

# LINARI LAW FIRM

## AVOCATS A LA COUR

---

### **YOUR LEGAL EXPERT IN**

INVESTMENT FUNDS – CAPITAL MARKET – PRIVATE EQUITY – M&A  
SECURITISATION – BANKING & FINANCE – REGULATED ENTITIES – LITIGATION



252 avenue Gaston Diderich  
L-1420 Luxembourg  
GRAND-DUCHY OF LUXEMBOURG

Phone : +352 27 11 60 10  
Fax : +352 27 11 60 09  
Email : [info@linari-law.lu](mailto:info@linari-law.lu)  
Web : [www.linari-law.lu](http://www.linari-law.lu)

***LINARI LAW FIRM reminder:***

***THE LUXEMBOURG REGIME ON  
THE IMMOBILIZATION OF BEARER SHARES***

Luxembourg adopted on 28 July 2014 a law in relation to the immobilization of bearer shares and their holding through a depositary (the “**2014 Law**”) in response to recommendations by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes.



The spirit of the 2014 Law is to make more transparent the detention of bearer shares by requiring their custody from an authorized institution established in Luxembourg.

The content of the law deals with:

- The entities concerned
- The obligations of the conducting organs of the entities concerned
- The obligations of the depositary
- The content of the register
- The sanctions

**TIMELINE OF OPERATIONS FOR ENTITIES CONCERNED:**

|  |                         |
|--|-------------------------|
| Date of entry into force:                            | <b>18 August 2014</b>   |
| Last date to appoint a depositary:                   | <b>18 February 2015</b> |
| Date of suspension of voting rights failing deposit: | <b>18 February 2015</b> |
| Last date of possible deposit:                       | <b>18 February 2016</b> |
| Beginning of cancellation procedures:                | <b>18 February 2016</b> |

## 1. ENTITIES CONCERNED:

---

Any and all entities that either (i) already issued bearer shares or (ii) contemplate their issuance or the conversion of registered shares into bearer shares.

These include:

- public limited liability companies (*sociétés anonymes*),
- public companies limited by shares (*sociétés en commandite par actions*), and
- investment vehicles incorporated as companies (SICAV, SICAF, SICAR and SIF as public limited liability companies (*sociétés anonymes*) and public companies limited by shares (*sociétés en commandite par actions*) or mutual fund placement.

## 2. OBLIGATIONS OF THE CONDUCTING ORGANS OF THE ENTITIES CONCERNED:

---

- For companies having issued bearer shares (or units) before 18 August 2014:
  - o Obligation of appointing, within 6 month of the entry into force of the 2014 Law, a depositary which meets the requirements set forth therein (as described hereunder); and
  - o Filing of such appointment with the Luxembourg Trade and Companies Register ("RCS")
- For companies contemplating the issuance of new bearer shares or the conversion of registered shares into bearer shares, the designation of the depositary and filing with the RCS are made as soon as the request from the shareholder is received.
- New Article 171-2 (1) of the amended law of 10 August 1915 on commercial companies, as amended (the "Company Law") puts the responsibility of the implementation of a register of bearer shares on the directors / managers of the issuing companies.

## 3. OBLIGATIONS OF THE DEPOSITARY:

---

Immobilization of bearer shares is done by filing them with a depositary authorized by law. Article 42 (3) of the Company Law provides an exhaustive list of these depositaries:

- credit institutions;
- portfolio managers (*gérants de fortunes*);
- distributors of units/shares in undertakings for collective investments;
- specialised professionals of the financial sector duly licensed in accordance with the amended Luxembourg law of 5 April 1993 on the financial sector as family office, company domiciliation agent, professional providing company set-up and management services, registrar agent or professional custodian of financial instruments;
- lawyers (*avocats*) (registered either on list I or IV of the Official List of lawyers held by the Luxembourg bar association);
- notaries (*notaires*);
- statutory auditors (*réviseurs d'entreprises*) and approved statutory auditors (*réviseurs d'entreprises agréées*); and
- Chartered accountants.

The depositary must be located in Luxembourg and may not be shareholder of the company issuing the related bearer shares.

The depositary may at the request of the shareholders issue a certificate of registration in the bearer shares register, similar to the certificate issued to holders of registered shares.

#### 4. CONTENT OF THE REGISTER:

---

The register must contain:

- The exact identity of the owner of the bearer shares,
- The number of bearer shares held by each owner;
- The date of the deposit of the bearer shares;
- The transfers of the bearer shares (including the date of the transfer or of the conversion of the bearer shares into normal registered shares); and
- Mention of the use of securities as collateral.

A shareholder has a right of access to the register but only to the information about his deposit. No one else can access this information; neither the auditors of the company, nor the members of the conducting organs or liquidators.

The depositary may be dispossessed of securities in four cases:

- in case of termination of his duties, which he must transmit to his legal successor;
- upon conversion of bearer shares into registered shares;
- in case of redemption by the issuer of its own shares; and
- in case of depreciation of capital under article 69-1 of the Company Law where the shares are returned to the issuer.

#### 5. SANCTIONS

---

- If, within a 6 months period from the entry into force of the 2014 Law, the bearer shares have not been immobilized:
  - the voting right is automatically suspended until they are effectively immobilized;
  - the suspended shares are not taken into consideration for the quorum and majority calculations and their holders may not attend the shareholders' meetings;
  - the distributions (dividends, etc) are deferred until immobilization.
- If, within a 18 months period from the entry into force of the 2014 Law, the bearer shares have still not been immobilized, they must be cancelled and the share capital must be reduced accordingly. The funds corresponding to the cancelled bearer shares or units or any assets of the same countervalue are deposited with the «*Caisse de dépôt et de consignation*» until a person being able to demonstrate its ownership requests the reimbursement.
- In addition, the members of the conducting organs and the depositary are exposed to potential criminal sanctions if they do not comply with their legal obligations.

