

The Immobilisation of Bearer Shares in Panama, and how it affects you.

This note seeks to explain Law 47 of 6 August 2013 ("Law 47"), which adopts a custodial system for bearer shares issued by a Panamanian company, and how it affects you, as our client.

Overview

On 6 August 2013, the National Assembly of Panama passed Law 47, which provides for the immobilisation of Bearer Shares. In short, this means that anyone in possession of Panamanian Corporation Bearer Shares is required to designate an authorised custodian to take possession of such Bearer Shares.

This change can mainly be attributed to the ever-increasing pressure to comply with international standards set out by the Organisation for Economic Cooperation and Development (OECD) as well as recommendation 24 of the Financial Action Task Force (FATF).

A further law, Law 18 on 23 April 2015 ("Law 18"), relating to Bearer Shares was subsequently approved modifying and reducing the deadlines for the implementation of Law 47.

The three-year transition period that was established by Law 47 was significantly shortened by Law 18 with the new date for immobilising Bearer Shares being 31 December 2015.

I have Bearer Shares - what are my options?

Current holders of Bearer Shares will need either: (1) to deposit their certificates with an authorised custodian, which can be a lawyer, law firm, bank or trust company who will then issue a custody certificate in return; or (2) allow the company to cancel the Bearer Shares and issue nominative shares.

What is the procedure for retaining Bearer Shares?

For an established company to continue to be able to issue Bearer Shares a resolution from the board of directors or the shareholders authorising the company to allow for any Bearer Shares to be immobilised is required. The resolution will be a public document and must be registered with the Public Registry of Panama.

What happens if the Bearer Shares are not immobilised?

After 31 December 2015, if the resolution has not been passed and the Bearer Shares immobilised then the articles of incorporation of companies shall be deemed to be automatically amended prohibiting the issuance of new Bearer Shares. The holder of the existing Bearer Shares will not then be able to exercise any rights or powers in relation to the company until such time as they are issued with nominative shares or they have arranged for the resolution to be passed and the Bearer Shares deposited with a custodian.

Can new companies issue Bearer Shares?

Yes, provided that the company issuing Bearer Shares after 4 May 2015 submits the Bearer Shares certificates to the authorised custodian within 20 days from the date of issuance, along with a sworn declaration.

Whilst it is therefore still possible to issue Bearer Shares, clients are now considering alternatives such as a trust or a foundation to act as the shareholder.

Will immobilisation affect confidentiality?

The law requires that the Supreme Court of Panama keep a registry of lawyers and law firms that serve as authorised custodians. However, this doesn't mean that shareholders' names shall be available in the Public Registry - only the names of the companies' officers, directors and registered agents are registered at the Public Registry.

Also, the resolution that is filed with the Public Registry will not contain the name of the shareholder (even if this is a shareholder resolution).

Conclusion

Many offshore financial centres are moving towards removing Bearer Shares to keep in line with the OECD. Panama has, however, found an innovative solution to protect privacy, while still managing mechanisms to control illegal activities by immobilising Bearer Shares rather than eliminating them entirely.

Hatstone Abogados can provide custodial services in respect of Bearer Shares and will be happy to assist with efficient and professional advice and service.

About Hatstone

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We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth. access to our lawyers 24/7 through the latest technology. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.

For further Information, please contact:



Carl O'Shea
Group Partner
E: carl@hatstone.com
T: +507 830 5300



Lidia Ramos
Associate
E: lidia.ramos@hatstone.com
T: +507 830 5300



Lizst Real
Group Partner
E: lizst@hatstone.com
T: +507 6550 7965

HATSTONE

www.hatstone.com

BICSA Financial Center,
Balboa Avenue,
44th Floor, Suite 4405,
Panama City, Republic of Panama
T: +507 830 5300

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