



Share register in the digital age: electronic vs. digital

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In the digital age, traditional share registers are undergoing significant changes. Electronic and digital versions offer companies various solutions for more efficient share management.

The traditional share register

A share register is a document that keeps track of who owns how many shares at a given time and when they are transferred to other shareholders.

However, the transfers and transitions of shares, according to company law, only have effect against the company and third parties from their entry in the share register (exclusive opposability function).

In addition, whoever is registered in the share register as the holder of the share is presumed to be the shareholder until proven otherwise (evidential function). Thus, the share register is not an exclusive means of proof; proof of ownership can also be provided through other means.

A properly updated share register also acts as an informational tool, providing a record of shareholders' names, their identifying information and the type of shares they own.

Often, paper share registers are kept very carelessly or get lost. The digital age offers companies two possible solutions: the electronic share register and the digital share register.

Electronic share register

With the new company legislation, the legislator foresees in the BV, NV and CV the option to keep share registers electronically from now on subject to compliance with some (rather strict) rules. An example of a platform that enables the holding of an electronic share register is 'eStox'.

Decision-making

The decision to maintain an electronic share register can be made by the governing body, even if it is not explicitly so provided in the bylaws.

What information is recorded?

When the electronic share register is created, the existing situation on the creation date is recorded, under the responsibility of the governing body.

What happens to the old paper register?

The traditional paper register will lose its presumption of holding once an electronic register takes hold. This means that the paper register, if retained, no longer has official status. Its probative value is limited to the general rules of evidence of common law. The paper register is kept at the company's registered office, with a view to the evidential value of registrations dating from before the creation of the electronic register.

Tip. It is advisable to include in both the new electronic share register and the old paper share register a clause stating that the electronic register replaces the paper share register, in order to avoid confusion.

Privacy requirements

Because the electronic share register qualifies as electronic processing of personal data, several data protection requirements must be met.

- The administrator must establish an access control system that prevents unauthorized access by third parties. This system of access control works on 3 levels: (i) the identification of the person, (ii) the control of the capacity on the basis of which he has access to the data and (iii) the necessity of the requested data. In more detail, the administrator must be able to trace, date and identify the operations carried out, the consultations and transactions and the authors of these transactions. The electronic identifiers used must meet the reliability level "high," in accordance with the Regulation of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.
- The administrator must protect the digital share register from any intentional or unintentional attack or damage. He shall monitor the integrity of the retained data and must use all necessary means to prevent any unauthorized access to the equipment, communication systems and media containing the retained data.
- The administrator must provide procedures for responding to incidents in order to limit their negative consequences.

In accordance with the General Data Protection Regulation (GDPR), the company is the data controller of the electronic share register regardless of whether its management is recorded by

the company itself or a third party.

Advanced and qualified electronic signature

The Companies and Associations Code provides that the declaration of transfer may take an electronic form and may be "signed by means of a set of electronic data attributable to a particular person and demonstrating the preservation of the integrity of the instrument." This amounts to the qualified and advanced electronic signature as defined in Article 8.1 of the Civil Code. An example is the signature via 'itsme'.

Digital share register

The digital share register is a digitally managed share register and follows the rules for the paper share register. Compared to the electronic share register, it offers more flexibility and is suitable for all types of companies.

Digital management of a (legally considered) paper register involves making a digital printout of the electronic registration, which is electronically signed and dated by the governing body. The register can be displayed by the board upon request of an authorized party. Beginning with the markup, all new transfers and transitions of ownership are recorded in the digital register. With a properly signed and dated digital share register, the evidential, opposition and information functions of the share register are fulfilled.

The governing body can ease the administrative burden by outsourcing management to internal or external legal professionals as part of corporate housekeeping. A digital register can be maintained in Excel, but in the broader context of corporate housekeeping, specific software such as 'Corporify' is recommended.

Decision-making

Since the digital share register follows the rules of the paper register and not those of the electronic register, no formal decision by the governing body or general meeting is required.

What information is included?

According to the rules of the paper share register, the following information must be given:

- the total number of shares issued by the company and, if applicable, the total number by class,
- the identification data of each shareholder (name and residence/seat),
- the number of shares held by each shareholder and the class to which these shares belong,
- the payments made on each share,
- the statutory transfer restrictions and, when requested by one of the parties, the transfer restrictions resulting from agreements or from the terms of issue,

- the transfers and transitions of shares with their date, and
- the voting and profit rights attached to each share as well as their share in the liquidation balance, if different from their profit rights.

When transitioning to a digital share register, it is advisable to copy all transactions that appear in the paper version.

Tip. As with the electronic share register, it is advisable to include a clause in both the new digital share register and the old paper share register stating that the digital register replaces the paper share register to avoid confusion about the evidential value.

Privacy requirements

Since the electronic share register rules do not apply, the company or the external service provider, does not have to comply with access restriction and control obligations. Of course, the rules of the General Data Protection Regulation (GDPR) do continue to apply.

Electronic signature

Digital shareholder register signatures are not subject to the strict qualified signature requirements. These can easily be signed electronically by directors. An example is signing via text message. Of course, the qualified and advanced electronic signature is preferred.

Conclusion

Although the electronic share register is an appropriate step toward digitization, our preference is for the digital share register.

It offers more flexibility and is not subject to strict access management rules. Moreover, the management of the digital share register can be integrated into comprehensive digital corporate housekeeping. In this way, not only the register but also all legal information can be maintained in an efficient manner.

The evolution of share registers illustrates the continuing shift toward more sophisticated, digital business management. The choice between electronic and digital share registers ultimately depends on the needs and ambitions of the company.



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