

B. SUMMARY OF PARTS & DIVISIONS

Appendix to Consultation Memorandum

Detailed Discussion of Statutory Sections Proposed for Amendment

For convenience, this Appendix provides specific outline of the proposed bills. Unlike, the current *Securities Act 1997*, which was adopted from the New Zealand Securities Act 1978, the current proposed bills would be drafted to reflect IOSCO Principles on Securities Regulations, the Financial Action Task Force (FATF) Standards on Anti Money Laundering & Counter Financing of Terrorism (AML & CFT), the Financial Stability Boards Standards and the latest development in the international financial markets.

Several jurisdictions and their legislations were consulted through a desktop review. They include, the Australian Corporations laws, New Zealand securities legislations, Malaysian securities legislations, Singaporean securities legislations, Thailand securities legislations, the Philippines' securities legislations, Indian securities laws, the Maldives securities laws, Pakistani securities legislations, Nigerian securities laws, Ghanaian securities legislations, the Canadian securities laws, the US securities legislations and Brazilian securities legislations.

The draft bills are intended to be framed together after having reviewed the securities legislations of the above jurisdictions and after receiving feedback from the stakeholders through this consultation process. These reviews would be conducted against the specific principles and standards of IOSCO, FATF and the FSB.

The following Appendices provide the detailed proposed provisions of the proposed bills.

A. *SECURITIES COMMISSION BILL 2014*

Key Features of the Bill

The draft Securities Bill will provide for the following matters:

- A very clear and transparent administrative structure;
- Very clear powers and functions of the Securities Commission;
- A clear system for checks and balances;
- A clear link between the regulator, the market and players;
- A system for strengthening good governance in the organization;
- For the protection and management of the assets and properties of the Securities Commission;
- For the State to adequately fund the Securities Commission annually from the national coffers;
- For specific procedures for the discipline of offenders under the legislation; and
- A link between the law and IOSCO principles and the Financial Stability Standards (FSB).
- A link between law and FAFT Recommendations on anti-money laundering and counter terrorism financing.

The following are the specific arrangements required of the Bill.

PART I PRELIMINARY

This provides for the Preliminary Part of the Bill which also provides on Constitutional compliance, application of the law and interpretation.

PART II SECURITIES COMMISSION

This Part provides for the administrative structure to administer the Securities Commission and provides provisions on:

Division 1 Establishment of the Securities Commission

Division 2 Objectives and Functions of the Commission

Division 3 The Chairman of the Commission

Division 4 The membership of the Commission

Division 5 Committees of the Commission

Division 6 Meetings of the Commission

Division 7 Staff of the Commission

PART III POWERS OF THE SECURITIES COMMISSION

This Part of the Bill should contain the powers of the Securities Commission on:

Division 1 General Powers of the Commission

Division 2 Other Powers of the Commission

PART IV FINANCES OF THE SECURITIES COMMISSION

This is probably the most important intervention by the Bill as it seeks to provide a mechanism to enable the government to provide annual budgetary support to the Securities Commission.

This Part provides:

- Specifying the finances of the Securities Commission;
- To enable the government to provide financial support to the Securities Commission annually;
- For the audit of the books of the Securities Commission;

PART V INVESTIGATIVE POWERS OF THE COMMISSION

This Part provides for the investigative powers of the Commission. Under this part, some of the matters that can be considered are:

Division 1 Investigations

Division 2 Examination

Division 3 Inquiries

Division 4 Proceedings after an investigation

Division 5 Evidentiary of use certain material

Division 6 Miscellaneous

Division 7 Offences

PART VI DISCLOSURE REQUIREMENTS

This Part provides for the disclosure required by Companies to the Commission. The proposed provisions would include:

Division 1 General

Division 2 Requirements to disclose information about securities

PART VII GENERAL PROVISIONS

This part provides for the general provisions on powers and functions of the Commission. This power includes powers;

- to file proceedings, general penalty provisions,
- Power to issue administrative penalties;
- Power of Review;
- Power of Appeal; and
- Powers to make regulations.

PART VIII REPEAL

This part provides for the repeal of the current *Securities Act 1997*.

PART IX SAVINGS AND TRANSITIONAL

This provides for provisions and savings on the current decisions and actions of the Commission and further provisions for transitional provisions.

B. CAPITAL MARKET BILL 2014

The Capital Markets Bill is needed to reform the PNG Capital market by formally establishing the PNG capital and derivative markets. These will allow the introductions of new securities products, especially debt securities (e.g bonds) and derivative securities (e.g, futures, options, swaps, warrants) on the PNG capital market. It will also enable more Papua New Guineans who do not have the opportunity today (because of market restrictions) to involve themselves in the market as stock brokers, investment advisors, fund managers among others.

The draft Capital Markets Bill would provide for the following matters:

- Creation of the capital and derivatives markets; and

- Licensing of market intermediaries; and
- Regulation of the capital and derivative markets; and
- Setting out clear trading rules; and
- Clear rules in protecting investors; and
- Clear procedures in dealing systemic risks within the PNG market and external risks; and
- Clear guidelines on cross-border trades; and
- Effective and transparent reporting and disclosure rules; and
- Clear provisions on the substantial securities holder disclosures; and
- Clear provisions on takeover processes; and
- Clear compliance with FAFT Recommendations; and
- A link between the law and IOSCO principles and FSB standards; and
- A clear link between the regulator, the market and players.

The following are the proposed specific arrangements required of the Bill and the specific drafting instructions.

PART I PRELIMINARY

This part should contain a provision on Constitutional compliance, application of the law and interpretation.

PART II SECURITIES MARKET

Division 1 Establishment of Markets

- Establishment of Stock and Derivatives Markets

Division 2 Market Institutions

Subdivision 1 Stock Exchange & Derivatives Exchange

- Approval of Stock Exchange & Derivatives Exchange
- Membership of the Stock Exchange and Affiliation of the Derivatives Exchange
- Commission to approve rules (amendments) of the Stock Exchange, derivatives exchange or a clearing house.
- Appointment of directors of stock exchange and derivatives exchange
- Duties of exchange
- Revocation of approval of exchange
- Effect of revocation of approval of exchange
- Annual Regulatory Report of compliance with ongoing requirements
- Quarterly Reports
- Disposal and Acquisition of Assets
- Powers to issue directives
- Closure of stock exchange or derivatives
- Power of the Commission to prohibit trading in a particular security
- Provisions of Assistance to the Commission
- Suspension order relating to a stock exchange, derivatives exchange, clearing house or central depository

Subdivision 2 General Provisions

- Publication of notice of suspension of trading or closure
- Rights of stock exchange or a clearing house not to be affected by laws relating to contracts

Subdivision 3 Registered Facilities

- Registered electronic facilities
- Application for registration
- Revocation of Registration

Subdivision 4 Clearing House

- Establishing or operating a clearing facility
- Power of the Commission to approve a clearing house
- Revocation of Approval
- Effect of revocation

PART III CAPITAL MARKET SERVICES

This part will deal with the following provisions:

Division 1 Licensing and Regulations

- Requirement for Capital Market License
- Requirement for Capital Market's Representative's license
- Application for grant or renewal of license
- Grant or Renewal of license
- Powers of the Commission to impose conditions or restrictions on licenses
- Grounds for the refusal of grant or renewal of license
- Power of the Commission to enquire into transactions in respect of securities
- Minimum financial requirements
- Period of license
- Variation or transfer of license
- Revocation and suspension of license

- Notification of disqualifying event
- Appointment, election and nomination of directors and chief executive of licensed person
- Register of license holders
- Notification of change of particulars
- Appeals
- Surrender of application

Division 2 Division Records

- Application of this division
- Register of securities
- Notice of Particulars to the Commission
- Defense of prosecution
- Particulars of financial journalists

Division 3 Conduct of Business

- Prohibition of certain activities
- Issue of Contract Notes
- Disclosure of certain interests
- Additional obligations on licensed holders
- Dealing as Principals
- Shortselling

Subdivision 1 General

- Certain representation prohibited
- Issues of contract notes

- Disclosure of certain interests in securities
- Recommendation by a license person
- Priority given to client's order
- Dealing by employees of holders of licenses or participating organisations
- Additional obligations on licensed persons

Subdivision 2 Securities

- Dealing as Principal
- Shortselling

Subdivision 3 Derivatives

- Trading in derivatives own account
- Documents to be given to prospective clients
- Trading limited in derivatives
- Reportable positions
- Derivatives Agreement not gaming or wagering contract
- Sequence of sending and carrying out of orders
- Trading in derivatives outside of Papua New Guinea

Division 4 Books, Client's Assets Protection and Audit

Subdivision 1 Books

- Keeping of books and furnishing or returns

Subdivision 2 Treatment of client's assets in respect of securities

- Application of subdivision

- Monies received by a holder of a license to be paid into trust account
- Withdrawal of monies from trust accounts
- Claims on liens not affected

Subdivision 3 Treatment of client's assets in respect of fund management

- Operation of trust account
- Clients' Assets

Subdivision 4 Range of actions the Commission may take to protect clients under certain circumstances

- Commission's action to protect client's assets

Subdivision 5 Audit

- Appointment of Auditor
- Relevant persons to lodge auditor's report
- Duties of Auditor
- Duty of relevant persons or its directors to furnish information
- Power of the Commission to appoint an independent auditor
- Independent Auditor reports to the Commission
- Powers of the independent auditor appointed by the Commission
- Penalty for destroying, concealing or altering books or sending books or property out of Papua New Guinea.

Division 5 Vesting

- Interpretation

- Application to Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed person

PART VI ISSUERS, DEBENTURES & MANAGED INVESTMENT SCHEME

This Part deals with issuing of securities to the public and related investments

Division 1 Listed and Unlisted Capital Market product proposals

Division 2 Application for approval

Division 3 Prospectus

Division 4 Debentures

Subdivision 1 Trust deeds,

Subdivision 2 Duties of Trustees, borrowers, etc

Subdivision 3 General Provisions

Division 5 Unit Trusts and Managed Investment Schemes

Subdivision 1 Trust Deeds

Subdivision 2 Trustees & Management Company

Subdivision 3 Register of Unit Holders

PART V TAKEOVERS, MERGERS & COMPULSORY ACQUISITION

This Part deals with takeovers, the formulation of takeovers code and the powers of the Commission to deal with and breaches of the takeovers code.

Division 1 Purpose of this Part

Division 2 Takeovers & Mergers Code

Division 3 Investigations and Enforcement

Division 4 Miscellaneous Provisions

PART VII MARKET MISCONDUCT

Under this part, some of the matters can be considered for inclusions are;

Division 1 Offences relating to false trading and market rigging, stock market manipulation

Division 2 Insider Trading

Division 3 Civil Remedies

Division 4 Prohibited Conducts – Derivatives

Subdivision 1 Offences relating to false trading, bucketing, etc...,

Subdivision 2 Civil Remedies

PART VIII MANAGEMENT OF SYSTEMIC RISK IN THE MARKET

This part deals with the powers of the Commission to intervene in the market when the market is affected by risks, including global or local financial crisis.

PART IX SECURITIES MARKET COMPENSATION FUND

This part provides for a;

Division 1 Compensation Fund;

This fund provides compensations to injured persons on the capital market.

Division 2 Fidelity Fund

This fund deals with the compensations to injured persons involving derivatives contracts.

PART X DISCLOSURE OF RELEVANT INTEREST

This Part deals with disclosures by directors, CEOs and senior management of interest they acquire in the corporation or it related or subsidiaries.

Division 1 Purpose of this Part

Division 2 Duties of Chief Executives and Directors of listed Corporations to disclose interest in securities

Division 3 Duties of Auditors

Division 4 Listed Corporations to Keep Interest Register

PART XI DISCLOSURE OF INFORMATION

This Part provides for disclosure requirements by licensed entities issued with a licensed under this Act.

Division 1 Application

Division 2 Disclosure of Information

PART XII DISCLOSURE OF SUBSTANTIAL SECURITIES HOLDING

This Part allows for a person to disclose to the corporation, an exchange and the Commission on any increase in a relevant interest in a corporation/company for more than 1% of the total stock on issue of the corporation.

Division 1 Purpose of this Part

Division 2 Substantial Securities Holder

Division 3 Tracing and disclosure of interests in listed corporations

PART XIII SELF REGULATORY ORGANISATIONS

This part will deal with;

- Recognition of self-regulatory organisations;
- Duties of a self regulatory organisations;
- Rules of a self-regulatory organisations;
- Appointment of directors of self-regulatory organisations;
- Powers of the Commission
- Provision of assistance to the Commission

PART XIV CAPITAL MARKET DEVELOPMENT FUND

Division 1 Establishment of the Capital Make Development Fund

Division 2 Objects of the Fund

Division 3 Board of the Fund

PART XV ADMINISTRATIVE AND CIVIL ACTIONS

This Part provides for the following provisions.

- Powers of Commission to take action;
- Powers of the Commission concerning compliance with license, etc., by licensed powers.
- Civil liability of persons in contravention of the securities laws.
- Commission may recover lost or damage
- Powers of the court to make orders

PART XVI GENERAL PROVISIONS

This part provides for the general provisions of the Act.

C. CENTRAL DEPOSITORY

Key Features of the Bill

This new law will strengthen and compliment the Securities Commission Bill 2014 and the Securities Markets Bill 2014.

The draft Central Depository Bill must provide for the following matters:

- Deposit of share certificates for safekeeping; and
- Facilitated the issuances and listings of foreign securities including CDIs on the Port Moresby Stock Exchange; and
- Harmonized cross-border transactions; and
- Increases transparency and safety of stocks traded; and

- Clearing of stocks; and
- Conversion of stocks into tradable shares; and
- Licensing of entities involved in the trading of stocks; and
- A link between the law and IOSCO principles and FSB standards;
- A link between law and FAFT Recommendations on anti-money laundering and counter terrorism financing; and
- A clear link between the regulator, the market and players.

The following are the specific arrangements required of the Bill and the specific drafting instructions.

PART I PRELIMINARY

This part should contain a provision on Constitutional compliance, application of the law.

PART II CENTRAL DEPOSITORY

This Part provides for the following provisions:

Division 1 Establishment of Central Depository

Division 2 Functions of a Central Depository

Division 3 Advisory Committees

Division 4 Commission to approve amendment of rules

Division 5 Authorised Central Depository Agents

PART III PROVISION RELATING TO DEPOSITED SECURITIES

Under this Part, the following provisions to:

Division 1 Deposited and dematerialized Securities

- Duty of a central depository in relation to deposited securities;
- Authorise central depository agents;
- Stock exchange to prescribed securities to be deposited in the central depository;

Division 2 Withdrawal of Securities

- Prohibition of withdrawal;

Division 3 Securities Accounts and Records

- Securities Account;
- Authorized nominee to hold account;
- Duty of central depository to keep records;
- Physical stick count of certificates

Division 4 Securities Transactions, Entries and Miscellaneous

- Securities transaction and entry;
- Dealing in deposited securities;
- Entry in Securities Account;
- Record of deposit;
- Prohibition against acquisition;

- Public offer
- Charging or pledging of securities.

PART IV SECRECY PROVISIONS

This Part deals with:

- Duty to take reasonable security measures;
- Duty to maintain secrecy;
- Restriction on disclosure of information by authorized depository agents;
- Permitted disclosures; and
- Regulation of access to the computer system.

PART V INVESTIGATIONS

This Part will provide for the powers of Commission to conduct investigations:

- Powers of the Commission to conduct investigations;
- Duty of the Central Depository to provide assistance to the Commission;
- Powers of Court to make certain orders;

PART VI OFFENCES

This part creates offences, their penalties and the mode of enforcement.

PART VII GENERAL PROVISIONS

This provides the general powers of the Commission to perform certain general duties and functions.