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CORPORATE & GOVERNANCE | BANKING & FINANCE

CONVERSION OF BEARER SECURITIES

Decree-Law no. 123/2017, of 25 September, establishing the conversion system for bearer securities (including shares) into nominative securities, was published last Monday, implementing Law no. 15/2017, of 3 May (“Law 15/2017”).

Decree-Law no. 123/2017 (“DL 123/2017”) – which took effect Tuesday – determines, among other measures, the way in which the conversion obligation is complied with, the information duties that arise from it, and establishes the appropriate framework as well as the consequences of non-compliance within the legal deadline.

We prepared a Q&A to clarify possible queries in this context and we are available for more detailed clarifications about the new statute.

Question

Answer under Decree-Law 123/2017

Which entities are covered by Decree-Law 123/2017?

Issuers of bearer securities, holders of bearer securities, financial intermediaries, and managing bodies of bearer securities centralized systems.

What is the deadline for the conversion?

The conversion must occur within six months after Law 15/2017 enters into force, i.e., until 4 November (“Transitional Period”), so the Transitional Period has already started and ends in less than two months.

Alterations to articles of association and other documents related to the issuing conditions of securities, which are necessary to implement the conversion, may be **approved by resolution passed by the board of directors**, thus waiving the need for a resolution of the General Meeting.

The **conversion operates at the expense of the issuer**, in one of the following ways¹:

- (i) Entry, into an individualised registration account, of bearer book-entry securities or certificated bearer securities integrated in a centralised system; or
- (ii) Substitution of the certificates or alteration of the certificate references carried out by the issuer. The destruction of old certificates, is promoted by the issuer, in case of substitution, or by the managing body of the centralised system, if the certificated bearer securities are integrated in such a system.

How is the conversion carried out?

The managing body defines the conversion procedures regarding bearer securities integrated in the centralised systems which it manages.

As established by Law 15/2017, the nominative nature of the shares is part of the mandatory content of the articles of association.

During the Transitional Period, the issuers of bearer securities should **release an announcement** informing people regarding the conversion process (“**Announcement**”).

What information duties are associated with conversion?

In the case of conversion certificated bearer securities which are not integrated in a centralised system, according to Article 99 of the Portuguese Securities Code, the financial depository intermediaries will communicate to each client, via durable medium, the need for the securities to be presented before the issuers for conversion, as well as the legal consequences of non-conversion.

The managing body will divulge the conversion procedures regarding bearer securities which are integrated in the centralised systems it manages.

Where will the Announcement be published?

The Announcement will be published to the website of each issuer, if it exists; to the Ministry of Justice ‘s Portal²; and, in the case of issuers admitted to trading in a regulated market or in a multilateral negotiation system, or issuers with capital open to public investment, to the Portuguese Securities Commission’s information broadcast system.

¹ The bearer securities deposited in a financial intermediary whose issue or series is represented by a single security are also converted in the ways set out in (i) and (ii) above

² In on-line Publications of Corporate Acts (<http://publicacoes.mj.pt/>).

The Announcement should identify (i) the securities at stake; (ii) Law 15/2017 and DL 123/2017 as the legal sources on which the decision is based; (iii) the date of deliberation of the alterations to the articles of association and other documents related to the bearer securities conversion, and the indication of the deliberative body at stake; (iv) the expected date for filing the request for the enrolment of alterations to the articles of association and other acts which are subject to commercial registration; and (v) the consequences of non conversion during the Transitional Period.

What information should be included in the Announcement?

For the purposes of updating and substituting the securities, in case of certificated bearer securities which are not integrated in a centralised system, the Announcement should clarify that, until October 31 2017, the securities are to be presented to the issuer, or to a financial intermediary indicated by the issuer, by the holders, or by the depository entities specified in article 99 of the Portuguese Securities Code - according to the holders' instructions and on their behalf -, or by the entities in possession of the securities, namely, guarantee beneficiaries.

When the bearer securities are integrated in the centralised system, the Announcement should always contain the predicted date for conversion in the system.

The centralised system managing body, the registering entities as per Article 61 of the Portuguese Securities Code, and the issuers, should update the registration of converted securities.

The issuers should request commercial registration of the alterations to the articles of association, as well as other documents subject to commercial registry.

What are the necessary registration acts for the conversion and which entities should promote it?

For the purposes of commercial registration, the following documents should be presented: resolution of the administrative body, as well as a new version of the association articles and all other documents related to the conversion of bearer securities into nominative securities subject to commercial registration. If conversion occurs on the last day of the Transitional Period (by the managing body of the centralised system, or by the financial intermediary, in case the conversion had not yet occurred by the issuer's initiative), a declaration by the managing body or the financial intermediary must also be presented.

In addition, until the conversion takes place, the commercial registration should include a note of the fact that the conversion process is pending and, when it has occurred, the issuer should promote the commercial registration regarding closure of the process.

According to DL 123/2017, commercial registry acts which are carried out and publications related to the conversion are **free of charge**.

Bearer securities integrated in a centralised system which are not converted by initiative of their respective issuer will be converted by the managing body of the centralised system on the last day of the Transitional Period, in the conditions defined by the managing body. At the end of the Transitional Period, centralised system and regulated market managing bodies will divulge information on the converted securities.

Securities which are registered in one single financial intermediary, which are not converted by the initiative of their respective issuer, will be converted by that financial intermediary on the last day of the Transitional Period, with the issuer being informed accordingly.

If, at the end of the Transitional Period, there is no conversion of bearer securities, their holders will not be able to transfer them, nor to participate in the respective results.

What are the consequences of the non-conversion of bearer securities until the end of the Transitional Period?

DL 123/2017 further establishes that (i) after the end of the Transitional Period, non converted bearer securities only confer legitimacy to their holders to request registration in their name; and (ii) securities should be presented before their respective issuer for substitution or alteration of their elements, in order to carry out the conversion.

Any amounts corresponding to suspended payments of dividends, interest, or any other income that arises from non-converted bearer securities, will be deposited with one single legally authorized entity, into an account opened in the name of the issuer, and will be delivered to the holders of the bearer securities once the conversion takes place, according to the issuer's instructions. If the above mentioned amount generates interest, it will revert in favour of the issuer. Only maintenance fees may be deducted from this account.

DL 123/2017 does not clarify the fiscal framework regarding dividends, interest and other "suspended" income, which raises interpretative questions, namely regarding the moment in which they should be submitted to tax withholding and the determination of the respective amounts.

During the Transitional Period, Article 101 and Article 104, paragraph 1, both of the Portuguese Securities Code, are in force.

How are the bearer securities transferred and how are related rights carried out during the Transitional Period?

So, until 4 November 2017, bearer securities are transferred through the delivery of the security certificate to the buyer, or depositary indicated by the buyer. The transfer of securities, deposited with the depositary indicated by the buyer, is carried out by registration in the account of the buyer, with effects from the date of the request of registration onward. In the case of transfer following a person's death, the referred registration is made based on documents which prove the right to inheritance.

According to Article 78, paragraph 2, of the Portuguese Securities Code, the exercise of rights related to bearer securities depends on the possession of the security certificate or of a certificate issued by the depositary.