



Financial Supervisory Commission Cook Islands

The Financial Supervisory Commission policy on the phase out of bearer instruments

The International Companies Act 1981-82 (ICA) allows for the issuance of bearer instruments (shares, share warrants, debentures). In 2005 the ICA was amended to ensure measures (section 35A) were put in place to, in effect, immobilise these instruments. In addition the Commission has had a practice over the years of discouraging interest in the issuance of bearer instruments by international companies. It has now been determined by the Commission that the prohibition of bearer instruments is appropriate.

On 15 November 2017 the Board of the Financial Supervisory Commission approved the phasing out bearer instruments (resolution 883). This policy was approved by the Board on the following basis:

- The Cook Islands remains one of a small number of countries still to allow bearer instruments (bearer shares in particular) and most international financial centres have moved away from this feature for companies;
- There is significant ML/TF risk in bearer shares and share warrants to bearer, which requires significant controls in place to reduce that risk both at a country level and at the institutional level;
- A large portion of the ME teams findings for Recommendation 24 – Transparency for beneficial ownership of legal persons, is focused on our mechanisms to immobilise bearer shares and share warrants to bearer. This has had a disproportional impact on our ratings for compliance with this Recommendation.

Accordingly members of the trustee company industry have been advised that the Commission has begun the process of phasing out all bearer instruments that are currently provided for under the International Companies Act 1981-82. In order to implement this policy the Commission is undertaking the following steps:

- Drafting an amendment bill which will prohibit the issuance of bearer instruments by international companies. This bill will undergo full consultation. The Commission will be seeking feedback on our approach to phasing out the instruments under the draft bill, timeframes, and practical implementation issues for trustee companies; and

- Any bearer instruments issued prior to any draft bill being enacted by Parliament will need to be converted, redeemed or surrendered by the indicated date of 1 July 2018; and
- The Commission are actively discouraging members of the trustee company industry from facilitating any new issuances of bearer instruments by international companies given the outlined policy albeit its current legal status under the International Companies Act 1981-82 and we expect their cooperation in this regard; and
- Any international company that has issued or issues bearer instruments will be placed under enhanced monitoring until the policy is fully implemented. Please contact Amanda Tuatai (Amanda.tuatai@fsc.gov.ck) for a copy of the FSC procedures for monitoring international companies with bearer instruments.

For any further information on this policy please contact Deputy Commissioner, Cheryl McCarthy (cheryl.mccarthy@fsc.gov.ck) or +682-20798.