

## SHAREHOLDERS NOT FREE TO DISPOSE OF SHARES IN CERTAIN INSTANCES

Dr. AbdelGadir Warsama Ghalib

A shareholder in a company, being an individual or corporate person, is totally free to dispose of his shares for any reason and at any time at his convenience. Disposal of shares in public joint-stock companies normally taken in stock markets through certain procedures explained therein. Most shareholders acquire an appropriate investment channel to increase financial sources. We believe, shareholders acquire shares because they provide good fruitful investment especially if taken and followed wisely through established proper avenues.

As stated, any shareholder is free to do whatever he likes and wishes with his shares unless there are legal or regulatory restrictions. As example, the Company Law, specifically provides for exceptions to the general rule of full absolute freedom to deal with own shares. According to the law, no company is allowed to purchase its own shares except in one case and under one condition, that is when this purchase is done for reduction of the capital, or alternatively, to amortize the shares of the company.

Here, shareholders are not free. I think the reasoning behind this, is to keep the capital or the number of shares of the company without reduction, because the ultimate goal of any business is to increase the capital. Some believe that there is no reason for this restriction and companies should be free in this respect. In some places, the securities market authority took the initiative of allowing companies to proceed, so as to boost trading activities.

An important procedural point, in this connection, is that reduction of the capital of any company requires an extra-ordinary general assembly. This means the management of the company is not allowed to purchase the shares unless there is a clear resolution or decision taken at the meeting. Also, it is important to mention that increasing the capital (as decreasing) of the company requires, according to the provisions of the company law, an extra-ordinary general assembly.

As a rule, and as mentioned, companies are not allowed to purchase their shares unless and in certain circumstances, for reduction of their capital or its amortization. However, even if this happened, such shares acquired by the company shall not have voting rights at the general assembly. Ultimately, this makes such shares of no material or tangible benefit, because they have no voting powers and shares with no voting powers cannot bite nor play any significant role during meetings.

An additional legal restriction on companies is the point that, companies as an institution, are barred and not allowed to, pledge their shares. This right of pledging shares is to be exercised and vested only on shareholders. However, the commercial companies are not allowed to do this pledging in relation to its own shares, almost for the same reasons highlighted above i.e. to keep such shares free from any risk whatsoever.

Another restriction is related to the founders, wherein, they shall not trade in the shares they have subscribed for before publication of the balance sheet and the profit and loss account for a financial year unless the Articles of Association provides for a longer period. A notation shall be made on these shares indicating its type and date of the company incorporation. However, the titles of the shares may be transferred during the ban period by way of sale from one founder to another or from the heirs of one founder to a third party or from the bankruptcy trustee of the bankrupt founder to a third party. The provisions of this article shall apply to the shares subscribed for by the founders in case of increasing the capital before the expiry of the ban period.

Among the rights or otherwise of shareholders, It is important for each to be aware that the company law gives legal instruction or protection against certain actions. This is clear in the provisions of the law, where it is stated that neither the ordinary general assembly nor the extraordinary general assembly are authorized to take, add or amend any of the legal rights given to the shareholder by the law or the Articles of Association of the company.

This important power is conferred on all shareholders by the law and accordingly it should give each shareholder the necessary boost to preserve such rights. Shareholders should understand that this privilege will be maintained all through the ownership of the share. At certain instances it has been observed that the general assembly had gone astray in relation to certain rights of shareholders. However, it should be very clear that such decisions or resolutions are void "ab initio", if challenged.