

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 9: Classes of Shares and Class Rights

929. "Classes of shares" (or "class rights") is not defined in the 1985 Act but at common law this term is normally used where the rights that attach to a particular share relate to matters such as voting rights, a right to dividends and a right to a return of capital when a company is wound-up. Rights attach to a particular class of shares if the holders of shares in that class enjoy rights that are not enjoyed by the holders of shares in another class.

Section 629: Classes of shares

930. This section provides that for the purposes of the Act, shares are of one class if the rights attached to them are in all respects uniform. It reproduces the provision in section 128(2) of the 1985 Act. It is particularly relevant to the provisions of section 550 and section 569. This definition of "classes of shares" also applies in determining the extent to which shares constitute different classes for the purposes of the statement of capital required to be filed under various provisions of the Bill (see note on section 619).

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. 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.

Section 631: Variation of class rights: companies without a share capital

938. This section extends the statutory provisions on variation of class rights to companies without a share capital. Companies limited by guarantee (which since December 1980 cannot be formed with a share capital) may, for example, have different classes of members with different voting rights.
939. At present the question of how members' rights may be varied will depend to a large extent on whether provision has been made, either in the memorandum or articles, for their variation. Under the Act class rights may also be varied in accordance with this section, which contains new provisions, comparable to those for companies with a share capital. Thus there is a minimum requirement that class rights may be varied if three-quarters of that class consent in writing or a special resolution of those members sanctions the variation, unless the company has made provision for a less onerous regime to apply in its articles. Again, a company may also make provision, in its articles, for a more onerous regime to apply than that provided in this section and where they do the company must comply with the regime set out in the articles.

Section 632: Variation of class rights: saving for court's power under other provisions

940. This section preserves the court's powers under various other provisions of the Act and substantially restates section 126 of the 1985 Act.

Sections 633 and 634: Right to object to variation

941. *Section 633* replaces section 127 (which confers a right on shareholders to object to a variation of class rights). It sets out the procedure that must be followed where there is an objection to a variation of the rights attached to a class of a company's shares and enables shareholders holding not less in aggregate than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution approving the variation) to apply to the court for the variation to be cancelled.
942. *Section 634* makes similar provision in respect of a variation of class rights in companies not having a share capital. This is a new provision which enables members, amounting to not less than 15% of the members of the class affected (being persons who did not consent to or vote in favour of the resolution approving the variation), to apply to the court to have the variation cancelled and gives the court the power to confirm

the variation, or disallow it if the court is satisfied that it would unfairly prejudice the members in that class.

Section 635: Copy of court order to be forwarded to the registrar

943. **Section 635** sets out the procedural requirements as to notice where the court has made an order on an application under section 633 or 634. Where the court has made an order on application under these sections, the company must forward a copy of that order to the registrar within 15 days of the date on which the order is made. Where a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, commits an offence (see *subsections (2) and (3)*).

Section 636 to 640: Matters to be notified to the registrar

944. These sections replace various provisions in sections 128 and 129 of the 1985 Act which are concerned with notification to the registrar of the creation of, and variations to, rights attached to a class of a company's shares (section 128 of the 1985 Act) or class rights of members (section 129 of that Act).
945. Under the Act, where a limited company creates a new class of shares, it will be required to provide details of the rights attached to the shares in the return of allotment and statement of capital required under section 555. There is a similar requirement in section 556 where an unlimited company allots a new class of share. Those provisions replace section 128(1) and (2) of the 1985 Act.
946. In addition, where a company varies the rights attached to any of its shares (or assigns a name or other designation, or a new name or other designation to any class or description of its shares) it will in future be required to register particulars of the rights affected under section 637 (or 636) irrespective of how the variation in rights was achieved. Currently companies are not required to provide this information if the rights attached to a particular share or class of shares are varied by an amendment to the company's memorandum or articles or by special resolution or agreement of the company's members which is required to be filed under section 380 of the 1985 Act. Sections 638 to 640 make similar changes to the disclosure requirements which apply to companies limited by guarantee not having a share capital and unlimited companies not having a share capital which may, nevertheless, have different classes of members.
947. It should be noted, that, in contrast to other alterations to a company's share capital, there is no requirement in section 637 for a statement of capital (see note on section 619). Such a requirement would be superfluous, as a variation of class rights will not result in a change to the aggregate amount of a company's subscribed capital.