



MEET THE REGULATOR II

March 29th, 2005
Long Bay Hotel



Criteria for Approval of Authorised Custodians of BVI Bearer Shares

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Order of Presentation

- Aims and Objectives of Presentation
- Background Bearer Share Regime
- Custodian Definitions
- Review of the legislation regarding Authorised Custodian
- Duties of Authorised Custodian
- Duties of Registered Agent
- Criteria for Approval of Authorised Custodian
- Application Checklist



Aims and Objectives

- Develop a better understanding of the key changes in the IBC Act, FSC Act and the provisions in the BVI Business Companies Act
- Outline the FSC criteria for the Approval of Authorised Custodian
- Review the application process for Authorised Custodian

Background Bearer Share Regime

International Pressures

IBC's Power to Issue Bearer Shares

Immobilisation of Bearer Shares

Reputation of Jurisdiction



Custodian Definitions

- **Authorised Custodian**
 - An existing service provider who holds a license issued by the FSC.
 - A company incorporated or formed outside of the BVI and does not reside or have a place of business in the BVI.



Definitions

- **Recognised Custodian** (not considered a regulated person)
 - Investment exchange or clearing organisation that operates securities clearance or settlement systems in jurisdiction which is a member of the FATF and that is identified by the FSC and published in the Gazette
 - The FSC has developed a list of Recognised Custodians (see Aide Memoire #3)



Legislation

- Financial Services Commission (Amendment) Act, 2004
- The BVI Business Companies Act, 2004
- International Business Companies (Amendment) Act, 2003
- International Business Companies (Amendment) Act, 2004



Legislation

- **Financial Services Commission (Amendment) Act, 2004**
 - Came into force July 1st 2004
 - FSC has began accepting applications for authorised custodian since July 1st 2004
 - Defines authorised and recognised custodian



Legislation

- **Financial Services Commission (Amendment) Act, 2004**
 - Defines rules governing custodians
 - ★ Conditions of approval
 - ★ Revocation of approval
 - Issuance of guidance notes relating to authorised custodian's practices and procedures



Aide
Memoire
#3

Legislation

| | EXISTING IBCs | NEW IBCs |
|---------------------------------|----------------------------|--|
| Immobilisation of Bearer Shares | Dec. 31 st 2010 | Bearer shares must be placed with a custodian |
| File declaration | Dec. 31 st 2010 | Same date that MAA is amended If MAA prohibits BS at incorporation – no declaration |

Legislation

- **BVI Business Companies Act, 2004**
 - Immobilisation of bearer shares
 - ★ Held in custody – recognised or authorised custodian
 - ★ Converted to, or exchanged for, a registered share
 - ★ Cancelled and forfeited
 - ★ Redeemed or purchased by the company as treasury share

Otherwise disabled



Legislation

- **BVI Business Companies Act, 2004 con't**

- Disabled bearer share
 - ★ Not immobilised => loss of entitlement
- Duties and responsibilities of authorised and recognised custodian
 - ★ Keeping adequate records
 - ★ Notification to RA
 - ★ Transfer of bearer shares



Legislation

- **BVI Business Companies Act, 2004 con't**

- FSC ceasing to recognise a custodian
 - ★ Notification – custodian and public
 - ★ Delivery of bearer share - RA of company
 - another custodian
 - the company



Legislation

- **BVI Business Companies Act, 2004 con't**
 - Duties of the registered agent
 - Deadline for re-registration of companies – December 31st, 2006



Legislation

- **International Business Companies (Amendment) Act, 2004**
 - Changed deadline for the immobilisation of bearer shares to December 31st, 2010
 - Enable amendment to M&A to include statement:
 - ★ Only authorised to issue registered shares
 - ★ Registered shares may not be exchanged for bearer shares



Duties of Authorised Custodian

- **Keeping adequate records**
 - Notice stating
 - ★ **Full name of beneficial owner** of the bearer share;
 - ★ Full name of any other person having an interest in the share or a statement that no other person has an interest in the share; and
 - ★ Any other information that may be required
 - Notice when there is a **transfer of beneficial ownership** of, or interest in the bearer share



Duties of Authorised Custodian

- **Keeping adequate records**
 - **Record of the location** of the bearer share at:
 - Principal office in the BVI
 - Or at such office in the BVI as approved by the FSC
 - Or at such office outside the BVI as approved by the FSC



Duties of Authorised Custodian

- **Keeping adequate records**
 - Record of **transfer of bearer shares**
 - ★ Make a **copy of all notices** provided to it by the company or the person that deposited the bearer shares and
 - ★ **Retain the copies** for such period as may be prescribed
 - ★ **Deliver**, with the bearer share, **all original notices** provided to it by the company that issued the bearer shares or the person that deposited the bearer shares



Duties of Authorised Custodian

- **Transfer of Bearer Shares**
 - Another **authorised custodian** who has agreed to hold the bearer share;
 - The company where the bearer share is to be, or has been:
 - **Converted or exchanged for registered share**
 - **Redeemed or repurchased by the company**
 - **Cancelled or forfeited**
 - The **registered agent** of the company.



Duties of Authorised Custodian

- **Notification to Registered Agent**
 - Receipt of bearer shares - within 14 days
 - Transfer of bearer shares to another authorised custodian – within 7 days
 - Ceasing to be an authorised custodian – within 60 days
 - Persons having rights to entitlements



Duties of Authorised Custodian

- **Ceasing to be an Authorised Custodian**
 - FSC:
 - ★ Publish revocation notice in the *Gazette* and local newspaper
 - ★ Send notice to the authorised custodian whose approval has been revoked



Duties of Authorised Custodian

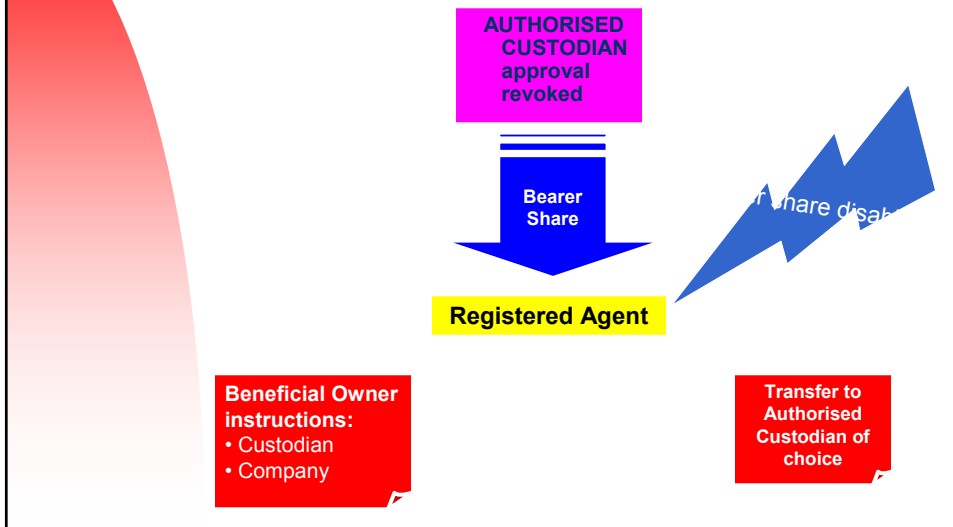
- **Ceasing to be an Authorised Custodian**
 - Notice must be given to:
 - The company
 - The beneficial owner and
 - Any person who has an interest in the bearer share



Duties of Authorised Custodian

- **Ceasing to be an Authorised Custodian**
 - Deliver to RA (within 14 days):
 - ★ Bearer shares in company
 - ★ All original notices
 - ★ Copies of any notices

Duties of Registered Agent



Licensing Criteria for Authorised Custodian Approval

- **Fit and Proper**
 - Honesty and integrity
 - Competence
 - Financial soundness and solvency
 - Prudential regulation
 - AML regulation



Licensing Criteria for Authorised Custodian Approval

- **Internal Control Systems and Procedures**
 - Adequate procedures and policies
 - Due diligence
 - Custodian Agreement
 - Segregation and safekeeping
 - Record keeping



Licensing Criteria for Authorised Custodian Approval

- **Adequate procedures and policies should include the following**
 - KYC/CDD
 - AML/CFT
 - Suspicious transactions reporting
 - Standard written custodian agreements
 - Arrangements for safekeeping of shares
 - Sound record keeping practices
 - Satisfactory MIS



Licensing Criteria for Authorised Custodian Approval

- **Due diligence**
 - KYC/CDD consistent with BVI AML/CFT regulations
 - Documented account acceptance process
 - ★ Have sufficient information about client's needs



Licensing Criteria for Authorised Custodian Approval

- **Custodian Agreement**
 - Standardized
 - Establish **duties and responsibilities** of custodian
 - Require **clients to properly** authorise instructions
 - Require custodian to be able to **authenticate** such instructions



Licensing Criteria for Authorised Custodian Approval

- **Custodian Agreement**
- Set out form of **reporting to client** (e.g. annual report)
- Set out **reporting obligation** to the Commission
- **Disclosure of information** to regulatory and law enforcement bodies
 - ★ When under compulsion



Licensing Criteria for Authorised Custodian Approval

- **Segregation and safekeeping**
 - All bearer shares must be under joint control
 - Bearer shares must be kept separate from the assets of the custodian
 - Use of appropriate risk management techniques and internal controls



Licensing Criteria for Authorised Custodian Approval

- **Record keeping**
 - Adequate system for reporting bearer share information
 - Information readily accessible to the FSC
 - In line with AML and best practices



Application checklist

- **Non-refundable Application fee \$100.**
- **Auditor's Consent**
- **Business Plan**
- **Certificate of Incorporation /Continuance**
- **Memorandum and/or Articles of Association and/or By-laws for the applicant**



Application checklist

- Audited financial statements (FS) for the last three financial years.
 - Start up company – auditing BS and 3 year projected FS
- An organisational chart
- Details of:
 - the internal control systems and procedures to secure the custody of bearer shares



Application checklist

- Section 50A(2) of the FSC (Amendment) Act
 - evidence of license from regulatory authority.
- Resumes/CV and three references (personal, professional and financial) for the executive management team
- Proof of Professional Indemnity Insurance



Pointers for completing Authorised Custodian Applications

- Be familiar with the requisite reading material ([Aide Mémoire #3, Press Release No.7 of 2004 and the Application's Notes to Applicant](#))
- Provide clear descriptions (processes and items, i.e. safe specifications)
- Provide all supporting documentation in English.
- Make the distinction between directors and senior officers.



Pointers for completing Authorised Custodian Applications

- Ensure that all director and senior officer information is [complete](#).
- Ensure that each director and senior officer signs the Declaration (section E)
- Organisation Chart (must indicate the personnel responsible for performing the day-to-day custodial activities).
- Be familiar with the requisite reading material ([Aide Mémoire #3, Press Release No.7 of 2004 and the Application's Notes to Applicant](#))

