

## Custody regime applicable to bearer shares and regulation to register lawyers and financial institutions as authorized custodians.



Law 47 of 2013 established a new regime applicable to bearer shares certificates, whereby the requirement was that such certificates be put in custody with an authorized local or foreign entity, following certain requirements and within an established period. The purpose of this regime is to guarantee access to the information of shares by competent authorities in case of tax and/or criminal investigations related to the company.

### Regulatory framework

- **Law 47 of August 6, 2013** which creates a custody regime of bearer shares.
- **Law 18 of April 23, 2015 amends Law 47 of 2013.**
- **Agreement No. 307 of April 24, 2015 of the Supreme Court of Panama creates a registry of authorized custodians for lawyers.**
- **Agreement No. 004-2015 of May 11, 2015 of the Superintendency of Banks of Panama** regulating the procedure for the registration of custodians of bearer shares in the case of financial institutions supervised by said Superintendency.

### General provisions of the scope of the law and its amendment

Law 18 introduces the following changes to the transition period established in Law 47 for placing certificates of bearer shares in custody:

1. Issued **prior** to Law 47 entering into force (May 4, 2015):
  - Up to **December 31, 2015**, certificates of bearer shares must be delivered to the authorized custodian together with a tax return, or such certificates must be replaced for certificates of registered shares.
  - The authorization of the Board of Directors or shareholders must be recorded in the Public Registry by which the company places itself under the share custody regime. The articles of incorporation that do not meet this requirement by December 31, 2015, will be understood as amended by Law prohibiting the issuance of bearer shares.

2. Issued **after** Law 47 entered into force (May 4, 2015):

- **Bearer share certificates issued between May 4 and August 4, 2015:** Deliver bearer shares into custody complying with the requirements of the Law (within a period of 20 days counted as of the approval of the issuance of shares); however, the authority will not be able to enforce it until the three-month transition period has been completed (expiring on August 4<sup>th</sup>).
- **Bearer share certificates issued after August 4, 2015:** Deliver bearer shares into custody complying with the requirements of the Law within a period of 20 days counted as of the issuance approval of shares.
- The company must annul the certificates of bearer shares if the owner does not provide the information of the custodian and tax return required by the Law within the time set forth by law.

#### Details on the figure of local and international authorized custodian of bearer shares

- **Local custodians:**
  1. The general licensed banks in Panama
  2. Trust companies established in Panama
  3. Brokerage houses and stock markets established in Panama
  4. Lawyers registered as such before the Supreme Court of the Republic of Panama.
- **Foreign custodians:**
  1. Banks
  2. Trust companies
  3. Financial intermediaries

Foreign custodians must be licensed to practice their activities and must be established in member jurisdictions of the International Group of Financial Action Task Force on Money Laundering or of its associate members and must register with the Superintendency of Banks of Panama in a special registry for this purpose.

#### Authorized local custodians: *Lawyers and Law Firms (Agreement No. 307 of April 24, 2015 of the Supreme Court of Justice)*

Lawyer or law firms who wish to practice as local authorized custodians shall meet the following requirements:

- Provide all their personal information, License No. and contact details, in the case of lawyers.
- Provide general Public Registry information of the company, name of the lawyer(s) who have legal representation or power to represent it for purposes of this registry, accompanied with authenticated copies of these lawyers' personal identity cards and a current Good Standing Certificate from the Public Registry, in the case of law firms.
- Physical address where the attorney or law firm has its offices (information to be matched with water, electricity or telephone bills, or copy of the lease of the offices).
- Physical address where the lawyer or law firm will safeguard the certificates of bearer shares of which their **custody** has been requested.

#### Authorized local and foreign custodians: *Financial institutions (Agreement No. 004-2015 of May 11, 2015 of the Superintendency of Banks of Panama).*

- **Requirements to register financial institutions as local and foreign custodians:**
  1. To have the appropriate facilities, security systems and compliance procedures to maintain the physical integrity of documents under their custody.
  2. To have qualified operating personnel for custody activity tasks.
  3. To guarantee segregation of duties of the operating personnel, so that no collaborator of the entity has absolute control over custody proceedings.
  4. To make sure that its custody system allows effective identification of ownership of bearer shares in custody, as well as any other information related to the owner of bearer shares.
  5. To conduct due diligence procedures and policies regarding the identification of the beneficial owner of the bearer shares.

**Additional requirements for approval of foreign financial institutions as authorized foreign custodians**

1. General data of constitution, name, physical address, telephone number and e-mail address or fax number.
2. Certification issued by the supervisory entity confirming that it is under its supervision, including name, physical address, telephone number and e-mail address or fax number and, if necessary, translated.
3. Record of designating a notification agent, including full name, physical address or telephone number and email address or fax number and translated, if necessary
4. Sworn statement by which the following is expressed:
  - a. That steps are taken to know the customer in terms no less than those required in Law 2 of 2011, which regulates the measures to know the customer for resident agents of existing legal entities according to the laws of the Republic of Panama.
  - b. To become committed to provide the resident agent the issuing company's full name, nationality or country of incorporation, valid personal identity card number or passport number, or incorporation data, physical address, telephone number and e-mail address or fax number of owners of bearer shares whose certificates will be held in custody, unless the custodian makes use of the exception established in Article 11 of Law 47 of 2013, by consigning the bond set forth thereto.

**Important! In the case of financial institutions,** in order to be custodians, a formal authorization must be mediated by the Superintendency of Banks of Panama through official announcement (Issuance of resolution) which is sought by an application filed by the interested party.



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