

New Reporting Obligations for Shareholders of Ltd's and Company Members of LLC's

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As part of the Federal Act on the Implementation of the Revised Recommendations of the Financial Action Task Force (FATF/GAFI) new reporting obligations for shareholders have been implemented in Swiss Corporate Law as per July, 01 2015. The new transparency obligations for legal entities shall serve the fight against money laundering and ensure fiscal transparency.

Subject matter of the new reporting obligations are shares of non-listed Swiss companies limited by shares (Ltd (AG)) and capital contributions of limited liability companies (LLC (GmbH)). Book-entry securities are not covered by the new reporting obligations.

New Reporting Obligations for Acquirers of Bearer Shares

Acquirers of bearer shares now have the obligation to **report their identity** to the company **within one month** from the acquisition. Every **transfer of ownership** must be reported. Even the acquisition of one sole bearer share must be reported. When reporting, the shareholder has to identify himself with a legal document, such as (copy of) passport/identification card respectively certificate of registration.

Also Bearer shareholders, who already held shares **prior to July 1, 2015** have to report their identity to the company. The reporting grace period has expired on **December 31, 2015**.

New Reporting Obligations regarding the Ultimate Beneficial Owner

Shareholders of Ltd's and company members of LLC's, who bought shares / made capital contributions **on/after July 1, 2015** and are therewith owning at least 25 % in **share capital or voting rights** of a Ltd or a LLC, have now to report the identity of the **ultimate beneficial owner**. With that the economic approach from the Money Laundering Act is being transferred to the Corporate Law.

The report has to be submitted with **every acquisition** that leads to a qualified shareholding / capital contribution of 25 % of the share capital or voting rights. The acquisition of shares / a capital contribution in the context of the founding of the company or a capital increase also triggers the reporting obligation.

Put into **practice** the new reporting obligations raise complex questions when it comes to “property chains”, company groups and funds, which have not been fully clarified yet. According to the

law, the (formal) acquirer of shares / company member has to report in best of his knowledge who the person at the end of the control chain is.

Report to a Financial Intermediary

Ltd's may stipulate a reporting to a financial intermediary instead of a reporting to the company. The relationship between the company and the financial intermediary can thereby be arranged in a way that allows the anonymity between the shareholder and the company.

Sanctions

Non-compliance of the new reporting obligations may lead to **suspension of voting rights** and **forfeiture of dividends and rights to other financial benefits**. A catching up report can be submitted at any time. The shareholder can then exercise his financial rights from this date on.

Obligation to keep a Register

Ltd's (i and ii) and LLC's (ii) have to keep (i) a register listing **all bearer shareholders** and (ii) a register listing **all ultimate beneficial owners** reported to the company. The company has to store all documents related to this within 10 years after every cancellation of a person. The register has to be accessible in Switzerland at any time. The member of the board of directors respectively its president with residence in Switzerland has to be granted access to the register at any time, too.

Responsibility and Liability of the Board of Directors/Management

The board of directors is obliged to make sure no shareholder/company member exercises his shareholder/company member rights without having fulfilled the reporting obligations. A neglect of this new obligation might lead to a **liability claim**.

Participating and voting at the general assembly without having reported the identity respectively the ultimate beneficial owner may lead to the **contestability of the resolutions made**. **Dividends** received based on not appropriately declared shares **may be demanded to be returned**.

Necessary Measures for Companies

Ltd's and LLC's now have the obligation to keep the mentioned registers. The registers can either be integrated into the share register or kept independently. With a view to the liability consequences the **responsibility** regarding the **register keeping** should be settled within the company's **organizational regulations**.

Also the **conversion of bearer shares into registered shares** or the involvement of a **financial intermediary** should be taken into consideration.

For the **conversion of bearer shares** into registered shares no provision in the articles of association is necessary anymore. Articles of association, that make the conversion more difficult than provided by law, are not permitted. The articles of association should be adjusted accordingly within two years since the implementation of the new law.

We recommend affected companies to **inform the shareholders/company members** about the new reporting obligations and the company's registration entry point.

Necessary Measures for Shareholders

Shareholders holding **bearer shares**, who have not reported their identity to the Company by December 31, 2015, should submit a **catching up report as soon as possible** in order to suspend the legal sanctions. The bearer shareholder has moreover to report the **ultimate beneficial owner** of the bearer shares in case of a qualified shareholding of 25 % or more of the share capital or voting rights.

Owner of **registered shares** of a Ltd or **company members of a LLC** have to report the beneficial owner only in case their participation in the company reached the threshold of 25 % of share capital or voting rights **after July 1, 2015**. The report has to be submitted **within a month** after acquisition.

Non-compliance of the new reporting obligations leads to suspension of voting rights and forfeiture of dividends and rights to other financial benefits. A catching up report can be submitted at any time. The shareholder can then exercise his financial rights from this date on.

As far as the qualified shareholding of 25 % of the share capital or voting rights in terms of registered shares or capital contributions of a LLC was already reached **before July 1, 2015**, a report is **not necessary**.

We will gladly advise and support you with the implementation of the new statutory obligations.

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