



MEMO

To: Board of Directors
From: Company Secretary
Subject: **PREFERENCE SHARES**

Preference shares are shares that give holders some right or preference over ordinary shares.

Corporations Act Provisions

Section 124(1)(a) of the Corporations Act gives a company the power to, inter alia, 'issue and cancel shares in the company' and s.254A(1)(b) says that power includes issuing preference shares.

Rights: Preference Shares

A company can issue different classes of shares. The rights and restrictions attached to shares in a class distinguish it from other classes.

S.254A(2) requires rights attaching to preference shares to cover the following:

- (a) repayment of capital
- (b) participation in surplus assets and profits
- (c) cumulative and non-cumulative dividends
- (d) voting
- (e) priority in payment of capital and dividends over other shares

to be either contained in the company's constitution or approved by special resolution of shareholders - otherwise preference shares cannot be issued.

This provision protects the interests of ordinary shareholders by ensuring that they agree to the rights of the preference shareholders (ie, by accepting/agreeing to the constitution as a shareholder, or by approving the preference shares through a shareholders resolution/meeting).

Shareholders' Meeting

Ordinary shareholders by special resolution (at a meeting or by signing a written resolution) can approve the rights of preference shareholders.

Once such a resolution is passed a public company must advise ASIC by lodging a Form 2205 *Notification of Resolutions Regarding Shares* within 14 days. Rights attached to preference shares in accordance with a company's constitution must be



submitted to ASIC with a Form 210 *Notification of Statement of Special Rights Carried by Shares* within 14 days after the rights are activated.

Listed Companies

The ASX Listing Rules 6.3 ~ 6.7 set out additional provisions relating to preference shares of stock exchange listed companies.

Convertible Preference Shares

An additional provision or right of a preference share might be that it is convertible into an agreed number of ordinary shares on the happening of a certain event - eg, stock exchange listing.

Redeemable Preference Shares

S.254A also allows for the issue of redeemable preference shares - which can be subsequently redeemed without shareholder approval.

The terms/certificates for such shares must specify that they are liable to be redeemed: s.254A(3) - eg, in a fixed time or on a specified date, at the company's option, or at the shareholder's option, as agreed.

On redemption the redeemable preference shareholder is paid in accordance with the shares' terms and the shares must be cancelled: s.254J. However, pursuant to s.254K a company may only redeem such shares if the shares are fully paid up and the redemption is made out of profits or the proceeds of a new issue of shares made specifically for that purpose.

Within 28 days of cancellation/re-issue of shares Form 484(C) *Change to Company Details* must be lodged with ASIC.

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