COMPLIANCE FOCUS

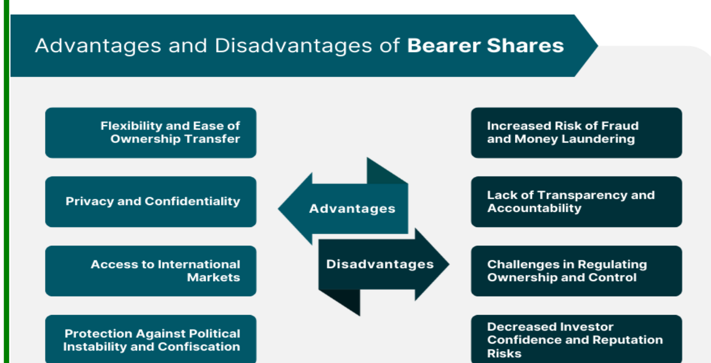
REVISIONS TO FATF RECOMMENDATION 24

What are Bearer Shares and Bearer Share Warrants?

Bearer Shares refer to negotiable instruments that **accord ownership** in a legal person to the person who possesses the physical bearer share certificate and any other similar instrument without traceability. It does not refer to dematerialized and/or registered forms of share certificate whose owner can be identified.

Bearer Share Warrants refer to negotiable instruments that **accord entitlement to ownership** in a legal person who possesses the physical bearer share warrant certificate and any other similar warrants or instruments without traceability.

The term "grandfathering" is the allowance of existing bearer shares to remain valid and operate under old rules even though new regulations or laws have been implemented that would prohibit such shares.



In July 2018, the Financial Action Task Force (FATF) and the Egmont Group published a report on the Concealment of Beneficial Ownership (BO). The Report indicated that bearer shares are among some of the different avenues by which legal persons can be misused for money laundering (ML).

Bearer shares and share warrants are physical certificates with untraceable ownership. They present an increased risk of ML and terrorist financing (TF) due to the concealment of the ownership of the certificates.

As a result, the FATF amended Recommendation 24 to control bearer shares beginning with the prohibition of the issuance of bearer shares and warrants. The requirement to end the 'grandfathering' of bearer shares and warrants already in place was also added.

Measures for the Prevention and Mitigation of the Misuse of Bearer Shares and Share Warrants

Immobilization Measures

Existing bearer shares and bearer share warrants should be held by a regulated financial institution (FI) or Designated Non Financial Businesses and Professions (DNFBPs). This ensures that competent authorities should be able to access this information in a timely manner. When a regulated FI or DNFBP becomes a custodian of bearer instruments, it should undertake steps to fully identify the bearer to be able to record and maintain the relevant information for competent authorities.

Conversion Measures

For shares held by a licensed service provider, the service provider would

⇒ be under duty to identify the beneficial owner of the bearer shares.

⇒ oversee the conversion of the bearer shares into other formats.

For shares held by the holder or user,

⇒ the holder of the share is obligated to have the shares intermediated by a service provider with a duty for the latter to identify the beneficial owner of the bearer shares.

⇒ the user of the bearer shares is obligated to change its bylaws to allow only registered shares.

Timeframe for Immobilization or Conversion

It is important to consider the required legislative and administrative changes and the risks posed by the instruments of their holders.

Before the conversion or immobilization of bearer instruments is completed, countries should require these holders to notify the company and for the company to record their identity prior to exercising any rights associated with the shares.

Countries may also consider establishing an interim limited period of time at the end of which existing bearer shares or bearer share warrants would either be converted, immobilized or eventually canceled.

In St. Kitts, there are no provisions for bearer shares. Sections 51 and 52 of the Companies Act, Cap 21.03 were deleted to remove the bearer share option.

Revision to Recommendation 24, Part V:
Bearer Shares and Bearer Share Warrants
May 28, 2024 (CFATF RESEARCH DESK)