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BRIEFING

MARSHALL ISLANDS BEARER SHARES
DEADLINE APPROACHING
OCTOBER 2018

“ANY CORPORATION WHOSE BEARER CERTIFICATE HOLDERS AND BENEFICIAL OWNERS FAIL TO MAKE SUCH DISCLOSURE MUST, BEFORE MAY 8, 2019, CANCEL ALL CERTIFICATES FOR WHICH DISCLOSURE HAS NOT BEEN MADE.”



This briefing highlights an urgent obligation applicable to the holders and beneficial owners of bearer certificates of Marshall Islands corporations. This obligation will also impact banks, lenders, or contractual counterparties with corporations whose shares are evidenced by bearer certificates.

In January of this year, WFW released a [briefing](#) describing amendments made to the Marshall Islands Associations Law (the “Amendment”) prompted by standards imposed by the Organization for Economic Co-operation and Development (i.e., the OECD) and the Financial Action Task Force on Money Laundering, which Amendment largely concerned additional record-keeping and disclosure obligations for all Marshall Islands entities.

The Amendment requires that, by November 9, 2018, holders and beneficial owners of bearer certificates of Marshall Islands corporations must disclose to the Marshall Islands Registrar of Corporations, among other matters, their names, the number of bearer certificates they hold, and the number of shares represented by each such bearer certificate.

This disclosure must be made by the November 9, 2018 deadline, and annually thereafter. Any corporation whose bearer certificate holders and beneficial owners

fail to make such disclosure must, before May 8, 2019, cancel all certificates for which disclosure has not been made. We highlight this obligation because, once cancelled, the shares represented by such certificates will no longer be outstanding, and the law does not provide for a grace period or a remedial method for those cancelled shares.

The cancellation of such shares could have cascading consequences for some corporations resulting in such corporations being incapable of doing business. For example, it is not uncommon for a corporation to have a sole shareholder who is also the sole director and officer of the corporation. If such corporation were to have issued only bearer shares, and that shareholder were to die or become incapacitated, the corporation would theoretically be unable to issue new shares to replace the cancelled bearer shares and be unable to replace the director and officer, resulting in a corporation without shareholders, directors, and officers—what we call an “orphan company”.

The knock on consequences of becoming an orphaned company may impact contractual counterparties as well as the corporation itself. For instance, an orphaned company:

- May breach covenants concerning ownership of the company (the orphan company may be a borrower or a guarantor under a loan);
- May present a novel issue of law regarding “know your client” obligations;
- May not be in good standing with the Marshall Islands registrar;
- May not be able to pay bills as they become due; and
- May not be able to conduct business as usual because there is no board of directors to approve matters or officers to implement them.

All corporations with bearer shares issued are should, by November 9, 2018, disclose their beneficial owners to the Marshall Islands registrar or convert the shares to registered shares. Any failure to do so will result in penalties and adverse consequences.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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