



No. __ of 2015

A Bill
Entitled

SECURITIES COMMISSION BILL 2015

EXPLANATORY NOTES

A. INTRODUCTION

These explanatory notes contain-

- (a) an outline of the purposes of the Bill, which will repeal the *Securities Act 1997* and reform the law relating to securities and derivatives market in Papua New Guinea;
- (b) a description of the framework under which the Bill will be administered; and
- (c) a summary of the principal features of the Bill in comparison with the *Securities Act 1997*.

B. PURPOSES OF THE BILL

The Securities Commission of Papua New Guinea was established under the *Securities Act 1997*, which was modeled on the New Zealand Securities Commission Act. Since its establishment the Securities Commission has been able to set up office and established the Port Moresby Stock Exchange.

The establishment of the Securities Commission and the Port Moresby Stock Exchange ushered in a new era of doing business in Papua New Guinea – the buying and selling of shares on the stock exchange. After about 17 years of operation, it is now clear that the *Securities Act 1997*, is not able to respond to many of the challenges that have rattled the global community after the 2008 global economic crises. The *Securities Act 1997* as it is, is inadequate to deal with emerging global issues in trading on stock markets and derivatives markets.

The rules of operation regarding the trading in securities and derivatives have been modified significantly globally, including the Asia Pacific Region (APR). If PNG is to attract more and bigger investors it needs to reform its investment laws including the *Securities Act 1997*. New rules have been developed and are now being implemented worldwide to: (1) protect investors; (2) ensure that the markets are fair, efficient and transparent; and (3) reduce systematic risks.

The *Securities Act 1997* is also not able to deal with prevailing and emerging issues and regulatory challenges in the PNG market. Those challenges have tested the current regulatory regime and it has been found wanting.

Critical Issues with the Securities Act 1997

The 1997 legislation has achieved its purpose - the establishment of the Securities Commission and the Port Moresby Stock Exchange. The Act however, fails in a number of important areas. These include:

- non-compliance with the IOSCO international securities principles;
- non-compliance with Financial Action Task Force (FAFT) principles on Anti-Money Launder & Counter Terrorism Financing;
- weak enforcement provisions;
- the lack of clarity in the roles and powers of the Securities Commission;
- the lack of clarity on the licensing of market intermediaries;
- no clear rules relating to monitoring and enforcement of the market and players.

A crucial aspect of administration that is also missing is the concept of good governance. Good governance requires transparency, accountability and strong legal processes and administrative mechanisms to protect the institution and the people that the organization seeks to serve. These and other issues of governance need to be rectified to create an efficient, effective and active securities commission.

C. FRAMEWORK OF ADMINISTRATION

The Bill will be administered by the Securities Commission of Papua New Guinea.

D. PRINCIPLE FEATURES

The Minister for Trade, Commerce and Industry, the Department of Trade, Commerce and Industry and the Investment Promotion Authority through a series of stakeholder consultations with the industry, as well as other government and non government agencies, including the Department of Justice & Attorney General, Independent Consumer Competition Commission (ICCC), the Independent Public Business Corporation (IPBC), Asian Development Bank (ADB), International Financial Corporation (IFC), the National Research Institute (NRI), among others have established that the *Securities Act 1997* be repealed and replaced with the *Securities Commission Bill 2015*.

The proposed *Securities Commission Act 2015*, in general 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;
- Adequately funding the Securities Commission annually from the national coffers;
- For specific procedures for the discipline of offenders under the legislation;
- A link between the law and IOSCO principles;
- A link between law and Financial Action Task Force (FAFT) principles on anti-money laundering and counter terrorism financing.

The following are the specific summary of arrangements as contained in the proposed bill.

PART I PRELIMINARY

This part contains Constitutional compliance provisions, application of the law and interpretation.

PART II ADMINISTRATION

This Part provides for the administrative structure to administer the Securities Commission. This includes the establishment of the Securities Commission of Papua New Guinea, the objectives and functions of the Commission, the establishment of the Office of the Chairman and his duties, the appointment process of the Chairman and the Commissions, the establishment of the board of Commissioners and their functions, and the staffing of the Commission.

The following are general summary of the provisions of the law-

- Division 1 Establishes the Securities Commission;
- Division 2 provides for the objectives and functions of the Commission;
- Division 3 provides for the Office of the Chairman Commission;
- Division 4 provides for the membership of the Board of Commissioners and their functions;
- Division 5 Committees of the Commission;
- Division 6 Meetings of the Commission;
- Division 7 provides for the Staffing of the Commission; and

- Division 8 provides for the engagement of Consultants;

PART III POWERS OF THE SECURITIES COMMISSION

This part contain general powers of the Commission to issue directives and specific powers over commercial banks in terms of accessing information from banks to conduct its investigations. The following are the summary of this part-

- General powers of the Securities Commission; and
- Specific 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. These provisions provides for the different sources of funding for the Securities Commission. Section 43 of the proposed bill provides for the different sources of funding to the Commission. This part in summary provides for the following-

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

PART V INVESTIGATIVE POWERS OF THE COMMISSION

This part provides for specific powers of investigations inquires of the Commission. This investigations power is not available under current laws and many persons are getting away with sophisticated crimes. These provisions also give power to the Commission to prosecute after investigations. The following are the summary of this part.

- Investigations;
- Examinations;
- Inquiries;
- Proceedings after investigations; and
- Creation of offences.

Under this part certain provisions are provided to ensure that the Commission performs its functions without any hindrance. One specific section, Section 62 provides for the Commission to enter into premises without a search warrant to seize evidence, especially commercial information or records. Subsection (2) provides the three specific qualifications or the grounds the above powers can be used. It is basically intended to prevent destruction or concealment of evidence and persons, especially foreigners from the leaving the jurisdiction after committing a crime.

PART VI DISCLOSURE REQUIREMENTS

This part provision provides for the Commission to seek information on any transaction that may take place on the market and where the Commission may suspect improper conduct by parties. The following are the summary of this part-

- Additional offences taking into account the new types of offences not covered by the Securities Act 1997;
- Disclosure of information to the Commission by auditors; and
- Disclosure of buying and selling of securities by markets participants to the Commission; and
- Confidentiality.

PART VII GENERAL PROVISIONS

This part provides for the general provisions on powers and functions of the Commission. These powers include powers;

- to file proceedings,
- enforce 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 *Securities Act 1997*.

PART IX SAVINGS AND TRANSITIONAL

This part provides provisions which protects and saves any decision made by the Commission under the current legislation to continue to be in force or give effect to as if the current law has not been repealed.

Conclusion

The Bill and the Capital Market Bill and Central Depository Bill, once passed by Parliament and implemented, will change the economic landscape of this country forever. These reforms will achieve two main outcomes;

- (1) It will help establish the Securities Commission as a fully fledged Commission just like any other Commissions elsewhere globally.
- (2) It will establish a proper market infrastructure, which will allow a fair, transparent and competitive capital market in Papua New Guinea.

Once the above outcomes are achieved, it will trigger the growth of the capital market in Papua New Guinea.