

# New changes to the Companies Act

More protection, clearer guidelines, streamlined processes

Amendments expected to come into effect on 1<sup>st</sup> of February 2015

## 3. Quicker and easier process of issuing shares

- Companies can **buy and sell their own shares** a lot more easily, with procedures also in place to protect shareholders.
- Companies can **buy back their own shares** and re-sell them when their value is higher.

## 4. Increased protection of creditors

- Better **protection during the liquidation** of a company, with court assistance provided to access company documents and request an audit.
- Directors who purposefully mismanaged accounting records will be held personally liable so that **creditors can be repaid** if needed.

## 1. Increased protection of shareholders

- **Easier voting** on company resolutions through the use of email, **notification** if an auditor resigns, and **access to court assistance** when calling on a Board to hold a special meeting.
- Greater **eligibility for discounts** on company goods and services.

## 2. Clearer guidelines on directors' duties

- **Support for directors** in cases where legitimate business decisions do not turn out as planned for the company.
- **Protection for shareholders** from directors who act improperly and not in the best interest of the company.



## 5. Clearer process of filing annual returns

- **Filing date will be linked** to the company's first annual meeting.
- Brings Papua New Guinea in **line with the procedures of other countries** around the world.

## 6. Streamlined process for filing company documents

- Documents can be **filed online** without a physical signature, **assisting businesses** with no access to scanners or fast internet connections.
- A move in anticipation of the development of a **complete online business registration system**, which will be launched at the end of the year.



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## what will these new changes mean for you?

- Increased protection and benefits for shareholders.
- Clarification of duties imposed upon directors.
- A more transparent and streamlined process of issuing shares.
- Increased protection of creditors, including a more disciplined liquidation process.
- A much clearer process of filing annual returns.
- Streamlined filing requirements in anticipation of implementing an online registration system.



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## CHANGES TO THE COMPANIES ACT 1997

The Papua New Guinea **Companies Act of 1997** has been updated to improve corporate governance practices and ease regulatory burdens upon companies, making it easier to do business. The update will also trigger the development of an online business registry. The amendments are expected to come into effect on 1<sup>st</sup> of February 2015. The primary changes that will assist companies fall into the following six areas.

### 1. Increased protection and benefits for shareholders

- Shareholders will find it easier to vote on resolutions in lieu of physically appearing at meetings through the use of email voting.
- Shareholders will be more eligible to receive discounts for company goods and services. Prior Papua New Guinea law greatly limited the number of companies that could offer shareholder discounts. In many other jurisdictions, including New Zealand, all companies may give discounts to shareholders so long as the company can pass a solvency test. The amendment adopts this more permissive approach.
- If an auditor of a company resigns, the company must notify all shareholders of the resignation.
- The Investment Promotion Authority sometimes encountered situations where the shareholders requested a special meeting under Section 102, but the Board refused to call the meeting. The amendment both imposes liability upon any director that refuses to call a meeting, and empowers shareholders to seek assistance from a court.

### 2. Clarification of duties imposed upon directors

A new section establish the "business judgment rule" in Papua New Guinea that will help define the duty-of-care owed by directors to their companies. The rule states that the Court will not second guess a director that exercises their "business judgement" on a particular decision so long as they have: 1) informed themselves of all factors and 2) were not acting in a self interested manner. This rule

strikes a balance between protecting shareholders from improper actions by directors, and protecting directors who make honest business decisions that may not turn out well for the company. The amendment is similar to the approach taken by Australia.

### 3. A more transparent and streamlined process of issuing shares

- Prior Papua New Guinea law did not directly recognize the validity of *treasury stock* i.e. stock which has been bought back by the issuing company. Instead, the law called for any shares reacquired by a company to be immediately cancelled. Many jurisdictions, including New Zealand, now allow a company in certain circumstances to hold treasury stock to be reissued at a later time. Inclusion of such provisions in Papua New Guinea creates a more streamlined process for a company to buy and transfer its own shares.
- Prior Papua New Guinea law allowed a company to finance the purchase of its own stock. New Zealand law requires additional formalities, most importantly that the Board must prepare a disclosure statement detailing the transaction and submit it to each shareholder. This requirement is waived if the total amount of all financial assistance to be given does not exceed five percent of the aggregate amount received through the issuance of shares. The amendment adopts the New Zealand approach as it is both protective of existing shareholders, yet also gives the Board flexibility in offering assistance with small purchases of shares.

### 4. Increased protection of creditors, including a more disciplined liquidation process

- The amendment will give creditors the ability to seek a court order to access company records or documents, or have an audit completed of the company.
- The amendment will give creditors greater protection in the naming of a company liquidator, providing creditors with the ability to challenge an initial appointment made by the directors or shareholders.
- In a liquidation proceeding, a court will be given the power to set aside a creditor vote in cases where a "related creditor" cast a deciding vote on a matter before the creditor committee. The term "related creditor" means a company that is a related entity to the company in liquidation.
- The liquidator will be required to report to the Registrar any "offence material to the liquidation" against the Act by the company or a director. A liquidator will often be in a position to learn of improper dealings of a company, and their disclosure will consequently serve to protect creditors.
- The amendment will give the liquidator the right to compel persons to testify under oath, with failure to comply being an offence.
- A person and/or firm will be prohibited from serving as a liquidator if at any time in the past two years they worked with the company in question (unless certain conditions are met, such as if all creditors consent).
- New provisions will permit a court to impose personal liability upon one or more directors of a company that enters liquidation where the

directors failed to keep proper accounting records, and where such failure contributed to the company's inability to pay its debts.

- Directors of previously failed companies will be prohibited from taking part in the management of any "phoenix companies". A "phoenix company" is defined as a company with a significantly similar name to that of the failed company.

### 5. A much clearer process of filing annual returns

Following New Zealand and the great majority of jurisdictions in the world, companies will file annual returns each year in the month of their original incorporation. This will eliminate current confusion over the timing of the first annual return, as it will be tied to the occurrence of the "balance date" and the first annual meeting.

### 6. Streamlined filing requirements in anticipation of implementing an online registration system

The amendment states that certain documents may be filed online without a physical signature. To facilitate online filing, the need to submit consents to the Registrar that have been hand-signed by directors and shareholders has been removed. Instead, the company will be required to maintain these consents as part of the company records, which are subject at any time to inspection by the Registrar. This change will greatly assist online filing from more remote areas where adequate scanning capabilities and internet bandwidth may be issues.