

July 2004 Update – Bearer Shares

Over recent months, we have highlighted the ongoing deliberations of the BVI Financial Services Commission (FSC), as they relate to the immobilisation of bearer shares. This update will apprise clients of the very latest position and provides some clarity over previously uncertain issues. (Clients may wish to remind themselves of the previous bulletin we issued in December 2003 which is available on the ‘news page’ our website at http://www.atubvi.com/atubvi_new.htm)

The FSC has now issued “Aide Memoire #3” which provides a clear signposting of how bearer shares will, in future be controlled and regulated, and what service providers are required to do to seek a license to provide ‘*Custody Services*’. The Aide Memoire was published along with an Application Form setting out the FSC’s requirements for custodial services. The latest, comprehensive position is broadly consistent with earlier indications.

This bulletin is necessarily brief, and clients are encouraged to download the two documents (the Aide Memoire & the Application) issued by the FSC, by visiting the news page of our website at http://www.atubvi.com/atubvi_new.htm

The summary highlights are:

- (a) Introduction of the legal framework for bearer shares effective January 2005;
- (b) Matters relating to who may be a custodian are effective immediately – July 2004;
- (c) For BVI companies formed before 1st January 2005, the bearer shares must be placed with a custodian by 31st December 2010;
- (d) For BVI companies formed after 1st January 2005, bearer shares have to be placed with a custodian immediately;
- (e) The concept of approved custodians includes ‘authorised’ & ‘recognised’ custodians as was previously envisaged. The former being practising service providers and the latter being Investment Exchanges listed in the Appendix issued by the FSC;
- (f) Those wishing to receive approval to provide ‘*custody services*’ will be required to lodge a comprehensive application with the FSC, which includes a Business Plan and a Manual detailing the standard operating procedures they will employ in handling their custody business. The required accompanying due diligence is thorough but consistent with other forms of application for financial services business;
- (g) Custodians will be required to submit to an annual compliance audit to be performed by an independent auditor. The FSC has yet to disclose full details of the proposed examination.

Clients with additional questions, not adequately addressed within the two documents available on the ‘news page’ of our website are asked to clearly set out their observations so that we may seek any required clarifications from the FSC.

Yours faithfully,
ATU General Trust (BVI) Limited

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