

## Swiss Corporate Law Changes: End of Bearer Shares?

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### Key points

- Since 2015, acquirers of Swiss non-listed bearer shares must report their name and address to the company within one month of the acquisition. The ultimate beneficial owner of an interest of 25 per cent or more has to be reported. The company has the obligation to keep a register of bearer shareholders and of the beneficial owners.
- According to the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “Global Forum”), these obligations are not sufficient to identify holders of bearer shares.
- On 17 January 2018, the Federal Council launched a consultation on the recommendations of the Global Forum.
- The bill suggests abolishing bearer shares and introducing criminal fines in case of breaches of the new obligations. In addition, all Swiss companies would be obliged to have a Swiss bank account.
- The new rules, if accepted, are scheduled to enter into force in 2019.

### The Background of the Proposed Rules

Under international pressure, in 2014 the Swiss Parliament adopted the Federal Act Implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012. FATF introduced new reporting obligations of acquirers of bearer shares: any acquirer must give notice of the acquisition, together with the acquirer’s name and address to the company within one month. In addition, any person who alone or by agreement with third parties acquires shares and reaches or exceeds the threshold of 25 per cent of the share capital or votes has the duty to report the ultimate beneficial owner of the acquirer to the company.

The company has the duty to keep a register of bearer shareholders and of the beneficial owners notified to the company. If a shareholder fails to comply with its obligations, the membership rights conferred by the shares are suspended.

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These changes, that entered into effect on 1 July 2015, were considered insufficient: on 26 July 2016, the Global Forum published a phase 2 peer review report on Switzerland. Even though Switzerland was graded as largely compliant, the report contains various recommendations, in particular regarding the transparency of legal entities and the exchange of information.

On 17 January 2018, the Federal Council launched a consultation on the recommendations of the Global Forum. The bill proposes converting bearer shares into registered shares and a system of sanctions to be applied if shareholders do not comply with their duty to report beneficial owners or if companies breach their obligation to keep a register of shareholders and beneficial owners.

The consultation lasted until 24 April 2018, and the leading political parties were critical regarding the suggested amendments, in particular the expropriation of shareholders failing to identify themselves to the company and the obligation for the Swiss companies to maintain a Swiss bank account. The draft is currently amended and will be debated by the Swiss Parliament in the next few months. The next peer review of Switzerland by the Global Forum started in the second half of 2018. The new rules, if adopted as amended, would enter into force in 2019.

## Key Points of the Suggested New Rules

### **Abolition of bearer shares**

The bill of the Federal Council proposes converting bearer shares into registered shares automatically by operation of law. If the bill is adopted, shareholders failing to identify themselves to the company within 18 months after its entry into force would lose their rights without compensation. The shares will be deemed void, and the company will have to issue new shares as treasury shares.

The companies will have to amend the articles of association to reflect the conversion of bearer shares into registered shares within two years upon entry into force of the new rules.

### **Introduction of criminal fines**

The Federal Council suggests introducing criminal fines in case of breaches of (i) the shareholders' duty to report the acquisition of an interest in the company and (ii) the companies' obligation to correctly maintain the share register and the beneficial owners' register. The maximum fine would amount to CHF 10,000.

### **Liquidation of the company**

Failure to comply with the above-mentioned obligations would qualify as an organizational deficiency of the company entitling shareholders, creditors and the commercial register to request the court take the required measures, including ordering the liquidation of the company.

### **Swiss bank account**

All Swiss legal entities (companies, branches and individual entrepreneurs with an annual turnover over CHF 100,000) will be required to maintain an account with a Swiss bank. The legal entities will therefore be under indirect supervision of the banks

which will have to identify the ultimate beneficial owner in accordance with the anti-money laundering act. In this respect, the banks will be entitled to have access to the company's share register and the register of ultimate beneficial owners in order to fulfil their duties.

We will keep track of the progress of the above bill. Please contact us if you would like to discuss its implications in more detail.