



Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019

Public Act 2019 No 68
Date of assent 16 November 2019
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Companies Act 1993 (the **principal Act**).

4 Section 53 amended (Dividends)

(1) Replace section 53(2) with:

(2) The board of a company must not authorise a differential dividend unless—

(a) the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of

the shareholder under the constitution of the company or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004; or

- (b) the company's constitution provides for differential dividends as permitted by subsection (2A) and the dividend is authorised in accordance with the constitution.
- (2A) The constitution of a company may provide for differential dividends in respect of the shares in a class of shares, which may be determined on any differential basis, but only if the differential basis is based on objective criteria and not on the exercise of a discretion by, or an opinion of, the board of the company.

Example

Company Z is an agricultural company whose class A shareholders are all current or former growers and suppliers to the company. The company's constitution could confer on holders of class A shares a right to differential dividends based on whether or not they are currently growing and supplying produce to the company.

The company's constitution could not provide for dividends based on a discretionary criterion, such as whether a shareholder had adequately upheld the reputation of the company.

- (2) After section 53(3), insert:
- (4) In this section, **differential dividend** means a dividend—
- (a) in respect of some but not all the shares in a class; or
- (b) that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class.

Legislative history

5 April 2018	Introduction (Bill 52–1)
8 August 2018	First reading and referral to Primary Production Committee
12 April 2019	Reported from Primary Production Committee (Bill 52–2)
26 June 2019	Second reading
23 October 2019	Committee of the whole House
13 November 2019	Third reading
16 November 2019	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.