

Update

Newsflash June 2015

Amendment of Swiss Corporate Law based on the recommendations of the Financial Action Task Force

On July 1, 2015 an amendment of the Swiss Code of Obligations implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012 will enter into force. The amendment will introduce new disclosure and transparency obligations in respect of holders of bearer shares and beneficial owners of shares of privately held companies. The new rules require prompt action by shareholders and affected companies.

On December 12, 2014, the Swiss Parliament approved the Federal Act Implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012 in order to improve transparency in respect of legal entities and bearer shares. The corresponding referendum deadline expired on April 2, 2015. On April 29, 2015 the Swiss Federal Council decided that the Act will enter into force in two stages. On July 1, 2015 the amendments of the Swiss Code of Obligations, the Collective Investment Schemes Act and the Federal Intermediated Securities Act will become effective, whereas the changes to the Swiss Civil Code, the Swiss Criminal Code and the Administrative Criminal Law Act, the Debt Collection and Bankruptcy Act and the Anti-Money Laundering Act will enter into force on January 1, 2016.

The changes in Swiss corporate law, which will enter into force on July 1, 2015, apply to companies limited by shares (*Ltd.*, *AG*, *SA*) and to limited liability companies (*LLC*, *GmbH*, *Sàrl*) which are privately held (i.e. companies without shares listed on a stock exchange), and which do not have intermediated securities pursuant to the Federal Intermediated Securities Act. This Newsflash summarizes the major elements of the new rules.

I. Bearer Shares

1. Disclosure duty of holders of bearer shares

Under the new law, the acquirer of bearer shares (including bearer participation certificates) has to notify the company of its acquisition within one month, by reporting its name and surname or its corporate name (in case of a corporate acquirer) and its address to the company. Any subsequent changes in such information have to be notified to the company as well. In addition, the acquirer will have to provide evidence to the company that it actually possesses the bearer share(s), and must identify itself by submitting an official identification document containing a photo (such as passport, identity card or driver's license) or an extract from the commercial register or equivalent document (in case of a corporate acquirer).

2. List of holders of bearer shares

In relation to the reporting obligations of the acquirer of bearer shares, the company has to keep a list of such shareholders setting forth the name, surname, address, nationality and date of birth of any individual shareholder, or in case of a corporate shareholder, the corporate name, date of incorporation and address. Such list has to be accessible in Switzerland and to at least one board member or officer domiciled in Switzerland at any time. In addition, any documents based on which a holder of bearer shares has been registered on the list have to be

preserved for a period of ten years following the deletion of such shareholder from the list.

3. Financial intermediary

The shareholders' general meeting of a company that has issued bearer shares may resolve that the disclosure by holders of bearer shares shall not be made to the company itself but to a financial intermediary as defined by the Swiss Anti-Money Laundering Act. If such a resolution is passed, the board of directors of the company has to appoint the financial intermediary and inform the shareholders accordingly. The financial intermediary then is responsible for keeping and updating the list of holders of, and beneficial owners in, bearer shares as well as preserving the corresponding documents.

II. Beneficial Owners

1. Disclosure duty in respect of beneficial owners

In addition to the disclosure obligation of bearer shareholders, the new law requires the acquirer of any shares (be them bearer or registered shares or shares of an LLC), who, acting alone or in concert with third parties, reaches or exceeds the threshold of 25% of the share capital or voting rights of the company, to disclose the name, surname and address of the beneficial owner of such shares to the company within one month. Any subsequent changes in such information have to be notified to the company as well. The beneficial owner to be indicated to the company has to be an individual person; in principle, a corporation may not be indicated as beneficial owner.

2. List of beneficial owners

In relation to the obligation to disclose the identity of the beneficial owner, the company has to keep a list with the name, surname and address of such beneficial owner. This list has to be accessible in Switzerland and to at least one board member or officer domiciled in Switzerland at any time. Any documents based on which a beneficial owner has been registered on the list have to be preserved for a period of ten years following the deletion of such person from the list. In case of bearer shares, the management of such list may be delegated to a financial intermediary (cf. section I.3 above).

III. Consequences of a breach of the notification duties

1. Membership (voting) rights

If a shareholder does not comply with its disclosure obligations, any membership rights attached to the shares (in particular, voting rights) are suspended for so long as the shareholder has not made the required notifications.

2. Financial rights

In addition to the suspension of membership rights, any financial rights attached to the shares (in particular, the right to receive dividends) are suspended if and for so long as a shareholder has not made the required notifications. The right to receive dividends will be forfeited if the shareholder does not comply with its notification duties within one month from the acquisition, provided that the entitlement to future dividends will resurrect as soon as the required notifications have been duly made.

3. Responsibility of the board of directors

The new law also provides that the board of directors is responsible for ensuring that no shareholder may exercise his voting rights or receive any dividends if and for so long as such shareholder has not made the required notifications (the managers of an LLC have the same responsibility).

IV. Further amendments to the Swiss Code of Obligations

In order to support the new transparency requirements, additional provisions of the Swiss Code of Obligations will be amended with effect as of July 1, 2015:

- > Any documents based on which a shareholder or usufructuary of registered shares has been registered in the share register have to be preserved for a period of ten years following the deletion of such shareholder or usufructuary from the share register;
- > The possibility to convert bearer shares into registered shares will be explicitly provided for in the Swiss Code of Obligations, such conversion requiring only the majority of votes cast (and not represented) in the shareholders' general meeting. The Articles of association may not provide for any higher quorum;
- > Following the dissolution and the deletion of a company from the commercial register, the share register as well as the list indicating the beneficial owners and/or the holders of bearer shares have to be preserved for ten

years and remain accessible in Switzerland during that period;

- > Cooperatives will have to keep a member register containing the name, surname (or corporate name) and address of each of its members. This register has to be accessible in Switzerland and to at least one board member or officer domiciled in Switzerland at any time. Any documents based on which a member has been registered in the register have to be preserved for a period of ten years following the deletion of such member from the register.

V. Transitional regime

The new rules will be applicable as from July 1, 2015.

Shareholders who already own bearer shares on July 1, 2015 will have to comply with their disclosure obligations by December 31, 2015, otherwise their financial rights that have accrued during that period will be forfeited. The question whether the same six month extension also applies in relation to membership rights is unclear.

Accordingly, existing holders of bearer shares who wish to exercise any membership rights during the second half of 2015 are advised to comply with their disclosure obligations prior to such exercise.

By contrast, there is no duty on holders of registered shares or shares of an LLC to disclose the beneficial owner if the 25% threshold has already been reached or exceeded prior to July 1, 2015. The duty only arises if such shares are acquired and the threshold is reached or exceeded on or after such date.

Finally, the new law provides that any necessary amendments of the Articles of association or organizational regulations will have to be implemented within two years from the entry into force of the new rules, i.e. until June 30, 2017.

Please do not hesitate to contact us should you have any query.

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