

Talking Companies

Characteristics and Classes of Shares in terms of the Companies Act 2008 (“the Act”)

The characteristics of the shares which a company is authorised to issue must be described in its Memorandum of Incorporation (“Mol”). These characteristics would be:

- * the classes of shares and the difference between each class;
- * the number of shares in each class;
- * a distinguishing designation for each class (i.e. “A” shares, “B” shares);
- * any other terms associated with each class.

Establishing the terms of a class of shares would typically involve:

- * conferring special, conditional or limited voting rights;
- * providing for the shares to be redeemable or convertible into another class of shares;
- * determining the extent to which the shareholder is entitled to receive dividends and how the dividend is to be calculated, including whether the dividend is cumulative, non-cumulative or partially cumulative. The calculation of the dividend can also be linked to “objectively ascertainable external facts”, such as variations in the prime overdraft lending rate or the consumer price index.
- * providing for the preferential rights of one class of shares above any other class of shares with respect to dividends or distribution rights on final liquidation. Where the company only has one class of shares, the holders of that class are entitled to receive the net assets of the company on liquidation. If the company is a non-profit company the net assets must be distributed to another company or voluntary association or trust having objects similar to the main object of the non-profit company.



The characteristics of a company’s shares as set out in the Mol may only be changed by:

- * an amendment of the Mol by special resolution of the shareholders (a copy of which must be filed with the Commission);
- or
- * the board of directors of the company (“the board”), in which event the company must file a Notice of Amendment of its Mol setting out the changes effected by the board.

If the Mol of a company has been amended to materially and adversely alter the characteristics of a class of shares, any holder of those shares is entitled to seek relief in terms of Section 164 as explained in Volume 8 of Talking Companies.

The company’s Mol may establish a class of shares whose characteristics may be determined by the board. These shares may not be issued until the board determines those characteristics and follows the procedure referred to above.

Contact Information

Horwath in Southern Africa (Pty) Ltd
 Edwin Selbst
 Tel: +27 11 217 8000
 talking.companies@horwath.co.za

Johannesburg
 Horwath Leveton Boner
 Tel: +27 11 217 8000
 Email: info@horwath.co.za

Cape Town
 Horwath Zeller Karro
 Tel: +27 21 481 7000
 Email: hzk@horwath.co.za

Durban
 Horwath Mahomedy
 Omar Paruk
 Tel: +27 31 337 3311
 Tel: +27 32 551 1111 (Stanger)
 Email: hmop@horwath.co.za

Botswana
 Horwath Gurugroup
 Tel: +267 391 2805
 Email: guru@gurugroup.bw

Compiled by Graeme Fraser and Veldra Morris - www.companiesactonline.co.za in association with Horwath in Southern Africa (Pty) Ltd. The advice contained in these newsletters is of general application and is not intended to be legal advice.

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