

Regarding Kapatens's claim against Ratos

Kapatens (a so-called third-party funder, i.e. a company that invests in others' disputes) has made an offer to prior holders of preference shares in Ratos AB issued in 2013. The offer stipulates that the prior shareholders are to transfer, until further notice, their alleged claims against Ratos to a limited liability company formed by Kapatens for this purpose for SEK 0, after which Kapatens will bring an action against Ratos through said company. If Kapatens succeeds in winning compensation, Kapatens will retain 40% of the amount collected and the prior shareholders who transferred their claims to Kapatens will receive 60%.

The alleged claims in question pertain to dividends on preference shares that were not paid since the preference shares were redeemed by Ratos in accordance with the company's Articles of Association in June 2017, i.e. prior to three of the record dates for dividends. In conjunction with this redemption, Ratos paid a redemption price in accordance with the terms of the preference shares in question.

To date, only prior preference shareholders with a combined holding corresponding to 15–20% of the preference shares in question have transferred their alleged claims to Kapatens, which as of 29 January 2021 corresponded to a demand that Ratos pay approximately SEK 14,700,000 (including interest).

Ratos has contested Kapatens's claim in its entirety and expects that any legal review proceedings would decide in Ratos's favour. Ratos's legal counsel in this matter is Mannheimer Swartling.

In a relatively recent court case, a prior preference shareholder in another company, Balder, claimed that he had a legal right to compensation for unpaid dividends following the redemption of his preference shares. He alleged that he had a "claim" that could not be "extinguished" through the redemption of his shares. This prior preference shareholder lost his case in the District Court and was refused leave to appeal to the Court of Appeal and the Supreme Court of Sweden.

If the legal position Kapatens appears to be invoking were to be deemed valid, this would impact many companies. The number of transactions in question is unclear, but would likely be high since the redemption of preference shares is a common occurrence.

If, contrary to expectations, Kapatens should succeed in its claim, Ratos intends to pay equivalent compensation to other prior shareholders whose preference shares were redeemed, i.e. those shareholders who did not join Kapatens's group claim, without deducting the 40% that Kapatens would retain. As such, there is no reason for additional prior preference shareholders to transfer their alleged claims to Kapatens. For those prior shareholders who have already done so, there is good reason to have the transfer reversed, if possible.

It is unknown whether Kapatens has the financial capacity to compensate Ratos for its legal costs, should Kapatens lose its claim.

Background information, dates, etc.

Kapatens's claim against Ratos does not take into consideration the fact that Ratos is a CSD company.

Ratos's Annual General Meeting on 6 April 2017 resolved to pay the holders of preference shares a dividend of SEK 30 per preference share per quarter up to a maximum of SEK 120 per preference share per year, with the record dates for payment set as 15 May 2017, 15 August 2017, 15 November 2017 and 15 February 2018.

Ratos's Board of Directors decided on 16 May 2017 to reduce the share capital in the company by SEK 2,614,500 and redeem the preference shares in question.

Quarterly dividends had been paid on the preference shares up to and including the record date on 15 May 2017, i.e. in accordance with the dividend resolutions passed by previous Annual General Meetings and the record dates specified in these resolutions.

The preference shares included in the dispute were redeemed on the record date of 13 June 2017. The number of redeemed preference shares amounted to 707,408 (total of 830,000 preference shares issued less 122,592 previously redeemed preference shares).

The redemption price per preference share was SEK 1,837.50, and the shares were traded at SEK 1,835 on the last day of trading (9 June 2017).

In companies that are not CSD companies, claims arising due to resolved dividends are subject to customary legal claim-related obligations regarding, for example, notification. However, this is not the case in CSD companies, in which such matters are governed by the rules regarding the registration of shares (refer to Chapter 4, Sections 39-40 of the Swedish Companies Act). If a share is transferred and the prior shareholder is not registered in the share register as of the record date for dividends, the right to receive dividends falls to the transferee (provided the transferee is registered in the share register as of the record date).

While Ratos is unaware of whether any of the prior preference shareholders who have now transferred their alleged claims to Kapatens had transferred the right to receive future dividends on the preference shares to a third party prior to the record date on 13 June 2017, Kapatens's claim suggests that this did not happen. Otherwise it would have been possible, through a legally binding agreement between the shareholder and transferee, to carry out such a transfer, in which case the redemption provision of the issuing company should naturally be taken into consideration.

Accordingly, none of the prior shareholders whose preference shares were redeemed on the record date of 13 June 2017 (and who have transferred their alleged claims to Kapatens) were registered in the share register as the owner of such preference shares and recorded in a CSD register in accordance with the Central Securities Depositories and Financial Instruments (Accounts) Act as of the record dates on 15 August 2017, 17 November 2017 or 15 February 2018.

In other words, Kapatens's claim alleges that the prior preference shareholders in a CSD company, which received payment for their shares at the time of their redemption in accordance with said company's Articles of Association, have a remaining right to dividends, despite the fact that they no longer own the shares and are not authorised to receive dividends. According to Kapatens, this right apparently applied at the time the preference shares were redeemed, but not at the time of their transfer. Ratos does not share this opinion.

Preference shares

A preference share is a financial product that entitles the holder to a dividend, but can be redeemed in a similar manner to a bond. The capital generated for a company through the issue of preference shares is treated as equity, while the capital generated through the issue of bonds is treated as a liability (external capital).

Pursuant to the Articles of Association, preference shares are designed in such a manner that they are regarded and valued in the same way as bonds. Preference to dividends can be regarded as corresponding to interest paid for the period in which the principal is outstanding. As already stated, the issuer (the company) may redeem the preference shares in the same manner as for bonds. The redemption right and redemption price are stipulated in a so-called redemption provision in the Articles of Association. The size of the dividend that accrues on the preference shares is determined by taking into account the fact that the shares may be redeemed by the company at any given time and taking into account the size of the redemption price, which is normally higher than the subscription price for the shares. In the case of market trading, preference shares are naturally valued in accordance with the terms applicable to said shares.

It is normally the company's Board of Directors that decides on the redemption of preference shares, after a certain amount of time and in accordance with the terms stipulated in the Articles of Association, when the company has alternative financing that, at that time, is a better financial option for the company. This may take place at a point in time when not all of the record dates adopted by the Annual General Meeting have occurred. This is also in accordance with the financial calculation for the preference shares. As already noted, the amount to be paid by the party redeeming the shares, i.e. the issuing company, at that time is regulated by the Articles of Association.