

Company & Commercial - Luxembourg

Companies and shareholders should step up to the Bearer Shares Immobilisation Law

Contributed by [NautaDutilh Avocats Luxembourg Sàrl](#)

April 13 2015

[Background](#)
[Scope](#)
[Deadlines](#)

Background

The Bearer Shares Immobilisation Law of July 28 2014, which aims to improve the transparency of company ownership and to provide enhanced weapons in the fight against money laundering and financing of terrorism, entered into force on August 18 2014.

The law introduced an obligation for companies which issue bearer shares or units and which have been incorporated in the form of a public limited company (*société anonyme*) or a partnership limited by shares (*société en commandite par actions*) – as well as for undertakings for collective investments (established in the form of a public limited liability company, a partnership limited by shares or a mutual fund (*fonds commun de placement*)) – to appoint a depository. Each holder of such bearer shares or units must then deposit these with the appointed depository. The depository must be chosen from the exhaustive list provided for by Article 42 of the Commercial Companies Law of August 10 1915 (as amended by the Bearer Shares Immobilisation Law), which includes credit institutions, domiciliary agents, private portfolio managers, notaries, lawyers, auditors and chartered accountants. The depository must be established in Luxembourg and must not itself hold shares in the issuer of the bearer shares or units.

Scope

On March 27 2015 the *Commission de Surveillance du Secteur Financier* (the Luxembourg financial regulator) published a press release clarifying certain outstanding questions as to the precise scope of application of the Bearer Shares Immobilisation Law. According to this, the following types of shares and units are excluded from the scope of the law:

- units issued by a securitisation fund;
- certificates representing the bearer shares or units (eg, US depository receipts, US depository shares or global depository receipts); and
- bearer shares or units deposited with a securities settlement system represented by a global certificate or by individual certificates, making them lose their nature of bearer shares or units.

The clarification pertaining to bearer shares deposited with a securities settlement system confirms the initial approach adopted in the parliamentary works and is in line with EU Regulation 909/2014, which allows companies to choose a central securities depository established in any EU member state.

Deadlines

The deadline for the abovementioned entities to appoint a depository was February 18 2015. From this date, the voting and dividend rights of shareholders which have failed to deposit their bearer shares or units with the designated depository have been automatically suspended. The management bodies of companies which have failed to appoint a depository or have recognised rights to shareholders whose bearer shares or units have not been deposited with a designated depository may be subject to a fine of up to €125,000.

Bearer shares or units covered by the Bearer Shares Immobilisation Law which are not deposited with a designated depository before February 18 2016 shall be cancelled, which will result in a reduction of the issuer's subscribed share capital and the funds being deposited with the Luxembourg State Treasury (*Caisse de Consignation*).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

Authors

[Josée Weydert](#)



[Jad Nader](#)



[Meliha Dacic](#)



ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2015
Globe Business Publishing Ltd