

This flash report summarises the enactment of changes to the Companies Act following the 2019/20 National Budget announcement. The amendment Act was passed by Parliament on 21 June 2019 and gazetted on 24 June 2019. The amendments come into effect on a date or dates appointed by the Minister.

Contents

Companies Act

Companies Act 2015 - Act 23 of 2019

Section 3 - Interpretation

- The following new definitions have been added:
 - “beneficial ownership interest” means an interest as prescribed by regulations;*
 - “sign” means to—*
 - (a) physically execute a signature; or*
 - (b) execute or otherwise adopt a symbol, or encrypt or similarly process a writing in whole or in part, with the present intent to identify the person and adopt or accept a writing, whether in physical or electronic format;*
- The definition of “lodge” has been substituted with the following:
 - “lodge” means to lodge with the Registrar, the Reserve Bank or the Minister, as applicable, including to lodge electronically, and “lodgement” has the related meaning;”;* and
- The amendment the definitions of “sign” and “lodge” now include provisions for electronic signature and electronic lodgments where previously it did not

Section 34 - Application for registration

- Section 34(3)(b) and (c) of the Act has been substituted with the following:
 - “(b) in the case of an application by a firm, by all the individuals who are partners, by all foreign companies which are partners and in accordance with section 53 by all companies which are partners; or*
 - (c) in the case of an application by a foreign company or company, by the foreign company or in accordance with section 53 by the company.”*
- The amendment to S.34(3)(b) and (c) now states that an application to register a Business Name must be signed by the persons detailed above

Section 37 - Certificate of registration

- Section 37 is renumbered to Section 37(1)
- Section 37(1) has been updated as follows:
 - “(1). Upon registration or the renewal of registration of the business name, the Registrar must issue the firm or person to whom the business name is registered with a certificate of registration in the prescribed form certifying that the business name is registered for a period of registration as prescribed by regulations.” [provisions added]*
- A new Section 37(2) is inserted as follows:
 - “(2) Subject to sections 37E and 37F, a certificate of registration issued under subsection (1) ceases to be valid on the day after the expiration of the period of registration specified in the certificate of registration.”*

Section 37A - Renewal of business name registration (New)

- A new Section 37A is inserted as follows:

"A firm or person to whom a business name is registered under this Act may, before the expiration of the period of registration specified in the certificate of registration, apply for the renewal of registration of the business name under section 37B for a period of registration as prescribed by regulations."

Section 37B - Application for renewal (New)

- A new Section 37B is inserted as follows:

"(1) To renew the registration of a business name, a firm or person to whom a business name is registered under this Act must lodge an application with the Registrar in the prescribed form.

(2) The application must be signed—

(a) in the case of an application by an individual, by the individual;

(b) in the case of an application by a firm, by all the individuals who are partners, by all foreign companies which are partners and in accordance with section 53 by all companies which are partners; or

(c) in the case of an application by a foreign company or company, by the foreign company or in accordance with section 53 by the company.

(3) In addition to the requirement specified in subsection (2), a firm or person must comply with the requirements as prescribed by regulations for the lodgement of the prescribed form application under subsection (1)."

Section 37C - Registrar's power to ask applicant for further information (New)

- A new Section 37C is inserted as follows:

"(1) The Registrar may, by written notice given to an applicant for the renewal of registration of a business name, ask the applicant to provide, within a stated reasonable time, another document or further information the Registrar reasonably believes is necessary—

(a) to enable the Registrar to decide whether to renew, or refuse to renew, the registration of the business name; or

(b) to satisfy the Registrar that the applicant is carrying on, or will carry on, the business in Fiji.

(2) If the applicant fails to comply with the request within the stated time, the applicant is taken to have withdrawn the application."

Section 37D - Application for extension (New)

- A new Section 37D is inserted as follows:

"(1) A firm or person to whom a business name is registered under this Act may, before the expiration of the period of registration specified in the certificate of registration, apply for an extension of the period for the renewal of registration under subsection (2).

(2) To apply for an extension of the period for the renewal of registration, the firm or person must lodge an application with the Registrar in the prescribed form.

(3) The Registrar may extend the period for the renewal of registration for the firm or person for such time as the Registrar thinks fit."

Section 37E - Effect of renewal of registration (New)

- A new Section 37E is inserted as follows:

"If the Registrar renews the registration of a business name, the business name registration is deemed to continue from the day after the expiration of the period of registration specified in the previous certificate of registration."

Section 37F - Failure to renew registration (New)

- A new Section 37F is inserted as follows:

"(1) If a firm or person to whom a business name is registered under this Act fails to apply, or has withdrawn an application, for the renewal of registration of the business name before the expiration of the period of registration specified in the certificate of registration or before the expiration of the period for the renewal of registration as extended by the Registrar in section 37D(3), as the case may be, the business name is deemed to have been deregistered on the day after the expiration of the period of registration specified in the certificate of registration and the Registrar must remove the business name from the register of business names.

(2) If the Registrar refuses to renew the registration of a business name, the business name is deemed to have been deregistered on the day after the expiration of the period of registration specified in the certificate of registration and the Registrar must remove the business name from the register of business names."

Section 37G - Transitional (New)

- A new Section 37G is inserted as follows:

"Any certificate of registration issued under section 37 prior to the commencement of section 4 of the Companies (Budget Amendment) Act 2019 continues to be valid until such time as the business name is reregistered or deregistered, whichever is earlier."

- S.4 of the Companies (Budget Amendment) Act 2019 are the amendments to S.37 - Certificate of Registration of the Companies Act (on page 1 of this flash report)

Section 58A - Prescribed registration fee

- A new Section 58A is inserted as follows:

"A foreign company must pay a fee for the prescribed amount if an amount is prescribed to the Registrar each year within 28 days after the anniversary of the day on which it is registered."

- The insertion of S.58A now specifically requires foreign companies to pay the prescribed registration fee (where previously it did not). This aligns with the Registrar's practice

Section 82 - Register of members

- Section 82(3) is amended as follows:

"(3) The register of a company that has a share capital and is not a listed company must indicate any share that a member does not hold beneficially and include the name of the person who holds the beneficial ownership interest of such share." [requirement added]

- Section 82(4) is substituted with the following:

"(4) For the purposes of subsection (3), where a company is given notice under section 251 that any share is held non-beneficially, the company must determine the person who holds the beneficial ownership interest of such share."

Section 713 - Regulation making power

- Section 713(1) is amended by adding the following:

“(i) the length of a period of registration for a business name;

(j) the requirements for the lodgement of an application for the renewal of registration of a business name;

(k) the requirements for the lodgement of an application for the reregistration of a company, foreign company and business name; and

(l) offences and penalties not exceeding a fine of \$1,350,000 or imprisonment for a term not exceeding 5 years or both.”

Section 714B - Rectification or correction of register (New)

- A new Section 714B is inserted as follows:

“(1) The Registrar may—

(a) on the application in the prescribed form, rectify a register kept under section 714 if the Registrar is satisfied that the information in the register to which the application relates was provided incorrectly or wrongly;

(b) on the application in the prescribed form, rectify a register kept under section 714 if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or

(c) if it appears to the Registrar that any particulars have been incorrectly entered in, or omitted from, a register kept under section 714, correct those particulars.

(2) The Registrar, before rectifying the register under subsection (1)(a), must—

(a) give written notice in the prescribed form to the company that an application has been made to rectify the register in relation to that company, including details of that application; and

(b) give notice in the Gazette including the following details—

(i) the name of the applicant;

(ii) the name of the company;

(iii) the reasons for and details of the changes sought to be made to the register; and

(iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 28 days after the date of the notice.

(3) Any person may deliver to the Registrar, not later than the date specified in accordance with subsection (2)(b)(iv), a written objection to a proposed rectification of the register, and the Registrar must give a copy of the objection to the applicant.

(4) The Registrar must not rectify the register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that—

(a) the objection has been withdrawn;

(b) any facts on which the objection is based are not, or are no longer, correct; or

(c) the objection is frivolous or vexatious.

Section 714C - Powers of the court (New)

- A new Section 714C is inserted as follows:

“(1) If a person is aggrieved by the decision of the Registrar in relation to an application made under section 714B(1), the person may apply to the court for an order of rectification.

(2) If an application for an order is made under subsection (1)

(a) the applicant must, as soon as practicable, serve notice of the application on the Registrar; and

(b) the Registrar may appear and be heard in relation to the application.

(3) On the application for an order under subsection (1), the court may, if it is satisfied that any information has been incorrectly or wrongly entered in, or omitted from, the register, make an order that the register be rectified.”

Section 742 - Notification of changes

- Subsections (2), (2B), (2C), (2D), (2E) and (4) have been deleted

Part 47 - Reregistration (New)

The amendments to the Companies Act included a new Part 47 - Reregistration

Division 1 and 2 - Companies and Foreign companies

- The new Division states that any company or foreign company formed and registered under the Act must apply for reregistration on or before the date appointed by the Minister
- Any company or foreign formed and registered under the Act on or after the date appointed by the Minister, must not apply for reregistration
- The company may only be reregistered if the company has paid the prescribed registration fee (and applicable late fee) for each year
- A copy of the company's Articles of Association must be lodged with the application, unless where the company adopted the Standard Form Articles of Association without amendment.
- The documents required for the reregistration of foreign companies is comprehensive. Please contact us for the full list
- For private companies, the company must have passed the special resolution to include “Pte” in their name
- A company or foreign company may apply, in the prescribed form, for extension of period to reregister before the expiration of the period specified by the Minister. The grant of the extension is at the Minister's discretion
- Once the new certificate of registration is issued by the Registrar, this shall be conclusive evidence that all requirements in respect of the reregistration have been complied with
- A company is deemed to be deregistered if the company fails to apply for reregistration. A foreign company is deemed to be struck off the register of foreign companies if the foreign company fails to apply for reregistration

Division 3 - Business names

- The new Division states any firm or person doing business in Fiji under a business name registered under the Act must apply for reregistration of the business name on or before the date appointed by the Minister
- Any firm or person doing business in Fiji under a business name registered under the Act on or after the date appointed by the Minister, must not apply for reregistration
- The firm or person must have the required consents and agreements in place
- A firm or person may apply, in the prescribed form, for extension of period to reregister before the expiration of the period specified by the Minister. The grant of the extension is at the Minister's discretion
- Once the new certificate of registration is issued by the Registrar, this shall be conclusive evidence that all requirements in respect of the reregistration of the business name have been complied with
- The business name is deemed to be deregistered if the firm or person fails to apply for reregistration of the business name

Division 4 - Disputes

- A person may apply to the courts for an order to prohibit the reregistration of a company, foreign company or business name

Division 5 - Amnesty

- The new Division is providing an amnesty for the failure to comply with a notification requirement under the repealed Act or the following Sections under current Act:
 - Section 39 - Registration of changes (in relation to the firm or person who owns a Business Name, not the Business Name itself);
 - Section 50 - Registered office (changes to the registered office of a company);
 - Section 51 - Place of business (changes to the place of business of a company);
 - Section 59 - Changes to foreign company (such as foreign company details, directors, local agent details and place of business);
 - Section 89 - Notice of change to member register;
 - Section 90 - Notice to change to share structure;
 - Section 129 - Notice of name and address of directors, alternate directors and secretaries to the Registrar;
 - Section 211 - Notice to the Registrar of share issue;
 - Section 212 - Notice to the Registrar of share cancellation; or
 - Section 223 - Acceptance of offer and transfer of shares to the company
- The person is no longer required to comply with the requirements or pay any applicable fee for such acts or omissions

Please contact your KPMG client service personnel or a member of our Tax team for any further information or assistance in respect of the reregistration or any other part of this flash report.

Contact us

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IMPORTANT

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