

A new era for companies in Fiji

Companies Act Essentials

July 2016

Companies Act 2015

Overview

The much anticipated Fiji *Companies Act* 2015 (**Companies Act**) came into effect from 1 January 2016 and as a number of companies concluded their financial year last week, it is interesting to see how the workings of the Act have transitioned so far into the day-to-day operations of companies in Fiji. This Act draws on the Australian *Corporations Act* 2001 (Cth) bringing in modern business practices and streamlining regulation within Fiji while also improving corporate governance measures and ensuring accountability from company directors and officers.

While many aspects of the new Companies Act have been discussed at length (going back to the consultation periods), in this article we aim to bring a simplified view of the new Companies Act through a change matrix as companies switch from the old to the new. We also provide insights on the capital raising requirements under the new Companies Act which we hope our readers will find interesting.

The shared regulatory roles on the Companies Act between the RBF and Registrar of Companies are clearly defined to allow both authorities to enforce the relevant parts of the Act working in conjunction with each other where necessary, and hopefully avoiding any form of duplication. Transitional laws that are in place will ensure that companies have time to adjust and comply with the new law that has come into effect from January 2016. However, it is worth noting the heavier penalties that apply due to non-compliance by the company, its directors or officers.

Overall the Companies Act lays a great foundation to pave the way forward for companies in Fiji. As policy frameworks in other areas continue to be developed and reviewed, we are hopeful that further reforms such as the digitisation of the Registrar of Companies records and the implementation of a secured transactions regime will follow suit to complement the new Companies Act. This will further improve the ease of doing business in Fiji and make it an even more attractive investment destination for foreign investors.

If your company requires any assistance in compliance with the Companies Act, especially in the areas of corporate governance, or internal policies relating to insider trading, conflict of interest, please feel free to contact us. We also welcome your feedback on any other aspects of this legislation that you would like us to cover in more detail in our next issue.

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	Companies Act 2015	Companies Act (Cap. 247)
Company's constitution	<ul style="list-style-type: none"> Articles of Association only (Company has legal capacity and powers of an individual both in and outside of Fiji) 	<ul style="list-style-type: none"> Memorandum of Association Articles of Association
Par value	Not required	Yes
Authorised Capital	Not required	Yes
Common Seal	Not required	Yes
Minimum shareholders/	All companies: 1	Private companies - 2 Public companies - 7
AGM	<ul style="list-style-type: none"> First AGM within 18 months Annually thereafter within 6 months of balance date 	<ul style="list-style-type: none"> First AGM within 18 months Annually within 15 months of previous AGM
Forms to be lodged for changes in address, officeholders, shareholding etc	<ul style="list-style-type: none"> Form A11 Form A29 - to be completed by resigning or retiring director 	<ul style="list-style-type: none"> Form 203 - Change in Directors of Secretary Form 201 - Change in Registered Office
Annual returns	<ul style="list-style-type: none"> Not required but an annual registration fee payable 	<ul style="list-style-type: none"> To be lodged annually
Minimum Directors	<ul style="list-style-type: none"> Private company: 1 resident director Public company: 3 directors (2 to be resident) 	<ul style="list-style-type: none"> Private company: 2 directors (1 to be resident) Public company - 3 directors (2 to be resident)
Secretary	<ul style="list-style-type: none"> Private company: no secretary required but if appointed, 1 to be Fiji resident 	<ul style="list-style-type: none"> All companies: At least 1 secretary to resident in Fiji

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Address	<ul style="list-style-type: none"> Registered office Place of business 	<ul style="list-style-type: none"> Registered office
Type of companies	<ul style="list-style-type: none"> Private companies limited by shares Public companies limited by: <ul style="list-style-type: none"> Shares Shares and guarantee Listed Guarantee Unlimited liability 	<ul style="list-style-type: none"> Private or public limited by shares Limited by guarantee Unlimited liability
Common Seal	Not required	Required for execution of documents
Financial statements	<p>Requirement varies depending on company size determined by consolidated revenue:</p> <ul style="list-style-type: none"> Private companies (consolidated revenue \leq \$5 million) - nil unless directed by Registrar or requested by 10% of the shareholders Medium Private Companies (\$5 million $<$ consolidated revenue \leq \$20 million) - Proforma financial statements Large Private Companies (consolidated revenue $>$ \$20 million), Public Companies and Managed Investment Schemes - Financial Statements and Directors' Report 	Financial statements and directors report by public companies only

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Solvency	<ul style="list-style-type: none"> • Directors to pass a solvency resolution within 2 months of balance date every year • Declaration to be made that company is solvent immediately after: <ul style="list-style-type: none"> ◦ declaring/paying a dividend ◦ reduction in capital 	Declaration of solvency only in case of voluntary winding up
Audit	All public companies, large private companies and managed investment schemes	All non-private companies
Obligation of directors	Outlined in Division 3 - Part 10: <ul style="list-style-type: none"> • promote success of company • exercise independent judgment • exercise reasonable care, skill and diligence • avoid conflicts of interest • not to accept benefits from external parties • declare interest 	Limited duties under Division 11 of Part V covering: <ul style="list-style-type: none"> • appointment • advertisements • payments or loans to directors • disclosure of interests
Breach of Obligations by directors of employees	<ul style="list-style-type: none"> • Civil consequences • Maximum of 5 years in prison • Criminal penalties apply 	Various fines and penalties for non-compliance of certain sections
Indemnification or insurance of officeholders	<ul style="list-style-type: none"> • Company can indemnify for liability for any act or omission or cost of the liability, excludes criminal liability • Signed certificate to justify cost of effecting such insurance • To be noted in the Interest Register 	Can indemnify against liability of officers and auditors but excludes any negligence, default, breach of duty or breach of trust

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Single director/single shareholder resolutions	<ul style="list-style-type: none"> • Can exercise all the powers of the company, including appointing other directors • Not required to hold AGMs 	<ul style="list-style-type: none"> • No provisions for single shareholder or director
Shareholders Meeting	<ul style="list-style-type: none"> • Can be requested by members with 5% of voting rights • 50% of the 5% may call and hold a general meeting if directors fail to do so • Waiver of 21-day notice period requires 100% of members to agree for AGMs and 95% of members to agree for other general meetings • Auditor to receive same documents as members • Shareholders with 10% voting right can propose resolution with 2 months' notice • Meeting can be held using any form of technology 	<ul style="list-style-type: none"> • Can be requested by members with 10% of voting rights • 50% of 10% may call and hold meeting if directors fail to do so • Waiver of 21-day notice period requires 100% of members to agree for AGMs and 95% of members to agree for other general meetings • Shareholders with 5% voting right or a minimum of 100 members with not less than \$200 paid up capital each can propose resolution with 6 weeks' notice • No provision for meetings to be held using any form of technology
Share Premium and Capital Reserves	<ul style="list-style-type: none"> • Cannot be established or maintained by companies • Existing premium and capital reserves to become part of issued share capital 	<ul style="list-style-type: none"> • Capital Reserves Funds and Share Premium maintained
Acquiring shares in itself	<ul style="list-style-type: none"> • Share buy-back • Under court order • Under employee share scheme • Business requiring it to take shares as security 	<ul style="list-style-type: none"> • Under court order

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Matters to be specified in a prospectus	<ul style="list-style-type: none"> • Company details • Details of the offer <ul style="list-style-type: none"> ◦ number and types of securities ◦ eligibility to apply ◦ details of allotment ◦ minimum amount to be raised ◦ minimum application amount ◦ intended use ◦ offer period ◦ directors' right to extend closing date ◦ intended date of listing ◦ details of refund if applicable • Risks of participating in the offer • Information on directors • Details of auditors, experts and advisers stating their interests, if any • Overview of the company and the industry • Historical and projected financial information • Independent accountants report • Prospectus or Offer Document only valid for 12 months • Application money to be held in trust • Disclaimer from RBF and Securities Exchange to be included • Statements by experts to be consented 	<ul style="list-style-type: none"> • Details of founders, management and interest holders in the company • Details of directors, current and proposed • Minimum amount to be raised • Period of offer • Amount payable on application and allotment to include details of any allotment in the past two years • Details on options (if any) • In case of property acquisition, details of vendor and amount to be paid • Amount paid/payable in commission within the preceding 2 years • Preliminary expenses • Benefits or payment to promoters • Material contracts • Details of auditors • Consent from experts named in prospectus • Directors' interests • Voting rights conferred by the classes of shares on offer • Registration of prospectus • Civil liability for misstatements

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Issues to Public	<ul style="list-style-type: none"> Public companies can issue shares to public through prospectuses Exceptions: <ul style="list-style-type: none"> offer is a personal offer to 20 or less investors with aggregate issue of \$1m in 12 months minimum amount accepted by the person to whom the offer is made is at least \$200,000 offer to certified sophisticated investor offer of debt securities by Financial Institution offer to related body corporate offer under a Bidder's Statement offer of debt securities under the Banking Act or Insurance Act offer by Government, Government entity, RBF to be registered with RBF 	Some of these areas were covered under the Capital Markets Regulations, Rules and Policies under Reserve Bank of Fiji
New areas introduced in the Act	<ul style="list-style-type: none"> Insider Trading Laws Managed Investment Schemes Takeovers Regulation of Securities Exchange and Central Depositories Licensing transactions involving Securities Exchange 	Some of these areas were covered under the Capital Markets Regulations, Rules and Policies under Reserve Bank of Fiji
Regulating Authority	<ul style="list-style-type: none"> RBF responsible for administration of Parts 22—Part 28 and Part 42 RBF to jointly regulate Part 43 and Part 44 with Registrar of Companies Registrar of Companies to regulate the remaining Parts of the Act 	Registrar of Companies

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