

VOLUME: VIII

COMPANIES

Part ID: VII Title Transfers, Share Register and Certificates (ss 80-89)

CHAPTER: 42.01

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80. Lien on shares

(1) Subject to subsection (2) a company shall, unless the constitution provides otherwise, be entitled to a lien, in priority to any other claim, over every partly paid issued share, and over any dividend payable on the share, for all money due by the holder of that share to the company by way of money called or payable at a fixed time in respect of the unpaid amount owing in respect of that share.

(2) A company, other than a listed company, may, if expressly so provided in its constitution, be entitled to a lien, in priority to any other claim over all shares including fully paid up shares and over any dividend payable on those shares, for all money due by the holder of those shares to the company whether in relation to the shares or otherwise.

(3) A company may, in such manner as the directors consider appropriate, sell any share over which the company has a lien:

Provided that no sale shall be made unless -

(a) a sum in respect of which the lien exists is presently payable; and

(b) until the expiry of 14 days after a written notice, stating and demanding payment of such part of the amount in respect of which the privilege or lien exists as is presently payable, has been given to the registered holder for the time of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder.

(4) The directors may, to give effect to any sale under subsection (2), authorise a person to transfer the shares sold to the purchaser of the shares, who shall be registered as the holder of the share comprised in any such transfer, and shall not be bound to see to the application of the purchase money, nor shall the title of the purchaser to the share be affected by any irregularity or invalidity in the proceedings relating to the sale.

(5) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and any residue shall, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the share at the date of the sale.

(6) The directors may, unless the constitution provides otherwise, decline to register the transfer of a share on which the company has a lien.

81. Transfer of shares

(1) Subject to the constitution of the company and any other written law, shares in a company may be transferred by the entry of the name of the transferee on the share register in accordance with this section.

(2) For the purpose of transferring shares, a transfer form signed by the present holder of the shares or by his personal representative shall be given to -

(a) the company; or

(b) an agent of the company who maintains the share register under section 83(4).

(3) The form of transfer shall be signed by the transferee if registration has the effect of imposing on the transferee as holder of the shares a liability to the company.

(4) On receipt of a form of transfer in accordance with subsection (2) and (3), the company shall forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless -

(a) the Act or the constitution expressly permits the Board to refuse or delay registration for the reasons stated;

(b) the Board resolves within one month of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and

(c) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within five days of the resolution being passed by the Board.

(5) Subject to the constitution of a company, the Board may refuse or delay the registration of a transfer of shares under subsection (4) where the holder of the shares has failed to pay to the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the constitution.

(6) Subsections (2) to (5) shall not apply to securities traded on a stock market of a Stock Exchange under a scheme for the electronic transfer of shares approved and publicly notified by a Stock Exchange.

(7) Where a company fails to comply with subsection (4) -

(a) the company shall be guilty of an offence and liable to the penalty set out in section 491(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 492(1).

82. Transfer of shares by operation of law

(1) Shares in a company may pass by operation of law notwithstanding the constitution of the company.

(2) A transfer of the share or other interest of a deceased shareholder of a company made by his executor shall, although the executor is not himself a shareholder, be as valid as if he had been a member at the date of the transfer, subject to the Capital Transfer Act and any law relating to the administration of the estate of a deceased person.

83. Company to maintain share register

(1) A company having a share capital shall maintain a share register that records the shares issued by the company, and in the case of a public company the register shall state -

(a) whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on the transfer of shares; and

(b) where any document that contains the restrictions or limitations may be inspected.

(2) The share register shall state, with respect to each class of shares -

(a) the names, alphabetically arranged, and the latest known address of each person who is, or has within the last seven years been, a shareholder;

(b) the number of shares of that class held by each shareholder within the last seven years; and

(c) the date of any -

(i) issue of shares to,

(ii) repurchase or redemption of shares from, or

(iii) transfer of shares by or to, each shareholder within the last seven years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(3) In the case of a company which does not have a share capital, including a close company, the register required to be kept by this section may be called a register of members and shall state -

(a) the names and addresses of the members;

(b) the date at which each person was entered in the register as a member; and

(c) the date at which any person ceased to be a member, and the references in this Act to a share register shall be read as referring to this register of members.

(4) An agent may maintain the share register of the company provided that the agent is a person, firm or corporation which is qualified to be the secretary of a public company in accordance with section 162.

(5) Every company having more than 50 shareholders shall, unless the share register is in such a form as to constitute in itself an index, keep an index of the names of the shareholders of the company and shall, within 10 days from the day on which any alteration is made in the share register, make any necessary alteration in the index.

(6) The index shall enable the account of each shareholder in the register to be found.

(7) If a company fails to comply with subsection (1), (2) or (4) -

(a) the company shall be guilty of an offence and liable to the penalty set out in section 492(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(1).

(8) The register required to be kept by this section may be kept in electronic form provided that the information kept on the register is available to persons entitled to inspect the register.

84. Place of share register

(1) The share register may, if expressly permitted by the constitution, be divided into two or more registers kept in different places.

(2) The principal register shall be kept in Botswana.

(3) If a share register is divided into two or more registers kept in different places -

(a) notice of the place where each register is kept shall be delivered to the Registrar for registration within 10 working days after the share register is divided or any place where a register is kept is altered;

(b) a copy of every register shall be kept at the same place as the principal register, and

(c) if an entry is made in a register other than the principal register, a corresponding entry shall be made within 10 working days in the copy of that register kept with the principal register.

(4) In this section "principal register", in relation to a company means -

(a) if the share register is not divided into two or more registers, the share register; or

(b) if the share register is divided into two or more registers, the register described as the principal register in the last notice sent to the Registrar and every other register shall be a "branch register".

(5) If a company fails to comply with subsections (2) and (3) -

(a) the company shall be guilty of an offence and liable to the penalty set out in section 492(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(1).

85. Share register as evidence of legal title

(1) Subject to section 87, the entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person.

(2) A company may treat the registered holder of a share as the only person entitled to -

(a) exercise the right to vote attaching to the share;

(b) receive notices;

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

86. Secretary's duty to supervise share register

(1) It is the duty of the secretary to take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it in accordance with section 83.

(2) A secretary who fails to comply with subsection (1) shall be guilty of an offence and liable to the penalty set out in section 492(1).

87. Power of court to rectify share register

(1) If the name of person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the court for -

(a) rectification of the share register;

(b) compensation for loss sustained; or
(c) both rectification and compensation.

(2) On an application under this section the court may order -

(a) rectification of the register;

(b) payment of compensation by the company or a director of the company for any loss sustained; or

(c) rectification and payment of compensation.

(3) On an application under this section, the court may decide -

(a) a question relating to the entitlement of a person who is a party to the application to have his name entered in, or omitted from, the register; and

(b) a question necessary or expedient to be decided for rectification of the register.

88. Trust not to be entered on register

No notice of a trust, whether express, implied, or constructive, may be entered on the share register or be received by the Registrar.

89. Share certificate

(1) Subject to subsection (2), a public company shall, within 20 working days after the issue, or registration of a transfer, of shares in the company, as the case may be, send a share certificate to every holder of those shares stating -

(a) the name of the company;

(b) the class of shares held by that person; and

(c) the number of shares held by that person.

(2) Nothing in subsection (1) applies in relation to shares which can be transferred under a system for electronic trading approved by a Stock Exchange in Botswana pursuant to a scheme which does not require a share certificate for the transfer of shares.

(3) A shareholder in a company, not being a company to which subsection (1) or subsection (2) applies, may apply to the company for a certificate relating to some or all of the shareholder's shares in the company.

(4) On receipt of an application for a share certificate under subsection (3), the company shall within 20 working days after receiving the application -

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels, one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating -

(i) the name of the company,

(ii) the class of shares held by the shareholder, and

(iii) the number of shares held by the shareholder to which the certificate relates.

(5) Notwithstanding section 81, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the company unless the form of transfer required by that section is accompanied by the share certificate relating to the share, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board.

(6) Subject to subsection (1), where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate shall be cancelled and no further share certificate issued except at the request of the transferee.

(7) If a company fails to comply with subsection (1) or subsection (4) -

(a) the company shall be guilty of an offence and liable to the penalty set out in section 492(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(1).