

COUNTRY UPDATE ON SWITZERLAND

Farewell to the "Société Anonyme": New Registration Obligations for Shareholders

By Oliver Blum, Head of M&A, CMS von Erlach Poncet, Zurich, Switzerland (oliver.blum@cms-vep.com)

As of July 1, 2015, holders of bearer shares in Swiss companies are required to disclose their identity to and be registered by the company. The same disclosure and registration obligations also apply to the beneficial owners of shares who, alone or as a group, ultimately control 25% or more of the voting or capital rights of a Swiss company.

In 2012, the G7 Financial Action Task Force (FATF) issued recommendations regarding transparency and beneficial ownership of legal persons that are aimed at combatting money laundering. Based thereon, Switzerland has enacted new regulations, effective July 1, 2015, imposing new, far-reaching disclosure and registration obligations on acquirers of shares in Swiss companies, which will have to be borne in mind by buyers in M&A transactions involving Swiss target companies, especially in view of the short time limits and the sanctions for non-compliance with these obligations.

Swiss stock corporations may issue either registered or bearer shares. While the holders of registered shares are, as the name implies, registered in a stock ledger kept by the company, the owners of bearer shares traditionally had the possibility to remain completely anonymous, even towards the company, so that there was effectively no way for domestic or foreign authorities to establish the identity of the shareholder and thus of the beneficial owner of the company's assets. This is the reason why in French (one of the three official languages in which Swiss laws are published) the stock corporation is called "société anonyme", i.e. the "anonymous company". The new law puts an end to that by requiring all acquirers of bearer shares to have their name and address registered with the company, together with a passport copy (for individuals) respectively a commercial register excerpt or equivalent document (for legal entities). The time limit for such registration is one month after the acquisition. The registration obligation also applies retroactively in that shareholders who already held bearer shares on July 1, 2015 have to register themselves with the company until December 31, 2015.

In addition, the registration obligation also applies to all individuals who, alone or as a group, ultimately (i.e. indirectly) control 25% or more of the voting or capital rights of a Swiss company. Therefore, if a buyer acquires a Swiss company formally through an SPV or an intermediate holding company, the buyer itself respectively (if the buyer is also a legal entity) its ultimate individual shareholders have to be registered with the company (provided any one of them or several of them as a group control 25% or more of the voting or capital rights of the Swiss target). This registration obligation for the ultimate beneficial owners applies in addition to the obligation to register the formal shareholder.

While it is clear that the obligation to register the ultimate beneficial owners does not apply to the shareholders of a typical listed company with a large public float, a closer examination will be necessary if family-owned or otherwise closely held companies act as buyers in an M&A transaction.

Also, future practice will have to show whether in private equity transactions the Swiss authorities will accept that only the acquisition vehicle of the private equity fund registers with the company, or whether they will require the fund investors to be registered as beneficial owners.

As set out above, shareholders who already held bearer shares on July 1, 2015 have until December 31, 2015 to comply with the registration obligation, and a time limit of one month applies to new acquisitions of bearer shares. The same one month time limit has to be complied with for the registration of the ultimate beneficial owners of newly acquired shares; no retroactive registration is necessary in that regard. If the registration is not effected within these time limits, the voting rights and capital rights (in particular the right to dividends) may not be exercised until the registration is completed, and even with such registration, these rights are only restored for the future.

These new registration obligations apply both to Swiss stock corporations and to limited liability companies, but not to listed companies, which are subject to stringent disclosure and registration obligations with regard both to their formal shareholders and their beneficial owners under stock exchange regulations.