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Sharing valuable insights into the relationship between share option holders and shareholders

When navigating the intricate landscape of corporate finance, shareholder rights and share option agreements, questions often arise regarding the status and rights of share option holders within a company.

To demystify this complex concept, let's delve into the provisions of the *Companies Act 71 of 2008*, which offers valuable insights into the relationship between share option holders and shareholders.

Are share option holders security holders?

This discussion is based on section 1 of the Companies Act, which defines securities as "any shares, debentures or other instruments irrespective of their form and title, issued or authorized to be issued by a profit company". This definition is paramount in establishing that share option holders are, indeed, security holders.

What is the difference between share option holders and shareholders?

To comprehend the connection between share option holders and shareholders, we need to explore section 57(1) of the Companies Act.

It defines a shareholder as "a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title, or nature of the securities to which those voting rights are attached". Importantly, the term "person" in this context, as defined in section 1 of the Act, also encompasses juristic persons.

In short, this means that the definition of a shareholder goes beyond mere ownership of shares, extending to include anyone entitled to exercise voting rights related to the securities granting such rights.

Is there power in voting rights?

The concept of voting rights, as clarified in section 1 of the Act, grants these rights to holders of a company's securities. It reads, "'Voting rights' with respect to any matter to be decided by a company, means the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company". This elucidates the pivotal role of share option holders as they possess voting rights related to the securities they hold.

What are the options for subscription of securities?

In the context of share options, section 42 of the Companies Act is vital. This section not only acknowledges the issuance of options but also grants the board of the company the authority to determine the consideration or other benefits upon which these options are granted. In other words, the board can decide that share option holders may also hold economic interests, including dividend rights.

Can you cede dividend rights?

The definition of "distributions" in section 1 is key to comprehending the cession of dividend rights. The Act defines it as "a direct or indirect transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares of that company". This explicitly includes dividends as a form of distribution.

In conclusion:

The Companies Act safeguards Dividend Rights for Share Option Holders as the Act establishes a solid legal foundation for the recognition of share option holders as shareholders. Section 1 defines them as security holders; section 57(1) extends the definition of shareholders to encompass those with voting rights on securities; and section 42(2) empowers the board to grant economic benefits, including dividend rights, to share option holders.

In light of these provisions, it is abundantly clear that share option holders are entitled to cede dividend rights under the protective umbrella of the Companies Act. This legal framework ensures that they are not merely bystanders in the corporate landscape but integral participants with recognised rights and responsibilities. Share option holders should embrace their role as shareholders, understanding that the law is on their side.

SERR Synergy assists businesses to comply with the new Companies Act and amended Close Corporations Act by bringing all relevant company documents in line with new legislation. This include *assistance with the alignment of company documents, such as the Memorandum of Incorporation (MoI),* with the new Companies Act and other legislation as well as setting up of Shareholder Agreements for companies and association agreements for close corporations.

About the Author: Carel Joseph Dauth obtained his B.Com (Law) and LLB degrees from the North West University and was admitted as an attorney in 2022. Carel joined SERR Synergy in 2022 where he currently holds the position of B-BBEE Professional. specialising in B-BBEE Ownership and assisting Companies to meet their B-BBEE requirements.