

No. 18 of 2002.

Independent Public Business Corporation of Papua New Guinea Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

Independent Public Business Corporation of Papua New Guinea Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

No of 2002.

AN ACT

entitled

Independent Public Business Corporation of Papua New Guinea Act 2002,

Being an Act –

- (a) to provide for the establishment and management of the Independent Public Business Corporation of Papua New Guinea to hold certain assets including interests in business enterprises as trustee for the benefit of the State; and
- (b) to succeed to the assets and liabilities of the Privatization Commission; and
- (c) to act as trustee of other prescribed trusts; and
- (d) for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

- (1) This Act, to the extent that it regulates or restricts a right or freedom conferred by Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –
- (a) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
 - (b) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
 - (c) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
 - (d) the right to privacy conferred by Section 49 of the *Constitution*; and
 - (e) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

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(2) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this law relates to a matter of national importance.

(3) For the purposes of Subsection 26(3) of the ***Constitution***, the position of Director (including Managing Director) is declared to be a public office to which Subdivision 111.3.C (***Leadership Code***) applies.

2. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears –
- “assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any corporation, securities, choses in action and documents of any kind;
 - “Board” means the Directors acting collectively;
 - “business enterprise” means an enterprise engaged, or proposing to become engaged, in the carrying on of business;
 - “Chairman” means the chairman of the Board appointed under Section 12;
 - “close relative”, in relation to any person, means –
 - (a) any parent, spouse (current or previous), child, brother or sister of that person; or
 - (b) any parent, child, brother or sister of a spouse (current or previous) of that person; or
 - (c) any aunt, uncle, nephew or niece of that person or of that person’s spouse (current or previous); or
 - (d) any child of the brother or sister of a parent of –
 - (i) that person; or
 - (ii) that person’s spouse (current or previous); or
 - (e) the spouse (current or previous) of any person referred to in Paragraphs (a) to (d) (inclusive);
 - “commencement date” means the date notified in the National Gazette as the date for commencement of the operation of this Act;
 - “Deputy Chairman” means the Deputy Chairman of the Board appointed under Section 12;
 - “Director” means a person appointed as a director of the Corporation under Section 11;
 - “enterprise” means –
 - (a) a corporation; or
 - (b) a partnership; or
 - (c) a firm; or
 - (d) a trust; or
 - (e) any other person or body or association of persons;
 - “General Business Trust” means the trust established by Section 31;

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- “IPBC Working Capital Fund” means the fund established under Section 34;
- “liabilities” means liabilities, debts and obligations (whether present or future and whether vested or contingent);
- “Managing Director” means the Managing Director appointed under Section 23;
- “People’s Unit Trust” means the unit trust established on or before the succession date by the Privatization Commission and initially designated as The People’s Unit Trust of Papua New Guinea;
- “Privatization Commission” means the commission established by Section 2 of the ***Privatization Act 1999***;
- “Secretary” means the Secretary to the Board appointed under Section 11;
- “succession date” means –
- (a) 30 June 2002; or
 - (b) such earlier date specified by the National Executive Council for this purpose and published in the National Gazette at least 30 days earlier.
- “this Act” includes any regulations;
- “Trust” means the General Business Trust and “Trusts” includes any other trust of which the Board becomes trustee in accordance with this Act.

(2) A reference to any association or corporation named in Section 11(1)(a) to (d) (inclusive) shall be taken to include a reference to any successor of that association or corporation, and includes any person, association or corporation notified in the National Gazette in accordance with Section 56 in respect of that association or corporation.

3. APPLICATION TO THE STATE.

This Act binds the State and, notwithstanding provisions of trust or general law to the contrary, neither the State nor any other beneficiary shall exercise any rights as a beneficiary of the Trusts except as permitted by, and in accordance with, this Act.

4. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) Subject to Subsection 3, the ***Public Finances (Management) Act 1995*** applies to, and in relation to, the Corporation and, to the extent it is capable of application, the Trusts.

(2) Each of the Corporation and the Trusts are trading enterprises for the purposes of Sections 62 of the ***Public Finances (Management) Act 1995***.

(3) Sections 51, 52, 58, 59, 61 and 63 of the ***Public Finances (Management) Act 1995*** do not apply to, or in relation to, the Corporation or the Trusts.

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5. INCONSISTENCY WITH PRIVATIZATION ACT.

To the extent that doing any matter or thing authorized or permitted by, or other wise giving full effect to, this Act is inconsistent with, or contrary to the *Privatization Act 1999*, then this Act necessarily amends, repeals or modifies that Act to the extent necessary to enable that matter or thing to be done, or full effect to be given to, this Act and, without limitation –

- (a) the Privatization Commission may vest or transfer any of its assets and liabilities in or to the Corporation; and
- (b) the Corporation may have access to the use of the resources and staff of the Privatization Commission; and
- (c) the Managing Director of the Privatization Commission may act simultaneously as Managing Director,

as authorized or permitted by this Act notwithstanding the provisions of the *Privatization Act 1999*.

PART II. – INDEPENDENT PUBLIC BUSINESS CORPORATION.

6. ESTABLISHMENT OF THE CORPORATION.

(1) An entity called Independent Public Business Corporation of Papua New Guinea is hereby established.

- (2) The Corporation -
 - (a) is a corporation with perpetual succession; and
 - (b) shall have a seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name.

(3) All courts judges and persons acting in a judicial capacity shall take judicial notice of the seal of the Corporation affixed to a document, and shall presume that it was duly affixed, until the contrary is proved.

(4) Subject to this Act, the Directors are responsible for the management and control of the business and affairs of the Corporation and the Trusts and for the performance of the functions and duties, and exercise of the powers and authorities, of the Corporation under this Act.

(5) The Corporation shall pursue its objects and perform its functions and duties and exercise its powers and authorities -

- (a) independently of, and free from, interference, direction or influence by the State, Ministers or members of the National Parliament or other provincial or local governments or officers of the public service other than as provided expressly in this or any other Act; and
- (b) in accordance with sound business principles and the care, diligence and skill that a prudent person of business would adopt or exercise in similar circumstances.

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7. OBJECTS OF THE CORPORATION.

(1) The Corporation is to act as trustee of the Trust and hold assets vested in it as trustee for the benefit of the State subject to this Act.

(2) The Corporation is to succeed to, and be vested with, assets and liabilities of the Privatization Commission in accordance with this Act, and, without limitation, shall become trustee of any trust of which the Privatization Commission is trustee on the succession date in place of the Privatization Commission and subject to the terms of any such trust.

(3) The Corporation shall act as trustee of other trusts for the benefit of other persons (including trusts for the benefit of employees which may be established as part of the privatization process under the *Privatization Act 1999*) with the approval of the National Executive Council and as prescribed.

8. FUNCTIONS OF THE CORPORATION.

(1) The Corporation shall administer the Trusts and monitor the performance of the assets of the Trust in such manner as provided under this Act and shall perform such other functions as are required under this Act.

(2) Without limiting the generality of Subsections (1) but subject to the provisions of this Act, the Corporation –

- (a) shall actively pursue the sale or disposal of the assets of the General Business Trust in accordance with timetables and within policy guidelines –
 - (i) agreed to from time to time with the Departmental Head of the Department responsible for treasury matters and approved by the National Executive Council; and
 - (ii) published by the Corporation in the National Gazette; and
- (b) may not initiate acquisition of assets for any of the Trusts but shall acquire assets as required, authorized or permitted under this Act and may take up opportunities to acquire assets which arise as an incident of holding other assets for each of the Trusts and shall monitor the performance of, and exercise the responsibilities attaching to, the assets of the Trusts (including exercising voting rights); and
- (c) may determine policies regarding –
 - (i) the conduct of its affairs and the affairs of any of the Trusts; and
 - (ii) the administration, management and control of the Corporation and any of the Trusts; and
- (d) may give such directions to and exercise such control over the Managing Director and other officers and employees of the Corporation as it thinks fit; and
- (e) has such other functions and duties as are prescribed by this Act or any other Act.

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9. POWERS OF THE CORPORATION.

(1) The Corporation has power to do in the country or elsewhere all things necessary or convenient to be done for or in connection with or otherwise incidental to the performance of its functions and duties.

- (2) In its capacity as trustee of the Trusts, the Corporation has all the powers –
- (a) in respect of each of the Trusts that it is possible to confer on a trustee; and
 - (b) as if it were the absolute owner of the relevant assets and acting in its personal capacity; and
 - (c) necessary for fulfilling its obligations under this Act and the terms of the relevant trust,

but subject always to the provisions of this Act.

(3) Without limiting the generality of Subsections (1) and (2), subject to this Act, the Corporation (both in its capacity as trustee of each of the Trusts and otherwise) has power to –

- (a) enter into arrangements for the formation, management, acquisition, sale, restructuring or liquidation of business enterprises; and
- (b) subscribe for or otherwise acquire shares or other interests in the nature of equity in business enterprises; and
- (c) procure or cause to be allotted, issued, sold, disposed of or otherwise dealt with fully or partly paid shares, units or equity interests in business enterprises; and
- (d) receive and disburse moneys in accordance with this Act for the purpose of performing its functions; and
- (e) deal with shares, stock, units debentures, options, warrants or other securities or financial instruments or interests in relation to a business enterprise with the same power as that of a natural person; and
- (f) carry on any business or undertaking wheresoever situated; and
- (g) manage the affairs of any business enterprise or undertaking; and
- (h) enter into any contract, deed, instrument or agreement; and
- (i) deal with land, any interest in any land or any lease with the same power as that of a natural person; and
- (j) appoint attorneys, agents, nominee or representative; and
- (k) act as trustee, attorney, agent, nominee or representative; and
- (l) appoint any person or persons to be members of boards of directors or other controlling or governing bodies of business enterprises provided such persons would not be disqualified from being a Director under any of Section 11(5)(a) and (b)(i), (iii) to (vii) (inclusive) or (ix); and
- (m) exercise any right to vote or other power or right attaching to any asset; and

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- (n) adopt such means of making known or advertising the activities of the Corporation as the Corporation thinks fit; and
 - (o) do anything necessary or convenient for or incidental to the purpose of its functions or powers,
- each of which paragraphs shall be a separate and distinct power and none of which is to be limited by any other.

- (4) Except as expressly provided in this Act, the Corporation shall not –
 - (a) borrow or lend money or enter into any other financial accommodation arrangements; or
 - (b) give any security over or charge assets; or
 - (c) provide any guarantee, indemnity or other financial assurance with respect to any liability.

(5) In exercising the power of appointment referred to in Subsection 3(l), the Corporation may appoint any of the Managing Director or the Directors appointed under Section 11(1)(a) to (d) (inclusive) to such positions, provided that only one of such persons may be appointed to any such position in the same business enterprise.

10. DELEGATION BY THE BOARD.

The Board may, by written instrument, delegate to any person, body or company (including the Chairman, the Managing Director, any Director or committee of Directors), all or any of the Corporation's functions, duties, powers and authorities (except this power of delegation other than to the extent provided in this Act).

11. DIRECTORS.

- (1) The Directors shall be –
 - (a) a person appointed by The Papua New Guinea Institute of Directors Inc.; and
 - (b) a person appointed by The Papua New Guinea Chamber of Commerce and Industry Limited; and
 - (c) a person appointed by the Port Moresby Stock Exchange Limited; and
 - (d) a person appointed by Transparency International (PNG) Inc.; and
 - (e) the Departmental Head of the Department responsible for justice matters, *ex officio*, or a person nominated by him in writing from time to time to attend meetings and discharge the responsibilities as Director in his place; and
 - (f) the Departmental Head of the Department responsible for finance matters, *ex officio*, or a person nominated by him in writing from time to time to attend meetings and discharge the responsibilities as Director in his place; and
 - (g) the Managing Director, *ex officio*.

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- (2) Upon an appointment being made under Subsection (1)(a) to (d) (inclusive), the name of an appointee –
- (a) shall be notified in writing to the Minister within seven days of the appointment being made and (except for the initial appointees) to the Secretary by the appointor; and
 - (b) shall be notified by notice in the National Gazette by the Minister.
- (3) Subject to this Act, a member of the Board, other than an *ex officio* member –
- (a) shall be appointed for a term of three years; and
 - (b) is eligible for reappointment.
- (4) The names of the initial appointees under Subsection (1)(a) to (d) (inclusive) shall have been notified –
- (a) to the Minister by the relevant appointees; and
 - (b) in the National Gazette by the Minister,
- on or before the commencement date to take effect on that date, and the terms of the initial appointments shall be –
- (c) in the case of the appointment under Subsection (1)(a) – one year from the commencement date; and
 - (d) in the case of the appointment under Subsection (1)(b) – two years from the commencement date.
- (5) A Director appointed under Subsection (1)(a) to (d) (inclusive) –
- (a) shall, in the reasonable opinion of his appointor –
 - (i) be competent and of sound judgment for fulfilling the duties of a Director; and
 - (ii) possess professional skills or wide industrial or management experience, and have the ability to meaningfully participate as a Director; and
 - (iii) have a reputable standing within the community and with his or her appointor; and
 - (b) shall not be –
 - (i) or have been convicted of any offence (or found liable civilly for any claim) involving fraud or dishonesty or which may diminish the integrity or reputation of the Board nor have been charged with any such offence and be awaiting trial; and
 - (ii) the holder of office for longer than three successive terms as a Director; and

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- (iii) or have been a bankrupt, or have applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for their benefit; and
 - (iv) of unsound mind as that expression is used in the *Public Health Act* (Chapter 226); and
 - (v) or have been struck off any professional register for disciplinary reasons; and
 - (vi) or have been in the past three years, an elected member of the National Parliament, a Provincial Government or a Local-local Government; and
 - (vii) the holder of any office of profit or other paid appointment made by the State or any registered political party; and
 - (viii) an employee or officer (including director) of any business enterprise in which the Board holds any interest unless appointed to that position by the Board in accordance with this Act; and
 - (ix) a close relative of another Director; and
- (c) shall not have ceased to be a Director within the last three years by reason of either of Section 15(1)(c),(d) or (e).

(6) A person appointed under Subsection (1)(a) to (d) (inclusive) may not, once appointed, be removed by his appointor.

(7) An appointment under Subsection (1)(a) to (d) (inclusive) shall be made by the relevant appointor within two calendar months of that appointor being notified of the obligation to make such appointment, and, in the event that the relevant appointor fails to make an appointment within that time, the Governor of the Bank of Papua New Guinea may make an appointment within a two calendar months of notification of his right to make an appointment on behalf of the relevant appointee.

(8) The Managing Director, or in his absence, the Secretary shall be responsible for giving any notice under Subsection (7).

(9) A person may not be appointed as a Director under Subsection (1)(a) to (d) (inclusive) if, on that person taking office on appointment, the majority of the Directors would not be Papua New Guinea citizens.

(10) Failure to notify an appointment under this section in the National Gazette shall not invalidate the appointment.

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- (11) An appointor referred to in Subsection (1)(a) to (d) (inclusive) –
- (a) shall be paid the sum of K500.00 or such higher fee as is prescribed from time to time; and
 - (b) shall be entitled to be reimbursed by the Board for the cost of any search consultant engaged by that appointor in respect of the exercise of the power of appointment provided that the process of determining the identity and remuneration of such consultant was open and transparent to the satisfaction of the Auditor-General.
- (12) A person may not hold simultaneously more than one position as Director.
- (13) The Directors shall appoint a person other than a Director to be Secretary to the Corporation.
- (14) A Director is not a trustee of any of the Trusts but each Director shall –
- (a) subject to this Act, be individually and collectively responsible for the proper management of each of the Trusts as if the Corporation were a company under the ***Companies Act 1997***, the Directors were the board of directors of that company and that company were acting as trustee; and
 - (b) before entering on his or her duties or exercising any power or authority under this Act, make a declaration of office and secrecy in the form set out in Schedule 1 in the presence of a duly qualified witness in accordance with the ***Oaths, Affirmations and Statutory Declarations Act*** (Chapter 317) and, once a secretary is appointed, deliver that declaration to the Secretary.

12. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Directors, other than the *ex officio* members, shall elect one of their number as Chairman and may elect another of their number as Deputy Chairman, and may replace the Chairman or Deputy Chairman at any time.

(2) Where, for any reason, the Chairman is unable to act, the Deputy Chairman (if any) may –

- (a) exercise all of the powers; and
 - (b) perform all or any of the functions,
- of the Chairman.

13. MEETINGS OF THE BOARD.

(1) Subject to Subsections (2) and (3), the Board shall meet as it resolves or the Chairman determines, provided that it meets at least once in each period of three calendar months.

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(2) Subject to Subsection (3), the Secretary shall, if requested to do so by not less than three Directors, call a meeting of the Board as soon as practicable after receiving the request.

(3) The Secretary shall give to all Directors at least seven days' notice of any meeting of the Board convened under Subsections (1) or (2) personally or by post or by any other means including facsimile or electronic mail to such an address, in respect of a Director, as that Director may have notified from time to time, and each Director shall notify the Secretary from time to time of at least one means of giving such notices other than by post for the most convenient and prompt receipt of such notices, generally or for any specified period.

(4) All Directors may agree on any occasion that the period of notice under Subsection (3) may be reduced or waived.

- (5) At a meeting of the Board –
- (a) a quorum is four Directors present and able to vote; and
 - (b) the Chairman, or in his absence, the Deputy Chairman shall preside and in the absence of both the Chairman and the Deputy Chairman, the Directors present shall elect a Director (other than the Managing Director) to preside; and
 - (c) all matters shall be determined by a majority of the votes of the Directors present, able to vote and voting; and
 - (d) the person presiding has a deliberative vote but does not have a casting vote, and, in the event of an equality of votes on a matter, no decision is made in respect of that matter.

- (6) In respect of each meeting of the Board –
- (a) the Chairman shall cause minutes of the meeting to be recorded and kept; and
 - (b) a draft of the minutes shall be circulated to each Director by the Secretary within 14 days of the meeting and shall be confirmed (or corrected and subsequently confirmed) at a Board meeting within three months of first circulation of the draft minutes; and
 - (c) on confirmation, copies of the minutes (but not any supporting papers) shall be provided to the Minister and shall be available for inspection during normal business hours at the Corporation's principal office free of charge by any person on written application to the Secretary.

(7) Subject to this Act, the procedures of the Board in relation to meetings and the conduct of its business at such meeting are as determined by it from time to time and, without limitation, the Board may determine that meetings may be held, and

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resolution passed, by circulation of one or more instruments in writing or by electronic or any other medium in such manner as it determines, and, for the purposes of Subsection (6), any such instrument or other record containing any decision of the Board shall be taken to be confirmed minutes of the meeting of the Board to which that decision relates.

14. LEAVE OF ABSENCE OF DIRECTORS.

The Chairman may, on application by a Director, grant leave of absence to that Director on such terms and conditions as he determines where the reason for such absence is, in the Chairman's opinion, reasonable after considering the procedures adopted by the Board in relation to attendance at meetings under Section 13(7).

15. VACATION OF OFFICE OF DIRECTOR.

(1) If a Director, other than an *ex officio* member –

- (a) dies; or
- (b) becomes permanently incapable of performing his or her duties; or
- (c) resigns his or her office by writing under his or her hand addressed to the Secretary and the Minister; or
- (d) absents himself from three consecutive meetings of the Board (occurring over a period of at least five weeks between the first and the third) without leave of absence by the Chairman; or
- (e) does not continue to be qualified to be a Director in accordance with Section 11(5),

his appointment as Director automatically terminates.

(2) Where it appears to all of the other Directors then in office, acting reasonably, that the conduct or reputation of any Director, other than an *ex officio* member, or the Managing Director is such as to –

- (a) diminish the integrity or reputation of the Board; or
- (b) make that person unfit to hold office as a Director,

then those other Directors may, by written notice signed by each and published by the Board in the National Gazette, terminate the appointment of that Director with immediate effect.

(3) Where a person's appointment as Director is terminated under Subsection (2), he may challenge the decision of the Board at his own expense and his costs of doing so (to the extent not reimbursed by other persons) shall be refunded by the Board but only where he is reinstated or otherwise has the decision of the Board overturned by a court of competent jurisdiction.

(4) In the case of termination of an appointment of a Director, other than an *ex officio* member, the relevant appointor shall appoint another person as Director and the person appointed is not restricted to holding office only for the remainder of the term of the person whom he replaces in office.

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16. VACANCY OR DEFECT NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise or performance of a duty, authority, power or function of the Corporation is not invalidated by reason only of a vacancy in the Board or defect in an appointment to Board.

17. DUTIES OF DIRECTORS.

The Directors shall comply with the provisions of Schedule 2 and nothing in that Schedule limits the duties and responsibilities of Directors under this Act or the general law.

18. DISCLOSURE OF MATERIAL INTEREST.

(1) A Director who is directly or indirectly materially interested in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a duly constituted meeting of the Board in sufficient detail as is reasonably necessary to enable the other Directors to decide, having regard to all the circumstances relating to the matter and the interests then known, the action (if any) to be taken in relation to the relevant matter in the interests of the Corporation, the beneficiaries of the relevant Trust or any affected business enterprise in which the Corporation has an interest.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Board and after such disclosure the Director, interested –

- (a) shall not take part in, or be present for, any deliberation or decision of the Board with respect to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

(3) For the purposes of this section, a Director is materially interested in a matter, without limitation, where the Director –

- (a) is a party to, or will or may derive a material financial benefit from, a transaction involving the Corporation or a business enterprise in which the Corporation has an interest; or
- (b) has a material financial interest in another party to a transaction involving the Corporation or a business enterprise in which the Corporation has an interest; or
- (c) has a close relative who is such a party or who will or may derive such a material financial benefit, or who has such a material financial interest.

(4) The Secretary shall keep a register of all disclosure made and recorded in Board minutes and such register may be inspected during normal business hours at the Corporation's principal office free of charge by any person on written application to the Secretary.

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(5) Where, in accordance with this section, it is not possible to obtain a quorum of the other Directors in any matter, it shall be referred by the Secretary to the National Executive Council and the decision of the National Executive Council on the matter—

- (a) shall be taken to be a decision of the Board for all purposes under this Act; and
- (b) the notice containing the decision of the National Executive Council issued by the Secretary of the National Executive Council to the Secretary shall be taken to be the minutes of the Board in relation to that matter.

19. AVOIDANCE OF TRANSACTIONS.

(1) A transaction entered into by the Corporation in which a Director is materially interested may be avoided by the Corporation at any time within three months after disclosure to the Corporation of the information required by Section 18.

(2) A transaction can not be avoided where Section 18 has been complied with fully before entry into the transaction.

(3) The avoidance of a transaction under this section does not affect the title or interest of a person in or to property which that person has acquired —

- (a) from a person other than the Corporation; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the person referred to in Paragraph (a) acquired the property from, or the property was disposed of by, the Corporation.

20. REMUNERATION OF DIRECTORS.

(1) A Director (other than the Managing Director) shall be paid such annual remuneration and reasonable attendance allowances as are consistent with comparable private sector non-executive board appointments and shall not be entitled to any separation or termination benefits or allowances.

(2) For the purpose of Subsection (1), the annual remuneration and attendance allowances payable to a Director shall be as certified annually by The Papua New Guinea Institute of Directors Inc. by written notice to the Corporation and the Minister.

(3) A certificate issued under Subsection (2) —

- (a) shall be published in the National Gazette by the Minister; and
- (b) shall be valid and conclusive (whether or not notified in the National Gazette) unless it is proven that The Papua New Guinea Institute of Directors Inc. has acted in bad faith, recklessly or without any reasonable basis for its decision.

**PART III. – SUCCESSION OF PRIVATIZATION
COMMISSION BY CORPORATION.**

21. SUCCESSION ARRANGEMENTS.

- (1) As from the succession date –
 - (a) the Privatization Commission shall cease to exist for all purposes; and
 - (b) the Corporation succeeds to all of the assets and liabilities of the Privatization Commission notwithstanding any inconsistent or contrary provisions in the *Privatization Act 1999* in the same capacity as such assets and liabilities were vested in the Privatization Commission; and
 - (c) the following Acts are repealed:-
 - (i) *Privatization Act 1999* and all *Privatization (Amendment) Acts*.

- (2) Without limiting Subsection (1) –
 - (a) all assets and rights and all management or control of anything (including as trustee) which, immediately prior to the succession date were vested, payable to, recoverable by, or which belong to the Privatization Commission are, as from the succession date, transferred to, vested in, payable to or recoverable by and belong to the Corporation without any transfer, assignment, notice or assurance other than this Act and despite any other Act or law; and
 - (b) all suits actions and proceedings commenced and pending immediately prior to the succession date by or against the Privatization Commission are, as from the succession date, to be taken to be pending and may be carried and prosecuted by or against the Corporation, and no such suit, action or proceeding is abated or prejudicially affected by this Act; and
 - (c) all contracts (including for employment), deeds, instruments or other instruments (written or otherwise) entered into by or with the Privatization Commission and in force immediately prior to the succession date are, as from the succession date, to be taken to be contracts, deeds, instruments or other instruments entered into by or with the Corporation; and
 - (d) all State appropriations in the name, or for the benefit, of the Privatization Commission shall, as from the succession date, accrue to, and be for the benefit of, the Corporation.

22. TRANSITIONAL PROVISIONS.

Notwithstanding any other provisions of this Act and of the *Privatization Act 1999*, the Corporation has all the powers, authorities, duties and functions in relation to assets, liabilities and other matters and things to which it succeeds under this Part as the Privatization Commission had (in any capacity) immediately prior to the repeal of the *Privatization Act 1999* and other Acts under Section 21(1)(c).

PART IV. – OFFICERS AND EMPLOYEES OF THE CORPORATION.

23. MANAGING DIRECTOR.

- (1) The Managing Director of the Privatization Commission –
 - (a) shall, on the coming into operation of this Act, be the Managing Director of the Board for a period equal to the remaining period of his appointment as Managing Director of the Privatization Commission; and
 - (b) is appointed on the same terms and conditions of appointment as Managing Director of the Privatization Commission; and
 - (c) is eligible for reappointment in accordance with Subsection (2).
- (2) After the initial appointment in accordance with Subsection (1), the Managing Director shall be –
 - (a) appointed by the Corporation for such period (not exceeding four years) and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, on such terms and conditions including salary and allowances and review arrangements as the Board thinks fit; and
 - (b) a person who, in the reasonable opinion of the Board, possesses the qualities described in Section 11(5)(a)(i) and (iii) and who has experience in accountancy, banking, commerce or law and is not disqualified from being a Director under Section (11)(5)(b)(i), (iii) to (vii) (inclusive), (ix) or (c); and
 - (c) eligible for reappointment.
- (3) An appointment under Subsection (2) shall be made by notice in the National Gazette.

24. REMUNERATION OF MANAGING DIRECTOR.

Notwithstanding anything in this Act or the *Privatization Act 1999*, the services as initial Managing Director in accordance with Section 23(1) shall not entitle the Managing Director to any additional remuneration, benefits or allowance during the initial appointment beyond the remuneration, allowances and benefits to which he is entitled in the position of Managing Director of the Privatization Commission but subject however to any review made by the Board according to the terms and conditions of the initial appointment.

25. VACATION OF OFFICE OF MANAGING DIRECTOR.

(1) If the Managing Director –

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand addressed to the Secretary; or
- (c) engages, without the consent of the Board, in any paid employment outside the duties of his office (for the purposes of which employment as Managing Director of the Privatization Commission and performance of the duties of that office shall be taken to have Board consent); or
- (d) absents himself from three consecutive meeting of the Meetings of the Board (occurring over a period of at least five weeks between the first and the third) without leave of absence by the Chairman; or
- (e) would be disqualified from being a Director under Section 11(5)(b)(i), (iii) to (viii) (inclusive), (ix) or (c),

the Board shall terminate his appointment.

(2) Subject to the terms and conditions of the contract of employment of the initial appointment under Section 23, the Board may, at any time, terminate the appointment of the Managing Director for inability, inefficiency, incapacity or misbehaviour.

26. INTERIM ARRANGEMENTS REGARDING PRIVATIZATION COMMISSION.

The Corporation shall have access to and shall use the resources and staff of the Privatization Commission until the succession date at no cost to the Corporation.

27. POWERS, DUTIES AND FUNCTIONS OF THE MANAGING DIRECTOR.

The Managing Director shall have and perform such powers, duties, functions and authorities as the Board from time to time determines, subject to the terms and conditions of his contract of employment.

28. DELEGATION BY THE MANAGING DIRECTOR.

The Managing Director may delegate to any person or body, any or all of his or her powers, duties, functions and authorities (except this power of delegation) where such delegation by the Managing Director is expressly authorized –

- (a) under law; or
- (b) by the Board.

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29. APPOINTMENT OF OFFICERS.

(1) The Corporation shall appoint such officers and employees of the Corporation as are necessary for the purpose of the performance and administration of the Corporation's powers, duties and functions under this Act.

(2) An officer or employee appointed in accordance with Subsection (1), (excluding the Managing Director) shall be officers of the public service and service as an officer or employee of the Corporation shall be taken to be service as a public servant for all purposes.

(3) The Corporation may appoint a person possessing the appropriate expertise as a consultant on any matter in relation to the performance of its functions and on such terms and conditions as the Corporation determines.

30. INITIAL OFFICERS.

(1) The initial officers, employees and other staff of the Corporation are to be the persons who immediately prior to the succession date, were engaged and employed by the Privatization Commission.

(2) The terms of engagement or employment of a person referred to in Subsection (1) are transferred and assigned to or vested in the Corporation in place of the Privatization Commission on and from the succession date without any transfer, assignment, notice or assurance other than this Act and notwithstanding the terms of any such engagement or employment or of any other Act or law, such engagement or employment contract continues to operate with the benefits and liabilities of that engagement or employment accruing to the Corporation instead of the Privatization Commission in accordance with this Act.

(3) Notwithstanding anything in any other Act, where an officer or employee of the Corporation was, immediately before his appointment, an officer or an employee of the public service or the Privatization Commission, his service as an officer or employee of the public service or the Privatization Commission shall be counted as service with the Corporation for the purposes of determining his or her rights (if any) in respect of –

- (a) leave of absence on the ground of illness; and
- (b) long leave of furlough or pay instead of long leave of furlough (including pay to dependants on the death of the officer).

(4) For the purposes of Subsection (3), all entitlements previously accrued, or accruing by reference to the period prior to the date of employment by the Corporation shall be the responsibility of, and payable by, the State and not out of the IPBC Working Capital Fund or other funds held by the Corporation.

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(5) Nothing in this Part allows a person to claim or receive benefits twice in respect of the same entitlement.

PART V. – TRUSTS.

31. ESTABLISHMENT OF TRUSTS.

(1) A trust to be called The Papua New Guinea General Business Trust (or such other name as the Corporation may determine from time to time) is hereby established.

(2) From time to time, other trusts may be established by regulation under this Act (after consultation with the Corporation) for the benefit of any persons (including, without limitation, the State or employees of business enterprises) prescribing the terms applicable to any such trust, and such terms may be amended from time to time by subsequent regulation.

(3) At any time, before or after the commencement date, the Minister may, by notice in the National Gazette, vest certain assets and liabilities (including interests in business enterprises) in the Corporation as trustee of any of the Trusts with effect on and from the commencement date or such later date as specified in the notice.

(4) Subject to this Act, income or other accretions derived from the assets of each of the Trusts become part of the relevant Trust.

32. CORPORATION TO BE TRUSTEE OF THE TRUSTS.

The Corporation shall be the trustee of each of the Trusts, and all moneys belonging to each of the Trusts shall be invested or dealt with by the Corporation in accordance with this Act.

PART VI. – FINANCE.

33. CAPITAL.

The capital of the Corporation consists of –

- (a) such sums as are advanced to the Corporation for its capital account out of moneys appropriated by any Act for that purpose; and
- (b) the aggregate net amount or value of all assets less all liabilities as, in each case, are assumed by, vested in or transferred to the Corporation under this Act, or to which the Corporation succeeds under Section 21, in its own capacity and not as trustee of any Trust; and
- (c) accretions and diminution accruing to the Corporation's capital account by application of the accounting principles applicable to the Corporation under this Act which are not otherwise dealt with under this Act.

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34. GENERAL RESERVE FUND.

(1) The Corporation shall establish and maintain a general reserve fund for itself, to be called the IPBC Working Capital Fund, consisting of such sums as are placed to the credit of that fund pursuant to this Part.

(2) Any case or other liquid assets readily convertible into cash, together with any proceeds of appropriations, of the Privatization Commission to which the Corporation succeeds in its own capacity and not as trustee of any Trust under Section 21 shall be credited to the IPBC Working Capital Fund.

35. DEALING WITH PROFITS.

(1) At the end of each financial year or at such other times as the Corporation may from time to time require, the net profit of each of the Corporation and of the General Business Trust, after audit by the Auditor-General, for that financial year or for the relevant period, as is available in cash maintained in an account, or otherwise as liquid assets readily convertible into cash, in accordance with this Act, after making provision for such contingencies and accounting provisions as the Corporation may determine, shall be dealt with as follows :-

- (a) such amount as the Corporation may determine as sufficient to allow the Corporation to operate effectively in accordance with its operating budget approved under Section 37 (less any amounts previously credited under Subsection (4)), shall be placed to the credit of the IPBC Working Capital Fund;
- (b) the balance (if any) shall be paid into and form part of the Consolidated Revenue Fund.

(2) No amount shall be paid into the Consolidated Revenue Fund under Subsection (1)(b) where, in the opinion of the Board, the assets of the Corporation are, or after the payment would be, less than the sum of its liabilities.

(3) A receipt, given by the Departmental Head of the Department responsible for treasury matters, or by a person duly authorized by him for this purpose, for moneys paid into the Consolidated Revenue Fund, shall constitute sufficient evidence of such payment and a full discharge of the Corporation's obligation to make the payment under this Part.

(4) Pending the application of Subsection (1) in respect of any period, the Corporation may credit any moneys received by the General Business Trust to the IPBC Working Capital Fund provided that the Board is reasonably satisfied that the aggregate amount of such credits for that period will not exceed the amount that would otherwise be credited in respect of that period to the IPBC Working Capital Fund under Subsection (1)(a) assuming there were no amounts so credited under this subsection.

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(5) To the extent that the aggregate amount credited under Subsection (4) in any relevant period exceeds the aggregate amount that would otherwise be so credited under Subsection (1)(a), assuming there were no credits under Subsection (4), in respect of that period, then the excess shall be debited from the IPBC Working Capital Fund and paid into the Consolidated Revenue Fund as soon as such payment can practically be made and committed expenditures under Section 37(4) can be met in a timely manner in accordance with this Act.

36. BANK ACCOUNTS AND CHEQUES.

(1) The Corporation shall open and maintain accounts within the country or elsewhere with such bank or banks as it may from time to time determine to be required for its purposes.

(2) Subject to this Act, the Corporation shall pay all moneys received by it into an account referred to in Subsection (1).

(3) Cheques or any other negotiable instrument drawn on any bank account of the Corporation shall be signed in the manner determined by the Corporation from time to time.

37. EXPENDITURE.

(1) The Corporation shall, not later than three months before the end of each financial year, submit to the Departmental Head of the Department responsible for treasury matters an operating budget including –

- (a) estimates of the receipts and expenditure of the Corporation for the next financial year; and
- (b) its proposed program (if any) for that financial year,

itemized separately in respect of each of the Trusts, and identifying any expenditure to be charged against the assets of the particular Trust to which they relate, as approved by the Board after consultation with , and in such form as reasonably required by, the Departmental Head of the Department responsible for treasury matters.

(2) Any disagreement in relation to the appropriateness or quantum of any expenditure item in the operating budget between the Corporation and the Departmental Head of the Department responsible for treasury matters shall first be discussed between the two, and if such disagreement is not resolved not later than one month before the end of the relevant financial year, then the matter shall be referred for determination by a person nominated by the Papua New Guinea Institute of Accountants, whose decision shall be final, and whose costs shall be paid by the State.

(3) The Corporation shall be funded by the State through the Department responsible for treasury matters to the extent sufficient for the responsible conduct of its functions and duties but to an extent at least sufficient to meet the operating budget

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approved under Subsection (1) after any adjustment required under Subsection (2) and to the extent that those commitments and expenses are not met in accordance with Subsection (4) and (5).

- (4) The Corporation shall debit to the IPBC Working Capital Fund –
- (a) the remuneration, benefits and allowances paid to Directors (including the Managing Director); and
 - (b) the salaries or other remuneration, benefits and allowances paid to officers or employees of the Corporation; and
 - (c) payments required to be made by the Corporation expressly by this Act or in making any notification or publication in the National Gazette required of the Corporation, a Director or the Secretary by this Act; and
 - (d) other expenses and payments (including any expenses or payments made by the Corporation in the resolution of disputes to which the Corporation is party) incurred in administering the Trusts and carrying out its duties and functions under this Act as are set out in an operating budget approved under this section which are not charged directly against the assets of a particular Trust under Subsection (5); and
 - (e) any other expenses approved by the Departmental Head of the Department responsible for treasury matters.

(5) The Corporation shall charge expenditure which is incurred for the benefit of beneficiaries of a particular Trust and identified as such in an approved operating budget against the assets of that Trust and –

- (a) may realize assets of that particular Trust for this purpose notwithstanding any other provision of this Act; and
- (b) expenditure for the benefit of more than one of the Trusts or for one or more Trusts and the Corporation in its own capacity may be apportioned on such reasonable basis as the Board determines and sets out in an approved operating budget and shall be charged accordingly.

(6) In relation to the first financial year of the Board, the Managing Director shall prepare an operating budget for that first financial year to 31 December and submit it to the National Executive Council, and, on approval by the National Executive Council, it shall be deemed to be an approved operating budget for all purposes under this Part.

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(7) An approved operating budget under this section may be varied by agreement between the Corporation and the Departmental Head of the Department responsible for treasury matters and, in the absence of agreement within one month of each request for variation being made by the Corporation, the operating budget shall be taken to be varied only if a person appointed in the same manner as set out in Subsection (2) certifies that –

- (a) the additional expenditure associated with the variation can be met from the IPBC Working Capital Fund after allowing for all other debits from that fund then made or anticipated under Subsection (4)(a) to (e) (inclusive); or
- (b) that the expenditure would otherwise be able to be met in accordance with Subsection (5),

and any variation agreed or so certified shall be taken to be part of an approved operating budget for all purposes under this Part.

38. LOANS BY THE STATE.

(1) The National Executive Council may direct the Minister responsible for treasury matters to offer loan moneys from the State to the Corporation but only for the purpose of acquiring assets to be vested in or transferred to the Corporation under this Act on such terms that are approved by the National Executive Council.

(2) The Corporation may accept any such offer and shall repay each such loan in accordance with the terms on which that loan under Subsection (1) is made.

39. OTHER LOANS AND FACILITIES.

(1) The Corporation may, with the prior consent of the National Executive Council, borrow money but only for the same purpose as set out in Section 38 from persons other than the State on terms that are agreed between the Corporation and that person and approved by the National Executive Council.

(2) The Corporation shall repay such loans made under Subsection (1) in accordance with the terms upon which each such loan was made.

(3) The Corporation may, with the prior consent of the National Executive Council, enter into other financial facilities and accommodations (including overdrafts) for purposes other than that set out in Section 38 within such limits and for such purposes as are prescribed by regulation from time to time, and the application, consent and any approved limits and purposes shall be published by the Corporation in the National Gazette.

40. APPLICATION OF LOAN PROCEEDS.

(1) The proceeds of any loan or borrowing or other financial accommodation obtained by the Corporation in its capacity as trustee of any of the Trusts become assets of that trust.

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(2) The proceeds of any loan or borrowing or other financial accommodation obtained by the Corporation otherwise than in its capacity as trustee of any of the Trusts shall be paid into such fund as shall be required to be established under the terms and conditions of the arrangements accepted by the Corporation in respect of such loans or borrowings, or otherwise the IPBC Working Capital Fund.

41. INVESTMENTS.

(1) In this Section –

“approved bank” means a bank carrying on business in the country and approved for the purposes of this section by the Departmental Head of the Department responsible for treasury matters by notice in the National Gazette;

“authorized short-term market” means the group of dealer companies that are authorized by the Bank of Papua New Guinea to be approved dealers in short-term loans and towards which that bank acts as lender of last resort.

(2) Moneys of the Corporation held in any capacity under this Act that are not immediately required may be invested –

(a) in any securities of, or guaranteed by, the State; or

(b) on deposit with an approved bank; or

(c) in the securities of an authorized short-term market; or

(d) any other manner approved by the Departmental Head of the Department responsible for treasury matters; or

(e) in the case of moneys held as trustee of a Trust, in assets authorized by the prescribed terms of that Trust.

42. APPLICATION OF MONEYS.

The moneys of the Corporation may be applied only in payment or discharge of expenses, obligations and liabilities of the Corporation arising under this Act.

43. ACCOUNTS AND RECORDS.

(1) The Corporation shall cause to be kept proper accounts of its transactions and affairs, and shall do all things to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over its assets, or assets in its custody and over the incurring of liabilities by it.

(2) The accounts and records required by Subsection (1) shall be kept in accordance with the accounting principles generally applied in commercial practice.

(3) The moneys, accounts and records of the Corporation in each of its various capacity under this Act shall be kept separate from those of the Corporation in its other capacities, except as authorized by this Act.

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44. AUDIT.

(1) Without limiting his powers and functions under the *Audit Act 1989*, the Auditor-General shall inspect and audit the accounts and records of financial transactions of the Corporation and the Trusts and records relating to the assets of the Corporation and the Trusts, and assets in the Corporation's custody and shall promptly draw the attention of the Minister to any matter disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so.

(2) The Auditor-General may, in his discretion, dispense with any part of the detailed inspection or audit of any accounts or records referred to in Subsection (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out in Subsection (1) and the particulars of any discretion exercised under Subsection (2).

(4) The Auditor-General may, at his discretion, for the purpose of assisting him in an audit and inspection under this section, employ a registered company auditor who shall act under the direction of the Auditor-General and on the terms and conditions determined by the Auditor-General as a person authorized by the Auditor-General for the purposes of this section.

(5) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Board and of the Trusts relating directly or indirectly to the receipt of payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it.

(6) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(7) The Auditor-General or a person authorized by him may require any person to furnish him with such information in his possession or control as the Auditor-General or authorized person thinks necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(8) For the purposes of this section, references to the "Corporation" include each subsidiary company of the Corporation within the meaning given to that expression in relation to a public body under Section 1A of the *Public Bodies (Financial Administration) Act* (Chapter 6).

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- (9) A person, who contravenes Subsection (7), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

45. REPORTS AND FINANCIAL STATEMENTS.

(1) The Corporation shall as soon as practicable after 31 December each year, but within three months of that date, prepare and furnish to –

- (a) the Minister; and
- (b) the National Executive Council,

a report on the operations of the Corporation for the year ended 31 December preceding, together with financial statements in respect of that year.

(2) Financial statements under Subsection (1) shall be in the form, and in accordance with principles, generally applied in commercial practice.

(3) Before furnishing financial statements in accordance with Subsection (1), the Board shall submit them to the Auditor-General who shall report to the National Parliament in accordance with Part II of the *Audit Act 1989*, and where such report has not been completed prior to the expiry of the period specified in Subsection (1), the unaudited financial statements shall be so furnished in accordance with Subsection (1) and be clearly marked as “unaudited” and the audited financial statements shall then be furnished as soon as it is available.

(4) Except as provided in this Act, the report of the Auditor-General shall be included in any reproduction of the report or financial statements for publication or other purpose.

(5) The first report and financial statement shall be for that part of the financial year commencing on the commencement date until 31 December following.

(6) The Minister shall cause the report and financial statements (whether audited or unaudited), together with the report from the Auditor-General (in the case of audited financial statements), or separately from such audit report (in the case of unaudited financial statements), to be published and presented to the National Parliament within seven sitting days after their receipt in each case by the Minister, and shall cause the fact of their receipt to be advertised widely in a newspaper published nationally, and copies of such report and financial statements and any applicable audit report shall be made available by the Corporation at the cost of their reproduction to any person requesting them by written application to the Secretary.

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(7) Any failure by the Corporation to comply with Subsections (1), (2) or (3) (as applicable) shall cause the appointments of each of the Chairman and the Managing Director as Director and Managing Director respectively to terminate automatically one month after such failure and neither shall be eligible for reappointment at any future time, unless a judge of the National Court is satisfied by the relevant Director in each case within that period that such failure on his part ought fairly to be excused as having been caused by circumstances beyond his control or direction.

(8) Management accounts for the most recent calendar quarter and the financial year to date prepared to professional standards and rolling three year financial projections for the Corporation shall be provided to the Departmental Head of the Department responsible for treasury matters within 30 days of the end of each calendar quarter commencing in respect of the first calendar quarter ending 31 December.

46. LIABILITY TO TAXATION AND DUTIES.

(1) The Corporation is not liable to pay taxes, duties, fees, charges, rates, excise or other impost of any kind charged or imposed under any law except for legislation enacted by the National Parliament specifically to amend or repeal this section.

(2) The transfer to or vesting in the Corporation of any assets or liabilities, is not liable for any taxes, duties, fees, charges, rates, excise or any other impost of any kind charged or imposed under any law except for legislation enacted by the National Parliament specifically to amend or repeal this section.

PART VII. – MISCELLANEOUS.

47. INDEMNITY.

(1) Subject to Subsection (2), every Director is indemnified and held harmless by the State against all actions, proceedings, suits, claims or demands in any jurisdiction arising out of any act, matter of thing done or omission, by that person for the purpose of carrying out or giving effect to the Act or done or omitted without negligence and in good faith purporting to act or make such omission for the purposes of this, except, in either case, where the person has contravened or caused a contravention of a provision of this Act in so doing or omitting to act.

(2) From time to time, Subsection (1) may be amended, repealed, added to or otherwise varied by regulation altering the terms and conditions of any indemnity under Subsection (1) or providing for the better administration or operation of Subsection (1) including, without limitation, making provision for –

(a) the conduct of any civil claim or court proceedings by the State; or

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- (b) the funding of any claims or proceedings pending the establishment of liability of the State under Subsection (1) (after any appeal process is exhausted); or
- (c) the co-operation of the indemnified party with the State in relation to any such civil claim or proceeding at the cost of the State; or
- (d) a mechanism for determining the amount payable to the indemnified party without resort to litigation; or
- (e) appointment of legal representatives,

provided however that no regulation shall apply to any Director or to any event or circumstance arising during that Director's then current, or any previous, term of office without that Director's express written agreement.

(3) Nothing in this section prevents the Corporation being indemnified out of the assets of any Trust in its capacity as trustee of that Trust, whether under general law or the prescribed terms of that Trust.

48. OFFICES.

(1) The Corporation may establish and maintain offices in any place in the country as the Corporation from time to time decides, and may discontinue any such office.

(2) The Corporation is to designate one of the offices (where it maintains more than one) as its principal or head office and that office shall be situated in Port Moresby.

49. NO STATE GUARANTEE.

(1) Subject to Section 47 and Subsection (2), the State shall not guarantee or indemnify the Corporation or any other party in respect of any asset or liability (including any overdraft or other financial accommodation) of the Corporation.

(2) Where any guarantee or indemnity has previously been given by the State in respect of any assets or liabilities which have been assumed by, vested in or transferred to the Corporation, such guarantee or indemnity shall remain in full force and effect.

50. VESTING AND TRANSFER.

- (1) All assets and liabilities held by any of—
 - (a) the Privatization Commission; or
 - (b) the State; or
 - (c) the People's Unit Trust; or
 - (d) a statutory body established by Act; or

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- (e) a Department of State or office within such Department; or
- (f) a corporation wholly owned by any of the bodies referred to in Paragraphs (a) to (e) inclusive,

which are notified in the National Gazette by the Minister under Section 31, whether before or after the commencement date, or which may otherwise be vested in or transferred to the Corporation for the purposes of this Act by the Minister by notice in the National Gazette, are taken to have been vested in and transferred to the Corporation to be held as trustee of the General Business Trust or in such other capacity specified in such notification under this Act (as the case may be) on and from the commencement date or such later date as specified in the notice.

(2) Notwithstanding the requirements of Subsection (1), assets and liabilities may be vested in and transferred to the Corporation to be held as trustee of the relevant Trust or in such other specified capacity under this Act by any of the entities described in Subsection (1)(a) to (f) (inclusive) in any manner effective at law and notified in the National Gazette by the Corporation.

(3) Notwithstanding any other Act or law, all assets and liabilities referred to in Subsections (1) and (2) shall vest in the Corporation, and the legal and equitable title to such assets and liabilities shall not be affected by any failure to comply with, or contravention of any such Act or law or lack of procedure or process and Acts or laws which may impede or constrain the effectiveness of this subsection may be amended or repealed by regulation to the extent necessary to give effect to this subsection.

(4) Any assets, liabilities or interests vested in or transferred to, the Corporation pursuant to this Act may be assumed, vested or transferred subject to caveats or other terms and conditions attaching to specific assets, liabilities or interests and any such caveats or terms and conditions shall be included in the relevant notice in the National Gazette.

51. NO BREACH OF CONTRACTS, ETC.

The operation of any of Part III or Sections 31 and 50(1) is not be regarded as –

- (a) prejudicially affecting, or a breach of or a default under, any contract, deed, instrument or agreement (written or otherwise) or otherwise a civil wrong; or
- (b) a breach of or default under any provision of any contract, deed, instrument, or such agreement prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) giving rise to any remedy by a party to, or causing or permitting the termination or discharge of, any contract, deed, instrument or such agreement or any judgment, order and process of a court which creates, modified or extinguishes assets, rights or liabilities (or which would do so if lodged, filed or registered in accordance with any law), because of a change in the beneficial or legal ownership or any asset, right or liability.

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52. STATE CHARGES.

In respect of any assumption by, transfer to, acquisition by, vesting in or entering into by the Corporation of any assets, liabilities, right, contracts, deeds, instrument, agreements or other matters or things under this Act, any registration, lodgment or other fees or amounts of any description which might be payable under any Act (other than this Act) by the Corporation are not payable.

53. NOTICE OF DEALINGS.

Any person required by any Act or law to make or enter a note or memorial or make any entry in any register, record or book or any instrument of title relating to assets, liabilities, rights, contracts, deeds, instruments, agreements or any other matter or thing assumed by, transferred to, acquired by, vested in or taken to be entered into by the Corporation under Part III or Sections 31 or 50(1), shall, upon request of the Corporation, register or note the assumption by, transfer to, acquisition by, vesting in or entry into by the Corporation for or with respect to any such asset, liability, right, contract, deed, instrument, agreement or other matter or thing to which the Corporation is entitled under Part III or Sections 31 or 50(1), and for that purpose, may make every entry, cancellation and correction in any register, record or book or instrument in that person's custody or under that person's control and do and execute any such acts and things as to that person appear necessary and proper.

54. ATTORNEY.

The Corporation may, by instrument under its seal, appoint a person (whether within or outside the country) to be its attorney and, subject to the instrument, a person so appointed may do any act or exercise or perform any power or function which he is authorized by the instrument to do, exercise or perform.

55. MODE OF MAKING CONTRACTS, ETC.

(1) Contracts, deeds or other instruments on behalf of the Corporation may be made, varied or discharged in accordance with this section, and any contract, deed or other instrument, so made is effectual in law, and is binding on the Corporation and all other parties to the contract, deed or other instrument their heirs, successors, assigns, executors and administrators.

(2) A contract, deed or other instrument that, made between private persons, would by law be required to be in writing under seal may be made, varied or discharged in the name on behalf of the Corporation in writing under the seal of the Corporation.

(3) A contract, deed or other instrument that, made between private persons, would by law be required to be in writing and signed by the parties to be charged with it may be made, varied to discharged in the name and on behalf of the Corporation in writing signed by a person acting with the express or implied authority of the Corporation.

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(4) A contract that, if made between private persons, would by law be valid although made by parol only, may be made, varied or discharged by parol in the name and on behalf of the Corporation by a person acting with the express or implied authority of the Corporation.

(5) This section does not invalidate a contract, deed, instrument or agreement executed on behalf of the Corporation by a duly appointed attorney of the Corporation if the contract will be valid if executed by the attorney on his own behalf.

56. SUCCESSORS TO DIRECTOR NOMINATORS.

In the event that any appointor under Section 11(1)(a) to (d) (inclusive) shall cease to exist without there being any successor person, association or corporation, an appointment to be made by that appointor under this Act may instead be made by such other person, association or corporation as the continuing appointors in Subsections (1)(a) to (d) (inclusive) may unanimously nominate to the Corporation as the successor person, association or corporation, and –

- (a) any such nomination shall be notified in the National Gazette by the Corporation, and
- (b) once so notified, that person, association or body shall be deemed to be the successor of the named appointor for the purposes of this Act.

57. CUSTODY OF CORPORATION SEAL.

(1) The seal of the Corporation is to be in the custody of the Secretary or any other person appointed by the Corporation.

(2) The seal must be used only by the authority of the Board and may be affixed by the Chairman, the Managing Director, the Secretary or any other person authorized to do so by the Chairman.

(3) Every document or writing to which the seal is affixed shall be signed by a Director or any person appointed by the Board for the purpose of signing documents or writings to which the seal is affixed generally, or that particular document or writing, and is to be countersigned by another of any of the Directors or such persons.

58. AUTHENTICATION OF DOCUMENTS.

The fact that a document or writing has affixed to it the seal of the Corporation and has been signed is evidence, and, in the absence of evidence of the contrary, is conclusive evidence that the document or writing has been duly sealed by the Corporation.

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59. POLITICAL INFLUENCE.

(1) No Minister, member of the National Parliament or any member of a Provincial or Local-level Government may seek to direct or influence the exercise by a Director of his or her duties, powers or judgments or any Board decision other than through a written communication that is tabled concurrently in the National Parliament if it is in session or otherwise with the Speaker of the National Parliament (who shall table any such communications in the National Parliament at the next opportunity).

(2) A Director who receives any representations made by or on behalf of such persons shall record the fact of, and the content of, such representations at the next Board meeting and table copies of any written communications containing such representations at the Board meeting and with the Speaker of the National Parliament within seven days of receipt.

- (3) Where a Director fails to comply with Subsection (2) –
- (a) his appointment as Director is automatically terminated; and
 - (b) he is not eligible for re-appointment.

(4) The Secretary shall establish and maintain a register containing the records of such representations and copies of such communications which shall be open for inspection during normal business hours at the Corporation's principal office by any person without charge on written application to the secretary.

60. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed whether necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the better or more convenient attainment by the Corporation of its objects.

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SCHEDULE 1

Act, Sec. 11(14)(b)

Declaration of Office and Secrecy.

- I, _____, do solemnly and sincerely declare that:
- (a) I will well and truly serve the Independent State of Papua New Guinea and its peoples in the office of the Independent Public Business Corporation;
 - (b) I will at all times maintain secrecy in relation to the affairs of the Corporation, the Directors and of the Trusts and, in particular that I will not directly or indirectly divulge any information that comes to my knowledge in the performance of my functions as a Director, except by authority of the Directors or under compulsion or obligation of law.

DECLARED AT

Dated:

(Signature of Declarant)

Before me:

(Signature of person before whom Declaration is made)

SCHEDULE 2

Act, Sec. 17

Duties of Directors.

1. DUTY TO ACT IN GOOD FAITH AND IN BEST INTEREST OF THE CORPORATION.

(1) Subject to Paragraph (b), a Director, when exercising powers or performing duties, shall act in good faith and in what the Director believes to be the best interest of the Board.

(2) When exercising powers or performing duties as a director or the like of a business enterprise (whether wholly or partly owned by the Board), the Director may act in a manner in which he or she believes is in the interests of the Board though it may not be in the best interests of that business enterprise.

2. DIRECTORS TO COMPLY WITH ACT.

A Director shall not act, or agree to the Corporation acting, in a manner that contravenes this Act or the terms of any of the Trusts.

3. DIRECTOR'S DUTY OF CARE.

A Director, when exercising powers or performing duties, shall exercise the case, diligence and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation –

- (a) the nature of the Corporation; and
- (b) the nature of the decision including the capacity in which the Corporation is acting; and
- (c) the position of the Director and the nature of the responsibilities undertaken by him or her.

4. USE OF INFORMATION AND ADVICE.

(1) Subject to Subsection (2), a Director, when exercising powers or performing duties, may rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following:–

- (a) an employee of the Board whom the Director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional advisor or expert in relation to matters which the Director believes on reasonable grounds to be within the person's professional or expert competence; and
- (c) any other Director or committee of Directors upon which the Director did not serve in relation to matters within that other Director's or committee's delegated authority.

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- (2) Subsection (1) applies to a Director only where the Director –
- (a) acts in good faith; and
 - (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) has no knowledge that such reliance is unwarranted.

5. USE OF CORPORATION INFORMATION.

(1) A Director who receives information in that capacity or as an employee of the Corporation, being information that would not otherwise be available to him or her, shall not disclose that information to any person, or make use of or act on that information, except –

- (a) for the purposes of the Corporation; or
- (b) as required by law; or
- (c) in accordance with this Act.

- (2) A Director may disclose, make use of or act on the information where –
- (a) the Director is first authorized to do so by the Corporation; and
 - (b) particulars of the authorized disclosure, use or act are entered in the minutes of the Board; and
 - (c) the disclosure, use or act in question will not, or will not be likely to, prejudice the Corporation, or any business enterprise in which the Corporation holds an interest.

6. OFFENCES.

A Director, who acts in contravention of any of the provisions of this Schedule, is guilty of an offence and is liable on conviction to a fine not exceeding K200,000.00 or imprisonment for a term not exceeding 5 years, or both.

I hereby certify that the above is a fair print of the *Independent Public Business Corporation of Papua New Guinea Act 2002* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Independent Public Business Corporation of Papua New Guinea Act 2002* was made by the National Parliament on 27 March 2002 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

