

Bearer Share Regime

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10 December, 2009



Background – Bearer Share Regime

OECD
FATF
KPMG
Report

International Pressures

IBC's Power to Issue Bearer Shares

Immobilisation of Bearer Shares

Reputation of Jurisdiction



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 on 1 July, 2004
 - FSC has been accepting applications for Authorised Custodians since 1 July, 2004
 - Defines Authorised and Recognised Custodian



Legislation

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



Meaning of disabled bearer share

During the period in which a bearer share is disabled, that share does not carry any of the entitlements which it would otherwise carry, subject to subsection (3), any transfer or purported transfer of an interest in the bearer share is void and of no effect.



Disapplication on transfer of bearer share

- Subsection (1) does not apply to the transfer or delivery of a bearer share in a company
 - Custodian
 - Company where the share is to be, or has been
 - ★ Convert to or exchange for, a registered share



Disapplication on transfer of bearer share

- ★ Redeemed, purchased or otherwise acquired by the company, or forfeited and cancelled
- ★ And the company holds no other bearer share for any other person
- Registered Agent of the company in accordance (S.73 (1)(c), 73(4)(b) or 74(2))



End of Transition Period

31 December, 2009

Deadline for immobilisation of bearer shares issued under the IBC Act (i.e., bearer shares issued prior to 1 January, 2005)



Recognised Custodian Definition

- **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



Recognised Custodian Definition

The FSC has developed a list of Recognised Custodians

(see Aide Memoire #3 – www.bvifsc.vg)



Publication of Order

- **Financial Services (Recognised Custodians) Order, 2009**
 - Effective 1 July, 2004 (Appendix Aide Memoire # 3)
 - Gazetted 12 November, 2009



Recognised Custodians

Asia/ Europe

- The Central Depository (Pte) Ltd (Singapore)
- The Central Moneymarket Unit (Hong Kong)
- Clearstream Banking Luxembourg
- Hong Kong Securities Clearing Company Ltd
- SIS SegalInterSettle AG (Switzerland)
- Euroclear

North America

- Indeval (Mexico)
- The National Securities Clearing Corporation (USA)
- The Canadian Depository for Securities
- The Depository Trust Company (USA)



Custodian Definitions

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



Authorised Custodians

Local Authorised Custodians

- Amicorp B.V.I. Limited
- Equity Trust (BVI) Limited
- Harneys Corporate and Trust Services Limited
- HSBC International Trustee (BVI) Limited
- Nerine Trust Company (BVI) Limited
- Trident Trust Company (BVI) Limited
- Citco Trust Corporation Limited

Overseas Authorised Custodians

- Assets Trust & Corporate Services, Inc
- Icaza Trust
- MMG Fiduciary & Trust Corp
- Mossfon Trust Corporation
- SHRM Financial Services (Luxembourg) S.A.



Questions

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