

**Defined terms**

company	s 4(1)
constitution	s 4(1)
prescribed	s 4(1)
private company	s 4(1)
public company	s 4(1)
Registrar	s 4(1)
share	s 4(1)

**Related provisions**

s 64A	Issue of shares with different voting rights by public company
s 74	Rights of holders of classes of shares

---

**75. Rights of holders of preference shares to be set out in constitution**

(1) No company shall allot any preference shares or convert any issued shares into preference shares unless there are set out in its constitution the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

[Act 36 of 2014 wef 03/01/2016]

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

[15/84]

[Aust., 1961, s. 66]

---

**NOTES**

**General overview**

[75.01] The voting and dividend rights of preference shares must be set out in the constitution. Previously, the Act defined a “preference share” in relation to specifically ss 5, 64 and 180 only. This created an inconsistency in the meaning of preference shares as used in other sections. For the sake of consistency, Act No 36 of 2014 deleted the old definition of preference shares to allow its commercial usage to be adopted by the Act.

**Rights of preference shares to be set out in constitution**

[75.02] Section 75 provides that the rights of preference shareholders must be set out in the constitution with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or over classes of preference shares. It is a matter of construction of the constitution what the rights of the preference shareholders are: *Webb v Earle* (1875) LR 20 Eq 556; *Re South African Supply and Cold Storage Co* [1904] 2 Ch 268; *Re Wakefield Rolling Stock Co* [1892] 3 Ch 165; *Birch v Cropper* 14 App Cas 525; *Re Hume Industries (Far East) Ltd, Hume Industries (FE) Ltd v Humes Ltd & Anor* [1974–1976] SLR(R) 37; [1974] SGHC 3.

**Definition of “preference share”**

[75.03] The definition of “preference share” in the Act has been deleted by Act No 36 of 2014. Although in commercial practice, preference shares may be voting and/or participating, the Act previously defined a “preference share” in relation to ss 5, 64 and 180 as a share, whatever name

called, which does not entitle the holder thereof to the right to vote at a general meeting (except in the circumstances specified in s 180(2)(a), (b) and (c)) or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise. This gives rise to an inconsistency where the term “preference shares” is used in other parts of the Act such as ss 74 and 75, to which the commercial usage of the term would apply. There is no statutory definition of preference shares in the Australian, New Zealand and UK legislations. Preference shares by their very nature carry limited and defined rights: *Re William Metcalfe and Sons Ltd* [1933] 1 Ch 142, CA. The right of a company to reduce its share capital by extinguishment of preferred shares provided the creditors were not prejudiced and there was no reasonable objection from the preferred shareholders themselves is a commercially expedient method of managing a company’s capital and debt: *Re Beaufort Sentosa Development Pte Ltd* [2001] 2 SLR(R) 749; [2001] SGHC 220.

### **Dividends**

**[75.04]** In law, the directors have discretion whether to recommend a dividend, even on the preference shares. However, this discretion had to be exercised fairly and honestly in the company’s interests. They would not be acting honestly or fairly if the discretion was exercised to deny the preferential shareholders their right for a collateral purpose: *Re S Q Wong Holdings (Pte) Ltd* [1987] SLR(R) 286; [1987] SGHC 58, HC.

### **Surplus on winding up**

**[75.05]** There is no general rule that where preference shareholders have a preference as to repayment of capital, they can have no further share in surplus assets. The question depends on the construction of the memorandum and articles of association. But if these documents contain no provisions on the point, surplus assets must in a winding up be divided amongst all the shareholders, ordinary and preference, in proportion to the nominal value of the shares: *Re Espuela Land and Cattle Co* [1909] 2 Ch 187, Ch Div; *Anglo-French Music Co Ltd v Nicoll* [1921] 1 Ch 386; following *Re John Dry Steam Tugs Ltd* [1932] 1 Ch 594, Ch Div; cf *Collaroy Co Ltd v Giffard* [1928] 1 Ch 144, Ch Div; *Birch v Cropper* (1889) 14 App Cas 525; *Will v United Lankat Plantations Co* [1914] AC 11; *Re National Telephone Co* [1914] 1 Ch 755; *Re Fraser and Chalmers* [1919] 2 Ch 114; *Re William Metcalfe and Sons Ltd* [1933] 1 Ch 142, CA. The preference shareholders receive the full amount of the dividends in arrears (as fixed by the contract) without any deduction of income tax, in priority to any payment to the ordinary shareholders: *Re Dominion Tar and Chemical Co Ltd* [1929] 2 Ch 387, Ch Div.

### **Defined terms**

company	s 4(1)
constitution	s 4(1)
officer	s 4(1)
share	s 4(1)

### **Related provisions**

s 5	Definition of subsidiary and holding company
s 64	Rights and powers attaching shares
s 70	Redeemable preference shares
s 180	As to member’s rights at meetings

## **76. Company financing dealings in its shares, etc.**

(1) Except as otherwise expressly provided by this Act, a public company or a company whose holding company or ultimate holding company is a public company shall not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —