

Variation of rights attached to special classes of shares

88. (1) This section shall have effect with respect to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes, whether or not the company is being wound up.

(2) Where the rights are attached to a class of shares in the company otherwise than by the constitution, and the constitution does not contain provisions with respect to the variation of the rights, those rights may be varied if, but only if—

(a) the holders of 75 per cent, in nominal value, of the issued shares of that class, consent in writing to the variation; or

(b) a special resolution, passed at a separate general meeting of the holders of that class, sanctions the variation,

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

(3) Where—

(a) the rights are attached to a class of shares in the company by the constitution or otherwise;

(b) the constitution contains 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 the purposes of section 69 (1) or with a reduction of the company's company capital by either of the means referred to in section 84,

those rights shall not be varied unless—

(i) the requirement in subsection (2)(a) or (b) is satisfied; and

(ii) any requirement of the constitution in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the requirement in subsection (2)(a) or (b).

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

(a) where they are so attached by the constitution, it contains provision with respect to their variation which had been included in the constitution at the time of the company's original incorporation; or

(b) where they are so attached otherwise, the constitution contains 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 constitution.

(5) Where the rights are attached to a class of shares in the company by the constitution and it does not contain provisions with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.

(6) Where a resolution referred to in any of the preceding subsections is to be proposed at a meeting of members holding a particular class of shares—

(a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his or her proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

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

(8) References to the variation of the rights attached to a class of shares in—

(a) this section; and

(b) except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in the company's constitution,

shall include references to their abrogation.

(9) Nothing in subsections (2) to (5) shall be read as derogating from the powers of the court under sections 212, 451 and 455.

(10) Save where the company's constitution provides otherwise, the rights conferred upon the holders of the shares of any class issued by a company with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.