Issuing and Redeeming Redeemable Preference Shares in a Singapore Private Limited Company

Generally, a company having a share capital is permitted to issue preference shares (RPS) that can be redeemed either at the option of the company or by the shareholder, so long as its constitution allows it. The terms and manner in which these RPS are to be redeemed must be effected according to the company's constitution.

However, there may be situations where a company wishes to raise capital through the issuance of RPS but is unable to do so as its constitution does not allow for it. This article provides an overview of the process under the Singapore Companies Act 1967 (Companies Act) to enable a company to issue and redeem RPS.

Issuing RPS

The following table summarises the key steps to take for a company to issue RPS (where its constitution currently does not allow for it).

Step	Explanation
1. Amend the company's constitution to provide for the rights of RPSs.	To amend the constitution, 75% of voting shareholders have to vote in favour of the resolution to amend the constitution. The rights that should be included in the constitution include: • whether the dividends are cumulative or non-cumulative; • what priority the holders of these preference shares have in relation to the holders of other classes of shares with respect to the payment of dividends; • whether there is a right to participate in surplus assets and profits; • what priority the holders of these preference shares have in relation to the repayment of capital in a winding up of the company; and • what the voting rights of these preference shareholders are. If the company issues RPSs in contravention of the above requirement, every officer of the company who is in default will be guilty of an offence under Section 75(2) of the Companies Act and be liable to a fine of up to S$2,000.

2.	Pass shareholders' resolution for the issue of RPS.	Generally, to pass the shareholders' resolution, a majority of voting members have to vote to in favour of the resolution to issue RPSs. However, the constitution of the company may require a greater majority for resolutions.
3.	Pass Directors' resolution for the issue of RPS.	Generally, to pass the directors' resolution (board resolution), a majority of voting directors have to vote to in favour of the resolution. However, the constitution of the company may require a greater majority for resolutions.
4.	Procure signed application form and payment for the RPS.	
5.	Complete filing with the Accounting and Corporate Regulatory Authority of Singapore (ACRA) on the issue of RPS.	
6.	Update register of members for the RPS.	A redemption of any RPSs does not take effect until the electronic register of members of the company is updated by ACRA.
7.	Issue share certificates with respect to the RPS.	

Redeeming RPS

As a prerequisite, before a company starts redeeming its RPS, it must first ensure that the RPS to be redeemed are fully paid up as only fully paid up RPS may be redeemed. RPS may be redeemed by utilising resources out of capital or profits of the company.

Further, all the directors of the company must make a solvency statement in relation to the redemption, if the redemption of the RPS is from the capital of the company, which must be lodged with ACRA. The solvency statement is essentially a declaration by each director that having regard to all the company's liabilities (including contingent liabilities), the company's most recent financial statements, and that the company does not intend to commence winding up within the next 12-months from the date of the solvency statement, the director is of the opinion that:

- there are no grounds on which the company would be unable to pay its debts;
- the company will be able to pay its debts as they fall due in the 12-months from the date of the declaration; and
- the value of the company's assets exceed its liabilities (including contingent liabilities), and that after the RPS redemption, the company's assets will remain more than its liabilities (including contingent liabilities).

In addition, the company is also required to lodge a notice of redemption with ACRA.

It should be noted that a redemption of RPS will not be taken as a share capital reduction under the Companies Act, and the procedure for capital reduction does not apply here. The following table summarises the steps in redeeming RPS.

Steps	Explanation
1. Prepare a board paper for the redemption to be presented to the board.	**Board paper**: The paper should include accounts and all other information that is relevant for the directors to consider the solvency of the company.
2. Procure share certificates of the RPS from the member.	
3. Directors to approve the redemption by a resolution.	Generally, to pass the directors' resolution (board resolution), a majority of voting directors have to vote to in favour of the resolution to redeem RPS. However, the constitution of the company may require a greater majority for resolutions.
4. Directors to make a solvency statement. This is applicable for redemption of the RPS from capital.	**Solvency statement**: A solvency statement is a statement by the directors of the company that they have formed the opinion that: (a) there is no reason to believe that the company will be unable to pay its debts; (b) the company will be able to pay its debts as they fall due during the period of 12-months from the date of the solvency statement (or if the company intends to commence winding up proceedings in the period of 12-months from the date of the solvency statement, that the company will be able to pay its debts as they fall due within that same 12-month period); and (c) the value of the company's assets is more than or equal to the value of its liabilities (including contingent liabilities). Similarly, after the proposed redemption, the company's assets will not become less than the value of its liabilities. **Factors to consider in making a solvency statement**: Directors should take into account: (1) all the liabilities of the company (including contingent liabilities); (2) the company's most recent financial statements; and (3) all other circumstances that affect (or will affect) the value of the company's assets and liabilities.

	To determine the contingent liabilities, directors must consider (i) the likelihood of that contingency occurring, and (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.
5. File the solvency statement with ACRA	**Form of solvency statement**: The solvency statement should be in the form of a written declaration signed by every director. This is applicable for redemption of the RPS from capital. **Exception to solvency statement requirement**: (a) The company has the option of submitting an auditor's report if the company is neither a dormant company (i.e. dormant since its formation or since the end of the previous financial year) nor an exempt private company (i.e. a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members) that is exempt from audit requirements under the Companies Act. (b) The auditor's report to be submitted must state: (i) that the auditor has inquired into the affairs of the company; and (ii) that he is of the opinion that the statement is not unreasonable given all the circumstances.
6. Effect redemption and file the notice of redemption	(a) A private company may redeem RPS by lodging a prescribed notice of redemption with ACRA. (b) If a public company redeems RPS it shall within 14-days (after redemption) give notice to ACRA specifying the shares redeemed.
7. Cancel the share certificates.	

Note: The information in this publication is intended to provide a brief overview of the process for issuing and redeeming redeemable preference shares under the Companies Act 1967 of Singapore. It is not intended as, and should not be relied upon as, legal advice on the subject matter.