

INDEPENDENT STATE OF PAPUA NEW GUINEA

No. 18 of 2002

An Act

entitled

Independent Public Business Corporation of Papua New Guinea Act 2002

Being an Act—

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

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

PART I.—PRELIMINARY

1. Compliance with Constitutional Requirements

- (1) This Act, to the extent that it regulates or restricts a right or freedom conferred by Subdivision III.3.C (qualified rights) of the Constitution, namely—
 - (a) the right to freedom of expression conferred by Section 46 of the Constitution; and
 - (b) the right to freedom of assembly and association conferred by Section 47 of the Constitution; and
 - (c) the right to freedom of employment conferred by Section 48 of the Constitution; and
 - (d) the right to privacy conferred by Section 49 of the Constitution; and
 - (e) the right to freedom of information conferred by Section 51 of the Constitution,is a law that is made for the purpose of giving effect to the public interest in public welfare.
- (2) For the purposes of Section 41 of the Organic Law on Provincial Governments and Local-level Governments, it is declared that this law relates to a matter of national importance.
- (3) For the purposes of Subsection 26(3) of the Constitution, the position of Director (including Managing Director) is declared to be a public office to which Subdivision III.3.C (Leadership Code) applies.

2. Interpretation

- (1) In this Act, unless the contrary intention appears—

"**Assets**" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any corporation, securities, choses in action and documents of any kind;

"Board" means the Directors acting collectively;

"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 12;

"Close Relative", in relation to any person, means—

- (a) any parent, spouse (current or previous), child, brother or sister of that person; or
- (b) any parent, child, brother or sister of a spouse (current or previous) of that person; or
- (c) any aunt, uncle, nephew or niece of that person or of that person's spouse (current or previous); or
- (d) any child of the brother or sister of a parent of—
 - (i) that person; or
 - (ii) that person's spouse (current or previous); or
- (e) the spouse (current or previous) of any person referred to in Paragraphs (a) to (d) (inclusive);

"Commencement Date" means the date notified in the National Gazette as the date for commencement of the operation of this Act;

"Deputy Chairman" means the Deputy Chairman of the Board appointed under Section 12;

"Director" means a person appointed as a director of the Corporation under Section 11;

"Enterprise" means—

- (a) a corporation; or
- (b) a partnership; or
- (c) a firm; or
- (d) a trust; or
- (e) any other person or body or association of persons;

"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 responsible for matters concerning or dealing with the management of State-owned corporations, companies, entities or assets wholly or partially owned by the State;

"MRDC" means Mineral Resources Development Company Limited.

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

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

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

"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);

"Succession Date" means—

- (a) 30 June 2002; or

- (b) such earlier date specified by the National Executive Council for this purpose and published in the National Gazette at least 30 days earlier.

"**This Act**" includes any regulations;

"**Trust**" means the General Business Trust and "Trusts" includes any other trust of which the Board becomes trustee in accordance with this Act.

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

3. Application to the State

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

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 of the National Parliament or other provincial or local governments or officers of the public service other than as provided expressly in this or any other Act; and
 - (b) in accordance with sound business principles and the care, diligence and skill that a prudent person of business would adopt or exercise in similar circumstances.
- (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 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) In its capacity as trustee of the Trusts, the Corporation has all the powers—
 - (a) in respect of each of the Trusts that it is possible to confer on a trustee; and
 - (b) as if it were the absolute owner of the relevant assets and acting in its personal capacity; and
 - (c) necessary for fulfilling its obligations under this Act and the terms of the relevant trust, but subject always to the provisions of this Act.
- (3) Without limiting the generality of Subsections (1), and (2), subject to this Act, the Corporation (both in its capacity as trustee of each of the Trusts and otherwise) has power to—
 - (a) enter into arrangements for the formation, management, acquisition, sale, restructuring or liquidation of 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) set policies or objectives for State Owned Enterprises on any matter or on behalf of the Trusts, the State or any State Owned Enterprises; and
 - (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) In exercising the power of appointment referred to in Subsection (3)(1), the Corporation may appoint any of the Managing Director or the Directors to such positions.

9A. Directors of State Owned Enterprises

- (1) Subject to this Section and notwithstanding any law to the contrary, or anything to the contrary in the constitution of any Majority State Owned Enterprise, directors of Majority State Owned Enterprises shall be appointed by the National Executive Council on the recommendation of the Minister, by notice in the *National Gazette*.

- (2) Subject to this Act, a director of a Majority State Owned Enterprise appointed pursuant to Subsection (1), other than an *ex officio* director –
 - (a) shall be appointed for a term of three years; and
 - (b) is eligible for re-appointment.
- (3) Where a Majority State Owned Enterprise has a minority shareholder or shareholders other than the State or the Corporation, this section does not apply to the appointment of directors whom the minority shareholder or shareholders are entitled to nominate pursuant to the constitution of, or any shareholder agreement or other arrangement between the shareholders of, that Majority State Owned Enterprise.
- (4) In appointing any director pursuant to Subsection (1) the National Executive Council must have regard to –
 - (a) the nominee’s commercial experience and qualifications;
 - (b) the nominee’s suitability for appointment to board of the Majority State Owned Enterprise to which he or she has been nominated; and
 - (c) the home province of the nominee to ensure, as far as practicable, that each Majority State Owned Enterprise has no more than one director from any particular province on its Board at one time.
- (5) Before recommending an appointment pursuant to Subsection (1), the Minister must be reasonably satisfied that the nominee has the personal and professional qualities and abilities, and does not suffer from any of the disqualifying criteria, set out in Subsection 11(4) in relation to the appointment of Directors to the Board of the Corporation.
- (6) In making recommendations to the National Executive Council for all appointments as directors of Majority State Owned Enterprises, the Minister must seek to ensure that, as far as is reasonably practicable –
 - (a) at least one director of each Majority State Owned Enterprise (other than the managing director, if any) has extensive knowledge of and experience in the industry in which that Majority State Owned Enterprise operates;
 - (b) at least one director of each Majority State Owned Enterprise shall be a suitably qualified woman with a professional or industry background;
 - (c) one director of each Majority State Owned Enterprise shall be nominated by the Corporation;
 - (d) no person shall be appointed to the Board of more than one Majority State Owned Enterprise, except in exceptional circumstances or where that person has been appointed *ex officio*; and
 - (e) as far as is practicable, the home provinces and districts of directors of Majority State Owned Enterprises collectively represent an equitable and reasonable distribution across all provinces and districts.
- (7) A director appointed pursuant to Subsection (1) may be removed at any time by the National Executive Council and where that director had been appointed as nominee of a professional or business organisation pursuant to Subsection (6)(c), the body which nominated the director may nominate another person in his place.
- (8) If for any reason the number of directors on the Board of a Majority State Owned Enterprise falls below the minimum number required by the constitution of that Majority State Owned Enterprise for a quorum, the Corporation may, pursuant to Subsection 9(3)(l), immediately appoint sufficient directors to the Board of that Majority State Owned Enterprise to constitute a quorum plus one, such directors to hold office until the National Executive Council appoints additional directors pursuant to Subsection (1).

10. Delegation by the Board

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

11. Directors

(1) The Directors shall comprise the following:—

- (a) a person nominated by the Papua New Guinea Institute of Bankers;
- (b) a person nominated by the Papua New Guinea Chamber of Commerce and Industry Limited;
- (c) a person nominated by the Papua New Guinea Institute of Directors Inc;
- (d) a person nominated by Transparency International (PNG) Inc;
- (e) two persons nominated by the Minister;
- (f) the Departmental Head of the Department responsible for justice matters, ex officio, or a person nominated by him in writing from time to time to attend meetings and discharge the responsibilities as Director in his place; and
- (g) the Departmental Head of the Department responsible for treasury matters, ex officio, or a person nominated by him in writing from time to time to attend meetings and discharge the responsibilities as Director in his place;
- (h) the Managing Director, ex officio.

(2) The Directors shall be appointed by the National Executive Council upon the recommendation of the Minister, by notice in the National Gazette.

(3) Subject to this Act, a Director, other than an ex officio Director—

- (a) shall be appointed for a term of three years; and
- (b) is eligible for re-appointment.

(4) A Director appointed under Subsection (1)(a), (b), (c), (d), (e) and (h)—

- (a) shall, in the reasonable opinion of the Minister—
 - (i) be competent and of sound judgment for fulfilling the duties of a Director; and
 - (ii) possess professional skills or wide industrial or management experience, and have the ability to participate meaningfully as a Director; and
 - (iii) have a reputable standing within the community and be unlikely to do anything to undermine the interests of Papua New Guinea in favour of personal, business or other interests; and
- (b) shall not be—
 - (i) or have been convicted of any offence (or found liable civilly for any claim) involving fraud or dishonesty or which may diminish the integrity or reputation of the Board nor have been charged with any such offence and be awaiting trial; and
 - (ii) . . . [Repealed]

- (iii) or have been a bankrupt, or have applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his creditors or assigned his remuneration for their benefit; and
 - (iv) of unsound mind as that expression is used in the Public Health Act (Chapter 226); and
 - (v) or have been struck off any professional register for disciplinary reasons; and
 - (vi) . . . [Repealed]
 - (vii) a close relative of another director.
- (5) A Director appointed under Subsection (1)(a), (b), (c), (d) or (e) may be removed at any time by the National Executive Council in which case, the body which nominated the Director shall nominate another person in his place.
- (6) The manner of nomination of persons referred to in Subsection (1)(a), (b), (c) and (d) shall be as prescribed.
- (7) A person may not be appointed as a Director under Subsection (1)(a), (b), (c) or (d) if he is not a citizen of Papua New Guinea.
- (8) Failure to notify an appointment under this section in the National Gazette shall not invalidate the appointment.
- (9) A person may not hold simultaneously more than one position as Director.
- (10) The Directors shall appoint a person other than a Director to be Secretary to the Corporation.
- (11) A Director is not a trustee of any of the Trusts but each Director shall—
- (a) subject to this Act, be individually and collectively responsible for the proper management of each of the Trusts as if the Corporation were a company under the Companies Act 1997, the Directors were the board of directors of that company and that company were acting as trustee; and
 - (b) before entering on his or her duties or exercising any power or authority under this Act, make a declaration of office and secrecy in the form set out in Schedule 1 in the presence of a duly qualified witness in accordance with the Oaths, Affirmations and Statutory Declarations Act (Chapter 317) and, once a secretary is appointed, deliver that declaration to the Secretary.

12. Chairman and Deputy Chairman

- (1) The National Executive Council shall appoint one of the Directors referred to in Section 11(1)(a), (b), (c), (d) or (e) in accordance with the recommendation of the Minister as Chairman of the Board and may revoke his appointment at any time by notice in the National Gazette.
- (2) The Directors of the Board, other than the Chairman, may elect one of their number to be the Deputy Chairman of the Board.
- (3) Where, for any reason, the Chairman is unable to act, the Deputy Chairman (if any) may—
- (a) exercise all the powers; and
 - (b) perform all or any of the functions of the Chairman.

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 cannot 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 Head of State, acting on advice, by notice in the National Gazette.
- (2) The Managing Director shall be appointed for such period (not exceeding four years) and, 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 1998* does not apply in respect of the Corporation or of its Directors, officers 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

- (1) The Corporation shall, not later than three months before the end of each financial year, submit to the Minister 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 to the consolidated revenue fund; 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.

- (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.

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 of 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 objectives 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" include 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. Approval required for certain Contracts

- (1) Subject to this Section, a Majority State Owned Enterprise shall not, except with the approval of the Minister referred to in Section 61 of the *Public Finances Management Act 1995* upon the recommendation of the Managing Director, enter into any contract involving the payment or receipt of an amount, or of property to a value, (or both) exceeding K1,000,000.00, or such other amount (not exceeding K10,000,000.00) as may be approved by the Corporation from time to time in respect of that specific Majority State Owned Enterprise.

- (2) Notwithstanding Subsection (1), a Majority State Owned Enterprise may enter into a contract involving the payment or receipt of an amount, or of property to a value, (or both) exceeding K1,000,000.00 but not exceeding K10,000,000.00 if –
 - (a) the payment or receipt of that amount is urgently required; and
 - (b) such a payment or receipt is in accordance with the Annual Plan of the Majority State Owned Enterprise approved under Section 46E; and
 - (c) such urgent payments or receipts have been approved in principle by the Managing Director.

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 9A, or by the Corporation pursuant to Subsection 9A(9), notwithstanding the provisions of the *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 Corporation 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) The annual plan of a Majority State Owned Enterprises is subject to approval by the Board of the Corporation.
- (3) Any material departure from or changes to the annual plan of a Majority State Owned Enterprise require the approval of the Board of the Corporation.

46F. Sale or Lease of Land and Plant

- (1) A Majority State Owned Enterprise must not—
 - (a) sell or lease any land; and
 - (b) sell or lease any plant under a contract for consideration exceeding K1,000,000.00, without the approval of the Corporation.
- (2) A contract or arrangement entered into contrary to Subsection (1) is void, and the Majority State Owned Enterprise may recover any land or plant which is the subject matter of any such contract or agreement, and upon doing so must refund any moneys received from the other party to the contract or arrangement.

46G. Capital Expenditure

- (1) A Majority State Owned Enterprise must only incur capital expenditure—
 - (a) included in an annual plan approved by the Corporation under Section 46D(2); or
 - (b) which, although not included in an annual plan approved by the Corporation under Section 46D(2), is of an amount not exceeding K1,000,000.00 (or such other amount not exceeding K5,000,000.00 as may be approved by the Corporation from time to time in respect of that specific Majority State Owned Enterprise) when aggregated with all capital expenditure for the same goods or services during a financial year; or
 - (c) which has been specifically approved by the Board of the Corporation.
- (2) A contract or arrangement entered into contrary to Subsection (1) is void, and the State Owned Enterprise may recover any moneys paid under the contract or arrangement, and upon doing so must return any property delivered by the other party to the contract.

46H. Borrowing Powers

Subject to this Act and in particular to Sections 46B, 46F and 46G, 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

The Corporation 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. Compliance with Directions and Policies

- (1) A Majority State Owned Enterprise which fails to comply with its obligations under Section 46B, 46E or 46G, or which ignores or fails to give prompt effect to a direction given to it under section 46I, shall have contravened this Part VIA of the Act.
- (2) If a Majority State Owned Enterprise has contravened Part VIA, each of its directors, including the managing director (if any) shall be deemed to have been involved in that contravention and

thereby to have breached their duties as directors pursuant to Section 112 of the *Companies Act 1977* and be punishable accordingly under Section 413 of that Act.

- (3) It shall be a defence to any prosecution under this section if a director can establish that he voted against the action or the failure to take action which amounted to the contravention of Part VIA, or that he informed the Corporation of the contravention and took such action as was available to him to rectify the contravention.
- (4) In the event of a contravention of this Part having occurred, it shall be open to the Corporation, instead of instigating action under the *Companies Act 1977*, to dismiss a director or directors of the Majority State Owned Enterprise, notwithstanding Subsection 9A(7), and any director so dismissed shall be ineligible to be appointed as a director of any Majority State Owned Enterprise for a period of three years from the date of his dismissal.”

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, lodgement 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 or 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.

56. Successors to Director Nominators

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

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

57. Custody of Corporation Seal

- (1) The seal of the Corporation is to be in the custody of the Secretary or any other person appointed by the Corporation.
- (2) The seal must be used only by the authority of the Board and may be affixed by the Chairman, the Managing Director, the Secretary or any other person authorized to do so by the Chairman.
- (3) Every document or writing to which the seal is affixed shall be signed by a Director or any person appointed by the Board for the purpose of signing documents or writings to which the seal is affixed generally, or that particular document or writing, and is to be countersigned by another of any of the Directors or such persons.

58. Authentication of Documents

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

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).

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.

Transitional Provisions

- (1) The appointment of directors of Majority State Owned Enterprises in accordance with Section 9A shall commence when vacancies occur on the board of each Majority State Owned Enterprise, but existing directors appointed by the Corporation prior to this Act coming into effect shall continue in office unless and until their term expires or they are otherwise dismissed or removed from office.
- (2) Subsections 23(2) and 29(4) apply to directors, officers and employees of the Corporation whether appointed before or after the commencement of this Act.

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 care, 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