

No. 28 of 2023.

Securities Commission (Amendment) Act 2023.

Certified on : 16 MAY 2024



No. 28 of 2023.

Securities Commission (Amendment) Act 2023.

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No. 28 of 2023.

AN ACT

entitled

Securities Commission (Amendment) Act 2023,

Being an Act to amend the *Securities Commission Act 2015*, to strengthen the governance framework and administration of the Securities Commission of Papua New Guinea,

MADE by the National Parliament.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

- (a) by inserting immediately after the definition of “associated person” the following new definition:

““Board” means the Board of the Securities Commission established under Section 9;” and

- (b) by repealing the definition of “CEO”; and

- (c) by inserting immediately after the definition of “Chairman” the following new definition:

““Chief Executive Officer” means the Chief Executive Officer appointed under Section 27;” and

- (d) by inserting immediately after the definition of “listing rules” the following:

““member” means a member of the Board;” and

- (e) by inserting immediately after the definition of “money laundering” the following new definition:

““Officer” means an Officer of the Commission appointed under Section 31 or a casual officer of the Commission appointed under Section 33;” and

- (f) by inserting immediately after the definition of “Securities Commission” the following new definition:

““securities law” means -

- (a) this Act, the *Capital Market Act 2015* or the *Central Depositories Act 2015*; or
(b) an Act that replaces any of them; or

- (c) any statute that provides that it is a securities law for the purposes of this Act;”.

2. SECURITIES COMMISSION (REPEAL AND REPLACEMENT OF PART II).

Part II of the Principal Act is repealed and replaced with the following new Part:

“PART II. - SECURITIES COMMISSION.

Division 1. - Establishment of the Securities Commission.

4. ESTABLISHMENT OF THE SECURITIES COMMISSION.

- (1) The Securities Commission of Papua New Guinea is established.
- (2) The Commission is a body corporate with perpetual succession and -
- (a) may acquire, hold, deal with and dispose of real and personal property; and
 - (b) may sue and be sued in its corporate name and style.

5. COMMON SEAL OF THE SECURITIES COMMISSION.

(1) The Commission will have a common seal which may be removed, changed or altered from time to time as the Commission thinks fit.

(2) Until a seal is provided by the Commission, a stamp bearing the words Securities Commission may be used in its place and shall be deemed to be the common seal of the Commission.

(3) The common seal shall be kept in the custody of the Chief Executive Officer or a person authorised by the Chief Executive Officer and shall be authenticated by either person in writing.

(4) All deeds, instruments or other documents purporting to be sealed with the common seal of the Commission in accordance with Subsection (3) shall be deemed to have been validly executed.

(5) All Courts and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and presume that it is duly fixed.

6. INDEPENDENCE OF THE SECURITIES COMMISSION.

The Commission in the performance of its functions and powers, is not subject to direction or control by any person except as stipulated under this Act.

Division 2. - Objectives and functions of the Securities Commission.

7. OBJECTIVES OF THE SECURITIES COMMISSION.

The Commission has the objectives to -

- (a) ensure the administration of capital markets in Papua New Guinea is conducted orderly; and
- (b) ensure the sound conduct of business in the capital markets and OTC facilities; and
- (c) elaborate on policies that ensure the fairness, efficiency and transparency of securities and derivatives markets in Papua New Guinea; and

- (d) elaborate on policies on money laundering and related activities in the capital market in Papua New Guinea; and
- (e) study new developments in the securities and derivatives market services sector; and
- (f) ensure collaboration with the Bank of Papua New Guinea for a sound and stable financial system; and
- (g) plan objectives, policies and priorities for the development of the securities and derivatives market in Papua New Guinea.

8. FUNCTIONS OF THE SECURITIES COMMISSION.

The Commission shall function as is necessary to effectively achieve its objectives and shall -

- (a) be responsible for the administration of this Act and related laws; and
- (b) license business activities in the securities and derivatives market; and
- (c) regulate, monitor and supervise the conduct of business activities in the securities and derivatives market; and
- (d) set rules and guidelines that govern the conduct of business in the securities and derivatives market, the OTC activities, money laundering and related activities; and
- (e) issue orders or directives on the conduct of business in the capital market, OTC activities, money laundering and related activities; and
- (f) prepare and publish the Corporate Governance Code for companies registered in Papua New Guinea, both public and exempted companies; and
- (g) ensure that publicly listed companies and market intermediaries comply with the highest standard of corporate governance; and
- (h) identify investment business abuse and take measures to prevent and eliminate such abuse; and
- (i) establish norms and standards to preserve and maintain the good reputation of Papua New Guinea in the securities and derivatives market sector; and
- (j) promote public understanding of the securities and derivatives market, including benefits and risks of investment; and
- (k) conduct investigations on illegal, dishonourable and improper practices, market abuse and financial fraud in relation in the securities and derivatives markets; and
- (l) research and disseminate information on the securities and capital markets: and
- (m) collect, compile, publish and disseminate statistics in respect of the securities and capital market; and
- (n) establish and maintain links and liaison with international agencies in the field of financial services and global business as may be necessary for the furtherance of its objectives; and
- (o) coordinate between public sector agencies and private sector corporations in engaging in the development of the securities and derivatives market; and
- (p) protect investors in the securities and derivatives market; and
- (q) advise the Minister on matters relating to the securities and derivatives market, or do such acts as are incidental or conducive to attaining the objectives of the Commission.

9. BOARD OF THE SECURITIES COMMISSION.

The Securities Commission Board is established.

10. FUNCTIONS AND POWERS OF THE BOARD.

(1) The Board is responsible to -

- (a) determine the policies of the Commission, including regulation of the capital market system; and
- (b) ensure the Commission carries out the objectives and functions under this Act or related securities law; and
- (c) supervise the performance of the Commission; and
- (d) provide periodic reports to the Minister on matters regarding the Commission's functions,

or any other functions under this Act or related securities law.

(2) The Board has powers as are necessary to effectively perform its functions under this Act and related securities law.

11. MEMBERSHIP OF THE BOARD.

The Board comprises of the following seven members:

- (a) the Governor of the Bank of Papua New Guinea, *ex-officio* or his nominee at deputy level; and
- (b) the Departmental Head for the Department of Treasury, *ex-officio* or his nominee at deputy level; and
- (c) the Departmental Head for the Department of Commerce and Industry, *ex-officio*, or his nominee at deputy level; and
- (d) four non *ex-officio* members appointed in accordance with Section 12 where:
 - (i) one member is a lawyer admitted to practice under the *Lawyers Act 1986*; and
 - (ii) three members are experts in capital markets with relevant experience in the operation and administration of a capital market regulatory regime; and
- (e) a lawyer with at least seven years of commercial law practice; and
- (f) a person with relevant experience in the operation and administration of a capital market regulatory regime.

12. APPOINTMENT PROCESS FOR NON EX-OFFICIO MEMBERS OF THE BOARD.

(1) A member of the Board other than an *ex-officio* member is -

- (a) appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) appointed for a term not exceeding four years; and
- (c) eligible for re-appointment; and
- (d) remunerated in accordance with the *Boards (Fees and Allowances) Act 1955*.

(2) A non *ex-officio* member appointed under Subsection (1) shall -

- (a) possess the following minimum qualifications:
 - (i) a tertiary qualification in law, economics, accounting, business or have at least ten years of work experience in any of these areas; and
 - (ii) at least five (5) years experience in a senior management position; and
- (b) be a person of integrity; and
- (c) have good standing and reputation in the community.

13. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Board shall submit to the Minister the names of not more than three persons from amongst its members and the Minister shall appoint one of these persons to be the Chairman of the Board.

(2) The Chairman shall be appointed for a term not exceeding three years and be eligible for re-appointment.

(3) The Board shall elect a Deputy Chairman from amongst its members for a term not exceeding three years and shall be eligible for re-appointment.

(4) The Chairman and Deputy Chairman shall remain as Chairman or Deputy Chairman until the expiration of the period of their respective appointment or election or until they cease to be members of the Board, whichever occurs first.

14. LEAVE OF ABSENCE.

(1) The Chairman of the Board may grant a leave of absence to a Board member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence only to the Chairman on such terms and conditions as the Minister determines.

15. DISQUALIFICATIONS.

A person other than an *ex-officio* member of the Board will be disqualified from appointment as a member of the Board, if that person -

- (a) is a member of parliament; or
- (b) is a candidate for the national general elections; or
- (c) is an office-holder or election candidate in a registered political party; or
- (d) is declared by a Court of competent jurisdiction to be bankrupt; or
- (e) is of unsound mind based on a current medical opinion from a qualified medical practitioner; or
- (f) has been sentenced to imprisonment for more than three months for a criminal offence; or
- (g) has been found guilty of misconduct in office under the *Organic Law on the Duties and Responsibilities of Leadership*; or
- (h) has a substantial interest of over 10 percent of shares in -
 - (i) a company listed on a stock exchange; or
 - (ii) a related company to the public company; or
 - (iii) other unlisted securities regulated by the Commission.

16. RESIGNATION.

(1) A member of the Board, other than an *ex-officio* member, may resign by giving three months' written notice to the Minister of his intention to resign.

(2) The period of three months specified in Subsection (1) is deemed to commence on the fourteenth day after the receipt of the resignation notice except where the Minister, by notice in writing to the member, fixes an earlier date for the commencement of that period.

(3) A member of the Board may withdraw his resignation before the lapse of the three-month period under Subsection (2).

17. VACANCY.

(1) A member of the Board, other than an *ex-officio* member, shall vacate the Board if the member -

- (a) dies; or
- (b) resigns; or
- (c) retires; or
- (d) is removed in accordance with Section 18.

(2) A vacancy in the Board shall be filled within 28 days of the vacancy arising.

(3) A Departmental Head shall advise the Minister and nominate another member if an appointed member ceases to hold office in the relevant department.

(4) The performance of a power or function of the Board shall not be invalidated by reason for a vacancy in the Board.

18. REMOVAL.

(1) A Board member, other than an *ex-officio* member, may be removed if the member -

- (a) is permanently incapable of performing his duties; or
- (b) is absent without the written consent of the Chairman; or
- (c) is absent without the written consent of the Chairman from three consecutive Board meetings; or
- (d) fails to comply with disclosure of interest requirements under Section 25; or
- (e) is bankrupt or declared insolvent, compound with his creditors or makes any assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable by a term of imprisonment of not less than one year or by death; or
- (g) is involved in a situation under Section 15 which would have disqualified the member from appointment.

(2) The Minister, may by written notice advise a member of the Board of his termination on grounds specified under Subsection (1).

(3) A Board member terminated under Subsection (2) may reply in writing to the Minister within 14 days of receipt of the termination notice and the Minister shall provide a response by recommendation to the National Executive Council to confirm termination or not.

(4) If a Board member terminated under Subsection (2) does not submit a reply under Subsection (3), the Minister may provide a recommendation to the National Executive Council to terminate his appointment.

19. MEETINGS OF THE BOARD.

(1) The Chairman shall preside over a meeting and in his absence the Deputy Chairman shall preside, if both the Chairman and Deputy Chairman are absent in a meeting then the members present shall elect from among them a chair for that meeting.

(2) The Board shall meet more than once every quarter as the business of the Commission requires, and at such times and places as the Board determines.

(3) The Chairman or the Deputy Chairman shall give to each member 14 days written notice of the meeting.

20. QUORUM.

(1) Five members of the Board shall constitute a quorum.

(2) A decision of the Board shall be made by a majority of votes from the members present.

(3) The chair of the meeting has a deliberative and a casting vote.

21. MEETING MINUTES.

The Board shall record and keep minutes of its meetings.

22. SPECIAL MEETING.

The Minister or a majority of members of the Board may request in writing the convening of a Special Meeting of the Board, within 14 days if three working days' notice has been given to each Board member.

23. REQUEST BY THE BOARD.

The Board may request a person, where necessary to attend, or present a submission or information in a meeting.

24. COMMITTEES.

(1) The Board may establish a committee, if and when necessary, to advise on matters relating to its functions under Section 8.

(2) The Board shall establish the functions and procedures of the Committee.

(3) The Board may appoint qualified persons to be members of the Committee who shall receive fees and allowances as determined by the Board if the member is not a Board member or public servant.

25. DISCLOSURE OF INTEREST.

(1) A member of the Board who has a direct or indirect pecuniary interest in a matter considered by the Board shall disclose the interest at a meeting as soon as relevant facts have come to his knowledge.

(2) Any disclosure of interest under Subsection (1) shall be recorded in the meeting minutes.

(3) A member of the Board that discloses an interest under Subsection (1) shall not -
(a) participate in any decision of the Board in relation to the conflicting interest; and
(b) make up the quorum of the Board who will decide on matters relating to the conflicting interest.

(4) A Board member who does not make a disclosure in accordance with Section 25 shall -

(a) have his vote rescinded if it is found after that meeting that the member did not disclose the interest; and
(b) be subject to removal in accordance with Section 18(1)(d).

26. REPORTS.

- (1) The Board shall furnish to the Minister -
 - (a) a report, before the end of March every year, on the progress and performance of the Commission for the previous year; and
 - (b) reports requested by the Minister on the functions of the Commission.

(2) The Minister shall present the report referred to in Subsection (1)(a) to the National Executive Council for presentation in Parliament every year.

27. CHIEF EXECUTIVE OFFICER.

- (1) A Chief Executive Officer shall be appointed by the Commission.
- (2) The Chief Executive Officer shall be -
 - (a) appointed for a term not exceeding four years; and
 - (b) employed under a contract of employment on terms and conditions determined by the Board; and
 - (c) eligible for re-appointment.

(3) The Chief Executive Officer's appointment, suspension and dismissal shall be in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* and the *Salaries and Conditions Monitoring Committee Act 1988*.

28. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER.

The Chief Executive Officer shall have the following functions:

- (a) to ensure the implementation of the policies determined by the Board; and
- (b) to perform the functions of the Commission -
 - (i) under the supervision of the Board; and
 - (ii) to achieve its objectives; and
- (c) to manage the day to day operations of the Commission; and
- (d) to provide secretariat support to the Board; and
- (e) to provide periodical reports to the Board or Minister on matters pertaining to his functions; and
- (f) any other functions necessary for the effective implementation of this Act.

29. DELEGATION.

(1) The Chief Executive Officer may delegate all or any of his functions or powers in writing to the Director or an Officer of the Commission.

- (2) The delegation -
 - (a) must be reported to the Board as soon as it is done; and
 - (b) excludes the power to further delegate under this section.

30. DIRECTORS.

(1) The Board shall, upon the recommendation of the Chief Executive Officer, appoint no more than five directors for the Commission.

(2) A director shall be appointed among the officers employed under Section 31.

31. OFFICERS.

(1) The Chief Executive Officer may employ such persons as he considers fit to be officers of the Commission.

(2) An officer's terms and conditions of employment may be determined by the Chief Executive Officer and is subject to the *Salaries and Conditions Monitoring Committee Act 1988*.

(3) The Chief Executive Officer, directors and officers employed under this section constitute the staff of the Commission.

32. CONTINUATION IN THE PUBLIC SERVICE.

Where a Chief Executive Officer or an officer of the Commission is appointed from the public service, his service as Chief Executive Officer of the Commission is counted as continuous service in the national public service, for purposes of determining his rights and entitlements.

33. CASUAL OFFICERS.

(1) The Chief Executive Officer may employ casual officers as he considers necessary.

(2) A casual officer employed under Subsection (1) is not an employee for the purposes of the *Salaries and Conditions Monitoring Committee Act 1988* and shall be engaged under a contract of employment that specifies their terms and conditions of employment.

34. CONTRACT OF EMPLOYMENT.

(1) The Chief Executive Officer, directors and all officers of the Commission shall be employed or engaged under a contract of employment.

(2) Officers above Grade 12 or equivalent under the Public Service General Orders are contract officers who are subject to terms and conditions provided for under their contracts of employment.

35. OTHER STAFFING ARRANGEMENTS.

The Commission shall enter into agreements or arrangements to utilise the services of a staff of a department, statutory authority or public body.

36. CODES OF CONDUCT.

The Board may approve codes of conduct that provide the minimum requirements and standards for officers of the Commission, including any person engaged by the Commission in accordance with this Act.

37. ENGAGEMENT OF CONSULTANTS.

(1) The Chief Executive Officer may, where necessary, engage persons as consultants for the efficient and effective implementation of the functions and objectives of the Commission.

(2) An engagement under Subsection (1) shall be set out in a consultancy agreement which shall be subject -

- (a) to the *Public Finances (Management) Act 1995*; and
- (b) to such terms and conditions as determined by the Board."

3. GENERAL POWERS AND FUNCTIONS OF THE COMMISSION (AMENDMENT OF SECTION 38).

Section 38 of the Principal Act is amended -

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

- “(2) The powers under Subsection (1), shall include the power -
- (a) to issue rules, guidelines, notifications, directives, class orders or orders under this Act; and
 - (b) to determine fees for application for approval and renewal of licences; and
 - (c) to issue rules in relation to the duties of the sub-committee; and
 - (d) issue rules, orders and guidelines in relation to officers, officer-relations system, placements, appointments, dismissal and discipline for Officers; and
 - (e) to conduct any other activities to be implemented in accordance with the objectives of this Act;”;

- (b) by repealing Subsection (8) and replacing it with the following new subsection:

“(8) The Chief Executive Officer or an officer of the Commission who performs powers and functions of the Commission in accordance with this Act, is deemed to have been performed by the Commission;”;

- (c) repealing Subsection (9) and replacing it with the following new subsection:

“(9) The Chief Executive Officer shall exercise powers or functions on any power or function on the Commission unless the contrary intention appears.”.

4. APPOINTMENT OF INVESTIGATING OFFICERS (AMENDMENT OF SECTION 55).

Section 55 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) The Commission may appoint a person or officer as an Investigating Officer for the purposes of carrying out investigations on an offence under this Act, the *Capital Market Act 2015*, the *Central Depositories Act 2015* or other related laws where the Commission is the enforcing authority.”.

5. PROCEDURE IN RESPECT OF PROPERTY DETAINED IN INVESTIGATING OFFICER’S CUSTODY (AMENDMENT OF SECTION 59).

Section 59 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) Where a Magistrate has directed the Commission to hold an unknown property in its custody in accordance with Section 58(5), the Commission shall publish a public notice for persons of interest to present their claim on the property within six months from the date of publication.”.

6. SURRENDER OF TRAVEL DOCUMENTS (AMENDMENT OF SECTION 60).

Section 60 of the Principal Act is amended by repealing Subsection (5).

7. EXAMINATION TO TAKE PLACE IN PRIVATE (AMENDMENT OF SECTION 69).

Section 69 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:

- “(2) A person is entitled to be at the examination if he is -
- (a) the examiner or examinee; or
 - (b) the Chief Executive Officer or an officer; or

- (c) present by virtue of -
 - (i) a direction under Subsection (1); or
 - (ii) being the lawyer of the examinee.”.

8. WHO MAY BE PRESENT WHEN AN INQUIRY TAKES PLACE IN PRIVATE (AMENDMENT OF SECTION 76).

Section 76 of the Principal Act is amended by repealing Subsection (3) and replacing it with the following:

“(3) A person shall not be present at a private meeting directed by the Commission unless he is -

- (a) a member of the Board; or
- (b) the Chief Executive Officer or an officer; or
- (c) entitled to be present by virtue of -
 - (i) a direction under Subsection (1); or
 - (ii) a party interested in the inquiry.”.

9. POWER TO SUMMON WITNESSES AND TAKE EVIDENCE (AMENDMENT OF SECTION 78).

Section 78 of the Principal Act is amended in Subsection (4) by deleting the words “member presiding” and replacing them with the word “Commission”.

10. REPEAL OF SECTION 81.

Section 81 of the Principal Act is repealed.

11. NOTICE TO AUDITORS CONCERNING INFORMATION AND BOOKS (AMENDMENT OF SECTION 99).

Section 99 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) The Commission may, subject to Subsection (2), issue a written notice requiring an auditor to -

- (a) give specific information; or
 - (b) produce specific books,
- at a specified place and time.”.

12. NOTICE TO PRODUCE BOOKS (AMENDMENT OF SECTION 100).

Section 100 of the Principal Act is amended in Subsection (1) by repealing the words “a member of the Commission or a staff of the Commission” and replacing them with the words “the Commission”.

13. REPEAL OF SECTION 105.

Section 105 of the Principal Act is repealed.

14. REPEAL OF SECTION 110.

Section 110 of the Principal Act is repealed.

15. POWER TO REVIEW (REPEAL AND REPLACEMENT OF SECTION 111).

The Principal Act is amended by repealing Section 111 and replacing it with the following new section:

“111. POWER TO REVIEW.

(1) A person who is aggrieved by a decision of the Commission under this Act may apply to the Board to review the decision within 30 days after being notified of the decision.

(2) The procedures under Section 114(3), (4), (5) and (6) are applicable to an appeal under this section.”.

16. OBLIGATION OF SECRECY (AMENDMENT OF SECTION 113).

Section 113 of the Principal Act is amended in Subsection (1) by omitting the words “no member of the Commission or any of its committees or any officer, servant or agent of the Commission” and replacing it with the words “no member of the Board or its committees, the Chief Executive Officer, officers,”.

17. APPEALS TO COURT ONLY ON QUESTIONS OF LAW (AMENDMENT OF SECTION 114).

Section 114 of the Principal Act is amended in Subsection (2) by deleting the words “any determination of the Commission as being erroneous on a point of law” and replacing them with the following:

“an outcome of a review under Section 111,”.

18. PROCEEDINGS PRIVILEGE (AMENDMENT OF SECTION 115).

Section 115 of the Principal Act is amended by -

(a) repealing the heading of the section and replacing it with the following new heading:

“PROTECTION OF MEMBERS”; and

(b) repealing Subsection (1) and replacing it with the following new subsection:

“(1) A member of the Board, the Chief Executive Officer, an officer or any person performing functions or power under this Act shall not be civilly or criminally responsible for anything done or omitted to be done in good faith and in accordance with this Act.”.

19. TRANSITIONAL AND SAVINGS (AMENDMENT OF SECTION 121).

Section 121 of the Principal Act is amended by adding immediately after Subsection (3) the following new subsections:

“(4) Prior to the commencement of this amendment, the Chairman appointed under this Act shall perform the functions of the Chief Executive Officer until such time that an appointment is made under Section 27.

Securities Commission (Amendment)

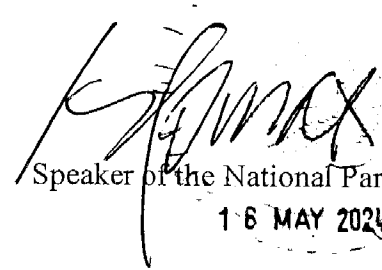
(5) The Chairman, Commissioners, and any other officer or employee of the Commission appointed under this Act, shall continue to be employed on the same terms and conditions until such time that the respective appointments are made in accordance with this amendment.”.

I hereby certify that the above is a fair print of the *Securities Commission (Amendment) Act 2023*, which has been made by the National Parliament.


Clerk of the National Parliament.

16 MAY 2024

I hereby certify that the *Securities Commission (Amendment) Act 2023*, was made by the National Parliament on 29 November 2023, by an absolute majority in accordance with the *Constitution*.


Speaker of the National Parliament.

16 MAY 2024