



A BEGINNER'S GUIDE TO LIMITED COMPANY SHARES AND SHAREHOLDERS



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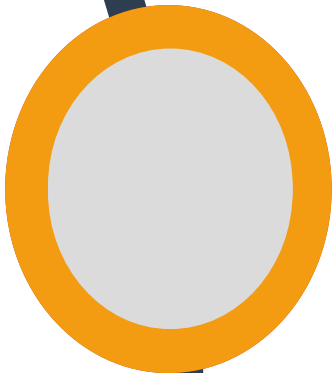


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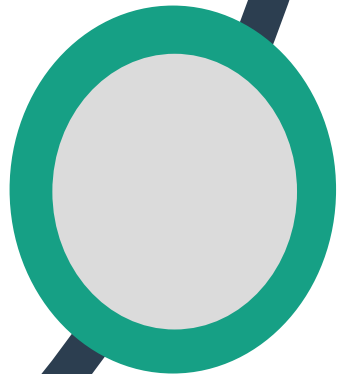


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SHAREHOLDERS

1. What/who is a shareholder?

This is the name given to anyone who owns 'shares' in a company limited by shares. As a shareholder, you own part of a company in relation to the proportion of shares you hold. A company can have just one shareholder or many shareholders. Each one is entitled to receive a portion of profits in relation to the number and value of their shares.

Shareholders are commonly referred to as 'members'. The first members in a company - the people who set register the business and agree to become members - are also known as '**subscribers**' because they subscribe their names to the Memorandum of Association during the company formation process.

2. Can anyone be a shareholder?

Yes, any person or corporate body (company, firm, organisation etc.) can be a shareholder of a private company limited by shares.

However, the decision on whom/ what classes of members to admit to membership is the sole preserve and discretion of the company through the Board and Shareholders (as the case may be). For instance, there exist companies whose membership is **controlled and limited** to a particular gender, class, profession, etc. Hypothetically, if a company called "**Kenya Mums Limited**" is to be incorporated then its membership will most likely be restricted to **Kenyan Citizens** who are of **female gender** and who have **at least one child**.

3. What is the minimum number of shareholders required to register a limited company?

Companies Act (2015) requires at least one shareholder to incorporate a private company limited by shares. The maximum is kept at 50 members (of course excluding employees).

4. Is a Shareholder the same as a Director?

No.

A Shareholder owns a company through the purchase or acquisition of shares; a Director is appointed by those shareholders to manage the operational activities of a company.

However, **a shareholder can also be a director**. This is very common in private companies. In many cases, just one person will assume the role of sole shareholder and sole director.

5. What does a shareholder do?

Shareholders own shares in a company. The 'nominal' value of their shares is the amount they are liable to pay toward business debts.

Shareholders receive a portion of company profits in relation to the number and value of their shares.

They are **not** responsible for the **day-to-day** activities of the business, **unless** they are also directors. The shareholders, being the company owners, will only make decisions about significant matters such as changing the name of the business, appointing or removing directors, changing directors' powers and altering the articles of association (and any other roles prescribed to them in the law and their Company Constitutions).

6. Distinction in the Conduct of Shareholders Meeting (GM) and Directors (Board) Meeting

General Meetings (AGM & SGM)

- ⚖️ The law prescribes a minimum of 1 every year, i.e. the Annual General Meeting. Though a company may choose to have as many general meetings as they deem necessary
- ⚖️ The Chairperson of the Board of Directors who ordinarily doubles as the chairperson of the company leads the meeting. Structures must be put in place to consider the Chairpersons absence.
- ⚖️ Quorum must be preset, i.e. it may be set as a percentage, but in any case, it is advisable to make it not less than 50% of the registered members.
- ⚖️ Voting can be done through any means e.g. acclamation, show of hands or secret ballot. In many cases, this is done in succession, i.e. where after acclamation the results are unclear, secret ballot may be used.
- ⚖️ Voting is done on the basis of shares, e.g. 1 share = 1 vote.
- ⚖️ Proxies may be used.
- ⚖️ Issues to be discussed include:
 - ⚖️ General Discussion of the Condition of the Company.
 - ⚖️ Financial/Accounting matters.
 - ⚖️ Policy decisions affecting the core-functions of the company.
 - ⚖️ Election of Directors.
 - ⚖️ Ratification of the Acts of the Directors (if appropriate.)
 - ⚖️ Any other matters of interest to a shareholder or requested to be placed on the agenda by a shareholder or director.

Directors (Board Meeting)

- ⚖️ Can be as frequent and as many as necessary.
- ⚖️ The Board executes policies of the Company passed through the AGM.
- ⚖️ Day to day management decisions which are then implemented by the employees under the CEO.
- ⚖️ CEO/MD serves as a Secretary to the Board, where-after s/he will be able to dutiful implement (with his employees) the policies of the AGM and management decisions of the Board.
- ⚖️ It is not recommended to have a CEO/MD who also serves as a Chairperson of the Board. In corporate governance terminology, it constitutes a breach referred to as “CEO Duality”. A recent case: Limuru Tea PLC which on 31 May 2017 publicly announced the appointment of Nicholaos Yiannakis as both CEO and Chair of the Board. After about a week of “debate & input” concerning the issue, the Company corrected the breach by appointing Dr. Richard Arap Korir as Chair of the Board with Yiannakis remaining CEO.





SHARES

1. What are shares?

A share is a piece of a Company (a company limited by shares). Each piece represents a certain percentage of the company. Anyone who owns shares in a limited company is called a 'shareholder' or 'member'.

The number of shares held by each member determines how much of the company they own and control. They normally receive a percentage of profits (dividends) that correlates with their percentage of ownership.

Here are some really simple examples of popular share structures:

- ⚖ One issued share = 100% ownership of the company.
- ⚖ Two of equal value = 50% ownership per share.
- ⚖ 10 of equal value = 10% ownership per share.
- ⚖ 100 of equal value = 1% ownership per share.

Though not relevant here, it is important to note that other than limitation on the basis of shares, a company can also be either entirely unlimited or limited by guarantee.

Shares, once issued to a shareholder, are an investment like any other (real estate, vehicles, etc) belonging to the shareholder (not the company).

2. How many shares can a company issue?

The minimum quantity of shares that a company can issue is one. This is common when someone is setting up a limited company as the sole owner and director. There is no upper limit, so you can issue as many shares as you like during the incorporation process or after your company has been set up.

3. Can I issue different types of shares?

You can create and issue any type you like, whether that is during or after company incorporation. Most companies issue 'Ordinary' shares of equal value, which provide members with equal voting rights and equal profit rights.

Alternatively, companies can issue multiple types ('classes') and values of shares to provide members with different voting and profit rights. The superior class of shares constitutes the 'Preferential' shares.

4. How much is a share worth?

Shares have a **nominal value** and a **market value**:

- ⚖ **The nominal value**, is the sum that a member agreed to pay, for their portion of the company. This is the sum the member is legally required to pay toward company debts or contribute when the business is wound up. Therefore, the nominal value represents the 'limited liability' of a company's owners. **This is primarily the value disclosed to the Registrar at the point of registration as a shareholder.** Let's use an example of a company whose share capital is **KES. 100,000** divided into **1000 shares**, each valued at **KES.100**. If you hold **50 shares** then, the nominal value of your shares is your **50 shares**

multiplied by **KES.100** which equals **KES. 5000/-** only. Take note of the English definition of the word “nominal” which means “minimal” or “insignificant”

⚖️ **The market value** of a share is the amount it is worth during trade. This will vary from the nominal value. It is the actual worth of the shares when certain factors are taken into consideration e.g. capital contribution, worth of the company, etc.

The difference between the nominal value and market value is known as the share ‘premium’.

5. What is the difference between shares and stock?

A stock comprises of several number of shares put together. For example, a company may decide that every **Fifty Shares** shall convert to constitute **One Stock**; so that instead of members buying shares they buy a stock, each of which represents fifty shares. This also makes share management very easy by fixing a minimum number of shares that can be held, bought or transferred. The company could thus resolve only to transact on a minimum of 1 stock which in our example constitutes 50 shares.

When a company decides to consolidate its shares into stocks, consolidation does not alter the share value. The value of the stock is quantified from the total value of shares that make up that stock.

6. What is the difference between shares and equity?

Shares and equity both describe ownership interest in a company. However, they are principally very different.

Simply put, shareholders are a particular type of equity holders. Shares are just one particular type of equity. Equity can be broad to even include debts and contributions given to a company. These contributions can be tangible (money and assets) or intangible (service, expertise and time).

If we use the analogy “all medicines are drugs but not all drugs are medicines,” then we could simply say “**all shares are equity but not all equity are shares**”.

7. Subscribers vs. Admitted Members

As we have already seen above, subscribers are the first/founding members in a company. They are known as **'subscribers'** because they subscribe their names to the Memorandum of Association during the company formation process.

'Admitted members', on the other hand, refer to members who have been added to the company and allocated at any point after registration of the company.

Generally, the subscribers and admitted members who hold shares of the same class and of the same amount are ranked equally. Time of admission notwithstanding. The difference might be in the value of the shares and thus the admitted members may pay more for the same amount of shares than the subscribers did during incorporation.

What needs to stand out however, is the issue of **'goodwill'** (and maybe ‘registration fees’). These ordinarily are none refundable charges levied upon **'Admitted members'** as a precondition to their admission.

Justification given for **'goodwill'** usually is the need to equalize all shareholders. The general assumption is that the **'subscribers'** have made significant sacrifices, dedications and efforts (time & other non-monetary sacrifices) to raise the company from zero, give it life and it “appealing” enough to attract new members. Therefore, the new members “much up” by way

of monetary payments, hence the **goodwill**.





CAPITAL CONTRIBUTION

The general rule that applies to contribution of capital to a company, is that such contribution will be translated to shares.

This works best in companies where shareholders comfortably hold **different numbers/values of shares**, such that the more you contribute - the more shares you get. Your shares grow proportionately with your contribution. Every time the company needs capital injected into the business operations, all they need they need to do is to put out a call to its members for those willing to invest in more shares.



However, in a company where each shareholder already acquired and holds the **same number of shares which are of the same value** and there exist no plans to issue varying shareholding, then the above arrangement ceases to be tenable.

If such a corporation requires additional funds for conducting its business and obtains such funds through payments/contributions by its shareholders and strictly **NOT** in exchange for shares, then the amounts so received will constitute a debt owed by the company to that particular shareholder who then also becomes an **equity-holder**. Kenyan company laws to not grant equity-holders any special rights other than those of a creditor. Like with every other debt, terms and conditions must be agreed upon.

Take note that such amounts do not constitute income and must be credited to the companies surplus records/account or to a special account.



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