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British Virgin Islands

International Business Companies (Amendment) Act 2003

The following is an extract from a Press Release that was released by the BVI Financial Services Commission (“FSC”) on October 30, 2003, in response to the recommendations made by a panel appointed by the FSC to recommend the way forward for the new regulatory regime introduced by the International Business Companies (“IBC”) (Amendment) Act 2002.

N.B. It is important to note that the findings of the panel are at this stage proposals or recommendations only and that they have not to date been formally accepted.

The BVI Government has announced that the special panel appointed by the FSC to recommend the way forward for the new regulatory regime introduced by the International Business Companies (Amendment) Act 2002, has completed its final report. The main recommendations have been welcomed by practitioners and users of IBCs.

The Act requires all bearer shares to be held in the custody of either an “authorised” or “recognised” custodian and for bearer shares to be immobilised. It also provides for companies to amend their memoranda or articles of association, which currently give an IBC the power to issue bearer shares. Following passage of the Act, the FSC commissioned the panel to make recommendations on the way forward.

The panel’s main recommendation is to propose a seven-year transition period before the new bearer shares legislation takes full effect.

For the first four years, the situation would essentially stay as it is for existing IBCs. After that, for a further three years, those IBCs that retain the power to issue bearer shares would pay a small increase in their license fee.

Any IBC – whether incorporated before or after the effective date of the IBC (Amendment) Act – that amended its memorandum of association to prohibit the issue of bearer shares would file at the Registry of Companies, together with an extract of the amendment, a declaration to the effect that no bearer shares are in issue.

A Bill to amend the separate FSC Act, making provision for “authorised” and “recognised” custodians, will be introduced in the BVI legislature shortly. The Bill will make service providers licensed under any BVI financial services legislation eligible for consideration as an authorised custodian. In addition, 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 will also be eligible as an authorised custodian.

Mr. Robert Mathavious, Managing Director/CEO of the FSC said, “The panel has dealt with this issue according to the BVI’s guiding principles of self-regulation, market discipline and official oversight. We also wanted to avoid undue burdens on the service providers, their clients and the Registrar. I believe that the recommendations are a sensible combination of balancing effective regulation with recognition of the commercial needs of the market.”

Release ends.

Notes to readers:

1. The Bill to amend the FSC Act will also stipulate that all applicants for approval as authorised custodians will have to satisfy the FSC that they meet the fit and proper criteria and that they have the necessary security and compliance systems and procedures in place for safe custody of their bearer shares.

To determine whether a body corporate incorporated and operating outside the BVI is fit and proper as an authorized custodian, the FSC will also have regard to the prudential regulation and anti-money laundering regulations with which it had to comply.

With regard to “recognized” custodians of bearer shares, current thinking is that the FSC would accept as a recognized custodian an investment exchange or clearing organization that operated securities clearance or settlement systems in a jurisdiction which was a member of the Financial Action Task Force.

2. At present there has been no indication or clarification from the FSC as to the amount of the “small increase in their license fee” that an IBC will have to pay should it wish to maintain the ability to issue bearer shares.

3. At present the FSC has not determined a format in respect of the “declaration to the effect that no bearer shares are in issue”. Below is a draft copy of the declaration that AMS intends for its clients to use.

4. There has been no indication at this stage as to whether or not the effective four years grace period mentioned will also apply to the issue of filing registers of directors with the Registered Agent of an IBC incorporated prior to the effective date, or whether the intended initial period of one year will continue to apply in respect of this matter.

5. No indication has been given as to when it is intended the Act will be proclaimed.

If you have any questions on the above or for further information, please contact your AMS representative directly or send an e-mail to ams@amsbvi.com.

ABC Limited
("the Company")
(International Business Company No. xxxxxx)

**This written declaration has been made by the Director(s)/Member(s) of the
Company**

1. WE, THE UNDERSIGNED, being the Director(s)/Member(s) of the above named Company do hereby declare that the Company has never issued bearer shares and that as of the said date the Company does not have any bearer shares in issue.

2. WE, THE UNDERSIGNED, being the Director(s)/Member(s) of the above named Company do hereby declare that as of the said date all bearer shares previously issued by the Company have been cancelled or exchanged for registered shares in accordance with the terms of the Company's Memorandum and Articles of Association and that as of the said date the Company no longer has any bearer shares in issue.

Dated this xxth day of xxxxxxxxxxxx, 200x

.....
Name
Director

.....
Name
Director