

## Company & Commercial - Luxembourg

### New law introduces immobilisation of bearer shares

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#### Introduction

On July 16 2014 the Chamber of Deputies passed Bill 6625 (referred to as the 'Immobilisation Law'), which introduces the concept of immobilisation of bearer shares. Pursuant to the law, bearer shares must be entrusted to a depositary and information concerning their holder must be contained in a specific register. The immobilisation obligation applies to all bearer shares issued before and after the law's entry into force.

The legal status of bearer shares remains unchanged, as the Immobilisation Law does not create a new class of shares, but merely provides for a new practical modality.

#### Provisions

##### **Creation of depositary**

Bearer shares must now be deposited with a recognised depositary, which will be appointed by the board of directors or management board of the relevant *société anonyme* (public limited liability company) or *société en commandite par actions* (partnership limited by shares). This depositary will be held to a number of strict conditions and may be chosen from an exhaustive list which includes lawyers admitted to the Luxembourg Bar (Lists I and IV), financial institutions, family offices and financial sector professionals.

##### **Creation of registry**

Bearer shares must be entered in a specific share register. This register will contain detailed information concerning the bearer shares' holders (including their identities, the date of the shares' deposit and the date of transfer of shares).

The register is not intended to be publicly accessible, but rather will provide judicial and fiscal authorities with easier access to information while maintaining confidentiality with regard to third parties and shareholders of the issuing company.

##### **Ownership**

Bearer shares' ownership is subject to registration in the official register. Any disposal is made effective by the depositary's detailed entry in the register.

##### **Transitional provisions**

The law includes several transitional provisions, including a six-month period from the law's entry into force for shareholders to appoint a depositary and an 18-month period to deposit the bearer shares with the chosen depositary. If bearer shares have not been registered and deposited by the end of the six-month period, the voting rights attached to the shares will automatically be suspended until the immobilisation procedure is completed.

Further, in order to ensure legal certainty, bearer shares that have not been deposited within 18 months of the law's entry into force will be cancelled.

Criminal penalties will be imposed on the depositary and management entity for non-compliance with the law – namely, a €125,000 fine will be issued if the depositary is not designated within the specified deadline.

#### Open questions

Certain questions remain open that can be answered only in practice – for example, the unclear imposition of the six-month delay in appointing a depositary and immobilising shares. In addition, as the function of the depositary *per se* is new, in practice these delays may well turn out to be unreasonably short.

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