

# Talking Companies

## Share basics in terms of the Companies Act 2008 (“the Act”)

A share is movable property, transferable in any manner provided for or recognised by the Act or other legislation (such as the Securities Services Act.)

The distinction between nominal or par value shares and no par value shares which existed under the Companies Act 1973 will no longer exist. Accordingly, a share does not have a nominal or par value. The directors will determine at what price a share will be issued.

Every company will, on incorporation, determine what number of shares it will be authorised to issue, with a minimum of at least one, but there is no maximum. An authorised share has no rights until it is issued.

Every company must keep a register of all securities issued by the company.

Shares may be issued as certificated (i.e. evidenced by a certificate) or uncertificated shares (i.e. transferable merely by entry in the company’s security register).

The share certificate:

- must state the name of the company issuing it, the name of the person to whom it is issued, the number and class of shares, and any restrictions on the transferability of those shares;
- must be signed by two persons authorised by the company’s board; and
- is proof that the named shareholder owns the shares, in the absence of evidence to the contrary.

A company cannot issue shares to itself but the Act does contemplate situations where the company may acquire shares it has issued, in terms of:

- Section 48 – but the company must satisfy the “solvency and liquidity test” at the time of acquisition. Subsidiaries of a company cannot in aggregate acquire more than 10% of any class of the shares of their holding company and no voting rights attached to these shares may be exercised while the company remains a subsidiary;



- Section 164 – may be invoked by a dissenting shareholders whose rights are materially affected by a resolution to alter the preference rights, rights, limitations or other terms of any class of shares and this may result in the company having to acquire the shares of that dissenting shareholder;
- Sections 112, 113, and 114 – give rise to dissenting shareholders’ rights in terms of section 164 where the company intends to dispose of the greater part of its assets or undertaking; enters into a merger or amalgamation; or proposes a scheme of arrangement.

Shares that a company acquires in a manner described above have the same status as shares that have been authorised but not issued.

The Act provides for the preservation of rights attaching to all shares issued by a pre-existing company and held by a shareholder immediately before the Act comes into operation, subject to regulations pertaining to the effect of the removal of the distinction between par value and no par value shares.

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