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FOR MORE  
INFORMATION  
CONTACT OUR  
PROFESSIONALS:

Magali Micheletti  
Head of Corporate Services  
Tel:  
(+352) 269 255-2194  
E-mail:  
[magali.micheletti@experta.lu](mailto:magali.micheletti@experta.lu)

Stanislas Bunetel  
Head of Tax  
Tel:  
(+352) 269 255-2209  
E-mail:  
[stanislas.bunetel@experta.lu](mailto:stanislas.bunetel@experta.lu)

New Luxembourg legal regime on bearer shares issued by Luxembourg companies.

#### INTRODUCTION

The law dated 28 July 2014 has been adopted by the Luxembourg Parliament in order to change the legal regime on bearer shares issued by Luxembourg companies (the "Law").

The Law was adopted further to the recommendations of the Financial Action Task Force (the "FATF") to Luxembourg to implement appropriate measures in order to ensure transparency of the shareholders of Luxembourg companies for the purpose of anti-money laundering, the fight against terrorism and tax evasion.

Among the various options suggested by the FATF, Luxembourg decided to use the option consisting in a specific deposit requirement of bearer shares.

## DESCRIPTION OF THE NEW LEGAL REGIME

- Type of companies falling within the scope of the Law:

The below listed Luxembourg companies having issued bearer shares are falling within the scope of the Law:

- Public limited liability companies (i.e. *sociétés anonymes*);
- Partnership limited by shares (i.e. *sociétés en commandite par actions*).

Those companies, if used as specific investment vehicles, are also covered by the Law (e.g. SICAV, SIF, SICAF, SICAR...).

The Law will be applicable to bearer shares already in issuance before the entry into force of the new legal regime and to bearer shares issued after its entry into force.

- Description of the depositary requirements:

In accordance with the new Luxembourg legal regime, the board of directors of the companies falling within the scope of the Law are responsible for appointing a depositary who will have to keep the bearer shares.

The depositary, who should not be a shareholder of the company, should be one of the regulated entities or people established in Luxembourg, as listed below:

- Credit institutions;
- Asset managers;
- Distributors of UCI shares and units;
- Regulated professionals of the financial sector;
- Lawyers registered on list I and list IV;
- Notaries;
- Auditors;
- Accountants.

The depositary will be obliged to hold a bearer shares register, for each company falling within the scope of the Law, containing the following information:

- The exact identity of the owner of the bearer shares;
- The number of bearer shares held by each owner;
- The date of the deposit of the bearer shares;
- The transfers of the bearer shares (including the date of the transfer or of the conversion of the bearer shares into normal registered shares).

Each owner of bearer shares has only access to the information in relation to his shareholding.

The ownership of the bearer shares shall be evidenced by the registration in the bearer shares' register and the transfer of bearer shares shall be made by way of a declaration of the transfer in the register. A certificate evidencing the ownership further to the registration of the bearer shares should be issued by the depositary upon request of the owner of the bearer shares.

The depositary is only allowed to transfer the bearer shares in two cases:

- When the depositary ceases to act as a depositary, he has to transfer the bearer shares to the person acting as the new depositary;
- When the bearer shares are converted into registered shares or when the company has redeemed part of its share capital, the depositary should transfer the bearer shares to the company.

- Consequences of the new legal regime on share pledge agreements:

The Law also states that the dispossession of the bearer shares deposited with a depositary can be implemented through the registration of the pledge in the margin of the depositary register.

- Timeline to comply with the new legal regime:

The Luxembourg companies falling within the scope of the Law and having issued bearer shares before the entry into force of the Law (i.e. on 18 August 2014) shall **appoint** a depositary within 6 months following the entry into force of the Law (i.e. before 18 February 2014).

Existing bearer shares have to be **deposited** within 18 months following the entry into force of the Law.

The voting rights attached to the bearer shares which have not been deposited within 6 months following the entry into force of the Law shall be automatically suspended and the bearer shares which have not been deposited within 18 months following the entry into force of the Law shall be definitively cancelled pursuant to a capital reduction.

- Sanctions:

The directors, who do not comply with their obligations, as depicted above, can receive a fine ranging between EUR 5,000 and EUR 125,000.

The depositary, who does not comply with his obligations, as described above, can receive a fine ranging between EUR 500 and EUR 25,000.

#### **SERVICES THAT EXPERTA MAY OFFER**

Firstly, Experta recommends its clients to determine with its employees if they still need to have bearer shares. As the case may be, Experta will be able to provide its clients with appropriate services to comply on time with the new Luxembourg legal regime on bearer shares.