www.linkedin.com/pulse/bvi-economic-substance-some-further-clarity-richard-grasby-tep>

6 Primarily as a result of BVI's dominance of the market and the author's familiarity with the jurisdiction.

7 Assuming foreign tax residence is not claimed.

8 Banking business; insurance business; fund management business; finance and leasing business; headquarters business; shipping business; holding business; intellectual property business; distribution and service centre business.

9 This is shorthand. The assets are held by the insurer and the policyholder is a party to the PPLI policy with the insurer.

10 Together with perhaps simplified CRS reporting and access to tax treaties.

11 See article at note 4.

12 <https://bvi.gov.vg/content/ita-rules>

13 See ITA Rule 9.8 – effectively involving affiliated companies.

14 For future financial periods. The present requirements will remain applicable.

15 "intellectual property asset" means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, 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. Certain IP may not be suitable for a PPLI.

[Tweet](#)

[Share](#)

[Send to a colleague](#) [Print \(subject to copyright\)](#) [Request Reprint Rights](#)

Latest Comment and Analysis



[Asia's Singlife Sees Big Wealth Management Market Potential](#)



[WEALTH TALK: Focus On WealthBriefing's MENA Region Awards 2020](#)



[WEALTH TALK: Focus On Third-Quarter Bank Results](#)

Latest News



[The ESG Phenomenon - Barclays Private Bank Study](#)



[Bank Of Singapore Remains "Constructive" Over Equities As Winter Cold Sets In](#)



[Cybersecurity Insurance Market To Top \\$70 Billion By 2030](#)

[Vietnamese Corporate Services House Rebrands](#)



UHNW Boutique Wealth House's Asian Ambitions



HSBC Upbeat Over Hong Kong's Wealth Arm Growth



Protecting Family Offices In Remote Working Age



What's New In Investments, Funds? - OCBC



WEALTH TALK: Private Client Series With Kobre & Kim - A Focus On Hong Kong

[More Comment and Analysis](#)

[More News](#)

Award Winners

Most Read

Pictet AM Opens Wholly-Owned Foreign Enterprise In Shanghai

Bordier Builds Asia-Focused Expertise

There Are Cracks In China's Banking System, Fitch Warns

Indosuez WM Appoints Hong Kong-Based COO, Anti-Money Laundering Head

Standard Chartered Restructures, Global Private Banking Head To Depart

More Stories

What's New In Investments, Funds? - OCBC

How Philanthropy Is Changing: A 20-Year Perspective - Podcast

Bordier Builds Asia-Focused Expertise

Nominations Open For Greater China Awards For Excellence 2021

Compliance Corner: Hong Kong, Israel, Others

Will covid accelerate marketing, brand development via digital channels?

- Yes
- No
- Not sure

[View Results](#)

[Vote](#)

[Overview](#) [Contact](#) [Advertise](#) [Editorial Board](#) [Terms & Conditions](#) [Privacy Policy](#) [Disclaimer](#)

© Clearview Financial Media Ltd, 52 Grosvenor Gardens, London, SW1W 0AU, United Kingdom. Tel: +44(0)207 148 0188

