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LEGAL PROFESSION ACT 1987 - REGULATION
(Legal Profession (Solicitor Corporations) Regulation 1991)

NEW SOUTH WALES



[Published in Gazette No. 41 of 8 March 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Legal Profession Act 1987, has been pleased to make the Regulation set forth hereunder.

JOHN DOWD
Attorney General.

Citation

1. This Regulation may be cited as the Legal Profession (Solicitor Corporations) Regulation 1991.

Commencement

2. This Regulation commences on the commencement of Part 10A of the Act.

Definitions

3. (1) In this Regulation:

"**the Act**" means the Legal Profession Act 1987;

"**the Table**" means the Table to this Regulation.

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

Modification etc. of Companies Code

4. For the purposes of section 172K (3) of the Act, the provisions of the Companies Code set out in Column 1 of the Table are omitted or modified in relation to their application to a solicitor corporation as set out in Column 2 of the Table.

Explanatory notes

5. Explanatory notes set out in this Regulation do not form part of this Regulation.

TABLE - MODIFICATION ETC. OF COMPANIES CODE

Column 1	Column 2
Section 33	Omit the section.

[EXPLANATORY NOTE: This section (dealing with the formation of companies) is unnecessary as the formation of solicitor corporations is dealt with by section 172B of the Act.]

Section 34	Omit the section.
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[EXPLANATORY NOTE: This section (dealing with restrictions on incorporation as a proprietary company) is not to apply to solicitor corporations since all solicitor corporations are declared to be proprietary companies whether or not they comply with section 34 of the Companies Code.]

Section 35	Omit the section.
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[EXPLANATORY NOTE: This section (dealing with registration and incorporation of companies) is unnecessary as the registration and incorporation of solicitor corporations is dealt with by section 172D of the Act.]

Section 37 (1)	Section 37 (1) 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;
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- (d) that the liability of the holders of voting shares is unlimited and the liability of each holder of non-voting shares is limited.

[EXPLANATORY 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.]

Section 39 Omit the section.

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

Section 69 Omit the section.

[EXPLANATORY 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.]

Section 70 Omit the section.

[EXPLANATORY 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.]

Section 71 Omit the section.

[EXPLANATORY 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 section 34 are not to apply to solicitor corporations.]

Section 72 (1) The provision 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.

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Section 72 (2) The provision is modified so as to require a solicitor corporation, in addition to lodging the documents referred to in the subsection, to lodge with the Commission a certificate of the Law Society Council certifying its approval to the alteration of or addition to the memorandum of the solicitor corporation.

Section 72 (5) The provision is modified so that the Commission must not register an alteration of or addition to the memorandum of a solicitor corporation unless there is lodged with the Commission the certificate of the Law Society Council certifying its approval to the alteration or addition.

[EXPLANATORY 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.]

Section 73 (1) and (2) The provisions 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.

[EXPLANATORY NOTE: Section 73 (1) and (2) 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.]

Section 74 (1) The provision is modified by insertion of a requirement that there must, in the case of a solicitor corporation, be registered with the memorandum,

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articles signed by the subscribers to the memorandum prescribing regulations for the solicitor corporation and certified as having been approved by the Law Society Council.

[EXPLANATORY NOTE: Section 74 (1) deals with registration of the articles of companies. Section 172C of the Act provides that the approval of the Law Society Council must be obtained to the articles of association of a solicitor corporation. The proposed modification reflects this requirement of the Act.]

Section 75 Omit the section.

[EXPLANATORY 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 provisions do not reflect the special provisions that apply to solicitor corporations.]

Section 76 (1) The provision is modified by insertion of a requirement that a solicitor corporation may by special resolution alter or add to its articles only after the proposed alteration or addition has been approved by the Law Society Council.

[EXPLANATORY 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 inserts this requirement.]

Section 79 (4) Omit the subsection.

[EXPLANATORY NOTE: This subsection, which requires that a copy of any agreement referred to in section 251 of the Companies Code binding a class of shareholders and affecting the memorandum or articles of a company must be lodged with the Commission, is not apply to a solicitor corporation.]

Section 82 Omit the section.

[EXPLANATORY 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 only one voting shareholder.]

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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).

[EXPLANATORY NOTE: This modification makes a consequential change because only voting shares in a solicitor corporation have unlimited liability.]

Section 124 (1) Omit the subsection.

[EXPLANATORY NOTE: Section 124 (1) of the Companies Code requires a company to lodge with the Commission notice of special rights attached to shares which are not provided for in its articles etc. Solicitor corporations are not to be required to give such notice.]

Part IV, Division 3A Omit the Division.

[EXPLANATORY NOTE: The Division permits "buy-backs" of shares by companies. It is not to apply to solicitor corporations.]

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.

[EXPLANATORY NOTE: Section 218 of the Companies Code is extended to require a solicitor corporation to disclose the fact that it is incorporated under the Legal Profession Act 1987.]

Section 219 Omit the section.

[EXPLANATORY NOTE: Section 172J of the Act deals exclusively with the number of directors and the qualifications of directors of a solicitor corporation. In

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particular, the Act provides that a solicitor corporation need only have 1 director whereas section 219 of the Companies Code provides that a proprietary company must have at least 2 directors.]

Section 222 (1) The provision is modified so that, if a director of a solicitor corporation is the only director holding a current unrestricted practising certificate, the office of the director is vacated if the director ceases to hold such a certificate.

[EXPLANATORY 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 sole or remaining director ceases to hold the requisite certificate.]

Section 234 (1) The provision is modified so that it applies to a solicitor corporation and so that the prior approval in writing of the Law Society Council must be obtained by the solicitor corporation to any assignment of office by a director in addition to a special resolution of the solicitor corporation.

[EXPLANATORY 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.]

Section 234 (2) The provision 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.

[EXPLANATORY 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,

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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.]

Section 251 Omit the section.

[EXPLANATORY NOTE: Section 251 of the Companies Code requires a company to lodge copies of the following documents with the Commission (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.]

Section 263 The provision (and any other provision of the Companies Code and the Companies Code regulations relating to lodging of documents or information with the Commission) are modified so that a solicitor corporation is not required to lodge with the Commission (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.

[EXPLANATORY NOTE: Section 263 and other provisions of the Companies Code require a company to lodge annual and other returns with the Commission. 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.]

Section 277 (12) The provision is modified so that the requisite approval of the Law Society Council, as well as that of the Commission, must be obtained to the appointment of an auditor as referred to in the subsection.

[EXPLANATORY NOTE: Section 277 (12) of the Companies Code, which permits approved persons to act as auditors of certain exempt proprietary companies if the Commission 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.]

NOTES

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EXPLANATORY NOTE

Part 10A of the Legal Profession Act 1987 will, on its commencement, provide for the incorporation of solicitor corporations. Under the Act, the Companies Code and regulations apply as if a solicitor corporation were an unlimited company having a share capital and an exempt proprietary company, subject to any exceptions or modifications prescribed by the regulations under the Legal Profession Act 1987. The object of this Regulation is to prescribe those exceptions and modifications. An explanation of each exception or modification is set out in the Regulation.
