

## NEWSLETTER – OCTOBER 2019

### CORPORATE LAW

#### Federal Act on Implementation of Recommendations of the Global Forum will enter into force on November 1, 2019.

On June 21, 2019, the Swiss Parliament adopted the Federal Act on the Implementation of Recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes. This Act implements the Global Forum's recommendations made to Switzerland in the Phase 2 report. On September 27, 2019, the Federal Council decided that the Federal Act will enter into force on November 1, 2019, as the referendum period running until October 10, 2019 has not been used.

#### I. BACKGROUND

On July 26, 2016, the Global Forum on Transparency and Exchange of Information for Tax Purposes addressed various recommendations to Switzerland in its Phase 2 report. These recommendations were to be implemented by the end of 2019, before the issuance of the report on Switzerland of the second round of peer reviews.

On June 21, 2019, the Swiss Parliament adopted a Federal Act in order to implement these recommendations, especially by improving Transparency of legal entities and Exchange of information for Tax Purposes.

This Federal Act and the corresponding provisions will finally enter into force on November 1, 2019, as decided by the Federal Council on September 27, 2019.

#### II. SUMMARY OF CORPORATE LAW MEASURES

The Swiss Code of Obligations, the Swiss Criminal Code and the Federal Act on Intermediated Securities will be amended regarding the regime applicable to bearer shares.

Existing or new bearer shares will be permitted only if (i) equity securities of the company are listed on a stock exchange or (ii) bearer shares are structured as intermediated securities. All bearer shares which are not issued within these two categories will be automatically converted into registered shares after a 18-months period following the Federal Act's entry into force, i.e. on May 1, 2021.

In addition, if the shareholder of converted bearer shares has not complied with his obligation to disclose his identity to the company in compliance with former art. 697i CO, such converted shares will be cancelled after a 5-years period following the Federal Act's entry into force, i.e. on November 1, 2024.

The Federal Act also provides that shareholders or companies will be fined if they fail to report beneficial owners or keep the share register and the list of beneficial owners. Until now, the only consequences of a breach of these duties were a suspension of the voting rights and the financial rights of the relevant shareholder and the liability of the board of directors.

### III. PRACTICAL RECOMMENDATIONS

A user guide or corresponding directives will be issued by the Federal administration to help implementing the new legal provisions. This being said, shareholders who already own bearer shares which are not listed on a stock exchange or structured as intermediated securities need to make sure to disclose their identity to the company. This will allow companies having

issued such bearer shares to organize their conversion into registered shares during the transitional period in a smooth manner. Indeed, an automatic conversion of the bearer shares after said 18-months period may lead to uncertainties, in particular if the shareholders have not complied with their obligation to disclose their identity to the company.

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The content of this newsletter is of a general nature and can in no way be assimilated to a legal or tax opinion. If you wish to obtain an opinion on a particular situation, do not hesitate to contact one of the following lawyers:

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