

Legal Alert

Mandatory disclosure of shareholdings

The Law of January 18, 2010 regarding the modification of the Law of January 11, 1993 against the use of financial schemes for the purpose of money laundering and the financing of terrorism, has implemented an article 515bis in the Companies' Code (hereinafter referred to as "CC"). This article contains a disclosure duty for the persons holding bearer shares and scriptless shares in an unlisted public limited company¹.

Ratio legis

The purpose of this disclosure duty is to identify the 'ultimate beneficiary'. The owners of 25% or more of the shares granting voting rights are considered to be the 'ultimate beneficiaries'.

Legal base

Article 515bis CC stipulates that:

- Any individual or legal entity;
- Who obtains shares entitled to vote (bear shares or scriptless shares);
- Should notify the issuing company;
- Within five working days following the day of the acquisition;
- In case the voting rights attached to these shares represent 25% or more of the total amount of voting rights at the moment of the acquisition.

Scope

The disclosure duty is applicable to public limited companies as well as to partnerships limited by shares (according to article 657 CC).

Way of notification

The article 515bis CC contains no stipulations as to the conditions relating to the form of this notification. Consequently the notification can be done by a letter addressed to the board of directors of the public limited company. For reasons of proof, it is recommended to send this letter by registered mail and by regular mail.

However, in case the owners of 25% or more of the shares entitled to vote were present on the preceding shareholders' meetings and they did sign the attendance lists of the corresponding minutes, one could conclude that the notification has already been fulfilled. This as far as the members of the board of directors took notice of the minutes of the shareholders' meeting, including the signed attendance list.

Frequency

The notification should take place each time the threshold has been crossed or underspent.

¹ Article 514 CC already contains a notification duty for the acquisition or transfer of shares containing voting right in listed public limited companies in case a certain threshold has been crossed or underspent.

Penalties on non notification

In order to fortify the aforementioned duty of notification, the following penalties on late or lacking notification have been implemented in the CC:

- It is not allowed to vote by means of shares entitled to vote above 25% for which no notification exists (modification of article 545, first part CC);
- The board of directors can postpone the general meeting up to three weeks should the board be aware, within twenty days prior to the general meeting, that a notification should have taken place or should still take place (modification of article 534 CC.).

Furthermore, the president of the competent court of commerce can, upon request of the issuing company or its shareholders entitled to vote (and by summary procedure), order the following penalties in case of non respect of the (timing of the) aforementioned notification duty:

- The suspension of all or a part of the rights related to the relevant shares for a duration of maximum one year;
- The suspension of the already convened general meeting during a certain period;

- The obligation to sell, under his supervision and within a certain period determined by him, the relevant shares to a third party who has no ties with the present shareholders (modification of article 516, §1 CC.).

Aforementioned penalties will only be charged in case of non notification of crossings and not for underspendings of the threshold.

Entry into force

This new duty of notification entered into force on February 5th, 2010.

Transitory stipulation

Persons who, before the entry into force of article 515bis CC, ie on February 5th, 2010, owned 25% or more of the shares with voting rights, should notify the concerned company within six months as of the entry into force of aforementioned article. This means that they should notify the company before August 4th, 2010.

Contact

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