

# SHARE TRANSFER

## RESTRICTIONS & RIGHTS IN THE CASE OF AN ISSUE OF NEW SHARES (PRE-EMPTIVE/PREFERENTIAL RIGHTS)

Published 03<sup>th</sup> August, 2023

Last week we gave you an overview of the main types of shares that are typically issued in Botswana. We also walked you through the basics. If you missed our article, you can click [here](#) to catch up.

In the second part of this series, we take you through share transfer and introduce pre-emptive rights.

### **Pre-emptive/preferential rights: An introduction**

The only restriction on the transfer of shares is in the constitution or shareholders' agreement.

In practice, restriction is expressed as a pre-emptive right made in favour of all or some of the other shareholders, alternatively, a requirement that the board of directors of the company ("the **board**") approves the transfer. The transfer of shares can also be restricted by agreement between shareholders, or between the company and one or more shareholders.

Shares are offered to the shareholders in a manner that would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders. As you can see, it is about parity.

Each shareholder is entitled to subscribe for the

number of shares equal to their voting rights, before the company offers the shares to a non-shareholder.

In essence, a right of pre-emption, also known as a preference, can be described as a right of first refusal.

As the word "preference" presumes, a seller of shares must approach the existing shareholders, should s/he wish to sell their portion of the shares.

Thank you for your patience if you have read this far.

I am [Msiya Kindiano](#), Partner and Head of the Dispute resolution department at [Bookbinder Business Law](#). I have acted for a large number of clients in local, cross-border and international arbitrations, as well as conventional dispute resolution proceedings involving company law.

If you have any questions for me on this subject matter you can drop me an email on [msiya@bookbinderlaw.co.bw](mailto:msiya@bookbinderlaw.co.bw) or if you wish to schedule an appointment with any of my colleagues on any of our offerings you can reach us on (+267) 391 2397. You can also follow our [Facebook](#) or our [LinkedIn](#) page. You can subscribe to our newsletter [here](#) or browse our website at [www.bookbinderlaw.co.bw](http://www.bookbinderlaw.co.bw).