

Talking Companies

Voting Rights Attaching to Shares in terms of the Companies Act 2008 (“the Act”)

Each share issued by a company has one voting right except to the extent that a provision of the Act or the company’s Memorandum of Incorporation (“Mol”) limits or extends that right.

The Mol may not limit the irrevocable right of a shareholder to vote on any proposal to amend the characteristics associated with the share held by that shareholder.

If a company has established:

- only one class of shares the Mol may not alter the voting rights of those shares;
- more than one class of shares, then the Mol must, in determining the terms of the classes of shares, provide that for each particular matter that may be decided by the shareholders of the company, at least one class of the company’s shares has voting rights that may be exercised on that matter.

If a Profit Company has only one shareholder, that shareholder may exercise any or all of the voting rights pertaining to that company on any matter, at any time, without notice or compliance with any other internal formalities, except to the extent that the company’s Mol provides otherwise.

If every shareholder of a particular company is also a director of that company, any matter that the board is required to refer to the shareholders for decision, may be decided by the shareholders at any time after that referral, without notice or compliance with any other internal formalities, except to the extent that the Mol provides otherwise, provided that:

- all the shareholders were present at the board meeting;
- sufficient shareholders are present at the time the shareholders’ meeting is held to satisfy the requirements of a quorum for a shareholders’ meeting;
- the resolution adopted by the shareholders has at least the support required for it to be adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders’ meeting.



Apart from being used to avoid unnecessary delays in decision-making, the above mechanism may also be useful in overcoming deadlocks at board level, where the directors do not all hold the same number of shares, since:

- the voting power held by a shareholder in respect of any matter is determined by the voting rights that may be exercised by that shareholder as a percentage of all the voting rights, but directors each have one vote at a board meeting;
- when making a decision, shareholders are entitled to vote in their own self-interest and are not bound by the standards of conduct the Act applies to the decisions of directors with regard to the affairs of the company.

A State owned company, regardless of the number of its shareholders, is precluded from dispensing with any notice, compliance or internal formalities.

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.

Companies Act Online

www.companiesactonline.co.za