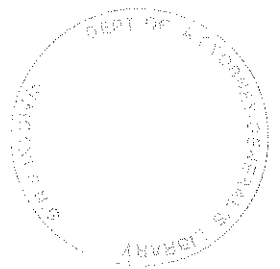


Do Not Remove



No. 15 of 1994.

Companies (Amendment) Act 1994.

Certified on : 11.8.94
M. O. [Signature]

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

Companies (Amendment) Act 1994.

ARRANGEMENT OF SECTIONS.

1. Interpretation (Amendment of Section 1).
2. Payment of fees to Registrar (Amendment of Section 6).
3. New Part III.

"PART III. - AUDITORS AND LIQUIDATORS."

Division 1. - Auditors.

"12. DISQUALIFICATION OF COMPANY AUDITORS."

Division 2. - Liquidators.

"13. OFFICIAL LIQUIDATORS."

"14. SAVINGS AND TRANSITIONAL ARRANGEMENTS."

"15. DISQUALIFICATION OF LIQUIDATORS."

4. Issue of certificates (Amendment of Section 107).
5. New Section 107A.

"107A. EXEMPTIONS."

6. Repeal and replacement of Section 119.

"119. NOTICE OF OFFICE AND OFFICE HOURS."

7. Grounds of winding up by Court (Amendment of Section 240).
8. Powers of Liquidators (Amendment of Section 253).
9. Payment by Liquidators into Banks (Amendment of Section 255).
10. Priorities (Amendment of Section 310).
11. Duties of sheriff as to goods taken in execution (Amendment of Section 316).
12. Winding-up of unregistered Companies (Amendment of Section 326).
13. Fees (Amendment of Section 361).
14. Relief from Statutory requirements (Amendment of Section 370).
15. Regulations (Amendment of Section 411).
16. Amendment of Schedule 1.
17. Amendment of Schedule 8.
18. Amendment of Schedule 10.
19. Amendment of penalties.

SCHEDULE 1.

SCHEDULE 2.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

AN ACT

entitled

Companies (Amendment) Act 1994,

Being an Act to amend the *Companies Act* (Chapter 146),

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1(1) of the Principal Act is amended -

- (a) by repealing the definition of "official liquidator" and replacing it with the following:-

"'official liquidator' means a person appointed as an official liquidator under Section 12;"; and

- (b) by repealing the definition of "registered company auditor" and replacing it with the following:-

"'registered company auditor' means a person registered as a registered company auditor under Section 20(d) of the *Accountants Registration Act* (Chapter 89);"; and

- (c) by repealing the definition of "registered liquidator" and replacing it with the following:-

"'registered liquidator' means a person registered as a registered liquidator under Section 20(e) of the *Accountants Registration Act* (Chapter 89);".

2. PAYMENT OF FEES TO REGISTRAR (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended -

- (a) in Subsection (1), by repealing the words "There shall be paid" and replacing them with the following:-

"Subject to Subsection (3), there shall be paid"; and

- (b) by adding the following new subsections:-

"(5) The Minister may, after receiving advice from the Registrar, by notice in writing to the Registrar, exempt a person or class of persons from the payment of fees under this section.

"(6) Fees payable by a foreign company shall, where appropriate, be calculated after the conversion of the share capital to the currency of the State."

3. NEW PART III.

The Principal Act is amended by inserting after Part II the following new Part:-

"PART III. - AUDITORS AND LIQUIDATORS.

Division 1. - Auditors.

"12. DISQUALIFICATION OF COMPANY AUDITORS.

(1) A person who -

- (a) knowingly consents to be appointed as auditor of a company; or
- (b) knowingly acts as auditor of a company; or
- (c) prepares for or on behalf of a company any report required by this or any other Act to be prepared by a registered company auditor,

and who -

- (d) is not a registered company auditor; or
- (e) is indebted to the company or to a related company in an amount exceeding K1000.00; or
- (f) except where the company is an exempt proprietary company, is -
 - (i) an officer of the company; or
 - (ii) a partner, employee or employee of an officer of the company; or
 - (iii) a partner or employee of an employee of an officer of the company,

is guilty of an offence.

Penalty: A fine not exceeding K2000.00.

"(2) For the purposes of Subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a related corporation or, unless the Board in the circumstances of a particular case directs otherwise, he has, at any time within the preceding period of 12 months, been an officer or promoter of the company or of such a corporation.

"(3) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his having been appointed as auditor of a corporation or, for any purpose relating to taxation, a public officer of a corporation.

"(4) A firm must not -

- (a) consent to be appointed as an auditor of a company; or
- (b) act as an auditor of a company; or
- (c) prepare, for or on behalf of a company, any report required by this Act to be prepared by a registered company auditor,

unless -

- (d) it complies with the provisions of Section 43(1) of the *Accountants Registration Act* (Chapter 39); and
- (e) no partner is, in relation to the company, a person to whom Subsection (1)(e) or (f) applies.

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"(5) If a firm contravenes Subsection (4), each member of the firm is guilty of an offence.

Penalty: A fine not exceeding K2000.00.

"(6) A company or person shall not appoint a person as auditor of a company unless the last-mentioned person has, before his appointment, consented in writing to act as the auditor, and a company or person shall not appoint a firm as auditor of a company unless the firm has, before its appointment, consented in writing under the hand of at least one partner of the firm to act as the auditor.

Division 2. - Liquidators.

"13. OFFICIAL LIQUIDATORS.

(1) For the purpose of conducting proceedings in winding up companies and assisting the Court in such proceedings, the Minister may appoint as many registered liquidators as he thinks fit to be official liquidators, and may require of each of them the prescribed security for the due fulfilment of his duties.

"(2) Where a security required under Subsection (1) is a bond to the State with or without securities, the Court may, on application and on being satisfied that any condition of the bond has been broken, order the Registrar of the Court to assign the bond to a person named in the order.

"(3) The person to whom the bond is assigned or his executor or administrator is entitled to sue on the bond in his own name as if the bond had in the first instance been given to him, and is entitled to receive on it, as trustee for all persons interested, the full amount recoverable as a breach of its condition."

"14. SAVINGS AND TRANSITIONAL ARRANGEMENTS.

(1) A person who, immediately before the coming into operation of the *Companies (Amendment) Act 1990*, held an appointment as an official liquidator under Section 13 (as it then was) shall -

- (a) on and from that coming into operation, and notwithstanding the provisions of the *Companies (Amendment) Act 1990*, be deemed to have continued to hold a valid appointment as an official liquidator until the coming into operation of the *Companies (Amendment) Act 1993* unless such appointment was otherwise terminated; and
- (b) on and from the coming into operation of the *Companies (Amendment) Act 1993* be deemed to be an official liquidator appointed under Section 13.

"(2) The provisions of Part III as in force immediately before the coming into operation of the *Companies (Amendment) Act 1990*, are, to the extent necessary to give effect to Subsection (1), deemed to have been saved.

"15. DISQUALIFICATION OF LIQUIDATORS.

(1) Subject to this section, a person who, except with the leave of the Court, consents to be appointed, or who acts, as liquidator of a company -

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- (a) if he is not a registered liquidator or a corporation authorized by law to act as a liquidator; or
- (b) if he is indebted to the company or to a related corporation in an amount exceeding K1000.00; or
- (c) if he is -
 - (i) an officer of the company; or
 - (ii) a partner, employer or employee of an officer of the company; or
 - (iii) a partner or employee of an employee of an officer of the company,is guilty of an offence.

Penalty: A fine not exceeding K2000.00.

"(2) Subsection (1)(a) does not apply to a member's voluntary winding-up of an exempt proprietary company, and Subsection (1)(c) does not apply -

- (a) to a member's voluntary winding-up; or
- (b) to a creditor's voluntary winding-up if, by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice stating the object of the meeting has been given to every creditor, it is determined that that paragraph shall not so apply.

"(3) For the purposes of Subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a related corporation or has, at any time within the preceding period of 24 months, been an officer or promoter of the company or of such a corporation.

"(4) A person shall not be appointed as liquidator of a company unless he has, before his appointment, consented in writing to act as the liquidator.

"(5) Nothing in this section affects an appointment of a liquidator made before the date of coming into operation of the *Companies (Amendment) Act 1993*."

4. ISSUE OF CERTIFICATES (AMENDMENT OF SECTION 107).

Section 107(1) of the Principal Act is amended by repealing the words "Every company must" and replacing them with the following:-
"Subject to Section 107A, every company shall".

5. NEW SECTION 107A.

Part V.6 of the Principal Act is amended by inserting after Section 107 the following new section:-

"107A. EXEMPTIONS.

The Registrar may, by written order, exempt a company, on such terms and conditions as the Registrar considers appropriate, from the operation of all or any of -

- (a) the provisions of this Act requiring the issue of share certificates; and
- (b) any other provision of this Act relating to the allotment or issue or transfer of shares; and
- (c) regulations made for the purposes of provisions referred to in Paragraphs (a) and (b),

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as may be necessary or convenient to enable the company to participate in share transfer systems and procedures available under the law or rules governing the conduct and operation of any prescribed stock exchange on which those shares are quoted."

6. REPEAL AND REPLACEMENT OF SECTION 119.

Section 119 of the Principal Act is repealed and is replaced with the following:-

"119. NOTICE OF OFFICE AND OFFICE HOURS.

(1) On lodging an application for incorporation there shall be lodged with the Registrar notice in the prescribed form of the proposed registered office and of the days and hours during which it is open and accessible to the public.

"(2) Notice in the prescribed form of any change in the situation or postal address of the registered office or of the days and hours during which it is open and accessible to the public shall be lodged within one month of the date of any such change provided that no notice of the days and hours during which the office is open and accessible to the public, or any change in them, is required if the office is open for at least five hours between 9.00 a.m. and 3.00 p.m. on each day other than Saturdays, Sundays and public holidays.

"(3) If default is made in complying with this section, the company and each officer of the company is guilty of an offence.

Default penalty: A fine not exceeding K200.00."

7. GROUNDS OF WINDING UP BY COURT (AMENDMENT OF SECTION 240).

Section 240(2) of the Principal Act is amended by repealing the amount "K100.00" and replacing it with the following:-
"K500.00".

8. POWERS OF LIQUIDATORS (AMENDMENT OF SECTION 253).

Section 253(2)(i)(ii) of the Principal Act is amended by repealing the amount "K600.00" and replacing it with the following:-
"K2000.00".

9. PAYMENT BY LIQUIDATORS INTO BANKS (AMENDMENT OF SECTION 255).

Section 255(2) of the Principal Act is amended by repealing the amount "K50.00" and replacing it with the following:-
"K500.00".

10. PRIORITIES (AMENDMENT OF SECTION 310).

Section 310(1) of the Principal Act is amended -

(a) in Paragraph (d), by repealing the amount "K600.00" and replacing it with the following:-
"K3000.00"; and

(b) in Paragraph (e), by repealing the amount "K2000.00" and replacing it with the following:-
"K10000.00".

11. DUTIES OF SHERIFF AS TO GOODS TAKEN IN EXECUTION (AMENDMENT OF SECTION 316).

Section 316(3) of the Principal Act is amended by repealing the amount "K40.00" and replacing it with the following:-
"500.00".

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12. WINDING-UP OF UNREGISTERED COMPANIES (AMENDMENT OF SECTION 326).

Section 326(3)(a) of the Principal Act is amended by repealing the amount "K100.00" and replacing it with the following:-
"K500.00".

13. FEES (AMENDMENT OF SECTION 361).

Section 361(1) of the Principal Act is amended by repealing the words and figures "Item 17, 18, 19 or 20 of Schedule 1" and replacing them with the following:-

"Items 3 and 4 of Schedule 1".

14. RELIEF FROM STATUTORY REQUIREMENTS (AMENDMENT OF SECTION 370).

Section 370(1) of the Principal Act is repealed and is replaced with the following:-

"(1) Where the Registrar is satisfied that a company is a company to which this Division applies, he may, by notice in writing to the company, relieve the company, the officers of the company or any other person from compliance with all or any of the requirements of this Act specified in the first column of Schedule 10 and the Registrar may impose such conditions on the grant of relief as the Registrar considers appropriate."

15. REGULATIONS (AMENDMENT OF SECTION 411).

Section 411 of the Principal Act is amended -

(a) in Paragraph (g), by repealing the amount "K20.00" and replacing it with the following:-

"K500.00"; and

(b) in Paragraph (h), by repealing the amount "K40.00" and replacing it with the following:-

"K500.00".

16. AMENDMENT OF SCHEDULE 1.

Schedule 1 to the Principal Act is amended -

(a) by repealing heading A and replacing it with the following:-

**"A - BY A COMPANY HAVING A SHARE CAPITAL
OR A FOREIGN COMPANY."; and**

(b) by repealing Item 3 and replacing it with the following:-

"3. For the registration of a foreign company -

(a) subject to Paragraphs (b) and (c), 50% of the prescribed fee that would be payable if the foreign company was a company being registered under Division IV.1; and

(b) the share capital of which consists wholly or partly of shares having no fixed nominal value, the same fee as would be payable under Paragraph (a) if those shares each had a nominal value being -

(i) the maximum issue prices in the case of shares for which an issue price is fixed by the instrument constituting or defining the constitution of the company; and

(ii) in any other case - K1000.00; and

(c) in any other case - K1000.00."; and

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(c) by repealing Item 4 and replacing it with the following:-

"4. On lodging with the Registrar notice of increase of share capital, an amount equal to the difference (if any) between -

- (a) the amount that would have been payable under this Act on first registration by reference to its capital as increased; and
- (b) the amount that would have been payable under this Act by reference to its capital immediately before the increase."; and

(d) by repealing Item 6 and replacing it with the following:-

"6. On lodging with the Registrar notice of increase in the number of members, a fee equal to the difference between -

- (a) the registration fee that would be payable if the company were registered with a number of members equal to the number of its registered members immediately before the increase; and
- (b) the registration fee that would be payable if the company were registered with a number of members equal to the number of its registered members after the increase."; and

(e) in Item 19, by repealing the words and figures "On lodging under Section 89 any statement" and replacing them with the following:-

"On lodging any statement"; and

(f) by repealing Item 28 and replacing it with the following:-

"28. On late lodging with the Registrar a document required to be lodged within a period prescribed by law, in addition to any other fee -

- (a) if lodged not later than one month after the expiration of the prescribed period - K20.00; and
- (b) if lodged later than one month but not later than two months after the expiration of the prescribed period - K50.00; and
- (c) if lodged later than two months after the prescribed period - K100.00.

The Registrar may waive or reduce any fees prescribed by this item if the Registrar is satisfied that just cause existed for the failure to lodge a document within the prescribed period."; and

(g) further in accordance with Schedule 1.

17. AMENDMENT OF SCHEDULE 8.

Schedule 8 to the Principal Act is amended -

- (a) in Section 1(c), by repealing the words "in Papua New Guinea or Australia"; and
- (b) in Section 2(1)(b)(iii), by repealing the words "in Papua New Guinea or elsewhere".

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18. AMENDMENT OF SCHEDULE 10.

Schedule 10 to the Principal Act is amended by repealing the substitute provision relating to Section 6(1) and replacing it with the following:-

"The fees specified in Items 7, 8, 9, 10, 11, 13, 14, 15, 19, 21, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of Schedule 1 shall be paid to the Registrar."

19. AMENDMENT OF PENALTIES.

The Principal Act is further amended in respect of the amounts of penalties in accordance with Schedule 2.

SCHEDULE 1 .

Sec. 16(g).

Schedule 1 to the Principal Act is amended -

(a) by repealing each amount shown in column two opposite each section listed in column one and the replacement of those amounts by the amounts set opposite as listed in column three below:-

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
5(a)	100.00	250.00
13	20.00	50.00
14	20.00	50.00
17	20.00	50.00
18	200.00	500.00
19		250.00
20	100.00	500.00
21	200.00	500.00
26	20.00	50.00
29	20.00	50.00
31	20.00	50.00
35	5.00	10.00
36	5.00	10.00
37	5.00	10.00
39	5.00	10.00

Company (Amendment)

SCHEDULE 2 .

Sec. 19.

The Principal Act is amended in each Section listed in Column One below by the repeal of the amounts in column two set opposite each Section listed in column one and the replacement of those amounts by the amounts set opposite as listed in column three below:

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
5(8)	200	1000
(9)	200	1000
(10)	200	1000
17(8)	20	200
17(9)	1000	10,000
21	20	200
23(3)	20	200
30(6)	100	1,000
	20	200
35(4)	20	200
39(1)	2000	20,000
40(9)	2000	20,000
41(4)	2000	20,000
42(5)	1000	10,000
42(7)	1000	10,000
	120	1,000
43	2000	20,000
44(4)	500	20,000
46(7)	1000	10,000
46(9)	1000	10,000
46(10)	1000	10,000
47(2)	1000	10,000
49(1)	2000	20,000
50(7)	1000	10,000
51(2)	1000	10,000
52	1000	10,000
53	1000	10,000
55(6)	400	5,000
	100	1,000
56(7)	400	5,000
	100	1,000
60(5)	20	200
61(7)	20	200
65(5)	20	200
67(5)	200	2,000
	20	200
68(2)	200	2,000
69(2)	1000	10,000
72(7)	20	500
73(3)	200	2,000

Company (Amendment)

SCHEDULE 2 .

(Cont....d)

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
74(8)	400	5,000
	20	500
75(6)	100	2,000
	20	500
83(1)	400	5,000
	100	1,000
83(5)	100	2,000
	20	200
84(2)	400	5,000
	20	200
98(1)	1000	10,000
105(2)	20	200
107(1)	20	200
110(12)	20	200
111(2)	20	200
113(3)	200	2,000
116(4)	200	2,000
	20	200
118(2)	20	200
120(3)	20	200
121(3)	100	2,000
	20	200
124(3)	400	5,000
	20	200
125(1)	1000	10,000
129(8)	1000	10,000
130(2)	1000	10,000
131(4)	400	5,000
131(8)	400	5,000
132(3)	1000	10,000
	20	200
132(9)	1000	10,000
133(4)	1000	10,000
135(2)	1000	10,000
137(6)	100	2,000
	20	200
139(4)	200	50,000
141(7)	20	200
142(1)	400	5,000
143(10)	20	200
150(4)	200	2,000
151(8)	1000	10,000
155(4)	200	2,000
	20	200
156	40	500
	20	200
157(3)	20	200
157(4)	10	200

Company (Amendment)

SCHEDULE 2 .

(Cont....d)

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
158(5)	20	200
159(3)	20	200
160(3)	20	200
161(3)	40	500
	20	200
164(8)	20	200
166(5)	200	2,000
	20	200
167(3)	200	2,000
	20	200
168(3)	200	2,000
	20	200
169(6)	200	2,000
	20	200
172(1)	400	5,000
173(3)	40	500
	20	200
175(3)	1000	10,000
176(6)	20	500
177(2)	100	2,000
	20	200
187(1)	1000	10,000
189(6)	1000	10,000
190(4)	1000	10,000
192(9)	200	2,000
193(5)	1000	10,000
194(5)	200	2,000
	20	200
195(6)	1000	10,000
197(6)	20	200
201(3)	20	200
204(4)	20	200
205(5)	20	200
206(4)	20	200
210(3)	400	5,000
	100	500
210(9)	400	5,000
	100	500
210(12)	400	5,000
	100	500
211(4)	400	5,000
213(2)	400	5,000
213(4)	100	2,000
	25	200
213(8)	100	2,000
	25	200
215(3)	100	2,000
	25	200
217(10)	100	2,000
	25	200
222(9)	400	5,000
	100	500

SCHEDULE 2.

(Cont....d)

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
229(4)	100	2,000
	25	200
230(5)	100	2,000
	25	200
230(9)	100	2,000
	25	200
230(13)	100	2,000
	15	200
231(2)	100	2,000
232(4)	400	5,000
232(5)	100	2,000
	25	200
232(6)	100	2,000
	25	200
247(5)	20	200
250(3)	200	2,000
	20	200
251(5)	1000	10,000
	20	200
257(6)	200	2,000
	20	200
261(3)	20	200
273(3)	20	200
276(4)	1000	10,000
278(4)	200	2,000
	20	200
279(10)	200	2,000
291(3)	200	2,000
	20	200
292(3)	20	200
292(8)	20	200
292(9)	200	2,000
	20	200
296(2)	40	500
300(3)	20	200
301(2)	20	200
302(2)	200	2,000
318(2)	20	200
334(4)	200	2,000
354(1)	2000	20,000
	200	2,000
362(3)	100	1,000
362(7)	200	2,000
	20	200
365(3)	20	200

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SCHEDULE 2 . (Cont....d)

Column One Item of Schedule to Principal Act	Column Two Repealed Amount in Kina	Column Three Replacement Amount in Kina
367	20	200
378	1000	10,000
380(11)	400	5,000
	1000	10,000
381(1)	5000	50,000
381(3)	2500	20,000
382(1)	2500	20,000
383(1)	500	50,000
383(2)	2500	50,000
384	500	5,000
385	5000	50,000
386	5000	50,000
387(2)	1000	10,000
	400	5,000
388(3)	1000	10,000
389	20	1,000
390(2)	20	1,000
391(2)	100	10,000
403(1)	20	1,000
403(2)	20	1,000

I hereby certify that the above is a fair print of the *Companies (Amendment) Act* 1994 which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Companies (Amendment) Act* 1994 was made by the National Parliament on 7 June 1994.

Speaker of the National Parliament.