

No. 19 of 2002.

Kokonas Industri Koporesen Act 2002.

Certified on : 10.5.02



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

Kokonas Industri Koporesen Act 2002.

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SCHEDULE



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

AN ACT

entitled

Kokonas Industri Koporesen Act 2002,

Being an Act relating to –

- (a) the control and management of the coconut industry; and
- (b) the making of arrangements for the phased transfer of the marketing powers and functions of the Koporesen, and 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 referred to in Subdivision III. 3.C (*qualified rights*) of the *Constitution*, namely –

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the freedom of employment conferred by Section 49 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*,

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

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

2. INTERPRETATION.

In this Act, unless the contrary intention appears –

“Appeal Committee” means the Appeal Committee established under Section 59;

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- “association” means an association registered under Section 56;
- “Board” means the Board of Directors of the Koporesen established under Section 6;
- “bounty” means the Coconut Industry Fund Bounty payable under Section 32;
- “by-law” means a by-law of the Koporesen made in accordance with Part V;
- “coconut” includes any part of a coconut;
- “coconut product” means the following:—
- (a) copra;
 - (b) coconut oil;
 - (c) coconut meal;
 - (d) desiccated coconut;
 - (e) coconut milk;
 - (f) coconut charcoal;
 - (g) activated coconut carbon;
 - (h) coconut lumber;
 - (i) coconut coir;
 - (j) coir pith,
- and such other products as may from time to time be declared by the Minister by notice published in the National Gazette to be coconut products for the purposes of this Act;
- “copra” means processed meat of coconut by hot air drying or sun drying;
- “downstream processing” means any method of processing copra in any form or kind including manufacturing and trading of coconut products;
- “exporter” means a person or a body licensed as exporter of coconut products;
- “Extension Fund” means the Papua New Guinea Coconut Extension Fund established by Section 38;
- “extension levy” means the coconut products extension levy imposed under Section 39;
- “extension services” means any services to assist copra producers in the growing of coconuts and production and processing of copra;
- “Fund” means the Coconut Industry Fund established by Section 27;
- “industry levy” means the levy fixed by the Koporesen under Section 30;
- “Inspector” means a Coconut Products Inspector appointed under Section 47;
- “licence” means a licence granted under Section 51;
- “management levy” means the management levy payable under Section 24;
- “member” means a member of the Board of Directors of the Kokonas Industri Koporesen and includes the Chairman;
- “plantation” means a producer of copra from coconut plantings of a size greater than 10 ha;

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- “processor” means a person or a body licensed as a miller of copra into coconut products;
- “producer” means a smallholder or a plantation;
- “research cess” means the coconut products research cess imposed under Section 35;
- “Research Fund” means the Papua New Guinea Coconut Research Fund established by Section 34;
- “smallholder” means a producer of copra from coconut plantings of a size of 10ha or less;
- “the commencement date” means the date of coming into operation of this Act;
- “the repealed Act” means the *Copra Marketing Board Act* (Chapter 212) repealed by this Act;
- “this Act” includes the regulations.

PART II. – KOKONAS INDUSTRI KOPORESEN.

3. ESTABLISHMENT.

- (1) The Kokonas Industri Koporesen is hereby established.
- (2) The Koporesen -
 - (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 judicially shall take judicial notice of the seal of the Koporesen affixed to a document and shall presume that it was duly affixed.

4. FUNCTIONS.

- (1) The functions of the Koporesen are –
 - (a) to control and regulate the production, processing, marketing and export of coconut products; and
 - (b) to promote the investment in and consumption and export of coconut products; and
 - (c) by itself or in co-operation with other persons or bodies, to promote or engage in research and development programmes for the benefit of the coconut industry; and
 - (d) to promote or engage in downstream processing of coconut products by itself or in co-operation with other persons or bodies for the benefit of the coconut industry; and
 - (e) to engage in extension services and related programmes by itself or in co-operation with other persons or bodies for the benefit of the coconut industry; and
 - (f) to compile statistical data on production, imports and exports of coconut products and to be familiar with production trends throughout the country and provinces and internationally; and

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- (g) to grant licences and registrations; and
 - (h) to keep a register of licences and registrations; and
 - (i) to formulate a register of coconut products grading systems for each of the coconut products; and
 - (j) when required by the Minister, to act as an agent for, and to carry out the obligations of the State in international forums or agreements relating to coconut or coconut products; and
 - (k) to provide policy advice to the Government concerning coconut industry matters.
- (2) In the exercise of its functions under this section the Koporesen shall –
- (a) at all times act in the best interest of the coconut industry of Papua New Guinea; and
 - (b) promote the development and growth of the coconut industry for the benefit of the coconut industry.

5. POWERS OF THE KOPORESEN.

The Koporesen has full powers to do all things necessary to be done to enable it to perform its functions under this Act, including, but without prejudice to the foregoing generality, power –

- (a) to require persons engaged in the coconut industry to supply to the Koporesen prescribed information in respect of their activities in the industry; and
- (b) to prohibit or restrict the sale or purchase of coconut products which fail to comply with prescribed minimum quality standards and to impose such conditions on the disposal of those coconut products the Koporesen thinks fit; and
- (c) to monitor prices at which coconut products are bought and sold; and
- (d) subject to Section 4 (2), to enter into contracts; and
- (e) to erect and maintain buildings; and
- (f) to acquire, mortgage or charge, let, hold and dispose of property; and
- (g) to provide assistance to persons engaged in the coconut industry; and
- (h) to set minimum farm gate or mill gate prices; and
- (i) to do anything incidental to its powers.

PART III. – THE BOARD.

6. THE BOARD.

- (1) There shall be a Board of Directors of the Kokonas Industri Koporesen.
- (2) The Board shall consist of -
 - (a) the Departmental Heads, *ex-officio*, of the Departments responsible for agriculture matters and treasury matters or their nominees; and

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- (b) three smallholder representatives, each to represent one of the three leading coconut producing provinces in the country selected by and from amongst the membership of the smallholder associations of those respective provinces; and
 - (c) three smallholder representatives of whom –
 - (i) one shall represent the New Guinea Islands region; and
 - (ii) one shall represent the Momase region; and
 - (iii) one shall represent the Papuan region, selected by and from amongst the membership of the smallholder associations of those respective regions; and
 - (d) two representatives representing the plantations, processors and exporters selected by and amongst the membership of the plantations, processors and exporters associations; and
 - (e) one person representing the private sector.
- (3) The members referred to in Subsection (2)(b),(c) (d) and (e) shall be appointed from persons selected as follows:-
- (a) in the case of the members referred to in Subsection (2)(b) –
 - (i) the three smallholder representatives shall represent the three provinces whom the Koporesen recognizes as leading coconut producers in the country; and
 - (ii) the smallholder associations of each province referred to in Subparagraph (i) shall each select at least two representatives for that province for consideration;
 - (b) in the case of the members referred to in Subsection (2)(c), the smallholder associations of each region referred to in Subsection (2)(c) shall each select at least two representatives for that region for consideration;
 - (c) in the case of members referred to in Subsection (2)(d) the plantations, processors and exporters associations shall select at least four representatives;
 - (d) in the case of the member referred to in Subsection (2)(e) the Minister shall from the commercial sector dealing with coconut industry appoint the private sector representative; and
 - (e) the selection –
 - (i) shall be held at a biennial general meeting or such other meeting as may be approved by the Board of the members of the coconut industry; and
 - (ii) each case shall be by ballot or other selection process determined by the Koporesen and supervised by the electoral officer appointed by the Koporesen; and
 - (f) a list of names of representatives selected under Paragraphs (a), (b) and (c) shall be notified to the Koporesen and submitted to the Minister for consideration and the Minister shall appoint from the representatives named.

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- (4) The members referred to in Subsection (2)(b),(c),(d) and (e) –
- (a) shall be appointed by the Minister by notice in the National Gazette; and
 - (b) shall be appointed for a term of two years; and
 - (c) are eligible for reappointment; and
 - (d) shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).

(5) The members shall, from amongst their own number, elect a Chairman and Deputy Chairman.

(6) If the members fail to elect a Chairman or a Deputy Chairman the Minister may, by notice in the National Gazette, appoint a member to be Chairman or Deputy Chairman, as the case may be.

(7) Where for any reason the Chairman is unable to act the Deputy Chairman may -

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

7. LEAVE OF ABSENCE OF MEMBERS.

(1) The Minister may grant leave of absence to the Chairman on such terms and conditions as he determines.

(2) The Chairman may grant leave of absence to a member on such terms and conditions as he determines.

8. VACATION OF OFFICE OF MEMBER OF THE BOARD.

- (1) If a member –
- (a) dies; or
 - (b) becomes permanently incapable of performing his duties; or
 - (c) resigns his office by written notice to the Minister; or
 - (d) absents himself, except on leave granted in accordance with Section 7, from three consecutive meetings of the Board; and
 - (e) fails to comply with the provisions of Section 11; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
 - (g) is convicted of an offence punishable under a law by death or imprisonment for one year or longer, and as a result of the conviction is subject to be sentenced to death or imprisonment, is under sentence of death or is undergoing imprisonment, or is under bond to appear for sentence if called on; or

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(h) nominates for election to, or becomes a member of the National Parliament or of a Provincial legislature; or
(i) ceases to hold office by virtue of Section 69(3),
the Minister shall terminate his appointment.

(2) The Minister may, at any time, by written notice, advise a member of his intention to terminate the appointment of the member for inability, inefficiency, incapacity or misbehaviour.

(3) If the member referred to in Subsection (2) fails, within 14 days of receipt of the notice referred to in that subsection, to reply by written notice to the satisfaction of the Minister, his appointment is terminated.

9. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise or performance of a power or function of the Board is not invalidated by reason only of a vacancy in the membership of the Board.

10. MEETINGS OF THE BOARD.

(1) Subject to Subsection (3), the Board shall meet at such times and places as it determines, or as the Chairman, or in his absence the Deputy Chairman, directs, but in any event not less frequently than once in every three months.

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

(3) The Chairman shall give to all members at least seven days' notice of meeting of the Board.

(4) At a meeting of the Board –

- (a) the Chairman or the Deputy Chairman and five other members are a quorum; and
- (b) the Chairman or Deputy Chairman shall preside; and
- (c) where both the Chairman and the Deputy Chairman are absent, the members present shall elect one of their number to preside; and
- (d) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (e) the person presiding has a deliberative vote and, in the event of an equality of votes on a matter, also a casting vote.

(5) The Board shall cause minutes of its meetings to be recorded and kept.

(6) Subject to this Act, the procedures of the Board are as determined by the Board.

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11. DISCLOSURE OF INTEREST BY MEMBER.

(1) A member who is directly or indirectly interested in a contract made or proposed to be made or under consideration by the Board, otherwise than as a member and in common with the other members of an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and the member –

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

12. INDEMNITY OF MEMBER OF BOARD.

A member of the Board is not personally liable for any act of the Board or of a member acting as such, done in good faith.

13. DELEGATION.

The Board may with the approval of the Minister by instrument, delegate all or any of its powers and functions (except this power of delegation).

14. ANNUAL REPORTS.

- (1) The Board shall, by 31 March in each year, furnish to the Minister –
- (a) a report on the operations of the Koporesen during the year ending on the preceeding 31 December; and
 - (b) financial statements in such form as the Minister approves in respect of that year.

(2) As soon as practicable after he has received the reports referred to in Subsection (1), the Minister shall forward the reports to the Speaker for presentation to Parliament.

PART IV. – STAFF OF KOPORESEN.

15. MANAGING DIRECTOR.

(1) There shall be a Managing Director of the Koporesen who shall be appointed by the Board.

- (2) The Managing Director is –
- (a) the chief executive of the Koporesen; and
 - (b) the head of the staff of the Koporesen.

16. FUNCTIONS OF THE MANAGING DIRECTOR.

- (1) The Managing Director shall –
- (a) manage the Koporesen in accordance with the policy and directions of the Board; and

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(b) advise the Board on any matter concerning the Koporesen referred to him by the Board.

(2) The Managing Director –

(a) shall carry out and perform the duties required of him under the Act and his contract of employment; and

(b) has such other functions as the Board, from time to time determines.

17. OFFICERS.

(1) The Managing Director may appoint to be officers and employees of the Koporesen such persons as he considers necessary for the purposes of giving effect to this Act.

(2) The Managing Director, the officers and employees appointed under Subsection (1) constitute the staff of the Koporesen.

(3) Where a person appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an officer of the Koporesen shall for all purposes be counted as service in the Public Service.

18. CONTRACT OF EMPLOYMENT.

(1) The Managing Director and each officer and employee of the Koporesen shall be employed under, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, hold office in accordance with the terms and conditions of, written contracts of employment.

(2) A contract of employment shall be executed by the Board and by the Managing Director or an officer or employee.

19. TEMPORARY AND CASUAL EMPLOYEES.

(1) The Koporesen may appoint such temporary and casual employees as it considers necessary for the purposes of this Act.

(2) An employee appointed under Subsection (1) shall be employed on such terms and conditions as are fixed in the by-laws.

20. CONSULTANTS.

The Koporesen may, within the limit of funds available to it, employ such consultants as, in the opinion of the Koporesen are from time to time necessary, on such terms and conditions as are specified in the by-laws.

PART V.- BY-LAWS OF THE KOPORESEN.

21. BY-LAWS.

(1) The Board may make by-laws, not in consistent with this Act, with respect to –

(a) the management, good governance and discipline of the Koporesen; and

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- (b) the use and custody of the seal of the Koporesen; and
- (c) the persons who are to be regarded, for the purposes of this Act, as officers and employee of the Koporesen; and
- (d) the tenure of office and the terms and conditions of employment of officers and employees of the Koporesen; and
- (e) constitution of and qualifications of membership to an association.
- (f) the control and regulation of coconut products; and
- (g) the control and investment of the property of the Koporesen; and
- (h) the establishment of a superannuation or other retirement benefit scheme to provide benefits for the officers; and
- (i) the qualifications of the private sector representatives on the Board; and
- (j) the protection of intellectual property and patent rights resulting from the Koporesen's research and development efforts and the right to publish the results of research; and
- (k) generally, all other matters that are authorized by this Act, or that are necessary or convenient for giving effect to this Act.

(2) The by-laws may provide for empowering an authority (including the Board) or member of the staff of the Koporesen to make rules or orders (not inconsistent with this Act or with any by-law) for –

- (a) regulating, or providing for the regulation of, any specified matter or class of matters (being a matter or class of matters with respect to which by-laws may be made); or
- (b) carrying out or giving effect to the by-laws,

and any such rule or order has the same force and effect as a by-law.

(3) In the absence of any by-laws made under Subsection (1), the provision of regulations pertaining to the Public Service shall, insofar as applicable apply.

22. APPROVAL AND PUBLICATION.

A by-law has no force or effect until –

- (a) approved by the Head of State, acting on advice; and
- (b) published in the National Gazette.

PART VI. – FINANCE ETC.

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

- (1) Part VIII of the *Public Finances (Management) Act 1995* –
 - (a) applies to and in relation to the Koporesen subject to the exceptions and modifications specified in the Schedule; and

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- (b) otherwise than in relation to audit, does not apply to –
 - (i) the Fund; or
 - (ii) the Research Fund; or
 - (iii) the Extension Fund.

(2) The Koporesen is declared to be a trading enterprise for the purposes of Section 62 (2) of the *Public Finances (Management) Act 1995*.

(3) The income, property and operations of the Koporesen are not subject to income tax under the *Income Tax Act 1959*.

24. MANAGEMENT LEVY.

(1) For the purposes of the administration of the Koporesen a levy, known as a management levy, is payable at a prescribed rate on all coconut products intended for export.

(2) Different rates of the management levy may be prescribed for different types and grades of coconut product.

(3) Subject to Section 25, the management levy shall be calculated, paid and collected as prescribed.

25. KOPORESEN MAY REDUCE, ETC., MANAGEMENT LEVY.

Where, at any time, the Koporesen is satisfied that it is in possession of more money than it requires for the performance of its functions or the exercise of its powers, it may –

- (a) by notice in the National Gazette, reduce or suspend the obligation to pay the management levy imposed by Section 24 for the period specified in the notice; or
- (b) transfer such amount as it considers appropriate to the Fund.

PART VII. – FUNDS AND BOUNTY.

Division 1. – Coconut Industry Fund.

26. THE COCONUT INDUSTRY FUND.

(1) The Coconut Industry Fund is hereby established.

(2) The Fund is not an asset of the Board, but the Koporesen shall administer the Fund as trustee.

(3) Separate accounts shall be established within the Fund for each of the coconut products listed in Section 2.

(4) The Koporesen shall be administer the Fund with the object of -

- (a) establishing price stabilization ; and

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- (b) establishing credit facility for producers; and
 - (c) investment promotion,
- within the industry.

(5) Although a person may have contributed to the Coconut Industry Fund he is not entitled –

- (a) to an interest in the Fund; or
- (b) to payment from the Fund except in accordance with this Act.

(6) Payment from the Fund shall not be made to any person except in accordance with this Act.

27. FORMER FUND.

(1) All moneys standing to the credit of, or forming part of the Papua New Guinea Copra Fund (in this section referred to as the former fund”) established under the repealed Act immediately before the commencement date, and all securities or deposits in which any such money was, immediately before that date, invested, is by virtue of this section, on that date, transferred to and into the name of, and forms part of, the Fund.

(2) A reference to the former fund in any law in force shall be deemed to be a reference to the Fund.

28. APPLICATION OF PART VII IN RESPECT OF DESICCATED COCONUT AND COCONUT OIL.

(1) Subject to this section, the provisions of this Act relating to coconut products and the payment of the levy and the payment of the bounty apply to and in relation to husked or unhusked coconuts purchased or otherwise acquired by a licensed processor or exporter, or received into store by a licensed processor or exporter for manufacture into desiccated coconut or coconut oil, as if it were coconut product.

(2) The levy imposed, or the bounty to be paid, for husked or unhusked coconuts shall be determined by means of the prescribed formula by which the weight of husked coconuts or unhusked coconuts, as the case may be, is related to the equivalent weight of coconut product.

(3) A licensed processor or exporter who purchases or otherwise acquires husked or unhusked coconuts for manufacture into desiccated coconut or coconut oil shall give to the supplier a docket in the prescribed form specifying the amount of levy collected or the amount of bounty paid, as the case may be, in relation to those coconuts in accordance with this section.

(4) A person, who fails to comply with Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

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29. PAYMENTS INTO THE FUND.

The Koporesen shall pay into the Fund –

- (a) money received from the collection of the industry levy imposed under Section 30; and
- (b) money received as interest from money standing to the credit of the Fund; and
- (c) money received from the sale of coconut products purchased with money from the Fund; and
- (d) money to be used for the purposes of the Fund.

30. INDUSTRY LEVY.

(1) The Koporesen may, from time to time, after consultation with –

- (a) the Minister responsible for financial matters; and
- (b) the Board,

by notice in the National Gazette –

- (c) fix a levy, known as the industry levy, payable by licensed exporters on all coconut products exported; and
- (d) fix the rate of industry levy per tonne of coconut product; and
- (e) fix the date on and from which the industry levy is payable; and
- (f) specify the period for which the industry levy is payable.

(2) Different rates of industry levy may be imposed in relation to different types or grades of coconut products.

(3) An industry levy –

- (a) is payable on all coconut products exported; and
- (b) shall be collected and paid as prescribed.

(4) A coconut product, in respect of which a industry levy has been fixed but has not been paid, is a prohibited export within the meaning of the *Customs Act* (Chapter 101).

31. PAYMENTS FROM THE FUND.

The Koporesen shall not expend money from the Fund except –

- (a) in payment of bounty under Section 32; or
- (b) in payment of advances authorized under Section 33; or
- (c) with the Board approval, to recompense the costs necessarily incurred by the Koporesen in administering the Fund.

32. PAYMENT OF BOUNTY FROM THE FUND.

(1) The Koporesen may, from time to time, after consultation with –

- (a) the Minister responsible for financial matters; and
- (b) the Board,

by notice in the National Gazette, fix a bounty to be made payable to a smallholder, licensed processor or exporter of coconut products out of the Fund.

(2) Different rates of bounty may be made payable in respect of different types or grades of coconut products.

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(3) The bounty under Subsection (1) shall be paid as prescribed.

33. APPLICATION FOR ADVANCE AND BOUNTY.

(1) An application for an advance authorized under Section 31(b) shall be in the prescribed form.

(2) An application by a processor or an exporter for payment of bounty authorized under Section 31(a) shall be made in the prescribed form and be accompanied by such documents as the Board in any particular case requires.

(3) An advance under Section 31(b) shall be accounted for in the manner and at the times prescribed, or as the Board, in any particular case, directs.

Division 2. – Research Fund.

34. PAPUA NEW GUINEA COCONUT RESEARCH FUND.

(1) There is hereby established the Papua New Guinea Coconut Research Fund into which shall be paid such money as is specified by this or any other Act.

(2) The Research Fund shall be administered by the Koporesen but is not an asset of the Koporesen.

(3) A person who pays research cess under Section 34 is not entitled by reason only of such payment –

(a) to any interest in the Research Fund; or

(b) to receive any payment or benefit from the Research Fund, other than such benefit, if any, as derives to the coconut industry pursuant to any research undertaken under Section 4(1)(c).

35. IMPOSITION AND COLLECTION OF RESEARCH CESS.

(1) There is hereby imposed on coconut products a research cess to be known as the coconut products research cess.

(2) The amount of research cess payable on coconut products shall be such amount, not exceeding 3% of the price per tonne of coconut products, or its equivalent, paid to producers and processors or exporters before the addition to or deduction of monies from the Fund as the Koporesen may determine.

(3) Where a processor or an exporter purchases or otherwise acquires coconut products (including copra produced by such processor or exporter) he shall –

(a) at least once each month; and

(b) at such other intervals as the Koporesen requires, remit to the Koporesen the amount of research cess payable in respect of coconut product at the rate applicable under Subsection (2).

(4) A person, who fails to comply with Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

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36. PAYMENT INTO RESEARCH FUND.

All moneys received from the collection of the research cess shall be paid into the Research Fund.

37. PAYMENT OUT OF RESEARCH FUND.

No money shall be paid out of the Research Fund except for the purposes of research under Section 4(1)(e).

Division 3. – Extension Fund.

38. PAPUA NEW GUINEA COCONUT EXTENSION FUND.

(1) There is hereby established the Papua New Guinea Coconut Extension Fund into which shall be paid such money as is specified by this or any other Act.

(2) The Extension Fund shall be administered by the Koporesen but is not an asset of the Board.

(3) A person who pays extension levy under Section 39 is not entitled by reason only of such payment –

- (a) to any interest in the Extension Fund; or
- (b) to receive any payment or benefit from the Extension Fund, other than such benefit, if any, as derives to the coconut industry pursuant to any extension services undertaken under Section 4(1)(e).

39. IMPOSITION AND COLLECTION OF EXTENSION LEVY.

(1) There is hereby imposed on coconut products a coconut extension levy.

(2) The amount of coconut extension levy payable on –

- (a) copra – shall be such amount, not exceeding 3% of the price per tonne of copra, or its equivalent, paid to producers and processors or exporters before the addition to the deduction of monies from the Fund as the Koporesen may determine; and
- (b) coconut oil or dessicated coconut, in respect of a processor of coconut oil and dessicated coconut – shall be such amount not exceeding 3% of the price per tonne of coconut oil or any other by-product or its equivalent.

(3) Where a processor or a exporter purchases or otherwise acquires copra (including copra produced by such processor or exporter) he shall –

- (a) at least once a month; and
 - (b) at such other intervals as the Koporesen requires,
- remit to the Board the amount of coconut extension levy payable in respect of copra and coconut oil and its by-products at the rate applicable under Subsection (2).

(4) A person, who fails to comply with Subsection (3) is guilty of an offence.

Penalty: A fine not exceeding K1, 000.00.

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40. PAYMENT INTO EXTENSION FUND.

All monies received from the coconut extension levy shall be paid into the Extension Fund.

41. PAYMENT OUT OF EXTENSION FUND.

No money shall be paid out of the Extension Fund except for purposes of extension under Section 4(1)(e).

PART VIII.- MARKETING OF COCONUT PRODUCTS.

42. MARKETING POWERS AND FUNCTIONS OF THE KOPORESEN.

Subject to Section 43, the Koporesen may –

- (a) purchase or otherwise acquire coconut products; and
- (b) determine the price to be paid for any coconut product or grade or class of coconut product purchased by or on behalf of the Koporesen; and
- (c) sell or dispose of any coconut product purchased or otherwise acquired by or on behalf of the Koporesen; and
- (d) manage and control all matters connected with the handling, storage, protection, treatment, transfer, shipment, sale or disposal of any coconut product purchased or otherwise acquired by or on behalf of the Koporesen.

43. OBLIGATION OF KOPORESEN TO MAINTAIN MARKETING SERVICES.

(1) The Koporesen shall –

- (a) play a co-ordinating role for marketing of coconut products produced in outlying areas of the country in order to enhance sustainability of production; and
- (b) institute and manage a programme of cross-subsidization of costs of freight in transportation of coconut products especially from rural areas of the country.

(3) The Koporesen shall ensure –

- (a) that, in view of the concern over the plight of producers in rural communities in regard to their difficulties in marketing their coconut or coconut products, the Koporesen shall extend to these producers a reliable and accessible marketing service; and
- (b) that the standard of marketing services meets the requirements of the producers to carry on producing coconuts or coconut products in the rural areas; and
- (c) to maintain, promote or develop a suitable marketing strategy to ensure adequate marketing services reach the producers in the rural communities.

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44. FACILITATION OF TRANSFER OF THE MARKETING POWERS AND FUNCTIONS OF THE KOPORESEN.

The Koporeesen shall, in accordance with the Governments policy on privatization make such arrangements as are required to facilitate a phased transfer of its marketing powers and functions and business undertakings relating to coconut products prior to the time limit fixed under Section 45.

45. TIME LIMIT ON THE EXERCISE OF MARKETING POWERS AND FUNCTIONS.

On and from –

- (a) the date of expiration of the period of five years after the commencement date; or
- (b) such date as the Minister may by notice in the National Gazette specify,

the Koporeesen shall not exercise or carry out any of its marketing powers or functions referred to Section 42 and this Act is deemed to be amended so as to give effect to this section.

46. APPLICATION.

(1) The Minister may by order published in the National Gazette, determine that this Part or a provision of this Part does not apply –

- (a) to an area or a place; or
- (b) to any coconut product,

specified in the order.

(2) An order made under Subsection (1) –

- (a) may be expressed to apply to –
 - (i) a particular area of the country including a district, province or a region; or
 - (ii) a particular coconut product or a class of coconut products; and
- (b) may specify the period during which the order shall remain in force; and
- (c) may be made subject to such conditions as are specified in the order.

PART X. – INSPECTION BY THE KOPORESEN.

47. APPOINTMENT OF INSPECTORS.

The Board may, by notice in the National Gazette, appoint persons to be Coconut Product Inspectors for the purposes of this Act.

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48. POWERS OF COCONUT PRODUCT INSPECTORS.

(1) For the purposes of this Act, an Inspector may, at all reasonable times –

- (a) enter and inspect any place, premises, aircraft, vehicle or vessel; and
- (b) seize and detain, pending an order of court, any coconut or coconut product in respect of which he has reasonable grounds for suspecting that an offence against this Act has been or is being committed; and
- (c) take samples of any coconut product; and
- (d) examine and take extracts from, or copies of, any delivery docket, waybill, book or other document evidencing the purchase, sale, delivery, ownership, place of production and destination of any coconut product; and
- (e) require any person taking part, or apparently taking part, in the affairs of a business of buying or selling or processing of coconut or coconut products, to provide information relating to the affairs of that business.

(2) The person in charge of any –

- (a) place or premises; or
- (b) aircraft, vehicle or vessel,

on or in which any coconut product is produced, handled, dried, packed, stored or transported shall give all reasonable assistance to an Inspector for the purpose of the exercise and performance of his powers, functions and duties under this Act.

PART XI. – LICENSING, ETC.

49. KOPORESEN MAY GRANT LICENCES.

(1) The Board may, in accordance with this Act, grant or refuse an application for a licence.

(2) A licence granted under Subsection (1) –

- (a) is subject to such conditions and restrictions as the Koporesen thinks fit and permits the licensee specified in the licence to carry out the activity or business specified in the licence; and
- (b) shall remain in force, unless cancelled in accordance with this Act, for such period (not exceeding 12 months) as is determined by the Koporesen; and
- (c) may be renewed for such period (not exceeding three years) as is determined by the Koporesen; and
- (d) is personal to the licensee and is incapable of being transferred.

(3) The Koporesen may, by written notice at any time, vary or revoke any condition or restriction or impose new or additional conditions or restrictions in the licence.

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50. APPLICATION FOR LICENCES.

(1) A person may apply to the Koporesen for a licence under Section 49 to engage in the business of –

- (a) buying and selling of coconut products, at a place specified in the licence; or
- (b) manufacturing or processing of coconut product, at a place specified in the licence; or
- (c) exporting of coconut products.

(2) An application under Subsection (1) shall –

- (a) be in the prescribed form; and
- (b) contain particulars of the applicant's financial position and of his proposals relating to the facilities or organization for the storage, control of quality, handling and marketing of the relevant coconut product; and
- (c) contain such other particulars as are prescribed; and
- (d) be accompanied by the prescribed fee.

51. KOPORESEN TO CONSIDER APPLICATION, ETC.,

(1) Where an application is made to the Koporesen under Section 50, the Koporesen shall consider the application and may, in its discretion –

- (a) grant the application and issue a licence to carry out the business specified in the licence; or
- (b) refuse the application.

(2) Without prejudice to or limiting the Koporesen's discretion under Subsection (1), the Koporesen may refuse an application where, in the opinion of the Koporesen, the applicant has not adequate finance, facilities or organization for the storage, control of quality, handling or marketing of the relevant coconut product.

52. ISSUE OF LICENCE.

Where the Koporesen grants the application under Section 51 it shall issue a licence in the prescribed form and shall endorse on the licence any condition referred to in Section 49(2).

53. CANCELLATION OF LICENCE.

The Koporesen may cancel the grant of a licence under Section 51 where the Koporesen is satisfied that –

- (a) the licence was obtained by –
 - (i) means of a false or misleading statement; or
 - (ii) partly by means of a false or misleading statement; or
 - (iii) fraud; or
 - (iv) by other improper means; or
- (b) the licensee has been convicted of an offence under this Act; or
- (c) the licensee has not, in the Koporesen's opinion, adequate finance, facilities or organization for the storage, control quality, handling or marketing of the relevant coconut products; or

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- (d) the licensee is in breach of a condition of the licence imposed under Section 49(2)(a).

Division 4. – Registration of Coconut Industry Association.

54. REGISTRATION OF ASSOCIATIONS.

(1) An Association, whose major objectives provides for its participation in the coconut industry and whose membership comprise producers, processors or exporters, shall register under this Division.

(2) An Association –

- (a) registered under Section 56 may, or
(b) not registered under Section 56 is not eligible to,

nominate or endorse a person for selection as a member of the Board.

(3) An Association is eligible for registration where –

- (a) its membership comprises persons involved in the coconut industry as a producer or processor or exporter; and
(b) its members involve, conduct, or promote activities in the coconut industry; and
(c) its objectives, policies or platforms encourage the development of the coconut industry; and
(d) it is incorporated under the *Associations Incorporation Act* (Chapter 142).

55. APPLICATION FOR REGISTRATION.

(1) An Association may apply to the Koporesen for registration as a smallholder, plantation, processor or exporter of coconut products.

(2) An application under Subsection (1) shall –

- (a) be in the prescribed form; and
(b) be accompanied by the prescribed fee; and
(c) specify whether or not it is a smallholder, plantation, processor or exporter Association; and
(d) contain the following information relating to the Association:-
(i) the name of the association;
(ii) the name of the officials of the Association;
(iii) the postal address and physical location of its main office;
(iv) the names of persons or bodies who are members of the association;
(v) the date of its incorporation; and
(e) be accompanied by a copy of the constitution of the Association and the certificate of incorporation issued under the *Associations Incorporation Act* (Chapter 142); and
(f) contain such other particulars as are required by the Koporesen.

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56. KOPORESEN TO CONSIDER APPLICATION, ETC.,

(1) Where an application is made to the Koporesen under Section 55, the Koporesen shall consider the application and may, in its discretion –

- (a) grant the application and register the Association as a smallholder, plantation, processor or exporter, subject to such conditions and restrictions (if any) as the Koporesen thinks fit; or
- (b) refuse the application.

(2) Without prejudice to or limiting the Koporesen's discretion under Subsection (1), the Koporesen may refuse an application where, in the opinion of the Koporesen, the Association has failed to meet the necessary requirements or eligibility criteria as provided for under this Act.

57. CERTIFICATE OF REGISTRATION.

Where the Koporesen registers an Association under Section 56 it shall issue to the Association a certificate of registration in the prescribed form and shall endorse on the certificate of registration any conditions referred to in Section 56.

58. CANCELLATION OF REGISTRATION.

The Koporesen may cancel the registration of an Association where the Koporesen is satisfied that –

- (a) registration was obtained by –
 - (i) means of a false or misleading statement; or
 - (ii) partly by means of a false or misleading statement; or
 - (iii) fraud; or
 - (iv) by other improper means; or
- (b) the association has not, in the Koporesen's opinion, fulfilled the conditions required of it as provided for under this Act.

Division. 5 – Appeals.

59. APPEAL COMMITTEE.

(1) For the purpose of appeals under Section 60 there is established an Appeal Committee.

- (2) The Appeal Committee shall consist of –
 - (a) an officer nominated by the Departmental Head of the Department responsible for agriculture matters, who shall be Chairman; and
 - (b) two other persons, other than officers of the Public Service, who shall be representatives of the coconut industry, appointed by the Minister by notice in the National Gazette.

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(3) The Chairman of the Appeal Committee shall determine –
(a) the time and place of; and
(b) subject to Section 60(3), the procedure to be followed at,
meetings of the Appeal Committee.

60. APPEALS.

(1) A person, aggrieved by a decision of the Koporesen –
(a) to refuse under Sections 51 or 56 to grant an application; or
(b) in relation to any conditions or limitations to which the grant of
a licence or registration is subject; or
(c) to cancel a licence or registration under Sections 53 or 58,
may appeal in writing to the Appeal Committee.

(2) As soon as practicable after receipt of an appeal under Subsection (1),
the Appeal Committee shall meet and consider the appeal.

(3) The procedure during the consideration of an appeal shall be informal
but regard shall be had at all times to natural justice.

(4) The decision of the Appeal Committee is final and shall be
implemented as if it were a decision of the Koporesen.

PART XII. – OFFENCES.

**61. FAILURE TO SUPPLY INFORMATION OR SUPPLYING FALSE,
ETC., INFORMATION TO THE BOARD.**

A person, who fails to supply information, or who supplies false or misleading
information, to the Board when required to do so under Section 5(a), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not
exceeding six months, or both.

62. FAILURE TO COMPLY WITH QUALITY STANDARDS, ETC.,

A person, who –

- (a) contrary to a prohibition or restriction under Section 5(b), sells or
purchases coconut products which fail to comply with prescribed
minimum quality standards; or
(b) fails to comply with, or observe, the conditions imposed by the
Koporesen under Section 5(b),

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not
exceeding six months, or both.

63. INSPECTOR NOT TO EXCEED POWERS.

An Inspector, who exceeds or abuses his powers under this Act, is guilty of an
offence.

Penalty: A fine not exceeding K200.00.

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64. OBSTRUCTION, ETC., OF AN INSPECTOR, ETC.,

A person who, without reasonable excuse (proof of which is on him) –

- (a) hinders or obstructs an Inspector in the exercise or performance of his powers or functions under this Act; or
- (b) fails or refuses, when requested by an Inspector to provide any document relating to the coconut industry in his possession or control; or
- (c) fails or refuses to provide information required under Section 48(1)(e),

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

65. PERSON GIVING FALSE INFORMATION, ETC.,

A person who, for the purpose of obtaining –

- (a) a licence to carry on the business of buying or selling of, manufacturing or, processing of or exporting of coconut products; or
- (b) registration as a Association,

gives false or misleading information to the Koporesen is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

66. EXPORT OF COCONUT PRODUCTS NOT IN ACCORDANCE WITH SAMPLE.

A person who –

- (a) sells; or
- (b) agrees to sell,

any coconut product for export by sample or description graded according to standards set by the Koporesen and subsequently, willfully or negligently exports, on the basis of that sample or description, coconut products which do not substantially conform to that sample or description, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

67. DOMESTIC SALE OF COCONUT PRODUCTS NOT IN ACCORDANCE WITH SAMPLE.

A person who –

- (a) sells; or
- (b) agrees to sell,

to any person any coconut product by sample or description graded according to standards, set by the Koporesen and subsequently, willfully or negligently sells or agree to sell on the basis of that sample or description, coconut product which do not substantially conform to that sample or description, is guilty of an offence.

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Penalty: A fine of not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

PART XIII. – MISCELLANEOUS.

68. REGISTER OF LICENCES.

- (1) The Koporesen shall establish and maintain a register of –
- (a) licences; and
 - (b) associations.

(2) Each register shall be in such form and shall be kept in such manner as the Koporesen determines.

(3) All matters required by this Act to be licensed or registered shall be effected by the Koporesen.

(4) The mere production of a register, copy or an extract from a register certified by the Koporesen to be a register, or a true copy of a register or a true extract from a register, of licenses or associations, as the case may be, is evidence of the matters contained in it.

69. RECOGNITION OF LEADING COCONUT PRODUCING PROVINCES.

- (1) Recognition of three provinces as being the three leading coconut producing provinces in the country shall be –
- (a) made by the Koporesen at the commencement date; and
 - (b) revised every two years thereafter.

(2) Where a change in status of a province recognized as a leading coconut producing province under Subsection (1)(a) occurs, the Koporesen may change its recognition to another province or provinces as one of the three leading coconut producing provinces in the country.

(3) A member who represents a province which ceases to be recognized as one of the three leading coconut producing provinces in the country shall cease to hold office.

70. 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, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing –

- (a) information to be provided to the Koporesen by persons engaged in the coconut industry; and
- (b) qualifying standard for coconut products; and
- (c) rates of management levy payable and the manner in which that levy is to be calculated, paid and collected; and

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- (d) the manner in which an industry levy imposed under the Act is to be calculated, paid and collected; and
- (e) the manner in which bounty to be paid out under the Act is to be calculated and paid; and
- (f) the manner of sampling coconut products whether intended for export or otherwise; and
- (g) marks to be placed on containers, containing coconut products intended for export by exporters; and
- (h) marks to be placed by Inspectors on containers containing coconut products intended for export; and
- (i) the types, sizes and construction of containers to be used for export; and
- (j) the method of appealing to the Appeal Committee; and
- (k) fees to be paid to the Koporesen; and
- (l) requirements relating to export documentation; and
- (m) penalties of fines not exceeding K1,000.00 for offences against the regulations.

PART XIV. - TRANSITIONAL MANAGEMENT.

71. INTERIM BOARD OF DIRECTORS.

(1) Until the Board is appointed in accordance with Section 6 and to effect the administration necessary for appointments to be made under Section 6, there shall be an Interim Board established to govern and administer the affairs of the Koporesen.

(2) The Interim Board shall consist of –

- (a) the Departmental Heads of the Departments responsible for agriculture matters and treasury matters or their nominees *ex-officio*; and
- (b) a chairman appointed by the Minister by notice in the National Gazette; and
- (c) five other persons appointed by the Minister by notice in the National Gazette.

72. POWERS OF INTERIM BOARD.

The Interim Board shall have all the powers, authorities, functions and duties of the Board under this Act.

73. DUTY OF INTERIM BOARD.

The Interim Board shall take steps as may be necessary in order that the Board of the Koporesen may be fully constituted by the earliest practical date.

74. CHAIRMAN OF INTERIM BOARD.

(1) The chairman of the Interim Board shall preside at all meetings of the Board.

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(2) In the absence of the chairman a member elected by the members present at the meeting of the Interim Board shall preside.

(3) The chairman shall have in respect of the Interim Board and of the Koporesen the same powers, authorities, functions, duties and obligations in all respects as the Chairman has under Part III of this Act.

75. QUORUM.

At a meeting of the Interim Board four members present shall constitute the quorum.

76. APPLICATION OF PART III.

The provision of Part III apply so far as applicable and with necessary modifications and adaptations in respect to the Interim Board and of committees constituted and appointed thereby.

77. TERM OF OFFICE OF MEMBERS.

- (1) Members of the Interim Board shall hold office –
- (a) on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299); and
 - (b) until the Board is constituted under this Act;

(2) The Koporesen shall be deemed to be the same body corporate before and after the dissolution of the Interim Board and no act or thing done or commenced by the Interim Board shall be affected by dissolution of that Interim Board.

78. FUNCTIONS OF THE INTERIM BOARD.

The functions of the Interim Board are –

- (a) to arrange for the appointment of members of the Board in accordance with Part III; and
- (b) pending the appointment of the Board, to perform the functions of the Board.

PART XV. – REPEAL, TRANSITIONAL AND SAVINGS.

79. REPEAL.

The *Copra Marketing Board Act* (Chapter 212) is hereby repealed.

80. INTERPRETATION.

In this Part –

“Board” means the Copra Marketing Board established under the repealed Act.

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81. FORMER OFFICERS OF BOARD.

A person who, immediately before the commencement date, held office under the Board shall be deemed, on that date, to have been appointed to the same office or a similar office under the Koporesen on the same terms and conditions of appointment as were applicable to him immediately before that date.

82. TRANSFER OF ASSETS, ETC., TO KOPORESEN.

All the assets, property, right, obligations and liabilities which, immediately before the commencement date, were vested in or imposed on the Board shall, on that date, be deemed to have been transferred to and become the assets, property, rights, obligations and liabilities of the Koporesen.

83. SAVING OF CONTRACTS.

All contracts, agreements, conveyance, deeds, leases, licences and other instruments and undertakings entered into by, made with, or addressed to, the Board, whether alone or with any other person, before, and in effect immediately before, the commencement date, are, on that date, to the extent that they were previously binding on and enforceable against the Board, binding and of full force and effect in every respect against or in favour of the Koporesen as fully and effectually as if, instead of the Board, the Koporesen had been a party to them or bound by them or entitled to the benefit of them.

84. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the commencement date, any action, arbitration or proceeding, or any cause of action, arbitration or proceeding, was pending or existing by, against or in favour of the Board, it does not, on that date, abate or discontinue or be in any way affected by any provision of this Act, but may be prosecuted, continued and enforced by, against or in favour of the Koporesen when it might have been enforced by, against or in favour of the Board if this Act has not been made.

85. APPLICATIONS OF ACTS, ETC.

Where –

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument whenever made or executed,

contains a reference express or implied to the Board, that reference shall, after the commencement date and except where the context otherwise requires, be read and construed and has effect as a reference to the Koporesen.

86. EVIDENCE OF VESTING.

(1) Where any property transferred to the Koporesen by Section 82 is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall, without formal transfer, on application in that behalf by the Koporesen, enter or register the Koporesen in the register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp or other duty, tax or fee is payable on a registration made under Subsection (1).

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(3) Where any property transferred to the Koporesen consists of shares in a company or other marketable securities, the company secretary or other responsible officer of the company shall, without formal transfer on the application in that behalf by the Koporesen, enter or register the Koporesen in the register of members or security holders and upon the share certificate or other instrument evidencing title to the securities.

(4) No stamp or other duty, tax or fee is payable on a registration or transfer made under Subsection (3).

(5) The production of a copy of this Act certified by the First Legislative Counsel as a true copy shall be inclusive evidence of the vesting in the Koporesen of an asset, property and liability of the Board, in accordance with this Act.

- (6) The vesting of an interest in land by or under this Part shall not –
- (a) constitute a purchase, creation, assignment, transfer, devolution, alienation, parting with possession, dealing with or other disposition of that interest for the purposes of any bill or instrument concerning that interest; or
 - (b) give rise to any forfeiture or invalidate or discharge any contract or security or operate so as to merge any leasehold interest in the reversion expectant on it.

87. REGISTRATIONS UNDER REPEALED ACT.

A registration of –

- (a) a person as a registered exporter; or
- (b) a person as a registered manufacturer,

of copra under the repealed Act, in force immediately before the commencement date, shall be deemed to be an equivalent registration under this Act and shall continue in force for the term for which it was granted and subject to the conditions under which it was granted, unless earlier terminated according to law.

SCHEDULE.

Exceptions and Modifications to the *Public Finances (Management) Act 1995*.

Provision

Modification

Section 51
Section 56
Section 59

Not applicable
Not applicable
Not applicable.

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I hereby certify that the above is a fair print of the ***Kokonas Industri Koporesen Act 2002*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Kokonas Industri Koporesen 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.