

Navigating Disclosure Obligations and Companies Act

Section 219

Listing Rules Guidance Note 02

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**JOINT GUIDANCE
NOTE FROM PNGX,
INVESTMENT
PROMOTION
AUTHORITY AND
SECURITIES
COMMISSION OF
PAPUA NEW
GUINEA**

This guidance for listed companies is jointly issued by the Securities Commission of Papua New Guinea, responsible for the *Capital Market Act* 2015 (**Capital Market Act**); the Investment Promotion Authority, responsible for the *Companies Act* 1997 (**Companies Act**); and PNGX Markets, responsible for the PNGX Listing Rules (**Listing Rules**).

The issuance of a joint statement reinforces the commitment of all three parties to promote confidence in the PNG capital markets. This collaborative effort ensures that listed companies are aware of, and comply with, their obligations under all applicable laws and regulations and underscores the importance of compliance and transparency in ensuring robust investor protection and market integrity.

PNGX's market operates within a continuous disclosure framework and the Listing Rules impose continuous disclosure obligations on the listed issuers. This guidance note provides guidance to issuers listed on the PNGX market who are regulated under the Listing Rules.

Listed companies operate under stringent regulatory frameworks to ensure transparency and protect investors. These obligations are primarily governed by the Companies Act, the Capital Market Act, and the Listing Rules. Each of these establishes specific requirements for continuous disclosure and shareholder communication, which can sometimes lead to potential conflicts in compliance.

In particular, Section 219 of the Companies Act may give rise to compliance conflicts with Section 443 of the Capital Market Act unless carefully navigated.

THE MAIN POINTS

1. There is an inherent risk of conflict between a listed company's obligation to provide information to shareholders under the Companies Act and its duty to comply with the Listing Rules and the Capital Market Act.

	2. Listed companies must carefully assess whether information requested under Section 219(1) of the Companies Act constitutes material, market-sensitive information. 3. Companies should leverage Section 219(4) of the Companies Act to refuse requests if providing the information would contravene the Listing Rules or other legal obligations.
RELATED MATERIAL	• Capital Market Act • Companies Act

Information requests by Shareholders

Companies Act 1997

Part XII of the Companies Act deals with disclosure to shareholders. Division 1 sets out the disclosure requirements of companies while Division 2 sets out the way shareholders may acquire information from the company.

Shareholders may request information from a company, under Section 219(1) of the Companies Act. However, Section 219(4) provides that companies can refuse information requests under conditions including, but not limited to, those outlined in subsections (a) to (c). These exemptions aim to protect sensitive business information and ensure compliance with other legal obligations.

Capital Market Act 2015

Section 443(1)(b) of the Capital Market Act requires companies to adhere to the Listing Rules as part of their regulatory obligations. This legislation provides the legal foundation for market operations and investor protection, reinforcing the importance of compliance with continuous disclosure obligations.

Continuous Disclosure under PNGX Listing Rules

The Listing Rules, particularly Listing Rule 4.1, mandate continuous disclosure of material information. This means listed companies must immediately inform the market of any information that could affect the price or value of their securities. This ensures all investors have equal access to crucial information, thus maintaining market integrity and fairness. The PNGX Listing Rules Guidance Note 1 on Continuous Disclosure provides detailed guidance on these obligations and is an essential resource for listed companies to understand their responsibilities under the continuous disclosure framework.

Potential Conflicts in Disclosure Obligations

There is an inherent risk of conflict between a listed company's obligation to provide information to shareholders under the Companies Act and its duty to comply with the Listing Rules and the Capital Market Act. For example, while a shareholder of a listed company may request certain information, disclosing such information could violate the continuous disclosure obligations if it involves material information not yet released to the market.

Conflicting Obligations

When a shareholder of a listed company requests information in accordance with Section 219(1) of the Companies Act, listed companies must carefully assess whether the requested information is material (as that term is defined in the Listing Rules) and has not been disclosed to the market. Providing potentially material information privately could breach Listing Rule 4.1, which requires material information to be shared with the market first.

Under Section 219(4) of the Companies Act, listed companies can refuse to provide information that is confidential, incomplete, or would breach other legal obligations. This aligns with the Listing Rules, which also allow for non-disclosure under certain conditions to protect the integrity of the market and the company's operations.

Considerations for Inside Information and Insider Trading Risks

When providing information in response to a request under Section 219(1) of the Companies Act, companies need to be vigilant about the potential implications of disclosing inside information. Part VII Division 2 of the Capital Market Act outlines the legal framework regarding insider trading, which necessitates careful consideration by companies to prevent unintended consequences.

Providing material non-public information to a shareholder may render them an insider, subjecting them to insider trading provisions under the Capital Market Act. Listed companies must evaluate whether the information provided could be classified as inside information, thus necessitating compliance with insider trading requirements in the Capital Markets Act.

Listed companies should consider whether the disclosure increases the risk of insider trading. If the recipient of the information trades based on it before it becomes public, this could lead to legal repercussions for both the listed company and the recipient of the information.

Listed companies may choose to provide a warning to the individual requesting the information, highlighting their responsibilities and potential legal obligations as an insider. This includes informing them about the prohibitions on trading based on non-public information and the penalties for breaching these laws.

Managing Disclosure and Compliance

To navigate these complexities, listed companies in PNG should:

1. Establish clear internal protocols to identify and assess material information promptly. This includes training for directors and key personnel on disclosure obligations and potential conflicts.
2. Engage with legal and compliance experts to understand the nuances of disclosure requirements and ensure alignment with all regulatory obligations and the Listing Rules.
3. Maintain open communication with shareholders, emphasizing the importance of market integrity and the company's legal obligations. This can help manage expectations and reduce the risk of conflicts.
4. When considering whether to disclose information in response to a shareholder request, companies should assess whether any legal exemptions apply and document the rationale for their decision.

Balancing the disclosure obligations that listed companies have to their shareholders under the Companies Act with the requirements of the Listing Rules and the Capital Market Act is crucial for listed companies. By understanding their obligations and implementing effective compliance strategies, listed companies can protect both their interests and those of their investors, ensuring transparency and trust in the financial markets. The potential for conflict underscores the importance of vigilance and strategic management in disclosure practices.

Awareness of insider trading risks and proactive measures to mitigate them are essential for maintaining market integrity, legal compliance and compliance with the Listing Rules.

Summary

Market-Sensitive Information and Continuous Disclosure

Listed companies must carefully assess whether information requested under Section 219(1) of the Companies Act constitutes material, market-sensitive information. Listing Rule 4.1 mandates the immediate disclosure of such information to the market. Non-compliance with this obligation could breach Section 443(1) of the Capital Market Act, thereby jeopardizing market integrity.

Balancing Disclosure Obligations

Companies should leverage Section 219(4) of the Companies Act to refuse requests if providing the information would contravene Listing Rules or other legal obligations.