

Variation of Class Rights

Is it a class right?

Option 1: Common Law Class right

- The variation in question is a variation that affect the strict legal rights of the members of the class.
- At CL, this is a variation of class right

Option 2: Dividing a class

- The variation attempts to divide a class of shares into further classes
- This is a variation of a class right: **s 246C(1) CA**

Option 3: Rights attaching to shares

- Share has [insert right] attached to it
- Any attempt to vary a right attaching to some share is a variation of class rights: **s 24C(2) CA**

Option 4: New shares changing rights of existing shares

- New shares have been issued
- These vary the rights of existing shares by [insert]
- When new shares are issued and rights of existing shares are different this is a variation of class rights: **s 246C CA**

Procedure to Vary Class Rights

Option 1: Procedure set out in constitution

- The constitution sets out that in order to vary a class right the company must [INSERT PROCEDURE]
- The procedure in the constitution must be followed to vary or cancel class rights: **s 246B(1) CA**

Option 2: No constitution/constitution doesn't set out procedure

- There is no constitution or the constitution doesn't set out the procedure for variation of class rights
- In these circumstances may only cancel or vary class rights by:
 - By special resolution of the company; and
 - By special resolution passed at a meeting of the holders of the affected class; or
 - With the written consent of members with at least 75% of the votes of the affected class (s 246B(2))