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The scheduled end of bearer shares in unlisted Swiss companies

Background

The Swiss Federal Parliament brought an end to the regime of bearer shares in unlisted Swiss companies on 21 June 2019 when it approved a Federal Council bill relating to their abolition.

Faced with combined pressure from the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), the Federal Council was forced into abolishing the bearer shares regime to avoid Switzerland finding itself blacklisted as a State identified as having failed to cooperate in terms of fiscal transparency.

Indeed, an initial major overhaul of the bearer shares regime had come into force on 1 July 2015, but this was not deemed to have gone far enough by the Global Forum's assessors; as a result, the Federal Council proposed a further reform of bearer shares.

Details of the reform

Bearer shares will only be permitted if the company has equity securities listed on the stock market or issued in the form of intermediated securities as defined by the Federal Act on Intermediated Securities of 3 October 2008 and deposited with a custodian in Switzerland designated by the company or registered in the main register.

Further, the company must keep a register of shareholders showing the shareholder's identity and, if the shareholder owns 25% of the share capital or voting rights, the forename, surname and address of the ultimate beneficial owner of the shares.

The share capital of many Swiss companies still comprises bearer shares. Accordingly, the board of directors is required to convert its bearer shares into registered shares, which requires an amendment to the Memorandum and Articles of Association and, consequently, referral to a notary.

If these obligations are not complied with, bearer shares will automatically be converted into registered shares within a period of eighteen months from the date when the legislation comes into force (the date of entry into force is not yet known). Additionally, the shareholder's membership rights are suspended and ownership rights withdrawn until the shareholder has fulfilled his reporting obligation.

A shareholder whose shares have been converted may, at his expense, petition the Court to enter him in the company's register of shareholders if he can prove his status as shareholder. If he fails to do so within a period of five years from the date of entry into force, he will permanently lose his status as shareholder.

Lastly, federal lawmakers have gone as far as providing for criminal sanctions for breach of the reporting and record-keeping obligations. In other words, a shareholder owning 25% of the share capital or voting rights in a company, either alone or together with a

third party, who fails to report the forename, surname and address of the beneficial owner of the shares to the board of directors of the company of which he is a shareholder may incur a fine. Similarly, members of the board of directors of a public limited company who fail to keep a register of shareholders and a list of beneficial owners may also incur a fine.
The referendum deadline expires on 10 October 2019 and the Federal Council has yet to set a date for entry into force.

Conclusion

Swiss unlisted companies, whose share capital still comprises bearer shares, must ensure they are compliant by converting their bearer shares into registered shares or into intermediated shares as defined by the Federal Act on Intermediated Securities of 3 October 2008 and deposit them with a custodian in Switzerland designated by the company or entered in the main register, or risk incurring criminal sanctions.

Similarly, holders of bearer shares must report themselves to companies of which they are shareholders in order to avoid having their shares automatically converted into registered shares and, ultimately, losing their status as shareholder.

WILHELM Avocats can offer help and advice to ensure that your company complies with the above legislation.

Source :

<https://www.wg-avocats.ch/en/news/commercial-law/the-scheduled-end-of-bearer-shares-in-unlisted-swiss-companies/>