

1st set of questions and answers

1. How and when were the seven founding shareholders identified and selected? Who decided these seven individuals would receive the 70 founding shares? What did these seven directors pay for their shares?

Answer:

The 7 shareholders were identified and nominated, post the acquisition of Public Newco, now Nova Property Group Holdings Limited (“Nova Holdings”), as part of an internal process, when Nova Holdings was identified as the vehicle to be utilised for the implementation of the schemes.

These individuals were nominated, during the preparation of the scheme documentation during the course of 2011, by the three persons who were nominated and appointed during that year as the directors of Nova Holdings.

The nominated 7 shareholders were selected by such directors, on the basis that such shareholders would constitute the core senior management of the newly restructured Nova Group post the sanctioning of the schemes, and for the reasons further set out in Appendix ARR8. These shareholders were finally identified as the 7 individuals, having the responsibility as provided for in Appendix ARR8, namely of procuring funding and other actions required for the repayment of the debentures of non-electing Debenture Holders, through the business activities of Public Newco and Private Newco.

The 7 shareholders (not “directors”) paid par value for the shares, being R70, which is still the value today.

2. Was there a nomination process and an actual vote to choose these seven individuals to become shareholders?

Answer:

Yes, the process is described in the answer to question 1.

Furthermore, following the process of the finalisation of the scheme documentation, the content of Appendix ARR8 was accepted and approved during the voting process in regard to the schemes of arrangement.

3. Apart from Appendix ARR8, where in the 311 Scheme of Arrangement document is it explained that the founding directors would receive the shares that were available to debenture holders, but which the debenture holders decided not to take up. I am referring to the shares available to the 96% of the debenture holders who elected to keep their debentures and not to elect the shareholding option.

Answer:

We assume that by your reference to “directors”, you meant shareholders.

1. In the Scheme, page 73, paragraph 4.3.5.4.1; and
2. the Background document, page 54, paragraph 1.3.10.3; and
3. the Explanatory Statement, page 42, paragraph 5.9.10.3; and
4. in “Annexure H” (Election Document) referred to in paragraph 4.3.5.4 of the Scheme (page 73); paragraph 5.9.10.1 of the Explanatory Statement (page 42) and paragraph 1.3.10.1 of the Background Document (page 54).

These paragraphs regulate and explain what Debenture Holders would receive by way of shares in Public Newco, in accordance with Appendix ARR8 and subject to the terms and conditions recorded in Appendix ARR8.

This appendix was at all relevant times in the scheme documentation prominently referred to as due to be carefully, and if necessary, with professional advice obtained, read and understood, in order to and prior to Debenture Holders making an election to convert their debentures.

This ought to have been done subject to and with full understanding of the effects of such election, and following the prescribed actions of considering and completing the specifically highlighted and coloured (**Blue**) Form of Election (Appendix H), to be completed in handwriting and signed by electing Debenture Holders, prior to their elections becoming effective and them becoming entitled to become shareholders in Nova Holdings.

It therefore follows that should any Debenture Holder, after becoming such, considered the available conversion process, such Debenture Holder must have known that it was necessary to fully understand Appendix ARR8, its full content, meaning and effect, prior to embarking upon the election process, by, as a final act, consciously and with full knowledge of the content and effect of Appendix ARR8, considering, attending to, completing and signing Appendix H.

It follows from the aforesaid that no scheme shareholder (ultimate electing Debenture Holder), could not have known that shares available following non-elections, would be issued to the holders of the initial 70 founder shareholders ordinary shares in Public Newco (Nova Holdings).

It needs to be noted that the 7 shareholders decided that these shares are to be held in a Nominee company and these shares may well in future be utilised in the process of procuring funding as provided for in Appendix ARR8 for the ultimate repayment of Debentures.

Finally, Appendix ARR8 was not only prominently referred to and the effect of its implementation adequately explained as aforesaid, but was furthermore printed in bold typeface with the concept of “**non-electing Debenture Holders**” even further highlighted in the document and was no more than half a page long.

In order to illustrate what is stated in the previous paragraph, we attach a copy of Appendix ARR8, which needs to be regarded and treated as contained in and forming part of our answer to your question 3.

4. What did the directors pay for these B shares?

Answer:

We assume that by your reference to “directors”, you meant shareholders.

Nova Property Group Investments (Pty) Ltd has the obligation to pay Debentures. The liabilities to Debenture Holders created by the schemes were equivalent to the value of the assets as per the schemes, held by the Nova Group at the time of the sanctioning of the schemes and consequently the shares had no inherent value. Given that the equity account of the Nova Group was zero at the date of the sanctioning of the schemes and before the commencement of the implementation of the schemes, the shares had no value and could not be allotted at a price, and therefore nothing was paid.

As stated above, under question 3, these shares are held in a Nominee company and these shares may well in future be utilised in the process of procuring funding as provided for in Appendix ARR8 for the ultimate repayment of Debentures.

5. Where in the scheme of arrangement is it explained that debenture holders who elect the share option would receive shares (Class D shares) which do not have any voting rights?

Answer:

The old Companies Act, under which the schemes were sanctioned, made no provision for non-voting shares and therefore the issuing of shares without voting rights was not contemplated when the scheme documentation was prepared, and therefore no explanation was given.

6. Did the class D shares ever have voting rights?

Answer:

No.

7. Where in the scheme of arrangement is it explained that the directors would receive shares (Class B shares), which have voting rights?

Answer:

We assume that by your reference to “directors” you mean shareholders.

We reiterate that at the time of the preparation of the scheme documentation and in terms of the old Companies Act, the concept of shares with voting rights as distinct from shares without voting rights did not exist, and therefore no explanation was given.

8. Why do class D shares not have voting rights, but class B shares do? It seems as if these shares should have the same voting rights as all the shares were (in theory at least) available to debenture holders?

Answer:

The concept of different Classes of shares was arrived at when the sanctioned schemes needed to be implemented by the Board of Nova Holdings.

It was realised that the schemes and their implementation called for different categories of shareholders and it was decided that it would be prudent to distinguish between and ring fence these categories from one other.

It was decided that the best and most practical manner in which to achieve the above, would be for the shareholding structure of Nova Holdings, to have the different Classes of shares that Nova Holdings has, and particularly having regard to the implications of the implementation of Appendix ARR8, which needed to be given effect to by the Board, and as the new Companies Act made provision for issuing shares with voting and non-voting rights, these provisions of the Act were utilised.

Class D shares were capitalised at the value of relevant exchanged debenture values, whereas Class B shares were issued at no value, as the relevant debenture liabilities remained.

The Class B shares were never available to Debenture Holders.

9. When and by whom were it decided that there would be four share classes? Who decided that the Class D shares issued to debenture holders would not have any voting rights?

Answer:

Please refer to our answer to your question 8 above.

These decisions were made by the Board of Nova Holdings.

10. What are the class C shares? Why was this class created and what purpose may it serve in future?

Answer:

The Class C shares were created for the opportunity to issue new shares to capitalize Nova Holdings.

**11. Is there a formal event at which the board answers questions of debenture holders?
Put differently, is there an AGM for debenture holders?**

Answer:

No.