The factual abolishment of bearer shares in Switzerland –
Actions required from companies and their shareholders

On November 1st 2019, the new Swiss legislation relating to the implementation of the recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD (Global Forum) will enter into force. The new law brings highly relevant changes for, among others, companies with bearer shares and their shareholders.

The goal of the new legislation is to avoid that Switzerland will be put on any «black list» of the Global Forum or of organisations such as the OECD, the G20 or the EU.

The new law, also due to the very drastic sanctions in case of non-compliance, triggers a need for action particularly for companies with bearer shares as well as their shareholders. Moreover, the new law introduces changes regarding the notification duty of shareholders of all share companies and limited liability companies.

1. Summary of the new law

1.1 Regarding bearer shares

The changes regarding bearer shares may be summarised as follows:

- In the future, bearer shares will be legal only if they are either traded on a stock exchange or if they are issued as intermediated securities. For all other companies, bearer shares are abolished.

- Existing bearer shares are to be converted into registered shares within 18 months from the entry into force of the new law, i.e. until 30 April 2021.

- If a company fails to convert its shares into registered shares within the above time period, the conversion will occur by operation of law and the commercial registry will register the relevant changes of its own accord.
− After the conversion, the company will record in its share registry those former holders of bearer shares that complied with the duty introduced in 2015 to notify the company about their names and addresses. As it is the case under the existing law, those former holders of bearer shares who did not comply with their notification duty, will lose their voting rights pending due notification and forfeit their dividend entitlements.

− Shareholders who did not timely comply with their notification duty and whose bearer shares were converted into registered shares can, within five years from the entry into force of the new law, i.e. until 31 October 2024, request the court to record them in the share register, provided that the company consents to the request.

− Shares of shareholders who did not request registration by the court until the expiry of the five years term will be voided by law and be replaced by treasury shares held by the company, resulting in an expropriation of such shareholders.

1.2 Regarding the notification duty

Regarding the notification requirements, the following matters are particularly noteworthy:

− As is already the case under the existing law, each shareholder of any share company or limited liability company owning (alone or by agreement with third parties) at least 25% of the voting rights of a non-listed company has to notify the company of the name and address of such shareholder’s beneficial owner. According to the new law, where the shareholder is a legal entity or a partnership, the person to be disclosed as beneficial owner shall be the person controlling the shareholder pursuant to the criteria set out in the Swiss Code of Obligations. If there is not such person, the shareholder has to notify the company of this fact.

− Changes in the name or address of beneficial owners have to be notified to the company within three months of their occurrence.

− The deliberate violation of the duty to notify of the identity of the beneficial owner or to duly maintain a share register or a register of beneficial owners under the new law constitutes a statutory offence and is sanctioned by a monetary fine.

− The lack of duly maintained share registers and registers of beneficial owners will qualify as an organisational deficit of the company which may result in a court directing various measures, including the dissolution of the company.

2. Need for action

The new law leads to a need for action both for companies having bearer shares and for their shareholders, as well as potentially for anyone controlling a stake of at least 25% in a share company or a limited liability company.
Non-listed **companies with bearer** shares that are not issued as intermediated securities shall ensure that their shares are converted into registered shares within 18 months. If the board has the opportunity to find out the identity of the shareholders, we would recommend actively seeking notifications from these shareholders in order to avoid cumbersome registration by court or voidance of shares at a later stage.

**Holders of bearer shares** shall ensure that they have duly complied with their notification duty in order to ensure that they will, upon conversion of their shares, be recorded in the share register of the company.

Considering the potential criminal liability in case of incorrect registers as well as the threatening organisational measures we furthermore suggest that **all companies**, including those with registered shares, **verify** that their **register** of beneficial owners **complies** with the legal requirements.

The corporate law specialists of Bratschi will be happy to assist you with any questions you may have regarding the implementation of the new legislation.