

Shareholders' Rights - Classes of Shares and Rights Attached

The sufficiently high number of companies being incorporated in Cyprus every year, attracting investors from all over the globe from different backgrounds and business cultures could be a reasonable indication that private companies remain the ultimate business vehicles. This short article intends to discuss the types of shares commonly used in the share capital structure of private companies with a particular focus on private companies limited by shares and demonstrate the perspective how different classes of shares can affect the rights and privileges of shareholders under the Cyprus legal regime.

The main types of private limited liability companies as reflected in the Companies Law Chapter 113 as amended (the “**Companies Law**”), are divided in companies limited by shares and companies limited by guarantee, with the former being the most common business vehicle for shareholders.

Section 29 of the Companies Law defines a private company as a company which by its articles of association:

- i. restricts the right to transfer its shares;
- ii. limits the number of its members to 50 ;
- iii. prohibits any invitation to the public to subscribe for its shares of debentures;
- iv. prohibits the issue of bearer shares.

The legal system in Cyprus, similar to the Companies Act 1948 of the United Kingdom has adopted the common law principle which identifies a private company as a separate legal entity. Thus the liability of the shareholders in a private limited liability company is limited to the nominal value of the shares each shareholder has agreed to take up or at a premium that he has agreed to take up such shares. Once the member has paid for his shares, his liability towards the debts or liabilities of the company is discharged.

While the Companies Law does not indicate a minimum requirement for private companies a member (shareholder) of a company must subscribe for at least one share. As already mentioned the share capital of a company may be divided into different classes of shares of a fixed amount.

The type of shares acquired by a shareholder will also determine the rights that each shareholder shall enjoy following the subscription in such shares, subject always to the provisions of the Companies Law and the articles of association of the company. Hence it is essential to refer to the articles of association of a company to acknowledge the rights attached to the different types of shares.

A most common type of shares used in the share capital structure of companies is the class of ordinary shares which constitutes the default class. When no other classes of shares are issued, ordinary shares rank pari passu in all respects with all other shares and thus shareholders will share the same kind of rights and obligations (equivalent to the percentage of their shareholding). Indicatively some of the common rights attached to the shares are, the right to receive dividends, receive notice, attend and vote at general meetings, to receive assets when the company is winding up etc.

Preference shares on the other hand are used to confer special rights on their holders. Such shares customarily rank ahead of other shares (particularly ordinary shares) either for dividends or priority in liquidation proceedings. They may carry limited voting rights whereas shareholders of redeemable preference shares are entitled to redeem the same at their option or at the option of the company, subject to the terms under which they have been issued.

As regards to the redeemable preference shares, the Companies law section 57 permits their issuance provided that the articles of association of the company authorise such issuance. If such class of shares is permissible by the articles of association then relevant terms of redemption will again be set out in the articles. According to section 57(1) redemption is permissible if the statutory conditions for redemption are satisfied. The conditions demonstrated in the aforementioned section inter alia include that repayment for the redemption can be made out of profits or the proceeds of a fresh issue made for the purpose of redemption. It is also noteworthy that preference shares cannot be converted into redeemable preference shares if already issued, hence the rights attached to the shares commence on issue.

Further to the above, somewhat standardised classes of shares, members of a company may, subject to the articles of association, choose to issue different classes of common shares, usually denoted as "Class A" and "Class B". Any such class may carry particular rights or have particular limitation as per their specific terms of issuance and/or the articles of association of the company. The classification of shares in the aforementioned manner normally affords more voting rights to one class of shares than the other or no voting rights at all to one or more of the classes of shares. Although there is no standardised approach for the multiple share classes as to the rights and privileges they may carry, it is important that shareholders understand the details of a company's share classes prior to considering investing in a firm with multiple classes of shares.

For more information with respect to the classes of shares and the ownership rights attached you may contact Anna Mourouzidou at a.mourouzidou@kpklegal.com or Varnavas Playbell at v.playbell@kpklegal.com