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## AVOCATS



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## Public limited companies must not forget the beneficial owners of their shares

Since 1 July 2015, even after the abolition of bearer shares (see [our blog of 18 November 2019](#)), the Swiss Code of Obligations requires all public limited companies to keep a list of the beneficial owners of shares announced to the company upon a transfer reaching the 25% threshold, regardless of the type of shares (bearer or registered). However, the current regime is difficult to handle as many provisions are currently still provisionally in force and will soon be repealed. In addition, the new law on public limited liability companies will be announced shortly. It is to be expected that the entry into force of the new law will bring these issues to the attention of the general meetings and boards of directors in the coming years. They would therefore be well advised to anticipate future changes, as these will be difficult to manage in an emergency.

According to Art. 697j CO, as it currently stands, any person who acquires, alone or in concert with a third party, shares in an unlisted company and whose holding, as a result of this transaction, reaches or exceeds the threshold of 25% of the share capital or voting rights, is required to inform the company within one month of the name and address of the natural person on whose behalf he is last acting.

Art. 697l of the Swiss Code of Obligations provides for the maintenance of a list of beneficiaries. This legal provision was revised by the novelle of 21 June 2019 (FF 2019, pp. 4313 et seq.) and its new wording will enter into force in its amended version on 1 May 2021. It will then apply only to registered shares and will provide that the company will keep a list of the beneficiaries “who have been announced to it”. Does this mean that only transfers reaching the 25% threshold mentioned above will fall under the scope of this announcement? It can reasonably be argued so. A more extensive application to all registered shares is not for the time being in accordance with the letter of the law, but, due to transparency, such a development cannot be excluded in the near future...

In any event, in any event, this list must indicate whether the beneficiaries are natural persons, their first and last names, nationality and date of birth and, in the case of legal entities, their company name. The address of the beneficiaries must also be included in the list.

This list must be kept by the board of directors of the company in such a way that it can be accessed at any time in Switzerland. Supporting documents relating to this list must be kept by the company for at least 10 years after the deletion of the person appearing on the list.

After the abolition of bearer shares, the General Meeting of Shareholders will soon no longer be able to stipulate that this list be maintained by a financial intermediary within the meaning of the Federal Act on Money Laundering. This option will expire 18 months after the entry into force of the aforementioned new law, i.e. on May 1, 2021.

Our practice shows that public limited companies have largely ignored these provisions. For those which are concerned, it is advisable to prepare oneself so as not to be exposed to the relatively important consequences of a breach of these obligations.

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**Source : <https://www.wg-avocats.ch/en/news/company-law/register-beneficial-owners-shares/>**