

ACT NO. 23 OF 2019

I assent.

J. K. KONROTE
President

[24 June 2019]

AN ACT**TO AMEND THE COMPANIES ACT 2015**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.**—(1) This Act may be cited as the Companies (Budget Amendment) Act 2019.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Companies Act 2015 is referred to as the “Principal Act”.

Section 3 amended

- 2.** Section 3 of the Principal Act is amended by—
- (a) after the definition of ““bearer share” or “bearer stock””, inserting the following new definition—
- ““beneficial ownership interest” means an interest as prescribed by regulations;”;
- (b) deleting the definition of “lodge” and substituting 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;”;

- (c) after the definition of “share warrant”, inserting the following new definition—

““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;”.

Section 34 amended

- 3.** Section 34(3) of the Principal Act is amended by deleting paragraphs (b) and (c) and substituting 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.”.

Section 37 amended

- 4.** Section 37 of the Principal Act is amended by—

- (a) renumbering section 37 as section 37(1);
- (b) in subsection (1)—
 - (i) after “Upon registration”, inserting “or the renewal of registration”; and
 - (ii) after “that the business name is registered”, inserting “for a period of registration as prescribed by regulations”; and
- (c) after subsection (1), inserting the following new subsection—

“(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.”.

New sections inserted

- 5.** The Principal Act is amended after section 37 by inserting the following new sections—

“Renewal of business name registration

37A. 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.

Application for renewal

37B.—(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).

Registrar's power to ask applicant for further information

37C.—(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.

Application for extension

37D.—(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.

Effect of renewal of registration

37E. 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.

Failure to renew registration

37F.—(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.

Transitional

37G. 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.”.

Section 58A inserted

6. The Principal Act is amended after section 58 by inserting the following new section—

“Prescribed registration fee

58A. 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.”.

Section 82 amended

7. Section 82 of the Principal Act is amended by—

- (a) in subsection (3) after “beneficially”, inserting “and include the name of the person who holds the beneficial ownership interest of such share”; and
- (b) deleting subsection (4) and substituting 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 amended***8.** Section 713(1) of the Principal Act is amended by—

- (a) in paragraph (g) after “;”, deleting “and”;
- (b) in paragraph (h), deleting “.” and substituting “;”; and
- (c) after paragraph (h), inserting the following new paragraphs—
 - “(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.”.

*Sections 714B and 714C inserted***9.** The Principal Act is amended after section 714A by inserting the following new sections—*“Rectification or correction of register***714B.—(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.

Powers of the court

714C.—(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 amended

10. Section 742 of the Principal Act is amended by deleting subsections (2), (2B), (2C), (2D), (2E) and (4).

Part 47 inserted

11. The Principal Act is amended after section 752 by inserting the following new Part—

“PART 47—REREGISTRATION

Division 1—Companies

Reregistering a company

753.—(1) Notwithstanding other sections of this Act or provisions of any other written law, a company formed and registered under this Act upon the commencement of this section must, on or before the date appointed by the Minister by notice in the Gazette, apply for reregistration of the company under section 754.

(2) Notwithstanding subsection (1), a company formed and registered under this Act on or after the date appointed by the Minister by notice in the Gazette is not required to, and must not, apply for reregistration of the company under section 754.

(3) A company may only be reregistered if the company has paid the prescribed registration fee for each year as required under section 24, including any applicable late fee.

Application for reregistration

754.—(1) To reregister a company, a company must lodge an application with the Registrar in the prescribed form.

(2) The company must—

(a) comply with the requirements as prescribed by regulations for the lodgement of the prescribed form application under subsection (1); and

(b) have the consents and agreements referred to in the prescribed form application.

(3) A copy of the company’s articles of association must be lodged with the application unless the company adopted the Standard Form Articles of Association in accordance with section 46(4)(a)(i) or 46(4)(b)(i) without amendment, or in the case of a company limited by guarantee, company limited by shares and guarantee or an unlimited liability company with only those amendments prescribed in Schedule 2.

(4) Notwithstanding section 28 and for the purpose of section 726(2), if the company is a private company, the company must comply with section 26(1)(b) when the application is lodged.

(5) After the company is reregistered in accordance with the provisions of this Act, the company must keep the consents and agreements referred to in subsection (2)(b).

Application for extension

755.—(1) A company may, before the expiration of the period specified in section 753(1), apply for an extension of the period under subsection (2).

(2) To apply for an extension of the period, the company must lodge an application with the Minister in the prescribed form.

(3) The Minister may extend the period specified in section 753(1) for the company for such time as the Minister thinks fit.

New certificate of registration

756. Upon reregistration of the company, the Registrar must issue the company with a new certificate of registration in the prescribed form certifying—

- (a) that the company is reregistered;
- (b) that the company continues to be formed and registered under this Act;
- (c) that the company's date of incorporation continues to be the date on which the company was formed and registered under this Act;
- (d) that the company continues to be a private company or a public company, and in the case of a public company, the type of public company; and
- (e) the liability of the members of the company.

Conclusiveness of new certificate of registration

757. A new certificate of registration issued by the Registrar in respect of any company shall be conclusive evidence that all the requirements of this Part in respect of reregistration and of matters of precedent and incidental thereto have been complied with, that the company is authorised to be reregistered and duly reregistered under this Part and that the company has the company name specified in the new certificate of registration.

Effect of reregistration

758.—(1) If the Registrar reregisters a company, the registration of the company is deemed to continue from the day of reregistration until such time as the company is deregistered.

- (2) The reregistration of a company does not—
- (a) create a new legal entity;
 - (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity;
 - (c) affect the property, rights or obligations of the company; or
 - (d) affect proceedings by or against the company.

(3) Proceedings that could have been commenced or continued by or against the company before reregistration may be commenced or continued by or against the company after reregistration.

Failure to reregister

759.—(1) If a company fails to apply for reregistration of the company within the period specified in section 753(1) or within the period extended by the Minister in section 755(3), as the case may be, the company is deemed to have been deregistered on the day after the date appointed by the Minister by notice in the Gazette under section 753(1).

(2) Notwithstanding the provisions of this Act, if a company has lodged an application for an extension before the expiration of the period specified in section 753(1) and, after the expiration of the period specified in section 753(1), has still not received the decision of the Minister, the registration of the company is deemed to continue until such time as the company receives the decision of the Minister.

(3) If the Registrar refuses to reregister a company, the Registrar must deregister the company.

Deregistered companies

760. For the avoidance of doubt, sections 605 to 609 apply to a company deregistered under this Part.

Division 2—Foreign companies

Reregistering a foreign company

761.—(1) Notwithstanding other sections of this Act or provisions of any other written law, a foreign company registered under this Act upon the commencement of this section must, on or before the date appointed by the Minister by notice in the Gazette, apply for reregistration of the foreign company under section 762.

(2) Notwithstanding subsection (1), a foreign company registered under this Act on or after the date appointed by the Minister by notice in the Gazette is not required to, and must not, apply for reregistration of the foreign company under section 762.

Application for reregistration

762.—(1) To reregister a foreign company, a foreign company must lodge an application with the Registrar in the prescribed form accompanied by the following in English—

- (a) a certified copy or if a certified copy cannot be obtained, a copy of the instrument and a statutory declaration confirming it is a true and correct copy of the charter, statutes or memorandum and articles of the foreign company or other instrument constituting or defining

the constitution of the foreign company, and, if the instrument is not written in the English language, a certified translation of the document;

- (b) a list of its directors or equivalent officers, containing particulars with respect to its directors that are equivalent to the particulars that are required by this Act to be contained in the register of the directors and secretaries of a foreign company registered under this Act;
 - (c) a statement of all subsisting charges excluding charges in relation to property solely situated outside Fiji;
 - (d) the names and postal addresses of a local agent and a written statement that is in the prescribed form and is made by the local agent; and
 - (e) the full address of its registered office or principal place of business.
- (2) The foreign company must—
- (a) comply with the requirements as prescribed by regulations for the lodgement of the prescribed form application under subsection (1); and
 - (b) have the consents and agreements referred to in the prescribed form application.

(3) After the foreign company is reregistered in accordance with the provisions of this Act, the foreign company must keep the consents and agreements referred to in subsection (2)(b).

(4) Without limiting the application of the Personal Property Securities Act 2017, if any charge, being a charge which ought to have been included in the statement required under subsection (1)(c), is not so included, it shall be void as regards property in Fiji against the liquidator and any creditor of the foreign company.

Application for extension

763.—(1) A foreign company may, before the expiration of the period specified in section 761(1), apply for an extension of the period under subsection (2).

(2) To apply for an extension of the period, the foreign company must lodge an application with the Minister in the prescribed form.

(3) The Minister may extend the period specified in section 761(1) for the foreign company for such time as the Minister thinks fit.

New certificate of registration

764. Upon reregistration of the foreign company, the Registrar must issue the foreign company with a new certificate of registration in the prescribed form certifying—

- (a) that the foreign company is reregistered; and
- (b) that the foreign company continues to be registered under this Act.

Conclusiveness of new certificate of registration

765. A new certificate of registration issued by the Registrar in respect of any foreign company shall be conclusive evidence that all the requirements of this Part in respect of reregistration and of matters of precedent and incidental thereto have been complied with and that the foreign company is authorised to be reregistered and duly reregistered under this Part.

Effect of reregistration

766.—(1) If the Registrar reregisters a foreign company, the registration of the foreign company is deemed to continue from the day of reregistration until such time as the foreign company's name is struck off the register of foreign companies.

(2) The reregistration of a foreign company does not—

- (a) create a new legal entity;
- (b) prejudice or affect the identity of the body corporate constituted by the foreign company or its continuity as a legal entity;
- (c) affect the property, rights or obligations of the foreign company; or
- (d) affect proceedings by or against the foreign company.

(3) Proceedings that could have been commenced or continued by or against the foreign company before reregistration may be commenced or continued by or against the foreign company after reregistration.

Failure to reregister

767.—(1) If a foreign company fails to apply for reregistration of the foreign company within the period specified in section 761(1) or within the period extended by the Minister in section 763(3), as the case may be, the foreign company's name is deemed to have been struck off the register of foreign companies on the day after the date appointed by the Minister by notice in the Gazette under section 761(1).

(2) Notwithstanding the provisions of this Act, if a foreign company has lodged an application for an extension before the expiration of the period specified in section 761(1) and, after the expiration of the period specified in section 761(1), has still not received the decision of the Minister, the registration of the foreign company is deemed to continue until such time as the foreign company receives the decision of the Minister.

(3) If the Registrar refuses to reregister a foreign company, the Registrar must strike off the foreign company's name from the register of foreign companies kept for the purposes of Part 6.

Foreign companies struck off the register of foreign companies

768.—(1) Where a foreign company's name is struck off the register of foreign companies kept for the purposes of Part 6 under this Division, the foreign company ceases to be registered under Part 6.

(2) For the avoidance of doubt, section 62(9) and 62(10) apply to a foreign company whose name has been struck off the register of foreign companies under this Part.

Division 3—Business names

Reregistering a business name

769.—(1) Notwithstanding other sections of this Act or provisions of any other written law, a firm or person carrying on business in Fiji under a business name registered under this Act upon the commencement of this section must, on or before the date appointed by the Minister by notice in the Gazette, apply for reregistration of the business name for a period of registration as prescribed by regulations under section 770.

(2) Notwithstanding subsection (1), a firm or person carrying on business in Fiji under a business name registered under this Act on or after the date appointed by the Minister by notice in the Gazette is not required to, and must not, apply for reregistration of the business name for a period of registration under section 770.

Application for reregistration

770.—(1) To reregister a business name, a firm or person must lodge an application with the Registrar in the prescribed form.

(2) The firm or person must—

- (a) comply with the requirements as prescribed by regulations for the lodgement of the prescribed form application under subsection (1); and
- (b) have the consents and agreements referred to in the prescribed form application.

(3) After the business name is reregistered in accordance with the provisions of this Act, the firm or person must keep the consents and agreements under subsection (2)(b).

Registrar's power to ask applicant for further information

771.—(1) The Registrar may, by written notice given to an applicant for reregistration 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 reregister, or refuse to reregister, 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.

Application for extension

772.—(1) A firm or person to whom a business name is registered under this Act may, before the expiration of the period specified in section 769(1), apply for an extension of the period under subsection (2).

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

(3) The Minister may extend the period specified in section 769(1) for the firm or person for such time as the Minister thinks fit.

New certificate of registration

773. Upon reregistration of the business name, the Registrar must issue the firm or person to whom the business name is reregistered with a new certificate of registration in the prescribed form certifying—

- (a) that the business name is reregistered;
- (b) that the business name continues to be registered under this Act;
- (c) that the business name's date of registration continues to be the date on which the business name had been registered under this Act; and
- (d) the period of registration.

Conclusiveness of new certificate of registration

774. A new certificate of registration given by the Registrar in respect of any business name shall be conclusive evidence that all the requirements of this Part in respect of reregistration and of matters of precedent and incidental thereto have been complied with, that the business name is authorised to be reregistered and duly reregistered under this Part and that the business name of the firm or person is the business name specified in the new certificate of registration.

Effect of reregistration

775.—(1) If the Registrar reregisters a business name, the business name registration is deemed to continue from the day of reregistration until the expiration of the period of registration of the business name or such time as the business name is deregistered, whichever is earlier.

(2) The reregistration of a business name does not create a new registration of a business name.

Failure to reregister

776.—(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 reregistration of the business name within the period specified in section 769(1) or within the period extended by the Minister in section 772(3), as the case may be, the business name is deemed to have been deregistered on the day after the date appointed by the Minister by notice in the Gazette under section 769(1) and the Registrar must remove the business name from the register of business names.

(2) Notwithstanding the provisions of this Act, if a firm or person to whom a business name is registered under this Act has lodged an application for an extension before the expiration of the period specified in section 769(1) and, after the expiration of the period specified in section 769(1), has still not received the decision of the Minister, the business name registration is deemed to continue until such time as the firm or person receives the decision of the Registrar.

(3) If the Registrar refuses to reregister a business name, the business name registration is deemed to have been deregistered on the day after the date appointed by the Minister by notice in the Gazette under section 769(1) and the Registrar must remove the business name from the register of business names.

Division 4—Disputes

Application to prohibit reregistration

777.—(1) A person as prescribed by regulations may apply to the court for an order prohibiting—

- (a) a company or foreign company from making an application for reregistration under this Part; or
- (b) a firm or person from making an application for reregistration of a business name under this Part.

(2) The powers of the court to deal with an application under subsection (1) are as prescribed by regulations.

Division 5—Amnesty

Amnesty for non-compliance

778. Notwithstanding the provisions of this Act or any other written law, prior to the commencement of this Part, if a firm or person has failed to comply with a notification requirement under a repealed Act or with a requirement of section 39, 50, 51, 59, 89, 90, 129, 211, 212 or 223, the firm or person is no longer required to comply with such requirement or pay any applicable fee for such acts or omissions prior to the commencement of this Part.”

Passed by the Parliament of the Republic of Fiji this 21st day of June 2019.