

Proposed changes to transparency of public limited companies 3/3/22



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In late 2021 the government debated and approved the Justice Ministry's proposals for amending the Commerce Act. Although the amendments have yet to be endorsed by Parliament, they might come into force on 1 July 2023. The most important proposals relate to disclosure requirements for a public limited company's shareholders.

Share registers

Although a share register is kept in the company when it comes to recording registered shares and their holders under [section 234\(1\) of the Commerce Act](#), so far the Act did not require a public limited company to file its share register with the Enterprise Registry, so shareholder details were not publicly available. Where there was no intention of disclosing shareholder details, the rules allowed a public limited company to be chosen as the best form of business. The annotation for the bill explains that this procedure fails to achieve sufficient transparency and availability of shareholder information in public limited companies, so the rules will be changed.

The bill provides that the procedure for keeping a public limited company's share register when it comes to registered shares would be improved and aligned with the procedure for keeping a private limited company's share register:

- Individual sequential numbers should be assigned to registered shares.
- Entries on the share register should be made in chronological order.
- The share register should consist of separate sections.
- Each section should be prepared in two copies, one to be filed with the commercial register.
- Signatures on a share register section should be certified by a notary or the section should be signed with a secure electronic signature.

This procedure for filing the share register would mean that shareholder details are included in the public part of the registration file and become accessible to third parties.

Recording bearer shares

For bearer shares, which are commonly chosen in a listed company, there is no requirement for a share register to be kept, filed or disclosed. Yet bearer shares must be recorded in the central depository of securities, a procedure that remains unchanged by the bill.

The bill provides, however, that in future an entry will be made on the commercial register about the central securities depository in which a public limited company's shares are recorded to make shareholder details readily accessible to third parties.

The bill also provides that a public limited company's shareholder whose bearer shares exceed 5% of the

company's shares will have to notify the company when their interest rises or falls by each 5 per cent. The company will then have to provide this information to the Enterprise Registry, who will include it in the public part of the registration file.

Paying share capital

The Commerce Act provides that at incorporation a private limited company's share capital must be subscribed in full and paid up at least for 50% by the date the incorporation request is filed. The rest must be paid up within one year after the date the company was entered on the commercial register. This procedure is likely to alleviate the founders' worries about the required funding when setting up a company.

However, the bill abolishes the option of partial payment of share capital at incorporation. The bill provides that in future, when a private limited company is formed, the subscribed share capital must be paid up in full by the date the incorporation request is filed with the Enterprise Registry.

Increasing share capital

The Commerce Act provides that a company's share capital increase rules must state a time limit for paying up new shares to ensure the new portion is fully paid up within six months after the date the decision was made to increase share capital. This could practically result in a situation where shares are paid up well after the new amount of share capital has been registered with the Enterprise Registry.

The bill provides that an application to the commercial register for a share capital increase should be filed on expiry of the share capital payment deadline stated by the share capital increase rules. So a share capital increase can no longer create a situation where the capital registered with the Enterprise Registry differs from the paid-up capital. The content of entries on the commercial register will also change by stating only the paid-up capital.

As for changes to how capital is paid and how a capital increase request is filed, it is important to note that information on the share payment position will no longer have to be filed with the Enterprise Registry by stating this in the relevant section of the share register.

Payment of share capital at the incorporation of a low-capital private limited company could so far be confirmed by the founders. Given the risks of money laundering and terrorism financing, in future the share capital of a low-capital private limited company will have to be paid up by opening a current account with a payment institution and paying an appropriate amount of cash.

Since these proposals affect shareholders and share capital, at least one of the goals is to mitigate the risks of money laundering and terrorism financing. We note, however, that this article does not summarise all the proposals and related aspects and the amendments have yet to receive final approval.