

New bearer shares regime

obligation to deposit bearer shares with a Luxembourg depositary who will keep a register of deposited shares

1. FATF-GAFI recommendations

The legal regime applicable to bearer shares issued by a Luxembourg company was adopted by the Luxembourg Parliament on 16 July 2014.

The Act was adopted in accordance with the FATF-GAFI recommendations (recommendation 24 dated 16 February 2012). ***“Countries should take measures to prevent the misuse of legal persons for money laundering.”*** Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue **bearer shares** or bearer share warrants, or which allow **nominee shareholders or nominee directors**, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to **facilitate access to beneficial ownership** and control information by financial institutions. The aim of the Bill is to implement measures ensuring the transparency of bearer shareholding in Luxembourg companies by way of a specific deposit requirement.

2. The new regime

The following Luxembourg entities that have issued bearer shares fall within the scope of the Act: public limited companies (*sociétés anonymes*), partnerships limited by shares, (*sociétés en commandite par actions*) and investment funds (*fonds d’investissement*) such as investment companies with variable capital (*SICAV*), investment companies with fixed capital (*SICAF*), investment companies in risk capital (*SICAR*), specialised investment funds (*SIF*) and mutual funds (*FCP*).

3. Obligation to appoint a depositary

Bearer shares in issue do not need to be converted into registered shares, but the management body of the relevant companies (see above) will have to appoint a depositary, with whom the bearer certificates will be deposited,

The bearer shares must be registered by the depositary on a register of bearer shares

Luxembourg credit institutions and fully qualified Luxembourg lawyers may act as such depositary.

4. Ownership and transfer

A bearer shareholder will only have access to the share register entries relating to him.

Ownership of bearer shares shall be evidenced by a registration in the share register. The holding of a bearer share certificate will no longer be sufficient in this respect.

The transfer of bearer shares shall be made by way of a declaration of transfer entered in the depositary register. A certificate confirming the registration of the bearer shares may be obtained from the depositary upon request of the bearer shareholder.

5. Share Pledge

The Bill also amends the law of 5 August 2005 on financial collateral arrangements by introducing a specific regime for the dispossession of security rights for the bearer shares: the pledge shall be recorded in the margin of the depositary register.

6. Transitional provisions

With respect to existing bearer shares, a depositary shall be appointed within 6 months following the entry into force of the Bill.

Existing bearer shares shall be deposited within 18 months following the entry into force of the Bill.

Sanctions

The rights attached to the bearer shares will be automatically suspended in the absence of such a deposit. After the expiry of 18 months following the entry into force of the Bill, the bearer shares which have not been deposited will be cancelled and the share capital decreased accordingly. Bearer shares shall be cancelled at the value obtained by dividing the net equity by the number of existing shares.

Publication

The nomination and/or replacement of the depositary shall be filed with the Luxembourg Trade and Companies Registry and shall be published in the Mémorial C.

Criminal liability

Members of the company's management body may incur criminal liability if they do not comply with the new regulation.

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