



Companies Act 1985

1985 CHAPTER 6

PART V

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER II

CLASS RIGHTS

125 Variation of class rights.

- (1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.
- (2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—
 - (a) the holders of three-quarters in nominal value of the issued shares of that class [^{F1}(excluding any shares of that class held as treasury shares)] consent in writing to the variation; or
 - (b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b) above.

- (3) Where—
 - (a) the rights are attached to a class of shares by the memorandum or otherwise;
 - (b) the memorandum or articles contain provision for the variation of those rights; and
 - (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under section 80 or with a reduction of the company's share capital under section 135;

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those rights shall not be varied unless—

- (i) the condition mentioned in subsection (2)(a) or (b) above is satisfied; and
- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—

- (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
- (b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in subsection (3)(c), those rights may only be varied in accordance with that provision of the articles.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company [^{F2}(excluding any member holding shares as treasury shares)] agree to the variation.

(6) The provisions of section 369 (length of notice for calling company meetings), section 370 (general provisions as to meetings and votes), and sections 376 and 377 (circulation of members' resolutions) and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—

- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question [^{F3}(excluding any shares of that class held as treasury shares)] and at an adjourned meeting one person holding shares of the class in question or his proxy;
- (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(8) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.

Textual Amendments

- F1** Words in s. 125(2)(a) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 8(2)}
- F2** Words in s. 125(5) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 8(3)}

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F3 Words in s. 125(6)(a) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 8(4)}

126 Saving for court's powers under other provisions.

Nothing in subsections (2) to (5) of section 125 derogates from the powers of the court under the following sections of this Act, namely—

- sections 4 to 6 (company resolution to alter objects),
- section 54 (litigated objection to public company becoming private by re-registration),
- section 425 (court control of company compromising with members and creditors),
- section 427 (company reconstruction or amalgamation),
- sections 459 to 461 (protection of minorities).

127 Shareholders' right to object to variation.

(1) This section applies if, in the case of a company whose share capital is divided into different classes of shares—

- (a) provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—
 - (i) the consent of any specified proportion of the holders of the issued shares of that class, or
 - (ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,

and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or

- (b) the rights attached to any class of shares in the company are varied under section 125(2).

(2) The holders of not less in the aggregate than 15 per cent. of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.

[^{F4}(2A) For the purposes of subsection (2), any of the company's issued share capital held as treasury shares must be disregarded.]

(3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm it.

The decision of the court on any such application is final.

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- (5) The company shall within 15 days after the making of an order by the court on such an application forward a copy of the order to the registrar of companies; and, if default is made in complying with this provision, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) “Variation”, in this section, includes abrogation; and “varied” is to be construed accordingly.

Textual Amendments

- F4** [S. 127\(2A\)](#) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 ([S.I. 2003/1116](#)), reg. 4, {Sch. para. 9}

128 Registration of particulars of special rights.

- (1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by section 380 to be sent to the registrar of companies, the Company shall deliver to the registrar of companies within one month from allotting the shares, a statement in the prescribed form containing particulars of those rights.
- (2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former’s allotment.
- (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company’s memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.
- (4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its shares, it shall within one month from doing so deliver to the registrar of companies a notice in the prescribed form giving particulars of the name or designation so assigned.
- (5) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

129 Registration of newly created class rights.

- (1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which section 380 applies, the company shall deliver to the registrar of companies within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.
- (2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation

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is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

- (3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.
- (4) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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