

No. 16 of 2014.

Companies (Amendment) Act 2014.

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No. 16 of 2014.

AN ACT

entitled

Companies (Amendment) Act 2014.

Being an Act to amend the *Companies Act 1997* to reform the law relating to companies, and to facilitate online filing,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended by adding the following new definition after the definition of “share register”:

““signature” means either the name of a person affixed with their own hand on a document, or, in the case of a document submitted to or produced from the registry by electronic means, the name of the person affixed to the document by a method deemed acceptable by the Registrar.”.

2. APPLICATION FOR REGISTRATION (AMENDMENT OF SECTION 13).

Section 13 of the Principal Act is amended in Subsection (1) by repealing Paragraphs (b), (c) and (d).

3. NEW SECTION 13A.

The Principal Act is amended by inserting after Section 13 the following new section:

“13A. SIGNED CONSENT.

(1) A company shall keep at its registered office a signed consent by each person named as director of the company in the prescribed form and shall forthwith produce such consents to the Registrar of Companies when required to do so by written request.

(2) A company shall keep at its registered office a signed consent by each person named as a secretary of the company in the prescribed form and shall forthwith produce such consents to the Registrar of Companies when required to do so by written request.

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(3) A company shall keep at its registered office a signed consent by each person named as a shareholder, or their authorised agent, of the company in the prescribed form and shall immediately produce such consents to the Registrar when required to do so by written request, together with any documents authorising an agent to act on behalf of a shareholder.”.

4. REGISTRATION (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended by repealing the word “After” and replacing it with the words “As soon as”.

5. APPLICATION FOR RESERVATION OF NAME (AMENDMENT OF SECTION 23).

Section 23(3)(b) of the Principal Act is amended by deleting the words “three months” and replacing them with the words “two months”.

6. CONTRACTS FOR ISSUE OF SHARES (AMENDMENT OF SECTION 41).

Section 41(1) of the Principal Act is amended by repealing Paragraphs (a) and (b) and replacing them with the following:

- “(a) has authorised the issue of the shares under Section 43 and complied with Section 47; or
- (b) all shareholders concur or agree with the issue of shares.”.

7. ISSUE OF OTHER SHARES (AMENDMENT OF SECTION 43).

Section 43 of the Principal Act is amended -

- (a) in Subsection (3)(a) by inserting the words “if any exists,” after the word “company,”; and
- (b) in Subsection (3)(b) by inserting the words “if any exists,” after the word “constitution”.

8. NEW SECTION 44A.

The Principal Act is amended by inserting after Section 44 the following new section:

“44A. SHAREHOLDER APPROVAL FOR ISSUE OF SHARES.

(1) Notwithstanding Section 43 of this Act, if shares cannot be issued by reason of any limitation or restriction in the company’s constitution, the Board may issue shares if the Board obtains the approval for the issue in the same manner as approval is required for an alteration to the constitution that would permit such an issue.

(2) Subject to the terms of the approval, the shares may be issued at any time, to any person, and in any number the Board thinks fit.

(3) Within 10 working days of approval being given under Subsection (1) of this section, the Board must ensure that notice of that approval in the prescribed form is delivered to the Registrar for registration.

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(4) Nothing in this section affects the need to obtain the approval of an interest group in accordance with Section 98 of this Act (which relates to the alteration of shareholders' rights) if the issue of shares affects the rights of that interest group.

(5) A failure to comply with this section does not affect the validity of an issue of shares.

(6) If the Board of a company fails to comply with Subsection (3), every director of the company commits an offence and is liable on conviction to the penalty set out in Section 414(2)."

9. **NEW SECTION 46A.**

The Principal Act is amended by inserting after Section 46 the following new section:

"46A. CONSIDERATION FOR ISSUE OF SHARES ON REGISTRATION.

A shareholder is not liable to pay or provide any consideration in respect of an issue of shares under Section 42 unless -

- (a) the constitution of the company specifies the consideration to be paid or provided for those shares; or
- (b) the shareholder is liable to pay or provide consideration for those shares pursuant to either a preincorporation contract (within the meaning of Section 152) or a contract entered into after the registration of the company."

10. **CONSIDERATION TO BE DECIDED BY BOARD (AMENDMENT OF SECTION 47).**

Section 47 of the Principal Act is hereby amended -

- (a) in Subsection 1(a) by inserting the phrase "and the terms on which they will be issued" after the word "issued"; and
- (b) by inserting after Subsection 1(a) the following new paragraph:
 - "(aa) if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and"; and
- (c) by inserting the phrase ", and the terms of," after the word "for" in Subsection 2(a); and
- (d) by inserting after Subsection 2(a) the following new paragraphs:
 - "(aa) describing the consideration in sufficient detail to identify it; and
 - (ab) where a present cash value has been determined in accordance with Subsection (1)(aa) of this section, stating that value and the basis for assessing it; and"; and
- (e) by inserting after Subsection 2, the following new subsections:
 - "(3) The Board shall deliver a copy of a certificate that complies with Subsection (2) to the Registrar for registration within 10 working days after it is given.

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(4) A Director who fails to comply with Subsection (2) or Subsection (3) commits an offence and is liable on conviction to the penalty set out in Section 414(2).

(5) Nothing in this section applies to the issue of shares in a company on -

- (a) the conversion of any convertible securities; or
- (b) the exercise of any option to acquire shares in the company.”.

11. NEW SECTION 47A AND 47B.

The Principal Act is amended by inserting after Section 47, the following new sections:

“47A. EXCEPTIONS TO SECTION 47.

Section 47 of this Act does not apply to -

- (a) the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same shareholder class in proportion to the number of shares held by each shareholder;
- (b) the consolidation and division of the shares or any class of shares in the company in proportion to those shares or the shares in that class;
- (c) the subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class.

47B. CONSIDERATION IN RELATION TO ISSUE OF OPTIONS AND CONVERTIBLE SECURITIES.

(1) Before the Board of a company issues any securities that are convertible into shares in the company or any options to acquire shares in the company, the Board must -

- (a) decide the consideration for which the convertible securities or options, and, in either case, the shares will be issued and the terms on which they will be issued; and
- (b) if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- (c) resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- (d) if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(2) The Directors who vote in favour of a resolution required by Subsection (1) must sign a certificate -

- (a) stating the consideration for, and the terms of, the issue of the convertible securities or options, and in either case, the shares; and
- (b) describing the consideration in sufficient detail to identify it; and

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- (c) where a present cash value has been determined in accordance with Subsection (1)(b), stating that value and the basis for assessing it; and
 - (d) stating that, in their opinion, the consideration for and terms of issue of the convertible securities or options, and in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
 - (e) if the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.
- (3) The Board must deliver a copy of a certificate that complies with Subsection (2) to the Registrar for registration within 10 working days after it is given.
- (4) For the purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.
- (5) A Director who fails to comply with Subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in Section 414(2).
- (6) If the Board of a company fails to comply with Subsection (3) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in Section 414(2).”.

12. SHAREHOLDER DISCOUNTS (AMENDMENT OF SECTION 53).

Section 53(1) of the Principal Act is amended by repealing “that is an issuer within the meaning of Section 173”.

13. OFFER TO PURCHASE SHARES (AMENDMENT OF SECTION 57).

Section 57 of the Principal Act is amended -

- (a) by repealing Subsection (3) and replacing it with the following new subsection:

“(3) Before an offer is made pursuant to a resolution under Subsection (2), the company shall send to each shareholder a disclosure document that contains the following information -

- (a) the nature and terms of the offer, and if only made to specified shareholders, to whom it will be made; and
- (b) the nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and
- (c) the text of the resolution required by Section (2) together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.”; and

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(b) by inserting after Subsection (3) the following new subsections:

“(4) The offer must be made not less than 10 working days and not more than 12 months after the disclosure document referred to in Subsection (3) has been sent to each shareholder.

(5) Before a company -

(a) makes an offer to acquire shares other than in a manner which will, if it is accepted in full, leave unaffected the relative voting and distribution rights of all shareholders; or

(b) agrees to acquire shares other than in a manner which leaves unaffected the relative voting and distribution rights of all shareholders,

the Board shall resolve that the making of the offer or entry into the agreement, as the case may be, is fair to those to whom the offer is not made or with whom no agreement is entered into.”.

14. NEW SECTIONS 57A, 57B AND 57C.

The Principal Act is amended by inserting after Section 57 the following new sections:

“57A. COMPANY MAY HOLD ITS OWN SHARES.

(1) Shares acquired by a company pursuant to Sections 57, 89, 91 or Section 93 shall not be deemed to be cancelled under Section 56(3) of this Act if -

(a) the constitution of the company expressly permits the company to hold its own shares; and

(b) the Board of the company resolves that the shares concerned shall not be cancelled on acquisition; and

(c) the number of shares acquired, when aggregated with shares of the same class held by the company pursuant to this section at the time of the acquisition, does not exceed 5 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under Section 56(3).

(2) Shares acquired by a company pursuant to Sections 57, 80, 91 or Section 93 that, pursuant to this section, are not deemed to be cancelled, shall be held by the company in itself.

(3) A share that a company holds in itself under Subsection (2) may be cancelled by the Board of the company resolving that the share is cancelled, and the share shall be deemed to be cancelled on the making of such a resolution.

57B. RIGHTS AND OBLIGATIONS OF SHARES COMPANY HOLDS IN ITSELF SUSPENDED.

(1) The rights and obligations attaching to a share that a company holds in itself pursuant to Section 57A shall not be exercised by or against a company while it holds the share.

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- (2) Without limiting Subsection (1), while a company holds a share in itself pursuant to Section 57A, the company shall not -
- (a) exercise any voting rights attaching to the share; or
 - (b) make or receive any distribution authorised or payable in respect of the share.

57C. RE-ISSUE OF SHARES COMPANY HOLDS IN ITSELF.

(1) Section 47 shall apply to the transfer of a share held by a company in itself as if the transfer were the issue of the share under Section 43 or Section 44A.

(2) A Company shall not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a share where the company has received notice in writing of a takeover offer made under the Takeovers Code in force under the *Securities Act 1997* or, in the case of a company that is a party to a listing agreement with a stock exchange, where the exchange makes a public release to the share market that a takeover offer for more than 20 percent of the company's shares is to be made.”.

15. COMPANY MAY GIVE FINANCIAL ASSISTANCE (AMENDMENT OF SECTION 63).

Section 63 of the Principal Act is amended by repealing Subsection (4) and replacing it with the following:

“(4) For purposes of this section the term “financial assistance” includes a loan, a guarantee, and the provision of security.

(5) Before an offer for financial assistance is made pursuant to a resolution under Subsection (2), the company must send to each shareholder a disclosure document that contains the following information -

- (a) the nature and terms of the financial assistance being offered and the name of the person to whom it will be offered; and
- (b) the nature and extent of any relevant interest of any director of the company in any financial assistance the subject of the offer; and
- (c) the text of the resolution required by Section (2), together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed offer of financial assistance.

(6) The disclosure document required under Subsection (5) need not be prepared if all shareholders have consented in writing to the giving of financial assistance.

- (7) The offer for financial assistance must be made -
- (a) not less than 10 working days and not more than 6 months after the disclosure document referred to in Subsection (3) has been sent to each shareholder; or
 - (b) in the event all shareholders have consented in writing to giving financial assistance, not more than 6 months after the date of the final shareholder consent.

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(8) Shareholder or the company may apply to the Court for an order restraining the proposed assistance being given on the ground that -

- (a) it is not in the best interests of the company and of benefit to those shareholders not receiving the assistance; or
- (b) the terms and conditions under which the assistance is to be given are not fair and reasonable to the company and to those shareholders not receiving the assistance.

(9) Every Director who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in Section 414(2).”.

16. NEW SECTION 63A.

The Principal Act is amended by inserting after Section 63 the following new section:

“63A. ENFORCEABILITY OF TRANSACTIONS.

(1) Failure to comply with Section 63 does not affect the validity of a transaction.

(2) This section does not affect a liability of a director or any other person for breach of a duty, or as a constructive trustee, or otherwise.”.

17. UNANIMOUS AGREEMENT BY SHAREHOLDERS (AMENDMENT OF SECTION 89).

Section 89 of the Principal Act is amended -

- (a) in Subsection (1)(b) by deleting the fullstop after the word “action” and replacing it with the punctuation and word “; and”; and
- (b) in Subsection (1) by inserting after Paragraph (b), the following new paragraph:

“(c) for the purposes of this section, no agreement or concurrence of the shareholders is valid or enforceable unless the agreement or concurrence is in writing.”; and

(c) repealing Subsection (3) and replacing it with the following new subsections:

“(3) A power referred to in Subsection (2) shall not be exercised unless the Board of the company is satisfied on reasonable grounds that the company will, immediately after the exercise of the power, satisfy the solvency test.

(3A) The Directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company shall, after the exercise of the power, satisfy the solvency test.

(3B) In applying the solvency test for the purposes of Section 89(3) -

- (a) assets excludes all amounts of financial assistance given by the company at any time under Section 63 or Section 89(2)(d) in the form of loans; and
- (b) liabilities includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under Section 63 or Section 89(2)(d).”; and

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(d) inserting the following new subsection after Subsection (6):

“(7) Every Director who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in Section 413(4).”.

18. MANAGEMENT REVIEW BY SHAREHOLDERS (AMENDMENT OF SECTION 90).

Section 90 of the Principal Act is amended -

- (a) in Subsection (2) by deleting the word and numeral “Subsection (3)” and inserting the words and numerals “Subsections (2A) and (3)”; and
- (b) by inserting a new subsection after Subsection (2) as follows:

“(2A) The provisions of Schedule 2 govern proceedings at a meeting of shareholders at which a resolution under this section is passed except to the extent that the constitution of the company provides for matters that are expressed in that schedule to be subject to the constitution of the company.”.

19. NEW SECTION 90A.

The Principal Act is amended by inserting after Section 90 the following new section:

“90A. STATEMENT OF RIGHTS TO BE GIVEN TO SHAREHOLDERS.

(1) Every company shall issue to a shareholder, on request, a statement that sets out -

- (a) the class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder; and
- (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
- (c) the relationship of the shares held by the shareholder to other classes of shares.

(2) The company is not obliged to provide a shareholder with a statement if -

- (a) a statement described in Subsection (1) has been provided within the previous 6 months; and
- (b) the shareholder has not acquired or disposed of shares since the previous statement was provided; and
- (c) the rights attached to shares of the company have not been altered since the previous statement was provided.

(3) The statement is not evidence of title to the shares or of any of the matters set out in it.

(4) The statement must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.”.

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20. SPECIAL MEETINGS OF SHAREHOLDERS (AMENDMENT OF SECTION 102).

Section 102 of the Principal Act is amended by inserting after Subsection (1) the following new subsections:

“(2) If the Board fails to convene a special meeting of the shareholders within 21 days of the receipt of the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights, the shareholders may request the Court to order a meeting of the shareholders under Section 104.

(3) Every Director who fails to comply with the request under Subsection (2) shall be liable for all costs associated with making application to the Court under Section 104.

(4) Every Director who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in Section 413(4).”.

21. RESOLUTION IN LIEU OF MEETING (AMENDMENT OF SECTION 103).

Section 103 of the Principal Act is amended by inserting after Subsection (3) the following new subsection:

“(3A) Any resolution in writing under this section may consist of one or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the shareholders specified in Subsection (3).”.

22. MAJOR TRANSACTIONS (AMENDMENT OF SECTION 110).

Section 110 of the Principal Act is amended -

(a) in Subsection (2)(c) by inserting after the word “liabilities” the following:

“, including contingent liabilities.”; and

(b) by inserting after Subsection (2) the following new subsection:

“(2A) In assessing the value of any contingent liability for the purposes of Paragraph (c) of the definition of “major transaction” in Subsection (2), the Directors -

- (a) shall have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
- (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (c) may take account of -
 - (i) the likelihood of the contingency occurring; and
 - (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.”.

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23. REPEAL AND REPLACEMENT OF SECTION 115.

Section 115 of the Principal Act is repealed and replaced with the following new section:

“115. CARE AND DILIGENCE OF DIRECTORS AND OTHER OFFICERS.

(1) A Director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they -

- (a) were a director or officer of a corporation in the corporation’s circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the Director or officer.

(2) A Director or other officer of a corporation who makes a business judgment is taken to meet the requirements of Subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they -

- (a) make the judgment in good faith for a proper purpose; and
- (b) do not have a material personal interest in the subject matter of the judgment; and
- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the corporation.

(3) The Director’s or officer’s belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

(4) Subsection (3) only operates in relation to duties under this section and their equivalent duties at common law or in equity and does not operate in relation to duties under any other provision of this Act or under any other laws.

(5) In this section the term “business judgment” means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

(6) A person whose actions are criminally negligent in contravention of this section commits an offence and is liable on conviction to the penalty under Section 413(4).”.

24. DISCLOSURE OF INTEREST (AMENDMENT OF SECTION 118).

Section 118 of the Principle Act is amended -

- (a) by inserting after Subsection (1) the following new subsection:

- “(1A) A Director of a company is not required to comply with Subsection (1) if -
- (a) the transaction or proposed transaction is between the Director and the company; and

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- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions."; and
- (b) by deleting in Subsection (4) the reference "413(2)" and inserting in its place the reference "413(3)".

25. NOTICE OF CHANGE OF DIRECTORS (AMENDMENT OF SECTION 137).

Section 137 of the Principal Act is amended -

- (a) by repealing Subsection (2) and substituting with the following:

“(2) A notice under Subsection (1) shall -

- (a) be submitted to the Registrar within one month of -

- (i) the change occurring, in the case of the appointment or resignation of a director; or
 - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name, address, or postal address of a director.”; and

- (b) by inserting after Subsection (2) the following new subsection:

“(2A) A company shall keep at its registered office a signed consent by each new person named as a Director of the company in the prescribed form and shall forthwith produce such consents to the Registrar of Companies when required to do so by written request.”.

26. INDEMNITY AND INSURANCE (AMENDMENT OF SECTION 140).

Section 140 of the Principal Act is amended in Subsection (5) by repealing Paragraph (c) and replacing it with the following new paragraph:

“(c) Costs incurred by that Director or employee in defending any criminal proceedings -

- (i) that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
- (ii) in which he or she is acquitted.”.

27. RATIFICATION OF CERTAIN ACTIONS OF DIRECTORS (AMENDMENT OF SECTION 154).

Section 154 of the Principal Act is amended by inserting after Subsection (3), the following new subsection:

“(4) Nothing in this section limits or affects any rule of law relating to the ratification or approval by the shareholders or any other person of any act or omission of a director or the board of a company.”.

28. ATTORNEYS (AMENDMENT OF SECTION 156).

Section 156 of the Principal Act is amended by inserting after Subsection (2), the following new subsection:

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“(3) Any power of attorney executed by a company shall be revoked upon the commencement of liquidation of the company or, if there is no liquidation, upon the removal of the company from the register kept pursuant to Section 395.”.

29. CHANGE OF REGISTERED OFFICE (AMENDMENT OF SECTION 162).

Section 162 of the Principal Act is amended -

- (a) in Subsection (2) by repealing the following “within one month of the change”; and
- (b) by inserting after Subsection (2) the following new subsection:

“(3) The change in the registered office takes effect on a date stated in the notice not being a date that is earlier than 10 working days after the notice is registered.”.

30. COMPANY RECORDS (AMENDMENT OF SECTION 164).

Section 164 of the Principal Act is amended in Subsection (1) by -

- (a) deleting the fullstop at the end of Paragraph (i) and replacing it with “; and”; and
- (b) inserting a new paragraph after Paragraph (i) as follows:

“(j) The accounting records required by Section 188 for the current accounting period and for the last 7 completed accounting periods of the company.”.

31. ADDRESS FOR SERVICE (AMENDMENT OF SECTION 167).

The Principal Act is amended in Section 167(2)(a) by inserting the phrase “but it must not be at a postal centre or document exchange” after the word “address”.

32. APPOINTMENT AND REMOVAL OF SECRETARY (AMENDMENT OF SECTION 170).

Section 170 of the Principal Act is amended -

- (a) by repealing Subsection (4) and substituting with the following:

“(4) A notice under Subsection (1) shall -
(a) be submitted to the Registrar within one month of -
(i) the change occurring, in the case of a change in the Secretary;
or
(ii) the company first becoming aware of the change, in the case of a change in the name, address, or postal address of the Secretary.”; and

- (b) by inserting after Subsection (4) the following new subsection:

“(4A) A Company shall keep at its registered office a signed consent by each new person named as a secretary of the company in the prescribed form and shall produce such consents to the Registrar of Companies when required to do so by written request.”.

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33. APPOINTMENT OF AUDITORS (AMENDMENT OF SECTION 190).

Section 190 of the Principal Act is amended by inserting after Subsection (2) the following new subsections:

“(2A) An Auditor may resign at any time by giving written notice to the Board of the company, and the company must, as soon as practicable, notify its shareholders of the Auditor’s resignation.

(2B) If an Auditor resigns, the company must give notice of the Auditor’s resignation to the Registrar within 20 days.

(2C) If a Company fails to comply with Subsections (2A) or (2B), every Director of the Company commits an offence and is liable on conviction to the penalty under Section 413(1).”.

34. AUDITOR NOT SEEKING REAPPOINTMENT (AMENDMENT OF SECTION 197).

Section 197 of the Principal Act is amended in Subsection (1) -

- (a) by inserting after the word “reappointed” the words “or of his or her resignation”; and
- (b) in Paragraph (a) by inserting after the word “reappointed”, the words “or of his or her resignation”; and
- (c) in Paragraph (b) by inserting after the word “, reappointed”, the words “or of his or her resignation”.

35. SENDING OF ANNUAL REPORT TO SHAREHOLDERS (AMENDMENT OF SECTION 210).

Section 210 of the Principal Act is amended by repealing Subsection (3) and replacing it with the following new subsections:

“(3) Where a shareholder has provided a notice in writing that such shareholder would prefer to receive the annual report by electronic means, the Board may satisfy its obligation hereunder by delivering the annual report by electronic means.

(4) Where the Board of a company fails to comply with Subsection (1), every Director of the Company commits an offence and is liable on conviction to the penalty set out in Section 414(2).”.

36. SENDING OF FINANCIAL STATEMENTS TO SHAREHOLDERS WHO ELECT NOT TO RECEIVE ANNUAL REPORT (AMENDMENT OF SECTION 211).

Section 211(1) of the Principal Act is amended by inserting the words “that has notified the company in writing that the shareholder should receive financial reports and auditors reports,” after the reference “Section 210(2)”.

37. ANNUAL RETURN (AMENDMENT OF SECTION 215).

Section 215 of the Principal Act is amended -

- (a) by repealing Subsections (1) and (2) and replacing them with the following new subsections:

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“(1) The Board of a company shall ensure that there is submitted to the Registrar for registration at least once in each calendar year during the month allocated to the company for the purpose, an annual return in the prescribed form or in a form the use of which by the company has been approved by the Registrar pursuant to Subsection (6), or as near to it as circumstances allow, and containing as much of the information specified in Schedule 6 and any other prescribed information or matters.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required to be contained in it must be compiled as at that date.”; and

- (b) in Subsection (4) Paragraph (b) by deleting the phrase “within 14 days after the annual meeting of its holding company instead of within 14 days after its annual meeting” and replacing it with the following:

“during the month allocated to its holding company instead of during the month allocated to it”; and

- (c) by inserting after Subsection (4) the following new subsections:

“(4A) On registration of a company under Part II of this Act, the Registrar shall allocate a month to the company for the purposes of this section.

(4B) The Company may, by written request, apply for a different month to be allocated to it for purposes of this section.

(4C) The Registrar may, by written notice to a company, alter the month allocated to the company under Subsection (5) of this section.”; and

- (d) by repealing Subsection (7).

38. NEW SECTION 215A.

The Principal Act is amended by inserting after Section 215 the following new section.

“215A. REGISTRAR MAY ALTER REGISTER.

If the annual return contains -

(a) an address of the registered office of the company; or

(b) an address for service of the company; or

(c) a postal address of the company -

(i) that is different from the address of the registered office, the address for service; or

(ii) the postal address of the company entered on the register, the Registrar may alter the register accordingly.”.

39. NEW SECTION 216A.

The Principal Act is amended by inserting after Section 216 the following new section:

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“216A. PUBLIC INSPECTION OF COMPANY RECORDS.

(1) A company shall keep the following records available for inspection in the manner prescribed in Section 217 by a person who serves written notice of intention to inspect on the company -

- (a) the certificate of incorporation or registration of the company; and
- (b) the constitution of the company, if it has one; and
- (c) the share register; and
- (d) the full names and residential addresses of the directors; and
- (e) the registered office and address for service of the company.

(2) If a company fails to comply with Subsection (1) -

- (a) the company commits an offence and is liable on conviction to the penalty set out in Section 413(2); and
- (b) every Director of the company commits an offence and is liable on conviction to the penalty set out in Section 414(2).”.

40. MANNER OF INSPECTION (AMENDMENT OF SECTION 217).

Section 217 of the Principal Act is amended in Subsection (1) by inserting after the phrase “Section 216” the phrase “and Section 216A”.

41. SHORT FORM AMALGAMATION (AMENDMENT OF SECTION 235).

Section 235 of the Principal Act is amended -

- (a) in Subsection (1)(b)(iii) by deleting the fullstop after the word “test” and inserting in its place “; and”; and
- (b) in Subsection (1)(b) by inserting after Subparagraph (iii) the following new subparagraph:

“(iv) the person or persons named in the resolution will be the Director or Directors of the amalgamated company.”.

42. REGISTRATION OF AMALGAMATION PROPOSAL (AMENDMENT OF SECTION 236).

Section 236 of the Principal Act is amended by repealing Paragraph (f) and replacing it with the following new paragraphs:

- “(f) a certificate signed by the Board, or proposed Board, of the amalgamated company stating that, where the proportion of the claims of creditors of the amalgamated company in relation to the value of the assets of the company is greater than the proportion of the claims of creditors of an amalgamating company in relation to the value of the assets of that amalgamating company, no creditor will be prejudiced by that fact; and
- (g) a company shall keep at its registered office a signed consent by each person named as a director or a secretary of the amalgamated company in the prescribed form and shall forthwith produce such consents to the Registrar of Companies when required to do so by written request.”.

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43. NEW SECTIONS 291A AND 291B.

The Principal Act is amended by inserting after Section 291 the following new sections:

“291A. RESTRICTION ON APPOINTMENT OF LIQUIDATOR BY SHAREHOLDERS OR BOARD AFTER APPLICATION FILED FOR COURT APPOINTMENT.

(1) This section applies if an application has been filed for the appointment of a liquidator of a company by the Court under Section 291(2)(c).

(2) A liquidator of the company may only be appointed under Section 291(2)(a) or (b) if the liquidator is appointed within 10 working days after service on the company of the application.

(3) If a liquidator is appointed under Section 291(2)(a) or (b), the creditor who filed the application referred to in Subsection (1) may apply to the Court under Section 331 for the review of his or her appointment as if the words “successor to a liquidator” in Section 331 read “liquidator”.

(4) Subsection (2) does not apply once the application has been finally disposed of.

291B. COMMENCEMENT OF LIQUIDATION TO BE RECORDED.

(1) If -

- (a) a liquidator is appointed under Section 291(2)(a), the shareholders shall record in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution was passed; or
- (b) a liquidator is appointed under Section 291(2)(b), the Board of the company shall record in the instrument appointing the liquidator the date on which, and the time at which, the liquidator was appointed; or
- (c) a liquidator is appointed under Section 291(2)(c), the Court shall record in the order appointing the liquidator the date on which, and the time at which, the order was made.

(2) If any question arises as to whether on the date on which a liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.”.

44. LIQUIDATOR TO SUMMON MEETING OF CREDITORS (AMENDMENT OF SECTION 293).

Section 293 of the Principal Act is amended by inserting after Subsection (1) the following new subsection:

“(1A) If the appointment of a liquidator pursuant to Section 291(2)(a) or (b) is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator continues until another liquidator is appointed.”.

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45. **NEW SECTION 295A.**

The Principal Act is amended by inserting after Section 295 the following new section:

“295A. POWER OF COURT WHERE OUTCOME OF VOTING AT MEETING OF CREDITORS DETERMINED BY RELATED ENTITY.

- (1) This section applies if the Court is satisfied that -
 - (a) a resolution at a meeting of creditors was passed, defeated, or required to be decided by a casting vote; and
 - (b) the resolution would not have been passed, defeated, or required to be decided by a casting vote if the vote or votes cast by a particular related creditor or particular related creditors were disregarded; and
 - (c) the passing of the resolution, or the failure to pass it -
 - (i) is contrary to the interests of the creditors, or a class of creditors, as a whole; and
 - (ii) has prejudiced, or is reasonably likely to prejudice, the interest of the creditor who voted against the resolution, or for it, as the case may be, to an extent that is unreasonable having regard to -
 - (A) the benefits accruing to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the resolution; and
 - (B) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and
 - (C) any other related matter.
- (2) The Court may, on the application of the liquidator or a creditor -
 - (a) order that the resolution be set aside; and
 - (b) order that a new meeting be held to consider and vote on the resolution; and
 - (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it; and
 - (d) make any other orders that the Court thinks necessary.
- (3) In this section -
 - (a) “promoter” has the same meaning as in Section 2(1) of the *Securities Act 1997*; and
 - (b) “related creditor” means a creditor who is a related entity of the company in liquidation; and
 - (c) “related entity” means, in relation to the company in liquidation -

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- (i) a promoter, a relative or spouse of a promoter, and a relative of a spouse of a promoter; or
- (ii) a director or shareholder, a spouse of a director or shareholder, and a relative of a spouse of a director or shareholder; or
- (iii) a related company; or
- (iv) a beneficiary under a trust of which the company in liquidation is or has at any time been a trustee, a relative or spouse of that beneficiary or a relative of a spouse of that beneficiary; or
- (v) a company one of whose directors is also a director of the company in liquidation; or
- (vi) a trustee of a trust under which a person (A) is a beneficiary, if (A) is a related entity of the company in liquidation under this subsection.”.

46. INTERIM LIQUIDATOR (AMENDMENT OF SECTION 296).

Section 296 of the Principal Act is amended by inserting after Subsection (3) the following new subsections:

“(4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.

(5) The Court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.

(6) If any question arises as to whether on the date on which an interim liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.”.

47. OTHER DUTIES OF LIQUIDATOR (AMENDMENT OF SECTION 305).

Section 305 of the Principal Act is amended -

- (a) in Subsection (2)(c)(i) by inserting the phrase “with each creditor’s address (if known)” after the word “company”; and
- (b) in Subsection (2)(c)(ii) by inserting “, every known creditor and every shareholder” after the word “Registrar”.

48. NEW SECTION 308A.

The Principal Act is amended by inserting after Section 308 the following new section:

“308A. DUTY TO NOTIFY SUSPECTED OFFENCES.

(1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by the company or any Director of the company against this Act or any other Act or law of Papua New Guinea must report that fact to the Registrar.

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(2) A report made under Subsection (1), and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.

(3) A liquidator who fails to comply with Subsection (1) commits an offence and is liable on conviction to the penalty set out in Section 413(2).”.

49. NEW SECTION 310A.

The Principal Act is amended by inserting after Section 310 the following new section:

“310A. LIQUIDATOR MAY ASSIGN RIGHT TO SUE UNDER THIS ACT.

(1) The liquidator may, if the Court has first approved it, assign any right to sue that is conferred on the liquidator by this Act.

(2) The application for approval may be -

(a) made by the liquidator or the person to whom it is proposed to assign the right to sue; and

(b) opposed by a person who is a defendant to the liquidator’s action, if already begun, or a proposed defendant.”.

50. POWER TO OBTAIN DOCUMENTS AND INFORMATION (AMENDMENT OF SECTION 311).

Section 311 of the Principal Act is amended -

(a) in Subsection (3) by inserting after Paragraph (b) the following new paragraph:

“(ba) to be examined on oath or affirmation by the liquidator or by a lawyer acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company; and”; and

(b) by adding after Subsection (8) the following new subsection:

“(9) A person who fails to comply with a notice given under this section commits an offence and is liable on conviction to the penalty under Section 413(2).”.

51. RESTRICTION ON ENFORCEMENT OF LIEN OVER DOCUMENTS (AMENDMENT OF SECTION 313).

Section 313(2) of the Principal Act is amended by deleting the amount “K500.00” and inserting in its place “K5,000.00”.

52. NEW SECTION 314A.

The Principal Act is amended by inserting after Section 314 the following new section:

“314A. EXAMINATION BY LIQUIDATOR.

(1) A liquidator or a lawyer acting on behalf of the liquidator may administer an oath to, or take the affirmation of, a person required to be examined under Section 311.

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(2) A person required to be examined under Section 311 is entitled to be represented by a lawyer.

(3) A liquidator or a lawyer acting on behalf of the liquidator who conducts an examination under Section 311 must ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.”.

53. POWER TO DISCLAIM ONEROUS PROPERTY (AMENDMENT OF SECTION 319).

Section 319 of the Principal Act is amended in Subsection (2) by -

- (a) deleting the fullstop in Paragraph (b) and replacing it with “; or”; and
- (b) adding a new paragraph after Paragraph (b) as follows:

“(c) a litigation right that, in the opinion of the liquidator, has no reasonable prospect of success or cannot reasonably be funded from the assets of the company.”.

54. NEW SECTIONS 320A, 320B AND 320C.

The Principal Act is amended by inserting after Section 320 the following new sections:

“320A. POOLING OF ASSETS OF RELATED COMPANIES.

(1) On the application of the liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that -

- (a) a company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation; and
- (b) where two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent that the Court so orders and subject to such terms and conditions as the Court may impose.

(2) The Court may make such other order or give such directions to facilitate giving effect to an order under Subsection (1) as it thinks fit.

320B. NOTICE THAT APPLICATION FILED MUST BE GIVEN TO ADMINISTRATORS AND CREDITORS.

(1) Unless the Court orders otherwise, an applicant for an order under Section 371A must give notice to the liquidator and each creditor of each related company in liquidation that the application has been filed.

(2) An applicant need not give notice to himself.

(3) The notice must -

- (a) identify each company to which the proposed order relates; and
- (b) summarise all information known to the applicant that is material to whether the order should be made; and

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- (c) state that a person to whom the notice must be given may oppose the application by filing a statement of defence in accordance with the Court Rules.

(4) The notice requirement in this section is in addition to anything required to be done by the Court Rules.

320C. GUIDELINES FOR ORDERS.

(1) In deciding whether it is just and equitable to make an order under Section 320A(1)(a), the Court must have regard to the following matters:

- (a) the extent to which the related company took part in the management of the company in liquidation; and
- (b) the conduct of the related company towards the creditors of the company in liquidation; and
- (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company; and
- (d) such other matters as the Court thinks fit.

(2) In deciding whether it is just and equitable to make an order under Section 320A(1)(b), the Court must have regard to the following matters:

- (a) the extent to which any of the companies took part in the management of any of the other companies; and
- (b) the conduct of any of the companies towards the creditors of any of the other companies; and
- (c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies; and
- (d) the extent to which the businesses of the companies have been combined; and
- (e) such other matters as the Court thinks fit.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under Section 320A of this Act.”.

55. REFUSAL TO SUPPLY ESSENTIAL SERVICES PROHIBITED (AMENDMENT OF SECTION 323).

Section 323(1)(a) of the Principal Act is amended by inserting the phrase “or gas” after the word “electricity”.

56. QUALIFICATIONS OF LIQUIDATORS (AMENDMENT OF SECTION 328).

Section 328 of the Principal Act is amended -

- (a) by repealing Subsection (1); and

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(b) in Subsection (2) by adding after Paragraph (c) the following new paragraphs:

- “(ca) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation, provided professional services to the company, unless, within 20 working days before the appointment of the liquidator, the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration; and
- (cb) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation, had a continuing business relationship (other than through the provision of banking or financial services) with the company, its majority shareholder, any of its directors, or any of its secured creditors, unless, within 20 working days before the appointment of the liquidator, the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration; and”.

57. COURT MAY SET ASIDE STATUTORY DEMAND (AMENDMENT OF SECTION 338).

Section 338(6) of the Principal Act is amended by deleting both instances of the word “immaterial” and inserting in both places the word “material”.

58. TRANSACTIONS HAVING PREFERENTIAL EFFECT (AMENDMENT OF SECTION 340).

Section 340 of the Principal Act is amended -

- (a) in Subsection (5)(a) by deleting the phrase “six months” and inserting in its place the phrase “one year”; and
- (b) in Subsection (5)(b) by deleting the phrase “six months” and inserting in its place the phrase “one year”; and
- (c) in Subsection (6)(a) by deleting the phrase “one month” and inserting in its place the phrase “three months”; and
- (d) in Subsection (6)(b) by deleting the phrase “one month” and inserting in its place the phrase “three months”.

59. NEW SECTIONS 340A AND 340B.

The Principal Act is amended by adding after Section 340 the following new sections:

“340A. VOIDABLE CHARGES.

(1) A charge over any property or undertaking of a company is voidable by the liquidator if -

- (a) the charge was given within the specified period; and
- (b) immediately after the charge was given, the company was unable to pay its due debts.

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- (2) Subsection (1) does not apply if -
- (a) the charge secures money actually advanced or paid, or the actual price or value of property sold or supplied to the company, or any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or
 - (b) the charge is in substitution for a charge given before the specified period.
- (3) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its due debts immediately after giving the charge.
- (4) Subsection (2)(b) does not apply to the extent that -
- (a) the amount secured by the substituted charge exceeds the amount secured by the existing charge; or
 - (b) the value of the property subject to the substituted charge at the date of the substitution exceeds the value of the property subject to the existing charge at that date.
- (5) Nothing in Subsection (1) applies to a charge given by a company that secures the unpaid purchase price of property, whether or not the charge is given over that property, if the instrument creating the charge is executed not later than 30 days after the sale of the property or, in the case of the sale of an estate or interest in land, not later than 30 days after the final settlement of the sale.
- (6) For the purposes of Subsections (1)(a) and (4), where any charge was given by the company within the period specified in Subsection (1), all payments received by the grantee of the charge after it was given shall be deemed to have been appropriated so far as may be necessary -
- (a) towards repayment of money actually advanced or paid by the grantee to the company on or after the giving of the charge; or
 - (b) towards payment of the actual price or value of property sold by the grantee to the company on or after the giving of the charge; or
 - (c) towards payment of any other liability of the company to the grantee in respect of any other valuable consideration given in good faith on or after the giving of the charge.
- (7) For the purposes of this section, "specified period" means -
- (a) the period of one year before the commencement of the liquidation; and
 - (b) in the case of a company that was put into liquidation by the Court, the period of one year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which the order was made.

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- (8) For the purposes of this section, “restricted period” means -
- (a) the period of three months before the commencement of the liquidation; and
 - (b) in the case of a company that was put into liquidation by the Court, the period of three months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which the order of the Court was made.

340B. PROCEDURE FOR SETTING ASIDE TRANSACTIONS AND CHARGES.

- (1) A liquidator who wishes to set aside a transaction or charge that is voidable under Section 340 or 340A shall -
- (a) file a notice with the Court that meets the requirements set out in Subsection (2); and
 - (b) serve the notice as soon as practicable on the other party to the transaction or the charge holder, as the case may be, and on any other party from whom the liquidator intends to recover.
- (2) The liquidator’s notice shall -
- (a) be in writing; and
 - (b) state the liquidator’s postal, email, and street addresses; and
 - (c) specify the transaction or charge to be set aside; and
 - (d) describe the property or state the amount that the liquidator wishes to recover; and
 - (e) state that the person named in the notice may object to the transaction or charge being set aside by sending to the liquidator a written notice of objection that must be received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator’s notice has been served on that person; and
 - (f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and
 - (g) state that the transaction or charge will be set aside as against the person named in the notice if that person does not object; and
 - (h) state that if the person named in the notice does object, the liquidator may apply to the Court for the transaction or charge to be set aside.
- (3) The transaction or charge is automatically set aside as against the person on whom the liquidator has served the liquidator’s notice if that person has not objected by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator’s notice has been served on that person.

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(4) The notice of objection must contain full particulars of the reasons for objecting and must identify documents that evidence or substantiate the reasons for objecting.

(5) A transaction or charge that is not automatically set aside may still be set aside by the Court on the liquidator's application."

60. NEW SECTION 348A.

The Principal Act is amended by adding after Section 348 the following new section:

"348A. LIABILITY IF PROPER ACCOUNTING RECORDS NOT KEPT.

(1) Subject to Subsection (2), if -

(a) a company that is in liquidation and is unable to pay all its debts has failed to comply with Section 188 (which relates to the keeping of accounting records); and

(b) the Court considers that -

(i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly liquidation; or

(ii) for any other reason it is proper to make a declaration under this section,

the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.

(2) The Court must not make a declaration under Subsection (1) in relation to a person if the Court considers that the person -

(a) took all reasonable steps to secure compliance by the company; or

(b) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

(3) The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.

(4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence."

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61. ESTABLISHMENT OF LIQUIDATION SURPLUS ACCOUNT (AMENDMENT OF SECTION 364).

Section 364 of the Principal Act is amended by adding after Subsection (5) the following new subsection:

“(6) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.”.

62. MEANING OF “CARRYING ON BUSINESS” (AMENDMENT OF SECTION 382).

Section 382 of the Principal Act is amended in Paragraph (a) by repealing Sub-paragraph (iii).

63. NEW SECTIONS 382A AND 382B.

The Principal Act is amended by adding after Section 382 the following new sections:

“382A. REGISTRAR MAY APPROVE USE OF DIFFERENT FORM.

(1) The Registrar may, on the application of any person, approve the use, by the overseas company or companies that the Registrar may specify, of a form for the purposes of this Part that is different from that prescribed.

(2) The Registrar may at any time revoke, in whole or in part, any approval given under Subsection (1).

(3) An application, notice, or other document given to the Registrar by an overseas company shall be treated as having been given in the prescribed form if the Registrar has approved the use of the form by the overseas company under this section.

382B. NAME TO BE RESERVED BEFORE CARRYING ON BUSINESS.

(1) An overseas company shall not carry on business in Papua New Guinea unless the name of the overseas company has been reserved.

(2) An overseas company registered under this Part of this Act that carries on business in Papua New Guinea shall not change its name unless the name has first been reserved.

(3) Sections 21, 22 and 23 of this Act apply subject to any necessary modifications to the reservation of the name of an overseas company, including reservation on a change of name, in the same way as they apply to the registration of companies under this Act and to the change of names of companies registered under this Act.

- (4) An overseas company that contravenes this section -
- (a) commits an offence and is liable on conviction to the penalty set out in Section 413(2); and
 - (b) all its directors commit an offence and are liable on conviction to the penalty set out in Section 414(2).”.

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64. APPLICATION FOR REGISTRATION (AMENDMENT OF SECTION 386).

Section 386(2)(e) of the Principal Act is amended by deleting the phrase “and who are responsible for submitting to the Registrar the documents required by this Act to be submitted in respect of the overseas company”.

65. ALTERATION OF CONSTITUTION OR OTHER DETAILS (AMENDMENT OF SECTION 389).

Section 389(1)(d) of the Principal Act is amended by deleting the phrase “or who is responsible for submitting to the Registrar documents required under this Act”.

66. NEW SECTION 389A.

The Principal Act is amended by adding after Section 389 the following new section:

“389A. RECTIFICATION OR CORRECTION OF NAME OR ADDRESS OF PERSON AUTHORISED TO ACCEPT SERVICE.

(1) This section applies if the name or address of a person resident or incorporated in Papua New Guinea who is authorised to accept service in Papua New Guinea of documents on behalf of an overseas company is rectified or corrected under Section 395A or 395B.

(2) The rectification or correction takes effect at the time that the rectification or correction is made to the overseas register.”.

67. ANNUAL RETURN OF OVERSEAS COMPANY (AMENDMENT OF SECTION 391).

Section 391 of the Principal Act is amended -

(a) in Subsection (1) by deleting the phrase “within six months of the end of its financial year, and in any case within 15 months of the date of its previous annual return under this section” and inserting in its place the phrase:

“during the month allocated to the overseas company for the purpose”; and

(b) by repealing Subsection (2) and replacing it with the following new subsection:

“(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required to be contained in it must be compiled as at that date.”; and

(c) by adding after Subsection (4) the following new subsections:

“(4A) On registration of an overseas company the Registrar shall allocate a month to the company for the purposes of this section.

(4B) The overseas company may, by written request, apply for a different month to be allocated to it for purposes of this section.

(4C) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under Subsection (4) of this section.”.

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68. REPEAL AND REPLACEMENT OF SECTION 394.

Section 394 of the Principal Act is repealed and replaced with the following new section:

“394. REGISTRAR AND DEPUTY REGISTRARS OF COMPANIES.

- (1) The Office of the Registrar of Companies is established.
- (2) There shall be -
 - (a) a Registrar of Companies; and
 - (b) as many Deputy Registrars of Companies as may be necessary for the purposes of this Act,each of whom shall be appointed by the Minister by notice in the National Gazette.
- (3) The Registrar and each Deputy Registrar shall hold office until the earlier of -
 - (a) the cessation of his employment; or
 - (b) the revocation of his appointment by the Minister.
- (4) Subject to the direction of the Registrar, a Deputy Registrar has and may exercise the powers, duties and functions of the Registrar under this Act.
- (5) The fact that a Deputy Registrar exercises the powers, duties or functions of the Registrar is conclusive evidence of his authority to do so.
- (6) The Registrar may be removed from office by the Minister for reason of disability, bankruptcy, neglect of duty, or may at any time resign his office by notice in writing delivered to the Minister.
- (7) In the event of a vacancy in the office of the Registrar, the Minister may appoint a Deputy Registrar to act as Registrar until a person is appointed as Registrar by the Minister under Subsection (2).
- (8) The Registrar may appoint a person to act as Registrar during any period, or during all periods when he is absent from office, other than in the case of his removal or resignation under Subsection (6).
- (9) The Registrar shall be in charge of the general administration of this Act, the *Business Names Act* (Chapter 145), the *Business Groups Incorporations Act* (Chapter 144), the *Associations Incorporations Act* (Chapter 142) and the exercise of the functions and powers conferred by this Act.”.

69. NEW SECTIONS 395A AND 395B.

The Principal Act is amended by adding after Section 395 the following new sections:

“395A. RECTIFICATION OR CORRECTION OF PAPUA NEW GUINEA REGISTER AND OVERSEAS REGISTER.

- (1) The Registrar may -

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- (a) on the application of any person, rectify the register if the Registrar is satisfied that any information has been wrongly entered in or omitted from the register; or
- (b) if it appears to the Registrar that any particulars have been incorrectly entered in the register due to a clerical error by the Registrar, correct those particulars.

(2) Before the Registrar rectifies the register under Subsection (1)(a), the Registrar shall -

- (a) give written notice to the company or overseas company that an application has been made to rectify the register in relation to that company or overseas company (including details of that application); and
- (b) give public notice setting out -
 - (i) the name of the applicant; and
 - (ii) the name of the company or overseas company; and
 - (iii) the reasons for and details of the changes sought to be made to the register or the overseas register; and
 - (iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 20 working days after the date of the notice.

(3) Any person may deliver to the Registrar, not later than the date specified in accordance with Subsection (2)(b)(iv), a written objection to a proposed rectification of the register or the overseas register, and the Registrar shall give a copy of the objection to the applicant.

(4) The Registrar shall not rectify the register or the overseas register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn.

395B. POWERS OF COURT.

(1) If an objection to a proposed rectification is received by the Registrar under Section 395A(3), the applicant for the rectification of the register may apply to the Court for an order for rectification.

- (2) If an application for an order is made under Subsection (1) -
 - (a) the applicant shall, as soon as practicable, serve notice of the application on the Registrar; and
 - (b) the Registrar may appear and be heard in relation to the application.

(3) On an application for an order under Subsection (1), the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the register, make an order that the register be rectified.”

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70. REGISTRATION OF DOCUMENTS (AMENDMENT OF SECTION 396).

Section 396 of the Principal Act is amended in Subsection (3) by -

- (a) repealing, Paragraph (a); and
- (b) deleting the word “and” at the end of Paragraph (b) and inserting in its place the punctuation and word “; or”.

71. REGISTRAR’S POWERS OF INSPECTION (AMENDMENT OF SECTION 400).

Section 400 of the Principal Act is amended by adding after Subsection (5) the following new subsection:

“(6) The Registrar or a person authorised by the Registrar shall consult with the Central Bank of Papua New Guinea before exercising any of the powers conferred by Subsection (1) of this section if the purpose of exercising the power relates to a company that is an entity registered or licenced under the *Banks and Financial Institutions Act 2000*.”.

72. DISCLOSURE OF RELEVANT DOCUMENTS AND RECORDS OF EXAMINATION (AMENDMENT OF SECTION 407).

Section 407(2) of the Principal Act is amended by inserting the word “report” after “document.”.

73. PROCEEDINGS FOR OFFENCES (AMENDMENT OF SECTION 417).

Section 417(3) of the Principal Act is amended by deleting the phrase “or, with the written consent of the Minister, at any later time”.

74. CARRYING ON BUSINESS FRAUDULENTLY (AMENDMENT OF SECTION 423).

Section 423 of the Principal Act is amended by adding after Subsection (2) the following new subsection:

“(3) Every Director of a company commits an offence and is liable on conviction to the penalties set out in Section 413(4), who, with intent to defraud a creditor or creditors of the company, does anything that causes material loss to any creditor.”.

75. NEW SECTIONS 429A, 429B, 429C, 429D, 429E AND 429F.

The Principal Act is amended by adding after Section 429 the following new sections:

“429A. DIRECTOR OF FAILED COMPANY MUST NOT BE DIRECTOR, ETC., OF PHOENIX COMPANY WITH SAME OR SUBSTANTIALLY SIMILAR NAME.

(1) Except with the permission of the Court, or unless one of the exceptions in Sections 429D to 429F applies, a Director of a failed company shall not, for a period of 5 years after the date of commencement of the liquidation of the failed company -

- (a) be a director of a phoenix company; or
- (b) directly or indirectly be concerned in or take part in the promotion, formation, or management of a phoenix company; or
- (c) directly or indirectly be concerned in or take part in the carrying on of a business that has the same name as the failed company’s preliquidation name or a similar name.

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(2) A person who contravenes Subsection (1) commits an offence and is liable on conviction on indictment to the penalty set out in Section 413(4).

429B. DEFINITIONS FOR PURPOSE OF PHOENIX COMPANY PROVISIONS.

(1) For Sections 429A to 429F -

“Director of a failed company” means a person who was a Director of a failed company at any time in the period of 12 months before the commencement of its liquidation and “Director of the failed company” has a corresponding meaning;

“failed company” means a company that was placed in liquidation at a time when it was unable to pay its due debts;

“phoenix company” means, in relation to a failed company, a company that, at any time before, or within 5 years after, the commencement of the liquidation of the failed company, is known by a name that is also -

(a) a preliquidation name of the failed company; or

(b) a similar name;

“preliquidation name” means any name (including any trading name) of a failed company in the 12 months before the commencement of that company’s liquidation;

“similar name” means a name that is so similar to a preliquidation name of a failed company as to suggest an association with that company.

(2) For the purposes of Sections 429A to 429F, a company is known by a name if that name is its registered name or if it carries on business, or carries on a part of its business, under that name.

429C. LIABILITY FOR DEBTS OF PHOENIX COMPANY.

(1) A person who contravenes Section 429A(1)(a) or (b) is personally liable for all of the relevant debts of the phoenix company.

(2) A person (A) who is involved in the management of a phoenix company is personally liable for all of the relevant debts of the company if -

(a) in the management of the company, (A) acts or is willing to act on instructions given by another person (B); and

(b) at that time (A) knows that (B) is contravening Section 429A(1)(a) or (b) in relation to the company.

(3) In this section, “relevant debts” -

(a) in Subsection (1), means the debts and liabilities incurred by the phoenix company during the period when the person liable was involved in the management of the company and the phoenix company was known by a preliquidation name of the failed company or a similar name; and

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(b) in Subsection (2), means the debts and liabilities incurred by the phoenix company during the period when (A) was acting or was willing to act on the instructions of (B) and the phoenix company was known by a preliquidation name of the failed company or a similar name.

(4) Liability under this section is joint and several.

(5) For the purposes of this section, a person who, is involved in the management of a company, was at any time acting on instructions given by a person who he knew at the time to be in contravention of Section 429A is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

429D. EXCEPTION FOR PERSON NAMED IN SUCCESSOR COMPANY NOTICE.

(1) Section 429A does not apply to a person named in a successor company notice.

(2) A successor company is a company that acquires the whole or substantially the whole of the business of a failed company under arrangements made by a liquidator or receiver.

(3) A successor company notice is a notice by a successor company that -

- (a) is sent by the successor company to all creditors of the failed company for whom the successor company has an address; and
- (b) is sent to those creditors within 20 working days after the arrangements for the acquisition of the business are made under Subsection (2); and
- (c) specifies -
 - (i) the name and registered number of the failed company; and
 - (ii) the circumstances in which the business has been acquired by the successor business; and
 - (iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on that business; and
 - (iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on that business; and
- (d) states, in respect of a person named in the notice -
 - (i) his or her full name; and
 - (ii) the duration of his or her directorship of the failed company; and
 - (iii) the extent of his or her involvement in the management of the failed company.

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429E. EXCEPTION FOR TEMPORARY PERIOD WHILE APPLICATION FOR EXEMPTION IS MADE.

(1) A person does not contravene a prohibition in Section 429A for the temporary period set out in Subsection (2) if that person applies to the Court within 5 working days after the commencement of the liquidation of the failed company for an order exempting that person from the prohibition in question.

(2) The temporary period in Subsection (1) is the period beginning on the date of the commencement of the liquidation of the failed company and ending on the earlier of -

- (a) the close of 6 weeks after the commencement of liquidation; and
- (b) the date on which the Court makes an order of exemption.

429F. EXCEPTION IN RELATION TO NON-DORMANT PHOENIX COMPANY KNOWN BY PRELIQUIDATION NAME OF FAILED COMPANY FOR AT LEAST 12 MONTHS BEFORE LIQUIDATION.

(1) The prohibitions in Section 429A(1)(a) and (b) do not apply in respect of a phoenix company that has been known by a name or names that are the same as the failed company's preliquidation name or are similar names if -

- (a) it has been known by that name or those names for not less than the period of 12 months before liquidation commences; and
- (b) it has not been dormant during those 12 months.

(2) For the purposes of Subsection (1), a company has not been dormant during the 12 month period if transactions that are required by Section 188 to be recorded in its accounting records have occurred throughout that period.”.

76. SERVICE OF DOCUMENTS ON COMPANIES IN LEGAL PROCEEDINGS (AMENDMENT OF SECTION 431).

Section 431 of the Principal Act is amended -

- (a) in Subsection (1)(f) by deleting the fullstop and inserting in its place “; or”; and
- (b) by inserting in Subsection (1) after Paragraph (f) the following new paragraph:

“(g) by serving it at an address for service given in accordance with the rules of the Court having jurisdiction in the proceedings or by such means as 7a solicitor has, in accordance with those rules, stated that the solicitor will accept service.”.

77. SERVICE OF OTHER DOCUMENTS ON OVERSEAS COMPANIES (AMENDMENT OF SECTION 434).

Section 434(b) of the Principal Act is amended by inserting the phrase “or company” after the word “person”.

78. INFORMATION TO BE CONTAINED IN ANNUAL RETURN (AMENDMENT OF SCHEDULE 6).

Schedule 6 of the Principal Act is amended by deleting “An annual return shall contain the following information:-”.

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79. PENALTIES FOR OFFENCES AGAINST THIS ACT (AMENDMENT OF SCHEDULE 13).
Schedule 13 of the Principal Act is amended by inserting -

(a) in Part 1, the following section reference in the correct numerical order:

“Section 190(2C)”; and

(b) in Part 2, the following section references in the correct numerical order:

“Section 154B(8)
Section 216A(2)(a)”; and

(c) in Part 4, the following section references in the correct numerical order:

“Section 89(8)
Section 102(d)
Section 115(6)”; and

(d) in Part 6, the following section references in the correct numerical order:

“Section 44A(6)
Section 47(4)
Section 47B(5)
Section 47B(6)
Section 63(9)
Section 216A(2)(b)”.

I hereby certify that the above is a fair print of the *Companies (Amendment) Act 2014*, which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Companies (Amendment) Act 2014*, was made by the National Parliament on 19 February 2014.

Speaker of the National Parliament.