

INTEREST REDUCTION
AMENDMENT (PREFERENCE
SHARES) ACT.

Act No. 42, 1932.

An Act to provide for the method of distribution of profits by a company where any of its preference shares are affected by section sixteen of the Interest Reduction Act, 1931; to confine the operation of subsections one and two of that section to preference shares issued prior to the commencement of that Act; to validate certain distributions of profit; to amend the said Act; and for purposes connected therewith. [Assented to, 21st December, 1932.]

George V.
No. 42, 1932.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Interest Reduction Amendment (Preference Shares) Act, 1932." Short title.

2. The Interest Reduction Act, 1931, is amended—

Amendment
of Act No. 44,
1931.

(a) by omitting subsection three of section sixteen and by inserting in lieu thereof the following new subsections:—

Sec. 16.
(Modifica-
tion of
rights of
preference
share-
holders.)

(3) The provisions of subsection one and subsection two of this section shall not extend or be construed to have extended to any right arising from a preference share issued after the commencement of this Act.

(3A)

(3A) Where the right of a holder of any preference share in a company is affected by the provisions of subsection one of this section, and the company desires to distribute among its shareholders by way of dividend profits available for distribution, the provisions of this subsection shall take effect, that is to say,—

(a) the amount available for distribution shall be applied in the following order of priority:—

- (i) in payment to the holders of cumulative preference shares of arrears of dividend where they are entitled under the memorandum of association or articles of association or other instrument or resolution governing the rights of shareholders in the company to be paid such arrears;
- (ii) in payment of dividend to the holders of preference shares issued before the commencement of this Act at the modified rate and to the holders of preference shares issued after the commencement of this Act at the specified rate in accordance with the priority in which such shares rank between themselves;
- (iii) in payment of dividend to the holders of ordinary shares at the lowest rate payable to any holder of preference shares affected by subsection one of this section;
- (iv) in payment *pari passu* of dividend to the holders of all ordinary and preference shareholders, but so that no payment at a rate greater than the specified rate of a preference share shall be made to the holder of such preference share;

(b)

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- (b) (i) arrears of dividend upon any preference shares affected by subsection one of this section are to be calculated at the specified rate in respect of any dividend period or part of a dividend period prior to the commencement of this Act and at the modified rate in respect of any dividend period or part of a dividend period after such commencement;
- (ii) notwithstanding any foregoing provision of this subsection, the holder of any cumulative second preference shares or cumulative preference shares ranking later in priority shall be entitled only to the priority in respect of payment of arrears of dividend to which they would have been entitled had this subsection not been enacted and to no greater priority;
- (c) a dividend shall be payable to members of a company in proportion to their shares unless by the memorandum of association, articles of association, or other instrument or resolution for the time being governing the rights of shareholders in the company some other provision is made in that behalf;
- (d) the application of the foregoing provisions of this subsection shall be subject in any particular case to any express provision in the memorandum of association, articles of association, or other instrument or resolution governing the rights of shareholders in the company as deemed to be modified by subsection two of this section in force at the commencement of this Act and to any variation thereof lawfully made thereafter;

(b)

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Sec. 16 (4).

(b) by inserting at the end of subsection four of the same section the following definitions:—

“ The modified rate ” means the specified rate as modified in accordance with subsection one of this section.

“ Dividend period ” means the period in respect of which a dividend is declared, and includes a period in respect of which a dividend accrues upon a cumulative preference share; and “ arrears of dividend ” means the deficiency in dividend occurring where the profits available for distribution are insufficient to pay the dividend in respect of a dividend period upon any cumulative preference share at the rate to which the holder thereof is entitled.

Validation.

3. A payment of dividend made before the commencement of this Act and since the commencement of the Interest Reduction Act, 1931, shall not be held invalid if and where such payment was made in accordance with subsection three of section sixteen of that Act as originally enacted or in accordance with subsection (3A) of that section as inserted by this Act, or in accordance with the express provisions of the memorandum of association, articles of association, or other instrument or resolution governing the rights of shareholders in the company as deemed to be modified by subsection two of section sixteen of the Interest Reduction Act, 1931, or of any variation thereof lawfully made after the commencement of that Act.

FRIENDLY