

# Luxembourg newsflash

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### Changes to the Luxembourg bearer shares regime

#### Contact us:



Laurent Schummer

Head of Corporate, Tax & Capital Markets



Claude Kremer

Head of Investment Management



Philippe Dupont

Head of Banking & Finance



Pierre Beissel

Head of Private Equity & Real Estate

Bill of law n° 6625 ("the Bill"), which will substantially change the legal regime applicable to bearer shares issued by a Luxembourg company was adopted by the Luxembourg Parliament on 16 July 2014.

#### Context

The Bill was adopted in accordance with the Financial Action Task Force recommendations and in particular recommendation 24 dated 16 February 2012, which provides that "*countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22*". The aim of the Bill is to implement measures ensuring the transparency of bearer shareholding in Luxembourg companies by way of a specific deposit requirement.

#### Scope

The following Luxembourg entities that have issued bearer shares fall within the scope of the Bill: public limited companies ("*sociétés anonymes*"), partnerships limited by shares, ("*sociétés en commandite par actions*") and investment funds ("*fonds d'investissement*") such as investment companies with variable capital ("*SICAV*"), investment companies with fixed capital ("*SICAF*"), investment companies in risk capital ("*SICAR*"), specialised investment funds ("*SIF*") and mutual funds ("*FCP*").

One should bear in mind that the Bill covers already existing bearer shares and those which may be issued after the entry into force of the Bill.

#### Depository

To comply with the obligation to deposit bearer shares, the management body of the relevant companies will have to appoint a depository.

The depository may be (a) a credit institution, (b) an asset manager, (c) a distributor of UCI shares, (d) certain other professionals of the financial sector, (e) certain lawyers, (f) auditors, (g) accountants or (h) notaries.

To be appointed, a depository must fulfill certain conditions including but not limited to the following:

- the depositary must be located in Luxembourg,
- the depositary must not be a shareholder of the company.

### Register

The bearer shares must be registered by the depositary on a register which shall mention: (i) the owner of the said bearer shares, (ii) the number of bearer shares held, (iii) the date of the deposit of the bearer shares, (iv) any transfer of the bearer shares (if applicable) and (v) any conversion of the bearer shares into registered shares (if applicable).

### Ownership and transfer

A bearer shareholder will only have access to the share register entries relating to him.

Ownership of bearer shares shall be evidenced by a registration in the share register. The holding of a bearer share certificate will no longer be sufficient in this respect.

The transfer of bearer shares shall be made by way of a declaration of transfer entered in the shareholders' register. A certificate confirming the registration of the bearer shares may be obtained from the depositary upon request of the bearer shareholder.

### Share Pledge

The Bill also amends the law of 5 August 2005 on financial collateral arrangements by introducing a specific regime for the dispossession of security rights for the bearer shares: the pledge shall be recorded in the margin of the depositary register.

### Transitional provisions

With respect to existing bearer shares, a depositary shall be appointed within six months following the entry into force of the Bill.

Existing bearer shares shall be deposited within eighteen months following the entry into force of the Bill.

### Sanctions

The rights attached to the bearer shares will be automatically suspended in the absence of such a deposit. After the expiry of eighteen months following the entry into force of the Bill, the bearer shares which have not been deposited will be cancelled and the share capital decreased accordingly. Bearer shares shall be cancelled at the value obtained by dividing the net equity by the number of existing shares.

### Publication

The nomination and/or replacement of the depositary shall be filed with the Luxembourg Trade and Companies Register and shall be published in the *Mémorial C*.

### Criminal liability

Members of the company's management body may incur criminal liability if they do not comply with the new regulation.

Please contact us should you require any further information.

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