



BPNG & Savings & Loan Industry Consultative Meeting

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Topic: Roles and Responsibilities of
Shareholders and Directors of
Companies

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Background



- The Government in 1997, repealed the Companies Act 1962, as part of a reform to simplify the business registration process.
- As a result two different laws were passed by Parliament;
 - (a) The Companies Act 1997; and
 - (b) Securities Act 1997.
- The Companies Act 1997 was to simplify the business registration processes.
- The Securities Act 1997 was aimed at creating a formal capital market regime in PNG.
- Both laws were adopted from the New Zealand Companies and Securities laws at that time.



What is a Company



- Company is a artificial human being created by law (Section 16). It is a Separate Legal Entity and exist independently from its shareholders and directors.
- It is perpetual and can only cease to exists if is removed from the Register of the Registrar of Companies (S.16).
- It can be removed as a result of; (a) non compliance; (b), Liquidation; and Mergers & Amalgamations.
- It can own properties, conduct businesses and can no anything under the law (S.17). Has full capacity to do anything.
- The Company can only be active, if there is a vibrant Board of Directors (Heart Beat of a Company).
- Shareholders own the shares in the company.
- Directors are employees of the company.



Company Constitution



- What is a constitution? It is a set of rules adopted by the Shareholders to govern the operation of the company.
- Is a requirement of a constitution mandatory? No (S.27).
- Where there is no constitution, the provisions of the Companies Act 1997 applies to the company.
- Where the company has no constitution, the board, shareholders, and management have rights, powers & obligations set out in the Act (s29)



Company Constitution



- Adopting a constitution is not mandatory;
- If the company decides to adopt a constitution, the constitution is a binding contractual agreement between:
 - (a) The company and each shareholders; and
 - (b) each individual shareholders.
- If a company that does not have a constitution wish to adopted a new constitution, the shareholders must adopt it by Special Resolution.



Shares



- Shares in a company is a personal property of the shareholder;
- The Shares confers the holder of the shares to (S.39):
 - (a) right to one vote on a poll at a meeting of the company on any resolution, any resolution to;
 - (i) appoint or a remove director or auditor;
 - (ii) Alter and adopt a constitution
 - (iii) approve a major transaction; or
 - (iv) approve an amalgamation under S. 234 or
 - (v) put the company into liquidation.
- Right to an equal share in dividends authorised by the board;
- Right to an equal share in the distribution surplus assets of the company.
- But it does not confer the right to the Assets of the Company.



Types of Shares



- A company may issue different classes for shares (s 38) including;
 - (a) redeemable shares
 - (b) preferential shares conferring rights to distribution of capital or income
 - (c) confers special, limited, or conditional voting rights
 - (d) do not confers any voting rights
 - (e) ordinary shares (most popular)
- Shares can be transferred
- New shares can be issued by the company after being approved by the board (ss 43 & 47)



Shareholders



- Who is a Shareholder? (S78)
 - (a) A psn who name appears as a holder of a share (class of share(s)) in a company; or
 - (b) a person named as shareholder under Form 4, prior to registration; or
 - (c) a person named as a shareholder in a proposed amalgamated company.
- A shareholder is not liable for an obligation of the company by reason only of being a shareholder (qualified Statement).



Shareholders and their Rights & Obligations



- Powers of shareholders – The powers reserved for shareholders can only be exercised;
 - (a) at a meeting of shareholders pursuant to s101 or s102;
 - (b) By a resolution in lieu of a meeting pursuant to s103.
- Such powers may be exercised by ordinary resolution;
- Its is mandatory for Shareholders to required Special Resolutions for the following;
 - (a) Adopt, alter or revoke a company constitution;
 - (b) approve a name change
 - (c) Keep records of the company, including consent of shareholding and directors forms at the registered office (s13A).
 - (d) approve an amalgamation (s234)
 - (e) approve a major transaction
 - (f) Put the company into liquidation.
- Shareholders have the right to question, discuss or comment on the management of the company during the meeting.



AGM



- The Board of a company is required to call a shareholders meeting (s101) to be held:
 - (a) once in each calendar year
 - (b) within six months after the balance date of the company
 - (c) Within 15 months after the last AGM.
- If a company is not able to hold an AGM within the prescribed period, the company may seek an extension of time from the Registrar to hold an AGM outside of the prescribed period.



Meeting of Shareholders Cont..



Special Shareholders Meeting (s102)

- (a) A special shareholders meeting is may
be called to voted on an issue by the;
 - (i) board
 - (ii) a psn authorised by the constitution
- (b) Shall be called by the board on a
written request of shareholders holding more
than 5% of the voting rights entitled to be exercised
the issue.
- What if the refused to call the meeting under (b)
above? If the board refuse to hold the meeting within
21 days, the Shareholders having more than 5%
interest shall seek the Court to Order the meeting.
- Directors to pay for costs of the application; and
- K200,000.00 penalty, 5 yrs imprisonment.



Meeting of shareholders ...Cont.



Resolution in lieu of Meeting (s103)

- The Shareholders consisting of more than 75% of shareholders who are entitled to vote on an issue may by circular resolution votes on the issue, as though it has been passed at a shareholders meeting.
- Within five days after the above resolution, the board must circulate the resolution to every shareholder who has not sign or vote on the resolution.
- If the board fails to send the resolution to other shareholders, every director of the company is liable for prosecution.



Directors – Appointment... etc,...



- Appointment and Removal of Directors
- A company shall have at least 1 director
- One director must be resident in PNG (if Foreign Coy - s128)
- A psn must be 18 years and over – s129
- Shareholders can appoint directors – s133
- Shareholders can remove directors by ordinary resolution – 134
- A psn ceased to be a director if:
 - (a) Resigns
 - (b) Removed by shareholders under s134
 - (c) becomes disqualified under s129
 - (d) Dies
 - (e) vacates the office in accordance with the constitution of Company.
- A notice change of directors (Forms 15 & 16) must be lodged with the Registrar of Companies Office within one month. - s137
- Schedule 4 of the Companies Act 1997 provides the meeting procedures - s138
- Board Members are entitle to remuneration- s139



Directors and their Powers and Duties



- Good Corporate Governance;
- Supervise Management;
- Duty to act in good faith and in best interest of company - s112 (K200,000 fines & 5 years imprisonment);
- Director's duty of care- s115 (K200,000 fines & 5 years imprisonment);
- Use of Information and advice - s116
- Transactions involving self interests- ss 117 – 122 (K10,000 fines & 2 years imprisonment);
- Use of Company information – s123 (K200,000 fines & 5 years imprisonment);



Financial Reporting, Accounting Records & Audit



- Two types of Companies
 - (a) Exempted Companies; and
 - (b) Reporting Companies
- Reporting Companies are companies with;
 - (i) Total Assets exceeding K5m
 - (ii) More than 25 employees
 - (iii) More than 100 employees
- A reporting company is required to lodge its Audited Financial Statement with the Registrar of Companies
- Exempted company voluntarily lodge its Audited Financial Statement.



Financial Reporting, Accounting Records & Audit



Preparations for Financial Statements

- The board of the company is required under law (s 179) to prepare the financial statements of the company.
- The Financial Statement shall comply with the Generally Accepted Accounting Practise (GAAP) standards (s180).
- The board is required to lodge the Audited Financial Statements with the Registrar of Companies within 14 days after the AGM.
- If directors of a reporting company failed to comply with provisions of s179, every director commits an offence and is liable for a fine of K100,000.00 (S414(3))
- Every Reporting company shall keep their Accounting Records, clearly setting out the financial transaction of the company (s188);



Disclosure by Companies



- Board of every company, within five months after the balance date is required to prepare an Annual Report on the affairs of the company within a financial year (s209).
- The Board is required to send a copy of the Annual Report to all shareholders (210).
- The Board is required to lodge with Registrar an Annual Return of the company on the date allocated by the Registrar or on the date of incorporation (s215).
- Failure to file A/R, three automatic remainders to the company. After the 3rd, the System automatically deregister the company.
- If a Company fail to comply with s15, every director of the company liable for a fine not exceeding K10,000.00 every year.



Management of Companies



- **Section 109. Management of company.**
 - (1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the board of the company.
 - (2) The board of a company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.



Receivership



- What is a receivership? A process where an independent person is appointed by the Court or through a Deed to manage an asset or number of assets of a company which is not able to repay its debts in the “ordinary course of business”.
- The receiver may run the company in order to maximize the value of the company's assets, sell the company as a whole, or sell part of the company and close unprofitable divisions.
- Secure the assets of the company and/or entity.
- Realize the assets of the company and/or entity.
- Manage the affairs of the company in order to resolve debts of the company.



Liquidation



- What is Liquidation?
- A Liquidation is a process whereby assets of the company is sold to repay the debts of the company in the ordinary course of business.
- When does the liquidation starts? Liquidation begins when a liquidator is appointed (s291).
- Who appoint a Liquidator?
 - (a) Shareholders of a company through a special resolution;
 - (b) By the board of the company pursuant to the provisions of its constitution;
 - (c) By the Court, upon the application of a shareholder(s), a director of the company, a creditor of the company or the Registrar of Companies.



Deregistration



- A company is removed from the register when the Registrar signs a notice stating that the company has been removed;
- What are grounds of Removal”
 - (a) when a company is amalgamated;
 - (b) When a company has been placed under liquidation (end of liquidation).
 - (c) the company through the shareholders and board of the Company;
 - (d) The Registrar of Companies when he is satisfied that the Company has ceased to carry on business;
 - (e) the company has failed to lodge its Annual Returns within six months after being due;
 - (f) The company fails to submit to the Registrar any documents within 12 months after it became due.



Deregistration



- Before a company is removed from the register, the Registrar must give notice to the company and the general public of his intention to remove a company from the register (s367);
- What happened to the Asset or business of the company if the Coy has assets or business? The Registrar is the representative of the Company and its assets and liabilities are vested on the Registrar (s372 & 373).
- The Registrar can reinstate a company within six years.
- The Court may restore a company deregistered for more than six years.
- Directors of defunct or deregistered companies will not be allowed to be a director or shareholder of a company for 5 years.



IPA

Powers and Functions of the Registrar of Companies



- The Registrar of Companies is appointed by the Minister;
- Performs its duties, functions & powers independently from anyone.
- Registrar the powers-
 - (a) Investigation (s400).
 - (b) Inquiry/Examination
 - (c) File proceedings against any psn.
 - (d) Preside over matters and make decisions – (powers equivalent to Grade V Magistrate).



Appeal against Registrar's Decisions



- If a person is not satisfied with the Registrar's decision, he may file an appeal to the National Court (Same procedure for an appeal from the District Court is applied) (s408).
- The Court may either confirm the decision of the Registrar or make such directions or determinations as the Court deems appropriate in the circumstances of its cases.



Q & A



Q & A