

Amendments brought to the Companies Act 2001 through Act No. 18 of 2008

Effective date 19 July 2008

5. Companies Act 2001 amended

The Companies Act 2001 is amended –

- (a) In section 2, by repealing the definitions of “investment company” and replacing it by the following definition –

“investment company” means a company whose business consists of investing its funds principally in securities with the aim of spreading investment risks and giving members of the company the benefit of the results of the management of its funds;

- (b) in section 12 –

- (i) in subsection (2) -

(A) in paragraph (b), by deleting the words “does not comply” and replacing them by the words “is not in accordance”;

(B) in paragraph (i), by deleting the words “fails to comply” and replacing them by the words “is not in accordance”;

- (ii) in subsection (3)-

(A) by deleting the words “give written notice in that behalf to the person” and replacing them by the words “in that behalf, in writing or by using such means of communication as may be determined by him, notify the person”;

(B) by deleting the words “within such time limit” and replacing them by the words “on payment of the prescribed fee and within such time limit”;

- (iii) by inserting after subsection (4), the following subsection-

(4A) Where a document is not collected for the purposes of subsection (3)(a) or is not resubmitted within the time limit specified in a notice under subsection (3)(b), the document shall –

- (a) be deemed not to have been filed; and

- (b) in the case of a document not collected for the purposes of subsection (3)(a), be disposed of by the Registrar in such manner as he may determine.
- (c) in section 115(4)(a), by deleting the word “approval” and replacing it by the word “adoption”;
- (d) in subsection 287(3)(b), by deleting the words “two subscribers or shareholders” and replacing them by the words “one subscriber or shareholder”;
- (e) by inserting after section 342, the following section –

342A. Compounding of offences

- (1) (a) Notwithstanding section 342 (1), the Registrar may offer to compound an offence committed by a person under this Act where the person agrees in writing to pay an amount acceptable to the Registrar not exceeding the maximum penalty imposable under this Act for that offence.
- (b) For the purposes of paragraph (a), the Registrar shall chair a committee which shall include of 2 other senior officers from his staff designated by him.
- (2) Every agreement under subsection (1) shall –
 - (a) be made in writing under the hand of the Registrar and the person and witnessed by an officer; and
 - (b) be submitted to the Director of Public Prosecutions for his approval.
- (3) The agreement shall be final and conclusive where it is approved by the Director of Public Prosecutions and a copy shall be delivered to the person.
- (4) Where the Registrar compounds an offence in accordance with this section, no further proceedings shall be taken in respect of the offence so compounded against the person.
- (f) by repealing section 346 and replacing it by the following section -

346. Certificate of current standing

(1) The Registrar shall, upon request by any person, issue a certificate of current standing under his hand and seal certifying that a company is of current standing where the Registrar is satisfied that the name of the company is on the register.

(2) A certificate of current standing under subsection (1) shall contain a statement as to whether –

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
- (c) the company has paid all fees, licence fees due and payable;
- (d) the company is in the process of being wound up and dissolved; or
- (e) any proceedings to remove the company from the register have been instituted.

(3) This section shall not apply to a private company holding a Category 1 or Category 2 Global Business Licence, unless the person who makes the request is a shareholder, officer, management company or registered agent of that company.

(g) in section 355 –

- (i) in subsection (5), by deleting the words “the resolution has been filed with the Registrar” and replacing them by the words “the resolution, or the notice for striking-off, has been filed or issued, or in the case of a commercial partnership, the deed of dissolution or any document to that effect has been filed, with the Registrar;
- (ii) by adding, after subsection (5), the following new subsections –

(6) Where a commercial partnership files its deed of dissolution or any document to that effect with the Registrar, it shall pay to the Registrar any outstanding prescribed fees.

(7) The Registrar may waive the difference between the prescribed fee payable after the due date and the prescribed fee payable within the due date where he is satisfied that failure to pay the prescribed fee within the due date was attributable to a reasonable cause.

(8) In the exercise of his power under subsection (7), the Registrar shall record, in writing, the reasons for waiving the difference referred to in that subsection.

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