Conversion of bearer shares: Deadline approaching

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Introduction

Unlisted companies that still hold bearer shares must convert them into registered shares by 30 April 2021 at the latest, unless the shares were issued as intermediated securities. This legal update provides an overview on how to convert bearer shares into registered shares and the consequences if they are not converted by 30 April 2021.

Background

In 2015, upon pressure from the Financial Action Task Force (FATF), Switzerland introduced new reporting obligations in the Swiss Code of Obligations (CO). These require companies to keep a register of owners of bearer shares as well as of the company's beneficial owners (for more information on these duties, see Pestalozzi's legal update of 1 February 2016.

On 1 November 2019, further amendments of the CO entered into force, reflecting transparency recommendations of the FATF. Following the implementation of these new regulations, bearer shares have been abolished in principle. As of 1 May 2021, bearer shares are permitted only if the company has equity securities listed on a stock exchange or if the bearer shares are structured as intermediated securities. These exceptions need to be registered with the commercial register. Companies that do not fall under these exceptions but still have bearer shares must convert them into registered shares within 18 months following the entry into force of the new regulations, i.e. by 30 April 2021.

Although institutions regulated by FINMA may already have converted their shares into registered shares a few years ago due to the existing FINMA practice or legal provisions, they should still be aware of the approaching deadline. It might be important for their contractual relationships with companies that do still hold bearer shares.

Conversion of bearer shares

How should a company proceed to convert bearer shares?

To convert bearer shares, the articles of association need to be amended in a first step because this is where the type of shares is determined. To do this, the board of directors has to convene an (ordinary or extraordinary) general meeting of the shareholders. The board of directors provides the agenda and the proposal to convert bearer shares into registered shares. The general meeting needs to approve the conversion and the amendment of the articles of association. In addition, the resolutions of the general meeting need to be publicly notarised. Thus, a notary must be involved. The resolutions approving the amendment of the articles of association as well as the amended articles of association themselves need to be filed with the relevant commercial register.

The conversion does not affect the nominal value and does not have any implications regarding the rights and duties of shareholders. Former bearer share certificates have to be collected and destroyed and new share certificates for registered shares may be issued.

What happens if bearer shares have not been converted by 30 April 2021?

If a company has not complied with its obligations and still has bearer shares by 1 May 2021, these shares will be automatically converted into registered shares by the commercial register. Even if the articles of association have not been amended, the automatic conversion is effective for everyone and will be made public by means of a notice in the commercial register.

After the automatic conversion, the company has to adjust its articles of association accordingly (for procedure, see above). The commercial register will reject amended articles of association which do not contain the conversion of bearer shares into registered shares.

Violation of reporting obligation

Following the conversion, the board of directors has to record the shareholders in the shareholder register and update the beneficial owner register accordingly. The board of directors should request (former) shareholders of bearer shares that have not reported themselves to the company to comply with their reporting obligation.

Any shareholders of former bearer shares who have not notified the company of their identity by 1 May 2021 will need to request their registration through court proceedings and will have to bear the legal costs themselves. Companies may only register these shareholders once the relevant court has approved the registration. Until then, unregistered shareholders will be barred from exercising their membership rights and financial rights. The board of directors is responsible for ensuring that no unregistered shareholder can exercise its rights. If shareholders of former bearer shares have not been registered by 1 November 2024, their shares will become void.

The new regulations of the CO also provide for sanctions if the reporting obligation is violated or if the company does not comply with its obligation to maintain a share register and beneficial owner register. Accordingly, companies or shareholders in violation of their obligations may become liable to criminal fines of up to CHF 10,000.

Conclusion and required action

As the deadline of 30 April 2021 is approaching, unlisted companies that still have bearer shares should convert these into registered shares now. In addition, companies should reach out to shareholders who have not notified the company of their identity and ask them to comply with their reporting obligation. Equally, it is advisable that shareholders comply with their disclosure obligation before 1 May 2021 in order to avoid legal costs. Lastly, if they have not already done so, it is recommended that companies adapt internal procedures to keep their shareholder register and beneficial owner register up to date in order to avoid sanctions.

Our experienced team will be happy to assist with any further queries you may have.

Contributor: Manu Ferro (Associate)

No legal or tax advice

This legal update provides a high-level overview and odes not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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Oliver Widmer

Partner
Attorney at law
Head Financial Services

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 42
oliver.widmer@pestalozzilaw.com



Andrea Huber



Partner
Attorney at law, LL.M.

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 41
andrea.huber@pestalozzilaw.com