

Nigeria

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Share certificates and dematerialisation in Nigeria

Shares relate to the proprietary interest that shareholders have in a company and are the basis for the existence of a relationship between a company and its shareholders. The significance of this interest is that it is the object through which the holders become members of a company, such that the issuance of a share certificate under the

common seal to shareholders constitutes prima facie evidence of the title of the members to those shares (s.1 of the Companies and Allied Matters Act). This paper-based system, however, is fast becoming obsolete, as technological advances have

resulted in a global preference for electronic mechanisms of recognising the ownership of shares.

In most cases, the contract with the company is constituted by an application being made by the intending shareholder to the company for an allotment of a certain number of shares, and by an allotment being made and notified to him – effectively invoking the provisions of section 125 of the Act. Where the company wholly or partially accepts the application, an allotment will be made to the applicant and, within 42 days after the allotment, the applicant will be notified of the allotment and the number of shares allotted to him (s.125(c)). Upon registration of the name in the company's register, the allottee becomes a member of the company. Furthermore, section 146(1) of the Act requires every company to issue certificate of shares allotted or transferred to the allottee or transferee as the case may be.

Share certificates confer proprietary rights on the holder, and like any other property belonging to an individual, can be sold or transferred by the shareholder. A share certificate, like a membership register, is prima facie evidence (s.147) only and not a title document, as where there is conflict

between it and the register of members, the latter is stronger prima facie evidence than the former as to evidence of title and membership of the company.

The introduction of the Central Securities Clearing System (CSCS) by the Securities and Exchange Commission (SEC) in conjunction with the Nigerian Stock Exchange has, however, made the issuance of physical paper certificates redundant, especially for companies whose shares are traded on the Stock Exchange, as the CSCS incorporates a Central Securities Depository for the share certificates of listed securities and a sub-register for all listed securities.

Upon opening a CSCS account, a shareholder's data is captured and transferred into an electronic register with the equivalent number of securities credited in electronic form to the CSCS depository. An electronic statement reflecting the shareholder's shareholding and its current value replaces the physical paper share certificates earlier issued. This process, otherwise known as dematerialisation, facilitates paperless trading whereby transactions are executed electronically.

It is quite regrettable that the Act does not provide for dematerialisation – a shortcoming that needs urgent redress. While the form of the certificate is governed by the Articles of the company, the Act requires that the certificate be issued under the common seal of the company (s.146(3)). In effect, the Act only recognises physical paper certificates. In practice, however, most companies, especially publicly-listed companies, do not issue share certificates; rather, they direct allottees to open CSCS accounts so that their shareholding will be reflected therein. In effect, the actions of these companies are a contravention of the provisions of the Act, notwithstanding the fact that the shareholder or investor can demand physical share certificates (s.146(5) accords the shareholder the right to seek redress in court where the company fails to issue physical share certificates).

For companies trading on the floor of the Stock Exchange, the 2011 Consolidated Rules and Regulations of SEC require that their shares are held in dematerialised form (rule 168(a)). The question therefore is "Can the rules and regulations made by SEC (being subsidiary legislation) supersede the provisions of the Act?" While applauding the notable strides of SEC in providing these rules, it is imperative, as is the case in India, that the Act be reviewed

to accommodate dematerialisation.

So far as these provisions are still operative under the Act and pending harmonisation with SEC rules, the non-issuance of share certificates constitutes an offence under the Act. Just as the new Evidence Act 2011 provides for the admissibility of electronic signature and documents, it is high time that the importance of technology as a tool for business and advancement is recognised in Nigerian corporate legislation.

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