

Wilhelm Gilliéron

AVOCATS



Auteur: Steve Gomes | Le : 5 October 2020

End of bearer shares - what should the Board of Directors do?

As already mentioned previously ([The scheduled end of bearer shares in unlisted Swiss companies](#) ; [The demise of unlisted bearer shares paves the way for some hard-fought legal battles!](#)), the federal legislator has decided to end the regime of bearer shares by amending the relevant provisions of the Swiss Code of Obligations. In the coming months some of the amended provisions will come into force, so that the boards of directors of the companies in question will have to take the necessary measures to comply with this new legislation.

As of 1 November 2019, boards of directors may no longer issue new bearer shares, unless they are listed equity securities or shares issued in the form of intermediated securities. However, even in these two cases, the board of directors is still required to inform the commercial register, which will include the entry in the company's commercial register.

On 1 May 2021, all bearer shares will be automatically converted into registered shares by law.

In the meantime, the board of directors must (1) seek to identify the shareholders who still hold bearer shares, (2) establish a register of shareholders indicating who is the holder of the shares as well as their beneficial owners (3) and, finally, adapt the Articles of Association in order to convert the bearer shares into registered shares.

With regard to the amendment of the Articles of Association, if the Board of Directors does not adapt them to take into account the conversion of the shares, the competent commercial register shall amend the entries by adding the following statement under the heading "comments" in the extract from the commercial register of the company concerned: *"On 1 May 2021, the bearer shares were converted by law into registered shares. The articles of association of the company have not yet been adapted to the conversion, but will have to be adapted at the time of the next amendment."* (cf. Instructions relatives à la loi fédérale sur la mise en œuvre des recommandations du Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales., p. 7). This does not, however, release the Board of Directors from the obligation to update the share register.

Public limited companies, whose bearer shares have been automatically converted into registered shares by the commercial register, may no longer amend their Articles of Association without adapting them to the share conversion carried out. There is no time limit for the adaptation of the Articles of Association. However, we advise the companies concerned to amend their articles of association at the next ordinary general meeting.

The legislator has also provided for a catalogue of sanctions to ensure the effectiveness of these new standards. For example, Article 327a of the Criminal Code provides for the imposition of a fine on anyone who fails to keep the share register or the list of beneficial owners in a proper manner. Furthermore, a company which does not keep its registers up to date is in default and is liable to measures which may go as far as the dissolution of the company.

In view of the above, we strongly advise the board of directors of the companies concerned to proactively take all necessary measures to comply with the new law.

Source : <https://www.wg-avocats.ch/en/news/company-law/end-of-bearer-shares-what-should-the-board-of-directors-do/>