



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. 18 of 2002

An Act

entitled

Kumul Consolidated Holdings 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 I.—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 right to freedom from arbitrary search and entry conferred by Section 44; and

(b) the right to freedom of conscience, thought and religion conferred by Section 45; and

(c) the right to freedom of expression conferred by Section 46; and

(d) the right to freedom of assembly and association conferred by Section 47; and

(e) the right to freedom of employment conferred by Section 48; and

(f) the right to privacy conferred by Section 49; and

(g) the right to freedom of information conferred by Section 51,

of the *Constitution* is a law that is made to comply with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular the National Goals and Directive Principles, namely —

(h) national sovereignty and self-reliance; and

(i) national resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the right and dignity of mankind.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* —

- (a) the purpose and reason for each such taking and acquisition are declared and described to facilitate the efficient and economical development and operation of the Independent Public Business Corporation of Papua New Guinea and each of its subsidiaries, and of the assets acquired by them so that the Independent Public Business Corporation of Papua New Guinea and each of its subsidiaries might thereby contribute to the advancement of the social and economic welfare of the people of Papua New Guinea; and
- (b) such purpose and reason is hereby also declared to be a reason that is reasonably justified in a democratic society that has proper regard for the rights and dignity of mankind; and
- (c) this Act is hereby expressed to be in the national interest; and
- (d) the undertaking of the obligations of the State, or the Independent Public Business Corporation of Papua New Guinea and each of its subsidiaries, as the case may be, in relation to each such taking or acquisition under this Act or any other Act, the conditions of any lease, licence or other tenement granted or issued under this or any other Act, or the terms of any agreement made in connection with such grant or issue and the terms of any such taking or acquisition as provided for in this Act, shall constitute compensation made in connection with that taking or acquisition,

for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law.

(3) Insofar as this Act provides for a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* of any person who is not a citizen, this Act is made pursuant to Subsection 53(7) of the *Constitution*.

(4) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(5) 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 3. 2 (*Leadership Code*) applies.

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

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;

"Borrowing Proposal" means a description of a financial arrangement proposed to be entered into by the Corporation, including —

- (a) material terms of the proposed financial arrangement, including the principal amount of the proposed financial arrangement, which may be stated as a range or an amount up to a maximum amount; and
- (b) currency risks; and
- (c) costs, which may be stated as a range or an amount up to a maximum amount; and
- (d) potential alternative financing options, if any; and
- (e) proposed timetables for the matters referred to in Paragraphs (a) to (d), and, where approved by the National Executive Council subject to amendments, includes those amendments;

"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 11;

"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;

"Corporation" means Kumul Consolidated Holdings, formerly named the Independent Public Business Corporation of Papua New Guinea;

"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;

"fit and proper person" means a person determined as such in accordance with this Act after taking into account the following considerations —

- (a) that person's probity;
- (b) that person's competence and soundness of judgment for fulfilling the responsibilities of the position;
- (c) diligence with which that person is fulfilling or likely to fulfil those responsibilities;
- (d) whether the interests of the Corporation and or its subsidiaries concerned are, or are likely to be, in any way threatened by that person being a member of the particular Board; and
- (e) that person's conduct and activities in business or financial matters, including whether that person has —
 - (i) been engaged in or associated with any financial loss due to dishonesty, incompetence or malpractice; or
 - (ii) been engaged in any business practices which could be considered to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person's method of conducting business or financial matters;

"Gas Agreement" means the agreement executed by the Independent State of Papua New Guinea, Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (Highlands) Limited, Ampolex (PNG Petroleum) Inc, Merlin Pacific Oil Company Limited, Oil Search Limited, Oil Search (Tumbudu) Limited, Oil Search PNG Limited, Merlin Petroleum Company, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited, AGL Gas Developments (PNG) Pty Limited, Santos Hides Ltd, Lavana Limited and Eda Oil Limited on 22 May 2008;

"General Business Trust" means the trust established by Section 31;

"IPBC Working Capital Fund" means the fund established under Section 34;

"Kroton" means Kroton No. 2 Limited Company No. 1-63957;

"LNG Project" has the same meaning as in the Gas Agreement;

"liabilities" means liabilities, debts and obligations (whether present or future and whether vested or contingent);

"Majority State Owned Enterprise" means a State Owned Enterprise in which the State or the Corporation, or both of them together, hold interests in assets or share capital exceeding 50%;

"Managing Director" means the Managing Director appointed under Section 23;

"Minister" means 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 who shall be responsible for the administration of this Act;

"MRDC" means Mineral Resources Development Company Limited.

"National Executive Council" means the National Executive Council established under Section 149 of the *Constitution*;

"NPCP" means NPCP Holdings Limited, Company No. I-100145, and upon coming into operation of the *Kumul Petroleum Holdings Limited Authorisation Act 2015*, will be renamed Kumul Petroleum Holdings Limited;

"People's Unit Trust" . . . [Repealed]

"Petromin" means Petromin Papua New Guinea Holdings Limited, Company No. 1-59327, established under the *Petromin Papua New Guinea Holdings Limited Authorisation Act 2007*, and which, upon the *Kumul Minerals Holdings Limited Authorisation Act 2015* coming into operation will be renamed Kumul Minerals Holdings Limited;

"Privatization Commission" means the commission established by Section 2 of the *Privatization Act 1999*;

"recognised University" means The University of Papua New Guinea, Papua New Guinea University of Technology, Divine Word University, Pacific Adventist University, a university that is a member of the Association of Commonwealth Universities and any other recognised and reputable university;

"Secretary" means the Secretary to the Board appointed under Section 11;

"Sovereign Wealth Fund" means the Sovereign Wealth Fund established by Section 212A (Sovereign Wealth Fund) of the *Constitution* and the *Organic Law on the Sovereign Wealth Fund*;

"State" means the Independent State of Papua New Guinea; and

"State Owned Enterprise" means—

- (a) a business enterprise in which the State or the Corporation owns any assets; or
- (b) a business enterprise in which any of the share capital is owned by the State or the Corporation; or
- (c) a business enterprise in which a business enterprise referred to in Paragraph (a), (b) or (d) owns any assets; or
- (d) a business enterprise in which any of the share capital is owned by a business enterprise referred to in Paragraph (a), (b) or (c), including by multiple applications of Paragraphs (c) or (d);

"subsidiary" has the meaning set out in Subsection 5(1) of the *Companies Act 1997*.

"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.

(1) 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 a beneficiary of the Trusts except as permitted by, and in accordance with, this Act.

(2) This section does not apply to limit, in any way, or prevent the State from exercising its rights under Subsection 4(1) of the *Kumul Minerals Holdings Limited Authorisation Act 2015* or the Corporation from meeting its obligation under, and giving effect to, that Subsection.

4. Application and amendment of *Public Finances (Management) Act 1995*.

(1) The *Public Finances (Management) Act 1995* does not apply to the Corporation, the Trusts, the State Owned Enterprises or to any other enterprise in which the Corporation, the Trusts or a State Owned Enterprise holds any shares, property or other interest.

(2) Subsection (1) does not affect the appropriation of any funds pursuant to the *Public Finances (Management) Act 1995*.

(3) Section 2 of the *Public Finances (Management) Act 1995* is amended in the definition of "public body" by adding the following paragraph—

- (f) the Corporation, the Trusts, the State Owned Enterprises and any other enterprise in which the Corporation, the Trusts or a State Owned Enterprise holds any shares, property or other interests (as those terms are defined in the *Independent Public Business Corporation of Papua New Guinea Act 2002*);

5. . . . [Repealed].

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.

(4A) Neither the Corporation nor any of the Corporation's subsidiaries is entitled to claim the benefit of sovereign immunity in relation to its or their actions or assets.

(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 or members of the National Parliament or other provincial or local-level 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 with due care, diligence and skill that a prudent person of business would adopt or exercise in a similar circumstance.

(6) Notwithstanding Subsection (5), the Minister may, following approval by the National Executive Council, issue policy directions to the Corporation, not inconsistent with the objects of the Corporation as provided for in Section 7, in relation to the carrying out of the Corporation's powers and the exercise of its functions.

(7) Any direction issued by the Minister pursuant to Subsection (6) shall be of no effect until the direction has been published in full in the National Gazette.

7. Objects of the Corporation.

The objects of the Corporation shall be—

- (a) to act as trustee of the Trusts and hold assets and liabilities that have been vested in or acquired by it, on behalf of the State; and
- (b) to act as a financial institution for the benefit of and the provision of financial resources and services to State Owned Enterprises and the State, where this is approved by the National Executive Council; and
- (c) to enhance the financial position of the State or State Owned Enterprises; and
- (d) to enter into and perform financial and other arrangements that in the opinion of the Corporation have as their objective either—
 - (i) the advancement of the financial interests of the State or State Owned Enterprises; or
 - (ii) the development of the State or any part thereof.

8. Functions of the Corporation.

(1) The Corporation shall administer the Trusts and monitor the performance of the assets of the Trusts 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 Subsection (1) but subject to the provisions of this Act, the Corporation (both in its capacity as trustee of each of the Trusts and otherwise)—

- (a) may undertake the function of holding and monitoring corporation for State owned assets and Majority State Owned Enterprises; and
- (b) may undertake the function of planning, coordinating and managing State assets, infrastructure and projects; 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 borrow, raise or otherwise obtain financial accommodation in Papua New Guinea and elsewhere; and
- (e) may advance money or otherwise make financial accommodation available to the State or State Owned Enterprises;. and
- (f) may act as a central borrowing and capital raising authority for State Owned Enterprises; and
- (g) may act as agent for State Owned Enterprises in negotiating, entering into and performing financial arrangements; and
- (h) may provide a medium for the investment of funds of State Owned Enterprises; and
- (i) may manage or cause to be managed the Corporation's financial rights and obligations; and
- (j) has such other functions and duties as are prescribed by the Act or any other Act.

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) Subject to the provisions of this Act, 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) Subject to Section 12 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 state owned assets and state owned enterprises; and
- (b) subscribe for or otherwise acquire shares or other interests in The nature of equity in State owned assets or State Owned 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 State owned assets or State Owned 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 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, nominees or representatives; and
- (k) act as a trustee, attorney, agent, nominee or representative; and
- (l) subject to Section 9A nominate any person to be a member of the board of directors or other controlling or governing body of a State Owned Enterprise provided such persons would not be disqualified from being a director under any of Section 11(4)(a) and (b)(i), (iii) to (vii) (inclusive) and subject to the provisions of the constitution of the State Owned Enterprise; and
- (m) exercise any right to vote or other power or right attaching to any asset; and
- (n) adopt such means of making known or advertising the activities of the Corporation as the Corporation thinks fit; and
- (o) advise on or arrange financing for the State and State Owned Enterprises in relation to the provision of infrastructure or services by or on behalf of the State; and
- (p) borrow or lend money or enter into financial accommodation arrangements whether in its own capacity or as trustee of the Trusts, the State and State Owned Enterprises (including any transaction between the Corporation, the State and any State Owned Enterprise); and
- (q) grant security over its assets or the assets of the Trusts; and
- (r) provide any guarantee, indemnity or other financial assurance in its own capacity or on behalf of the Trusts; and
- (s) . . . [Repealed]
- (t) do anything necessary or convenient for or incidental to the purpose of its functions or powers, each of which paragraph shall be a separate and distinct power and none of which is to be limited by any other.

(4) The Corporation may agree to indemnify and may indemnify a director, secretary, liquidator or other officer of a State Owned Enterprise on such terms and conditions as the Corporation determines in its absolute discretion by instrument in writing signed by the Corporation.

(5) . . . [Repealed]

9A. . . . [Repealed]

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 of the Corporation.

- (1) The Chairman and Directors shall be appointed in accordance with this section.
- (2) The Board of the Corporation shall be comprised of seven Directors.
- (3) One of the Directors shall be the Managing Director of the Corporation.
- (4) At least five of the Directors must be citizens of Papua New Guinea and not more than two of the Directors may be non-citizens of Papua New Guinea.
- (5) All of the Directors, other than the Managing Director, shall be appointed for a term of up to three years with such respective terms of office ensuring an orderly system of retirement, re-appointment and replacement as are determined from time to time by the National Executive Council.
- (6) In determining the respective terms of Directors necessary to satisfy the requirements of Subsection (5), the National Executive Council shall seek to ensure that not more than 50% of the Directors retire in any 12 month period.
- (7) In respect of the Board of the Corporation —
 - (a) no person shall be appointed to, or remain, on the Board if that person—
 - (i) is not a fit and proper person as determined by the National Executive Council; or
 - (ii) except in the case of the Managing Director, is an employee or other executive officer of the Corporation or any subsidiary of the Corporation; or
 - (iii) has been a Director for a maximum period of nine years in aggregate, provided that nothing in this subparagraph shall apply to a Managing Director; or
 - (iv) has turned 72 years of age; or
 - (v) does not, as a minimum, hold an undergraduate degree bestowed by a recognised University; or
 - (vi) is a member, or candidate for election as a member, of the National Parliament, or a Provincial Government or Local-level Government or is a member of a Local-level Government Special Purposes Authority appointed under Section 42 of the *Local-level Governments Administration Act 1997*; or
 - (vii) is an officer or employee of the public service or a statutory authority or agency; or
 - (viii) is an office-holder, or candidate for election as an office-holder, in a registered political party; and
 - (b) the requirements of Subparagraph (a)(v) may be waived by the National Executive Council in respect of no more than one Director who otherwise satisfies the remaining requirements of Paragraph (a) and who has at least 15 years senior management experience in any business or field that provides significant involvement with the operation or management of state owned enterprises and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current Directors; and
 - (c) except as may be provided in this or any other Act, a person who has held an office or position or who has been a candidate for election as referred to in Subparagraphs (a)(vi), (vii) and (viii), shall not be appointed as a Director

until 12 months have elapsed following that person ceasing to hold the office or position or ceasing to be a candidate for election; and

(d) a Director who intends to nominate to hold office as referred to in Subparagraph (a)(vi) shall resign as a Director no later than six months prior to such nomination.

(8) Without limiting Subsection (7), no person shall be newly appointed as a Director unless that person has at least ten years experience working in any business or field with significant involvement with the operation or management of State owned enterprises.

(9) The Directors shall be appointed by the National Executive Council as follows:

(a) before any appointment is made, the Board shall inform the Minister and the National Executive Council of the number of vacancies to be filled and shall at the same time notify the Minister and the National Executive Council —

(i) of persons, including from among their own number, who in their opinion have the qualifications and experience meeting the requirements for Directors specified in this section and who are prepared to accept appointment as a Director; and

(ii) the details of those persons identified in Subparagraph (i), including their respective qualifications and experience; and

(b) the National Executive Council shall appoint the requisite number of Directors duly qualified under this section from the persons notified by the Board under Paragraph (a); and

(c) in making appointments under Paragraph (b), the National Executive Council shall not be limited to the persons initially advised under Paragraph (a) and may request the Board to provide further names of qualified persons under that paragraph until the National Executive Council has completed the making of those appointments; and

(d) during the first 12 months after the date on which the *Independent Public Business Corporation of Papua New Guinea (Kumul Consolidated Holdings) Amendment Act 2015* comes into operation, for the purposes of this Subsection (9), the procedures for nomination of Directors by the Board shall not apply and the National Executive Council shall appoint such persons who have the qualifications and experience meeting the requirements for Directors specified in this section and who are prepared to accept appointment as a Director, as the National Executive Council considers appropriate.

(10) No Director shall be appointed as Chairman unless, for the purpose of satisfying the matters in Subsection (8), that Director has a minimum five years additional experience in those matters.

(11) No Director shall be appointed Chairman while that Director holds the position of Chairman of NPCP or Chairman of Petromin.

(12) The Chairman shall be appointed as follows:

(a) before any appointment is made, the Board shall —

(i) identify those among their number having the qualifications and experience meeting the requirements specified in Subsections (7), (8)

and (10) and who are prepared to accept appointment as Chairman;
and

- (ii) notify the Minister and the National Executive Council of those Board members as so identified and provide the Minister and the National Executive Council with details of their respective qualifications and experience; and

(b) the National Executive Council shall select the Chairman from the Board members so notified having regard to any recommendation of the Minister, and the Board shall appoint that person as the Chairman.

(13) The Directors, apart from the Managing Director, shall be paid such annual remuneration and reasonable attendance allowances as are consistent with non-executive board appointments in companies managing similar enterprises in the private sector and, in that respect —

(a) the Chairman shall from time to time recommend to the Minister and the National Executive Council an appropriate annual remuneration for the Directors; and

(b) the amount of that annual remuneration from time to time shall be determined by the National Executive Council having regard to any recommendation of the Minister, and in so determining that amount, the National Executive Council shall not be bound by the Chairman's recommendation.

(14) A Director may be removed at any time by the National Executive Council after consulting with the Minister, however, that no more than three directors may be removed by the National Executive Council in any 12 month period.

12. Directors of Majority State Owned Enterprises.

(1) The Chairman and Directors of Majority State Owned Enterprises shall be appointed in accordance with this section.

(2) The Board of Directors of each Majority State Owned Enterprise shall be comprised of seven Directors.

(3) One of the directors shall be the Managing Director of the Majority State Owned Enterprise.

(4) At least five of the directors of each Majority State Owned Enterprise shall be citizens of Papua New Guinea and not more than two of the directors of each Majority State Owned Enterprise may be non-citizens of Papua New Guinea.

(5) All of the directors, other than the Managing Director, shall be appointed for a term of up to three years with such respective terms of office ensuring an orderly system of retirement, re-appointment and replacement as are determined from time to time by the National Executive Council.

(6) In determining the respective terms of directors necessary to satisfy the requirements of Subsection (5), the National Executive Council shall seek to ensure that no more than 50% of the directors retire in any 12 month period.

(7) In respect of the Board of each Majority State Owned Enterprise —

(a) no person shall be appointed to, or remain, on the board if that person—

- (i) is not a fit and proper person as determined by the National Executive Council; or

- (ii) except in the case of the Managing Director, is an employee or other executive officer of the Majority State Owned Enterprise or any subsidiary of the Majority State Owned Enterprise; or
 - (iii) has been a director for a maximum period of nine years in aggregate, provided that nothing in this subparagraph shall apply to a Managing Director; or
 - (iv) has turned 72 years of age; or
 - (v) does not, as a minimum, hold an undergraduate degree bestowed by a recognised university; or
 - (vi) is a member, or candidate for election as a member, of the National Parliament, or a Provincial Government or Local-level Government or is a member of a Local-level Government Special Purposes Authority appointed under Section 42 of the *Local-level Governments Administration Act 1997*; or
 - (vii) is an officer or employee of the public service or a statutory authority or agency; or
 - (viii) is an office-holder, or candidate for election as an office-holder, in a registered political party; and
- (b) the requirements of Subparagraph (a)(v) may be waived by the National Executive Council in respect of no more than one director who otherwise satisfies the remaining requirements of Subparagraph (a) and who has at least 15 years senior management experience in any business or field that provides significant involvement with the operation or management of state owned enterprises and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current directors; and
- (c) except as may be provided in this or any other Act, a person who has held an office or position or who has been a candidate for election as referred to Subparagraphs (a)(vi), (vii) and (viii), shall not be appointed as a director until 12 months have elapsed following that person ceasing to hold the office or position or ceasing to be a candidate for election; and
- (d) a director who intends to nominate to hold office as referred to in Subparagraph (a)(vi) shall resign as a director no later than six months prior to such nomination.

(8) Without limiting Subsection (7), no person shall be newly appointed as a director unless that person has at least ten years experience working in any business or field relevant to the operation or management of the Majority State Owned Enterprise.

(9) The directors of each Majority State Owned Enterprise shall be appointed by the National Executive Council as follows:

- (a) before any appointment is made, the Board of the Majority State Owned Enterprise shall inform the Minister and the National Executive Council of the number of vacancies to be filled and shall at the same time notify the Minister and the National Executive Council—
 - (i) of persons, including from among their own number, who in their opinion have the qualifications and experience meeting the

requirements for directors specified in this section and who are prepared to accept appointment as a director; and

- (ii) the details of those persons identified in Subparagraph (i), including their respective qualifications and experience; and
- (b) the National Executive Council shall appoint the requisite number of directors duly qualified under this section from the persons notified by the board under Paragraph (a); and
- (c) in making appointments under Paragraph (b), the National Executive Council shall not be limited to the persons initially advised under Paragraph (a) and may request the board to provide further names of qualified persons under that paragraph until the National Executive Council has completed the making of those appointments.

(10) No director shall be appointed as Chairman of a Majority State Owned Enterprise unless, for the purpose of satisfying the matters in Subsection (8), that director has a minimum five years additional experience in those matters.

(11) The Chairman of a Majority State Owned Enterprise shall be appointed as follows:

- (a) before any appointment is made, the board of a Majority State Owned Enterprise shall —
 - (i) identify those among their number having the qualifications and experience meeting the requirements specified in Subsections (7), (8) and (10) and who are prepared to accept appointment as Chairman; and
 - (ii) notify the Minister and the National Executive Council of those Board members as so identified and provide the Minister and the National Executive Council with details of their respective qualifications and experience; and
- (b) the National Executive Council shall select the chairman from the Board members so notified having regard to any recommendation of the Minister, and the board shall appoint that person as the Chairman.

(12) The directors of a Majority State Owned Enterprise, apart from the Managing Director, shall be paid such annual remuneration and reasonable attendance allowances as are consistent with non-executive Board appointments in companies managing similar enterprises in the private sector and, in that respect —

- (a) the Chairman of each Majority State Owned Enterprise shall, from time to time, recommend to the Minister and the National Executive Council an appropriate annual remuneration for the directors; and
- (b) the amount of that annual remuneration from time to time shall be determined by the National Executive Council having regard to any recommendation of the Minister, and in so determining that amount, the National Executive Council shall not be bound by the Chairman's recommendation.

(13) A Director of a Majority State Owned Enterprise may be removed at any time by the National Executive Council after consulting with the Minister, provided however, that no more than three directors may be removed by the National Executive Council in any 12 month period.

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.

(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 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(4),

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 recommend to the Minister to terminate the appointment of that Director with immediate effect.

- (3) . . . [Repealed]
- (4) . . . [Repealed]

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.

(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.

A Director (other than the Managing Director) and a director of a Majority State Owned Corporation 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.

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. Appointment of Managing Director.

(1) The Managing Director of the Corporation shall be appointed by the National Executive Council acting on the recommendation of the Minister.

(2) The Managing Director shall be appointed for such period (not exceeding four years) and on such terms and conditions including salary and allowances as the Board thinks fit.

(3) The Managing Director may be reappointed in the manner provided for in Subsections (1) and (2) for one further period not exceeding three years.

24. Remuneration of Managing Director. [Repealed]

25. Removal of Managing Director.

The Managing Director may be removed from his position in accordance with the terms and conditions approved in accordance with Section 23(2).

26. . . . [Repealed]

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.

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) The Corporation is not a Department of the National Public Service, and officers of the Corporation (including the Managing Director) are not officers in the National Public Service.

(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.

(4) The *Salaries and Conditions Monitoring Committee Act* 1988 does not apply in respect of the Corporation or of its Directors, office or staff.

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.

(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.

(1A) The beneficiary of the Papua New Guinea General Business Trust is the State.

(1B) The purposes of the General Business Trust, subject to this Act, include the following—

(a) to hold assets and liabilities which have been acquired or assumed by or vested in the Corporation; and

(b) to enable the rehabilitation and restructuring of assets under the control of the Corporation; and

(c) to hold the interest of the Corporation in ownership or development of assets in conjunction with private sector investors; and

(d) to enable the sale or disposal of State owned assets and the receipt of the proceeds thereof.

(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 State Owned 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 held by any of the

bodies referred to in Section 50(1) in the Corporation as trustee of any of the Trusts with effect on and from the commencement date or such later date as specified 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. Profit and losses of the Corporation.

Except to the extent that it is otherwise provided by the National Executive Council, all profits made by the Corporation shall accrue to the benefit of consolidated revenue and any losses of the Corporation shall be the responsibility of consolidated revenue.

34. Annual Plan of the Corporation and dividend distribution.

(1) The Corporation shall, not later than three months before the end of each financial year, submit to the National Executive Council a plan in respect of the next financial year of the activities of the Corporation and the Trusts including—

- (a) a financial plan, including proposed borrowings and payment of dividends; and
- (b) an expenditure budget; and
- (c) proposals for acquisition of assets; and
- (d) identification of assets for joint development between the State, the Corporation and private sector investors; and
- (e) identification of assets for rehabilitation and restructure; and
- (f) proposals for sale of assets; and
- (g) proposals for provision of infrastructure and services by or on behalf of the State; and
- (h) proposals regarding financing for the purposes of this Act; and
- (i) a forecast of the asset, liability and cash flow position of the Corporation and the Trusts as at the end of that financial year; and
- (j) proposed timetables for the matters referred to in Paragraphs (a) to (h).

(2) The plan referred to in Subsection (1) is subject to the approval of the National Executive Council, and is not valid unless and until such approval has been granted.

(3) Upon approval of the plan referred to in Subsection (1), the plan is valid as from the commencement of the period to which the plan relates and if an Annual Plan is duly approved by the National Executive Council, it shall, notwithstanding the date of that approval, be binding on the Corporation in all aspects from the commencement of the Accounting Period to which it relates.

(4) Notwithstanding Subsection (3), borrowing, raising of money or entering into any other financial arrangements requires specific approval of the National Executive Council in accordance with Section 37(1).

(5) Any changes to the plan referred to in Subsection (1) require the approval of the National Executive Council.

- (6) In the course of—
 - (a) preparing, in the case of the Corporation; and
 - (b) considering approval, in the case of the National Executive Council, the plan referred to in Subsection (1), regard must be had to the need for the Corporation and each of the Trusts to have an excess of assets over liabilities and be able to meet their debts as and when they fall due, and a plan must not be approved which does not meet these requirements.
- (7) The Corporation shall not incur any expenditure, or acquire or dispose of any assets during a financial year unless —
 - (a) the expenditure or acquisition or disposal of assets is made pursuant to the plan referred to in Subsection (1); or
 - (b) the expenditure or acquisition or disposal of assets is approved by the National Executive Council; or
 - (c) the total expenditure and value of acquisition of assets in any financial year incurred by the Corporation does not exceed K10,000,000.00, or such other limit as may be determined by the National Executive Council and advised to the Corporation from time to time; or
 - (d) the total value of disposal of assets in any financial year incurred by the Corporation does not exceed K10,000,000.00, or such other limit as may be determined by the National Executive Council and advised to the Corporation from time to time.
- (8) The Corporation must, from time to time, declare dividends in accordance with Subsection (9) and may fix the time for payment of dividends, which shall be no later than two months after the end of each financial year.
- (9) A dividend must be paid directly into the Sovereign Wealth Fund in accordance with the *Organic Law on the Sovereign Wealth Fund* in respect of each financial year equal to the amount of available reserves of the Corporation (being the accumulated realised earnings from prior periods and the profits earned in the current year) at the end of that financial year less any amount required to be held by the Corporation to meet the requirements of the approved plan referred to in Subsection (1).

35. . . . [Repealed]

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. Borrowing powers of the Corporation.

(1) The Corporation (both in its capacity as trustee of each of the Trusts and otherwise) has the power to borrow or raise money or enter into any other financial

arrangements either in Papua New Guinea or elsewhere as a borrower or guarantor or as a party in the nature of a borrower or guarantor or as an acquirer of financial accommodation or in any other related capacity, on terms approved by the National Executive Council.

(2) Subject to Section 7 of the *Liquefied Natural Gas Project (State Participation) Act 2008*, the Corporation shall, before entering into a financial arrangement (other than financial arrangements referred to in Section 7 of the *Liquefied Natural Gas Project (State Participation) Act 2008*) in accordance with Subsection (1), submit to the Minister a Borrowing Proposal in respect of the financial arrangement.

(3) A Borrowing Proposal submitted to the Minister under Subsection (2) shall be simultaneously submitted to the Treasurer in accordance with Section 5(b) of the *Papua New Guinea Fiscal Responsibility Act 2006*.

(4) A Borrowing Proposal is subject to the approval of the National Executive Council and will include any amendments required by the National Executive Council as a condition of such approval, and unless approval is given the Borrowing Proposal is not valid and the Corporation must not enter into the financial arrangement to which the Borrowing Proposal relates.

(5) Upon approval, the Borrowing Proposal is valid as from the commencement of the period to which it relates.

(6) Any changes to a Borrowing Proposal approved by the National Executive Council pursuant to Subsection (4) requires the further approval of the National Executive Council pursuant to that subsection.

(7) Financial arrangements entered into in accordance with this section may be made —

- (a) with or without security given by the Corporation (both in its capacity as trustee of any of the Trusts and otherwise); and
- (b) at such rate of interest (if any) and for the payment of such other consideration (if any) as the Corporation thinks fit; and
- (c) on such terms as to repayment and otherwise as the Corporation thinks fit.

(8) This section does not apply to financial arrangements entered into by the Corporation as a lender or as a party in the nature of a lender or as the provider of any financial accommodation.

38. Lending powers of the corporation.

(1) The Corporation, in the attainment of its objects and the discharge of its functions under this Act, has the power to make loans or advances or enter into any other financial arrangements either in Papua New Guinea or elsewhere as a lender or as a party in the nature of a lender or as the provider of a financial accommodation, to the State or a Majority State Owned Enterprise, as it thinks fit.

(2) The Corporation may not make loans or advances or enter into any other financial arrangements as a lender or as a party in the nature of a lender or as the provider of a financial accommodation, to a State Owned Enterprise in which the Corporation has only a minority shareholding and which it does not control, without the approval of the National Executive Council.

39. . . . [Repealed]

40. . . . [Repealed]

41. . . . [Repealed]

42. . . . [Repealed]

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.

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" including each Majority State Owned Enterprise and the provisions in this section relating to the Corporation apply to each such Majority State Owned Enterprise *mutatis mutandis*.

- (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 and the Trusts 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 audited financial statements, together with the report from the Auditor-General, to be published and presented to the National Parliament at the next sitting 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.

(7) . . . [Repealed]

(8) Management accounts for the most recent calendar quarter and the financial year to date prepared to professional standards and rolling one 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 or 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.

(3) All supplies of goods or services to the Corporation, whether in its capacity as trustee of any of the Trusts or otherwise, shall be liable to value added tax imposed under the *Value Added Tax Act* 1998 at a rate of zero percent.

PART VIA.—MAJORITY STATE OWNED ENTERPRISES.

46A. Application of *Public Finances (Management) Act* 1995.

The *Public Finances (Management) Act* 1995 does not apply to any Majority State Owned Enterprise or State Owned Enterprise.

46B. . . . [Repealed]

46C. Governance of Majority State Owned Enterprises.

(1) The board of directors of a Majority State Owned Enterprise shall be appointed by the National Executive Council pursuant to Section 12, notwithstanding the provisions of *Companies Act* 1977 and the *Constitution* (if any) of the Majority State Owned Enterprise.

(2) Notwithstanding Subsection (1), the directors of a Majority State Owned Enterprise have the same obligations and duties under the *Companies Act* 1977 as apply to the directors of any other company.

(3) A Majority State Owned Enterprise must hold an annual meeting in accordance with the provisions of the *Companies Act* 1997.

46D. Indemnities.

The Corporation may agree to indemnify and may indemnify a director, secretary, liquidator or other officer of a Majority State Owned Enterprise on such terms and conditions as the Corporation determines in its absolute discretion.

46E. Annual Plan of Majority State Owned Enterprise.

(1) Each Majority State Owned Enterprise shall not later than four months before the end of each financial year, submit to the National Executive Council a plan in respect of the next financial year of the activities of the Majority State Owned Enterprise including—

- (a) a business plan; and
- (b) an expenditure budget; and
- (c) forecast financial information including debt repayments and dividends; and
- (d) proposals for acquisition of plant or other assets; and
- (e) borrowing program and proposals; and
- (j) identification of assets for joint development with private sector investors; and
- (g) identification of assets for rehabilitation and restructure; and
- (h) employee relations policies; and
- (i) proposals for sale of assets; and
- (j) proposed timetable for the matters referred to in paragraph (b) to (i) (inclusive); . and
- (k) performance indicators; and
- (l) industry reform proposals.

(2) If a plan referred to in Subsection (1) is duly approved by the National Executive Council, it shall, notwithstanding the date of that approval, be binding on the Majority

State Owned Enterprise in all respects from the commencement of the financial year to which it relates.

(3) No changes to a plan referred to in Subsection (1) shall be acted on or considered valid or effective until approved by the National Executive Council.

(4) In the course of —

(a) preparing the annual plan, in the case of a Majority State Owned Enterprise;
or

(b) considering approval for the annual plan, in the case of the National Executive Council,

regard must be had to the need for the Majority State Owned Enterprise and its subsidiaries to be able to meet their debts as and when they fall due.

46F. Permitted Expenditure by Majority State Owned Enterprises.

A Majority State Owned Enterprise shall not incur any expenditure, or acquire or dispose of any assets, during a financial year unless:

(a) the expenditure or acquisition or disposal of assets is made in accordance with the plan referred to in Section 46E(1); or

(b) the expenditure or acquisition or disposal of assets is approved by the National Executive Council; or

(c) the total expenditure and value of acquisition of assets in any financial year incurred by the Corporation does not exceed K10,000,000.00, or such other limit as may be determined by the National Executive Council and advised to the Majority State Owned Enterprise from time to time; or

(d) the total value of disposal of assets in any financial year incurred by the Majority State Owned Enterprise does not exceed K10,000,000.00, or such other limit as may be determined by the National Executive Council and advised to the Majority State Owned Enterprise from time to time.

46G. Payment of Dividends by Majority State Owned Enterprises.

(1) A Majority State Owned Enterprise must, from time to time, declare dividends in accordance with Subsection (2) and may fix the time for payment of dividends, which shall be no later than two months after the end of each financial year.

(2) A dividend must be paid in respect of each financial year equal to the amount of available reserves of a Majority State Owned Enterprise (being the accumulated realised earnings from prior periods and the profits earned in the current year) at the end of that financial year less any amount required to be held by the Majority State Owned Enterprise to meet the requirements of the approved plan referred to in Section 46E(1).

(3) A Majority State Owned Enterprise shall pay all dividends to the Corporation.

46H. Borrowing powers.

Subject to this Act and in particular to Sections 46E, and 46F, a Majority State Owned Enterprise has all the powers of a company under the *Companies Act 1997* to

borrow money, obtain financial accommodation, give security and grant guarantees or indemnities

46I. Directions and policies.

Following the approval of the National Executive Council, the Minister may, by notice to a Majority State Owned Enterprise, set policies or give directions in any matter concerning the activities of the Majority State Owned Enterprise including, but not limited to, operation, planning, staffing, staff remuneration, board remuneration, contract tendering, engagement of consultants or industry reform.

46J. . . . [Repealed]

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 Act, 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
- (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. State guarantee.

(1) The State may, by instrument executed by the Head of State, acting on advice, 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.

(3) The State may, by instrument executed by the Minister responsible for treasury matters, guarantee or indemnify a director, secretary, liquidator or other officer of a State Owned Enterprise on such terms and conditions as the Minister determines in his absolute discretion.

50. Vesting and transfer.

(1) All assets and liabilities held by any of—

(a) the Privatization Commission; or

(b) the State; or

(c) any Minister of the State, Secretary of any Department or other State officer;
or

(d) a statutory body established by Act; or

(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 consistent with this Act 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.

(5) An asset, liability or interest vested in the Corporation pursuant to this Act shall, at the time of vesting, be accounted for in a manner determined by the Corporation that is consistent with applicable financial reporting standards.

(6) A notification made for the purposes of Subsection (1) or Section 31 can be corrected so as to be effective and workable, but otherwise cannot be varied or revoked.

(7) For the avoidance of doubt, any notification made by the Minister during the period between the commencement date of this Act and the commencement date of the *Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2006* which purports to have the effect of revoking a vesting of assets in, or to de-vest assets of, the Corporation is void and of no effect.

50A. Liquefied Natural Gas Project.

(1) Notwithstanding any other law, the State hereby nominates, and ratifies and confirms any prior nomination of, Kroton as its nominee to acquire so much of the participating interest in the LNG Project as the State is entitled to acquire either pursuant to Section 165 of the *Oil and Gas Act 1998* or clause 10 of the Gas Agreement.

(2) Nothing in Subsection (1) applies to the equity benefit granted by the State under Section 167 of the *Oil and Gas Act 1998* and the State may nominate MRDC or a wholly owned subsidiary of MRDC to hold that equity benefit.

(3) Any nomination contrary to Subsection (1) or Subsection (2), as the case may be, whether made before or after this Section comes into effect, is void and of no effect.

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.

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.

(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.

ii

56. . . . [Repealed]

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.

59. . . . [Repealed]

59A. Application of Sections 3, 50 and 59.

(1) Section 3 does not apply to limit in any way or prevent the State from exercising its rights in respect of an acquisition of assets from the Corporation pursuant to Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007*.

(2) Any assets which are to be transferred by the Corporation under Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007* shall, by this section, be transferred free of any trust to which they were subjected under Section 50.

(3) Section 59 does not apply to anything done or effected in respect of a transfer of assets by the Corporation pursuant to Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007*.

59A. People's Unit Trust.

(1) The People's Unit Trust of Papua New Guinea created by deed dated 6 June 2002 of which the Corporation, as successor to the Privatization Commission, as trustee is terminated on the basis that it was never fully constituted and any assets and liabilities held by the Corporation as trustee of that trust, or by any other person as beneficiary of that trust, are held absolutely by the Corporation.

(2) No person shall have any claim for compensation, damages or loss arising from or in respect of the termination of the trust referred to in Subsection (1).

59B. Kumul Minerals Holdings.

(1) In this section —

"Kumul Minerals Company" and "Kumul Minerals Trust" have the meaning given to them in Section 2 of the *Kumul Minerals Holdings Limited Authorisation Act 2015*;

(2) On the coming into operation of the *Kumul Minerals Holdings Limited Authorisation Act 2015*, Sections 9, 9A and 50 of this Act shall have no application to —

(a) the assets of any Kumul Minerals Company; or

(b) any of the shares or rights in respect of shares of any Kumul Minerals Company; or

(c) any assets of the Kumul Minerals Trust.

59C. Kumul Petroleum Holdings.

(1) In this section —

"Kumul Petroleum Company", "National Petroleum (Kroton)" and "Kumul Petroleum Trust" have the meaning given to them in Section 2 of the *Kumul Petroleum Holdings Limited Authorisation Act 2015*.

- (2) On the coming into operation of the *Kumul Petroleum Holdings Limited Authorisation Act 2015*, Sections 9, 9A and 50 of this Act shall have no application to —
- (a) the assets of any Kumul Petroleum Company; or
 - (b) any of the shares or rights in respect of shares of any Kumul Petroleum Company; or
 - (c) any assets of the Kumul Petroleum Trust.

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.

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 Corporation.

(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.

(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.



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