

Republic of Panama Superintendency of Banks

RULE N°. 10-2018
(dated 4 September 2018)

“Whereby Rule 4-2015 on the procedure for the registration of bearer shares custodians is amended”

THE BOARD OF DIRECTORS
in use of its legal powers and,

WHEREAS:

Article 3 of Law 47 dated 6 August 2013, that adopts a custody regime applicable to bearer shares, provided that any holder of bearer shares must appoint an authorized custodian to hold the relevant bearer share certificates in custody;

Article 6 of Law 47 dated 6 August 2013 prescribed that general license banks and trust companies established in the Republic of Panama, regulated by the Superintendency of Banks of Panama, may act as authorized domestic custodians of bearer share certificates;

Article 7 of Law 47 dated 6 August 2013 established that banks, trust companies, and finance intermediaries that hold licenses to engage in their activities in member countries of the Financial Action Task Force on Money Laundering or its associate members and are registered with the Superintendency of Banks of Panama in a special registry that will be kept for that purpose, may act as authorized foreign custodians;

Articles 8 and 9 of Law 47 dated 6 August 2013 describe the information the holders of bearer share certificates must provide to the authorized custodian of bearer shares through an affidavit when surrendering the bearer share certificates issued before and after the enactment of the law, respectively;

By means of Article 10 of Law 47 dated 6 August 2013 the obligations of authorized domestic custodians were provided, among which is the requirement to maintain all documentation related to the provision of the custodial services at its offices in the Republic of Panama, which must be maintained for a five-year period after the service is terminated;

By means of Law 23 dated 27 April 2015 the measures for the prevention of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction were adopted;

Article 19 of Law 23 of 2015 established the Superintendency of Banks, among others, as a supervisory body;

Paragraph 7 of Article 20 of Law 23 of 2015 established that issuing guidance standards and feedback to the financial reporting entities, the nonfinancial reporting entities and activities performed by professionals subject to supervision for its enforcement, as well as the procedures for the identification of the final beneficiaries, legal entities and other legal structures is among the duties of the supervisory bodies;

Pursuant to Article 22 of Law 23 of 2015 the Superintendency of Banks is responsible for supervising banks and banking groups; trust companies, including any other activities they perform; financial companies; leasing companies; factoring companies; issuers or processors of debit, credit and pre-paid cards, either persons or legal entities; and the entities issuing payment means and electronic money, for the prevention of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction;

By means of Article 118 of Law 21 dated 10 May 2017, Article 11 of Law 47 of 2015, by means of which the obligations of authorized foreign custodians are established, was amended;

During its working sessions, the Board of Directors determined it was necessary and advisable to amend Rule 4-2015, to establish the information that authorized custodians of bearer shares must request from their clients owning bearer share certificates.

RESOLVES:

ARTICLE 1. Article 5 of Rule 4-2015 shall read:

ARTICLE 5. AUTHORIZATION BY THE SUPERINTENDENCY OF BANKS. The banks, trust companies and financial intermediaries that wish to be certified as domestic or foreign custodians of bearer shares must request the prior authorization of the Superintendency. The request must be submitted along with the following:

1. Name and general data of the bank, trust company or financial broker, as appropriate;
2. Operational plan that will be used by the entity to offer custody services;
3. Custody security, control and compliance procedures duly approved by the relevant authorities;
4. Description of the registration and data storage systems;
5. Any other document, information or requirement the Superintendent of Banks deems pertinent for the relevant analysis of the application.

Once the application is analyzed and evaluated, the Superintendency will conduct pre-operating examinations to verify compliance with the parameters established herein and, for foreign custodians, to verify the physical existence of the entity. Afterwards, a resolution will be issued to authorize or reject the relevant entity's application to provide authorized custody service.

ARTICLE 2. Article 8 of Rule 4-2015 shall read:

ARTICLE 8. DUTIES OF THE AUTHORIZED DOMESTIC CUSTODIAN. Pursuant to the provisions of Article 10 of Law 47 dated 6 August 2013, authorized domestic custodians will have the following duties:

1. To keep updated all documentation related to the custody service in its headquarters located in the Republic of Panama, including documentation on customer and/or final beneficiary due diligence. Records related to the custody service, as well as any other document permitting the reconstruction of the relationship, if necessary, must be kept for five years after the service ceases;
2. To maintain the physical custody of the bearer share certificates in its headquarters in the Republic of Panama for as long as it continues to function as an authorized custodian;
3. To maintain strict confidentiality of the information received;
4. To provide information when required by competent authority. Furnishing information upon the request of competent authority will not be considered noncompliance with its obligation to maintain strict confidentiality of the information or an infringement of confidentiality responsibilities or privacy rights.
5. To issue certifications providing the identity of the owner of the bearer shares when required by court order, the owner or the lienholder.

ARTICLE 3. Article 9 of Rule 4-2015 shall read:

ARTICLE 9. DUTIES OF THE AUTHORIZED FOREIGN CUSTODIAN. Pursuant to the provisions of Article 11 of Law 47 dated 6 August 2013, authorized foreign custodians will have the following duties:

1. To keep updated all documentation related to the custody service, including the documentation on the customer and/or final beneficiary due diligence, at the physical address provided to the resident agent of the issuing corporation at the time custody is notified. Records related to the custody service, as well as any other document permitting the reconstruction of the relationship, if necessary, must be kept for five years after the service ceases;
2. To maintain the physical custody of the bearer share certificates at the physical address provided to the resident agent of the issuing corporation at the time the custody is notified, for as long as it continues to function as an authorized custodian;
3. To maintain strict confidentiality of the information received;
4. To provide, along with the notification of the appointment as authorized custodian, the full name, citizenship or country of incorporation, valid ID card number or passport number or incorporation data, physical address, telephone number and e-mail address or fax number of the owners of the bearer share certificates held in custody to the resident agent of the issuing corporation. Furnishing this information to the resident agent will not be considered noncompliance with its obligation to maintain strict confidentiality of the information or an infringement of confidentiality responsibilities or privacy rights;
5. To issue certifications providing the identity of the owner of the bearer shares when required by court order, the owner or a lienholder.

ARTICLE 4. Article 9A is added to Rule 4-2015 as follows:

ARTICLE 9A. IDENTIFICATION OF THE OWNER OR BENEFICIARY OF BEARER SHARE CERTIFICATES. The banks, trust companies and financial intermediaries, as appropriate, authorized to act as domestic or foreign custodians of bearer share certificates must identify the owner and/or final beneficiary of the bearer share certificates, requesting and reviewing reliable documents, data or information from independent sources.

For these purposes and without obviating the requirement for the affidavit referred to in Article 9 of Law 47 of 2013, domestic and foreign custodians authorized by the Superintendency of Banks must prepare a customer profile, including a format designed by the entity, containing as a minimum the following information on the owner and/or final beneficiary of the bearer share certificates:

1. Full name, age, gender, employment or employment situation, civil status, profession or occupation and citizenship;
2. Physical address and/or post office address and e-mail address;
3. Valid customer identification document; the personal identification card, for Panamanians or the current passport, for foreigners;
4. Telephone or mobile phone number;
5. Percentage of shareholding;
6. Contact data for an individual or legal entity that can provide references on the customer;
7. Activities engaged in by the corporation issuing shares;
8. Full name, physical address and e-mail address of the resident agent of the issuing corporation;

9. Any other information the authorized custodian may request.

ARTICLE 5. Article 10A is added to Rule 4-2015 as follows:

ARTICLE 10A. EXAMINATIONS OF DOMESTIC CUSTODIANS. Once the authorization to provide services as a domestic custodian is granted, the Superintendency of Banks may, when it deems appropriate, conduct examinations to these custodians to verify compliance with the policies, controls and internal procedures established for rendering services as an authorized domestic custodian. There will also be verification of their compliance with customer due diligence measures as part of the regime for the prevention of money laundering and the financing of terrorism.

ARTICLE 6. ENACTMENT. This Rule will become effective as of its promulgation.

Given in the city of Panama on the fourth (4th) day of September, two thousand eighteen (2018).

FOR COMMUNICATION PUBLICATION AND ENFORCEMENT.

THE CHAIRMAN,

THE SECRETARY,

Luis Alberto La Rocca

Joseph Fidanque III