



REQUIREMENTS OF THE COMPANIES ACT 1997

This information has been provided by the Companies Office of the Investment and promotion Authority

The Companies Act 1997 came into effect on 2 March 1998 to replace the Companies Act (Chapter 146) which had been in place since 1 July 1964. The new Act is designed to provide a simple and inexpensive method of incorporation, reducing the cost of compliance and introducing beneficial changes. This means company law is more accessible and understandable to allow use by directors, shareholders and business development officers, and not just lawyers and accountants. The new Act also ensures that appropriate regulations and penalties are in place to prevent abuse of companies.

Incorporation of a Company

A proposed company must have the following:

- a name;
- one or more shares;
- one or more shareholders; and
- one or more directors. (A Company is not required to appoint a secretary)

Any person, either alone or together with another person, may apply for the registration of a company.

Constitution

A Company is no longer required to have a memorandum and articles of association. However, a proposed company may opt to have a constitution, but it is not required to have one.

Name

A name must be reserved before a company can be registered under that name. Use a Form 6 to reserve a name.

The reservation of name process is essentially an "approval process". The Registrar will not approve a name which:

- would contravene any law;
- is identical or similar to the name of another company, or a reserved name;
- is undesirable, misleading, deceptive or offensive;
- the Minister has directed the Registrar not to accept.

The Registrar will not register a company, nor register a change of name, unless the name has been reserved beforehand, or an application for reservation of the name is also attached.

Note: The Registrar can direct a company to change its registered name if the name is one, which should not have been registered in the first place.

The word "Limited" or "Ltd" must appear at the end of the company name. The word "Proprietary" and the abbreviations "Pty" and "NL" have been dispensed with.

Annual Meetings, Financial Statements and Annual Returns

Annual Meetings

The board of every company must ensure that an annual meeting of shareholders is held:

- at least once every calendar year;
- not more than six months after the balance date of the company; and
- not more than 15 months between one annual meeting and the next.

However, a company is not required to hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of incorporation.

Most companies registered in Papua New Guinea have a balance date at the end of the calendar year i.e., 31 December. The annual meeting of the company must therefore be held no later than 30 June of the following year.

A Company may apply in writing to the Registrar, under Section 101(3) to extend the period in which its annual meeting is to be held. A fee of K100 is payable.

Resolution in lieu of a meeting

The Act enables resolutions to be passed without the need for a formal meeting of shareholders - Section 103.

An annual meeting need not be held where everything required to be done at that meeting is done:

- by resolution(s) in writing, signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders; and
- together, they hold not less than 75% of the votes entitled to be cast on that resolution.

A resolution passed in accordance with the above is as valid as if it had been passed at a meeting of the shareholders. Within 5 days a copy of every resolution passed in accordance with Section 103 must be sent to every shareholder that did not sign it.

Financial Statements

All companies are required to complete financial statements. These financial statements must be made up within 5 months after the balance date of the company, or such shorter period as may be required by any other Act.

A Company may apply in writing to the Registrar under Section 179(2) to extend the period within which to complete its financial statements. A fee of K50 is payable to the Registrar for the application.

Financial statements are defined as:

- a balance sheet;
- a profit and loss or income and expenditure statement;
- a statement of cash flows, if required by an applicable financial reporting standard; and
- any related notes or documents.

Financial statements must:

- comply with "generally accepted accounting practice", being the financial reporting standards approved by the Accounting Standards Board, and if there are none, then authoritative and appropriate accounting policies; and
- give a true and fair view of the matters to which they relate.

Lodgment of Financial Statements

A Company that is required to be audited must within 14 days after its annual meeting submit copies of its financial statements and the auditor's report to the Registrar. If a

company has subsidiaries, group financial statements as defined in Section 178 must also be lodged.

A company is required to be audited unless it is:

- an exempt company; or
- a company, or in class of company exempted by the Registrar.

An "exempt company" is defined in Section 171 as a company that did not at any time have:

- total assets exceeding K5, 000,000; or
- more than 25 shareholders; or
- more than 100 employees; or

a company that has one or two of the above only, and all the shareholders have resolved not to appoint an auditor.

A subsidiary of an exempt company is also exempt.

A Company that is not exempt is referred to as a "reporting company".

Subsidiaries of an overseas company or a reporting company are not exempt.

The financial reporting requirements for an overseas company vary slightly from those for a locally incorporated company. Consult your professional advisers for further information.

Annual Returns - Section 215

As under the old Companies Act a company is required to prepare an annual return. It must be lodged with the Registrar each calendar year within 14 days after the annual meeting of the company. The annual return must be made up to the date of the annual meeting or to a date not later than 14 days after the annual meeting.

Since the balance date of most companies incorporated in Papua New Guinea is at the end of the calendar year, i.e. 31 December, the last possible date for the lodgment of the annual return without late fees, will be on 15 July. The lodgment fee for an annual return is K50. The lodgment fee for an annual return of an overseas company is K100.

Reporting companies must attach the certified audited financial statements for the company to their annual returns.

Where a company fails to lodge its annual return and, where applicable, its financial statements, every director of the company commits an offence and is liable on conviction to pay the following:

- K10, 000 for not lodging an annual return; and
- K100, 000 for not lodging the financial statements.

Statutory obligation of Companies and Directors

Books and Registers

A Company must maintain the following books and registers:

- a share register (described in Section 67)
- company records (described in Section 164); and
- accounting records (described in Section 188).

Share Register

Section 67 - A company must maintain a share register that records the shares issued by the company and states :

- whether, under the companies constitution, or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and
- where any document that contains the restrictions or limitation may be inspected.

The share register must also state the following with respect to each class of shares:

- an alphabetical list of names and the latest known address of each person who is, or has within the last 10 years been, a shareholder;
- the number of shares of that class held by each shareholder within the last 10 years; and
- the date of any, *issue of shares to, repurchase or redemption of shares from, transfer of shares by or to*, each shareholder within the last ten years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

An agent (such as a share registry) may maintain the share register of any company. The share register must be kept at the registered office of the company - Section 164.

A Company shall have only one share register. However, a share register of a company whose shares are subject to a listing agreement with a stock exchange, may be divided into two or more registers and kept at different locations, if expressly permitted by its constitution. A notice of the location in the prescribed form, of each register must be delivered to the Registrar for registration within one month after the share register is divided or any place where a register is kept is altered - Form 14.

The principal register of a company must be kept in the country.

Company Records

Section 164 - A Company must keep the following documents at its registered office:

- the constitution of the company;
- minutes of all meetings and shareholder's resolution within the last seven years;
- an interests register (of director's interests);
- certificates given by directors under the Companies Act within the last seven years;
- minutes of all meetings, director's resolutions and director's committees within the last seven years;
- the full names, residential and postal addresses of the current directors and secretaries;
- copies of all written communications to all shareholders or all holders of the same class of shares during the last seven years, including annual reports made under Section 209;
- copies of all financial statements and group financial statements required to be completed by the Companies Act for the last seven completed accounting periods of the company; and
- the share register.

Notwithstanding the general requirements to keep the above records at the company's registered office, the records (except the share register) may be kept at any other location in the country, provided that their location is notified to the Registrar within one month of their first been kept elsewhere - Form 18.

Note:- the share register if undivided is the company's principal register and must be kept at its registered office. If divided, the registers may be kept elsewhere (see above).

The Accounting Records

Section 188 - The board of a company must ensure that the company keeps accounting records. These records must:

- correctly record and explain the company's transactions;
- at any time enable the financial position of the company to be determined with reasonable accuracy;
- enable the director to ensure that the company's financial statements comply with Section 179 of the Companies Act and any group financial statements comply with

Section 182 of the Companies Act; and

- enable the company's financial statements to be readily and properly audited.

The accounting records are not required to be kept at the registered office of the company, but if they are not, the company must lodge with the Registrar a notice of the location of the records, or any change in location. No form is prescribed for this purpose but it is recommended to use Form 18 as a guide.

Charges

Not every charge created by a company over its assets is required to be registered; only those listed in Section 222(4) of the Companies Act 1997. The most common of these are debentures, mortgages and instruments by way of security, issued by a company.

A copy of every document that creates a charge over a company's assets that is required to be registered must be lodged with the Registrar. A Notice for Registration of Charge (Form 24) must be lodged, along with a certified copy of the document creating or evidencing the charge - Section 222(1).

The Form 24 and a copy of the document that creates or evidences the charge must be submitted to the Registrar within two months (not 60 days) after the date of creation of the charge. A charge that is not filed with the Registrar of Companies within the prescribed time will not be registered unless the Registrar or the National Court approves an application under Section 228.

It should be noted that the Registrar has the power to provisionally register a charge where it has not been stamped in accordance with the Stamp Duties Act, or is otherwise rejected for registration by the Registrar - Section 225(5) - (8).

Registered Office

Every company must have a registered office in the country that is identifiable and easily accessible to the public. A village address will, in most instances, not be acceptable as a registered office address. The registered office address must be notified to the Registrar on the Form 1 application form for incorporation - Section 161.

If a company wishes to change its registered office, the change and date of change must be notified to the Registrar on the prescribed form within one month of the change - Form 17.

Address for Service

Every company must have an address for service in the country. This may be the same address as a company's registered office or it may be elsewhere, but it must not be a postal address.

The address for service must have a readily identifiable street address and be at a place that is readily accessible during normal business hours.

A Company's address for service must be notified to the Registrar on the Form 1 application form for incorporation - Section 167.

If a company wishes to change its address for service, the change and the date of change must be notified to the Registrar on the prescribed form within one month of the change - Form 19.

Particulars of Directors

Section 137 - Any changes in the director's of a company or particulars relating to the director(s) must be notified, in the prescribed form to the Registrar - Form 16.

The changes that must be notified to the Registrar are:

- changes in the directors of a company whether as the result of a director ceasing to hold office (including death) or the appointment of a new director, or both; or
- changes to a director's name, or residential or postal address.

A Form 16 must be lodged within one month of the change or the company first becoming aware of the change.

In the case of a new director being appointed, a consent and certificate (the certificate certifies that the director is not disqualified from being appointed or from holding office as a director) in the prescribed form (Form 15) must also be submitted to the Registrar with the Form 16.

Section 129 - It is important to note that a person cannot be a director of a company if he or she is:-

- under 18 years of age;
- prohibited from being a director or promoter of, or being concerned or taking part in the management of a company under Section 425, 426 or 428.
- a person who is or becomes of unsound mind;
- not qualified pursuant to the constitution of the company; and
- not a natural person.

Appointment of Auditors

At each annual meeting a company must appoint an auditor to hold office until the conclusion of the next annual meeting, and to audit the financial statements of the company - Section 190.

The types of companies listed below need not appoint an auditor:

- an exempt company; or
- a company that is, or is of a class that is, exempted from the requirements of Section 190 of the Companies Act by the Registrar by notice in the National Gazette.

Note:- "exempt company" is defined in Section 171 as a company that:

- does not assets of over K5 million at any time, more than 25 shareholders, or more than 100 employees;
- that complies with one or two of the both and all the shareholders have agreed not to appoint an auditor;
- is not an issuer, or a subsidiary of an issuer, an overseas company or a subsidiary of an overseas company, or a subsidiary of a company that is not an exempt company.

Annual Return

All companies are required to lodge an annual return in the prescribed form (Form 22) within 14 days of the annual meeting being held together with a prescribed fee of K50. The annual return must be made up to the date of the annual meeting of the company or to a date not later than 14 days after the date of the annual meeting - Section 215.

Financial Statements

Section 183 - A company that is required to appoint an auditor is required to annex its certified and audited financial statements, and any group financial statements, and the audit report, to its annual return. A company must also ensure that the financial statements are completed, dated and signed within 5 months of the balance date of the company, and is presented at the annual meeting of the shareholders.

Annual Report

Section 209 - The board of every company must within 5 months of the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date. The annual report is to be presented together with the financial statements at the annual meeting of the shareholders. It should be noted that the annual report need not be registered with the Registrar of Companies.

A Company need not prepare an annual report for an accounting period if:

- the financial statements of that company are not required to be audited under Section 190(2); and
- every shareholder has given notice in writing to the company waiving the right to be sent a copy of the annual report or copies of the reports of the company generally.

If a company fails to comply with the above, every director of the company commits an offence and is liable on conviction to a maximum penalty of K10, 000.

An application may be made in writing to the Registrar under Section 209(4) to extend the period for preparing an annual report.

Issues of Shares

Section 42 - After registration, a company must issue to any person named in the application as a shareholder; the number of shares that the application states the shareholder will receive.

After the first issue of shares, the board of a company may issue shares at any time, to any person, and in any quantity it sees fit. This power is subject to the provisions of the Companies Act and any provision in a company's constitution that may modify its right to issue shares - Section 43.

The Registrar must receive notice of the share issue in the prescribed form within one month of the date of the issue - Form 10.

Share Transfer

Section 65 - The Registrar of Companies must be notified of any issued share that has been transferred to another shareholder within one month of the date of the transfer, unless the requirements of Section 65(6) apply.

The form should register the details of the transferee and the transferor - Form 13.

Distribution to Shareholders

Section 50 - The board of a company may authorise a distribution by the company at any time, and of any amount, and to any shareholders it sees fit. But before doing so it must:

- be satisfied, on reasonable grounds, that the company will be able to satisfy the solvency test immediately after the distribution; and
- ensure that it does not breach Section 51 of the Companies Act or any provision in its constitution relating to distributions.

Directors who vote in favour of a distribution must sign a certificate stating that the company will satisfy the solvency test after the distribution and give the grounds for that opinion.

A Company satisfies a solvency test if:

- it is able to pay its debt as they become due to the ordinary course of business; and
- the value of the company's assets is greater than the value of its liabilities, including contingent liabilities - Section 4.