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## **Commonwealth Lawyers Association Presentation PNG Continuing Legal Education**

**Presenter: Michael Sullivan**

**Topic: Laws Relevant to a PNGX Listed Company**

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# Introduction & Thank You

**Last** but hopefully not worst!

## **About Your Presenter:**

1. 30 years plus experience as a lawyer and banker
2. Managing Partner – Leahy Lewin Lowing Sullivan Lawyers
3. Formerly the Bank of Tokyo's Sydney Representative

**Thank you** to those involved DCJ Ambeng Kandakasi, Hon. Justice Logan, David Denniston and others

# Outline

1. Capital Market Act 2015
2. PNGX Listing Rules
3. Takeovers & Mergers Code
4. Concluding Remarks

# Capital Market Act 2015

## Survey Result

### Background

- In 2015 PNG's National Parliament enacted 3 important laws – Securities Commission Act 2015, Capital Market Act 2015 and Electronic Depository Act 2015
- The Securities Commission Act 2015 repealed the Securities Act 1997 and the Takeovers Code 1997
- Malaysian precedents
- Impenetrable
- Poorly drafted
- At odds with the Companies Act 1997
- Name of legislation is misleading

# Capital Market Act 2015 (cont.)

## Overview:

- Capital Market Act regulates capital markets in PNG.
- Capital markets generate the money which is required to help PNG develop and transition to being a more advanced economy.
- Without capital there will be no growth.
- Given their importance, capital markets and the raising of capital need to be regulated.
- More than one capital market
- Very limited opportunities for raising capital in PNG limited mainly to bank loans and share issues.

# Capital Market Act 2015 (cont.)

## Subsidiary Regulations

Capital Market Act has created a variety of other rules and regulations including the following which are the focus of my presentation today:

- PNGX Listing Rules
- PNG Takeovers & Mergers Code

# PNGX Listing Rules

The listing rules are an important group of regulations that regulate companies whose shares are traded in a public market known as a stock exchange.

Such companies include BSP, Credit Corporation, Kina Securities and City Pharmacy.

Understanding these rules is a basic requirement when advising public companies.

## **Some Basic Concepts:**

- Public company and private company
- Listed company and unlisted company
- Quotation of shares
- On market trades and off market trades
- Brokers

# PNGX Listing Rules (cont.)

A stock exchange is a public market in which shares and other securities are bought and sold.

The listing rules are the internal rules of a stock exchange that regulate the companies whose shares are quoted on a stock exchange.

Listing rules differ from stock exchange to stock exchange.



# PNGX Listing Rules (cont.)

## The Listing Rules:

- Apply to all companies which are listed on and whose shares are quoted on PNGX
- Represent a contract between PNGX and each listed company
- Are designed to create a fair and transparent market
- Must be observed at all times unless an exemption is obtained.

# PNGX Listing Rules (cont.)

**Failure to comply with the Listing Rules may result in:**

- suspension of trading
- delisting
- loss of public confidence
- an offense under the Capital Market Act

# PNGX Listing Rules (cont.)

**The listing Rules cover a variety of subjects including:**

- Continuous disclosure (chapter 4)
- Periodic disclosure (chapter 5)
- Event specific disclosure (chapter 6)
- Reporting by mining companies (chapter 8)
- Reporting by oil and gas companies (chapter 9)
- Disclosure of Directors' and CEO's dealings (chapter 10)
- Changes in capital (chapter 12)
- Transactions with related parties (chapter 14)
- Major transactions (chapter 15)
- Meetings of security holders (chapter 16)

# PNGX Listing Rules (cont.)

## Continuous Disclosure (chapter 4)

### Immediate Notice of Material Information (Rule 4.1)

Once a listed company is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the issuer's securities, the company must immediately tell PNGX that information.

# PNGX Listing Rules (cont.)

Listing Rule 4.1 does not apply to particular information while each of the following 3 conditions is satisfied:

1. One of more of the following 5 situations applies:
  - (a) It would be a breach of law to disclose the information.
  - (b) The information concerns an incomplete proposal or negotiations;
  - (c) The information comprises matters of supposition or is insufficiently definite to warrant disclosure
  - (d) The information is generated for the internal management purposes of the issuer;  
or
  - (e) The information is a trade secret; and
2. The information is confidential and PNGX has not formed the view that the information has ceased to be confidential; and
3. A reasonable person would not expect the information to be disclosed.

# PNGX Listing Rules (cont.)

## False Market (Rule 4.3)

If PNGX considers that there is or is likely to be a false market in an issuer's securities and asks the issuer to give it information to correct or prevent a false market, the issuer must immediately give PNGX that information.

# Takeovers & Mergers Code

Buying and selling companies is an important part of commerce.

The Takeovers Code regulates takeover offers.

A takeover offer is an offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in a particular company.

Today, it is not my intention to explain how the Takeovers Code operates in detail but rather to alert you to the existence of the Code and to highlight some important preliminary issues and concepts for you.

# Takeovers & Mergers Code (cont.)

- The PNG Takeovers Code 1997 was repealed by the Securities Commission Act 2015.
- The Minister has now prescribed a new takeovers and mergers code (**Takeovers Code**) and this code came into effect on 22 June 2023.
- A person who makes a **takeover offer** must do so in accordance with the provisions of the New Code and any ruling made under Section 277(4).
- The Securities Commission has an overriding power to issue a permanent restraining order if the Commission considers that any **takeover offer** is not in the national interest of PNG (Section 277 (6)).
- The “national interest” is not defined.



# Takeovers & Mergers Code (cont.)

**The Takeovers Code only applies to a Code Company being:**

- (a) A company that is a listed company with shares quoted on an approved stock exchange or was so listed in the last 12 months; or
- (b) A company that has:
  - (i) 50 or more shareholders; and
  - (ii) Is at least a medium sized company

**A medium sized company is a company for which either or both of the following is true:**

- (a) Total assets of the company and its subsidiaries (if any) are at least K100 million.
- (b) Total assets of the company and its subsidiaries (if any) is at least K 30 million.

# Takeovers & Mergers Code (cont.)

A Code Company may be an **overseas company** provided the overseas company has a **sufficient territorial nexus with PNG**.

The New Code does **not apply** to an acquisition of voting rights in a code company **under an offer that is made before the commencement of the New Code on 22 June 2023**.

# Takeovers & Mergers Code (cont.)

The following “fundamental rule” (Rule 12) applies to all Code Companies:

A person who holds or controls:

- (a) No voting rights or less than 20% of the voting rights** in a Code Company may not become the holder or controller of an increased percentage of the voting rights in that Code Company unless after that event the person and their associates hold or control in total not more than 20% of the voting rights in that Code Company.
- (b) 20% or more of the voting rights in a Code Company** may not become the holder or controller of an increased percentage of the voting rights in that Code Company.

# Takeovers & Mergers Code (cont.)

**Without breaching the Takeovers Code** a person may become the holder or controller of an increased percentage of the voting rights in a Code Company:

- (a) By making a full offer;
- (b) By making a partial offer;
- (c) If the acquisition or allotment is approved by an ordinary resolution of shareholders of the Code Company; or
- (d) If the holds or controls more than 50% but less than 90% of the voting rights in the Code Company, and the acquisition or allotment does not increase that person's ownership or control by more than 5%
- (e) If the person already owns or controls 90% or more of the voting rights in the Code Company

# Concluding Remarks

Capital markets generate the money which is required to help PNG develop and transition to being a more advanced economy.

Without capital there will be no growth.

Given their importance capital markets and the raising of capital need to be regulated.

Transparency and uniform regulation are the cornerstones of successful capital market regulation

The Capital Market Act 2015 is PNG's first real attempt at comprehensively regulating capital markets in PNG.

The PNGX Listing Rules and the Takeovers Code are two important regulatory regimes that apply to capital markets

Thank you