



CLASSES OF SHARES

Section 36(1)(a) of the Companies Act 71 of 2008 (“the Act”) provides that a company’s Memorandum of Incorporation (Mol) must set out the classes of shares and the number of shares in each class. The Act further provides that the preferences, rights, limitations and other terms associated with each class have to be set out in each specific class.

Shares are generally differentiated based on the level of voting rights the shareholders receive. These rights can be used to maintain control over the company and protect the company from an easy takeover. Ordinary shares are the most commonly used share in companies, where typically one share equals one vote, and each share possesses equal rights to dividends. Other share options include preference shares, redeemable shares, non-voting shares, redeemable preference shares, deferred ordinary shares and cumulative preference shares. The rights shareholders have can be limited through the use of these different classes.

If a company decides to have more than one class of shares, the Mol will specify the different rights and voting rights attached to each class of shares. It is possible to exclude voting rights in specific classes. However, it should be noted that when amending the existing rights of the specific class, the holders of that class have the right to vote on the matter.

Shares are often seen as a point of persuasion to new employees or used as motivation to current employees. The rights attached to each share can be highly desirable, and therefore hold the perfect bargaining power to employers. Providing these shares throughout the different levels of the organization can serve as the perfect remuneration and result in a cohesive and driven workforce. The issue is that management are not as willing to distribute shares amongst the company if it waters down their control over the company. This scenario would be ideal for the use of different classes of shares.

Another example would be a family run business. A father may wish to provide share options to his daughter, but he may be worried that she will vote against him at the next shareholders meeting. To maintain his control over the management of the company he can design a different class of shares which contain lessor voting rights than that of his class. The share itself may be of the same monetary value yet hold different rights.

In selecting a class of shares, it is important to note that one shareholder may own different classes of shares at once and benefit from the different rights which are attached to each share class. Effective management of your shares can be critical to a successful and motivated company, so it is important to be aware of the options available and to use them to your advantage.

Should you have queries herein or be interested in creating your own share class within your company feel free to contact our offices for further assistance.

James Gallow

Candidate Attorney B.Com (Stell) LLB (Stell)

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