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Share(s), Share Capital and Shareholders: Rights and Obligations

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ABSTRACT

Corporate entities inter alia require what is known as share capital to operate and achieve the objective of their shareholders as the case may be. This short paper discusses the concept of share capital, shares as it relates to shareholders, shareholders rights and obligations and the procedure for the transfer of shares. In this short paper, insight would be taken from Rwandan company law/legislation as well as directives from the registrar of companies in Rwanda and other sources as would be indicated progressively.

The share capital of a company is a portion of a company's capital or assets, which is contributed by its shareholders and used in running the activities of the company. A company's assets cannot by an affirmative action go below its share capital, which represents the minimum risk capital contributed by its shareholders as a guarantee in relation to creditors of the company and in the other hand determines the value of shareholders equity in the company.

Keywords: *share, shares, share capital, shareholder, shareholders, Rwanda.*

I. INTRODUCTION

The share capital of a company can be furnished by two or more natural or legal persons each of whom is regarded as a shareholder. Shareholders own shares in a company the value of which is determined by the amount or the number of shares they own. Shares also gives shareholders rights and obligations which are determined by the company's bylaws, company article of association or by legislation (Certain forms of company are not obligated by law to have a bylaw or article of association to regulate its internal affairs. As such, the rights and obligation of shareholders is regulated by the relevant legislation.).

II. SHARE(S)

As can be inferred above, a share is an equal part of a company's share capital issued to its shareholders or the company itself under the same conditions and monetary value. However, there are several classes of shares which can be issued by a company and by implication, different conditions, monetary value, rights and obligations would be attached to each class of

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share. Shares are personal properties of a shareholder, they can be allotted, they are intangible assets, they are transferable subject to any restrictions provided by law or by operation of a contract (shareholders agreement) as provided in article 52 of the law governing companies in Rwanda.

Also, a share is an embodiment of the rights and duties of a shareholder. The rights and duties of a shareholder under a share are acquired by subscribing for shares in a newly formed legal entity on incorporation or during capital increase or by purchase from a previous shareholder. All of these attendant rights are outlined in a shareholder's agreement which is a document that is issued to a person who owns shares in a company attesting to the rights and duties of the shareholder or by legislation. A shareholder agreement also serves as a security against a company in relation to the person who is named therein.[2]

III. MAIN CLASSES OF SHARES

Article 2(4) of the law governing companies (007/2021 of 05/05/2021) in Rwanda defines classes of shares as a group of shares that issue to shareholders identical rights. A company which is looking to raise capital can issue different classes of shares such as preference shares, ordinary shares, redeemable shares etc. as is allowed by relevant laws.

Article 53 of the law governing companies in Rwanda (007/2021 of 05/05/2021) provides that different classes of shares may be issued by a company. They include, ordinary shares, redeemable shares, preference shares (preferential rights to distribution of capital income)) limited or conditional shares and shares which confer no voting rights.

(A) Ordinary Shares

Ordinary shares routinely vouchsafe shareholders voting rights. The voting rights of shareholders of this class of share is determined by the worth of shares they possess or by the number of shares they have as provided for by the article of association of the company or by legislation. The most unique feature and dissimilarity an ordinary share has against other classes of shares is that they may or may not receive dividend. This is because entitlement to receive dividend is hingent on whether there are any available in the aftermath of paying dividend on preference shares and other classes of shares. Also, ordinary shareholders are last in line upon conclusion of an insolvency procedure, hence, entitling them to the remaining value of the company's asset.

[2] Ibid., pg. 11

(B) Preference Shares

Preference shares are shares which have preferential rights in respect of dividend and the refund of capital. This class of shares accords to its holder rights which override the rights of ordinary shareholders. A common feature which is also a difference between an ordinary share and a preference share is that, preference shareholders are not usually granted the right to play a part in the decision-making process of a company

(C) Redeeable Shares

A redeemable share is a share that can be reclaim by a company at a predetermined price and time as set out in the company's incorporation documents. Under Rwandan law, redeemable shares can be redeemed at the option of the company that issued the shares or at the option of the shareholder. When it is redeemed at the option of the company that issued the shares, it is deemed to be an acquisition of the shares by a decision of the directors of the company which must be in the best interest of the company, the term of the acquisition must be equitable and reasonable to the company and the directors should not be privy to information which is not familiar to the shareholders.

Where a share is redeemable at the option of the shareholder, a notice is given to the company and the share is redeemed on the date specified in the notice or on the date of receipt of the notice if no date is specified in the notice. Once a share is redeemed, all the rights and privileges attached to the share becomes obsolete.

IV. Rights and Obligations of Shareholders

(A) Rights of shareholders

As per Rwandan legislation on companies particularly in article 87, a company cannot take any action which alters the rights attached to a class of shares unless that alteration is pre-approved by a special resolution taken by the shareholders having such a class of shares. Fundamentally, shares grant to shareholders the right to share in the distribution of dividend, the right to share in the distribution of the surplus assets of the company upon its liquidation and the right to vote on shareholders resolution subject to conditions stipulated by law and the companies incorporation documents which include appointing or removing directors and auditors, approving a major transaction, adopting and or altering articles of association, dissolving the company, approving an amalgamation etc.

Shareholders also substantially have what is known as pre-emption rights. Pre-emption rights are the rights of shareholder's to be "offered any further allotment of shares which rank equally with or prior to existing shares whether as to voting or distribution or both in such a manner and on such terms as would if accepted, preserve their relative voting and distribution rights;" as provided in article 2(37) of the company law of Rwanda. As per article 59, Shareholders of a private company have pre-emption rights to acquire newly issued shares of a company. This right is acquired pro rata at a price no less favorable than that offered to other investors and on terms which maintain the relative voting and distribution rights of those existing shareholders.

(B) Obligation of shareholders.

Shareholders have as obligation to pay timeously the value of their respective contributions and to be "tried and true" towards the company. They must not act or behave in such a way that would put the interest of the company at risk or which will disclose sensitive or classified information belonging to the company.

V. Transfer of shares

As was stated above shares are personal properties of shareholders and are transferable subject to restrictions provided by law and or by the bylaws of the company. In Rwanda, the procedure for the transfer of shares is provided in article 75 of the company law. As per this article, a share is transferred by entering the name of the transferee in the company's register of shareholders.

For the transfer of shares to be effective, a share transfer form must be signed between the transferor (the person selling the shares) and the transferee (the person buying the shares). On receiving the share transfer form, the company keys in in its register of shares the name of the transferee as the new holder of the shares unless where the board of directors refuses the registration of the transfer giving reasons for the refusal in the resolution containing the decision.

One of the reasons to refuse the registration of a transfer of shares is if the holder (new holder) of the shares has failed to pay to the company the amount due in respect of the shares.

VI. Conclusion

Shares are a fraction of a company's share capital which itself is a portion of the company's capital or asset provided by shareholders of the company giving them rights, obligations and privileges. These privileges are exercised through or during annual general meetings of shareholders organized usually once a year, during extraordinary general meetings organized as often as it is necessary by written resolutions and by unanimous shareholder agreements.

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