



No. 06 of 2012.

*Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2012.*

Certified on : 15.05.2012



No. of 2012

*Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2012.*

ARRANGEMENT OF SECTIONS.

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**“20. REMUNERATION OF DIRECTORS.**

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16. Amendment of Schedule 2.
17. Transitional Provisions.



No. of 2012.

AN ACT

entitled

***Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2012,***

Being an Act -

- (a) to amend the ***Independent Public Business Corporation of Papua New Guinea Act 2002*** to provide for better corporate governance of the Independent Public Business Corporation of Papua New Guinea and of State owned enterprises and majority state owned enterprises; and
- (b) 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.

**1. COMPLIANCE WITH THE CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred 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 purpose of Section 41 of the ***Organic Law on Provincial Government and Local-level Governments***, it is hereby declared that this law relates to a matter of national importance.

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(3) For the purpose of Section 26(3) of the *Constitution*, the position of Director (including Managing Director) is declared to a public office to which Subdivision III.3.C (*Leadership Code*) of the *Constitution* applies.

**2. ESTABLISHMENT OF THE CORPORATION (AMENDMENT OF SECTION 6).**

Section 6 of the Principal Act is amended by inserting, after Subsection (4A), the following subsections:-

“(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.”.

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

Section 9(3) of the Principal Act is amended by adding, at the beginning of Paragraph (l), the words:-

“subject to Section 9A”.

**4. REPEAL AND REPLACEMENT OF SECTION 9A.**

Section 9A of the Principal Act is repealed and replaced with the following section:-

**“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.

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(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.

(2) 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 majority 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; and
- (b) the nominee's suitability for appointment to board of the Majority State Owned Enterprise to which he or she has been nominated.

(5) Before recommending an appointment pursuant to Subsection (1), the Minister must be reasonably satisfied that the nominee has the person and professional qualities and abilities, and does not suffer from any of the disqualifying criteria, set out in Section 11(4), as if that subsection were to apply in relation to appointments made pursuant to Subsection (1) in the same way as it applies 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*;
- (e) the home provinces and districts of directors of Majority State Owned Enterprises collectively represent an equitable and reasonable distribution across all provinces and districts; and

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(f) the board of each Majority State Owned Enterprise shall comprise a minimum of six, and a maximum of eight, directors in total.

(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 the Corporation pursuant to Subsection (6)(c), the Corporation 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 section 9(3)(c), 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).”.

**5. REPEAL AND REPLACEMENT OF SECTION 20.**

Section 20(1) of the Principal Act is repealed and replaced with the following:-

**“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.”.

**6. APPOINTMENT OF MANAGING DIRECTOR (AMENDMENT OF SECTION 23).**

Section 23(2) of the Principal Act is amended by deleting the words:-

“subject to the *Salaries and Conditions Monitoring Committee Act 1988*.”.

**7. APPOINTMENT OF OFFICERS (AMENDED OF SECTION 29).**

Section 29(4) of the Principal Act is repealed and replaced with the following:-

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

**8. REPEAL AND REPLACEMENT OF SECTION 38.**

Section 38 of the Principal Act is repealed and replaced with the following section:-

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**“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.”.

**9. AUDIT (AMENDMENT OF SECTION 44).**

Section 44 of the Principal Act is amended by adding after Subsection (7), the following subsection:-

“(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*.”.

**10. REPEAL AND REPLACEMENT OF SECTION 46B.**

Section 46B of the Principal Act is repealed and replaced with the following section:-

**“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.”.

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**11. GOVERNANCE OF MAJORITY STATE OWNED ENTERPRISES (AMENDMENT OF SECTION 46C).**

Section 46C of the Principal Act is amended by repealing Subsections (1) and (2) and replacing them with the following subsections:-

“(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 Section 9A(8), 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.”.

**12. CAPITAL EXPENDITURE (AMENDMENT OF SECTION 46G).**

Section 46G(1)(b) of the Principal Act is amended by inserting, after the figures “K1,000,000.00” the words:-

“(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)”.

**13. BORROWING POWERS (AMENDMENT OF SECTION 46H).**

Section 46H of the Principal Act is amended by deleting the word “A” at the commencement of the section and replacing it with the words:-

“Subject to this Act and in particular to Sections 46B, 46F and 46G, a”.

**14. DIRECTORS AND POLICIES (AMENDMENT OF SECTION 46I).**

Section 46I of the Principal Act is amended by adding after the words “give directors in any matter concerning”, the words:-

“the activities of the Majority State Owned Enterprise including, but not limited to,”.

**15. NEW SECTION 46J.**

The Principal Act is amended by adding, after Section 46I, the following section:-

**“46J. COMPLIANCE WITH DIRECTIONS AND POLICIES.**

(1) A Majority State Owned Enterprise which fails to comply with its obligations under Sections 46B, 46E, 46F 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.



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“(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 Section 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.”.

**16. AMENDMENT OF SCHEDULE 2.**

Section 1(1) of Schedule 2 to the Principal Act is amended by deleting the word “Board” and replacing it with the word:-

“Corporation”.

**17. 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) Sections 23(2) and 29(4) apply to directors, officers and employees of the Corporation whether appointed before or after the commencement of this Act.”.

I hereby certify that the above is a fair print of the *Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2012* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Independent Public Business Corporation of Papua New Guinea (Amendment) Act 2012* was made by the National Parliament on 22 March 2012 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

