

**First Corporate Law Simplification Act 1995**

**No. 115 of 1995**

An Act to amend the Corporations Law, to repeal the Close Corporations legislation, and for related purposes

The Parliament of Australia enacts:

[Assented to 17 October 1995]

**1** **Short title etc.**

(1) This Act may be cited as the *First Corporate Law Simplification Act 1995.*

(2) In this Act:

**“Corporations Law”** means the Corporations Law set out in section 82 of the *Corporations Act 1989*1.

**2** **Commencement**

(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the rest of this Act commences on a day or days to be fixed by Proclamation. Different days may be fixed for sections, Schedules and items within Schedules.

(3) If a section, a Schedule or an item of a Schedule does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

**3** **Share buy-back amendments—Schedules 1 and 2**

(1) *New share buy-backs Division*

Division 4B of Part 2.4 of the Corporations Law is repealed and the Division set out in Schedule 1 to this Act is substituted.

(2) *Other share buy-back amendments*

The Corporations Law is amended as set out in Schedule 2 to this Act.

**4 Proprietary company amendments—Schedules 3 and 4**

(1) *Small business guide*

After Part 1.3 of the Corporations Law the Parts set out in Schedule 3 to this Act are inserted in Chapter 1 of that Law.

(2) *Other proprietary company amendments*

The Corporations Law is amended as set out in Schedule 4 to this Act.

Formal parts of Act

**5** **Company registers amendments—Schedules 5, 6 and 7**

(1) *New company registers Division*

After Part 2.4 of the Corporations Law the Part set out in Schedule 5 to this Act is inserted in Chapter 2 of that Law.

(2) *Other company registers amendments*

The Corporations Law is amended as set out in Schedule 6 to this Act.

(3) The Australian Securities Commission Act 19892 is amended as set out in Schedule 7 to this Act.

**6** **Repeals**

The following Acts are repealed:

(a) *Close Corporations Act 1989*

(b) *Close Corporations (Liquidators’ Recovery Trust Fund Contribution) Act 1989*

(c) *Close Corporations (Additional Liquidators’ Recovery Trust Fund Contribution) Act 1989*

(d) *Close Corporations (Fees) Act 1989.*

**Schedule 1**

**New share buy-backs Division**

***Division 4B—Share buy-backs***

206A Purpose

206B The company’s power to buy back its own shares

206C Buy-back procedure—general

206D Buy-back procedure—shareholder approval if the 10% in 12 months limit exceeded

206E Buy-back procedure—special shareholder approval for selective buy-back

206F Buy-back procedure—lodgment of offer documents with the ASC

206G Notice of intended buy-back

206H Buy-back procedure—disclosure of relevant information when offer made

206I Acceptance of offer and transfer of shares to the company

206J Buy-back procedure—notice to ASC of cancellation of shares

206K Signposts to other relevant provisions

**Constitution of companies Chap: 2**

**Membership and share capital Part: 2.4**

**Share buy-backs Div: 4B**

**section 206A**

***Division 4B—Share buy-backs***

**206A Purpose**

This Division states the rules to be followed by a company when buying back its own shares. These rules are designed to protect the interests of shareholders and creditors by:

(a) addressing the risk of buy-back activity leading to the company’s insolvency

(b) seeking to ensure fairness between the company’s shareholders

(c) requiring the company to disclose all material information.

**206B The company’s power to buy back its own shares**

A company may buy back its own shares (other than redeemable preference shares) if it follows the procedures laid down in this Division.

Note 1: A company may include provisions in its articles that preclude the company buying back its own shares or impose restrictions on the exercise of the company’s power to buy back its own shares.

Note 2: For the redemption of redeemable preference shares see section 192.

**Chap: 2 Constitution of companies**

**Part: 2.4 Membership and share capital**

**Div: 4B Share buy-backs**

**section 206C**

**206C Buy-back procedure—general**

(1) The following table specifies the steps required for, and the sections that apply to, the different types of buy-back.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Procedures**  **[and sections applied]** | **odd**  **lot** | **employee share scheme** | | **on\*market** | | **equal access scheme** | | **selective**  **buy-back** |
| **within**  **10/12**  **limit** | **over**  **10/12**  **limit** | **within**  **10/12**  **limit** | **over**  **10/12**  **limit** | **within**  **10/12**  **limit** | **over**  **10/12**  **limit** |
| ordinary resolution **[206D]** | - | - | yes |  | yes | - | yes | - |
| special/unanimous  resolution  **[206E]** | - | - | - | - | - | - | - | yes |
| lodge offer documents with  ASC  **[206F]** | - | - |  | - | - | yes | yes | yes |
| 14 days’ notice  **[206G]** | - | yes | yes | yes | yes | yes | yes | yes |
| disclose relevant information when offer made  **[206H]** | - | - | - | - | - | yes | yes | yes |
| cancel shares  **[2061]** | yes | yes | yes | yes | yes | yes | yes | yes |
| notify ASC of cancellation **[206J]** | yes | yes | yes | yes | yes | yes | yes | yes |

Note: Subsections (2) and (3) of this section explain what an equal access scheme is. The 10/12 limit is the 10% in 12 months limit laid down in subsections (4) and (5). See section 9 for definitions of “odd lot buy-back”, “employee share scheme buy-back”, “on-market buy-back” and “selective buy-back”.

**Constitution of companies Chap: 2**

**Membership and share capital Part: 2.4**

**Share buy-backs Div: 4B**

**section 206C**

(2) *Equal access scheme*

An equal access buy-back scheme is a scheme that satisfies all the following conditions:

(a) the offers under the scheme relate only to ordinary shares

(b) offers are to be made to every person who holds ordinary shares to buy back the same percentage of their ordinary shares

(c) all of those persons have a reasonable opportunity to accept the offers made to them

(d) buy-back agreements are not entered into until a specified time for acceptances of offers has closed

(e) the terms of all the offers are the same.

(3) In applying subsection (2), disregard:

(a) any difference in consideration attributable to the fact that the offers relate to shares having different accrued dividend entitlements

(b) any difference in consideration attributable to the fact that the offers relate to shares on which different amounts are paid up or on which different amounts remain unpaid

(c) any difference in the offers introduced solely for the purpose of avoiding shareholders being left with odd lots

(d) any difference in the exact percentage of shares bought back introduced solely for the purpose of ensuring that only whole numbers of shares are bought back.

(4) *10/12 limit*

The 10/12 limit for a company proposing to make a buy-back is 10% of the smallest number, at any time during the last 12 months, of votes attaching to voting shares of the company.

**Chap: 2 Constitution of companies**

**Part: 2.4 Membership and share capital**

**Div: 4B Share buy-backs**

**section 206D**

(5) *Exceeding the 10/12 limit*

A proposed buy-back would exceed the 10/12 limit if the number of votes attaching to:

(a) all the voting shares in the company that have been bought back during the last 12 months; and

(b) the voting shares that will be bought back if the proposed buy-back is made;

would exceed the 10/12 limit.

**206D Buy-back procedure—shareholder approval if the 10% in 12 months limit exceeded**

(1) *Ordinary resolution required*

If section 206C applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by a resolution passed at a general meeting of the company, or the agreement must be conditional on such an approval.

(2) *Information to accompany the notice of meeting*

The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision whether to vote in favour of the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

(3) *Documents to be lodged with the ASC*

Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:

(a) the notice of the meeting; and

(b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.

**Constitution of companies Chap: 2**

**Membership and share capital Part: 2.4**

**Share buy-backs Div: 4B**

**section 206E**

**206E Buy-back procedure—special shareholder approval for selective buy-back**

(1) *Selective buy-back requires special or unanimous resolution*

If section 206C applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by either:

(a) a special resolution passed at a general meeting of the company with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or their associates; or

(b) a resolution agreed to by all ordinary shareholders at a general meeting;

or the agreement must be conditional on such an approval.

(2) *Information to accompany the notice of meeting*

The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision whether to vote in favour of the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

(3) *Documents to be lodged with the ASC*

Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:

(a) the notice of the meeting; and

(b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.

(4) The ASC may exempt a company from the operation of this section. The exemption:

(a) must be in writing; and

(b) must be granted before the buy-back agreement is entered into; and

(c) may be granted subject to conditions.

**Chap: 2 Constitution of companies**

**Part: 2.4 Membership and share capital**

**Div: 4B Share buy-backs**

**section 206F**

**206F Buy-back procedure—lodgment of offer documents with the ASC**

If section 206C applies this section to a buy-back, the company must lodge with the ASC, before the buy-back agreement is entered into, a copy of:

(a) a document setting out the terms of the offer; and

(b) any document that is to accompany the offer.

**206G Notice of intended buy-back**

(1) If section 206C applies this section to a buy-back, the company must satisfy the lodgment requirement in subsection (2) at least 14 days before:

(a) if the buy-back agreement is conditional on the passing of a resolution under subsection 206D(1) or 206E(1)—the resolution is passed; or

(b) if it is not—the agreement is entered into.

(2) The company satisfies the lodgment requirement when it lodges with the ASC:

(a) documents under subsection 206D(3) or 206E(3) or section 206F; or

(b) a notice that the company intends to carry out the buy-back.

Note 1: A company that has to lodge documents under section 206D, 206E or 206F needs to lodge a notice under paragraph (2)(b) only if it wants for some reason to have less than 14 days between lodging the section 206D, 206E or 206F documents and entering into the buy-back agreement or the passing of the resolution.

Note 2: The company may specify a buy-back under paragraph (2)(b) in any way. It may, for instance, choose to lodge a notice covering buy-backs to be carried out:

\* under a particular scheme; or

\* as part of particular on-market buy-back activity.

**206H Buy-back procedure—disclosure of relevant information when offer made**

If section 206C applies this section to a buy-back, the company must include with the offer to buy back shares a statement setting out all information known to the company that is material to a shareholder’s decision whether to accept the offer.

**Constitution of companies Chap: 2**

**Membership and share capital Part: 2.4**

**Share buy-backs Div: 4B**

**section 206I**

**206I Acceptance of offer and transfer of shares to the company**

(1) *Effect of acceptance of the buy-back offer on share rights*

Once a company has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.

(2) *Shares transferred to the company and cancelled*

A company must not deal in shares it buys back. An agreement entered into in contravention of this subsection is void.

(3) Immediately after the registration of the transfer to the company of the shares bought back, the shares are cancelled. This cancellation does not reduce the company’s nominal share capital.

**206J Buy-back procedure—notice to ASC of cancellation of shares**

Within 1 month after registering the transfer, the company must lodge with the ASC a notice that states:

(a) the number of shares transferred; and

(b) the class of shares transferred; and

(c) the consideration paid for the shares.

**206K Signposts to other relevant provisions**

The following table sets out other provisions of the Law that are relevant to buy-backs.

|  |  |
| --- | --- |
| section 588G  section 1317HA | **liability of directors on insolvency**  Under the combined operation of these sections, the directors may have to compensate the company if the company is, or becomes, insolvent when the company enters into the buy-back agreement. |
| section 1324 | **injunctions to restrain contravention**  Under this section, the Court may grant an injunction against conduct that constitutes or would constitute a contravention of the Law. |

**Chap: 2 Constitution of companies**

**Part: 2.4 Membership and share capital**

**Div: 4B Share buy-backs**

**section 206K**

|  |  |
| --- | --- |
| section 733 | **ASC intervention (application to the Panel)**  Under this section, the ASC may apply to the Corporations and Securities Panel for 9 declaration if it appears to the ASC that unacceptable circumstances have or may have occurred in relation to a share buy-back. If the Panel makes a declaration it may exercise a range of powers under section 734. |
| section 42A  section 632A | **application of takeover provisions**  These sections deal with the application of Chapter 6 to buy-backs. |
| section 205 | **consequences of failure to follow procedures—the company and the officers**  If a company fails to follow the procedures in the buy-backs Division, the company contravenes this section and the officers who are involved in the contravention commit an offence. |
| subsection  206(1A) | **consequences of failure to follow procedures—the transaction**  This subsection provides that a failure to follow the procedures does not affect the validity of the buy-back transaction itself. |
| sections  1001A-1001D | **continuous disclosure provisions**  Under these sections, a disclosing entity is required to disclose information about its securities that is material and not generally available. |
| Part 3.2A | **benefits to related parties to be disclosed**  Under this Part, a financial benefit to a director or other related party, that could adversely affect the interests of members of a public company or diminish or endanger its resources, must be approved by a general meeting before it is given. |
| section 162 | **provisions in articles**  This section deals with the way in which a company’s articles may restrict the exercise of the company’s powers and the consequences of a failure to observe these restrictions. |
| section 197 | **variation of class rights**  This section deals with the variation of rights attached to a class of shares. This variation may be governed by the provisions of the company’s memorandum and articles. |

**Schedule 2**

Other share buy-back amendments

Other share buy-back amendments

**1. *Section 9***

*Insert the following definitions:*

**“ASC”** means the Australian Securities Commission;

**“buy-back”** by a company means the acquisition by the company of shares in itself;

**“buy-back agreement”** by a company means an agreement by the company to buy back its own shares (whether the agreement is conditional or not);

**“employee share scheme buy-back”** means a buy-back under a scheme that:

(a) has as its purpose the acquisition of shares in a company by or on behalf of participating employees; and

(b) has been approved by the company in general meeting;

Note: “participating employee" is defined below in this section.

**“equal access scheme”** has the meaning given by subsections 206C(2) and (3);

**“marketable parcel”** of shares in a listed corporation means a marketable parcel within the meaning of the rules of the relevant securities exchange;

**“odd lot buy-back”** means a buy-back of shares in a listed corporation if the parcel of shares bought back is smaller than a marketable parcel;

**“on-market buy-back”** means a buy-back by a listed corporation at an official meeting of a securities exchange in the ordinary course of trading on a stock market of the exchange;

“**selective buy-back”** means a buy-back that is none of the following:

(a) a buy-back under an equal access scheme within the meaning of subsections 206C(2) and (3)

(b) an odd lot buy-back

(c) an on-market buy-back

(d) an employee share scheme buy-back;

**2. *Section 9* (*paragraph (b) of the definition of “voting share”*)**

*After the paragraph, insert:*

(ba) on a resolution to approve the terms of a buy-back agreement;

Other share buy-back amendments

**3. *After section 42***

*Insert:*

**42A Shares covered by buy-back agreements**

For the purposes of Chapter 6, disregard any effect that a buy-back agreement has on relevant interests in the shares being bought back.

Note: This section docs not deal with the effect on relevant interests of the cancellation of shares under subsection 206I(3).

**4. *Paragraph 191(2)(ea)***

*Omit, substitute:*

(ea) in providing for consideration payable by the company on a buy-back of its shares; or

**5. *After subsection 205(1)***

*Insert:*

(1A) A buy-back authorised by section 206B does not contravene subparagraph (1)(b)(i).

**6. *Subsection 206(1)***

*Omit, insert:*

(1) Except as provided by this section, the validity of a contract or transaction is not affected by a contravention of:

(a) paragraph 205(1)(a); or

(b) paragraph 205(1)(b)—unless the contract or transaction effects the acquisition that constitutes the contravention; or

(c) paragraph 205(1)(c)—unless the contract or transaction effects the acquisition that constitutes the contravention.

(1A) If the contract or transaction is constituted by:

(a) a buy-back of shares by a company; or

(b) the transfer of shares to a company under a buy-back;

Other share buy-back amendments

paragraph (1)(b) does not apply and the validity of a contract or transaction is not affected by a contravention of paragraph 205(1)(b) (even if the contract or transaction is the one that effects the acquisition that constitutes the contravention).

**7. *After section 553A***

*Insert:*

**553AA Selling shareholder cannot prove debt unless documents given**

The selling shareholder in a share buy-back may claim in a winding up of the company but is not entitled to a distribution of money or property unless the shareholder has discharged the shareholder’s obligations to give documents in connection with the buy-back.

Note: The selling shareholder’s claim ranks after those of non-member creditors and before those of other member creditors (see section 563AA).

**8. *Section 553E***

*Omit* “sections 206RD and 279”, *substitute* “section 279”.

**9. *After section 563***

*Insert:*

**563AA Seller under a buy-back agreement**

(1) The selling shareholder’s claim under a buy-back agreement is postponed until all debts owed to people otherwise than as members of the company have been satisfied.

(2) The shareholder’s claim is not a debt owed by the company to the seller in the shareholder’s capacity as a member of the company for the purposes of section 563A.

**10. *After subsection 568(1)***

*Insert:*

(1AA) This section does not apply to an agreement by the company to buy back its own shares.

Other share buy-back amendments

**11. *After subsection 588G(1)***

*Insert:*

(1A) For the purposes of this section, a company that buys back shares incurs a debt (even if the consideration is not a sum certain in money). The debt is incurred at the time when the buy-back agreement is entered into.

**12. *Section 603 (paragraph (b) of the definition of “prescribed occurrence”)***

*After the paragraph, insert:*

(ba) the target company or a subsidiary:

(i) entering into a buy-back agreement; or

(ii) resolving to approve the terms of a buy-back agreement under subsection 206D(1) or 206E(1);

**3.*****After section 632***

*Insert:*

**632A Acquisition by way of buy-back**

Section 615 does not apply to a buy-back authorised by section 206B.

**14.** ***Subsection 732(1)***

*Add at the end:*

; or (e) a company carries out, or proposes to carry out, a buy-back that is unreasonable having regard to:

(i) the effect of the buy-back on the control of that company or of another company; and

(ii) the fact that the disclosure and other procedural safeguards of this Chapter do not apply to the buy-back because of section 632A.

**5. *After subsection 1324(1)***

*Insert:*

(1A) For the purposes of subsection (1), a contravention of the Law affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention. This subsection does not limit subsection (1) in any way.

**Schedule 3**

**New Parts 1.4 and 1.5**

**Part 1.4—Technical provisions about aids for readers**

111J Small business guide

**Part 1.5—Small business guide**

1 What incorporation means

2 The company structure for small business

3 Setting up a new company

4 Continuing obligations after the company is set up

5 Company directors and company secretaries

6 Shares and shareholders

7 Funding the company’s operations

8 Returns to shareholders

9 Accounts and audit for small proprietary companies

10 Disagreements within the company

11 Companies in trouble

**Part 1.4—Technical provisions about aids for readers**

**111J Small business guide**

(1) The regulations may amend the small business guide in Part 1.5 if the amendments are necessary to reflect the regulations or instruments issued by the ASC under this Law.

(2) The small business guide is divided into sections (numbered 1, 2, 3 ...) and the sections are divided into paragraphs (numbered 1.1, 1.2, 1.3 ...). For example, a reference in the guide to 3.1 is a reference to paragraph 3.1 of the guide.

**Part 1.5—Small business guide**

This guide summarises the main rules in the Corporations Law that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Law as it applies to those companies and directs readers to the operative provisions in the Law.

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Law, the regulations made under the Law, and Australian Securities Commission Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

**1 What incorporation means**

*1.1 separate legal entity that has its own powers*

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company’s money and other assets belong to the company and must be used for the company’s purposes.

A company has the powers of an individual, including the powers to:

* own and dispose of property and other assets
* enter into contracts
* sue and be sued.

Once a company is incorporated, its separate legal status, property, rights and liabilities continue until the ASC (Australian Securities Commission) cancels the company’s registration.

[sections 123,161,162,574]

**Chap: 1 Introductory**

**Part: 1.5 Small business guide**

*1.2 limited liability of shareholders*

Shareholders of a company are not liable (in their capacity as shareholders) for the company’s debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, particularly if a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[sections 124, 516, regulation 12 of Table A Schedule 1]

*1.3 director’s liability for company’s debts*

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of certain of the director’s duties to the company (see 5.3).

In addition to having liability for the company’s debts or to pay compensation to the company, a director may also be subject to a civil penalty.

If a company holds property on trust, a director of the company may be liable in some circumstances for liabilities incurred by the company.

[sections 232, 233, 318, 588G, 588J, 588M, 1317HA, 1317HD]

*1.4 director’s liability as guarantor/security over personal assets*

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:

* for a personal guarantee of the company’s liabilities; and
* for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over their house to secure the company’s repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

**Introductory Chap: 1**

**Small business guide Part: 1.5**

*1.1 continuous existence*

A company continues to exist even if one or more of its shareholders or directors sells their shares, dies or leaves the company. If a company has only one shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 123, 224A]

*1.2 how a company acts*

A company does not have a physical existence. It must act through other people.

The directors of a company are responsible for managing the company’s business. The company’s articles of association (see 3.2) usually provide details of how meetings of directors are to be called and conducted. Directors must keep a written record (minutes) of their meetings.

A company’s articles may also allow individual directors, the company secretary, company employees or agents to enter into contracts that bind the company.

In some circumstances, a company will be bound by something done by another person (see 1.7).

The shareholders of a company own the company, but the company has a separate legal existence and the company’s assets belong to the company.

Shareholders can make decisions about the company by passing a resolution, usually at a meeting. The 2 main types of resolutions are **ordinary resolutions** and **special resolutions**. Special resolutions usually involve the more important questions that affect the company as a whole or the rights of some or all of its shareholders.

Shareholders may pass an ordinary resolution at a meeting or without holding a meeting if all shareholders sign a minute (a written record) setting out the terms of the resolution.

**Chap: 1 Introductory**

**Part: 1.5 Small business guide**

If a meeting is held, an ordinary resolution must be passed by a majority of the shareholders who vote at the meeting in person or by proxy (if proxies are allowed). A special resolution must be passed by at least 75% of the shareholders who are entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

[sections 250, 253, 255, 255A, 258, regulations 66, 69, 70, 73, 75, 77 of Table A Schedule 1]

*1.7 what others can assume about the company*

Anyone who does any business with the company is entitled to assume that the company has a legal right to conduct that business unless the person knows, or ought to know, otherwise. For example, an outsider dealing with the company is entitled to assume:

* that a person who is shown in a notice lodged with the ASC as being the director or company secretary of a company has been properly appointed and is authorised to act for the company; and
* that a person who is held out by the company to be a director, company secretary or agent of the company has been properly appointed and is authorised to act for the company.

[section 164]

**2 The company structure for small business**

*2.1 proprietary company for small business*

Generally, a proprietary company limited by shares is the most suitable company for use by small business. Such a proprietary company must have at least one shareholder but no more than 50 shareholders (not counting employee shareholders).

[sections 114, 116]

**3 Setting up a new company**

The operators of small businesses can either buy “shelf” companies or set up new companies themselves.

**Introductory Chap: 1**

**Small business guide Part: 1.5**

*3.1 "shelf” companies*

The operator of a small business may find it more convenient to buy a “shelf’ company (a company that has already been incorporated but has not traded) from businesses which set up companies for this purpose or from some legal or accounting firms.

*3.2 incorporation and registration*

To set up a new company, the operator must apply to the ASC for registration of the company.

A proprietary company limited by shares must have at least one initial shareholder. That person (or if there are 2 or more initial shareholders—all of them) must comply with a number of formalities before the company is registered as an Australian company. The formalities include preparing a memorandum of association and preparing or adopting articles of association.

To obtain registration, the initial shareholders must lodge an application form (Form 201) with the ASC.

The company is registered when the ASC registers the application.

*memorandum*

The **memorandum** sets out:

* the name of the company; and
* the names and addresses of the initial shareholders; and
* the amount of the company’s share capital; and
* a statement that the share capital is divided into shares of a fixed amount; and
* a statement that the liability of shareholders is limited.

*articles*

The **articles** govern the relationships between the company, its shareholders and its directors, For example, they deal with the transfer of shares, the appointment of directors and procedures at meetings.

**Chap: 1 Introductory**

**Part: 1.5 Small business guide**

Instead of preparing articles, the operator may adopt the standard articles set out in Table A of Schedule 1 to the Corporations Law.

A shareholder of a company can ask the company for a copy of articles prepared by the company.

[sections 117, 118, 120, 123, 175, 176, 180, 181, Table A Schedule 1]

*3.3 ACN, name and common seal*

When a company is registered, the ASC allocates to it a unique 9 digit number called the Australian Company Number (ACN). (For use of the ACN see 4.1).

A new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words “Proprietary Limited” as part of its name. Those words can be abbreviated to “Pty. Ltd.”.

A proprietary company may adopt its ACN and the words “Proprietary Limited” (or “Pty. Ltd.”) as its name.

A company has a common seal. It shows the company’s name and its ACN and is equivalent to the company’s signature. It is used on important company documents such as share certificates and mortgages. Its use must be witnessed by:

* a director of the company and its company secretary; or
* 2 directors of the company; or
* if the company has only one director who is also the only company secretary—that person.

[sections 99A, 123, 219, 240, Division 1 of Part 4.2]

*3.4 contracts entered into before the company is incorporated*

If someone enters a contract on behalf of a company before it is incorporated, the company can ratify the contract within a reasonable period after the company is formed. If the company does not ratify the contract, the person who entered the contract may be personally liable to carry it out.

[section 183]

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*3.5 issuing shares*

After the company is set up, it may issue other shares. The company’s memorandum sets out a limit on the number of shares that may be issued.

[section 117, regulation 2 of Table A Schedule 1]

*3.6 who appoints the first directors?*

The initial shareholders usually appoint the company’s first director or directors.

A director must consent in writing to holding the position of director.

See 5.1 and 5.2 for the removal of directors and the appointment of later directors.

[sections 221, 222A, regulations 57, 58, 59 of Table A Schedule 1]

*3.7 who appoints the first company secretary?*

The directors appoint the first company secretary.

A company secretary must consent in writing to holding the position of company secretary.

The same person may be both a director of the company and the company secretary.

See 5.4 for the removal of secretaries and the appointment of later secretaries.

[sections 222A, 240]

*3.8 registered office*

A company must have a registered office in Australia and must inform the ASC of the location of the office. A post office box cannot be the registered office of a company. The purpose of the registered office is to have a place where official forms and notices can be sent to the company.

If the company does not occupy the premises where its registered office is located, the occupier of the premises must agree in writing to having the company’s registered office located there.

The company’s name and the words “Registered Office” must be shown outside the office.

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A company can notify the ASC of the opening hours of its registered office. The company can choose any 3 or more hours between 9a.m. and 5p.m. each business day as the opening hours of its registered office. If the company does not notify the ASC of the opening hours of its registered office, the office must be open for at least 5 hours between 10a.m. and 4p.m. each business day.

[sections 100, 217, 219, Form 203]

*3.9 registers kept by the company*

A company must keep registers, including a register of shareholders and a register of charges. A company must keep its registers at:

* the company’s registered office; or
* an office at the company’s principal place of business; or
* an office where the work in maintaining the register is done (the office need not be an office of the company); or
* another office approved by the ASC.

A register may be kept either in a bound or looseleaf book or on computer.

If a register is kept on computer, its contents must be capable of being printed out in hard copy.

[sections 216E, 1302, 1306]

*register, of shareholders*

A company must keep in its register of shareholders such information as:

* the names and addresses of its shareholders; and
* details of shares held by individual shareholders.

[sections 216A, 216B]

*register of charges*

A company must keep a register of charges if the company gives a bank, trade creditor or anybody else a charge over company assets.

[section 271]

**4 Continuing obligations after the company is set up**

The Corporations Law and other laws impose obligations on companies themselves and on their directors and company secretaries. Some of the more important obligations imposed under the Corporations Law are discussed below.

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*4.1 use of company name, ACN and common seal*

The name of a company must be shown outside all the company’s business premises (including its registered office) that are open to the public.

The company’s name and its ACN must appear on its seal, some of its public documents, its cheques and on all documents lodged with the ASC.

[section 219, Australian Securities Commission Practice Note 47]

*4.2 annual return*

A company must lodge with the ASC an annual return which contains such information as:

* names and addresses of each director and company secretary; and
* issued shares; and
* details of its shareholders; and
* address of its registered office.

For convenience, the ASC may send a partially completed annual return to each company for the company to check, amend if necessary, verify and send back to the ASC. However, a company must lodge an annual return with the ASC even if the ASC does not send a partially completed annual return to the company.

[section 335, regulations 3.8.01, 3.8.02, Form 316]

*4.3 annual fee*

A company must pay an annual fee to the ASC on lodgment of the annual return.

[Corporations (Fees) Regulations]

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*4.1 notification to ASC of changes*

The company must notify the ASC if certain basic changes to the company occur. The table sets out these notification requirements.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **If...** | **the Company must notify the ASC of the change...** | **using**  **Form No....** | **see...** |
| **1.** | a company allots shares | within 1 month after the change | 207 | section 187 |
| **2.** | a company changes the location of a register | within 7 days after the location is changed | 909 | section 216G section 1302 |
| **3.** | a company changes the address of its registered office | within 7 days after the change | 203 | section 218 |
| **4.** | a company changes the opening hours of its registered office (if the company has notified the ASC of the opening hours) | within 7 days after the change | 203 | section 218 |
| **5.** | a company changes its directors or company secretary | within 1 month after the change | 304 | section 242 |
| **6.** | there is a change in the name or address of the company’s directors or secretary | within 1 month after the change | 304 | section 242 |
| **7.** | a company creates certain kinds of charges | within 45 days after the charge is created | 309 | section 263 |

**5 Company directors and company secretaries**

*5.1 who can be a director*

Only an individual who is at least 18 years old can be a director. If a proprietary company has only one director, they must ordinarily reside in Australia. If a proprietary company has more than one director, at least one of the directors must ordinarily reside in Australia.

A director must consent in writing to holding the position of director.

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The company must keep the consent and must notify the ASC of the appointment.

In some circumstances, the Corporations Law imposes the duties and obligations of a director on a person who, although not formally appointed as a director of a company, nevertheless acts as a director or gives instructions to the formally appointed directors as to how they should act.

The Court or the ASC may prohibit a person from being a director or from otherwise being involved in the management of a company if, for example, the person has breached the Corporations Law.

A person needs the Court’s permission to be a director if the person has been convicted of certain offences or is, in some circumstances, unable to pay their debts as they fall due.

Generally, a director may resign by giving written notice of the resignation to the company. The company must notify the ASC of a director’s resignation. A director who resigns may also notify the ASC of the resignation.

The articles may also deal with the process of changing directors.

[sections 60, 221, 222A, 224, 228, 229, 230, 242, 242C, 599, 600]

*5.2 appointment of new directors*

A company’s articles usually allow existing directors of a company to appoint a new director if a casual vacancy occurs. Shareholders in general meeting may also have the power to appoint new directors.

[section 242, regulations 60, 61 of Table A Schedule 1]

*5.3 duties and liabilities of directors*

In managing the business of a company (see 1.6), each of its directors is subject to a wide range of duties under the Corporations Law and other laws. Some of the more important duties are:

* to act in good faith
* to act in the best interests of the company
* to avoid conflicts between the interests of the company and the directors’ interests
* to act honestly

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* to exercise care and diligence
* to prevent the company trading while it is unable to pay its debts
* if the company is being wound up—to report to the liquidator on the affairs of the company
* if the company is being wound up—to help the liquidator (by, for example, giving to the liquidator any records of the company that the director has).

A director who fails to perform their duties:

* may be guilty of a criminal offence with a penalty of $200,000 or imprisonment for up to 5 years, or both; and
* may contravene a civil penalty provision (and the Court may order the person to pay to the Commonwealth an amount of up to $200,000); and
* may be personally liable to compensate the company or others for any loss or damage they suffer; and
* may be prohibited from managing a company.

A director’s obligations may continue even after the company has been dissolved.

[sections 232, 475, 530A, 574, 588G, 596, 1317HA, 1317HB, 1317HD]

*5.4 company secretaries*

A company must have a company secretary. The directors appoint the company secretary. A company secretary must be at least 18 years old. If a company has only one company secretary, they must ordinarily reside in Australia. If a company has more than one company secretary, at least one of them must ordinarily reside in Australia.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify the ASC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. The company must notify the ASC of a company secretary’s resignation. A company secretary who resigns may also notify the ASC of the resignation.

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The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Law on company officers. The company secretary also has specific responsibilities under the Corporations Law, including responsibility for ensuring that:

* the company notifies the ASC about changes to the identities, names and addresses of the company’s directors and company secretaries
* the company keeps its registered office open during its opening hours
* the company lodges its annual return.

A company secretary’s obligations may continue even after the company has been dissolved.

[sections 83, 217, 222A, 240, 242, 242C, 335, 574]

**6 Shares and shareholders**

A proprietary company must have a share capital and at least one shareholder.

*6.1 becoming a shareholder and ceasing to be a shareholder*

A person may become a shareholder of a company in several ways, including the following:

* the person being an initial shareholder of the company
* the company allotting shares to the person
* the person buying shares in the company from an existing shareholder and the company registering the transfer.

[sections 117, 124, 184]

Some of the ways in which a person ceases to be a shareholder are:

* the person sells all of their shares in the company and the company registers the transfer of the shares
* the company buys back all the person’s shares
* the ASC cancels the company’s registration.

[sections 206I, 574, regulation 19 of Table A Schedule 1]

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*6.2 classes of shares*

A proprietary company must have at least one share. It may have different classes of shares. Usually the articles set out the rights that attach to each class of shares. Those rights distinguish the classes of shares from each other.

[sections 116, 118, regulation 2 of Table A Schedule 1]

*6.3 meetings of shareholders*

Directors have the power to convene (call) meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares.

Shareholders who hold at least 5% of the issued share capital of a company have the power to convene a meeting themselves or to require the directors to convene a meeting.

Meetings may be held regularly or to resolve specific questions about the management or business of the company.

The Corporations Law and the company’s articles set out rules about meetings including minimum notice periods and who can attend and vote.

A company must keep a written record of each meeting. The record usually includes information such as where and when the meeting was held and the results of any voting.

[sections 246, 247, 253, 258, regulations 40 to 56 of Table A Schedule 1]

*6.4 voting rights*

Different rights to vote at meetings of shareholders may attach to different classes of shares. The entitlement to vote is usually set out in the company’s articles.

[regulation 2 of Table A Schedule 1]

*6.5 buying and selling shares*

A shareholder may sell their shares but only if the sale would not breach the company’s articles. A company’s articles may give the company’s directors the discretion to refuse to register the transfer of the shares between the seller and the buyer.

[regulations 19 to 21 of Table A Schedule 1]

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**7 Funding the company’s operations**

The initial shareholders may fund the company’s operations by lending money to the company or by taking up other shares in the company. Except if it is raising funds from its own employees or shareholders, a company must not engage in any fundraising activity that would require the company to lodge a prospectus with the ASC (for example, advertising in a newspaper inviting people to invest in a company).

The company may also borrow money from banks and other financial organisations.

Anyone who has lent money, or provided credit, to the company may ask for a mortgage or charge over the company’s assets to secure the performance by the company of its obligations.

[sections 116, 161, regulation 66 of Table A Schedule 1]

**8 Returns to shareholders**

Shareholders can take money out of the company in a number of ways but only if the company complies with its articles, the Corporations Law and all other relevant laws. A director of a company that pays out money causing the company to be unable to pay its debts as they fall due may be liable:

* to pay compensation; and
* for criminal and civil penalties.

[sections 588G, 1317HA, 1317HB, 1317HD]

*8.1 dividends*

Dividends are payments to shareholders out of the company’s after tax profits. The directors of the company decide whether the payment of dividends is appropriate.

[section 201, regulation 86 of Table A Schedule 1]

*8.2 buy-back of shares*

A company can buy back shares from shareholders.

[Division 4B of Part 2.4]

*8.3 distribution of surplus assets on winding up*

If a company is wound up and there are any assets left over after all the company’s debts have been paid, the surplus is distributed to shareholders in accordance with the company’s articles.

[section 563A, regulation 97 of Table A Schedule 1]

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**9 Accounts and audit for small proprietary companies**

*9.1 the small/large distinction*

The accounting requirements imposed on a proprietary company under the Corporations Law depend on whether the company is classified as small or large. A company’s classification can change from one financial year to another as its circumstances change.

A company is classified as small for a financial year if it satisfies at least 2 of the following tests:

* gross operating revenue of less than $10 million for the year
* gross assets of less than $5 million at the end of the year
* fewer than 50 employees at the end of the year.

A company that does not satisfy at least 2 of these tests is classified as large.

[section 45A]

As the great majority of proprietary companies are small under these tests, the discussion below deals mainly with the accounting requirements for small proprietary companies. If a company becomes large, the accounting requirements imposed on it are more extensive.

[section 315]

*9.2 accounting records*

Under the Corporations Law, all proprietary companies must keep sufficient accounting records to allow annual accounts to be prepared and audited. “Accounting record” here means some kind of systematic record of the company’s financial transactions—not merely a collection of receipts, invoices, bank statements and cheque butts. Accounting records may be kept on computer.

[sections 283, 283A, 283B, 283C, 289]

*9.3 preparing accounts etc.*

The Corporations Law does not require a small proprietary company to prepare formal accounts (an annual profit and loss account and a balance sheet) or have them audited unless the company is asked to do so by:

* shareholders holding at least 5% of the voting shares in the company; or
* the ASC.

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Unless the shareholders’ request specifies otherwise, the company must prepare its accounts in accordance with the applicable accounting standards.

Although the Corporations Law itself may not require a small proprietary company to prepare accounts except in the circumstances mentioned, the company may need to prepare the accounts for the purposes of other laws (for example, income tax laws). Moreover, good business practice may also make it advisable for the company to prepare the accounts so that it can monitor and better manage its financial position.

[sections 283A, 283C, 289, 292 to 294, 317, 317B]

**10 Disagreements within the company**

*10.1 special problems faced by minority shareholders*

There are remedies available to a shareholder of a company if:

* the affairs of the company are being conducted in a way that is unfair to that shareholder or to other shareholders of the company; or
* the affairs of the company are being conducted in a way that is against the interests of the company as a whole.

A Court may, for example, order the winding up of a company or the appointment of a receiver.

[sections 260, 461]

*10.2 buy-back of shares*

A company may buy back the shares of a shareholder who wants to sever their relationship with the company.

[Division 4B of Part 2.4]

*10.3 selling shares*

A shareholder in a proprietary company who wants to sever their relationship with the company may decide to sell their shares. However, the shareholder may not be able to sell their shares readily—particularly if they want to sell their shares to someone who is not an existing shareholder. Some of the difficulties they may face in that case are:

* restrictions in the company’s articles on transferring shares; and
* the restrictions in the Law on offering shares to the public.

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**11 Companies in trouble**

*11.1 voluntary administration*

If a company experiences financial problems, the directors may appoint an administrator to take over the operations of the company to see if the company’s creditors and the company can work out a solution to the company’s problems.

If the company’s creditors and the company cannot agree, the company will be wound up (see 11.3).

[Part 5.3A]

*11.2 receivers*

A receiver, or receiver and manager, may be appointed by order of a Court or under an agreement with a secured creditor to take over some or all of the assets of a company. Generally this would occur if the company is in financial difficulty. A receiver may be appointed, for example, because an amount owed to a secured creditor is overdue.

[Part 5.2]

*11.3 winding up and distribution*

A company may be wound up by order of a Court, or voluntarily if the shareholders of the company pass a special resolution to do so.

A liquidator is appointed:

* when a Court orders a company to be wound up; or
* the shareholders of a company pass a resolution to wind up a company.

[Part 5.2, section 495]

*11.4 liquidators*

A liquidator is appointed to administer the winding up of a company. A liquidator’s main functions are:

* to take possession of the company’s assets; and
* to determine debts owed by the company and pay the company’s creditors; and

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* to distribute to shareholders any assets of the company left over after paying creditors (any distribution to shareholders is made according to the rights attaching to their shares); and
* finally, to dissolve the company.

[Parts 5.4B, 5.5]

*11.5 order of payment of debts*

Generally, creditors who hold security over company assets are paid first.

[Division 6 of Part 5.6]

*11.6 cancellation of registration*

If a company has ceased trading or has been wound up, it remains on the register until the ASC cancels the company’s registration.

[sections 573, 574]

**Schedule 4**

**Other proprietary company amendments**

Other proprietary company amendments

**1. *Section 9 (definitions of “exempt proprietary company” and “proprietary company provisions”)***

*Omit.*

**2. *Section 9***

*Insert the following definitions:*

**“large proprietary company”** has the meaning given by subsection 45A(3);

**“small proprietary company”** has the meaning given by subsection 45A(2);

**3.** ***Section 9 (definition of “proprietary company”)***

*Omit, substitute:*

**“proprietary company”** has the meaning given by subsection 45A(1);

**4. *After Division 5 of Part 1.2***

*Insert:*

***Division 5A—Types of company***

**45A Proprietary companies**

(1) *Proprietary company*

A proprietary company is a company that:

(a) is registered as a proprietary company under section 120, 129, 137 or 145; or

(b) converts to a proprietary company under section 168.

Note: A proprietary company must:

* be limited by shares or be an unlimited company with a share capital
* have no more than 50 non-employee shareholders
* not do anything that would require lodgment of a prospectus under Part 7.12 (except in limited circumstances).

(see section 116)

Other proprietary company amendments

(2) *Small proprietary company*

A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than $10 million

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $5 million

(c) the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year.

Note: A small proprietary company generally has reduced financial reporting requirements (see section 283C).

(3) *Large proprietary company*

A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is $10 million or more

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $5 million or more

(c) the company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

(4) *Entities and controlled entities*

In this section, “entity” has the meaning given by section 294A. Apply section 243E to decide whether a proprietary company controls another entity.

(5) *Counting employees*

In counting employees for the purposes of subsections (2) and (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.

(6) *Accounting standards*

Consolidated gross operating revenue and the value of consolidated gross assets are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).

Other proprietary company amendments

**5. *Subsection 58C(1)***

*Add at the end:*

Note: See also section 283D.

**6. *Section 69***

*Repeal.*

**7. *Section 114***

*Repeal, substitute:*

**114 Formation of companies**

(1) *Proprietary companies*

One or more persons may form a proprietary company by:

(a) subscribing their name to a memorandum; and

(b) complying with the registration requirements for proprietary companies set out in this Division.

(2) *Public companies*

Five or more persons may form a public company by:

(a) subscribing their names to a memorandum; and

(b) complying with the registration requirements for public companies set out in this Division.

**8. *Section 116***

*Repeal, substitute:*

**116 Proprietary companies**

(1) A company must comply with subsection (2) if it is to:

(a) be registered as a proprietary company; or

(b) convert to a proprietary company; or

(c) remain registered as a proprietary company.

(2) A proprietary company:

(a) must be either:

(i) limited by shares; or

(ii) an unlimited company that has a share capital; and

(b) must have no more than 50 non-employee shareholders.

Other proprietary company amendments

A company limited both by shares and by guarantee cannot be a proprietary company. A no liability company cannot be a proprietary company.

Note 1: If a proprietary company contravenes this subsection, one consequence is that the ASC may require it to convert to a public company (see section 170).

Note 2: See section 1407 for the application of subparagraph (2)(a)(i) to proprietary companies that are limited both by shares and by guarantee under this Law as in force immediately before the commencement of this section.

(3) In applying paragraph (2)(b):

(a) count joint holders of a particular parcel of shares as one person; and

(b) an employee shareholder is:

(i) a shareholder who is an employee of the company or of a subsidiary of the company; or

(ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.

(4) Subject to subsection (5), a proprietary company must not engage in any activity that would require the lodgment of a prospectus under Part 7.12 or a corresponding law.

Note: If a proprietary company contravenes this subsection, one consequence is that the ASC may require it to convert to a public company (see section 170).

(5) Subsection (4) does not apply to an offer of shares to:

(a) existing shareholders of the company; or

(b) employees of the company or a subsidiary of the company.

(6) *Effect of breaching prospectus limitations*

An act or transaction is not invalid merely because of a contravention of subsection (4).

**9. *Subsection 118(3)***

*Omit, substitute:*

(3) If:

(a) the proposed company’s memorandum states the matters that are required to be stated under paragraphs 117(1)(a), (b), (c) and (g); and

(b) the company is to be registered as a proprietary company;

the application must also set out those matters.

Other proprietary company amendments

**10. *Subsection 120(2)***

*Omit, substitute:*

(2) The Commission must not register a company under this Division by a particular name unless that name is available within the meaning of section 367.

**11. *Paragraphs 135(a) and (b)***

*Add at the end* “and”.

**12. *Paragraph 135(c)***

*Omit* “transfer; and”*, substitute* “transfer.”.

**13. *Paragraph 135(d)***

*Omit.*

**14. *Section 136 Add at the end:***

(4) The application may ask for registration as a proprietary company.

**15. *Subsection 137(4)***

*Omit, substitute:*

(4) The Commission must register the applicant as a proprietary company if:

(a) it is limited by shares or is an unlimited company that has a share capital; and

(b) it has no more than 50 non-employee shareholders; and

(c) its application asks for registration as a proprietary company.

(4A) In applying paragraph (4)(b):

(a) count joint holders of a particular parcel of shares as one person; and

(b) an employee shareholder is:

(i) a shareholder who is an employee of the company or of a subsidiary of the company; or

Other proprietary company amendments

(ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.

**16. *Paragraph 164(3)(e)***

*Omit, substitute:*

(e) that a document has been duly sealed by the company if it bears what appears to be an impression of the company’s seal and either:

(i) the sealing of the document appears to be witnessed by 2 people, one of whom may be assumed to be a director of the company because of paragraph (b) or (c) and the other of whom may be assumed to be a director or a secretary of the company because of those paragraphs; or

(ii) the sealing of the document appears to be witnessed by one person who may be assumed to be a director and a secretary of the company because of paragraph (b) or (c) but only if it is stated next to the signature that the person witnesses the sealing in the capacity of sole director and sole secretary of the company; and

**17. *Subsections 168(1) and (2)***

*Omit, substitute:*

(1) A public company may convert to a proprietary company if it:

(a) lodges with the ASC a copy of a special resolution determining to convert to a proprietary company and specifying an appropriate alteration to its name; and

(b) complies with subsection 116(2).

(2) A proprietary company may convert to a public company by lodging with the ASC:

(a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name; and

(b) in the case of a Table A proprietary company—a copy of its memorandum and its articles (if any).

Other proprietary company amendments

**18. *Section 170***

*Repeal, substitute:*

**170 ASC may order a proprietary company to convert to a public company in certain circumstances**

(1) The ASC may order a proprietary company to convert to a public company under section 168 if it is satisfied that the company has contravened subsection 116(2) or (4).

(2) The order:

(a) must be in writing; and

(b) must be given to the company; and

(c) must specify that the company must comply with the order within 2 months after the date on which the order is given to the company.

(3) A company must comply with an order given to it under subsection (1) within 2 months after the date on which the order is given to the company.

**170A ASC may determine that a proprietary company is a public company in certain circumstances**

(1) If a proprietary company contravenes subsection 170(3), the ASC may determine that the company ceases to be a proprietary company on the date specified in the determination.

(2) A determination:

(a) must be in writing; and

(b) must be given to the company; and

(c) must specify the date on which the company ceases to be a proprietary company.

(3) The effects of a determination are:

(a) the company is a public company on and from the date specified in the determination; and

(b) the company is taken to have omitted “Proprietary” or “Pty.”, as the case requires, from its name on and from that date.

**19. *Subsection 171(3)***

*Omit* “, share capital, or status as a proprietary company”, *substitute* “or share capital”.

Other proprietary company amendments

**20. *Sections 177 and 178***

*Repeal.*

**21. *Subsection 180(4)***

*Omit.*

**22. *Section 186***

*Repeal, substitute:*

**186 Consequences for members of public company if the company carries on business with fewer than 5 members**

(1) This section applies to a person who is a member of a public company if:

(a) the company carries on business for more than 6 months while it has fewer than 5 members; and

(b) the company incurs a debt after those 6 months; and

(c) the person:

(i) is a member of the company at any time after those 6 months; and

(ii) is aware that the company is carrying on business with fewer than 5 members.

(2) The person:

(a) is individually liable for debts of the company referred to in subsection (1) incurred while the person is a member; and

(b) may be individually sued for payment of those debts; and

(c) contravenes this subsection.

(3) In counting the members of a company for the purposes of subsection (1), count joint holders of a particular parcel of shares as one person.

(4) This section does not apply to a person who is a member of a public company all of whose shares are held by a holding company that is a company or a recognised company.

Other proprietary company amendments

**23. *After subsection 205(10)***

*Insert:*

(10A) If a company is a proprietary company and has only one director, the signature requirement in paragraph (10)(c) is satisfied if the director signs the statement referred to in that paragraph.

**24. *After subsection 220(4)***

*Insert:*

(4A) Without limiting the operation of subsection (1), a document may be served on a proprietary company that has only one director by delivering a copy personally to that director.

**25. *Section 221***

*Repeal, substitute:*

**221 Directors**

(1) *Proprietary companies*

A proprietary company must have at least one director. At least one director must ordinarily reside in Australia.

(2) *Public companies*

A public company must have at least 3 directors. At least 2 of them must ordinarily reside in Australia.

(3) *Body corporate cannot be director*

A body corporate cannot be appointed as a director.

**26. *After section 224***

*Insert:*

**224A Appointment of new director on death, mental incapacity or bankruptcy of single director/shareholder of proprietary company**

(1) *Death or mental incapacity*

If a person who is the only director and the only shareholder of a proprietary company:

(a) dies; or

Other proprietary company amendments

(b) cannot manage the company because of the person’s mental incapacity;

and a personal representative or trustee is appointed to administer the person’s estate or property, the personal representative or trustee may appoint a person as the director of the company.

(2) *Bankruptcy*

If:

(a) the office of the director of a proprietary company is vacated under paragraph 224(1)(c) because of the bankruptcy of the director; and

(b) the person is the only director and also the only shareholder of the company; and

(c) a trustee in bankruptcy is appointed to the person’s property;

the trustee may appoint a person as the director of the company.

(3) A person who has a power of appointment under this section may appoint themselves as director.

(4) A person appointed as a director of a company under this section holds that office as if they had been properly appointed in accordance with the company’s articles of association.

**27. *After subsection 228(3)***

*Insert:*

(3A) If a proprietary company is a subsidiary of a public company:

(a) subsection (3) does not apply to it; and

(b) a person can continue to act as a director of the proprietary company until the next annual general meeting of the public company after the person turns 72; and

(c) the person’s office of director becomes vacant at the end of that meeting.

Note: Proprietary companies do not need to hold annual general meetings (see subsection 245(2A)).

**28. *Subsections 228(4), (5), (6) and (11)***

*Insert* “or (3A)” *after* “(3)”.

**29. *Subsection 228(7)***

*Omit* “subsection (8)”, *substitute* “subsections (8) and (8A)”.

Other proprietary company amendments

**30. *After subsection 228(8)***

*Insert:*

(8A) If the subsidiary is a proprietary company:

(a) the person may be appointed or re-appointed as a director of the subsidiary until the end of the next annual general meeting of the holding company; and

(b) the appointment does not need a resolution under subsection (7); and

(c) the appointment must satisfy either paragraph (8)(a) or paragraph (8)(b).

**31. *Section 231***

*Add at the end:*

(10) This section does not apply to a director of a proprietary company if the director is the only director and only shareholder of that company.

**32. *After subsection 240(7)***

*Insert:*

(7A) Subject to subsection (7B), subsection (7) does not apply if the only director of a proprietary company is also the only secretary of the company.

(7B) Subsection (7) does not apply to the witnessing of the use of the company seal of a proprietary company if:

(a) the only director of the company is also the only secretary of the company; and

(b) that person witnesses the use of the company seal; and

(c) it is stated next to the signature that the person witnesses the sealing in the capacity of sole director and sole secretary of the company.

**33. *Subsection 245(1)***

*Omit* “, or, in the case of an exempt proprietary company, within 6 months,”.

**34. *Subsection 245(2)***

*Omit* “(or, in the case of an exempt proprietary company, not more than 6 months)”.

Other proprietary company amendments

**35. *After subsection 245(2)***

*Insert:*

(2A) Subsections (1) and (2) do not apply to a proprietary company.

**36. *Subsection 245(4)***

*Omit.*

**37. *Paragraph 249(1) (a)***

*Omit, substitute:*

(a) a quorum is constituted by:

(i) in the case of a proprietary company with a single member—that member; and

(ii) in the case of a proprietary company with 2 or more members—2 members personally present; and

(iii) in the case of a public company—3 members personally present; and

**38. Subsection 255(1)**

*Omit* “an exempt proprietary company”, *substitute* “a proprietary company”.

**39. After section 255**

*Insert:*

**255A Decisions and declarations of single shareholder/single director proprietary companies**

(1) If a proprietary company has only one shareholder and the shareholder records the shareholder’s decision to a particular effect, the recording of the decision counts as the passing by the shareholder of a resolution to that effect.

(2) If a proprietary company has only one director and the director records the director’s decision to a particular effect, the recording of the decision counts as the passing by the director of a resolution to that effect.

(3) A record made for the purposes of subsection (1) or (2) also has effect as minutes of the passing of the resolution.

Note: Section 258 deals with minutes.

Other proprietary company amendments

(4) If a proprietary company has only one director and the director records the director’s declaration to a particular effect, the recording of the declaration counts as the making of a declaration to that effect made at a meeting of the company’s directors.

(5) A declaration has effect as minutes that record the making of the declaration.

Note: Section 258 deals with minutes.

(6) A record made for the purposes of subsection (1), (2) or (4) must be made in writing.

**40. *Subsection 258(1)(b)***

*Add at the end:*

Note: See section 255A for single shareholder/single director proprietary companies.

**41. *Before Division 1 of Part 3.6***

*Insert:*

***Division 1A—Application of Part***

**283 Disclosing entity**

This Part applies to a disclosing entity for all its accounting periods.

Note: For “disclosing entity” see section 111AC.

**283A Public company or large proprietary company**

This Part applies to a public company or a large proprietary company for all its accounting periods.

**283B Small proprietary company (foreign control and not covered by consolidated accounts)**

This Part applies to a small proprietary company for an accounting period if:

(a) the company is controlled by a foreign company for all or a part of the period; and

(b) the company’s profit or loss for the period is not covered by accounts lodged with the ASC by the foreign company.

Note 1: For the concept of one company controlling another see section 243G.

Note 2: For “foreign company” see section 9.

Other proprietary company amendments

**283C Other small proprietary companies**

(1) *Small proprietary company covered by this section*

This section covers a small proprietary company that is neither:

(a) a disclosing entity; nor

(b) dealt with by section 283B.

(2) *Application*

Sections 289, 315, 317, 319 and 320 apply to the small proprietary company for all of its financial years. The other provisions of this Part will only apply to a particular financial year of a small proprietary company if:

(a) they are applied to that financial year by subsection (3) (shareholders’ request); or

(b) they are applied to that financial year by subsection (7) (ASC request).

(3) *Shareholders’ request*

If shareholders holding 5% or more of the voting shares in the company request the company to do so, the company must prepare the following for the financial year specified in the request:

(a) the financial statements

(b) the Division 5 statements

(c) the Division 6 report.

Subject to subsections (5) and (6), all of this Part (except section 317B) applies to the company for that financial year.

Note 1: For “financial statements” see section 9.

Note 2: Although the shareholders cannot require the company to lodge the documents with the ASC, the ASC itself may ask the company to lodge them (see section 317).

(4) *Request*

The request must be:

(a) served on the company; and

(b) signed by the shareholders making the request; and

(c) made no later than 12 months after the end of the financial year concerned.

Other proprietary company amendments

(5) *Applicable accounting standards*

If the request specifies that the financial statements do not have to be made out in accordance with the applicable accounting standards (see section 298), the financial statements do not have to be made out in accordance with those standards.

(6) *Audit*

The financial statements must be audited only if the request asks for an audit.

(7) *ASC request*

If the ASC makes a request under subsection 317(1) to a small proprietary company for a financial year, the provisions of this Part apply to the company for that year in accordance with the request.

**283D Time for preparing accounts etc.**

(1) This section applies for the purposes of working out the deadlines that apply to the various kinds of company for the purposes of this Part.

(2) The deadline for an accounting period for a disclosing entity or a public company that is not a disclosing entity is the deadline for the period as defined in section 58C.

(3) The deadline for a financial year for a large proprietary company that is not a disclosing entity is 4 months after the end of the year.

(4) The deadline for a financial year for a small proprietary company referred to in section 283B is 4 months after the end of the year.

(5) The deadline for a financial year for a small proprietary company that has been given a request under subsection 283C(3) is worked out using subsections (6) and (7).

(6) If the request is made before the end of the financial year, the deadline is 4 months after the end of the year.

(7) If the request is made after the end of the financial year, the deadline is:

(a) 2 months after the date on which the request is made; or

(b) 4 months after the end of the financial year;

whichever ends later.

(8) The deadline for a financial year for a small proprietary company that has been given a request under subsection 317(1) is the date specified in the request.

Other proprietary company amendments

**42. *Subsection 290(5)***

*Omit all the words after* “company,”, *substitute:*

signed by:

(a) in the case of a proprietary company that has only one director—that director; or

(b) in any other case—at least 2 directors.

The notice must state the reasons for seeking the order.

**43. *Subsection 296(1)***

*Omit* “, other than a company that pursuant to section 325 or 326 did not appoint an auditor to audit the financial statements concerned,”.

**44. *Subsections 301(9) and (10)***

*Omit.*

**45. *Subsection 302(8)***

*Omit.*

**46. *Subsection 303(1)***

*Omit*, *substitute:*

(1) Subject to subsection (1A), a company’s directors must comply with section 301, section 302, or sections 301 and 302, as the case requires, in relation to an accounting period before the auditor reports under this Part on the financial statements.

(1A) If:

(a) a company is a small proprietary company; and

(b) either:

(i) the Commission has asked the company under section 317 to prepare accounts; or

(ii) the shareholders have asked the company under subsection 283C(3) to prepare accounts but have not asked the company to have the accounts audited;

the company’s directors must comply with section 301, section 302, or sections 301 and 302, as the case requires, in relation to a financial year before the deadline after the financial year.

Other proprietary company amendments

**47. Section 303**

Add at the end:

(3) If a company is a proprietary company and has only one director, the signature requirement in paragraph (2)(d) is satisfied if the director signs a statement referred to in subsection (2).

**48.** **Paragraph 304(1A)(b)**

Omit “an exempt proprietary company”, substitute “a proprietary company”.

**49.** **Paragraph 305(1A)(b)**

Omit “an exempt proprietary company”, substitute “a proprietary company”.

**50.** **Section 310**

Add at the end:

(3) If a company is a proprietary company and has only one director, the signature requirement in paragraph (2)(d) is satisfied if the director signs a report referred to in subsection (2).

**51.** **Subsection 313(3)**

Omit all the words after “company,”, substitute:

signed by:

(a) in the case of a proprietary company that has only one director—that director; or

(b) in any other case—at least 2 directors.

The notice must state the reasons for seeking the order.

**52.** **After subsection 313(11)**

Insert:

(11A) In deciding for the purposes of subsection (11) whether the audit requirements for a large proprietary company, or a class of large proprietary companies, would impose an unreasonable burden on the company or companies, the Commission is to have regard to:

Other proprietary company amendments

(a) the expected costs of complying with the audit requirements; and

(b) the expected benefits of having the company or companies comply with the audit requirements; and

(c) any practical difficulties that the company or companies face in complying effectively with the audit requirements (in particular, any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the company or companies are likely to move frequently between the small and large proprietary company categories from one financial year to another); and

(d) any unusual aspects of the operation of the company or companies during the financial year concerned; and

(e) any other matters that the Commission considers relevant.

(11B) In assessing expected benefits under subsection (11A), the Commission is to take account of:

(a) the number of creditors and potential creditors; and

(b) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the company or companies); and

(c) the nature and extent of the liabilities of the company or companies.

**53.** ***Subsections 315(2) and (3)***

*Omit* “A company”, *substitute* “A public company”.

**54.** ***After subsection 315(3)***

*Insert:*

(3A) If a company is:

(a) a large proprietary company for a financial year; or

(b) a small proprietary company to which section 283B applies for a financial year; or

(c) a small proprietary company that receives a request under subsection 283C(3) for a financial year;

the company must send to each eligible person by the deadline for that year a copy of:

Other proprietary company amendments

(d) the company’s financial statements for that year; and

(e) each Division 5 statement for that year; and

(f) the Division 6 report for that year; and

(g) the auditor’s report (if any) about the financial statements for that year under section 331A.

**55.** ***Subsection 315(4)***

*Omit* “or (3)”, *substitute* (3) or (3A)”.

**56.** ***Subsection 315(6)***

*Omit.*

**57.** ***Subsection 316(1)***

*Omit* “A company’s”, *substitute* “A public company’s”.

**58*. Section 317***

*Repeal, substitute:*

**317 ASC may require company to prepare or lodge accounts etc.**

(1) The ASC may ask a small proprietary company to comply with the provisions of this Part for a financial year.

(2) The request may be general or may specify the particular requirements of this Part that the company is to comply with.

(3) A request under subsection (1) must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the request.

(4) The ASC may ask a company to lodge with the ASC a copy of any of the following documents prepared for a financial year:

(a) the financial statements

(b) the Division 5 statements

(c) the Division 6 report

(d) the auditor’s report on the financial statements.

(5) A request under subsection (4) must specify the date by which the documents have to be lodged. The date must be at least 14 days after the date on which the request is served on the company.

Other proprietary company amendments

(6) A request under subsection (1) or (4) must:

(a) be made in writing; and

(b) be served on the company; and

(c) specify the financial year or years concerned; and

(d) be made no later than 7 years after the end of each financial year specified under paragraph (c).

**59*. After section 317A***

*Insert:*

**317B Lodgment of accounts etc. by some proprietary companies**

(1) *Application of section*

Subject to subsection (3), this section applies to:

(a) a large proprietary company that is not a disclosing entity; and

(b) a small proprietary company to which section 283B applies.

(2) *Company accounts and reports*

A proprietary company to which this section applies must lodge a copy of the following documents with the ASC before the deadline for a financial year:

(a) the company’s financial statements for the year

(b) the Division 5 statements for the year

(c) the Division 6 report for the year

(d) the report about the financial statements that section 331A requires from the company’s auditor.

(3) Subsection (1) does not apply to a large proprietary company for a financial year if:

(a) the company was an exempt proprietary company on 30 June 1994; and

(b) the company has continued to meet the definition of “exempt proprietary company” (as in force at 30 June 1994) at all times since that date; and

(c) the company is a large proprietary company at the end of the first financial year after the commencement of this section; and

Other proprietary company amendments

(d) the company’s financial statements for the financial year ending during 1993 and each later financial year have been audited before the deadline for that year; and

(e) within 4 months after the end of the first financial year of the company that ends after the commencement of this section, the company lodges with the ASC a notice that the company wants this subsection to apply to the company.

(4) The ASC may extend the period referred to in paragraph (3)(e).

**60.** **Paragraphs 324(1)(f), (2)(g) and (2)(h)**

Omit “an exempt proprietary company”, substitute “a proprietary company”.

**61. Subsection 324(12)**

Omit “an exempt proprietary company”, substitute “a proprietary company”.

**62.** **Sections 325 and 326**

Repeal, substitute:

**325 Appointment of auditor by small proprietary company**

(1) A small proprietary company only has to appoint an auditor under subsection 327(1), (3) or (5) or subsection 327(10) if it is covered by section 283 or 283B.

(2) If:

(a) a small proprietary company receives a request under subsection 283C(3) or section 317 for a financial year; and

(b) to comply with the request the company has to have its financial statements for the year audited; and

(c) the company does not have an auditor;

the directors of the company must appoint an auditor for the company.

**63.** ***Paragraphs 327(5)(b) and (12)(b)***

*Omit* “an exempt proprietary company”, *substitute* “a proprietary company”.

Other proprietary company amendments

**64. Subsection 329(9)**

Omit “an exempt proprietary company”, substitute “a proprietary company”.

**65.** ***Subsection 331A(2)***

*After* “(2)”, *insert* “or (3A)”*.*

**66.** ***Subsection 335(1)***

*Before* “company” (*first occurring*), *insert* “public”.

**67.** ***After subsection 335(1)***

*Insert:*

(1A) A proprietary company must lodge with the Commission an annual return for each calendar year before 31 January in the next calendar year. The annual return must:

(a) be in the prescribed form; and

(b) contain a list of members; and

(c) contain the prescribed particulars (if any); and

(d) be lodged together with the prescribed documents.

(1B) The Commission may extend the period referred to in subsection (1A).

**68. *Subsection 335(4)***

*After* “subsection (1)”, *insert* “or subsection (1A), as the case requires”.

**69. *Subsection 335(6)***

*After* “subsection (1)”, *insert* “or (1A)”.

**70. *Subsections 358(1) and (4)***

*Omit.*

**71.** ***After subsection 363(3)***

*Insert:*

Other proprietary company amendments

(3A) Without limiting the operation of subsection (1), a document may be served on a registered body that is registered as a proprietary company and has only one director by delivering a copy personally to that director.

**72. Subsection 367(2)**

Omit all the words from and including “for the purposes of” to “shall be had to:”, substitute “one name with another for the purposes of subsection (1), disregard:”.

**73. Subsection 372(2)**

Omit.

**74.** **Subsection 382(2)**

Omit, substitute:

(2) The Commission must not approve a change of name of a company under subsection (1) unless the proposed new name is available to the company within the meaning of section 367.

**75. Paragraph 382(3) (a)**

Omit “to a name that is reserved in respect of that company under section 375”, substitute “to a name that is available to the company”.

**76. Section 382A**

Repeal.

**77.** **Paragraph 461(d)**

Omit, substitute:

(d) unless the company is a wholly owned subsidiary of another company or of a recognised company or is a proprietary company—the number of members falls below 5;

**78. Subsection 494(1)**

Omit “that consists of at least 2 of them”.

Other proprietary company amendments

**79. Subsection 532(4)**

Omit “that is an exempt proprietary company or is a subsidiary of a public company”.

**80. Subsection 857(19)**

Omit “(other than an exempt proprietary company)”, substitute “(except a proprietary company)”.

**81. Subsection 858(7)**

Omit “(other than an exempt proprietary company)”, substitute “(except a proprietary company)”.

**82. Subsection 1215(19)**

Omit “(other than an exempt proprietary company)”, substitute “(except a proprietary company)”.

**83. Subsection 1216(7)**

Omit “(other than an exempt proprietary company)”, substitute “(except a proprietary company)”.

**84. After Division 7 of Part 9.11**

Insert:

***Division 8—Changes resulting from the First Corporate Law Simplification Act 1995***

**1406. Meaning of “Amending Act”**

In this Division:

**“Amending Act”** means the First Corporate Law Simplification Act 1995.

**1407. Proprietary companies limited both by shares and by guarantee**

Despite subparagraph 116(2)(a)(i), a company that was a proprietary company limited both by shares and by guarantee under this Law as in force immediately before the commencement of item 8 of Schedule 4 to the Amending Act can remain registered as a proprietary company until:

Other proprietary company amendments

(a) it ceases to be a company limited both by shares and by guarantee; or

(b) it ceases to be a proprietary company.

**1408. Application of amendments dealing with company accounts**

The amendments made by the Amending Act to Parts 3.6 and 3.7 apply to each financial year of a company that ends on or after the commencement of this section.

**1409. Application of audit requirements for large proprietary companies**

Despite section 1408, the first financial year for which a large proprietary company that was an exempt proprietary company immediately before the commencement of this section must have its accounts audited under section 296 (as amended by the Amending Act) is the first financial year that starts after the commencement of this section.

**1410. First annual return for proprietary companies under new provisions**

(1) To avoid any doubt, the first calendar year for which subsection 335(1A) applies is the one that ends on the first 31 December after the commencement of this section.

(2) The first calendar year for which subsection 335(1A) applies to a company that is registered after the commencement of this section is the calendar year that ends on the first 31 December after its registration.

Note: Subsection 335(1A) was inserted by item 67 of Schedule 4 to the Amending Act.

**85. Schedule 3**

(a) insert after “**Section 111AU**”*:*

**Subsection 116(2):**

Penalty: 50 penalty units or imprisonment for 1 year, or both.

(b) *Omit:*

**Section 170:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

substitute:

**Section 170:**

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Other proprietary company amendments

(c) insert before “**Section 333**”*:*

**Section 317:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Schedule 5**

**New company registers Division**

**Part 2.5—Company registers**

216A Registers to be maintained

216B Register of members

216C Register of option holders and copies of options documents

216D Register of debenture holders

216E Location of registers

216F Right to inspect and get copies

216G Agent’s obligations

216H Correction of registers

216I Evidentiary value of registers

216J Use of information on registers

216K Overseas branch registers

**Constitution of companies Chap: 2**

**Company registers Part: 2.5**

**section 216A**

|  |
| --- |
| Part 2.5—Company registers |

**216A Registers to be maintained**

(1) A company must set up and maintain:

(a) a register of members (see section 216B); and

(b) if the company grants options over unissued shares—a register of option holders and copies of options documents (see section 216C); and

(c) if the company issues debentures—a register of debenture holders (see section 216D).

Note 1: See also section 271 (register of charges) and section 702 (register of unclaimed property of dissenting shareholders).

Note 2: The registers may be kept on computer (see section 1306).

(2) *Extended reach of debenture concept*

For the purposes of this Part, documents that fall into one of the exceptions in paragraphs (a), (b), (c) and (f) of the definition of “debenture” in section 9 are treated as if they were debentures.

**216B Register of members**

(1) General requirements

The register of members must contain the following information about each member:

(a) the member’s name and address

(b) the date on which the entry of the member’s name in the register is made.

(2) Index to register

If the company has more than 50 members, the company must include in the register an up-to-date index of members’ names. The index must be convenient to use and allow a member’s entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index.

**Chap: 2 Constitution of companies**

**Part: 2.5 Company registers**

**section 216B**

(3) Companies with share capital

If the company has a share capital, the register must also show:

(a) the date on which every allotment of shares takes place; and

(b) the number of shares in each allotment; and

(c) the shares held by each member; and

(d) the class of shares; and

(e) the share numbers (if any), or share certificate numbers (if any), of the shares; and

(f) the amount paid, or agreed to be considered as paid, on the shares.

Note 1: Transfers of shares are entered in the register under section 1092. Section 213 deals with the registration of trustees etc. on the death, incapacity or bankruptcy of the shareholder.

Note 2: For the treatment of joint holders see subsection (8).

(4) Companies with stock

If the company converts shares to stock, the register must show the amount of stock, or the number of stock units, held by each member who holds stock.

(5) Non-beneficial ownership—companies other than listed companies

The register of a company that:

(a) has a share capital; and

(b) is neither a listed company (within the meaning of section 603) nor a company covered by an order under section 707;

must indicate any shares or stock that a member does not hold beneficially.

Note: See also section 208 (in particular, subsection 208(9) which contains relevant presumptions about beneficial ownership).

(6) In deciding for the purposes of subsection (5) whether a member holds shares beneficially or non-beneficially, the company is to have regard only to information in notices given to the company under section 208, 720 or 722.

**Constitution of companies Chap: 2**

**Company registers Part: 2.5**

**section 216C**

(7) *Former members*

A register of members must also show:

(a) the name and details of each person who stopped being a member of the company within the last 7 years; and

(b) the date on which the person stopped being a member.

The company may keep these entries separately from the rest of the register.

(8) *Joint holders*

For the purposes of this section, 2 or more persons who jointly hold shares in the company are taken to be a single member of the company in relation to those shares. They may also be members of the company because of shares that they hold in their own right or jointly with others.

**216C Register of option holders and copies of options documents**

(1) The register of option holders must contain the following information about each holder of options over unissued shares in the company:

(a) the option holder’s name and address

(b) the date on which the entry of the option holder’s name in the register is made

(c) the date of grant of the options

(d) the number and description of the shares over which the options were granted

(e) either:

(i) the period during which the options may be exercised; or

(ii) the time at which the options may be exercised

(f) any event that must happen before the options can be exercised

(g) any consideration for the grant of the options

(h) any consideration for the exercise of the options or the method by which that consideration is to be determined.

Because it is a register of the holders of options that are still exercisable, the register must be updated whenever options are exercised or expire.

**Chap: 2 Constitution of companies**

**Part: 2.5 Company registers**

**section 216D**

(2) Information about the grant of an option must be entered in the register within 14 days after the grant of the option.

(3) *Copies of options documents*

The company must keep with the register a copy of every document that grants an option over unissued shares in the company unless the option has been granted official quotation by a securities exchange.

(4) The company must change the register to reflect the transfer of an option over unissued shares in the company only if the person transferring the option gives the company written notice of the transfer.

(5) A company’s failure to comply with this section in relation to an option does not affect the option itself.

**216D Register of debenture holders**

(1) The register of debenture holders must contain the following information about each holder of a debenture:

(a) the debenture holder’s name and address

(b) the amount of the debentures held.

Note: See subsection 216A(2) for the coverage of “debenture”.

(2) A company’s failure to comply with this section in relation to a debenture does not affect the debenture itself.

**216E Location of registers**

(1) A register kept under this Part must be kept at:

(a) the company’s registered office; or

(b) an office at the company’s principal place of business; or

(c) an office (whether of the company or of someone else) where the work involved in maintaining the register is done; or

(d) another office approved by the ASC.

The office must be in Australia.

**Constitution of companies Chap: 2**

**Company registers Part: 2.5**

**section 216F**

(2) *Notice to ASC*

The company must lodge with the ASC a notice of the address at which the register is kept within 7 days after the register is:

(a) established at an office that is neither the company’s registered office nor at its principal place of business; or

(b) moved from one office to another.

Notice is not required for moving the register between the registered office and an office at the principal place of business.

**216F Right to inspect and get copies**

(1) *Right to inspect*

A company must allow anyone to inspect a register kept under this Part. If the register is not kept on a computer, the person inspects the register itself. If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the company agree that the person can access the information by computer.

Note: Other provisions that are relevant to the inspection of registers are:

• section 1300 (place and times for inspection)

• section 1301 (the location of documents that are kept on computers)

• section 1306 (form and evidentiary value).

(2) *Inspection fees*

A member of a company, a registered option holder or a registered debenture holder may inspect a register kept under this Part without charge. Other people may inspect the register only on payment of any fee (up to the prescribed amount) required by the company.

(3) *Right to get copies*

The company must give a person a copy of the register (or a part of the register) within 7 days if the person:

(a) asks the company for the copy; and

(b) pays any fee (up to the prescribed amount) required by the company.

The ASC may allow the company a longer period to comply with the request. If the register is kept on a computer and the person asks for the data on floppy disk, the company must give the data

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**Part: 2.5 Company registers**

**section 216G**

to the person on floppy disk. The data must be readable but the floppy disk need not be formatted for the person’s preferred operating system.

(4) A person has the same rights to inspect, and obtain copies of, a company’s options documents kept under subsection 216C(3) as the person has in respect of the register of option holders itself.

(5) The company is not required under subsection (1) or (3) to allow a person to see, or to give a person a copy that contains, share certificate numbers.

(6) ASC power in relation to register of debenture holders

The ASC may exempt a company from complying with subsections (1) and (3) in relation to information in a register of debenture holders about debentures that are not convertible into shares or options over unissued shares.

(7) The exemption:

(a) must be in writing; and

(b) may be general or limited; and

(c) may be subject to conditions specified in the exemption.

(8) The ASC must publish a copy of the exemption in the Gazette.

(9) A person must not contravene a condition of the exemption.

(10) On application by the ASC, the Court may order a person who contravenes a condition of the exemption to comply with the condition.

**216G Agent’s obligations**

A person who agrees to maintain a register on behalf of a company for the purposes of this Part must:

(a) make the register available for inspection under this Part; and

(b) provide the copies required by this Part.

**216H Correction of registers**

(1) A company or a person aggrieved may apply to the Court to have a register kept by the company under this Part corrected.

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**section 216I**

(2) If the Court orders the company to correct the register, it may also order the company to compensate a party to the application for loss or damage suffered.

(3) If:

(a) the Court orders a company to correct its register of members; and

(b) the company has lodged a list of its members with the ASC;

the company must lodge notice of the correction with the ASC.

**216I Evidentiary value of registers**

In the absence of evidence to the contrary, a register kept under this Part is proof of the matters shown in the register under this Part.

**216J Use of information on registers**

(1) A person must not:

(a) use information about a person obtained from a register kept under this Part to contact or send material to the person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person;

unless that use or disclosure of the information is:

(c) relevant to the holding of the shares, options or debentures concerned or the exercise of the rights attaching to them; or

(d) approved by the company.

Note: An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

(2) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) owes a debt to the company. The amount of the debt is the amount of the profit.

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**Part: 2.5 Company registers**

**section 216K**

**216K Overseas branch registers**

(1) A company may keep a branch register of members at a place outside Australia.

(2) If a company keeps an overseas branch register under subsection (1):

(a) the company must keep the branch register in the same manner as this Law requires the company to keep the register kept under section 216B (the **“principal register”**); and

(b) the company must enter in the principal register the details contained in the branch register; and

(c) the company must distinguish shares that are registered in the branch register from the shares registered in the principal register.

|  |
| --- |
| **Schedule 6** |
| **Other company registers amendments** |

Other company registers amendments

**1. Section 9**

Insert the following definition:

**“Australian register”** of a foreign company means a branch register of members kept under section 351;

**2. Section 9 (definitions of “branch register”, “principal executive officer”, “principal Australian register” and “principal register”)**

Omit.

**3. Subsection 31(1)**

Omit “sections 234, 235 and 236”, substitute “section 235”.

**4. Paragraph 43(a)**

Omit “sections 234, 235 and 236”, substitute “section 235”.

**5. Paragraph 83(2) (b)**

Omit, substitute:

(b) a provision of subsection 242(1), (2), (8) or (9), or a provision of section 335, requiring the lodgment of a document.

**6. Section 109X**

Add at the end:

(3) Service on director or secretary

In addition to the methods of service referred to in subsection (1), a document may be served on, or delivered to, a director or secretary:

(a) in their capacity as a director or secretary; or

(b) for the purposes of a proceeding in respect of conduct they engaged in as a director or secretary;

by leaving it at, or posting it to, the alternative address notified to the ASC under subsection 242(1), (2) or (8).

Other company registers amendments

(4) Subsection (3) applies whether the service or delivery is made for the purposes of a provision of this Law or for the purposes of another law.

**7. Paragraph 111AH(l)(a)**

Omit “209, 215”, substitute “216B, 216C, 216D”.

**8. Paragraph 152(l)(a)**

Omit “209, 215, 235, 242, 271, 715, 724”, substitute “216A, 271”.

**9. Paragraph 152(4) (a)**

Omit “210(3), 215(5), 235(8), 242(6), 271(4), 715(3), 724(4)”, substitute “216F(1), 216F(3), 271(4)”.

**10. Paragraph 164(3)(b)**

(a) Omit “, the principal executive officer”.

(b) Omit “, by the principal executive officer”.

(c) Insert “notices or” after “from”.

**11. Paragraph 164(3)(J)**

Omit “the principal executive officer,”.

**12. Subsection 180(5)**

Omit “, the principal executive officer”.

**13. Heading to Division 5 of Part 2.4**

Omit, substitute:

Division **5**—Beneficial and non-beneficial interests in shares

Other company registers amendments

**14. Section 207**

Repeal.

**15. Subsection 208(9)**

Omit “209”, substitute “216B”.

**16. Sections 209 to 212**

Repeal.

**17. Subsection 213(1) (definition of “share”)**

Omit “or branch register”.

**18. Subsection 213(9)**

Omit “or branch register” (wherever occurring).

**19. Subsection 213(10)**

Omit “209”, substitute “216B”.

**20. Paragraph 213(10)(a)**

Omit “or a branch register”.

**21. Paragraph 213(10)(b)**

Omit “209”, substitute “216B”.

**22. Sections 214 to 215**

Repeal.

Other company registers amendments

**23. Subsection 222(1)**

Omit “, either personally or by an agent authorised in writing for the purpose, signed and lodged with the Commission a consent in writing to act as a director and”.

**24. Subsection 222(3)**

Omit “(other than the provisions relating to the signing of a consent to act as director)”.

**25. After section 222**

Insert:

**222A Consent to act as director or secretary**

(1) A company contravenes this subsection if a person does not give the company a signed consent to act as director or secretary of the company before being appointed.

(2) The company must keep the consent.

**26. Section 235**

Repeal, substitute:

**235. Listed company—director to notify securities exchange of shareholdings etc.**

(1) Notifiable interests

A director of a listed company must notify the relevant securities exchange under subsections (3) and (4) of the following interests of the director:

(a) relevant interests in shares of the company or of a related body corporate

(b) relevant interests in debentures of, or prescribed interests made available by, the company or a related body corporate

(c) rights or options over shares in, debentures of, or prescribed interests made available by, the company or a related body corporate

Other company registers amendments

(d) contracts:

(i) to which the director is a party or under which the director is entitled to a benefit; and

(ii) that confer a right to call for or deliver shares in, debentures of, or prescribed interests made available by, the company or a related body corporate.

(2) A notice of a relevant interest under paragraph (l)(a) or (b) must give details of the nature and extent of the relevant interest.

(3) *Occasions for initial notification*

The director must notify the exchange within 14 days after each of the following occasions:

(a) the commencement of this section

(b) appointment as a director of the company after that commencement

(c) the listing of the company after that commencement.

Paragraph (b) does not apply to a director who retires and is then re-appointed at the same meeting.

(4) Updating notices

The director must notify the exchange within 14 days after any change in the director’s interests.

(5) The director need not give the information to the exchange under this section if the director has already given the information to the exchange under Part 6.7.

**27. Paragraphs 236(1) (a) and (b)**

Omit.

**28. Paragraphs 236(2) (a) and (b)**

Omit.

**29. Subsection 236(4)**

Omit “the principal executive officer, or a secretary,”, substitute “a secretary”.

Other company registers amendments

**30. Paragraph 236(5)(b)**

Omit “the principal executive officer, or a secretary, as the case may be,”, substitute “a secretary”.

**31. Subsections 236(6) and (7)**

Omit.

**32. Subsection 237(19) (paragraph (a) of the definition of prescribed office”)**

Add at the end “and”.

**33. Subsection 237(19) (paragraph (b) of the definition of prescribed office”)**

Omit.

**34. Subsection 237(19) (paragraph (c) of the definition of “prescribed office”)**

Omit “or (b)”.

**35. Sections 242 and 242A**

Repeal, substitute:

**242. Notice of name and address of directors and secretaries**

(1) On registration

Within 1 month after it is registered under section 120 or 137, a company must lodge with the ASC a notice of the personal details of each director and secretary. The notice must be in the form prescribed by the regulations.

(2) New directors or secretaries

If a person is appointed as a director or secretary of the company, the company must lodge with the ASC, within 1 month after the appointment, a notice of the personal details of the director or secretary. The notice must be in the form prescribed by the regulations.

Other company registers amendments

(3) *Personal details*

The personal details of a director or secretary are:

(a) present given and family name; and

(b) all former given and family names; and

(c) date and place of birth; and

(d) address.

(4) *Address*

Subject to subsection (5), a person’s address must be their usual residential address.

(5) A person is entitled to have an alternative address included in notices under subsections (1), (2) and (8) if:

(a) their name, but not their residential address, is on an electoral roll under the *Commonwealth Electoral Act 1918* because of section 104 of that Act; or

(b) their name is not on an electoral roll under that Act and the ASC determines, in writing, that including their residential address in the notices under this section would put at risk their personal safety or the personal safety of members of their family.

This alternative address must be in Australia and be one at which documents can be served on the person. At any particular time, a person is entitled to have only one alternative address under this section.

Note: See subsection 109X(3) on the status of the alternative address as an address for service.

(6) A person who takes advantage of subsection (5) must:

(a) before or at the same time as the alternative address is first included in a notice under this section, lodge with the ASC notice of the person’s usual residential address; and

(b) lodge with the ASC notice of any change in the person’s usual residential address within 14 days after the change.

A notice under this subsection must be in the form prescribed by the regulations.

(7) If a court gives a judgment for payment of a sum of money against a person who is taking advantage of subsection (5), the ASC may give details of the person’s usual residential address to an officer of the court for the purposes of enforcing the judgment debt.

Other company registers amendments

(8) Changes in details

The company must lodge with the ASC notice of any change in the personal details of a director or secretary. The notice must be lodged within 1 month after the change and must be in the form prescribed by the regulations.

(9) Notice of directors or secretaries leaving the company

If a person stops being a director or secretary of the company, the company must lodge with the ASC notice of the fact within 1 month. The notice must be in the form prescribed by the regulations.

**242A ASC power to ask for information about person’s position as director or secretary**

(1) The ASC may ask a person, in writing, to inform the ASC:

(a) whether the person is a director or secretary of a particular company; and

(b) if the person is no longer a director or secretary of the company—the date on which the person stopped being a director or secretary.

(2) The person must give the information to the ASC in writing by the date specified in the request.

**242B ASC certificate**

The ASC may certify that a person was a director or secretary of a company at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

Note: See section 1274B for the evidentiary status of documents prepared by the ASC from the national database.

**242C Director or secretary may notify ASC of resignation or retirement**

(1) If a director or secretary of a company retires or resigns, they may give the ASC written notice of the retirement or resignation. The notice must be in the form prescribed by the regulations.

(2) To be effective under this section, a notice of resignation must be accompanied by a copy of the letter of resignation given to the company.

Other company registers amendments

(3) Nothing in this section affects the company’s obligations to notify the ASC of the resignation or retirement.

**36. Subparagraphs 244(3)(d)(i), (ii) and (iii)**

Add at the end “and”.

**37. Subparagraph 244(3)(d)(iv)**

Omit “and”.

**38. Subparagraph 244(3) (d)(v)**

Omit.

**39. Paragraph 307(l)(b)**

Omit, substitute:

(b) if the company is a listed company—that director’s relevant interests in shares of the company or of a related body corporate that paragraph 235(1)(a) requires the director to notify to the relevant securities exchange; and

**40. Paragraph 337(l)(b)**

Omit “principal register”, substitute “register of members”.

**41. Paragraph 341(c)**

Omit, substitute:

(c) a list of its directors containing personal details of those directors that are equivalent to the personal details of directors referred to in subsection 242(3);

**42. Paragraph 344(c)**

Omit, substitute:

(c) a list of its directors containing personal details of those directors that are equivalent to the personal details of directors referred to in subsection 242(3);

Other company registers amendments

**43. Section 351**

(a) Omit from paragraph (2)(a) “a principal”, substitute “an”.

(b) Omit from subsections (4) and (5) “principal”.

(c) *Omit from subsection* *(4)* “that does not keep a register under section 352”.

**44. Section 352**

Repeal

**45. Subsection 353(1)**

Omit “or 352”.

**46. Subsection 353(2)**

Omit “principal register”, substitute “register of members”.

**47. Subsection 353(5)**

Omit “rectification” (wherever occurring), substitute “correction”.

**48. Paragraphs 354(a) and (c)**

Omit “or 352”.

**49. Paragraph 355(b)**

Omit “or 352”.

**50. Section 355**

Omit “352,”.

**51. Section 356**

Repeal, substitute:

**356 Index of members and inspection of registers**

Subsection 216B(2) and sections 216F, 216G and 216J apply in relation to a register kept under section 351.

Other company registers amendments

**52. Section 357**

Omit “or 352”.

**53. Subsections 715(1), (2) and (3)**

Omit.

**54. Subsections 716(2) and (3)**

Omit.

**55. Section 724**

Repeal.

**56. Subsection 726(2)**

Omit.

**57. Subsection 726(3)**

Omit “, 723 or 724”, substitute “or 723”.

**58. Section 727**

Omit all the words from and including “proved that:”, substitute “proved that the giving of the notice was frivolous or vexatious.”.

**59. Subsection 742(3)**

Omit all the words from and including “satisfied:”, substitute “satisfied that the giving of the notice was frivolous or vexatious.”.

**60. Subsection 1047(1)**

Omit.

Other company registers amendments

**61. Section 1048**

Repeal.

**62. Subsection 1070(2)**

Omit, substitute:

(2) The provisions of Part 2.5 (other than sections 216E and 216K) apply to registers kept under subsection (1) as if they were registers of members.

**63. Subsection 1083(2) (definition of “prescribed provision”)**

Omit all the words after “means”, substitute “paragraph 216A(l)(c) or a provision of Division 2,4 or 6 of this Part.”.

**64. Subsection 1085(3)**

Omit, substitute:

(3) For the purposes of any law, a share or other interest of a member in a company is taken to be situated:

(a) if the share or other interest is entered on the register kept under section 216B—in the State or Territory where that register is kept; or

(b) if the share or other interest is entered on an overseas branch register kept under section 216K—in the foreign country where that register is kept.

**65. Paragraph 1087(l)(a)**

Omit, substitute:

(a) must be under the common seal of the company; and

**66. Before subparagraph 1274(2)(a)(i)**

Insert:

(iaa) a notice lodged under subsection 242(6);

Other company registers amendments

**67. Subsection 1302(1)**

Omit “209, 215,235, 242,271, 715, 724”, substitute “271”.

**68. Subsection 1302(2)**

Omit.

**69. Subsections 1302(3) and (4)**

Omit “or (2)”.

**70. Subsections 1302(3), (4) and (5)**

Omit “or branch register” (wherever occurring).

**71. Subsection 1302(6)**

Omit.

**72. Schedule 3**

(a) Insert before **“Section 219”**:

**Section 216A:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Subsection 216C(3):**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Section 216E:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Section 216F:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Other company registers amendments

**Section 216G:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Section 216J:**

Penalty: 50 penalty units or imprisonment for 1 year, or both.

(b) Insert before **“Section 224”**

**Section 222A:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(c) Insert before **“Section 236”:**

**Section 235:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(d) Insert before **“Section 243ZF”**:

**Section 242:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

**Section 242A:**

Penalty: 10 penalty units or imprisonment for 3 months, or both.

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| Schedule 7 |
| Amendment of the ***Australian Securities Commission Act 1989*** |

**Section 86**

After “subparagraph (1)(a)(ii)” insert “or subsection (3)”

**NOTES**

1. No. 1, 1989, as amended. For previous amendments, see No. 110, 1990; Nos. 110, 200 and 201, 1991; Nos. 27 and 210, 1992; Nos. 32 and 82, 1993; and Nos. 31,69 and 104, 1994.

2. No. 90,1989, as amended. For previous amendments, see Nos. 41 and 110,1990; Nos. 110,122 and 188,1991; and Nos. 27, 94 and 210,1992.

NOTE ABOUT SECTION HEADINGS

The following table changes some section headings in the Corporations Law and sets out when the changes commence.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Heading to** | **Change** | **Commencement** |
| 1 | section 255 | omit“**exempt**” | same as item 38 of Schedule 4 to this Act |
| 2 | section 351 | omit“**Principal Australian register**”,substitute“**Register of members” .** | same as item 43 of Schedule 6 to this Act |
| 3 | section 353 | omit “**or 352**” | same as item 45 of Schedule 6 to this Act |
| 4 | section 354 | omit“**or 352**” | same as item 48 of Schedule 6 to this Act |
| 5 | section 715 | omit the heading, substitute“**Effect of actions under this Part**” | same as item 53 of Schedule 6 to this Act |

**LIST OF CORPORATIONS LAW AMENDMENTS MADE BY THIS ACT**

This list sets out the items that amend existing sections of the Corporations Law and that insert new sections into the Corporations Law. New sections are marked with an asterisk.

|  |  |  |
| --- | --- | --- |
| **Corporations Law section** | **amended/inserted by** | **topic** |
| 9 | Items 1 and 2 of Schedule 2 | Share buy-backs |
|  | Items 1 and 2 of Schedule 6 | Company registers |
|  | Items 1 to 3 of Schedule 4 | Proprietary companies |
| 31 | Item 3 of Schedule 6 | Company registers |
| \*42A | Item 3 of Schedule 2 | Share buy-backs |
| 43 | Item 4 of Schedule 6 | Company registers |
| Division 5A of Part 1.2 | Item 4 of Schedule 4 | Proprietary companies |
| 58C | Item 5 of Schedule 4 | Proprietary companies |
| 69 | Item 6 of Schedule 4 | Proprietary companies |
| 83 | Item 5 of Schedule 6 | Company registers |
| 109X | Item 5 of Schedule 6 | Company registers |
| 111AH | Item 7 of Schedule 6 | Company registers |
| \*Part 1.4 | Schedule 3 | Proprietary companies |
| \*Part 1.5 | Schedule 3 | Small business guide |
| 114 | Item 7 of Schedule 4 | Proprietary companies |
| 116 | Item 8 of Schedule 4 | Proprietary companies |
| 118 | Item 9 of Schedule 4 | Proprietary companies |
| 120 | Item 10 of Schedule 4 | Proprietary companies |
| 135 | Items 11 to 13 of Schedule 4 | Proprietary companies |
| 136 | Item 14 of Schedule 4 | Proprietary companies |
| 137 | Item 15 of Schedule 4 | Proprietary companies |
| 152 | Items 8 and 9 of Schedule 6 | Company registers |
| 164 | Item 16 of Schedule 4 | Proprietary companies |
|  | Items 10 and 11 of Schedule 6 | Company registers |

List of Corporations Law amendments made by this Act

|  |  |  |
| --- | --- | --- |
| 168 | Item 17 of Schedule 4 | Proprietary companies |
| 170 | Item 18 of Schedule 4 | Proprietary companies |
| \*170A | Item 18 of Schedule 4 | Proprietary companies |
| 171 | Item 19 of Schedule 4 | Proprietary companies |
| 177 and 178 | Item 20 of Schedule 4 | Proprietary companies |
| 180 | Item 21 of Schedule 4 | Proprietary companies |
|  | Item 12 of Schedule 6 | Company registers |
| 186 | Item 22 of Schedule 4 | Proprietary companies |
| 191 | Item 4 of Schedule 2 | Share buy-backs |
| 205 | Item 5 of Schedule 2 | Share buy-backs |
|  | Item 23 of Schedule 4 | Proprietary companies |
| \*206A to 206K | Schedule 1 | Share buy-backs |
| 206 | Item 6 of Schedule 2 | Share buy-backs |
| Heading to Division 5 of Part 2.4 | Item 13 of Schedule 6 | Company registers |
| 207 | Item 14 of Schedule 6 | Company registers |
| 208 | Item 15 of Schedule 6 | Company registers |
| 209 to 212 | Item 16 of Schedule 6 | Company registers |
| 213 | Items 17 to 21 of Schedule 6 | Company registers |
| 214 and 215 | Item 22 of Schedule 6 | Company registers |
| \*216A to 216K | Schedule 5 | Company registers |
| 220 | Item 24 of Schedule 4 | Proprietary companies |
| 221 | Item 25 of Schedule 4 | Proprietary companies |
| 222 | Items 23 and 24 of Schedule 6 | Company registers |
| \*222A | Item 25 of Schedule 6 | Company registers |
| \*224A | Item 26 of Schedule 4 | Proprietary companies |
| 228 | Items 27 to 30 of Schedule 4 | Proprietary companies |
| 231 | Item 31 of Schedule 4 | Proprietary companies |
| 235 | Item 26 of Schedule 6 | Company registers |
| 236 | Items 27 to 31 of Schedule 6 | Company registers |

List of Corporations Law amendments made by this Act

|  |  |  |
| --- | --- | --- |
| 237 | Items 32 to 34 of Schedule 6 | Company registers |
| 240 | Item 32 of Schedule 4 | Proprietary companies |
| \*242 to 242C | Item 35 of Schedule 6 | Company registers |
| 244 | Items 36 to 38 of Schedule 6 | Company registers |
| 245 | Items 33 to 36 of Schedule 4 | Proprietary companies |
| 249 | Item 37 of Schedule 4 | Proprietary companies |
| 255 | Item 38 of Schedule 4 | Proprietary companies |
| \*255A | Item 39 of Schedule 4 | Proprietary companies |
| 258 | Item 40 of Schedule 4 | Proprietary companies |
| \*283 to 283D | Item 41 of Schedule 4 | Proprietary companies |
| 290 | Item 42 of Schedule 4 | Proprietary companies |
| 296 | Item 43 of Schedule 4 | Proprietary companies |
| 301 | Item 44 of Schedule 4 | Proprietary companies |
| 302 | Item 45 of Schedule 4 | Proprietary companies |
| 303 | Items 46 and 47 of Schedule 4 | Proprietary companies |
| 304 | Item 48 of Schedule 4 | Proprietary companies |
| 305 | Item 49 of Schedule 4 | Proprietary companies |
| 307 | Item 39 of Schedule 6 | Company registers |
| 310 | Item 50 of Schedule 4 | Proprietary companies |
| 313 | Items 51 and 52 of Schedule 4 | Proprietary companies |
| 315 | Items 53 to 56 of Schedule 4 | Proprietary companies |
| 316 | Item 57 of Schedule 4 | Proprietary companies |
| 317 | Item 58 of Schedule 4 | Proprietary companies |
| \*317B | Item 59 of Schedule 4 | Proprietary companies |
| 324 | Items 60 and 61 of Schedule 4 | Proprietary companies |
| 325 and 326 | Item 62 of Schedule 4 | Proprietary companies |
| 327 | Item 63 of Schedule 4 | Proprietary companies |
| 329 | Item 64 of Schedule 4 | Proprietary companies |
| 331A | Item 65 of Schedule 4 | Proprietary companies |

List of Corporations Law amendments made by this Act

|  |  |  |
| --- | --- | --- |
| 335 | Items 66 and 67 of Schedule 4 | Proprietary companies |
| 337 | Item 40 of Schedule 6 | Company registers |
| 341 | Item 41 of Schedule 6 | Company registers |
| 344 | Item 42 of Schedule 6 | Company registers |
| 351 | Item 43 of Schedule 6 | Company registers |
| 352 | Item 44 of Schedule 6 | Company registers |
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[Minister’s second reading speech made in***—***

House of Representatives on 8 February 1995 Senate on 23 March 1995]