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Who owns what?

Luxembourg has enacted new legislation regulating bearer shares. Companies and shareholders have a limited period of time to comply with the ownership and identity requirements, reports Julien Dif.

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In July 2014, Luxembourg's Parliament passed legislation, the *Bill of Law No.6625*,¹ overhauling its bearer shares regime. This followed recommendations set out by the OECD-sponsored Financial Action Task Force (FATF), calling on OECD member states to take measures to combat money laundering and the financing of terrorism. In the OECD's *Tax Transparency 2011* report, bearer shares were described as 'a potential barrier to achieving an effective exchange of information', and Luxembourg was specifically asked to meet the standards as to the 'availability of ownership and identity information' on beneficial owners.

Immobilisation of bearer shares marks an end to anonymity of ownership and also transfer of ownership by delivery

A bearer share is generally defined as a security not registered on the books of the issuing company and supposedly owned by whoever holds the certificate. Those features allow for the avoidance of some of the controls associated with ordinary registered shares. However, given the deterrent of appearing on the FATF blacklist, which lists the countries that are perceived to be non-cooperative in the global fight against money laundering and terrorist financing, only a handful of countries still offer such bearer shares.

The new regime

In Luxembourg, bearer shares must now be deposited with a custodian, who must keep a register. The immobilisation of bearer shares marks an end to anonymity of ownership and also transfer of ownership by delivery. It is worth pointing out that the law does not cover bearer shares listed on the stock exchange; requirements as to ownership and identity information of such shares were set out in a previous law, and in particular the rules and regulations of the Luxembourg Stock Exchange.

The mechanism is as follows: shares are deposited with a professional custodian registered in Luxembourg and appointed by the board of directors. Requirements as to the natural or legal person appointed as custodian are drafted in such a way as to avoid any conflict of interest, in that no shareholder of the same company can fulfil that duty. The custodian must keep a register mentioning the name of each shareholder and the number of shares owned by each shareholder, the date of deposit and transfers of ownership. Nevertheless, unlike in the case of registered shares, the register is not freely accessible to all shareholders; bearer shareholders can only obtain information relating to themselves.

Transitional period

Bearer shares issued after the entry into force of the new legislation must comply with the immobilisation requirement from inception. Bearer shares issued before the entry into force of the legislation benefit from a transitional period. Companies have a six-month period to appoint a custodian, and shareholders have an 18-month period to put their shares in custody.

If shareholders do not comply with the law in due time, the exercise of the rights attached thereto – i.e. attending the annual general meeting for voting and getting paid dividends – will be suspended until effective immobilisation occurs. Eight years from the entry into force of the legislation, the bearer shares that are not yet immobilised will be cancelled and the subscribed capital will be reduced by the amount of the cancelled shares. Any violation of the provisions is punishable by a fine of up to EUR125,000.

• 1Adopted by the Luxembourg Parliament on 16 July 2014

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