

# Preferred shares



Real Resources NL contemplates on issuing preference shares to a bank in exchange of a bankfinance. The issue put forth is whether or not Real Resources NL would be in the best position to issue preference or ordinary shares for financing purposes. In order to understand the issue, it is best to define the types of shares that a corporation may issue to its shareholders and the liability of a corporation as regards these types of shares. RELEVANT LAWS Shares may be classified as ordinary, preference, cumulative, and redeemable.

Shares are considered as ordinary when they have no special rights or restrictions, the potential to get the highest financial gains or the highest risk, and they are the last to be paid in case the company is dissolved. Shares are considered Preference shares when there exists a preferential right to annual dividends during distribution, there is a fix value to dividend sharing, a right to dividends ahead of all other shareholders, and a right to be paid the par or nominal value of the share ahead of others in case of dissolution of the corporation.

Shares are considered cumulative when there exists a right to carry over of dividend shares to the next payment period which must be paid despite the status of the business. Lastly, shares are considered redeemable when there exists a buy-back agreement at a future date. Shares may be further categorized by corporations depending on the definition, limits, and restrictions that may be stipulated in the Articles of Incorporation. All rights and liabilities of particular types of shares shall be defined and limited to such stipulation .

Real Resources NL needs capital to address their needs. The company has to inquire into and fully understand the nature of the bank and the kind of security that is acceptable to the bank in order for the latter to finance the company's needs. Banks are governed by banking laws and their Articles of Incorporation. There are limits as to what banks may be allowed to transact when it comes to shares of stocks in corporations. There are also limits to the authorities granted to its officers to make transactions binding.

Thus, to ensure that all transactions with the bank are within the limits of authorities, the Board of Directors of Real Resources NL should know the provisions in the banking laws and Articles of Incorporation. Corporations are granted the power and the facility by the the Stock Exchange to raise capital for expansion through the selling of shares to the investing public . In doing so, corporations may issue shares of stock in the manner, amount, and volume as may be provided under its by-laws. APPLICATON OF LAWS

As provided by law and under the articles of incorporation, any corporation like Real Resources NL is authorized to issue shares of stock for sale to the public. By law, Real Resources is authorized to issue out its maximum authorized capital stocks in order to pursue business processes and transactions. The success of this sale of shares would greatly depend upon the attractiveness and acceptability of the corporation. The stability and profitability would be the next factors that would be considered.

Real Resources NL, as a legitimate corporation, is also empowered to determine which sector of the public it would issue out its shares of stock. The laws grant any incorporation the right to choose its partner-shareholders in order to ensure that the business grows. The preferred public would be

given the preferential right to purchase the shares of stocks. When Real Resources Inc. goes public, its share would already be subject to the control and management of Stock Exchanges. The issuance of preference shares is more prescribed to private or pre-public companies.

Public trading of preference shares may be regulated by the rules of stock exchange and other governmental regulations . In the case of Real Resources NL, the determination of the limits and restriction of the preference shares which the company proposes to issue to the bank must first be defined. This is to ensure that the preference share issued to the bank will not unduly disadvantage other shareholders in case of dissolution of the company. Every bank has a regulator who ensures that the bank's standing before any partner company is not compromised.

Thus, the regulator would usually set the parameters of preference shares to be issued in favor of the bank by ensuring that a return of investment will be realized by the bank from the capital investment it granted to the company. The regulator's responsibility is to maximize the bank's gain as may be realized from the preferred shares. At the same time, the regulator would also look into the potential of gaining control over the company in case the latter loses its financial strength in favor of the bank.

Thus, from the regulator's point of view, the preference shares should give the bank an edge as to fixed returns and potential control . As a legitimate corporation incorporated under the legal and governmental rules, Real Resources NL is authorized to issue shares of stock up to the maximum of its authorized capital stock. It has the power to classify its shares of stocks

depending on the company's strategic plans to grow the business of the company.

On the part of Real Resources NL, the bank must be considered as an investment partner with the rights commensurate to the capital investment it granted to the company. Thus, it is important that the fixed returns of the preference share must be carefully fixed returns is not conditioned upon the status of the company. Rather, whether the company loses its business or fails in the realization of some profit, the established fixed returns attached to the preference share shall be duly implement without need of rationale and justification .

Thus, the role of Real Resources NL is to ascertain that % fixed return which may be attached to the preference share and by imposing that the preference share carries no voting rights whatsoever. Another factor to be considered is the preference that the bank will enjoy when it holds preference shares during liquidation and dissolution of the company. The bank's equity over the company's share should not serve as a denial of shareholders' equity. All shareholders must have their won equities served thereby in case of dissolution.

It is therefore important that the rights of small shareholders are protected as against the rights of the bank in case of dissolution. To ensure that their rights are protected, preference shares should be customized by defining its limits and identifying its rights. There is no guarantee as to the success of any undertaking and this holds true for investments in corporations . The Board of Directors should proactively look beyond the existence of the company and develop its strength in case of losses.

While there could be no absolute control and certainty on profitability, the Board of Directors may already establish the parameters upon which the bank may put any liability, exercise any right control and assert any right against the company. With all the foregoing, the Board of Directors of Real Resource NL may issue preference shares to the bank in exchange for the capital investment that may be used for the company's needs. Provided that limits, conditions, and restrictions are clearly defined, this strategy may well be utilized by Real Resources NL. CONCLUSION

Corporations are governed by the Articles of Incorporation and the governmental laws and regulations. This set of laws mandate the corporation's existence as it develops in the pursuance of its legitimate business. The Officers or the Board of Directors are clothed with authority to exercise decision making and control powers within the ambits of the Articles of Incorporation. Thus, in whatever undertaking, whether in the raising of capital funds or investments for the purpose of addressing the needs of the corporation, the authority of the Board of Directors is always exercised within the limits of the powers vested upon them.

In the interest of the Board of Directors of Real Resources NL to issue preference shares to the bank in exchange of capital investment, the power of the Board of Directors to effectively enter into such undertaking shall be looked upon on the basis of what is provided under the Articles of Incorporation. This would be the basis of the Board's sound decision of issuing preference shares to the bank provided limits and restrictions are set in order to protect the interests of other shareholders. REFERENCES Gilson, Ronald J. ; Black, Bernard S. (1998).

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