

**Law of 28 July 2014 regarding immobilisation of bearer shares and units and the keeping of the register of registered shares and the register of bearer shares and amending 1) the law of 10 August 1915 on commercial companies, as amended, and 2) the law of 5 August 2005 on financial collateral arrangements, as amended**

(Mém. A 1996, No. 63)

**Chapter 1 – Amending provisions**

**Article 1.** The following point d) shall be added to the first paragraph of Article 11a(3) of the law of 10 August 1915 on commercial companies, as amended:

"d) depositaries of *sociétés anonymes* (public companies limited by shares) and *sociétés en commandite par actions* (corporate partnerships limited by shares) designated under Article 42."

**Article 2.** Article 42 of the law of 10 August 1915 on commercial companies, as amended, shall be replaced as follows:

"Article 42. (1) Bearer shares shall be deposited with a depositary appointed by the board of directors or the management board, as the case may be, in accordance with paragraph 2.

(2) The depositary shall not be a shareholder of the issuing company. Only the following professionals can be appointed as depositaries established in Luxembourg:

- a) credit institutions;
- b) private portfolio managers;
- c) distributors of units/shares in UCIs;
- d) specialised professionals of the financial sector (PFS), authorised as Family Office, as corporate domiciliation agent, as professional providing company incorporation and management services, as registrar agent or as professional depositary of financial instruments;
- e) *avocats à la Cour* (attorneys-at-law) included in list I and European lawyers pursuing their professional activities under their original professional title included in list IV of the list of lawyers referred to in Article 8(3) of the law of 10 August 1991 on the legal profession, as amended;
- f) notaries;
- g) *réviseurs d'entreprises* (statutory auditors) and *réviseurs d'entreprises agréés* (approved statutory auditors);
- h) chartered accountants;

(3) The depositary shall keep a register of bearer shares in Luxembourg; this register shall include:

- a) a precise designation of each shareholder and an indication of the number of shares or denomination;
- b) date of deposit;
- c) transfers including their date or conversion of shares into registered securities;

Each bearer shareholder is entitled to examine only the records relevant to him/her/it.

(4) The depositary holds the shares deposited in accordance with paragraph 1 on behalf of the shareholder who/which owns them. Ownership of the bearer share shall be entered in the register. Upon written request from the bearer shareholder, a certificate stating all the records relevant to him/her/it shall be delivered by the depositary.

Any transfer is made effective against third parties by an acknowledgement of transfer recorded in the same register by the depositary. The depositary may, for these purposes, accept any document or notification stating the transfer of ownership between the transferor and transferee.

Unless otherwise provided by the articles of incorporation, transfer, in the case of death, shall be validly established vis-à-vis the depositary, provided that no opposition is lodged, on production of a death certificate, the certificate of registration and an affidavit (*acte de notoriété*) attested by a *juge de paix* or a notary.

(5) The rights attached to the bearer shares can only be exercised if the bearer share is deposited with the depositary and if all data is registered in the register in accordance with paragraph 3.

(6) The depositary cannot transfer the bearer shares, except in the following cases where s/he must deliver the bearer shares to:

- a) his/her successor in his/her capacity as depositary, in case of termination of activities;
- b) the company, in case of conversion of bearer shares into securities in registered form, in case of acquisition of its own shares in accordance with Articles 49-2 and 49-3 and in case of amortisation of capital in accordance with Article 69-1.

(7) The liability of the depositary, insofar as it derives from its obligations under paragraphs 3, 4 and 6, shall be determined according to the same rules as those applicable to the liability of the directors or members of the management board, as the case may be."

**Article 3.** The reference to Article "42" of the last sub-paragraph of Article 84 of the law of 10 August 1915 on commercial companies, as amended, shall be deleted.

**Article 4.** The following sentence shall be added at the end of Article 5(2)(b) of the law of 5 August 2005 on financial collateral arrangements, as amended:

"The transfer of possession of bearer financial instruments held in custody with a depositary pursuant to Article 42 of the law of 10 August 1915 on commercial companies, as amended, may be done by entering the pledge over the financial instruments in the register of the depositary."

## Chapter 2. - Criminal penalties

**Article 5.** The following Article 171-2 shall be included in the law of 10 August 1915 on commercial companies, as amended:

"Article 171-2. (1) Managers or directors who knowingly:

1° do not keep a register of registered shares in accordance with the provisions of Article 39;

2° have not designated a depositary or deposited the bearer shares with this depositary in accordance with the provisions of Article 42;

3° recognise the rights attached to the bearer shares in breach of the provisions of Article 42(5), shall be punishable by a fine of 5,000 to 125,000 euros.

(2) The depositary or, in the case of a legal person, the managers or directors of the depositary who knowingly infringe the provisions of Article 42(3), (4) and (6) shall be punishable by a fine of 500 to 25,000 euros. "

## Chapter 3. - Transitional provisions

**Article 6.** (1) The *sociétés anonymes, sociétés en commandite par actions* and management companies of undertakings for collective investment incorporated in the form of a *fonds commun de placement* (mutual fund) which issued bearer shares or units before the entry into force of this law, shall appoint a depositary within six months of the entry into force of this law.

(2) The bearer shares or units issued by *sociétés anonymes, sociétés en commandite par actions* and management companies of undertakings for collective investment incorporated in the form of a *fonds commun de placement*, before the entry into force of this law, are to be deposited within eighteen months of the entry into force of this law with the appointed depositary.

(3) The voting rights attached to the bearer shares or units which will not be immobilised within six months of the entry into force of this law are automatically suspended when this period expires until their immobilisation. Upon expiry of this period, the distributions are deferred until the immobilisation date without payment of interest, provided that the distribution rights are not time-barred.

(4) The shares or units whose voting right has been suspended are not taken into account in the calculation of the quorum and majority during the general meetings. The holders of these shares or units are not authorised to attend these general meetings.

(5) The bearer shares or units which have not been immobilised within eighteen months of the entry into force of this law shall be cancelled and the subscribed capital shall be reduced by a corresponding amount.

The cancellation of the shares or units shall be undertaken at a price obtained by dividing the amount of the capital of the company, as shown in the last balance sheet of the company drawn up at a date which cannot exceed two months prior to the cancellation decision, by the number of shares or units issued by the company. Said price shall be reduced by the amount of premiums and reserves which may not be distributed under law or the articles of incorporation as well as the fees and charges related to the deed of capital reduction.

The funds corresponding to the shares or units so cancelled or, failing that, other assets whose consideration is equal to the cancelled shares or units are to be deposited with the Caisse de

consignation until one person, who has validly established his/her capacity as holder, requires they be repaid.

(6) Managers or directors who knowingly:

1° have not designated a depositary in accordance with the provisions of paragraph 1;

2° recognise the rights attached to the bearer shares in breach of the provisions of paragraphs 3 and 4;

3° have not cancelled the non fixed bearer shares or units, reduced the subscribed capital and deposited the corresponding funds in accordance with the provisions of paragraph 5, shall be punishable by a fine of 5,000 to 125,000 euros.