



## The phasing out of bearer shares and changes to reporting duties for shareholders and partners

In 2015 Switzerland implemented the recommendations of the *Groupe d'action financière* (GAFI), which have led to the introduction of enhanced transparency requirements and reporting duties. On 21 June 2019 the Parliament approved the Swiss Federal Act on the Implementation of Recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes. After the referendum deadline expired unused on 10 October 2019, the Act will enter into force on 1 November 2019. The new Act will further enhance transparency requirements with the aim of enabling Switzerland to pass the next national examination carried out by the Global Forum with flying colours.

### The end of the bearer share

The entry into force of this new Act will also result in changes to Swiss corporate law. As a result, bearer shares will be almost entirely abolished in the future. Following an amendment to the Code of Obligations, bearer shares will only be lawful if the company has shares that are listed on a stock exchange or the bearer shares are configured as intermediated securities within the meaning of the Federal Act on Intermediated Securities and have either been lodged with a custodian in Switzerland designated by the company or have been entered into the main register. In all other cases, bearer shares will no longer be lawful in the future. This will apply both to newly issued as well as to existing bearer shares.

Companies that fall under the exception and are still permitted to issue bearer shares must require that this fact be entered into the Commercial Register within 18 months of the entry into force of the new Act, thus by 30 April 2021.

Companies that do not fall under the exception and that are therefore no longer permitted to hold bearer shares must convert their bearer shares into registered shares within 18 months of the entry into force of the new Act. In order to do so it will be necessary to amend the bylaws. Should any company fail to comply with this duty, the bearer shares issued by it will be automatically converted into registered shares at the end of the 18 months. The company will then be required to adjust its bylaws accordingly the next time they are amended. The competent Commercial Register will be required to reject any other amendment to the bylaws unless and until this adjustment has been made.

After the shares have been converted, the shareholders that have complied with the previous obligation to report under Article 697i of the Code of Obligations and thus are known to the company will be entered into the share register. Other shareholders may apply to the court asking to be entered into the share register within 5 years of the entry into force of the Act. However, this can only occur with the consent of the company. If no application is filed within this time limit, the shares concerned

will become automatically void and replaced by own shares held by the company. The shareholders will lose the rights associated with their shares. Any such shareholder may claim compensation from the company within 10 years, where certain prerequisites are met.

### Adjustments to reporting duties

The rules on transparency for companies in relation to the notice of beneficial owners have not proved to be sufficiently clearly defined. Following an amendment to the Code of Obligations, specific provision has now been made for the eventuality that the shareholder is a company or a listed company. In addition, the law now stipulates a deadline for reporting any changes to the first name, surname or address of the beneficial owner. Any such reports must now be made within 3 months.

### Consequences under criminal and corporate law

The wilful breach of the obligation to notify beneficial owners of shares or capital contributions or the wilful breach of the obligation to keep a share register or a register of contributions or a register of beneficial owners will now be punished by fines. In addition, the failure to keep a proper share register or register of beneficial owners will constitute an organisational deficiency within the company, which in the worst case scenario may result in the dissolution of the company. The same will apply to any companies that issued bearer shares without having shares listed on a stock exchange or without configuring the bearer shares as intermediated securities.

### Required action

Companies with bearer shares should check whether they will fall under the exceptions in the future and will be able to retain their bearer shares, or whether those shares will have to be converted into registered shares. Due to the increased scope for sanctions, both shareholders and the company should make sure that they comply with their reporting obligations correctly and on time and that the necessary ledgers and registers are properly kept.

Please do not hesitate to contact us with any questions or in relation to the implementation of any action.

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