

## PORTCULLIS TRUSTNET

### **PTN eUpdates – Keeping you informed (Issue 6 – September 2008)**

#### **TO BE OR NOT TO BE...A BVI BEARER SHARE COMPANY**

##### **British Virgin Islands Business Companies Act 2004**

##### **Transitional Provisions Deadline for BVI Bearer Shares Companies**

31 December 2009 marks the turning point in how bearer shares and bearer share companies are regulated in the British Virgin Islands (“BVI”).

All existing bearer share companies incorporated and issuing bearer shares before 1 January 2005 (**IBC Companies**) must now consider the fees, and whether they wish to remain bearer share companies or not. Quick action must be taken as the deadline is drawing near, along with some benefits to be had from early decision making.

##### **Automatic Revocation of the Right to Issue Bearer Shares unless Notice is Filed with the Registrar by 31 December 2009**

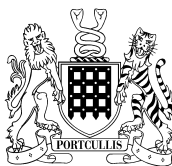
Effective 12:01 a.m. on 1 January 2010, all IBC companies which are currently authorised to issue bearer shares will automatically lose the right to do so unless, they have elected to maintain the right to issue bearer shares by filing a notice of that intention with the Registrar (a “**Notice**”). This means that unless a company files a Notice with the Registrar by 31 December 2009, it can no longer issue bearer shares and any bearer shares which it has already issued, will be disabled. **A disabled share will be invalid and has no rights in the company.**

In summary, **any IBC company which wishes to retain or continue to issue bearer shares, must file a Notice with the Registrar by 31 December 2009.** However if the company has not issued any bearer shares and does not intend to do so in the future, then no action will be necessary on its part and the ability to issue bearer shares will automatically be revoked at 12.01 a.m. 1 January 2010.

##### **Bearer Shares Already in Issue**

All bearer share certificates issued after 1 January 2005, must have been deposited with a BVI Financial Services’ approved custodian (a “**Custodian**”). Likewise, all IBC companies which have issued bearer shares and intend to remain bearer share companies, must now request the bearer share certificates back from the shareholder and deposit these certificates along with details of the person entitled to the shares, with a Custodian by 31 December 2009. **Failure to do so will result in the share being disabled.**

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of the British Virgin Islands Business Companies Act 2004 or the law as it relates to the BVI. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.



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Where an IBC company has determined that it does not want to retain the right to issue bearer shares but has already issued bearer shares, it must in accordance with its Memorandum and Articles of Association, either request that the shareholders seek conversion of the bearer shares to registered shares by 31 December 2009, or cancel, redeem, purchase or otherwise acquire the bearer shares by the same date. **Failure to do take one of these options will result in the shares becoming disabled.**

### **Increase in Annual Fees**

Effective 1 January 2010, the fees of bearer share companies will be increased by USD750.00 for companies that are authorised to issue no more than 50,000 shares or have an authorized capital of no more than USD50,000.00 (i.e. Government fee will become USD1,100.00); and by USD250.00 for companies authorised to issue more than 50,000 shares or have an authorized capital of more than USD50,000.00 (i.e. Government fee will become USD1,350.00).

A bearer share company can however make a saving on its annual fees, if it has deposited all of its bearer shares in issue, on the date that the annual fees are due in 2010 with an authorized custodian whose registered office and head office is in the BVI, and the shares have been with that custodian for at least 12 months before the date that the 2010 annual fees are due.

Where a company has complied with all of the aforementioned, its fees will be increased by USD450.00 instead of USD750.00 if it is authorised to issue no more than 50,000 shares or have an authorized capital of no more than USD50,000.00 (i.e. Government fee will become USD800.00); and by USD150.00 instead of USD250.00 if it is authorised to issue more than 50,000 shares or have an authorized capital of more than USD50,000.00 (i.e. Government fee will become USD1,250.00).

### **Summary**

Based on the foregoing, IBC companies in the BVI should be able to make a well informed decision on whether or not they wish to remain bearer share companies after 31 December 2009.

***For further discussion on any aspect of a Bearer Share Company in the BVI or your company's options, please do not hesitate to contact your usual Portcullis TrustNet representative for assistance.***

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