

No. 30 of 2002.

*Independent Public Business Corporation of Papua New Guinea  
(Amendment) Act 2002.*

Certified on: 10.09.02



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002.

*Independent Public Business Corporation of Papua New Guinea  
(Amendment) Act 2002.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA

AN ACT

entitled

*Independent Public Business Corporation of Papua New Guinea  
(Amendment) Act 2002,*

Being an Act to amend the *Independent Public Business Corporation of Papua New Guinea Act 2002,*

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.

**1. INTERPRETATION (AMENDMENT OF SECTION 2).**

Section 2 of the Principal Act is amended by inserting after the definition of "Managing Director" the following new definition:-

" 'Minister' means the Minister responsible for privatization matters or the Minister designated by the Prime Minister, and published in the National Gazette with respect to the allocation of Ministerial duties and responsibilities of Ministers under Section 148 of the *Constitution*, to be the Minister responsible for matters concerning or dealing with the management or privatization of State-owned corporations, companies, entities or assets wholly or partially owned by the State; "

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**2. POWERS OF THE CORPORATION (AMENDMENT OF SECTION 9).**

Section 9 of the Principal Act is amended –

- (a) in Subsection (1) by repealing the words “The Corporation” and replacing them with the following:-

“Subject to Subsection (1A), the Corporation”; and

- (b) by inserting after Subsection (1) the following new Subsection:-

“(1A) The Corporation shall not, of itself, or in its capacity as Trustee, effect a disposal of -

- (a) any enterprise or business enterprise; or  
(b) any part of, or shares in, an enterprise or business enterprise,

without the prior written consent of the National Executive Council.”; and

- (c) in Subsection (3), by repealing the reference “Subsections (1) and (2)” and replacing it with the following:-

“Subsections (1), (1A) and (2)”;

- (d) in Subsection (3), by repealing Paragraph (1).

**3. NEW SECTION 9A.**

The Principal Act is amended by inserting after Section 9 the following new section:-

**"9A. POWERS OF NATIONAL EXECUTIVE COUNCIL AND MINISTER.**

(1) The National Executive Council may, following consideration of a recommendation from the Minister, appoint any person or persons to be members of boards of directors or other controlling or governing bodies of business enterprises, provided any such person would not be disqualified from being a director under any of Section 11(5)(a) and (b)(i), (iii) to (vii) inclusive or (ix).

"(2) The National Executive Council shall determine –

- (a) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of employment of the chief executive officers of the Corporation and of business enterprises; and  
(b) the engagement, and terms and conditions of engagement, of consultants by the Corporation and by business enterprises."

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4. **ESTABLISHMENT OF THE CORPORATION (AMENDMENT OF SECTION 6).**  
Section 6 of the Principal Act is amended in Subsection (5) by repealing Paragraph (a).

5. **REPEAL AND REPLACEMENT OF SECTION 11.**  
Section 11 of the Principal Act is repealed and is replaced with the following :-

**"11. DIRECTORS.**

- (1) The Directors shall comprise the following:-
- (a) a person nominated by the Papua New Guinea Trade Union Congress;
  - (b) a person nominated by the Papua New Guinea Chamber of Commerce and Industry Limited;
  - (c) a person nominated by the National Council of Women;
  - (d) a person nominated by Transparency International (PNG) Inc;
  - (e) two persons nominated by the Minister;
  - (f) 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
  - (g) the Departmental Head of the Department responsible for financial 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;
  - (h) the Managing Director, *ex officio*.

"(2) The Directors shall be appointed by the National Executive Council by notice in the National Gazette.

- "(3) Subject to this Act, a Director, other than an *ex officio* Director –
- (a) shall be appointed for a term of three years; and
  - (b) is eligible for re-appointment.

- "(4) A Director appointed under Subsection (1)(a), (b), (c), (d) or (e) –
- (a) shall, in the reasonable opinion of the Minister –
    - (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 participate meaningfully as a Director; and
    - (iii) have a reputable standing within the community and be unlikely to do anything to undermine the interests of Papua New Guinea in favour of personal, business or other interests; and

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- (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
  - (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 creditors or assigned his 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) 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.

"(5) A Director appointed under Subsection (1)(a), (b), (c), (d) or (e) may be removed at any time by the National Executive Council in which case, the body which nominated the Director shall nominate another person in his place.

"(6) The manner of nomination of persons referred to in Subsection (1)(a), (b), (c) and (d) shall be as prescribed.

"(7) A person may not be appointed as a Director under Subsection (1) (a), (b), (c) or (d) if he is not a citizen of Papua New Guinea.

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

"(9) A person may not hold simultaneously more than one position as Director.

"(10) The Directors shall appoint a person other than a Director to be Secretary to the Corporation.

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"(11) 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."

**6. REPEAL AND REPLACEMENT OF SECTION 12.**

Section 12 of the Principal Act is repealed and is replaced with the following :–

**"12. CHAIRMAN AND DEPUTY CHAIRMAN.**

"(1) The National Executive Council shall appoint one of the Directors referred to in Section 11(1)(a), (b), (c), (d) or (e) as Chairman of the Board and may revoke his appointment at any time by notice in the National Gazette.

"(2) The Directors of the Board, other than the Chairman, may elect one of their number to be the Deputy Chairman of the Board.

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

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

**7. VACATION OF OFFICE (AMENDMENT OF SECTION 15).**

Section 15 of the Principal Act is amended –

(a) in Subsection 1(e), by repealing the figure "11(5)" and replacing it with the following :–

"11(4)"; and

(b) in Subsection (2), by repealing the words "and published by the Board in the National Gazette, terminate" and replacing them with the following :–

"recommend to the Minister to terminate"; and

(c) by repealing Subsections (3) and (4).

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**8. REMUNERATION OF DIRECTORS (AMENDMENT OF SECTION 20).**

Section 20 of the Principal Act is amended—

(a) by repealing Subsection (2) and replacing it with the following:—

"(2) For the purposes of Subsection (1), the annual remuneration and attendance allowances payable to a Director shall be certified annually by the Chief Financial Officer of the Corporation and approved by the Minister."; and

(b) by repealing Subsection (3).

**9. REPEAL AND REPLACEMENT OF SECTION 23.**

Section 23 of the Principal Act is repealed and is replaced with the following:—

**"23. APPOINTMENT OF MANAGING DIRECTOR.**

(1) The Managing Director of the Corporation shall be appointed by the Head of State, acting on advice, by notice in the National Gazette.

"(2) The Managing Director shall be appointed for such period (not exceeding four years) and, subject to the *Salaries and Conditions Monitoring Committee Act 1998*, on such terms and conditions including salary and allowances as the Board thinks fit."

**10. REPEAL OF SECTION 24.**

Section 24 of the Principal Act is repealed.

**11. REPEAL AND REPLACEMENT OF SECTION 25.**

Section 25 of the Principal Act is repealed and is replaced with the following:—

**"25. REMOVAL OF MANAGING DIRECTOR.**

The Managing Director may be removed from his position with or without cause by the Head of State, acting on advice, by notice in the National Gazette."

**12. APPOINTMENT OF OFFICERS (AMENDMENT OF SECTION 29).**

Section 29(3) of the Principal Act is repealed.

**13. FORMER DIRECTORS, ETC.**

(1) In this section, "former Director" means a person who, immediately before the coming into operation of this Act (*Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2002*) was a Director of the Corporation (other than an *ex officio* Director).

(2) A former Director does not, because of the operation of this Act (*Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2002*), become, or continue to be, a Director of the Corporation.

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(3) The operation of this section, in relation to a former Director, is not to be regarded as constituting a breach of any obligation whether imposed by contract, statute, regulation or otherwise.

**14. TRANSITIONAL.**

(1) The person holding office as Managing Director under the Principal Act immediately before the coming into operation of this Act shall, on that coming into operation, continue to hold office but on terms and conditions determined in accordance with the amendments effected by this Act.

(2) The operation of this section, in relation to the Managing Director, is not to be regarded as constituting a breach of any obligation whether imposed by contract, statute, regulation or otherwise.

I hereby certify that the above is a fair print of the ***Independent Public Business Corporation of Papua New Guinea (Amendment) 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 (Amendment) Act 2002*** was made by the National Parliament on 4 September 2002.

*Speaker of the National Parliament.*