



## CORPORATE

# THE CONVERSION OF BEARER SECURITIES

## DECREE-LAW 123/2017 OF 25 SEPTEMBER

*Decree-Law 123/2017, published in the official Portuguese journal, **Diário da República**, on 25 September, regulates the process of conversion of any bearer securities in circulation into nominative securities, which must be implemented by 4 November 2017.*

Law 15/2017 of 3 May (i) introduced a prohibition on the issuance of bearer securities, which is in force since 4 May of this year, and (ii) imposed the conversion of any bearer securities in circulation into nominative securities, setting out in its article 3 that the regulation of that conversion would be the object of subsequent regulation.

Decree-Law 123/2017, published in the official Portuguese journal, *Diário da República*, on 25 September, now regulates the process of conversion of any bearer securities in circulation into nominative securities. This conversion must be implemented within 6 months of the entry into force of Law 15/2017, in other words, by 4 November 2017 (“**Transitional Period**”).

### **I. THE RESPONSIBILITY OF THE ISSUERS TO IMPLEMENT THE CONVERSION PROCESS**

Besides the abovementioned prohibition of issuing new bearer securities, applicable since 4 May, article 2(2) of the new Decree-Law requires issuers of bearer securities to implement, at their own expense and by the end of the Transitional Period, the process of converting any bearer securities in circulation into nominative securities, to permit the clear identification of the securities’ holder.

The responsibility to carry out this conversion therefore lies with the issuers and does not depend on any prior request from the holders of the bearer securities.

### **II. THE CONVERSION PROCESS**

The conversion process will begin with a corporate resolution that approves the conversion of any bearer securities into nominative securities, which may be passed by the company’s board of directors without the need for the approval of the shareholders or bondholders convened in a general meeting. This resolution must also approve the amendment to the articles of association of the issuing company, which must include a reference to the nominative nature of the shares or of other securities in circulation – as per articles 272(d) and 299 of the Portuguese Companies Code, as amended by Law 15/2017 of 3 May.

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Under the new Decree-Law, the amendment to the articles of association does not formally depend on the prior conclusion of the process to convert the bearer securities. Therefore, it may happen that the articles of association of the issuing company state that all the securities are nominative when, in fact, bearer securities remain in circulation (which is, at best, inconsistent).

Although the rule referred to above empowers the board of directors to approve the conversion of bearer shares, it is important to note that this power does not exclude that of the shareholders' general meeting of the issuing company to resolve on this matter. We believe that in a considerable number of cases – above all, in share companies where the dispersion of the share capital is lesser – it will be the general meetings that resolve on the conversion of bearer shares (or other securities).

*The amendment to the articles of association does not formally depend on the prior conclusion of the process to convert the bearer securities.*

After the aforesaid corporate resolution has been passed, companies and the other entities that issued bearer securities will have to publish – by the end of the Transitional Period – an announcement to inform the holders of the securities in question of their conversion (“Announcement”). The Announcement must be published on the website of the issuer, if it has one, and on the online publications’ page of the Ministry of Justice website. In case of (i) issuers of securities admitted to trading on a regulated market or multilateral trading facility, or of (ii) issuers with capital open to investment by the public, the Announcement will also have to be published in the Information Disclosure System of the Portuguese Securities Market Commission.

The Announcement should indicate (i) the identification of the securities converted, (ii) the legal rules on which the decision to convert is based, (iii) the date of the resolution on the amendments to the articles of association and any other documents relating to the conversion of the securities, with an indication of the decision-making corporate body, (iv) the planned date for filing of the application for commercial registration of the changes to the company’s articles of association and of any other acts subject to commercial registration, and (v) the consequences of the non-conversion of the securities by the end of the Transitional Period.

In case of securities represented by certificates that are not integrated in a centralised system, the Announcement will also have to indicate that to update or substitute the securities, the holders must present their certificates to the issuer – or the financial intermediary indicated by the latter – by 31 October 2017. Alternatively, the certificates may be presented on behalf of their holders by the depositaries (as defined under article 99 of the Portuguese Securities Code), if the holders give them instructions to do so, or by any entities that have the certificates in their possession, notably the beneficiaries of guarantees.

In case of bearer securities integrated in a centralised system, the Announcement must also mention the planned date for the conversion to occur in the system.

**III. HOW IS THE CONVERSION FORMALISED?**

Pursuant to article 4 of the Decree-Law, the conversion is made:

- (i) By an annotation in the individual securities account for book-entry bearer shares or bearer shares represented by certificates and integrated in a centralised system; or
- (ii) By substitution of the share certificates or by changing the mentions appearing on them, to be done by the issuer. In the case of substitution, the issuer – or the managing entity of the centralised system, whenever the securities are integrated in that system – must destroy the share certificates subject to conversion.

The above described procedure will also apply to the conversion of bearer securities represented by certificates that are deposited with a financial intermediary, and whose issuance or series is represented by a single certificate.

**IV. COMPULSIVE CONVERSION**

The new Decree-Law also creates a (special) “compulsive” conversion procedure, which only applies (i) to bearer securities integrated in a centralised system, and (ii) to book-entry bearer securities registered with a single financial intermediary, if they have not been converted, at the initiative of the issuer, by the end of the Transitional Period.

If this scenario occurs, the managing entities of the centralised system or the financial intermediary, as applicable, will be required, at their own initiative, to convert the bearer securities into nominative securities on the last day of the Transitional Period (4 November 2017). They will also be required to publicly disclose the securities *compulsively* converted.

**V. THE OBLIGATION TO UPDATE THE REGISTERS**

Following the conversion, the issuers, managing entities of centralised systems, or registering entities will be responsible for updating the registers of the securities in question. In the case of issuers, these will be required to update the register of issuance of securities (in the case of the shares, commonly referred to as “share registration books”).



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The issuers must also apply for the commercial registration of the amendments to the articles of association arising from this conversion, which will benefit from an exemption from the usual fees.

In case of conversion carried out by the issuer, the application for registration made to the Commercial Registry Office must be presented together with (i) the resolution of the issuer, (ii) the new (consolidated) wording of the company's articles of association and (iii) any other documents on which the conversion is based.

In circumstances where there has been a "compulsive" conversion, for the purposes of commercial registration it will be sufficient to present a declaration issued by the managing entity or by the financial intermediary responsible for the conversion.

Until all the formalities relating to conversion are completed (as set out in section III above), a note that the conversion process is pending must appear in the commercial permanent certificate of the issuer, which will be responsible for promoting the closure of the conversion process before the Commercial Registry Office upon its conclusion.

#### VI. CONSEQUENCES OF FAILURE TO COMPLY WITH THE CONVERSION OBLIGATION FOR THE HOLDERS OF BEARER SECURITIES

According to article 2(2) of Law 15/2017 of 3 May, the holders of any bearer securities that are not converted by 4 November will, from this date onwards, be prevented from (i) transferring the securities, and (ii) exercising their rights to receive the proceeds associated with unconverted securities (such amounts should be held in a bank account opened by the issuer specially for this purpose, and may only be handed over once the conversion process has been completed).

Therefore, after the end of the Transitional Period, any bearer securities that have not been converted will only allow their holder to request the issuer to register the securities in question in favour of the holder. In the case of bearer securities represented by certificates, these certificates must be presented to the issuer, for them to be converted. Book-entry securities (i) integrated in a centralised system or (ii) registered with a single financial intermediary, which have been converted *compulsively* (under the terms of section IV above), will not be subject to these rules.

*The holders of any bearer securities that are not converted by 4 November will, from this date onwards, be prevented from (i) transferring the securities, and (ii) exercising their rights to receive the proceeds associated with unconverted securities.*



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