

LEGAL ALERT

PROHIBITION OF BEARER SECURITIES

(UPDATE)

On 4 May, [Law 15/2017](#), which **prohibits the issue of bearer securities**, came into force.

The prohibition affects not just **shares** but any **bearer securities**, including participation units in collective investment undertakings, bonds and other debt securities.

Under the new Law:

- (i) Since 4 May 2017, it is **prohibited to issue bearer securities**;
- (ii) **Currently existing bearer securities** must be **converted into nominative securities** by 4 November 2017;
- (iii) As from 4 November 2017:
 - a. **the transfer of bearer shares will be prohibited**; and
 - b. **the right to participate in the distribution of earnings** associated with bearer securities **will be suspended**.

Apart from the **end of anonymity for securities holders**, this change poses various demanding practical challenges – not only of a corporate nature and in the field of securities, but also in the fields of tax law and finance law – which require an integrated and specialised analysis.

The **issuers of bearer securities** may have to plan and implement a **conversion process** with some haste, within a tight deadline, particularly if there is any delay in the publication of the implementing rules referred to below. It is important therefore to identify the situations in which the new legislation applies.

The greatest caution will be required of the **holders or issuers of such securities**, with a view to avoiding delays or offences that could involve some penalty, specifically the impossibility of exercising the rights mentioned in indent (iii) for failure to convert the securities into nominative instruments.

Other interested parties too, such as financial institutions or other entities that are parties to pledge agreements or contracts carrying other rights over bearer securities, should revisit the applicable terms and conditions so as to safeguard their rights.

The Government now has a maximum period of 120 days in which to establish the provisions for converting bearer securities into nominative securities, laying down specific mechanisms for the implementation of this new legal framework.

Law 15/2017 also amends certain provisions of the [Securities Code](#) (52 and 97) and of the [Companies Code](#) (272, 299 and 301) in order to bring them into line with the new legal framework. To that end, it repeals Articles 52(2) (nominative and bearer securities), 53 (convertibility) and 54 (types of conversion), 63(1)(a) (registration at a single financial intermediary), 101 (transfer of bearer securities) and 104(1) (exercise of rights) of the Securities Code, as well as Articles 299(2) (nominative and bearer shares) and 448 (publicising shareholder holdings) of the Companies Code.

This legislation is part of a number of measures, adopted and to be adopted, on money laundering and terrorism financing, based on [\(EU\) Directive 2015/849](#) of the European Parliament and of the Council, of 20 May 2015, particularly Article 10, which obliges the Member States to take measures to prevent the abusive use of bearer shares or bearer share warrants.

MLGTS' specialist teams will continue to monitor closely all developments on this topic.

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