

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 9: Classes of Shares and Class Rights

Section 630: Variation of class rights: companies having a share capital

931. On variation of class rights the CLR recommended (Final Report, paragraph 7.28) that the current provisions should be retained with some simplification, and extended to companies without a share capital (see section 631).
932. **Section 630** replaces section 125 of the 1985 Act. It is concerned with the manner in which rights attached to a class of shares may be varied. Class rights typically cover matters such as voting rights, rights to dividends and rights to a return of capital on a winding up.
933. Currently class rights may be set out in the memorandum or articles or elsewhere, and provision may or may not be made for their alteration. Under the Act it will not be possible for class rights to be set out in the memorandum (see section 8) and where class rights attaching to shares in an existing company are specified in the memorandum these will be deemed, by virtue of section 28, to be a provision in the company's articles.
934. Class rights are "attached to a class of shares" (see *subsection (1)*). Where all the shares in a company fall within the one class, there are no class rights, only shareholder rights. What amounts to a class is not defined either in the current law or the Act (other than in section 629) and remains a matter for case law.
935. The current requirement for an extraordinary resolution where a company is proposing to vary the rights attached to a class of its shares is replaced with a requirement for a special resolution (see *subsection (4)(b)*). The Act abolishes the concept of an extraordinary resolution. Special resolution is defined in section 283.
936. *Subsections (2) and (4)* provide that rights may be varied in accordance with the company's articles or, where the articles make no provision for a variation of class rights, if the holders of at least three-quarters in nominal value of the issued shares of that class consent in writing or a special resolution passed by the holders of that class sanctions the variation. This means that the articles may specify a less demanding procedure for a variation of class rights than the statutory scheme (for example, that the holders of 51% by nominal value of the class consent in writing), or may permit a simple majority of the class at a class meeting.
937. The provisions of section 630 are expressed to be without prejudice to any other restriction on the variation of rights (see *subsection (3)*). This has two important effects. First, if and to the extent that the company has adopted a more onerous regime in its articles for the variation of class rights, for example requiring a higher percentage than the statutory minimum, the company must comply with the more onerous regime.

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

Second, if and to the extent that the company has protected class rights by making provision for the entrenchment of those rights in its articles (see section 22), that protection cannot be circumvented by changing the rights attached to a class of shares under this section.