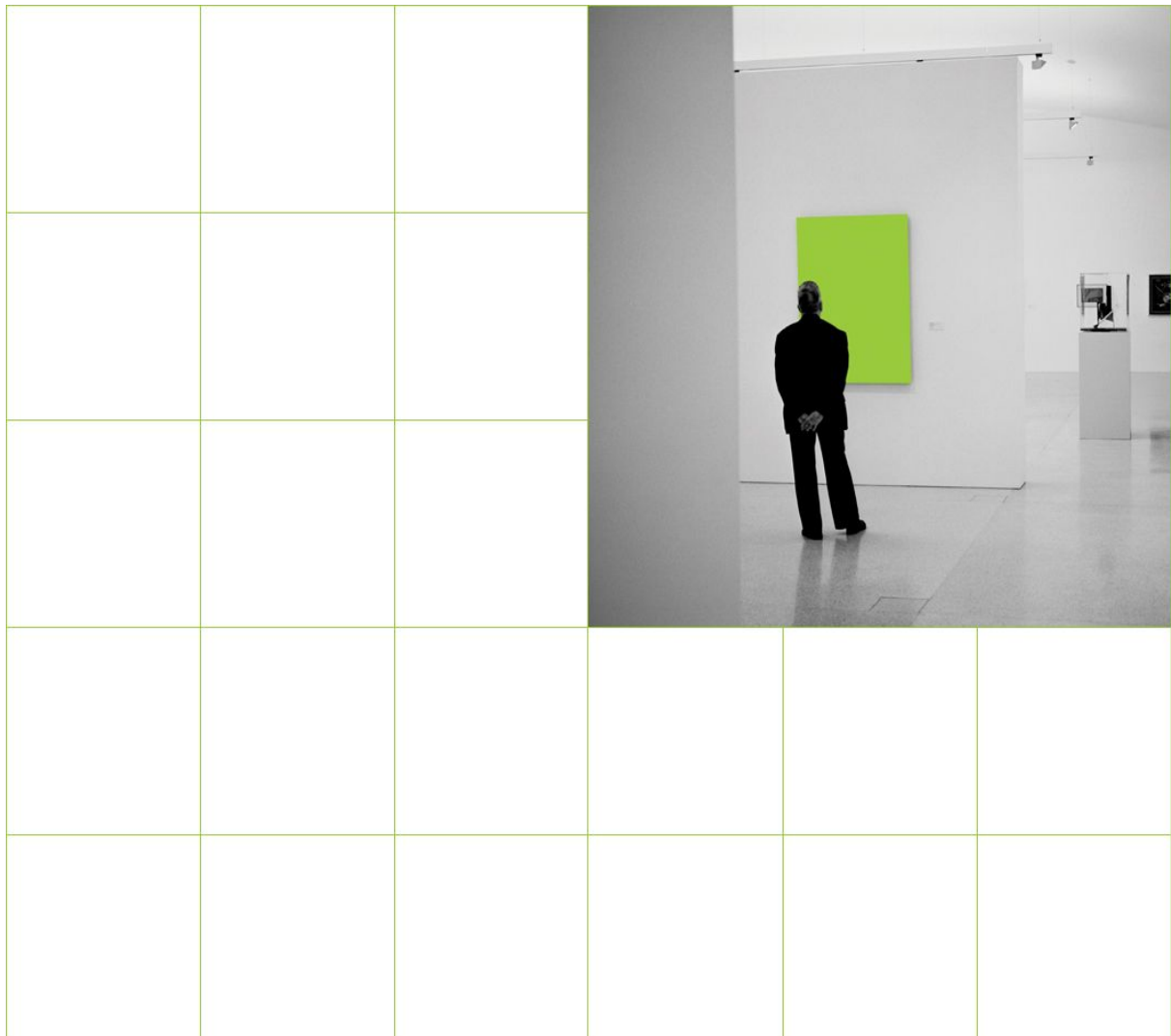


# Law of 28 July 2014 on the immobilisation of bearer shares and units



**Law of 28 July 2014 on the immobilisation of bearer shares and units and the keeping of the register of registered shares and the register of bearer shares, and amending 1) the amended law of 10 August 1915 on commercial companies and 2) the amended law of 5 August 2005 on financial collateral contracts.**

### **Chapter 1 – Amending provisions**

**Art. 1.** Article 11*bis*, §1, 3) of the amended law of 10 August 1915 on commercial companies shall be supplemented by item d) which is worded as follows:

“d) depositaries of public limited companies (*sociétés anonymes*) and partnerships limited by shares (*sociétés en commandite par actions*) appointed in accordance with Article 42.”

**Art. 2.** Article 42 of the amended law of 10 August 1915 on commercial companies shall be replaced as follows:

“Art. 42. (1) Bearer shares shall be deposited with a depositary appointed by the board of directors or by the management board, as the case may be, and complying with the requirements set forth in paragraph 2.

(2) The depositary shall not be a shareholder of the issuing company. Only the following professionals may be appointed depositaries, provided that they are established in Luxembourg:

a) credit institutions;

b) wealth managers;

c) distributors of units in UCIs;

d) professionals of the financial sector (*professionnels du secteur financier*), authorised as Family Offices, domiciliary agents of companies, professionals providing services pertaining to the incorporation or the management of companies, registrar agents or as professional depositaries of financial instruments;

e) lawyers with the Luxembourg Bar registered on list I and European lawyers pursuing their professional activities under their original professional title registered on list IV of the Bar register referred to in Article 8, paragraph 3, of the amended law of 10 August 1991 on the profession of lawyer;

f) notaries;

g) statutory auditors and independent auditors;

h) chartered accountants;

(3) The depositary shall maintain a register of bearer shares in Luxembourg; such register shall include:

- a) the precise name of each shareholder and an indication of the number of shares or fractional shares;
- b) the date of the deposit;
- c) the transfers and the dates thereof or the conversion of shares into registered securities;

Each holder of bearer shares may consult those entries in the register which relate to it only.

(4) The depositary shall hold shares deposited pursuant to paragraph 1 for the shareholder which is the owner of such shares. The ownership of bearer shares shall be subject to an entry in the register. Upon written request of the owner of bearer shares a certificate evidencing all the entries relating to it shall be delivered to it by the depositary.

Any sale shall be made enforceable through evidence of the transfer entered in the same register by the depositary. To that end the depositary may rely on any document or notification evidencing the transfer of ownership between the transferor and the transferee.

Unless otherwise provided for in the articles of incorporation, notification of transfer upon death shall be validly made towards the depositary, provided no opposition is lodged, on production of the death certificate, the certificate of registration and an affidavit attested by a *juge de paix* or by a notary.

(5) The rights relating to bearer shares may only be exercised if the bearer shares are deposited with the depositary and if all the relevant data is entered in the register pursuant to paragraph 3.

(6) The depositary may not be dispossessed of bearer shares, except in the following cases where it shall deliver bearer shares:

- a) to its successor, in its capacity as a depositary, in the event of the termination of its duties;
- b) to the company, if the bearer shares have been converted into registered securities, in the event of repurchase by the company of its own shares pursuant to Articles 49-2 and 49-3 and in the event of a capital amortisation pursuant to Article 69-1.

(7) The liability of the depositary, as derived from its obligations set forth in paragraphs 3, 4 and 6, shall be determined in accordance with the same rules as the liability of directors or members of the supervisory board, as the case may be."

**Art. 3.** The reference to Article "42" shall be deleted from the final paragraph of Article 84 of the amended law of 10 August 1915 on commercial companies.

**Art. 4.** A sentence shall be added at the end of Article 5, paragraph 2, b) of the amended law of 5 August 2005 on financial collateral contracts. It shall have the following wording:

"The dispossession of bearer financial instruments deposited with a depositary pursuant to Article 42 of the amended law of 10 August 1915 on commercial companies may be performed by registering the pledge in the margin of the registration of the financial instruments on the register of the depositary."

## Chapter 2 – Criminal Sanctions

**Art. 5.** An Article 171-2, worded as follows, shall be inserted into the amended law of 10 August 1915 on commercial companies:

“Art. 171-2. (1) A fine of 5,000 euros to 125,000 euros shall be imposed on managers or directors who have knowingly:

1° omitted to maintain a register of registered shares in accordance with the provisions of Article 39;

2° omitted to appoint a depositary or have not deposited the bearer shares with such depositary in accordance with the provisions of Article 42;

3° recognised the rights attaching to the bearer shares in breach of the provisions of Article 42, paragraph 5.

(2) A fine of 500 to 25,000 euros shall be imposed on the depositary, or in the case of a legal person, the managers or directors of the depositary which have knowingly breached the provisions of Article 42, paragraphs 3, 4 and 6.”

## Chapter 3 – Temporary provisions

**Art. 6.** (1) Public limited companies (*sociétés anonymes*), partnerships limited by shares (*sociétés en commandite par actions*) and management companies of undertakings for collective investment (*sociétés de gestion d'organismes de placement collectif*) constituted in the form of common funds (*fonds communs de placement*) which have issued bearer shares of units before the entry into force of this law shall appoint a depositary within six months of the entry into force of this law.

(2) The bearer shares or units issued by public limited companies (*sociétés anonymes*), partnerships limited by shares (*sociétés en commandite par actions*) and management companies of undertakings for collective investment (*sociétés de gestion d'organismes de placement collectif*) constituted in the form of common funds (*fonds communs de placement*), before the entry into force of this law shall be lodged within eighteen months of the entry into force of this law with the depositary appointed.

(3) The voting rights attaching to the bearer shares or units which have not been immobilised within a period of six months from the entry into force of this law shall automatically be suspended at the expiry of this period until the time of their immobilisation. At the expiry of this same period, the distributions shall be delayed until the date of the immobilisation, provided that the rights attaching to the distribution have not been prescribed and without payment of interest.

(4) The shares or units for which voting rights have been suspended shall not be taken into account for the calculation of the quorum and majorities during general meetings. The holders of such shares or units shall not be admitted to these general meetings.

(5) The bearer shares or units which have not been immobilised within a period of eighteen months from the entry into force of this law shall be cancelled and the capital subscribed for shall be reduced by a corresponding amount.

The cancellation of the shares or units shall be made at a price obtained by dividing the amount of the shareholders' equity of the company, as entered in the most recent balance sheet of the company drawn up at a date which may not be in excess of two months prior to the decision to cancel, by the number of shares or units issued by the company, the price of which must be reduced by the amount of the bonuses and reserves which in accordance with the law and the articles of association may not be distributed as well as the fees and commissions relative to the reduction of the capital.

The funds corresponding to the shares or units thus cancelled or, failing this, other assets with a value equivalent to the cancelled shares or units shall be deposited with the *Caisse de consignation* (Consignation Bureau) until such time as a person having been able to validly establish its status as owner requests restitution thereof.

(6) A fine of 5,000 to 125,000 euros shall be imposed on managers or directors who have knowingly:

1° omitted to appoint a depositary in accordance with the provisions of paragraph 1;

2° recognised the rights attaching to bearer shares or units in breach of the provisions of paragraphs 3 and 4;

3° omitted to cancel the non-immobilised bearer shares or units, have not reduced the subscribed capital and have not deposited the corresponding funds in application of the provisions of paragraph 5.