

Bearer Securities prohibited in Portugal

CRA – Coelho Ribeiro e Associados, SCARL

Luís Moreira Cortez

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The Portuguese Parliament has just approved Law nr. 15/2017, of May 3rd, prohibiting the issuance of bearer securities.

Under this Law, that introduces several amendments to the Securities Code and to the Corporate Code, since May 4th, 2017, it is no longer possible to issue bearer securities and a transitional regime has been defined for the currently existing bearer securities.

The currently existing bearer securities will have to be converted into nominal securities until November 4th, 2017. A specific regime will be approved by the government for that purpose. The Government has been given a deadline of 120 days to approve this conversion mechanism.

After the interim period (that is, as off November May 4th, 2017):

- it will be no longer possible to transfer bearer securities; and
- Holders of bearer securities will not be allowed to participate in the distribution of dividends related to such bearer securities until such securities will not be converted into nominal securities.

The main objectives of this measure, that has been unanimously approved by the Parliament, are the fight against money laundering, corruption and tax evasion. The initiative was also supported by the favourable opinion of the Quoted Companies Association (AEM – Associação de Empresas Emitentes de Valores Cotados em Mercado), the Bank of Portugal and the Portuguese Securities Market Commission (CMVM).



However, we believe that this Law rises several unanswered questions that have to be clarified by the courts if no subsequent amendment is approved by the Parliament or is not solved by the Government when approving the conversion mechanism:

- a) Do bearer shares that are not converted after the interim period keep in force all other inherent rights (particularly voting rights) other than the right to the dividends?
- b) What is the succession by death regime in relation to bearer securities not converted during the interim period?
- c) Dividends attributed to bearer securities not converted during the interim period are subject to withholding taxes or not?

This is not an isolate measure, as it was approved after an extensive package of anti-laundering measures approved and implemented by the Government, aiming to guarantee more transparency to corporate, commercial and banking operations.

This new regime also applies to the companies registered with the Madeira International Business Center.

With a special focus on the banking activity, Law nr. 16/2017 was also approved in the same May 3rd, 2017, determining the obligation of disclosure of the ultimate beneficial owners with qualified participations in the share capital of Banks registered in Portugal.

This disclosure will have to be done to the Central Bank (Banco de Portugal) within 90 days.

Under the General Regime of Credit Institutions and Financial Entities, it is understood that there is a qualified participation when there is a direct or indirect ownership of, at least, 10% of the share capital or of the voting rights in the entity or when there is, in any form, a possibility to have a significant influence in the management of such entity.