



Chapman Tripp submission to the Ministry of
Business, Innovation and Employment on
Consultation on regulations for the
Incorporated Societies Act 2022

[22 November 2022]

The regulations for the Incorporated Societies Act 2022

Introduction

This submission from Chapman Tripp is in response to the Consultation Document regarding the regulations (the **Regulations**) for the Incorporated Societies Act 2022 (the **Act**).

Chapman Tripp is a full service law firm. We have offices in Auckland, Wellington and Christchurch.

Our practice includes providing legal advice on a range of matters to incorporated societies. Several of our clients intend to reregister, and we expect to assist several new societies in registering, under the Act. Through our previous experience we are aware of the issues that tend to arise for incorporated societies, and are submitting to help ensure the Regulations implemented assist in the Act functioning effectively.



Submissions

We have reviewed the Consultation Document and generally support the Regulations as proposed. The following submissions respond to the questions in the Consultation Document on an ad hoc basis.

| Question in Consultation Document | Topic | Comments |
|-----------------------------------|---|---|
| Question 4 | Declaring persons to be, or not to be, officers | <p>We do not consider that purely secretarial roles should be held to the same standard as those who are expressly appointed to manage the society (e.g. committee members, chief executives, treasurers).</p> <p>As incorporated societies are often formed for community purposes, there will likely be situations where it would be considered extreme to impose officers' duties on positions which carry out purely administrative activities (e.g. secretaries).</p> <p>These positions will often be taken up by people with good intentions, however limited expertise regarding the governance and/or management of a society. Furthermore, while secretarial roles may have significant involvement in the administration of societies, they will not always have significant influence – leading to inconsistent treatment of such roles.</p> <p>We recommend that positions which are purely administrative/secretarial in nature should be expressly excluded by Regulation from the definition of officer. Our starting point is this should apply to all societies, however at a minimum this should be the case for societies that qualify as 'small societies' (as defined in section 103 of the Act).</p> |

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|-----------------------------------|---|--|
| Question 5 | Prescribing circumstances related to independent committee members | <p>We agree with the proposed Regulation to allow societies involved in physical recreation and sport to have additional independent committee members. The proposed exception will help enable such societies to achieve high-quality governance, mitigating the concerns raised in paragraph 37.</p> <p>In relation to other societies, we support the dual threshold Regulation as described in paragraph 42(b).</p> <p>Enabling societies of the proposed sizes to appoint additional independent committee members reflects the increased importance of promoting the trust and confidence of a societies' members where significant sums of money are involved. The differing thresholds also reflects the heightened public interest where charities are involved.</p> <p>Additionally, having a dual threshold which is consistent with the differing audit thresholds will help promote awareness of when the exception applies – if you are required to have your financial statements audited, the exception will apply. This should increase the likelihood of societies turning their minds to whether they wish to rely on this exception, and therefore the likelihood of achieving the purposes for which the exception was created.</p> |
| Question 8 | Regulating constitutional provision on conflicts | <p>We suggest that omitting to make Regulations that prescribe conditions for section 62(2)(d) and section 67 means that societies do not have sufficient flexibility to determine conflicts provisions that are bespoke for their circumstances. Without Regulations the optionality of those sections is empty. The Regulations could simply specify "where the full executive committee considers unanimously that it is appropriate" or something similar. The point is that the societies should have the flexibility.</p> |
| Question 10 | Defining the term 'total current assets' | <p>We support the proposed definition of "total current assets".</p> <p>While it can be difficult to retrospectively document intent, the wording "expected to be sold" captures more concrete decisions (e.g. not simply considering whether to sell assets). As societies should have clear documentation around any expected sales (e.g. sale and purchase agreements, minutes of decisions) this difficulty is appropriately mitigated.</p> <p>Though there could be situations where an expected sale which puts a society over the 'small societies' threshold doesn't eventuate, we do not expect this to be a common occurrence in practice. Furthermore, the consequence of this happening (i.e. otherwise small societies being required to prepare financial statements in accordance with GAAP) is outweighed by the purpose of promoting high-quality governance of societies, and promoting the trust and confidence of societies' members.</p> |
| Question 11 | Prescribing additional requirements for the financial statements of small societies | <p>We agree that no more is needed. A lenient approach should be taken for small societies, in the same way that a lenient approach is taken to small charities under the Charities Amendment Bill.</p> |

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| Question 12 | Determining the class of society that must have its financial statements audited | <p>We agree with the proposed threshold requiring societies (not registered as charities) to have their financial statements audited.</p> <p>We consider a threshold that captures the largest 1% of societies to appropriately balance promoting the trust and confidence of societies' members against allowing societies to be self-governing and free from inappropriate Government interference.</p> <p>The fact that 95% of societies with expenditure of \$3 million or more had their financial statements audited or reviewed in their 2021 financial year suggests members generally support this view.</p> |
| Question 13 | Setting infringement fees | We think these strike a good balance. |
| Question 18 | Receipt of documents | Regarding the inclusion of facsimile receipt – in our experience people are removing facsimile receipt from their notice provisions as the number of entities using them has dropped substantially. That said, we appreciate that the concept is still used in the Companies Act and therefore it makes sense for this to reflect that broader approach. |
| Question 23 | Setting late fees | <p>The table at paragraph 182 states there will be a penalty for failure to give the Registrar a copy of a resolution within 5 working days – referencing section 92(2) of the Act.</p> <p>There is no section 92(2) of the Act. Furthermore, section 92 only requires a society to provide a copy of a resolution to each person who was entitled to vote but did not approve the resolution, with no additional requirement to provide a copy to the Registrar.</p> <p>We presume this is an error, as a requirement to provide copies of all written resolutions to the Registrar would add unnecessary administrative burden to both societies and the Registrar.</p> |



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