



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE COMPANIES (INSOLVENCY & RECEIVERSHIP) BILL 2009

National Parliament Paper No. 3 of 2009

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1. TERMS OF REFERENCE

To examine and report to Parliament the Committee's observations and recommendations on:-

"The Companies (Insolvency & Receivership) Bill 2009"

2. FUNCTIONS OF THE COMMITTEE

In accordance with Section 62 of the Constitution, as read with Section 71 of the Standing Orders, the Bills and Legislation Committee's functions in addition to the provisions in Standing Orders 50 and 55, shall be to:-

- a. examine such matters as may be referred to it by Parliament or the Government;
- b. review all draft legislation prepared for introduction into Parliament;
- c. examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- d. monitor all motions adopted by Parliament which require legislative action;
- e. review current or proposed legislative measures to the extent it deems necessary;
- f. examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- g. make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

3. MEMBERSHIP

The Membership of the Bills & Legislation Committee comprises:

Hon. Severino Nuaiasi, MP (Chairman)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

4. PURPOSE OF THE BILL

The objects and reasons as stated in the Bill are as follows:

- “(a) to provide a modern and up to date framework which will cover companies when they are insolvent or placed in receivership;
- (b) to provide a more streamline approach to the company law framework and separate the general company law from the corporate insolvency provisions;
- (c) to provide a clearer statement of law relating to receivers which currently sits within the common law; and
- (d) to facilitate better access and provide user friendly law of insolvency and receivership.

5. BACKGROUND – WHY SOLOMON ISLANDS NEEDS A COMPANIES (INSOLVENCY & RECEIVERSHIP) ACT

The purpose of the proposed Companies (Insolvency and Receiverships) Act is to provide a modern and up-to-date framework which will cover companies when they are insolvent or are placed in receivership. The current Companies Act contains provisions which relate to company insolvency. Following the consultations it was decided that the insolvency provisions would be better removed from the Companies Act and placed in a separate Act. This would support a more streamlined approach to the company law framework. It would also allow a clearer statement of law relating to receivers which currently sits within the common law. This makes access difficult for practitioners who need to act as receivers for companies. An Act which contained all the provisions covering corporate insolvency would facilitate better access and be more user friendly model. The point should also be made that the Companies (Insolvency and Receiverships) Act would receive far less use than the Companies Act. It should be noted that many countries are now separating corporate insolvency provisions from general Company Law statutes.

6. **OBSERVATIONS ON THE COMPANIES (INSOLVENCY & RECEIVERSHIP) BILL 2009**

The Committee held its public hearings on the bill simultaneously with the Companies Bill 2009. The first hearings were conducted on Friday 12 December 2008 and then the Committee met again on Tuesday 10 March 2009 to receive evidence from the relevant government ministry and key stakeholders (see Appendix 1). The following witnesses appeared before the Committee:

- Permanent Secretary and Officials of the Ministry of Commerce, Industries and Employment,
- Companies Consultant, Asian Development Bank
- Business and Consumer Banking Manager, Westpac Bank
- Country Manager, Bank South Pacific
- General Secretary of the Solomon Islands Chamber of Commerce
- Technical Director, Small & Medium Enterprises Council of Solomon Islands

At the outset, the Committee was pleased with the assistance from the Asian Development Bank and Ministry of Commerce for the level of consultation that had taken place in relation to the development of this Bill. The Committee also wishes to acknowledge the House for given it sufficient time to review and consult.

The Act consists of three Parts, with each Part subdivided into sections. A summary of each Part of the Act is as follows.

The first Part of the Act establishes the commencement date, an overview, how the Act is structured and the interpretations.

The second Part of the Act deals with various procedures for insolvent companies. Sub Part 1 deals with compromised with creditors and Sub Part 2 deals with liquidations.

Sub Part 1 allows certain persons to propose a compromise i.e. cancellation of part of a debt, varying the rights of its creditors or altering the company's rules that affects the likelihood of the company being able to pay its debts.

The Committee notes that it also possible under the Act for a compromise to be later varied or terminated. The costs of the compromise are met either by the company, the receiver or liquidator or any other person.

Sub Part 2 provides for liquidations. This section covers aspects such as the appointment of a liquidator, the establishment of clear rules relating to notices, obligations of liquidators and liquidators rights to the company's documents, and the priority of payment of creditors by the liquidator

The Committee also notes that in Sub Part 2 liquidation will be deemed complete when the final report is completed outlining that all known assets have been disclaimed, realised or distributed and proceeds of realisation have been distributed. The Act also provides for a termination of liquidation by the Court. In addition there are provisions which relay to liquidation of overseas companies and community companies.

Part 3 of the Act provides a statutory framework for receiverships. The purpose of this is to provide guidance to those who may be appointed as receivers. In this Part the Act provides for the appointment of receivers, it imposes certain obligations towards the receiver and outlines the reporting requirements for receivers.

The Committee further notes that the Act also makes provisions for the payment of preferential claims in a receivership. In short, the notice of the end of the receivership must be provided to the Registrar and the Court may order that a receivership be terminated in certain circumstances. Part 3 also provides the Cabinet with the statutory authority to make regulations covering fees, forms, etc.

Finally the Act contains 13 schedules which cover areas such as office or liquidators, creditor claims and office of receiver. These schedules have been drafted in a manner which simplifies the requirements and will make their application more effective and user friendly.

The Committee has no objections nor any amendments to **“The Companies (Insolvency & Receivership) Bill 2009”**. It strongly supports the modernization and update of current legislation, and would like to see more streamlined approaches as done with the companies framework be applied to other important legislations.

Although the proposed Act will be in less use than the Companies Bill the Committee believes that there are challenges which need to be monitored by the ministry and the government as a whole. Reference is made to the Committee's report on its examination of the Companies Bill 2009 (**National parliament paper no. 2 of 2009**). The report highlights certain issues which the Committee sees as also relevant especially in relation to implementation.

7. RECOMMENDATIONS

The Committee therefore recommends that the Bill be debated in Parliament, And further recommends that the government educate the general populace on the aspects of the bill as part of the implementation process of the overall Companies framework and report to Parliament 12 months after the commencement of the Act.



Hon. Severino Nuaiasi
Chairman
Bills & Legislation Committee
17 March 2009

APPENDIX 1: LIST OF WITNESSES & STAKEHOLDERS

- Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and Employment
- Mr. Terry Reid, Consultant, Asian Development Bank
- Mr. Rupeni Nawaqakuta, Advisor to the Legal Draftsman
- Mr. Norman Hiropuhi, Ministry of Commerce
- Mr. Primo Afeau - Barrister/Solicitor
- Mr. Paul Amau, General Secretary, Solomon Islands Chamber of Commerce
- Mr. Mark Corcoran, Country Manager, Bank South Pacific
- Mr. Leliana Firisua, Technical Director, Small & Medium Enterprises Council of Solomon Islands (SMEC)
- Mr. Cameron Waterson, Manager, Business and Consumer Banking, Westpac



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings Meeting No. 26 of 2008

Friday 12 December 2008, Parliament House, 10:00am

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Isaach Inoke Tosika, MP
Hon. Augustine Taneko, MP
Hon. Siriako Usa, MP

Absent

Hon. Japhet Waipora, MP
Hon. Nelson Ne'e, MP

Witnesses

Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and Employment
Terry Reid, Consultant, Asian Development Bank
Mr. Rupeni Nawaqakuta, Advisor to the Legal Draftsman
Mr. Norman Hiropuhi, Ministry of Commerce

Secretariat

Mr. Warren Cahill, UNDP Parliamentary Strengthening Project Manager
Ms. Alice Willy, Committee Secretariat - Legal
Mr. Jude Devesi, Committee Secretariat

2. Opening Remarks & Prayers

The Chair welcomed Members of the Committee and secretariat staff. Hon. Inoke opened with a word of prayer.

3. Confirmation of Minutes of the Previous Meeting and Matters Arising

The minutes of the committee meeting held on 26 November 2008 were adopted on a motion by Hon. Sogavare. There were no matters arising.

4. Deliberation on Issues and Questions for the Public Hearing

The Committee considered the Chair's draft questions that were prepared by the secretariat. The Committee noted that the purpose of this meeting was to put as much information in the public domain prior to the consideration of the bills by the House at the next sitting in March 2009.

5. Public Hearing on the Companies Bill 2008 and the Companies (Insolvency and Receivership) Bill 2008

The Chair welcomed the witnesses and made an opening statement.

The Permanent Secretary to the Ministry of Commerce Industries and Employment made a statement to the Committee. This statement was tabled before the Committee.

The Technical Advisor to the Ministry briefed the Committee on the contents of the bills. He tabled the Consultation Summary in relation to the two bills.

The Committee questioned the witnesses.

A copy of the letter from the Auditor General to the Permanent Secretary on the proposed amendments to clause 130 (3) of the Companies Bill 2008 was tabled for the information of the Committee by the Permanent Secretary.

Evidence Concluded.

6. Close

The Chair thanked the PS and Officials for their attendance. Hon. Usa closed the Committee's deliberations with a word of prayer.

Meeting closed at 12:30 pm



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings Meeting No. 1 of 2009

Tuesday 10 March 2009, Conference Room 2, Parliament House, 10:00am

1. Members Present

Hon. Hon. Severino Nuaiasi, MP
Hon. Isaach Inoke Tosika, MP
Hon. Nelson Ne'e, MP
Hon. Japhet Waipora, MP

Secretariat

Mr. David Luta Kusilifu, Committee Secretariat

Witnesses

Mr. Primo Afeau - Barrister/Solicitor
Mr. Paul Amau, General Secretary, Solomon Islands Chamber of Commerce
Mr. Mark Corcoran, Country Manager, Bank South Pacific
Mr. Leliana Firisua, Technical Director, Small & Medium Enterprises Council of Solomon Islands (SMEC)
Mr. Cameron Waterson, Manager, Business and Consumer Banking, Westpac

In Attendance

Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and Employment

2. Opening Remarks & Prayers

The Chair welcomed Members of the Committee and secretariat staff.
Honorable Inoke opened proceedings with a word of prayer.

The Chair then gave his opening remarks.

3. Consideration of the Companies Bill 2009 and the Companies (Insolvency & Receivership) Bill 2009

The witnesses made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

Discussion ensued.

Evidence Concluded.

4. Close

The Chair thanked the witnesses for their attendance. Hon. Waipora closed the Committee's deliberations with a word of prayer.

Meeting closed at 11:15 am.