

ABOLITION OF BEARER SHARES

NEWSLETTER
PORTUGAL
May 2017

SUMMARY

Portugal enacted on 3 May 2017 a law that provides for the abolition of bearer securities (including shares) (Law 15/2017 of 3 May, the "Law"). Despite the absence of a preface to the law to give it some context, we assume that they are being abolished as part of the international recommendations to make company ownership more transparent, as a means to fight money laundering and the financing of terrorism.

In summary, the Law prohibits Portuguese companies from issuing any further bearer shares and, after 6 months of the date entry into force of the law (which is stated to be the day following its publication), all existing bearer shares will no longer give their holders the right to dividends in the companies and will no longer be transferable.

The Law also amends a number of articles of the Portuguese Companies Code and the Portuguese Securities Code, eliminating the references to the possibility of shares being bearer shares. In the amendment wording of the Portuguese Securities Code (article 52), the legislator goes as far as stating "*Securities are nominative and the issue of bearer instruments is prohibited*".

Existing bearer shares must be converted into nominative shares but the method of conversion and its regulation will be governed by regulations to be published by the government within 120 days of the Law.

PROHIBITION OF NEW BEARER SHARES

Article 1 of the Law prohibits the issue of any new bearer shares and creates a transitional regime for the conversion of existing bearer shares into nominative shares.

Article 2 of the Law states that bearer shares must be converted into nominative shares within 6 months of the date of entry into force of the Law and after that date no further transfers of bearer shares will be allowed and the voting rights of bearer shares that have not been converted will be suspended.

CONVERSION OF EXISTING BEARER SHARES INTO NOMINATIVE SHARES

The actual method of conversion of existing bearer shares into nominative shares is remitted to regulations to be published by the government within 120 days of the date of the Law and the Law does not provide for the vision that the legislator has for how the process should be carried out.

CONSEQUENCES OF FAILURE TO CONVERT INTO NOMINATIVE SHARES

Unlike other countries where failure to convert bearer shares into nominative shares has rather harsh consequences, such as Ireland, where if a company has issued bearer shares and does not convert them into registered shares within 18 months of the Irish equivalent law coming into force, the Minister for Finance will become the shareholder, or the UK, where if the bearer shares are not surrendered by the end of a 9 months period, the company must apply to the court for a cancellation order, cancelling such shares, in Portugal, failure to convert during the prescribed deadline means the prohibition of further share



transfers and the suspension of the right to dividends associated to the bearer shares.

SOME ADDITIONAL THOUGHTS

It is interesting to see that the Law grants the government almost as long to bring in the conversion regulations, as the deadline it creates for existing bearer shares to be converted into nominative shares without any prejudicial consequences for their holders (120 days versus 6 months).

The previously existing legislation already provided that bearer instruments could be mutually converted from bearer to nominative, but in the case of shares, such conversion may require amendments to the articles of association of companies and involve the creation and operation of shares registers by companies that previously did not have them.

The prejudicial consequences of failing to convert lie wholly with the shareholders (who ceases to be able to transfer shares and will no longer be able receive dividends) and previously existing legal provisions state that the costs of a conversion at the request of the holder of bearer instruments must be borne by the holder, which could create difficulties between issuing companies and their shareholders, especially for those who want the conversion to be done in a speedy fashion.

CONTACTS



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