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implicit lower bound of bank lending rates which are more sensitive to market demand and supply have moved down.

The other tool the PBOC uses to adjust monetary policy is the medium-term lending facility (MLF) rate, which is more aligned to supply-demand dynamics in China's money markets. The one-year rate for the MLF is roughly 3.3%, much lower than the PBOC's benchmark lending rate of 4.35%. Linking the new LPR to the MLF rate can bring down the LPR, leading to a decline in overall borrowing costs. Immediately after the PBOC's announcement, the new one-year LPR was set at 4.25%,<sup>5</sup> lower than the previous LPR of 4.31%,<sup>6</sup> while the newly introduced five-year LPR was fixed at 4.85%, below the five-year benchmark rate of 4.9%.

The interest rate reform does not guarantee a lower borrowing cost as commercial banks may be reluctant to immediately pass through large reductions in borrowing costs as they will want to maintain margins under pressure in the economic downturn. The participating banks on the panel have no strong incentive to lower their rates against narrowed net interest margin.

## MORE EFFECTIVE MONETARY POLICY

China's interest rate system has long been criticised for failing to pass on lower rates to borrowers in the corporate sector. Habitually, Chinese banks prefer to lend to state-backed companies because of the lower risk. That means the private sector, which has been hit hardest by the economic slowdown and the trade war, is usually underserved with credit. This is why financial inclusion is hard to achieve in China's context.

Although China calls its own economy a socialist market-oriented one, its monetary policy is a command one often seen in a centrally planned economy. Basically, the PBOC dictates what interest rates for bank loans and deposits should be.

However, the command-based interest rate does not necessarily work well as the Chinese economy has increasingly been engaged in the global marketplace, and the PBOC's benchmark rate is unable to accurately reflect the demand and supply equilibrium. Commercial lenders still prefer to use the PBOC's benchmark rates as a reference to price their loans to ensure a profitable margin.

PBOC is trying to be in line with international practice when it comes to setting interest rates and exchange rates. Central banks in major economies mainly adjust interest rates on short-term funds to influence borrowing costs in the broader economy. Still, PBOC has a rich policy toolkit to manage the supply of money. Apart from setting the interest rate, it is able to cut the reserve requirement ratio, encouraging banks to lend more. PBOC has also indicated its plan to merge its system of fixed and floating rates. PBOC may move toward a system where the short-term lending rate to banks is the PBOC's main monetary tool. The PBOC's reform of its lending rate pricing mechanism is a welcome effort as it moves towards a more market-oriented financial monetary system reflective of a true demand and supply equilibrium. ■

- 1 Citibank China Co Ltd. and Standard Chartered Bank China Ltd are the two foreign lenders on the panel.
- 2 Commercial lenders submitting prices for the calculation of the new LPR will report in terms of a spread on top of the interest rate of the PBOC's medium-term lending operations, currently at 3.3%. As the current benchmark one-year lending rate stands at 4.35%, new loans priced from the LPR could carry a significant discount. To ensure a lower lending rate, the PBOC can either cut MLF rates or use the window guidance to narrow the spread between banks' LPR quotations and the MLF rate.
- 3 PBOC indicates that the one-year lending rate, which sets borrowing costs economy wide, will ultimately be abolished. For now, interest rates on existing loans and mortgages will not be changed, according to the central bank.
- 4 Likely, lowering the benchmark rate would have immediately reignited the property market and accelerated debt growth.
- 5 Reported by the National Interbank Funding Centre, a unit of the PBOC.
- 6 It is also lower than the old benchmark lending rate of 4.35%.

## Switzerland

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## DE FACTO ABOLITION OF BEARER SHARES AND NEW CRIMINAL SANCTIONS FOR BOARD MEMBERS AND SHAREHOLDERS OF SWISS COMPANIES

### INTRODUCTION

■ On 1 November 2019, the new Swiss Federal Act implementing the recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum Act) will enter into force. The Global Forum Act will introduce various amendments to the Swiss Code of Obligations (CO) and the Swiss Criminal Code (SCC) which significantly tighten the FATF provisions that have been introduced on 1 July 2015.

The new law not only *de facto* abolishes bearer shares but also introduces several new criminal and other sanctions. The main changes introduced by the Global Forum Act are the following:

- Swiss stock corporations may not issue bearer shares anymore except if the relevant company is listed on a stock exchange or if the bearer shares are issued in the form of intermediated securities.

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- Existing bearer shares not falling under the exemption regime will automatically be converted into registered shares 18 months after entry into force of the new law.
- Holders of bearer shares in Swiss stock corporations who have not complied with their reporting obligations pursuant to Art 697i CO at the time of the automatic conversion of their bearer shares into registered shares risk the (irreversible) loss of all of their rights in the shares.
- The violation of the obligation to disclose the beneficial ownership in Swiss companies may result in criminal sanctions.
- Members of the board of directors or managing directors of Swiss stock corporations and Swiss limited liability companies who deliberately fail to correctly keep the share register or the register of beneficial owners may be subject to criminal sanctions.

## DE FACTO ABOLITION OF BEARER SHARES

### De facto abolition and automatic conversion

As of 1 November 2019, Swiss stock corporations whose equity securities are not listed on a stock exchange and who do not wish to issue their shares as intermediated securities may no longer issue bearer shares. Stock corporations not fulfilling one of these exemptions should convert all bearer shares that have already been issued into registered shares as soon as possible.

If the conversion is not effected within 18 months, ie by 1 May 2021, the existing bearer shares will automatically be converted into registered shares. In this case, the converted shares retain their nominal value, their pay-in ratio and their status with respect to membership and pecuniary rights and remain fully transferable. In the event of a conversion by operation of law, the relevant stock corporation must adapt its articles of association to the new circumstances. As long as the required amendments have not been made, each application for registration of another amendment to the articles of association will be rejected by the competent commercial register.

After bearer shares have been converted into registered shares, those (former) bearer shareholders who have complied with their reporting obligations pursuant to Art 697i CO will be entered into the share register.

### Exemptions for publicly listed companies and companies with bearer shares having the form of intermediated securities

Bearer shares remain permissible if any equity securities of the relevant Swiss stock corporation are listed on a stock exchange or if the bearer shares take the form of intermediated securities and are deposited with or entered into the main register of an intermediary located in Switzerland and designated by the company. In this case, the company's board of directors has to inform the competent commercial register within 18 months of the entry into force of the Global Forum Act (ie by 1 May 2021) that one of these exceptions

applies. This fact will subsequently be entered into the commercial register.

## SANCTIONS IN CASE OF A VIOLATION OF THE NEW REGIME CONCERNING BEARER SHARES

Shareholders of Swiss stock corporations who have not complied with their reporting obligation pursuant to the existing Art 697i CO cannot exercise their membership rights. In addition, any pecuniary rights coming into existence are forfeited as long the relevant notification has not been made.

Remarkably, the new law stipulates that after the automatic conversion into registered shares has taken place it is no longer possible to make a notification to the company pursuant to Art 697i CO in order to regain all rights attached to the shares. Instead, a (former) bearer shareholder must, within five years of the entry into force of the Global Forum Act, file an application to the competent court for registration into the share register. Such an application requires the prior consent of the company. It is unclear under which conditions the company must give its consent.

Shares for which no such request has been made five years after the entry into force of the new law will automatically become null and void and are replaced by treasury shares of the company. The board of directors may then dispose of these shares.

Shareholders whose shares have become null and void may claim compensation from the company within a time period of ten years. The prerequisite for such a compensation claim is not only proof of the ownership of the shares at the time when they have become null and void but also that the shares became null and void without the shareholder's fault. The compensation is based on the lower of:

- the effective share value at the time of the conversion; and
- the value of the shares at the time the claim is asserted.

Compensation is always excluded if the company does not have sufficient freely disposable equity to pay the compensation.

## VIOLATION OF BENEFICIAL OWNERSHIP DISCLOSURE OBLIGATIONS

So far, the sanctions for a violation of the beneficial ownership disclosure obligations applicable to shareholders of Swiss companies have been limited to the fact that the shareholders could not exercise their membership and pecuniary rights and forfeited the pecuniary rights arising during the period of non-compliance. With the entry into force of the Global Forum Act, the sanctions regime will change considerably. According to the revised Art 327 SCC, anyone who intentionally fails to comply with the obligations to report the beneficial owners of shares of Swiss stock corporations or quotas of Swiss limited liability companies will not only forfeit its property rights, but may also be fined up to CHF10,000.

The board of directors and the managing officers of Swiss stock corporations and Swiss limited liability companies must continue to ensure that no shareholder exercises its rights in violation of the reporting obligations.

## **VIOLATION OF DUTIES TO MAINTAIN SHAREHOLDERS AND BENEFICIAL OWNERS REGISTERS**

The new Global Forum Act also significantly tightens the duties of the board of directors and the managing directors of Swiss companies by providing for new criminal sanctions. Pursuant to the revised Art 327a SCC, anyone who deliberately fails to keep the share register or the register of beneficial owners in accordance with the law or who infringes the related obligations under corporate law may be fined. This does also cover the duties to properly store the supporting documents provided by persons requesting an entry into the relevant registers and to ensure access to these registers in Switzerland at any time.

In addition, organisational deficiency proceedings can be initiated against a Swiss company that does not keep its share register or register of beneficial owners in accordance with the law. Possible measures which could be taken by the competent court in such a proceeding include the setting of a deadline to restore the lawful status of the company or, in the worst case, the dissolution of the company by court order.

## **RECOMMENDATIONS**

In view of the entry into force of the new Global Forum Act, the following actions should be taken.

The members of the board of directors of Swiss stock corporations and the members of the management board of Swiss limited liability companies should ensure that:

- the share register as well as the register of beneficial owners are always kept in accordance with the law;
- no shareholder exercises its rights in violation of the reporting obligations;
- the supporting documents for any entry into the share register and the register of beneficial owners are kept in accordance with the law;
- the share register and the register of beneficial owners can be accessed in Switzerland;
- existing bearer shares (provided the company does not have any equity securities listed on a stock exchange):
  - are issued in the form of intermediated securities; or
  - are converted into registered shares; and
- if applicable, the entry into the commercial register in accordance with the new Art 622 para 2bis CO is made.

In addition, each shareholder of a Swiss stock corporation or a Swiss limited liability company should make sure that:

- if he, she or it holds bearer shares, the company has been notified in accordance with the law and the entry in the register of bearer shares is correct;
- any required notification regarding the beneficial ownership in the shares has been made and all information required pursuant to Art 697j para 2 and 3 CO has been reported to the company;
- the beneficial ownership information reported to the company is still correct.

Finally, everyone holding a pledge or other security interest over bearer shares of a Swiss stock corporation should carefully analyse its legal position and, if necessary, request that the relevant bearer shares are converted into registered shares. ■