

Reporting obligations of companies and the abolition of bearer shares



Since the implementation of the rules set out by the Groupe d'action financière (GAFI) in 2015, Swiss law provides for an obligation to notify the purchasers or holders of bearer shares and the beneficial owners of a company. These reporting obligations have recently been tightened. In addition, it has been decided that most companies will no longer be able to issue bearer shares. These new, stricter regulations are in force since 1 November 2019.

In our experience, many companies have not or not sufficiently implemented the above-mentioned reporting obligations, which may lead to unpleasant sanctions for the company, its executive bodies and shareholders. The abolition of bearer shares will also have a significant impact on companies which have issued such shares. Below you will find a brief

overview of the relevant regulations and guidance on where to take action.

1. Reporting Obligations

Since 1 July 2015, purchasers or holders of bearer shares and registered shares must report their shareholding in the company stating their name or company name, address, nationality and date of

birth. Pursuant to Art. 697I of the Swiss Code of Obligations (CO), the company must keep a list of the shareholders reported to the company.

In addition, any person who alone or by agreement with third parties acquires shares in a company whose shares are not listed on a stock exchange, and thus

reaches or exceeds the threshold of 25 per cent of the share capital or votes must within one month give notice to the company of the first name and surname and the address of the natural person for whom it is ultimately acting (the beneficial owner). The board of directors or the financial intermediary of the company must keep a list of the beneficial owners that have been reported to the company.

2. Consequences of Non-Compliance with Reporting Obligations

In principle, the shareholder's membership rights are suspended as long as the shareholder has not fulfilled the above-mentioned reporting obligation(s). No shareholder rights (including dividend rights) and in particular no voting rights may be granted to the shareholders concerned until the shareholders or beneficial owners have been notified. If the board of directors does not comply with these obligations, it runs the risk of incurring civil liability pursuant to Art. 754 CO. A criminal liability according to Art. 158 of the Swiss Criminal Code (criminal mismanagement) is also possible, e.g. in the case of dividend payments to unauthorized persons.

If shareholders who are not entitled to participate in a general meeting of shareholders are present, the resolutions of the general meeting of shareholders may be null and void (Art. 706b CO) or at least challengeable (Art. 706 CO). If dividends are paid out to unauthorized persons, there is a risk that the payment will be null and void and that the shareholder will be sued for repayment in accordance with Art. 678 CO.

It should be noted that these legal consequences apply to all reporting obligations (i.e. the acquisition or holding of shares, the beneficial owners and on changes in the details of persons already reported).

Since 1 November 2019 the law provides additionally for a fine for shareholders or companies that fail to report the beneficial owners or to maintain the share register and the list of beneficial owners. Furthermore, the failure to duly maintain the required registers or unlawfully issuing bearer shares will constitute a violation of organizational duties which can, at the request of a shareholder, a creditor or the commercial register, lead the court to summon the company to comply with its duties or take steps to dissolve the company and liquidate it in accordance with bankruptcy law.

3. Bearer shares can no longer be issued after 1 November 2019

According to the latest legislative change, as of 1 November 2019, Swiss companies that so far were able to issue bearer shares under their articles of association will no longer be able to do so. During the transitional period until 30 April 2021, any company able to issue bearer shares

should initiate an amendment of their articles of association. If not done by this deadline, any other changes to the articles of association will be rejected by the commercial register.

The consequences of the recently implemented provisions do not apply to companies that have securities listed on a stock exchange or have issued intermediated securities. It should be noted, however, that such companies should inform the commercial register accordingly before 30 April 2021.

4. Conclusion

In view of the significant sanctions, we recommend that the legal provisions regarding reporting obligations for bearer shares be strictly observed and implemented. Due to the new legal provisions, we would also highly recommend to convert the bearer shares into registered shares as soon as possible.

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