

Legal Profession Uniform General Amendment (Managed Investment Schemes) Rules 2018

under the

Legal Profession Uniform Law

The Legal Services Council has made the following rules under the *Legal Profession Uniform Law* on 28 June 2018.

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Chief Executive Officer, Legal Services Council

1 Citation

These Rules may be cited as the Legal Profession Uniform General Amendment (Managed Investment Schemes) Rules 2018.

2 Commencement

These Rules come into operation on 1 July 2018.

3 Objective

The objective of these Rules is to amend the Legal Profession Uniform General Rules 2015 to prescribe certain matters for the purposes of section 258 of the Uniform Law, which deals with prohibited services and businesses (including managed investment schemes).

4 Authorising provision

These Rules are made by the Legal Services Council under Part 9.2 of the Uniform Law.

5 New Division inserted in Part 4.6

After the heading to Part 4.6 of the Legal Profession Uniform General Rules 2015 insert—

"Division 1 Prohibited businesses and services

91A Related entities for purposes of section 258

- (1) This rule specifies, for the purposes of section 258 of the Uniform Law, who is to be a *related entity* in relation to a law practice to which this rule applies.

Note

In section 6(1) of the Uniform Law, paragraph (b) of the definition of *related entity* provides that these Rules may specify who is to be a related entity in relation to certain persons.

- (2) This rule applies to a law practice that is—
 - (a) a sole practitioner; or
 - (b) a law firm; or
 - (c) a community legal service that is not a company; or
 - (d) an incorporated legal practice that is not a company; or
 - (e) an unincorporated legal practice.
- (3) If the law practice is a body corporate, another body corporate is a *related entity* if the two are related bodies corporate.
- (4) If the law practice is not a body corporate, a body corporate is a *related entity* to the law practice if any of the following paragraphs describes the relationship between the law practice and either the body corporate or a holding company of the body corporate—
 - (a) the law practice controls the composition of the board of the body corporate or holding company; or
 - (b) the law practice is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate or holding company; or
 - (c) the law practice holds more than one-half of the issued share capital of the body corporate or holding company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (d) if there is a committee of, or other body having management of, the law practice, the body corporate or holding company controls the composition of that committee or other body; or
 - (e) if the law practice has meetings at which persons constituting the law practice vote on matters concerning the management of the law practice, the body corporate or holding company is in a position to cast, or control the casting of, more than one-half of

the maximum number of votes that might be cast at such a meeting.

(5) In this rule:

holding company has the same meaning as it has in the Corporations Act;

related body corporate has the same meaning as it has in the Corporations Act.

91B Managed investment schemes

- (1) For the purposes of section 258(3) of the Uniform Law, a law practice is permitted to provide legal services in relation to a managed investment scheme, despite an associate of the law practice having an interest in the scheme or the responsible entity for the scheme, if:
- (a) those legal services are provided to the operator of the scheme; or
 - (b) no associate of the law practice has a substantial interest (within the meaning of subrule (2)) in the scheme or the responsible entity for the scheme; or
 - (c) one or more associates of the law practice has a substantial interest (within the meaning of subrule (2)) in the scheme or the responsible entity for the scheme, but no principal of the law practice either—
 - (i) knows of any of those interests; or
 - (ii) ought reasonably to know of any of those interests.
- (2) For the purposes of subrule (1), an associate has a *substantial* interest in a managed investment scheme or responsible entity if the associate:
- (a) is entitled, at law or in equity, to an interest in the assets of the managed investment scheme or responsible entity which is significant or of relatively substantial value; or
 - (b) exercises any material control over the conduct and operation of the managed investment scheme or responsible entity; or
 - (c) has an entitlement to a share of the income of the managed investment scheme or responsible entity which is substantial, having regard to the total income which is derived from it.

91C Mortgages

- (1) For the purposes of section 258(4)(c), a mortgage is exempt from the prohibition in section 258(4) if:
 - (a) the lender is not a financial institution; and
 - (b) neither the law practice, nor any associate, agent or appointee of the law practice, introduced the borrower to the lender.
- (2) For the purposes of section 258(4)(c), a mortgage is exempt from the prohibition in section 258(4) if:
 - (a) the lender is not a financial institution; and
 - (b) the borrower was introduced to the lender by:
 - (i) the law practice; or
 - (ii) an associate, agent or appointee of the law practice; and
 - (c) that introduction occurred other than as part of mortgage financing engaged in by the practice or person who made the introduction.

91D Financial institutions

For the purposes of paragraph (b) of the definition of *financial institution* in section 258(5) of the Uniform Law, the following classes of body are specified:

- (a) a body that is a professional investor within the meaning of the Corporations Act;
- (b) a body that holds an Australian credit licence within the meaning of the *National Consumer Credit Protection Act 2009* of the Commonwealth;
- (c) a body:
 - (i) whose ordinary business includes the lending of money; and
 - (ii) whose consolidated gross assets have a value of more than \$10 million;
- (d) a related body corporate, within the meaning of section 50 of the Corporations Act, to a body of a class specified in any other paragraph of this rule."

6 New Division heading inserted before rule 92

Before rule 92 of the Legal Profession Uniform General Rules 2015 insert the following Division heading:

"Division 2 Registers".

7 Rule 92 amended

In rule 92 of the Legal Profession Uniform General Rules 2015, for "this Part" substitute "this Division".