



British Virgin Islands

International Business Companies (Amendment) Acts 2003 & 2004

The following is a summary of a press release by the British Virgin Islands Financial Services Commission (“FSC”) on Friday, 7th May, 2004, relating to the immobilisation of bearer shares and matters related thereto.

Immobilisation of bearer shares

1. The amendments to the International Business Companies (Amendment) Act pertaining to the immobilisation of bearer shares and the related custodial issues shall become effective on 1st January, 2005.
2. All International Business Companies (“IBCs”) formed before 1st January, 2005 and which have the capacity to issue bearer shares, will have until 31st December, 2010 to place their shares with an authorised or recognised custodian. (The approval and recognition of custodians is governed by the **Financial Services Commission (Amendment) Act, 2004**. This Act will come into effect on 1st July, 2004.)
3. IBCs formed after 1st January, 2005 which have the capacity to issue bearer shares will be required to comply with the rules for the immobilisation of bearer shares immediately.
4. The BVI FSC will commence receiving applications from prospective custodians on 1st July, 2004. Those organisations eligible for consideration as authorised custodians are:-
 - i) Service providers licensed under any BVI financial services legislation; or
 - ii) A body corporate incorporated or formed outside the BVI that is not a resident in and does not have a place of business in the BVI.
5. Applicants for approval as custodians must meet “fit and proper” criteria and possess necessary security and compliance systems and procedures in place for the safe custody of bearer shares. To assist potential applicants for authorized custodian status the FSC has produced an aide memoire on the criteria for approval which can be found on the FSC’s website at ‘www.bvifsc.vg’.

Fees and amendments to the Memorandum and Articles of Association

1. The amendments to the International Business Companies (Amendment) Act pertaining to the capacity of an IBC to issue bearer shares as contained in its Memorandum and Articles of Association and the level of annual licence fees payable shall become effective on 1st January, 2005.
2. The new fee level (US\$1,000) for an IBC having the capacity to issue bearer shares will become effective on 1st January, 2005 for all such IBCs formed after that date.
3. For IBCs formed before 1st January, 2005, matters will essentially stay the same as at present for the first four years. After that, for a further three years, those IBCs still retaining the capacity to issue bearer shares will pay a “small” (but, as yet, unspecified) increase in their licence fee. Thus, after seven years, the Act will be fully in force and effect and the fee of \$1,000 will be payable for IBCs having the power to issue bearer shares.
4. Any IBC that amends its Memorandum of Association to prohibit the use of bearer shares shall file at the Registry an extract of the amendment **and** a declaration to the effect that no bearer shares are in issue. This requirement applies whether or not the IBC is incorporated before or after 1st January, 2005.

If you have any questions on the above or for further information, please contact your AMS representative directly.