

CLASSES OF SHARES: DIFFERENCES BETWEEN EUROPEAN AND AMERICAN LAW

("AN APPROACH TO AMERICAN
RULES")

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I

WINTER REPORT RECOMMENDATION, IV.3. "NO PAR VALUE" SHARES:

- " Introduction of no par value shares is widely demanded".
- "It is arguable whether introducing shares without any reference to either nominal or fractional value would be a significant change in the system of the 2^a Directive".
 - Article 8 of the Directive is the only objection.
 - Or introducing them "would require a more fundamental change to the system of the Directive".

I

A) AMERICAN “NON PAR VALUE” SHARES (THE MODEL)

(1)

- “Non par value” shares in the Model Business Act. (revised 2002) and Statutes without Stated o Legal Capital.
- Effects:
 - All states today allow corporations to issue “non par value” shares if they wish.
 - The articles of incorporation may set forth a par value for authorized shares without legal meaning.
 - The price at which shares are issued were determined by the board of directors (the fair value or equitably contribution).
 - They were designed to eliminate the problem of watered stock liability.
 - They make it safer to issue stock for property with uncertain or speculative value.
 - The articles of incorporation or issued certificate must set forth the shareholders’ rights.

I

A) AMERICAN “NON PAR VALUE” SHARES THE MODEL

(II)

- The “non par value” shares in the Statutes with Stated o Legal Capital. [Delaware, 153 (b), New York, 501 (a)].
 - The price at which shares are issued were determined by the board of directors (the fair value or equitably contribution).
 - The articles of incorporation may set forth a par value for authorized shares.
 - They make it safer to issue stock for property with uncertain or speculative value.
 - The articles of incorporation or issued certificate must set forth the shareholders’ rights.

Differences:

- The directors must determine or state (from time to time) the value of the consideration to be received by the corporation for no-par value shares.
- The total amount thus determined for the outstanding no-par shares is shown on the balance sheet as “stated capital”.
- If the assets received for no-par shares are worth less than their stated value, problems of watered stock liability may re-emerge.

I
B) APPLICATION THE AMERICAN NON PAR VALUE SHARES TO
THE EUROPEAN COMPANY LAW
(QUESTIONS)

(I)

- AN ALTERNATIVE SYSTEM TO “PAR VALUE” SHARES OR NEW CLASSES OF SHARES?
 - “Par countable shares” in European Company Law. (Stückaktie in Germany, French and Italian systems).
 - Prediction U.E. 1th Communication by the Commission (a class of preferred shares).

I

B) APPLICATION THE AMERICAN NON PAR VALUE SHARE TO THE EUROPEAN COMPANY LAW (QUESTIONS)

(II)

- **QUESTIONS TO APPLICATION IN BOTH SYSTEMS:**
 - Determination of non par value shares in the Articles of Incorporation, and the prohibition of issuance below par value.
 - Fixation of shareholders' rights.
 - “Non par value” and the shareholders contribution.

II

WINTER REPORT RECOMENDATION, ISSUES SHARES RULES: FLEXIBILITY

A) AMERICAN AND EUROPEAN RULES OF SHARES ISSUANCE:

- Power to issuance shares: board of directors.
- Classes of shares and series of shares within a class: Power to board of directors.
- Limit: always one or more classes of shares with unlimited voting rights, and one or more classes entitled to receive the net assets of the corporation upon dissolution.

II

B) CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES.

(I)

- **CONCEPT OF COMMON SHARES:**
 - Voting right.
 - Information right.
 - Economic rights.
 - Preemptive right.

II

B) CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES

(II)

- **PREFERRED SHARES:**
 - RMBA: authorize creation of classes or series of shares with a virtually unlimited range of preferences, rights and limitations (Section 6.01).
 - Voting right:
 - Any class or series of shares may be granted multiple or fractional votes per share without limitation. Exceptions.
 - Or shares may be given limited or conditional voting rights.
 - Any class or series of shares may be granted preferred net assets of the corporation upon dissolution.

II

B) CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES.

(II)

- **DIFFERENT TYPES OF SHARES (i):**
 - **NON VOTING RIGHT SHARES.**
 - Non-voting common shares.
 - Preferred non-voting common shares.
 - **REDEEMABLE SHARES.**
 - Redeemable at the option of the holder or another person (“put”)
 - Redeemable at the option of the corporation (“callable shares”)

II

CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES.

(II)

- **DIFFERENT TYPES OF SHARES (ii)**
 - **FRACCIONATE SHARES AND SCRIP.**
 - **Fractional shares entitle the holder, in proportion to his fractional holdings, to exercise all rights to full shares.**
 - **Scrip: a registered or bearer form with the signature of an corporation officer exchangeable as therein provide for full shares, but not entitle the holder to any rights of a shareholder.**

II

B) CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES.

(II)

- DIFFERENT TYPES OF SHARES (iii)
 - CONVERSION OF SHARES.
 - Shares of any class or series to be converted into shares of any other class or series or into cash, indebtedness, securities, or other property of the corporation or of another person.
 - “Upstream” conversion (shares converted into debt security or into a class of shares having prior or superior).

II

B) CLASSES OF SHARES: AMERICAN AND EUROPEAN RULES.

(II)

- **DIFFERENT TYPES OF SHARES (iii)**
 - TRACKING STOCK.
 - A class or series of common stock of that corporation.
 - Each class is designed to track the operating and financial performance of a distinct business segment.

- **Conclusions.**