

Banking Law
Capital Markets & Stock Exchange Law
Collective Investment Schemes
Competition Law
Compliance
Corporate & Commercial Law
Employment Law
Energy Law
Information Technology Law
Inheritance Law
Intellectual Property Law
Lending & Structured Finance
Life Sciences
Litigation & Arbitration
Media Law
Mergers & Acquisitions
Notarial Services
Payments, Clearing & Settlement
Real Estate
Restructuring & Insolvency
Tax Law
Venture Capital & Private Equity
White-Collar Crime

New transparency requirements for Swiss shareholders

2 April 2015 saw the expiry of the deadline for initiating a referendum on the federal law implementing the recommendations of the Financial Action Task Force (FATF), revised in 2012. Thus, more restrictive measures to combat money laundering will come into effect shortly. As a result, far-reaching changes to the Swiss Code of Obligations ("CO") will become effective as of July 1, 2015, aimed at stricter regulation of shareholders in corporate enterprises. These regulations will give rise to a substantial increase in the cost of corporate housekeeping for companies as a result of the new reporting and registration obligations.

New Reporting and Registration Obligations

Reporting the Acquisition of Bearer Shares

In future, *buyers of bearer shares* will have to report the acquisition to the company, *within one month*, together with their full name or company name and their address. In this regard, the acquisition of only a single bearer share will give rise to the reporting obligation. The shareholder must prove effective possession of the bearer share and, in addition, identify itself to the company by way of required identification documents. Persons, who already hold bearer shares on entry into force of the changes, must report their shareholding within *six months*. In addition, the company must be notified of any change in the identification details.

Identifying the Beneficial Owner

Anyone acquiring registered or bearer shares (alone or in conjunction with a third party) and who thereby reaches or exceeds the limit of 25 percent of the share capital or the voting power of a company limited by shares (*Aktiengesellschaft*), will, in future, have to *notify the company of the identity of the beneficial owner*. It is mandatory to identify a natural person as the beneficial owner for whom

the shareholder subject to the reporting obligation is eventually acting. The notification must contain the full name and address of the natural person. Notification must be made *within one month* of the acquisition. Anyone who already holds bearer shares, on entry into force of the changes, will have *six months* to comply with their reporting obligations. Registered shareholders are not affected by this deadline; they only have to report on future acquisitions of shares. The reporting shareholder is also responsible for reporting any change in the identification details.

Exemptions

All companies that are listed at a stock exchange are, in principle, exempt from the new reporting obligations. In addition, all companies are exempt whose shares are structured *as intermediated securities under the Federal Intermediated Securities Act (Bucheffectengesetz)*. In the case of intermediated securities, the company must designate a depository in Switzerland where the shares are deposited or entered in the main register.

By way of exemption, the general meeting or, if delegated according to the articles of association, the Board of Directors, may appoint a third

Wenger & Vieli Ltd.
Dufourstrasse 56
P.O. Box
CH-8034 Zürich

Office Zug
Metallstrasse 9b
CH-6300 Zug

T +41 (0)58 958 58 58
spotlight@wengervieli.ch
www.wengervieli.ch

**PASCAL HONOLD**

LIC. IUR., LL.M.; ATTORNEY AT LAW
 p.honold@wengervieli.ch
 T: 058 958 55 44

**MARC WALTER**

M.A. HSG IN LAW; LL.M.; ATTORNEY AT LAW
 m.walter@wengervieli.ch
 T: 058 958 53 58

party who acts as a financial intermediary within the meaning of the Swiss Money Laundering Act (*Geldwäschereigesetz*), as a reporting office for bearer shareholders. This allows the bearer shareholder to have a certain level of anonymity with respect to the company because the financial intermediary only has to provide the company with the information that the required reports have been submitted and possession of such shares has been proven. This exemption does not apply in the case of registered shares.

Register and Share Ledger

In future, companies will be obliged to maintain a *register of bearer shareholders* and a *register of the beneficial owners*. Within the company, the obligation to maintain the register, like the share ledger (*Aktienbuch*), falls to the Board of Directors, which may however delegate this task. The registers, as well as the share ledger, must be accessible in Switzerland at any time. In accordance with the statutory provisions, the registers (like the share ledger) can also be stored electronically. The notification documents of shareholders must be kept by the company for ten years after the person is removed from the register or the share ledger. A ten-year retention period also applies to share ledgers, registers and documents relating to a notification as from cancellation of the company's entry in the Commercial Register.

Additional Changes to Corporate Law

In the case of *limited liability companies (Gesellschaft mit beschränkter Haftung)*, there is an obligation to identify the beneficial owner of shares analogous to the provisions relating to companies limited by shares. *Cooperatives (Genossenschaften)* are, for the first time, obliged to maintain a register of the members. From now on, *investment companies with variable capital (SICAV)* are also obliged to maintain a register of the beneficial owners of company shareholders. Company shareholders are subject to a corresponding reporting obligation.

The amendment will make the *conversion of bearer shares into registered shares easier* in the future. By law, consent by a majority of the votes cast is now sufficient for the resolution on conversion. Provisions in the articles of association which make a conversion more difficult are not valid.

Far-reaching Legal Consequences on Breach of Reporting Obligations

Corporate Sanctions

As long as the shareholder fails to comply with the statutory reporting obligations, the shareholder

rights relating to these shares, in particular the voting rights, are suspended. In addition, distribution rights (e.g., dividend payments) can only be asserted once the shareholder has complied with its reporting obligations. The shareholder's distribution rights will even be forfeited if the shareholder does not report within one month of acquisition of the shares. Where the shareholder makes its report subsequently, it can only assert distribution rights arising thereafter.

Responsibility of the Board of Directors

In future, the Board of Directors will have to ensure that no shareholders exercise their rights in breach of the reporting obligations. In particular, it must take measures to prevent dividend distributions being made to shareholders who have not complied with reporting obligations. A breach of duty may lead to the liability of the Board of Directors under art. 754 CO. In addition, the Board of Directors must take precautions to ensure that such shareholders are not permitted to take part in general meetings as this may otherwise lead to the voidability of resolutions passed in general meeting under art. 691 (3) CO.

Criminal Sanctions

Investment companies with variable capital (SICAV) are now subject to fines of up to CHF 500,000 in case of wilful malpractice to maintain the share ledger correctly.

To Dos

- Prompt assessment of the ownership structure and beneficial ownership of shares.
- Decision on whether shares will be structured as intermediated securities in order to profit from the exemption provision.
- Prompt implementation of the necessary structures and processes for maintaining and storing the registers and ensuring access.
- Amendment of the articles of association and all regulations within two years of the entry into force of the new provisions.
- Where stipulated by the general meeting, designation of a financial intermediary as reporting office for bearer shareholders.
- The shareholders concerned must comply promptly with reporting obligations.
- Implementation of necessary additional filings with in Commercial Register.

**SPOTLIGHT AS PDF:**

<http://www.wengervieli.ch/Publikationen/Spotlights.aspx>