



New South Wales

Legal Profession (Solicitor Corporations) Regulation 1996

under the

Legal Profession Act 1987

His Excellency the Governor, with the advice of the Executive Council, and on the recommendation of the Attorney General, has made the following Regulation under the *Legal Profession Act 1987*.

J. W. Shaw

Attorney General

Explanatory note

The object of this Regulation is to repeal and remake, with no changes in substance, the provisions of the *Legal Profession (Solicitor Corporations) Regulation 1991*. The new Regulation applies provisions of the *Companies Code* to solicitor corporations under the *Legal Profession Act 1987*.

This Regulation is made under the *Legal Profession Act 1987*, including section 216 (the general regulation making power) and section 172K.

This Regulation comprises or relates to matters that do not impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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1 Name of Regulation

This Regulation is the *Legal Profession (Solicitor Corporations) Regulation 1996*.

2 Commencement

This Regulation commences on 1 September 1996.

3 Definitions

(1) In this Regulation:

the Act means the *Legal Profession Act 1987*.

(2) Expressions used in this Regulation have the same meanings as they have in Division 1 of Part 10A of the Act.

4 Explanatory notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

5 Modification of Companies Code

For the purposes of section 172K (3) of the Act, the provisions of the *Companies Code* set out in Schedule 1 are omitted or modified in relation to their application to a solicitor corporation as set out in that Schedule.

6 Repeal

The *Legal Profession (Solicitor Corporations) Regulation 1991* is repealed.

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(Clause 5)

[1] Section 33

Omit the section.

Note. This section (dealing with the formation of companies) is unnecessary. The formation of solicitor corporations is dealt with by section 172B of the Act.

[2] Section 34

Omit the section.

Note. This section (dealing with restrictions on incorporation as a proprietary company) is not to apply to solicitor corporations. All solicitor corporations are declared to be proprietary companies, whether or not they comply with section 34 of the *Companies Code*.

[3] Section 35

Omit the section.

Note. This section (dealing with registration and incorporation of companies) is unnecessary. The registration and incorporation of solicitor corporations is dealt with by section 172D of the Act.

[4] Section 37 (1)

The subsection is modified by omitting paragraphs (c)–(g) and by inserting instead the following paragraphs:

- (c) the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount,
- (d) that the liability of the holders of voting shares is unlimited and the liability of each holder of non-voting shares is limited.

Note. The modification removes requirements concerning the memorandum of a company which are not relevant to solicitor corporations and imposes requirements that reflect the provisions of the Act relating to share holdings.

[5] Section 39

Omit the section.

Note. This section, which deals with the identification of particular classes of companies, does not apply to solicitor corporations. Section 172L of the Act provides that a solicitor corporation need not have any particular word or abbreviation as part of its name.

[6] Section 69

Omit the section.

Note. This section, which deals with changes in the status of companies, does not apply to solicitor corporations. The status of solicitor corporations, which is determined by the Act, cannot be changed.

[7] Section 70

Omit the section.

Note. The Act specifies that solicitor corporations are taken to be exempt proprietary companies for the purposes of the Companies Code. Accordingly, this section, which deals with changes from public to private companies and vice versa, has no application to solicitor corporations.

[8] Section 71

Omit the section.

Note. This section, which deals with a default by a proprietary company in complying with section 34 of the Companies Code, does not apply to solicitor corporations because the restrictions in that section are not to apply to solicitor corporations (see item [2]).

[9] Section 72 (1)

The subsection is modified so that an alteration or addition to the memorandum of a solicitor corporation cannot be effected except with the prior approval in writing of the Law Society Council.

[10] Section 72 (2)

The subsection is modified so as to require a solicitor corporation, in addition to lodging the documents referred to in the subsection, to lodge with the Director-General of the Department of Fair Trading a

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certificate of the Law Society Council certifying its approval to the alteration of or addition to the memorandum of the solicitor corporation.

[11] **Section 72 (5)**

The subsection is modified so that the Director-General of the Department of Fair Trading must not register an alteration of or addition to the memorandum of a solicitor corporation unless there is lodged with the Director-General the certificate of the Law Society Council certifying its approval to the alteration or addition.

Note. Section 172M (1) (a) of the Act provides that the written approval of the Law Society Council must be obtained to an alteration or addition to the memorandum of a solicitor corporation. Consequential modifications are made to section 72 of the *Companies Code*.

[12] **Section 73 (1) and (2)**

The subsections are modified by insertion of a requirement that, before making a special resolution, a solicitor corporation must obtain the approval in writing of the Law Society Council to the proposed alteration, omission or insertion of provisions to, from or in the memorandum of the solicitor corporation.

Note. Section 73 (1) and (2) of the *Companies Code* deal with changes in the memorandum of a company. Section 172M (1) of the Act requires a solicitor Corporation to obtain the written consent of the Law Society Council before making any such change. The proposed modification inserts this requirement.

[13] **Section 74 (1)**

The subsection is modified by insertion of a requirement that, when the memorandum of a solicitor corporation is registered, there must also be registered articles prescribing regulations for the solicitor corporation (being articles that have been signed by the subscribers to the memorandum and certified as having been approved by the Law Society Council).

Note. Section 74 (1) of the *Companies Code* deals with registration of the articles of companies. Section 172C of the Act requires the approval of the Law Society Council to be obtained to the articles of a solicitor corporation. The proposed modification reflects this requirement of the Act.

[14] Section 75

Omit the section.

Note. This section, which provides for adoption by companies of model articles contained in Table A or B of the *Companies Code*, is not to apply to solicitor corporations. The model articles do not reflect the special provisions that apply to solicitor corporations.

[15] Section 76 (1)

The subsection is modified by insertion of a requirement that a solicitor corporation must not alter or add to its articles by special resolution unless the proposed alteration or addition has been approved by the Law Society Council.

Note. Section 76 (1) of the *Companies Code* deals with an alteration or addition to the articles of a company by special resolution. Section 172M (1) of the Act provides that a solicitor corporation must have the written approval of the Law Society Council before making such an alteration or addition. The proposed modification reflects this requirement.

[16] Section 79 (4)

Omit the subsection.

Note. This subsection, which requires that a copy of any agreement referred to in section 251 of the *Companies Code* (being an agreement binding a class of shareholders and affecting the memorandum or articles of a company) must be lodged with the Commission, is not to apply to a solicitor Corporation.

[17] Section 82

Omit the section.

Note. This section, which prohibits a company from carrying on business with fewer than the statutory minimum number of members, does not apply to a solicitor corporation. Under the Act, a solicitor corporation may have as few as one voting shareholder.

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[18] Section 123 (12)

The subsection is modified so that section 123 of the *Companies Code* does not apply to so much of the share capital of a solicitor corporation as is represented by voting shares, and so that the Code does not preclude a solicitor corporation reducing such share capital (including amounts in its share premium account resulting from the issue of voting shares).

Note. This modification is consequential on the fact that only voting shares in a solicitor corporation have unlimited liability.

[19] Section 124 (1)

Omit the subsection.

Note. Section 124 (1) of the *Companies Code* requires a company to lodge with the Director-General of the Department of Fair Trading notice of special rights attached to shares which are not provided for in its articles. Solicitor corporations are not to be required to give such notice.

[20] Part IV, Division 3A

Omit the Division.

Note. The Division permits “buy-backs” of shares by companies. It is not to apply to solicitor corporations.

[21] Section 218

The section is modified so that, in addition to the name of a solicitor corporation appearing on the seal, business letters, official notices and other documents referred to in the section, notice of the fact that the corporation is formed or incorporated under the Legal Profession Act 1987 must also appear.

Note. Section 218 of the *Companies Code* is extended to require a solicitor corporation to disclose the fact that it is incorporated under the Act.

[22] Section 219

Omit the section.

Note. Section 172J of the Act deals exclusively with the number of directors and the qualifications of directors of a solicitor corporation. In particular, the Act provides that a solicitor corporation need not have more than one director whereas section 219 of the *Companies Code* provides that a proprietary company must have at least 2 directors.

[23] Section 222 (1)

The subsection is modified so that, if a director of a solicitor corporation is the only director holding a current unrestricted practising certificate, the office of that director is vacated if the director ceases to hold such a certificate.

Note. Section 222 of the *Companies Code* deals with vacation of office by directors. Section 172J of the Act requires that the director, or at least one of the directors, of a solicitor corporation must hold a current unrestricted practising certificate. The proposed modification extends the vacation of office provision to a case in which the only director who holds the requisite certificate ceases to do so.

[24] Section 234 (1)

The subsection is modified so as:

- (a) to apply to a solicitor corporation, and
- (b) to require the prior approval in writing of the Law Society Council (in addition to a special resolution of the solicitor corporation) to any assignment of office by a director.

Note. Section 234 of the *Companies Code*, which deals with assignment of office by directors of public companies, is extended by the modification to apply to directors of solicitor corporations with the additional requirement that the prior written approval of the Law Society Council be obtained to any such assignment.

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[25] Section 234 (2)

The subsection is modified so that it does not apply unless the alternate or substitute director is a person who may be appointed as a director of a solicitor corporation under the Act.

Note. Section 234 (2) of the *Companies Code* provides that section 234 is not to be taken to prevent a director appointing an alternate or substitute director to act on the director's behalf when the director is unable to act. The modification requires that, in the case of a director of a solicitor corporation, any alternate or substitute director appointed must be a person who is capable of being appointed as a director of a solicitor corporation under the Act.

[26] Section 251

Omit the section.

Note. Section 251 of the *Companies Code* requires a company to lodge copies of the following documents with the Director-General of the Department of Fair Trading (where the Code does not otherwise require them to be lodged):

- (a) special resolutions,
- (b) agreements binding classes of shareholders,
- (c) documents or resolutions attaching rights to shares.

The requirement to lodge the above is not to apply to solicitor corporations.

[27] Section 263

The section (and any other provision of the *Companies Code* and the *Companies Code* regulations relating to lodging of documents or information with the Director-General of the Department of Fair Trading) are modified so that a solicitor corporation is not required to lodge with the Director-General (whether or not in or accompanying an annual return) any copy of a document or information required by section 275 of the Code to be laid before an annual general meeting of the solicitor corporation.

Note. Section 263 and other provisions of the *Companies Code* require a company to lodge annual and other returns with the Director-General of the Department of Fair Trading. Solicitor corporations are to be exempt from the requirement to lodge documents tabled at the annual general meeting of a solicitor corporation under section 275 of the Code, namely, copies of accounts, directors' reports and auditors' reports.

[28] Section 277 (12)

The subsection is modified so that the approval of the Law Society Council, as well as that of the Director-General of the Department of Fair Trading, must be obtained to the appointment of an auditor as referred to in the subsection.

Note. Section 277 (12) of the *Companies Code*, which permits approved persons to act as auditors of certain exempt proprietary companies if the Director-General of the Department of Fair Trading considers it is impracticable for such a company to engage a registered company auditor, is to apply to a solicitor corporation only if the Law Society Council also approves of the appointment.