



Factsheet concerning the issue of bearer shares

1. General

Companies limited by shares,¹ partnerships limited by shares² and European companies (SE)³ that issue bearer shares are obliged to appoint a custodian with whom the bearer shares are to be deposited.⁴

The custodian shall be appointed by the board of directors. If for any reason the board of directors of the company does not constitute a quorum, the custodian shall be appointed by the Princely Court of Justice in special non-contentious proceedings.⁵

No custodian is required for listed companies, undertakings for collective investment in transferable securities, investment funds and investment companies.⁶

The custodian must be entered in the Commercial Register, stating his function as a custodian.⁷

2. Criteria for taking on the function of custodian⁸

Only persons may be appointed as custodians who

- are either subject to the Due Diligence Act (Sorgfaltspflichtgesetz)⁹ or are subject to a set of rules and supervision abroad that is equivalent to Directive 2005/60/EC¹⁰; or
- have their registered domicile or place of residence in Liechtenstein and hold an account in the name of the shareholder in Liechtenstein or in another EEA member state.

If the representative office of the company is subject to the supervision of the Liechtenstein Financial Market Authority (FMA), it may be appointed as the custodian.

In the case of legal entities that have a managing director subject to the Liechtenstein Trade Act (Gewerbegesetz) or another special act or that are subject to the supervision of a municipality, the

¹ Art. 326a et seq. PGR

² Art. 368 Para. 3 PGR in conjunction with Art. 326a et seq. PGR

³ Art. 2 of the Act of 25 November 2005 on the Statute for a European Company (Gesetz vom 25 November 2005 über das Statut der Europäischen Gesellschaft (Societas Europaea, SE)) (SE Act; "SEG") in conjunction with Art. 326A et seq. PGR

⁴ Art. 326a Para. 1 PGR and Art. 326b Para. 1 PGR

⁵ Art. 326b Para. 1 PGR

⁶ Art. 326a Para. 2 PGR

⁷ Art. 326b Para. 4 PGR

⁸ Art. 326b PGR

⁹ Act of 11 December 2008 concerning Professional Due Diligence to Combat Money Laundering, Organised Crime and the Financing of Terrorism (Due Diligence Act) (Gesetz über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung (Sorgfaltspflichtgesetz – "SPG")) (LGBI. 2009 No. 47)

¹⁰ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing

Government or another public authority (with the exception of the Supervisory Authority for Foundations), it is sufficient for the custodian to have an account in the name of the shareholder in Liechtenstein or in another EEA member state.¹¹

3. Register of bearer shareholders¹²

The custodian must maintain a register. This may also be maintained electronically, provided it can be made readable at any time. The following information must be entered in the register in respect of each bearer share:

- last name, first name, date of birth, nationality and place of residence or company name and registered domicile of the shareholder;
- the date of the deposition;
- if applicable, the bank account details of the shareholder in Liechtenstein or another EEA member state (for details see Fig. 2);
- if applicable, the pledging of the bearer share.

Vis-à-vis the company, only parties who are recorded in the register are considered to be shareholders.¹³

The register must be held for safekeeping at the registered domicile of the company. The provisions on the keeping and safekeeping of business records (Art. 1059 PGR) are analogously applicable.¹⁴

4. Release of the bearer shares¹⁵

The custodian may release the bearer shares only in the following cases:

- in the event of the ending of his function as custodian, to his successor;
- in the event of the conversion of the bearer shares into registered shares pursuant to the articles, to the company;
- in the event of the retraction, withdrawal or amortisation of bearer shares, to the company.

5. Shareholder rights

Shareholder rights arising out of the bearer share may be exercised only if the bearer share is deposited with the custodian and all details of the bearer shareholder are registered.¹⁶

Each bearer shareholder is entitled to inspect the data about him kept in the register.¹⁷

Domestic authorities and courts may also inspect the register and make copies within the context of their jurisdiction.¹⁸

¹¹ Art. 326b Para. 3 PGR

¹² Art. 326c PGR

¹³ Art. 326c Para. 2 PGR

¹⁴ Art. 326c Para. 5 PGR

¹⁵ Art. 326e PGR

¹⁶ Art. 326f PGR

¹⁷ Art. 326d Para. 1 PGR

Upon written request, the custodian must immediately issue the shareholder with a confirmation of the number, par value and category of the deposited bearer shares (so-called depository receipt). The depository receipt shall be deemed to be a document of evidence.¹⁹

6. The exercise of voting rights at the general meeting²⁰

Voting rights at the general meeting may be exercised either by the shareholder himself (or a third party authorised by him) or by the custodian (or a third party authorised by him). If voting rights are to be exercised by the custodian, he must ask the shareholder for voting instructions before each general meeting.

If instructions are not received in good time, the custodian shall exercise the voting rights in accordance with a general instruction from the bearer shareholder; if no such instruction is received, the custodian shall follow the motions of the board of directors.

The custodian must demonstrate his entitlement to exercise voting rights by means of a written declaration containing the following:

- citation of his function as a custodian;
- the number, the par value and the category of the represented bearer shares;
- information about whether the representation results from a special, a general or no instruction.

If a public deed is to be prepared about the resolution of the general meeting, then the declaration of the custodian and, in the absence of instructions from the shareholder, the motions of the board of directors shall be attached to the document in writing.

7. Transfer of bearer shares²¹

If a shareholder intends to transfer bearer shares, he must notify the custodian. The notification must contain the last name and first name, date of birth, nationality and place of residence or company name and registered domicile of the acquiring party of the bearer share.

The transfer of bearer shares shall become effective upon the entry of the acquiring party in the register (for details, see Fig. 3).

8. Supervision²²

Within the context of its annual audit and review obligations, the audit authority²³ that must be appointed for the company must examine and confirm that the custodian has adhered to the obligations. If the audit authority ascertains that these obligations have been adhered to, this shall be confirmed in the audit report.

If the audit authority finds deficiencies, however, it must immediately file a complaint to the Office of Justice. The Office of Justice shall then order the custodian to rectify the deficiency within a

¹⁸ Art. 326d Para. 2 PGR

¹⁹ Art. 326c Para. 6 PGR

²⁰ Art. 326g PGR

²¹ Art. 326h PGR

²² Art. 326i PGR

²³ Art. 350 PGR

specific deadline. If the deficiency is not remedied within the set deadline, the Office of Justice shall notify the Princely Court of Justice.

In addition, the Office of Justice must report immediately to the Princely Court of Justice if it becomes aware of any of the following circumstances:

- issue of an incorrect confirmation of the deposition of bearer shares (for further details, see Fig. 5);
- unlawful surrender of bearer shares (for further details, see Fig. 4); or
- provision of an incorrect confirmation by the audit authority or failure of the audit authority to issue a report following ascertainment of a deficiency.

9. Transitional provision

The following applies to bearer shares of companies limited by shares, partnerships limited by shares or European companies (SE) issued before 1 March 2014:

The transitional provision provides for an obligation to deposit bearer shares with the custodian by 1 March 2014 at the latest, otherwise voting rights can no longer be exercised.

Once this deadline has expired, bearer shares can only be deposited with the custodian for registration if the respective shareholder submits a resolution of the Princely Court of Justice stating that he is the legal owner of the bearer shares.

After 1 March 2014, bearer shares not deposited with the custodian must be declared null and void by the company; no rights may be asserted from such shares after this date.

10. Legal principles

- *Persons and Companies Act (Personen- und Gesellschaftsrecht – “PGR”) of 20 January 1926 (Liechtenstein Law Gazette (“LGBI”) (1926 No. 4))*
- *Commercial Register Ordinance (Handelsregisterverordnung – “HRV”) of 11 February 2003 (LGBI. 2003 No. 66)*
- *Persons and Companies Ordinance of 19 December 2000 (Verordnung vom 19. Dezember 2000 zum Personen- und Gesellschaftsrecht); (LGBI. 2000 No. 281)*
- *Ordinance of 11 February 2003 concerning Land Register and Commercial Register Fees (Verordnung vom 11. Februar 2003 über die Grundbuch- und Handelsregistergebühren) (LGBI. 2003 No. 67)*