

LEGAL ALERT, 7 NOVEMBER 2018

AMENDMENTS IN THE BULGARIAN COMMERCIAL ACT REPLACING BEARER SHARES WITH REGISTERED SHARES

I. Introduction

Bulgarian State Gazette No. 88 of 23.10.2018 introduced important amendments in the Bulgarian Commercial Act concerning the bearer shares in joint stock companies.

The main focus of the legislative changes is the elimination of the bearer shares from the Bulgarian business world as a direct result from the implementation of European laws¹ for measures against the money laundering and financing of terrorism in the Bulgarian legal system.

Explained in a nutshell, up until now a joint stock company could have two types of materialized shares – (i) **bearer shares** and (ii) **registered shares**.

The **bearer shares** are transferred by a simple hand over of the physical documents meaning that the holder of the share is its owner. The change in title is not announced in any company or public register. Therefore, the bearer shares are considered an easy tool for concealing ownership and money laundering.

As opposed to that, **the registered shares** indicate the name of their owner, as the name is changed following each subsequent transfer of the shares. In addition, the transfer of registered shares is made in a specific manner, namely by endorsement, and the acquirer is registered with the book of shareholders.

II. Summary

Based on the above legislative amendments the joint stock companies are required until 23.07.2019 to exchange all issued bearer shares, or respective temporary certificates, with registered shares, to update accordingly their corporate documents and to announce them in the Bulgarian Commercial Register. In case of non-compliance there are sanctions, as described in item III. 2 below.

III. Steps to be taken

1. Procedure

In order to comply with the requirements each company that has issued bearer shares should:

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For more information please contact:

Anelia Dinova – Partner

Anelia.Dinova@drp-legal.com

Konstantin Stambolov – Partner

konstantin.stambolov@drp-legal.com

P: +359 (0)2 943 4350

F: +359 (0)2 944 1508

¹ Directive (EU) 2015/849 of The European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.



- A. Send an invitation²** to its shareholders for convening of a General meeting with at least the following agenda:
- Amendment of the Articles of Association of the company in accordance with the new legislation;
 - Inviting all shareholders with bearer shares and creditors with pledge/injunctions on bearer shares to exchange their shares and to register in the shareholders' book until/ on the date of the General meeting. The invitation should also indicate the consequences in case the shares are not duly exchanged;
 - Authorizing member/s of the Board of Directors to create/ update the book of shareholders;
- B. Convene a General meeting** adopting the resolutions under item A. above;
- C. Register the amended Articles for Association of the company, together with the new/ updated book of shareholders in the Company register.**

2. Consequences

A. For non-compliant company

In case the company does not file for registration with the Company register the required amendments until 23.07.2019, it will be compulsory terminated. Within 2 months after expiration of the provided term, the Registry Agency is obliged to prepare a list with the non-compliant companies and to send it to the Prosecutor's Office. The prosecutors then shall initiate the proceeding for winding up of these companies.

B. For non-compliant shareholders

If a shareholder does not present his/her bearer shares for exchange in the provided term, the company has to annul them. In the latter case the shareholder is entitled to request from the company a monetary compensation for the contribution made against the annulled shares.

C. For non-compliant creditors with pledge/ injunction on bearer shares

The creditors with pledge/injunction on bearer shares who do not initiate their exchange with registered shares risk the annulment of the shares by the company. In addition, the creditors could be held liable for damages to the respective shareholder for the annulment of the shares or for providing untrue data regarding the pledge/injunction.

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² The invitation should be announced in the Bulgarian Commercial Register at least 30 days prior to date scheduled for the General meeting, or for a longer period if indicated in the Articles of Association of the respective company. In case provided in the Articles of Association the convening of the General meeting could be done only through written invitations.