

Spotlight 10/24



FINAL CALL FOR HOLDERS OF FORMER BEARER SHARES

Last Chance to Submit the Late
Notification regarding Former Bearer
Shares by 31 October 2024

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On 1 July 2015, the Swiss legislator introduced a reporting obligation for holders of bearer shares. As of 1 November 2019, bearer shares—except in a few cases—were declared inadmissible under Swiss law. After a transition period, any existing inadmissible bearer shares were automatically converted by law into registered shares on 1 May 2021. Former holders of bearer shares who did not comply with their reporting obligations before this deadline must report their shares by means of a judicial procedure to be initiated by 31 October 2024. If this deadline is missed, these shares will become null and void by law. Compensation is only available in exceptional cases.

Reporting Obligation for Holders of Bearer Shares Since 1 July 2015

On 1 July 2015, the Federal Act of 12 December 2014, implementing the 2012 revision of the Financial Action Task Force (FATF) recommendations, came into force. As a result, upon acquiring bearer shares, shareholders were required to report their full name or company name and address to the company within one month. Additionally, the report had to be submitted along with specific documents. This obligation also applied to those who already held bearer shares when the provisions took effect on 1 July 2015. They had to comply with the reporting obligation within a six-month transition period, i.e., by 1 January 2016.

Shareholders were exempt from this obligation if their bearer shares were issued by a company listed on a stock exchange or if the shares were issued as intermediated securities under the Intermediated Securities Act of 3 October 2008 and were accordingly deposited with a custodian in Switzerland designated by the company or entered in the main register.

Shareholders who did not comply with the reporting obligation (or have still not done so) had their membership rights suspended, and their financial rights were forfeited. If a holder of bearer shares later submitted the report, they could reclaim their membership rights and financial rights as of the date of submission.

Stricter Legal Framework as of 1 November 2019

On 1 November 2019, the Federal Act of 21 June 2019 regarding the Implementation of the Recommendations of the Global Forum on Transparency and Information Exchange for Tax Purposes, came into force. It declared bearer shares generally inadmissible. Exemptions applied again only to companies with shares listed on a stock exchange and bearer shares designed as intermediated securities, which were deposited with a custodian in Switzerland or entered in the main register.

Companies were therefore required to convert existing bearer shares into registered shares within an 18-month transition period, ending on 30 April 2021, or to have one of the aforementioned exemptions entered in the commercial register. Companies that did not comply by the deadline had their bearer shares automatically converted into registered shares by law on 1 May 2021, with the relevant changes being made by

the competent commercial register. Additionally, companies could not amend their articles of incorporation until they adapted them to reflect such conversion.

THE NULLITY OF THE SHARES MEANS THE IRREVOCABLE LOSS OF ALL RIGHTS ASSOCIATED WITH THE SHARE.

After the conversion, companies were required to enter holders of former bearer shares who had fulfilled their reporting obligations into the share register as registered shareholders. Shareholders who did not meet the reporting deadline by 30 April 2021, had their membership rights suspended and their financial rights forfeited.

Irrevocable Nullification of Shares After 31 October 2024 for Failure to File Late Notification

Former holders of bearer shares who did not comply with their reporting obligation by 30 April 2021 can still submit a late notification by means of a judicial procedure with the company's prior consent until 31 October 2024. Shares of shareholders who do not initiate this procedure by the deadline will become null and void by law. As a result, shareholders will lose all rights associated with the shares, and the company receives treasury shares equivalent to the voided shares.

The company is free to dispose of these new treasury shares. If the nominal value of the company's treasury shares exceeds the 10% threshold of the share capital (according to Article 659(1) of the Swiss Code of Obligations) due to the issuance of these new shares, the excess treasury shares have to be sold or canceled through a capital reduction.

Shareholders whose shares become void through no

«TO AVOID THE CONSEQUENCE OF NULLITY, FORMER HOLDERS OF BEARER SHARES MUST FILE A JUDICIAL LATE NOTIFICATION NO LATER THAN 31 OCTOBER 2024.»

fault of their own are entitled to claim compensation from the company within ten years, i.e., until 31 October 2034, by proving their shareholder status at the time the shares were voided. A shareholder is not at fault if no intentional or negligent behavior can be attributed to them. How strictly the courts will interpret the question of fault remains to be seen, but the hurdles to claim compensation are expected to be high.

Compensation will correspond to the actual value of the shares at the time of conversion. If the actual value of the shares is lower at the time the claim is made, the company will only be required to pay such lower amount. Compensation will be excluded if the company lacks sufficient freely disposable equity.

Last Chance to Avoid Nullification Through Judicial Late Notification

Shares for which the reporting obligation was not properly complied with by 30 April 2021 will become void after 31 October 2024. To avoid this, former holders of bearer shares must file a judicial late notification no later than 31 October 2024. This late notification can no longer be submitted directly to the company, as was possible before 1 May 2021.

Since 1 May 2021, late notification can only be completed through a judicial procedure. In other words, shareholders who wish to take advantage of this late notification option must file a request with the competent court by 31 October 2024 for entry into the share register. The request has to include the company's prior consent and proof of shareholder status.

This judicial late-notification procedure is non-contentious, and the shareholders bear the legal costs. If the court grants the request, the company will enter the shareholder into the share register, and the shareholder can exercise their membership rights and claim financial rights from this point onward.

If the company refuses the shareholder the necessary prior consent, the shareholder must initiate legal proceedings against the company to obtain this consent. In this event, it is advisable to initiate both the ordinary legal process and the judicial late-notification procedure by 31 October 2024.

Keyfacts

- 01 Holders of bearer shares were required to report inter alia their full name or company name and address details to the Company by 30 April 2021.
- 02 If the reporting obligation was not complied with by 30 April 2021, the corresponding shares risk becoming void.
- 03 To avoid nullification, a late notification must be filed with the competent court no later than 31 October 2024.
- 04 Given the short remaining timeframe and severe legal consequences, legal advice is recommended if there is uncertainty about fulfilment of the reporting obligation.



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