Panama adopts law creating custody regime for bearer shares

A custody regime for share certificates issued to the bearer was approved by Law No. 47 of 6 August 2013 (the Law) in Panama.

The Law will enter into force following a two-year period after its date of promulgation (i.e., 6 August 2013).

It also provides for a three-year transition period as from its entry into force in respect of bearer shares issued prior to the Law’s entry into force.

Bearer shares issued after the entry into force of the Law must be delivered to a custodian together with an affidavit from the owner of the shares including specific identification information. This obligation must also be fulfilled with respect to bearer shares issued prior to the Law’s entry into force, but following the expiration of the three-year transition period mentioned above.

The following local individuals and entities are authorized to act as custodians:

- Banks with a general license established in Panama and regulated by the Banking Supervisory Authority
- Trustees established in Panama and regulated by the Banking Supervisory Authority
- Brokerage firms established in Panama and regulated by the Stock Market Supervisory Authority
- Central Securities Depositaries established in Panama and regulated by the Stock Market Supervisory Authority
- Lawyers who are registered with the Fourth Chamber of General Affairs of the Supreme Court of Justice and meet specific requirements set out in the Law
Additionally, the following foreign custodians are authorized: banks, trustees and financial intermediaries that are duly licensed for their activities, established in jurisdictions that are members of the Financial Action Task Force on Money Laundering (FATF), and registered with the Banking Supervisory Authority of Panama in a special registry that will be kept to this end.

The main duties of the custodians are the following:

- Keep the bearer shares certificates and all documentation related to the performance of the custody service at their office established in Panama in the case of a local custodian, or at the physical address of the issuing entity’s resident agent in Panama in the case of a foreign custodian
- Hold physical custody of bearer shares certificates
- Protect the confidentiality of the information received
- Local custodians must provide the identification information of the owners of the shares when required by the competent authority (e.g., the Tax Authorities for tax purposes)
- Foreign custodians must provide the resident agent of the company issuing the shares the identification data of the owners of the shares. Foreign custodians that provide a performance bond in the amount of B/. 25,000 (i.e., US $25,000) issued by a bank or an insurance company established and licensed to operate in Panama are exempted from this obligation. Information required by the competent authority has to be delivered by the custodian to the resident agent

The failure to handover the custody of the share certificates issued to bearer bears face the following sanctions:

- Bearer shares certificates issued after the entry into force of the Law: the company will void the issuance of bearer shares if the owner of the shares does not appoint a custodian within 20 days from the issuance approval thereof.
- Bearer shares certificates issued prior to the entry into force of the Law: if the bearer shares are not delivered in custody during the three-year transition period mentioned above, the owner will not be entitled to exercise the voting and economic rights of said shares.

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Endnotes

1. In Spanish: Superintendencia de Bancos.
2. In Spanish: Superintendencia del Mercado de Valores.
3. In Spanish: Centrales de Valores.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young Limited Corp., Panama City**
- Luis Eduardo Ocando +507 208 0144 luis.ocando@pa.ey.com
- Isabel Chiri +507 208 0100 isabel.chiri@pa.ey.com

**Ernst & Young, S.A., San José, Costa Rica**
- Rafael Sayagués +506 2208 9880 rafael.sayagues@cr.ey.com
- Alexandre Barbellion +506 2208 9800 alexandre.barbellion@cr.ey.com

**Ernst & Young LLP, Latin American Business Center, Houston**
- Priscila Maya +1 713 750 8698 priscila.maya@ey.com

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**Co-Directors of America’s Tax Center**
- Global Tax, **Eric Solomon**, Washington, DC
- Global Tax, **Michael Mundaca**, Washington, DC

- America’s Tax Center Chief Operating Officer  
  **Declan Gavin**, Washington, DC
- ATC - Customs  
  **William Methenitis**, Dallas
- ATC - Global Compliance and Reporting (GCR)  
  **Ken Brown**, Dallas
- ATC - Global Tax Desks  
  **Gerrit Groen**, New York
- ATC - Tax Controversy  
  **Debbie Nolan**, Washington, DC
- ATC - Tax Effective Supply Chain Management (TESCM)  
  **Lisa Lim**, New York
- ATC - Tax Performance Advisory (TPA)  
  **Gary Paice**, Chicago
- ATC - Tax Policy  
  **Ricardo Escobar**, Santiago, Chile
- ATC - Value Added Tax (VAT)  
  **Jean-Hugues Chabot**, Montreal, Canada
- ATC - Insurance  
  **Terry Jacobs**, Washington, DC
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