

# COMPANY SHARES

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# WHAT ARE SHARES?

# DEFINITION AND PURPOSE OF SHARES

## Shares as Company Ownership

Shares represent ownership units in a company and determine shareholder rights and obligations.

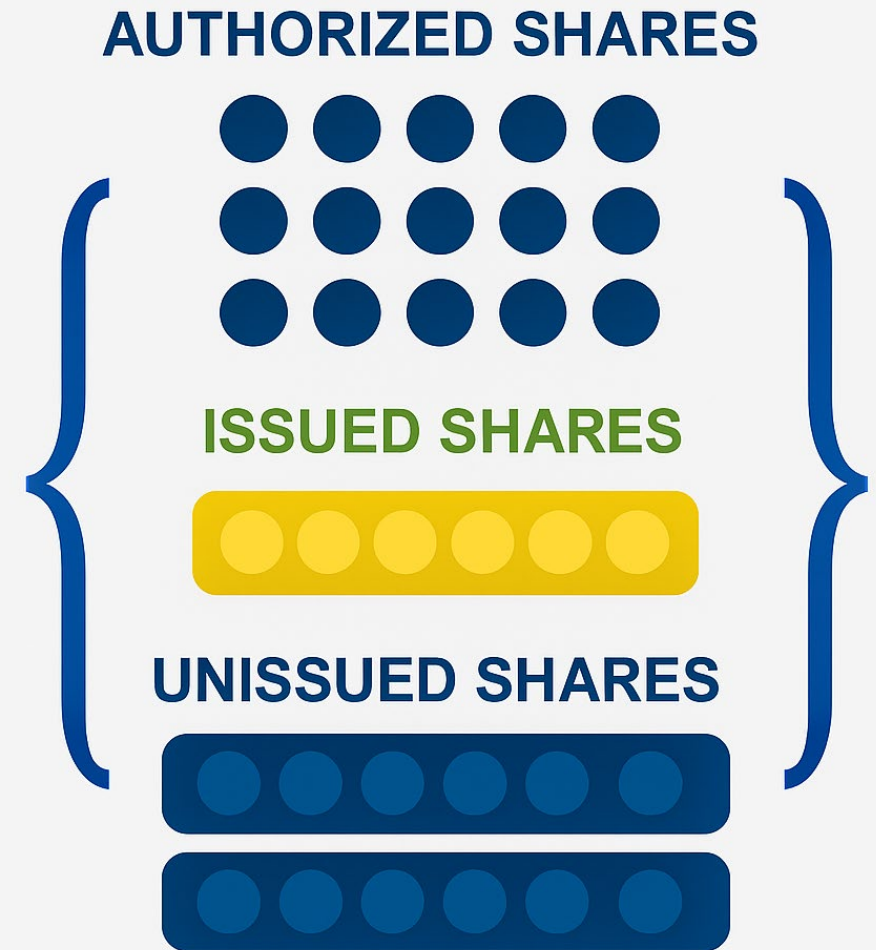
## Authorised v Issued Shares

Authorized shares are approved by the Memorandum of Incorporation (MOI), issued shares are allocated to shareholders, and unissued shares remain reserved.

A company cannot issue shares that have not been authorized or that are in excess of what was authorized.

## Shares and Corporate Governance

Shares influence voting rights, dividends, and participation in company assets upon liquidation.

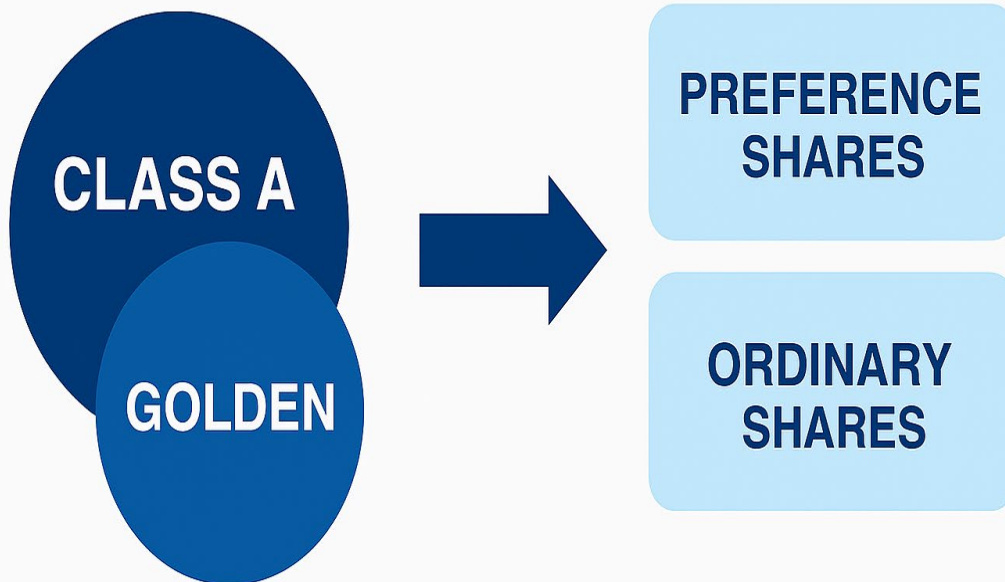


# HOW A COMPANY UTILIZES ITS SHARES

- Being a shareholder means you own a stake in the business, not the entire company itself.
- Your right to vote on company decisions depends entirely on the specific type of shares you own.
- Companies often issue shares to raise money; for example, redeemable preference shareholders can only vote on matters directly affecting their specific share class.
- Businesses can reward employees by offering them shares, though these are typically issued without voting rights.
- Dividend payouts depend on the share type (such as preference shares) and can only be declared if the company is in a strong financial position.

# SHARE NAMING

## WHAT'S IN A NAME?



- The Companies Act recognises only TWO authorised classes: Ordinary and Preference
- Companies may name their shares anything they want (e.g., Class A, Founder Shares, Golden Shares, Employee Shares, Development Shares) BUT these must always fall under either of the two.
- Rights outweigh naming conventions. For example: “Class B Founder Shares” with voting rights and no fixed dividends → Ordinary shares. “Employee Class C Shares” with a fixed 8% annual return → Preference shares
- Rights must be clearly defined in the MOI (s36(1)) If rights are not specified, shares fall under “unclassified” and must be assigned rights before issuance.

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# TYPES OF SHARES AND ASSOCIATED RIGHTS

## CLASSES OF SHARES

- ORDINARY SHARES
- PREFERENCE SHARES

## OTHER TYPES OF SHARES

COMPANIES MAY CREATE AND NAME, BUT MUST ALWAYS BE EITHER OF THE AUTHORISED TYPES IN TERMS OF THE COMPANIES ACT

## Rights of Shareholders

Shareholders have rights to vote, receive dividends, access company information, and share in surplus capital.

## Unclassified Shares

Unclassified shares are classes of authorized shares held by the company and once it is issued – it must be provided with a clear designation and can no longer be considered “unclassified”.

## Importance of Classification

Accurate share classification ensures compliance and helps structure investment and ownership effectively.

# RECLASSIFICATION AND PAR VS NO-PAR VALUE SHARES

## **Share Reclassification Process**

Reclassification changes rights attached to shares, requiring board resolutions and legal compliance.

## **Par Value Shares (phased out in terms of Companies Act, 2008)**

Par value shares have a fixed nominal value, such as R1 per share, defined by the Companies Act.

## **No-Par Value Shares**

No-par value shares lack a fixed nominal value; their worth is determined at issuance.

## **Conversion from Par to No-Par Shares**

Conversion requires a board report ensuring shareholder rights remain unaffected and legal compliance.

# BEST PRACTICES FOR COMPANY SHARE ADMINISTRATION

**Step 1** – When the company is registered, the number of shares are indicated in the MOI (called authorized shares).

Authorised shares are shares that are available to be issued.

**Step 2** – The company issues the shares in different ways to investors (called issued shares)

The company cannot issue more shares of a specific class than what are authorised.

**Step 3** – Company can change share structure.

Any change to the authorised Shares (increase, decrease, reclassification, etc.) must be approved by a special resolution passed by Shareholders or Directors of the company.

The resolution must be registered with CIPC because it is an amendment of the MOI.

**Step 4** – CIPC does not keep the record of issued shares. CIPC only keeps the authorised shares in the MOI. During the process of filing the Beneficial Ownership, you are requested to complete issued shares, but this information is not used by CIPC and is therefore not available on the CIPC database.

# SHARE REGISTER

According to Section 50 of the Companies Act, 2008, companies must have a share register.

## **What is a share register?**

A share register is a summary of the company's ownership.

## **What is a security register?**

A security register is an official record that lists all the financial instruments, such as shares and debentures, issued by a company along with who owns them.

## **Why a share register so important?**

- It is a legal requirement in terms of Companies Act, Section 50 .
- It is a proof of ownership to protect the shareholders.
- Share register must be maintained by record or changes in shareholding as it happens, for example, change of shareholders.
- You will need the information in the share register to file beneficial ownership at CIPC.

# DETERMINING THE FAIR VALUE OF SHARE PRICE

- Note that shares are created without value.
- The value of the shares is primarily determined by supply and demand.
- A company's performance might influence the share price.
- Investor perceptions and emotions can impact share prices.
- Factors such as interest rate, politics, inflation and economic growth also play a role.

# CAN A MINOR BE A SHAREHOLDER OF COMPANY?

In South Africa a minor is under the age of 18.

The Companies Act does not prohibit a minor from being a shareholder of a company, but there are legal restrictions such as signing legal documents; therefore a minor cannot be a director of the company.

A parent/guardian will act on their behalf, handling voting rights and other shareholder responsibility.

Family-owned private companies may allow minors to own shares through gifts or inheritance.



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# CONSEQUENCES

# LEGAL CONSEQUENCES

- Under Section 36 of the Companies Act, a company may issue ONLY those shares that are authorised in its Memorandum of Incorporation (MOI).
- If a share is not authorised in the MOI, it cannot legally be issued.
- If authorised shares are limited to a number, that limit may NOT be exceeded.
- Any issuance that violates this is ultra vires, invalid, and exposes the company and directors to legal consequences.

# LEGAL CONSEQUENCES OF ISSUING UNAUTHORISED SHARES

- The shares are INVALID (void)
- A company cannot create rights or obligations through an action it has no power to perform.
- The “holder” of the invalid shares is not a shareholder in law. They have no voting rights, no dividend rights, and no share in capital. Any decisions they purportedly participated in may be invalid.
- Acts of the Board may be invalidated. If unlawfully issued shares:  
were used to pass a shareholder resolution, or resulted in changes in control, then affected resolutions may be challenged and set aside by a court under section 218(1) and common law.

# LEGAL CONSEQUENCES OF ISSUING UNAUTHORISED SHARES

- Directors may be personally liable (Section 77 & Section 218(2))
- Directors breach their duties when they:
  - Issue shares not authorised in the MOI, fail to read or understand the authorised share structure, issue more share than the authorised number.
  - This may constitute a breach of fiduciary duty, gross negligence, and an unlawful act under the Act. They may be held personally liable for:
    - ~ losses suffered by the company, costs of unwinding the transaction, damages suffered by investors. Section 218(2) allows any person who suffers loss to sue a director personally.
    - ~ If directors knowingly issued unauthorised shares: It can constitute fraud, misrepresentation, dishonest conduct under corporate governance and criminal law.

# LEGAL CONSEQUENCES OF ISSUING MORE SHARES THAN AUTHORISED

- Once the authorised number is exceeded, every additional share has no legal existence.
- Consequences include:
  - Shares are void.
  - They cannot be voted or traded.
  - Company must reverse the issuance.
  - Directors face liability for breach of duty.
- This often occurs in:
  - Poorly drafted MOIs,
  - Failure to lodge CoR15.2 amendments,
  - Rapid funding rounds without verification.

# AVAILABLE REMEDIES

Lawful ways to correct the situation:

- A. Rectification of the Share Register** (Section 50). If invalid shares were recorded the company must correct the securities register. Unauthorised entries are removed. Share certificates (if any) are cancelled.
- B. Amendment to the MOI** (CoR15.2). If the company wants to validate the issuance a special resolution is passed to increase or create authorised shares. CoR15.2 is filed with CIPC. Only once approved may new shares be issued.
  - ! Important:** This amendment cannot backdate the validity of shares already issued. Those shares must be re-issued lawfully afterward.

# AVAILABLE REMEDIES

Lawful ways to correct the situation:

- C. Ratification or Settlement with the Affected Investor.** The company may offer repayment of consideration, new, valid shares (once authorised), compensation for prejudice. But this cannot validate the invalid shares. It only resolves the dispute.
- D. Court Application.** Either the company or affected persons may apply to the High Court to declare the shares invalid, set aside resolutions, order directors to compensate investors, compel rectification of registers.
- E. Enforcement by CIPC.** CIPC may issue a compliance notice (s171), refer matters for investigation, compel companies to amend their registers or MOIs, refer reckless or fraudulent conduct to the NPA.

# Questions



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