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## Implementation of FATF Recommendations 2012 Corporate Law Changes

New Swiss Company Law provisions have become effective on 1 July 2015. The law provides for new reporting duties for the holders of bearer and registered shares and, amongst other things, the set up of additional (share) registers.

### Overview / Key Changes

- *Holders of bearer shares must report to the corporation (AG/SA) and disclose their identity (see 3.1);*
- *Holders of bearer and registered shares must report the BO to the corporation (see 3.2);*
- *Corporations / BoD must set up a bearer share register and BO register (or amend the registered share register) (see 3.5);*
- *BO's of LLC (GmbH/Sarl) shares must report to the LLC and the LLC must record them in a respective register (see 3.8);*
- *Cooperatives (Genossenschaften) have the duty to keep a member's register (see 3.9);*
- *All companies must ensure the access to the registers at any time through a member of the BoD or management who is residing in Switzerland (see 3.5);*
- *BoD must ensure compliance with the new provisions (see 3.5);*
- *Articles of association and by-laws must be amended, if necessary (see 3.6).*

## Timing / Transitional Periods

- i. Current holders of bearer shares must report and provide the above mentioned information (owner and BO) and documents to the corporation within 6 months as from the entry into force of the new law, i.e. until **31.12.2015**;*
- ii. Holders of registered shares must comply with the new notification duty only after **01.07.2015**. Hence, there is no action to be taken by current shareholders if there are no changes of the BO;*
- iii. Necessary changes to the articles of association and by-laws will have to be made within 2 years, i.e. by **30.06.2017**;*
- iv. The companies/board of directors should have the new register(s) available as from **01.07.2015** and ensure that none of 'non-compliant' shares participate in meetings of the general assembly or exercise any other rights.*

## Background

In February 2012, the Financial Action Task Force (**FATF**) revised and amended its international standards for combating money laundering and terrorist financing. As a FATF member, Switzerland subsequently approved the 40 revised FATF Recommendations and has since been implementing them into Swiss law. In this context, on 12 December 2014, the Swiss parliament has adopted the new "Implementation of the 2012 Revised FATF Recommendations Act" which will become effective on 1 July 2015.

This new act has a broad impact, also affecting Swiss companies. The "Implementation of the 2012 Revised FATF Recommendations Act" also implies changes to the provisions covering Swiss Company Law, i.e. the Swiss Code of Obligations (**CO**). Perhaps the new provisions will de facto abolish the bearer shares, because the owner as well as the beneficial owner (**BO**) of bearer shares will have to be disclosed, like the owner and the BO of registered shares. In order to comply with the new regulations, Swiss companies are, amongst other things, required to set up new share registers or amend its existing ones.

In the following, the new company law requirements will be described in more detail:

## Amendment of the Swiss Code of Obligations

### Reporting duty of holders of bearer shares (art. 697i CO)

Acquirers of bearer shares will have to notify a corporation limited by shares (corporation) of the acquisition within 1 month from the acquisition. Upon the reporting, the shareholder has to identify itself and give proof of the possession of the shares (e.g. by presenting the shares or respective documents showing the legal assignment chain). For identification purposes, the shareholder has to provide the corporation with a copy

of passport/ID/drivers license or in case of a legal entity, an extract from the commercial register. Further, personal information on the shareholder has to be given, i.e. name, address, date of birth and nationality of the shareholder. The new law also stipulates that it is the shareholder's duty to notify the corporation if its name or address changes.

Note that with respect to registered shares, the current regulation will remain in force. Hence, the acquisition of registered shares still has to be reported to the corporation and, in case of restricted transferability, the board of directors' (**BoD**) consent to the transfer is required.

### **Reporting duty of beneficial owners of bearer and registered shares (art. 697j CO)**

Shareholders of bearer as well as registered shares who are solely or jointly with third parties holding at least 25% in the share capital or of the voting rights of a corporation have to notify the identity of the ultimate BO to the corporation within 1 month from the acquisition. Name and address of the BO have to be disclosed. The duty of notification remains with the formal owner of the shares who also has to report any changes of the BO (or change of address of registered BOs) to the corporation.

Note that the BO may only be an individual (not a legal entity). Should the BO be a corporation and no individual can be identified as BO, the (chairman of the) BoD of such corporation is deemed to be the BO.

### **Reporting to a financial intermediary (art. 697k CO)**

Corporations, respectively the general assembly of a corporation, issuing bearer shares may choose to appoint a financial intermediary to administrate their register(s). If this is the case, the shareholders must report the acquisition of bearer shares as well as the BO of such shares to the financial intermediary. The BoD is responsible to appoint the financial intermediary and to inform the shareholders of such appointment.

The corporation can request information on the notifications made in connection with the corporation's bearer shares from the financial intermediary at any time. Yet, the financial intermediary shall only provide the information for which bearer shares a notification has been made, but not who has made it (no-name-basis).

### **Sanctions in case of non-compliance (art. 697m CO)**

Non-compliance with the new provisions leads to the suspension of personal membership rights (e.g. voting right, the right to participate in the general assembly meeting, information rights etc.) and to the forfeiture of financial benefits. These rights are suspended as long as the reporting duty is not fulfilled.

Moreover, the financial benefits are even discharged if the shareholder does not report its ownership shares or the BO within 1 month. However, if the shareholder does so at a later point, the financial benefits can be claimed as from then (but not retrospectively).

## **Obligations of the Corporations / Organisation**

The BoD must take measures to ensure compliance by the corporations, i.e. the establishment and maintenance of the respective register(s), ensure that none of 'non-compliant' shares participate in meetings of the general assembly, etc. Otherwise, they incur liability (director's liability) or the respective resolutions of the general assembly become subject to appeal.

The corporations must further ensure that the register is accessible in Switzerland at anytime and corporations must be represented by at least one person residing in Switzerland who has access to the share register and the register of BOs. This person must be a member of the BoD or the management. Further, all documents provided for the identification of the shareholders must be retained for 10 years as from the deletion of the entry in the register.

## **Conversion of bearer into registered shares**

The new law provides for a simplified conversion process of bearer into registered shares. So far, corporations were only able to convert bearer into registered shares if the articles of association provided for it. As from 1 July 2015, the conversion has its legal basis in the new law and the articles of association may not foresee any restrictions in this respect.

## **Exemptions**

The above mentioned reporting/notification duties do not apply to shares of corporations listed at the stock exchange or shares issued under the Federal Intermediated Securities Act (*Bucheffekte*).

## **Limited Liability Company (LLC)**

The BO's of LLC shares also have to be reported to the LLC and the LLC must record them in a respective register.

The same sanctions as for the corporations apply (suspensions of personal membership rights and forfeiture of financial benefits) in case of non-compliance.

The LLC must be represented by a person residing in Switzerland. This person must either be managing director or a member of the management and have access to the members register and the register of BOs.

## **Cooperatives**

Cooperatives (Genossenschaften) have the duty to keep a members register (art. 837 CO). This register must be accessible in Switzerland. The documents forming the basis for the entry of the member in the register must be retained for 10 years after the deletion of the member.

The cooperative must be represented by a person residing in Switzerland. This person must either be member of the administration, managing director or director and have access to the members register (art. 898 II CO).

## Contact

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