

Checklist for practitioners

News update on *GmbH* list of shareholders

By Dr. Andreas Jürgens

In June 2017, the law implementing the Fourth EU Money Laundering Directive also revised section 40 of the German Limited Liability Companies Act (*GmbHG*), requiring German limited liability companies' lists of shareholders (*Gesellschafterliste*) to contain information on the percentage participation of each shareholder. In addition, section 40 paragraph 4 of the *GmbHG* authorizes the issuance of future regulations to stipulate further requirements for lists of shareholders. The German Federal Ministry of Justice and Consumer Protection has made use of this authorization to issue the Regulation on the Structure of the List of Shareholders (*Gesellschafterlistenverordnung-GesLV*). The regulation entered into force on July 1, 2018, and resolves a number of previously unanswered questions. The following is a summary of the most important points.

Numbering

Since 2008, section 40 of the *GmbHG* has stipulated that shares must always be marked with consecutive numbers. This is



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to ensure that all changes in the ownership structure can be thoroughly traced following the incorporation of a company.

The *GesLV* further stipulates that shares must be numbered with whole Arabic

numerals. Roman numerals or combinations of numbers and letters (for instance, 1a, 1b, 1c) are not permitted. In exceptional cases, for example when there is a share split, numbering in decimal order (for instance, 1.1, 1.2, 1.3) is allowed.

Sorting

The *GesLV* clarifies that the list of shareholders can be sorted either by shareholder name or by the numbering of the shares. The explanatory memorandum to the *GesLV* (Bundesrat Printed Matter 105/18) also notes that several shares may be listed on one line, provided that the numbering is consecutive (for instance, “shares 1 to 25,000”). This reflects current prevailing practice.

Continuity of numbering

Once a number has been assigned to an individual share, it may not be used for another share. This principle is referred to as “numbering continuity” and is intended to ensure that shares are unmistakably identifiable.

New share numbers may only be issued if new shares are created, combined or split. This means new share numbers may not be issued in event of a step-up, cancellation of shares, capital reduction or transfer of shares. In each case, the →

next unused whole Arabic number must be allocated.

Notably, the principle of numbering continuity must be observed following a share split. If a shareholder splits a share, the original number of the share must be eliminated, and new individual numbers must be allocated according to the number of shares created by the split. These will be given the next unused Arabic numbers. In addition, the *GesLV* allows the use of decimal classification, permitting a split share's original whole number to be used as part of the new decimal numbers (for instance, "share nos. 1.1 and 1.2").



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Apart from the strict principle of numbering continuity, the *GesLV* also requires the renumbering of all shares in a clearing list (*Bereinigungsliste*) if the list of shareholders would otherwise be confusing, or

if the list would become confusing as a result of its previous numbering system. However, in order to further ensure that shares can be properly identified and sourced in these cases, the list of shareholders must include an additional column in which the previous numbering is recorded.

Additional column for explanatory notes

The additional column for explanatory notes (*Veränderungsspalte*) that often appears in a list of shareholders can still be used. The *GesLV* clarifies that the legal basis for changes to a list of shareholders "can" be entered in a separate column for explanatory notes. It also specifies which facts "should" be included in an additional column of this kind. These include the splitting, combination and cancellation of shares, capital increases and reductions, and the transfer of shares. Any change in a shareholder's information or their participation "can" also be entered in the additional column. The choice of wording ("can" and "should") makes it clear this is not an obligation: Making entries in the notes column is at the (appropriate) discretion of the issuer of the list of shareholders. However, recent experience has revealed that some local courts view the

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An additional column containing the previous numbering of the shares is only mandatory if a clearing list is created (see paragraph 3 above).

The notes column should only include facts that explain changes to the previous list recorded in the commercial register. In keeping with this, when the list is updated with regard to specific shares, the previous information in the notes column relating to these shares must be deleted.

Percentages

Pursuant to section 40 of the *GmbHG*, the percentage participation in the share capital of each share, based on the nominal amount of the share, must be stated. If a shareholder holds more than one share, the total amount of their participation in the share capital must also be stated separately as a percentage.

The *GesLV* also clarifies the rules for rounding percentages. The percentage participation for an individual share may be rounded to one decimal place in accordance with commercial principles.

Rounding to more than one decimal place remains permissible.

Percentage participation may not be displayed as a fraction. Rounding to 25.0% or 50.0% is not allowed either. This could give the false impression that a shareholder, contrary to section 3 of the German Money Laundering Act, is not a beneficial owner or has no control, as these require participation levels of greater than 25% and 50%, respectively.

The *GesLV* has also clarified that in cases of microparticipations of less than 1% of the share capital, the statement "less than 1 percent" is just as permissible as the actual percentage participation. For understandable reasons, rounding down to 0.0% is not permitted.

According to the explanatory memorandum to the *GesLV*, all shares in the list of shareholders must be rounded by applying the same commercial principles, and all shares must indicate the same number of decimal places.

The *GesLV* expressly states that the total amount of a shareholder's percentage participation must be calculated before any rounding or omission of decimal places with respect to individual shares. This is intended to prevent rounding →

differences for the total participation from becoming too substantial.

It is also worth noting that where shares are jointly held by shareholders (for instance, by a civil law partnership-*Gesellschaft bürgerlichen Rechts*), the percentage participation of the joint owners must be stated and not the participation of the individuals. This applies both to the individual share and to the total volume of their percentage participation.

When presenting the percentages, the percentages with respect to the individual shares must be specified in their own column. The percentages of the individual shareholders' total participation must be stated in a further column. Alternatively, the total percentage participation can be shown on separate lines immediately following the end of the list of shareholders (within the same document).

Transitional arrangements

The *GesLV* entered into force on July 1, 2018. For companies already established prior to July 1, 2018, however, the requirements only need to be observed if a new list of shareholders has to be submitted to the commercial register

due to a change in the shareholders' information or the scope of their participation. ←



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