



Abolition of the bearer share – status quo and recommendations for action

The abolition of the bearer share has reached a new milestone. Companies had until 30 April 2021 to convert remaining bearer shares into registered shares or to register a remark in the commercial register explaining why such a conversion is not necessary. In addition, the holders of bearer shares whose shares were converted had until that date to disclose their identity to the company in order to be registered in the company share register. Those who have failed to do so before this date can now be registered under stricter conditions only up until 31 October 2024. Those who miss this deadline risk having their shares declared null and void and converted into the company's own shares.

1. Background

While the identity of registered shareholders is known to a company through their registration in the company's share register, the holders of bearer shares remain anonymous. In order to more effectively combat money laundering, the acquisition of bearer shares was subjected to the obligation to register with the company with effect from 1 July 2015, thus effectively abolishing the anonymity of bearer shareholders. Due to ongoing criticism from the Global Forum on Transparency and Exchange of Information for Tax Purposes, the transparency requirements were further tightened as of November 2019. Bearer shares are now only exceptionally permitted if the company is listed on a stock exchange or if the bearer shares are organized as intermediated securities within the meaning of the Federal Intermediated Securities Act and deposited with a custodian in Switzerland or entered in the main register.

2. Effects as of 1 May 2021

In the context of this toughening of transparency regulations, transitional provisions for the abolition of bearer shares were introduced in November 2019. Companies had until 30 April 2021 to either (i) communicate the above-mentioned exceptional grounds for exemption to the relevant commercial register or (ii) convert bearer shares into registered shares, otherwise this conversion would take place *ex officio* as of 1 May 2021. In this latter case, it is noted in the commercial register that the articles of association have not yet been adapted to the new situation and that this change will need to be made when the articles of association are next amended. The conversion of shares — whether it was carried out within the time limit or enforced *ex officio* — shall be registered in the commercial register and have effect vis-à-vis all persons, irrespective of any provisions to the contrary in the articles of association and irrespective of whether share certificates were issued or not.

Holders of bearer shares who have not yet complied with their obligation to register, but whose shares were *ex officio* converted into registered shares on 30 April 2021, must now request that a competent court order their registration in the share register by 31 October 2024 at the latest, subject to the prior consent of the company. If the company refuses, the shareholder will first need to issue proceedings for the court to recognize their right. In the context of this procedure, the physical share certificate is not sufficient evidence; a subscription form or an assignment agreement must also be produced. If the court approves the request,

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the shareholder will be able to re-assert his property rights from that point on, but will need to bear the court fees associated with the court proceedings.

The board of directors is responsible for ensuring that the share register is properly maintained at all times. Therefore, should a shareholder not fulfill their obligation to request registration by 30 April 2021, a note must be made in the share register indicating the default and the ensuing suspension of the rights associated with those shares. If the board of directors intentionally fails to update the share register, this can be punished under criminal law with a fine of up to CHF 10,000. In addition, any shareholder or creditor of the company is entitled to initiate legal proceedings to remedy organizational deficiencies (i.e. improper keeping of the share register).

3. Effects as of 1 November 2024

Should a shareholder fail to comply with his obligation to register by 31 October 2024, he will permanently lose his shareholder status as of 1 November 2024, i.e. his shares will become null and void. These voided shares will however be replaced by the company's own shares, which the company may freely dispose of. These own shares must be correctly booked as a negative item in the equity capital and the share register must be updated accordingly. It should be further noted that a company may only hold its own shares if their total nominal value does not exceed 10% of the share capital. Otherwise, shares exceeding this 10% limit will need to be sold within two years or cancelled via a capital reduction.

The situation becomes interesting if the shares have become null and void through no fault of the shareholder. In this case, a claim for compensation can be asserted against the company within a further period lasting until 31 October 2034. In such circumstances, the individual's shareholder status must be proven (share certificate and subscription form/assignment agreement). In addition, the shareholder must show that he has neither intentionally nor negligently failed to comply with his registration obligation. In this regard, the most conceivable situations are those where someone was not aware of their shareholder status because the shares were inherited and they did not know this until after 1 November 2024.

4. Recommendations for action

Companies that have not yet converted bearer shares into registered shares are now required to amend their articles of association. In addition, they must now verify whether all former holders of bearer shares have disclosed their identity in order to be registered in the share register. If this is not the case, the share register must be amended accordingly and the company must ensure that the rights of such shareholders (e.g. their entitlement to dividends) be suspended. As outlined above, failure to comply with these obligations may result in criminal and civil liability. For ease of reference, the key deadlines are listed below:

1 May 2021	1 November 2024	31 October 2034
Automatic conversion of prohibited bearer shares into registered shares	Automatic invalidation of shares of non-reported shareholders and conversion into own shares of the company	Expiry of the right to compensation of shareholders whose shares have wrongfully been declared null and void

If you have any questions regarding the conversion of bearer shares into registered shares, please do not hesitate to contact us.

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