

Governance and Commercial Trade Associations and Membership Organisations

Do You Know Your “Class” Rights?

Any organisation established as a company limited by guarantee (trade associations and membership charities but also many professional bodies) needs to be aware of a change introduced under the Companies Act 2006. Certain changes to your articles of association which affect members’ rights can now only be affected if certain procedures under the Act are followed. Previously similar provisions only affected companies with a share capital. Most non profit organisations focus less on these types of issues than for profit organisations as the members generally lack a financial interest in the organisation.

What are classes of members?

The rights and obligations of members are usually set out in the company's memorandum and articles. Different members may have different rights and obligations, for example where different members pay different membership fees or subscriptions, or have a different number of votes on particular issues. Members whose membership rights are in all respects the same will form a class of members.

What is a variation of class rights?

Any variation of members’ rights may constitute a variation of a “class right” and therefore may be caught by the provisions of the Act.

An example of a variation of class rights is where the number of votes given to a certain class of members is to be increased or decreased. This is particularly important to consider in the context of a variable subscription giving rights to more or fewer votes on particular matters. Such a provision may be entirely acceptable but will need to be carefully considered and drafted to avoid falling foul of the new provisions.

The rights of a class of members may only be varied in accordance with provisions in the articles or with the consent of the members under the statutory consent requirements (s 631 CA 2006).

What is the variation procedure?

The statutory consent requirements for the variation of class rights require:

- the consent in writing from at least three-quarters of the members of the class; or

- a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.

The articles can specify a procedure to vary class rights which can set a higher or lower standard than the above requirements.

Can members object to a variation?

Members have the right to object to a variation of class rights. At least 15% of the members of the objecting class must apply to court within 21 days of the consent being given, or the resolution being passed, for the variation. Once the application is made, the variation has no effect unless it is confirmed by the court. The court can disallow the variation if it is satisfied that the variation would unfairly prejudice the members of the class represented by the applicant.

Alternatively a member (the 15% threshold is not applicable) can apply to the court for an order that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of some part of the company's members (including the applicant) or that an actual or proposed act or omission is or would be so prejudicial.

Caution:

If you are considering reviewing or making any changes to your memorandum and articles of association to enable your organisation to benefit from some of the liberalisations introduced by the Act (to our see earlier update please [click here](#)) or otherwise you should also consider whether any of the changes constitute a variation of members rights and, where you do have separate classes of members, you should include provisions to deal with the varying of class rights. Remember that introducing such provisions will require each class of members to agree to it and if one class of members does not pass the relevant resolution the resolution as a whole will fail.

Our team regularly reviews and updates governance arrangements for trade associations and other not for profit organisations and we would be happy to have an informal discussion with you if you have any concerns.

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