



REPUBLIC OF VANUATU

INTERNATIONAL COMPANIES ACT NO. 32 OF 1992

Guidelines -Custody of Bearer Shares

Order No 15 of 2007

In exercise of the powers exercise of the powers conferred on me by section 132 of the International Companies Act No. 32 of 1992, I, the Honourable WILLIE JIMMY TAPANGARARUA, Minister of Finance and Economic Management make the following guidelines:

1 Interpretation

(1) In this Order, unless a contrary intention appears:

Act means the International Companies Act No. 32 of 1992;

authorised custodian means a person approved by the Commission as an authorised custodian under subsection 2(3);

Commission means the Financial Services Commission established under section 2 of the Vanuatu Financial Services Commission Act No. 35 of 1993;

custodian means an authorised custodian or a recognised custodian;

existing bearer share means a share in a company that:

- (a) was issued or converted to a bearer share before the commencement of this Order; and
- (b) remains a bearer share in the company on the commencement of this Order;

FATF means the Financial Action Task Force established by the international organisation known as the Organization for Economic Cooperation and Development;

recognised custodian means a person recognised by the Commission as a custodian under section 3;

registered agent means the person who is at any particular time performing the functions of registered agent of a company under the Act;

trust company means a company licensed under the Trust Companies Act [CAP 69].

(2) A term used in these Guidelines that is defined in the Act has the same meaning in these Guidelines as it does in the Act.

2 Authorised custodians

(1) Any of the following may apply to the Commission to be an authorised custodian of bearer shares:

(a) a trust company; or

(b) a body corporate that:

(i) is incorporated outside Vanuatu; and

(ii) is not a resident in Vanuatu; and

(iii) does not have a place of business in Vanuatu.

(2) The application must:

(a) be in writing and in the form approved by the Commission; and

(b) have with it:

(i) the prescribed fee; and

(ii) evidence that the applicant is a body mentioned in paragraph (1)(a) or (1)(b); and

(iii) details of the directors and managers of the applicant; and

(iv) details of the systems and procedures the applicant has in place to act as custodian and comply with these Guidelines; and

(v) any other information and documents that the Commission requires.

- (3) The Commission may approve a person as an authorised custodian if it is satisfied that the person:
 - (a) is a fit and proper person to act as an authorised custodian of bearer shares; and
 - (b) has systems and procedures in place:
 - (i) to secure the custody of bearer shares; and
 - (ii) to enable the person to comply with these Guidelines.
- (4) In determining whether a body corporate referred to in subsection (2) is fit and proper, the Commission must have regard to:
 - (a) the prudential regulation exercised over the body corporate outside Vanuatu; and
 - (b) the anti-money laundering obligations imposed on the body corporate outside Vanuatu; and
 - (c) any other matters that it considers relevant.
- (5) The Commission must arrange for notice of the approval of an authorised custodian to be published in the Gazette.
- (6) An approval remains in force for the period specified in the notice of approval.

3 Recognized custodians

- (1) A person may apply to the Commission to be recognised as a custodian of bearer shares.
- (2) The Commission may recognise a person as a custodian of bearer shares if the Commission is satisfied that the person:
 - (a) is an investment exchange or a clearing organisation operating a securities clearance of settlement system; and
 - (b) carries on business in a jurisdiction that is a member of FATF.
- (3) The Commission must arrange for Notice of the recognition of a custodian to be published in the Gazette.

4 Conditions of approval

- (1) The approval of an authorised custodian under subsection 2(3) is subject to the following conditions:
 - (a) that the custodian will follow appropriate systems and procedures to secure the custody of bearer shares; and
 - (b) any other conditions the Commission considers appropriate.
- (2) The Commission may, at any time after approving an authorised custodian:
 - (a) vary or revoke a condition; or
 - (b) impose new conditions.
- (3) Before varying a condition of an approval, the Commission must:
 - (a) inform the authorised custodian of the proposed variation;
 - (b) invite the authorised custodian to make comments on the proposed variation within a reasonable time; and
 - (c) consider the comments of the authorised custodian under paragraph (3)(b)

5 Revocation of approval of authorised custodians

- (1) If the licence of a trust company who is an authorised custodian is revoked under the Trust Companies Act [CAP 69], the custodian is no longer regarded as an authorised custodian.
- (2) The Commission may revoke its approval of a person as an authorised custodian if, in the opinion of the Commission, the person:
 - (a) is no longer a fit and proper person to act as an authorised custodian of bearer shares; or
 - (b) breaches a condition of its approval; or
 - (c) fails to comply with these Guidelines; or

- (d) being a person specified in paragraph 2(1)(b):
 - (i) becomes a resident of Vanuatu; or
 - (ii) establishes a place of business in Vanuatu.

6 Information relating to beneficial owner of bearer share

- (1) If a bearer share in a company is delivered to or deposited with an authorised custodian by a person other than the registered agent of the company, the person must give the authorised custodian a notice containing the following information:
 - (a) the full name of the beneficial owner of the bearer share; and
 - (b) the full name of any other person having an interest in that share, whether because of a charge on the share or otherwise.
- (2) An authorised custodian must not accept a bearer share unless it is accompanied by the information set out in subsection (1).
- (3) If a bearer share in a company is delivered to or deposited with a recognised custodian, the person delivering or depositing the share must, within 14 days after the date on which the share is delivered or deposited, give the registered agent:
 - (a) proof of the delivery or deposit of the share; and
 - (b) a notice containing the information specified in clause (1)

7 Duties of authorised custodian holding bearer share

- (1) If a bearer share of a company is delivered to or deposited with an authorised custodian by a person other than the registered agent of the company, the authorised custodian must within 14 days after receiving the bearer share give notice to the registered agent of the company that it is the custodian of the share.
- (2) An authorised custodian who holds a bearer share must keep a record of the information referred to in sections 6 and 12 and the location of the bearer share:
 - (a) if the authorised custodian is a trust company, at its principal office in Vanuatu or at any other office in Vanuatu approved in writing by the Commission; or

- (b) if the authorised custodian is a person referred to in paragraph 2(1)(b) , at an office approved by the Commission in writing.
- (3) An authorised custodian must ensure that the bearer share remains at all times within its custody and control, whether the share is kept in or outside Vanuatu.
- (4) If an authorised custodian intends to cease acting as custodian of a bearer share in a company, it must give at least 60 days notice of its intention to:
 - (a) the registered agent of the company; and
 - (b) the beneficial owner; and
 - (c) any other person who has an interest in the share.

8 Transfer of bearer shares by an authorised custodian

- (1) An authorised custodian who holds a bearer share in a company must not transfer possession of the share to a person unless the person is:
 - (a) an authorised custodian who has agreed to hold the share; or
 - (b) the body corporate where the bearer share is or is to be:
 - (i) converted to or exchanged for a registered share; or
 - (ii) redeemed, purchased or otherwise acquired by the body corporate:
or
 - (iii) cancelled and forfeited; or
 - (c) the registered agent of the company.
- (2) If an authorised custodian transfers possession of a bearer share under subsection (1), it must:
 - (a) keep for one year copies of:
 - (i) notices sent to it under section 6(1); and
 - (ii) any notices it sent to the registered agent under section 12 ;
and

- (b) deliver with the bearer share:
 - (i) all original notices sent to it under subsection 6(1); and
 - (ii) copies of any notices it sent to the registered agent under section 12.

9 Transfer of bearer shares by a recognized custodian

- (1) A recognised custodian must not transfer possession of a bearer share in a company to a person unless the person is:
 - (a) the registered agent of the body corporate; or
 - (b) the company where the bearer share is or is to be:
 - (i) converted to or exchanged for a registered share; or
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited.
- (2) If a recognised custodian transfers possession of a bearer share in a company, it must deliver with the bearer share a copy of any notice sent to the registered agent under section 12.
- (3) If a recognised custodian transfers possession of a bearer share in a company to the company, the company must within 14 days after receiving the share send notice of its receipt to its registered agent.

10 Procedure on a person ceasing to be a custodian

- (1) If the Commission revokes the approval of an authorised custodian or ceases to recognise a person as a recognised custodian, the Commission must:
 - (a) publish a notice in the Gazette and in a newspaper generally circulating in Vanuatu about the revocation of the approval of an authorised custodian or the person who ceases to be recognised by the Commission as a recognised custodian; and
 - (b) notify the person whose approval has been revoked or who has ceased to be recognised by the Commission.

- (2) A person who is:
- (a) an authorised custodian whose approval has been revoked; or
 - (b) a recognised custodian who has ceased to be recognised by the Commission as a recognised custodian,

must, for each bearer share that the person holds, give notice of the fact to the registered agent of the company, the beneficial owner of the share and any other person who has an interest in the share.

- (3) A person must within 14 days of ceasing to be a custodian, deliver to the owner of the share or a person authorised by the owner:
- (a) the bearer share; and
 - (b) all original notices sent to him under subsection 6(1); and
 - (c) a copy of any notice sent to the registered agent under section 12(1) or (4).
- (4) A registered agent who receives a bearer share in a company under subsection (3) holds the share on behalf of the beneficial owner of the share.

11 Transfer of beneficial ownership of, or interest in bearer share

A person who transfers beneficial ownership of or an interest in, a bearer share held by a custodian must give written notice of the transfer to the custodian.

12 Notice of person having right to entitlements carried by bearer share

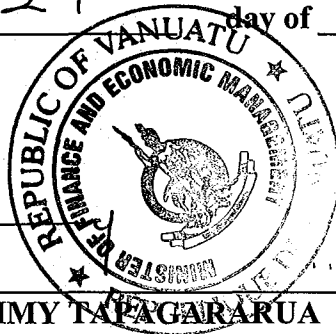
- (1) The custodian of a bearer share in a company may give notice to the registered agent of the company specifying the name and address of the person who is to be registered as having the right to entitlements carried by the share that are specified in the notice.
- (2) A notice under subsection (1) may:
- (a) extend to all the entitlements carried by the share; or
 - (b) be limited to certain specified entitlements.
- (3) If despite the company having received a notice under subsection (1) that has not been revoked, the bearer share is in the custody of a custodian, the company must treat the person specified in the notice as the bearer of the share for the purposes of the entitlements carried by the share that are specified in the notice.

- (4) The custodian of a bearer share may by notice in writing given to the company, revoke a notice delivered under subsection (1).
- (5) A notice of revocation under subsection (4) takes effect from the time that the notice is received by the registered agent or at the later time as may be specified in the notice.

13 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 24th day of April 2007.



Honourable WILLIE JIMMY TAPAGARARUA
Minister of Finance and Economic Management