
Revised Regulations of Anguilla: I20-3

INTERNATIONAL BUSINESS COMPANIES ACT (R.S.A. c. I20)

CUSTODY OF BEARER SHARES REGULATIONS

Note: These Regulations are enabled under section 27 of the International Business Companies Act, R.S.A. c. I20.

Interpretation

1. (1) In these Regulations—

“Act” means the International Business Companies Act;

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

“custodian”, in relation to any bearer share, means a person who—

- (a) holds a licence issued under the Trust Companies and Offshore Banking Act that has not been suspended;
- (b) holds a licence issued under the Company Management Act that has not been suspended;
- (c) is a foreign regulated person who has agreed with the registered agent of the relevant international business company to comply with the provisions of these Regulations relating to custodians; or
- (d) has, on an application made by a licensee under the Trust Companies and Offshore Banking Act or the Company Management Act, obtained written approval from the Commission to act as a custodian and has agreed with the registered agent of the relevant international business company to comply with the provisions of these Regulations;

and who has under its direct control facilities for the safekeeping in custody of bearer shares which are satisfactory to the Commission;

“existing international business company” means an international business company incorporated or continued in Anguilla that remains an international business company in Anguilla immediately before 23 November 2006;

“foreign regulated person” has the meaning assigned to it in the Anti-Money Laundering Regulations;

“new international business company” means an international business company that is incorporated or continued as an international business company in Anguilla on or after 23 November, 2006;

“transition date” means the 31st day of December 2010.

(2) Words and expressions defined in the Act have the same meaning in these Regulations.

Bearer Shares of existing International Business Companies

2. (1) An existing international business company shall on or before the transition date—

- (a) deposit its bearer shares with a custodian who has agreed to hold the shares; or
- (b) convert its bearer shares to, or exchange its bearer shares for, registered shares.

(2) Subsection (1) does not apply to bearer shares of an existing company that, before the transition date—

- (a) are cancelled; or
- (b) are redeemed, purchased or otherwise acquired by the international business company as a treasury share.

(3) For the purposes of subsection (1), a bearer share in an existing international business company is deemed to be deposited with a custodian, other than the registered agent of the company, when the registered agent receives written notice of the deposit from the custodian in accordance with section 4(1).

Bearer Shares of new International Business Companies

3. (1) A new international business company that issues a bearer share or disposes of a treasury share that is a bearer share shall deliver the share to a custodian who has agreed to hold the share.

(2) A new international business company shall deliver a bearer share converted from a registered share to a custodian who has agreed to hold the share.

Duties of the custodian

4. (1) A custodian other than the registered agent shall, within 14 days after receipt of a bearer share, send written notice to the registered agent of the relevant company, stating that—

- (a) it is the custodian of the share; and
- (b) it has identified the beneficial owner of the share and has entered into a custody agreement with the beneficial owner.

(2) Subject to subsection (3), a custodian who holds a bearer share shall ensure that the bearer share remains at all times within its custody and control.

(3) Where a custodian desires to cease acting as custodian in respect of a bearer share, it shall—

- (a) give the registered agent of the company and the beneficial owner of the share written notice of its intention to cease acting as custodian; or
- (b) if the custodian is the registered agent of the company, give the beneficial owner of the share written notice of its intention to cease acting as custodian.

Responsibility of registered agent

5. Where the custodian is not resident in Anguilla, it shall be the responsibility of the registered agent to verify that the custodian maintains direct control facilities for the safekeeping in custody of bearer shares which are satisfactory to the Commission.

Power of the Commission

6. Where it comes to the notice of the Commission that a custodian does not meet the requirements for being a custodian or has failed to carry out the duties of custodian as set out in these Regulations, the Commission may declare that the custodian is not or will no longer be a custodian under these Regulations.

Transfer of bearer shares

7. (1) A custodian holding a bearer share in an international business company shall not transfer possession of that share to any person other than to—

- (a) another custodian who has agreed to hold the share;
- (b) the company where the bearer share is to be, or has been—
 - (i) converted to, or exchanged for, a registered share,
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited; or
- (c) the registered agent of the company.

(2) Where a custodian other than the registered agent transfers possession of a bearer share in a company to another custodian, it shall, within 14 days of the transfer, send a written notice of transfer to the registered agent of the company.

(3) A transfer of the beneficial ownership of, or an interest in, a bearer share held by a custodian is effective when notices in accordance with subsection (2) and section 4(1) are received by the registered agent of the company.

(4) Where the registered agent of a company has transferred possession of the bearer share to another custodian, the transfer of the beneficial ownership of, or an interest in, a bearer share is effective when the registered agent receives written notice from the new custodian in accordance with section 4(1).

Disabling of bearer shares

8. (1) A bearer share in an international business company is disabled for any period during which it is held by a person other than a custodian.

(2) Subsection (1) shall not have effect with respect to a bearer share of an existing international business company until the share has been deposited with a custodian after the transition date.

(3) Subsection (1) does not apply where—

- (a) a bearer share in an international business company is held by the international business company and the international business company does not hold the bearer share for or on behalf of any other person; or
- (b) the bearer share is to be, or has been—
 - (i) converted to, or exchanged for, a registered share, or
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited.

Guidance Notes

9. The Commission may issue Guidance Notes from time to time in relation to any matter arising from these Regulations.

Citation

10. These Regulations may be cited as the Custody of Bearer Shares Regulations, Revised Regulations of Anguilla I20-3.
