

No. 45 of 2022.

*Companies (Amendment) Act 2022.*

Certified on : 2 SEP 2022



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***Companies (Amendment) Act 2022.***

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No. 45 of 2022.

AN ACT

entitled

***Companies (Amendment) Act 2022.***

Being an Act to amend the *Companies Act 1997* -

- (a) to reform the law relating to companies; and
  - (b) to combat money-laundering; and
  - (c) provide for better internal governance; and
  - (d) to facilitate re-registration of companies,
- and for other related purposes.

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(1) of the Principal Act is amended in the definition of “Securities Commission of Papua New Guinea” by repealing the words and figure “*Securities Act 1997*” and replacing them with the following:

“*Securities Commission Act 2015*”.

**2. RE-ISSUE OF SHARES COMPANY HOLDS IN ITSELF (AMENDMENT TO SECTION 57C (2)).**

Section 57C(2) of the Principal Act is amended by repealing the words and figure “*Securities Act 1997*” and replacing them with the following:

“*Capital Market Act 2015*”.

**3. TRANSFER OF SHARES (AMENDMENT OF SECTION 65).**

Section 65 of the Principal Act is amended by repealing Subsection (6) and replacing it with the following:

“(6) Following entry of the name or names of a transferee or transferees on the share register, the company shall, within 10 days after registering a transfer of shares, submit to the Registrar notice in the prescribed form of that entry unless -

- (a) the company is subject to a listing agreement with a stock exchange; or
- (b) the total number of shares transferred since the date of incorporation or the last annual return under Section 215 is less than 50% of the issued shares.”.

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**4. REPEAL AND REPLACEMENT OF SECTION 72.**

The Principal Act is amended by repealing Section 72 and replacing it with the following new section:

**“72. BENEFICIAL OWNERSHIP OF SHARES.**

(1) No notice of a trust, whether express, implied or constructive, may be entered on the share register.

(2) Notwithstanding Subsection (1), a company must -

(a) obtain and maintain sufficient information to identify the beneficial owner of a share issued by the company; and

(b) disclose that information in a written notice to the Registrar on the written request of the Registrar.

(3) For the purposes of Subsection (2), “beneficial owner” means a natural person who -

(a) owns or controls a share or other membership interest in a company; or

(b) exercises ultimate effective control directly or indirectly over a legal person or arrangement affecting shares or membership interests or decisions in a company,

and “beneficial ownership” is to be construed accordingly.

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

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).”.

**5. MEANING OF “ISSUER” (AMENDMENT TO SECTION 173).**

Section 173 of the Principal Act is amended by repealing the words and figure “*Securities Act 1997*” and replacing them with the following:

*“Capital Market Act 2015”.*

**6. REGISTRATION OF FINANCIAL STATEMENTS BY COMPANIES (AMENDMENT OF SECTION 183).**

Section 183 of the Principal Act is amended by repealing “, within 14 days after the annual meeting of the company,”.

**7. POWER OF COURT WHERE OUTCOME OF VOTING AT MEETING OF CREDITORS DETERMINED BY RELATED ENTITY (AMENDMENT OF SECTION 295A).**

Section 295A of the Principal Act is amended in Subsection (3), Paragraph (a) by repealing the words and figure “*Securities Act 1997*” and replacing them with the following:

*“Capital Market Act 2015”.*

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**8. GROUNDS FOR REMOVAL FROM REGISTER (AMENDMENT OF SECTION 366).**

Section 366 of the Principal Act is amended by inserting immediately after Subsection (5) the following new subsection:

“(6) Public notice is not required for removal under Section 366(1)(f).”

**9. NOTICE OF INTENTION TO REMOVE WHERE COMPANY HAS CEASED TO CARRY ON BUSINESS (AMENDMENT OF SECTION 367).**

Section 367 of the Principal Act is amended -

- (a) in Subsection (1) by repealing Paragraph (b); and
- (b) in Subsection (3) by repealing “(b) and”.

**10. NOTICE OF INTENTION TO REMOVE IN OTHER CASES (AMENDMENT OF SECTION 368).**

Section 368 of the Principal Act is amended -

- (a) in Subsection (1) by repealing “,(f)”; and
- (b) in Subsection (3) by repealing “,(f)”; and
- (c) in Subsection (3) by repealing Paragraphs (a) and (b); and
- (d) in Subsection (3) by repealing the dash and replacing it with the following:

“the Company.”.

**11. REPEAL AND REPLACEMENT OF SECTION 369.**

The Principal Act is amended by repealing Section 369 and replacing it with the following new section:

**“369. OBJECTION TO REMOVAL FROM THE REGISTER.**

(1) No person may object to the removal of a company from the register under Section 366(1)(f).

(2) Any person may object to the removal of a company from the register under Section 366(1)(a), (b), (c), (d), (e) and (g).

(3) A person may object to removal on any one or more of the following grounds:

- (a) the company is still carrying on business or there are other reasons for it to continue in existence; or
- (b) the company is a party to a legal proceeding; or
- (c) the company is in receivership or liquidation; or
- (d) the person objecting is a creditor, shareholder or other person having an undischarged claim against the company; or
- (e) the person objecting believes that there exists and intends to pursue a right of action on the part of the company under Division IX.3; or
- (f) for any other reason, removal would not be just and equitable.

(4) Subject to Subsection (1), a person may object to the removal of a company from the register by applying to the Court for an order that the company be not removed under Section 371(1).

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(5) Where an objection is submitted to the Registrar, the Registrar shall not proceed to register a notice under Section 365 to remove the company from the register unless -

- (a) the objection has been withdrawn; or
- (b) any facts on which the objection is based are not, or are no longer correct, or have not been proved to the satisfaction of the Registrar; or
- (c) the Registrar is of the opinion that the objection is frivolous.”.

#### **12. POWERS OF COURT (AMENDMENT OF SECTION 371).**

Section 371 is amended in Subsection (2) by inserting immediately after the phrase “if it is satisfied that”, the following:

“on one or more of the grounds specified in Section 369(c), or if”.”.

#### **13. REGISTRAR MAY RESTORE COMPANY TO REGISTER (AMENDMENT OF SECTION 378).**

Section 378 is amended in Subsection (1) by repealing the words “this section” and replacing it with the following:

“Section 378A”.

#### **14. NEW SECTION 378A.**

The Principal Act is amended by inserting immediately after Section 378, the following new section:

##### **“378A. REGISTRAR TO RESTORE COMPANY TO REGISTER.**

(1) Subject to Subsection (2), the Registrar shall, on the application of a person specified in Subsection (3), restore to the register a company that has been removed from the register under Section 366(f) for failing to file an annual return.

- (2) The application must be -
- (a) filed with the Registrar within 2 years after removal from the register; and
  - (b) in the prescribed form (if any); and
  - (c) accompanied by -
    - (i) all outstanding annual returns; and
    - (ii) the prescribed filing fee for each outstanding annual return; and
    - (iii) the prescribed late filing fee for each outstanding annual return.

- (3) A person may apply if the person was a -
- (a) a shareholder or Director of the company; or
  - (b) a creditor of the company; or
  - (c) a party to any legal proceedings against the company; or
  - (d) is an undischarged claimant against the company; or
  - (e) was the liquidator or receiver of the property of the company, at the time the company was removed from the register.

- (4) Nothing in this section limits or affects Section 379.”.

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**15. REGISTRAR'S POWERS OF INSPECTION (AMENDMENT OF SECTION 400).**

Section 400 of the Principal Act is amended in Subsection (1)(a) -

- (a) by deleting from Subparagraph (i) the words and figure "*Securities Act 1997*" and replacing them with the following:

*"Securities Commission Act 2015 and the Capital Market Act 2015"*; and

- (b) by deleting from Subparagraph (iii) the words and figure "*Securities Act 1997*" and replacing them with the following:

*"Securities Commission Act 2015 and the Capital Market Act 2015"*; and

- (c) by deleting from Subparagraph (iv)(A) the words and figure "*Securities Act 1997*" and replacing them with the following:

*"Securities Commission Act 2015 and the Capital Market Act 2015"*; and

- (d) by deleting from Subparagraph (vi) the words and figure "*Securities Act 1997*" and replacing them with the following:

*"Securities Commission Act 2015 and the Capital Market Act 2015"*.

**16. NEW SECTIONS 439A, 439B, 439C, 439D AND 439E.**

The Principal Act is amended by inserting immediately after Section 439 the following new sections:

**"439A. APPLICATION FOR RE-REGISTRATION OF EXISTING COMPANY.**

- (1) An existing company may apply for re-registration under this Act.
- (2) An application for re-registration must be -
- (a) in the prescribed form; and
  - (b) signed by the person completing the application; and
  - (c) filed with the Registrar within one year after the commencement of this section.
- (3) The application must specify, in respect of the company once it is re-registered -
- (a) the name of the company, which must comply with Section 22; and
  - (b) whether the company has a constitution; and
  - (c) the full name, residential address, postal address and other prescribed details of each director of the company; and
  - (d) that each person named as a director of the company has consented to act as a director of the company; and
  - (e) the full name, residential address, postal address and other prescribed details of each secretary of the company if the company has a secretary; and
  - (f) that each person named as a secretary of the company has consented to act as a secretary of the company; and



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- (g) the full name and other prescribed contact details of every shareholder of the company, the number of shares held by each shareholder, and if the company has different classes of shares the particulars concerning the different classes; and
  - (h) the registered office address, the address for service, and the postal address of the company, which may be the registered office or any other postal address; and
  - (i) any other prescribed information.
- (4) The application for re-registration must be accompanied by -
- (a) the prescribed fee; and
  - (b) a copy of the constitution if the company has a constitution; and
  - (c) if the company is not in compliance with this Act for the failure to file any annual return under Section 215, the prescribed late fee.

**439B. FAILURE TO APPLY FOR RE-REGISTRATION.**

(1) An existing company that has not applied for re-registration in accordance with Section 439A shall be removed from the register.

(2) For the purposes of Subsection (1), Part XIX applies as if the existing company were a company that had been removed from the register for the failure to file an annual return under Section 215.

(3) An existing company that fails to re-register may apply for restoration under Section 378A.

(4) On the application of a director, shareholder, creditor or other interested person of an existing company, the Court may -

- (a) direct the Registrar to make an application for re-registration on behalf of the company; and
- (b) make any other orders necessary to affect the re-registration of the company.

**439C. APPLICATION FOR RE-REGISTRATION OF EXISTING OVERSEAS COMPANY.**

(1) An existing overseas company may apply for re-registration under this Act.

(2) An application for re-registration of an existing overseas company must be -

- (a) filed with the Registrar within one year after the commencement of this Act; and
- (b) in the prescribed form.

(3) An existing overseas company that has not applied for re-registration in accordance with Section 439A shall be removed from the register.

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(4) For the purposes of Subsection (3), Section 379 applies as if the existing overseas company that failed to re-register were a company that had been removed from the register.

### **439D. RE-REGISTRATION.**

(1) The Registrar shall, without delay on receiving an application for re-registration of an existing company or existing overseas company that complies with Section 439A or 439C, as the case may be -

- (a) enter the company on the Papua New Guinea register; and
- (b) issue to the company a certificate evidencing its re-registration.

(2) A certificate of re-registration issued under Subsection (1) is conclusive evidence that -

- (a) all the requirements for re-registration have been complied with; and
- (b) on and from the date of re-registration stated in the certificate, the company is a company or overseas company registered under this Act.

(3) The re-registration of an existing company or existing overseas company under this section does not -

- (a) create a new legal entity; or
- (b) affect the shares or share capital of the company except as provided by this Act; or
- (c) affect existing shareholder rights and obligations; or
- (d) affect the property, rights or obligations of the company except as provided by this Act; or
- (e) affect proceedings by or against the company.

(4) A company or overseas company is not required to file an annual return under this Act in the year in which it is re-registered.

### **439E. INTERPRETATION OF EXISTING AND OVERSEAS COMPANY.**

For the purposes of Sections 439A, 439B, 439C, 439D and 439E -

- (a) “existing company” means a company that was registered under this Act immediately before the commencement of the amendment that added this section to this Act, but does not include a company that is in liquidation; and
- (b) “existing overseas company” means an overseas company that was registered under this Act immediately before the commencement of the amendment that added this section to this Act; and
- (c) “existing shareholder rights and obligations” means the rights and obligations of the existing shareholders in relation to -
  - (i) voting at meetings of shareholders; and
  - (ii) the appointment and removal of directors; and
  - (iii) preferential or fixed entitlements to dividends; and
  - (iv) the distribution of surplus assets of the company.”.

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**17. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the Principal Act is amended in Schedule 2.8 -

(a) by repealing Subsection (1) and replacing it with the following new subsections:

“(1) Shareholders may give a written notice to the Board of a resolution that the shareholders propose to vote on at the next meeting of the shareholders and the shareholders are entitled to vote in the following:

- (a) shareholders holding at least 5% of the total voting rights are entitled to vote on the proposed resolution; or
- (b) at least 50 shareholders are entitled to vote on the proposed resolution at a meeting of the shareholders.”; and

(b) by adding immediately after Subsection (1) the following new subsection:

“(1A) The Board is not required to comply with a request under Subsection (1) where a proposed resolution would, if passed, be ineffective, whether by reason of inconsistency with law or the company’s constitution.”.

**18. REPEAL AND REPLACEMENT OF SCHEDULE 6.**

Schedule 6 of the Principal Act is repealed and replaced with the following new Schedule:

**“SCHEDULE 6. INFORMATION TO BE CONTAINED IN ANNUAL RETURN.**

- (1) The annual return may contain the following information -
- (a) the name and registration number of the company; and
  - (b) the year to which the annual return relates; and
  - (c) the date of the annual meeting; and
  - (d) the address of the registered office of the company; And
  - (e) the address for service of the company; and
  - (f) the address for communications and, if available, the email address of the company; and
  - (g) the names and other details of the directors of the company; and
  - (h) the names and other details of the shareholders of the company and their shareholdings; and
  - (i) if there are more than one class of shares for the company and, if so, the particulars of the different classes; and
  - (j) the name and other details of the Secretary, if any; and
  - (k) a statement indicating if the company’s financial statements were required to be audited by the Act and, if so, the name and other details of the auditor; and
  - (l) whether the company satisfies the solvency test; and
  - (m) statistical information such as employment levels and business activity of the company; and

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(n) such other information as may be required by the Registrar.

(2) The Registrar may send or otherwise provide to a company an annual return form pre-filled with the prescribed information as it appears on the Papua New Guinea register.

(3) The form complies with Section 215 and this Schedule if the pre-filled form is current as at a date in the company's allocated month.

(4) The Registrar may amend the register to correspond with the information given in a company's annual return in relation to the address of its registered office, its postal address, its address for communication or email address if the address given differs from the address entered in the register.”.

**19. PENALTIES FOR OFFENCES AGAINST THIS ACT (AMENDMENT OF SCHEDULE 13).**

Schedule 13 of the Principal Act is amended -

(a) in Part 3 by inserting immediately before “Section 321(2)” the following:

“Section 72(4)(a);”; and

(b) in Part 7 by inserting immediately before “Section 185(1)” the following:

“Section 72(4)(b);”.

I hereby certify that the above is a fair print of the *Companies (Amendment) Act 2022*, which has been made by the National Parliament.

  
Clerk of the National Parliament.  
2 SEP 2022

I hereby certify that the *Companies (Amendment) Act 2022*, was made by the National Parliament on 20 January 2022.

  
Speaker of the National Parliament.  
2 SEP 2022